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Business and Labor Committee  
February 08, 2010

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[LB780 LB829 LB833 LB846 LB872 LB908 LB961 LB963 LB994 LB1044]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 8, 2010, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB908, LB780, LB833, LB846, LB963, LB1044, LB961, LB829, LB872, and LB994. Senators present: Steve Lathrop, Chairperson; Tom Carlson; Amanda McGill; Norman Wallman; and Tom White. Senators absent: Brenda Council, Vice Chairperson; and Ken Schilz.

SENATOR LATHROP: (Recorder malfunction)...so I thought I'd take a few minutes to kind of tell you what my thinking is and how we're going to proceed today. We have ten bills, which is the reason I'm standing up and talking about this. So that we can get the committee members out of here by 5:00 or 5:30, we've developed a little bit of a different structure. We're going to take up LB908, which I think is fairly simple and straightforward. The second bill we'll take up is LB780. That is the mental-mental bill. We're taking that up second so that the volunteer firemen who have come here from across the state can get in their cars and get home before the weather changes on them or it gets too late. We will then take up LB833 and when I say take up, we will have senators introduce these four bills one right after the other and then take testimony. Those will be LB833, LB846, LB963, and LB1044. So we'll have the four senators come in, introduce those, then we'll take the proponents, and then we'll take the opponents. If you want to testify on any one or all of the bills, just tell us so that the record is reasonably clear what you have a problem with or what you support. So if you come up on two of them, you can then, I like LB830 because of this and I like LB846 because of that, so that we know which bill you're talking about. I'm hoping that this will shorten the afternoon up by grouping those bills together. Then we will do LB961, LB829, and the last two I believe are...one of them is a shell bill, so this should...I think we can still get this done before 5:00. That's my hope. In order to make that happen, we're going to employ the light system today. It will be a three-minute light system. You'll get a yellow light after two minutes. Recognize that by the time the red light comes on three minutes into this that you are on overtime. And I hope I don't have to interrupt you, but in order for us to get out of here at a reasonable hour, it's going to be necessary that you, you know, wrap it up and you're...in a paragraph or less once that red light comes on. The usual rules, if you have...before you testify you need to fill out a sheet, provide the committee clerk, Kate Wolfe, with the testifying sheet so she can keep the record straight today. Please turn your cell phones off or turn them to vibrate. And I'll also introduce the other members of the committee: Senator Tom Carlson to my far right; Amanda McGill; Senator Council is snowed in, in Washington, D.C., today and will not be here. Molly Burton is our legal counsel; Senator Wallman is here today; and I would expect...Senator Schilz is sick and I expect White to be along momentarily. So with that, we'll begin with LB908, which brings us to Senator Conrad. Welcome.

SENATOR CONRAD: Good afternoon, Senator Lathrop, members of the committee. My

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name is Danielle Conrad. That's D-a-n-i-e-l-l-e C-o-n-r-a-d. I represent the "Fighting 46th" Legislative District here in our Nebraska Unicameral Legislature. Today I'm here to introduce LB908. I think actually your Chairman stole much of my thunder in regards to my very brief, very simple opening on this, what I consider to be a technical bill. LB908 amends Section 48-108 to improve the efficiency of the Nebraska's Workers' Comp Court in terms of approving certain fees owed for legal services rendered. It allows approval of claims for legal services by any judge of the Nebraska Workers' Comp Court instead of requiring the approval of the presiding judge at trial. As I recounted to somebody who asked me about this bill this morning, this bill is so technical and straightforward in nature it probably should have been put in as a Revisor's bill. But that being said, we're happy to be here today. We're happy to answer any questions, and we're happy to be respectful of your very limited time on a very busy afternoon. So thank you. [LB908]

SENATOR LATHROP: Thank you, Senator Conrad. Are there any questions for Senator Conrad? I see none. [LB908]

SENATOR CONRAD: With that, I'll waive my closing at this point too. Thank you. [LB908]

SENATOR LATHROP: Very good. Thank you, Senator. Appreciate you being down here today. Is anyone here in support of LB908? Come on up. Looks like we have two people. Either one of you can go first. That's fine. [LB908]

DENNIS CRAWFORD: All right. I'll go first. Where to I put this, Senator? [LB908]

SENATOR LATHROP: You can give it to Kate Wolfe. [LB908]

DENNIS CRAWFORD: I don't think I've testified in front of a committee for about 20 years, so I'm a little rusty, (laugh) so everybody bear with me today. [LB908]

SENATOR LATHROP: Well, you start with your name, Dennis. [LB908]

DENNIS CRAWFORD: All right. Dennis. [LB908]

SENATOR LATHROP: Spell your last name for us. [LB908]

DENNIS CRAWFORD: Dennis Crawford, C-r-a-w-f-o-r-d. 135 Lakewood Drive, Lincoln, Nebraska, is my professional address. I'm here to testify on behalf of the Nebraska Association of Trial Attorneys. LB908 makes some fairly modest changes to Nebraska statute 48-108. The way the statute is presently set up, this bill only applies if an attorney is discharged by his or her client. Okay? If the client is on board, then there's not an issue or problem, so this issue will not come up very often with the Nebraska

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Workers' Compensation Court. Being discharged by a client is a fairly unusual event. But if a lawyer is discharged by a client, there's a technical flaw in the statute. An attorney can only petition for a fee after a discharge by a client if there's been a trial that's been conducted and held or if there's a lump sum settlement pending in front of the Nebraska Workers' Compensation Court. The technical flaw with the statute is as follows: Sometimes an attorney will file a lawsuit on behalf of a client. The judge will grant the injured worker an award. Part of the award will be weekly workers' compensation benefits. It takes a lot of work to get an award like that, they're not easy to come by. And if the client and lawyer should have some kind of significant disagreement, the client can let the attorney go and the client does not have any right under the statute to ask for a fee on those weekly checks that his or her work generated on behalf of the client. In that kind of a situation, the attorney would have to wait until there was either another trial or the case was settled and then petitioned to court. And so you have an anomalous situation where a lawyer has done a good body of work and is not compensated for his or her time. It would be analogous to a situation where somebody is representing an employer or an insurance company in front of the court. They get terminated by the client just before the trial, and they try to file suit to collect their fees owed by the corporation, and there's no way...their case gets dismissed on a technicality. So this is just a modest change. It will not really present any big changes to how workers' compensation cases are conducted in Nebraska. It will not take up very much court time for the judges. Thank you for your consideration. [LB908]

SENATOR LATHROP: Thanks, Dennis. Are there any questions? I don't see any. Appreciate you coming down here today. [LB908]

DENNIS CRAWFORD: All right. Thanks for having me. [LB908]

SENATOR LATHROP: Good to see you. Tim. [LB908]

TIM DOWD: Good afternoon. My name is Tim Dowd and I'm speaking on behalf of the AFL-CIO for the state of Nebraska and we are a proponent of this bill. My comments will echo those of the two previous speakers including the senator that has proposed this legislation. Although the changes are modest, the impacts are significant with respect to attorneys. As Mr. Crawford has just indicated, it's a means to protect attorneys who have performed work to obtain a successful result for their clients, and this allows for an allotment of attorney fees for the work they have performed. [LB908]

SENATOR LATHROP: Good. Thanks, Tim. [LB908]

TIM DOWD: Thank you. [LB908]

SENATOR LATHROP: Any questions? I don't see any. Thanks for coming down. Anyone else here as a proponent? Anyone here in opposition? Anyone here in a neutral

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capacity on LB908? Seeing no one interested in testifying any further, that will close our hearing on LB908. [LB908]

SENATOR MCGILL: All right. Senator Lathrop.

SENATOR LATHROP: Good afternoon, fellow members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here today to introduce LB780. LB780 is generally referred to as the mental-mental bill. It is an amendment to the workers' comp statute, and I would like to start out with a little bit of background. In work comp law in the state of Nebraska, if you suffer an injury, a physical injury in the scope and course of your employment, you're entitled to receive worker's compensation benefits. If you suffer a physical injury in the scope and course of your employment and that leads to a mental injury, in Nebraska you can collect workers' compensation benefits because the initial insult or the initial injury is a physical injury. You cannot, however, collect for a...or make a claim for and receive care and treatment for a mental injury that has a mental stimulus. That's why it's generally referred to as a mental-mental type claim. LB780 would allow for mental-mental claims for first responders. The bill is intended to address a problem for those people who are in law enforcement and for those who are involved in rescue firefighting who we ask to do some of the most difficult work for our communities which is to, on occasion, be at the scene of a shooting, perhaps have to take another person's life in the scope and course of your employment, or to go into a burning home and to remove children, and to go to the scene of an accident and be involved in providing care and treatment to folks you may even know. And the bill is important to all first responders but particularly important, I think you will hear, to those who serve our communities on a volunteer basis with volunteer fire departments. The volunteer fireman is the person who is most likely to have the most difficulty. They are not the professional, trained, paid firefighters, although they are certainly amenable to this type of a condition. But they are the ones who leave their job. They are the ones who are likely to be taking a call for somebody they know, and they are folks that are more likely to experience a mental trauma from what they've seen in the scope and course of their employment. We have asked for an opinion--we'll offer it as part of the testimony--about what this might do, how many more claims is it going to result in, and the answer is it's a very small percentage of people. This is not going to turn into a rash of claims that lead to long-term disabilities for mental injuries, but what is important and why this bill, I think, is necessary to recruitment and retention of volunteers and for the paid folks as well is that when they suffer conditions like a posttraumatic stress disorder, oftentimes those things fester and they ultimately surface in behaviors like drinking, things that happen...we see it with the posttraumatic stress disorder for the people returning from war. They have difficulty in their relationships. They have ways that they try to cope and self-medicate. Providing them with appropriate care early on is going to allow them to return back into service, and the expectation from the information I have is that it will result in just a few cases each year for people that should receive the care, deserve to

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get the care, and need it in a timely manner. So with that, I would ask your support of LB780. [LB780]

SENATOR MCGILL: Thank you, Senator Lathrop. Any questions? Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. There's something strangely familiar about this bill. [LB780]

SENATOR LATHROP: Yeah. I think you and I worked on it the last time. I should have mentioned that too. It has passed the Legislature two years ago and was vetoed by the Governor. [LB780]

SENATOR CARLSON: And I understand that we don't know what the cost of it might be, so would you be open to a sunset provision? [LB780]

SENATOR LATHROP: We do have...I won't ever close the door on a sunset provision as a compromise if that should be necessary. We did get some information that I'll share with you, Senator Carlson, that would suggest that what this would do for communities would have a nominal or a...I think it's a nominal effect on premiums because it would be expected to be such a small number of people making claims under this modest expansion for a limited group. [LB780]

SENATOR CARLSON: And if it were a nominal effect, it would be easy to have a sunset date and then remove that when it comes because it's been proven that it's not a significant cost. [LB780]

SENATOR LATHROP: I think that would be true. [LB780]

SENATOR CARLSON: And I'm asking this for the benefit of the testifiers that come behind you. They may want to comment on that as well. [LB780]

SENATOR LATHROP: On the idea of a sunset? [LB780]

SENATOR CARLSON: Yes. [LB780]

SENATOR LATHROP: Well, we sometimes use sunsets to get us...to pick up a few more supporters that we can't get otherwise, and I never rule out working with senators and certainly including yourself. But I think the information we have is that these don't open the door to a whole bunch...a significant number of additional claims. [LB780]

SENATOR CARLSON: Okay. Thank you. [LB780]

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SENATOR MCGILL: Other questions? No. [LB780]

SENATOR LATHROP: Okay. [LB780]

SENATOR MCGILL: Thank you, Senator Lathrop. Are you going to come back to chair? [LB780]

SENATOR LATHROP: No, I'll sit here. [LB780]

SENATOR MCGILL: Okay. [LB780]

SENATOR LATHROP: And then I intend to close too. Thank you. [LB780]

SENATOR MCGILL: All right. Then we'll start taking proponents. [LB780]

MICHEAL DWYER: (Exhibit 1) Good afternoon. My name is Micheal Dwyer, D-w-y-e-r, and I'm a member of the Nebraska State Volunteer Firefighters Association legislative committee, an EMT, and a 26-year member of the Arlington Volunteer Fire Department. I'm here today to testify in support of LB780, specifically to Section 1 of the bill that deals with workmen's compensation coverage for mental injury to first responders as a result of extraordinary and unusual conditions. In my 26 years, I responded to over 1,200 incidents including fires, accidents, cardiac episodes, farm injuries, and broken bones. If memory serves, I've rescued two cats from roofs. I have also performed CPR 17 times, 4 times on children, all but 2 of the patients passed away. I've responded to a partial decapitation; the death of my son's best friend in high school; seven suicides, which is how my father died. While none of my 1,200-plus calls were ordinary, I/we recovered and continued to respond. As with many volunteers, I also do other stuff. I serve on the Arlington Board of Education and direct a Christian rock band that includes high school kids. Three weeks ago tomorrow, our department responded to a car accident on a state highway resulting in the death of a parent of one of the kids in our band and the mother of four girls in our school. Her husband, an ER nurse, arrived on the scene to help only to discover that it involved his wife. I kept him away while we worked the scene and rode with him to the hospital. The band sang at the funeral. Nothing in my 26 years prepared me for that call or for the days to follow. I have participated in critical incident stress debriefing, which was my fourth time through that; talked with several great friends on the department; and received pastoral care but remain on what I can only describe as limited duty--responding only if absolutely necessary to calls. Work, home, sleep, worship have been difficult, to say the least. In closing, currently over 70 percent of Nebraska is protected by volunteer fire and rescue services. We spend countless hours preparing for and responding to the worst. The nature of volunteering in our local communities means...excuse me, the nature of volunteering in our local community means that occasionally the worst happens to our friends and family. It's important that you understand that part of what makes

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responding to these events extraordinary and unusual and so difficult to recover from is the fact that we're responding to local friends and family. LB780 would offer appropriate coverage when the worst is just too much. I would direct your attention to the fiscal note, which Senator Lathrop already mentioned, that's attached to LB780. It indicates that a similar law in Missouri, on average less than one-quarter of 1 percent of workmen's comp claims involve mental-only claims making the fiscal impact of LB780 virtually neutral. On behalf of everyone in Nebraska who responds to extraordinary events, I would ask that you support LB780 and I would welcome any questions. Thank you. [LB780]

SENATOR MCGILL: That's an incredibly heartbreaking story. Thank you for sharing it with us. [LB780]

MICHEAL DWYER: Thank you. [LB780]

SENATOR MCGILL: Are there any questions? Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. Mr. Dwyer, with your what sounds like extensive experience, can you think back of how many people that you've worked with that may have taken advantage of this type of coverage or a percentage? Could you respond to that? [LB780]

MICHEAL DWYER: I can think of three other cases, three other calls, the one that I mentioned in testimony that were particularly difficult for the department. In those 3 calls out of the 1,200 that I've been on and roughly twice that the department has responded to in my years, I can think of 3 calls that were particularly difficult and, of those, two or three people each that may have responded or taken advantage of the provisions of LB780. Does that answer your question? [LB780]

SENATOR CARLSON: I think it does. How many... [LB780]

MICHEAL DWYER: Very small. [LB780]

SENATOR CARLSON: Yeah, and how many years... [LB780]

MICHEAL DWYER: And I'm trying to quantify it but it would be very small. [LB780]

SENATOR CARLSON: How many years have you done this? [LB780]

MICHEAL DWYER: 26. [LB780]

SENATOR CARLSON: 23. [LB780]

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MICHEAL DWYER: 26. [LB780]

SENATOR CARLSON: I'm sorry? [LB780]

MICHEAL DWYER: 26. [LB780]

SENATOR CARLSON: Oh, 26. And I think you said about three different occasions, but there would have been multiple people on each occasion affected. [LB780]

MICHEAL DWYER: Correct. Without getting too ethereal, all of us respond to an incident differently. I know that there's people that on this particular call that I mentioned three weeks ago that a couple of us have really struggled, a couple of the other responders not so much. I'm not enough of a psychologist to understand why some bother us significantly and others don't. With respect to those three calls, this one included, certainly everybody on the call is going to respond differently and typically...I'm making broad generalities, but typically there may only be two or three of us that even on a really bad call may actually seek care. Does that answer your question? [LB780]

SENATOR CARLSON: Well, I think it does. And I'm going to ask you one more thing and it's not to try and prove a point that this isn't necessary. But of those occasions where you felt it might have been helpful to have this kind of benefit, did those people recover? [LB780]

MICHEAL DWYER: Good question. In two cases, yeah, and two of them that I can think of are still members. In one case, the guy quit the next day. [LB780]

SENATOR CARLSON: Okay. And maybe this benefit would have taken care of things and he may have... [LB780]

MICHEAL DWYER: At the very least we, as members and officers of the department, could have made it clear that this kind of care is available in addition to critical incident stress debriefing and personal care and everything else, the little debriefing that we do as a department immediately after the call. [LB780]

SENATOR CARLSON: Okay. Thank you. [LB780]

MICHEAL DWYER: If I could add, one thing that you mentioned earlier about the sunset provision and I think my only comment as a responder would be that I'd be in complete favor of a sunset provision as long as you could also attach it to these kind of calls so that as the bill expires that we would no longer have these kind of calls. The reality is that these kind of calls are going to continue for the foreseeable future, and that while certainly we would support the sunset provision if it got the bill passed, this isn't going to make this kind of stuff go away. [LB780]



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SENATOR CARLSON: I realize that. And I've had experiences with utilizing sunset dates on several bills that I've been involved with and have had enough confidence in the bill itself that that was not going to be a problem, and it sounds like that's your thinking as well. Thank you. [LB780]

MICHEAL DWYER: Yes. Thank you. [LB780]

SENATOR MCGILL: Any other questions? Senator White. [LB780]

SENATOR WHITE: Is your department having trouble keeping people involved in volunteering? [LB780]

MICHEAL DWYER: Absolutely. [LB780]

SENATOR WHITE: Do you think... [LB780]

MICHEAL DWYER: Excuse me for interrupting, but... [LB780]

SENATOR WHITE: And you're getting down to a critical number. [LB780]

MICHEAL DWYER: Critical number. Quite frankly... [LB780]

SENATOR WHITE: So loss of one is a big deal? [LB780]

MICHEAL DWYER: Big deal. Quite frankly in the last three weeks...after the funeral, I pulled our president aside and said, I'm off. And he completely understood and respected that. We have had two calls since then that, you know, the pager goes off and the whistle goes off, you're sitting in the house and wife is looking at me going, what are you going to do? So I kind of wandered down to the fire hall slowly only to discover there's no other EMTs there, it's me, or we start mutual aiding people which significantly impacts response time. So I can't speak for the state, although there's a number of other departments that are in the same situations. But in my little corner of the world, it's critical. [LB780]

SENATOR WHITE: I think it's across the state of Nebraska in volunteer fire departments. [LB780]

MICHEAL DWYER: I would tend to agree. [LB780]

SENATOR WHITE: In your experience and opinion, would this help you keep and hold those people who do volunteer? [LB780]

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MICHEAL DWYER: In a very general sense...and, again, I'm arguably not qualified to answer that, but my own personal feeling is absolutely. I know that I'm hanging on a bubble (laugh) and a little bit of extra something or other certainly couldn't hurt. [LB780]

SENATOR WHITE: Okay. Well, Senator Carlson said, did they recover. And of course oftentimes you don't know why they leave. They just stop coming. [LB780]

MICHEAL DWYER: I'm done. Yeah. [LB780]

SENATOR WHITE: Okay. Thank you. [LB780]

MICHEAL DWYER: Thank you. [LB780]

SENATOR MCGILL: Any other questions? Thank you, Mr. Dwyer. [LB780]

MICHEAL DWYER: Thank you. [LB780]

SENATOR MCGILL: Next proponent. [LB780]

BILL FORTUNE: (Exhibit 2) Senators, my name is Bill Fortune, F-o-r-t-u-n-e. I'm here today as the president of the Nebraska State Volunteer Firefighters Association, vice chairman of the Nebraska Emergency Services Caucus, and as a Fire Chief in Ogallala, Nebraska, and I am here today to ask for your support of LB780. Many volunteer fire and ambulance services of Nebraska are in dire straits due to the problems with recruitment and retention in our own communities, an issue that many of you yourselves have witnessed in your districts. The NSVFA has brought several pieces of legislation before you to address this problem with reasonable success. But in the current economic downturn, we understand that this may not be the best time to look for tax incentives this year or retirement plans. Indeed, we are looking for a sensible center. This bill is that middle ground. The truth is, we are losing firefighters and emergency medical providers and law enforcement officials every year due to the horrific and searing images that we see on a daily basis, even by suicide. I could literally pay for the insurance premium increase myself if I had a dollar for every time someone told me that they could not do what I do. Yes, we choose to respond to our neighbor's cries for help, but we are simply not prepared for the level of carnage that we all too often witness. Each member of a fire or rescue squad has tried to make peace with an issue at one time or another. I know I have in my 16 years. In that time, my department alone has lost 15 to 20 members to such events and have spent thousands of dollars of our own fund-raising money to pay for these mental injuries. The truth is, when we lose a volunteer firefighter or EMT, the time and education expended every year to train these dedicated men and women are often lost in an instant by being eyewitness to the passing of someone they know, seeing the remains of a family member or a lifeless child. Please continue your support of emergency services by supporting this bill.

