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Business and Labor Committee  
March 09, 2015

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[LB288 LB429 LB480 LB554 LB555]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 9, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB429, LB288, LB554, LB555, and LB480. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Ernie Chambers; Sue Crawford; Laura Ebke; Jerry Johnson; and John McCollister. Senators absent: None.

SENATOR HARR: Hello and welcome to your Business and Labor Committee. My name is Burke Harr and I am the Chair of this committee. We have a lot of fresh faces here so I'll just go over the rules. First off, we'd ask that you turn off your cell phones or at least turn them to vibrate so that we don't disturb. We have four hearings today, five hearings today. So ask for your patience. It should be a long day. Want to appreciate everyone for coming today. If you are testifying, we ask that you fill out a green sheet, which are available by the doors, with your name and when you come to testify, please state your name, spell your last name for the record. If you have handouts, make sure you have ten copies, one for each member. And if you don't have ten, we have one page today? Two. Okay. So we have both our pages. Over here is Stefani Bradley from Kansas City, Missouri, and then we also have Drew Schendt from Broken Bow Nebraska. And they'll be more than willing to help you. And then we also have to my far left is Jamison Wyatt, the committee clerk, and to my right Meghan Chaffee who is legal counsel. And then we will let the senators introduce themselves starting with Senator Ebke, if you'd be willing to.

SENATOR EBKE: Laura Ebke, District 32.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45, which is eastern Sarpy County, Bellevue, and Offutt.

SENATOR JOHNSON: Senator Jerry Johnson, District 23, Saunders, Butler, and most of Colfax Counties.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, northeast corner of the state, and I'm Vice Chair of the committee.

SENATOR MCCOLLISTER: John McCollister, honored to serve District 20, which is central Omaha.

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SENATOR HARR: And with those housekeeping issues behind us, I think we are ready to begin on LB429. Standing in for Senator Smith is his L.A. Lisa Johns. [LB429]

LISA JOHNS: Good afternoon, Senator Harr and members of the Business and Labor Committee. For the record, my name is Lisa Johns, L-i-s-a J-o-h-n-s. I am the legislative aide for Senator Jim Smith who represents the 14th Legislative District in Sarpy County. I'm here today to introduce LB429. LB429 would establish evidence-based utilization and treatment guidelines for medical services in workers' compensation cases. Under the bill, any medical, surgical, or hospital service that falls under the guidelines would be presumed reasonable and would be covered. Insurers would not be liable for treatment falling outside those guidelines unless such treatment is preauthorized. A similar bill was introduced two years ago, and in that measure it was clear that emergency services are always covered. Senator Smith does want to make sure that this is the case in this bill, so we would work with the committee on any amendment that may be necessary to ensure that emergency services are covered. The guidelines are not intended to interfere with the patient-doctor relationship but are merely a...designed to be a starting point that benefits everyone involved in a workers' compensation case. When a worker suffers an injury, the guidelines will assist providers in making the proper diagnosis and prescribing treatments known to be successful, saving both time and money. It will eliminate the unnecessary back-and-forth between providers and payers, helping guarantee the providers are paid in a timely manner. And, again, it will help employers, especially small businesses. And, as you know, Senator Smith is a small business owner and said that workers' comp prices continue to rise. This just kind of helps contain some of those costs by, again, using evidence-based treatment that has been proven to be successful. A lot of times, the small businesses, if you have a case that goes on and on with a misdiagnosis or improper treatment, you have a lot of employee absenteeism then. And, most importantly, the injured employee benefits. When the injured employee has to go through a battery of tests and treatments that may not be the right course of action, it slows their recovery time. Early and proper diagnosis and treatment helps a worker heal quickly and get back to the quality of life free from injury and pain. Treatments that fall outside the guidelines are still available and covered if preauthorized. If preauthorization is denied or if payment after treatment is denied, LB429 provides that any party may request a finding by an independent medical examiner. The adoption of evidence-based guidelines seems to make sense because at least 25 other states have adopted some sort of treatment guidelines in workers' comp cases. They have been proven to work, providing physicians with a template for easy diagnosis and treatment for the common work comp related injuries, ensuring quicker payment, helping the injured worker heal, and resume his or her life as quickly as possible. That is LB429. [LB429]

SENATOR HARR: Thank you, Ms. Johns. [LB429]

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LISA JOHNS: And Senator Smith does send his apologies. He is introducing another bill in Transportation Committee right now. [LB429]

SENATOR HARR: Okay. I appreciate that. One more housekeeping I should mention is that we do have an overflow room in 1023. So if anyone would rather go over there, feel free. Any questions for Ms. Johns? Seeing none, thank you. [LB429]

LISA JOHNS: Thank you. [LB429]

SENATOR HARR: And I...is Senator Smith coming for closing or... [LB429]

LISA JOHNS: No, probably not. [LB429]

SENATOR HARR: Okay. Thank you. [LB429]

LISA JOHNS: I think he'll be in Transportation all afternoon. [LB429]

SENATOR HARR: Thank you. Are there any proponents today on LB429? Go ahead. [LB429]

KENNETH EICHLER: (Exhibit 1) Senators, thank you for allowing me to appear today. My name is Ken Eichler, E-i-c-h-l-e-r. I am director of regulatory affairs for Work Loss Data Institute, publishers of ODG, the guideline under consideration today. I'll be rather brief. A couple of general comments about treatment guidelines: I've given you a handout; I'm not going to go through all the PowerPoint. A lot of this is for factual backup if you'd like. But I would like to quote the Centers for Disease Control which indicates that informing agencies, providers, and medical professional/organizations about evidence-based medicine can improve patient outcomes. It's important to notice that...to realize that all guidelines are not a good fit for workers' comp, that there are differences between workers' comp guidelines and guidelines in group health. In workers' comp, we are bound to treat the patient and afford them any and all care appropriate to get them back to preinjury status or as close as possible, whereas, in group health, one buys defined benefits. The same thing applies for medications. In group health, medications are driven by cost. Under this bill and under the guidelines, the use of medications is driven by need, medical necessity. The guidelines will expedite the appropriate delivery of appropriate care. It's important to note that treating physicians under this bill are not mandated or required to participate in use of the guidelines. If they choose not to follow the guidelines and not to utilize the guidelines, nothing changes. They continue to treat and seek authorizations as they do today. However, if they do apply the guidelines, cite the guidelines, cite the evidence-based medicine, these would be the same basis used by the insurance carries and, therefore,

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would create a road map to expedite and facilitate the care, cutting down delays significantly. In Louisiana in the first year alone, the dispute resolution after adoption of guidelines, the dispute resolution time frame went from an average of 18-plus months to 60 days. The sooner we get care to injured workers, the sooner they can get back to functioning in life and work as well. We want to get them to maximum medical improvement as soon as possible. These guidelines give a list of preauthorized treatments and a list of treatments that require preauthorization, separate and apart. It also provides a road map through the appendix entitled documenting exceptions to the guidelines, such that if a doctor wants to treat above and beyond the guidelines or treat with a procedure that is, quote, not recommended as first line, and I qualify again, first line. Not recommended does not mean never, does not mean it shouldn't be authorized, but it means first line. To go beyond first line, it does require preauthorization, such as a back fusion. One would hopefully, absent an urgent or emergent scenario, go through conservative care, and then the doctor would document the need for such additional more extreme care. The formulary is also part of this. Formulary is very important. Our formula has two columns: a Y column and an N column. The Y column are the safer drugs that are nonaddictive that tend not to be dangerous; the N column means N as in needs preauthorization. That's predominately your opioids, your narcotics, your benzos, such as Valium, Xanax and the like--the drugs that potentially kill. People silently take these drugs not realizing the drug interactions and are dying in astounding numbers. I've provided you numbers at the back of the handout here. But we're talking about I think it's 114 or 116 people a day are dying from accidental overdoses, and that does not include substance abusers or people looking to get high. These are accidental overdoses. We cover evidence-based medicine. It's a transparent ranking that we clearly do. We review all the literature on an ongoing basis so that you're staying current. The evidence is ranked, the studies are ranked transparently, and all of this is available. So it is evidence-based. The doctors love it. They say it gets them out of the hot seat. It allows them to expedite care, and when they need to say no to a patient who's requesting an unnecessary treatment, it takes them out of the hot seat and gives them the ability to say no and explain why under the guidelines. I see the yellow light is on, which means I'm just about out of time. This is normally a 20 minute to an hour presentation (laughter) that we do nationally, but in the expedience and the goal of keeping it short and to the point. I am available for questions. I do testify on this nationally. Other jurisdictions have adopted and are in the process of adopting these guidelines. The goal again is to expedite and facilitate care, create a road map, open the hand of card so the insurance carriers don't have a closed book that nobody knows what they're using for authorization. It levels the playing field and it gets the injured workers what they want. And I did it before the red light went on. Are there any questions, Senators? [LB429]

SENATOR HARR: Thank you. Let me find out. Any questions for Mr. Eichler? Senator McCollister. [LB429]

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SENATOR McCOLLISTER: Thank you, Mr. Chairman. Can you enlighten us further about the Work Lost Data Institute and how widely is that standard applied? [LB429]

KENNETH EICHLER: Work Loss Data Institute is a privately-held independent publisher of guidelines. We do not write the evidence. We solely collect and cull the evidence. We have a medical advisory board of over 100 medical practitioners who review the studies based upon their specialities. We'll use the appropriate docs and other types of providers as the studies come out. We are adopted right now. We have firm adoptions. It's either in 10 or 12 states. It's 10 states with firm hard-core adoptions, there are 12 states with mixed adoptions, and there are another 12 states actively looking at adopting right now. We will further allow the state if they adopt the guidelines to post at no charge to stakeholders the formulary free of charge on the state Web site, and we also post the guidelines on [guidelines.gov](http://guidelines.gov) which is the National Guideline Clearinghouse controlled by the feds and we meet the criteria. [LB429]

SENATOR McCOLLISTER: Thank you very much. [LB429]

KENNETH EICHLER: Thank you, Senator. [LB429]

SENATOR HARR: Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for being here to testify and share this information. [LB429]

KENNETH EICHLER: Thank you, Senator. [LB429]

SENATOR CRAWFORD: Do you have any evidence of how long it takes the cases that are in the no category compared to how long it was taking cases to get litigated before they adopted guidelines? [LB429]

KENNETH EICHLER: The best example I can cite is Louisiana because they tracked. And as I said, they went 18 months of prolonged time to 60 days, which is huge. [LB429]

SENATOR CRAWFORD: Is that like an average for all cases? Basically the average went down. [LB429]

KENNETH EICHLER: Yes. [LB429]

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SENATOR CRAWFORD: Right. So I was just interested if there was any tracking on those harder cases, you know, the no cases of what happens to them once you adopt the guidelines. [LB429]

KENNETH EICHLER: It's tough to really track. Unfortunately, jurisdictions do not collect the data. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

KENNETH EICHLER: We're hearing the strong results. We're seeing the amount of time of disability go down. What's important to remember is once the patient is out on delays, they unfortunately fall into the role of becoming a patient. And when I say that, I don't say that in a negative way. I say that in a concerned way. When one sits home, eating, drinking, smoking, watching TV, and deconditioning, one develops a certain mind-set which is counterproductive to being a productive member of a family and a productive member of society. So by getting them the treatment sooner, getting them back to functioning in life, we're able to preserve and enhance quality of life. I wish I could give you a more hard-core number but even NCCI which collects data and WCRI which collects data, they can give anecdotal information but the numbers are tough to purely quantify. [LB429]

SENATOR CRAWFORD: All right. Thank you. [LB429]

SENATOR HARR: Thank you. We have been joined by Senator Chambers. [LB429]

SENATOR CHAMBERS: You're welcome. (Laughter) [LB429]

SENATOR HARR: Any other questions for Mr. Eichler? All right. I have a couple of questions for you. [LB429]

KENNETH EICHLER: Yes, sir. [LB429]

SENATOR HARR: So you say you're privately held and you also say you'll put the guidelines out for free. So how do you make money? [LB429]

KENNETH EICHLER: Okay. There are two different ways. One, the guidelines are available free, public domain. However, I'm guessing many of your are attorneys who are senators here. We view ourselves similar to Westlaw or LexisNexis. With Westlaw or LexisNexis, laws, rules,

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regs, cases are available in the public domain for access. However, it's somewhat difficult on your own to go out and spend time to find the information you want. We do provide a Web-based tool that's a subscription model that provides enhanced tools to get to the information a bit quicker with more efficiency. The majority of the insurance carriers and utilization review companies are already existing clients we use nationally. For the physicians within the state, we're talking about a cost, if they choose to purchase the tool, significantly discounted somewhere in the range of \$225 to \$250 a year. Docs will initially oppose that saying it's an additional cost to business. In reality, what physicians and medical providers--and I differentiate because all medical providers are not necessarily physicians--will tell us in other states with an average cost of a support staff member with fringe and benefits costing anywhere between \$35 and \$50 an hour. If we do the math, let's say it's at \$50 an hour. If the tool saves five hours in a year, once you've hit that five-hour point the tool actually becomes a cost savings rather than an actual out-of-pocket cost. And it speeds it up. It allows them to print out. It allows them to plug in a treatment code or a diagnosis code and auto populate. It allows them to extrapolate the evidence more easily, including printout of the abstracts of the articles. [LB429]

SENATOR HARR: And are you a for-profit or not-for-profit company? [LB429]

KENNETH EICHLER: We are a for-profit company. [LB429]

SENATOR HARR: Okay. Do you receive funding any other way besides subscriptions? [LB429]

KENNETH EICHLER: No, sir. [LB429]

SENATOR HARR: Okay. [LB429]

KENNETH EICHLER: If I could also qualify, we do not accept any direct communication with any pharmaceutical companies, any device manufacturers, or anyone who could influence the opinions on the guidelines. It's purely based upon the objective articles with no direct communication. We do accept submissions, however, there is no direct contact with the reviewers. [LB429]

SENATOR HARR: What about insurance companies? [LB429]

KENNETH EICHLER: Insurance companies are subscribers but not funders, so it's purely... [LB429]

SENATOR HARR: Okay. And do they pay the same \$250 to \$500? [LB429]

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KENNETH EICHLER: No. The insurance industry pays a higher fee. And the reason for that, the insurance carriers... [LB429]

SENATOR HARR: What is that higher fee? [LB429]

KENNETH EICHLER: It ranges based upon the number of users. It could be as low as \$100 or \$200 a user. It could be as high as \$400 a user or so, depending upon the numbers of users. [LB429]

SENATOR HARR: Okay. [LB429]

KENNETH EICHLER: And the reason the insurance companies are okay with the docs getting a lower fee is they are the point of entry and they are willing to pay high...the carriers will pay more to make it... [LB429]

SENATOR HARR: So how much does an average insurance company pay? [LB429]

KENNETH EICHLER: There's no such thing as average. We have small, third-party administrators that have one to two licenses. We have nationals that may have \$100,000-plus license for several thousand adjustors across the country. [LB429]

SENATOR HARR: Okay. So there are some that pay \$400,000. [LB429]

KENNETH EICHLER: Yes. [LB429]

SENATOR HARR: Some that pay more than that? [LB429]

KENNETH EICHLER: I'm not in the sales department and I'm not avoiding your question. I don't know the exact numbers. [LB429]

SENATOR HARR: Well, let me get at why I'm asking though, is because, you know, there's a concern if a majority of your money comes from the insurance company from their subscriptions, are you more likely to side with the insurance company or with a doc who, you know, because they are...they can have conflicting loyalty. So I'm trying to figure out...and that, I think it's very important to figure this out. [LB429]



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KENNETH EICHLER: I agree. That's an excellent question. We are nonbiased. Our goal is to get appropriate care to the injured worker. As I mentioned, we do not write the evidence. The evidence is published. They have published studies. We cull everything that is written and then rank it. So the evidence makes the decision. It's a scientific research that determines what treatments are, quote, recommended versus require more detailed authorization. [LB429]

SENATOR HARR: And I appreciate that. We're officially nonpartisan, too, so (laughter). [LB429]

KENNETH EICHLER: Unfortunately, we don't wear red or blue. [LB429]

SENATOR HARR: You know, and so I'm just trying to figure out, I know nothing about your company and I'm just trying to find out a little bit more. If we're going to write your company gets the exclusive business into our laws, I'll be honest with you, that gives me a large amount of heartburn because now you got a money trough, a state-sponsored money trough. And you may be nonbiased and you may be great, but I have a problem, fundamentally a for-profit business being the sole provider written into a statute. Let me ask you, do you have any competitors? [LB429]

KENNETH EICHLER: Okay. In the workers' comp space, there are some states that have written their own guidelines. None have done it well. None are able to keep them updated. There's one other national guideline publisher, which is a company I formally worked for which is ReGroup. ReGroup bought the full rights to the ACOEM guidelines. So the ACOEM stands for the American College of Occupational and Environmental Medicine. They used to be an independent agency. They are no longer independent. They have sold lock, stock, and barrel their guidelines to a private company. The ACOEM guidelines are only currently adopted in one state as a full adoption. That would be Nevada. Nevada does not even...has adopted the guidelines but does not enforce the guidelines. Nowhere else in the country have the current version of the ACOEM guidelines been used, whereas our guideline is used in just about every state soft or hard adoption. [LB429]

SENATOR HARR: So why are you guys better than your competitor? I'll give you a chance to make a sales pitch right here. (Laughter) [LB429]

KENNETH EICHLER: Why? Because of our objectivity, because of the way we handle the evidence that comes in. [LB429]

SENATOR HARR: But that's a conclusion. Why are you less objective? [LB429]

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KENNETH EICHLER: Why are we less objective? [LB429]

SENATOR HARR: Or more objective. You say you guys are objective. Why are you more objective than they are? [LB429]

KENNETH EICHLER: We have the resources available to, on an ongoing basis, review the literature that comes out and transparently rank it, whereas the other guideline company out there does not do so. They update their guidelines but every few years. We have better tools to utilize the guidelines. [LB429]

SENATOR HARR: Conclusionary again. Give me why you come to that conclusion that you have better tools. [LB429]

KENNETH EICHLER: How could I better say...without taking a look at the Web product or taking a look at the published guideline itself, it would be difficult. We make it easy to use. We're able to cull the information and present it in a clear, concise manner such that a treating medical provider, a payer, and a utilization review person can come to the same conclusion and have easy access to the supporting evidence. [LB429]

SENATOR HARR: Okay. How much do they cost? The other...your competitor. What is their cost basis? [LB429]

KENNETH EICHLER: They're approximately the same price. [LB429]

SENATOR HARR: Okay. Would you have objection if we put either/or into the statute? [LB429]

KENNETH EICHLER: Personally, no. However, from a practical standpoint, there is an issue with that because you then have two different guidelines, which means potentially double the work and potential confusion. That's why other states that have considered adopting both have gone back and modified and gone with one sole guideline. [LB429]

SENATOR HARR: You know, I guess, yeah, you could have double the work but I also...it's called the practice of medicine for a reason. It's an art. [LB429]

KENNETH EICHLER: Most definitely is. [LB429]

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SENATOR HARR: And, you know, these guidelines try to standardize care, which is good for a certain amount which is why we have a care and, you know, it worked for them. Let's say it works for 95 percent of the workers. That's good, right? You'd consider that a good ratio. For that last 5 percent it becomes more difficult. Now maybe if you guys have competing, you know, just like I, when I go to a doctor, I sometimes ask for a second opinion. The other version would be just that, a second opinion. So if the first isn't working, you have a chance to try something else that still fits within before you have to go through the more laborious standard of going outside the guidelines. [LB429]

KENNETH EICHLER: So, Senator, that's where I respectfully disagree with you. The reason being in our treatment guidelines, we are not cookbook medicine. We do not state take step A, step B, step C. We do not define what specific treatment must be given for any condition. What we do is we provide a list of all of the available treatment options to the physician, and then under each one, A to Z, we state whether it's recommended or not recommended as a first-line treatment. We cite the evidence. We have the rankings available. So the decision making is truly a patient-physician decision. If one has a rotator cuff tear, we're going to address every treatment and every diagnosis known out there, whether it's going to be surgery, whether it's going to be physical therapy, whether it's going to be acupuncture, whether it's going to be self-directed home exercise, whether it's going to be MRI, CT, you name it. We're going to list down whatever evidence is available and then it's then up to the patient and the physician to select which of those treatments. If they select one that comes under the category that's recommended, then it's pass go, collect your \$200, do it immediately, you don't need preauthorization from the carrier. If you choose to look at one of the treatments that are not recommended as a front line, it then prescribes what needs to be documented such that that case doesn't fall into the abyss and so that the physician can provide the proper information to the carrier to expedite. I think people are under the misnomer that carriers benefit by delaying and denying care when in reality they don't, especially under workers' comp. But what... [LB429]

SENATOR HARR: I never made that assumption. [LB429]

KENNETH EICHLER: I'm sorry, I'm not...I didn't say you did. I said in general folks do. But what happens is by ex...the carrier, the more they can authorize, the quicker the case moves forward, the better the outcome is going to be, the better it is for the patient. But bottom line, for the carrier it's also going to cost them less. And cost shouldn't be the driving factor. It should be quality of care. [LB429]

