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Business and Labor Committee  
February 25, 2013

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[LB302 LB310 LB396]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 25, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB302, LB310, and LB396. Senators present: Steve Lathrop, Chairperson; Ernie Chambers; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: Burke Harr, Vice Chairperson; and Brad Ashford.

SENATOR HANSEN: If I can have your attention, please, we're going to go ahead and start. We've got several members that are not going to be here today. I don't have the little green sheet, so turn your cell phones off; if you want a conversation, go out in the hall. Is that about it? (Laughter) If you need any copies made, let our page, Evan, know, the guy with the goofy glasses. (Laugh) And Senator Conrad has the first bill today.

SENATOR CONRAD: Good afternoon. [LB396]

SENATOR HANSEN: Welcome to the short committee. (Laugh) [LB396]

SENATOR CONRAD: And let's keep it that way. Senator Hansen, Senator Wallman, distinguished staff of the Business and Labor Committee, my name is Danielle Conrad; that's D-a-n-i-e-l-l-e Conrad, C-o-n-r-a-d, representin' the Fightin' 46th Legislative District of north Lincoln. I'm here today to introduce LB396. And let me be brief. I'm going to ask the committee to IPP this legislation. The subject has been disposed of via court decision, and I have conveyed the same to opponents and proponents who contacted our office in regard to the legislation. Thank you for your time, and I'm happy to answer any questions. [LB396]

SENATOR HANSEN: Are there any questions? We probably would accept the IPP motion, so... [LB396]

SENATOR CONRAD: Very good. Thank you, Senator Hansen. [LB396]

SENATOR HANSEN: Thank you. Oh, I don't even know who's next. Senator Wallman has a bill this afternoon. [LB396]

SENATOR WALLMAN: Good afternoon, Chairman Hansen, absent board members. My name...for the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent the 30th Legislative District. LB302 would apply only to those who are injured on their job and whose injuries were determined by the Workers' Comp Court to have resulted in total disability. Current law provides a formula for the annual calculation of the maximum weekly benefits. And although the Legislature has recognized the necessity of annually updating the allowable maximum, there is no such updating for the worker once his or her compensation amount has been set. LB302 would simply apply the same formula

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used to calculate the maximum benefits to the actual award of benefits on an annual basis. Thank you, Chairman. [LB302]

SENATOR LATHROP: Thank you, Senator Wallman. I apologize to those of you who are here today. Senator Ashford and I had an engagement that went a little bit long over the lunch hour, and...but we're back. That's the introduction of LB302. Are there any questions for Senator Wallman? I see none. Okay. We'll... [LB302]

SENATOR WALLMAN: Thank you. [LB302]

SENATOR LATHROP: Thanks, Senator Wallman. We'll begin with proponents of LB396...pardon me, LB302. [LB302]

STEVE HOWARD: Good afternoon. And my name is Steve Howard, H-o-w-a-r-d, appearing in support of LB302 on behalf of the Nebraska State AFL-CIO. And being distributed now is the statistical report from the court that covers dates and types of benefits that are paid out and shows the trend, going back to 2002 through the present, regarding payments made. And I've highlighted, towards the bottom of page 6 of the document, permanent and total disability benefits and the dollars that are being paid out. And you'll see, when comparing that highlighted line on page 6 to the very bottom line on page 7, that the number of dollars paid out for permanent and total disability is a very small proportion. And if we had this cost-of-living increase for permanent and total disability, it would not, by these numbers, represent a drastic or alarming increase. The numbers do require a bit of clarification in that...you might look at 2010 and 2011; those wouldn't necessarily be current because of the difference between the day that the injury occurred versus the dollars paid. But certainly, if you look back into the trend, into the early and mid-2000s, with the dollars paid for permanent and total disability, it's a small proportion of the total amount. But what happens with these folks that are, unfortunately, injured so badly that they are permanently and totally disabled, the amount that's being paid in workers compensation benefits is not adequate to keep them going; it's not adequate to keep their bills paid and their households up. So they look to social programs. If you're on permanent and total disability by award of the Workers' Compensation Court, chances are you're on Social Security, chances are you are eligible for benefits of social legislation, state and federal tax dollars. And so by replacing those with insurance dollars, it should be a net benefit for the taxpayer. We have one client that is receiving \$75 a week for permanent, total disability. And it'll never go up, because this bill is just prospective. But regardless of inflation, regardless of the cost of living going up, that gentleman will never see more than \$75 per week. And so the Nebraska State AFL-CIO supports this bill. And it just makes sense that there be a cost-of-living adjustment as it relates to those folks so unfortunate to be permanently and totally unable to work. [LB302]