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[LB780]

SENATOR MCGILL: Thank you. Are there any questions? No. Thank you, Chief. Any other proponents? [LB780]

CHRIS ABOUD: Senator McGill, members of the Business and Labor Committee, my name is Chris Abboud, A-b-b-o-u-d. I'm representing the Omaha Police Union today, and we are in support of this bill. I'll be happy to answer any questions. [LB780]

SENATOR MCGILL: Any questions? No. Thank you. [LB780]

CHRIS ABOUD: Okay. Thank you. [LB780]

SENATOR WALLMAN: Excuse me. [LB780]

SENATOR MCGILL: Oh, sorry. Senator Wallman. [LB780]

SENATOR WALLMAN: Thank you, Senator McGill. Yeah, Chris, do you have any idea how much it costs to train an EMT, you know, as far as man-hours and time? I should have asked one of the others. I'm sorry. [LB780]

CHRIS ABOUD: Yeah. I don't know the answer to that question. [LB780]

SENATOR WALLMAN: Okay. Thanks. [LB780]

CHRIS ABOUD: But you can probably call them back up and they can answer that question for you. [LB780]

SENATOR MCGILL: Perhaps somebody else will be able to. Thank you. [LB780]

CHRIS ABOUD: Okay. Thank you. [LB780]

SENATOR MCGILL: Any other supporters? [LB780]

GREG JUREY: My name is Greg Jurey, J-u-r-e-y, and I guess I'm mainly here just to kind of give you a firsthand...I was...I don't know. I guess I'll tell you my story I guess. When I was...it was five years ago, I think. Yeah. I went to a car wreck and there was...it was...I had never went through something like that before, an actual car wreck or whatever. And when I got there, we had...there was a call over the radio that kind of let me know that there was a deceased person there. And you never know how you're going to like handle that kind of situation. So, I mean, everybody is like you don't...you know, stay away from there because you don't know how you're going to react and everything like that. Well, I mean the only way...like us, the firefighters or whatever, the

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only way we know if we can handle it is to go through it. And so, I mean, it didn't bother me, it didn't bother me, and then, I mean, all of a sudden, I don't know if it was because I was sitting there thinking about it for so long, but I got really weak in my knees. I couldn't hardly...I mean, I was done for. I mean I was done for on that call. I mean I just sat down. I couldn't do nothing. And then like later on that night we all kind of talked about it and stuff and all the firefighters, they were telling me how, you know, if you need any help or anything, we'll be there for you. You know, call me in the middle of the night if you have to or whatever. Well, the next day I got up to go to work or whatever and I couldn't even...I was bawling. I couldn't quit crying. I just kept on replaying like the actual car accident. Like I wasn't there for the car wreck but I was sitting there replaying it over and over in my head like, you know, how it happened, like what happened to her and everything else. And so...and I wasn't able to go to work for I don't know what it was, three days. And I went to the doctor and I got on some medical...meds or whatever. And, I mean, we ended up having a debriefing with the Nebraska State Patrol. And, I mean, we went through all sorts of stuff. And I can say it helped...that debriefing that the State Patrol does is...to me, is it helps you deal with it. It doesn't fix the problem, where if I could have afforded it or if I could have...you know, if we would have had this bill or whatever in...you know, the way we want it to go is I could have probably got a little bit more help, you know, and actually probably fixed the problem, you know, sooner. I mean, I don't have any problems with it anymore but, I mean, I still bet you there isn't a day go by that I don't think about it. You know, and then...I mean, from then on like on the fire department, I wasn't...like when we get a car wreck, I would never be the first one to go. I'd always leave, you know, second or third truck or whatever, you know. And then when those guys would get there, they would kind of assess the situation and then they would call me on the radio and tell me whether it was bad enough for me to go to or if I should just drive by and like direct traffic or whatnot, you know. And so, I mean, I don't know. I just feel like it would have definitely helped me a lot because I would have gotten more treatment. You know, I mean, I got over it and everything but, you know, it took a couple of...few years, you know, to where I wouldn't...I didn't think about it so much, and that was my main problem was that I replayed it over and over in my head. And like to this day I can still picture like it was yesterday, you know, what happened. And I don't know. I guess that's... [LB780]

SENATOR MCGILL: Thank you for sharing your story. [LB780]

GREG JUREY: Yeah, that's no problem. That's no problem. [LB780]

SENATOR MCGILL: And having the courage to come and tell us. [LB780]

GREG JUREY: Oh, no, it's no problem. That's no problem. I mean, I actually...I mean, if it's going to help, you know, the other firefighters and stuff in the long run, whatever, you know, because I know I think it will help. [LB780]

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SENATOR MCGILL: Are there any questions from the committee? Senator Carlson. [LB780]

SENATOR CARLSON: Mr. Jurey, what's your first name? [LB780]

GREG JUREY: Greg. [LB780]

SENATOR CARLSON: And where are you from? [LB780]

GREG JUREY: Palmyra. Palmyra Fire Department. [LB780]

SENATOR CARLSON: Palmyra. Okay. Thank you. [LB780]

GREG JUREY: Yup. [LB780]

SENATOR MCGILL: All right. Thank you very much. [LB780]

GREG JUREY: Are we good? [LB780]

SENATOR MCGILL: Yup. (Laugh) Any other proponents? [LB780]

BRUCE BEINS: Good afternoon, Senators. My name is Bruce Beins, it's spelled B-e-i-n-s, and I represent the Nebraska Emergency Medical Services Association. I reside in Republican City, Nebraska, which is deep in the frontier of Senator Carlson's district. And in our area, all of our providers are volunteer, both fire and EMS, and we're blessed that we get to serve people we know. It's a frontier area, we know everybody. We're also cursed because we get to serve those same people. I really look at this...you know, we've all got stories to tell that have been doing this for a long time and a lot of us still have nightmares now and then about some of those. Like was said before, people handle them in different ways. On my service, we lost two of our leaders and EMTs, firefighter EMTs from one incident, and we lost them forever. A bill like this I think would have allowed us...gave us an opportunity to try to get them some help. We cannot stand to lose any more volunteers. The system in the state of Nebraska is on the edge as we speak. As I sit here, 25 percent of Republican City's EMS is out of service because I'm gone. There's only four of us, so we can't afford to lose anybody. Unfortunately, some of these calls, we're going to lose some people. But it's unfortunate if we lose them because help was there but we couldn't give it to them, it wasn't an option for us. This bill would at least give us that little bit more of a tool in the toolbox. We try to train people ahead of time, try to prepare them, but how do you prepare for those types of calls? It's an individual thing. So I encourage you to advance this bill. I think it's a very small cost compared to the huge amount of dollars that the volunteers provide to the people in their communities and the state as a whole. So with that, I'd sure answer your questions. [LB780]

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SENATOR MCGILL: All right. Thank you. Senator Wallman. [LB780]

SENATOR WALLMAN: Thank you, Senator McGill. Yeah, thank you for serving as a volunteer. Thank you. [LB780]

BRUCE BEINS: Thank you. [LB780]

SENATOR WALLMAN: And you could probably tell me how many hours the average person has to spend to get this EMT and stuff like this. [LB780]

BRUCE BEINS: Well, to get EMT is 130, you could even say up to 150 hours by the time you add CPR and other things that we need to do locally on it. Firefighter training really varies, but a really basic firefighter training is like about 60 hours for Firefighter I, and that's just initial training. I mean, we do ongoing training. [LB780]

SENATOR WALLMAN: So if you lose one of the people, that's a lot of time. [LB780]

BRUCE BEINS: It is, it is. And we work so hard to find them to start with and we baby them along, whatever we need to do because we need that personnel so desperately in our rural areas that, yeah, it really hurts when you lose somebody that you've invested so much in. [LB780]

SENATOR WALLMAN: Thank you. [LB780]

SENATOR MCGILL: Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. Your force is four people now, your crew. [LB780]

BRUCE BEINS: Yes, our EMS crew is four. [LB780]

SENATOR CARLSON: What's it been in the past? [LB780]

BRUCE BEINS: In 1980, it was 18. Let's see, four years ago it was nine. I've been up to the Capitol four different times testifying on resolution hearings for recruitment and retention, so I've been speaking about retention/recruitment for our rural areas for a long time. There's no magic bullet. [LB780]

SENATOR CARLSON: In these last four years then, you've gone down from nine to four. Is that...are there some specific reasons there? Is any of this what you're testifying on relate to that? [LB780]

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BRUCE BEINS: I couldn't specifically say that stress itself was a cause, although several of those people had been doing this for a long time and they just felt that they couldn't keep doing it. But whether it was because of the accumulated stress or whether they felt that they gave all that they could give, I don't...I really couldn't answer that. Of course, some of them moved away, you know, changed jobs and positions and we've lost them that way. [LB780]

SENATOR CARLSON: You need some younger people recruit. [LB780]

BRUCE BEINS: Absolutely. [LB780]

SENATOR CARLSON: Unfortunately, probably this benefit by itself doesn't make a whole lot of difference on recruiting. [LB780]

BRUCE BEINS: Not unless we can create jobs in our rural area. Yeah. [LB780]

SENATOR CARLSON: It means something to those of you that currently serve. [LB780]

BRUCE BEINS: Exactly. But it would be a good retention tool for those that we may lose because of a critical incident. [LB780]

SENATOR CARLSON: Okay. Thank you, Bruce. [LB780]

SENATOR MCGILL: All right. Thank you for your service. [LB780]

BRUCE BEINS: Thank you. [LB780]

SENATOR MCGILL: Other proponents? How many other proponents do we have after this gentleman? A couple more. All right. Thanks. [LB780]

RICHARD JUREY: Hello, Senators. I'm Richard Jurey, J-u-r-e-y, Palmyra Fire Department, and I guess I'm here to kind of reinforce what my son was up...he was my son, was here earlier, and I remember that incident, too, quite well. And I was...I'm going to give you just a little bit of history of myself: 25 years on the fire department; I was chief for 13 years until I stepped down a year ago, and I was chief at the time when this incident happened. And I didn't file this claim just because he was my son; I filed it because he was a firefighter. I would have done it for any of them. And of course we were turned down. So the other thing here is that we're from a small community of less than 600 people. And we're not immune to the...any of the things that happen in the big city. In the 25 years, we've had, well, a homicide, double homicide, and you don't know what these are sometimes when you go. This call came in as a car fire and when we got there, it was double homicide. You have to go out on accidents where, you know, this isn't...I'm not trying to be morbid, but you have to go out and pick up body parts. You

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have to...farm accidents, that was mentioned earlier, we had calls where somebody was ground up in an auger and you have to sift through this grain to find this stuff. It's very, very stressful. And sometimes the critical incident stress debriefings aren't quite enough and you need that extra help, and we just need to be able to provide it to them. So thank you for your time and if you have any questions.... [LB780]

SENATOR MCGILL: Thank you. Are there any questions? No. Thank you, Mr. Jurey, you have a great family. Next proponent. [LB780]

DAVID ENGLER: Good afternoon. My name is Dave Engler, that's E-n-g-l-e-r, and I represent the Nebraska Professional Firefighters Association. Today, we are sitting here in support of LB780. And you've heard a lot of great testimony on this and so I won't talk about some of those things. But I do want to say, you know, one senator said not too long ago, you know, you should have known what you were getting into when you got into this career. The fact is, is you don't know. I'm on duty tomorrow. Tell me what my day is. You don't know what's going to happen and you don't know how your body and your mind is going to react to these situations. A perfect example: I had a baby in December of 2005, Christmas morning about 1:00 in the morning, I got a call for a child not breathing, an infant not breathing at my house. I responded. Luckily my wife, who's an ER nurse, did the right thing, and my baby was breathing and everything was fine. But the question remains, how would I have reacted had it been a different situation, a different outcome? And what effect would that have on me in the future of my career? We don't know because luckily things did work out. But you've heard stories today about people that were affected by incidents and we have them all across Nebraska on a daily basis. So this bill is important to ensure that those who have been trained, and the communities have invested in their training, their equipment, and them, have the ability to get help and continue on in their...whether it be a career or whether they be volunteers because all these people need that sort of assistance. Now, you're getting to the opponents soon and there's no doubt in my mind we're going to hear how much money this is going to cost. And I'm sure that every firefighter in Nebraska and every EMT is just going to run out and file claims. I mean, that's what's going to happen. The fact is, prove it. Prove that this is going to cost more money. We've got data from other states that have broader laws and it's not costing that, it's not a huge increase. And furthermore, they have higher populations so they have more responses and more people. This is a small investment in Nebraska's emergency responders. I ask that you guys support this as a committee and I'll take any questions that you have. [LB780]

SENATOR MCGILL: Any questions? Senator White. [LB780]

SENATOR WHITE: Dave, you're in the Lincoln force, is that correct? [LB780]

DAVID ENGLER: Yes, I'm the captain. [LB780]



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SENATOR WHITE: Can you tell...roughly tell the committee roughly what it costs to bring a new recruit up to speed where they're an EMT and on a... [LB780]

DAVID ENGLER: I would...I couldn't even tell you the exact cost, but I would guess it's probably around \$20,000 to \$30,000, you know, when you talk about the equipment, the investment and the training and that sort of thing. [LB780]

SENATOR WHITE: Okay. So the guy or a woman walks away from it, you've lost a lot of money. [LB780]

DAVID ENGLER: Absolutely. [LB780]

SENATOR WHITE: Thank you. [LB780]

SENATOR MCGILL: Other questions? No. Thank you. [LB780]

DAVID ENGLER: Thank you. [LB780]

SENATOR MCGILL: Next proponent. [LB780]

TOM HAMERNIK: (Exhibit 3) Good morning, Senators. I appreciate having the opportunity to address you. My name is Tom Hamernik, H-a-m-e-r-n-i-k, and I serve with the Clarkson Volunteer Fire and Rescue Department. And I know that time is at a premium for you and I'm only going to touch on a couple of things. I did prepare some other testimony and I won't go through all of that. I guess the main thing I would have for you is, I know that you're going to hear opposition to the bill and I know that cost is a concern to you. But I honestly really question...I know that there will be people who question whether this is a true injury, and I'm here to state that it absolutely is. And to some of those people that doubt that, I would hope that they would consider walking in some of our responder's shoes before they make that judgment. I had a situation where an eight-year-old boy was entrapped in a grain bin full of ground feed several miles from town. When we got there, we were the people on the ground that were trying to get the feed out of that little boy's mouth to determine whether or not CPR was possible, all the while that family was standing there. And if you don't think that has a profound effect on your psyche and your ability to do those kinds of things, you are mistaken. And there is a real cost. Not only do you lose people, you may lose them for weeks, you may lose them for months, you may lose them entirely. I have a friend out west who, after a automobile accident with a fire where three small children died, that was the last call he ever went on and it was very difficult for him to talk about. Those kind of people or many of those people have trouble coming forward and talking about that. And we tried very hard within our department to get them talking to provide critical incident stress debriefing for them, to make our medical director available, and to do whatever we can, but people react differently and this would certainly give an option for those extreme

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cases where not only are you going to lose a responder, but it's going to create some other issues for that person in their life. If you have any questions, I'd be happy to try to answer them. [LB780]

SENATOR MCGILL: Any questions? Thank you for sharing your experiences. Any more proponents? [LB780]

TOM HAMERNIK: Thank you. [LB780]

SENATOR MCGILL: I'm sorry. Thank you. [LB780]

TIM DOWD: Hello. Tim Dowd, D-o-w-d. I'm appearing on behalf of Nebraska AFL-CIO as a proponent. Fortunately, I don't have any personal stories of tragedy to share with you although I have represented countless throughout my career as an attorney, and I think we can all say without hesitation that we're blessed to have these individuals that are willing to subject themselves to these horrific situations that they encounter. By only allowing for physical injuries or physical injuries causing mental health injuries, I do not think the law adequately recognizes the true nature of injuries these first responders sustain, and fortunately LB780 does recognize it. Mental injuries are real and we can draw upon our own common sense to understand it--you've heard the horrific stories that have been presented to the committee today--or we can draw on the medical literature. And these are all injuries that would not have occurred but for their employment situation, but for them sacrificing themselves to help these individuals. And I think this is an excellent bill as it finally gives mental-mental conditions its rightful recognition and compensates these individuals for what they've endured. If there's any questions, I'd be glad to handle them. If not, I thank you for your time. [LB780]

SENATOR MCGILL: Thank you. Were there any more proponents left? Okay. We'll move on to the opposition. [LB780]

KORBY GILBERTSON: Good afternoon, Vice Chair McGill, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Lincoln Public Schools and the Property Casualty Insurers Association of America in opposition to LB780. Let me start by saying, we do not question at any time whether or not there are actual injuries or whether these people are damaged by what they see or experience in their jobs and very much appreciate what they do for us in Nebraska and for society. However, the question is whether or not this should be covered under a workers' compensation claim, and we would hold that it should not. There are already programs in place by agencies to deal with issues like this. Maybe perhaps another alternative would be to look at expanding those programs. One of the proponents of the legislation did bring up that the opposition would talk about costs and we are concerned about costs. There is a great unknown. Just sitting here listening to the people who supported the legislation, it would

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appear as though there would be a number of claims that would fall under this. And so because of that, we don't think the cost will be minimal or miniscule. Secondly, for Lincoln Public Schools specifically, when you look on page 2, line 22 of the bill, it specifically refers you to Section 38-1208 to look at the definition of an emergency care provider. And once you look at that section, it then refers you to another section in statute, 71-507, where the definition of emergency services provider includes a number of things which most of us think are included under this legislation--firefighters, police officers, things like that. This definition also includes funeral directors, a school district employee, and a person rendering emergency care gratuitously. And it is our concern that that broad definition that is referenced in the bill as proposed vastly increases the number of people that would be covered by it, and that causes us some concern. With that, I'd be happy to answer any questions. [LB780]

SENATOR MCGILL: All right. Senator White. [LB780]

SENATOR WHITE: Thank you. Do you think that a gratuitous responder, since they're not on the job, would be covered by work comp then? Is that your concern on that? [LB780]

KORBY GILBERTSON: They could be on a job, happen upon an accident or witness something in their job. [LB780]

SENATOR WHITE: Okay. So if you have a traveling salesman sees a car accident... [LB780]

KORBY GILBERTSON: Absolutely. [LB780]

SENATOR WHITE: ...you think he'd be covered, is your concern? [LB780]

KORBY GILBERTSON: A delivery person, anything like that, railroad employees. There could be a number of things. [LB780]

SENATOR WHITE: Okay. If we tightened that up, Korby, so that teachers, people in that situation, it really was restricted to EMTs, firefighters, police, civil air, would that remove your client's objections or do you think they'd still be concerned? [LB780]

KORBY GILBERTSON: That might perhaps remove the concerns of Lincoln Public Schools; it would not remove the concerns of the PCI. [LB780]

SENATOR WHITE: And on that concern, is there a concern that these costs will be shared across all employers and not reallocated back to the employee? For example, the city pays insurance in Omaha. Isn't this going to be cost ultimately borne only by those who employ or are responsible for paying for the workers' compensation

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insurance for those first responders? [LB780]

KORBY GILBERTSON: Yes, and those costs could go up and most likely would. [LB780]

SENATOR WHITE: And they may. [LB780]

KORBY GILBERTSON: Yes. [LB780]

SENATOR WHITE: But it's not an unrelated business that's going to end up paying this, it's going to be under the system. As I understand it, correct me if I'm wrong, they will be reallocated back to the employer because that occupation is rated at higher risk level then. [LB780]

KORBY GILBERTSON: Absolutely. [LB780]

SENATOR WHITE: Okay. So just so we know, I just want to make sure I know, you know, who's getting hurt if this passes. Under our system, it should not be anyone other than...if we tighten this language up, other than those who knowingly employ or purchase work comp insurance for first responders. [LB780]

KORBY GILBERTSON: Right. Our objections go further than that obviously, though, and I think we've talked about this last year. In two years, we then expand it to another class of employees, and two years after that it gets expanded further. We're, obviously, concerned with that. [LB780]

SENATOR WHITE: Well, yeah, I mean, but as we sit here today, Korby, I mean, you're worried that it's the precedent and that it will go on down the road. [LB780]

KORBY GILBERTSON: Absolutely. [LB780]

SENATOR WHITE: Okay. And that's a valid point, but having raised that as we sit here with what's in front of us, you're comfortable over time the only people who will pay for this are going to be the cities and the rural fire departments that employ these folks. [LB780]

KORBY GILBERTSON: And the taxpayers that support them to pay for those insurance benefits. [LB780]

SENATOR WHITE: Oh, sure, sure, and the taxpayers who receive the benefit of their services. [LB780]

KORBY GILBERTSON: Yes. [LB780]

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SENATOR WHITE: Thank you. [LB780]

KORBY GILBERTSON: Um-hum. [LB780]

SENATOR WHITE: I really appreciate it. [LB780]

SENATOR MCGILL: Other questions? Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. Korby, you listened to testimony and so have I, and several positive proponents of the bill indicated that the actual cost is unknown. And you're, I think, agreeing that the actual cost is unknown. So if there was a sunset provision on this bill to see for a certain period of time what effect it might have, would that make any difference? [LB780]

KORBY GILBERTSON: I can definitely take that back to my clients and ask them if it would. I think we have a bill later today that will talk about sunsets a little bit more in depth on, so we can look at all of those things together. [LB780]

SENATOR CARLSON: Okay. Thank you. [LB780]

SENATOR MCGILL: All right. Thank you, Korby. [LB780]

KORBY GILBERTSON: Thank you. [LB780]

SENATOR MCGILL: Any other opponents here today? [LB780]