SENATOR HARR: Okay. Well, you're getting to the area that sounds a lot like Obamacare. [LB429]

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KENNETH EICHLER: Not at all. [LB429]

SENATOR HARR: Well, in that Obamacare has recommended procedures within it as well. So how do you differentiate? [LB429]

KENNETH EICHLER: Because, again, we are not...whereas Obamacare may be more directing care, we are just reviewing the available options that are available under the current medical literature and we are ranking the evidence. It's up to the physician and the patient to choose which option they choose to go down. [LB429]

SENATOR HARR: And so how do you...maybe that's another question is how you do this ranking? [LB429]

KENNETH EICHLER: Transparently, and it's in our guidelines and, you know, I'd be happy to afford committee members access to look at the guidelines. The...as I said, an article comes in, let's say a study comes in on the efficacy of a specific procedure. The agreed methodology is the standard methodology used in ranking medical literature and studies. That study is parsed out to our specific committee that is handling that body part or that condition. Let's say, low back or chronic pain or shoulder. We're going to have a group of shoulder specialists. It's not just orthopedic surgeons who treat shoulder but it's going to be physical therapists, it's going to be chiropractors, it's going to be physiatrists, it's going to be somebody from the pharmaceutical side, somebody so that all the folks who are involved in that will review the procedures. We rank on a scale of 1 to 11 and then A, B, and C within each. We have strict criteria that is cited on our site with ranking the different types of studies, the highest rankings are what carry the weight. So it is a standard accept...the re-methodology is the standard accepted methodology in the U.S. And we're very, very tough about it. We have to stand up to the, you know, test. [LB429]

SENATOR HARR: Okay. So these tests that you look at, how many are paid for by pharmaceutical companies? [LB429]

KENNETH EICHLER: How many are funded to us? [LB429]

SENATOR HARR: Of your studies that you use in making your rankings are used by...paid for by a pharmaceutical company? [LB429]

KENNETH EICHLER: Okay. That's a bigger question. The bigger question is who does studies in the United States currently. And we have to look at how funding is done. Funding comes in, in various ways. The two top sources of funding for any medical research, not specifically our

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guidelines because we're looking at all medical research coming out, is pharma and manufacturers. That's the reality. Unfortunately, we don't have a government system and we don't have enough "philanthropers" to really support true medical evidence. Who follows after pharma and device manufacturers? You've got research institutes, you've got medical schools, you've got universities. Of course, you've got the National Institute of Health. They have their own protocol. But when you look at the research institutes, you look at the universities, why are they funding studies? They're funding studies to gain attention, to gain donations, and to gain faculty to come on board. Why? Because that faculty then brings on further funding and donations. So it's a true cycle that goes on. [LB429]

SENATOR HARR: So what percentage is by big pharma? [LB429]

KENNETH EICHLER: I couldn't cite that number to you. That would be the overall global number that's available to all researchers, not...to all research, not just to us. [LB429]

SENATOR HARR: Okay. All right. [LB429]

KENNETH EICHLER: I wish we were in a country where we had billions of dollars to go to medical research. Personally, my family was very involved in a medical research foundation where we gave out over \$60 million of funding. We were very tough about where we gave our funding. We only funded studies and programs where it was not only private research but it was research...rather clinical research but it had to be based to actual patient care. So we gave all our money or the majority of it to a couple of research institutes where we knew it was going to make a difference with patients. People have different ways, but when you go, look at research, take an example of use of an ice pack. Who's going to fund the efficacy of an ice pack? We joke in our office the ones we should be turning onto are Bird's Eye and Green Giant. And I'd say that with no disrespect because what's the best ice pack out there? A bag of frozen peas or a bag of frozen corn. Nobody is going to fund that research. This is the world we live in. This is the way research is funded. We have no control over that. We just receive research; we don't fund it. [LB429]

SENATOR HARR: But you do judge it. [LB429]

KENNETH EICHLER: We objectively and transparently judge it with all ranking scores disclosed in the guidelines... [LB429]

SENATOR HARR: Okay. [LB429]

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KENNETH EICHLER: ...so that one can dispute if they wish. And you asked about the competitor. We have a much more detailed ranking system, a much greater transparency than the ACOEM guidelines. [LB429]

SENATOR HARR: All right. It doesn't get past...I really have a fundamental problem of putting a statute up for-profit business. I mean, if you were not-for-profit and there are...you know, I probably would be okay or I'd have a little less heartburn. But the fact that you will make money off a statute like this, and we only allow...you know, you're the first one, it's a lot easier for everyone else. You don't run into problems with that anywhere else? [LB429]

KENNETH EICHLER: There are no other options really. You're only other option is writing your own. And, you know, look at Colorado. Colorado wrote their own guidelines. I think Dr. Kathryn Mueller is a very dear friend of mine. We travel the country extensively. Kathryn's state spends in excess of \$400,000 or \$500,000 a year to write a guideline for but four or five body parts. Kathryn is the president of ACOEM. She's the first one to tell a state not to attempt to write their own. Unless you've got a for-profit company, then who else is going to maintain and review the number of articles that come out on an annual year? [LB429]

SENATOR HARR: So if you're privately held, who owns you? [LB429]

KENNETH EICHLER: We are owned by a gentleman, Phil Denniston, and his wife, Pat Whelan. [LB429]

SENATOR HARR: Okay. And, you know, I don't want to get too much into your business but at the same time if we're going to put money in your pocket, what was your revenue last year? [LB429]

KENNETH EICHLER: That's not something that the company generally reveals. It's several million dollars. I think it was approximately \$7 million. [LB429]

SENATOR HARR: Okay. That was your revenue or your income? [LB429]

KENNETH EICHLER: That was the gross sales. [LB429]

SENATOR HARR: Okay. [LB429]

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KENNETH EICHLER: And of that, there are obviously extensive costs to be able to publish a guideline to the extent and research the amount of research we do. There are associated costs. [LB429]

SENATOR HARR: But I get that but, boy, I'd sure love to have a statute that says everyone has to do their law work with me, you know? [LB429]

KENNETH EICHLER: Quite candidly with no disrespect to the state of Nebraska, the state of Nebraska is but a blip on our finances. All the national end carriers that do business here are already licensees. We're looking at maybe a couple of hundred licenses to the state. To us why this is a potential win for us is not the bottom line dollars on this, it's the fact that we're dealing with the national carriers who want us adopted in their states because they're looking at...you know, one guideline is easier for them to use than multiple. They do have the ACOEM guidelines as well, but the majority, the majority of utilization review companies, they're using our guideline because it's the easiest, it's the most accurate, and it's the easiest for physicians to use as well. A physician can in a matter of seconds during a patient encounter plug in an ICD code, which is a diagnostic code, and a CPT code and determine on the spot while they're with a patient whether or not it requires preauth. [LB429]

SENATOR HARR: And that's good and well. That's not my issue. My issue is...I think I've been pretty clear is I would like to put an amendment on here that says all legal work on this in the state of Nebraska has to use...we'll use my legal counsel to avoid conflict of interest. Would you object to that? [LB429]

KENNETH EICHLER: Would I object to that? If there are other options? [LB429]

SENATOR HARR: You have no other option. You have to use Meghan for all legal work in the state. [LB429]

KENNETH EICHLER: I don't think, you know, with all due respect I don't think you're comparing apples to apples. If you had other guideline options... [LB429]

SENATOR HARR: That's where you and I are going to disagree then. [LB429]

KENNETH EICHLER: Right. [LB429]

SENATOR HARR: Okay? Thank you. Senator Bloomfield. [LB429]

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SENATOR BLOOMFIELD: Thank you, Chair. Mr. Eichler, you earlier mentioned the guidelines and then you mentioned a dislocated shoulder. Could you possibly at some point in the next week or so get us a...what your recommendations would be for a dislocated shoulder so we can look at what you actually recommend be done, you know, which procedures are good and which ones you don't? [LB429]

KENNETH EICHLER: What I could do for you, if you say a dislocated versus a rotator cuff tear... [LB429]

SENATOR BLOOMFIELD: Rotator cuff tear is fine. [LB429]

KENNETH EICHLER: ...what I could do is I...for any multiple diagnosis, we could run it and we could give you a full printout of what was recommended, not recommended. And, again, it's important to remember, not recommended just means requires further preauthorization with case-specific information there, and that's to protect the patient against unnecessary or risky procedures, weighing in risk versus benefit. But we'd be more than happy to...yes. [LB429]

SENATOR BLOOMFIELD: Would you do that, please? Just make it a rotator cuff. That's fine. [LB429]

KENNETH EICHLER: Okay. Rotator cuff? And if permitted, I'll also arrange for access so that anyone on the committee can take a look at any body parts to see what the outcomes would be. [LB429]

SENATOR BLOOMFIELD: Thank you. [LB429]

SENATOR HARR: Senator McCollister. [LB429]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Prior to your coming here I'm sure you looked at Nebraska's current system. [LB429]

KENNETH EICHLER: Yes, I had. [LB429]

SENATOR McCOLLISTER: And what will transpire if we were to adopt this standard and do business with you? [LB429]



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KENNETH EICHLER: Okay. I can give you my perspective but I'd encourage you to more specifically allow Glenn Morton, who's the administrator of the workers' comp system here, address that. Glenn, I know, is present and I've worked with Glenn over the years through National Association of Workers' Comp regulators, so we know each other well. Basically if a doc chooses not to use these guidelines to expedite their authorizations, absolutely nothing changes. The doc continue to practice as they do. They continue to incur...encounter the potential delays that they do. But if the doctor chooses to treat applying the guidelines, any treatments that are considered recommended first line would not require formal preauthorization. Let me qualify that though. What it will do is in reality a doctor, a surgery center, a radiology facility is not going to perform an expensive procedure without a written approval in their hand. No chief financial officer is going to allow that happen, whether it's a \$400 or a \$1,000 MRI or CT or whether it's a \$50,000 operative procedure. They want that written authorization in hand. So if a doctor uses his guidelines, it almost ties the hands of the payor not to dispute it but to authorize it and provide that authorization on an expedited basis. [LB429]

SENATOR McCOLLISTER: I don't know if you're a listener to NPR, but during the last week they had an expose on workers' compensation and it talked about two states and some person that had a hand amputated or severed or something. It talked about the different standards and how much each state would award. How do we reconcile the big differences that some states award versus others? [LB429]

KENNETH EICHLER: Now, I haven't read the study yet. Unfortunately I've been traveling the last couple of weeks. [LB429]

SENATOR McCOLLISTER: Okay. [LB429]

KENNETH EICHLER: But if you're talking about the amount awarded, that's separate and apart from treatment. You're talking about permanency impairments. You're talking about partial permanent versus total permanent. You're talking about AMA awards under percentages. So this would not impact that at all. [LB429]

SENATOR McCOLLISTER: So I...presumably this would eliminate some of the treatments that some doctors authorize that go way beyond what's generally accepted. Isn't that correct? [LB429]

KENNETH EICHLER: We cover the ones that aren't. But what would it do is if those treatments are truly indicating or appropriate for that patient on a case-specific basis, I have a specific section on documenting exceptions, would give them the road map on what to document, example, physical findings. One of the biggest problems I find as I travel the country is when

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doctors seek authorization, it's the old saying garbage in, garbage out, the doctors take what I refer to as a lazy parent's approach. When we don't want to explain something to a parent, what do we say? Because I said so. Often doctors in putting in their requests for authorization take that approach. And when we go back over utilization and review files of things that are denied, it's generally a lack of information provided. This will help them understand what information needs to be provided as far as functional improvement, as far as physical findings, as far as other specifics to help get it authorized. [LB429]

SENATOR McCOLLISTER: Yeah. Thank you very much. Thank you, Mr. Chairman. [LB429]

SENATOR HARR: Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you, Mr. Eichler. I think I heard you say that in Nebraska many carriers already subscribe to your service. [LB429]

KENNETH EICHLER: That's correct. [LB429]

SENATOR CRAWFORD: So I was curious what they're already doing with your service or why they would subscribe to your service now. [LB429]

KENNETH EICHLER: Why? Because years ago...I love this one, years ago there was a commercial on TV for group health and they kind of showed Susie the insurance adjustor behind a desk with piles filed all over, and Susie was kind of ditzy and knew nothing about medicine or about treatment. And the question was, do you want Susie making your medical decisions? The reason that they subscribe to our guidelines is because they don't want Susie, with no medical background, making decisions. Hopefully, the insurance adjustors are able to look up procedures. If something...the procedure and the treatment fall within the preapproved range, hopefully that gives them the tool to expedite and authorize right away. What the majority of payers do is they will allow an adjustor level, I want to say adjustor, a claims handler to approve but not to deny. With most of the nationals...and I was recently on a call in Tennessee where I had three of the nationals on the phone. They firmly stated that denial of care requires review by a medical professional, whether it's a nurse or a physician. So what this does is allows them...gives them the bucket of what to preapprove and it allows them to take the information to kick it to the next level. The "not recommendeds" or if they see something is not meeting the criteria, kick it to the next level of medical review. It also gives them the ability when a doctor is potentially going to...requesting treatment which may not be indicated or may not be appropriate, it gives them the grounds to discuss the case, to identify why that case should fall out of the norm and be approved, or gives them the ability to deny. An example is a controversial procedure with growth hormones right now on spinal surgery. There's a ridiculously high risk of cancer in

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using that. So that's going to be something that's going to be flagged so it can be addressed to, again, hopefully protect the injured worker against unnecessary care. And the scariest thing is it's in rural states or very rural states, and you've got a large rural population here, where the family practitioner ends up treating cases that should probably be seen by a specialist, where the family practitioner knows the patient from the community. They're going to see them at church, at soccer, at dance events, whatnot. They don't want to go head to head. And a doctor will tell you it takes five to ten seconds to say yes and five to ten minutes to say no. So they're going to authorize things. And look at the example of a child getting antibiotics. How many times does a pediatrician give the antibiotics, even though they're not indicated and they're contraindicated, just to appease the patient? [LB429]

SENATOR CRAWFORD: So the carriers right...in our state, some, at least, carriers in our state are already using it to expedite the decision making that they're making...that they're doing now. [LB429]

KENNETH EICHLER: Yes, ma'am. [LB429]

SENATOR CRAWFORD: Does that have any legal standing when these cases are litigated that they were following your guidelines already before this bill passes? [LB429]

KENNETH EICHLER: That I would have to defer to the state administrators. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

KENNETH EICHLER: What I can tell you is it allows them easy access to the evidence to support their decisions. And, remember, we review all the studies. We then cull them, but we present the studies. And we will show physicians as well as the payers how to print out the abstracts. So if it goes to dispute resolution, the folks may do...you know, responsible for resolving the case, have the facts there and aren't just kind of playing as, you know, some of us are old enough to remember Johnny Carson putting on the turban, so that they're not playing Carnac and holding a file up and guessing. [LB429]

SENATOR CRAWFORD: Yeah. Okay. But just to clarify, if the carriers are allowed to subscribe to your service and some of them subscribe to it and use it to expedite cases now... [LB429]

KENNETH EICHLER: Yes, Senator. [LB429]

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SENATOR CRAWFORD: ...so the key difference between that and what happens if the bill passes is what? [LB429]

KENNETH EICHLER: Key difference is this is codifying it into a statute. It's giving the provider the upper hand to know exactly what the carrier is using and to utilize those same tools to force the hand of the payer to expedite the care. [LB429]

SENATOR CRAWFORD: Okay. Can a provider currently purchase your service? [LB429]

KENNETH EICHLER: Most definitely. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

KENNETH EICHLER: Many do. I couldn't tell you how many do in this state. There are a handful that do. They do in other states. Docs who are heavily involved in workers' comp do. Even... [LB429]

SENATOR CRAWFORD: So if they wanted to do as a best practice and they thought you had the best service, carriers can already purchase it and providers can purchase it and they could be using it in their discussions now? [LB429]

KENNETH EICHLER: Yes. That's why we're the number one and also one of the most affordable guidelines. The senator before asked about one of the other guidelines. McKesson or Macmillan is another guideline, but that's hundreds of thousands of dollars and it's only utilized by hospitals because it's not accessible to individuals. [LB429]

SENATOR CRAWFORD: Thank you. Thank you. [LB429]

SENATOR HARR: Any other questions? All right. Senator Chambers. [LB429]

SENATOR CHAMBERS: Your company is owned by two people, a husband and wife? [LB429]

KENNETH EICHLER: Yes, Senator. [LB429]

SENATOR CHAMBERS: There are no investors? [LB429]

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KENNETH EICHLER: No, sir. [LB429]

SENATOR CHAMBERS: And where these people get it...how much is the company worth, \$30,000? [LB429]

KENNETH EICHLER: Is it worth? [LB429]

SENATOR CHAMBERS: Uh-huh. [LB429]

KENNETH EICHLER: With no disrespect, I'm not an investment banker. I couldn't put a valuation on it. [LB429]

SENATOR CHAMBERS: Do you think it's worth at least \$30,000? [LB429]

KENNETH EICHLER: It's worth millions of dollars. We have over...we have approximately \$7 million-plus in revenues per year, so if you used a multiplier I'm guessing it's worth significantly more. What I can tell you is the family that owns the business has been approached in the past by investment bankers and they've chosen not to sell. They like it as a family-owned company. [LB429]

SENATOR CHAMBERS: And without this question being pejorative or argumentative, who invited you to testify here today or requested that you come? [LB429]

KENNETH EICHLER: Quite candidly, I showed the initiative and reached out to come as a regulatory affairs person who's committed to workers' comp across the country. I testify at hearings across the country. I work with state regulators. I work with all the stakeholder groups nationally. I cochair various national committees. And, yes, we have something to benefit here but I do check my hat at the door. [LB429]

SENATOR CHAMBERS: Okay. And how did you become aware of this bill? [LB429]

KENNETH EICHLER: How did I become aware of it? [LB429]

SENATOR CHAMBERS: How did you become aware of it since you reached out? You had to know something was going on in order to reach out. [LB429]

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KENNETH EICHLER: I monitor legislative activities across the country on a regular basis and I'm aware of it. I know various stakeholders in this state. Folks often will turn to me in various jurisdictions to help gain information. But I do subscribe to monitoring services that alert me when statutes are introduced and I follow them. [LB429]

SENATOR CHAMBERS: Did you discuss this with the one who drafted it? [LB429]

KENNETH EICHLER: After it was drafted. I did not see it until...I did not discuss anything prior to it being drafted. [LB429]

SENATOR CHAMBERS: After it was drafted, did you discuss this bill with the drafter? [LB429]

KENNETH EICHLER: I discussed it with various stakeholders. [LB429]

SENATOR CHAMBERS: Do you know who drafted the bill? [LB429]

KENNETH EICHLER: Who put the pen to paper? [LB429]

SENATOR CHAMBERS: Yes. [LB429]

KENNETH EICHLER: I believe some of the folks involved may have been Mr. Hallstrom as well as other individuals, but I couldn't tell you specifically. I know it was introduced by Senator Smith, but who put the actual language to paper I could not testify to. [LB429]

SENATOR CHAMBERS: Was there an organization that you had discussions with? [LB429]

KENNETH EICHLER: I've spoken with various key stakeholders, including the medical society, an organization... [LB429]

SENATOR CHAMBERS: Whoa, I don't want you to have to answer more than what I'm asking, so I'll try to narrow my questions. [LB429]

KENNETH EICHLER: Yes, sir. [LB429]

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SENATOR CHAMBERS: Who would be embraced in that term "stakeholder" as you use it? [LB429]

KENNETH EICHLER: Stakeholders represent all sides of the equation. Could be... [LB429]

SENATOR CHAMBERS: Well, that doesn't help me out. Consider me to have come here from Mars or whichever planet men come from and I just came here and I'm trying to inform myself, because I know about as much about this as would be the case had I come from another planet. Who...saying all sides of the equation doesn't help me at all. There are groups, there are individuals comprising these various entities or sides. [LB429]

KENNETH EICHLER: Definitely. [LB429]

SENATOR CHAMBERS: So who are some of those you talked to because you would know that? [LB429]

KENNETH EICHLER: Okay. I have spoken with Mr. Hallstrom and folks that he represents. I spoke... [LB429]

SENATOR CHAMBERS: Who are the folks he represents? [LB429]

KENNETH EICHLER: I'd defer to him to, you know, he represents... [LB429]

SENATOR CHAMBERS: Is there something...are you...did you take a vow of silence? [LB429]

KENNETH EICHLER: No, not at all. I just don't want to state something that I couldn't tell you everyone that he represents. [LB429]

SENATOR CHAMBERS: Oh, do you know any of those that he represents? [LB429]

KENNETH EICHLER: He represents folks from the insurance industry, some of the carriers. [LB429]

SENATOR CHAMBERS: Okay. And what about bankers? [LB429]

