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Business and Labor Committee
March 07, 2011

[LB184 LB245 LB341 LB502 LB674]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 7, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB502, LB674, LB184, LB341, and LB245. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Brad Ashford; Tom Carlson; Burke Harr; Jim Smith; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: (Recorder malfunction)...Monday, March 7. My name is Steve Lathrop, state senator from District 12 in the Omaha/Ralston area and Chairman of the committee, and we are here today. And it looks like we have five bills and plenty to take up and our first one is Senator Cook. I will introduce the committee, and it looks like everybody here is a familiar face or just about...yeah, everybody here, so I don't have to go through the rules and the lights. And so maybe we'll just go right into the taking testimony. I have...we do have some hearings on a different matter later on this afternoon so I would kind of like to move things along if we can. And with that, we'll begin with our leadoff, which is LB502, and that brings us to Senator Cook. Welcome. [LB502]

SENATOR COOK: (Exhibit 1) Thank you, Mr. Chairman. Fellow members of the Business and Labor Committee, I'm Tanya Cook, T-a-n-y-a C-o-o-k. I appear before you as the Nebraska state senator representing Legislative District 13 and as the introducer of LB502. Nebraska is experiencing a shortage of healthcare providers. The shortage exists now and is expected to grow in severity as the state moves forward into the future. I'm committed to addressing this problem. I hope that you will join me in this mission by advancing LB502. LB502 places a dedicated healthcare representative to the Nebraska State Workforce Investment Board. The Nebraska State Workforce Investment Board is a statutorily created body that conducts statewide work force planning and training. Adding a dedicated healthcare representative to the Nebraska State Workforce Investment Board is crucial because it makes our state eligible to compete for future federal Health Care Workforce Development grants to help address healthcare work force demands in Nebraska. It is my understanding that there are already healthcare employers serving on the Workforce Investment Board. Despite this fact, in order for the board to be an eligible entity for Health Care Workforce grants, it must be statutorily defined as an entity representing healthcare employers and conducting healthcare work force planning. LB502 achieves this. I am aided in the introduction of LB502 by the University of Nebraska Medical Center. I'm going to ask the pages to distribute a letter. This letter is in support from the University of Nebraska Medical Center and it outlines the dire need for a more comprehensive healthcare work force. These issues are real and growing. Please consider this solution to the shortage across the state as a solution to two of our biggest problems: lack of access to high quality healthcare in many parts of our state and the lack of well-paying career-level employment for our constituents. I appreciate this committee's consideration and

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advancement of LB502. Thank you. [LB502]

SENATOR LATHROP: (Exhibit 2) Thank you, Senator Cook. Are there questions on the introduction of the bill? I see none. And, of course, you're on the committee so we'll see if you want to close when the time comes. We will hear from proponents of LB502, first. If you are in favor of this bill, please step forward and be heard. Okay. We do have a letter. And I presume this is a letter of support from Mark Bowen at the University of Nebraska Medical Center, is that right? And that's in the form of a letter dated March 4, 2011; and a letter from the Nebraska Pharmacists Association, dated March 7, 2011, also in support of LB502. Are there any opponents of LB502? Seeing none, are there any persons here to testify in a neutral capacity on LB502? Seeing none, that will conclude the testimony. Senator Cook, do you want to waive close? [LB502]

SENATOR COOK: Yes. [LB502]

SENATOR LATHROP: All right. Oh, I'm sorry. [LB502]

SENATOR CARLSON: Can we have an opportunity to make a statement about this or not? [LB502]

SENATOR LATHROP: Sure, if you'd like to. [LB502]

SENATOR CARLSON: Well, I think it's important that--thank you, Senator Lathrop--that there is an A bill. Whenever there's an A bill in this session, we're leery of it. But that A bill from \$6,500 comes from federal funds, so there's no General Fund impact. Okay. [LB502]

SENATOR LATHROP: (Exhibit 3) And it looks like we also have a late letter from Bruce Rieker with the Nebraska Hospital Association in support. With that, we will close LB502 and move on to LB674 and Senator Harr. [LB502]

SENATOR HARR: Thank you, Senator Lathrop and fellow members of the Business and Labor Committee. I am Burke Harr, H-a-r-r. I reside in District 8 which is midtown Omaha, the Dundee and Benson neighborhoods. I present to you LB674. This bill is to provide certainty within the workplace and clarification as far as what can and is and is not tolerated and what employers and employees may expect. The intent of LB674 is to do five things: (1) provide employees with notice that they may be electronically monitored for disciplinary purposes; (2) give a time line in which obtained information can be used in disciplinary actions; (3) provide for educational training if outside the time limit; (4) excludes criminal activity from the time line for what can and cannot be used for a disciplinary action; (5) and with the hope of reducing potential litigation for employers by permitting them to purge their files. As you are aware, unfortunately, there is a fiscal note on this. It is \$236,000 for the first year and \$241,000 for the second year.

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I would take some exception to the fiscal note on this. But as we got this--it was only made available to us on Friday--I haven't had a chance, much of a chance, to discuss this with the Fiscal Office. With that, I would be open to any questions. [LB674]

SENATOR LATHROP: Thank you, Senator Harr. Are there any questions for Senator Harr? Anybody want to interrogate him on the fiscal note or talk to him about the policy? [LB674]

SENATOR HARR: Reasonableness. [LB674]

SENATOR LATHROP: (Laugh) Okay, I see none. And we'll have you around to close if you choose to. [LB674]

SENATOR HARR: Thank you, Senator Lathrop. [LB674]

SENATOR LATHROP: You're very welcome. Is there anyone here that is a proponent of LB674? Please. [LB674]

ANGELA AMACK: Good afternoon, all. My name is Angela Amack. It's spelled A-m-a-c-k. I'm a registered lobbyist for the Nebraska Professional Fire Fighters Association, and we are here in support of LB674. We're here in support for two reasons and that is because the bill does allow for parameters to be set in terms of letting employees know what is allowed and what isn't allowed in the workplace; and secondly, it provides a time line for disciplinary actions so that employers who get angry with an employee for some reason don't have...can't go back indefinitely to find a reason for termination. So if through some of the opposition that I understand is going to be here now (laugh), if we can find legitimate ways to address our concerns, I would be happy to work with legal counsel to address those issues in an amendment of some kind. But with that I just want to say thank you for your time this afternoon. [LB674]

SENATOR LATHROP: Very good. Thanks, Angela. Any questions? Senator Carlson. [LB674]

SENATOR CARLSON: Thank you, Senator Lathrop. Angela, so when you say an amendment, you're talking about the A bill, addressing the A bill? [LB674]

ANGELA AMACK: If we can address the A bill, yes, I would be happy to work on that too, but if there are concerns from other testifiers in opposition, I'd be happy to work with them to address any concerns that they would have through an amendment, a committee amendment possibly. [LB674]

SENATOR CARLSON: Because in the climate that we're in this looks like a gigantic A bill. [LB674]

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ANGELA AMACK: Yeah. And I think we're all pretty familiar with how sometimes we magically receive fiscal notes that we may not totally agree with sometimes, so. [LB674]

SENATOR CARLSON: Okay. Thank you. [LB674]

ANGELA AMACK: But be happy to work with...on that, so. [LB674]

SENATOR LATHROP: Okay. I see no other questions. [LB674]

ANGELA AMACK: Thank you. [LB674]

SENATOR LATHROP: Thanks, Angela. Anyone else here in support of LB674? Anyone here in opposition to LB674 who cares to testify? [LB674]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek; that's spelled S-e-d-l-a-c-e-k. I'm here today on behalf and representing the Nebraska Chamber of Commerce, also representing, for the purpose of speeding along the hearing, the National Federation of Independent Business-Nebraska, and if I may, as well, the Nebraska Bankers Association, who have all taken a position at this time, opposed to the legislation as written. We talk a little bit about electronic monitoring and the purpose for which many employers do so. Probably about two-thirds of employers, at least according to national surveys that I found, do some sort of monitoring, and it can be for a number of reasons, just several, and I can get into that a little bit later. What I'd like to do, however, is represent and testify on the provisions of the bill and probably those provisions in which we have some concerns about. Certainly in the area, the definition of the employer, we do note and the committee should note that an employer does not often have control over the ISP, and there is going to be monitoring of systems and they'll be central storage and so on of Internet, particularly, activity when we're looking at that. And that probably should be clarified because that's something that's probably going to be part of the contractual arrangement of just having that service in the workplace. Secondly, this bill is patterned as it appears over...like a Connecticut law. Delaware also has an electronic monitoring, a little bit similar. There's been quite a bit of litigation in the lower courts. There was one higher court-reported case in Connecticut dealing with one of the municipalities in which they were trying to figure out whether or not GPS devices were covered under the legislation. They found that they used GPS devices to monitor drivers who are logging in, I think for the city, as making various inspection visitations, and found that many of the workers were not making those particular visitations--and GPS confirmed that. They were disciplined. They took them to court, claiming that this law did provide protection. The court disagreed and said, no, they were on the highways; that's public and therefore they consider GPS not covered. But that was certainly an issue. The other was dealing with RFID devices, hangtags,

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and so forth, and the monitoring of the usage of those particular items. Probably our biggest problem that we have is found on page 3 of the bill, lines 17-20, dealing with: Information not obtained in the course of a criminal investigation may only be used in a disciplinary procedure if done so within ten days of acquiring the information. Many of those who monitor do so by contract with other software companies, and find it quite expensive, you know, to issue those reports. Ten days certainly accelerates that. Many of them do it on a quarterly basis or on a monthly basis. But every ten days or actually sooner than ten days would be something to consider. With that, I'll be happy to take any questions. [LB674]

SENATOR LATHROP: Thanks, Ron. Senator Carlson. [LB674]

SENATOR CARLSON: Thank you, Senator Lathrop. Ron, you didn't dwell on the A bill, but if there had been A bill on this LB674, would you still have testified in opposition? [LB674]

RON SEDLACEK: Yes. Our policy position was determined well before the A bill was ever formulated,... [LB674]

SENATOR CARLSON: Okay. [LB674]

RON SEDLACEK: ...and that was news to me in the last few hours. [LB674]

SENATOR CARLSON: Okay. Thank you. [LB674]

SENATOR LATHROP: Senator Smith [LB674]