JACK CHELOHA: Good afternoon, Senator McGill and members of the committee. My name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. First of all, I'd like to thank the committee for allowing me to testify today. The city of Omaha is in opposition to LB780. Currently, we employ the largest law enforcement agency in the state and the largest professional paid firefighter and rescue unit in the state as well. This bill would provide added exposure to the city of Omaha. We are currently self-insured on workers' compensation, so any additional claims that would be allowed or added benefits would ultimately cost the city in terms of claims paid which ultimately come from the taxpayers for the city of Omaha. I guess part of the reason why we're concerned about the bill is, regarding our first responders, we put them into a vigorous training program where we try to anticipate, you know, all the types of calls they may have. Obviously you can't duplicate every situation, and obviously every rescue call may be unique in one way or the other. And so on the front end we do try to provide training, though, and prepare them in advance for what they may face. As they go about their jobs and do go through the responding, we also protect them, if you will, on the back end by...we provide various treatments if people do

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have concerns and problems with calls. We have mental health insurance that's offered to all of our employees. And we've dealt with this, if you will, on a number of situations. In fact, a few years ago there was a police officer who was involved where he had to fire his weapon and ultimately killed a suspect, and he ended up with a claim for disability under our pension where he no longer could perform his duty, and our police, fire pension board saw the evidence and ultimately granted him that disability. And so we wanted to say that we don't throw our employees to the curb, if you will. If they have problems, we try to help them, rehabilitate them, provide them with counseling. It's just hard to put these type of claims under the workers' comp system because that's, my understanding, supposed to be an objective-type claim whereas mental-mental claims become more of a subjective-type thing, and how can you determine and put a value as to what their claim might be? And for those reasons, we're opposed to the bill and I'll try to answer any questions. [LB780]

SENATOR MCGILL: Any questions? Senator White. [LB780]

SENATOR WHITE: I have a number, Jack. First of all, did the council instruct you to oppose this or did the current administration? [LB780]

JACK CHELOHA: It came from the city council office, and I've touched base with the mayor's deputy chief of staff. [LB780]

SENATOR WHITE: Often you come to us with formal votes. [LB780]

JACK CHELOHA: Right, right. [LB780]

SENATOR WHITE: And was there a formal vote on this one? [LB780]

JACK CHELOHA: There was not. [LB780]

SENATOR WHITE: Okay. The second thing is, Jack, Omaha does retire firefighters, does give them healthcare for mental injuries, or police officers, suffered on the job, correct? [LB780]

JACK CHELOHA: Correct. [LB780]

SENATOR WHITE: And it's expensive to do that, is it not? I mean, you look at the pension situation... [LB780]

JACK CHELOHA: Right, absolutely, it can be expensive, yes. [LB780]

SENATOR WHITE: Okay. If Omaha is doing that anyway, and I think they are, why does Omaha care about this bill? I mean, you're going to either pay it through work

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comp or you're going to pay it through the pension system. Why does it matter? [LB780]

JACK CHELOHA: Well, I tried to touch on that a little bit just because of the difference in nature of making your claim. I don't know a lot about workers' compensation and how it works, but it seems to me the Legislature and the state of Nebraska has tried to make that an objective-type claim where we actually put dollar amounts based on your injuries and there's some, if you will, certainty to it, whereas the mental claim could be different, although we've made advances in science to try to determine, you know, what percentage of incapacity have you reached. For those reasons, you know, we just would prefer to continue to do it as we're doing now to take care of them, you know, through our health insurance as opposed to making it a workers' comp claim. [LB780]

SENATOR WHITE: You know, Jack, I represent people in both processes, and I can't think of a difference between a muscle-strained back that's chronic and the vagueness of that and what that means and someone who says they can't sleep, they can't go back to a firehouse because they get debilitating flashbacks. I mean, they're both subjective. We compensate both in Omaha. So I guess... [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR WHITE: ...I'm still struggling to understand a rational basis why the city would oppose this. [LB780]

JACK CHELOHA: Well, I think they see it as an expansion. They're worried about the potential for added claims. For those reasons, we're opposed to it. [LB780]

SENATOR WHITE: But if it's limited to first responders, we're...just so everybody here is clear, Omaha is already paying for that through the pension system. I mean, and in some levels it's more expensive because you're either retired or you're not... [LB780]

JACK CHELOHA: Right. That's the... [LB780]

SENATOR WHITE: ...running on the pension system. [LB780]

JACK CHELOHA: Right, that's the question, whether you're retired or not. Right. [LB780]

SENATOR WHITE: And I guess the concern I have is the principle of work comp, workers' compensation. First principle is to try to return the person to full and gainful employment, which is not the purpose of a pension. So I mean, I was struggling with... [LB780]

JACK CHELOHA: Right, but our... [LB780]

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SENATOR WHITE: ...why a city would oppose putting this kind of a claim into a system whose primary mission is to try to get that person back to full functioning and on the job, where a pension system is about, okay, yeah, you're done, go. [LB780]

JACK CHELOHA: Well, we already...Senator, we have those mechanisms in place and we do try to rehabilitate anybody who has an illness or a concern, and... [LB780]

SENATOR WHITE: Inside the contract you do... [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR WHITE: ...but not as part of the pension process. Okay. Thank you. [LB780]

JACK CHELOHA: Now, you know more...sorry. [LB780]

SENATOR WHITE: Thank you, Mr. Cheloha. [LB780]

JACK CHELOHA: Yup. [LB780]

SENATOR WHITE: I appreciate it. [LB780]

SENATOR MCGILL: Other questions? Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. Jack, to follow up a little bit on Senator White's question, so you have in your system that if somebody suffers from trauma and as it's a possibility, you may retire them and they go into the pension plan. Is that what you're saying? [LB780]

JACK CHELOHA: Right. That could happen. [LB780]

SENATOR WHITE: It has happened. [LB780]

SENATOR CARLSON: Okay. So if that was...for example, someone ended up in that position ten years early, that's ten years of pension payments that they would receive. Had they not suffered that way, you wouldn't be paying that pension payment. That's the cost of it. [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR CARLSON: Whether it's ten years or five years or three years or whatever, there's a cost in there. [LB780]



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JACK CHELOHA: Um-hum. [LB780]

SENATOR CARLSON: There's also a cost to you bringing an officer up to the point that they can be productive. What's the cost of preparing a first responder? [LB780]

JACK CHELOHA: I apologize. I can't answer that for sure. I just don't know. [LB780]

SENATOR CARLSON: But it is...there's a cost there. [LB780]

JACK CHELOHA: Oh, absolutely, and Omaha runs their own training facilities for both police and fire. [LB780]

SENATOR CARLSON: So there's a cost to that, there's a cost if they end up on the pension plan, and perhaps the added cost of making this a part of workmen's comp might be less than either one of these costs, but we don't know that. Would you agree? [LB780]

JACK CHELOHA: Right. We don't know that, but for the...you know, as you take your picture and look at workers' comp and what amount of claims you have there or added claims, you know, it's still an added cost, if you will. In addition, as these claims are made and honored within that system, they still could move forward to the disability claim under the police, fire pension fund and draw from that as... [LB780]

SENATOR CARLSON: And that's an unknown as to whether in fact... [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR CARLSON: ...that would happen or whether or not this treatment would prevent that. [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR CARLSON: So we're still talking about some unknowns. [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR CARLSON: If there were a sunset provision, would that make any difference to you? [LB780]

JACK CHELOHA: Oh, I suppose we could look at it and that would give us the ability to see, you know, what type of claims may arise, but yet at the same time all the calls are unique and the number of calls, etcetera, and whether an individual filed a claim. You know, we'd have some data but how certain would it be? I'm not sure, so that's why

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we...you know, I see in the fiscal note we've looked at some other states and there are some numbers there, but in terms of opening the door, I'm not sure if we'd be agreeable to that or not, even with the sunset. [LB780]

SENATOR CARLSON: Okay. So your answer is maybe, maybe not. (Laughter) [LB780]

JACK CHELOHA: Maybe, maybe not. Yeah, exactly. [LB780]

SENATOR CARLSON: Okay. Thank you. [LB780]

SENATOR MCGILL: Senator White. [LB780]

SENATOR WHITE: Jack, I'd like to clarify a couple of points. Under the pension system as it exists now, the pension fund takes full advantage of not only work comp but also Social Security payments, does it not? Therefore it's not a double payment. I mean, if somebody qualified under workers' compensation for a compensation for this kind of injury, I'm quite certain that the pension fund now and police and fire reduces the pension amount by the amount recovered from work comp. [LB780]

JACK CHELOHA: If it is...right, on a physical injury, it can reduce it. [LB780]

SENATOR WHITE: And the mental as well. [LB780]

JACK CHELOHA: Right, but you brought Social Security into it and I'm not sure how that relates. [LB780]

SENATOR WHITE: It also reduces...I just wanted to point out that... [LB780]

JACK CHELOHA: Right. [LB780]

SENATOR WHITE: ...any kind of fund out there for retirement, the pension funds reduce, I believe, if it's a disability. So this... [LB780]

JACK CHELOHA: Possibly. I don't know for sure, but our police and fire do not participate in Social Security. [LB780]

SENATOR WHITE: If not, I will send my clients to you. (Laughter) [LB780]

JACK CHELOHA: We're getting pretty technical now, Senator White. Yeah. [LB780]

SENATOR WHITE: Well, but it's about whether or not it's a double payment or there's going to be some double benefits, so it's quite important. [LB780]

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JACK CHELOHA: Right. [LB780]

SENATOR WHITE: And my experience is it is not. And the second thing is, you lose more than just the pension payments a city would make to that firefighter. You actually lose the payments the firefighter makes into the pension fund. So you get a double whammy. You've got somebody going onto the pension early, and you've lost ten years of their contributions when that happens. [LB780]

JACK CHELOHA: Right. But if you really want to start splitting the dollars, Senator, I mean, the pension fund is funded jointly by the employees and the city, whereas workers' comp is strictly the city paying out on those so, you know, there may be more exposure there. You know, I guess I haven't looked at it that way, but thanks for pointing that out. [LB780]

SENATOR WHITE: Well, take a look at it because I think if you do you'll find that because workers' compensation's payments are so much limited, it will be insubstantial. [LB780]

JACK CHELOHA: All right. [LB780]

SENATOR MCGILL: All right. Thank you. [LB780]

JACK CHELOHA: Thank you. [LB780]

SENATOR MCGILL: Is there anyone else in opposition? [LB780]

LYNN REX: Senator McGill, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. And we respectfully do oppose this measure, and there are several reasons for that, many of which have already been pointed out by others. But for example, one of the things that does express a concern to us is on page 2, lines 4 through 7. This would say that basically that this would be established by preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal course of the particular employment. I guess I would submit to the committee what exactly does that mean? When you're dealing with the life of a firefighter or police officer, these folks are always dealing with extraordinary situations. I would imagine most of the time they are rather extraordinary situations unless you're just doing traffic calls or something of that nature as a police officer or going out and putting out a typical grass fire type of situation. So by definition we have a concern about that. Clearly the precedent is a concern for us. In addition, many of our municipalities across the state already provide coverage through their standard health insurance programs, they already have types of coverage for these individuals. And that being said, I would suggest that perhaps a better way to approach this problem is if

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there are municipalities that in fact do not have significant debriefings and assistance for those that are suffering after these kinds of traumatic experiences that are on-the-job-type experiences, that requiring a municipality to have such kind of treatment would be the way to go as opposed to doing a workers' comp type situation. I have nothing but great respect for the Nebraska volunteer firefighters, the paid firefighters, law enforcement, and others across the state. They do a job I certainly am not able to do and would not want to do. But that being said, I also think it's important for us to understand that there are a number of other incentives for retention that we've supported over the years with them for retention of their important members, but this is one we cannot. We are concerned about the unknown cost. A sunset certainly is something to consider, I could take that back to my board as well. But we do have some real serious concerns about what this bill would actually do in the state of Nebraska. With that, I'd be happy to respond to any other questions and we're happy to work with Senator Lathrop and his staff if they want to address maybe another way to approach this problem. And we do understand that these are problems and we're not suggesting that folks cannot have serious issues, after listening to some of the stories today and just from my own personal experience because my father was a police officer. I'd be happy to respond to any questions you have. [LB780]

SENATOR MCGILL: Senator White. [LB780]

SENATOR WHITE: Thanks for coming, Ms. Rex. Ms. Rex, do you have experience from cities and agencies in other states that actually have this type of coverage and what kind of expense it's added to their policies? [LB780]

LYNN REX: No. We have contacted the National League of Cities risk program, which is a program that does service municipal programs across the country, and they do have concerns about these types of cases. [LB780]

SENATOR WHITE: Thank you. [LB780]

LYNN REX: Yes. You're welcome. [LB780]

SENATOR MCGILL: All right. Thank you, Lynn. [LB780]

LYNN REX: Thank you. In closing, what I can say is that part of the dilemma with the National League of Cities and other employers across the country has, again, been trying to put a number or trying to identify what kinds of costs can be raised by this kind of coverage. So thank you very much for your questions and allowing me to appear today. [LB780]

SENATOR MCGILL: All right. Thank you. Other opposition. [LB780]

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RON SEDLACEK: Good afternoon, members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, that's spelled R-o-n S-e-d-l-a-c-e-k. And in the interest of conserving time for the committee and in an effort not to be redundant, I'm here testifying on behalf of a number of organizations. They all asked if...and signed in for them and ask that they could be part of the legislative record, namely: the Nebraska Chamber of Commerce; the Omaha Chamber of Commerce; National Federation of Independent Business in Nebraska; the Lincoln Chamber of Commerce; Nebraskans for Workers' Compensation Equity; the Nebraska Grocers Association; the Nebraska Restaurant Association; and the Nebraska Retail Federation. Undoubtedly...I'm going to reduce my comments and not be redundant, but undoubtedly psychological and psychiatric injuries may arise from an individual's employment and we certainly do not discount their impact on those who suffer them. And certainly the Legislature is charged to make public policy choices within the workers' compensation system, and it's the prerogative of this committee to suggest those choices. We acknowledge that, however, there are a number of reasons why both the...you've heard from some of the public employers and I'm representing private employers, why there isn't a version to expansion in the mental-mental area of workers' compensation. And the foremost reason, the common denominator is that employers are viewing a limited expansion in this area as a forerunner to further expansion down the road to further expansion of mental-mental coverage. And so really ultimately it's a matter of who pays and how much and when. That's the concern. We're encouraged by some of the testimony because it's reflective of some discussions in regard to this delicate issue. And that is we would like to see it addressed in some way by the cities, the counties, the political subdivisions, those who have these employees, the volunteers, through employee assistance, through other coverages, but right now we just would like to see an alternative other than workers' compensation. [LB780]

SENATOR MCGILL: All right. Any questions? Senator White. [LB780]

SENATOR WHITE: Thank you for coming, Ron. What alternatives are there to work comp? [LB780]

RON SEDLACEK: Well, there's certainly timely counseling after an injury can significantly speed up recovery, no question about that; employee assistant programs; availability of mental health coverage. [LB780]

SENATOR WHITE: Sure. [LB780]

RON SEDLACEK: Well-structured groups that are available to support workers recovering from these types of injuries can be done at a modest cost. There's no doubt about it as a culture, if I can speak frankly and directly, when we have a physical injury, it doesn't seem like we have a problem treating that, it's objective. But when it comes to issues of mental health, sometimes as a culture we balk at that, and ironically, in the

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sense that they can often be even more severe than a physical injury. We understand that. And certainly, as was mentioned by the committee, when you're out of work, succumb to more problems, often depression and so forth, and exacerbate those problems. So prompt treatment is important. Those are alternatives that we would like to at least have the committee take a look at. [LB780]

SENATOR WHITE: I agree with you, Ron. There's no question that posttraumatic stress disorder is generally considered treatable, especially with prompt, skilled intervention. One of the problems we face, however, is there's an almost complete dearth of qualified mental health professionals in the western half of the state or they're so over-pressed. And then in terms of affordability, where can you get that expertise at the least expense? I don't know of a less expensive alternative than work comp. Our rates are controlled. We have a regular body of professionals. Their work has to be reviewed by the courts, you know. I mean, if we're serious about this and getting them back to work, where can we do it for less money? [LB780]

RON SEDLACEK: There's a...to some extent you would face the same problem as far as the dearth of availability in the western part of the state even under workers' comp, but also I'm thinking of is the issue of comparing mental-mental versus physical injuries or those that are covered in the sense that quite often on the physical side there's a managed care type of situation, there's a limited number of visits, there are other controls, and in the mental treatment area that's lacking. And that's what some other states have experienced and that's why there's been in...not all states but in many states already a paring back from mental-mental because of the problems that have occurred. Once the claim...it seems a lot of the carriers feel once you file a claim and it's there, you know, you pretty much own that claim for a long, long time, very long time because it's hard. You can see in most cases, not all, physical injuries heal over time. It's very difficult to ascertain that end point of a mental health issue so, you know. [LB780]

SENATOR WHITE: I mean, you see that with back injuries, muscle injuries,... [LB780]

RON SEDLACEK: Sure. [LB780]

SENATOR WHITE: ...neck injuries, same situation. Okay. [LB780]

RON SEDLACEK: To some extent. [LB780]

SENATOR WHITE: Well, thank you for your courtesy. [LB780]

RON SEDLACEK: Thank you, Senator. [LB780]

SENATOR MCGILL: Senator Carlson has a question for you, Ron. [LB780]

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SENATOR CARLSON: Ron, don't get away (laughter). [LB780]

RON SEDLACEK: Sorry. Yes, Senator. [LB780]

SENATOR CARLSON: I think you mentioned in your response to Senator White that there were some states that have tried this and are paring back the benefit. Is that what you said? [LB780]

RON SEDLACEK: No, not this particular. I'm talking about mental-mental in general, not a particular...this is pretty focused. [LB780]

SENATOR CARLSON: Okay, okay. [LB780]

RON SEDLACEK: Okay. In some of the states it was much more expensive. That's what I'm talking about. [LB780]

SENATOR CARLSON: But you don't know of any particular state that has passed a bill such as this and then backed off of it? [LB780]

RON SEDLACEK: I'm not conversant in that at this point, no. [LB780]

SENATOR CARLSON: Okay, okay. Thank you. [LB780]

RON SEDLACEK: Um-hum. [LB780]

SENATOR MCGILL: All right. Now you can go. (Laugh) Any other opposition? [LB780]

LAURA PETERSON: Good afternoon, Senator McGill, members of the Business and Labor Committee. My name is Laura Peterson, L-a-u-r-a P-e-t-e-r-s-o-n. I'm the state risk manager appearing in opposition to LB780. As you've heard, LB780 provides compensation for mental-mental claims for first responders under certain circumstances. Such claims are not currently compensable and, therefore, the bill will increase the cost to the state's self-insured Workers' Compensation Fund and at least to some of the agencies who currently pay assessments into that fund. The workers' compensation system was originally adopted to avoid the situation of employees suing employers for injuries and involving coworkers in the case. Employers gave up defenses to traditional tort claims and in return employees are compensated, but possibly not compensated as greatly as they would be in a traditional tort case. Physical injuries manifest themselves in objective ways making determination of the injury and its related cause much easier to relate to work injury than mental injuries, which have a much more subjective manifestation. The subjective nature of mental injury claims combined with a lack of clarity in the bill regarding key terms such as which incidents

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are unusual and extraordinary and, therefore, compensable are expected to increase litigation, somewhat defeating the nature and purpose of the workers' compensation system to create a no-fault, nonlitigious program for compensating employees for injuries occurring at work. The state currently makes great effort to train employees who are likely to witness traumatic or difficult situations and to assist employees who do witness or participate in such events, whether the employees are first responders or not. Several agencies have debriefing and counseling programs for employees. Every state employee has access to the Employee Assistance Program, known as EAP, for counseling, and the state's health insurance does provide coverage for treatment of psychological concerns. LB780 would provide additional options for a certain category of employees to deal with traumatic events at potentially significantly increased cost to the state. I want to put into perspective the potential costs associated with a workers' compensation claim. State Trooper Mark Zach's family filed what was ultimately determined by the Supreme Court of Nebraska to be a mental-mental claim, after his death in 2002 related to incidents at the Norfolk bank robbery. The state was ultimately not responsible to Trooper Zach's family. But had the state been required to pay, we calculated the total cost of Trooper Zach's claim to be in excess of \$1.6 million for benefits, excluding any cost of litigation. Whether you use a higher percentage of public safety claims like I did in the fiscal note that I submitted or a lower percentage of all claims like the Legislative Fiscal Office did in their fiscal note, the number of claims per year is about the same. There is no way to be certain exactly how many mental-mental claims might be filed by first responders. What is clear, that it expands workers' comp benefits and, therefore, will have a fiscal impact to the agencies that pay into the Workers' Compensation Fund. [LB780]

SENATOR MCGILL: Senator White. [LB780]

SENATOR WHITE: Let's talk about that trooper's family. How many children did that trooper have, do you know? [LB780]

LAURA PETERSON: I believe it was six, several. [LB780]

SENATOR WHITE: Okay. That trooper not only helped clean up the horror that was left behind by those bank robbers, I think it was, what, five bodies in Norfolk? [LB780]

LAURA PETERSON: And I'm not sure if he was actually a responder to the scene. [LB780]

SENATOR WHITE: Okay. But I do know he blamed himself because he felt he could have arrested one of the guys before. Is that part of the story? [LB780]

LAURA PETERSON: Yeah, my understanding is he pulled them over prior to the robbery, several days prior, and there was an error in...there were weapons in the



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vehicle. There was an error in recording the number of the gun. They don't know if it was his error or on the dispatch side, but there was an argument that possibly had the numbers not been transposed there could have been an arrest of one or more members of the ultimate robber team. [LB780]

SENATOR WHITE: Okay. Who's supporting his widow and those children? [LB780]