SENATOR LATHROP: Very good. Thanks, Steve. Any questions? I see none. [LB302]

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STEVE HOWARD: Thank you very much. [LB302]

SENATOR LATHROP: Thank you. Next proponent for LB302. [LB302]

JON REHM: Good afternoon. Jon Rehm testifying on behalf of the Nebraska Association of Trial Attorneys. Just in addition to what Mr. Howard with the AFL-CIO said for increasing permanent, total disability benefits, the Nebraska Supreme Court has found that disability benefits are intended to...should approximate what a worker's loss of earning power is. So for example, if you have somebody who's my age--I'm 37 right now--who were to be found permanently and totally disabled...if I wasn't to be found permanently and totally disabled...if somebody at my age, assuming that that...their earning power should increase just with cost of living, with inflation and under any collective bargaining agreements, as I get older...or as somebody my age were to get older. So having that increase, that cost-of-living increase, better serves the purpose of the Workers' Compensation Act as enunciated by the Supreme Court. So that's all that I have to add to what Mr. Howard said. [LB302]

SENATOR LATHROP: Okay. Jon, did you say you were here for a group? [LB302]

JON REHM: Nebraska Association of Trial Attorneys. [LB302]

SENATOR LATHROP: Okay. I don't know if you said that and I missed it, or...okay, any questions for Jon? I see none. Thanks for coming down today; appreciate hearing from you. Anyone else here in support of LB302? Anybody here in opposition? [LB302]

ROBERT J. HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness. I've also signed in on behalf of the National Federation of Independent Business in opposition to LB302. We believe that the bottom line with LB302 is that it will result in increased cost of premiums for those employers who purchase workers' compensation insurance coverage, will also result in increased cost for self-insured employers. We have a number of technical questions. And I think the fiscal note, as well, underscores perhaps from the city of Lincoln or one of the municipalities or entities that...referenced is a question as to whether or not, even though the supporters of the bill have talked about this in terms of total and permanent...permanently disabled. The way I read the bill is that it would apply to both temporary/total and permanent/total disability, which may not be the intent or design of the bill. We also think that the bill in essence...and the costly factor is that it essentially puts in a COLA type of automatic escalation into the benefits, which we do not think is appropriate. We also would have questions on whether or not the administrative burden, which would presumably be significant, would be on the employers and the insurers and the TPAs to recalculate annually the increase in

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benefits or whether that, for example, would require a new court order. I would suspect not, but that's a technical concern and also a concern of substance, in that if that is to be placed upon the backs of the employers, insurers, etcetera. With that I'd be happy to address any questions. [LB302]

SENATOR LATHROP: Okay. Any questions for Bob? I see none. [LB302]

ROBERT J. HALLSTROM: Thank you. [LB302]

SENATOR LATHROP: Thanks, Bob. Next opponent. [LB302]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k, and I'm here on behalf of the Nebraska Chamber of Commerce. Our labor relations council did meet and discussed this bill, among other bills of interest, and essentially decided to take the same position that has been previously articulated by Mr. Hallstrom, on the same basis. Without being repetitive, essentially it was a cost issue. With that I'll conclude my testimony, and I'd be happy... [LB302]

SENATOR LATHROP: Okay. [LB302]

RON SEDLACEK: ...to answer any questions. [LB302]

SENATOR LATHROP: Thanks, Ron. Any questions for Ron? I see none. [LB302]

RON SEDLACEK: Thank you. [LB302]

SENATOR LATHROP: Thank you... [LB302]

SENATOR CHAMBERS: I just have one. [LB302]

SENATOR LATHROP: Oh, wait. Pardon me, Senator Chambers has joined us. [LB302]

SENATOR CHAMBERS: Could you repeat everything you said before I came here. I'm just kidding. (Laughter) [LB302]