SENATOR SMITH: Thank you, Senator Lathrop. Once again, what are the major concerns with this bill? Is it strictly the ten-day? [LB674]

RON SEDLACEK: The ten-day does provide some problematic areas because a number of times these...the monitoring is done for a number of reasons. For example, legal compliance with...let's say, just to protect...you're a telemarketer and you have an employee is making telephone calls. Usually there's a disclosure when you call in: This call may be monitored for quality or customer assurance, assistance, and so forth. But there may be transactions. They want the recording between the employee and the customer, you know, to protect both parties, so there isn't a taint in regard to...argument in regard to the transaction. That may not occur until weeks or months later. Also just legal liability. An employer may be having problems and initiate the monitoring because of allegations. There may be a hostile work environment developing. There could be sexual harassment issues. You know, all sorts of threats made. And so they begin to monitor either a telephone conversation or e-mails or that type of thing. Another is performance reviews just to be sure, you know, what kind of productivity is occurring in

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the workplace. And they may not take a look at those files for quarterly or half a year and once a year prior to the review. That causes a difficulty with the ten days. Productivity measures how much work is being accomplished. Maybe another: monitoring in warehouses; truck docks, which are not really public areas, to ensure that there is no shrinkage or theft regarding employees; and then also just for security reasons, and we can go into that, such as intellectual property, trademark infringements, noncompete agreements, and so on just to see what's happening. Again, the ten...the notice provision isn't really the stickler in the sense that...that can be done. Here's a copy of Connecticut's notice, as an example. It's just a one-pager. And since this law has become effective, what employers do is they just copy this from the Connecticut Department of Labor. They check everything and they put other, and it says "any other electronic" or, you know, any other surveillance, and then that's it. They stucked (phonetic) it up and...someplace in the workplace, or they amend it from time to time. It's...the compliance people say it's not really that effective. It would be better to get, you know, notices in employee handbooks and so forth. That's what most of them do. But at any rate, most people do...from what I understand, employers do give some sort of notification putting employees on notice, because that also helps the...having the employee on notice certainly helps with those issues, those productivity...that we will be monitoring, so be careful in what you do. [LB674]

SENATOR LATHROP: Great. Thanks, Ron. Senator Carlson. [LB674]

SENATOR CARLSON: Thank you, Senator Lathrop. One other quick question then on page 3, line 19. If that ten days were 180 days, would that change (inaudible) opposition to the plan? [LB674]

RON SEDLACEK: No, I don't believe so. I think we probably would have those who would comment, saying, you know, there may be times when disciplinary action was taken before, and then now we're seeing a pattern, you know, the employee has done pretty well for a year or a year and a half, and then, all of sudden, the pattern...that activity starts again and just want to have that record of that. So some employers like to purge the files, but many do not and prefer to keep those records for a longer period of time. [LB674]

SENATOR CARLSON: Thank you. [LB674]

SENATOR LATHROP: Very good. Thanks, Ron. [LB674]

RON SEDLACEK: Thank you. [LB674]

SENATOR LATHROP: Anyone else here in opposition to LB674? [LB674]

KATHY SIEFKEN: Senator Lathrop and members of the committee, my name is Kathy

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Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today in opposition of LB674, representing the Nebraska Grocery Industry Association. Mr. Sedlacek pretty much summed up our opposition, the ten-day limitation for disciplinary proceedings. We have some issues where you have behaviors that are repeated. Further down the line, if you've got someone with a very high skill level, you'll want to work with those people to try to keep them as your employee, so you try to keep them going along the right path. And if you have to go back six months or a year in the past, because they repeat bad behaviors that far back, you'll want to be able to do that. This limits it to ten days. With that, we oppose. If you have any questions I'd be happy to try to answer them. [LB674]

SENATOR LATHROP: Okay. Thanks, Kathy. Any questions? I see none. Thanks. Coleen. [LB674]

COLEEN NIELSEN: Good afternoon, Chairman Lathrop, members of the Business and Labor Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, testifying on behalf of the Nebraska Insurance Information Service in opposition to LB674. I think Ron Sedlacek with the State Chamber did very well to summarize our concerns about this bill and particularly with the ten-day rule. And with that I'd be happy to answer questions. [LB674]

SENATOR LATHROP: I see no questions. Who did you say you were here speaking for? [LB674]

COLEEN NIELSEN: The Nebraska Insurance Information Service. [LB674]

SENATOR LATHROP: Okay. Okay, good. Thank you, Coleen. Anyone else here to testify in opposition? Anyone here in a neutral capacity on LB674? Seeing none, Senator Harr to close. [LB674]

SENATOR HARR: Thank you, Senator Lathrop. And thank you for all those who came to testify today on this bill. Obviously this bill probably needs a little work. We need to amend it. As Senator Christensen always said: I'm amendable. (Laughter) Some of the issues I do want to address, though, is what...for instance, there was some talk about shrinkage. Well, that's a criminal investigation and obviously that wouldn't fall under the ten-day rule. As for highly skilled employees, the argument could be made that you address that employee at that time; ask for a waiver and you...and then they sign that. And it's a way around that and it's a way of keeping that under their thumb. That being said, I am amendable to expanding it beyond the ten-day rule. And I do appreciate the...there definitely needs to be some work, clarification, as far as electronic monitoring, what we as a Legislature intend that to mean. And I hope to meet with both parties and to work a bill out in this regard. So thank you very much for your time. Appreciate it. Any questions? [LB674]

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SENATOR LATHROP: Very good. Thanks, Burke. Any questions? I don't see any.
[LB674]

SENATOR HARR: Thank you. [LB674]

SENATOR LATHROP: All right, thank you. That will close our hearing on LB674 and bring us to our own Senator Smith and LB184. Welcome, committee member Smith.
[LB674]

SENATOR SMITH: Good afternoon, Senator Lathrop, and members of the Business and Labor Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and it's rare that I have to spell that name, and I do represent the 14th Legislative District in Sarpy County. It's indeed an honor to speak before you today. I am here today to introduce LB184, which would change the interest rate applicable to an award of workers' compensation benefits in cases in which attorney fees are allowed. Our workers' compensation law allows reasonable attorney fees to be awarded in workers' compensation cases for the following reasons: (1) An employer refuses to pay or neglects to pay for 30 days; (2) The employer files for a review of the judgment and fails to get the judgment reduced; or (3) The employee files for a review and is successful in increasing the award. In all these cases, the employee is entitled to interest on the final award. The interest is figured from when the benefits were payable to when the payment is made. The current law states that the interest rate in these cases shall be the same interest rate as that found in Section 45-104.01. In that section, that section is the section of law that sets the interest rate that is assessed for delinquent payment of taxes for special assessments owed to political subdivisions. This rate is 14 percent per year. Under LB184, the interest rate applied to these workers' compensation cases would, instead, be the same interest rate that applies to all other decrees and judgments. This rate is found in Section 45-103. The rate is defined as two percentage points above the 26-week United States Treasury Bill rate that is in effect the date of the entry of judgment. At this time, that rate is 2.193 percent. To use the interest rate established for delinquent payments to political subdivisions is purely punitive in nature. However, a decision to reduce or increase a workers' compensation award is a judgment, and it is simply more logical to apply the interest rate set in Section 45-103 which, again, applies to all other judgments and decrees. I wanted to be brief in my opening and will let the testifier following me go into more detail with respect to the history of this policy and why LB184 makes sense. So with that, I will end my opening and ask you to please give this bill serious consideration. Thank you. [LB184]

SENATOR LATHROP: Very well. Thanks, Jim. Are there any questions? I see none. Thanks. Bob. How many people are here to testify on this bill? Okay, good. Thanks.
[LB184]

ROBERT J. HALLSTROM: (Exhibit 4) Chairman Lathrop, members of the committee,

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my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business and the Nebraskans For Workers' Compensation Equity and Fairness. I've also been authorized to express, on the record, support on behalf of the Nebraska Chamber of Commerce and Industry, the Greater Omaha Chamber of Commerce, and the Lincoln Chamber of Commerce. Senator Smith has covered the first couple pages of my testimony with regard to the purpose of the bill, which is to change from 14 percent interest to the judgment rate which is currently closer to 2.2 percent. He's also outlined in his testimony the situations in which an attorney fee is awarded when interest rate does apply to these awards on appeal and so forth. What I'd like to go into is a little more justification and background of the historical context within which the original interest rate was set. First, the rate came about on the books and the statutes in Nebraska in, I think, approximately 1983. At that time, if you may recall, and I've gone back and looked historically, interest rates were in the neighborhood of 13 to 15 percent. So I would suggest to the committee that setting the rate at that time at 14 percent was not uncommon, was not viewed in the nature of a penalty for purposes of assessing the interest rate. I've also attached to my testimony a copy of the Nebraska Supreme Court case from 2009, the case of Russell v. Kerry, Inc. As I noted in my written comments, the court went on to suggest that the provisions of 48-125(3) are not intended to be a penalty. It was in a slightly different context as to whether or not interest was payable on the entire amount of an award when there was an appeal. But the issue became that the court essentially said it's not designed to be a penalty, but rather, to compensate the person for the loss of the use of money during the period of time that they have gone without penalty. And we believe that the holding of that case is applicable to the general provisions for interest on appeal and would suggest that we ought to make the changes proposed under Senator Smith's bill, LB184. Be happy to address any questions that the committee may have. [LB184]

SENATOR LATHROP: Very good. Thanks, Bob. Any questions for Mr. Hallstrom? I see none. Thanks, Bob. Anyone else here in support of LB184? Korby. [LB184]

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. I don't really know what else I could add, so in the interest of brevity I'll say, "me too." I think Mr. Hallstrom covered everything. [LB184]

SENATOR LATHROP: Okay. Well, that works too (laughter). Thanks, Korby. Any questions? Senator Wallman. [LB184]

SENATOR WALLMAN: Thank you, Chairman. Yeah, Korby, thanks for being here. Would this lower our insurance premiums if we passed this bill? [LB184]

KORBY GILBERTSON: Will this lower your insurance premiums? I think that would

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probably depend on the number of lawsuits that would be carried forward,... [LB184]

SENATOR WALLMAN: Do we have a lot of lawsuits? Yeah, go ahead. [LB184]