LAURA PETERSON: I do know that he had life insurance because there was a separate court case related to life insurance... [LB780]

SENATOR WHITE: Do you know how much? [LB780]

LAURA PETERSON: ...and I don't know if the state makes available to employees long-term disability. He also had retirement from the state. [LB780]

SENATOR WHITE: Well, he's not disabled. He'd be dead. [LB780]

LAURA PETERSON: Oh, yeah, that's true. Sorry. I'm sorry. That would apply in other cases. But we do make that available to other employees who would have disability but not...were not deceased. [LB780]

SENATOR WHITE: Well, what's the family standard of living? Is there enough insurance? Do we know? [LB780]

LAURA PETERSON: I don't know. I don't know very much about the family. [LB780]

SENATOR WHITE: Are you comfortable with those facts that, when we walk out of here, I don't know how those kids are doing? I don't know how his widow is doing, whether they have enough to eat or not. You comfortable with walking out like that? [LB780]

LAURA PETERSON: You know, I think the question here is that...all I'm trying to point out is there's been a lot of discussion about the cost. [LB780]

SENATOR WHITE: I understand. [LB780]

LAURA PETERSON: It's a new benefit and there will be costs. I... [LB780]

SENATOR WHITE: Here's the problem: Whenever somebody gets hurt, there's a cost. Okay? The question is, who carries it? Now, if that family doesn't have his income, they're paying the cost and the state is not. And that's a reasonable discussion. But the idea that we just create the cost, the cost is there. It's just who's going to pick it up. [LB780]

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LAURA PETERSON: And the state may be paying it. I mean, if they don't have enough food or if they don't have enough income, the state may be paying it in another way, that's true. [LB780]

SENATOR WHITE: Okay. Well, thank you. [LB780]

SENATOR MCGILL: Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. I think the figure you gave, Laura, was like \$1.6 million. [LB780]

LAURA PETERSON: For that one particular case, yes. [LB780]

SENATOR CARLSON: What are some of the things that those dollars went toward? [LB780]

LAURA PETERSON: It would be, there's a \$6,000 benefit for his funeral, and then there's the calculation of payments to his children until they are grown, as well as to his spouse for the rest of her life or until she is remarried. [LB780]

SENATOR CARLSON: Okay. So that amount of money didn't...of course, there would have been limited medical expenses there, but the bulk of those dollars really went for the benefit of his family then. [LB780]

LAURA PETERSON: That's right. [LB780]

SENATOR CARLSON: Okay. [LB780]

LAURA PETERSON: Everything but \$6,000. There were no medical costs or if there were, those were not within that calculation. [LB780]

SENATOR CARLSON: Okay. Thank you. [LB780]

SENATOR WHITE: I have one more question. [LB780]

SENATOR MCGILL: Yes, Senator White. [LB780]

SENATOR WHITE: Now that \$1.6 million, is that reduced to present value or is that the total payments over the next 50 years? [LB780]

LAURA PETERSON: That was not reduced to present value. That would have been the total value. [LB780]

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SENATOR WHITE: And so if you're talking about kids' payments that might be stretching...and the widow's payment might be stretching 30, 40 years, depending on her age, or more, that \$1.6 million is pretty misleading because the actual present value cost is much less. [LB780]

LAURA PETERSON: Yeah. Her...I think the longest amount of time was 30 years... [LB780]

SENATOR WHITE: Okay. [LB780]

LAURA PETERSON: ...based on her life expectancy on the table, and this calculation was done a couple of years ago. That's true. [LB780]

SENATOR WHITE: Thank you very much. [LB780]

SENATOR MCGILL: All right. Thank you. Any other opposition? [LB780]

BILL KOSTNER: Good afternoon. Senator McGill and members of the committee, my name is Bill Kostner, it's K-o-s-t-n-e-r. I'm the risk manager for the city of Lincoln. I head up the risk management benefits division of the personnel department. I first wanted to say I was really moved by a lot of the presenters here today. I certainly respect their work and appreciate all the great work that they do for the rest of us in the community. I'm here, though, for the city of Lincoln and just wanted to advise you all that the city of Lincoln is opposed to LB780. We believe that there will be a fiscal impact of approximately \$130,726 to the city of Lincoln. We are self-insured for workers' compensation and we believe that that's a conservative estimate based upon 12 percent of the three-year average of police and fire workers' compensation claims. It does not include Medicare section 111 liability or the need for increased litigation costs. We've looked at it mostly with our police and fire staff, and there's some question in my mind as to whether even some of our health department representatives could be considered first responders under the bill. Like some of the other folks here today, I did want to mention that we do have some programs existing that help to deal with stresses of a job. We have an employee assistance program. We've had that for a number of years. I think it's a great program. We also do some specialized debriefing programs with our police and fire staff. So we have some great programs in existence. We also have health insurance and the Mental Health Parity Act we're in compliance with that treats incidents like this like any other situation. I guess I would just say that in my 15 years with the city of Lincoln, I can't recall where we did have a mental injury that couldn't be resolved with our existing benefits. It's a tough time, tough economy. I would encourage you to continue to make Nebraska a strong, competitive state and not enact this legislation. If there's any questions, I'd be happy to answer any of those. [LB780]

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SENATOR MCGILL: Thank you. Senator Carlson. [LB780]

SENATOR CARLSON: Thank you, Senator McGill. The \$130,000-some, that's your estimate annually? [LB780]

BILL KOSTNER: Yes, it is, sir. [LB780]

SENATOR CARLSON: Okay. Thank you. [LB780]

SENATOR MCGILL: Senator White. [LB780]

SENATOR WHITE: Have you compared that estimate to other cities that have similar limited benefits? Have you done an objective analytical study comparing your city to other cities? [LB780]

BILL KOSTNER: What we did, we looked at the state average for the state of Maine, which was approximately 8 percent. We felt our benefits were running higher than that, and so we took it at 8 percent. I don't know of any other communities that I can compare to or benchmark against, Senator. So we took our average cost of claims for police and fire and estimated that at 12 percent, which is what I believe would be a reasonable way of taking a look at that. I know of no other communities that I can benchmark against. [LB780]

SENATOR WHITE: You said Maine has 8 percent. [LB780]

BILL KOSTNER: Yes, sir. [LB780]

SENATOR WHITE: But you use 12 percent. [LB780]

BILL KOSTNER: Yes, sir. [LB780]

SENATOR WHITE: And you compared it statewide. [LB780]

BILL KOSTNER: Um-hum. [LB780]

SENATOR WHITE: And that is employees of all classes, correct, for mental injuries, not just first... [LB780]

BILL KOSTNER: No, what I... [LB780]

SENATOR WHITE: Or is Maine only first responders? [LB780]

BILL KOSTNER: It's only...believe it's only first responders. [LB780]

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SENATOR WHITE: Okay. If Maine is only first responders, on what basis did you use 12 percent instead of 8? [LB780]

BILL KOSTNER: I used 12 percent because I feel that there will be some increased litigation. I also feel that with the Medicare section 111 reporting that we're going to have a longer tail on these claims. This is something relatively new, Senator, that we're going to be reporting for the city of Lincoln coming up in the next couple of months where if folks are disabled and they continue into their Medicare years that we also take on that liability then for the rest of their life. So I do believe that's something unique that's recent, that will increase that cost dramatically. [LB780]

SENATOR WHITE: Well, thank you. [LB780]

BILL KOSTNER: Okay. [LB780]

SENATOR MCGILL: All right. Thank you. Any other opposition? Anyone here neutral? All right, Senator Lathrop. [LB780]

SENATOR LATHROP: Thank you, and fellow members of the Business and Labor Committee, as I listened to the testimony I thought back ten years ago when there was a terrorist attack in New York City. And in the wake of that terrorist attack, we came to appreciate that those who serve on the fire departments in this country and those who serve on the police departments in this country are the citizens' first responders. They're the people that answer the call. And when the Twin Towers were on fire and everybody was running out of them, the firefighters were running into them. And we have lost sight of what these people do everyday because ten years have gone by since that attack. Up in Omaha these guys gets kicked around routinely. The firefighters and the first responders in this state and the law enforcement, they're the people that go out to the most gruesome things that we don't want to do. We don't want to answer a call and go to a fire and pull human beings out of fires, rescue them; go to car accidents and use the Jaws of Life to remove them. So we have people that we pay to do it and we have people who do it on a volunteer basis, and sometimes they see things that are so horrific, so horrific you cannot put your mind around it. And once in awhile we ask the law enforcement officers, human beings just like you and me, to shoot another human being. And I've talked to them. We're not talking about guys whose egos get bruised in the firehouse. We're talking about people who have posttraumatic stress disorder. It is a condition we can treat early, and when we treat it early they receive the care they need and they're back to work. So today we have a variety of people that came in here, people from the private sector complaining that we would cover city employees who would have posttraumatic stress disorder. They don't have a dog in this fight. For the life of me, I don't know why they're here. The logic that they use and the confusion they try to create with their testimony, let me suggest something to you and I'll start with the last

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testifier. He said he didn't know of one occasion where a firefighter needed anything more than counseling but he comes in with a suggestion that it's going to cost the city of Lincoln \$130,000 a year. There would be no claims in the city of Lincoln if his experience continues. We're not talking about people that need to be debriefed. And when they tell you that they have health insurance plans and they have debriefing policies, I'll suggest a couple of things to you. First of all, debriefing, what they're talking about...when you strip away the terminology, what they're talking about is they sit down with somebody and tell them their story. And if it looks like they're not going to be able to deal with it, they give them a couple of names of people that they can go see on their own dime. Now you've heard people say that you can go and do this under the health plans. If you look at a health insurance policy, and it's the principal reason for this bill, if you have posttraumatic stress disorder and you make a claim under this bill there will be no deductible and there will be no limitation on the number of visits that you can have with a psychiatrist. But what they're suggesting is we already have a way to deal with this and we're going to deal with it by sending people to...through their health plan, which has deductibles, copays, and limits on how many visits you can get, and then when that doesn't work we have a disability plan back at the city of Omaha. That is a ridiculous thing to say, that we are going to let people not get the treatment they need, not go back to work, but we have a safety net for them--it's called our disability plan. This is the kind of logic that would have a municipality not do routine maintenance on a fire truck. It misses the point. We make an investment in these people. They're our neighbors and they live in our communities. We make an investment in their training. And why would we take somebody who we've spent the money to train and tell them they're expendable when they suffer an emotional injury that takes them out of service and then suggest that the answer is to have them make a disability claim under the city's policy? What we are talking about with this bill is taking those people who do the things that we can't do, we won't do, we refuse to do. They're the most difficult jobs and the jobs that are most likely to cause somebody posttraumatic stress disorder, other than going to war for this country, and then abandon them. Those are the people that we should take care of. Those are the people this bill is aimed at helping. There is no attempt to expand this to the private sector. This is limited to first responders. And those people who tell you at the same time that we haven't had any of these kind of claims and nobody that needed anything more than debriefing, but that we're going to have to spend \$130,000, suggests that there is an agenda besides this bill. These people deserve our support. They deserve the care and treatment they receive and it's a good investment for the state of Nebraska and these communities to put these people back into service after they receive appropriate care. Thank you. [LB780]

SENATOR MCGILL: Thank you, Senator Lathrop. That ends the hearing on LB780. [LB780]

SENATOR LATHROP: (Exhibits 4, 5, 6) Before we leave on this subject, I have three additions to the record. One is a letter from Vince Valentino, attorney for the state

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troopers, in support of LB780. The other is an analysis done by the National Council on Compensation Insurance that suggests ultimately that this bill would have a negligible effect on benefits paid. And then a letter from Nebraska Insurance Information Service dated February 8, 2010. And with that we'll close our hearing on LB780. (See also Exhibit 7) [LB780]

SENATOR CARLSON: Senator Lathrop. [LB780]

SENATOR LATHROP: Oh, I'm sorry. [LB780]

SENATOR CARLSON: That last letter, is that a proponent or an opponent? [LB780]

SENATOR LATHROP: It's in opposition. [LB780]

SENATOR CARLSON: Okay. [LB780]

SENATOR LATHROP: Next we are going to introduce four bills, LB833, LB846, LB963, and LB1044, and we'll take them in a group. Do we have the senators here? The first one is Senator Fulton on LB833 and he's here. Senator Fulton, welcome. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Thank you, Mr. Chairman. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29, south Lincoln, and I bring to you LB833. This bill provides a greater level of confidentiality to Workers' Compensation Court documents and information available regardless of physical form or characteristics. Documents that are to be retained as confidential under this bill include those that reveal (a) an employee's identity, (b) the nature of an employee's alleged injury, (c) an employee's past or present medical condition, (d) the extent of an employee's disability, (e) the amount, type, or duration of benefits paid to an employee, or (f) the application information for self-insurance. Those are documents that are to be retained as confidential. The nature and extent of the workers' compensation documents to be held confidential under this proposal are quite similar to those held as confidential in the unemployment insurance benefit context. Several changes have been made from previous versions of this legislation, including amending the written authorization requirement for attorneys to inspect or copy such that the requirement is dependent on the request of the Compensation Court. Secondly, expanding those parties exempted to include the workers' compensation insurer and risk management pool. That can be found in subsection (2) of the green copy. And lastly, clarifying the type of record that can be requested by any party, and that's found in subsection (5). Retaining this documentation as confidential is intended to protect injured workers from the invasion of privacy from legal solicitations which occur once the report of first injury is filed with the Workers' Compensation Court. Mitigating solicitation is not equivalent to mitigating one's right to legal counsel, as it is reasonable to presume that employees

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are aware of the existence of effective counsel through other media and may contact the court directly to obtain information regarding court procedures and their rights under the workers' compensation system. While true that workers' comp is exempted from the provisions of HIPAA, it is at the same time reasonable to presume that most people have a greater expectation of privacy with regard to records relating to their own medical condition. Concluding, amending the Workers' Compensation Act by providing additional safeguards with respect to employee documentation, as nearly 40 other states have done in some way, ensures greater privacy protection for employees and a lessening of the cost of the workers' compensation system. This legislation interjects a necessary element of prudence regarding medical records in the workers' compensation context. Thank you, Mr. Chairman. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thank you, Senator Fulton. Any questions for Senator Fulton while he's here? I see...oh, Senator White. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Hi, Senator Fulton. How are you today? [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Good, sir. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Good. Senator, I have a number of concerns on the bill. And I, just so you know, know that attorneys solicit injured people through these reports, which worried me a lot until I learned that the employers are sending them letters directly and telling them not to get lawyers and that they can just work it out with the company and, of course, on terms usually not as favorable as if they'd hired a lawyer. So if we're going to stop attorneys from getting the information to advise injured employees of their legal rights under the compensation system, what are you doing to stop the employer from providing them information that may not be accurate about their actual rights? [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Sure. Well, I...that's...you know, this is the first time I've heard that occurring. But it seems to me that by invoking this bill that would eliminate both problems. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: It doesn't stop the employer who already knows. Nothing in your bill says don't let them know. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Yeah, but the extent to which the green copy, let's see, page...so page 2 in the green copy, this...the amount of information that can be requested, there are...how do I say? There are limits to the information that can be requested. And there is a protocol by which that information can be requested. So it seems to me that putting forward...and I don't know if this is a fix for the problem that you're talking about... [LB833 LB846 LB963 LB1044]



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SENATOR WHITE: Yeah, I think it's not. But what it does is it takes away competing information, because employers are getting ahold of them. They are suggesting, of course, a reaction to their injury. And often I've seen a letter saying don't hire a lawyer, it's a bad idea, which, you know, may or may not be. But the point is you're going to make sure only one side of the story gets told. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Right. It seems to me...and again, if I...we could contemplate this from all vantages, but it seems to me that if we have some prudential control over what information is considered public record with respect to the first claim in workers' compensation, then that would be the means by which better control, at least on the part of government, would exist to alleviate both sides of this issue. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, no. What you're saying is that we can control it by claiming it's public information to stop two sides of the debate. But your bill is not going to do a darn thing to control what the employer says. And I can tell you, from stuff I've read, it's often just skewed. Now I'm not saying the plaintiff's side isn't also skewed. That's one concern. The other one is Bates v. Arizona. The United States Supreme Court said, and they seem to have reaffirmed it in a recent rather controversial political ruling, that we have to be extremely careful about trying to affect the debate and information. Bates said lawyers can advertise; lawyers can solicit. Aren't we, in effect, trying to control free speech instead of control privacy of records? [LB833 LB846 LB963 LB1044]

SENATOR FULTON: That's not my intent, Senator. I guess I would ask, is it clear? And maybe you could educate me as to how the employer is obtaining information. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Yeah. Well, it starts with the fact that usually the guy gets hurt on the job there. So, you know, when they're mopping up the blood on the factory floor, they kind of figured out somebody got hurt and who it is, and they're talking to them; and plus, their comp carrier is handling the care. And a lot of these are self-insured so the comp carrier has seen the records and the hospital records and they're going through them. And often, now they're telling them to only go to their doctors. And their doctors who are dependent on them for continued referrals are giving estimates of disability that may not be in the best interests of the employee; they may be in the best interests of the factory. And what we're going to do is shut off information to an employee that says, hey, maybe it's you're not being treated fairly. There may be a doctor who doesn't owe his livelihood to the company and, therefore, that doctor may say you don't have a 10 percent disability; you're completely and permanently disabled, and if you try to go back to work it isn't going to happen. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Yeah, understood. What you brought forward is a problem not

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contemplated in here. I'm not contemplating the communication of availability for legal counsel. Mine has to do more with the privacy. That's my intention in bringing the bill. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And I do understand the privacy, but I can tell you the purpose of a lot of people in putting that bill forward, whether it's yours or not, I accept you, what you say, is to control access to attorneys and information. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Well, if you have any ideas as to how we could... [LB833 LB846 LB963 LB1044]

SENATOR WHITE: I'd love it. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: ...control both sides, then. I brought this a few years ago... [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, I do actually. What do you think if we have the bar association...NATA and the bar association the defense association agree on a statement that the courts will give to the employees about what they should or should not do, and that would be the only one that will go out? [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Sounds reasonable. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Okay. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: It's a possibility. I do know that nothing will happen unless the bill before us, at least this one--there could be bills to follow--has some way forward. And when I first introduced the bill, this was a couple of years ago, admittedly it's not an area where I have a whole lot of experience, but at least when brought forward I can perceive that there is some type of...there's a problem here. It's a problem of privacy. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Thank you. Thank you, Senator, I do appreciate it. [LB833 LB846 LB963 LB1044]

SENATOR FULTON: Yeah. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Any other questions for Senator Fulton? I don't see any. Thanks for coming. Do you want to close, Tony? [LB833 LB846 LB963 LB1044]

SENATOR FULTON: We'll see how the committee is going. Probably not though. Thank you. [LB833 LB846 LB963 LB1044]

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SENATOR LATHROP: Okay, good. Next will be Senator Schilz whose LA is here to introduce LB846. [LB833 LB846 LB963 LB1044]

MELISSA HILTY: Good afternoon, Senator Lathrop and members of the Business and Labor Committee. For the record, my name is Melissa Hilty, M-e-l-i-s-s-a H-i-l-t-y, and I am the legislative aide to Senator Ken Schilz of the 47th Legislative District. Senator Schilz apologizes for not being here today, as he is ill, so I am here to introduce LB846 on his behalf. LB846 would revise the interest rate applicable to an award of workers' compensation benefits in cases in which an attorney's fee is allowed from the rate provided in Section 45-104.01 of 14 percent to the rate provided in Section 45-103, the judgment rate. There are others that will follow me with testimonies and may be able to answer any questions that you have. Thank you. And I will waive closing. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thanks, Melissa. We appreciate it. And you've waived closing? [LB833 LB846 LB963 LB1044]

MELISSA HILTY: Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Terrific. Next is going to be Senator Carlson with LB963. Good afternoon, Senator Carlson. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Good afternoon, Senator Lathrop and members of the committee. I'm Tom Carlson, spelled C-a-r-l-s-o-n, here to introduce LB963. This bill provides for a reduction in total and partial workers' compensation benefits by an amount equal to 50 percent of the federal Social Security benefits received by a retired employee. LB963 creates a presumption that an employee is retired if he or she is receiving Social Security retirement benefits or any other nondisability-based government retirement pension. I have other testifiers following me but I would be happy to attempt to answer questions you may have about this bill. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Senator White has a few for you. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: I thought he might. (Laughter) [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Senator, it's so good to see you in the stand. Let's talk. Does this bill make it retroactive or only for injuries going forward? [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: I believe it's for injuries going forward...have a certain date. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Okay. And if we're going to do this, would you support then raising

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the workers' compensation levels and expenses? Or do you just want to take money out of the people's pockets? Because that's what it is. We're talking about an injured person not getting Social Security, getting less of work comp. Would you support a higher comp rate until he gets Social Security? [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: I may or may not. I heard that answer given earlier. I don't know. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And, Senator, do you have any estimations of how much money will be retained by the employers if your bill passes? [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: No, I don't know what those estimates are. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Do we know how many people are receiving Social Security and workers' compensation at the same time, today? [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: No, I don't. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Thank you, Senator. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Just maybe one question from me, and that is it seems to me that if this became law we could have people who are totally disabled, folks that want to work to age 70, but when they get to age 62 or whenever Social Security retirement kicks in they're stuck taking a cut even though they'd like to work but now can't. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: I agree with you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Would you agree that that's the effect of the bill? [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: I agree with you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. Good. All right, that's all the questions I have, Senator Carlson, and I don't see any others. You're here. You'll decide, I guess, if you want to close. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: I'll reserve the right. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. Very good. And next looks like Senator Lautenbaugh with LB1044. Oh, I'm sorry. Welcome, Senator Lautenbaugh. I was reading your bill real quick. Go ahead. [LB833 LB846 LB963 LB1044]