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KENNETH EICHLER: He works for the Nebraska Bankers Association, but in this capacity I don't think he's representing the Nebraska Bankers Association. But, again, with no disrespect, he's in the room. I'd defer to him to more specifically answer. I've also met with the folks representing the plaintiffs attorneys. I've represented with attorney Rod Rehm who represents the plaintiff attorneys. [LB429]

SENATOR CHAMBERS: Oh, plaintiff's attorney. Okay. [LB429]

KENNETH EICHLER: Yes. [LB429]

SENATOR CHAMBERS: I thought you said the plankton attorneys and I was...did you talk to the whales also? (Laughter) [LB429]

KENNETH EICHLER: The plaintiff's attorneys. I've spoken with Dallas Jones and other folks who represent the defense attorneys. I've spoken with lobbyists who represent some of the self-insureds. I've spoken with folks from the Nebraska Medical Association. [LB429]

SENATOR CHAMBERS: So then when you say stakeholders, you mean all those groups or individuals who would have an interest in this area of the law or this activity? [LB429]

KENNETH EICHLER: That's correct, including plaintiff and defense sides. [LB429]

SENATOR CHAMBERS: Okay. Right. Well, you said that and I got that. So that's all that I would have to ask of you. Thank you. One other question: Where did you...where were you just before you came to Nebraska? [LB429]

KENNETH EICHLER: Just before? [LB429]

SENATOR CHAMBERS: The first time. Yes, what state were you in? [LB429]

KENNETH EICHLER: Right before this trip I flew in from Florida where is my home. [LB429]

SENATOR CHAMBERS: From Florida. Who paid your way? [LB429]

KENNETH EICHLER: My company does as they do for me to travel all around the country. [LB429]



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SENATOR CHAMBERS: So your company is trying to gain more revenue by having research done on potential statutes being drafted which would allow your company to make money if that statute should be adopted. [LB429]

KENNETH EICHLER: Well, clearly we would gain some revenue. Quite candidly, it would be minimal in this state. It's more of a service to our existing clients. But, yeah, we do have some revenue to earn here. [LB429]

SENATOR CHAMBERS: Do you know anything about the oil industry? [LB429]

KENNETH EICHLER: Minimal. [LB429]

SENATOR CHAMBERS: Do you know what a wildcatter is in the oil industry? [LB429]

KENNETH EICHLER: No, sir. [LB429]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB429]

SENATOR BLOOMFIELD: Are there any other questions? Doesn't look like it. Thank you. [LB429]

KENNETH EICHLER: Thank you, Senator. Thank you, committee. [LB429]

SENATOR BLOOMFIELD: The next proponent, please. [LB429]

MELISSA WOITALEWICZ: Thank you, Senator Bloomfield, members of the committee. My name is Melissa Woitalewicz, W-o-i-t-a-l-e-w-i-c-z. I am the workers' compensation manager for Crete Carrier Corporation, which is self-insured and self-administered for workers' compensation claims. This means that we do not use the services of an insurance company or third-party administrator. We work with injured workers directly, paying lost time benefits, helping them through the transitions of life that comes with sustaining a work injury, and helping them navigate the medical system. I'm here to ask that you support LB429. And I want to make two points today: Who is the claims examiner, and we need a tool. The claims examiner is truly the one engaged in authorizing, questioning, or denying medical treatment. Over the years, I have worked with and supervised many examiners and I think it is important, first, to mention that very few have a medical background. I, myself, have a political science and history background. Claims examiners can range from those who may not have higher education to those who served

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in the armed forces. And then of those that do have higher education, most have studied finance, history, business management, journalism. The point I am trying to make is that claims examiners are not medical experts and mostly never have any type of medical training, period. Yet in the Nebraska workers' compensation system, they are the one who make the determination as to whether to approve the treatment or if will be disputed. And, unfortunately, that means delayed. So from us as claims examiners comes my second point. Please give us a tool to help us make better decisions related to medical treatment. The example I'm going to use is not related to an invasive and life-altering procedure like a spinal cord stimulator. I want to provide a hypothetical regarding pain-relieving narcotics. I am calling it a hypothetical but it is happening far too many times on the desk of claims examiners. You all have the visual of Susie in your mind right now, but (laugh) hopefully I'll represent Susie a little bit better. John Doe sustains a compensable injury to his low back. He resides in a rural area and designates to treat at the clinic where his personal family physician practices. He was initially evaluated by a PA who was under the guidance of an MD who may supervise multiple PAs and split his time between multiple offices. Mr. Doe is in a lot of pain so the PA prescribes a narcotic medication to use over a two-week period and Mr. Doe is taken off of work. Mr. Doe is reevaluated again in two weeks by either the same PA or maybe another PA in the same office. He still reports having pain, so his narcotic medication is not only continued but the dosage is increased. The PA also has to prescribe more medication now to handle the side effects that would include something like a stool softener and sleep aid. At the next follow-up appointment since Mr. Doe's body is becoming accustomed to narcotic use, it is no longer providing pain relief. So now the PA changes the prescription to another narcotic medication that is even stronger. An experienced claims examiner will be concerned about this use of narcotics and its escalation. A letter in the state of Nebraska can be written from the claims examiner to the PA about the medical necessity. But, currently, there is nothing holding a PA or a doctor accountable to provide an answer based on evidence-based medicine or a justification beyond that they believe the medication is reasonable and necessary. So workers' compensation will have to pay for it. The claims examiner can see this as a detriment to the injured employee since there is concern he could become dependent on the narcotics and impact his ability to fully recover from an injury, which will compromise return to work. The examiner could simply deny payment of the narcotic medication, but that could adversely affect the injured worker. The examiner could also spend thousands of dollars obtaining an IME. However, that again is time-consuming and may delay benefits. Certainly an argument may be made that workers' compensation carriers are interested in saving money. However, from my experience in the industry, I find our best outcomes occur when an injured employee is provided the medical care that is necessary per evidence-based medicine and timely. I look at our goal as doing what we can to minimize the impact to the injured worker's life and get them back to their preinjury status as safely and as effectively as possible. Claims examiners need a tool to help them and to provide treating physicians guidance for appropriate treatment so we may work together to help prevent further upheaval for an injured worker's life. I ask you to support this bill. I'd be happy to take any questions. [LB429]

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SENATOR HARR: Any questions for Ms. Woitalewicz? Any questions? Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you. So we just heard that several carriers in Nebraska are...subscribe to some kind of service like the service we were just hearing about earlier and use it just to help provide that guidance to their claims adjustors. Has that been your experience at all with self-insured? [LB429]

MELISSA WOITALEWICZ: Sure. I think there's a twofold answer to that. I think what Mr. Eichler was trying to say was that there is a lot of carriers that have adjustors who handle multijurisdictional claims. So they have just taken, the carrier has taken it upon themselves to adopt a protocol for their adjustors that say, you know, if it meets ODG, then you can automatically authorize that. In order to deny medical treatment, you are going to need additional evaluation or something like that. The other thing is isn't just within the state of Nebraska. It's just...like I said, it's a really good tool to use in those cases where you're starting to become, if you think treatment is going on a little too long or if in your communications with an injured worker they might be showing some different tendencies that make you question. So you might just look a little more closely at the treatment that's being recommended and make sure that it's within the guidelines because, again, you're not a medical professional to help guide you as to whether or not you would need an IME. The one thing that I would build on, based on some of the questions that you guys had earlier, is with my...and, again, with independent medical evaluations, yes, we have that right to it but I think that medical treatment guidelines even help us get there faster. So on the cases where there might be a dispute over some medical treatment, instead of going back and forth with the doctor and you might have three weeks of communications going back and forth with them, medical treatment guidelines, if it's put in place, the adjustor or claims examiner would say doesn't meet, I'm going to an independent medical evaluation immediately to decide, make that decision. [LB429]

SENATOR HARR: Senator McCollister. [LB429]

SENATOR MCCOLLISTER: Yeah. Thank you, Mr. Chairman. How often do claims go into dispute or have to be resolved between the... [LB429]

MELISSA WOITALEWICZ: I don't have an exact percentage for you but not often. [LB429]

SENATOR MCCOLLISTER: Ten percent of the time? [LB429]

MELISSA WOITALEWICZ: Ten percent or less. [LB429]

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SENATOR McCOLLISTER: Okay. Thank you. Thanks, Mr. Chairman. [LB429]

SENATOR HARR: Senator Bloomfield. [LB429]

SENATOR BLOOMFIELD: Thank you. And I probably should have asked this to the other testifier, but if this is already available to the providers, why should the state get involved? [LB429]

MELISSA WOITALEWICZ: I think that the challenge that we face as claims handlers is for those cases that do...again, we're not medical experts. So when you start getting to a point, if you have, for example, Senator, a meniscal tear in your knee which is just a cartilage tear... [LB429]

SENATOR BLOOMFIELD: Been there, done that. [LB429]

MELISSA WOITALEWICZ: Right. So if you have that, more than likely we are going to get you in, get your treatment, you're going to be well within the guidelines and we'll get you in and get you out and get you back to work. It's when, for example, you have a knee strain and you've been off of work for six months and had 50 physical therapy visits prescribed. You know, it becomes a judgment call unfortunately on the claims examiner's part to say, like I was speaking to in my testimony, when do I go get an IME which creates...you know, unfortunately, there's a connotation of dispute there. Or maybe the doctor will just come around. Whereas, if at physical therapy visit 24, I would have been able to say, with the medical treatment guidelines, Doctor, you're outside the guidelines; what is your plan in order to resolve this claim and get this guy back to work. [LB429]

SENATOR BLOOMFIELD: Okay. Thank you. [LB429]

SENATOR HARR: Senator Johnson. [LB429]

SENATOR JOHNSON: Thank you. It's good to have somebody testifying that is, I'll call it, local. Put it that way. People that use a service like this, you go there because there's the dispute. So in other words, you're not sure which way to go so you go to a higher place to go get that answer type thing. And let's say, because it's disputed, that it ends up being the wrong decision. Where does that liability...can you go back on this company that you've relied on for this expert diagnosis? [LB429]

MELISSA WOITALEWICZ: Can you clarify what you mean by the wrong decision? [LB429]

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SENATOR JOHNSON: Well, things just didn't go right for the injured person and somebody decides you made this decision to do or not to do and now this person is paralyzed. I don't know what...where would they go? [LB429]

MELISSA WOITALEWICZ: I'm nervous about that question if you're meaning like just the injured worker is off of work for a longer period of time or if you're talking about something actually, physically went wrong in the surgery. [LB429]

SENATOR JOHNSON: Let's say physically went wrong. [LB429]

MELISSA WOITALEWICZ: That would go to legal counsel to make that determination if there's medical malpractice and if somebody else has a liability. [LB429]

SENATOR JOHNSON: Do you know if this company that you reached out to for the higher answer would assume part of that liability? [LB429]

MELISSA WOITALEWICZ: I do not. And I think in that context what goes through my mind as a claims adjustor is that if something...if the surgery was approved and there's actually medical malpractice versus just a poor recovery. So a poor recovery, that's just the nature of the industry that we're in. Medical malpractice is something entirely different. [LB429]

SENATOR JOHNSON: Yeah. If the surgery went wrong but if it was the wrong decision... [LB429]

MELISSA WOITALEWICZ: And we had a poor...if we had a poor recovery, that's my liability. [LB429]

SENATOR JOHNSON: To operate or not operate. [LB429]

MELISSA WOITALEWICZ: That's my...you know, I had an injured worker that just had some comorbidities or something that prevented them from fully overcoming their injury. That's my liability. [LB429]

SENATOR JOHNSON: Okay. Thank you. [LB429]

SENATOR HARR: I have a couple of questions. [LB429]

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MELISSA WOITALEWICZ: Sure. [LB429]

SENATOR HARR: You probably...I, just like Senator Bloomfield, I'm probably asking the wrong person. I should have asked the last questioner, but we're all going to die, right? And it's a privately-held company that we're using here and it's a husband-wife. I haven't heard anything about a succession plan, which I assume means someone is going to have to take over the company. And here we have in statute. What happens if it goes up for sale and, heaven forbid, NATA buys it? What happens then? [LB429]

MELISSA WOITALEWICZ: I think that your concerns are, you know, valid concerns in putting in the statute. At this point, I'd like to pull in my experience from other jurisdictions because, mind you, with Crete being over the... [LB429]

SENATOR HARR: And I think it's working fine. I'll assume it's working fine right now. It's we as policymakers don't have to worry about it today. We have to worry about today and 20 years from now, 50 years from now, and I'm afraid 100 years from now. [LB429]

MELISSA WOITALEWICZ: Right, and as you notice in my testimony, I'm not speaking to any specific medical treatment guideline. [LB429]

SENATOR HARR: Fair. [LB429]

MELISSA WOITALEWICZ: I'm just asking for a tool. And in other jurisdictions that I've been in, that they have medical treatment guidelines, New York is one that I've worked in extensively and they have drafted their own medical treatment guidelines and they're making adjustments to it every year. So I recognize the challenge of this. [LB429]

SENATOR HARR: And I assume these are adjusted every year, too, aren't they, ODG? [LB429]

MELISSA WOITALEWICZ: But when...what I'm talking about is the state of New York has written their own so they make adjustments within the legislature there on their own. ODG, I think, as he testified, their company handles that and they do update their evidence. [LB429]

SENATOR HARR: So they would have the ability to change our statute without our knowledge then. Is that...you're shaking your head, is that a yes? [LB429]

MELISSA WOITALEWICZ: I would...yeah, I guess so. Yeah. [LB429]

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SENATOR HARR: Okay, okay. All right. I think that's it. Thank you very much. I appreciate it. Senator McCollister. Sorry. [LB429]

SENATOR McCOLLISTER: We're talking about the New York standards. And you've used this company as well in other states. [LB429]

MELISSA WOITALEWICZ: Correct. [LB429]

SENATOR McCOLLISTER: Are those two standards, those two sets of standards, remarkably different? [LB429]

MELISSA WOITALEWICZ: I...you're kind of getting into my...okay, so, again, I'm from the claims adjusting perspective. When I look at the Official Disability Guidelines in the states that have adopted that or from my personal reference, I honestly trust it more. And the reason why, with no disrespect, in a system where it is people who are not involved in the medical research and system that they may not have the same perspectives. It was very challenging in New York. I no longer do a lot of work up there, very, very challenging. But with the Official Disability Guidelines, you know that the latest research that's out has been implemented and it has been updated accordingly. [LB429]

SENATOR McCOLLISTER: Thanks very much. Thanks, Mr. Chairman. [LB429]

SENATOR HARR: Is there a similar service for scope of practice so we wouldn't have to deal with that? (Laughter) Thank you. [LB429]

MELISSA WOITALEWICZ: Thank you. [LB429]

BOB HALLSTROM: (Exhibit 2) Chairman Harr, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and also for the National Federation of Independent Business in support of LB429. I was assigned this position in the testifying so that the committee would have an easier name to spell and pronounce than Woitalewicz. (Laughter) In my testimony, I'm going to go away from my testimony for the most part because the witnesses before me have covered the field quite well. Ms. Johns talked about what the bill does in general. Mr. Eichler talked about the fact that there are a series of states, probably over half of the states, that have adopted some form of medical treatment guidelines. I would note that we have checked with Minnesota and Colorado who were probably two of the first states to venture out before any of the national guidelines were out there for easier access, and they had

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both suggested to us that if they were starting over they would not have followed that path because it's just easier to rely on the base of expertise and investigation and research that's done and analyzed by ODG and similar types of companies. I have addressed a little bit the drug formulary, which Ms. Woitalewicz had touched on. I think that's important because it provides insight into an area where I think we've done a lot of things in the Legislature with regard to prescription drug monitoring programs that have identified and recognized that overprescribing of opioids and narcotics is a significant problem. The dependence, if not addiction, that employees have to opioids because of overprescribing, not just in the workers' compensation area but beyond, has caused some real problems, concerns from a cost perspective, from a functionality return-to-work perspective in the workers' compensation area. And I think that's maybe one area where we could hopefully agree that treatment guidelines might provide some real substance and assistance. I will tell you, following up with Senator Chambers, on some of your questioning with regard to the stakeholders, we did reach out to some of those groups that Mr. Eichler mentioned. And we invited him in, you know, given his level of expertise and understanding of the treatment guidelines, to assist Rod Rehm, Julie Shipman-Burns, Dr. Bozarth from the Nebraska Medical Association, representatives of the insurance industry, to reach out to them to hopefully help them understand what the treatment guidelines are, to determine if they are good, bad, or ugly from their perspective. And I think we've made some strides, at least with regard to their understanding, and they have had access, as Mr. Eichler offered to the committee to have access to those particular guidelines and the Web site information. So I hope they're better educated. What I would like to do it just close in touching on a few things. One of the issues that we have, and, Senator Crawford, you noted to it, with regard to what's the difference between putting it in statute and just having it out there where companies already have access. One of the reasons that we came with this approach is that it's not intended to mandate the doctor's use. It's not intended to promote cookie-cutter medicine. It's out there as a guide that can be used in the discretion of the provider. And the issue that we've heard is in those cases, and they may not be a great percentage of cases, but in the ones where there are disputes over the reasonableness of medical treatment and there's a dispute and something isn't getting paid, these are designed to say if the doctor had followed, not mandated but discretionarily followed the guidelines, the statute simply gives effect to say in those cases we ought not have those disputes and extended and protracted debates in discussions over whether or not they're going to be paid. And that's, simply put, what the bill is designed to do. I've had some meetings with representatives of the trial lawyers and they seem to disagree with whether or not it's discretionary or mandatory. Certainly we can wordsmith the bill to ensure that that is our intent, that it is certainly discretionary. If they use the guidelines, then there is reasonableness, the conclusive presumption of reasonableness for the treatment. I would note with regard to a couple of technical things since the drafting of the bill--which I was the guy behind the curtain, Senator Chambers, who did draft the bill--we probably need to refer to only reasonableness as opposed to reasonable and necessary. When we met with the trial lawyers, they were concerned about this creeping its way into causation. And I think by adding



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"necessary" that probably, from the perspective of a legal perspective, has more to do with causation. And we're simply looking at reasonableness from the medical perspective and the ability to be paid without the disputes or the protracted delays that may otherwise apply. With regard to the back end of the bill, real quickly in closing up, Senator, there is a provision that was also some concerns over the rebuttable presumption of correctness that is involved with the IME process. We have absolutely no problems with removing that. It's not essential to the bill. It was designed to provide a little bit better guidance to the judges if they wanted it. If they don't want it and if the trial lawyers are concerned about that, we have no objection to removing that language from the bill. Be happy to address any questions that the committee might have. [LB429]

SENATOR HARR: Thank you, Mr. Hallstrom. Senator Chambers. [LB429]

SENATOR CHAMBERS: Mr. Hallstrom, you heard me tell the gentleman who came before you that I don't know anything about what is going on here, so deal with me on that basis if you will. [LB429]

BOB HALLSTROM: Yes, sir. [LB429]

SENATOR CHAMBERS: I'd like you to look at the second paragraph in your testimony. [LB429]

BOB HALLSTROM: Yes, sir. [LB429]

SENATOR CHAMBERS: In line 1, we have this term, "conclusively presume." Then the third line from the bottom and into the next line, we have "conclusively prescribed." Why do you say "presumed" in one instance and "prescribed" in the other, and what's the difference? [LB429]

BOB HALLSTROM: Without knowing anything about this, Senator, that is simply a typo. [LB429]

SENATOR CHAMBERS: Oh. Who doesn't know anything about that? You or me? [LB429]

BOB HALLSTROM: Well,... [LB429]

SENATOR CHAMBERS: Which is to be... [LB429]

BOB HALLSTROM: Presumed. [LB429]

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SENATOR CHAMBERS: Okay. So "prescribed" should be "presumed." [LB429]

BOB HALLSTROM: Correct. [LB429]

SENATOR CHAMBERS: Okay. Now to look at what it says, LB429 would conclusively presume that medical, surgical, and hospital services provided in accordance with the Official Disability Guidelines published by the Work Loss Data Institute are, "reasonable and necessary." Then this line in addition: medical, surgical, and hospital services that do not fall within the guidelines are conclusively presumed to be reasonable and necessary under Section, and it gives it, if prior authorization for the services is obtained. Who would be seeking this prior authorization? [LB429]

BOB HALLSTROM: That would be the payor...or, excuse me, the provider of the services would be seeking preauthorization from the payor. [LB429]

SENATOR CHAMBERS: The hospital or doctor would be the one seeking? [LB429]

BOB HALLSTROM: Correct. [LB429]

SENATOR CHAMBERS: And for whom would the hospital or the doctor be working? [LB429]

BOB HALLSTROM: For whom or with whom? [LB429]

SENATOR CHAMBERS: With whom? [LB429]

BOB HALLSTROM: With whom would be the payor, the insurance company, the self-insured employer. They would be looking to them. I think Mr. Eichler testified that, for example, if there was a really high-dollar particular type of procedure, that even if it was covered within the guidelines as an extra modicum of protection that the provider might still reach out to the payor and say I just want to have it documented that I've got preauthorization before I undertake this procedure or this treatment. [LB429]

