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Judiciary Committee
March 10, 2011

[LB350 LB652 LB665 LB689]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 10, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB665, LB652, LB689, and LB350. Senators present: Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: Senator Bradford, Chairperson.

SENATOR LATHROP: Welcome to the Judiciary Committee. I think we've got enough people to start, as long as Burke doesn't leave. We have four bills up today. Senator Ashford is out of town so I'm going to be...as Vice Chair, I'll be handling the hearings. Thank you. I think everybody knows everybody, and it looks like a crowd of our normal, for the most, our usual testifiers. So what we'll do is begin with Senator Pirsch's LB665. Just a reminder that we have a light system, which basically means the introducer will go without a time limitation beyond what's...well, they're governed by reasonableness. The time for introducers is governed by reasonableness, and the testifiers is 3 minutes. You get 2 minutes with a green light. Then it will go to yellow--you'll have 1 minute. And by the time you get to the red light, we'll ask you to wrap it up. Okay? That's just so that we can get every bill heard and everyone out of here in time to get home to have dinner with their families, if possible. We have four bills. Senator Pirsch is first with LB665, and with that we'll start with Senator Pirsch. And, by the way, welcome to the Judiciary Committee. [LB665]

SENATOR PIRSCH: (Exhibits 1-3) Thank you, Vice Chairman Lathrop and members of the committee. I am State Senator Pete Pirsch. For the record that is spelled P-e-t-e P-i-r-s-c-h. I represent the 4th Legislative District. I am the sponsor of LB665. LB665 is a bill intended to better protect children. As a parent, I'm not sure that there is a greater fear that a parent has than harm coming to your children or that they turn up missing. There are, unfortunately, some very disturbed, very twisted, very evil individuals out there in the world, and many choose to target children because children are particularly naive, trusting, and easy prey. In my community, in recent months, as I was watching the news I focused on a story of...there was a gentleman driving his car, just out on a public street, and happened to glance over and catch, out of the very corner of his eye, a man carrying a naked young child in his arms just walking down the sidewalk. You know, first impression was that child is probably the son...I'm sorry, the daughter of the...or some sort of relative of the man who was walking down the street. But he had the presence of mind to turn around, turn his car around and actually pull up to the man who was walking at a brisk pace with the child in his arms still, and say: You know, is everything is okay; what's going on; can I help? And the man holding the child looked over at him and responded: No, the police are probably looking for me anyhow. And he quickly got on his cell phone. Turns out the police were not looking for him; only started looking for him because the man had the presence of mind to get on the cell phone and call the police. This was on a public street, a sidewalk. The child had previously been

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sexually assaulted. The individual is in the...it was believed, walking to a place where he could find greater solitude. And it was the opinion of the officer that with respect to the actions of the good Samaritan, that he was a hero, and that, had not this man had the presence of mind, after catching it out of the corner of his eye, to turn around, this child would not be with us here today. And so the key with this was the visibility. But not all cases where kids are put in such jeopardy are visible, and the purpose of this bill is to make sure that that safety that comes about with the visibility of the public is not compromised or taken away. We currently have in statute, under 28-311, a law that is intended to make sure that visibility is not taken away to ensure children's safety. But it's incomplete as I see it. And the purpose of this bill is to make it more complete in protecting children. Right now, you cannot...no person...28-311 currently reads: No person, in part, can entice, solicit, coax, lure a child under the age of 14 years--so 13 and under--into any vehicle. And that's the extent of how the law...the reach of the law now. What I seek to do in this, and I have passed around a couple of handouts that illustrate why this is needed, but this seeks to extend that protection, which has worked. Now we don't have very many prosecutions. I think there's only two individuals a year, currently, who do. But in those cases in which they are, they're extremely important and children's lives are saved. And so what it seeks to do, under my bill here, is to prevent people from enticing these children not just into a vehicle, but to enter into any place with the intent to seclude the child from his or her parent, guardian, or other legal custodian, or the general public. So that's the, in a nutshell, underlying intent. And with that, I'll open myself up to questions. [LB665]

SENATOR LATHROP: Thanks, Pete. Are there any questions for Senator Pirsch?
[LB665]

SENATOR PIRSCH: Thank you. [LB665]

SENATOR LATHROP: Doesn't look like it. [LB665]

SENATOR PIRSCH: Yep. [LB665]

SENATOR LATHROP: Thanks. Marty, good to have you back, as always. [LB665]

MARTY CONBOY: Thank you. Good afternoon, Assistant Deputy Chairman. [LB665]

SENATOR LATHROP: Vice Chair that is. [LB665]

MARTY CONBOY: Vice Chairman and Senators, my name is Marty Conboy, C-o-n-b-o-y. I'm here to testify in support of LB665, and I thank Senator Pirsch for bringing this forward. I'm also here on behalf of the Nebraska County Attorneys Association who have asked me to lend their support as well. This has been described to me as a no-brainer. And I will tell you that three times last year--one in Lincoln, the

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Blair case that Senator Pirsch mentioned, and then one in our county--a gentleman tried to lure young children into a place, I think you can presume with bad intent, to a secretive place. In the case in Omaha, two young adolescent girls were confronted by a man hiding in the bushes. He popped out and tried to, at first, tell them some story and then he threatened and coerced them into coming with him into the bushes and back into a secluded area of the park. They ran down the trail and reported it to the police. When he was apprehended, I had the very unfortunate duty to tell their parents that there was nothing illegal in Nebraska about what this man did. And they had a similar case in Lincoln. And, of course, the Blair case is another example where our law just...you can entice a child for any purpose as long as you don't use a vehicle. And it just seems kind of strange to have that limitation. I call to mind the Amber Harris case from Omaha, where the man lived very near where she was found, or at least her things were found, and it was presumed that she was killed in his house, right there--unlikely he used a vehicle. We don't know how he got her into the house once she left the bus, but short of the actual taking physical control of her, whatever he did to that point was not illegal in Nebraska as long as he wasn't using a vehicle. And so I would urge that you consider this change. I think it's worded in a way that would be sufficient to be both practical and utilitarian in terms of what we're trying to accomplish. A lot of states have approached this in different ways, but many states have a similar law. Some fold it into their internet enticement, others into kidnapping and other sorts of child endangerment. But we have a good law and I think this would make it better. I'd be glad to answer any questions that you might have. [LB665]

SENATOR LATHROP: Very good. Thanks, Marty. Senator Harr. [LB665]

SENATOR HARR: Just a quick question. There's a newspaper article about this situation you talked about. This bill, to me, seems like a no-brainer, except in there you said if this is considered, it's going to be difficult. Do you know why? [LB665]

MARTY CONBOY: Well, here's the problem. And it's difficult to word this particular sort of language so that it doesn't encompass otherwise lawful conduct. You know, it's a serious allegation to make, and we want to make sure that the language does not potentially capture otherwise innocent or inadvertent conduct. So this retains and is worded in a way that it incorporates those existing defenses. So if it's in good faith, with the approval of the parents or a guardian, with governmental imprimatur, those sorts of things are an automatic defense to this. So that is helpful I think. And again, you'd...I think this is worded about as carefully as you can, but I would certainly ask the committee to look at that, and if there are ways that you can think of that it might be more appropriate. I've looked at other states and I think this is as...very similar to what other states have had success with, so hopefully this will...as you said, the concept is a no-brainer but the, you know, getting it drafted. I know Senator Pirsch's office worked for a long time to try and...you know, it's one paragraph. It's very significant, so. [LB665]

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SENATOR HARR: Fair enough. Thank you very much. [LB665]

