

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

[LB453 LB514 LB556 LB622]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 23, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB556, LB622, LB514, and LB453. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Ken Schilz; Norman Wallman; and Tom White. Senators absent: Amanda McGill. []

SENATOR LATHROP: Okay. Welcome to Business and Labor. My name is Steve Lathrop; I'm chair of the committee, state senator from District 12. Maybe I'll give the committee a little bit of chance for the other folks to arrive and while I'm waiting I'll explain a few rules. We're going to take up the bills today in the order posted outside beginning with Senator White and LB556. Just the way we do it for those of you not familiar with the process, we will allow the senator to introduce the bill, that will be followed by proponents, then opponents, and then those that want to testify in a neutral capacity and then the introducing senator is given an opportunity to close on the bill. We would ask you to...we don't have the light system in here, I thought they were going to install it. It hasn't been a big problem here. I'll just ask you to confine your remarks to three or four minutes. If you go much longer than that, then you're going to keep us here until after five by the time we get through four bills today. And just as a courtesy, we'll ask you to observe that three or four minute rule. If you don't, then I'm going to say something this time. And I will just remind you that you've gone on for three or four minutes and ask you to wrap it up and at that point please finish your thoughts, so that we can make time so that everybody gets heard today. Now I think I can probably introduce the committee, since Senator Council is here. To my immediate left is Senator Tom White from Omaha; Norm Wallman from Cortland; Ken Schilz from cattle country, Ogallala; Chris Chapek is our committee clerk; Molly Burton is our committee counsel; and we also have Senator Council from Omaha; and Senator Carlson from Holdrege. And with that, we'll start with LB556. I probably ought to ask you to turn off the cell phones. (Laughter) You wouldn't think I'd have to tell him but, okay, thanks. And Senator White, thank you. []

SENATOR WHITE: Good afternoon, Mr. Chairman, members of the committee. I am here, Thomas M. White, representative of Legislative District 8 to introduce LB556. LB556 would change the statutes that apply comparative fault to cases brought under Section 48-118 and following. Under current law, if an action is brought pursuant to Section 48-118 to recover from a third party the negligence of the employer, the employee, and the third party are all compared by the finder of fact. This occurs even though the Nebraska Workers' Compensation Act provides that the exclusive remedy against an employer is under the act. Thus the employer may have a percentage of negligence assigned even though no action can be brought against the employer. LB556 would remove the employers' negligence from the assignment of negligence under comparative fault statutes. An example of this is a case I had as an attorney a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

number of years ago. It was a gentleman was using a Jarvis Beef Buster bandsaw to cut cattle carcasses down the backbone while they hang. There was a defective switch in the saw; he was reaching forward to adjust the carcass; the saw activated and it sawed this part of his hand off. What occurred is we then, on behalf of him, sued the manufacturer of the saw and their defense in part was that he was badly trained, that he should never have had his hands forward even if there was a problem with the saw. And therefore, they used that to reduce the amount of money he could recover. That then, of course, reduced his recovery from what it would have been fully though he had no control over what his training was. But then the misery was compounded because the employer who had a substantial amount of money out in medical bills and work comp benefits was able to get 100 percent of their damages back from him. So even though the award to him was reduced by the employer's negligence, the employer got all of their money back with no reduction. It works great hardships and it is unfair, as the law is in our experience, and therefore we ask the committee to seriously look at this bill and consider advancing it to the floor. I'd be happy to try to answer any questions. [LB556]

SENATOR LATHROP: Very good. Thanks, Senator White. Any questions from the committee? Senator Carlson, you're recognized. [LB556]

SENATOR CARLSON: Senator Lathrop. Senator White, I'm the employer. Now put it in words that I can better understand. [LB556]

SENATOR WHITE: Sure. Senator, you're the packing company, okay? And you hire me to cut a critter in half; you don't train me properly to use the equipment. You say, go do it. I have no choice I have to go do it or you show me to the door. So I do as I'm told. I get hurt using your equipment. Now, you have to pay me Workers' Compensation but that doesn't really cover my injuries. I may have lost an arm or a leg, and I have my actual damages are much higher than the workers' compensation. The only person that can be sued, that I can sue is you, you know, I mean you are immune from any other suit. But I can sue the person that made the equipment and say it was defective, the switch was bad, whatever it was. And we're in the lawsuit together, you have a claim against whatever money I recover to get repaid. So now I'm suing the manufacturer of that equipment and the first thing their lawyer does is say, this isn't our fault, it's Tom Carlson's fault. He didn't train him right, he installed it wrong, he did this wrong, whatever he did wrong. This injury wouldn't have happened, and let's say it's at least 40 percent Senator Carlson's fault. So the damages instead of being \$100 are now \$60. So my damages that I asked from the manufacturer, let's say it's Senator Schilz, I would have \$100. They said 40 percent of the fault is Tom Carlson's; therefore he doesn't pay \$100, he pays \$60. All right? Now it's time that you have a right to recover for what you paid for workers' compensation, and even though 40 percent of the injury was your fault and I didn't get that money, you still get 100 percent of all the money you paid out even though 40 percent of the injury was caused by you. So I not only have my injury reduced from the money I get from Senator Schilz, you don't have yours reduced at all.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

You take maybe all of my money and I get nothing and you were at fault and I wasn't.  
[LB556]

SENATOR CARLSON: So how does your bill change that? [LB556]

SENATOR WHITE: My bill would say that the employer's fault can't be considered.  
[LB556]

SENATOR CARLSON: Okay, thank you. Maybe (laughter). [LB556]

SENATOR LATHROP: Are you done? [LB556]

SENATOR CARLSON: Maybe. [LB556]

SENATOR LATHROP: Well, I was going to call on Senator Schilz if you were but go ahead, Senator Schilz. [LB556]

SENATOR SCHILZ: So what you're saying is that you would take away the employer's 40 percent? [LB556]

SENATOR WHITE: Since the employer is immune from suit, they just can't be considered in the court. [LB556]

SENATOR SCHILZ: Pull it out of the thing. [LB556]

SENATOR WHITE: Out of the mix. [LB556]

SENATOR SCHILZ: And then you, then your client, or you would actually go after the manufacturer yourself and that would be. [LB556]

SENATOR WHITE: Right. And then Senator Carlson would get 100 percent of what he recovered as a, you know. [LB556]

SENATOR SCHILZ: But the employee would have that same shot. [LB556]

SENATOR WHITE: Yes. [LB556]

SENATOR SCHILZ: That's what you're saying? [LB556]

SENATOR WHITE: Yes. [LB556]

SENATOR SCHILZ: Okay. [LB556]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR WHITE: But right now the employee... [LB556]

SENATOR SCHILZ: Has. [LB556]

SENATOR WHITE: ...he gets nailed both ways and he may have absolutely no fault at all and be completely barred from recovery. [LB556]

SENATOR SCHILZ: Thank you. [LB556]

SENATOR WHITE: Or he makes a recovery and loses it all to the person who was at fault. [LB556]

SENATOR SCHILZ: Okay, thank you. [LB556]

SENATOR LATHROP: Senator Council. [LB556]

SENATOR COUNCIL: Yes, thank you, Senator Lathrop and Senator White. I think what needed to be clarified is that the resulting effect of the bill as introduced is not that the employee gains in the sense of being able to have his or her medical and lost wages paid under workers' comp and then still be able to recover an additional sum from the third party. What your bill provides is that if the injured employee does, in fact, sue the third party that the contributory negligence of the employer cannot be considered so that whatever the award is in that case is fully payable to the employee but the employer still has a right to recover from the employee anything that has been paid pursuant to workers' comp. [LB556]

SENATOR WHITE: Absolutely, Senator, that is absolutely what it does and the point...that's how the law handles it but it's not only unfair now in the initial case, it gets compounded secondarily because again, a person who had no fault at all can, and regularly are deprived of any kind of recovery against a third party because of the way the law is drafted right now. [LB556]

SENATOR LATHROP: Maybe just by way of clarification for people that don't understand comparative fault, basically, when you have a lawsuit outside of the work comp setting jury has to decide out of 100 percent of the fault who has what percent of fault and right now we include the employer's conduct in that calculation. [LB556]

SENATOR WHITE: Absolutely. [LB556]

SENATOR LATHROP: Even though they can't be sued in that setting. [LB556]

SENATOR WHITE: Yes. [LB556]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: And what you're saying is just take them out of the picture. [LB556]

SENATOR WHITE: Just take them out of the picture and that is the most sensible because their rights are really dependent on the employee's rights so that's how it should be. [LB556]

SENATOR LATHROP: Okay. Thank you. Senator Carlson. [LB556]

SENATOR CARLSON: Okay, and this will probably clear it up, Senator Lathrop. So under current law, I'm the employer. You came in and told me you know how to run this thing and you've had a lot of experience with it so I took your word for it, put you to work, you don't know anything about it. But now I'm at fault. [LB556]

SENATOR WHITE: No, actually you're not because at that point, Senator, under that hypothetical...I lied to you and told you I had been trained. That clearly, is my fault, and that would come in right now against me. [LB556]

SENATOR CARLSON: Okay. I went on a little tangent there so I'll get back. So under current law I can't be sued. [LB556]

SENATOR WHITE: That's other than work comp, yeah, it's not your fault. [LB556]

SENATOR CARLSON: And your bill doesn't change that. [LB556]

SENATOR WHITE: Nope. [LB556]

SENATOR CARLSON: Okay. Thank you. [LB556]

SENATOR WHITE: No, it does not. [LB556]

SENATOR LATHROP: I don't see any other questions, thanks. The first person wishing to testify as a proponent? Good morning, or good afternoon. [LB556]

JOHN FOWLES: Okay, Chairman and committee, my name is John Fowles, I'm an attorney practicing here in Lincoln and I'm here testifying on behalf of the Nebraska Association of Trial Attorneys in favor of this bill as a proponent. And I'm not going to repeat what Senator White explained to you because I think he explained it very well but I just want to add a couple of things to his testimony. First of all, I point out that in certain situations workers' compensation does compensate employees fairly well. For example, when an employee has lost earning capacity or lost--incurred--disability to a limb. Workers' compensation does provide compensation for that. But you run into a lot of situations where people sustain injuries that: A, don't affect their earning capacity.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

They're injured severely, it may affect them the course of their life outside of work but doesn't affect their ability to work. And I would point out, for example, scarring, burns, injuries that are very obvious when they are seen. They cause significant pain and suffering, humiliation and things like that. Now, in that situation which I run into quite frequently in my practice...for example, I recently had a client who sustained a significant injury to his face as a result of a work related injury, scar basically covering half his face, significant damage to his cheekbone but didn't affect his ability to do his job. We filed a third party liability claim against the responsible party who manufactured a implement that was used. And the first thing the defendant did was try to cast blame on the employer, said that they didn't train him properly, didn't maintain the equipment properly, they'd made improper modifications. Basically that's an attempt to gut their claim because he didn't have a substantial loss of earning capacity claim but he had significant damages otherwise. And this bill will address that situation because when you take a significant chunk out of a recovery for, for the noneconomic damages and things like that it can substantially reduce a claimant's recovery. And I'd like to point out that this bill doesn't cause a double recovery by the plaintiff. The plaintiff does not double recover because the employer has a subrogation claim in the employee's recovery. So there is no risk of double recovery in this situation but it does help the plaintiff be made whole in the situation where his employer is maybe partially at fault for his accident and his injuries. If there are any other questions, I'd be happy to answer. [LB556]

SENATOR LATHROP: Very good. Thanks, John. Any questions? I don't see any, thanks for your testimony. [LB556]

JOHN CORRIGAN: Good afternoon, members of the committee, my name is John Corrigan and I'm with the firm of Dowd, Howard, and Corrigan in Omaha. And I'm here on behalf of the Nebraska AFL-CIO to offer support for Senator White's LB--I think...what was this one--556. From the labor movement's perspective, they employ a lot of people or they represent a lot of people in the construction industry. You can imagine a construction site where there are maybe 7 to 10 different employers and oftentimes you're working hand in hand with an employee of another company. That other employee can be responsible for negligence leading to serious injury and death on a regular basis. Those are very dangerous areas of the work force and they are particularly susceptible to this problem because they'll have that work comp claim, but the guy who didn't, you know, tighten the screw on the scaffold worked for somebody else. And they started fighting about whether they were trained properly and the testing of the scaffolding and they're out in the sense that their own employer who may have been irresponsible gets to hide behind the shield that the law artificially creates at this time. And so on behalf of the AFL-CIO and the people that they represent, we'd ask you to support this legislation to right this imbalance in the law. Thank you. [LB556]

SENATOR LATHROP: Thanks John, we'll see if there's questions before you get away.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

Anybody have any questions for Mr. Corrigan? No? [LB556]

JOHN CORRIGAN: Thank you. [LB556]

SENATOR LATHROP: Okay, thank you. Next proponent? Anybody here in opposition? [LB556]

TOM LOCHER: Mr. Chairman, members of the committee, my name is Tom Locher. I'm a practicing attorney in Omaha and I am appearing here on behalf of the Nebraska Defense Council Association which is a organization of lawyers across the state who represent businesses and individuals in the defense of civil lawsuits and workers' compensation matters. I've also been authorized to enter opposition on behalf of the Nebraska Chamber of Commerce, the Nebraska Retail Federation, the Nebraska Grocery Industry Association, and the Nebraska Insurance Information Services. Our principle concerns regarding this bill are that it changes some fundamental principles regarding allocation of fault which have long been the province of juries and judges who are well equipped to determine allocations of fault. And it proposes to eliminate any allocation of fault to an employer who may well be significantly responsible in terms of the proximate or substantial contributing cause of an injury. And I think, first of all, that may have the effect of discouraging workplace safety on the part of employers. And the consequence, also, to a third party who may have minimal fault, say a vendor, contractor, supplier of services or a product who comes into the workplace and has very little fault can now be found responsible for all of or 100 percent of the damages of an insured employee and we believe that that is fundamentally unfair. Now, an injured employee is already protected by the Workers' Compensation Act regardless of fault. The issue here is in addition will he be able, or she be able, to recovery monetary damages in addition to workers' compensation benefits? And certainly, in certain circumstances that may well be the case. One of Senator White's observations was that well, that creates a potential problem because an employer who has a subrogation interest may be very much at fault yet still recover 100 percent of his subrogation or its subrogation interest. And I respectfully disagree with Senator White about that because 48-118 already contains a provision whereby a district court can make an equitable division of the right to subrogation, can award an employer who is seeking subrogation less because of fault or for other equitable reasons. So I think that's already taken care of in this instance. It does not affect the injured employee because the injured employee is either going to get workers' compensation and damages in accordance with fault or at the very minimum workers' compensation. So we think that on the whole this law does not need to be changed. The juries and courts of this state are well equipped to allocate fault. It will avoid the injustice of assigning 100 percent of damages to a party who may have very little fault by taking an employer out of the mix. And certainly in the instance Mr. or Senator White indicated, there may well have been fault of the employer. Maybe the employer did not adequately train that worker, maybe the employer should not have allowed that worker to work on that particular machine because of that lack of training.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

Perhaps that employer did not put sufficient guarding on that machine. Those are factors that juries and judges are well equipped to deal with under the existing system. I might also add that a business is protected by the exclusive remedy of the Workers' Compensation Act. That employer is not going to be found liable for its fault. It's just merely an allocation of fault for purposes of seeing that the party who is truly responsible pays a truly fair share of any damages. So with that, I'll be happy to answer any questions. Thank you for this opportunity. [LB556]

SENATOR LATHROP: Thanks, Tom. Any questions? Senator Carlson. [LB556]

SENATOR CARLSON: Senator Lathrop. Now, let's go back to something Senator White brought up. If the employee ended up being determined to be 40 percent at fault and the employer 60 percent. [LB556]

TOM LOCHER: Yes. [LB556]