SENATOR CHAMBERS: If you have two conclusive presumptions and they don't match up, which one yields to the other, the statute would trump this guideline institute or Work Loss Data Institute? [LB429]

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BOB HALLSTROM: Well, I think, Senator, they're two separate and distinct situations. One is where the treatment is clearly recommended by the treatment guidelines. The provider has chosen to provide treatment in accordance with the guidelines. And under that situation, it's conclusively presumed without more that they should be paid and that it should be taken care of. If they fall outside of the guidelines, they're not recommended by the guidelines. Mr. Eichler testified that there's certain protocols and documentation that can be provided to take them to where they will be approved or preauthorized. In that case, they fell outside of the guidelines but they jumped through the hoops to get preauthorization. And once again then if they fall outside the guidelines but you've gotten preauthorization, you're again conclusively presumed to be paid. [LB429]

SENATOR CHAMBERS: How is the injured person, how does the injured person factor into this scheme that's being discussed? [LB429]

BOB HALLSTROM: Well, the injured person won't have any direct involvement in the payment and the submission of the information and so forth but they're getting the treatment. [LB429]

SENATOR CHAMBERS: But here's what I mean. I asked it wrongly. What did they have...what input did they have in arriving at this scheme in terms of its being adopted by the state? This was done by those different providers or payors. [LB429]

BOB HALLSTROM: Yeah. I would assume, Senator, if I'm understanding your question correctly, the patient's involvement would be in consultation with the doctor. The doctor would be making recommendations of whether to in his discretion follow what the treatment guidelines have recommended. Or, conversely, if they have something else that they think would be a better course of treatment, there's absolutely nothing in this bill that stops the doctor from going that direction. [LB429]

SENATOR CHAMBERS: Okay. [LB429]

BOB HALLSTROM: It simply says if you then want to get preauthorization, we're going to give you the statutory conclusive presumption that further assists your ability to be paid. If none of that happens, then we're under the system that we follow today. [LB429]

SENATOR CHAMBERS: Maybe this doesn't even obtain. But if a person were required to go to a company doctor and an opinion was rendered and the person had a personal doctor and an opinion was rendered and the two opinions did not mesh or match, which opinion would prevail? Or doesn't this deal with that? [LB429]

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BOB HALLSTROM: Well, I don't know that it deals with the opinions. It deals with the treatment and the ability to be paid or the conclusive presumption that payment will follow if the treatment guidelines were followed or, in the absence of treatment guidelines applying, that you got preauthorization. [LB429]

SENATOR CHAMBERS: Well, when I say opinion I mean one doctor thinks that one level or type of treatment is necessary and the company doctor thinks something less or that no treatment is warranted. This doesn't resolve those kind of differences, does it? [LB429]

BOB HALLSTROM: I don't believe it would. [LB429]

SENATOR CHAMBERS: And you've dealt with the ones who'd be more likely characterized as company doctors? [LB429]

BOB HALLSTROM: I have not dealt with company doctors compared to any other doctors personally. [LB429]

SENATOR CHAMBERS: You've dealt with organizations that would probably have their own doctors who would want to do anything involved with this. [LB429]

BOB HALLSTROM: Some of our members may have company doctors, yes. [LB429]

SENATOR CHAMBERS: So you know what a company doctor is. [LB429]

BOB HALLSTROM: I understand what it is. [LB429]

SENATOR CHAMBERS: Are there differences as far as you know between what a company doctor recommends and what a person's personal physician would recommend? [LB429]

BOB HALLSTROM: I wouldn't know that as a general matter. I would suspect that doctors have differing opinions on a number of different subject matters irrespective of where they come from or where they're situated. [LB429]

SENATOR CHAMBERS: And you wouldn't have any knowledge of how those differences are resolved, would you? Or would you? [LB429]

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BOB HALLSTROM: I don't know. I mean, if two doctors provided treatment, my assumption, Senator, is that the determination would be if the treatment was necessary or if it was related to the workplace injury, and that may be a different issue with regard to potential issues of causation that aren't designed or intended to be covered by this legislation. [LB429]

SENATOR CHAMBERS: And you were approached to draft this legislation by this small business organization. [LB429]

BOB HALLSTROM: Correct. [LB429]

SENATOR CHAMBERS: And what's the other one that you represent, that thing that talks about equity and fairness, whatever that is? [LB429]

BOB HALLSTROM: Yes, sir. Nebraskans for Workers' Compensation Equity and Fairness. [LB429]

SENATOR CHAMBERS: Now that's a different group from the businesspeople that you represent also? [LB429]

BOB HALLSTROM: Yes. [LB429]

SENATOR CHAMBERS: And you represent both of them? [LB429]

BOB HALLSTROM: Correct. [LB429]

SENATOR CHAMBERS: And they both are in favor of this bill. [LB429]

BOB HALLSTROM: Correct. [LB429]

SENATOR CHAMBERS: Did they get together and agree that you should draft it or did the fair people talk to you about it or the business people. Which one asked you to do it? [LB429]

BOB HALLSTROM: The primary motivation for the actual drafting and introduction came from the work comp equity group. [LB429]

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SENATOR CHAMBERS: And did you resort to legislation in existence in other states in helping you draft this legislation? [LB429]

BOB HALLSTROM: Certainly reviewed that. I think the one thing that we have, Senator, that is different than most is that I believe of most if not all of the other states that have drafted and/or adopted the legislation, they have adopted in statute the mandating of the use of the guidelines as opposed to having them discretionary, and discretionary but if you follow them then you get a statutory presumption for payment. [LB429]

SENATOR CHAMBERS: That's all I would ask you. Thank you, Mr. Hallstrom. [LB429]

BOB HALLSTROM: Thank you. [LB429]

SENATOR HARR: Any other questions? Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you, Mr. Hallstrom. [LB429]

BOB HALLSTROM: Thank you. [LB429]

SENATOR CRAWFORD: So who are the...I'm new to this committee, so you have to forgive me for this. But who are the members of Nebraskans for Workers' Compensation Equity and Fairness? Who is that? [LB429]

BOB HALLSTROM: We have between 75 and 100 members that range from very small to moderate sized. I don't think we have any huge members, but many of them are small business owners. We do have some insurance agents, adjustors, that are part. We have some...a very few defense attorney firms that are members. But the vast majority of them are simply small business owners across the state. [LB429]

SENATOR CRAWFORD: Now standard practice in other committees I've been on is if there's something that you think a service that we could benefit from, I guess we...I have seen that more often we draft a statute that authorizes some agency to contract with someone as opposed to putting a specific company in the statute language. Was that something you considered or why did you choose to put a company's name in here as opposed to authorizing the Comp Court or authorizing someone else to contract for this service? [LB429]

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BOB HALLSTROM: Actually, I didn't think about it, Senator, but I think the only basis is that ODG seems to be the best company and have the best utilization and treatment guidelines that are out there from among the few that you have to pick from. And again the fact that we're not mandating the usage would seem to be a little bit different context than putting in statute that people have to use a particular, Senator Harr's law firm or something of that nature. [LB429]

SENATOR CRAWFORD: But I guess I don't under...and that's where I guess I'm getting stuck in terms of what you mean by we're not mandating it, because we are in statute saying that's conclusively presumed. And I guess what's most worrisome to me from the perspective of thinking about the workers is subsection (3) of Section 1 which says, as far as I understand it, that if it doesn't fall in these guidelines and we didn't follow their steps of preauthorization, you're off the hook and the worker is stuck. So to me that looks like...I mean, you may not call it a mandate but it looks like it has a pretty special legal status at least. (Laugh) [LB429]

BOB HALLSTROM: Senator, I worked with the administrator of the Work Comp Court a little bit in looking at this and trying to get some guidance as to how the IME process and the appeals process from there works. My understanding and clearly the intent under there is you'll see it says unless otherwise determined in accordance with subsection (3). So even though that does say that the employer is not responsible, it presumes that one alternative is if the parties want to, either party want to request an IME, that they will go through that process. It is my understanding it's not just saying you shall never have to pay. It just says you don't have to pay. You can go through IME. If you adopt or agree with the IME findings, that should be the end of it. And it may say either it was reasonable or it was not, which would be exactly the same way by my understanding that the current system works without any of this. Or if you don't agree with those findings, my understanding is that you can appeal it to the court for a final resolution. If that's not the case, that was certainly the intent and my understanding... [LB429]

SENATOR CRAWFORD: That's your intent to make sure that protection is in there. [LB429]

BOB HALLSTROM: Yeah. And my understanding is that's where you would be today without any of the stuff that is in. [LB429]

SENATOR CRAWFORD: Right. Yeah. But why is...so again, since it mentions this specific set of guidelines, how is it that we're not mandating that those are the ones being used? [LB429]

BOB HALLSTROM: The only issue is you're saying if you follow them in your own discretion we're putting in a statutory presumption which should benefit or favor a provider by saying, having followed them, you're not required to follow them but having followed them, we're going to give a statutory presumption that you shouldn't have to mess with whether or not you're going

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to be entitled to payment. When Ms. Woitalewicz reflected that, yes, we may use those in the absence of this statute today, clearly you can but you could use those standards and decide that you were still going to deny payment. This would say if the providers followed those, that denial of payment or that runaround should not occur. [LB429]

SENATOR CRAWFORD: So a...would a worker know how it...would they know whether or not their employer uses these standards to know that would be... [LB429]

BOB HALLSTROM: Well, it would be the provider that's using the standards. [LB429]

SENATOR CRAWFORD: The provider is using the standards. [LB429]

BOB HALLSTROM: Yes. The provider reviews the patient, consults with the patient, may look at the treatment guidelines, may not even pay any attention to them. If they don't, then the current system applies. But if they look at those treatment guidelines and they say if you do X, Y, Z in the recommended course of providing treatment to that patient, and I would presume and trust in every case the doctor would say, and that's the treatment protocol that I believe should be followed anyway. It's just adding the layer of conclusive presumption to their ability to get paid. [LB429]

SENATOR CRAWFORD: So in your...what I hear from you is this is much more about the provider and the carrier as opposed to the worker. [LB429]

BOB HALLSTROM: In terms of the payment aspect. [LB429]

SENATOR CRAWFORD: In terms of the payment. [LB429]

BOB HALLSTROM: Yeah. [LB429]

SENATOR CRAWFORD: Right. [LB429]

BOB HALLSTROM: But if the provider doesn't think that the treatment recommended under the guidelines is what he or she wants to provide to the injured worker, they don't have to follow it. And the current system that says if what you do is denied, you got the same rights that you do currently. [LB429]

SENATOR CRAWFORD: Right. Thank you. [LB429]



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SENATOR HARR: Any other questions? I have a couple. [LB429]

BOB HALLSTROM: Yes, Senator. [LB429]

SENATOR HARR: I guess my first question is, is this endorsed by the AMA, this guideline? [LB429]

BOB HALLSTROM: I do not know that. I think you'll hear from somebody at the NMA today that perhaps will not be on this side of the Mendoza Line testifying but... [LB429]

SENATOR HARR: And that's kind of what I'm getting at, is, you know, I keep hearing this is great for the worker because it provides certainty so they know what their treatment is. It's great for the provider because they have certainty. If they do a certain procedure, they'll get paid. And yet what I find ironic is that the people that this bill is meant to help are not the ones here testifying in favor of the bill. It would almost appear that this is a way for those providing a service to save money. Is that a fair assumption? [LB429]

BOB HALLSTROM: I don't know that I'd make that assumption, Senator. I think part and parcel of my limited discussions with the NMA representatives was that they felt that we were telling them that they had to follow the guidelines. I don't think that's what the bill says. It certainly isn't the intent and could be modified. One of the examples, Senator, and I may have touched on this earlier, but some of the NMA officials that we worked with in trying to reach out and allow them to better know about this, particularly in the area of the drug formulary and the opioids, said there's a real concern and a problem and particularly, as you might expect, when you get out into rural Nebraska where more family practitioners are providing care and we go to church and we have sports activities, that if somebody comes in and they're hurting and they want pain relief. You probably have a recipe maybe not for disaster but at least it isn't the best prescription to say, yeah, we want you to feel better, I don't want to watch you at the basketball game hurting the whole time. And you have this opioid overprescription issue. So I think there's some elements there where there may be some real benefit. [LB429]

SENATOR HARR: Okay. Well, let me just say, you know, the groups you represent, as a general rule when we come in with bills that provide workers' rights, generally your group comes in and says, well, we believe in free market and we believe in fairness and free. And yet here you're coming in and making more rules and regs, at least law that control how the relationship between the worker...the employer and the employee. And I think you made a strong case today for the use of opioids or overprescription. Would you be open to limiting this to the use of opioids to see how it works? [LB429]

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BOB HALLSTROM: Senator, I certainly think that's something that we've discussed. You know, there's always a middle ground to try and get things started, whether that's in the...what we call the drug formulary area or in a few of the high-cost areas for treatments for back injuries or whatever. Certainly that's within the realm of things that we would consider to be prudent to get your...not necessarily get your foot in the door or your toes wet but at least give it a chance. And I think and hope that you'll have some that will suggest today that the significance of the opioid abuse-dependence-addiction issue is something that's maybe worthwhile in that area, taking a chance on and, more than a chance, doing something that can really be beneficial. [LB429]

SENATOR HARR: Okay. Thank you, Mr. Hallstrom. Any other questions? Thank you. [LB429]

BOB HALLSTROM: Thank you. [LB429]

SENATOR HARR: Any other proponents on LB429? Oh, I thought we had somebody in the back row. Sorry. Any opponents on LB429? Your Honor. [LB429]

RONALD BROWN: (Exhibit 3) Good afternoon. My name is Ronald Brown. I'm a private practice lawyer in Omaha. I have returned to private practice after serving 18 years on the Nebraska Workers' Compensation Court. Prior to that, I was a private practice lawyer in Omaha for 18 years. I think it's safe to say I will not be back in private practice another 18 years. In 1993, there was a big rework of the Nebraska workers' compensation system and it was the product of LB757. Some of you may have heard of it. There is only one senator in the Unicameral now who was serving at the time LB757 was passed. It was the product of a commission that met for months, was appointed by the Governor, and provided a report with changes recommended to the Workers' Compensation Act. One of the changes that occurred as the result of LB757 was a statute which permitted the formation and use of managed care plan, medical managed care plans. When medical managed care plans were first...and if you look at page 1 of the handout I've given you, you'll see that the law became effective in 1995. There was one employer in Nebraska using medical managed care. In 1999, there were about 3,300 employers using managed care plans. If you look at page 3 of the handout, there are now 301 employers using medical managed care plans. Why did that happen? Because managed care came in and they promised all sorts of cost savings to employers in the state of Nebraska. And so when they first started managed care plan you'll see from this information, and by the way, this is from the annual reports of the Nebraska Workers' Compensation Court. You can go on-line and see where I have obtained all this information. Early on when the promises were made, if you sign up, we can save you all kinds of money in managed care of your workers' compensation claims. There was a big rush to sign up for managed care; 3,300 employers did so. In 2014, it was down to 301. Why did that happen? Because managed medical care did not work. It could not deliver on the promises it made. So we now have fewer than 10 percent of the employers in

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Nebraska participate in this compared to 1995 when this was brand new just like these medical guidelines are. If you look at page 4 of your handout, you'll see that there were six managed care plans that were approved by the Nebraska Workers' Compensation Court to provide managed care services in the state of Nebraska. There are still six that are approved but there's only one that's actually providing medical managed care services in the state of Nebraska, and that is this OHARA outfit in Sioux Falls, South Dakota. OHARA, the only managed care plan left, uses the Official Disability Guidelines in the services they provide to the dwindling number of Nebraska employers who subscribe to that. How do I know that? Because if you look at page 5 of your handout, Bob Hallstrom testified on a very similar bill in 2013 that the only medical managed care plan left in the state of Nebraska, OHARA, used Official Disability Guidelines. So you have one organization left selling managed care which uses these guidelines and they have not been able to provide what they initially promised. If they did, instead of having 301 employers using managed medical care, every employer in the state of Nebraska that was interested in saving in the administration of workers' compensation would be on board with OHARA managed care. Nebraska does not have a workers' compensation problem. If you look at the final page of my handout you're going to see a page from the annual statistical report published by the Nebraska Workers' Compensation Court. This page 7 shows you that medical expenses in the state of Nebraska... [LB429]

SENATOR HARR: If you can wrap it up, you have a red light too. [LB429]

RONALD BROWN: Okay. I'm sorry...have steadily decreased. In 2007 they were...for initial claims in 2007, they spent \$174 million. It's now down to \$79 million. Look under 2013. Medical costs are decreasing. You do not have to fix a runaway medical cost issue in workers' compensation in Nebraska. [LB429]

SENATOR HARR: All right. Thank you, now, Mr. Brown. [LB429]

RONALD BROWN: Yes, sir. [LB429]

SENATOR HARR: I apologize for calling you Your Honor earlier if that isn't proper. Any questions for Mr. Brown? Seeing none, thank you for your testimony. Any other opponents of LB429? [LB429]

IAN CRABB: Good afternoon, Senators. Thank you for allowing me to speak on LB429. My name is Ian Crabb. I'm an orthopedic surgeon in Omaha, Nebraska, and have practiced in Nebraska since 1996. We've covered a lot of LB429 today. I'd just reiterate that LB429 is a proprietary guideline for a private company from the Work Loss Data Institute. So in order to understand a little bit about the Work Loss Data Institute and its legitimacy, it's helpful to know a

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bit about how it came to be. They initially followed return-to-work guidelines, which is a very different thing than treatment guidelines. So these were...a return to work is a statistical measurement of how long a worker is off. This is a statistical fact that can be measured. [LB429]

SENATOR HARR: Dr. Crabb, can I interrupt you for a second? Can you spell you last name for the record? Sorry. [LB429]

IAN CRABB: Oh, I'm sorry. C-r-a-b-b. [LB429]

SENATOR HARR: Thank you. [LB429]

IAN CRABB: And so in the measurement of a statistical fact, the Work Loss Data Institute was excellent and their work is good and valuable. They then have moved into treatment guidelines, and as we've discussed earlier, this is entirely different and more complicated and subject to a great deal of interpretation. Certain medical treatments are obvious. A forearm laceration with pulsatile arterial bleeding should be sutured, no one would argue. But the vast majority of medical treatments are not so clear-cut and high level of evidence, which is frequently brought up in the discussion of these guidelines, is just not there for the vast majority of medical decision making. And because of the lack of this evidence, a great deal of interpretation and consensus is necessary to generate meaningful guidelines. And I guess I'd like to further leave off that in terms of medical practice, I don't use the guidelines. You know, I don't know any doctors that use these guidelines. This is what we do day in and day out. We could write the guidelines on our practice in longhand if...that we would use and they would be very close to what is in the center portion of the ODG. So these are...this is an insurance product. This is a product for adjustors and claims managers to evaluate and justify the treatment that is ongoing. And I share deep concern that, as physicians, we would allow the definition of the standard of care to be delegated to a private company in perpetuity. Because even if at the remote chance they got it exactly right at this moment in time, there's no guarantee that it will be right six months from now or a year from now and there's no mechanism by which they have to demonstrate that they are keeping up with the evidence that's available. And there was some talk earlier about pain management and narcotic abuse, and certainly I know that that has been an issue in the state. And it's just interesting if you look back in medical care, 15 years ago physicians were lambasted for undertreating pain. And, in fact, you may remember the campaign, pain is the sixth vital sign. And so there was a huge push for increased treatment of pain and increased prescription of narcotics which has now completely reversed, appropriately so in my opinion. But the fact...the degree to which that public opinion and the Zeitgeist of determining medical treatment can change is just another case of how there's a lack of this is not evidence-based, this is not science. There's a lot of cultural influence, a lot of consensus in determining what the appropriate treatment is. So certainly there are problems with medical treatments in the Nebraska work comp

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system. If there's specific problems, then I welcome the industry to speak specifically to the NMA and I think we can address those specific issues in a more direct manner. Ultimately, medical decision making is a personal decision between the physician and the injured worker and providing the physician with the best information will improve the encounter, but legislating one company's version of medical literature will impair the doctor-patient relationship. [LB429]

SENATOR HARR: Thank you. Any questions for Dr. Crabb? I have a couple of questions. Foundational, I'll start with. Can you give me your background, how much...your medical training? [LB429]

IAN CRABB: So, yes. I went to college in Massachusetts, New York University School of Medicine in New York. I was in the United States Navy; served overseas for two years, two years in San Diego. Moved here in 1996. I've done orthopedic surgical training. I'm an orthopedic surgeon, specialize in hand, upper extremity, and joint reconstruction. I do quite a bit of workers' compensation work, maybe 15 or 20 percent of my practice. [LB429]

SENATOR HARR: Okay. And are you required to have continuing education of any sort? [LB429]

IAN CRABB: Yes, we are. [LB429]

SENATOR HARR: Okay. And can you describe that? [LB429]

IAN CRABB: We have annual CME requirements and a licensure, a board certification requirement that spills out over a ten-year period. [LB429]