KORBY GILBERTSON: ...and so I couldn't really give you a definitive answer (laugh). [LB184]

SENATOR LATHROP: So that's a "I can't say that it will, and I won't say that it won't." [LB184]

KORBY GILBERTSON: I have no idea. [LB184]

SENATOR LATHROP: No idea. Okay. That's what we needed to hear (laughter). Thank you. Any other questions? Very good. Thanks, Korby. [LB184]

KORBY GILBERTSON: Thank you. [LB184]

SENATOR LATHROP: Anyone else here in...I guess, in support? Anyone here opposed to LB184? [LB184]

TODD BENNETT: Good afternoon. Todd Bennett on behalf of the Nebraska Association of Trial Attorneys. First and foremost, I think what is important to understand when we're dealing with interest in workers' compensation cases is not all cases injured workers are entitled to interest. We're talking a small fraction of cases. And ironically, one of the things that was brought up is whether it's punitive in nature and just how many cases you're going to affect. When you look at the legislative history in 1983, when they basically pushed this forward to make the change to the tax delinquent statute, there were two deterrents of what they were trying to accomplish: (1) delinquent payments on behalf of employers; and (2) needless appeals or meritless appeals just for the tactic to delay. So it was punitive in nature in 1983. And actually that was directly in that legislative history. One thing I would like to point out is, again, not all cases, an injured worker is entitled to interest. There are two things that have to happen. You have to have a proceeding, first and foremost. You have to actually have the hearing. So in all these cases where, if the law is followed, interest is a mute issue. If the law is followed or an employer is found and acknowledges a delinquent payment, they can make a 50 percent penalty under this statute 48-125 and avoid paying interest. So when and why is this bill needed? There's two reasons. One, when you go through a proceeding, a court or a trial court has to find that that delinquent payment, there was no dispute, there was no reasonable controversy that that payment was due and owing. That is a tough burden to prove. But in those cases when it is met, the court can award a reasonable attorney fee, and interest therefore follows. And again, the second reason is, is if an employer appeals a decision and does not obtain that reduction, that entitles a person to an attorney fee and interest, and the same thing through the Court of

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Appeals and the Supreme Court. Ironically, one of the deterrents in the legislative history in 1983 was to avoid all those appeals because at that time there was a significant increase in the appeals being filed. And ironically, when you look at the 2010 annual report from the Workers' Compensation Court, there were 315 decisions in 2010; 72 hearings at the review panel level; and only 21 decisions at the Court of Appeals and Supreme Court level. So we're only talking a smidgin number of cases. And in those cases, ironically, what is at stake is the public's welfare to prompt payment. That's the number one goal. If there's no dispute, prompt payment is what is necessary. In this particular bill, it's just too far-reaching to say let's just change it because it should be for all judgments. And again, not everybody who receives an award is entitled to interest. We're only talking that certain things have to be applied. In that case, the better action is to leave it alone. That interest rate, ironically, is commensurate to Iowa, which is 10 percent, and there is about...every other state who has a penalty provision is 10 percent or higher. Some have 5 percent, but that's the minority. So 14 percent is not out of line when you're talking about what other states do in these scenarios. So I respectfully ask you to oppose the bill. If you have any questions, I'd be glad to answer them. [LB184]

SENATOR LATHROP: Thanks. Thanks, Todd. Any questions? Senator Carlson. Todd, whoa, hang on a minute. Got a question for you. [LB184]

SENATOR CARLSON: Thank you, Senator Lathrop. Mr. Bennett, you...at the early part, you said something about I think an employer could choose a 50 percent or...would you clarify that and give an example? [LB184]

TODD BENNETT: Well, under this statute, 48-125, if there's a delinquent payment where there was no reasonable controversy, there's a 50 percent penalty that is applied to that payment. If an employer wants to acknowledge and pay that payment, they avoid interest. There's no interest... [LB184]

SENATOR CARLSON: So if it was a \$10,000... [LB184]

TODD BENNETT: If \$10,000 was due and owing, the penalty would be 50 percent under 48-125. [LB184]

SENATOR CARLSON: So they could choose to pay \$15,000 instead of \$10,000. [LB184]

TODD BENNETT: There's no choice. They would pay the penalty. Yeah. Under 48-125, there's no choice. There's a 50 percent penalty on all delinquent payments. [LB184]

SENATOR CARLSON: Okay. I thought I heard you say there was a choice. So there's not a choice. [LB184]

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TODD BENNETT: No, the choice would be they could pay the penalty before a hearing and they would avoid the interest. [LB184]

SENATOR CARLSON: Okay, all right. Thank you. [LB184]

TODD BENNETT: You bet. [LB184]

SENATOR LATHROP: Very good. Thanks. Steve, come on up. [LB184]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, appearing on behalf of the Nebraska State AFL-CIO, and we come before you in opposition to LB184. And to pick up on some items that were discussed by Todd Bennett, you know, there's another way to avoid a penalty and interest, and that is where the defendant employer simply goes and hires a doctor that disputes what the treating doctor says. In other words, if you go into a trial and we've got four or five doctors all saying the same thing, it's just kind of an unfortunate reality that there are physicians available for employers and insurers to have review a case, and if that doctor gives an opinion that's opposite, then you've got a reasonable controversy, even though it's several doctors to one, and no interest is awarded in that case. If a worker was injured today and 30 days hence there's nothing paid, so that worker files a petition in the court and gets a hearing date nine or ten months down the road, if there's a reasonable controversy, and the employee wins, the worker wins, they'll just get what's past due. But there's no interest that's automatically due on the past due benefits. The overwhelming majority of dollars awarded by the Workers' Compensation Court don't carry with them interest. Some other things that probably are relevant to this discussion: Our Constitution in Nebraska does not permit individuals to recover punitive damages. The Constitution says that fines and penalties shall be paid to the school district but not to an individual. And so that incentive--we use the word "punishment"--that incentive is not present in Nebraska, and I don't know that that's common knowledge. Even if it were, the case from the mid-'90s, Ihm v. Crawford, says that a worker can't sue the insurance company or the employer for bad faith, to begin with. So we need these incentives to encourage prompt and timely payment. Not to just tell stories, but I tried a case in the last half of 2010, and this was in the district court, and there was...the jury awarded a sum of money. And the defense lawyer and I are on the phone. He says, well, you know, we have to appeal. I said, yeah, I know you do, because the interest that you can get by keeping that money in your account justifies it; you'll come out better in the end. Financial institutions, insurance companies can get a much better rate than the rest of us. And so in that case there was incentive to appeal just on a financial basis. This wouldn't be the exact same interest rate, but it is one of the few incentives that employees enjoy in Nebraska for prompt and timely payment. And I think to reduce the interest rate respectfully would drive up appeals and perhaps drive up defense costs in the process. So I thought I heard, on February 14 when we were here, that workers' compensation rates are down in Nebraska overall, so we certainly aren't facing a crisis or something like that. So thank you for consideration

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of my comments. [LB184]

SENATOR LATHROP: Very good. Thanks, Steve. Are there any questions for Mr. Howard? [LB184]

STEVE HOWARD: Thanks. [LB184]

SENATOR LATHROP: I don't see any. Anyone else here opposed to LB184? Anyone here in a neutral capacity? Seeing none, Senator Smith, you're good to close on LB184. [LB184]

SENATOR SMITH: I'll waive closing. [LB184]

SENATOR LATHROP: (Exhibits 5, 6, and 7) And he waives closing on LB184. We do have two letters in the record, and the record will reflect...pardon me, three: one from the Department of Administrative Services dated March 7 in support; one from the Nebraska Restaurant Association, Jim Otto, dated March 7, in support of LB184; and the Nebraska Retail Federation letter dated March 7, also in support of LB184. That will close our hearing on LB184 and bring us to LB341, and again, Senator Smith. [LB184]

SENATOR SMITH: Good afternoon again, Senator Lathrop and members of the Business and Labor Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County, and I'm here today to introduce LB341. LB341 clarifies that workers' compensation benefits are income for purposes of a child support order and are subject to garnishment regardless if the withholding notice comes from Nebraska or it comes from another state. The bill further clarifies that for purposes of workers' compensation the insurance carrier is deemed to be the employer as recognized by both the Workers' Compensation Court and the Nebraska Supreme Court. With respect to the withholding of benefits for child support, LB341 provides that these benefits are subject to withholding under the Income Withholding for Child Support Act and the Uniform Interstate Family Support Act or the UIFSA. Currently, our statute provides for withholding only under the Income Withholding for Child Support Act. By including the UIFSA in our workers' compensation law, we are ensuring that garnishment orders from other states are recognized and enforceable. As you know, the federal government required states to adopt a UIFSA to develop uniformity throughout the country and to make it more difficult for noncustodial parents to skip their obligation to pay child support by moving from state to state. I anticipate that if there are any opponents to this bill their argument will be that LB341 is unnecessary because withholding can already be accomplished through the Income Withholding for Child Support Act. This is true. However, there has been and continues to be some question as to whether or not withholding orders issued by another state are valid unless registered in Nebraska. Some claimants' attorneys have challenged out-of-state orders and have taken the position that those orders are only valid if

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registered in Nebraska. This question only leads to a continuous legal wrangling that prolongs the payment of child support. It also puts insurance carriers in jeopardy of being in violation of paying an out-of-state withholding order, subjecting them to lawsuits, fines, and potentially criminal charges. Out-of-state child support enforcement agencies draw their authority to issue such orders from the UIFSA. Citing this act in our workers' compensation law clarifies that withholding orders from other states are recognizable in Nebraska. There is no reason we should not clarify this issue unless we want to maintain a public policy that invites lengthy and costly legal battles that do nothing more than keep needed support funds from children. With that, I'll close my testimony and ask you to please advance LB341. Thank you. [LB341]

SENATOR LATHROP: Thanks, Jim. Hey, before you leave that seat, how many people are here to testify in support, if any? Two? Anybody in opposition? Okay. I just wanted to know if you were going to open and no one was going to testify. Senator Harr. [LB341]

SENATOR HARR: Thank you, Senator Lathrop. And I just...I enjoy your rhetoric on that, your opening. My question though is the registration or notice. Is notice...under this, would notice be given to the employee whose wages would be garnished...or excuse me, compensation would be garnished? And let me state this, my concern: My concern is that...and I'll be...that a man is owed child support from the wife; the wife has a claim; and then that insurance company pays the male or the husband, ex-husband, when the claim wasn't proper. And so I think if we're going to pay that person, there has to be some notice in case, in this instance, the wife, ex-wife, has an issue with the fact that they owe child support or not. [LB341]