RON SEDLACEK: Thank you. [LB302]

SENATOR LATHROP: (Laugh) Okay. [LB302]

KATHY SIEFKEN: Senator Lathrop and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, here in opposition to this bill simply because our members are very

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concerned that it will increase the cost of premiums and, again, those that are self-insured, an increase in the cost. [LB302]

SENATOR LATHROP: Okay. Sounds familiar. [LB302]

KATHY SIEFKEN: Yes, it does. [LB302]

SENATOR LATHROP: Okay. Any questions for Ms. Siefken? I see none. Thanks for coming down... [LB302]

KATHY SIEFKEN: Thanks. [LB302]

SENATOR LATHROP: ...giving us the point of view of the grocers. Anyone else here to testify in opposition? Is anyone here to testify in a neutral capacity? If not, Senator Wallman, you care to close? [LB302]

SENATOR WALLMAN: Just a very short closing. I can see why people are concerned about the cost. Maybe we'll have to, you know, look at how far back do we go and stuff like this. But I think it's a good, common-sense bill. Whenever you flat-line something, you're flattening your income; and so we know the cost of living goes up. So thank you. [LB302]

SENATOR LATHROP: Very good. Thank you, Senator Wallman. That will conclude our hearing on LB302. Senator Chambers, before you got here, Senator Conrad came in on her bill and asked that it be IPP'ed. [LB302]

SENATOR CHAMBERS: Oh, (inaudible). [LB302]

SENATOR MCGILL: Oh. [LB302]

SENATOR LATHROP: So we are moving right along. [LB302]

SENATOR CHAMBERS: I should have stayed away a little longer, huh? (Laughter) [LB302]

SENATOR MCGILL: I didn't get that update when I walked in late. (Laugh) [LB302]

SENATOR LATHROP: I didn't even notice you walked in. Excuse me, we're joined by Senator McGill, who finally got here at a quarter till. (Laughter) No, I know Senator McGill had a speaking engagement over lunch. So sometimes we try to get back here on time, but it doesn't always happen. So that brings us to LB310 and, from the 29th Legislative District, Senator Bolz. Welcome. [LB310]

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SENATOR BOLZ: Thank you. Good afternoon. That's right, my name is Kate Bolz; that's K-a-t-e B-o-l-z; and I do, in fact, represent the 29th District. I am here today to introduce LB310. The shoulder is probably the most mobile joint in the body. It is this mobility that makes the shoulder so critical in so many body movements. But this mobility can also stress the shoulder in ways that make it prone to injury. When those injuries occur, they have a tremendous impact on the ability to perform daily activities and work duties. If you think for a moment about how each of us are using our shoulders now, we might be repositioning the microphone or picking up our bill books, and all of these things have an impact on the way that our body moves and works, even though our jobs are fairly sedentary. Imagine the impact if a painter could no longer reach over her head or a carpenter could no longer use a circular saw with a mechanism or a mechanic could no longer work on a car raised about his or her head. For those whose occupations are limited to manual labor, the impact is more than significant. A shoulder injury can occur as the result of a repetitive job process or operation. Employees involved in tasks such as painting walls, hanging curtains, repairing vehicles on a lift, filing, and lifting objects are at risk for shoulder injuries due to excessive overhead arm motion. The most common workplace shoulder injuries are rotator cuff tears and impingement. Under current law, a shoulder injury is treated as an injury to the arm. Thus, if a worker sustains an injury to the shoulder, he or she is limited to the compensation provided in the schedule contained in Section 48-121 of the Nebraska Workers' Compensation Act (sic). LB310 would allow the Nebraska Workers' Compensation Court to award a loss of earning capacity in a case involving loss of the use of a shoulder. This means that the court would determine the extent to which an injured worker's earning capacity has been diminished on account of the injury. To me, treating the shoulder as an arm injury does not reflect the importance of that joint. Indeed the shoulder itself can compensate for some limitations due to injuries to the arm, thus diminishing the impact an arm injury might have. But there is no similar joint that can compensate for an injury to the shoulder. I believe that the policy of the state should reflect the importance of the shoulder, especially in those cases where the worker's other skills are limited. I'm happy to answer any questions, and I note that there are others who will follow me who can answer technical questions you might have. [LB310]