SENATOR LATHROP: And you think this does something other than or in addition to kidnapping? [LB665]

MARTY CONBOY: Yes. The enticement itself is the attempt or the, through deception, coercion, or whatever, to take a kid away from the public place into a place where they are no longer visible or safe or in control of whoever it is that's responsible for them. And at that point, once they are taken into I guess the situation where they're not free to leave, then it would be kidnapping. But short of that, it's hard to, until a kidnapping occurs, it's hard to call it attempted kidnapping, because there's no certainty as to what the intent is. But just the fact that someone would try and induce someone into that structure or place, in itself it would probably be less than attempted kidnapping. [LB665]

SENATOR LATHROP: Okay. All right, I think there's no more questions. Thanks, Marty. How many people are here to testify on this bill? Okay. It makes the next question kind of silly: Are there any other proponents? Is anyone here in opposition to LB665? How about in a neutral capacity? Seeing none, Senator Pirsch, you're good to close. [LB665]

SENATOR PIRSCH: Yes, I will close, and I thank you for the testimony that came forward and your questions. I think there was a good question that was brought up is we have to make sure--and that was my concern in drafting this--that this thing is tight and that this gets at the individuals. Because certainly we don't want, when they're using words like enticement--and I thought about this over the summer--we don't want to catch the mother, as the Girl Scout leader...you know, I mean as the Girl Scouts in the store, you know, on the front porch, and the mother opening the door to, you know, say: Oh, come in out of the rain and let me see what you have. And that's why, built into this, is you have language within subsection (b) that the purpose...there's an intent, mens rea language, that you're...it's not enough to coax and entice someone inside; you have to entice with the intent to seclude the child from his or her parent, guardian, or legal custodian. So there's that. Again, built into the same...there's protective language that already exists within the enticing car language, the existing language. And so I just used those same affirmative defense--and you can see that on page 2, line 16 and below: "It is an affirmative defense to a charge under this section that: (a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity; (b)(i) the person is a law enforcement officer, emergency services provider..., " and those other safeguards that follow. And so this is one, like I said, it's not used that frequently; there's been no abuse. I've used this intent language by adding it to this new section. It makes it an even more stringent requirement for it to show than the existing language of the enticing into a car. And so on that basis, I think that it is, as it's written, ready to go and very tight. With respect to the question: Isn't it enough for us to have a kidnapping statute on the books? And I would just...I think that's a great question. I'd just say at the point where it's already a

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kidnapping, we're at a very dangerous level. And so this is...if there was some sort of reason, some freedom that we'd want to protect about to allow a total stranger to be an enticing person with the intent to...enticing the child into a place for the purpose of secluding the child, then I could see why we would want them to dance up to that line of kidnapping. But really, when it comes to our children, and there's no reason society would want to dance up to that line. There's no redeeming feature about that. I think laws such as this allow us, in the context of an uncompleted kidnapping, I mean that was where it was going, but the individual had already enticed the child into a place of seclusion, but we don't have enough about...kidnapping requires asportation--transporting the child, essentially--and we're not at that point yet. That's where this bill can kick in and do some good, you know. And just in closing, Beveridge junior high school is in my district, and in front of Beveridge junior high school, in memoriam of Amber Harris, there they've planted a garden. And as I go back and forth through the school on occasion, it's a somber reminder to me that that real danger does exist in our community and that there are things that we can do about it. So thank you. [LB665]

SENATOR LATHROP: Very good. Thanks, Pete. That will close our hearing on LB665, and bring us to LB652 and a regular here in the Judiciary Committee, Senator Mark Christensen, and LB652. Welcome, once again, Senator Christensen. [LB665]

SENATOR CHRISTENSEN: Thank you. It's an honor to be here. Thank you, Mr. Chairman and members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. My intent with LB652 was to begin looking at areas where sentences of the first-time nonviolent offenders could be changed to focus on less costly options, such as probation, restitution, house arrest, and Work Ethic Camp. Reducing jail time of the first-time nonviolent offenders reserves Nebraska's limited jail space for those who are habitual and violent offenders that are a menace or present real danger to society, potentially reducing costs. Restitution restores the victim and the community to their prior state, giving a personal face to the crime. House arrest allows for offenders a chance to continue to work to provide for restitution and the continued care of family members that might otherwise be supported by state services, while the Work Ethic Camp can help with character issues and at the same time help the community through work projects. LB652 focuses on first-time nonviolent theft offenders by amending Section 28-518 which grades theft offenses into tiers by the value of things involved in the theft, and designates penalties for each tier. The current dollar value for each grade or tier in Section 28-518 has not been adjusted since 1992, and 1978 prior to that, so LB652 would make adjustments to these values. These values were adjusted for the committee to consider since it had been almost 20 years since they were last changed. I do have an amendment, AM644, for your consideration that would keep the lowest grade or tier at \$200. This was suggested by the grocers. What happened the last time the values were changed in 1992 is people quickly adjusted to the amount stolen for certain crimes to adjust under the bottom tier. I

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would defer that to the committee regarding this concern. LB652 would create more of a formal policy shift in the new section (9) and (10) of Section 28-518. Subsection (9) would require probation with a condition of restitution in accordance with Section 29-2280 to 29-2289, which guides the courts pertaining to restitution for any sentence of theft under Section 28-518, when the defendant has had no prior criminal conviction. Subsection (10) would convey the legislative intent that, when appropriate and in the interest of justice, sentencing under this section should utilize house arrest and the Work Ethic Camp. If you turn to the fiscal note on LB652, I think you will find it interesting. The Department of Corrections' figures show that there would be a potential savings of \$3.465 million. I think this shows us that a slight policy shift in the way we think about nonviolent first-time offenders may provide part of the answer to overcrowding and cost issues in corrections. Unfortunately, the fiscal note reveals an unintended consequence within our parole system. Frank Jenson, Deputy Probation Administrator, met with me to explain their fiscal note. Currently, in many of the theft convictions, the court sentence only involves a fine or restitution of some sort. LB652 would make probation mandatory, increasingly considering the cost of administration probation estimate at \$966,685. To address this issue I've handed out AM739 in hopes to create the flexibility the courts need to sentence only fines or restitution when they find it adequate, as they do currently. I've sent this to Frank Jenson but they have not had enough time to calculate how the change to AM739 may affect their estimated fiscal impact. I'd like to explain what brought me to bring this bill. There was a case in Kearney of a gal that embezzled \$250,000, that's been in the York women's facility for a little over two years. It was in the same month there was a gentleman, stole \$750,000, or embezzled \$750,000 from a bank in Minden, and got probation the whole time. And to me that just doesn't seem quite right that there would be that inequity in there. Plus, the situation where I happened to know this gal, and she had found another job after she had admitted it and resigned, and was in the position to maybe start making some restitution, and was thrown in jail and taken from her family. So I just thought..that made me get to thinking, what could we do to maybe even things up between the courts and maybe save the state some money? I hope this committee will take a look at LB652 and how we might begin to shift slightly the state's policy on penalties for first-time nonviolent offenders. I encourage you to give this bill a good look and I thank you for the opportunity to share this. [LB652]

SENATOR LATHROP: You can trust us to give it a good look. [LB652]

SENATOR CHRISTENSEN: (Laugh) I'm sure you will. [LB652]

SENATOR LATHROP: I don't think we've ever been asked to do that. Senator Harr has got a question for you. [LB652]

SENATOR HARR: First of all, a comment: This is a very good bill; I really like it. [LB652]

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SENATOR CHRISTENSEN: (Laugh) [LB652]