SENATOR SMITH: So your question is regarding notification. [LB341]

SENATOR HARR: Is there notice--yeah. And I think that's why registration is required, and so if there is some sort of notice...is there any type of notice under this bill? [LB341]

SENATOR SMITH: You know, I'm going to defer to those that follow me and allow them to answer that question for you, if you don't mind, sir. [LB341]

SENATOR HARR: Perfect. Thank you. I appreciate that. [LB341]

SENATOR LATHROP: That looks like all the questions. [LB341]

SENATOR SMITH: All right. [LB341]

SENATOR LATHROP: Thanks, Jim. We'll have the proponents come forward, please, to LB341. [LB341]

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BRENDA SPILKER: (Exhibit 8) Good afternoon, Chairman Lathrop and members of this committee. My name is Brenda Spilker. I'm a partner at the law firm of Baylor Evnen and I'm here testifying in support on behalf of Nebraskans for Workers' Compensation Equity and Fairness. I have some written testimony that's being passed out. I practice in workers' compensation. I've had some issues come up with some questions on how employers and insurance companies should act when they've received an income withholding notice that was issued in another state, and I'm here to talk about some problems that I've seen. I'm an advocate for LB341 because it would ensure that children are receiving the child support payments for which they're entitled. LB341 puts the children first to make sure they are not lost in red tape and bureaucracy. The two problems that I've seen that LB341 would address and provide clarification are (1) kids living outside Nebraska are not receiving the child support that a court has found that they're entitled to. These are situations where we already have had a determination in another state that a parent is obligated to pay child support. That parent has now come into Nebraska and that out-of-state agency has followed that parent here to Nebraska to try and attach workers' compensation benefits that they're receiving. The second issue that LB341 would address and provide clarification to is (2) workers' compensation insurance carriers who have complied with an out-of-state child support income withholding order are being asked to pay benefits twice. I've seen situations where insurance companies have received the income withholding notice. They have complied with that. They have paid a portion of the workers' compensation benefits to that out-of-state agency for the child support, and then that employee here in Nebraska, and their attorney, has come and said that that was paid in error and then asking that insurance company to pay those benefits twice. We already have, in Nebraska, through 48-149, part of the Workers' Compensation Act, recognition by this Legislature that child support can be garnished or attached as far as workers' compensation benefits paying for child support. We also have here, that the Legislature has recognized, the Uniform Interstate Family Support Act that allows for ease of out-of-state orders to come in and attach and garnish workers' compensation benefits without the need to register. And that's the big issue here, that registration requirement is a big time commitment. It involves filing it with the district court. There's a whole list of things that need to be done. And what we're trying to do is simplify the whole process so the child support benefits can be paid to the children who are not living in Nebraska and to make sure that they're getting their benefits. [LB341]

SENATOR LATHROP: Very good. Thanks, Brenda. Can I ask a couple of questions, if you don't mind? [LB341]

BRENDA SPILKER: Sure. [LB341]

SENATOR LATHROP: Currently, in Nebraska, if you owe child support...let's say that I owe child support to my ex-wife, and I get hurt at work and I'm getting temporary total disability. Can the processes that are in place right now intercept my work comp check

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to pay child support? [LB341]

BRENDA SPILKER: Yes, and that's not really an issue. That's happening now every day. And the injured employee hasn't had a problem with the income withholding when it's issued here in Nebraska, because we have in place and in process the ease to get those workers' compensation benefits to go, a portion of it, to child support with income withholding. And what we're trying to do through this amendment is to have the same ease that we already have for an order in Nebraska when that order is been out of state. [LB341]

SENATOR LATHROP: Okay. Now I've got to ask, and I mean this in all sincerity, where does Work Comp Equity have a dog in this fight? [LB341]

BRENDA SPILKER: Because we have seen... [LB341]

SENATOR LATHROP: Why do you care if...why...I'm just curious what you're...what the...if you're representing Work Comp Equity, what interest do they have in...? I appreciate the benevolent, you know, we're worried about the kids thing, but generally there's something else there, and I'm trying to figure out why Work Comp Equity is worried about child support orders for workers that live here and have kids in another state. [LB341]

BRENDA SPILKER: The insurance companies are being asked to pay those benefits twice and attach... [LB341]

SENATOR LATHROP: How does that happen? Explain it so that everybody here understands it. [LB341]

BRENDA SPILKER: Attached to my written testimony there is a motion that is being filed right now by attorneys on behalf of injured employees saying: Insurance company, you have paid benefits erroneously to my kids out of state, so now you need to pay those benefits a second time to me, plus a 50 percent waiting time penalty, plus interest, plus an attorney fee. And we're having to fight over that to try and figure out... [LB341]

SENATOR LATHROP: And I'm...if that's what's happening, I...you know, I can appreciate the need for clarification. I just want to make sure...because I do a little bit of work comp. Most of the people here don't do any, and I'm not sure it's clear to me how this happens. So let's take Iowa and Nebraska. Dad is living in Nebraska, and where...in this situation do his kids have to be living in Iowa? Like he gets divorced in Iowa and his kids are living in Council Bluffs. There's an order for child support and then he gets hurt, and then what? Do they send some kind of a garnishment out of...? [LB341]

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BRENDA SPILKER: Out of Iowa. [LB341]

SENATOR LATHROP: Out of Iowa. [LB341]

BRENDA SPILKER: The child support enforcement agency in Iowa sends an income withholding... [LB341]

SENATOR LATHROP: And they're sending it to whom? The insurance carrier? [LB341]

BRENDA SPILKER: To the insurance carrier, because they are the ones paying the benefits to the employee. [LB341]

SENATOR LATHROP: And the insurance carrier gets it and says I just got a...I got to withhold and transmit this... [LB341]

BRENDA SPILKER: They start sending benefits to Iowa and then the... [LB341]

SENATOR LATHROP: They start sending...okay. [LB341]

BRENDA SPILKER: Sending part of the work comp benefits for the Iowa child support. [LB341]

SENATOR LATHROP: At what point in this process does the injured worker get to come in and say: Wait a minute, that child support order has been modified; I think I ought to modify my support obligation because my pay is now cut significantly. Where do they get wind that this is even happening? [LB341]

BRENDA SPILKER: Under the income withholding notice has to be...the employee has to receive notification by the insurance company that they've received that income withholding notice. [LB341]

SENATOR LATHROP: Is that after the fact? In other words, the insurance carrier, Liberty Mutual, sends the check off to the state of Iowa and then says: Guess what, hurt guy; part of your work comp check went to the state of Iowa. [LB341]

BRENDA SPILKER: The Uniform Interstate Family Support Act states that immediately the employer, or the insurance company in this case, would need to notify the obligor or the parent. [LB341]

SENATOR LATHROP: And maybe some of the lawyers that are opposing this will explain this better, but is that after the fact? Does the hurt guy get to say: No, no, no, don't send that there; I've got a reason why you shouldn't--or does it happen and then he is told of it after the fact. [LB341]

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BRENDA SPILKER: The income withholding is sent to the insurance company. The insurance company notifies the employee that they've received it, and then the employee can contest that income withholding and have proceedings here in Nebraska. [LB341]

SENATOR LATHROP: Okay. And one more question for you. How many states are doing what you're asking us to do right now? Do you know the answer to that one? [LB341]

BRENDA SPILKER: Well, I do not know for sure. I think because this is a uniform law, a majority of the states do have the Uniform Interstate Family Support Act. And when I have spoken with the out-of-state child support enforcement agencies and said: Hey, my client has received this, but I'm getting a lot of negative feedback from the injured employee's attorney saying that this isn't valid unless it's registered in Nebraska; what am I supposed to tell them? And these out-of-state child support enforcement agencies are telling me: Well, you just need to tell them we have this Uniform Interstate Family Support Act. So I do believe, based upon what I'm hearing, that this is pretty universal... [LB341]

SENATOR LATHROP: Okay. [LB341]

BRENDA SPILKER: ...to try and make it easy, you know. [LB341]

SENATOR LATHROP: Very good. Thanks, Brenda. Senator Carlson. [LB341]

SENATOR CARLSON: Thank you, Senator Lathrop. Now in the discussion between the two of you, if somebody in Nebraska has child support due in Council Bluffs and is working, and that's being garnished and sent over there, and now through work comp and disability the income changes, I don't understand why, if it's me, why I would have any say about that at all? The law says I have to provide for the child or children. So why would I get a notice beforehand so that I could say, don't do that? I don't understand why I would even have that privilege. [LB341]

BRENDA SPILKER: As the parent? [LB341]

SENATOR CARLSON: Yes. [LB341]

BRENDA SPILKER: Well, the law says that if an employer or an insurance company receives an income withholding notice, they do need to let the parent know that they've received that and they're going to start taking a portion of the workers' compensation benefits and pay it to the child support. [LB341]

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SENATOR CARLSON: But...and I'm asking you the question because I'm not supposed to ask Senator Lathrop a question, but he said that the employee doesn't even...if this happens after the fact, he doesn't have the choice of saying "No, don't do that." Well, I don't know why he should have a choice of saying "No, don't do that." If I'm the injured person but I'm supposed to be supporting a child over there, regardless of the source of the dollars, whether it's work comp or salary, I need to do that. So I understand the need to notify but I don't think the purpose of notification is to allow me to say I don't want to do it. [LB341]

BRENDA SPILKER: I guess I would tend to agree, and I think what we kind of do is we have two different things going on here and two different issues. Because, number one, we've already had a court determination in that state of Iowa that you, the parent, have an obligation to pay child support. If you disagree with the amount, if the information has changed where your salary is not the same, you can go back to Iowa and modify that order. We already have, in these cases, an order, a court determination that this parent is obligated to pay. [LB341]

SENATOR CARLSON: Okay. [LB341]

BRENDA SPILKER: And we're just trying to make it easier without having to get it registered in Nebraska so that child can get their obligation and their benefits. [LB341]

SENATOR CARLSON: Okay. Thank you. [LB341]