SENATOR CARLSON: And the employee only receives 40 percent of damages. [LB556]

TOM LOCHER: Well, the employee, first of all, will have recovered 100 percent of the benefits under the Workers' Compensation Act. That's regardless of fault. In that instance, if 100 percent of the fault is between the employee and the employer, then yes, the employee has made that choice of remedy under the workers' compensation benefit. But so too, the employer will not have a right of recovery against anyone else. [LB556]

SENATOR CARLSON: Okay, you said the employee has a choice? [LB556]

TOM LOCHER: Well, they make a choice of remedies to the extent that that employee is protected by the Workers' Compensation Act, which is a balancing of interests. Regardless of that, an employee could be 100 percent at fault and still recover workers' compensation benefits without regard to his own fault. So that's what the workers' compensation system is designed to do. [LB556]

SENATOR CARLSON: Okay. Now this might be a little bit unusual question but I find it seems to be like you're coming down a little bit hard on the employer. Maybe that's okay and you're representing the Nebraska Chamber of Commerce and Nebraska Insurance Information, and Nebraska Retail, and Nebraska Grocers. Are you coming down hard on the employer? [LB556]

TOM LOCHER: I'm not coming down hard on the employer because the employer has nothing at risk. They are protected by the workers' compensation exclusive remedy. So they will pay workers' compensation benefits in any event. And but if they are truly at



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

fault, then that fault should be allocated. It's not that they're going to have a damage award against them under the circumstances that I've described because of that exclusive remedy. [LB556]

SENATOR CARLSON: And if they are truly at fault, Senator White's bill doesn't remove that, does it? [LB556]

TOM LOCHER: If they are truly at fault, it does remove it. It intends to remove it by saying that goes out of the mix entirely. And our position is that's not fair to a party who may have very little fault, for example, a contractor that comes in or a vendor of a product when the bulk of the fault is with the employer. [LB556]

SENATOR CARLSON: Okay, thank you. [LB556]

SENATOR LATHROP: I'd like to ask you some questions because I'm not sure it's clear to some what we're talking about and maybe a couple of questions will, while you're there and we've practiced against one another and so this is an honest way to do this. If a person, in the scope and course of their employment is injured by somebody through somebody's fault other than a coworker or their employer, then they have two causes of action, don't they? One is for work comp benefits which a person can get if they get hurt in the scope and course of their employment and that's without regard to fault. To get those work comp benefits you show merely that you were in the scope and course of your employment. [LB556]

TOM LOCHER: I agree, sir, absolutely. [LB556]

SENATOR LATHROP: And we can also agree that that was sort of a social contract that goes back to the industrial revolution when we could sue employers and we said, now you don't have to show fault but everybody's going to get work comp. Right? [LB556]

TOM LOCHER: That's my understanding of the history, yes. [LB556]

SENATOR LATHROP: Okay. And you've referred to the exclusive remedy without defining it but what that basically means is the employee cannot sue his employer even if the employer took all the guards off of the equipment, took all the safety measures away from the workplace and let everything be and the hazards exist in the workplace. [LB556]

TOM LOCHER: The exclusive remedy is a balance between eliminating any proof of fault against an employer yet still being able to recover. [LB556]

SENATOR LATHROP: That's what work comp is. [LB556]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

TOM LOCHER: But there is a limitation in terms of certain damages, yes. [LB556]

SENATOR LATHROP: Right, but that's what work comp is. Work comp is the balance and the trade-off is that the employee cannot sue the employer no matter how willfully careless they are except in work comp. [LB556]

TOM LOCHER: They can sue in workers' compensation court. [LB556]

SENATOR LATHROP: Only. [LB556]

TOM LOCHER: That's right. [LB556]

SENATOR LATHROP: Okay. [LB556]

TOM LOCHER: And the injured employee also can have no fault assessed against him as a result of his misconduct. [LB556]

SENATOR LATHROP: Yeah, and so it might be...yeah. I'm going to agree with you and maybe explain it so we don't confuse Senator Carlson. But the employee can make that claim regardless whether he was hurt because of his employer's fault or through no fault which might just involve picking up a two by four and blowing out a disk in their back. [LB556]

TOM LOCHER: I agree. [LB556]

SENATOR LATHROP: Okay. That's work comp. Some people can be hurt in the scope and course of their employment and it's somebody else's fault besides the employer or a coworker. [LB556]

TOM LOCHER: That is certainly true. [LB556]

SENATOR LATHROP: And in that instance it will give rise to what we call a third party claim. [LB556]

TOM LOCHER: I agree. [LB556]

SENATOR LATHROP: And what we're here to do today is...and that brings us to comparative fault which is a jury or a judge allocating 100 percent of all the fault to the players. [LB556]

TOM LOCHER: Correct. [LB556]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: And what Senator White's bill is saying is, we're not going to include the employer in that calculation and the rationale that he gave us is over here they have no civil liability so why should we include them in the calculation? That's the rationale for this bill. Whether you agree with it or not. [LB556]

TOM LOCHER: That's Senator White's rationale, right. [LB556]

SENATOR LATHROP: Okay. One of the problems, and this may be a little bit of a rhetorical question but we could solve your concerns by putting a little crack in the exclusive remedy and saying if you bring a third party action that involves negligence of a host of people including the employer that they don't have the exclusive remedy any longer. [LB556]

TOM LOCHER: Could you do that? [LB556]

SENATOR LATHROP: Yeah. [LB556]

TOM LOCHER: Well, I think you could do that, sure. Would I agree with that? Not necessarily. [LB556]

SENATOR LATHROP: And then I'm suspecting that the very groups that you support would say no, that's a bad idea. [LB556]

TOM LOCHER: They may well because I think the system works well now, I think the courts are used to dealing with it and I think that really this gets back to who is fundamentally at fault among third parties. Take the employee out of the mix and the employer in the context of the work comp he's always going to recover. But we're now getting to the third party and you have a situation where someone who may be 10 percent at fault, whereas an employer is 90 percent at fault, now you're saying that that 10 percent at fault party has to pay 100 percent of the damages. And that's where the fundamental fairness issue comes in. [LB556]

SENATOR LATHROP: And that's really a function of that exclusive remedy. The employee can't sue the employer in that civil lawsuit, only in work comp. [LB556]

TOM LOCHER: In work comp and he has been already afforded the benefits of workers' compensation. [LB556]

SENATOR LATHROP: Well, maybe one more point about it just to enlighten anybody who doesn't understand this as well as you do. In work comp you essentially get your bills paid for and you're compensated for your lost earnings and your lost earnings ability. Third party claims are about a lot more damages. You may have lost your marriage. You're, you know, disfigured you're going to live a life of pain and those things

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

aren't even accounted for in the work comp claim. [LB556]

TOM LOCHER: Certainly could be. [LB556]

SENATOR LATHROP: Okay. [LB556]

TOM LOCHER: And but, of course, there will also be an allocation of contributory negligence or a comparative fault against that employee which he doesn't have in the workers' compensation situation. [LB556]

SENATOR LATHROP: Except for a unique, yeah. [LB556]

TOM LOCHER: That could substantially reduce those damages and a jury may not see the damages the same way that the injured employee does. [LB556]

SENATOR LATHROP: Okay. I'll see if there's any questions. I don't see any. Thanks, good to see you. [LB556]

TOM LOCHER: Thank you very much, thank you. [LB556]

SENATOR LATHROP: Next opponent to LB556, if any. Just one. Anybody here in a neutral capacity? Seeing none, Senator White, you're welcome to close. [LB556]

SENATOR WHITE: Thank you, Mr. Lathrop, members of the committee, a couple of points. First of all, it is absolutely not true that the employee gets third-party benefits in addition to work comp benefits. The law is clear and in the cases I have had the judges clearly enforce it. If you get additional benefits, the employer recovers what they pay back. Now, there is true, there is a provision says equitable distribution but the drive has been, in my experience, the courts award back what the employer gets. And they say, well the jury really just adjusted what your damages are. So I would tell you this, it is interesting that this number of folks oppose this. It also, however, will reduce the cost of workers' compensation. Because by taking them out of this what will be clear is if an employee recovers against a third party, when you go into that judge, there will be no equitable argument that 100 percent of the employer's medical payments should be repaid. So the thing that often is frustrating--and rather than arguing with Mr. Locher here, I'm sure we'll have a beer and we'll argue about it later--is you don't limit damages. Okay. That employee suffered damages whether it's medical bills, lost wages, disfigurement, pain, suffering. They don't go away. The question is who gets stuck with them? Right now, the law sticks the employee with them even if it's not his fault. He gets stuck with the loss. I don't think that's fair. I don't think it's good for the employee; I don't think it's good for the system. I think if we're going to hold the employer free from any fault, then we should make that rule consistent. [LB556]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: Very good. Any questions for Senator White on his close? Seeing none, thanks. That will close our hearing on LB556 and we'll go right into LB622. And that brings us to Senator Nordquist, who is here to introduce LB622. [LB556]

SENATOR NORDQUIST: Thank you, Chairman Lathrop, members of the committee, my name is Jeremy Nordquist, N-o-r-d-q-u-i-s-t, and I represent District 7 in Omaha. I'm here today to open on LB622. As you know, when a worker is injured in an on-the-job accident, the result can be financially devastating for their families. Family income dries up while expenses continue to accrue. On top of ordinary expenses, worker often incurs medical bills related to the injury. Those medical bills are not paid on a timely basis by the employer's insurance carrier as required under the Nebraska Workers' Compensation Act. The additional stress of bill collectors is introduced into this already stressful situation. The Nebraska Workers' Compensation Act was intended to provide a quick and efficient method of replacing a portion of a worker's lost income and to provide the worker's medical bills be paid so that the worker can return to work quickly. To achieve the goal, the Legislature has provided that if a disability payment to cover the worker's lost income is delinquent, a 50 percent waiting penalty is added. LB622 is intended to mirror the waiting penalty on disability payments. If a medical bill is more than 30 days delinquent and there are no reasonable controversies as to the responsibility or the amount of the bill, a 50 percent penalty payable to the worker would be added. The goal of the bill is simply to provide an incentive for prompt payments of medical bills. There will be those following me who can address the technical aspects of this, and I'd be happy to answer any questions. The committee may wish to consider amending the bill to extend the deadline up to 45 days. This would harmonize the bill with existing provisions and retain the general purpose of the legislation. Nebraska state governments...that's the Nebraska state government prompt payment provision. [LB622]

SENATOR LATHROP: Senator Nordquist, you've had some conversation with people with the state of Nebraska. They've expressed concern about... [LB622]

SENATOR NORDQUIST: Exactly. Yeah. That's why we need to...you know, the committee should consider going to 45 days as opposed to 30. [LB622]

SENATOR LATHROP: And you have no problem with that. [LB622]

SENATOR NORDQUIST: No, absolutely not. [LB622]

SENATOR LATHROP: Okay. [LB622]

SENATOR NORDQUIST: I'd appreciate your full consideration. [LB622]

SENATOR LATHROP: All right. We'll give it our full consideration. I promise you that. [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR NORDQUIST: Thank you. Thank you. [LB622]

SENATOR LATHROP: Is there anybody here that has a question for Senator Nordquist? Senator Council. [LB622]

SENATOR COUNCIL: And maybe it's both for you, Senator Lathrop and Senator Nordquist, because you just spoke to something involving the state and harmonizing. Now, is there legislation that affects state employees differently in terms of late payment of medical bills? [LB622]

SENATOR NORDQUIST: Yeah. I believe that it's 45 days under the...and there will be someone testifying after me to clarify that, but. [LB622]

SENATOR COUNCIL: Because that's the question I need to have answered. [LB622]

SENATOR LATHROP: He had a conversation I think that he related to me on the floor this morning about someone from the state indicating that typically the state is permitted 45 days to pay their bills because it's the state and it takes them longer to do things. And they've essentially requested that you amend your bill to accommodate the speed at which the state moves. [LB622]

SENATOR NORDQUIST: Exactly. [LB622]

SENATOR COUNCIL: Okay. And my question, I guess, goes to is there any comparable provision relative to any obligation of the state for injuries to employees and payment of medical expenses? Because I don't do workers' comp. I don't even know when it applies. [LB622]

SENATOR LATHROP: I think the state is obligated to pay work comp benefits the same as a private employer. [LB622]

SENATOR COUNCIL: Okay. So it would be the same...and that's why I'm asking why the 45 days, and so this would also subject the state to the additional 50 percent... [LB622]

SENATOR NORDQUIST: That's right. [LB622]

SENATOR COUNCIL: ...payable to the employee. [LB622]

SENATOR NORDQUIST: If it's past 45 days. [LB622]

SENATOR COUNCIL: Okay, thank you. [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: Any other questions? Seeing none, do you wish to close?  
[LB622]

SENATOR NORDQUIST: Actually, we're opening on budget bills in Appropriations. I'm going to sneak out and get back to that so thank you, though. [LB622]

SENATOR LATHROP: All right. Thanks, Senator Nordquist. First proponent. []

JOHN CORRIGAN: Good afternoon, again, members of the committee, Mr. Chairman. John Corrigan on behalf of the AFL-CIO in support of this legislation. Clearly, the concept behind the legislation is positive in the sense that there is a great hardship visited upon employees who, in cases where there is no reasonable controversy, that is, we're not fighting about whether it really happened at work. We're not fighting about whether the doctor says, you know, this might be a preexisting condition and not work related. When there is no reasonable controversy and somebody sits on the bill, that hurts people because they get stuck in collections; it hurts their credit reports; it hurts their ability to buy houses and finance children's educations and so our direction from our membership of the AFL-CIO was go and support this bill. Now the concept of the 45 days--we're completely in support of that amendment should the committee wish to do so. And really I think what the senator is talking about is the concept of the Clean Claim Act. The insurance industry has the concept of a clean claim. When they submit a clean claim to a provider or a plan that has responsibility to pay the bill, so a provider submits a bill, the clean claim is deemed to be pursuant to their coding, it says, okay, it's clean. There's no question about, you know, the charge, we owe the money. If they don't pay it within 45 days, you don't get your discount in your PPO organization. So let's say the hospital says as long as you are in the PPO with Midlands Choice, we're going to give you a 60 percent discount. If the claim is not paid within 45 days, now it's going to be 100 percent of those bill charges. And that can be a windfall to the providers. But the idea is there has to be some incentive to pay these bills in a timely manner because of the grief that it causes the insured when they don't, and this is no different except that we don't have the...the workers have not had the ability to force the employer to pay a premium when they pay it late. This creates that incentive and we support the legislation. I'll answer any questions if there are any. [LB622]

SENATOR LATHROP: Any questions? Senator Carlson. [LB622]

SENATOR CARLSON: Senator Lathrop. In the wording in the bill, this new wording "All medical payments," that's page 2, line 20, what does that mean? What comprises all medical payments? Is that compensation as well as... [LB622]

JOHN CORRIGAN: Medical payments...there are a number of different types of compensation that you can receive under the Workers' Compensation Act. The most

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

immediate, most direct, and probably the most common are payments for the guy gets injured and they take him to the hospital. Those bills, those charges are medical payments, medication payments, payments for physical therapy, payments for doctor's visits. Those are med pays or the simple bill that the guy gets and somebody has to pay it. Now it's not dealing with...this bill, as I understand it, is not dealing with payments for disability or mileage, which those things are already subject to a 50 percent penalty if not timely paid when there is no reasonable controversy. But for some reason, they've excluded medical payments from that. This bill captures that discrepancy, and if it were to be extended to a 45-day time line, then it would be consistent with what we already do for the medical community and the insurance industry. [LB622]

SENATOR CARLSON: Now if I'm the employee and I'm hurt at work and I have medical treatment and it comes to \$1,000, and if that's not paid within...if this goes from 30 days to 45 days...if that's not paid within 45 days, this says that 50 percent would be added so now it's \$1,500 payable to me. I never paid the \$1,000 in the first place. [LB622]