SENATOR LATHROP: Okay. Any questions for Senator Bolz? [LB310]

SENATOR HANSEN: I have one. [LB310]

SENATOR LATHROP: Senator Hansen. [LB310]

SENATOR HANSEN: Senator Bolz, so the purpose of your bill is just to separate the shoulder from the rest of the body and just zero in on those, or...so what are some of the common injuries to a shoulder? [LB310]

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SENATOR BOLZ: That's a good question. Let's see, common injuries include instability: sometimes a shoulder joint is forced out of its normal position and then no longer has the stability to lift or move. Impingement is caused by excessive rubbing of the shoulder muscles on the top part of the shoulder, and that can occur during activities that require excessive overhead arm motion, and sometimes that limits mobility in the arm and the shoulder. [LB310]

SENATOR HANSEN: And do you think that separating the arm and the shoulder will benefit quite a few people then, because the shoulder injuries are becoming more and more common? [LB310]

SENATOR BOLZ: I think it specifically helps workers who rely on manual labor, rely on the ability of their body to move in order to earn their living. And I think the shoulder is a unique part of the body that deserves special consideration. [LB310]

SENATOR HANSEN: Okay. Thank you. [LB310]

SENATOR LATHROP: I see no other questions. You're on Appropriations, right? Are you going to stick around, or do you want to...? [LB310]

SENATOR BOLZ: I'll stick around. [LB310]

SENATOR LATHROP: Okay. I don't think it'll be a long hearing, judging from the number of people in the room. [LB310]

SENATOR BOLZ: Okay. [LB310]

SENATOR LATHROP: So we will take proponents of LB310 first. [LB310]

JON REHM: Good afternoon, Senators. My name is Jon Rehm, here testifying in favor of LB310 on behalf of the Nebraska Association of Trial Attorneys. Just to kind of segue off what Senator Hansen asked Senator Bolz, under Nebraska law...for example, I have a client right now who's a year younger than I am, who's 36, who was a Teamster who was making \$15-\$16 an hour, which is about the highest, about the top you can make for somebody with a high school degree here in Lincoln. And he had a shoulder injury, tore his rotator cuff, has about a 10 percent impairment out of the cookbook, known as the AMA Guides. Fortunately for him, he's 36, he's able to get vocational rehabilitation, and he's going to school right now to be a respiratory therapist. Now flip the 36 around and go to somebody who's 63 or somebody in their late 50s who has that same injury; vocational rehabilitation for somebody who's elderly...or who's not elderly but somebody who is in their late 50s or early 60s is not feasible, because by the time the person gets retrained, you know, they're going to be 65, you know, they're going to be in their mid-60s, sometimes even in their 70s, if they're injured then. So vocational rehabilitation

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is not an option for people who are...who...generally for people in their late 50s and 60s who are still working. So that's...essentially, by treating their shoulder injury, you're allowing that class of workers to be compensated, people who do manual labor, in that wage pool. And if they're not...if people don't have a good option for compensation there, what happens then is you're forcing people to go on SSDI, which is...essentially they're borrowing against their Social Security; they're burdening the federal government; they're spending less monies in their communities. So that's the policy reason behind that, and that's the reason that NATA wanted to see this bill supported. Just as a reference, Iowa has this by case law. There was a 1996 case that allowed shoulder injuries to be paid for...paid like back injuries. And finally, just to get to the cost issue, I appreciate Mr. Howard bringing down the statistics, and I'm looking at page 6 here. And it looks like there's been a decline in both permanent/total disability benefits as well as permanent/partial/unscheduled and permanent/partial/scheduled injuries, and it's a long-term trend since 2002. I would also point out that since 2008--when the two-member...where, basically, where people were...where the court was given the discretion to award loss of partial earning power for two-member injuries--the amount paid on permanent, partial has declined since 2008. And those cases should be in the, you know, should be in the pipeline by...or should have been decided by now. So I don't think that the cost on this, to industry, would be unduly burdensome on them; while as the cost of the injured workers in their communities where they live at is going to be burdensome. So that's why... [LB310]

SENATOR LATHROP: Okay. [LB310]

JON REHM: ...I think this bill should be supported. [LB310]