SENATOR HARR: (See also Exhibit 4) Well, I don't know why that's funny. (Laughter) Or maybe I do. But I do have some issues, and, you know, the county attorneys sent a letter saying...and I do agree that section (10), there's an issue, because some counties you can't get house arrest, others you can. So there's an inequity issue there. And as an old property prosecutor, that we had property crimes, I can tell you what (9) is what generally does happen. My concern with it is...well, there are a number...well, a couple, I should say: no prior criminal conviction. I'm not sure what would qualify as a criminal conviction. I mean I know what it would, but if you put that in there, that pretty much eliminates almost everybody. So I think it needs to be a little tighter definition so that more people can get probation. Maybe no prior felony. No prior Class I, or higher, misdemeanor--something to that degree. And then to get to your concern, I think in my personal opinion, once you steal six figures, you probably do deserve a little jail time. And so I have a problem with instituting it automatically. If you limit it to a Class IV or below or a Class I or a IV--Class I misdemeanor, Class IV felony--for probation, I think that would be very good. And then the other problem I have, so...and then that addresses my other issue, if it's a Class I or Class IV, because then "shall order probation." My other concern is if someone just says: You know what, I'm on probation, I'll just have probation terminate "unsat." And then you're done with it. And if you steal \$250,000, and that's all you have to do is you have an "unsat"...you have a felony but then it's probation "unsat," you might get the "show cause" time, which I think is 120 days, and that's all you're going to serve is 120--maybe serve 120 days. So I don't have a problem with it for Class IV felonies, but maybe once you get to Class III, especially now that we're upping the amounts, which needs to be done and it's great, but I think if we can limit it to that area you would definitely have my support. [LB652]

SENATOR CHRISTENSEN: I'm open to adjustments. [LB652]

SENATOR LATHROP: Senator Council. [LB652]

SENATOR COUNCIL: Yes. Thank you, Vice Chairman Lathrop, and thank you, Senator Christensen. I mean I find myself in the same position as Senator Harr. You know, when I originally looked at this, and I, like, this is a good direction. And you and I have had...it wasn't this particular situation, but you had mentioned this situation to me, and I told you that the Community Corrections Council had been looking at ways to expand community corrections to cover more nonviolent types of offenses, and we were trying to figure out a way perhaps to look at theft, because you don't need those six figure examples to show the discrepancies. Someone told me about a gentleman who was arrested and convicted for stealing some equipment out in one of the rural counties, and it was his first offense. The equipment was valued about \$1,500, and he was sentenced to 2-4 or something, and a similar or someone convicted for stealing something of a lesser value received probation or some jail time. My problem, though, with the bill goes

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more to I have a problem with treading on judicial discretion. I mean my...and if it's tied to community...you know, tied more to community corrections in a way like our felony drug offenders are linked in now to community corrections, and if you're sentenced to less than three years, community corrections is an option for you as opposed to incarceration. If there's some way we could get to that, because I know that that's what your objective is, is for those types of offenses where you're talking about individuals who have no violent propensities and we could be better served with having them continue to work and live in the community. I think that maybe this may be something that is, assuming we're able to retain the Community Corrections Council in its current form, that the Community Corrections Council could look into as a way of achieving the same objective, and that's reducing incarceration rates and providing more community-based alternatives, without treading as much as your bill treads on judicial discretion in terms of the sentencing. I agree, and I respect my friends in the retail area, but I think we do need to increase the limits here. I mean things, they haven't changed. And I know what they're saying, yeah, because these are more costly and expensive items that people are stealing. But I would very much like to see, and concur with, raising the limits. But I think we have to look and find a different way to achieve the result of reducing incarceration and providing more ways for people to be held accountable in a less restrictive manner. So I...you know, if we can come up with some way to arrive at that, I'm just letting you know that I wholeheartedly endorse what you're trying to accomplish. I'm concerned about the mandatory probation expense to the probation department. I don't know whether we can rely on the, totally rely on the corrections figures, because those are, you know, based on today's incarceration figures. And whether or not you'd see that same level, particularly with the amount being increased, if you'd still see that number of people being incarcerated if the amount is increased. So I think there could be some adjustment in the amount of cost to the Department of Corrections. With that, thank you, Senator Lathrop. [LB652]

SENATOR LATHROP: Senator Harr. [LB652]

SENATOR HARR: And I apologize. I have to raise one more issue that, listening to Senator Council, I am reminded of, and that's how drug court operates. Because of the way the money flows, it's now a postconviction drug court, so you have to plead guilty to the underlying felony if you're allowed into drug court. So as a result, if you successfully complete drug court, the case is dismissed against you. However, if you fail to complete the course, it would seem to me that probation probably wouldn't be a very good option in that case, because you've already...to a certain degree, you're already on probation in drug court. And most property crimes, especially in the Class IV area, are related to drug and alcohol addiction, and mainly drug. So there might be...might have to put another exemption in there: except if they're in alternative sentencing similar to drug court. [LB652]

SENATOR CHRISTENSEN: Okay. [LB652]

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SENATOR HARR: But we can work with that, but. [LB652]

SENATOR LATHROP: I think that's it. Thanks, Mark. [LB652]

SENATOR CHRISTENSEN: Thank you. [LB652]

SENATOR LATHROP: I assume you'll be around. You're introducing the next bill. [LB652]

SENATOR CHRISTENSEN: Yes. [LB652]

SENATOR LATHROP: Okay. Anyone here in support of LB652? Support for LB652, besides Senator Harr and Council? Anyone here in opposition to LB652? Neutral? Seeing none. Senator Christensen waives closing. That will close our hearing on LB652 and bring us to LB689 and again Senator Christensen. Welcome once again. [LB652]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here today to introduce LB689. The intent of LB689 is to strengthen Nebraska human trafficking laws and include new protections for human trafficking victims. The bill would amend the definition of commercial sexual activity and forced labor or services in Section 28-830. In addition, LB689 would add two new sections to our human trafficking statutes. The first new section would allow an affirmative defense that the defendant was also a victim of a crime that is a violation in Section 28-831, and committing the crime under a threat or compulsion, and the defendant believes was reasonable under the circumstances. This new section would also require restitution to the victim in addition to any penalties. The second new section would expressly provide new protections to human trafficking victims. As this committee knows, from my prior testimony with LB513, human trafficking has become an important issue to me. It's also become a major focus for professionals and researchers at the University of Nebraska-Lincoln. In fact, last November, they held their second annual international conference on human trafficking here in Lincoln. I have attended both conferences, and I hope many of you will be able to attend the next conference. The increased level of interest at the university has led to the creation of a student organization called NUSAMS--Nebraska University Students Against Modern-day Slavery. One of the student leaders from NUSAMS, Ms. Calli Cain, began to work with my office on a potential bill to help strengthen Nebraska human trafficking statutes. After Calli's investigation of human trafficking laws in other states, she offered some potential ideas which are offered in LB689. Most of these changes in the bill come from similar language in Iowa and Oklahoma. We are working with the Attorney General's Office to get their feedback on the bill, but because of their workload right now, they were unable to give us a thorough review before the hearing. It is my hope, at the very least, you will

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include LB689 in the study on human trafficking suggested at the hearing on LB513. I believe there will be several testifiers behind me, and with that, I encourage you to advance or add this to the study, and thank you for your consideration. [LB689]

SENATOR LATHROP: Very good. Thanks, Mark. Any questions for Senator Christensen? Senator McGill. [LB689]

SENATOR MCGILL: It's not really a question, but she came by my office just the other day, and I told her, again, that we certainly plan on studying this, this summer. One of us will put it in an interim study, I'm sure, because she had said that she knew there were maybe even some issues with this particular bill but wants to keep working on it, and so do I. [LB689]