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SENATOR LAUTENBAUGH: It's not long. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: No, it's not long. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I am here to introduce LB1044. Sometimes I deviate from my prepared remarks, as I see the first line here is: LB1044 is a minor alteration to the workers' compensation law. So I'll move on from that. What LB1044 would limit, it would limit an employer's liability for medical conditions and disabilities resulting from an accident, to those for which the compensable accident was the prevailing factor in causing both the personal injury and the resulting disability. Under LB1044, gradual deterioration or progressive body degeneration caused by aging or with the normal activities of day-to-day living would not be compensable without a workplace injury as the prevailing factor for any resulting medical condition or disability. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: That's all. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: That's what it says pretty much. Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. (Laughter) Well, Senator White has some questions for you. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Yes. I assumed as much so I cut the opening short, but... [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And let's talk about the equity in this one. My then 16-year-old son, who's a wrestler in perfect physical condition, is in his car; gets rear-ended by a drunk driver; totals his car. He walks away with kind of a sore neck for a couple of weeks. I might have had a broken neck because I have osteoporosis, whatever. So let's say we're both on the job. He gets compensation under this theory for the sore neck, but since I'm older and they say, well, look, that 16-year-old, he didn't age like you did; he's in the peak of condition; we'll pay him for his sore neck. But you, Mr. White, Tom White, you're...you know, you're old and your bones are weaker and your muscles are weaker, so you won't get compensation, because really it's the underlying age that made you vulnerable to this injury, not the accident. Isn't that what this bill does? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: In a sense, although not really with your hypothetical. The one I'd be more familiar with would be the scenario where you do have degenerative disk disease diagnosed by every doctor, and there's a dispute among the medical

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authorities as to whether or not the actual work, claimed work-related injury caused the disability or injury or whether it was just a natural progression of degenerative disk disease. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, if I'm working the day before and now I can't work anymore, what you're saying is I ought to, because I'm older, have to defend, and defend in court in a battle of doctors, whether or not it was my old age and the fact that I'd worked for 40 years, or the fact that this guy hit me from behind. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Yes. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And you are okay with that. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Yes. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And you think that what...because this bill will have a disproportionate impact on older workers, because we all become more vulnerable as we age. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I would say that the types of claims that would get a second look on this or there would be an additional proof that the actual work-related injury was leading to the actual claimed injury or disability would be more of the degenerative-type system...syndrome certainly. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: But that...so older workers overwhelmingly are going to be more susceptible to losing claims than younger workers, correct? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I wouldn't say more susceptible to losing, but there would be a difference of proof, I guess, regarding whether or not the injury itself did cause the injury or disability in question. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Now you know the common-law rule of the thin-skulled plaintiff? You're familiar with that? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Yes. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: In tort liability, it doesn't matter in a general situation if I've had a bad neck before and also this causes deep enhanced injuries, now I can't work, even though we acknowledge I'm a thin-skulled plaintiff. So you would make it harder to recover for an injured person in work comp than in a comparable civil suit on that causation issue. [LB833 LB846 LB963 LB1044]

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SENATOR LAUTENBAUGH: I wouldn't say...well, first of all, we aren't in actually a tort circumstance anyway, that comp is different, I mean just different rules apply. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: It's supposed to make it easier for the worker to recover in exchange for a lower payout. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: And that is certainly the case, all other things being equal. This bill simply addresses the circumstance where the employer is being put on the hook for what is otherwise a natural progression. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Interrupted by an accident, because otherwise if you don't have an accident or an incident, you don't have any comp claim to begin with. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: That's correct. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: But even if we did it perfectly, you would say a guy that's more vulnerable--degenerative disk, osteoporosis, whatever it is--that guy, you're okay with him not getting compensation because they're older and they're more vulnerable, and a younger person who hadn't gone through that, they'd get compensation. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: If the court determines that the actual injury or disability is related to the underlying degenerative condition rather than the accident in question. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Okay. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: I do have a question for you. It occurred to me while Senator White was asking his questions, and that is if you have someone who is in their fifties, has degenerative disk disease, and they sustain an injury, or they're in an accident and it lights up an asymptomatic degenerative back, you would require...this would change the standard to a prevailing factor. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: That's essentially...that's probably the most common case that we'd see the changes in. Would you agree with that? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Um, sometimes joint as well, bone-on-bone type, but yeah, generally, certainly. [LB833 LB846 LB963 LB1044]

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SENATOR LATHROP: Sure. We could see it in knees, shoulders, elbows, but primarily it's going to be in the spine. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I would agree. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And if that happened under a circumstance where a coworker caused the accident, would you be okay with those folks being able to make a tort claim against the employer? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: You mean adding the prospect of making a tort claim against the employer. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Well, if they don't have a remedy in the Work Comp Court, would they then have a remedy for a third-party claim against the employer for the negligence of a coworker? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: No. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: So...yeah, you wouldn't open up the exclusivity provision to allow these people, that we would be closing the door to, to now make a tort claim. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: No. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. I think that's all the questions I have. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Senator, I have a question. Senator, why don't we just eliminate work comp? Wouldn't that make you happier? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: (Laugh) I don't think we're here to make me happy, necessarily, Senator White, but... [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, yeah, I agree, because we'd make so many miserable in the meantime. (Laughter) [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Senator Wallman. [LB833 LB846 LB963 LB1044]

SENATOR WALLMAN: Thank you, Senator Lathrop. Thank you for being here. Just...a couple of years ago I broke my leg and some other stuff, and I was in the hospital--I don't have workmen's comp--but I've never quite been the same since. So in other words, you know, I can't lift as much. My one leg don't work quite as good. So, in other words, this would take me out of the equation--natural aging--because it's never been



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the same since that happened. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Well, I think you're in a...you're not in the equation currently by your own admission, but say this somehow was a worker's compensation injury... [LB833 LB846 LB963 LB1044]

SENATOR WALLMAN: Yeah, it happened at work, but my own work, so. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I would say, arguably, no...well, again the answer is, as any good lawyer will always tell you, it depends. If you had an actual broken leg, that's not really a degenerative condition necessarily, although I supposed there's a case it could be. [LB833 LB846 LB963 LB1044]

SENATOR WALLMAN: It will never be the same though. It did more than that, so. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: It would still be, I would argue you, a compensable injury unless there would be...unless that broken leg was not the...was the cause of some aging condition rather than otherwise. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Senator, I have another claim which is going to be a procedural nightmare should this bill pass. Insurance companies, health insurance companies routinely exclude any care caused by a workplace incident or accident. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Yes. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And so we're going to leave people, if this bill passed...they're in the midst of fighting over the question of whether or not they get care for, let's say, a back injury or a disk that's blown out, and their health insurance companies are going to say, well, it ain't us. And the work comp care is going to say, it ain't us. In the meantime, they're going to be stuck for years, no money, and disks that need to, for example, be operated on, and they're going to be in insurance limbo, which maybe is insurance hell. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I don't know that that's any different than what can happen now. This is just a matter of where you draw the line as far as whose responsibility it is. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, it sure broadens to the point where you have huge gray areas, so you're going to have thousands more Nebraskans in this area, if this bill passes, where they aren't going to have access, either to their healthcare or to work comp, to fix

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a problem that's debilitating. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I don't know if that's the case that there we will be talking about thousands or that it would really change the lay of the land much right now. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, if it doesn't change the lay of the land, is it broken then? Do we need to fix it? [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: Well, what you've identified...when I say change the lay of the land, there is still that issue always as to whether or not what you have is work related or not; what treatment is work related, what treatment is not. This...I don't know that this would create any more of a competition between those two competing sources of compensation, I guess would be the best way to put it. It would just be a different place where the line is drawn, I would argue. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Yeah, but in the meantime while they're figuring out where the line is drawn, there's people not getting care for years, or if this bill has nobody it affects. I mean, it can't be both ways, Senator, logically. [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: No, I don't think you're understanding my response. I'm not saying the bill has no effect. I'm saying that already cases are litigated. Already there's a "is it work related, is it not?" Is this work related, is it not? You know, is it an aggravation? Is it a permanent aggravation? Is it just, you know, a recurrence? We don't know the answer to that at every case now. So there's always that element of uncertainty, so I don't think this would lead to really a difference in the volume of uncertainty or the volume of litigation. It may change some outcomes as to whether you're paid with this or this, but I don't think it would change the nature of the dispute, if you will, if that makes sense. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Well, I hear what you're saying. I don't think that accords with my experience, but that's what the world is about. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Any other questions? I don't see any. Do you want to stick around to close? You're welcome to stay and tell us later if you're... [LB833 LB846 LB963 LB1044]

SENATOR LAUTENBAUGH: I'll keep my options open. How's that? But don't look hard for me if I'm not here. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. We'll let you keep your options open. As our first proponent comes up, since we have introduced these in a group of four, what I'd like you to do, if you're a proponent and you come up to the table, let us know as you are

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talking about any one of these four bills which one you're talking about, so that we can kind of keep the record straight and we know which ones you oppose and which ones you don't. Thanks. Hello, Bob. [LB833 LB846 LB963 LB1044]

ROBERT J. HALLSTROM: (Exhibits 8, 9, 10) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before the committee today on behalf of the Nebraskans for Workers' Compensation Equity and Fairness, and the National Federation of Independent Business, in support of both LB833 and LB846. I've also been authorized on behalf of the Greater Omaha Chamber of Commerce, the Lincoln Chamber of Commerce, the Nebraska Restaurant Association, the Nebraska Retail Federation, the Nebraska Chamber of Commerce and Industry, and the Property Casualty Insurance Association of America to express their support for both of those bills as well. And if my three minutes are not up, I'll go ahead and talk about the substance of the bills. With regard to LB833, I think my testimony is very similar to what Senator Fulton has expressed in his opening remarks. I would just note a couple of items. Number one, approximately 40 states currently have similar types of restrictions on the confidentiality of workers' compensation records. I have referenced on page 2 of my testimony the Nebraska revised statutory provisions relating to similar confidentiality provisions that relate to unemployment records of individuals, and have also noted on page 3 of the testimony that there is specific information that employers, self-insured, and their insurance carriers are required to give employees regarding their rights and also information provided by the Workers' Compensation Court to that extent. What I'd like to do is also then focus more on LB846. As indicated by Senator Schilz's staffer, this is an issue that would adjust the interest rates applicable on awards when an attorney's fee is awarded. I've indicated in my testimony on LB846 that there are a number of circumstances currently under law in which an attorney's fee may be awarded, having to do with appeals where an award is not originally granted to an employee but subsequently is overturned and an award is made, appeals by an employer where they do not get a reduction in the amounts from the original case, or appeals by an employee where they get an increase in the amounts awarded by the original court. The issue that we're talking about in LB846 has to do with the interest rate that applies on those types of situations in which an attorney fee is granted. The current rate of interest under 45-104.01 is effectively 14 percent, the same rate of interest that applies on unpaid real estate or delinquent real estate taxes. Some might think that that particular provision is designed or intended to serve as a penalty. What we found out recently, a case interestingly enough in which Senator Lautenbaugh was involved which I've handed out in my materials, Russell v. Kerry, the Supreme Court has indicated that, in fact, the provisions of 48-125 that contain that 14 percent interest rate are, in fact, not intended to serve as a penalty. The penalty provisions are the waiting time penalties and so forth in that same statutory provision and the interest rate has been designed only to provide for the carrying cost of money when an employer has not paid in a timely fashion. I've also noted in my testimony, as further support for the notion that the interest rate was not intended by the Legislature initially to be a

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penalty, in that the legislation was originally adopted in 1983 at a time when, checking back historically, the interest rates were set at approximately 13-15 percent, so the 14 percent interest rate at that time that was established, I would suggest and submit, was not designed to be a penalty. This bill would change that interest rate to the judgment interest rate that applies to more commonly to all money judgments. And I'd be happy to answer any questions that the committee may have. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Did I understand that your testimony, Bob, was on LB833 and LB846 only? [LB833 LB846 LB963 LB1044]

ROBERT J. HALLSTROM: Correct, Senator. Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. Thank you. Are there any questions? I don't see any. [LB833 LB846 LB963 LB1044]

ROBERT J. HALLSTROM: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Appreciate you being here today. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: (Exhibits 11, 12, 13) Mr. Chairman and members of the Business and Labor Committee, my name is Jeff Schumacher, J-e-f S-c-h-u-m-a-c-h-e-r. I'm here on behalf of the NWCEF and Crete Carrier Corporation, a Lincoln-based trucking company. I'm here as a proponent of LB963. And before I begin my testimony I just want to indicate the following groups support LB963: the Nebraska Chamber of Commerce and Industry; National Federation of Independent Business; Greater Omaha Chamber of Commerce; Lincoln Chamber of Commerce; Nebraska Restaurant Association; Nebraska Retail Federation; and the Property Casualty Insurers Association of America. I just want to emphasize two things today. There will probably be other testimony, I don't want to be redundant. I do have a sheet...I didn't make any copies, I'm sorry, but there are, oh, over a dozen states that currently offset or terminate indemnity payments when employees become entitled to Social Security benefits, that list I just gave to the page, and there's two states, Kentucky and Rhode Island, that terminate them altogether. So I think the approach that is being taken here with LB963 is reasonable. As you know, LB514, a similar bill, was introduced last year that provided for 100 percent offset, and was more employer friendly than employee friendly. I just want to note that this bill is a very modest bill compared to that. It only provides for a 50 percent reduction. I do have, if I can hand these out maybe...what I did, Crete is a qualified self-insured here in Nebraska, and so we handle our own claims here in downtown Lincoln. But what I did was come up with...and these are real quick, easy claims to find. These are seven actual claims. The names, of course, of the employees have been deleted. But these, what I did was we have a database that allows us to calculate that person's injury...or age at the time of the injury, what their current age is, and then the benefits, indemnity benefits we've paid after that. And I just

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want to point out, look at the fourth one there, that individual was 63 years of age, likely on the verge of retirement. Gets injured when he's 63. He's currently 76. We paid him up till he became 65--\$29,000--but after age 65 we paid him an additional \$355,000. That's one claim. No offset, which is LB963. If you add up those seven, and I can find a lot more in our database, that's a million dollars of indemnity benefits we're paying after they turn 65 and are very likely receiving Social Security benefits. So nevertheless, this would...once again, I really believe this is modest. I'd much prefer the approach of last year, but it is what it is. The average Social Security benefits a person is going to receive--and this was on the Web site last year--but it was about \$1,100 a month, I think, times 12 months; about \$13,000. All this would do is say, on average, we're going to take \$6,500 out. As you can see, a lot of these...that particular individual is making \$550 a week, tax-free, from age 65 to 76. If he lives to be 90, we pay him basically \$30,000--some, once again tax-free. And with a Social Security benefit of \$12,000 or \$13,000, which I'm assuming would be roughly the case, he's making almost \$50,000 tax-free. So with that...but I just wanted to make sure you saw these numbers. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: We got them. Yeah. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: These are real dollars we're talking about. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Sure. One thing that these people that get hurt before they get to retirement age don't get to do because they've been hurt in the scope...all of these people would be what we would call a running total, right? [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Right. Yeah, um-hum. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: So they're people that get hurt and you've shown us people that were close to retirement age. I assume you have some people that are like 45 that are totally disabled for the rest of their lives, right? [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Oh, sure. Absolutely. Yeah. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And so their contribution and what they can get for Social Security has been arrested at the age of 45. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Well,... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: In other words, they don't get to work all the way up to retirement age to calculate what their retirement benefit from Social Security might have been. [LB833 LB846 LB963 LB1044]

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JEFF SCHUMACHER: Well, depending on the age at the injury, it could...yeah, that could very well be the case, yes, uh-huh. Yeah. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. Thank you. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Uh-huh. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Senator White. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Hello, Jeff. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Hi, Senator. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Similarly, their ability to earn money to put away for their retirement in those years was reduced because work comp does not pay them what they would have made if they were on the job. Correct? [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Right. Work comp...workers' compensation benefits are not taxable. So depending on their tax bracket, it's not going to be 66...it's not going to be two-thirds. It's going to be more like 85 or 90 percent. So on average for a person making \$50,000 a year, yeah, they might get paid, after tax, 10 percent less, which to add in FICA and... [LB833 LB846 LB963 LB1044]

SENATOR WHITE: And they also can't participate in 401(k)s or those kind of retirement plans to put deferred income away for retirement during that time. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: When they're injured, you mean? [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Yes. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: That's correct. Right. Um-hum. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Okay. So the point is, they are giving up benefits, you know, some benefits that a working person would have. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: Oh, sure. Um-hum, yeah. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Okay. Thank you, Jeff. Appreciate it. [LB833 LB846 LB963 LB1044]

JEFF SCHUMACHER: You're welcome. [LB833 LB846 LB963 LB1044]

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SENATOR LATHROP: Thank you for your testimony, Jeff. Next proponent of any of these bills. [LB833 LB846 LB963 LB1044]

DAN FRIDRICH: (Exhibit 14) Good afternoon, Senator Lathrop and members of the committee. My name is Dan Fridrich, F-r-i-d-r-i-c-h. I'm here testifying in favor of LB1044 on behalf of the Nebraskans for Workers Compensation Equity and Fairness and Werner Enterprises, Inc. I've also been authorized to express support for LB1044 on behalf of the Nebraska Chamber of Commerce and Industry; the National Federation of Independent Business; the Greater Omaha Chamber of Commerce; the Lincoln Chamber of Commerce; the Nebraska Restaurant Association; Nebraska Retail Federation; and the Property Casualty Insurers Association of America. Like I said, I'm here to testify on behalf of LB1044 which is the bill that would change the standard of proof necessary to prove that an injury and disability arose from employment. It changes the standard to the prevailing factor of the injury and disability as compared to what exists now which is basically an aggravation of a preexisting condition. Right now, if an injured worker were to be injured on the job and that injury would combine or contribute even to just 1 percent of the injury--in other words, it caused it to even such a modest degree--the employer is liable for the entire injury. The standard that would go into place with LB1044 would change it so that the injury that happened on the job would have to be the prevailing cause of the injury and disability when compared to every other factor. As an example, I would point to a case that was tried before the Nebraska Workers' Compensation Court. It is not a case of mine; a case that I read. It had involved a total knee replacement. A gentleman had worked for a company here in Lincoln, and prior to that he'd had degenerative arthritis in his knee. He had also torn his meniscus and, of course, had that meniscus repaired. He then hyperextended his knee twice on the job; no type of tear or ligament damage done, just a hyperextension. He had pain and swelling. The doctor who ended up doing the total knee replacement on him admitted that he needed the total knee replacement before he ever came to work for that employer, but still held the opinion that the two hyperextensions of the knee hastened the need for the total knee replacement; and therefore, the employer was liable for the total knee replacement, the off-time work or compensation, and the permanent disability. This would change that and make it so that the employee, in that case, would have to prove that the injury at work was the prevailing factor of the need for the total knee replacement, and that seems to be most fair when trying to compare the causes of a condition like that, a significant operation, a costly operation, when you compare it to a minor injury such as a hyperextension. So the purpose of the bill is to provide some balance between the causes, because as it exists now if it's 1 percent the employer pays for it. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Dan, thanks. And I want to express this too. I appreciate that you guys have figured out who's going to come up and testify and you've testified for all of you at once like you're doing here today. That's saved the committee a lot of time so that we don't have every one of these groups saying the same thing. So I appreciate

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that. Let's see if there's any questions for you. I don't see any. Thanks for your testimony, Dan. [LB833 LB846 LB963 LB1044]

DAN FRIDRICH: Thank you, everybody. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Anyone else here as a proponent to LB833, LB846, LB963, or LB1044? Seeing none, we'll move to those in opposition to LB833, LB846, LB963, or LB1044. [LB833 LB846 LB963 LB1044]

GREG COFFEY: Senator Lathrop, members of the committee, I initially came here to speak on LB963 but my ears perked up when Mr. Fridrich began describing a case that I tried. And I don't think... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Why don't we have you give us your name. [LB833 LB846 LB963 LB1044]

GREG COFFEY: I'm sorry. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: That's all right. [LB833 LB846 LB963 LB1044]

GREG COFFEY: Greg Coffey. The last name is spelled C-o-f-f-e-y. I'm here on my own behalf; in other words, I'm not being paid to represent any party here other than me. I've got to tell you that I don't think that the factual scenario that he has described accurately represents what happened with my client, who was an employee of Madonna Rehabilitation Hospital. He was fine before this incident at work. He was getting along. He was able to walk. He had to use a knee brace but he was getting along fine. Yeah, he had a lot of preexisting problems that the doctor was fully aware of. He had not been compensated for any of those preexisting problems. A rolling bed that had not been locked in place rammed into his knee. And a result of that, the doctor clearly said at some point in time in the future, maybe 20 years down the road, he might have, at some point in time, needed a total knee replacement. But because of the significant damage that resulted from this, they took 40 cc's of fluid off of his knee on the day that he went in, that day that this happened, indicating that there was a specific traumatic event there; that this isn't something that he just made up. Because of that event, the total knee replacement became necessary right then, and not at some point in time down the road. He was...I can go on and tell you about the amount that he was jerked around by his employer, but, you know, I don't need to get into that. I just...I don't think that his description of the facts was fair. The reason I'm here, the reason I wanted to be here was to talk about LB963. And I don't understand why Mr. Schumacher, Crete Carrier, and the Property Casualty Insurers of the state would want to penalize military retirees the way that this bill would do. I say that I'm here on my own behalf. It's not really going to affect me. I graduated from the Army ROTC program at the University of Nebraska in 1988 and I spent 12 years and then I got out, but I know plenty of people that didn't get