SENATOR HARR: Can you give what those requirements are, if you can? [LB429]

IAN CRABB: Yeah. It's 120...you have to have 120 CME hours in two consecutive three-year periods prior to sitting for your boards. It's quite extensive. [LB429]

SENATOR HARR: Okay. And I guess what I'm getting at is who do you think is better qualified to make a decision about a specific patient, yourself or a guideline? [LB429]

IAN CRABB: Absolutely myself,... [LB429]

SENATOR HARR: Okay. [LB429]

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IAN CRABB: ...I mean, yeah. [LB429]

SENATOR HARR: Okay. This is meant to...you've heard the testimony, provider...presumptions to the providers for convenience. Do you think it would do that? [LB429]

IAN CRABB: What...excuse me, could you rephrase that? [LB429]

SENATOR HARR: Sorry. You've heard the testimony that the ODG would provide a presumption for providers so that they wouldn't have to go through the preapproval process. [LB429]

IAN CRABB: Yeah. So, no, I don't think that will help very much. So the majority of the conflict in workers' compensation cases is to do with causation and is the person employed there and are they buying off on the whole causation part of it. That's 95 percent of the conflict. In my personal practice, I don't run into very much in the way of denial of service because it's not appropriate. So I'm not sure this would help me at all in that regard. We would still have to qualify every single person to know that they were employed there, to know whether they are acknowledging that this causation is taken care of. This doesn't address any of causation. [LB429]

SENATOR HARR: Okay. Any questions? Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for being here to testify, Doctor. One of the things that's interesting in some of the testimony that was given to us does look at costs over time. And since you deal with some of these cases, I just wondered if you would care to comment. It looks like since 2007 that sort of the medical costs over time had been going down. Have there been any changes in practice or changes in the way you've dealt with these cases that would help us understand why, why we have actually been seeing costs go down in the state of Nebraska? [LB429]

IAN CRABB: Well, the fee schedule for workers' compensation is set by the court and the Nebraska compensation equity group lobbied heavily for fee cuts two two-year periods in a row. So there have been several periods of fee reduction which have contributed. There's also a lower number of cases there. So that's respective of that. There are fewer cases, so I don't know what influences that. [LB429]

SENATOR CRAWFORD: Okay, okay. Excellent. Thank you. [LB429]

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SENATOR HARR: Any other questions? Seeing none, thank you for your time, Dr. Crabb.  
[LB429]

IAN CRABB: Thank you. [LB429]

ROD REHM: (Exhibit 4) Good afternoon. My name is Rod Rehm. I'm here on behalf of NATA and I practice in Lincoln and Omaha, have been doing this for a long time and I was on that commission that Senator Chambers voted on in 1993 to help rewrite the law. NATA is against this bill. NATA is the Nebraska Association of Trial Attorneys. It's an association of about 500 lawyers who basically represent people, as opposed to insurance companies. And I've spent since 1980 representing injured workers in the Workers' Compensation Court. I don't think there's a problem with costs spiraling out of control in Nebraska. I have submitted some materials. Item A is a copy of portions of an annual report from the National Academy of Social Insurance. Basically, Table 10 compares cost trends for medical care in all 50 states and Puerto Rico and the District of Columbia. Nebraska over the last five years has dropped 5.5 percent. We're ranked as the 38th lowest in terms of our medical, you know, the losses, which is a good score. It says that our costs are going down in this state. It's consistent with what Judge Brown, Ron Brown just said. But it compares on this chart, you can look at other states. And many of the states that are ODG states are highlighted. I highlighted them. California is the poster child, allegedly, for ODG. Its...over this five-year period, its medical costs have gone up 6.7 percent. Kansas, which is an ODG state allegedly, and I would quarrel with that because I can't find that word in their statutes or their regulations. There's some memo that says it's suggested resource. Their medical costs have gone up 5.3 percent while ours went down 5.5. I don't understand what the crisis is if there is a crisis. Mr. Eichler talked about dispute resolution delays. We don't have any data on that. In Nebraska, if I want a dispute resolved, I can file a lawsuit and have a judge from this court decide that case six months later, which is fast compared to most states. And it's getting faster because some changes in the law that were implemented a few years ago took an appeal process away from them that they don't have anymore, so it goes straight to the Court of Appeals. And our judges have more time to hear cases so we get cases resolved quickly. The insurance premiums are a measure of success, I guess, for keeping costs down. There's the state of Oregon studies them biannually. They publish a comparison of all the 50 states. Nebraska ranks in the 30th in the lower half of the cost, has ranked there forever. Sometimes it's been lower. That's where we are right now. We're a relatively low premium state. The insurance industry is doing well. I don't know that they need any help. There's a study in here from Rutgers University talking about the profits--that's Item C--of insurance companies. The last year that they had available data, the insurance industry realized a natural profit of 17 percent, and they've been profitable for 17 out of the last 20 years and had some of the highest profits, real profits they've ever had in their history. Why we need to do something that would limit workers' rights to healthcare I don't understand, our association doesn't understand. I don't think the bill benefits workers hardly at all. This bill in...they gave us something where you could learn it, and I've

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attached that as Item D that some of you that are really curious about this might want to look at it. It's a tutorial about how ODG works. Takes 65 minutes. I apologize for the length of time. I didn't write it. I've watched it a couple of times. I've tried...and I've been provided with an open copy that I can try to understand how this works. My takeaway from all of that is that the ODG's will reward those doctors and those clinics that know how to run a computer program better, not the best doctors. There's a way that it's whatever...if you put the right information in that program, you're going to get something approved. If you don't put the right information in it, it's going to get questioned and ultimately denied. And there's going to be testimony following me about how this works right now in Nebraska without this presumption to strengthen it. Right now in Nebraska, Nebraska workers are being denied care by the ODG. And you'll see how it works in a few minutes. [LB429]

SENATOR HARR: Thank you, Mr. Rehm. Any questions for Mr. Rehm? Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you. So we've been talking quite a bit about the registry...or the guidelines we're talking about. But there's another part of the bill that I wanted to just get your feedback on. [LB429]

ROD REHM: Okay. [LB429]

SENATOR CRAWFORD: It's on page 4 of the bill. So another addition in the bill is talking about the independent medical examiner's findings and it adds language that says, "It is a rebuttable presumption that the findings of the independent medical examiner are correct." What does that mean? [LB429]

ROD REHM: Well, it means they are putting something, some teeth, into the independent medical exam procedure that doesn't exist now that was originally in LB757 22 years ago. It was removed because nobody used medical...or the independent medical process. It's supposed to be this panel of neutral doctors that if you...that will get assigned, and it's never been a successful program. In that same annual report from the Workers' Compensation Court in fiscal year 2014, there was only 47 independent medical physicians appointed by the court. It's just...it has never worked. I don't know why it's in there. If I had more than five minutes, I'd be talking about IMEs. There's two kinds of IMEs. There's the ones where the insurance companies pick the company doctors, and they do that all the time. We recently introduced evidence about one doctor in the Workers' Compensation Court. His name appeared 275 times in the decisions and orders of the Nebraska Workers' Compensation Court. This is a public record anybody can search. And I'll be happy to give you his name, but I'd rather not do it publicly for the doctor's sake. He scored 93 percent testifying for the defense and he wasn't treating most...hardly any of those people.



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There's all that kind of IME. This other kind of IME is meant to be a dispute resolution process and it's never worked. It's rarely employed. So it looks to me like the way the bill is actually drafted is it is a mandate. Because if treatment is...if you don't get the insurance adjustor to approve your treatment, then you either have to sue and there's no appeal. You actually have to sue, a lawsuit; you have to file a lawsuit. And it would be handier if there was an appeal, you know, there are procedural things that would make it friendlier to workers. And, in fact, the statute now says we can't appeal without having an IME beforehand. And so they beefed up this IME I think to I think force people to accept the decisions of this process. The process also includes its own... [LB429]

SENATOR CRAWFORD: I guess maybe I need to tell you I'm also from Venus or wherever (laugh) and don't have law training, but I guess what I wanted to know... [LB429]

ROD REHM: Well, my wife made me read that book and the Senator is right. Men are from Mars. She periodically says I need a refresher. [LB429]

SENATOR CRAWFORD: I guess, as someone who's not a lawyer, I wanted to understand exactly what rebuttable presumption means in this case. [LB429]

ROD REHM: Well, it means, if there's evidence to the contrary, that a judge can overrule it. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

ROD REHM: It would be my interpretation for a layman. Sorry. [LB429]

SENATOR CRAWFORD: Okay. No, that's all right. That's all right. So you can challenge it. But does that mean a certain kind of standard, like rebuttable presumption? Is that... [LB429]

ROD REHM: Well, I think there...judges all view presumptions differently than...each judge, I mean, that's...we have a judge...all judges aren't created equally. They don't all interpret words exactly the same. So the standard of proof should be I think just beyond...to a reasonable...excuse me, you get medical stuff in here, too, about reasonable medical certainty, but it's the preponderance of evidence is the standard, and that is what the judges rule on in court. But to get the decision from an IME and their rebuttal presumption in front of a court, we have to file a lawsuit under this statute. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

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ROD REHM: And I don't think we're saving any time because we have to file a lawsuit now if we get into an argument with them, the insurance company, about medical care. I don't get where this is speeding things up at all on controversial cases. And I agree 100 percent with Dr. Crabb that most cases we fight about causation: Is it work related? Once we get beyond that, usually the care is taken care of in the vast majority of the cases. [LB429]

SENATOR CRAWFORD: Okay. So I was just trying to find out if it was increasing the standard or lowering the standard, on which side. [LB429]

ROD REHM: Well, it's increasing in a way because this statute right now is on the books, the independent medical examine procedure. [LB429]

SENATOR CRAWFORD: Right. [LB429]

ROD REHM: And there's no presumption attached to their opinion. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

ROD REHM: So this increases... [LB429]

SENATOR CRAWFORD: Increases the standard. Thank you. [LB429]

ROD REHM: Yes. [LB429]

SENATOR HARR: Senator McCollister. [LB429]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. You kept a copy machine busy. [LB429]

ROD REHM: We have a fast copier. [LB429]

SENATOR McCOLLISTER: Yeah. In the documents you gave us, you gave us a listing of states and how the rates have behaved over the last four or five, six years. Boy, there's a wide range of increases. It's not a uniform kind of thing. Some states will go down a considerable amount and some states will go up. What do you attribute that to? [LB429]

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ROD REHM: I really am not an actuary and wouldn't want to venture on why it is that way. I mean, the laws vary from state to state. You know, there are statutory changes made from state to state. Some of the numbers are, they're crazy. The one thing I do know is that Nebraska has got a pretty stable system and it has been forever. You know, if you look back at earlier editions of that National Association or National Academy of Social Insurance, you'll see we're always in the same range of increases or decreases, and I don't know whether that's something about our Unicameral and the fact that we don't go in and tear apart the comp law periodically one way or the other. You know, things seem to work by consensus. You know, Iowa's benefits are higher than ours but their premiums are not necessarily that much higher. I mean, I don't understand why that is. And Iowa's costs have gone up but their premiums, you know, in comparing the documents between the Oregon study and the NASI study. You know, it doesn't make a lot of sense. [LB429]

SENATOR McCOLLISTER: I suppose you'd agree that the laws that govern workers' comp in every particular state has a direct bearing on the amount of claims. [LB429]

ROD REHM: Yes, they do. [LB429]

SENATOR McCOLLISTER: You wouldn't want to make any generalizations? [LB429]

ROD REHM: I think that the states with more generous benefits might generate more litigation, but I'm not sure. You know, I looked at that same NPR Web page that you referenced and I think, almost across the board, Nebraska was pretty much in the middle or a little, you know, above, little below average on all those members. You know, it just says a lot about our system here in Nebraska is we have a good system. And, you know, back in the seventies President Nixon appointed a presidential commission to study the workers' compensation laws and they set up 19 criteria for a good system. Nebraska has scored 17 or 18 ever since. And the last time that anybody looked at it I think was maybe ten years ago, the U.S. Department of Justice did, and we scored the highest of all 50 states. So I think we've got a pretty good balanced system that doesn't need radical changes. [LB429]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB429]

SENATOR HARR: Thank you. Any other questions? I have one question for you. Can you spell your name for the record? [LB429]

ROD REHM: Sure. I forgot to do that. R-e-h-m. [LB429]

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SENATOR HARR: All right. Thank you, Mr. Rehm. Any other opponents to LB429? [LB429]

STEVE HOWARD: Good afternoon. My name is Steve Howard, H-o-w-a-r-d, and I am here on behalf of the Nebraska State AFL-CIO and also on behalf of the Omaha Police Officers Association and we come before you to oppose this legislation. The attorneys that spoke before me talked a lot about the finances and the trends in Nebraska and so I won't repeat that. Senator Harr, you asked about what would happen if NATA were to somehow purchase this entity, and that's a great point. What if an insurance company purchased it upon the death of the owners? These guidelines are such that they'll have a profound impact I think if they become mandatory. Now the proponents would say, well, no, no, they're not mandatory, these aren't required, these are things that doctors can decide on their own. But in the real world what's going to happen is the doctor gets ahold of the insurance company for preauthorization to treat because the... I want to say this right now that the insurance industry is not held hostage by the doctors. The healthcare providers have to get preauthorization to practically do anything. And so they will get ahold of the insurance company. The insurance company will say, well, right here, the Legislature passed this bill that says we're supposed to follow Work Loss Data Institute. So here are the guidelines. And that puts the doctor in the very difficult position of doing what he or she thinks is right versus what he or she will know they get paid for. And it's all driven by that diagnostic code. Now no one today has talked about nurse case managers. Nurse case managers are nurses that work for the insurance industry, work for the employer, and they go to appointments and they have direct interaction with the physicians. They're not really authorized by statutes but they're arms of the insurance industry. And what I would worry about is that they would drive that diagnostic code, that a rotator cuff tear may be coded as a shoulder strain and, therefore, the treatment is inadequate. A herniated disk, a lumbar disk, may be coded as a strain or sprain and, therefore, the treatment guidelines would call for less. You know, I thought...if I really thought about self-interest, probably should support this bill because this will drive up litigation. You know, lawyers only get involved representing injured workers when there's a conflict. If everything goes smoothly, there's no need for litigation, there's no need for counsel. But I don't think that's how it's going to work if these guidelines were adopted. Just a few things from the earlier testimony and, again, I won't repeat what my colleagues of have said. But, Senator Johnson, you brought up a good point. What if things really go south, if the wrong diagnosis code is followed and the guidelines don't call for something and a patient has a terrible outcome? We have the Nebraska Hospital Medical Liability Act. which is Chapter 44, Article 28, which governs the process by which negligence claims against healthcare providers are brought. And this private company, Work Loss Data Institute, certainly isn't identified as a healthcare provider, so I doubt that they buy any insurance, and I don't know this, maybe I'm wrong, but buy any insurance to protect themselves against claims that are brought against the guidelines because of an untoward outcome because the guidelines were inadequate. And they'd always be able to defend themselves by saying, well, you know, these are voluntary. It's not mandatory. So we don't have any stake in it. We don't have any personal responsibility. So...and, Senator Harr,

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you mentioned about the law firm. It would be no different than, say, the Transportation Committee moving on a bill that said you have to buy Chevys and you can't buy Fords or you can't buy any other product. I would suggest to you, and I wish to make this record, that there may be a possibility of a taxpayer challenge when you are saying that the tax dollars have to be devoted towards a private industry to the exclusion of all others. And so those are the comments that I wanted to have today. And so thank you. [LB429]

SENATOR HARR: Thank you, Mr. Howard. Any questions for Mr. Howard? Seeing none, thank you for your time. Any other opponents, LB429? [LB429]

BROCK WURL: Thank you, Senator Harr and the committee. My name is Brock Wurl, W-u-r-l. I'm a practicing attorney out in North Platte, Nebraska. Many of my clients live in very rural areas, and I'm here today to talk about a question that Senator Crawford had actually which I thought was a great question. You know, we're talking a lot about, you know, the insurance company and the doctors. What about the injured people? That's really who the workers' compensation system is designed to protect. And I'll tell you, from my experience out in our area in looking at this legislation, I don't think this is beneficial to the injured worker for a couple of reasons. I think for one, it puts the...essentially the insurance company in between the doctor and the patient. I think it puts a divide there where the doctor might not be providing the best care but what they can actually get away with and what the insurance company would sign off on, and I think that creates problems. Secondly, I think many doctors out especially in our area which is a rural area, many folks in our area are going to be traveling to see a doctor. Many of them, you know, live out on a ranch or on a farm or live in a small community where there may not be a doctor or there may be a doctor only once or twice a week or once or twice a month sometimes. Many of those doctors are very busy. Many of those doctors I could very easily see them saying I don't want to deal with this new system. I don't want to learn, you know, or have to subscribe to this new service in order to treat work comp patients and say I'm just not doing it, ultimately decide I'm not going to deal with this. And what that does then, it puts the injured worker in a position where instead of traveling 15-20 miles to the nearest town for treatment, they're having to travel 100 miles for treatment or 200 miles for treatment. So I think that's definitely one effect that it can have on injured workers. Finally, I guess, on the burden of proof on the IME issue, you know, I think a lot of these doctors if they know, you know, well, I could see this getting to a point where, you know, the IME is the ultimate say, you know, whoever that is, who hasn't treated the person but saw them once, reviewed some records. I could see a lot of these doctors eventually just saying, you know what, why am I messing with this, just go see whoever that is. And so I think this has a very negative effect on the injured employees and I think you're going to hear some more testimony on that today. But with that, I'll cut mine a little short and thank you for your time today. [LB429]

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SENATOR HARR: Thank you, Mr. Wurl. Any questions? Seeing none, thank you for your testimony. I appreciate it. Ma'am, if you want, you can sit right here in the chair so you can be next up. [LB429]

JULIE SHIPMAN-BURNS: Good afternoon, Chairman, members of the committee. My name is Julie Shipman-Burns, S-h-i-p-m-a-n, hyphen Burns, B-u-r-n-s, and I'm here today on behalf of the Nebraska Association of Trial Attorneys. And I don't want that to be used against me, please. What I want (laughter) to...what I would like to say is that there are so many individuals in this room that are much, much more intelligent than I am, but they have individuals that are here representing them. The lobbyists here, they're for the union, for the businesses, for the self-insureds, but I fail to see a lobbyist here on behalf of the workers in the state of Nebraska. And I want to remind everyone here that this is your family. This is my family. These are my children. These are my grandchildren, which I don't have any yet but I will in August but that's another story. But these are your family members and I represent your family members and I have for 25 years. That's all I've done is represent injured workers for 25 years. And I have been to meeting after meeting and I was also present at the meeting last week with Bob Hallstrom and Rod Rehm and Ken Eichler and Dr. Bozarth, and so I know a lot about this. But, to me, and it may be the rose-colored glasses that I wear all the time, is the fact that this is a bad bill. Bottom line, it's a bad bill. It's a bad bill because this is Nebraska. And throughout that meeting last week, I kept hearing everyone say, and especially Ken, was being compared: Texas and Iowa and California and Illinois. I'm sorry, this is Nebraska. This is Nebraska. We don't say soda. We say pop. And we do. We have one of the best systems in the United States and I'm not kidding you about that. We do. And it makes my hair stand up when I think about the possibility of our system being turned over to a company that is for-profit. I have faith in my physician. And if someone had to tell me that I have to go treat for an HMO or Obamacare program, I would refuse. I flat out would refuse. I have a relationship with my physician for the last 30 years and I trust my physicians and I have a feeling that the majority of you do also and your family members. And I would like to think that you would not force your family members to go to a physician or under treatment guidelines that are not in their best interest. So I'm asking you to keep that in mind, please, when you're considering this bill. It's a bad bill, in my opinion. Thank you. [LB429]

SENATOR HARR: Thank you very much, Ms. Shipman-Burn. [LB429]

JULIE SHIPMAN-BURNS: Burns. [LB429]

SENATOR HARR: Burns. Sorry. Any questions? Seeing none, thank you for your testimony. [LB429]