SENATOR CHRISTENSEN: Okay. [LB689]

SENATOR LATHROP: Senator Council. [LB689]

SENATOR COUNCIL: Yes, and that's one of the questions, I guess, or concerns I had. I certainly appreciate the intent to provide protection and to eliminate human trafficking. But when I look at...I have a concern when we make special provision for one class of victims of a crime over, as opposed to another class of victims of a crime. And I'm just, you know, concerned. I mean, I have a lot of people, for example, in my district who have been the victim of crimes and are faced with threats of retaliation, and we don't require that measures be taken to protect them or their family members from intimidation or take measures to assure that their names and identifying information is it. We don't, you know, take measures to make sure they're housed and...do you see? I mean, we're coming up with a class of victims that we're distinguishing from any other class of criminal victim. And I...don't get me wrong. I understand what the intent is, but I think we need to tread very lightly in terms of, you know, creating a special class of victim of a crime here so. And then, just a point, I noted we have a definition of trafficking, and then we used the term "human trafficking" just to...okay, and that's all, Senator Lathrop. [LB689]

SENATOR LATHROP: Very good. Thank you, Senator Council. Any other questions? I see none. Do you want to stay around to close? [LB689]

SENATOR CHRISTENSEN: Yeah. [LB689]

SENATOR LATHROP: Okay, good. Thanks, Mark. Those who are here to testify in favor of LB689, you may come forward one at a time. Hello, Al. [LB689]

AL RISKOWSKI: Good afternoon. [LB689]

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SENATOR LATHROP: Welcome back to the Judiciary Committee. [LB689]

AL RISKOWSKI: Thank you so much. Al Riskowski, it's R-i-s-k-o-w-s-k-i, and in favor of a bill that would help in the area of human trafficking. It is the fastest growing illegal trade in the world. We have, I think by almost every estimation, the arms, drugs, and human trafficking. They're feeling now that human trafficking probably is the number one growing illegal trade, and probably the largest illegal trade in the world. It's hard to get a handle on how big it is. Most estimates say it's at least 27 million, but the United Nations International Labor Organization said it's like 215 million child-labor slaves in the world. I mean, it's just an incredible number. The University of Nebraska puts it maybe in the hundreds here in the state of Nebraska. We're just not sure how many there are, but they certainly are here in our state. It was interesting, I looked in 1855, there were 13 slaves in Nebraska City. That's what they were able to identify, and some of those were sold on a public market in Nebraska City in 1855. Thus, a legislator by the name of Little put in legislation, stating it should be illegal in Nebraska to hold slaves. And the Legislature at that time said, well, there just aren't enough to make it worthwhile to pass any legislation. In my mind, 13 were 13 too many, and we know today that it's a much bigger issue. Even in our own country, there are more slaves being held in the United States today than there were in 1850, and that's by everyone's estimates--more slaves in the United States today than in 1850. As we look at this bill, Nebraska Family Council, as well, and I testify for them, we are very much in favor of a human trafficking bill. We had a little concern about this bill as well, in that the wording, perhaps it was not tight enough, so that it could be used by any prostitute to claim that they were a human trafficking victim. And we had a little concern about that in this bill. The other concern we have is that, here in the state of Nebraska, our penalties are so light for human trafficking. There was a gentleman, picked up in Iowa, that trafficked the two young girls, the 15- and 14-year-old, and was given 25 years in the state of Iowa, because they have a strong human trafficking law. I asked Tom Casady what would be the penalty here in Nebraska. He said it would be a misdemeanor. So there's a huge disparity in the penalty here in the state of Nebraska. Thus, I just...I'm here today very much in favor of human trafficking. I appreciate, Senator McGill, your commitment to make this a priority and as an interim study. That's what I really believe needs to happen, to look at this with you on the Judiciary Committee. I think this is the one type of bill and legislation we can all agree on that needs to be approached. Something needs to be done, and we would cherish the opportunity to work with you to that end. Thank you. [LB689]

SENATOR MCGILL: Thank you. [LB689]

SENATOR LATHROP: I don't mean to correct you, but I think you said you were in favor of human trafficking, and I think you meant the bill (laughter). [LB689]

AL RISKOWSKI: This bill...this bill, yes. Thank you very much. I appreciate that for the

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record. [LB689]

SENATOR LATHROP: All right. Thanks, Al. Senator Council. [LB689]

SENATOR COUNCIL: Thank you, and thank you, Al, for appearing and testifying. But I must request the data to support what I find to be an inconceivable statement that there are more people being trafficked in the form of human trafficking today than in 1850, since that predates the Emancipation Proclamation. So I'd appreciate receiving any data that you may have to support that, because I have that...I find it hard to...very hard to believe. And, in fact, it doesn't sit well with me when there are so many other reasons to support taking some legislative action to reduce and eliminate human trafficking. A comparison to the horrible and peculiar institution of slavery, I don't find it comparable, so. And then to relate that there's more today than in 1850, I find just unbelievable, so please provide me with the data to support that statement. [LB689]

AL RISKOWSKI: I think, Senator, part of how that number is determined is underage children are considered not to be able to give their permission, and it's estimated...it's hard to know...the U.S. Department of Justice estimates somewhere between 100,000 to 300,000 underage children are being used here in our country for prostitution alone. And that's where part of that inflated number comes from. The other part is the entire area of prostitution, and this bill speaks to that, the idea that there needs to be protection for family. For many of these underage children and even a case we're working on right now with the Attorney General's Office and the FBI, the girls, the eight girls that we're aware of that are being held right here in Lincoln, are all being held partly by a threat to assault the parents, saying if you do not cooperate with what we do and we tell you to do for prostitution, we will beat up either your brothers, sisters, or your parents. And that has happened, and so, that's what calls for...this is a very different kind of slavery than we saw in 1850, but nevertheless, still being held against their will. [LB689]

SENATOR COUNCIL: I don't dispute that there are numbers and too large a number of people being held against their will, but I will not accept or lend any credence to a suggestion that it's comparable to the slavery of African-American people in this country. Number two, the argument you just posited with regard to treating these victims differently than other crime victims, come speak to the family members of people who have been the victims of gang violence in my community, and listen to the same stories being told and not having statutory protection like is set forth. I'm not saying that it's not warranted, but it's...we can't pick and choose who deserves that level of protection when faced with similar circumstances. And that's the only point that I'm making. That's all I have, Senator Lathrop. [LB689]

SENATOR LATHROP: Senator Larson. [LB689]

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SENATOR LARSON: Did you say it's the largest illicit trade in the United States?
[LB689]

AL RISKOWSKI: Pardon? [LB689]

SENATOR LARSON: Did you say this was the biggest illicit trade in the United States or the...? [LB689]

AL RISKOWSKI: Different organizations estimate, in the world, that we have...the three largest illegal trades in the world are drug, illegal arms, and human trafficking. And almost everyone agrees that human trafficking is probably at least number two. It's hard to know whether drugs or human trafficking are the largest moneymaking illegal trade in the world. So it's very large. That's where...and a number of the estimates estimate that there are nearly a billion people at risk, because of civil war, financial depravity, and etcetera. [LB689]

SENATOR LARSON: Thank you. [LB689]

SENATOR LATHROP: I think that's it. Thanks, Al. [LB689]

AL RISKOWSKI: All right, thank you. [LB689]

SENATOR LATHROP: Appreciate your testimony. Any other proponents? [LB689]