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out. And I have enormous respect for the people who retired from the military, including my oldest brother and my father. My dad served in the Army in World War II. He went to the university on the GI Bill; graduated through the University of Nebraska ROTC program in 1948; commissioned as a second lieutenant. My family went over to Germany; came back; went to Lawton, Oklahoma; was stationed down in Louisiana; up in New York; Virginia. Every two or three years my family was uprooted. My family went to Japan after my dad spent a year in Korea. And when he retired in 1970 at the age of 44, he had time to start a new career. If this bill was to pass and he were getting out of the Army now as a 44-year-old with a military retirement, under page 8 of the bill, lines 3 through 8, you reduce...can I? I'll try to finish quickly. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Yeah, try to sum up for us, Greg. [LB833 LB846 LB963 LB1044]

GREG COFFEY: You're cutting out the disability benefits for people who are retired. You're going to presume that people who are 55 or more are retired...well, there is an exception for people who are 55 or younger or who five years before the date of their retirement that they got hurt. But the inverse of that is that if they got...if they're older than 55 or it was less than five years before their injury that they retired, then they do fall under this...except...this provision that would exclude them or reduce their benefits by half. And that includes people who are military-service-based government retirement pensioners. And they're presumed to be in retirement and they would then have to prove that they're not retired. But if you read lines 11 through 13, their own testimony is inadequate to prove that they're not retired. The fact that they're hurt on the job would be inadequate to prove that they're not retired. And so what you're doing is taking somebody who's spent 20 years in the military, gotten their retirement. They're out working. They get hurt on the job. The fact that they're working evidently is insufficient to presume that they're not retired. They're going to be in a position of having to prove that they weren't retired in order to prevent... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: If I don't cut you off, I'll lose control of this hearing. [LB833 LB846 LB963 LB1044]

GREG COFFEY: I understand. Everybody is going to want the same thing. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: But we appreciate your...we genuinely appreciate your testimony. [LB833 LB846 LB963 LB1044]

GREG COFFEY: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And let me see if there's any questions? Senator Carlson. [LB833 LB846 LB963 LB1044]

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SENATOR CARLSON: Senator Lathrop. You referred to page 8. Would you help me, in lines 14 through 20? [LB833 LB846 LB963 LB1044]

GREG COFFEY: Yes. It says "An employee who receives...", and then it lists old age, survivors insurance, and so forth. Gets down to under line 17, "any other military-service-based government retirement pension," and then under line 18 it says, "is presumed to be in retirement." [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Okay. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: What page and line was that? Pardon me. [LB833 LB846 LB963 LB1044]

GREG COFFEY: Line 8... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: What page? [LB833 LB846 LB963 LB1044]

GREG COFFEY: I'm sorry. Page 8, lines 14 through 20 are the lines that refer to... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. [LB833 LB846 LB963 LB1044]

GREG COFFEY: ...military pension. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Good. Thank you. [LB833 LB846 LB963 LB1044]

GREG COFFEY: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: We appreciate your testimony. [LB833 LB846 LB963 LB1044]

STEVE HOWARD: Good afternoon. Steve Howard, H-o-w-a-r-d, from Dowd, Howard, and Corrigan, counsel for the state AFL-CIO. I come before you on behalf of the AFL-CIO and the clients that we represent in opposition to LB833, opposition to LB846, opposition to LB763 (sic), and opposition to LB1044. And we've taken the liberty of bringing... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Pardon me. You said LB763 and I think it's LB963. [LB833 LB846 LB963 LB1044]

STEVE HOWARD: Excuse me. LB963. Sorry, Senator. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. [LB833 LB846 LB963 LB1044]

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STEVE HOWARD: We oppose those four. We brought three clients today that have some brief comments. With respect to LB...I'll just say this. With respect to the confidentiality, one thing that wasn't discussed is the fact that sometimes you can use reports from another case to prove up your case. We've had employers say, gee, we've never had anybody get carpal tunnel syndrome from this production job. You can go look at those reports and get that data and prove that that's not accurate. You know, workers' comp is a complicated system. You know, there are dozens of rules and the statute book is pretty thick. I've never seen an employer come in unrepresented in a case like that. And so we oppose LB833. LB846, on the interest rate, it may seem logical to say, well, gee, why isn't this interest rate the same as everything else? Remember, in workers' comp, you're starting off with only two-thirds of the benefits. You don't get the full slate of benefits that you would get in a tort claim: you know, 100 percent lost wages, 100 percent medical bills. And conscious physical pain and suffering and scaring, those things don't even exist. Frankly, if we did away with this 14 percent, it would provide the incentive for insurers to appeal because they can park those funds that they have to pay on the award into an investment vehicle--and big companies and big corporate entities can invest at a better rate than the rest of us--it's cheaper to park that money and take up that appeal and pay a defense lawyer to prosecute the appeal than just to pay on it. So we need that incentive, and doing anything else would be a disincentive. As far as LB963 goes, you know, this goes after the demographic group that needs benefits the most. These tend to be higher paid workers. They tend to have preexisting conditions that give insurance companies ways to defend the cases, and these are the ones that are the most difficult. And this would hit employees, the demographic group, the hardest. And the cruel irony there, and I know I'm going fast, but the irony there is a lot of times it's the injury that forces the early retirement, so we shouldn't cut into those benefits. With regards to LB1044, I would say that when I first read this I thought it was broader than what's been discussed by Senator Lautenbaugh and some others. But it would open the door to all sorts of defenses. I can see clever defense lawyers saying: well, it wasn't the on-the-job accident that caused this injury, it was the weather; or it was that other delivery truck that hit the employee from behind out on the highway, or it was something like that. And I think it would drive up litigation. It would certainly, in the end, if it cuts benefits, represent a shift from workers' compensation dollars to the public sector, because these folks are going to be looking for benefits from the public sector to replace work comp dollars that they should otherwise have. So the folks that we brought can better explain this because they have personal experience. But I'd be happy to answer any questions. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: I do have a question for you on LB1044. And currently in work comp law, in making a claim, if somebody has degenerative disk disease that's asymptomatic--and virtually everybody over 50 has a certain amount of that, right? [LB833 LB846 LB963 LB1044]

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STEVE HOWARD: Right. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: That's just the aging process that shows up in our joints and, in particular, our spine. [LB833 LB846 LB963 LB1044]

STEVE HOWARD: Correct. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And currently, if you have an asymptomatic back that has signs of the aging process and you're involved in lifting pipe, if you're a steamfitter you lift pipe and you injure your back, that's a compensable injury. Would you agree? [LB833 LB846 LB963 LB1044]

STEVE HOWARD: Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And this would go to a prevailing factor standard. Is a prevailing factor standard recognized in any current aspect of work comp? Or is that a brand-new phrase that we're introducing to work comp? [LB833 LB846 LB963 LB1044]

STEVE HOWARD: I think it's brand-new and it's ripe for an escalation in the cases that are defended in litigation. There's no prevailing factor that I'm familiar with. It's a preponderance. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: I just...it's not defined. Well, I guess it is defined as a primary factor in relation to any other factor. But I...it just seems, at least to me, ambiguous. And I noticed in the fiscal note that the court said that they would probably have to add an extra judge just to deal with the additional cases after that standard is introduced. [LB833 LB846 LB963 LB1044]

STEVE HOWARD: I would think that would happen. There's always going to be some other outside factor that's going to be tested in the courts... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: All right, thanks. [LB833 LB846 LB963 LB1044]

STEVE HOWARD: ...by defense. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thank you. Any other questions? Seeing none, I appreciate your testimony today. [LB833 LB846 LB963 LB1044]

STEVE HOWARD: Thank you. If I may, would it be appropriate to have our clients come up briefly? Is that...? [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Well, they'll have an opportunity. [LB833 LB846 LB963 LB1044]

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STEVE HOWARD: Okay. All right. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: We have Russ here from Blue Cross. And if those folks want to move to the front row, we'll be happy to have them testify next. [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: (Exhibits 15, 16) Good afternoon, Senator Lathrop. Russ Collins from Blue Cross Blue Shield of Nebraska. I'm here to testify in opposition of LB833. We oppose it in its current form in the absence of permission for health insurers to request records from the workers' comp system. As you know, we administer healthcare plans that include exclusions for workers' comp coverage, and our employees frequently request records from the Workers' Compensation Court in order to administer the plan to ensure that there is no duplicate payment. Our interests are aligned with a member in making sure there is no duplicate payment. And we would suggest that health insurers be added as a party permitted to request records from the workers' comp system, and doing so would not disrupt the intent of legislation. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Russ, the...you bring up a good point with your opposition to LB833, and that is that as a significant health insurer in Nebraska you guys make a point to see who's been hurt on the job. And if they've been hurt on the job, your policy excludes payment? [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: Correct. If the injury is compensated by the Workers' Comp Court. If there's a denial, we cover during the pendency of the litigation in the Work Comp Court system. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: But if there's some confusion about it...if somebody files a first report of occupational injury, says they hurt their back, Blue Cross rightly says that's excluded because it's a work comp claim. [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: If the claim submitted is marked by the provider as being work related, it would trigger some administrative action to determine whether that's true or not. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And that's why you want to continue to access these first report of occupational injuries. [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: Correct. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Got it. Thank you. Any questions for Russ? Senator Carlson. [LB833 LB846 LB963 LB1044]

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SENATOR CARLSON: Thank you, Senator Lathrop. To your knowledge, when there's an injury covered by workmen's comp, are there times when workmen's comp doesn't cover the full cost of the medical portion of the injury? [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: There...it would be subject to the work comp fee schedule. So if it's covered, it's covered by the work comp fee schedule. So based on your question, I'm not aware of that. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: If there was such a case and it was determined to be final, then would Blue Cross Blue Shield pick up any excess? [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: If it's covered by the worker's comp carrier and the system, Blue Cross would not cover the excess. It would be denied. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Okay. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Work comp covers 100 percent though. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: If...and I heard you say this but I just want to have it clear again for the record. You're not only opposing this bill for yourself, but you're saying that all health insurance companies should be included as a requestor? [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: Correct. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Okay. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thank you. I don't see any other questions. Thanks for coming down. [LB833 LB846 LB963 LB1044]

RUSSELL COLLINS: Thank you. [LB833 LB846 LB963 LB1044]

JON REHM: Good afternoon, Mr. Chairman. My name is Jon Rehm and I'm down here on behalf of the Nebraska Association of Trial Attorneys and on behalf of Rehm Bennett and Moore, PC, LLO, where I'm an associate, down here specifically to testify against LB963, which has been well-covered by two of my trial lawyer colleagues. I'd like to point out that Mr. Howard in his capacity as the AFL-CIO representative for these hearings pointed out, you know, mentioned that this would affect higher wage workers. And at least with my experience with workers' comp, which is about five years, I would agree with that assessment. However, in Nebraska, most people aren't high-wage people. This affects people that are low-wage workers as well. And some of those people that are low-wage workers often work part-time and they're often the elderly.

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And, you know, they work in touch. And I'm going to...I'm going to have a client come down here, a lady who has testified, and this is kind of my experience with matters. But they work to supplement their income. Social Security is basically not a whole lot better than subsistence level. People have to pay expenses, utilities, food, gas, which can often vary depending on the vagaries of the market. Also there is...also healthcare costs rise during...as people age. And these aren't just, you know, what's called compensable healthcare costs. These are noncompensable. They are not work-related healthcare costs. In order to have that, of course, there is Medicare, but, you know, Medicare doesn't cover everything. That's why many seniors get Medicare supplemental insurance, as well as Medicare prescription D insurance. And even...and those are out-of-pocket to seniors, and even with those, there are some things like dental and vision and some other kind of medical services that add to the comfort and health to seniors that aren't even covered by that. So this is a raw deal for senior citizens who are...basically that are forced into the labor force to meet expenses. And even if it's work part-time and low wages, every penny can help. My client, and actually friend now, Doris Newkirk will come down and will...when Mr. Howard's clients come up, after Mr. Howard's clients testify, will come up and share her experience, too, so... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Very good. Thanks, Jon. Any questions? I don't see any. Thanks for your testimony today. [LB833 LB846 LB963 LB1044]

JON REHM: Thanks. [LB833 LB846 LB963 LB1044]

DENNIS SWANSON: Dennis Swanson, S-w-a-n-s-o-n, from Omaha. And I'm here to oppose it, and... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Which bill are you in opposition to, sir? [LB833 LB846 LB963 LB1044]

DENNIS SWANSON: Oh, I'm sorry. LB963. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thank you. [LB833 LB846 LB963 LB1044]

DENNIS SWANSON: When I was employed, I was working in Lincoln at a grocery store, remodeling it. And I was knocked off a ladder and I broke seven ribs, injured my shoulder, my neck. I was off for about six months. I returned to work, and then the second injury I had, we was working in a grocery store, the same store, and I was trenching inside the store, making it into a grocery store and putting sewer lines in, water lines, anything. And I came up with...well, I had a heck of a cough and it lasted for four or five months. Finally went to the doctor and the doctor thought I had pneumonia, which I didn't have. I had histoplasmosis. I don't know if I'm saying it right or not. But it's contamination of the dirt that was in the soil that I was breathing. And so I had lung

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surgery, took some of my lung, and it was a fungus that was growing in there and they say it's still growing, up in Rochester, up in the...and I was denied of anything through the...my employee (sic), that there was no way that I could have got that there. But I finally got an attorney and we went to trial. And the judge granted me what...somewhat what we wanted. So after that, I went back to work and I injured my back, and that would have been October '09, and I haven't been back to work since. And there was no money coming in whatsoever. Well, I haven't had a check yet. And we try, you know, for the house. We got payments on the house. I got bills. I have a lot of bills that went to collection agency. And they denied it, that I did not get hurt on the job. And we just had a hearing on that and they granted me some money on that. But for all the times that I've been out of work that I could have been working, or if he would have just helped me out a little bit I wouldn't be in the shape that I'm in today. I've got a wife that...she can't work. She's on full disability. She had a triple bypass. And here we are. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Very good. Well, Mr. Swanson, we appreciate your testimony today and the fact that you came down here from Omaha to tell us your story. Are there any questions? I don't see any. Thank you. [LB833 LB846 LB963 LB1044]

DENNIS SWANSON: Thank you. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Hello. I'm Keith Claypool. I'm from Jackson, Nebraska, and... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: How do you spell your last name for us, would you? [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Oh, sorry. C-l-a-y-p-o-o-l. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Good. Welcome to the Business and Labor Committee. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Thank you. Never did anything like this before, but, boy, I could eat you guys' ear up for about two hours, but I won't take that long. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Well, you've got three minutes. And let me tell you...(laugh). You don't need to be nervous. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Oh. (Laughter) I've heard a lot of testimony in here. I could just go off... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: You don't need to be nervous. Why don't you just tell us your



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story. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Yeah. Well, I'm a little nervous but not really. About two years ago I got hurt down at work. I've been a glazer, which I put glass in skyscrapers or commercial work, for the last 22 years. And yeah, I am older than I look. Thanks. But I've been going through this for about two years now. I have not...I started off, I had a frame about 16 foot, probably about as big as this window behind you, fall on me. And then we went through the procedures. I went to the doctor and then my company fired me and then I hired a lawyer. And so I've been out of work for two years with no pay. And I make really good money. So when someone makes really good money, you have some expensive stuff so it's kind of hard to pay for stuff when you don't have an income coming in. And I am married, just recently, a year ago. And I just kind of let you know that I oppose this and a lot of other things that work comp and insurance companies are doing. But, God, I don't even know what to say, but... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Is there one of these bills, in particular, that you...? [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: The LB1044. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: LB1044. Okay. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: I could just kind of tell you that all...I don't have to tell you. You guys can figure it out, all the money stress and everything else I'm going through. And it's not good and there should be other things changed. Instead of trying to make it worse for people like me, should try and make it better. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Very good. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: That's it. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Hang on a second. Let's see...Senator White has a question for you. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: A lot of people get out there and they try to say that people are gaming the system. They want to be injured, they want to be on comp. Would you tell those folks briefly what it's been like for you and your family to have to go through this? Has it been a good deal or has it been a very, very (inaudible)? [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Well, it's only been a good deal because my family has money, otherwise it would be a bad deal. Real bad. [LB833 LB846 LB963 LB1044]

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SENATOR WHITE: So if you didn't have personal family money helping you out, this would have been a disaster for you? [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Yeah. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Senator Carlson. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Senator Lathrop. Listening to you and the testifier previously, too, it sounds like there's maybe two sources of discontent or uneasiness. One of them is workmen's comp and how it didn't pay. But the other might be your former employer? Is that fair? [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Uh, yeah, they're a little crooked, too, yeah. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: And in...well, in terms of a... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Wait a minute. Don't tell us who it is, okay, whatever you do. We don't want to get you in trouble. Just don't say who it is. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Oh, I won't say no names. No. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: But my point is, I could sense you had frustration and difficulty from at least two sources, not only one. [LB833 LB846 LB963 LB1044]

KEITH CLAYPOOL: Yeah, two sources. From the insurance company. And let's say I go see the insurance company's doctor. Of course, nothing is wrong with me. Well, then the MRI says I have two bulging--ruptured--disks. It all means the same thing. So how could he say there's nothing wrong with me when the MRI says there is something wrong with me? And why should...? You know, after this gets all settled and done, which it is almost done. It's been settled and I did win. But all of the money I've got to pay back that if I would have been working, you know, I would have made \$150,000, \$200,000. But work comp ain't going to pay that. And then a third goes to that lawyer. So why should I pay that lawyer? They should pay it. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Okay. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Very well done. Thank you for coming down. [LB833 LB846 LB963 LB1044]

PATRICIA HAGEMANN: I am Patricia Hagemann, H-a-g-e-m-a-n-n. I am 36 years old

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and I appreciate the opportunity to speak in opposition of LB1040 (sic). On January 16 of 2008, I was working in my regular occupation as a truck driver. I stepped out of my cab onto uneven rocks and fractured my leg in four places. After surgery, it was clear that I was not going to be able to return back to that job. I am in school through the court-approved vocational rehab program. I am happy to report that I am ahead of schedule and I'm graduating two quarters ahead. I graduate in June of this year. I'm actually in school for a two-year program with two extra classes. I have decided to finish up and just get off of workmen's comp and get back to work. If LB1040 (sic) were the law, I may not have been entitled to any workers' compensation benefits at all. The primary cause of my injury may have been interpreted as there being uneven rocks or the fact that I am a woman or some other excuse. I would then be looking to the government for support for me and my son, who is four and a half years old. I am a single mother and it has been a struggle every day since I've been on workmen's comp to make ends meet. If there was no workmen's compensation, I do not know what we would do. This bill is bad for Nebraska employees, since it makes proving a claim much harder. There is no doubt I was badly injured on the job. I did not have to fight over what the primary cause was. I was one of the lucky ones. I hope you shall not pass LB1040 (sic). I thank you for your consideration of my comments. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And you've said LB1040 and I think you mean LB1044, right? [LB833 LB846 LB963 LB1044]

PATRICIA HAGEMANN: Yes. Sorry. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. That's all right. I just want to make sure the record properly reflected the bill you were concerned with. Senator White has a question for you. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: One of the concerns I had talked about is older people, but in your case, as a woman, you're much, much, much more likely to have osteoporosis, the weakening of bones. [LB833 LB846 LB963 LB1044]

PATRICIA HAGEMANN: Yes. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: This bill could really isolate women and cause them to have a much more difficult time getting compensation for job injuries of the type you had. [LB833 LB846 LB963 LB1044]

PATRICIA HAGEMANN: Yes, especially the way I broke it, because it almost looks like an osteoporosis fracture. [LB833 LB846 LB963 LB1044]

SENATOR WHITE: Thank you very much. [LB833 LB846 LB963 LB1044]

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SENATOR LATHROP: That's it. [LB833 LB846 LB963 LB1044]

PATRICIA HAGEMANN: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thank you for your testimony today. Next opponent. Mark, why don't we let this lady...since she's on her way up, let's let her come on up and testify. [LB833 LB846 LB963 LB1044]

DORIS NEWKIRK: I am Doris E. Newkirk, N-e-w-k-i-r-k. I am 87 years old. I was injured at the Lone Star Steakhouse where I had worked for almost 17 years doing hostess work. And, well, why I needed to work was in 1988 my husband had a stroke, which paralyzed him on his left side, and with all the medical bills and everything it just deleted all of our savings and everything. As I say, I started working in 19...when I was 71 years old. Savings had been eaten up by the expenses from my husband. And he had worked for one company for over 25 years, that his pension was 10 years certain, so that had gone by, and when he had this stroke, why, then that just eliminated most of our savings. My income before I was hurt is Social Security and the husband's private pension and what I made working at Lone Star. (Inaudible) workmen's compensation benefits made up for what I lost at Lone Star. In 19...I mean 2006, on June 13, I was working and had...as a hostess at Lone Star, and every half hour we had to check the rest rooms and document it on the back of the door in the rest room. And I had checked the ladies. It was fine. But I checked the gentlemen's and I had the door open about this far with my left hand and was writing on the back of the door that I had checked it, everything was fine. But one of the managers in training, about a 300-pound man, I don't know whether he had to go to the rest room in a hurry or whether he was angry about something, but he hit me with that door and I went flying up and came down on the back of my head and had a concussion. And I didn't...well, my left...my right shoulder has just been giving me fits. I can't sleep on the left side of my...because of all of this. My living expenses are my rent, my electricity, gas, water, food, gas, car insurance, and gas for the car. My medical expenses, health expenses, are Medicare and copays...Medicare supplement. And on my insurance, it's not covered by Medicare or Medicare supplement, are dental, vision, and noncovered needs. I understand I wouldn't be affected by this but I would be bad and those entering retirement to deal with this bill. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And it sounds like you're talking about LB963 that would offset your retirement benefits. [LB833 LB846 LB963 LB1044]