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TODD BENNETT: (Exhibits 5-8) Good afternoon. Todd Bennett on behalf of Nebraska Association of Trial Attorneys, B-e-n-n-e-t-t. I did testify last week and I'm here today to kind of...don't want to talk about the technical refinements. I could do that all day, but I want to at least give...shed light on what the real world is right now. I've got four handouts and those handouts are essentially what is going to be a typical ODG plan. The one that you're seeing is called Bunch. It's based out of California who uses, ironically, three or four of the ODG products out there. The reason this is relevant is because this is in our backyard in Bellevue. And a long story short, one of the documents entitled Bunch CareSolutions utilization review sets out the goals. And the reason I provided that document was essentially to show you what the typical steps would be. And the first one is obviously to gather the information. The second one is, is a first review by a nurse who gathers the information and may call the physician or may not call the physician. If there's a disagreement and something else is further needed, the second overview process is to have a medical opinion. That medical opinion can be in the form of two ways. What I'd like to give you at least a personal view is in Bellevue, I'm going to introduce one of my clients here that will testify what this real world is. One of the documents you have, it's called Align. Align is an ODG product that is essentially for therapeutic services only. And those items are physical therapy, occupational therapy, FCEs, work hardening, and six others. What they did in a particular case with AnnJanae Griffin, who will testify before you here shortly, the third document I show you is how they reviewed this particular client's medical treatment. And I'm not going to go through that document in and of itself, but what that document will show you is a few things. It tells you how many visits she had to date, what was recommended by the treating physician, what was also recommended by the Align group itself, and what was recommended by ODG itself. They all conflicted. Ironically, what they didn't do in this document was, for example, they had wrist pain as their diagnosis for therapy. She doesn't have wrist pain. She's got a fracture. She was going to have an EMG to determine whether she had a nerve injury. None of that's listed here, none. So they denied the care. They did that in less than 24 hours, called the physician's office one time, left a voice mail, and pursuant to their rules, moved forward, denied the treatment. Then they turn it to a doctor who goes through the same criteria, lists the same information the nurse listed, and ironically uses this MTUS, which is the Bunch system, and it is silent particular to this case, and they move forward to the ODG guideline. Well, ironically on the last page of that document Dr. David H. Trotter signed off as this treatment not being necessary and reasonable. Dr. Trotter is not a Nebraskan doctor. He's from California. He's certified in Texas, Illinois, Kentucky, and Florida. He didn't see this person. He didn't call them. He didn't call the office. He left one voice message by the way of a nurse. He didn't talk to the physician and he certainly didn't do an examination and treat Ms. Griffin. So in answer to the second question, what do we do from here, we are forced to have a judge make a determination based on what each physician is going to say. I don't know a judge that's going to listen to a doctor from Florida, Kentucky, or Illinois who hasn't seen my client, but it's a concern. The second one and the last document is entitled Sedgwick. This is Sedgwick here in Omaha, Nebraska. Different client, Geraldine Moreno who had a back injury, radiculopathy. Had several

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tests, going to a pain specialist. They have a recommendation for dry needle therapy. That's not that common. But according to these guidelines the nurse denied it. We waited two weeks for that. We waited for the exact same nurse to leave a voice mail. She left a voice mail. Less than 12 hours later, the letter is written, mailed, received that it's denied. The ironic part of this whole situation is this is a different client, different employer, different insurance company, but the same Dr. David H. Trotter who signed off on this treatment not being related. This is two Bellevue clients being denied care. We waited almost three and a half weeks just to get these documents where we just got them yesterday. This care was prescribed one in December, one in January, again on February 16 and 17. We waited and waited and waited. They still don't have the same therapy that's been recommended. My job to you, at least listen to what they have to say because they're the ones who are going to suffer through this. The only other thing that I would like to point out and yet it is a technical refinement, this bill is based and set out of 48-134.01 which is the independent medical examine. There's not one person who testified here for this bill that had a reasonable relationship between that and our medical statute of 48-120 right now. So if a doctor chooses to follow 48-120, which is medical, reasonable, necessary treatment, who decides? This particular bill says the employer is not responsible if it's not treatment that fits the cookbook. What I would like to see, assuming we get that far and this does pass, who's going to take care of the bill for these clients who's been denied where they go on and don't follow the cookbook and they get a bill and this bill doesn't get paid? How's the worker going to be protected? That's not been discussed. It's not in this bill. And I can tell you it'll turn people like me into collection attorneys, which they do already. One of the things that we testified last week in several hearings is where's the statistics and problems. [LB429]

SENATOR HARR: You need to wrap it up. [LB429]

TODD BENNETT: We don't have that in front of you. But there is one if this is approved. [LB429]

SENATOR HARR: Thank you. Any questions? Senator McCollister. [LB429]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. I'm a little confused here. Are you advocating for or against the status quo? [LB429]

TODD BENNETT: For the status quo? The status quo is fine. [LB429]

SENATOR McCOLLISTER: Okay. [LB429]



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TODD BENNETT: But what I'm saying, if this becomes mandatory, we're going to piecemeal every piece of a medical case. Whether it's therapy, a doctor visit, an injection, an MRI, an EMG, it's going to be this process. [LB429]

SENATOR McCOLLISTER: Didn't you just outline some rather long waiting times under the current system? [LB429]

TODD BENNETT: Yes. That's what we're doing. We're waiting. We're waiting. [LB429]

SENATOR McCOLLISTER: Okay, okay. Well, thank you. [LB429]

TODD BENNETT: You bet. [LB429]

SENATOR HARR: I have a couple questions. ODG, I can't get back to. I have a real problem with this for-profit, privately held. Is it a parent company Align is affiliated with and how does that corporate structure work? [LB429]

TODD BENNETT: And Align I can't say is part of the ODG. It's one of those companies for essentially physical rehab medicine that is like Work Loss Data Institute who uses ODG. In this particular case, you have this insurance company who uses this person or outfit called Align who uses ODG. [LB429]

SENATOR HARR: Okay. [LB429]

TODD BENNETT: So that insurance company hired Align who looks at the therapeutic record and goes through that process to deny it using ODG. [LB429]

SENATOR HARR: Okay. I understand now. Okay. Thank you. Senator Crawford. [LB429]

SENATOR CRAWFORD: Thank you, Chair. So I think I'm going to follow up on maybe where Senator McCollister was going. So, I mean, these are cases, current status quo cases that are problematic. [LB429]

TODD BENNETT: Correct. [LB429]

SENATOR CRAWFORD: So how would the next step be different or how would the process of addressing these cases be different if this bill were to pass than it is now? [LB429]

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TODD BENNETT: If this bill passed, for example, we would have been forced, one, either get an IME or file the case in court and still use our physician to testify basically saying this is why I recommend the treatment is necessary. And ODG or the insurance company will use the ODG folk to say why it's denied. [LB429]

SENATOR CRAWFORD: So what are you going to do? What can you do now that's different on these cases? [LB429]

TODD BENNETT: Well, ironically, it took us three weeks to get these documents. So while we got these documents, we provided it to the physician and said they left you a voice mail. The physician, obviously if he's practicing, isn't going to answer a phone call at 2:00 in the afternoon or he's hopefully not playing golf. Just bad joke. But, anyway, what's going to happen? Then they're going to use that to say here's why this further treatment is recommended and provide the other documents. What they did in these cases, simply use the ODG to deny the care. There's a phone call and a voice mail left. There's no review. There's no discussion. There's no exam, no treatment, no nothing of this particular person. So you're left with that physician to carry the ball from there. [LB429]

SENATOR CRAWFORD: So...but your next step in these kinds of cases is... [LB429]

TODD BENNETT: Well, the physician would have to provide the information why it's medically necessary, and at least using those same guidelines we're not forced or bound by ODG. As long as the physician says, look, I've treated him, I've examined him, I've seen the diagnosis, I've looked at the previous medical record or the MRI, the EMG, and this is necessary. And he provides his rationale why that's necessary. [LB429]

SENATOR CRAWFORD: And then so as long as the Compensation Court agrees or... [LB429]

TODD BENNETT: Correct. [LB429]

SENATOR CRAWFORD: All right. Would that go to the...would that require this independent medical examination or do you think in these kinds of cases it usually doesn't? [LB429]

TODD BENNETT: No. That IME statute very seldom gets used. [LB429]

SENATOR CRAWFORD: Okay. [LB429]

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TODD BENNETT: What this would do is it gives you the word "may" that you can go that route. What the information that we have before us with this particular bill, there's no information that these court IME doctors, as they are, have the knowledge and expertise of ODG, and there's very few that use them because the main treaters aren't on that list. I can pretty much...once you look at the list, you can tell through the court system which allegiance they have. [LB429]

SENATOR CRAWFORD: Okay. Thank you. [LB429]

TODD BENNETT: You bet. [LB429]

SENATOR HARR: Thank you very much. I appreciate it. If you want to come on up. Thank you for waiting patiently. [LB429]

DEBORAH OLIVA: No problem. Hi. My name is Deborah Oliva, D-e-b-o-r-a-h, last name Oliva, O-l-i-v-a. I work for the telephone company. I have my own workers' compensation claim and am familiar with the claims of others. I'm here to testify against LB429 and the treatment guidelines being proposed. Many Americans were concerned that the President's Affordable Care Act, also known as Obamacare, would put government in charge of our healthcare. Whether these concerns are accurate or fictitious, I believe LB429 would indeed put government between injured workers and their treating doctors. No two injuries are identical and no two workers should be forced to follow some standardized set of guidelines in order to heal and to return to work. In my case, I fell in the circle drive at work. Workers' compensation denied my claim. I had to use health insurance and other means to receive care. Because that healthcare was restricted and I was denied workers' compensation, I cannot undergo necessary physical therapy. The result was that I had to have a second operation. Had I been allowed to treat under the current Nebraska's workers' compensation law, I believe my recovery would have been quicker and I perhaps could have avoided a second surgery. While those are medical issues and I'm no expert on orthopedic surgery, I do know that any system which requires workers to be locked into rigid and inflexible treatment guidelines would be bad for Nebraskans. A patient's doctor knows best what the patient needs and our good doctors in Nebraska ought not be restricted in the care provided to injured workers such as myself. I understand the proponents of this system suggest that there is flexibility and that doctors would be allowed to go outside the guidelines. That seems like an unnecessary process. I know firsthand what frustrations come with a contested workers' compensation case. I have worked all my life. I am the primary breadwinner in my home. My intention is to work until I retire. I certainly didn't want to fracture my ankle, and my overarching goal is to recover and return to work. Please do not pass LB429. It would hurt hardworking folks in Nebraska. Thank you very much for your consideration of my testimony. [LB429]

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SENATOR HARR: Thank you for your testimony today, Ms. Oliva. Any questions? Thank you. [LB429]

DEBORAH OLIVA: Thank you. [LB429]

ANNJANAE GRIFFIN: Hello. My name is Sheri AnnJanae Griffin. I am opposed to the LB429. I do not believe that it is a good bill for Nebraskans. I moved to Nebraska to actually take care of my medically retired military brother. I am currently working at my place of employment where I got injured there. I had great faith in the workers' compensation process until I ran into this third party that's involved in the workmen's comp, which is the Bunch and the Align who are going by these guidelines of this company. I was...my doctor had me go to physical therapy and I was making improvements. There were still some concerns because I was having some other issues related to my injuries, but it wasn't severely impeding my day-to-day activities of being able to care for my brother as well as my home. But since this third party has got involved and denied my claim, my injury has gotten worse. I am no longer able to do simple tasks around the house, cook, vacuuming causes my wrist to swell up, and I am refused care. I'm denied for physical therapy based on this Align's process of how many visits I should have seen. I am not better but they say I should be. My doctors all believe that I still need physical therapy and I need to work on them. The workmen's comp people have actually physically, not physically but spoken to my physical therapist and asked, can she be released to home care. The physical therapist said, no, she is not ready. They still stated that they were denying my claim based on Align's recommendation. My diagnosis, as was mentioned before, one of the senators had asked what happens if it's entered in there wrong. Some of the...we had a lawyer talk about how I have a fracture but they're putting it in as wrist pain and that's why they're denying me. This doctor who's never seen me, doesn't know what's going on has apparently not gone thoroughly through the notes from the doctor that I am actually seeing, is denying me based on a code entered into a computer. When I was diagnosed, the doctor told me that they generally treat these types of fractures as wrist sprains and that's probably why it was coded as joint pain. But it's still not the correct diagnosis. And I'm being denied on a code that's used for treatment, not my actual injury. This is not good for Nebraska. It's not good for me. It's not good for my family. And it's definitely not helping my employer for me getting better to go back to work, to be able to do the things that I was doing. I don't see how this is going to...this bill helps the worker. The gentleman who was talking said about this process is supposed to help quick recovery. This has done anything but help quick recovery. This happened to me back in October. I was on the path of recovery. And because this third party got involved, I haven't had care in almost three months now, three months, and it's not fair. It's not fair to me in my process of getting better. I think that's, I guess, what I have to say. [LB429]

SENATOR HARR: Okay. Well, thank you, Ms. Griffin. You did a fine job testifying. Any questions for Ms. Griffin? Seeing none, thank you for your time. [LB429]

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ANNJANAE GRIFFIN: Thank you. [LB429]

JACK McCARTHY: (Exhibits 9 and 10) Senators, my name is Jack McCarthy, M-c-C-a-r-t-h-y. I come as a representative of the Nebraska Medical Association and I am here to ask your consideration for caution before voting on LB429 which would legislate the utilization of physician practice guidelines for workmen's compensation. We truly believe the commercialization of this group of patients would occur in Nebraska if the ODG guidelines would be accepted. We will see a significant increase in administrative challenges for these patients. This legislative bill proposes significant problems for Nebraska's physicians and our ability to care for patients. The NMA would consider alternative guidelines and indeed individuals like Ian Crabb are engaged on a national level with this discussion. We can build on others without restricting us providers. Please understand that workmen's compensation patient care has always been a part of our clinical practices. At this time, I am not comfortable with a legislative mandate that changes a physician's ability to direct and care for medical issues. I believe our partners in labor and business, who, likewise, are committed to the care of the injured workers, would not expect physicians to accept the ODG guidelines as they are offered. There are several areas. First, we do not like to use ODG guidelines as the preferred guidelines. Historically, many states, as you have been told, use the ODG guidelines. I will tell you there are several entities working diligently and on an unbiased fashion to come up with more appropriate guidelines. The American Academy of Orthopedic Surgeons is one of these. Second, guidelines are indeed a summary of best guesses. Even our academy of orthopedists struggles with the appropriate guidelines. In other words, there are consensus, not evidence-based pure science. There is no proven literature for the majority of medical practices as to what is the, quote, best way to care for our patients. Guidelines are suggestions and to legislative one version is inappropriate. Us providers will be restricted and this will not...we will not be able to work as closely with our patients. Please remember, us physicians and our offices are the hoop jumpers. Guidelines are cumbersome and voluminous, as you can see from the associated text. I've presented two chapters from their book. I contrast this with the AAOS guidelines which I have in front of you for knee arthritis. In our judgment, the AAOS guidelines are more appropriate in outlining the strengths of recommendations for different aspects of care, in this case, for osteoarthritis of the knee. Cost is a significant issue. As you will hear, occupational medicine practice guidelines are expensive. In contrast to 2006, according to my on-line research, the Reed Group increased their cost 50 percent. To general orthopedists to purchase the guidelines and follow regular updates, it is not reasonable and probably will not occur. Indeed, we could buy an updated version on a yearly basis if we wanted to be part of the workmen's compensation care pattern for Nebraska if indeed the ODG guidelines were ever implemented. The fact is that in Nebraska, occupational medicine guidelines need to be interpreted in view of the physicians who practice in our state. Suffice it to say, there are only a handful, by that I mean approximately five, board-certified occupational medicine physicians in Nebraska. Expectations of those of us who are nonoccupational medicine physicians to practice with these guidelines which are not

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generated by our own specialty would be an inappropriate start. If the ODG guidelines are legislated, then physicians who want to care for them will need to purchase an electronic version which will have to be updated each year. I took the time to contact Harry Norman at the ACOEM who is their Nebraska representatives and we were offered the three alternatives, as you can see: I can pay \$750 a year; my group can pay \$30,000 a year; and they offered, if \$30,000 was too much for my group, to negotiate a three-year pricing. Again, I do not believe business and labor, colleagues, are aware of the restrictions, the expectations, and the cost of the ODG guidelines and would not expect us to have these nonrealistic and nonnegotiable items if legislated in the care of workers' patients. Thus, for these reasons the Nebraska Medical Association would ask that you not advance LB429 out of this committee. [LB429]

SENATOR HARR: Thank you, Dr. McCarthy. Any questions? Senator McCollister. [LB429]

SENATOR MCCOLLISTER: Yes, sir. Thanks, Mr. Chairman. In the third paragraph, second sentence, you say, "I will tell you there are several entities working very diligently and in an unbiased fashion to create appropriate patient guidelines." Are there any alternatives to the ODG system? [LB429]

JACK McCARTHY: The ones I'm most familiar with are strictly for orthopedics where we're trying to develop the guidelines. And I'll tell you, I think, I may be wrong, the number 60-so percent of all workmen's compensation patients are actually orthopedics. So... [LB429]

SENATOR MCCOLLISTER: So they base the thing on best practices or how do they determine what... [LB429]

JACK McCARTHY: They use the same articles as you're being referred to here and then they build a consensus amongst experts. So it's a combination. And the challenge we're finding is all the written materials out there don't give you the answer. They're where we're at today but not where we're going to be in five years. [LB429]

SENATOR MCCOLLISTER: Okay. Thank you very much. [LB429]

SENATOR HARR: Any other questions? Seeing none, thank you for your time and your testimony today. Any other opponents? [LB429]

ROBIN CANIGLIA: Robin, R-o-b-i-n, Caniglia, C-a-n-i-g-l-i-a. I work for the Eastern Nebraska Veterans Home. I was 37 days short of 30 years before they retired me out. When I think about it, it's irritating and upsetting. Okay. The work-related injury was never questionable. It was

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written immediately from when it happened. I went to the doctor on the way home from work that day. They said that they thought it was just nerve or just pain or a pulled a muscle or whatever. So within 20-some days they did an MRI to figure out that there was four...two disks in the neck: four and five, and six and seven. They wanted to do surgery. There's a problem. I have a preexisting problem. I have ITP. I have low platelets. So they had to send me to do something with those platelets. The doctor couldn't get them up enough. The surgeon was iffy on, well, you know, I don't know if I can really do it with, you know, 50,000 platelets. Technically, we need 100,000. It was questionable. By the time that...from, like I said, the very first day it was going down, it was getting worse. It was like, man, there's a problem there. And by the time that January rolled around, I was flat on my back and we had these nerve things going on. So they're going back and forth. By February, they finally decided, yeah, maybe they're going to do the surgery. I was starting to feel better. I had two doctors, the one who was doing the physical and a hematologist, say, you know what, let's see if you can't get better without doing the surgery. It's not...no one is for sure on it. So by March, I go back to work and part of this, I'm listening to this FARA. FARA is the state of Nebraska's workers' comp guy. And the positions they gave me to do were with these disks, I work in a medical facility so you would think that we would have...with the complaints, even the doctor was trying to limit them. They would have me take food trays. I was actually a medication aide. Could have done medication fine. They had me fill food trays. Lift them up to my neck, take them off there. Two meals a day. So I was doing 60 trays a day. So within five days, of course, they're off and it's aggravated again. They left me off again until the state of Nebraska brought me back. They needed to have one on one. I worked in an Alzheimer's unit for 28 of my 30 years there. They had me go one on one with a Alzheimer's member because the state had been in and said that...state or VA had been in and they needed to have someone do one on one. I got assaulted by him. And then on November 29 of that year, I'm working fine. And they have the walking Alzheimer's, when you have light-duty people walking members, which is what...and then on the second one, the DON said, why is she doing that? Well, the workers' comp coordinator in the state...in that state facility, that was his choice of his jobs. So they terminated me March of that year. My doctor kept saying, no, she's not at an MMI because you were getting better, with these jobs it was making it worse. So he said, no, you're January, February, March, a Dr. Gammel (phonetic) came in. I've never met him. He wrote a report, said she's an MMI. And in April, they went to the functional capacity test. The functional capacity guy and the doctors still say, no, there's something wrong. I've been to therapy all this time. I've done everything that they told me that I had to do. So in April, my physician sent me to...I had another MRI. They sent me to a neurologist. They sent me to a shoulder guy. The shoulder guy in June said, okay, let's do a cortisone shot. There's a shoulder tear on top of all this. So from...it worked for a month and a half. By August, he was saying this is not working. He goes, we need to do surgery. He started in August dealing with FARA. In November, he wrote an "opin" that said this is definitely shoulder. So you had not only the treating physician, you had the surgeon saying there's a rotator cuff problems. And then we come all the way around till we're supposed to go to court. You have to

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go to court because they're arguing with the state. And they would not let me see the IME. The IME they said had...couldn't see them until April 1st. Well, by then I'm in a lot of pain, so I call down to the doctor who's the IME in Omaha. And, actually, it was the state making us wait two months. So finally seeing him and he agreed it's a rotator cuff tear. So that was in April. It was set to go to surgery. When it was supposed to go to surgery, it was the day before, it was canceled the day before so that we had to reset it. So from August all the way until July of this year when they finally had the surgery, I have been in pain. And it was a rotator cuff tear, which is in conjunction with the neck. And like I can said... [LB429]

SENATOR HARR: Well, thank you. The red light is on. [LB429]

ROBIN CANIGLIA: Okay. [LB429]

SENATOR HARR: Yeah. Thank you for your testimony. Is this your first time here? [LB429]

ROBIN CANIGLIA: Yes. [LB429]

SENATOR HARR: Yeah. You did a great job. Let me see if anyone has any questions for you. Just a second. Senator McCollister. [LB429]

SENATOR McCOLLISTER: Yeah. How are you feeling now? [LB429]