JIM CUNNINGHAM: Senator Lathrop and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I represent the Nebraska Catholic Bishops Conference, the mutual interests and concerns of the Archdiocese of Omaha and the Dioceses of Lincoln and Grand Island. I appreciate the opportunity to testify in support of LB689, perhaps not so much with respect to the specific wording or construction of the bill. If there are legal intricacies that warrant clarification and revision, then certainly that should be addressed. But certainly, we testify in support with respect to the concepts and purposes of this bill. Catholic social teaching considers the commerce and trafficking of human beings for purposes of sexual exploitation and forced labor to be a shocking offense against human dignity and a grave violation of fundamental human rights. It betrays every dimension of human life and personhood. While human trafficking is known to be a global phenomenon, that does not mean that the state should not address it; probably I should say continue to address it, because former Senator John Synowiecki and others led that process in 2006. By the way, I have been remiss personally in not checking on this, but presumably Section 12 of that legislation, LB1086, now Section 28-832 of the statutes, required the Attorney General and the Department of Health and Human Services to issue a report by July 2007 about human trafficking in the state of Nebraska and responses that could be made to that. I hope you will take that into account and use it as a resource for purposes of continuing

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the discussion about human trafficking. And again, I can't vouch that it exists, but I presume that that law was followed. Research suggests that human trafficking is far more widespread than most people realize. At your recent public hearing on Senator Christensen's bill proposing to license and regulate escort services, another dimension of this overall issue, you heard Pastor Tom from the Lincoln City Mission and students from the University of Nebraska very passionately and articulately give credence to the research. We thank and commend Senator Christensen for raising awareness of issues stemming from human trafficking. Especially, we note the inclusion and emphasis of his bill, not only on protection, but also compassionate responses in human treatment for victims and survivors of human trafficking. And we pledge, as the Catholic Conference, to cooperate and participate in whatever effort the committee proceeds with, with regard to these issues. Thank you. [LB689]

SENATOR LATHROP: Thanks, Jim. Any questions for Jim? Seeing none, always appreciate hearing from the Catholic Conference. [LB689]

JIM CUNNINGHAM: Thank you. [LB689]

SENATOR LATHROP: Next proponent. [LB689]

CALLI CAIN: Good afternoon. My name is Calli Cain, and I'm the president of a student organization at UNL called NUSAMS which is Nebraska University Students Against Modern-day Slavery. And a few weeks ago at the hearing for LB513, it was mentioned among some senators about the possibility of an interim study on human trafficking, and I'm here to support that and advocate for that. And I agree that LB689 is not the perfect fix for human trafficking in Nebraska, neither is LB513, but it's a start. And there's a lot of people that are willing to work together on this issue, including people from the FBI, with the Innocence Lost program in Omaha, the Attorney General's Office, and several researchers from UNL who are very educated on this issue. And so I'm here to ask that we work together in looking at the problem and better possible solutions. And in 2003, the FBI, in conjunction with the Department of Justice and the National Center for Missing and Exploited Children, launched the Innocence Lost National Initiative, and their combined efforts were aimed at addressing the growing problem of domestic sex trafficking of children in the U.S. In the seven years since its inception, there's now 39 task forces across the U.S., and in January 2010, they started a task force in Omaha, because they believed that human trafficking was a huge issue here in the Omaha and metro area. And in just the past year, the Innocence Lost program in Omaha has identified and successfully rescued five children from human trafficking situations. Some of these children were as far away as the East Coast. And five doesn't seem like a lot of people in the big scheme of things, but it's a start. And two weeks ago at a breakfast hosted at the Governor's Mansion in conjunction with the Nebraska Family Council and NUSAMS, the FBI supervisor Weyan Dun talked about the major problem that human trafficking is in our area, as well as the Lincoln Chief of Police Tom Casady, and the

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Council Bluffs Chief of Police Ralph O'Donnell. They all talked about how human trafficking is a problem, but our citizens don't see it because they're not aware of it and they're not looking for it. The most interesting thing that Agent Weysan Dun discussed was a sting operation they set up, just three weeks ago, in which they put an advertisement up of a girl on a Web site and wired it to one of their phones. And after just three hours, they received 24 calls for services, even though the girl made it clear that she was underage when she was called. And this just shows that Nebraska does have a problem with human trafficking, because there's a huge demand for sex--and sex with children. And anywhere where there's a demand, there's going to be a supply. And so I think an interim study would help us identify the best way to go about this problem. [LB689]

SENATOR LATHROP: Thanks, Calli. That seems to be the consensus on the committee, too, and I appreciate your coming down here again today and sharing your point of view and the good work of your organization. Are there any questions? I don't see any. Thanks once again. [LB689]

CALLI CAIN: All right. Thank you. [LB689]

SENATOR LATHROP: Other proponents wishing to testify on LB689. [LB689]

RON HAMPTON: I thank you very much. My name is Ron Hampton. I'm a professor from the University of Nebraska. I've been working in this area for the last six years globally. The support for my research and our research at the university has come from the State Department, the Justice Department, the International Organization of Migration. We continue to be, I think, a leading institution in this area of doing hard research that is putting numbers, real numbers, to how big this problem is. Our first endeavor was in Ukraine. And, although the estimates at that time were about 10,000, we were the first to do an academic, if you will, empirical study, and our numbers came up to be 20, sometimes 30 times, the amount that they estimated. So it wasn't 10,000 young people that were trafficked out of the country of Ukraine; it was closer to 200,000. The estimates for the U.S., you've already heard probably many times. It ranges anywhere from 200,000 to 400,000 nationwide. Within our own state, those estimates are probably closer to about 2,000 as we sit here today. I want to tell you that this is a real problem for our state as well as it's a real problem for all states. There is no one immune to this. It is a worldwide phenomena, and I would like to think that whatever bills we propose are those that will help us to become a slave-free state. Thank you very much. [LB689]

SENATOR LATHROP: Any questions? Do you have the statistics for the state of Nebraska? [LB689]

RON HAMPTON: No. In fact, that study has yet to be done. It would be fantastic if we

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get the support. We're providing a particular grant proposal that is nationwide that would include the state of Nebraska in the... [LB689]

SENATOR LATHROP: Do you have any estimates on how prevalent it is, or can you give us a sense on the prevalence of human trafficking in Nebraska, in a nutshell? [LB689]

RON HAMPTON: In a nutshell, we're looking at, at least, I would think at least 1,500 people. And it doesn't just include sex trafficking. It also includes construction and other areas of labor-intensive, low-wage kinds of debt trafficking, if you will. So if somebody has put a roof on your house, and they do not speak our language, there's a very good chance that they have been trafficked into the U.S. and trafficked into this business. [LB689]

SENATOR LATHROP: And when you use "traffic" in that term, is that "brought here from another place" or are they in some degree of servitude to the person that brought them here? [LB689]

RON HAMPTON: Probably the word trafficking obviously refers to the movement of people across country boundaries or across state boundaries for illegal activities in regards to putting them to work in ways in which they are not paid, and they are kept from being allowed to move about freely. [LB689]

SENATOR LATHROP: What's the prevalence of human sex trafficking in Nebraska, if you have an estimate of that? [LB689]

RON HAMPTON: Wow. We don't have a handle on that as well yet. We're still working in this area. But I can tell you... [LB689]

SENATOR LATHROP: Okay. And I got one more question, and that is,... [LB689]

RON HAMPTON: Okay, I'm sorry. [LB689]

SENATOR LATHROP: ...we talked the other day, because Senator Christensen had a bill on escort services. Is that just a front for human trafficking? [LB689]