JOHN CORRIGAN: Now it's a 50 percent penalty to the employee so now you've got the carrier or the employer, whoever is responsible for paying the bill is going to send a check to the doctor for \$1,000 and he owes the employee \$500 because he didn't pay it on time. And that's exactly what the law is today with regard to if he owed the employee \$1,000 for temporary total disability payments for he missed two weeks of work and if he didn't pay it within 30 days of the time that it became clear there was no controversy here, then he's going to have to pay the employee \$1,500. And if it's not paid in a timely manner, you may be entitled to interest and attorney fees if the court has to order them to pay it. So that incentive is already there. This creates that incentive for those simple medical payments which are really the bulk of benefits that are paid. Most people are back to work in short order after they receive medical payments, but because that's the case, the bills aren't paid in a timely manner. And that visits a hardship on working people who are getting harassed and getting their credit reports affected by the fact that they didn't have any responsibility to pay the bill under the law and yet it wasn't paid and so the provider is seeking to collect in court or sends it out to a credit reporting agency. [LB622]

SENATOR CARLSON: I understand that. I look at it differently from compensation that I am to have received that replaces my wages. I need that income to live. I'm not responsible for paying those medical bills anyway, but it is a frustration when they don't get paid because I'm getting the bill in the mail and I don't have any money to pay it. I understand that. But I guess I don't see that it's worth a 50 percent extra like it is on compensation that I have coming to me and I don't have it. Therefore, I can't take care of my family. [LB622]

JOHN CORRIGAN: Well, I understand the concern, Senator, and I guess I would share with you an incident where just exactly as I described the employer in the private



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

industry or in the insurance setting, the hospital sends a bill out for \$1,000. And if you don't pay that bill within 45 days under the Clean Claim Act, they get to charge you \$2,000 and you got to pay it. And the law allows the insurance industry to do that as an incentive to make people pay their bills on time, and the Workers' Compensation Act should be no different. It should be no different for injured workers because them not getting their money, getting their bills paid pushes them into a situation where there's real hardship because their credit ratings are affected when they go into collection. And it's simply a legislative way to place some incentives on the carriers to timely pay the claims. [LB622]

SENATOR CARLSON: Thank you. [LB622]

SENATOR LATHROP: Senator White. [LB622]

SENATOR WHITE: Are you familiar, Mr. Corrigan, with situations where hospitals will require a person presenting themselves, even if injured on the job, to sign a contract that states if any carrier, work comp or otherwise, doesn't pay this on a timely manner, you remain responsible for the full amount? [LB622]

JOHN CORRIGAN: That's exactly what every major hospital in Omaha I know does that. People come in and if the guy can't sign it, a relative signs and says, yeah, we want this care and they've just obligated themselves to pay 100 percent of bill charges, whether that charge is reasonable or necessary or pursuant to the fee schedule with work comp. And it's a very inequitable situation, but that's the law in Nebraska allows the hospital to do that. [LB622]

SENATOR WHITE: And so at this point in time, unlike some questions that were asked, that patient is responsible for paying that bill if the carrier promptly doesn't do it. Correct? [LB622]

JOHN CORRIGAN: Correct. And he can go out to the comp court and force that employer to do it, but in the meantime, the employer is only obligated to pay for the fee schedule, some reduced rate, where that employee has just signed off to pay the 100 percent of the bill charges if it's not paid within 45 days of the clean claim. That's a really unfair situation. [LB622]

SENATOR WHITE: So the employee may be responsible for the difference between the fee charges if it's paid over 45 days...later than 45 days and the full value. Correct? [LB622]

JOHN CORRIGAN: Well, under the black and white terms of that contract, yes, that is correct. Now if in that situation I would certainly try and defend that employee to say, hey, he's not responsible here, but there's probably some medical providers and their

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

attorneys that would disagree with me. [LB622]

SENATOR WHITE: And as a result, one of the things hospitals have agreed to lower rates from work comp. Correct? [LB622]

JOHN CORRIGAN: Yes. And the law provides a fee schedule for that purpose. [LB622]

SENATOR WHITE: Then they need prompt payment because they've agreed to a lower rate. [LB622]

JOHN CORRIGAN: That is correct. [LB622]

SENATOR WHITE: And also in other states it's increasingly difficult to get hospitals and care providers to take work comp cases, is it not? [LB622]

JOHN CORRIGAN: I am familiar with that problem around the country. [LB622]

SENATOR WHITE: And part of that is the delay in payment and the lower reimbursement rates. [LB622]

JOHN CORRIGAN: There are certain providers in our own community that feel the same way. They won't take--oh, it's a work comp case? You'll have to see another doctor. [LB622]

SENATOR WHITE: Thank you. [LB622]

JOHN CORRIGAN: Because of the...not only the failure to prompt pay, but the other problems associated with the law in protecting employers and insurance carriers from simply getting paid. [LB622]

SENATOR LATHROP: Before I recognize Senator Carlson, I'm going to ask a question myself just to make a point maybe, and that is if I sense from Senator Carlson's question, one of his concerns is why is the employee getting his 50 percent? How come we don't give it to somebody else? And the reality is it's the employee that's got to go out and hire the lawyer to make the claim against the employer or the work comp carrier to recover the medical bill that wasn't paid on time. Right? [LB622]

JOHN CORRIGAN: Those are all incidents of the hardship visited upon the employee by the failure of the provider to pay an otherwise undisputed claim. [LB622]

SENATOR LATHROP: When I read this bill, the first thing that occurred to me, and I do have a work comp practice, not a lot but I do some of this, the first thing that occurred to me is this is sort of the problem with getting the pay. But what I've recognized more

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

recently is the unwillingness, unreasonable, and without foundation the unreasonable refusal to authorize care. Seems to me this bill ought to include some penalty for unreasonable failure to authorize care when there's no medical dispute. [LB622]

JOHN CORRIGAN: I can't say I would be opposed to that, Senator. [LB622]

SENATOR WHITE: Would you accept an amendment on that (inaudible)? [LB622]

JOHN CORRIGAN: Not my bill but... [LB622]

SENATOR LATHROP: Well, I just, you know, and for people that don't practice in the work comp court, they sort out and rarely find, rarely find the absence of any controversy sufficient to impose penalties. Wouldn't you agree with that? [LB622]

JOHN CORRIGAN: Yes. I think that... [LB622]

SENATOR LATHROP: So while... [LB622]

JOHN CORRIGAN: ...by the time that the case falls on the desk of Mr. Locher or some people that are on his side of the fence in this system, they're going to tell these people to pay the bills. But the problem is, it may take months or years before an adjuster is advised by an attorney to start paying the claims and stop obstructing the process. And we found in our practice unrepresented people or even represented people, that is a tactic of delaying the process to chase these folks away from the proper medical care that they're entitled to and chase them away from the benefits they're entitled to because they just make it so difficult and time consuming that people lose the will to seek the benefits they're entitled to. [LB622]

SENATOR LATHROP: Okay. Senator Carlson. [LB622]

SENATOR CARLSON: Senator Lathrop. Get back to the discussion between you two here, that seemed to me like you're talking about a hospital that has somebody sign something that's under duress... [LB622]

JOHN CORRIGAN: Well, I... [LB622]

SENATOR CARLSON: ...and they've obligated themselves...just let me finish. I mean that's what you're talking about. I don't disagree with you, but I don't think this bill is addressing that. This has to do with paying the employee from the...and it's not addressing the problem of the provider. [LB622]

JOHN CORRIGAN: Well, I don't know if I'd use the term under duress, but that's certainly the reality. On several occasions when somebody shows up at the hospital, the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

problem is, is that, and I think what Senator White's questioning was trying to point out was the Legislature has already created a system whereby that is possible that the employee...let's say he has insurance through his employer and it's a nonwork-related reason that he's in the ER, his insurance plan says we're supposed to pay that bill and they don't do it. Well, the employer or I mean the hospital now they've got a provision in their agreement with the PPO plan or the provider, that says if you don't pay this within 45 days, we're going to get the full charge. And we don't care who is responsible. It may be the individual or his plan, but we're going to get our money. And they'll reduce their charge by up to 60 percent just so they can be paid promptly. But after 45 days, the law allows this inequity, in my opinion an inequity, today in nonwork-related injuries. There's no reason we shouldn't create the same incentive for workers' compensation injuries. And that's why we think the 45-day period rather than a 30-day period would be acceptable and place it in harmony with other provisions in the law. [LB622]

SENATOR CARLSON: Okay, thank you. And it sounds to me like you've got some problems that you need to send your people out to Holdrege, Nebraska, in our hospital and then treat people that way. [LB622]

SENATOR LATHROP: You may be right on the money. Senator Council. [LB622]

SENATOR COUNCIL: And I just have a question that maybe either Senator White or Mr. Corrigan, and I said it before, I don't practice workers' compensation law so I'm not intimately familiar with its provisions. But when I look at the addition to the statute, it speaks to two circumstances: One within 30 days after notice has been given and the other or within 30 days after the entry of a final order, award, or judgment of the compensation court. So what is this notice that is referenced in the legislation? [LB622]

JOHN CORRIGAN: The employer has to be placed on notice that the employee has incurred a medical expense for which the employer is responsible as a result of a work-related accident. If the employer hasn't got the bill, you can't show that they knew, either the carrier or the employer itself if they're self-insured, if they don't know the bill is coming, then how can you say they paid it late essentially? Now the second situation is...the first situation, it's my understanding, is referring to...you haven't...there isn't a lawsuit on file. There's just a guy got hurt and a bill from the ER. And the employee needs to make sure that that employer or the carrier has the bill and they've been placed on notice that they need to pay it. That other situation is when the court decides these are all work-related expenses. There may have been some dispute. Maybe one doctor said it wasn't work related and one doctor said it was. But I'm going to find in favor of the employee and say that this was work related. Now that employer's attorney or the employer itself has got a judgment from the court, an order saying pay these bills. Now if they don't pay it and the judgment becomes final, just like we do with other benefits, temporary disability or other permanent disability benefits, it makes a penalty provision applicable to medical payments as well. [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR COUNCIL: Okay. Well, I guess what I don't understand is the notice and that can occur before there is a compensation court determination that the medical bills are payable? [LB622]

SENATOR WHITE: What happens I think a lot is there's a notice of...first notice of injury. So you have somebody working and he falls. Many times there won't ever be a lawsuit. Okay, the employer says (inaudible) he's working under it and he got hit by this and broke his shoulder so there doesn't need to be an award or lawsuit. There's just a notice to the employer, hey, we had a person hurt, they're in the hospital. This would take effect now because the bills will be coming in. You shouldn't have to go to court to make a lawsuit when it is clear to everybody that are on the job and he needs care. [LB622]

JOHN CORRIGAN: And I think to clarify a little bit, let's say the employee had a 30 percent loss of earning. That a vocational counselor agreed upon by everybody gave an opinion that said you got a 30 percent loss of earning. The employer at that point, if they disagree with it, or the employee for that matter, they've got an obligation to go out and see if they can generate a rebuttal opinion to that loss of earning opinion. Let's say the employer doesn't generate that opinion. They've had a copy of this opinion that there's a 30 percent loss of earning for more than 30 days. The current law requires them now to pay the penalty. And so in the practice, if the doctor...you get an impairment rating from the doctor or evidence saying that the guy can't work and so he's entitled to temporary disability, the first thing the lawyer needs to do is send a letter to the insurance carrier of the employer and say, you're on notice. These benefits are due and paying today. And that's what the court looks at when they enforce the penalty provisions to say, did the employer know about this bill, Mr. Corrigan? Yes, they did, Judge. Here's exhibit A. Okay. We'll order the penalties. And I don't think that this changes that, other than to apply it to medical bills so that when the case comes in, you get a bill, make sure a letter goes out to that carrier so you have evidence if you're going to try and enforce this provision. Thank you. [LB622]

SENATOR LATHROP: John, one other thing, though. If I go into the hospital unconscious and they fix me up and send me out the door and they provided the service, it was necessary care, they can sue me for that bill regardless of who my insurance company is or whether it's work related or not, right? [LB622]

JOHN CORRIGAN: You received the medical care. [LB622]

SENATOR LATHROP: And it's not a defense to that suit against me for the cost of the care that I was in the scope and course of my employment and they should sue the employer because they can't. Right? [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

JOHN CORRIGAN: That's correct. [LB622]

SENATOR LATHROP: It's incumbent upon the employee to enforce the work comp statutes and to bring the claim in the work comp court for the bills and the lost earnings. [LB622]

JOHN CORRIGAN: That's right. [LB622]

SENATOR LATHROP: So that might be part of the confusion. That person owes the bill because they got the care, period. They can get reimbursed or essentially require the employer to pay it in the work comp court. [LB622]

JOHN CORRIGAN: That's right. [LB622]

SENATOR LATHROP: And what you're saying is if they got everything they need and they've sat on it for 45 days and I have to file a suit, I ought to get a penalty to help compensate me for (a) the fact that I might get sued over the bill, and (b) the attorney fees and the effort I got to expend to get it collected. [LB622]

JOHN CORRIGAN: And for the most part, employers, insurance carriers understand their obligations and they follow them. This law is an attempt to unify these provisions about penalties to make an incentive to pay the medical bills because we have identified this problem. We don't have the problem with the other types of benefits because the penalty provisions were there. [LB622]

SENATOR LATHROP: Okay. Thanks, John. Next proponent. [LB622]

LEE LOUDON: Good afternoon, Chairperson Lathrop and members of the committee. My name is Lee Loudon, it's L-o-u-d-o-n. I'm here on behalf of the Nebraska Association of Trial Attorneys in support of LB622. LB622 would provide a greater incentive for employers to pay medical bills timely when there is no reasonable controversy concerning the employee's entitlement to these benefits. I've handled workers' compensation cases now for about 14 years, and I've handled probably hundreds of workers' compensation cases, and every week I have to deal with creditors that are hounding my clients to pay medical bills for which there is no reasonable controversy. LB622 would just put into the law the same incentive for employers to pay the medical bills on time just like the indemnity provisions now. The employer still would bear, excuse me, the employee would still bear the burden of proving that there was no reasonable controversy about their entitlement to this medical treatment. The way the law is now, if one seeks to penalize the employer for not paying these medical bills for which there is not a reasonable controversy, the only thing the employee can recover in addition to the medical bill is an attorney fee for the time in obtaining payment or getting an order from the court ordering payment of these medical bills. And I've been

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

successful on numerous occasions, but the judges apply a proportionate share of attorney fees for getting just that particular medical bill. So there might be thousands of dollars in medical bills that are outstanding that our clients are getting hounded for, but in separating out the elements of the case, I may have only spent 10 or 20 hours on obtaining payment of these medical bills. And so the employers take the attitude, well, we can go ahead and pay a few hundred dollars or \$500 in attorney fees if we can string this case out for a year or two years and not pay these medical bills that run into the tens of thousands of dollars. It is a chronic, serious problem for workers' compensation claimants in this state. [LB622]

SENATOR LATHROP: Very good, thanks, Lee. Senator White. [LB622]

SENATOR WHITE: Thank you, Mr. Loudon. Have you also had the problem where a care provider in the middle of treatment will stop providing treatment necessary to get the employee back on the job because they're not getting paid? [LB622]

LEE LOUDON: Yes, absolutely. That's happened on several occasions. [LB622]

SENATOR WHITE: And that can permanently cripple or permanently derail an employee's effort to get back into the work force. Is that your experience? [LB622]

LEE LOUDON: Absolutely. [LB622]

SENATOR WHITE: Thank you. [LB622]

SENATOR LATHROP: Senator Carlson. [LB622]

SENATOR CARLSON: Senator Lathrop. In your experience talking about this, who is really at fault? Is it the...are you saying it's the employer... [LB622]

LEE LOUDON: Yeah. [LB622]

SENATOR CARLSON: ...for not reporting a work injury? [LB622]