ROBIN CANIGLIA: It's a lot better. [LB429]

SENATOR McCOLLISTER: Oh, great. [LB429]

ROBIN CANIGLIA: Trying to get released and get their stuff all taken care of. But, I mean, it's...like I said, that Dr. Gammel (phonetic), when he wrote that without ever seeing me. And like I said, even the state's person that they choose for the IME said...and we still had to wait that long from almost a year and a half. [LB429]

SENATOR McCOLLISTER: Great. Thank you. Thanks for... [LB429]

SENATOR HARR: And are you doing the physical therapy? [LB429]

ROBIN CANIGLIA: Yes. [LB429]



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SENATOR HARR: Keep up the good work. Thank you. Anyone else? [LB429]

KEN OSTRONIC: It's going to be tough to follow all that. Thanks, Mr. Chairman, members of the Business and Labor Committee. My name is Ken Ostronic, first name Ken, K-e-n, last name Ostronic, O-s-t-r-o-n-i-c. I'm vice president and business agent with the Teamsters Local 554 based in Omaha. I'd like to thank the members of this body for allowing me your time to testify in opposition to LB429 that would be considering in debate. This is a bill that allows ability to manage care in workmen's compensation issues to be directed by published disability treatment guidelines created for by the Work Loss Data Institute. Very fundamentally, this bill may take the practice of using reality-based medical...reality-based care of an injured worker out of the trained, certified, licensed, medical practitioner's hands and put it in the hands of treatment guidelines from a computer program from an out-of-state agency. From my personal and professional experience, the process of treating and rehabilitating an injured worker can be very time-consuming, cumbersome, and frustrating for the medical practitioner as well as the patient and their family. Medical practitioners by nature practice medicine and do so in real time with real clinical experiences. By all accounts, they do still practice medicine with all the curve balls any medical condition can offer you. Medical conditions from one patient to the next could vary for a myriad of different reasons. I'm of the opinion that guidelines cannot be created equally nor should they be interchangeable. A cookie-cutter approach to treating someone injured may also lead to a reduction in utilization of medical services or denial of care under the guise of reducing costs. Not only could this bill potentially take the ability to diagnose and treat an injured worker out of the medical practitioner's hands but it may also lead to undue stress on the patient as well as their families by a company's risk management officials. The pressure to return to work that an employee can be subjected to is something I see quite often representing members of my bargaining units throughout this state. It is stressful enough for the breadwinner to not be working and earning a full income to support their family, but that stress can further be compounded when an employee feels intimidated or threatened to return to work sooner than needed. In 1994, I'd broken my left fibula on the job. A seven-to-nine week routine injury was compounded with some serious complications which almost cost me my lower leg. During that process it put me seriously behind in the rehabilitation that was necessary to return my body to optimum working ability that was necessary to perform the daily, very physical rigors of my job. Those type of complications were the atrophy, muscle loss, and general weakness that took a long time to repair. During that time, a company risk management official or the nurse case manager that was referenced earlier, they consistently communicated frustration to my physical therapist in charge of my rehabilitation that I was not back to work as quickly as I felt...or they felt as I should. I hear that quite often from several of my members on somewhat of a routine basis, and it's very frustrating for them as well as the individual going through it. During that entire five-and-a-half month process, I suffered serious financial hardship which was stressful enough on me as well as my family. From going to a fairly young, strong, capable employee to feeling something much less than that was the absolute lowest point in my life to this date. It is

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for these reasons and many of the other from the testimony before me that I respectfully request you oppose LB429 for the potential negative impact that it may have on working men and women in our great state. I, again, thank you for your time and consideration. I'll answer any questions you may have. [LB429]

SENATOR HARR: Any questions? Seeing none, thanks for your time, Ken. Appreciate it. Anyone else? May I refer to you as Your Honor? [LB429]

JAMES MICHAEL FITZGERALD: Yes, you can. [LB429]

SENATOR HARR: All right. Good. I won't screw that one up. [LB429]

JAMES MICHAEL FITZGERALD: My name is James Michael Fitzgerald, J-a-m-e-s M-i-c-h-a-e-l F-i-t-z-g-e-r-a-l-d. I'm a judge on the Workers' Compensation Court. I am appearing here on my own behalf. I am not a representative of the court. The other judges have said don't do it. (Laughter) But I have a real problem with anyone or anything that tinkers with my independence, my discretion to do what's right under the circumstances, the evidence presented before me, and to do the right thing under the law. That's my...what happens here is, is today if people have a dispute about medical care and they'll come to me and the injured worker brings his experts and his medical reports, the defense brings the medical reports, and I make the decision on what happens. Many times that decision is made upon the expertise of the person who's writing those reports, because after a number of years practicing law and on the bench, I have certain doctors that do carry a little bit more weight because I know them. And the way you figure that out is, is who are the specialists that the general practitioners, family practice doctors, refer someone to when there's all kinds of referrals from family practice doctors to the specialists. And when you see that being done, you know that that specialists is really good. And, anyway, here's my problem with this and, you know, maybe I ought to be neutral. But my problem with this is, is that somebody has told you this is between the doctors and the insurance company. Well, what happens when they say no? The doctors can't come to my court. The only person that can come to my court, the Workers' Compensation Court, is the injured employee. So really we're talking about it's between the employee and the doctor...the employee and the insurance company employer with the doctor in between. Now, right now you have to prove by a preponderance of the evidence that you're...the medical care proposed by the treating physician is reasonable and necessary. But this thing here says in this subsection (1) of the services provided for are going to be presumed to be or conclusively presumed to be reasonable and necessary medical. And, of course, I read that as setting minimum standards. I would have to order an employee to undergo the treatment even if they wanted to because it's conclusively presumed that it's right. And is there still the exception that is there a reasonable...is the employee making a reasonable decision not to undergo the medical care? In addition thereto--

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which also, why spend the care if he doesn't want it--but if you have...if Medicare is offered and it's reasonable and necessary to treat your injury and you don't undergo that care, we stop your weekly benefits. The same way now, does this "conclusively presume" also apply that if the doctor says, yes, he needs this care, the treating physician, and the cookbook says no, if it's conclusively presumed, it's probably "no" no matter how right the treating doctor is. Now and, see, you've got "conclusively presumed" in one place in this statute, and in other over here in someplace else it says it's a "rebuttable presumption." What are we talking about? If you're going to do anything with this type of legislation, take the summertime to figure it out (laughter) because there's, in all truth, there's far too many are brand new and far too many of you really haven't had the opportunity to look at workers' comp, which is really, really difficult. There's only 100 lawyers in the state that even practice that. But, you know, I just think you're infringing on my discretion when you're telling me do whatever is in the cookbook. For crying out loud, I told somebody the other day, just do away with the judges and buy cookbooks. Save a lot of money. (Laughter) [LB429]

SENATOR HARR: Thank you, Your Honor. Any questions? It's your one chance to ask a judge a question. [LB429]

JAMES MICHAEL FITZGERALD: Go ahead. [LB429]

SENATOR McCOLLISTER: Yeah, Judge, are you offering to help us this summer draft some of the legislation? [LB429]

JAMES MICHAEL FITZGERALD: Yeah. You know, it's Dr. McCarthy that's telling you what to do. Dr. McCarthy will say I don't want people outside of my specialty saying what I should be doing. I will sit down with orthopedists and we'll draw something up, and the same way with neurosurgeons, and the same way with spine surgeons. And, in fact, Dr. McCarthy pretty much limits himself to hand and elbow and shoulder problems. [LB429]

SENATOR McCOLLISTER: That was Dr. Crabb I think. [LB429]

JAMES MICHAEL FITZGERALD: Well, no. That's Dr. McCarthy too. [LB429]

SENATOR McCOLLISTER: Okay, okay. [LB429]

JAMES MICHAEL FITZGERALD: Because I...he's treated me for...I was examined by him one time for carpal tunnel. [LB429]

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SENATOR McCOLLISTER: Well, you're on the record now with your comments, so we'll see you this summer. [LB429]

JAMES MICHAEL FITZGERALD: Okay. (Laughter) Anything else? [LB429]

SENATOR HARR: Seeing none, thank you, Your Honor. [LB429]

JAMES MICHAEL FITZGERALD: Thank you. [LB429]

SENATOR HARR: Anyone else, opponent of LB429? Anyone in the neutral capacity? Seeing none, I believe Senator Smith waives closing. And with that, we move on...we have letters for the record. Mr. Wyatt. [LB429]

JAMISON WYATT: (Exhibits 11-18) Senator Harr, I have items for the record. A letter of support for LB429 from Bruce Rieker and Elisabeth Hurst from Nebraska Hospital Association. I have a letter of support for LB429 from Theodore Fraizer with American Insurance Association. I have a letter of opposition from Autumn Golonka. I have a letter of opposition for LB429 from Dr. Kurt V. Gold. I have a letter of opposition for LB429 from Omaid Zabih with Nebraska Appleseed. I have a letter of opposition for LB429 on behalf of 124 interested labor interests across both the public and private sectors. And I have a letter of opposition for LB429 from Nancy Fulton with Nebraska State Education Association. [LB429]

SENATOR HARR: Great. Thank you, Mr. Wyatt. Why don't we go ahead and take a short break and come back at 4:30. Let everyone stretch their legs a little, work their back. [LB429]

BREAK

SENATOR HARR: All right. Well, we are back on the record and we are on to the next, second of five bills. LB288, Senator Ebke's bill. Senator Ebke, the floor is yours. [LB288]

SENATOR EBKE: Thank you very much, Chairman Harr. My name is Senator Laura Ebke, that's E-b-k-e. I represent the 32nd Legislative District which makes up Jefferson, Saline, Thayer, Fillmore Counties, and a little piece of Lancaster. Good afternoon, Chairman Harr and fellow members of the Business and Labor Committee. Today, I'm presenting LB288. I'll outline the bill, the intent of the bill, and why I believe it's principled and fair legislation. You'll see that the bill is very simple. I wanted to keep it that way because I believe the principle is very simple and I'll get to that principle in just a minute. LB288 provides for the following: (1) any collective bargaining agreement involving a public employer entered into on or after the effective date of

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this act shall not require the deduction of dues, etcetera, on behalf of a union, collective bargaining organization, or other professional association; and (2) a public employer shall not deduct dues, etcetera, from the wages of public employee on behalf of a union collective bargain organization or other professional association except as required by a collective bargaining agreement entered into prior to the effective date of the act. In other words, the bill would limit the administrative resource costs borne by the taxpayer to process these payments. Some public sector unions have, in fact, already moved to a system that doesn't require a mandatory payroll deduction and have instead set up ACH-EFT procession of dues payments for its members. This eliminates the public employer middleman and it allows the withdrawal of funds from employee checking accounts. I have an example right from my own district and hometown of this. In Crete, the school district there has moved to this several years ago. When I was...right after the election, I was thinking about different kinds of legislation and this was one that I was considering. And I asked our business manager in Crete, I was on the school board for 12 years, you know, how this process worked. And she said, well, we haven't done that for three or four years at least. I said really. And she said, yes, that the union had encouraged the local union to go ahead and remove that and to move to the ACH payment system. Indeed, at parent-teacher conferences a few weeks ago, I had several of the teachers tell me that they actually kind of liked it that way because it enabled them to see just what benefit they were getting from the union out of their monthly paycheck after it was deposited into their checking account. Sort of like our taxes or all of our other benefits, if we don't see it in our account and have it available even briefly, we don't necessarily really appreciate it. We appreciate the money that's taken out for our cable bill. We appreciate the money that's taken out of our bank automatically for our insurance or for our mortgage or our car payments or whatever every month. We don't necessarily appreciate the money that's taken out before we even get our paycheck. The response in Crete has largely been positive, at least from the teachers that I have talked to. People like it because it's eliminated that middleman. And they say that it hasn't hurt membership of the union itself. I know some opponents are going to say that this is an antiunion bill. I want to make it clear that I'm not against unions. I might disagree on certain policies, but there's actually a few we do agree on. Last week, several SEIU members visited with me about this bill. We had a nice friendly discussion about the disagreement over LB288, but we also noted that we share the same thoughts on the Keystone pipeline as well as the right to organize and free speech issues. So this isn't antiunion. It also applies to certain professional organizations that are public sector as well. The reason for the bill, frankly, is just fairness and transparency. Before finishing my remarks, I'll ask you take a look at the fiscal note. The bill won't cost the state and we don't know what the savings would be. But we do know that there would be some savings in some form or another. The Fiscal Office checked with five entities. All five indicated little or no fiscal impact. Those were the state Department of Administrative Services, the Nebraska Department of Education, the University of Nebraska, the city of Omaha, and the city of Lincoln. The Department of Education provided the following statement on fiscal impact. The removal of payroll deductions for union professional association dues would reduce work for state government as a whole.

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However, since NDE has such a small number of employees who are dues-paying members of the union, this bill would have little fiscal impact on NDE human resources and accounting. The University of Nebraska said that while savings wouldn't be significant, it would also reduce their costs. State Administrative Services says that it takes approximately two hours per month to process deductions related to unions and professional associations. It's clear that there are savings somewhere in the deduction process if LB288 passes. Even if it's a minimal amount, there is something saved and the assurance of protecting taxpayer dollars is achieved. I believe that principle is worth this effort and your consideration. I'd be happy to try to answer any questions that you might have. I know that we have some testifiers coming, I think, who need to leave soon. So if you have a pressing question now, I'll be happy to answer it or we can do it at close. [LB288]

SENATOR HARR: Anyone have any questions? [LB288]

SENATOR McCOLLISTER: I'll just ask one. [LB288]

SENATOR HARR: Senator McCollister. [LB288]

SENATOR McCOLLISTER: This bill wouldn't preclude still taking out money for United Way or anything of that nature? [LB288]

SENATOR EBKE: It does not, it does not. Right. It does not. [LB288]

SENATOR McCOLLISTER: Thank you. [LB288]

SENATOR HARR: Any other questions? Senator Crawford. [LB288]

SENATOR CRAWFORD: I'll just...one just basically. So what determines whether or not an employer is able to withdraw these dues or assessments? Like... [LB288]

SENATOR EBKE: As I understand the process now, the member has to take a card or a sheet of paper saying that they wish for the dues to be withheld from their paychecks. In practical terms, I'm not sure that it would be any more difficult to take the same sheet of paper or a similar type of paper to the bank and ask to have it withdrawn automatically from that account. [LB288]

SENATOR CRAWFORD: So the worker is choosing... [LB288]

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SENATOR EBKE: The worker has to initiate it, yes. [LB288]

SENATOR CRAWFORD: Okay. Thanks. [LB288]

SENATOR HARR: All right. Senator Bloomfield. [LB288]

SENATOR BLOOMFIELD: Are you in fact going to close? [LB288]

SENATOR EBKE: I will close. [LB288]

SENATOR BLOOMFIELD: Okay. Thank you. [LB288]

SENATOR HARR: I have a couple questions. [LB288]

SENATOR EBKE: Okay. [LB288]

SENATOR HARR: All right. First of all, the fiscal note is zero though, right? [LB288]

SENATOR EBKE: Well, it's zero except that the notes do say that there will be some savings. They just can't determine what it is. [LB288]

SENATOR HARR: Okay. So did you write this bill? [LB288]

SENATOR EBKE: I brought the ideas to the Drafters, yes. [LB288]

SENATOR HARR: Okay. And the reason I ask that is, is first of all let me start with what Senator McCollister said. You could still take money out for United Way you believe. Is that correct? [LB288]

SENATOR EBKE: Well, yeah, that's not precluded in this bill. [LB288]

SENATOR HARR: Okay. Do you think it takes state time to take money out for United Way, employer time? [LB288]

SENATOR EBKE: Sure, sure. [LB288]

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SENATOR HARR: Okay. So why is it okay to take it out for United Way but not for union dues? [LB288]

SENATOR EBKE: I'd be happy to accept an amendment in that regard if you want. [LB288]

SENATOR HARR: Okay. Well, no. You know, we're the policymaking body. [LB288]

SENATOR EBKE: Sure, sure. [LB288]

SENATOR HARR: I'm just trying to figure out what is the reason for doing one and not the other. [LB288]

SENATOR EBKE: Well, I mean, probably the best reason is one that I got from a constituent who sent me the other day who said that it's a conflict of interest for the taxpayers for the public entity to be taking out the dues of the organization that is going to go head to head in negotiations with them. [LB288]

SENATOR HARR: Okay. So...and I'm reading this and so I see...and we can go through it, but it says, "any collective-bargaining agreement involving a public employer entered into, renewed, or extended on or after the effective date of this act shall not contain provisions requiring or allowing the deduction of dues, assessments, or other amounts from a public employee's wages." And then it says "including, but not limited to." So other amounts from public employee wages to me would mean court orders. It would be...that's where I would see United Way sneaking in there. I would see insurance, health insurance payments sneaking in there. I would see retirement. [LB288]

SENATOR EBKE: I think those are treated differently. [LB288]

SENATOR HARR: Well, they're other amounts. It doesn't say. So it's an amount from a public employee's wages. [LB288]

SENATOR EBKE: Well, but those aren't...but, well, now I think you can make the case perhaps for the charitable deductions. That certainly wasn't the intent, but we can clarify the language there. But the rest of it, I mean, insurance payments and things like that are benefits, part of the benefits package, and those would be negotiated separately. [LB288]



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SENATOR HARR: I guarantee you court-ordered payments from your salary is not a benefit for (laughter) child support or other actions. [LB288]

SENATOR EBKE: Well... [LB288]

SENATOR HARR: I mean, we can clean up the language if you'd like. [LB288]

SENATOR EBKE: Sure. [LB288]

SENATOR HARR: But it gets to the underlying issue of I'm not quite sure, you know, why we treat dues differently than we do any other...the policy behind it than any other deduction or benefit that's taken out of a salary other than... [LB288]

SENATOR EBKE: Well, are dues a benefit? And does everybody get the...I mean... [LB288]

SENATOR HARR: That's the argument. Are dues benefits, and so it's the same as health insurance or your retirement plan? [LB288]

SENATOR EBKE: Well, but those are...the health insurance is factored into the benefit package, into the salary package. [LB288]

SENATOR HARR: Fair enough, but they're a benefit at the same time. I would...and if they aren't a benefit... [LB288]

SENATOR EBKE: Sure, but dues payments...I mean, a dues payment, that's a benefit of being an employee. [LB288]

SENATOR HARR: Yeah. [LB288]

SENATOR EBKE: The actual dues payments are not benefits of being an employee. It's a voluntary organization or a voluntary group that the employee has opted to join. [LB288]

SENATOR HARR: Okay. So just like then we get back to the United Way situation. So they've opted to join United Way. [LB288]

SENATOR EBKE: They've opted to donate to United Way, yeah, right. [LB288]

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SENATOR HARR: Yeah. And some employers are a little more optional than others, I'll say that. But that's for another day that I have a bone to pick with. [LB288]

SENATOR EBKE: Okay. [LB288]

SENATOR HARR: So then the issue is, and I'm just trying to get the argument straight is, why I can differentiate between United Way and a union because the employer negotiates with the employee and this is the bargaining unit and, therefore, I shouldn't have to take money out for someone who negotiates against me. Is that the reason for this bill? [LB288]

SENATOR EBKE: Yes, yes. [LB288]

SENATOR HARR: Okay. All right. I understand that. I'll add one more thing. I personally...well, are we a right-to-work state or are we... [LB288]

SENATOR EBKE: Yes, we are. [LB288]

SENATOR HARR: Okay. So right now we cannot require an employee to join a union. Is that correct? [LB288]

SENATOR EBKE: That's correct. [LB288]

SENATOR HARR: Okay. And they have the option, yes or no, to pay dues, have dues collected out of their paychecks right now. [LB288]

SENATOR EBKE: Right. [LB288]

SENATOR HARR: So now what we're doing is we're going the next step and saying you shall not have dues collected. So we're going even further, instead of we're taking choice now away from the worker as to whether their dues can be collected or not out of their paycheck. Is that right? [LB288]

SENATOR EBKE: Well, sure, but they still have the choice of joining the union just like any of us have the choice of joining any organization. Just write... [LB288]

SENATOR HARR: That's fair. [LB288]

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SENATOR EBKE: We just write our own check, decide to have it deducted from our bank account or whatever. [LB288]

SENATOR HARR: Yeah, and maybe that's where we differ philosophically. I like less law; apparently you don't, so. All right. I appreciate the give-and-take. Any other questions in regards too? [LB288]

SENATOR CRAWFORD: This is a broad intent question so I'll go ahead and ask it now instead of at closing. [LB288]

SENATOR EBKE: Okay. [LB288]

SENATOR CRAWFORD: So as I read section (1) and (2), we're talking about public employers that clearly have a collective bargaining organization. [LB288]

SENATOR EBKE: Right. [LB288]

SENATOR CRAWFORD: So...because the first one is that the collective bargaining agreements can't do that, and then the second one is that any other public...a public employer cannot do this unless it was done by a collective bargaining agreement previously. So just to clarify, so a public employer that has no union, no collective bargaining entity at all, would I think not be able to collect dues, assessments, or other wages because they wouldn't have that grandfathered piece in. Are you intending for no public entities at all to collect dues or just those with collective bargaining? [LB288]