RON HAMPTON: It's a front for enslaved girls, mostly women, some children. In fact, probably in this particular thing, many of them are probably under the age of 18. And more often than not, if you look at the numbers, we're probably looking at, at least six out of seven of those young women do not want to be there. They were not supposed to be there. That's our early estimates. [LB689]

SENATOR LATHROP: Okay. I see no other questions. Thank you for your testimony

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and your interest in the subject. [LB689]

RON HAMPTON: Thank you. [LB689]

SENATOR LATHROP: Any other proponents? Anyone here in opposition? Come on up if you care to testify in opposition. [LB689]

_____: I'm sorry. I just wanted to say that we're proponents, but we can hand in a letter for the senators (inaudible). [LB689]

SENATOR MCGILL: Thank you. [LB689]

SENATOR LATHROP: (See also Exhibits 5-8 and Exhibit 11) Very good. Thanks. Anyone here neutral on LB689? Senator Christensen has waived closing on LB689. That brings us to Senator Lautenbaugh and LB350. [LB689]

SENATOR LAUTENBAUGH: Thank you, Vice Chairman Lathrop and members of the committee. My name is Scott Lautenbaugh. I'm the senator from District 18, and I am the introducer of this bill. LB350 I think will be a mechanism to give juries a fairer and clearer and more accurate approach or appreciation and measure of the damages suffered by plaintiffs in personal injury cases. And I will...I'll be fairly brief in my opening, as I know there are several willing to testify behind me on this and relate their experiences as well. What this would allow in personal injury accidents is evidence as to previous payments or future rights of payments of actual economic losses. And then there can be evidence presented, if that's presented, to show what the plaintiff may have incurred to obtain those payments, if you will--spent to obtain those payments, if you will. No information regarding collateral sources; we don't want to have the juries discussing insurance, as is the current approach. And this information will be subject to discovery, as well, so it would be known ahead of time. That in a nutshell is what the bill does. I'll be happy to take questions at the end, I'll be happy to take them now. I'll be here throughout. I'll leave it to the committee. [LB350]

SENATOR LATHROP: Senator Council. [LB350]

SENATOR COUNCIL: Just a quick question, Senator Lautenbaugh. How do you distinguish what's in this bill, and what is the longstanding collateral source doctrine? I mean it's basically providing for the same, you know, to look at what other collateral sources, other than insurance, that are available to an injured person. [LB350]

SENATOR LAUTENBAUGH: What it would do is I would distinguish it from the current reality, if you will, to say that it would provide the ability to offer evidence of perhaps what actual bills have been paid, not just the face amount of the bills. And then the plaintiff would be free to offer evidence, saying: Yes, but I had to spend this money to

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get that payment. It really opens the door to not just introducing the face value of the bills. That's how it differs from current reality. [LB350]

SENATOR COUNCIL: Okay. But who's paying the bills? I mean the assumption is that somebody other than the insurance company is paying the bills? And if it is, why should the defendant benefit from that? [LB350]

SENATOR LAUTENBAUGH: Well, there's an exclusion here that says if the bills were paid by a state, federal, or the claimant himself, well, then that evidence doesn't come in. That's not what we're after here. But we're just trying to show whether it's a discount negotiated on the bill or the amount that it was agreed to accept for some sort of collateral source payment. That more accurately reflects the actual damages of the plaintiff rather than the initial face value of the bill. [LB350]

SENATOR COUNCIL: Well, I guess some could argue that there's some benefit from, if I'm able to negotiate a discount, who should receive the benefit of that discount? [LB350]

SENATOR LAUTENBAUGH: That is certainly an argument. [LB350]

SENATOR COUNCIL: Okay. All right, thank you. [LB350]

SENATOR LATHROP: I see no other questions. Thanks. Proponents of LB350. [LB350]

STEVE OLSON: Ladies and gentlemen, I am Steve Olson, an attorney up in Omaha, Nebraska. I've been a litigation attorney in Omaha for the last 22 years; handle mainly personal injury-type cases, generally defending tort-feasors, but sometimes representing injured parties also. My support for LB350 generally goes from the issue of fairness. The purpose of tort law is to put people back whole or put people back to where they were prior to the incident or prior to their injury and not create a windfall for some versus others. I would point out that LB350 would bring Nebraska similar to other states, including Iowa and, I believe, a growing majority of other states. It's only fair that people recover what their damages are; not necessarily get a windfall. As an example, if someone has...goes to the hospital and they run up some medical bills--there's \$100,000 in medical bills; but, because health insurance or another provider, there's been discounts some way to, say, \$30,00 or \$40,000, if the jury considers \$100,000 in medical bills and awards those, thinking that those are bills that actually have been incurred, essentially the injured party receives an extra benefit of \$60,000 that the jury never intended. So I think it's only fair for them to recover their damages. I don't believe that this is evidence of a collateral source, and the reason I say that is, is because it's not evidence of payments from another source; it's just evidence of what their actual damages are. Allowing people to recover more than their damages does a number of things: it increases litigation costs; it results in litigation lasting a longer time period and

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less likely to settle cases, which increases court expenses. Ultimately, it increases liability insurance rates, which everyone has to pay. It doesn't relate to the actual damages incurred. It's similar to property damage. When someone has a property damage to their vehicle, the damages are whatever the cost is to fix your car. You don't receive the highest estimate you can find but then be able to then go in and actually repair your vehicle for the cheapest estimate you can get; it's the actual cost. Allowing someone to be paid this higher amount, it just ultimately isn't fair. So I'd be happy to take any questions. [LB350]

SENATOR LATHROP: I don't see any. Thanks, Steve. [LB350]

DAVID BUNTAIN: (Exhibit 10) Senator Lathrop, members of the committee, my name is David Buntain, B-u-n-t-a-i-n. I'm an attorney and the registered lobbyist for the Nebraska Medical Association, and we are here today in support of LB350. And I think Mr. Olson has done a good job of explaining what the policy considerations are. I want to give you a couple of practical examples, and I...the page is handing out some materials. What's being handed out are three fairly recent court cases--two of them in Lancaster County, one of them is a Minnesota Supreme Court case--involving this issue, and primarily it involves the issue of negotiated discounts. Essentially the way our law is now, if someone is claiming a personal injury, whether it's a medical liability claim or other kind of personal injury claim, they can come before the jury, and the attorney can present and have them identify all of their medical bills--that comes in as the evidence of what their damages are--even though in most cases plaintiffs are...or the providers haven't been paid that amount. So it has the effect of enhancing the amount of damages that are proven to the jury beyond what the actual amount of damages is to the plaintiff. And the best example I can give of that is this first case that I've included, which is a decision in Lancaster County, this last year, in which the medical providers actually wrote off the bills. And the lawyers came in and said: How can the plaintiff recover for the medical bills if the providers have written off the bills? And the judge said: Because of the change that was made several years ago in the medical lien law, the jury can't be told that the bills were written off. So it makes it appear to the jury that the plaintiff has been damaged and has to pay these medical bills, even though those bills don't exist. The second case came down earlier this week in Lancaster County, a little bit different facts. But basically the lawyers there said: You know, these are bills that have been paid by insurance; they have been paid by Medicare. And yet, the court said: No, you can put in the full evidence of these bills. What LB350 would do would be to allow the court to handle this issue by taking evidence as to what the actual medical bills were...or what was actually paid on behalf of the plaintiff rather than what was billed to the plaintiff. And then the last case I've included is a Minnesota Supreme Court case where they reversed their longstanding rule. It is a collateral source case. But basically what they talk about is negotiated discounts and the fact that plaintiffs, in effect, get a double recovery if you don't take into account the negotiated discount. And I see I have a red light. [LB350]