LEE LOUDON: Okay. We both have employers who are self-insured or those that are covered by workers' compensation insurance. And I find that with both entities, Senator, that I'll provide information to the employer or the work comp carrier proving the elements of the case that the employee was injured in an accident arising out of the course of employment and then I provide them the medical bills and it doesn't get paid. And sometimes on other occasions we've gone to trial, proved the case, won, and then still have difficulty getting the employer or its work comp carrier to pay, in both situations, Senator. [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR CARLSON: So your concern is the employer, not necessarily the work comp carrier? [LB622]

LEE LOUDON: Well, both. I am saying I'm not seeing a difference in how either entity treat these work comp cases, both employers who are self-insured or work comp insurance carriers. They're both falling behind on paying these medical bills on time, and it injures these workers even more trying to get these...just to get the bills paid, just to get the medical treatment that they need to get back to work. [LB622]

SENATOR CARLSON: Thank you. [LB622]

SENATOR LATHROP: Lee, if I can, again, I'm going to try to clarify your answer to Senator Carlson's question. In your experience in Nebraska, most employers have work comp insurance. Is that right? [LB622]

LEE LOUDON: Right. Yes. [LB622]

SENATOR LATHROP: You do have a few of the larger corporations that are self-insured, but most of the time when we're talking about not paying a bill on time, it's a work comp carrier who got the bill in the course of handling a claim, sat on it, didn't pay it that we're talking about with this bill. [LB622]

LEE LOUDON: Yes. [LB622]

SENATOR LATHROP: Okay. Sometimes if you're self-insured or when you're self-insured, you also serve not only the role of the employer but the insurance company because you're paying the claims out of your own checking account. [LB622]

LEE LOUDON: Right. [LB622]

SENATOR LATHROP: Okay. I hope that clarified things. Any other questions? Senator White. [LB622]

SENATOR WHITE: Have you had an experience which I have of people who are injured seriously getting judgments entered against them without even being aware they were coming to you and asking you and now they're garnishing my checking account for medical care that the comp payer was supposed to pay? What do I do with trying to set that aside? [LB622]

LEE LOUDON: Yes, that happens too. A work comp injury can send a person into a real financial tailspin because under the compact they're only entitled to two-thirds of their wages at the time of the injury. And to compound that hardship, then to fight about just getting the medical bills paid is just a tremendous hardship for these people. [LB622]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR WHITE: Thank you. [LB622]

SENATOR LATHROP: Thanks, Lee. Next proponent. Any other proponents of LB622? Anyone here in opposition to LB622? Welcome. [LB622]

KORBY GILBERTSON: 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. I'm appearing today as a lobbyist for the Property Casualty Insurers Association of America or PCI in opposition to LB622. Apparently, there is some disappearing ink or an issue between bill drafting and the green copy because nowhere in the bill, as testified both by Mr. Corrigan and Mr. Loudon, does the bill state anything about no reasonable controversy or a clean claim having been met. That is one major issue with this bill that this is very different from the disability payment in that a disability payment you know what the cost of that is going to be and that is a known figure and that is why there is a penalty for that not being made. Medical bills are very much different, and there is in this bill nothing that says that there is a clean claim or no reasonable controversy, and that is our concern with the legislation. Be happy to try to answer any questions. [LB622]

SENATOR LATHROP: Would you support it with amendments that provided for a 50 percent penalty after there's been the submission of a clean claim? [LB622]

KORBY GILBERTSON: The determination. I can sure take that back to people. However, with questions about your other amendment that you had suggested, I would also have to ask about that one. [LB622]

SENATOR LATHROP: Yeah, you might do that. That being, that the unreasonable... [LB622]

KORBY GILBERTSON: ...refusal to allow care. [LB622]

SENATOR LATHROP: ...refusal to authorize medical care. [LB622]

KORBY GILBERTSON: Yes. [LB622]

SENATOR LATHROP: Okay. Senator Carlson. [LB622]

SENATOR CARLSON: Senator Lathrop. What is a clean claim? [LB622]

KORBY GILBERTSON: This is an issue that we've been dealing with for years regarding...in discussions about the whole fee schedule and the prompt payments. These are issues that have been talked about for at least five or six years as we've been working on. And two years ago we worked on the whole new fee schedule for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

medical for hospital stays. When the claim is termed to be clean, that is when there is no more dispute about what is being billed for. And that is an issue that continues to be debated. [LB622]

SENATOR CARLSON: Well, I could see that there can be a lot of work comp claims where in a reasonably short period of time it ends up being a clean claim. And then there are others that aren't nearly that. So which type creates the problem as far as payments not coming in? [LB622]

KORBY GILBERTSON: I think it can be either way. It...just every one is different. [LB622]

SENATOR CARLSON: Well, if it's a clean claim, in your opinion, then why is there a delay in payment? [LB622]

KORBY GILBERTSON: That's our concern. This does not say anything about there being a clean claim, so our concern is that within the 45-day language as was proposed that the 45-day clock would start ticking before the clean claim was determined, and that's our concern. [LB622]

SENATOR CARLSON: And if there's going to be a...if it's not going to happen until there's a clean claim, I could see where that would take a long time. But if there is one... [LB622]

KORBY GILBERTSON: Then there's... [LB622]

SENATOR CARLSON: ...and you know I've got a background in insurance and I'm going to be sympathetic to insurance, but I'm not sympathetic when there's a clean claim and they're not paid. [LB622]

KORBY GILBERTSON: I think it would be very hard for us to argue that that shouldn't be the case. [LB622]

SENATOR LATHROP: Well, that might bring me to the question of the day which is, can we agree on what a clean claim is? Is that somewhere already in a statute or if we try to find or get to a place where this bill is dependent upon a clean claim, then do we not come to some consensus because no one can agree on what a clean claim is or when that happens? [LB622]

KORBY GILBERTSON: I did have some conversations with the lobbyist for NATA this morning regarding trying to clarify this to show that this would be when there is no reasonable controversy clearly. And he at that time stated to me that they felt that there might need to be some clarifying language added to the bill. That was the extent of our

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

conversation, but I'm obviously willing to discuss that further. [LB622]

SENATOR LATHROP: Mr. Corrigan was here a little bit ago and talked and now you brought up the fact it sounds like there have been discussions that have been going on between either labor or the trial bar and the insurance industry over what is a clean claim. Has that been defined anywhere? [LB622]

KORBY GILBERTSON: Not that I'm aware of. [LB622]

SENATOR LATHROP: So in order for that to be incorporated into here, we'd first have to agree when is a claim clean. That part makes sense. I mean you can't be forced to pay something if the hospital isn't going to provide you with the records or the chart or whatever you need to put the two together. But at the same time, we don't want to turn that into a 90-day process either. [LB622]

SENATOR WHITE: You might look in the...and some of the hospital lobbyists maybe will help you read through it, Social Security or some other insurance provisions as to what is a clean claim, either in the PPOs under definitions accepted in the industry or in the regs on Medicare/Medicaid. [LB622]

KORBY GILBERTSON: For clean claim, okay. And when you said hospital, that reminded me of one other issue that came up during the fee schedule discussions in the last couple of years regarding the medical providers that would bill the patients for the work comp care. And the bottom line was it's just the cost of defending the lawsuit to go in front of the court and have the court say that it's a work comp claim. And that we had continued discussions about that and actually at one point offered that there should be language within the law that said that if it's clear if it's a work comp claim, the hospital should not be able to bill...to back bill for those services. So that is an issue that's been before us before. [LB622]

SENATOR LATHROP: Here is the problem with that. It seems to me that if the question is liability for the claim in its entirety, then that's not much of a remedy for the guy who is getting sued over his hospital bill because you go in and say this is a work comp claim, and the employer comes in and says, no, it isn't. [LB622]

KORBY GILBERTSON: I think there's actually even legislation in there--I think perhaps Bob Hallstrom is coming up here after me to also testify, and he might be able to clarify this--I think we've even seen legislation in the past that would prohibit billing for those services if it is a work comp claim or... [LB622]

SENATOR LATHROP: But when you say if it's a work comp claim, sometimes that's the central question. Did the guy get hurt at work or didn't he? Maybe, you know, he shows up... [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

KORBY GILBERTSON: Right. But I think the bottom line was... [LB622]

SENATOR LATHROP: ...on Monday with a sore back and they say, well, no, you did that playing basketball over the weekend and then you have a fight about whether he even got hurt at work. And so... [LB622]

KORBY GILBERTSON: Right. I think it was once it was determined then it shouldn't happen. And my understanding is it happens regardless of whether or not it was a comp claim. [LB622]

SENATOR LATHROP: Okay. I don't know if that's provoked any other questions. Senator Council. [LB622]

SENATOR COUNCIL: And maybe it has provoked it, but clarification because that's why I asked the question about what is the notice. Because what I'm hearing is an individual could claim to be injured on the job, go to the hospital, seek treatment, and it's customary, you know. The questionnaire when you're going through admissions--is this a work-related injury? And the individual says yes. And the employer disputes that it's a work-related injury. But nevertheless, the employee goes to legal counsel, whatever, and that legal counsel sends a notice of a claim for medical...payment of medical expenses for an asserted on-the-job injury. And I guess that's why I was asking the question, what triggers the obligation to pay? If the employer disputes that it's an on-the-job injury, doesn't this not penalize that employer before the determination is made? [LB622]

SENATOR WHITE: No, because the court still has to determine in retrospect what is a clean claim. You don't get a penalty automatically. You have to still...the employer and the insurance company would face a potential penalty. But if it comes in and they say, look, we got a good faith basis here, guys. This is not a clean claim. There was a real issue as to whether this injury occurred on the job, the court is not going to call that a clean claim and they're not going to enforce the penalty. [LB622]

SENATOR COUNCIL: Okay. But the statute...the language doesn't say that to me. That's what I'm confused about. [LB622]

KORBY GILBERTSON: Well, and I think that...it doesn't say that. But the language, I mean the way I read it, and I don't practice this, but... [LB622]

SENATOR LATHROP: We got to be careful not to turn this into a roundtable... [LB622]

KORBY GILBERTSON: Right. [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: ...so that we end up with a record that works. [LB622]

KORBY GILBERTSON: But I think this is after there is a final order that it is a comp claim so I think it is clear that it is at that point. [LB622]

SENATOR LATHROP: Okay. [LB622]

SENATOR COUNCIL: Okay, maybe that's where...and maybe it's an either/or but right...I mean maybe the later than or there has to be some language that limits it to that determination being made. [LB622]

SENATOR LATHROP: That was Senator Council. Now Senator White is going to talk. [LB622]

SENATOR WHITE: Well, the problem that we face is hopefully the vast majority of medical payments under the comp act are paid promptly without intervention of litigation. In other words, because you're talking a long time from injury until the court can get involved. So you can't wait until there's a determination because the window for recovery will go. I mean you literally will have people walking around with broken backs that need to be reduced, and they're waiting for a lawsuit to determine who will pay it. That happens even now. So one of the problems we face is people, because of time, value, money, and other issues, aren't getting proper care. So that causes them not to recover. On the other hand, the employer shouldn't have to pay for things that aren't properly caused by the injury. So a clean claim will always be determined retrospectively if it's really in dispute. Did I know he was really hurt? Yeah, you sure did and you didn't pay it. You're now going to pay the bill plus 50 percent. [LB622]

SENATOR COUNCIL: And I mean, and that, I guess, that needs to be clarified. [LB622]

SENATOR WHITE: I agree, I agree with you. [LB622]

SENATOR COUNCIL: Because the way it is right now, the way it reads right now is as soon as I get a notice that this employee has incurred medical payments, I've got 45 days to pay that or risk an additional 50 percent penalty. [LB622]

SENATOR WHITE: And that's why the clean claim language needs (inaudible). [LB622]

SENATOR COUNCIL: Needs to be, okay. Thank you for the round table discussion, thank you. [LB622]

SENATOR LATHROP: Okay, I guess it worked. Even the round table must be a good way to come up with amendments. All right. Mr. Hallstrom. [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

BOB HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, and I appear before you today in opposition to LB622 on behalf of the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness. Certainly interesting to sit in on the Executive Session that just took place on this bill. I'm not going to belabor many of the points that Ms. Gilbertson went over, but obviously the issue of notice of what is of concern, the points that Senator Council has made in that regard, and I think there's been fair and full discussion as to the need to clarify those types of issues. The reasonable controversy issue as well we would believe would need to be ferreted out. I would comment that I don't believe, and I think that's been fairly established, that simply moving from 30 to 45 days to mirror the time frame for the prompt payment act isn't going to solve that problem. It has to do more with the components of that act, which go to the very heart of the clean claim issue. There is a remedy under the current law under subsection (3) of LB622 that talks about the ability to recover attorney fees, whether or not there ought to be a policy decision made that we're going to pay the employee a penalty for something that they do not have any responsibility for in general that the employer is ultimately going to have to pay those medical bills is another issue that I would raise for the committee's consideration. Be happy to address any questions that you might have. [LB622]

SENATOR LATHROP: Thanks, Bob. Any questions? Seeing none, thanks. [LB622]

BOB HALLSTROM: Thank you. [LB622]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, here on behalf of the Nebraska Chamber of Commerce. I believe that a number of our questions that we had regarding the intent of the bill have been thoroughly...or not thoroughly, but they have been discussed at least this afternoon. And those were...a similar comment, we would like to get this issue resolved--the concept of prompt payment and see it on both sides--and would like to see this put to bed some day. And I'm not sure the bill is quite there. I'll try to assist in getting it there, however. I guess our concern most was small employers where they're caught. You know, they have a carrier and they're trying to get this employee paid. And to be subjected to a very expensive medical bill plus 50 percent could break them, particularly when you must carry work comp, you got a part-time employee. You want to get them compensated. [LB622]

SENATOR LATHROP: I think Senator White has a question for you, Ron. [LB622]

SENATOR WHITE: Will you feel better if in the case of a carrier, let's say you have a Travelers or a big carrier who isn't promptly paying, you've got a small employer. If the penalty went against the carrier but could not be charged back to the work experience of the small employer, would that help assuage your worries? [LB622]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

RON SEDLACEK: Possibly, but it probably would then affect another sector of our membership because it's so broad. I have to take the concept back and think about it. I understand. [LB622]

SENATOR WHITE: Well, the point though is a small employer may not have... [LB622]

RON SEDLACEK: The resources. [LB622]

SENATOR WHITE: ...the heft inside of the company to have his claims of his employees paid properly. I can see that if you're doing business with a big, big insurance company and for whatever reason they have a claims department that's just denying claims right now, maybe it's cash flow, whatever it is, that you shouldn't ultimately be charged back for a decision outside of your hands. [LB622]

RON SEDLACEK: Right, that's right. [LB622]

SENATOR WHITE: So I mean if that's the concern you're expressing, I can see where that might be well-founded. [LB622]

RON SEDLACEK: Okay. Okay, thank you. [LB622]

SENATOR LATHROP: No other questions? That's it. Thanks, Ron. [LB622]

RON SEDLACEK: Thank you, Senator. [LB622]

SENATOR LATHROP: Anyone else here to testify in opposition? All right, the city of Omaha. Jack. [LB622]

JACK CHELOHA: Good afternoon, Senator Lathrop, members of the committee. My name is Jack Cheloha, it's spelled J-a-c-k and then last name is C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha, testifying in opposition to LB622. We've heard a lot of testimony. I'll try to be brief. The city of Omaha employs over 2,000 workers, one of which is me. I happen to work for the city of Omaha as a civil servant and an employee. And the city of Omaha is one of those employers that you talked about that's self-insured. And so not only does the city, you know, budget for but pay its health insurance out of the general fund budget, but also workers' compensation claims. So on one hand you'd say, well, what does it matter, you know, if we have this bill and this penalty because ultimately the city is going to pay for it anyway, whether, you know, it was just a health claim or a workers' comp claim, but we do, you know, for accounting purposes like to keep them separate and distinct. And a number of times as we're working on bills that are submitted through our various carriers that handle these, we contract out with different companies to handle our health insurance and separate and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

distinct is the workers' compensation insurance, and so sometimes we have to share documents in between and so we need a number of times we have to look for either notes or records to determine if it was, you know, injury on duty or whether or not it was, you know, a general health claim, etcetera. And so we think the bill is a little broad where it catches us self-employed people that generally we don't have very many complaints, or at least that I'm aware of, regarding our practices. And so for those reasons, we'd be opposed to LB622. [LB622]