DORIS NEWKIRK: Yes, sir. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. I just wanted the record to reflect the bill that you were here testifying on. We appreciate your testimony, the fact that you came down here today. Before you get away, let me see if there's any questions from any of the

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senators. Senator Carlson has a question for you. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Thank you, Senator Lathrop. Thank you for testifying today. Is your husband deceased? [LB833 LB846 LB963 LB1044]

DORIS NEWKIRK: Yes, sir. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: And that was part of the problem where his pension stopped then at his death. [LB833 LB846 LB963 LB1044]

DORIS NEWKIRK: Yes. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Is that correct? [LB833 LB846 LB963 LB1044]

DORIS NEWKIRK: Well, he worked for State Farm for over 25 years and he had retired from there. And he got a pension, it was ten years certain. And that expired. And then he went to work for another small insurance company in Omaha and we have a little...I have a little pension, four times a year, and that's it. So it was work at Lone Star. And they hired me when I was 71 years old and kept me going and I appreciate it. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Okay. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: I think that's all the questions. Thank you again for coming down today. [LB833 LB846 LB963 LB1044]

DORIS NEWKIRK: Thank you. [LB833 LB846 LB963 LB1044]

MARK INTERMILL: (Exhibit 17) Good afternoon, Senator Lathrop and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP on LB963. AARP will oppose any effort to offset workers' compensation benefits for persons who are also eligible for Social Security retirement benefits. We see these are two distinct programs that serve distinct purposes. And what this bill tends to do is muddle those purposes to the disadvantage of Nebraska workers who have suffered a disabling injury as they approach retirement. We also note that in the statutes, the workers' compensation statutes, there's a section that says, that's not amended by LB963, that essentially says that no savings or insurance of the injured employee shall be taken into consideration in determining the compensation paid. LB963 appears to violate that underlying principle that's stated in the statute. And finally we note that the reduction in compensation benefits envisioned by LB963 would only apply to workers who are injured after the age of 55 and more than five years prior to the date of retirement. And I think this does address some problems that we've seen in previous bills of this type in that it does limit to those individuals who may have had an

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opportunity to work for a longer period of time. But it does open up a lot of questions in terms of when that particular five-year period begins and when that would take place. So we don't believe this is a bill that you should advance and we encourage you to indefinitely postpone it. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thanks, Mark. Are there any questions? I don't see any. [LB833 LB846 LB963 LB1044]

MARK INTERMILL: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: We appreciate the thoughts of AARP. [LB833 LB846 LB963 LB1044]

JAMES MICHAEL FITZGERALD: My name is James Michael Fitzgerald, 4260 Garry Owen Road P38, Fort Calhoun, Nebraska, 68023. I'm a judge in a workers' compensation court and I don't...I'm a little nervous about being here. But one of these bills really affects me and that's that LB963. You're looking at the traveling judge who drives about 19,000 miles a year in service for the state of Nebraska. And if I was to be killed on the highway going to a case, my wife's benefits under workers' compensation would be reduced because I'm getting Social Security. I paid the maximum under Social Security since 1969, and I'd be doggoned if I did pay that so the state of Nebraska can pay my wife 650 bucks, or whatever it is, less, or a \$1,000 a month less. It's just plain wrong. You've already...I could give you the...Mrs. Newkirk told you she gets \$1,000 a month. She goes to work because she can't make a living and they want to get a credit for the \$500 out of the \$1,000 a month and she can't make or pay her bills. What are we going to do with her? Somebody is going to, like Senator White said, somebody is going to pay that bill. She's going on Medicare, she's going on Medicaid, she's going on something. On LB1044, I'm against LB1044 because I want to read you from some statutes. In 1913, the Revised Statutes of Nebraska started out in Section 92...it's also known as 3642...when personal injury is caused to an employee by an accident arising out of and in the course of his employment, he'll get some workers' compensation benefits. In 19...or in 2004, which was the latest statute book, when a personal injury is caused to an employee by accident or occupational disease, we've added occupation disease, arising out of and in the course of his or her employment you get benefits--same law for 97 years, hasn't changed. We have a body of law that we know what we're doing, the judges know, the Supreme Court knows, the Court of Appeals. Everybody knows what we're doing. Don't change it unless there's one really good reason. And the reason that the employers are here is they say, well, we want a reduction because of preexisting conditions. Well, we had that on the books. It's called 48-128. And, in fact, you'll find it one of these bills, 48-128, which was what they called the Second Injury Fund, which if a fellow had a preexisting condition and he got hurt on the job, the employer could bring in the Second Injury Fund and have the Second Injury Fund pay a piece of the award. We had that on the books. In 1997, Commerce and

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Industry (sic), Ted Fraizer--some of you will know him--came and testified that we don't need a Second Injury Fund anymore, get rid of it, but benefits will remain the same. Now they can't have it both ways. Do away with the Second Injury Fund, which protects them from preexisting conditions and do away with that, and then come in here and tell you we don't want to pay for preexisting conditions. Where is the mister employee going to go? Where is he going to get his benefits from? So on LB1044, that...the court was awful nice to you in their legislative note, because I'll guarantee you, you better be prepared to add about five or six new judges because we will litigate every injury in this state if you adopt LB1044. You better add about five judges because there's absolutely no way we can keep up with what's going to happen, because they won't pay a claim. No claims will get settled, nothing. We'll try every one of them. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Appreciate it, Judge. Any questions? Senator Carlson has a question. Hey. Pardon me, Judge. [LB833 LB846 LB963 LB1044]

JAMES MICHAEL FITZGERALD: Oh, I'm sorry. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Thank you, Senator Lathrop. You referred to the Second... [LB833 LB846 LB963 LB1044]

JAMES MICHAEL FITZGERALD: Injury Fund. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Second Injury Fund. And that's no longer there. How was that funded? [LB833 LB846 LB963 LB1044]

JAMES MICHAEL FITZGERALD: That was funded by contributions from insurance carriers. It spread the risk from one employer amongst all the employers in the state. [LB833 LB846 LB963 LB1044]

SENATOR CARLSON: Okay. Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thanks for coming down. We appreciate hearing from you. [LB833 LB846 LB963 LB1044]

ROBERT R. MOODIE: Mr. Chairman, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys in opposition to LB833, LB846, and LB1044. Almost all of my points have already been made so I'll try to be brief. One point that has not been made is that workers' compensation is not a social entitlement system. It's, if you would call, a social contract. It is a contract that was made between business and labor in which the idea was to make benefits a little bit easier to collect but to limit those benefits in certain ways. Now one of the limitations that was placed in that is that the benefits have to be

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paid as a part of an accident. There has to be a specific event. When somebody goes to work and they work their whole life doing heavy, hard labor and they wear themselves out through a degenerative process of just working hard, that's not a workers' compensation claim. There has to be an accident. Now where that accident aggravates the preexisting degenerative conditions that happen when a blue collar laborer is working himself into the ground his whole life, then that can be a compensable accident, and would be and is a compensable accident absent LB1044. So the point I would make is that we already have a compromise in here between the employer, between business and labor. And what LB1044 would do would be to grossly tip the balance of that compromise away from the injured workers. With respect to LB833, LB833 did not originate through a groundswell of consumers who are worried about their privacy being violated. LB833 was generated by a series of large self-insured employers who want to control the information that is going to their employees over work-related injuries. And the basis of LB833 is are we going to limit the information that is going to employees so that the only place they're getting it from is from their employers. Last point on LB846...and LB846, one of the points that Mr. Hallstrom didn't make to you is that one of the circumstances where interest is awarded, perhaps one of the most important circumstances where interest is awarded is when workers' compensation benefits are delinquent; when there is no controversy; when the court has concluded that there was no reasonable controversy at all, and the employer, the insurance company just didn't pay the benefits and the employee had to go to court to get those benefits without a controversy. So the interest provision that it's tied to now is tied to the provision where that the citizens have to pay if they don't pay their taxes. Part of the motivation behind that is that citizens need to be motivated to pay their taxes on time. Well, I would submit that employers and insurance companies need to be motivated to pay their benefits if there's no reasonable controversy and the interest rate should not be changed. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Thanks, Bob. [LB833 LB846 LB963 LB1044]

ROBERT R. MOODIE: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: It doesn't look like there's any questions. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Good afternoon. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Good afternoon. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Chairman and committee members, my name is Bob Lannin, L-a-n-n-i-n. I am here on my own behalf, as well as the secretary-treasurer of the Nebraska Defense Counsel Association. I am here in opposition to LB833. The confidentiality provisions it creates I believe are unwarranted. The specific concern I have is there is



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no exception for employees who put their physical or mental condition in issue and a second workers' compensation claim or in a third-party action under 48-118. What in my opinion that does then is create a greater physician-patient privilege than exists normally in typical civil litigation. The physician-patient privilege is waived. With respect to the injuries in question in this case, that information would remain confidential. If there was such an exception we might support the bill, but as presently drafted we are in opposition. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Did you just say you were with the Defense Attorneys Association? [LB833 LB846 LB963 LB1044]

BOB LANNIN: Yes. Yes, sir. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: So you defend these kind of claims. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And you oppose LB833. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. I just wanted to make sure I was hearing it right. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Strange... [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: We don't get NATA and the defense bar in here very often on the same page. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Strange bedfellows. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: All right. Good. Any questions? I don't see any. Thanks for coming down, Bob. [LB833 LB846 LB963 LB1044]

BOB LANNIN: Thank you, Senator. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Anyone else here to testify in opposition to any of these bills? Anyone here in a neutral capacity? Glenn, come on up. Is anyone else here intending to testify in a neutral capacity? Okay. [LB833 LB846 LB963 LB1044]

GLENN MORTON: Thank you, Senator Lathrop. My name is Glenn Morton, M-o-r-t-o-n. I'm the administrator for the Nebraska Workers' Compensation Court appearing

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neutrally today on behalf of the court just to make a very brief statement regarding the court's fiscal note, actually notes, for LB1044 and LB963. And I am testifying, given Judge Fitzgerald's comments and also your own comment that you interrupted the note as saying we might need another judge. Actually...and just to clarify, what we did say in the fiscal note is that this bill, both of these bills will almost certainly increase the litigation and would therefore increase the workload on the judges, the staff of the court. However, what we said actually was that we were unable to quantify what that workload would be, and therefore, we weren't able to identify any specific expenditure increases because of either of these bills. But what I will say is, and then what I wanted to testify very clearly about is that the cumulative effects of bills like this, as well as a couple of others that you've heard today, as well as others that we've heard in past years that keep adding the workload to the court, over time we will need more judges and more staff to that. So although we didn't identify a specific expenditure for any of these bills due to the bills themselves, the individual bills, we would hope if we ever do need to come back and ask for more staff or judges, that at least the senators on this committee would be supportive of that. So that's my testimony. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: I just want to ask you a question. You're up in the Work Comp Court. The case...it is almost a typical case to have someone who is 50 years old, preexisting, asymptomatic, degenerative disk disease, and then they suffer a back injury. That is as common as they get in the Work Comp Court, would you agree? [LB833 LB846 LB963 LB1044]

GLENN MORTON: That's a very, very common scenario. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Very, very common. And LB1044 would change completely the standard for judging whether those are compensable or not. [LB833 LB846 LB963 LB1044]

GLENN MORTON: Yes, it would. It would make a...I'm sorry. Yes, the answer is yes. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. And introducing a new standard, prevailing factor standard, that's not a generally accepted standard in work comp, am I right? [LB833 LB846 LB963 LB1044]

GLENN MORTON: I do know there are some other states that have such a standard. I think this seems very similar to what Missouri has. But to the best of my knowledge, that's not the general rule, no. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: And what we will see, even though you were unable to quantify how many more cases we'd see litigated, we certainly heard Judge Fitzgerald suggest

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we're going to see an awful lot of litigation in the wake of changing the standard. [LB833 LB846 LB963 LB1044]

GLENN MORTON: Yes, we would. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: Okay. Thank you very much. Are there any questions for Glenn? I don't see any. We appreciate your... [LB833 LB846 LB963 LB1044]

GLENN MORTON: Thank you. [LB833 LB846 LB963 LB1044]

SENATOR LATHROP: ...always your thoughts. That should close our hearings subject to close. (See also Exhibit 18) So Senator Carlson, would you like to close? Senator Carlson waives close on LB963. Senator Schilz waived close on LB846. Is Senator Fulton here? I don't see Senator Fulton. And Senator Lautenbaugh I believe is gone too. So that will close our hearings on LB833, LB846, LB963, and LB1044, and bring us to LB961 and Senator Council. And I think her LA is here to open for her. [LB833 LB846 LB963 LB1044]

SHELISA MINNIFIELD: (Exhibit 19) Good evening, Senator Lathrop and members of the Business and Labor Committee. I'm Shelisa Minnifield, it's S-h-e-l-i-s-a M-i-n-n-i-f-i-e-l-d. I'm legislative aide to Senator Brenda Council. Senator Council, as you mentioned, is unable to be here because of the blizzard that shut down D.C. and resulted in the cancellation of her flight home yesterday. In addition to that, Senator Schilz is ill, as a chief cosponsor, and unable to be present also. So with the Chairman's position (sic) and Senator Council has asked that I introduce LB961 on her behalf. In 2008 the Legislature passed LB956 which creates a subaccount within the Job Training Cash Fund that utilizes interest income generated from the fund for the purpose of training employees of small businesses, residents of rural areas, and residents of areas of high concentrations of poverty. I distributed a chart to you which shows the employers and the areas where the funds have been utilized. LB961 affects only this subaccount and does not alter the intent of the existing law. To the contrary, LB961 only seeks to establish a clear mechanism for implementation of one of the specified program uses of the subaccount. When enacting the current law, the Legislature recognized that many residents of the rural areas and areas of high concentrations of poverty, which overlap in many areas of our state, not only lack the requisite technical job skills but also lack what is referred to as soft job skills required to access available, newly created jobs. Thus, the current law allows employers to obtain grants from the subaccount for preemployment training. However, because the grants are administered on a reimbursement basis that's tied to this position, the employees and the community-based training organizations and educational institutions with whom they are encouraged to partner are often unable to provide the training because the costs are not reimbursed until after the corresponding position is filled. LB961 is designed to remove this barrier to accessing the fund for the training and employment of residents of rural

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areas and areas of high concentrations of poverty within our state. While LB961 has been drafted with an eye toward achieving that objective, it also reflects the objective of maintaining accountability and responsibility for the funds. In that regard, Senator Council, Senator Schilz, and others have been working with the Department of Economic Development and representatives of the business community to identify any section of LB961 that needs to be addressed through amendment. Since I'm sure there are others here to testify in support of LB961 who may be in a better position to answer any questions you may have, I'll conclude the opening and waive closing of LB961. [LB961]

SENATOR LATHROP: Very well done. Thank you. [LB961]

SHELISA MINNIFIELD: And I'll breathe when I get up. Thanks. (Laugh) [LB961]

SENATOR LATHROP: All right. Thank you. Proponents. [LB961]

BEN GRAY: Thank you. Chairman Lathrop, members of the committee, my name is Ben Gray. I am a city councilman for the city of Omaha, but I'm here in my capacity as the emergency team director for Impact One Community Connections, which is a gang prevention or violence prevention/intervention organization. As I sit here, I want to preface my remarks by saying to all of you, because I know all of you have the same concern, but to my Omaha colleagues that about 45 minutes ago a 15-year-old from Benson High School was shot and killed on 48th and Benson (sic). And so we are...I will... [LB961]

SENATOR LATHROP: 48th and what? [LB961]

BEN GRAY: Forty-eighth and Bedford. [LB961]

SENATOR LATHROP: Oh, my God. [LB961]

BEN GRAY: So I will be leaving here fairly soon, but I bring that up because it is part and parcel to what I think this legislative bill, LB961, and others that we have been working on in sort of a collaborative fashion, both with the Legislature and the city council, various organizations, the chamber and others, to address the chronic problems of unemployment, underemployment, and what we need to do to address some of those issues. I believe that LB961 addresses that in a very unique way in that it provides for specific language that talks about outcomes for people who are involved in...for people who try to gain resources in order to train or retrain workers in some of the impacted areas. A lot of times when we are attempting to do the right thing, we pass legislation that we think is going to be meaningful, and in a lot of instances it is, but at the end of the day the lack of accountability in some instances causes these programs, as well meaning as they may be, not to work effectively because there are no

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mechanisms in place that would address accountability and reliability in some of the programs and provide measurements for what needs to occur and if we're getting the outcomes that we want. I think LB961 does exactly that in terms of the measurable outcomes that it seeks to have as well as the accountability contained within the bill itself. It specifies more what needs to occur. I think also we need to look at it in the context of a number of different things that are going on in a number of different areas that are happening both within...with the elected officials as well as others. I know with the Omaha City Council we have engaged in a number of activities including developing a work force development task force that is looking very seriously at work force development and providing ideas and opportunities for how we can advance and make that a better organization that affects the lives and works with substantially more people than are currently being worked with now. So to look at it in a vacuum would be...wouldn't be wise because there are a series of things that are going on. And this is just one of those pieces of the puzzle, but it is a significant piece because, again, it does provide the accountability, it provides the transparency, and it provides a mechanism for us to measure our outcome. So I'm highly in support of LB961. I will answer any questions you all might have. [LB961]

SENATOR LATHROP: Very good. Thanks, Ben. We appreciate it. Senator White. [LB961]

SENATOR WHITE: Ben, I appreciate you being here. I know you got to go. I want the record on this hearing to hit the floor. My studies have been that if you want to prevent crime, you want to get people out of prison or keep them out of prison, jobs and training for jobs are number one and substance abuse might be number two. [LB961]

BEN GRAY: Absolutely, no question about it, Senator. [LB961]

SENATOR WHITE: Is it your opinion that this will more effectively help you intervene with kids who are on a path to going into the gangs, going into a lifetime in the prisons, in and out, and teach them the skills to hold jobs that give them an alternative? [LB961]

BEN GRAY: Absolutely, and I'll tell you one of the reasons why, because anyone that is applying for these resources will have to provide for you some measurability and some accountability. And so with that, I think we can more effectively look at some of these organizations and some of these businesses that want to go into training or retraining. And I think this would be beneficial towards doing that and it would definitely help us in our efforts to try and stem the tide of violence in our community. [LB961]

SENATOR WHITE: Thank you, Councilman. [LB961]

BEN GRAY: Thank you, sir. [LB961]

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SENATOR LATHROP: That's it. [LB961]

BEN GRAY: Thank you, sir, appreciate it. [LB961]

SENATOR LATHROP: Yeah, thanks, Ben. [LB961]

NATALIA PEART: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Natalia Peart, spelled N-a-t-a-l-i-a P-e-a-r-t, and I'm here to testify in favor of LB961. I'm the CEO of the YWCA Omaha, and we work with clients on a daily basis, many of whom live in poverty who are in need of skills to help make them employable and are looking for career opportunities, not just jobs. Now at the risk of stating the obvious, people do not choose to live in poverty. People do not choose to be unemployable. Sometimes, due to a number of circumstances, they find themselves without a basic education or without a positive support system or without stable housing and reliable transportation. Other times, they may have a record with the police. And more often than any of us would want to admit, it's all of the above. All of these are barriers to them being employed and, therefore, contribute to them living in poverty. In my experience as the CEO of an agency whose mission is to help move our residents toward self-sufficiency, I know that if you can provide individuals living in poverty with training and employment opportunities that lead to a career and not just a job, they will choose to stay on that career path and go on to be productive members of our community. Our organization is a partner in the work force collaborative. We help identify individuals who are looking to improve themselves, both personally and professionally. We coach them as they navigate a world of bosses, deadlines, and expectations. We help them problem solve hurdles as they try to balance their personal lives with being an employee. But right now we need more opportunities. Any legislation that can be passed that will encourage employers to look outside the traditional population of applicants and to train and hire individuals with barriers will benefit the company, the individual, and the state. But before I go further, I hope the committee understands that people who have barriers to employment do not just live in north Omaha. There are people all across our state who are lacking in education or don't have a support system or who did something misguided as a teenager or young adult that resulted in a police record and now they are struggling to get back on track. I have counterparts in rural communities across this state who face the same challenges that I face. I see this legislation as one more tool at the disposal of everyone to help put individuals who have employment barriers on a path to success. I want to thank you for your time, and I would be happy to answer any questions. [LB961]

SENATOR LATHROP: Thanks. I don't see any questions, but it's good to see you and thanks for your work in this area. [LB961]

NATALIA PEART: Thank you. [LB961]