SENATOR LATHROP: Thanks, Jon. I may use you just as...to make a couple of points so that people understand what this bill attempts to do, whether we decide we're going to go there or not. But generally when a person gets hurts in the scope and course of their employment, they're entitled to work comp. Those work comp benefits include medical care. [LB310]

JON REHM: Correct. [LB310]

SENATOR LATHROP: Work comp, when obligated to, pays 100 percent of the cost of medical care. And then they're paid temporary total disability benefits, or two-thirds of their average wage, while they're recuperating. And once they're at maximum medical improvement or as good as the doctors can get them, then they go into permanent disability benefits. [LB310]

JON REHM: That's correct. [LB310]

SENATOR LATHROP: Okay. In work comp we have scheduled members. And Senator



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Hansen, for one, is new to this, so I want to kind of cover a little bit of what we're driving at in this bill. You have scheduled members, which means if you hurt a finger...have a permanent injury to a finger, a hand, an arm, a toe, a foot, a leg, an eye, or hearing in one ear, that's what we call a scheduled disability. And according to the statute, the work comp statute, those people are paid some percentage of what you'd get for total loss of an arm, for example, depending upon the impairment. [LB310]

JON REHM: That's correct. [LB310]

SENATOR LATHROP: Okay. And for the injuries to the back or the brain--so the spine, essentially, or some problem that would impair your cognitive ability--those are what we call loss of earning capacity cases, where the person is compensated on a permanent basis for their loss in earnings ability, as opposed to going to the schedule to find out what you get for an injury to a arm. [LB310]

JON REHM: Correct. [LB310]

SENATOR LATHROP: And what you're asking in this bill, or what Senator Bolz is asking and what you support, is treating a shoulder injury as you would a back, calculating the loss of earning capacity and paying benefits based upon that, as opposed to going to the schedule and finding out what you'd compensate somebody for, for some percentage of a loss of use of the arm. [LB310]

JON REHM: Yes. [LB310]

SENATOR LATHROP: Okay. With that explanation, or with that background, I hope that was helpful. [LB310]

SENATOR HANSEN: Um-hum. [LB310]

SENATOR LATHROP: Does anybody else have a question for or any questions for Mr. Rehm? [LB310]

SENATOR CHAMBERS: He certainly gave some good testimony, in conjunction with you. Thank you very much. [LB310]

JON REHM: Thank you, Senator. [LB310]

SENATOR LATHROP: Okay. Yeah, Senator Hansen. [LB310]

SENATOR HANSEN: I have one quick question. [LB310]

JON REHM: Sure. Sure. [LB310]

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SENATOR HANSEN: The shoulder, the arm, I mean, they're all connected. I've had shoulder problems in both shoulders and also bicep problems... [LB310]

JON REHM: Sure. [LB310]

SENATOR HANSEN: ...too; so that's the connection between the elbow and the shoulder. So how do you distinguish...? I think, I don't know what they call it, a release bicep is a... [LB310]

JON REHM: Yeah, that's a shoulder... [LB310]

SENATOR HANSEN: ...is another...that's part of the shoulder injury, then? [LB310]

JON REHM: Yes, it is. [LB310]

SENATOR HANSEN: I can't remember why my doctor said I was in too much pain. [LB310]

JON REHM: It's generally...I believe it's the situs of the impairment or situs of the injury, where that happens, so...and... [LB310]

SENATOR HANSEN: So that would be a shoulder injury? [LB310]

JON REHM: That would be a shoulder...yeah, that usually is in conjunction with the rotator cuff. So there's a gentleman out in your district who I represented, who had...was--kind of why I was thinking about that--who was 63 and, you know, was working at the distribution center out there and can't work in a warehouse anymore and is really...can't really send him back to school, so what are you going to do? So that's kind of the impetus behind this bill, so... [LB310]

SENATOR HANSEN: I know about the age of 40 you start going downhill, so enjoy the next three years. (Laughter) [LB310]

JON REHM: Well, I started going downhill before that, so... [LB310]

SENATOR LATHROP: All right. And we won't question you on that. [LB310]

JON REHM: Thank you. [LB310]

SENATOR LATHROP: Thanks, Jon. [LB310]