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SENATOR LATHROP: Okay. You're here for the doctors today? [LB350]

DAVID BUNTAIN: That's correct. [LB350]

SENATOR LATHROP: And so let me ask you about the doctors' billing practices. If I have Blue Cross Blue Shield insurance, and the doctor generally charges \$100 for an office visit, and Blue Cross negotiates, because I've paid them a premium, they use that and send people into the field to negotiate a discount. [LB350]

DAVID BUNTAIN: Right. [LB350]

SENATOR LATHROP: That's really what we're talking about, isn't it? [LB350]

DAVID BUNTAIN: You're correct. [LB350]

SENATOR LATHROP: And that might be...let's say it's \$20 in this case. So for me, because I'm a Blue Cross Blue Shield person, I pay \$80 and your doctor writes off the \$20. [LB350]

DAVID BUNTAIN: That's correct. [LB350]

SENATOR LATHROP: Is that right? [LB350]

DAVID BUNTAIN: Yes. [LB350]

SENATOR LATHROP: And if I don't have a Blue Cross Blue Shield policy, I have to pay the full \$100, right? [LB350]

DAVID BUNTAIN: That's correct. [LB350]

SENATOR LATHROP: And the doctors think that's fair, right? [LB350]

DAVID BUNTAIN: It's the way the system operates currently. There are reasons that the discounts get negotiated. [LB350]

SENATOR LATHROP: Right. But if I am hurt in an auto accident--and I don't have health insurance--and I have a \$100 bill with your doctor's office--the people you represent--I have to pay them \$100. Am I right? [LB350]

DAVID BUNTAIN: They would expect to be paid. Yes. [LB350]

SENATOR LATHROP: Right. That's what your doctors do. They bill for the full face

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amount for those cases where the person does not have a health plan. Is that...?
[LB350]

DAVID BUNTAIN: That's correct. [LB350]

SENATOR LATHROP: Okay. And so what we're talking about is the person who's prudent enough to get a health plan. They have a discount because of the health plan they bought, and they actually pay less because their health plan has negotiated a better price. [LB350]

DAVID BUNTAIN: That's correct. [LB350]

SENATOR LATHROP: And you would have that discount go to the benefit of the tort-feasor, the guy that caused the wreck, rather than to the person who had the foresight to get the health plan. Is that the principle here? [LB350]

DAVID BUNTAIN: Well, that's one way to characterize it, but I submit that that's not really what the economic reality is. [LB350]

SENATOR LATHROP: Well, are your doctors taking \$80 off of people for the doctor visit, regardless of whether they have health insurance or not, or only in those cases where they have health insurance? [LB350]

DAVID BUNTAIN: No. The difficulty, Senator, is that that amount, the difference between the \$80 and the \$100, if the plaintiff comes in and says, I have \$100 worth of damages, when in fact he or she has only paid \$80, that's an enhancement on the damages award. The effect of that is to affect everybody who is a policyholder. I mean it's... [LB350]

SENATOR LATHROP: Well, the person it has the most immediate effect on are two people: the guy who bought the policy and the person who caused the wreck. It could be a drunk driver. He is going to pay less damages because the plaintiff bought a Blue Cross Blue Shield policy before the drunk driver hit him, isn't that true? [LB350]

DAVID BUNTAIN: That's correct. [LB350]

SENATOR LATHROP: So this is an issue about who the \$20 should benefit: the drunk driver that caused the wreck or the guy that got hit. Isn't that the case? [LB350]

DAVID BUNTAIN: And this affects many insured interests who, for example, medical liability carriers, automobile carriers, and... [LB350]

SENATOR LATHROP: Sure. Sure. And the problem is, the problem can also be

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described as a problem in the billing office at the doctor's office. If they had one rate, this wouldn't be an issue. If they charged everybody \$80, \$80 would be the standard. [LB350]

DAVID BUNTAIN: Well, I think that that's setting a...I don't agree with your premise that that's the reason for the problem. [LB350]

SENATOR LATHROP: Well, we can agree that we're arguing over the discount the injured person got because they bought health insurance and who should benefit from that discount. [LB350]

DAVID BUNTAIN: That's one way to characterize it. Another way to characterize it is that the jury is being misled as to what a plaintiff's actual damages are--and that's the way our law currently operates. [LB350]

SENATOR LATHROP: Okay. Well, I can appreciate that would be your point of view. All right. Any other questions? I don't see any. Thank you. [LB350]

KORBY GILBERTSON: Good afternoon, Senators. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in support of LB350. We were here last year in support of a similar piece of legislation. I think that LB350 goes a long way to addressing some of the issues that were brought up, I think by Senator Lathrop and others, during the hearing on the previous legislation, and that LB350 allows for a better picture of actual damages to be considered by a jury. And to address Senator Lathrop's question about--and we talked about this last year: What do you do about the person that has the insurance, and isn't that the benefit of having the insurance, is the reason why they're getting a lower rate? I think in Section 2 it would allow for the fact that you are paying those insurance premiums and that benefit, to be brought into evidence as well, so that a jury or the judge could look at the full picture of what people are either expending to receive these benefits or what their actual damages would be. With that, I'd be happy to try to answer any questions. [LB350]

SENATOR LATHROP: Just briefly, Korby, if I am injured in an automobile accident and I had the foresight to buy a disability policy, and the disability policy paid me for my time off of work, do you--and I missed work and I lost wages--do you think that that should be...that should go in front of the jury as well? [LB350]

KORBY GILBERTSON: I think that you could...I think, arguably under this bill, that, yes, it should. But you can also bring out the fact that you bought that disability policy to offset it, so. [LB350]

SENATOR LATHROP: So you would allow any collateral resource to be an offset, but I

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could pitch what I paid in premiums to the jury. [LB350]

KORBY GILBERTSON: I think that, based on our discussions last year and this year, that would seem to be the middle ground on this, to better reflect actual damages... [LB350]

SENATOR LATHROP: Okay. [LB350]

KORBY GILBERTSON: ...and not make a winner out of either party. [LB350]

SENATOR LATHROP: How far back do I get to go? The fact that I'm paying premiums on the health policy for ten years, do I get to show that I paid premiums for ten years? [LB350]

KORBY GILBERTSON: I'm guessing that, as with--I don't know if everyone's policy is like mine: I have to get renewed every year--so I'm guessing that it would be based on whatever policy you're covered under right now. [LB350]

SENATOR LATHROP: So. (Laugh) Okay, you've answered my question. You would just make it the policy year the person got hurt in...would be an offset. [LB350]

KORBY GILBERTSON: Well, I would guess that legally and technically that's the insurance you're being covered on, and each insurance contract is a... [LB350]

SENATOR LATHROP: Well, we could do it any way we want. [LB350]

KORBY GILBERTSON: ...is a separate contract. [LB350]

SENATOR LATHROP: We could make it any way we want. If I'm going to offer evidence of the premiums that I paid, I could go...we could make it anything we want, and have you go back 10 years or 20 years, or since the time I became an adult and started paying health insurance premiums. [LB350]

KORBY GILBERTSON: I think that would be something for the jury to discover...to look at. I can give you an example for myself. When I was in college I had to have two health insurance policies. I had knee surgery five times, and no one would write health insurance for me. I would love to be able to count that, but I don't think any jury would say, yes, she should be able to count rates she was paying 20 years ago. I think it would be for the actual contract of insurance you're under at the time. [LB350]

SENATOR LATHROP: Okay. I get where you're coming from. Any other questions? Thanks, Korby. [LB350]

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KORBY GILBERTSON: Thank you. [LB350]

SENATOR LATHROP: Any other proponents? Anyone here in opposition to LB350? [LB350]