SENATOR LATHROP: Thanks, Jack. Any questions for Mr. Cheloha? I don't see any. Thank you. [LB622]

JACK CHELOHA: Thank you. [LB622]

SENATOR LATHROP: Anyone else with testimony? Okay. [LB622]

DANIEL FRIDRICH: Hello. Good afternoon. My name is Dan Fridrich, Senator Lathrop and members of the committee. I'm testifying in opposition to LB622. I'm here on behalf of Werner Enterprises. I'm legal counsel for Werner Enterprises and I am in charge of workers' compensation cases. And Werner Enterprises, much like the city of Omaha, is self-insured for health insurance and workers' compensation insurance. I'll try to be very brief. A couple of points: One is I think that there's a system in place right now where an employee can get attorney fees for late bills. I think that's adequate to address a problem right now. Secondly, a system that's not been brought up which is the Fair Claims Practices Act. If an insurer or an insurance company is known for repeated failures for failing to follow the Nebraska Workers' Compensation Act, an injured worker or his attorney could file a claim under the Fair Claims Practices Act and there could be additional penalties there. And lastly, I would just point out that in general, medical issues are not always clear; they're not always easy to understand, and they're complex. You have a claims examiner handling an issue which may involve a difficult medical issue. And what may appear clear to one person may not appear clear to another. And even to medical professionals it may not be clear. And so you may say, well, isn't that a reasonable controversy? And I would submit to you that sometimes it is and sometimes it isn't. And the threat of a 50 percent penalty could prompt an employer to have to pay out, or an insurance carrier, pay out a huge sum of money for fear of a judge finding that there wasn't a reasonable controversy. I know I've been in front of the Nebraska Workers' Compensation Court. I had medical opinion of a doctor saying that the injury was not compensable, and was found to have to pay a 50 percent penalty for indemnity, even though there was a conflicting medical opinion. And even in that situation, it was a decent size penalty. There wasn't any, obviously, penalty for the medical bills because that wasn't in place. But it's hard to go back to your client and go, even though we had this doctor's opinion, we still owe a penalty. And you can see that being a huge penalty for medical bills. That's all I have. I'd be open to any questions. [LB622]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: Okay. Any question for Dan? Senator Carlson. [LB622]

SENATOR CARLSON: Senator Lathrop. Mr. Fridrich, if Werner Enterprises being self-insured, if we had a polling of 100 percent employees, what percent would not be satisfied with the way you currently handle things on a self-insured basis? [LB622]

DANIEL FRIDRICH: Percentage of our employees? That's...I mean it's a tough question. Trying to be fair to both sides, at any time in any given claim there's going to be something they're probably not happy about. So I would say 50 percent. I mean at some point they're going to be dissatisfied about something, whether it was I need my mileage or my check didn't come in the mail on time, which may or may not be our fault. So, you know, if you're talking at that low of a standard that they're not happy about something, it's probably 50 percent, trying to be fair. [LB622]

SENATOR CARLSON: And you're self-insured so everything is coming to the employee from within the company. [LB622]

DANIEL FRIDRICH: Most of the time. I will just, without going into great detail, if it's an out-of-state claim, if you are paying pursuant to another state, then it does go to a carrier out there who has a third-party administrator. So if it's an Ohio claim, someone in Ohio or our carrier will take care of that. [LB622]

SENATOR CARLSON: Thank you. [LB622]

DAN FRIDRICH: Sure. [LB622]

SENATOR LATHROP: I see no other questions, thanks, Dan. [LB622]

DAN FRIDRICH: Thank you. [LB622]

SENATOR LATHROP: Thanks for coming down. Anyone else in opposition? Anyone here in a neutral capacity? Seeing none and in light of the fact that Senator Nordquist waived his close, that will complete our hearing on LB622 and move us into LB514, I think. Yeah, LB514 and that's Senator Lautenbaugh. Thank you for your patience, Senator. Good to have you here in front of Business and Labor. [LB622]

SENATOR LAUTENBAUGH: Yeah. I find the discussion fascinating, Mr. Chairman. So no patience required. Thank you all for having me, Mr. Chairman, members of the committee. My name is Scott Lautenbaugh, I'm the introducer of LB514. Simply put, it's intended to reduce the cost for employees that pass the retirement age, the cost of compensation benefits. And I think there will be some additional witnesses coming that will analogize this to the disability insurance world where in that circumstance, for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

disability insurance, there is routinely a credit for benefits for social security that are received. It is not always a 1:1 credit, meaning the amount of the comp benefit would not necessarily be equal to the amount of the social security benefit. Such is the same in the disability world, so I suppose there could be a case made that if it's not going to be the same are you just talking about rather than terminating the benefits, crediting for social security benefits. That's another discussion and a possible amendment. What this talks about, as drafted, is just terminating benefits once social security benefits are received. There are states that do that; there are states that give the workers' compensation carrier 50 percent credit for social security benefits, that kind of thing. And what we're talking about here is that in Nebraska as it currently stands an injured employee can receive both ongoing workers' compensation benefits for disability and social security benefits. Other states, as I indicated provide a credit for those social security benefits. This bill would tell the worker that once you are receiving social security rely on those benefits rather than the disability benefit from the comp carrier. This is not designed to terminate the payment of medical bills in any way. This strictly deals with indemnity benefits and it is simply a policy decision for the state to decide. I should say, the Legislature to decide. And I'd be happy to take any questions you might have. [LB514]

SENATOR LATHROP: Okay. Good. Senator White has a question for you. [LB514]

SENATOR WHITE: Senator Lautenbaugh, you'd agree, wouldn't you that it's pretty impossible just to live on social security benefits, correct? And I mean decent, dignified living. [LB514]

SENATOR LAUTENBAUGH: It's difficult, certainly. [LB514]

SENATOR WHITE: All right, so if you have a person who is injured and they have their salary reduced to even the maximum amount that we allow for work comp, and let's say they spend 25 years--their last 25 years--on such a disability reduction. They're not going to have an opportunity to save money to live postretirement age, will they? Because their earning capacity has been devastated by their on the job injuries. [LB514]

SENATOR LAUTENBAUGH: Stated as your hypothetical was stated, that's a possibility, certainly. [LB514]

SENATOR WHITE: So certainly. So we have a person, for example, might have been making \$2000 a week and be entitled, I don't know what the maximum is now \$400, \$500, \$600 a week and with their family obligations never again be able to save a nickel if they can just break even. And yet, when they get social security under your bill having had all of those productive years taken from them, not being able to save. They would then lose social security too. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LAUTENBAUGH: If your hypothetical is a person who wasn't in a position to save, didn't save, I would agree that they didn't. [LB514]

SENATOR WHITE: Do you know many people that can save money on disability under work comp? [LB514]

SENATOR LAUTENBAUGH: Honestly, I have no numbers reflecting one way or the other. I don't know how many people that's the sole source of income for. It would depend on the circumstances, dependents, prior circumstances prior to injury whether or not there's any other work available. Sometimes you--not often--you can be permanently and totally disabled and still have employment under our current compact so I don't have any way to respond to your hypothetical. [LB514]

SENATOR WHITE: Thank you, Senator. [LB514]

SENATOR LATHROP: I think that's it for...oh, I'm sorry. Senator Council. [LB514]

SENATOR COUNCIL: There is an interesting situation that could present itself, Senator Lautenbaugh and I guess I need to know how you would think that this would apply. An individual, I'm going to use myself, an individual who worked for a railroad for ten years. Okay. After ten years I'm only eligible for railroad retirement but I can go seek employment in an industry where I pay into the social security system, but I will never be eligible to receive social security. If I am injured while on that particular job, according to the legislation as I read it, I only get two years of disability payments. [LB514]

SENATOR WHITE: Yes, it's because it becomes eligible for it, not when you receive it. [LB514]

SENATOR COUNCIL: When I receive it. But in fact it says becomes, qualifies for, and is receiving social...or two years after the date the employee's disability began. So if I'm not eligible for and cannot receive social security then my disability payments will end two years after my disability began. [LB514]

SENATOR LAUTENBAUGH: This is not meant to operate in a circumstance where a person can never get social security. So that would be...that is a problem you're identifying that would have to be dealt with by amendment because that's not the intent to say regardless of whether you ever get it, in that circumstance. [LB514]

SENATOR COUNCIL: Okay. [LB514]

SENATOR LAUTENBAUGH: At least that would not be my intent. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR COUNCIL: Because that situation does exist and can exist for individuals who leave railroad employment after ten years then they're now automatically vested in the railroad retirement plan and I don't care if they're paying social security for the next 25 years; they're not eligible to draw social security. And if I get injured on that second job, according to this legislation, two years after my disability occurs I'm left out there. So I just wanted to bring that to your attention. I think that...and I'd appreciate your understanding of the potential and the need for this to be amended to address that situation, but there are people out there who would never be eligible for social security. [LB514]

SENATOR LAUTENBAUGH: Honestly, I had not considered railroad retirement or how that worked. I'm unfamiliar with it, don't tell Senator Fischer I admitted that but it is the truth. (Laughter) Where I'm supposed to be right now, incidentally. (Laughter) [LB514]

SENATOR LATHROP: Where you're supposed to be right now. Put you on transportation committee because you're the dean of railroad retirement benefits. Did you have a question, Senator Carlson? [LB514]

SENATOR CARLSON: Yes, I do, Senator Lathrop. I'm going to take Senator White's example a little further. He mentioned somebody that's making \$2000 a week and then becomes disabled and certainly would be limited by the amount of compensation weekly they'd receive off of workmen's comp until retirement age. Now, take the same situation and, apparently, in his example that person didn't think enough of their earning ability to buy individual disability insurance, but I did. And then I became disabled as a result of work and it might have been...I even had a rider on my policy it was lifetime benefit. I bought it. I don't want to see my benefit reduced by this bill. It just hit me that I took the responsibility to take care of myself and bought the coverage so that if this happened I'm taken care of. [LB514]

SENATOR LAUTENBAUGH: It's not a 100 percent clear to me that your disability policy would decrease your benefit. [LB514]

SENATOR CARLSON: No, but I think the work comp would and in the one case of Senator White's example, that person didn't plan ahead so he's trying to defend that they shouldn't have their payment reduced. I did plan ahead, and I really shouldn't have mine reduced. [LB514]

SENATOR LAUTENBAUGH: I am not sure I agree it would operate that way. I'm not sure I'm following you, and maybe I'm just failing to follow you. [LB514]

SENATOR CARLSON: Well, it's a different type of situation and they're two different...maybe the two differently but it's hard to legislate for both. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LAUTENBAUGH: Yeah. [LB514]

SENATOR LATHROP: Any other questions? Seeing none, well, do you want to stay for close? [LB514]

SENATOR LAUTENBAUGH: Yeah, I'll stay. [LB514]

SENATOR LATHROP: Okay, good. [LB514]

SENATOR WHITE: Anything is better than transportation. (Laughter) [LB514]

SENATOR LATHROP: We won't tell Senator Fischer that one either. Okay, the first proponent, LB514. [LB514]

JEFF SCHUMACHER: Mr. Chairman, members of the Business and Labor Committee, my name is Jeff Schumacher and thank you for giving me the opportunity to come here in support of LB514 today. And I'll try to remember to answer some of the questions...you asked some real good questions of the senator here a little bit ago. And maybe, Senator Carlson, if I could, before I forget try to answer yours. If you had purchased a long-term disability policy, normally the vast majority of situations, those are non-occupational so it has to be not while you're in the course and scope of your employment when you get injured. It would be something falling off your roof at home, you know, that type of thing. And the intent of this bill is not to provide an offset for that. That's only...the only offset is social security benefits, that would be a long-term disability benefit, so. And once again, most of those are non-occupational. I should also say that if you purchased a long-term disability policy when you were 20, 30, 40 years old they all have provisions in there that your benefit gets cut off at age 65. Some of them, if you buy the one with bells and whistles will maybe let you go up to 70, but most of them beginning at the time you get social security benefits, it terminates. Okay. So...so I just throw that out there, so does that answer your question? [LB514]

SENATOR CARLSON: He started testimony, can I ask a question or not? No. [LB514]

SENATOR LATHROP: Sure. No, I think, go ahead and ask a question if you like. [LB514]

SENATOR CARLSON: Okay. I don't think I'm agreeing with you. How do you spell your name? [LB514]

JEFF SCHUMACHER: Oh, Schumacher, S-c-h-u-m-a-c-h-e-r. [LB514]

SENATOR CARLSON: Okay, you're not the same family I thought it might be. Nothing against you (laughter). [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

JEFF SCHUMACHER: Gee, thanks. Boy, I'm glad I spelled it that way (laughter).  
[LB514]

SENATOR LATHROP: It didn't sound like it really. (Laughter) [LB514]

SENATOR CARLSON: In my example I gave, I said I put a rider on there for lifetime payment. So it didn't end at age 65 when I started receiving social security. [LB514]

JEFF SCHUMACHER: Yeah, you can purchase those, no question, but the vast majority of them are... [LB514]

SENATOR CARLSON: Yeah. That was the example that I gave. And I'm... [LB514]

JEFF SCHUMACHER: ...yeah, terminate at 65, so. [LB514]

SENATOR CARLSON: Thank you. [LB514]

JEFF SCHUMACHER: Okay. You're welcome. [LB514]

SENATOR LATHROP: You're done with your questions? Why don't you go ahead with your testimony? [LB514]

JEFF SCHUMACHER: Okay. [LB514]

SENATOR LATHROP: And then if you just testify and then we'll have people ask you questions if they have them, Mr. Schumacher. [LB514]

JEFF SCHUMACHER: Okay. Okay, thanks. LB514, as originally introduced as Senator Lautenbaugh said, would terminate disability benefits that an employee qualifies for and is receiving. And Senator Council, I'll provide that amendment here in a little bit that should address your issue. If he's receiving social security benefits or two years after the disability begins, whichever is later. So if the person's injured age is 61 and decides retire at age 65, he'd get four years of benefits. If he was 66 and got injured on the job, the two years would apply then so. Having said that, and Senator, one other thing I want to reiterate is this bill does not apply to medical bills so, you know, if the person was injured and needed medical bills for the rest of their life, whether they're 75, 80, 85 years old has no effect on that. So we have lifetime medical as it should be. We're not curtailing the medical bills at all. If I may, can I pass out two amendments here please?  
[LB514]

SENATOR LATHROP: Mr. Schumacher, are you with a group or an organization?  
[LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

JEFF SCHUMACHER: Yes, oh, yes I am with... [LB514]

SENATOR LATHROP: In what capacity do you speak today? [LB514]