SENATOR HANSEN: He offered that he was 37. [LB310]

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SENATOR LATHROP: Yeah. Mr. Howard. [LB310]

STEVE HOWARD: Yes. Steve Howard for the Nebraska State AFL-CIO. Just to pick up on these calculations of these two types of injuries. You know, we have the scheduled members: fingers, toes, arms, legs, and things; and that's a set number. You lose your thumb; after you're healed up, you're going to get I think it's 60 weeks. If your arm is cut off above the elbow, under the current law, at the shoulder joint or below: 225 weeks; well, we don't have that amputation situation that often in Nebraska, but you get a 10 percent rating: 22.5 weeks. It doesn't matter under that calculation how it affects you personally. The body as a whole is a much fairer way to assess benefits; the body as a whole: the head, neck, chest, torso, trunk, back, spine. When a judge is looking at those factors that impact the calculation for body as a whole, they look at the whole person: age, background, training, education, work experience, how much that person can lift and bend and push and pull and walk and kneel and crawl and all those things that go into it. And it's a much more accurate tie between the effect that the injury has on the person and the benefits that are awarded. And I would suggest to you that it could go both ways. If you have a person that's in a sedentary job that somehow has a shoulder injury, rotator cuff tear, and it's repaired, if they can go back to their job sitting at a desk, you know, lawyers shuffling papers, clicking on the computer, talking, writing, reading, it's not going to influence their earning power. So even though the book that my friend Mr. Rehm talks about that gives the percentage may give you 10 percent or 15 percent, if you have no loss of earning power, that person's rating may actually go down...and their benefits, rather, their net benefits may go down. But it is true that a shoulder injury can have a profound impact on one's ability to earn income and to work. And it's just a fairer calculation. I'm not aware that the Legislature has addressed this. It is the court that declared that shoulder equals arm, shoulder doesn't equal body as a whole, so you have the opportunity to clarify that. And when you just think about it, you know, just physically, anatomically, the shoulder is part of the body as a whole; it is the shoulder joint, similar to the hip as it is to the leg and the body as a whole. So we support this bill, and we think it's a much more accurate way to assess earning power loss...excuse me, entitlement to disability benefits, so... [LB310]

SENATOR LATHROP: Very good. Any questions for Mr. Howard? I see none. [LB310]

STEVE HOWARD: Thank you. [LB310]

SENATOR LATHROP: Thanks for your testimony. Anyone else here in support of LB310 that cares to testify? Okay, how about in opposition? [LB310]

ROBERT J. HALLSTROM: Chairman Lathrop, members of the Business and Labor Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and

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Fairness as well as the National Federation of Independent Business, in opposition to LB310. Again, LB310 will increase costs to employers, in that generally the scheduled member injury results in less benefits than would a loss of earning capacity or injury to the body of the whole as proposed under LB310. I guess our general proposition would be: If it's not broke, don't fix it. I think the current system of looking at scheduled member injuries, depending on the injury to the body part and the impact that it has on the body to a whole, does provide for a system that can sort out these things without having to be changed. The existing system focuses on the area of the body that the disability affects, as it should, since the overall system is intended to compensate employees for their actual disability. All too often, I think, we suggest that this is just the camel's nose under the tent, so I won't use that one today. Rather I'd say: Today the shoulder, tomorrow the hip. And I think you heard Mr. Howard in his testimony suggest that the shoulder is a part of the body as a whole, very similar to the hip that is part of the leg and the body as a whole. So I would suggest that we probably won't stop where we are today. I think, in closing, I'd suggest that this looks like a hotbed for litigation as well. What is the shoulder? Is the clavicle, injury to the clavicle, the shoulder? So we'll be deciding those types of issues through time if we pass this legislation. Be happy to address any questions that the committee may have. [LB310]

SENATOR LATHROP: I do have a question for you, Bob. We had a brief conversation this morning just in anticipation of this bill. Are you familiar with circumstances under which the shoulder is treated as a body as a whole? In work comp...in the world of work comp law... [LB310]

ROBERT J. HALLSTROM: I am not... [LB310]

SENATOR LATHROP: ...are there occasions where it is? [LB310]