SENATOR LATHROP: Senator Harr. [LB341]

SENATOR HARR: Thank you, Senator Lathrop. So basically all this law does is currently you can go after that money in the state of Nebraska but you have to register. Correct? [LB341]

BRENDA SPILKER: That's what the argument is right now that we're hearing... [LB341]

SENATOR HARR: Okay, so all you have to do... [LB341]

BRENDA SPILKER: ...from the injured workers. [LB341]

SENATOR HARR: So all this would do is get rid of the requirement to register. Is that your understanding? [LB341]

BRENDA SPILKER: Okay. Yes, and I think that's a very good point. I guess I should have made that more clear. Nobody is saying that this individual parent is not obligated to pay or a portion of their workers' compensation benefits should not be going to child support. They're just trying to put some additional hurdles in place before that will

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happen. They're making it more difficult. But everybody agrees that child... [LB341]

SENATOR HARR: But all it is, is register. [LB341]

BRENDA SPILKER: ...is entitled to the money. [LB341]

SENATOR HARR: And if there's no register, you guys don't pay right now, do you? [LB341]

BRENDA SPILKER: I'm sorry? [LB341]

SENATOR HARR: If the requirement now is for you have to register in order to receive this payment, if there's no registration, do you guys pay or not pay right now? [LB341]

BRENDA SPILKER: The insurance companies are caught between a rock and a hard place because they have the out-of-state child support enforcement agency, Iowa, saying, "If you're not going to be sending us part of those work comp benefits, we're going to go after you and we're going to sue you and we're going to come after you." So most insurance companies are, right now, paying. [LB341]

SENATOR HARR: But wouldn't you have a defense in saying, "Hey, we're more than willing to pay it. Just it has to be registered here. We'll even show the other side how to do it."? But I mean if the requirement is merely...I mean I'm confused. How can Iowa go after you if the requirement is in Nebraska you have to be registered? [LB341]

BRENDA SPILKER: Because Iowa is saying, "You don't have to register it in Nebraska because we have the Uniform Interstate Family Support Act." That's the problem here. We're trying to just clarify, yes, we do have the Nebraska Uniform Interstate Family Support Act. So let's make sure everybody understands that and put that language specifically in 48-149, the Work Comp. [LB341]

SENATOR HARR: Has Nebraska signed on to the Uniform Interstate Family Support Act? [LB341]

BRENDA SPILKER: Yes. We have it right now. It's the law. Yeah. It's... [LB341]

SENATOR HARR: Okay. That's the point I didn't understand. [LB341]

BRENDA SPILKER: Yeah, we have that. It is 42-701 is where it starts: 42-701. We have that in place. The Legislature has the Uniform Interstate Family Support Act which is supposed to make it easy and not have this registration requirement. That's why we want to just clarify for everybody that, yes, that's the law; we don't have to register it and put it within the 48-149 Work Comp. [LB341]

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SENATOR HARR: So your argument is this is just cleanup language. [LB341]

BRENDA SPILKER: Cleanup. Yeah, let's get them together and make sure everybody is on the same page, that it doesn't have to be registered. [LB341]

SENATOR HARR: All right. I have a little better understanding of it. Thank you. [LB341]

BRENDA SPILKER: Okay. [LB341]

SENATOR LATHROP: It's always interesting to sit in this chair and then when somebody is going, "Oh, this is just cleanup language," and people behind you, some people are going (indicates positive), other people are going (indicates negative). (Laughter) So, like everything else, there's always two sides to every story. Senator Cook may have had a question for you. [LB341]

SENATOR COOK: I do. And having...thank you, Mr. Chair. And not having had the opportunity to divorce or collect worker comp or child support, I need some real elemental information about notification, because I...kind of antenna went up in my head. So I am a person who agrees that I must support my children who happen to reside in another state right now. And I am working; I'm doing fine. I'm injured; I'm collecting work comp. And what I'm understanding from this conversation is that my first notification that X dollars have been taken out of, let's say, my checking account is when I get the...is when I either double-click on it, on-line, and notice, well, wait a minute, that still went out even though my income was here and now it's here, or when I get the notification from, let's say, Liberty Mutual. That's the first time I find out is after that money has been--and I owe the money; I agree--but that's the first opportunity. I say, "Oh, shoot, now I need to follow up and make certain that I can have appealed the fact that now I'm earning half or a third or however much I would be earning after I was injured." Is that correct? [LB341]

BRENDA SPILKER: You were already aware when the court entered the order... [LB341]

SENATOR COOK: Yes, that I owe this much. [LB341]

BRENDA SPILKER: ...in Iowa. Yeah, you were already aware... [LB341]

SENATOR COOK: Yes. [LB341]

BRENDA SPILKER: ...that you owed \$500 a month in child support. [LB341]

SENATOR COOK: Right. [LB341]

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BRENDA SPILKER: You haven't been paying the \$500 a month and you're in arrears, okay? [LB341]

SENATOR COOK: Oh. I didn't know I was in arrears. [LB341]

BRENDA SPILKER: That's the problem here. Okay, you haven't been paying your child support, okay? So they're coming after you now because you've moved to Nebraska and you do have an income source. [LB341]

SENATOR COOK: Ah. Okay. [LB341]

BRENDA SPILKER: So they're going to say... [LB341]

SENATOR COOK: That clarifies. I know that and that's wrong. Okay. [LB341]

BRENDA SPILKER: Yeah. [LB341]

SENATOR COOK: Thank you very much. [LB341]

SENATOR LATHROP: Thanks. Oh, hang on a minute. Senator Carlson has got a question. [LB341]

SENATOR CARLSON: Well, just a comment. Knowing Senator Cook, I think if she found out she owed money, she would probably say, "oh shoot." But if she found out it was in arrears, she would still probably say, "oh shoot." [LB341]

SENATOR COOK: I would say: Oh shoot. [LB341]

SENATOR CARLSON: Others would say something else. [LB341]

SENATOR COOK: Oh. (Laugh) Thank you, Senator. [LB341]

SENATOR LATHROP: Okay. Thanks very much for your testimony and your patience with the committee. Bob Hallstrom--a Work Comp Equity and Fairness double-team. [LB341]

ROBERT J. HALLSTROM: (Exhibit 9) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business in support of LB341. I've been authorized to express support on the record for the Nebraska Chamber of Commerce and Industry, the Greater Omaha Chamber of Commerce, and the Lincoln Chamber of Commerce. I

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think the committee delved into most of the issues that I was going to touch on in my testimony. But perhaps, hopefully without adding to the confusion, the situation essentially is this: We have a Uniform Interstate Family Support Act that says on its face...it's been adopted in Nebraska, and it says on its face that there is only a requirement to receive notice, and once you receive the notice you should be authorized to withhold the funds, in this case from the employee's workers' compensation benefits, to apply towards unpaid child support obligations. There is no requirement for it to be registered on the face of the statute. Nonetheless, we are facing, as Ms. Spilker noted, motions that when you have paid out those funds pursuant to the notice as the law seemingly tells you to or authorizes you to, you're faced with a motion that says having done so and not having preserved those funds to pay out as workers' compensation benefits, you're now faced with a motion that says we want you to pay waiting time penalties, attorney fees, and interest. And so that is the horns of the dilemma, if you will, that self-insured employers or insurance carriers find themselves in. We certainly support the policy of providing payments to child support, but we're here today principally for the situation to provide clarity to those who have to pay. The law seems to tell us we can rely on the notice but yet we're still facing these types of motions. And we'd just like to have that clarified. [LB341]

SENATOR LATHROP: Bob, can you tell me, it sounds like something that you say this happens to us and you talk about it like it's happened a number of times. Is that true? [LB341]

ROBERT J. HALLSTROM: Yes, when... [LB341]

SENATOR LATHROP: What are the courts doing right now with it? You want a clarification and are we getting decisions that go one time they tell the insurance company you've got to pay twice; one time they tell...I mean... [LB341]

ROBERT J. HALLSTROM: Yeah. I... [LB341]

SENATOR LATHROP: What's happening when this comes up? [LB341]

ROBERT J. HALLSTROM: Senator, I'm not aware and maybe you misspoke or could have spoken to this had the question been asked when she was in the chair. I'm not aware of any cases of that type that have been decided under the Uniform Interstate Family Support Act. If I understood when I was visiting with Ms. Spilker before the hearing, under the uniform Income Withholding Act, which is recognized and addressed in our workers' compensation statutes and for which I believe there is a registration requirement under that particular uniform interstate act, that in that case a registration requirement as one would expect has been upheld because it's part of the underlying legislation or statute, which our argument, in this case, would be the underlying statute says "no registration required." We ought to be able to act affirmatively upon the mere

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notice. [LB341]

SENATOR LATHROP: Okay. Good. Thanks, Bob. Oh, I'm sorry. Senator Wallman has a question for you. [LB341]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks, Bob, for being here. This here...I should have asked Ms. Spilker, but with Colorado, would this pertain? I happen to know people that had a little trouble with Colorado on this issue. Would this pertain to Colorado then too? [LB341]

ROBERT J. HALLSTROM: I would assume any state that has adopted the uniform act and has the ability to send the notice into Nebraska under that act, we've adopted it and we will respond accordingly to that notice. [LB341]

SENATOR LATHROP: Very good. Senator Carlson. [LB341]

SENATOR CARLSON: Thank you, Senator Lathrop. Bob, initially...and you started to give a little bit of an explanation of this, which was helpful to me. You used the term "seemingly." Now if an insurance company knows that they're supposed to pay a portion of that to another state for child support, it's cut and dried, isn't it? It wouldn't be "seemingly" follow the law. They either are or they aren't. [LB341]

ROBERT J. HALLSTROM: Well, you would think, Senator, that if the law says that you can act and rely upon the notice, that doing so would not require you to face a motion for waiting time penalties, interest, and attorney fees. But from Ms. Spilker's testimony, there are motions currently pending or have been pending in the past. And again, Senator, I apologize. I don't know if there have been anywhere there has been a formal decision announced where the court came down on one side or another. I understood from Ms. Spilker's testimony that that was a pending motion. [LB341]

SENATOR LATHROP: Senator Harr. [LB341]