JEFF SCHUMACHER: (Exhibits 5, 6, 7) I was going to get to that, yeah. I'm with Transportation Claims, Inc. and we are a third-party claims administrator for Crete Carrier Corporation and some affiliated companies. And I've been involved in handling claims there...work comp and otherwise for almost 20 years now, so. And we're based out of Lincoln, Nebraska, here. And in the course of those 20 years we've had cases now come to light after many years where we've had people that get injured and I'll just share one example with you real quick, but the person that was injured was 63 years old. He was injured 12 years ago; he's 75 years old now. We've paid over...once he reached the retirement age of 65, is now 66, but we've paid over 500 weeks of benefits at over \$400 a week to the tune of \$200,000. And we've got numerous cases like that and in my opinion, that defeats the purpose that the workers' compensation system was set up for and that is to be a wage replacement, not a retirement policy, not a long-term disability policy so. And like I said, I've got numerous others, but if this law would have been in place, if the offset would have been there then we would have gotten that offset and that amount wouldn't be anywhere near. And, by the way, we're required to pay that unless something changes in his medical condition. In this case, that's likely not going to happen. If he lives to age 95, we have 20 more years at basically 20 some thousand and the case is going to go over half a million dollars. So once again, this is just one of many and as the age force becomes older, and the baby boomers come into retirement, my opinion is the situation is only going to get worse so. Having said that, if you could...I handed two amendments. One is called amendments to LB514 and then the other one is the optional amendment. The first amendment, if I can explain, there's a one, two, and a three there. And the first one there where it says on page 7, line 4, after the word to insert subsections 1a, b, d, and e. What that...what we did...what that amendment does is says that if you have a scheduled member injury as an injured employee there would not be a reduction so, you know, if you've lost a toe or a finger or, you know, broke your ankle or had your leg amputated we thought it was fair that we exclude that from these provisions. So scheduled member injuries under this amendment which I support and I drafted would not be subject to the offset. Secondly, on the second one there I just tried to clarify...that's more for clarification anyway, I just inserted the date the employee's disability began, just so there was no doubt in anybody's mind as far as when we're going to start calculating the date, that two-year period. And then finally, and I hopefully, Senator Council, this alleviates your concern but the third one there after the word qualifies for, we put and is receiving. So for there to be a reduction, that person would have had to have qualified for social security and receiving it. Some people...everybody qualifies for social security at age 62, some elect to take it early. You get about 80, 85 percent of what you'd get at age 66, which is now the standard retirement age. So if you were injured at age 62 and elected not to take social security

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

at that time, elected not to receive it and you waited until age 66 to receive it, in that four year period there would be no offset. Okay? So, so there's that amendment. The other amendment I thought it'd be...and this is one I support and drafted as well, in lieu of terminating the benefits after two years, which the LB514 as originally drafted would do, this one states that all compensation payable under these sections would be reduced by the amount of old age and survivor's insurance benefits which the employee is receiving under the federal Social Security Act. So it's a reduction or an offset. It's not a termination after two years, fairly different approach. If I had to choose one, I'd choose the former because then, you know, that limits the time period for two years. But, nevertheless, in the particular case I gave you, we would have been able to offset and this particular individual that was injured at age 63 from age 65 to 75 we'd have been able to offset that by social security that he was entitled to. So anyway, a different approach so. [LB514]

SENATOR LATHROP: All right. Thank you, Mr. Schumacher. Are there any questions? Senator Wallman. [LB514]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, how many of your drivers are over 65? [LB514]

JEFF SCHUMACHER: A very small percentage. We have over 5,000. I can tell you the average age of our driver is 50, so 49 or 50. So, you know, certainly much less than social security age so. [LB514]

SENATOR WALLMAN: Thank you. [LB514]

SENATOR LATHROP: Senator Council. [LB514]

SENATOR COUNCIL: Yes, Mr. Schumacher, I appreciate your efforts to anticipate the need for amendments but...and I think Senator Carlson and I are laboring under the same confusion because I'm looking at your amendments to LB514 that speak to one, two, and three. And one and two don't match anything in the green bill as we've presented so we definitely need to address that because on page 7, line 5 of my document, the preposition to doesn't even appear. And on page 7, line 8 of my document, the phrase qualifies for does not appear. So you would need to revise this document to correspond to at least the bill as it's been presented in our booklets so...it doesn't match. [LB514]

JEFF SCHUMACHER: Oh, I'm sorry, we had a typo, you're right. It should be on page 7, line 15, I apologize. [LB514]

SENATOR COUNCIL: Line 15? [LB514]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

JEFF SCHUMACHER: Yeah. It should be on page 7, I apologize yeah, that was a typo. [LB514]

SENATOR COUNCIL: That's the first one. What about page 7, line 8? Is that 18? [LB514]

JEFF SCHUMACHER: That's 18, yeah, she missed the one in all these, yeah. Okay, I apologize. [LB514]

SENATOR COUNCIL: And just by way of clarification, the revision on page 7, which should be line 16, you left the one out of every one of them. [LB514]

JEFF SCHUMACHER: Right, yeah, we're 10 short on them, I apologize. [LB514]

SENATOR COUNCIL: That's quite all right. Unfortunately, it does not address the issue that I presented because again, in the scenario I provided, I can never qualify for social security. So, according to...even with your amendment I would be limited to two years after my injury because I can never qualify for social security. [LB514]

JEFF SCHUMACHER: Because you worked for the railroad? Yeah, okay. [LB514]

SENATOR COUNCIL: Yes, because I'm vested in the railroad retirement system by virtue of ten years of continuous employment and I get the statement every year from social security because I've paid in, but I can never qualify to receive social security so even with qualify for... [LB514]

JEFF SCHUMACHER: So if you're not... [LB514]

SENATOR COUNCIL: ...and is receiving, according to the language of this bill I could only receive compensation under workers' comp for two years. [LB514]

JEFF SCHUMACHER: There would be an offset, yeah. Right, yeah. [LB514]

SENATOR COUNCIL: This is...no, under the original bill it's a termination. [LB514]

JEFF SCHUMACHER: Right, but you're not receiving them to begin with, right, is that correct? [LB514]

SENATOR COUNCIL: I can't receive social security. [LB514]

JEFF SCHUMACHER: Right, so this shouldn't affect you then. [LB514]

SENATOR COUNCIL: Well, because the language says or two years after the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

employee's injury, whichever occurs last. So if I'm not eligible for social security...  
[LB514]

JEFF SCHUMACHER: Yeah, this bill is not intended to affect you, then. Only if you're actually receiving social security benefits. [LB514]

SENATOR COUNCIL: Well, that's the way it reads...the way it's written it does. So, I mean, it needed....the way it's written, it does. So that needs to be addressed. [LB514]

JEFF SCHUMACHER: Okay, I guess...we could work with you on some language on that then, that's fine. If I could pass around, I think the best way to...I've just got a couple of more handouts here. I know it's been a long afternoon. [LB514]

SENATOR LATHROP: Yeah, you've kind of gone past three or four minutes too. If you have some other handouts, why don't you hand them to the page, and in the meantime, Senator White has a question for you. [LB514]

JEFF SCHUMACHER: Okay. Okay, sure, Senator. [LB514]

SENATOR WHITE: Mr. Schumacher, how are you sir? [LB514]

JEFF SCHUMACHER: Nice to see you, again.. [LB514]

SENATOR WHITE: Yes. Would you also limit widows survivors' benefits too? [LB514]

JEFF SCHUMACHER: The bill, as drafted, applies to two of the three. It's old age and survivors' insurance benefits, yeah. [LB514]

SENATOR WHITE: So a widow would lose her benefits as soon as she qualifies for social security. [LB514]

JEFF SCHUMACHER: There would be an offset, yeah. Yeah, um-hum. [LB514]

SENATOR WHITE: And you indicated that this is more consistent with what work comp was intended to be which was wage replacement, is that your understanding? [LB514]

JEFF SCHUMACHER: Right, yeah. Um-hum. [LB514]

SENATOR WHITE: Well, work comp doesn't replace wages. It doesn't fully replace the wages and it doesn't allow a person that's on it to save for retirement because we limit the amount they can get, wouldn't you agree? [LB514]

JEFF SCHUMACHER: It doesn't replace it entirely, but remember workers'

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

compensation is a tax-free benefit, too so. [LB514]

SENATOR WHITE: Not even close, really. I mean, obviously, your drivers who go on full disability aren't making anywhere near what they were making when they were working. [LB514]

JEFF SCHUMACHER: You'd be surprised. They do. [LB514]

SENATOR WHITE: You pay that low? [LB514]

JEFF SCHUMACHER: They do. [LB514]

SENATOR WHITE: So your payments are... [LB514]

JEFF SCHUMACHER: For what our...I'm not going to get, I can't share dollar amounts with you but if our driver is working and he has the usual state and federal income tax deductions and FICA is taken out of his wages, he will make about the same as what he will make with the maximum \$600 and whatever it is per week which equates to \$30,000 some tax free so. [LB514]

SENATOR WHITE: So you're saying that it does replace wages. That is your testimony as is according to the amounts they are now. [LB514]

JEFF SCHUMACHER: Yeah, yeah. I mean, not for everybody, I mean. Just, yeah, but in this case it does, yes. Um-hum. [LB514]

SENATOR WHITE: Well, wouldn't you agree that if you put this in then we actually replace wages then we actually replace wages full amount and then tax it because the state could use the money and then the comp carriers could pay for it. [LB514]

JEFF SCHUMACHER: I'm not going to say whether the state should tax those benefits, but they don't, as you know so. [LB514]

SENATOR WHITE: I mean, we ought to increase them up to their full previous salary and then we'll tax them, and then I agree with you that it's a wage replacement policy, right? [LB514]

JEFF SCHUMACHER: I guess I'm not following you. [LB514]

SENATOR WHITE: Yeah, I know. What I'm indicating, Mr. Schumacher, is we don't really replace wages. At best, we do two-thirds of wages and in most cases if you make more than what is...will keep a family of four in a decent situation, you're not going to get anywhere near two-thirds of your wages replaced. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

JEFF SCHUMACHER: Once again, I testify that for the vast majority of our drivers that does happen. [LB514]

SENATOR WHITE: What would happen if the federal government moved the retirement age around on social security as we're discussing? [LB514]

JEFF SCHUMACHER: They've...they could do that. Right now it's age 66 and I passed the facts about social security around, but right now it's age 66. One of the pages in there, Senator White, under the second page there, and I think this may be the key. I mean people saying...people are working longer. Right now the median age of retirement and this was a survey, most recent survey through 2005 was only 61.6 for men, 60.5 for women. That was the median, and the average was 62.6 and 62.5 so, you know, my position is that these people were on the verge of retirement anyway based on the averages; this is census data. And I just think it's just patently unfair that companies should be forced to bear the burden of supporting someone for 15, 20, 25 years at a fairly high replacement wage going forward. [LB514]

SENATOR WHITE: How many folks do you know on retirement actually take second jobs to make ends meet, that are getting social security and retirement but are now working second jobs? And if they're disabled, they wouldn't be able to do that because presumably they're physically unable to do that. [LB514]

JEFF SCHUMACHER: Well, the... [LB514]

SENATOR WHITE: I mean just the first question is, how many people do you know who are retired that work second jobs to make ends meet. [LB514]

JEFF SCHUMACHER: I don't know. I don't have any idea. [LB514]

SENATOR WHITE: Thank you. [LB514]

SENATOR LATHROP: Okay. I think that's it for the questions and we do have your handouts; they'll be made part of the record and we will take them into account. Thank you, Mr. Schumacher. [LB514]

JEFF SCHUMACHER: Thank you, Senator. [LB514]

SENATOR LATHROP: Appreciate your testimony today. Anyone else here to testify in support of LB514? [LB514]

ROBERT REYNOLDSON: Good afternoon, Senator Lathrop and members of the committee. My name is Robert L. Reynoldson. I'm with Unico Group here in Lincoln.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

[LB514]

SENATOR LATHROP: With whom, sir? I didn't hear. [LB514]

ROBERT REYNOLDSON: Unico Group. [LB514]

SENATOR LATHROP: Unico? [LB514]

ROBERT REYNOLDSON: (Exhibit 8) Yes. We are a Lincoln based property casualty insurance agency with a focus area in workers' compensation. I'm also a certified workers' compensation advisor here in support of LB514. Couple of the key points as I wanted to hold my comments very brief on this very long afternoon is that my comments are based around the pricing mechanism of workers' compensation and the impact that it has on...losses have on their employers. Workers' compensation, as we all know, is required by every...almost every employer in the state of Nebraska. Unlike other types of insurance, there's very little risk that is actually transferred to an insurance company. Really the insurance company becomes a financing mechanism of the losses that they sustain. The workers' compensation pricing mechanism is heavily weighted by an employer's individual experience modification. The handouts that I've provided are simply a sample illustration of how that does impact an individual employer's experience modification. The first page basically shows you different loss amounts with the actual three-year premium increase is to an individual employer. You will see that the larger the loss is, that is what is truly transferred to an insurance company based upon the experience rating system. This is a system that has been developed by the National Council of Compensation Insurance and adopted by the Department of Insurance in the state of Nebraska. It's a common one used throughout the United States. I will turn to page 2 and this is a...it shows you again in the lower left-hand box where it says impact of specific losses, and I've included a mod formula down there which you have to have a pretty good computer system to run to have it make sense, but this shows you what the impact of an individual loss would have on an experience mod which is multiplied times the base rates of an employer to come up with their premium. The last page is simply what the actual premium costs of those particular losses would be on this sample employer. And as you can see, those costs are certainly quite profound in this type of an economy. We've had several of our clients who have sustained workers' compensation losses of employees nearing retirement age and had the indemnity payments that were extended well beyond their normal retirement dates. Basically, the end analysis is this costs employers significant dollars as a result of their future increases in their experience modifications. And my point is is that employers today simply can't afford the duplicative payments that are offered for disability for injured workers that extend well beyond their retirement ages. I think certainly some of the amendments that have been offered really help address a lot of the issues. It's probably not perfect, but my point today was just to explain to the committee how the mechanism works for employers and how that cost has actually shifted not to the insurance

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

company but back to employers. [LB514]

SENATOR LATHROP: Thank you. Any questions? You must have been very clear. Thank you for your testimony. [LB514]

BOB HALLSTROM: (Exhibit 2) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness in support of LB514. Given the late hour I will not reiterate the policy arguments in support of this bill. I would indicate that our organizations are in support of the general content of the amendments submitted by Mr. Schumacher, which I think brings a more balanced approach to the issue of offset versus termination of the workers' compensation benefits. I'd be happy to address any questions that the committee may have. [LB514]

SENATOR LATHROP: Thanks, Bob. Any questions? I don't see any. [LB514]

BOB HALLSTROM: Thank you. [LB514]

SENATOR LATHROP: Thank you. [LB514]

KORBY GILBERTSON: (Exhibit 1) 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 the Property Casualty Insurers Association in support of LB514. PCI was not involved in the drafting of this and there were a number of members that had some questions about the implications. I think that the amendments have taken care of our concerns but overall, PCI is supportive of the concept of this and the policy that if an employee would no longer be on the payroll that it would make sense for them no longer to be taking money from the work comp system. [LB514]

SENATOR LATHROP: Can I ask you a question? [LB514]

KORBY GILBERTSON: Sure. [LB514]

SENATOR LATHROP: And see if you're able to answer this and I maybe should have put this to Mr. Schumacher, but do you know any other states that have done this? [LB514]

KORBY GILBERTSON: Yes, there are offsets in a number of states. I can get more information from you. I also have an NCCI report that was done on the bill. It was done on the original draft of the bill, and I'm not sure what changes would be made based on the amendments, but I can try to get more detailed information. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: You can share that with me when you come up with it. [LB514]

KORBY GILBERTSON: I would be happy to. [LB514]

SENATOR LATHROP: Good. Senator Wallman has a question for you. [LB514]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thank you, Ms. Gilbertson for testifying. Would your organization be more comfortable if you put the cut-off age to 70? [LB514]

KORBY GILBERTSON: I have...the...I don't know specifically, you know, what age it would be. I think that the idea, the philosophy is that if an employee would have retired and no longer would have been on your payroll then the idea is that then that is when the benefits should cease to come from workers' comp. [LB514]

SENATOR WALLMAN: But a lot of people aren't retiring at 65 or 66. [LB514]