ROBERT MOODIE: Senator Lathrop and members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys against LB350. And it's been suggested that this is not about a question of insurance--but I submit it is. People who bring lawsuits in personal injury cases are forbidden to mention or in any way advise or inform the jury that the defendant may be insured. The theory is that this information is irrelevant to any question that the jury is supposed to decide--those questions being whether negligence occurred, whether the negligence caused an injury, the nature and extent of damages from that injury. Further, it's felt that the information could be prejudicial to the defendant. A jury might be more inclined to find against the defendant if they know that he would not have to pay the judgment personally. This rule has been subject to discussions among lawyers since long before I was a lawyer. But it is now absolute. Even the mention of the word insurance is likely to result in the judge ordering a mistrial. The other side of that rule is that the person bringing the suit, if that person has some insurance that pays her bills before the matter goes to trial, this information likewise does not go to the jury for the same reasons: it's not relevant and it can be prejudicial. The jury may be less inclined to find for the plaintiff if they knew that her bills have already been processed by health insurance. We avoid the windfall to the plaintiff by giving the health insurance company that paid bills a subrogation interest, which means, to the extent that the injured person is recovered in her case for those medical bills that have already been paid by insurance, the health insurance company gets paid back and the plaintiff does not get a double recovery. What LB350 would do is eliminate the second half of this balancing act. Now it may say that...it may be suggested to you that the bill doesn't say anywhere about the jury being informed that there's insurance. But what it does say is the jury is going to be informed of the payments. And I don't know how we can inform the jury of payments, particularly if the payments are discounted, without the jury concluding that there is insurance. Now I, for one, think that juries are smart enough to understand insurance, if properly instructed, and that we could do away with both halves of this insurance question and deal with the issue, fairly, that way. But we must have a level playing field between the person bringing the insurance...or the person bringing the case and the bad driver who causes the innocent victim the damages. It would be fundamentally unfair for the...yeah, I got through that. I guess I've already got to that point, so that's it. Thank you. [LB350]

SENATOR LATHROP: All right. Thanks, Bob. Senator Larson. [LB350]

SENATOR LARSON: As I've mentioned many times this year, I'm not a lawyer, so I'm kind of new at these types of things. And I like your argument about, you know, that

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neither side could mention insurance and whatnot. But in this bill would you actually have to mention to the jury that there's been previous amount paid, or could you just say that this is their incurred amount, total incurred amount, to where, you know, we talked about...I mean Senator Lathrop brought up the negotiating; Blue Cross can negotiate it down. Couldn't the lawyers just say, this is how much it's been, total, even with the negotiating rights? And that way you'd never still have to answer insurance. And again, I'm not a lawyer, so I don't know the true judicial proceedings of how this goes. [LB350]

ROBERT MOODIE: Well,... [LB350]

SENATOR LARSON: But that would be common sense to me. [LB350]

ROBERT MOODIE: First of all, that's not what the bill says right now, and that would be need to require, because the bill, it says in Section 2, is that the parties may introduce evidence as to previous payments. So, the way it's envisioned right now, we're talking about actually telling the jury about payments that have been made. Now if it were... [LB350]

SENATOR LARSON: If it were to change though, would you guys be in support then? [LB350]

ROBERT MOODIE: No. If it were to change, then we're going back to the issue that Senator Lathrop was asking in his questions to previous testifiers, and that is: If, in fact, there is a discount...and the question comes down: What is a fair medical bill? [LB350]

SENATOR LARSON: So I would... [LB350]

ROBERT MOODIE: The fair medical bill may be a question of who bought insurance and who has insurance and who paid for the right to have a discount. And if I paid for my health insurance, paid a premium to get the discount, then who should get the benefit of that discount? Should I get the benefit of that discount--the innocent party, or should the bad driver get the benefit of that discount? [LB350]

SENATOR LARSON: I understand that, and I just...I guess I don't get why...or so you wouldn't be in favor of the bill if they struck that language, because you think it should be the plaintiff that gets that benefit. [LB350]

ROBERT MOODIE: There are more problems with this bill than I am permitted to elaborate in three minutes, and that would be... [LB350]

SENATOR LARSON: Well, I'm asking you questions. [LB350]

ROBERT MOODIE: That would be another one. Yes. Making that change would not fix

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the bill to my satisfaction or to those that I am testifying on behalf. [LB350]

SENATOR LARSON: Okay. [LB350]

ROBERT MOODIE: Thank you. [LB350]

SENATOR LATHROP: I think that's it. Thank you, Mr. Moodie. Any other opponents? Anyone here in a neutral capacity on LB350? Senator Lautenbaugh to close. [LB350]

SENATOR LAUTENBAUGH: Thank you, Vice Chairman Lathrop and members of the committee. I do appreciate your attention on this today, and I think the questioning was good and I think the points were made, and there is just a disagreement over where the benefit should lie, or should we just accurately inform juries of what the actual damages incurred are and the actual bills paid? This is not something that is, you know, unique to Nebraska, a movement in this direction. I had a discussion with an opposing counsel from St. Louis, discussing what they do in Missouri, where literally the information given to the jury shows the amount of the bills actually paid. If there is a credit for the cost of the plaintiff incurring, I believe that is then reflected as well, so then the amount of actual damages is reflected numerically, which is certainly knowable in every case and certainly calculable and certainly should be discoverable. And we believe the fairer approach should be to let the juries know what is actually paid and what it costs to achieve that discount--and we move ahead. I'd be happy to take any questions you might have. [LB350]

SENATOR LATHROP: Maybe just because you and I deal in this world, I'll ask a couple questions maybe to make my point, and that is, if you have two drunk drivers driving down the road, they both rear-end somebody and they both cause somebody \$100,000 worth of medical expenses, and one plaintiff had the foresight to go out and get a policy and his bills have been discounted to \$75,000. The first drunk driver is going to have to pay \$100,000 for the very same conduct that caused the very same injury, and you would make the second one pay \$75,000 and whatever the premium was for the year on the bills, so that the discount that the person got, the \$25,000 discount, goes to the drunk driver and not to the guy that got hurt and bought the insurance in advance of the accident. [LB350]

SENATOR LAUTENBAUGH: Well, I would like to clear up one misconception and that I did bring a bill like this last year, too, and I think our discussion was similar. The guy I represent isn't always drunk. For two years in a row now, we've had the hypothetical of the drunk driver, and I'm saying this just would apply to all defendants. [LB350]

SENATOR LATHROP: It would certainly include a drunk driver that rear-ended somebody. [LB350]

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SENATOR LAUTENBAUGH: Undeniably. Undeniably. [LB350]

SENATOR LATHROP: Okay. [LB350]

SENATOR LAUTENBAUGH: And, yes, that it would be the operation of it. We would be talking about the reality with these two parties and what was actually incurred by the plaintiff... [LB350]

SENATOR LATHROP: Okay. [LB350]

SENATOR LAUTENBAUGH: ...in the respective cases. [LB350]

SENATOR LATHROP: All right. Senator Harr. [LB350]

SENATOR HARR: As I looked this bill over, I do not see an immunity clause in there. Is that by mistake? (Laughter) [LB350]

SENATOR LAUTENBAUGH: (Laugh) I'll get on that if we'll get your support, Senator Harr. [LB350]

SENATOR LATHROP: Type up the amendment. (Laughter) All right. I think that's it. Thanks, Scott. (See also Exhibit 9) [LB350]

SENATOR LAUTENBAUGH: Thank you all. [LB350]

SENATOR LATHROP: That will close our hearings. [LB350]