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WENDY BOYER: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Wendy Boyer, B-o-y-e-r, and I'm here to testify in favor of LB961 on behalf of the Greater Omaha Chamber. I want to thank Senator Council also for introducing this bill. I'd like to tell you about the work force collaborative that we have created in Omaha that really serves two issues, and it's about creating strategic solutions to help businesses that have unmet work force needs. We have businesses who have challenges in finding skilled, qualified workers. And also we have a community in which there are high poverty rates, individuals that are unable to find employment. When you look at Omaha, our unemployment rate is 4.7 percent and yet in certain areas of our community it's upwards of 17 percent. And so how can we take the issues that these two entities have and create strategic solutions around them? We've had some success in working with companies so far. We've created a customer service program with Mutual of Omaha and Blue Cross Blue Shield. We created an ophthalmic assistant program with Midwest Eye Care and UNMC eye physicians. We created a welding program for Valmont Industries and Distefano. We are in the process of creating two more partnerships. And in those partnerships, employers commit to hiring individuals in poverty, helping to develop the curriculum and the program that includes both hard skills and soft skills, and then helping to coach and support those individuals to successful employment. We feel really good about this process. We are measuring and evaluating what we're doing. We're learning best practices. We're trying to codify our work and position us to help other communities learn from what we're doing. We're actually involved in a consortium of 21 cities across the country trying to do customer or, excuse me, work force development from a dual customer approach. And so in that I would say that Omaha is not the only community that has similar issues--both businesses who are unable to fill their jobs with qualified work force and also people that are living in poverty or have barriers to employment. And I would consider asking you to think about how this is a win-win for the state in order to help businesses get the workers they need so that they will be able to stay here and expand their business and companies and also to help people move out of poverty into meaningful positions. So as you consider this legislation, I would ask that you do so with the following three outcomes in mind: (1) It has to encourage employers to look outside the traditional application, excuse me, outside the traditional population of applicants and to train and hire people with employment barriers; (2) companies have to be able to access the dollars for existing but unfilled jobs as well as for creating new jobs; and (3) it has to be easy to access for preemployment purposes. Many of the individuals we're working with don't have the basic skills necessary to enter employment at a certain point. We think this legislation could be a very valuable tool as we continue to help companies find the quality employees they are seeking and provide opportunities for people who live in poverty to find meaningful employment. I thank you for your consideration of this legislation. We would certainly like to work with Senator Council and the committee on any changes and hope you will send it to the full floor for debate. I'm happy to answer any questions. [LB961]

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SENATOR LATHROP: Thanks, Ms. Boyer. I don't...oh, Senator Carlson has a question for you. [LB961]

SENATOR CARLSON: Thank you, Senator Lathrop. [LB961]

WENDY BOYER: Yes. [LB961]

SENATOR CARLSON: You mentioned any changes, but at this point you don't recommend any changes. [LB961]

WENDY BOYER: We would be open to that. I mean certainly legislation or a bill that encourages employers to consider entering these partnerships and hiring people in poverty is our number one goal. [LB961]

SENATOR CARLSON: Okay. Thank you. [LB961]

WENDY BOYER: Uh-huh. [LB961]

SENATOR LATHROP: I think that's it. Thank you for your testimony. Hi, Jim. [LB961]

JIM GROTRIAN: Hi, how are you? [LB961]

SENATOR LATHROP: Good. [LB961]

JIM GROTRIAN: (Exhibits 20, 21) Good afternoon, Chairman Lathrop and committee members. My name is Jim Grotrian, spelled G-r-o-t-r-i-a-n. I am the executive vice president at Metro Community College. It's my pleasure to be here today extending Metro's support for LB961. I have a letter that I've distributed in support of the legislation and it's on behalf of the college from President Schmailzl. And as President Schmailzl says in his letter, the Job Training Cash Fund created by the Legislature has great potential to serve constituents of our four-county service area--Dodge, Douglas, Sarpy, and Washington Counties--and benefit all Nebraskans with educational and training opportunities leading towards economic independence through meaningful jobs and careers. MCC is an active partner, as you've heard, with the Greater Omaha Chamber. We provide, so far, provide all the educational programming for those partnerships, and other service providers and our community to find solutions related to the work force needs of employers while also focusing on residents who have major obstacles to overcome to gain meaningful employment. We believe it is imperative that the resources of the Job Training Cash Fund be available to students for assistance with general education, career training, and job placement opportunities. MCC does and will continue to support the efforts of Senator Council in making Job Training Cash Fund resources available to students from high poverty areas and small businesses. We are committed to being the institution of higher education of first choice when educational



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assistance is needed. We are proud to be part of any solution the Legislature and this committee can put forward in making education available to everyone. And I'd like to thank you and be glad to answer any questions. [LB961]

SENATOR LATHROP: Thanks, Jim. Any questions? You've made it very clear. [LB961]

JIM GROTRIAN: Thank you. [LB961]

SENATOR LATHROP: Thanks, Jim. [LB961]

KATE BOLZ: (Exhibits 22, 23) Hello. My name is Kate Bolz, that's B-o-l-z, and I'm here today representing the Nebraska Appleseed Center for Law in the Public Interest. I have just a few brief comments to share. In response to the economic downturn, we started convening a job opportunities working group last year. That group is made up of educators, human service providers, and business leaders from all across the state who are interested in sharing ideas about building job opportunity. Preemployment services are one of the top concerns of that group. Those services, those soft skill services are very difficult to provide. Therefore, because of my understanding of the struggles the job opportunity working group members faced in providing those preemployment services, I'm here in support of LB961. We also support the reporting requirements that we think are good practice in all economic development projects and programs. I also point out to you a sign-on letter that is being passed around that while it contains just a short list of folks who support this bill as well, it does reflect the diversity of participants that do believe in preemployment services and in the improvements LB961 makes. Those are all my comments. Thank you. [LB961]

SENATOR LATHROP: Very good. Thanks, Kate. Any questions? I don't see any, appreciate you coming down today. Any other proponents? [LB961]

JOHN LINDSAY: Thank you, Senator Lathrop, members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of Omaha Public Schools. Omaha Public Schools has been at the table with the proponents who have developed this concept. We've had a longstanding position that education is part of the answer, but after the education is complete, jobs have to be part of the answer as well. We've worked with the proponents trying to make sure there is, as much as possible, the training will flow into the jobs that are created. And we stand in support of the bill. Be happy to answer any questions. [LB961]

SENATOR LATHROP: Thanks, John. I don't see any questions so we appreciate you coming down. Any other proponents? Oh, sorry, Tim. We have another proponent. [LB961]

TIM DOWD: Tim Dowd, appearing on behalf of the Nebraska AFL-CIO. We are a

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proponent of the bill. We support it and I think the issue has been well covered. If there's any further questions, I'd be happy to answer them. [LB961]

SENATOR LATHROP: I don't see any questions. Thanks, Tim. Anyone here in opposition to LB961? Anyone here in a neutral capacity? [LB961]

MARSHALL HILL: Good afternoon, Senator Lathrop, members of the committee. [LB961]

SENATOR LATHROP: Good afternoon. [LB961]

MARSHALL HILL: My name is Marshall Hill, M-a-r-s-h-a-l-l H-i-l-l. I'm executive director of the Coordinating Commission for Postsecondary Education. I'm testifying this afternoon in a neutral capacity only because our commission has not had an opportunity to fully discuss this bill. If they had, I'm quite confident they would have directed me to testify in...as a proponent. I'm testifying, though, today because the bill mentions partnering entities can include institutions of postsecondary education. We have some interest in that, of course, and we have been working on these issues in Omaha for quite some time. We've been working with Senator Council and many others, Mr. Gray and others, on this bill and the initiatives behind it and will continue to do so. We've been providing research and analysis on the academic programs available, the career training programs available, not only in the public institutions but in the independent and career schools as well. We will continue to do that, provide analysis and facilitate that conversation and especially focusing in on placements for young people who are trying to make the transition from either high school or postsecondary education into the world of work. I'd be pleased to respond to any questions you might have. [LB961]

SENATOR LATHROP: Thank you very much. It doesn't look like we have any questions for you, but we appreciate you coming down. [LB961]

MARSHALL HILL: Thank you. [LB961]

SENATOR LATHROP: (Exhibit 24) Anyone else here in a neutral capacity who wishes to testify? Seeing none, that will close our hearing on LB961. Wait a minute. We have a letter to offer for the record and that's from...dated February 8, 2010, from the Department of Economic Development and Mr. Richard Baier. And that will be added to the record. (See also Exhibit 25) And that will close our hearing on LB961. We're going to take a brief break to allow the committee a chance to stretch their leg. Five minutes. Let's go back and next up is going to be Senator Rogert with...are we on, Kate? [LB961]

KATE WOLFE: Yes, we're on.

SENATOR LATHROP: Okay. Next is going to be LB829 and that brings us to Senator

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Rogert. Welcome back to the Business and Labor Committee. [LB829]

SENATOR ROBERT: Well, thank you. Chairman Lathrop, members of the Business and Labor Committee, my name is Kent Rogert. I represent the 16th Legislative District, here today to introduce LB829, which is a follow-up adjustment stemming from last year's LB453 that ended up being amended into the committee bill, LB630, and it was passed last year. This is merely a clarification to the law, but an important clarification nonetheless. LB453 from last year provided agricultural operation employees with less than ten unrelated full-time employees...excuse me. It provided those employers, with less than ten unrelated full-time employees, it gave them some flexibility in providing another alternative to, at the time of hire, with the requirement that the notice be given anytime 30 days prior to injury stating that the employer is exempt from providing workers' compensation coverage. Originally, the requirement for "at the time of hire" gave rise to concern for those in the agricultural sector because some had interpreted that a notice given anytime other than at the time of hire was void. So LB453 brought in this notice provision to allow for notice to take place anytime 30 days prior to the time of injury. The notice must be signed by the employee and retained by the employer and must state: In this employment you will not be covered by the Nebraska Workers' Compensation Act; you will not be compensated under the act if you are injured on the job or suffer an occupational disease; you should plan accordingly. If notice is not given to the employee, the employer is liable under the act. However, since we passed this legislation, it's come to mine and other's attention that an unintended consequence may occur when an employer inadvertently misses the opportunity to provide required notice to a single employee. The employer then becomes subject to liability for all the employees as a result of even just one occurrence with a single employee. This is an unintended consequence that we are trying to resolve with the clarification in this bill. This LB829 clarifies that the employer would only be liable for an action solely regarding the employee or employees for whom they did not give notice to as required under the current law. The employer would still be held liable for not providing this notice before 30 days prior to an injury on the job, but only for this specific employee for whom he did not give the required notice. It seems to be fair as opposed to the situation as it stands now. If you have any questions, some folks behind me can answer the questions, but I'll answer anything that I can. [LB829]

SENATOR LATHROP: Thanks, Kent. I don't see any questions. Do you want to close? [LB829]

SENATOR ROBERT: I don't think you need me to. I'll get out of your way. [LB829]

SENATOR LATHROP: Okay. All right, thanks. [LB829]

ROBERT J. HALLSTROM: (Exhibit 26) 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 on behalf of

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the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business. Also included in my testifier's sheet that I will hand in are a number of other organizations that I'd like the record to reflect. I've been authorized to represent their support for LB829, as well, including the groups that I mentioned in my earlier testimony, plus the Nebraska Cattlemen's Association and the Nebraska Farm Bureau Federation. There's probably not too many more ways to tell you the story of what this ten-word amendment does, but an example perhaps. If you have less than ten unrelated agricultural employees, let's say the employer has eight unrelated employees, they give the notice to seven properly with the disclosure that they will not be covered by workers' compensation coverage. The eighth employee who failed to get that notice, as the law currently stands, would say, even though you gave the notice to seven employees, you're subject to workers' compensation laws as to all eight of them. This would simply clarify that it's only the employee or employees who you failed to give the notice to for which you would be subjected to liability under the Workers' Compensation Act. Be happy to address any questions. [LB829]

SENATOR LATHROP: I don't see any. Oh, Senator Carlson has one. [LB829]

SENATOR CARLSON: Thank you, Senator Lathrop. What kind of evidence does the employer need that he has, he or she has given notice? [LB829]

ROBERT J. HALLSTROM: I don't have the statute right in front of me, Senator Carlson, but I believe the statute on its face requires the employer to provide the notice and retain a copy of the notice in their records to provide proof that they, in fact, did give the notice. [LB829]

SENATOR CARLSON: Okay. Thank you. [LB829]

SENATOR LATHROP: I don't see any other questions. Thanks, Bob. [LB829]

ROBERT J. HALLSTROM: Thank you. [LB829]

JAMES CAVANAUGH: Senator Lathrop, members of the Business and Labor Committee, my name is James Cavanaugh. I'm a registered lobbyist representing the Independent Insurance Agents of Nebraska. We appear in favor of LB829 and commend Senator Rogert for bringing it before you. Essentially, our concern is, as Senator Rogert mentioned in his opening, clarity. If you read the current statute, it's...well, you'll have to read it a couple times because it's a little difficult to understand what exactly you're supposed to do. This basically boils it down to I think what the original intent was, is tell all of your employees that they're not covered by workers' comp, tell them all individually. And there's a way that you tell them. It's outlined in the statute and it's contained in the introducer's statement of intent. And if you don't and they get injured, they're going to be covered. And that's easy for an agent to tell a

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customer. The employer comes to an agent and says, I want...do I need workers' comp insurance? And you tell them, well, you're going to if you don't do this for each of your employees if you fall into this particular category. So we're concerned about our exposure to our clients to be able to tell them clearly and succinctly a rule that exists so that they can clearly follow it, and this is clearer, LB829 is clearer than current law, and for that reason alone we'd like to see you put in on the statute books. Alternatively, you know, from the employee's point of view, it says clearly that, you know, it's a one-on-one thing between the employer and the employee relative to this notice. If you don't have this notice, if you haven't given it to the employee and you don't retain it on file, then you're going to be liable. So it's good both ways. Be happy to answer any questions. [LB829]

SENATOR LATHROP: Senator Wallman. [LB829]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, Jim, welcome to our esteemed committee today. [LB829]

JAMES CAVANAUGH: Thank you. [LB829]

SENATOR WALLMAN: So you would recommend that I would, if I hired a new employee, to give them a written notice or just verbal. [LB829]

JAMES CAVANAUGH: Yeah, there's a written notice in here. It says: In this employment you will not be covered by Nebraska's 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. You know, that's pretty fair, up-front. And then, you know, if they don't want to take the job because they're not going to be covered, well, they can make an informed decision. [LB829]

SENATOR WALLMAN: Thanks. [LB829]

SENATOR LATHROP: Thanks for that clarification, Mr. Cavanaugh. [LB829]

JAMES CAVANAUGH: Thank you. [LB829]

SENATOR LATHROP: We appreciate your testimony today. [LB829]

JOE ELLIOTT: Mr. Chairman and members of the Business and Labor Committee, my name is Joe Elliott, E-I-I-i-o-t-t. I'm a lobbyist with the Professional Insurance Agents Association. This has been a problem for our agents for the four years or so, five years, that we drew this up, or I mean that was drawn up. And at all of our seminars we have with our agents, we keep telling them you've got to notify these people, and yet I get a sense and feeling from our agents that they, the farmers, aren't doing it very well. And

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so they've been exposed to a tremendous amount of liability if they just miss one guy. Maybe it's an 18-year-old. And I'm not even sure notices to that person would save him from paying a sizeable workmen's comp loss. But this bill certainly is a good effort and it reduces the liability and exposure, and so we support it wholeheartedly. So if there's any questions. [LB829]

SENATOR LATHROP: Thanks, Joe. I do not see any questions but we appreciate your testimony. [LB829]

JOE ELLIOTT: Okay, thank you. [LB829]

SENATOR LATHROP: Anyone else here in support of LB829? Anyone here in opposition? How about a neutral capacity? Seeing none, that will close our hearing on LB829 and bring us to LB872. Good evening, members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from District 12, here today to introduce LB872. LB872 is sort of an annual exercise for us and it comes with this bit of history. A few years back we passed, I think it was, LB588 which provided for a fee schedule for hospitals. We exempted from that fee schedule several trauma codes for trauma centers while we allowed our experience with the rest of LB588 to tell us what would happen with work comp insurance premiums in the wake of passing LB588. We intended to address whether to include the trauma codes or to continue to exclude them by this point in time, but we've not been able to develop the information necessary to make...or draw any useful conclusions about our experience with LB588 and whether or not it will lower work comp insurance premiums in the state. As a consequence, we have each year, I think now this will be our second or third year, extended the exception for these trauma codes. My bill would eliminate those trauma codes. By agreement with those involved, we're going to put an amendment in to extend it one more year in the hopes that we will have, by this time next year, enough information on LB588 to draw some conclusions about whether it has had an effect upon work comp premiums in the state and whether we should continue or discontinue the exclusion for trauma codes. Any questions? Senator Carlson, I'd be happy to answer a question. [LB829 LB872]

SENATOR CARLSON: Your bill will be the amendment to this, then? I don't see anything... [LB872]

SENATOR LATHROP: No. I will put an amendment on the bill. The bill that I put in would have taken those trauma codes out of the new fee schedule for hospitals. And instead what we're going to do is just exclude them for one more year in the hopes that we'll have enough information, enough experience with LB588 to draw some conclusions about whether or not we should include trauma cases or exclude trauma cases into the future. [LB872]

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SENATOR CARLSON: Thank you. [LB872]

SENATOR LATHROP: I will waive my close. Thanks. [LB872]

JAMES CAVANAUGH: (Exhibit 27) Senator Lathrop, members of the Business and Labor Committee, my name is James Cavanaugh. I'm a registered lobbyist for Creighton University Medical Center and Creighton University, appearing on their behalf in support of LB872. I also appear for the Nebraska Hospital Association, and you're receiving a memorandum from them in support of LB872 as well. I think Senator Lathrop did a good job of outlining the legislative history of this issue. I'll give you some of the practical impact. Nebraska has very few designated trauma centers. These are hospitals where you're taken if you're really, really hurt. You heard Councilman Gray testify about a shooting incident today up in Omaha, and I can guarantee you that the victims of that shooting would have been taken to one of two hospitals in Omaha, either Creighton University Medical Center or the hospital at the University of Nebraska Medical Center. Not all hospitals deal with trauma cases. They're not equipped and they're not certified. They don't have the staff, the skilled staff that is required to deal with these life-threatening cases. The reason it was exempted from this fee schedule in the beginning is because these cases are very, very expensive. You can easily spend hundreds of thousands or better than a million dollars on a trauma case to save somebody's life. And if you're traumatically injured in a construction accident and you end up at one of these trauma centers, you want to be able to get the best care available. That costs money. The law up until the institution of the fee schedule a number of years ago said, you know, you bring your medical bills to the court and the court decides on the reasonableness of those and certifies them. When the new statute was passed, all cases but trauma cases were taken and put on a fee schedule that's predicated on Medicare reimbursement rates. And these cases were exempted for the very good reason that they are extremely costly cases. Now, if you don't want trauma centers, then you can put these on the Medicare fee schedule and you'll find trauma centers closing around the state. You don't have that many to close in the first place. But there's no way that organizations can afford to treat these cases, these very expensive cases, on the fee schedule that was originally contained in LB588. And that's why the exemption was put there in the first place and that's why the exemption has, in your good judgment, been continued in subsequent years. We don't think anything is going to change between now and next year but we're certainly amenable to continuing the exemption for one more year. And I can assure you that we'll be revisiting this issue again then. I'd be happy to answer any questions you might have. [LB872]

SENATOR LATHROP: I do not see any questions. [LB872]

JAMES CAVANAUGH: Thank you. [LB872]

SENATOR LATHROP: Thanks for your testimony, Jim. Anyone else here as a

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proponent on LB872? (See also Exhibit 28) Anyone here in opposition? Anyone here in a neutral capacity? [LB872]

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, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. I've also been authorized to provide testimony on behalf of the Nebraska Chamber of Commerce and Industry; the National Federation of Independent Businesses; and Nebraskans for Workers' Compensation Equity and Fairness. As we all know, there's always three sides to every story, so I'll give you my take on the history of why we are here today with LB872. During the fee schedule discussion, there were...obviously, which took a couple of years to get to the final fee schedule agreement, the hospitals agreed to walk away from the rest of the fee schedule, but the trauma portions were one chunk too much for them to try to swallow all at one time. They were very concerned that accepting the new fee schedule would hurt them on the rest of the hospital DRGs. And because of that, we said, okay, fine, we will keep out the trauma DRGs for now; but we need to...we will wait and look in a few years and see how this works. As all of you know, the information goes to NCCI who looks at the workers' comp data. It obviously lags a couple of years behind. The fee schedule just went into effect last year, so obviously it will take another year before we can get the information. They anticipate that they should be able to start gathering the information and the impact on the new fee schedule this year, so they will have information next year for their summaries for the state. And for that reason we would support...or not support, we will not oppose extending the sunset, which is what we agreed to in the first place. Thank you. [LB872]

SENATOR LATHROP: Thanks, Korby. I don't see any questions. [LB872]

KORBY GILBERTSON: Thank you. [LB872]

SENATOR LATHROP: Thank you. Anyone else here in a neutral capacity? Seeing no one, that will...and since I've waived my close on LB872, I'll go to LB994. Good evening, members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator for District 12. The bill that's being introduced at this point in time, LB994, is what we generally refer to as a shell bill. It was...doesn't make any substantive changes. My hope is that if we can bring...you've heard a lot of testimony today. It's been work comp day. We have some things that employers would like and there's some things that employees would like. And if we can bring those parties together and develop some consensus, we would probably amend this shell bill to reflect that compromise. Otherwise, it will likely die in our committee. That's my introduction. I'd be happy to answer any questions. Senator Carlson. [LB872 LB994]

SENATOR CARLSON: Senator Lathrop, is this a little bit like what "is" is, but in this



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case it's what "at" is? (Laughter) [LB994]

SENATOR WHITE: Is that at, or that is it? [LB994]

SENATOR CARLSON: Might be what "in" is. [LB994]

SENATOR WHITE: Or out could be. [LB994]

SENATOR CARLSON: It could be. That's all my questions. [LB994]

SENATOR LATHROP: Thank you for that question, Senator Carlson. And I'll waive my close. And that closes our hearing. [LB994]