KORBY GILBERTSON: That's very true, and that's why I think the issue of whether or not they were eligible for workers' compensation, or for...I'm sorry, for social security was an issue or whether or not they're actually receiving it and that was one of the main issues that was brought up, but I think Mr. Schumacher dealt with that in his testimony so I didn't want to belabor the fact. [LB514]

SENATOR WALLMAN: Thank you. [LB514]

KORBY GILBERTSON: Um-hum. [LB514]

SENATOR LATHROP: Senator White. [LB514]

SENATOR WHITE: I remain concerned on a number of levels, but one of them is that I increasingly know retirees that are working jobs, taking social security and not because they want to, but because they have to. I also know political discussion that we need to limit the amount that we pay retirees in the form of cost of living increases or otherwise and encourage them to stay in the job market because we just can't afford to have retirement at these ages. Now a person who was injured on the job and got one of these pensions, I guess you'd call them, I'd call them compensation. Presumably, they can't work at the same level or for the same kind of money they could have earned had they not been injured and that didn't go away when they turned 65. So why should the compensation go away if, in fact, people aren't retiring, they're really working multiple jobs? [LB514]

KORBY GILBERTSON: I think there is also an argument on the flip side, though, however. If they would have chosen to not remain in employment then they should not

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

be able to get both. [LB514]

SENATOR WHITE: Yeah, but your law would just take it away from them. You don't even give them the choice, and how do you know? [LB514]

KORBY GILBERTSON: If they choose to take the benefit at that time, if they start receiving it, then yes. [LB514]

SENATOR WHITE: Well, they earned it. They earned social security, correct? [LB514]

KORBY GILBERTSON: Um-hum. [LB514]

SENATOR WHITE: Is that yes? [LB514]

KORBY GILBERTSON: Yes. Sorry. [LB514]

SENATOR WHITE: All right. So if they had that right and many of them, what they'd tell you is, yeah, we're taking social security and I'd have taken a job as a greeter at Walmart, but they can't because of their physical limitations. Why should the employer now be relieved of paying that benefit? The employee still has the limitation. [LB514]

KORBY GILBERTSON: And I think that that is one of the issues with the bill. I think, though, the flip side argument that the PCI members supported was that if there is a time when a person wouldn't have remained in employment and would have and it's their natural course, ceased employment and not been on the payroll that is a time when both benefits should not continue. [LB514]

SENATOR LATHROP: I do kind of maybe agree with Senator White's point and that is, if a person has a permanent partial disability and they're paid benefits that expires after 300 weeks. So we're not really talking, and the concern isn't really the guy who gets totally disabled at age 60 because that guy's permanent disability benefits are going to expire at the same time as he retires. You're really talking about how do we stop the guy that's a running total? And that guy never has the chance to go retire and take the job at, you know, maybe he wants to go work in the Mulhall's and sell people flowers or work at McDonald's or something and he can't do that and that isn't...that happened in the scope and course of one person's employment. We appreciate you bringing this to us and the policy implications and we'll consider them... [LB514]

KORBY GILBERTSON: I'm sure you will. [LB514]

SENATOR LATHROP: ...and address the bill. [LB514]

KORBY GILBERTSON: Thank you. [LB514]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: Thank you, Korby. Anybody else here in support of LB514? Dan, welcome back. [LB514]

DAN FRIDRICH: (Exhibit 3) Thank you, thank you. Dan Fridrich, F-r-i-d-r-i-c-h, Werner Enterprises here on behalf of Werner Enterprises. I do have a handout; I will read from it for a second. You asked, Senator Lathrop, what states have similar provisions or have a provision. I do have a listing here of some states that do offset benefits although this list apparently is not totally inclusive so there may be other states that aren't listed on here. [LB514]

SENATOR LATHROP: Okay. [LB514]

DAN FRIDRICH: I'll pass that out. [LB514]

SENATOR LATHROP: The page will pass those around. [LB514]

DAN FRIDRICH: Yes. [LB514]

SENATOR LATHROP: Thanks, Dan. [LB514]

DAN FRIDRICH: I'm not going to go over anything that anyone else has said. I would just say that I think this law is good in that it's consistent with the ADA and ADEA, which obviously prevents discrimination based on age and disabilities. Those laws were meant to encourage employers to hire older people and/or not fire older people and to hire those with disabilities. And what you have in a lot of cases where someone is found permanently and totally disabled is you have an employee who had a significant disability which will combine with the work injury to render them totally disabled. And when you think about an employer paying for total disability when his disability that he caused, or she caused, may only be slight in compared to the disability caused by the disability. There's many lawyers who are very good at saying, well, the injury from the back which was a 5 percent combined with the diabetes or the prior left foot injury or the bad knees that he has from arthritis, and when you combine those all together the work injury with all these other preexisting conditions renders him totally disabled. So when you think about this bill in light of those types of conditions it makes it more palatable. Now that's not every case, I submit to you. But I'm not here to echo everything that all the testifiers have said. I'm here to say that this is another thought that makes this bill a bit more easy to understand in that when you have older workers, they're probably going to have other conditions. And the employer pays for all of those in terms of total disability benefits, so that when you cease their disability benefits when they reach retirement age, it makes it a bit more understandable. I have no other questions. Open to questions. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: Senator Council has a question for you. [LB514]

SENATOR COUNCIL: Okay. Thank you, Mr. Fridrich, for your testimony. But I am a bit troubled because I don't see the bill limited to employees who were injured after they've reached what is considered normal retirement age. That's not what this is limited to. This is limited to any injured employee, so if I start working at your company at age 45 and I get injured at age 47, and I'm fully disabled and you have to compensate me until, according to the legislation until I'm....I qualify for social security and once I qualify, then according to the bill as initially proposed--not the amendments--initially proposed, my workers' comp terminates notwithstanding the fact that if I'm injured at 52 that's 10 years of no payments into the social security system on my behalf which means I necessarily receive a reduced amount of social security. My social security is going to be based on what I have paid in over these years of service, so I'm getting double penalized under this legislation because I'm not getting the benefit of additional years of payments in the social security which determines how much I get monthly. And once I reach retirement age, my workers' comp is going to be cut off, so I'm going to be getting less social security than I would have received had I not been injured and continued to work until age 62, 66, 70 or whatever year I decide. Isn't that accurate? [LB514]

DAN FRIDRICH: Assuming you would have a wage increase over those ten years, that sounds correct. [LB514]

SENATOR COUNCIL: Not a wage increase. You don't pay FICA on workers' comp. At least somebody correct me if I'm wrong. [LB514]

DAN FRIDRICH: No, no. But what I... [LB514]

SENATOR COUNCIL: So, but what you get in social security at retirement age is based on your...what's paid in based on your wages earned over X period of years. I know, like I said, I get the statement every year that's meaningless because I'll never, I'll never get to receive it (laughter). [LB514]

SENATOR LATHROP: That's clear. (Laughter) [LB514]

SENATOR COUNCIL: That's clear. Have I made that point before? [LB514]

SENATOR SCHILZ: Do they at least say thank you? [LB514]

SENATOR LATHROP: You've made that point. [LB514]

SENATOR COUNCIL: I figured. Have I made that point before? But it tells me that based upon my earnings each of these years, this is what I get. But now I'm injured so that number is going to be zero, zero, zero, zero and it's going to affect what my

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

ultimate monthly benefit is. And under this legislation I'm going to get penalized because my social security is going to be based upon whatever earnings I had for which FICA taxes were paid prior to my injury and nothing since then. And so here I'm going to be double penalized if you terminate. Now, offset is a little different. And I think what you were talking about, these are states that provide for offsets, not termination but if you offset, I mean, that's a little fairer because you're going to be offsetting it against a lower social security because I'm not getting the full amount that I would have received of social security had I been able to work up until retirement age. So an offset may be more palatable but a termination, you know, particularly since my social security benefits themselves are going to be affected by the fact that I have been unable to work. [LB514]

SENATOR LATHROP: Except that social security offsets for work comp. [LB514]

DAN FRIDRICH: Social Security disability. [LB514]

SENATOR LATHROP: Yeah. [LB514]

SENATOR COUNCIL: Disability, not retirement. [LB514]

SENATOR LATHROP: Disability, right. [LB514]

SENATOR COUNCIL: And we're talking about retirement. So at retirement if you're going to terminate my work comp, my social security is not thereby compensating me for the years that I was unable to work. Well, that, I mean, that wasn't a question. [LB514]

SENATOR LATHROP: It wasn't. (Laughter) But some might think a good point. Again our exec...we've gone into exec without a motion, I think. No, I'm only teasing. That was a very good point and thank you Senator Council. And Dan, thanks for your testimony again, we appreciate you being here. Anybody else here to testify in support of LB514? Anyone here in opposition? [LB514]

DAN FRIDRICH: Thank you. [LB514]

LEE LOUDON: Good afternoon, Chairperson Lathrop and members of the committee. My name is Lee Loudon. I'm here on behalf of the Nebraska Association of Trial Attorneys. Senator Council, I'd like to go back to your comment right away. That is the chief concern of my organization about LB514 which we oppose. Under the social security retirement system, the social security system looks for the...bases retirement benefits based on the primary insurance amount, and that is found by taking the 35 highest earning years of the retired worker. To use your example, Senator, if you had someone that was injured at age 40, presumably their highest earning years are ahead

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

of them. Well, when they go on total disability they're not going to have that, and social security when they reach retirement age is going to look back at their highest earning years, those years between say 50 and 65 are not going to be there. And so this bill hits them both in two ways. That one, when they do reach retirement age they're not going to have the benefit of those highest earning years, and then they're going to take away the work comp benefits as well. The bill basically discriminates against the older worker. In the year 2000, Congress passed the Senior Citizens Freedom to Work Act to encourage older workers to stay in the work force. So we do have older workers that continue to work past age 65. This bill could be devastating to them. If you take an example, two individuals work for the same company, same wages, same job duties. One happens to be age 30, the other age 65 and they both sustain back injuries. The 30-year-old individual is going to have compensation for a maximum of 300 weeks of permanent disability benefits and subtracted from that would be the time they get temporary disability benefits, a full 300 weeks. The older worker who is 65 is going to be arbitrarily cut off at two years. It's going to have a devastating affect on the older workers. Also because the bill discriminates based upon age, it could violate the equal protection clause of the U.S. Constitution, state constitution, and the special legislation clause of the Nebraska Constitution which is Article III, Section 18. Two states have found that similar provisions in their laws violated their equal protection provisions. Montana found that their statute violated their state constitution. It's called Reesor v. Montana State Fund, 103 Pacific 3d, 1019. Arkansas looked to the federal constitution and found that their similar provision violated the federal Constitution, the equal protection clause, and that's Golden v. Westark Community College, 969 S.W.2d, 154. And so I would say we oppose this bill because it's going to have a devastating affect on the older workers and also could violate the equal protection clauses of the state and federal constitution. May I respond to any questions? [LB514]

SENATOR LATHROP: Okay. Thanks, Lee. Any questions? I see none. Thanks for your testimony. [LB514]

LEE LOUDON: Thank you. [LB514]

JOHN CORRIGAN: Good afternoon, members of the committee. John Corrigan on behalf of the Nebraska AFL-CIO, and we want to register opposition to this legislation. I think that the issues have been hashed out very succinctly. I would point out that many of our members, police and fire pension systems in both the cities of Omaha and Lincoln do not participate in the social security retirement program. And this could have severe impact on those types of individuals similar to the railroad as pointed out by Senator Council. And in the defined benefit world of many of the union pension funds that you hear about, these kind of retirement ages in a market year where you saw 40 percent loss in the market are going away. I mean, that's just what the actuaries are telling everybody is we've got to work on that retirement age because we can't afford to pay benefits based on the income. Now, given that fact and given the fact that the work

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

is not changing. Many of our members in the AFL-CIO, these guys are doing jobs--and women--that you really just have trouble doing past the age of 55, construction or iron-working, those type of jobs. And this legislation goes to punish people who are doing dangerous work because, let's face it, the percentage of work comp claims that result in a permanent and total disability either payment or a judgment from the court are very, very minor. And it seems to us that, as Mr. Loudon pointed out, you're punishing old people. Not only old people but old, disabled people. And I think Hubert Humphrey is accredited with the quote, but I don't think he wrote it, but that is a way to judge our society and how you treat those, the very young and the very old. And in Nebraska, we have a fairly good system for that, and you know, two or three years ago we were here in a great effort to revamp the workers' compensation legislation. We were going to change everything and there was a great effort on both sides from labor and management and industry to try and reshape the balance and I could think of nothing more offensive to those efforts than to deprive disabled people of the state of the law now which at least offers a dignified chance at a retirement, or not even a retirement, compensating for the fact that they're going to work. They're going to continue to work, and we shouldn't make an arbitrary decision on that opportunity that person lost and take it away. And so with that, I close, but I would be happy to answer any questions that the members may have. [LB514]

SENATOR LATHROP: Thanks, John. Any questions for Mr. Corrigan? I don't see any. Thanks for your testimony. Anyone else here in opposition? Hello, Mark. [LB514]

MARK INTERMILL: (Exhibit 4) Hi. Senator Lathrop and members of the committee, my name's Mark Intermill. And I'm here today on behalf of AARP. Intermill is spelled I-n-t-e-r-m-i-l-l. We would echo some of the comments that were made by the last two testifiers. We see this as a bill that is not in the interest of older workers. I would echo that there are a number of workers who are not covered by social security: railroad retirees, and this was mentioned. There were some public employees here also not covered, so it sets up a dichotomous system of treating some workers one way and others the other way. I'd also point out that there are costs associated with disability. And I think we recognize this in public policy in Nebraska in the Homestead Exemption program where we have a higher standard for people who have a disability than we have for people who are over the age of 65. There are costs that those individuals have to incur aside from what we would typically think of retirement expenses and to remove the benefits that are associated with the acquisition of a disability just doesn't seem to make sense from our perspective. We are opposed. It's been noted that there are other states that have similar laws to what's being proposed. I can assure you the AARP is working to modify those laws as well. We just don't believe there should be...these are two different types of programs, a retirement program and a disability program, and they should be left to stand alone and not be muddled together. [LB514]

SENATOR LATHROP: Thanks, Mark. Any questions for Mr. Intermill? Seeing none,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

appreciate your testimony. Anyone else here in opposition to LB514? Anyone here in a neutral capacity? [LB514]

JAMES CAVANAUGH: Senator Lathrop, members of the Business and Labor Committee, my name's James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska. And we've taken a hard look at this bill because we sell a lot of insurance and obviously the people we sell it to want coverage. And we've had discussions with Senator Lautenbaugh about possibly if you were going down this path, a way to look at it would be something that's consistent with what's done in the insurance market. First of all, offsets in the insurance market do not occur because you receive a retirement benefit. In the insurance market, if you buy a long-term disability policy, as Senator Carlson was talking about, there commonly are offset provisions in the policy that say if and when you receive social security disability only, we will offset these benefits to a certain level. Normally, because both of these programs, social security disability and long-term disability insurance products are wage replacement instruments, a percentage is established and the industry standard is about 80 percent of your average current earnings. So if you're going to look at this like the insurance industry currently operates, you would look at it only as an offset provision when disability benefits--wage replacement type program benefits--are being set side by side with private wage replacement benefits in your long-term disability policy. In the materials that you saw from the other states, if they're the same ones that I've looked at, you'll see that a lot of times the distinction is kind of blurred between social security benefits and it makes a big difference if you're talking social security disability benefits or social security retirement benefits. And I'd be happy to answer any questions you might have. [LB514]

SENATOR LATHROP: Thanks for the testimony, Jim. Any questions for Mr. Cavanaugh? Seeing none. Anyone else here in opposition to LB514? Anyone here in a neutral capacity? Seeing none. Senator Lautenbaugh, pardon me. [LB514]

SENATOR CARLSON: He just was neutral. [LB514]

SENATOR LATHROP: Oh, I'm sorry. He was neutral. Okay, forgive me. It's almost 4:00, it's been a long day. Senator Lautenbaugh, you get the last word. [LB514]