ROBERT J. HALLSTROM: I am not personally, Senator. I did talk with Dallas Jones, who is under the weather today, or he would have been here to testify. And I believe he had suggested to me that if the injury results in disability to the torso and not just the arm, that the employee could be entitled to disability based on loss of earning capacity. So if I understood him correctly, that would be my understanding, that there are or could be cases of that nature. [LB310]

SENATOR LATHROP: Okay. And if this were to become law, there would be winners and there would be losers, right? Some people would benefit and some people would not benefit. Lawyers, for example, who don't use their arms unless they...prosecutors might point at people, but (laughter) other than that, lawyers, for example, or professionals, probably would get nothing under a loss of earning capacity. But if it were to become law, the beneficiaries, or the people it would primarily benefit, are folks maybe in the trades or people working on the floor at a packing plant, those who, you know, once they have that shoulder injury would not be able to do whatever job they

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were doing. [LB310]

ROBERT J. HALLSTROM: That would be my presumption, because...my assumption, because you'd have a presumption that it's a body-as-a-whole or loss-of-earning-capacity case, and then it would be based on the percentage impairment. [LB310]

SENATOR LATHROP: So in terms of figuring out the cost overall to employers, if you're insuring or if you're the employer of people who don't need their arms to do work, mostly the, you know, I suppose real estate agents, engineers, architects, lawyers, doctors, they're probably not going to realize anything under this bill. But... [LB310]

ROBERT J. HALLSTROM: Well, I suppose... [LB310]

SENATOR LATHROP: ...the guy who labors or does the physical work with the arms would. [LB310]

ROBERT J. HALLSTROM: I would suppose the other corollary would be that it's less likely that those individuals would injure their shoulder. I've had clients come in and look at my fingernails and suggest I don't work too hard, when they look across the desk, at least in terms of doing manual labor or getting dirt under my fingernails. [LB310]

SENATOR LATHROP: You say that, and I think our Chair of Revenue might have an interest in this. (Laughter) I think Hadley went down and tore a rotator cuff just two weeks ago. [LB310]

ROBERT J. HALLSTROM: Yeah. [LB310]

SENATOR LATHROP: So... [LB310]

ROBERT J. HALLSTROM: Reminds me of, "Down goes Frazier," from a fight many, many years ago... [LB310]

SENATOR LATHROP: (Laugh) All right. [LB310]

ROBERT J. HALLSTROM: ...but... [LB310]

SENATOR LATHROP: Well, I appreciate your testimony and your answering my questions. [LB310]

ROBERT J. HALLSTROM: Thank you. [LB310]

SENATOR LATHROP: Anybody else have questions for Bob? Senator Chambers.

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[LB310]

SENATOR CHAMBERS: Mr. Hallstrom, first a comment. The organizations you represent would be opposed to any change if it might result in more money out of their pocket, no matter what it related to. [LB310]

ROBERT J. HALLSTROM: As a natural matter, that would...as a general proposition, that would probably... [LB310]

SENATOR CHAMBERS: Okay. [LB310]

ROBERT J. HALLSTROM: ...be true, Senator. [LB310]

SENATOR CHAMBERS: Now, have you ever seen a skeleton or a drawing of a skeleton... [LB310]

ROBERT J. HALLSTROM: Yes, sir. [LB310]

SENATOR CHAMBERS: ...a human body? Now if you were to look at it, you know there's the rib cage, and then you called...are you the one who called this a clavicle, or did the other gentleman? [LB310]

ROBERT J. HALLSTROM: I referred to a clavicle. [LB310]

SENATOR CHAMBERS: Okay. Now when you look at this skeleton, the shoulder joint, that's the socket; and the arm, at the top, has a ball that fits into that socket. So you could literally jerk the arm away from the body, but the shoulder would still be there, wouldn't it? [LB310]

ROBERT J. HALLSTROM: Presumably. [LB310]

SENATOR CHAMBERS: So then, the shoulder is more a part of the body than of the arm, isn't it? [LB310]

ROBERT J. HALLSTROM: One could make that argument. [LB310]