SENATOR HARR: Thank you, Senator Lathrop. I have in front of me the Uniform Interstate Family Support Act and I'm looking at 42-736, which states, "Registration of order for enforcement. A support order or an income withholding order issued by a tribunal of another state may,"--not must--"may be registered in this state for enforcement." And then it says "Procedure to register order for enforcement," under 42-737. And it's really not in-depth, to be honest. I guess my question is, does this amend that? It looks like we would still have a requirement to register. How would this eliminate that? [LB341]

ROBERT J. HALLSTROM: Well, there's not a requirement. It's permissive, Senator. [LB341]

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SENATOR HARR: Yeah, it's a "may." And that's what I was...I was getting at the "may" versus the "must." [LB341]

ROBERT J. HALLSTROM: Yeah. I think in all honesty, Senator, you know, you can look at it, and we had some discussions of this part. If we're looking for clarity, you could say: Make the law so that we know we can rely on the notice, or conversely, make the law so we have to have it registered and we can rely on that. But that goes against the grain of what the Uniform Interstate Family Support Act is designed to do, which is to provide a streamlined mechanism and ability for the child support payments to be made. We deferred simply to go that route because that's what's on the books today, which is you're not obligated to record it. You could certainly choose to resolve the issue by saying somehow notwithstanding the permissive nature under 42-729, or whatever statute you cited, that there must be a recording in order for it to apply to workers' compensation benefits. [LB341]

SENATOR HARR: Well, and I guess my issue is, if the issue is certainty, we already have a tool for certainty, which is registration. And I guess I'm not sure why we want to get rid of this notice provision or this registration. It creates a little bit of (inaudible). [LB341]

ROBERT J. HALLSTROM: Yeah, Senator, I don't...you keep saying the requirement for registration. There is no requirement in the statute... [LB341]

SENATOR HARR: Fair. Well, let me...yeah. [LB341]

ROBERT J. HALLSTROM: ...under the Uniform Interstate Family Support Act. [LB341]

SENATOR HARR: Fair. Fair. I appreciate that. But I guess if the goal of this is to provide certainty, it would seem a lot easier just to go from "may" to "must," and that's just more of a comment than a question. [LB341]

ROBERT J. HALLSTROM: Yeah. And, Senator, that certainly would be one way to skin the rabbit. Then you're talking, though, about the other policy decision as to whether or not having adopted the uniform act, do we want to make that inroad... [LB341]

SENATOR HARR: Fair. Fair. And I think it... [LB341]

ROBERT J. HALLSTROM: ...in terms of a nonuniform amendment. And that's a policy decision. [LB341]

SENATOR HARR: Yeah, and I think it...as a policy decision, I think it's also fair to say that we in Nebraska often vary in small parts from uniform acts. [LB341]

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ROBERT J. HALLSTROM: I would not disagree. [LB341]

SENATOR LATHROP: Okay. Thanks, Bob. [LB341]

ROBERT J. HALLSTROM: Thank you. [LB341]

SENATOR LATHROP: Anyone else here as a proponent? All right. We'll take opponents to LB341. Welcome back. [LB341]

TODD BENNETT: Good afternoon. With all due permission, I would like to see what Ms. Spilker handed you, because I believe it was my case, if I could? I guess I didn't realize I'd find I would have to try this case twice, especially after the fact, but. This is not about what is uncertain or certain. What is certain is a transfer of foreign judgment. Simple as that. That is a requirement under 48-149. This is not a case of child support payments in Nebraska. If there's any order or judgment in Nebraska, the Nebraska Child Support Payment Center receives those orders and child support is taken out whether you're working or not. What this involves is the Uniform Family Act that they want to include in this. That is a statute that is used when somebody is physically working and an employer gets a notice of that child support obligation. There's no issues there. What this involves is an injured worker who is no longer working, receiving workers' compensation benefits. I don't want to retry my case but I feel attacked somewhat saying this happens all the time. This happens only on a handful of cases. But when it does, I will tell you situations like this, this is how it comes about. There's an injured worker who works for an employer in Nebraska, lives in Nebraska. The carrier is in Missouri. The child support obligation came from Kansas, which state law applies. What they like to do in the payment centers is send that notice by mail once they get wind that there's, hey, he's got a compensation claim out there. The Kansas obligation will send it to a Missouri carrier. A Missouri carrier will pay it to the state of Kansas. That's an example. And I will tell you what happened in the other case when I filed a motion dealing with this scenario is I can tell you my client didn't have notice, didn't have a clue what he was getting paid. His average weekly wage was \$1,200, which is reduced to a state maximum of \$691 in 2010. His child support obligation should have been 50 percent of his comp rate. Instead, because he had arrears, they miscalculated, took the entire check for six weeks and he had no money coming in. Now you can imagine when that client comes into my office what is the state of the law. Well, Kansas should have transferred that judgment to the state of Nebraska. It's a simple procedure. It's a due process. It's due notice. Now this is not an attempt to avoid paying child support at all. This is an attempt if they are so worried about being penalized by an insurance company for paying child support, transfer the order. Ironically, the...Jerry McGuire came to mind when you asked what does the court say, Senator Lathrop. They say show me the order. And when there's no order, payment is made to the injured worker. If there's an order, then there's an obligation and there's a garnishment under 48-149,

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and that garnishment could be up to 50 percent, could be up to 65 percent, depending if they're in arrears or had a household, etcetera. So what this involves is due process, due notice. This isn't about avoiding payments. It's giving an injured worker the right to have a notice in advance of withholding. I can tell you I've spent more time...I don't get paid for this in particular, but I've spent more time trying to sort out proper credit, proper calculation. I'm still dealing with a case in Des Moines that happened six months ago where they still got payment, received it, and my client has no credit and he's still getting a judgment order saying: You are in arrears. That's not fair. And if they want to be Nebraskans in Equity, transfer the order. It's pretty doggone certain. It's certain. Everybody knows where you stand. Ask the presiding judge of the court, show me the order. If there's no order, everybody knows where you stand. If they transfer the order, it goes to the Nebraska Child Support Payment Center. The payment center sends it. It gives notice to the court. Everybody has got notice. Simple as that. [LB341]

SENATOR LATHROP: Okay. Senator Carlson. [LB341]

SENATOR CARLSON: Thank you, Senator Lathrop. Mr. Bennett, and what you've told here I would have no problem at all with the way you handled that case. But you're representing what appears to be a deadbeat dad that is in arrears, so he probably got what was coming to him. [LB341]

TODD BENNETT: Okay. With all due respect, at the time he was in advance...or I should say had no qualms of paying his child support. He was paying. When he got hurt, he didn't get any checks. Then when he is asked: Well, where's my checks? I can guarantee you, like I said, if I want to try this case, there was a reason why I filed that motion. And if we want to hear about frivolous motions...I won't file it because I've got to go in front of a judge and support my case. And I can guarantee you I'll try this again today if I had to. But in those cases, I've got plenty of people willing to pay--but give them notice of what they're entitled to and give them proper credit. The only way to do that is to transfer the judgment. It's a simple process. To sit here and say it's time-consuming and we're just trying to streamline, it doesn't take that long to transfer it to a county attorney in this jurisdiction to get an order. [LB341]

SENATOR CARLSON: Thank you. [LB341]

TODD BENNETT: You bet. [LB341]

SENATOR LATHROP: Okay. Thanks, Todd. [LB341]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, on behalf of the State AFL-CIO. And although we are in opposition to LB341, I wish to state that very few forces or movements in the United States or the state of Nebraska have done more to support the children of working families, to feed the children of working families, to educate

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them, than the labor unions of the United State and of Nebraska and the movement behind it. So we're certainly not here saying we're in favor of deadbeat parents. But I do wish to point something out in terms of the discussion, Senator Carlson, about the notice. This isn't a case where the employee can just opt out. If they get the notice, they can't say, "Oop, nope, not for me; I don't want to pay. Send those dollars to me and I'll make sure that my child support is paid." The notice is something akin to a courtesy but it doesn't give that employee the right to somehow elect not to have the withholding. It's a garnishment. So that's the point that I wanted to make there. I don't know of any Supreme Court decisions or Court of Appeals decisions where an employer or an insurer has been required to pay double. I suggest at this stage of the discussion, if there was one out there where 50 percent penalties and interest and attorney fees and double payment was the case, then you would know about it at this stage. There's a simple cure here. If we want to make it simple and straightforward for insurers to know exactly what to do, require that the out-of-state judgment be registered in Nebraska and then a non-Nebraska registered judgment would be of no effect. And that's the way it is with nonworkers' compensation out-of-state child support enforcement. It's not that big a deal. You get a certified copy and you go to the district court and register it. You don't have to relitigate the terms. You don't get to start over with new child support tables or things like that. And so to the extent that the suggestion is made that this is an easier, simpler, more streamlined method, I'd suggest that just using one state and one district court in Nebraska is easier than trying to do the accounting of 49 other states and the laws there. So we think parents should support their children, but we think it ought to be done the way that it's done with other child support orders. And to eliminate any confusion, if we just have a statute that says when you file it, you file it foreign judgment in Nebraska, then we all know and there would be no cause for confusion, so. That's all I have. Thank you. [LB341]

SENATOR LATHROP: Very good. Thanks, Steve. Any questions for Mr. Howard? I see none. [LB341]

STEVE HOWARD: Thank you. [LB341]

SENATOR LATHROP: Anyone else here in opposition to LB341? Anyone in a neutral capacity? Senator Smith to close. He waives close. That will close our hearing on LB341 and bring us to our own Senator Carlson and LB245. [LB341]

SENATOR CARLSON: Senator Lathrop and members of the Business and Labor Committee, I am Senator Tom Carlson, spelled C-a-r-l-s-o-n, from District 38, here to introduce LB245. LB245 would provide that an employee filing a claim for workers' compensation benefits must supply the employer compensation insurer, risk management pool, or self insurer, upon request a patient waiver entitling the appropriate insurance group to obtain all the employee's previous hospital and medical records. There is a provision in the bill to protect sensitive medical records such as

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previous treatment for sexual abuse, HIV, reproductive health issues, and alcohol or controlled substance abuse. Mental health conditions would not have to be divulged unless the employee was seeking benefits for mental health injuries. The reason for this bill was brought to me...the reason it was brought to me is to provide a timely means to investigate claims. Current law imposes an obligation on insurance carriers and self-insured employers to investigate all workers' compensation claims filed by employees. LB245 would reduce costs associated with litigation by minimizing the discovery process and reducing filing lawsuits in other states to obtain the information. There is no fiscal impact to this bill. There are others here to further explain the bill. I'd be happy to try to answer any questions you may have. [LB245]