SENATOR LAUTENBAUGH: If that was a hint to me, Mr. Chairman, I'll take it, 4:00, long day. I believe you had a good discussion on this bill. Of course, I think the amendments do improve the bill and we're open to work with the committee on it. [LB514]

SENATOR LATHROP: Very good. Thank you for your thoughts. I think that does it. That'll close LB514, and we'll move right into LB453 which brings us to Senator Rogert, a former member of the committee. [LB514]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR ROBERT: Well, it's good to be back. []

SENATOR LATHROP: Well, it's great to have you. []

SENATOR ROBERT: It is such a beautiful room, I like hanging out in here. We have some new members that I haven't addressed in this committee. Chairman Lathrop and members of the Business and Labor Committee, my name is Kent Rogert, I represent Legislative District 16, today introducing LB453. LB453 would change employer notice provisions that require agricultural employers to notify employees whom are not covered by workers' compensation insurance. Under current law, agriculture operators that employ fewer than ten unrelated full-time employees are exempt from providing work comp insurance coverage so long as they provide notice to their employees that they are exempt from the act. This issue...the issue with this requirement is that the notice must now be given at the time of hire specifically. State Statute 48-106 requires every employee exempted who does not elect to provide workers' comp insurance coverage to give all unrelated employees at the time of hiring the following notice which shall be signed by the unrelated employee and retained by the employer. "In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease, you should plan accordingly." Again, that is the way the statutes read today. That is currently what we're at. Failure to provide the notice required by this subsection subjects the employer to liability under and inclusion in the act for all unrelated employees on the basis of failure to give such notice. This requirement has given rise to concerns of those in the agricultural sector because some have interpreted that the notice give at any time other than at the time of hire is void. We're simply in LB453 broadening the notice provision to allow for notice to take place at the time of hire or any time prior, excuse me, 30 days prior to the time of injury. I think the underlying provision is we're trying to educate farmers, specifically, that know they're exempt but don't know they're supposed to notify their employees that they're not going to be covered. And it's my intention with this to make this a two-way beneficial bill by encouraging...by giving us this little expansion of the statute, it's going to...we're going to try and encourage farmers to get out there and tell their employees that they're not covered, get them to sign that notice and make them compliant with the law. Right now, if a worker is injured, they go tell their employer that they've got an injury that's not covered by their insurance. The farmer goes, well, we don't have work comp insurance. The employee goes, oh. And then that's one issue, but then the farmer at that point says, well, you knew that. I think I told you, didn't I? And then it kind of falls by the wayside, but hopefully, by doing this we can allow some sort of adjustment period. We can get more farmers educated that they have to give them this notice and then by that those employees will know that they need to go seek coverage elsewhere if they want to be covered. [LB453]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: I think Senator Wallman has a question for you. [LB453]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thanks for being here, Senator Rogert. [LB453]

SENATOR ROBERT: I'm glad to be. [LB453]

SENATOR WALLMAN: But if I'm...I am a farmer and I've got an employee in a dangerous position, aren't I liable anyway though? [LB453]

SENATOR ROBERT: No. Not if you...if you tell him according to law now at the time of hire and have him sign this notice that you have informed him that he will not be covered under the Workers' Compensation Insurance Act, that he should seek coverage elsewhere if he so desires, he needs to buy disability in another place, then you are limited at that point. [LB453]

SENATOR WALLMAN: Thank you. [LB453]

SENATOR ROBERT: Um-hum. [LB453]

SENATOR LATHROP: Senator Carlson. [LB453]

SENATOR CARLSON: Senator Lathrop. Senator Rogert, you may have said this when you first started, and if you did I missed it, and I can't find it. It's written notice...that's required. What's the penalty for not doing it? But your employee didn't get injured so there's not a claim. [LB453]

SENATOR ROBERT: There is no penalty, but at that point you're personally liable for doing it, for any injury that your employee may have. And the fact is, if you don't realize that and you think you're exempt, and you are as long as you gave them notice and have them sign it to say they got notice, but if they didn't sign that, you're personally liable on your farm operation to cover that claim. [LB453]

SENATOR CARLSON: Thanks. [LB453]

SENATOR LATHROP: Do you have a question, Ken? [LB453]

SENATOR SCHILZ: No, I'm scratching my head trying to figure it all out. [LB453]

SENATOR COUNCIL: I am too. [LB453]

SENATOR LATHROP: By way of background...by way of background, Senator Rogert, work comp covers every employment in the state of Nebraska except that ag people



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

can elect not to cover their employees by work comp. [LB453]

SENATOR ROBERT: Actually, I think there's a few more exemptions than that. [LB453]

SENATOR LATHROP: Well, domestic help. [LB453]

SENATOR ROBERT: And railroads. [LB453]

SENATOR LATHROP: There are a few exceptions including ag. [LB453]

SENATOR ROBERT: Right. Yep, that includes... [LB453]

SENATOR LATHROP: The people that work in the ag industry. [LB453]

SENATOR ROBERT: Ten unrelated employees or less. If you have more than that, then you have to cover them. [LB453]

SENATOR LATHROP: All right. So if it's a small agricultural operation they can elect not to be covered by work comp, and the difficulty that you're trying to rectify with this is that if you hired somebody ten years ago, you can't go back and undo something you didn't tell them ten years ago. [LB453]

SENATOR ROBERT: According to the law now you've got to fire them, write them the final check, probably end their health insurance and anything else you're doing with them, rehire them and sign all this stuff and start it all over again. [LB453]

SENATOR LATHROP: Okay. And all you're doing here is saying a reasonable...more than 30 days before they get hurt notice before they get hurt that there's no work comp coverage should be sufficient. [LB453]

SENATOR ROBERT: Yeah, right. [LB453]

SENATOR LATHROP: Okay, I think we understand the bill. [LB453]

SENATOR ROBERT: Okay. [LB453]

SENATOR LATHROP: Any other questions? Anyone here in...thank you. Do you want to close, Senator Robert? [LB453]

SENATOR ROBERT: Nope. I'm going to waive closing. I've got to go back to committee, thanks guys. [LB453]

SENATOR LATHROP: Okay, thank you. Then we'll go straight to proponents. [LB453]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

KORBY GILBERTSON: Good afternoon, 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. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in support of LB453. I'd first like to thank Senator Rogert for working on this with us as well as Senator Lathrop who we first brought the issue to when it came to our attention. This isn't a true insurance issue because the people covered under this legislation are electing not to be covered by workers' compensation insurance. However, what has happened is that many people then think that the claim for these types of injuries would fall under their farm policy. And that is not true because that policy would expressly cut out any workers' compensation claims. So what can happen is that farmer gets thrown under the bus, and they are then personally liable for these benefits. So what LB453 does is simply say that you can now give an employee notice beyond the time of when you initially hired them. Senator Lathrop, during discussions with you we added the 30 days prior to injury because you, rightfully so, said they didn't want us sending anyone into a dangerous...or not us...the employer sending someone into a dangerous situation and saying, oh, by the way, sign this on your way in there (laughter). So that's why that 30-day language is in there. So I'm hopeful that this committee can send this one out and it can be made part of the mix of noncontroversial legislation and be taken care of rather quickly. Thank you. [LB453]

SENATOR LATHROP: Okay, any questions for Korby? I don't see any. Thank you for your testimony. Anyone else here in support of LB453? Pardon me. [LB453]

JAY REMPE: Senator Lathrop, members of the committee, my name is Jay Rempe. I'm vice president of governmental relations for Nebraska Farm Bureau, marking all over myself, here today on behalf of Nebraska Farm Bureau in support of the bill. I think Senator Rogert--and I want to thank him for introducing the bill--and Korby explained it very well. I know of one instance where we've had a member that hired--they were an exempt ag employer--they hired somebody, forgot to provide the notice. Subsequent to that they did provide notice but then there was an injury and a court decided that that wasn't...they didn't meet the intent of the law and so they had to...were personally liable for those injuries. So I think this provides...we've been working ever since this has been law to try to provide information to our members to get them up to speed so they'll provide that notice but there's always folks that slide through the cracks and so we're going to continue to do this, but I think this helps out. [LB453]

SENATOR LATHROP: Very good. Senator Council. [LB453]

SENATOR COUNCIL: Thank you, Mr. Rempe, for testifying today. Did you understand that this bill would have retroactive application? [LB453]

JAY REMPE: Retroactive? [LB453]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR COUNCIL: Yes, so, you know. I'm an exempted ag employer, and I have 25 people that I hired two years ago, didn't give them the notice. Is it your understanding or expectation that that would cover...that this legislation would relieve that agricultural employer from liability as long as they gave the notice 30 days prior to the injury? [LB453]

JAY REMPE: Yeah. Let me...couple points. One, if you had 25 you wouldn't be exempt anyway, but it's for those less than ten. And yes, my understanding the way it would work, if you have somebody that you have hired now and you forgot to provide notice you could go, as long as it's 30 days prior to the injury, you could provide that notice. [LB453]

SENATOR COUNCIL: Okay, thank you. [LB453]

SENATOR LATHROP: With the down side being that as soon as they give that...as soon as they don't cover their employees with work comp, the exclusivity provision is gone, and they can be sued for negligence. So if they put somebody up on a faulty ladder and they get hurt they can be sued in a third-party claim. [LB453]

JAY REMPE: Right. Right. [LB453]

SENATOR LATHROP: Which is the trade-off. Senator Carlson. [LB453]

SENATOR CARLSON: Senator Lathrop. Jay, I think I know the answer to this, but why is ag exempt in the first place? [LB453]

JAY REMPE: Well, I wasn't around when it was first given, but I think there's a lot of different reasons. One is ag is very seasonal in its employment, and they hire people part time and off and in and out. Secondly I think it's the cost involved, that it's a tremendous cost to the ag employers, and it's one that it'd be hard for them to bear in all cases...in some cases I should say. And then I think, third, it's a competitive issue. Most states...I shouldn't say most, but I know the surrounding states of Nebraska do provide similar exemptions to this so. [LB453]

SENATOR CARLSON: I think it might get back to that in agriculture, producers don't have the control over their market price like a lot of industries do. And say cost, I think that's a big part of the reason. [LB453]

JAY REMPE: Um-hum. Yeah. They...in terms of cost they either have to absorb that through their bottom line or they have to make a decision either to lower wages too or perhaps not hire the person because they can't afford it. [LB453]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

SENATOR LATHROP: Okay. Senator White. [LB453]

SENATOR WHITE: Is ag still statistically the most dangerous occupation in the country? [LB453]

JAY REMPE: I think it is one of the...is statistically, yes, it is. [LB453]

SENATOR LATHROP: Certainly a lot of equipment a guy can get caught up in. [LB453]

JAY REMPE: Um-hum. [LB453]

SENATOR LATHROP: Thanks for your testimony, I appreciate it. Anyone else here in support of LB453? Hello, Joe. [LB453]

JOE ELLIOTT: Mr. Chairman, my name is Joe Elliott. I'm with the Professional Insurance Agents Association, and our association does do a lot of business with farmers. And when this bill originally came up, Senator Burling introduced it about four or five years ago, and they didn't have any guidelines, and they went back and forth between 5 and 10 and 15, and they finally settled on 10 or less. And this has been a big exposure for a lot of farmers. I don't think they really realize it, but I've attended a lot of meetings and some farm seminars and told them that if they don't properly notify these employees that they're not covered and document it, they could catch a million dollar workmen's comp law very, very easily. And our agents have tried to continue to push the various agents and say this is an important deal and don't get caught. And I don't, fortunately, I don't think we have a big one. We've got one I know in Seward. I just called an agent the other day and I asked him about it and I think this individual...there is a 13-week requirement in here too, that they have to work that many days in a year...I mean that many weeks in a year in order to be included as an employee. So, but this one, I don't know how this...it didn't sound like it was going to be that serious. But this is a step that would be nice if they'd say ten or less, not even require workers' comp but that's never been the case. But I think this 30 days requirement does give them some options and maybe some in view of the 13 weeks if they aren't working full time all the time, then they could if they feel that they don't need that person anymore decide, well, we're not going to continue on. And so that can reduce their exposure too. But I certainly feel that this bill could help. [LB453]

SENATOR LATHROP: Very good. Thanks Joe, any questions? I don't see any. Continue with your education effort. [LB453]

JOE ELLIOTT: Thank you. [LB453]

BOB HALLSTROM: Chairman Lathrop, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, appearing in support of LB453 on behalf of the National

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness. I think the changes in the law are appropriate for the smaller agricultural employers. Senator Lathrop, you had indicated one of the technical flaws in the bill is that if you hired someone before the effective date back in 2003, there's no mechanism under existing law to cure that problem. I think the other aspect is someone that may inadvertently have escaped getting the notice, you don't have a second opportunity to go back and cure that as well and that seems to be inherently reasonable to allow that opportunity rather than going through what may be viewed to some as a charade where Senator Rogert indicated you can fire them and rehire them. Why make them go through that if you have a sufficient advanced notice to allow that individual to know what the consequences are and to go out and get some protection? With that, I'd be happy to address any questions with the committee. [LB453]

SENATOR LATHROP: I don't see any. Thanks Bob. [LB453]

BOB HALLSTROM: Thank you. [LB453]

PETE McClymont: Chairman Lathrop, members of the committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here representing Nebraska Cattlemen as a lobbyist. We would just want to echo comments made before here. Vast majority of our members would employ less than ten unrelated employees, so from that standpoint your comment earlier, Senator, one of the things that we do as an association is an education process for some that might be naive if not ignorant. So it's up to us to make sure that they know what they are compelled to do because obviously, feedlots over probably 10,000 and we know of one of our members that's a rancher that would be over the ten unrelated employees so they automatically have this work comp. So this is something that we're compelled to do and we're here to support this bill. [LB453]

SENATOR LATHROP: Very good. Any questions for Pete? I don't see any, thanks for coming down. Anyone else in support of LB453? Anyone here in opposition to LB453? [LB453]

JOHN CORRIGAN: Good afternoon, members of the committee, Mr. Chairman. John Corrigan on behalf of Nebraska AFL-CIO and we certainly would recognize that this bill is aimed at a sector of the economy that generally is not represented by organized labor. However, the state of the law...and I've been asked to lodge the opposition of the AFL-CIO to this bill. As the state of the law is today, the Legislature has made a policy decision to be inclusive rather than exclusive with regard to workers' compensation coverage. And there is in the history from my own reading, Senator Carlson, part of the reason that you excluded the agricultural workers from coverage under the Workers' Compensation Act was simply to get it passed. To get workers' compensation that social contract through the legislatures around the country, there was great opposition to that by the agricultural sectors in the progressive movement and that was the deal

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

that was struck. But in Nebraska we have this attempt to have some exclusion because in my mind, one of the problems that you have is that when there isn't coverage and the employee is in this very dangerous industry and is injured seriously, he may be able to go out and sue that employer now because he wasn't covered by workers' compensation. But nobody's paying these bills and nobody is providing any wage replacement for that family and the Legislature has seen fit to create a system that doesn't seem to be broken in order to facilitate coverage rather than exclusion and so we don't think under the current state of the bill a change is necessary. And we thank you for the time. I'd be happy to answer any questions you might have. [LB453]

SENATOR LATHROP: Thanks, John, any questions? I don't see any. [LB453]

JOHN CORRIGAN: Thank you. [LB453]

SENATOR LATHROP: Anyone else here in opposition to LB453? Anyone here in a neutral capacity? This was introduced by Rogert and he waived, so that will end our hearing on LB453 and our hearings this afternoon. [LB453]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Business and Labor Committee  
February 23, 2009

---

Disposition of Bills:

LB453 - Held in committee.

LB556 - Held in committee.

LB514 - Indefinitely postponed.

LB622 - Placed on General File with amendments.

---

Chairperson

---

Committee Clerk