SENATOR CHAMBERS: But neither of us is an anatomist. The only reason I'm mentioning that: I tend to see what they're talking about. Believe it or not, many years ago I did work on construction. I used to mix mortar; I used to cut stone; I used to do all of that. And practically everything that I did required some use of the shoulder. And even if you had, not necessarily an injury, but something that gave you pain, then it would impair or hinder your ability to do the kind of work that you had to do. So it wasn't always just lifting overhead, but anything that required some kind of ability to move or lift

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a weight is going to involve your shoulder. The people that you represent aren't really interested in those kind of niceties at all; they're just looking at, not the damage that might result to a worker because of a shoulder injury, but the fact that it would cost them more money in terms of premiums if this bill were passed and the shoulder injury were considered the type that Senator Lathrop and Mr. Rehm had described earlier, correct? They're just worried about the money out of their pocket. [LB310]

ROBERT J. HALLSTROM: That's one of the concerns we have. We're also concerned about trying to avoid the injuries in the first place. I think one of the earlier witnesses suggested that the cost of certain injuries had been reduced. And I assume part of that trend that he referred to is there are less injuries in the workplace that are occurring. And I'd like to hope that's because of workplace safety programs and things that employers have done in that respect. [LB310]

SENATOR CHAMBERS: Now if you were to characterize your clients, who would they be most akin to, Scrooge or Marley? [LB310]

ROBERT J. HALLSTROM: Uh...uh... [LB310]

SENATOR CHAMBERS: That's okay. That's like saying... [LB310]

ROBERT J. HALLSTROM: I'm not good at Christmas Carols either, Senator. [LB310]

SENATOR CHAMBERS: Okay. (Laugh) It's all right. [LB310]

SENATOR LATHROP: I think that's it. [LB310]

ROBERT J. HALLSTROM: Thank you. [LB310]

SENATOR LATHROP: Thanks, Bob; appreciate your answers to the questions too. Next opponent. [LB310]

RON SEDLACEK: Good afternoon, Chairman Lathrop, members of the Business and Labor Committee. And for the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. Again, our labor relations council met, and the discussion essentially did center around costs. And it also was a question as to if one is taking off the...one part is taking off the scheduled member benefit, what's next? And there was some anticipation in that regard. With that, I'll be happy to answer any questions. [LB310]

SENATOR CHAMBERS: You said you'd be happy to answer any question. [LB310]

RON SEDLACEK: I guess so, yes, sir. [LB310]

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SENATOR CHAMBERS: Are your clients more akin to Scrooge or Marley... [LB310]

RON SEDLACEK: Well... [LB310]

SENATOR CHAMBERS: ...or both? Both could belong to the Chamber of Commerce, couldn't they? [LB310]

RON SEDLACEK: Scrooge is redeemed. [LB310]

SENATOR CHAMBERS: And...but Marley, he...wasn't Marley something like an accountant, because he was dragging cashboxes and ledgers and things of that sort? [LB310]

RON SEDLACEK: They were partners in a counting house. [LB310]

SENATOR CHAMBERS: Yes, they were. And they could have belonged to the Chamber of Commerce, couldn't they, without changing anything? [LB310]

RON SEDLACEK: I don't think they would have paid the dues. (Laughter) [LB310]

SENATOR CHAMBERS: But they could have, other than that. [LB310]

RON SEDLACEK: (Inaudible). [LB310]

SENATOR CHAMBERS: Okay. [LB310]

SENATOR LATHROP: They would have been comfortable there. (Laughter) [LB310]

RON SEDLACEK: There you go. [LB310]

SENATOR LATHROP: Okay, thanks... [LB310]

RON SEDLACEK: Thank you, Senator. [LB310]

SENATOR LATHROP: ...Ron; I appreciate it. Anyone else here in opposition to LB310? Anyone here in a neutral capacity on LB310? Seeing no one here that cares to testify, we'll close with Senator Bolz. [LB310]

SENATOR BOLZ: I'll just add one brief remark in closing. And that is, as I introduced this bill my own father had his arm in a sling due to a shoulder injury. My dad's main occupation throughout his life has been farmer and truck driver. And so I'll just leave you with that visual; imagine trying to change the gears of a big rig truck without the use of



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your shoulder. Thanks for your time. [LB310]

SENATOR LATHROP: Okay, thank you very much, Senator Bolz. That's it for our hearings today. It's one of those days. Okay, thank you. [LB310]