SENATOR LATHROP: Very good. Any questions for Senator Carlson? [LB245]

SENATOR CARLSON: And I think you're going to mention this: There are two letters of support that you have. [LB245]

SENATOR LATHROP: (Exhibits 10 and 11) I am going to mention that and I can do it now as well as any other time. The Nebraska Restaurant Association is in support. They sent a letter dated March 7, and the Nebraska Retail Federation, both of them signed by Jim Otto, also a letter of support. Thank you, Senator Carlson. Anyone here in support of LB245? [LB245]

ROBERT J. HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business, in support of LB245. I've also been authorized to express on the record the support of the Nebraska Chamber of Commerce and Industry, the Greater Omaha Chamber of Commerce, and the Lincoln Chamber of Commerce. Senator Carlson has gone through the basic components of the bill in terms of providing a requirement for a patient waiver. When we say requirement, that's a little bit of an overstatement. The employee can choose not to provide the information that would be allowed under a patient waiver. But if they do so, the penalty provisions under the Workers' Compensation Act would be tolled until such time as the waiver was obtained, after which the employer then would have 30 days within which to make payment of the medical claims or whatever types of benefits might be available. Basically, what we run into is a situation that before...once litigation is filed, clearly through the discovery mechanisms, these types of records can readily be obtained. Our position would be, in order to potentially avoid unnecessary litigation, why not allow, like many other states have, to have this patient waiver, so that the insurance carrier or the self-insured employer can obtain this information up front while they are investigating the initial claim and the decision on whether to pay or not pay the benefits? There's also an issue with regard to the obtaining of information from medical providers outside of the state, if that would be the case, that you may have to go into a special litigation or

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lawsuit in that case to obtain those records, as I understand it. So this again would provide that information up front. If it is not provided, for whatever reason, in the employee's discretion, it would simply toll the penalties that might otherwise apply for not having made timely payment. Be happy to address any questions. [LB245]

SENATOR LATHROP: Thanks, Bob. Any questions for Mr. Hallstrom? Senator Harr. [LB245]

SENATOR HARR: Thank you, Senator Lathrop. And I like this bill. I just have a couple of questions about it. Number one, why is HIV or human immunodeficiency virus included and not STDs, sexually transmitted diseases? [LB245]

ROBERT J. HALLSTROM: Senator, this bill was introduced probably back in about 2003 or 2004. At that time, while I don't suspect we had an agreement with the trial lawyers, we had at least discussed some sensitive medical records that would be excluded, and that was the laundry list of items that are on there. Certainly would not be averse to having something like that added to the list, if appropriate. But those were the types of issues that we at least had discussions on. That bill was advanced to General File, went no further, and this is the next time around the block for us. [LB245]

SENATOR HARR: Okay. And I guess my next question is, the medical record requirement seems overly broad. Why wouldn't it be limited to just records related to the injury, any previous injuries? [LB245]

ROBERT J. HALLSTROM: Well,... [LB245]

SENATOR HARR: If I have a back injury, why does it matter that I hurt my foot 10, 20 years ago, or broke my finger? [LB245]

ROBERT J. HALLSTROM: Senator, I think for ease of getting those records from the providers might be one issue in terms of asking for the records themselves, unless otherwise excluded under the statute, instead of saying you can pick and sort out anything that might be related to a back injury. [LB245]

SENATOR HARR: Okay. And then finally, there's an immunity clause in there on page 7, and what is...why is it that you think an immunity clause is necessary? [LB245]

ROBERT J. HALLSTROM: That was put in there to provide protection for the medical community in making the response that was also an issue that was discussed with the trial lawyers back in 2003, and one that I would rather imagine, among other things, they would suggest ought to be removed from the bill. [LB245]

SENATOR HARR: Okay. Other than that, I like the bill. Thank you. I think it's a good bill.

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[LB245]

SENATOR LATHROP: Senator Cook. [LB245]

SENATOR COOK: Thank you. I have a question. If I'm the person doing the review of the medical records, do I receive a pile of, you know, Tanya Cook's medical records, which may include references to things that are prohibited in this? Let's say the hypothetical Tanya Cook has cirrhosis of the liver. Is that going to impact my worker comp claim? I mean if these other things are on the prohibited list, then conditions emerging from, let's say, in that case alcohol, substance abuse, that would still be in there. And also I'm imagining getting this pile of paper and, like the Pentagon papers where there were all these black...I don't know what it's called, I can't remember what the name is right now. [LB245]

SENATOR LATHROP: Redaction. [LB245]

ROBERT J. HALLSTROM: Well, they may redact information, Senator. [LB245]

SENATOR COOK: Yeah, redacted. Well, Tanya, she had the flu? Yes. She didn't have cirrhosis. No. I mean I guess I'm just imagining what the pieces of paper would look like. And that's not a good question; I apologize, Mr. Hallstrom. But what would they look like? [LB245]

ROBERT J. HALLSTROM: Well, the information may be voluminous in terms of somebody's medical record. And just whether it's part of the discovery that you ultimately have to go through after a lawsuit is filed or whether you would get this information up front in order to assist in the initial determination to pay or not to pay, you're going to have to go through the same process of sorting out and culling out what might be pertinent to the particular claim in terms of making a decision to pay or not pay, whether or not there was a preexisting injury that might have some impact on the entitlement to benefits. [LB245]

SENATOR COOK: Okay. Thank you. [LB245]

SENATOR LATHROP: Bob, currently, the way it would work is that the...if you're in litigation, the insurance carrier or the employer, as the case may be, would send a subpoena out. They have to send notice of their intent to subpoena. The other side can file a motion to quash it in that window. And then if there's no motion to quash, the subpoena is issued, the records are received back. Is that true? [LB245]

ROBERT J. HALLSTROM: I think that's true. [LB245]

SENATOR LATHROP: Okay. And this would just essentially give the employer or the

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insurance company a document that would, along with a request, allow them to get all medical records on the employee that haven't been excluded by this act. [LB245]

ROBERT J. HALLSTROM: That is correct. [LB245]

SENATOR LATHROP: All right. Thanks. Oh, Burke. [LB245]

SENATOR HARR: I'm sorry. Because I don't do this area of law, I don't know it very well. Under the scenario given by Senator Lathrop, is that before or after a denial of the claim has occurred? [LB245]

ROBERT J. HALLSTROM: In terms of...? [LB245]

SENATOR HARR: Asking for the medical records. [LB245]

ROBERT J. HALLSTROM: Well, under the bill as drafted you would make the request to get the information before litigation is filed, before a decision is made, because the underlying theme is we'd like to see the records in order to determine whether or not we think this claim should be denied or accepted. [LB245]

SENATOR HARR: And I agree with that. But under Senator Lathrop's...under the current, in order to get to that stage that he was talking about, you... [LB245]

ROBERT J. HALLSTROM: There would have to...yeah, you'd be long past the time when you're obligated to make that 30-day decision. And, in fact, you'd be in litigation in order for the discovery mechanisms to kick in. [LB245]

SENATOR HARR: And can you explain, for the record, what happens after that 30-day? Do you deny it and, later on, it's determined? [LB245]

ROBERT J. HALLSTROM: After the 30-day period--and we talked a little bit about this in the other bills--after that 30-day period, under certain circumstances, and in this one it would be failure to pay medical bills that were ultimately determined to have been properly payable, you would face the exposure to the 50 percent waiting penalties, attorney fees, and interest. [LB245]

SENATOR HARR: Okay. Thank you. [LB245]

SENATOR LATHROP: Did you just suggest that there's a 50 percent waiting penalty for not paying a medical bill? [LB245]

ROBERT J. HALLSTROM: I think that's what the provision is under 48... [LB245]

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SENATOR LATHROP: But if you are...if you get a bill...because we tried to deal with this a couple years ago on the floor. If you get a bill from Methodist Hospital for an employee, and the bill sits on your desk for 30 days, there's no controversy and you don't pay it. Do you think you have a 50 percent penalty on that bill? [LB245]

ROBERT J. HALLSTROM: When there's no reasonable controversy? [LB245]

SENATOR LATHROP: Yeah. No reasonable controversy. [LB245]

ROBERT J. HALLSTROM: I believe so, Senator. I may be wrong but I believe that... [LB245]

SENATOR LATHROP: And then I may be missing something. But we'll hear from some of the other guys. [LB245]

ROBERT J. HALLSTROM: I would suspect you know better than I. [LB245]

SENATOR LATHROP: Okay, good. Thanks. [LB245]

ROBERT J. HALLSTROM: Thank you. [LB245]

SENATOR LATHROP: Proponents. Korby. [LB245]

KORBY GILBERTSON: Good afternoon again. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America, and Lincoln Public Schools. I think Bob did a good job of explaining the process and everything. I think another reason for wanting timely access to the records, especially from a self-insured standpoint, if not just the insurance companies also, but looking at some of the other injuries that could be related could affect the time, the amount of time to get a person back to work, proper jobs that they could have when they come back. If you have an underlying condition that wasn't directly related, it can impact other things and the care. And those things were also brought up during the discussion of these bills, so I wanted to bring that up also. [LB245]

SENATOR LATHROP: Thanks, Korby. Any questions? Seeing none. [LB245]

KORBY GILBERTSON: Thank you. [LB245]

SENATOR LATHROP: Anyone else here in support? Anyone here in opposition? Please. [LB245]

TODD BENNETT: Again thank you very much. It's Todd Bennett with the Nebraska

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Association of Trial Attorneys. First of all, there is no 50 percent penalty on medical bills, Senator Lathrop. I wish there were because... [LB245]

SENATOR LATHROP: Well, Work Comp Equity just picked something up today. [LB245]

TODD BENNETT: I'm hoping that's a stipulation at the next hearing (inaudible). First and foremost, I think what you have to look at is the statute that is written that is currently on the books, 48-120. And the reason is, is why is the bill LB341 (sic--LB245) necessary at this time? Directly in the statute of 48-120 is a clear...there's no prohibition or no privacy right once somebody files a workers' compensation claim. In the statute: "All medical and health information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court." "No such relevant information developed in connection with treatment or examination...shall be considered a privileged communication for purposes of a workers' compensation claim." So, right now, there is no prohibition or privacy right once you file a workers' compensation claim. Ironically, on the Nebraska Workers' Compensation Court's Web site, they've got a HIPAA notice, because specifically built into the HIPAA law is the fact that any state law that says that's their no privilege, you're bound by state law. That's right there in the HIPAA Section 45 CFR. The second part of that is Nebraska law again is 48-120. There's no prohibition to medical privilege in Nebraska. Practically speaking, how this works is typically an insurance company will hire a medical case manager the minute they get notice of a claim--that case manager usually is a nurse; will go to that physician's office and she will get all those medical records, whether it's related or not, assuming somebody signs a release. What is in this release is kind of a little bit far-reaching. It doesn't define what a mental health condition is. It doesn't give...and speaking to the immunity privilege or provision, what happens if they do disclose protected information? This is actually giving them a right to do it and "Sorry, I made a mistake, but there's no remedy for disclosing that information." Irrespective of that, ironically, if the goal is to timely investigate claims and avoid waiting-time penalties, again I urge you to go look at the statistical report from the Compensation Court. Table 7 specifically notes other fees and expenses and interest and so forth. You will note they don't even list waiting time penalties on here because it's negligible considering all other types of benefits and injury types on those claims. This is not a big issue where courts are awarding big penalties because they're not timely investigating clients. I will also urge you, in the same statute, that if an employer doesn't accept or deny a claim within 14 days after the accident, it's automatically deemed denied. So in that scenario, whether it's litigated or not, whether they've accepted it or not, this would give them a free ride to go get any medical record, presuming it's related to that injury. And it certainly...you brought up redaction. You're going to get a bunch of records with a bunch of black marks, and whether it can be used or not...I mean it's just going to make the provider decide what is relevant and not. And that's usually how the subpoena process works in a litigated case. You have that 10-day

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window to object. If you don't object, the records are going to be requested and received. So I urge you to oppose this because, right now, 48-120 as it stands, there's free rein for any and all relevant information once you file a claim. [LB245]

SENATOR LATHROP: Thanks, Todd. [LB245]

TODD BENNETT: Thank you. [LB245]

SENATOR LATHROP: Senator Harr has a question. [LB245]

SENATOR HARR: Now I am confused as to what's going on (laughter) which doesn't take a lot. So under the current law...because here's my concern: I have a back injury and I get workers' comp and it gets better. I go get another job somewhere else, and within, let's say, the first three weeks of starting my new job, all of a sudden I injure my back again. I want to be able to...I want to...my goal is that that insurance carrier or employer is able to find my previous compensation for that workers' comp. That's my goal in this because I don't want to see anyone getting unfairly...is that available today? [LB245]

TODD BENNETT: Yes. [LB245]

SENATOR HARR: Okay. And how would the insurance company be able to find out about the previous back injury? [LB245]

TODD BENNETT: Right now... [LB245]

SENATOR HARR: Is the employee required to tell the previous...or how does that work? [LB245]

TODD BENNETT: Well, it kind of goes back to how do you prove a claim? You're going to give your physician, where you treated, you've got to have a medical opinion establishing the history of your accident and the examination, the treatment, and whether it's temporary or permanent. To get that, you're going to notify them of what your providers for this injury are. If it's a litigated case, you're going to be asked: Tell me all the places you've been in the last 10 or 15 years, whether it's a hospital or a physician. And typically they won't... [LB245]

SENATOR HARR: But within the 30 days, is there a way for an insurance company to find out about previous back injuries? [LB245]

TODD BENNETT: Yes. First of all, you can...you, ironically, it involves another bill: the first report of injuries. You can call up and find out if there's any other back injuries on you, whether it's been filed in the court. You can do that in any state. Second of all, you

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can...you're going to...they're going to ask you: Where did you treat for this injury and where have you treated before? And they will have a right to go get those records. [LB245]

SENATOR HARR: Okay. Thank you. I appreciate that. [LB245]

TODD BENNETT: Thank you. [LB245]

SENATOR COOK: Thank you. Anyone else to testify in opposition to LB245? [LB245]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, on behalf of the State AFL-CIO in opposition to LB245. And Mr. Bennett is just spot on. 48-120 says generally all this information is made available upon request. And, in the real world, it's distributed and it's exchanged upon request. HIPAA does not apply. And, Senator Harr, in terms of who the providers are, we have the form 50, Rule 50, that says you write down where you're treating and who you're treating with, and the employer can go get those records. One record, you know, the doctor will write, you know: Dear Dr. Smith, thank you for referring Patient Jones to me. So there's another...you know, there's a trail of all of this that goes on. It just seems so rare, in my practice, that the defendant is complaining about not having access to the records. And when we do give those patient waivers, it doesn't seem...with all respect, it doesn't seem to shortcut anything. It really doesn't. Because they've got the patient waiver and they get the records, and then if it's in litigation, there's a request for production of documents and they get the records again. And counsel still subpoenas the records through Rule 34, the discovery rules. So the records seem to get exchanged. One concern that we would have is this will create some uncertainty with respect to that 30-day penalty provision. And penalties are rare to begin with--but it is an incentive. It would create some uncertainty. Did the employee give that patient waiver to the boss, or to a foreman, or did they put it in someone's box, or does it have to be with the company nurse or the nurse case manager or the insurance company? And this would, for the first time, would interject some uncertainty in when that is triggered. The big point that I want to make is this would serve, unfortunately, as a tremendous deterrent for folks to report their injuries. You know, if you have someone and maybe they felt something pop in their back at work, and they want to tough it out and go home, because if I report this is an injury, then I'm going to sign this medical release and they're going to find out I went through some marriage counseling or drug and alcohol 25 years ago, or something. And even though the statute has some categories that are excluded, the worker may not know that. So they're on the horns of a dilemma: How far do I push this? I've got to sign this and now all of a sudden my medical history is an open book, and maybe it won't be important and maybe my back will get better by tomorrow. But we ought not have employees worrying about the risks and the cost of reporting things. And the final point that I want to make is we're going into the digital age. I don't get stacks of records as much anymore. I get these little CDs and they're just packed full of records, and things come scanned and over e-mail, and

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that's the way of the future and that's how it's done. In federal court the lawyers just had a seminar about exchange of information digitally, and...I see my time is up. But we oppose LB245 for those reasons. [LB245]

SENATOR LATHROP: Okay. Thanks, Steve. Any questions for Mr. Howard? I see none. [LB245]

STEVE HOWARD: Thank you. [LB245]

SENATOR LATHROP: Thank you. Anyone else here in opposition to LB245? Anyone here in a neutral capacity? Hello, Glenn. [LB245]

GLENN MORTON: Hello, Senator. Thank you very much. Glenn Morton, spelled M-o-r-t-o-n. I'm administrator of the Workers' Compensation Court. I know it's late and I'll be very brief. We are testifying neutrally...or I am testifying neutrally. The court has no position on the substantive issues in this that you're dealing with in this bill, but I'd like to quickly point a couple things, more technical or implementation-type of a nature. First of all, LB245 would require the court to draft a patient's waiver form. All right? It's unclear whether that means we need to formally adopt a form or whether the parties would be required to use that form. It's just not clear. As has been testified, we do have a model HIPAA release form on the court's Web site. We haven't adopted that. That's not required to be used. It's simply out there for someone who chooses to use that form. So we would appreciate some clarification on that issue. There was a...Mr. Hallstrom mentioned the previous bill in earlier years, and there was an amendment pending on that bill which didn't pass, of course, but which would have changed the word "draft" to "prescribe"--the court will "prescribe" a form. And that would be one solution to this. Secondly, there is a question in my mind about how this bill relates to the current law or the current language in 48-120, which has been discussed. That language says all information relevant to the particular injury for which compensation is sought is not privileged. There's no privileged communication and it has to be released. There is no requirement for a waiver or a petition...a patient's waiver under that section. Now in this section...in this bill, of course, it would require that it would relate to all previous records and for which previous treatment. So it's unclear how those two relate. Now in the previous bill I did talk to Mr. Hallstrom. He said he thought that the word "previous" in this bill distinguished this language from the previous language, which relates to the injury for which compensation is sought. I'm not quite sure that it does that and I would ask the committee to maybe consider some clarification of how these two provisions would relate. And then finally, very...and lastly, there isn't any provision in this bill about who would pay for the records. Under Section 48-120, now, it says the party requesting the information shall pay the cost. And we just ask that that issue also be considered. That's my testimony. [LB245]

SENATOR LATHROP: (Exhibit 12) Okay. Thanks, Glenn. Are there any questions for

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Mr. Morton? I see none. Thanks. Anyone else here in an neutral capacity on LB245? Senator Carlson to close. And as he approaches the chair to close, the record will reflect that we have a letter in opposition, that is in opposition from the Nebraska Hospital Association on behalf of its 87-member hospitals. That comes to us in the form of a letter from Bruce Rieker, dated March 7, 2011. [LB245]

SENATOR CARLSON: Senator Lathrop and members of the Business and Labor Committee, thank you for listening to the testimony concerning LB245. As I'm listening to testifiers, those that are proponents would indicate that it is necessary for a patient waiver to facilitate the process, and it does exclude sensitive medical information. Now the opponents say that there is no privilege for employees to withhold information and so this bill isn't necessary. There is a penalty and there are bad consequences to not handling a case on a timely basis. It's bad for the employee. It may be bad for the reputation of the employer if it's not handled on a timely basis. And it's difficult for the party who pays because, if they don't feel like they have adequate information to make a decision, they can't pay until they do. Now Mr. Morton, in his testimony, again reiterated there is no privileged information and everything should be released that pertains to the injury or relates to the injury. I think one of the questions is: Who makes that decision? What information relates to the injury? So there are some unanswered questions here and I have an intent to really search out further from the proponents why this is necessary, and I will bring that back and discuss it with the committee in Executive Session. [LB245]

SENATOR LATHROP: Very good. [LB245]

SENATOR CARLSON: Thank you. [LB245]

SENATOR LATHROP: Thank you, Senator Carlson. We appreciate it. That will close our hearing on LB245 and our hearings for today. [LB245]