SENATOR EBKE: Right. No public employees. [LB288]

SENATOR CRAWFORD: No public employee at all. [LB288]

SENATOR EBKE: Right. [LB288]

SENATOR CRAWFORD: All right. Thank you. [LB288]

SENATOR HARR: Thank you. Thank you, Senator Ebke. Are there any proponents on LB288? Proponents? Seeing none, we can move to opponents. Any opponents? [LB288]

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DARREN GARREAN: Chairman Harr, members of the committee, I'll attempt to be as brief as possible. I know there's a lot of testimony behind me in opposition. My name is Darren Garrean, D-a-r-r-e-n, last name Garrean, G-a-r-r-e-a-n. I'm president of the Nebraska Professional Firefighters Association, representing 1,300 members across the state, paid firefighters and paramedics of 16 different jurisdictions. We oppose LB288 primarily for the broad scope and generality of it being written relating to prohibit certain provisions of collective bargaining agreements and prohibit certain deductions from wages. That can be construed, I know, as wide variety of things. We kind of heard from Senator Ebke the intent of that with her...I appreciate the introduction of the statement of intent on LB288, albeit, that prohibits the professional and/or union dues. Now we get into this, this can be construed a lot of different ways. There are many members that want to do the plan for either donations or those kind of things. We kind of touched that, that if I wanted to give to United Way, how that would be affected. What if I wanted to give to a different organization, whether it be professional or dues or something like that? If I wanted to do like a secondary insurance, let's say, if it's outside of my benefit package, I wanted to do, just for generality, like an Aflac or something like that and I had negotiated that, now this is a reduction of benefits that I thought I had been able to negotiate for. It could go so far as, let's say, I wanted to put money into a 429 or a 457 plan outside of my bargaining agreement and was allowed to do that within the scope of dues deductions. I think all those things are very negative impacts of the employee and could affect commerce and things of that nature, and the employee's history, what happens to that employee as they go through their work life. There's a...you know, I touched about the secondary insurance and those things. If, let's say, there's a due structure of like an Aflac or something like that, is that a professional fee or a professional due that this falls under? I just think the general scope of this bill, LB288, is not a necessity for Nebraska. It's not needed, and we encourage the committee to not advance LB288. [LB288]

SENATOR HARR: Thank you, Mr. Garrean. Any questions? Seeing...oh, we do. Senator Johnson. [LB288]

SENATOR JOHNSON: Let's say Aflac...there would be other ways that Aflac would be able to be paid probably through automatic withdrawal through the bank then, right? You don't totally eliminate it. It just doesn't come out at your paycheck time. It would come out of your bank later. [LB288]

DARREN GARREAN: That's correct. But if I had negotiated that at a table, that provision, to be allowed, you know, and that being part of a benefit package, and that's outside of it... [LB288]

SENATOR JOHNSON: Outside of it, yes. [LB288]

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DARREN GARREAN: ...that is something that, you are correct, that it could be done outside of that. But doing it at the table, if that was part of something that we had both agreed upon, it is a benefit to the employees. And this would be your... [LB288]

SENATOR JOHNSON: So benefits coming out of your check versus coming out of the bank. I mean, it's the same amount of dollars. [LB288]

DARREN GARREAN: Well, if it's something that we had negotiated, let's say, at the table as a benefit. [LB288]

SENATOR JOHNSON: Part of the negotiation. Okay. [LB288]

DARREN GARREAN: Right. Correct. [LB288]

SENATOR JOHNSON: Thank you. [LB288]

SENATOR HARR: Senator Crawford. [LB288]

SENATOR CRAWFORD: Thank you, and thank you for being here. Is whether or not the deduction can be taken from a paycheck, is that a part of the actual collective bargaining negotiation, like a piece that you either give or take on? [LB288]

DARREN GARREAN: It is something that both sides agree that dues deduction is agreed upon. And as a state personnel is within in the state of Nebraska, I would have to sign off for that to occur anyway. So it's agreed upon that the city would agree to take that dues deduction. And then I would have to sign off that it comes out of my paycheck. [LB288]

SENATOR CRAWFORD: Thank you. [LB288]

SENATOR HARR: Senator McCollister. [LB288]

SENATOR MCCOLLISTER: Yeah, thank you, Mr. Chairman. What are the components of that amount of money that comes out of a person's check? Where does that money typically go? [LB288]

DARREN GARREAN: It can go to a variety of different reasons. I mean, the government taxes, the retirement, the insurance, the... [LB288]

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SENATOR McCOLLISTER: I'm talking about the union dues. [LB288]

DARREN GARREAN: Well, it's...you mean where do my union dues go that I pay? [LB288]

SENATOR McCOLLISTER: Yeah. [LB288]

DARREN GARREAN: They go into a fund that is similar to somebody else, like paying into a pool of funds that are used to benefit that group, whether it be for items within the community. We do a lot of philanthropy work as a union as well, things of that nature. [LB288]

SENATOR McCOLLISTER: Okay. Thank you. [LB288]

SENATOR HARR: Any questions? Senator Chambers. [LB288]

SENATOR CHAMBERS: What is the public...sorry I'm late. What is the public policy or the public interest in not allowing this type of deduction? [LB288]

DARREN GARREAN: I can stand to why I think it's an attempt to hinder union organization and money. That's just me and my personal opinion. As far as the public and the stance for it, I couldn't tell you. [LB288]

SENATOR CHAMBERS: I'm late. Are you for or against the bill? [LB288]

DARREN GARREAN: I'm against this bill. [LB288]

SENATOR CHAMBERS: Oh, I got here to the wrong time. (Laughter) [LB288]

DARREN GARREAN: I'm strongly against this bill. Thank you, Senator. [LB288]

SENATOR HARR: Any other questions? Seeing none. [LB288]

JOHN E. CORRIGAN: Good afternoon, Mr. Chairman, members of the committee. My name is John Corrigan, C-o-r-r-i-g-a-n. I'm an attorney in Omaha and I practice with the firm Dowd, Howard and Corrigan, and I'm here in opposition to LB288 on behalf of the Nebraska AFL-CIO. I think it's important to understand how the dues deduction comes to be. And I want to apologize, my voice is a little raspy. I've got a bad cold. But the dues deduction is basically a

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product of collective bargaining as a result of the fact that it has been determined for many, many years to be a mandatory subject of bargaining. When Nebraska implemented the Industrial Relations Act, it modeled itself off of the National Labor Relations Act, NLRA, which is a body of law first passed in 1935 and then later as some amendments to that act in the late 1940s which is our national labor policy. And it creates the obligation of both sides to negotiate in good faith on mandatory subjects of bargaining. A mandatory subject of bargaining is one that touches on the economic necessity of the employees. And so we talk about wages, we talk about safety, we talk about retirement benefits, we talk about leave, those types of things. And the dues deduction or dues checkoff is simply one of those items that gets negotiated. And that's important because when the employer and the employee don't agree in the public sector in Nebraska, the Nebraska Commission of Industrial Relations has been established to decide cases based on comparability. The commission will look at the various employers that they decide to be comparable and say, well, is dues deduction comparable or is it not? And if it is not, they will not order it; and if it is, they will order it. The fact is that it's almost uniformly comparable. This is something that doesn't even come up in discussions hardly anymore because it is so easy to do, and that's why it doesn't cost any money hardly. You don't have a fiscal note because there's not much to it. Now the employees do have to...the employer does have to be presented with some authorization from an employee saying I hold up my hand, I say I want to deduct dues. That is the employee choice based on the fact that we are a right-to-work state. But...and that's part of it, but the reason it's so important to the unions is, as the sole and exclusive bargaining agent, the union has the duty to bargain in good faith on behalf of everybody, regardless of whether they're paying dues or not. And I can tell you in the history of the state of Nebraska, there's probably about three or four decisions where the union was found to have breached that duty. The duty only exists because the law says that the union has to negotiate in good faith and that...because they are an exclusive agent, they owe that duty to everybody and that's a duty of fair representation. Without the dues payments and the dues collections, it makes their job very difficult. And their job, Senator McCollister, you pointed out and where do the dues go. The union has the obligation (1) to fairly represent everybody regardless of whether they're receiving dues or not. And if the employee is experiencing mistreatment in the workplace or if the employee is experiencing unnecessary discipline, those are things that would fall under the duty of fair representation. They can't just ignore them because they're not paying dues. And they do have to bargain in good faith on their behalf, which means they have to find out what is comparable, what are the important aspects of the employment that should be addressed in those mandatory subjects of bargaining that should be addressed at the table. That takes communication. That takes the expenditure of time and money. And then you need to train people to do that. It's not...you don't just walk off the back of a fire engine and say, okay, now I'm going to negotiate the contract with deductions for pensions or health insurance or any manner of other items that might be subject to negotiation. The union engages in training and education of its own members so that they can fairly exercise that obligation that applies to everyone. So with that, this bill is unnecessary. This bill is an attempt to differentiate collective bargaining units in a way that it doesn't differentiate between things that

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maybe one might like, like the United Way or the MDA or something like that. And for that reason, it is constitutionally suspect, in my opinion, and for that reason I'd ask that you vote no on LB288. And I'd be happy to answer any questions that the committee may have. [LB288]

SENATOR HARR: Any questions for Mr. Corrigan? I have a question for you. Have you...you've read the bill obviously. [LB288]

JOHN E. CORRIGAN: Yes. [LB288]

SENATOR HARR: And so it says, "shall not contain provisions requiring or allowing deduction of dues, assessments, or other amounts from public employee's wages." As I read that, now obviously federal law supersedes state law. So the feds could still take the employee's income taxes out. [LB288]

JOHN E. CORRIGAN: Certainly. [LB288]

SENATOR HARR: But it appears to me as though the state would be prohibited from taking tax withholdings under the current language. Is that how you read that? [LB288]

JOHN E. CORRIGAN: I think what they're saying is that a collective bargaining agreement cannot allow that. Now if there's some other statutory obligation on the part of...that the state imposes upon employers, then I suppose that they got to follow that law. But I do have real concerns about the question of whether or not the dues for professional associations can be reduced. A lot of people join things like cemetery clubs or burial associations. We can no longer agree to pay for that through some dues deduction. Why? What is the legitimate distinction between that and allowing us to pay for, you know, us being the people in the state of Nebraska, allowing us to deduct from our wages contributions to charities that everybody feels warm and fuzzy about? Collective bargaining is all about strengthening the middle class, and they have the ability to do that through participation in workplace democracy. Employers have the ability, at least in the public sector, to participate in the Nebraska municipal...the League of Municipalities or the chamber of commerce. Are you going to say that the cities can't contribute to them through taxpayer money, that that should actually come from the pockets of the elected officials who want to make those contributions? Because that's what you're saying to the unions, and it's unnecessary and it's unfair. [LB288]

SENATOR HARR: Okay. Thank you. Thank you, Mr. Corrigan. [LB288]

JOHN E. CORRIGAN: Thank you. [LB288]



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SENATOR HARR: Any other opponents? [LB288]

MIKE MARVIN: (Exhibit 1) Good afternoon, Chairman Harr, members of the committee. My name is Mike Marvin, that's M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees/American Federation of State, County and Municipal Employees, Local 61, NAPE/AFSCME. NAPE/AFSCME is the labor organization representing the vast majority of state employees. Mr. Corrigan has already talked about the CIR and how that affects in the dues deductions, but he didn't say a couple of other things that I would say in here. In the negotiations, the...every negotiation I have ever been at, whether it would be state of Nebraska, a Metro Area Transit in Omaha, state of Kansas, anywhere, anything that you negotiate the state has figured out a cost, no matter how minimal. This has a minimal fiscal impact, but, believe me, the state, when they come in and negotiate and agree to something, they know what it's going to cost them. And then we give up somewhere down the line something that they could have spent that money on. So it is negotiated. They know the cost. It is paid for. But if not, they could negotiate an administrative fee to do it. That is all subject to negotiation. I would also say that particularly in the case of the state of Nebraska, they do, they do process many other things. There are charitable contributions, which is their United Way. They take out for the zoo. I have in my packet I've handed you, I've handed the things that they put out about it. They not only deduct that money; they use other state assets to solicit those deductions. They use their Web site. They use their e-mail. In the case of the charitable giving, they take people off of their job and pay them their wages to go out and sign people up. We are entitled, we believe, to the same things under the law and equitable treatment under the law as all those organizations. We should be able to continue our dues deduction. We believe that if you don't, you're treating us differently and creating an unequal situation underneath the law. Now some of the other attachments that I've given you was one from Senator Ebke's Web page, and Senator Ebke and I had a discussion last week. She just believes that the taxpayer should not process this, pay to process. Again, I say that we have paid, the employees have paid because we've negotiated this. The state knows what it has cost them. That's less money that's available to us to negotiate other things. This is just simply, and in her words, a philosophical view, a difference. Now this is a bill that originates with ALEC. It's made its way around the country in one form or another in different states. We believe that it's unfair to labor unions to be singled out in this legislation. And as I stated earlier, this creates an inequity for us. Are we not entitled to the same treatment as all other entities? This bill is not fair under any reasoning and we ask that you do not move this bill out of committee. And with that, I conclude my testimony and be happy to answer any questions you have. [LB288]

SENATOR HARR: Thank you, Mr. Marvin. Any questions? Seeing none. [LB288]

MIKE MARVIN: Thank you very much. [LB288]

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SENATOR HARR: Thank you for your time and patience. [LB288]

MIKE MARVIN: You bet. [LB288]

RICHARD HOPPE: (Exhibit 2) Good afternoon, Chairman Harr, members of the committee. My name is Rick Hoppe, H-o-p-p-e. I serve as chief of staff to Lincoln Mayor Chris Beutler, and I'm here today to talk a little bit about our opposition to LB288. In order to do that, however, I have to give you just a tad bit of background which has been touched upon a little bit by previous testifiers. As has been pointed out, the relationship between the unions and the city is governed by the Nebraska Industrial Relations Act. Our employees have the right to collectively bargain through a labor organization and the city has an obligation to recognize the union and negotiate with them in good faith on the terms and conditions of employment. Now about 93 percent of our 2,000-person organization are represented by one of the six unions that the city has. In short, we have to work cooperatively with the unions in order to make city government function. Furthermore, the negotiations between the city and the union are determined and governed by the set of statutes we refer to as comparability. Some of you talk about the CIR. But as those statutes point out, wages and benefits are determined by like and similar jobs in other jurisdictions that are similar to the city of Lincoln. Now comparability places a big premium on cooperation. That is extremely important in these negotiations because many times what is comparable isn't necessarily what the city is willing or able to afford at a given point in time. So if you want to pay under comparability, you'd better have a reservoir of good will and you had better have developed a mutually respectful relationship. That's why voluntary payroll, believe it or not, is something that's important to us. It's freely negotiated with the unions because it has virtually no cost to us and we feel like it contributes the reservoir of good will that helps us successfully conclude labor negotiations. There are several additional reasons the city is willing to provide this service that I think point out why this may not be the idea we want to pursue. First of all, it's been mentioned, the deductions are voluntarily authorized by each individual employee/union member. We simply will not process if the employee does not sign off and, conversely, if the employee tells us to end this, we end it. The individual retains the authority and control over what's coming out of their checks. Second, we have a fully automated payroll system. All our authorized deductions are entered into the system in advance, and during each pay period the deductions are automatically removed. An internal voucher is created and the funds are electronically transferred. There is no additional administrative action. It takes a very short time for a programmer to implement this. And as long as we don't change and we don't do it very often, it takes virtually no time to engage in this practice. So there really isn't a direct cost to the city at all. Now there have been a lot of talk about numerous payroll deductions at the city and we have a number that are the same as the state and other organizations: health, benefits, retirement, so forth. We do the United Way as well. We're a proud partner. But there are other dues-paying organizations that are actually important to the city in terms of professional development of its work force. We have a group called Leadership Link that provides leadership

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training to a number of our management and union employees, and we use the payroll deduction system in order to collect those union dues...excuse me, those membership dues. We think that's important and we think that actually helps our members receive better training and a higher degree of professionalism in their job as a result of their association with that important organization. So to summarize, payroll deduction is not an expensive proposition. It's a negotiated employee benefit that serves both the interests of the city and its unions. We see little purpose in prohibiting even the negotiation of voluntary employee benefits that builds that good will and costs the city virtually nothing to enact. I appreciate the time to address you today and would be happy to answer any questions that you may have. [LB288]

SENATOR HARR: Any questions for Mr. Hoppe? Seeing none, thank you very much. [LB288]

RICHARD HOPPE: Thank you, Senator. [LB288]

STEVE LeCLAIR: Good evening, Chairman Harr and members of the Business and Labor Committee. My name is Steve LeClair, S-t-e-v-e L-e-C-l-a-i-r. I am the president of the Omaha Professional Firefighters Association, Local 385. I will do my best to avoid to be repetitive or redundant in the sense that many of the things that I have concern with this bill have already been addressed. But I would like to mention that...and reinforce is the fact that no one in Nebraska is required to join an employee organization or a union as a requirement for their employment. And the status of the law currently provides the employer and the employees choices. I believe this bill removes that freedom of choice. As I think has been hinted at and intimated, that there's no financial savings by enacting this legislation. At best, it's minimal. And the process of deducting dues off of one's paycheck is exactly the same as deducting a contribution to the United Way, making a pension contribution, a wage garnishment for child support, a supplemental insurance payment like Aflac, or a flexible spending account. And if you're only going to remove the dues deduction for unions and still include the others, the accounting process is exactly the same. Essentially, the push of a button. There will be zero cost savings. In fact, if anything, it would likely disrupt the flow of commerce between our city and its employees. I believe that LB288 is a solution looking for a problem and that LB288 would make the collection of dues a prohibited practice. Now over the last 50 years of bargaining back and forth between the city and its employee unions and specifically over the last 6 years where I've been actively engaged in negotiations with the city of Omaha, I have amassed hundreds of proposals and demands from the city. Can you guess how many came in regard to dues deductions? Zero. It hasn't ever occurred. The last time I checked, we don't like it when the federal government imposes mandates on us as a state. It is certainly...and we feel certainly the state shouldn't be telling us local governments how to do their business unless there really is an identifiable problem. I believe that local control is the key. I would say and reinforce, much like other 501(c)(3) organizations, nonprofits, unions have enormous positive philanthropic impact in our communities. I'd like to give you just a few examples of how Omaha's firefighters give back

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to our community and prevent government from having to spend more to address these needs. In the last five years, we have raised and donated over \$350,000 to Muscular Dystrophy Association. On an annual basis, we contribute approximately \$10,000 a year to the UNMC burn unit. We've been ardent supporters of United Way. Annually, we ring the bell and support Salvation Army during the holidays. Our members regularly donate to and volunteer for the Omaha Food Bank. In the last two years, through dues deductions, our members have purchased over 1,000 American-made coats and then subsequently donated those to needy kids within the OPS, the Omaha Public School system. We annually support a toy drive to ensure that children in the hospital during the Christmas season get some of that Christmas joy. So as you see, we not only do our...not only do our members respond to the emergencies of Omaha citizens, but we choose to respond to the most emergent needs of those most vulnerable in our community. So on behalf of Omaha's professional firefighters, I'm asking that you oppose LB288. I appreciate your time and I certainly appreciate all your service to our great state. With that, I'd finish and be happy to take any questions. [LB288]

SENATOR HARR: Thank you, Mr. LeClair. Any questions for Mr. LeClair? Seeing none, thank you, Sergeant. [LB288]

STEVE LeCLAIR: Thank you. [LB288]

JOHN WELLS: Hello, Senators, Chairman Harr. My name is John Wells, J-o-h-n W-e-l-l-s. I am president of the Omaha Police Officers Association. Today, I'm here to testify in opposition to LB288. And in answer to Senator McCollister's question earlier, he asked about, you know, what do the dues go towards. Rather than repeat all of the concerns ahead of me, I'm going to highlight concerns specifically about the Omaha Police Officers Association that weren't highlighted earlier. But I can tell you that this seems to be an attempt to somehow curb associations' or unions' ability to do political activity or to do things on behalf of their members. I can tell you in the last two years in 2013-2014 where we had a city election as well as a statewide election, the Omaha Police Officers Association spent less than 1 percent of their total dues on political activity. The bulk of our activity goes towards making sure that our members have access to due process, that even under the best of circumstances police officers face a high level of scrutiny and whether that would come through civil lawsuits, internal complaints, or discipline. And we as an organization feel it's important, why we've banded together, to make sure we have access to that due process, because very few among us can afford to go out and hire our own attorney due to the cost. Additionally, our concern is, if this bill is passed, what it will do to the ability of our members to do charitable donations. A lot of our dues does go to a variety of different charities but not only our organization. Police officers belong to other professional organizations and I'm going to list a few: the Latino Police Officers Association who for years has had a police athletic league which helps out kids who couldn't necessarily afford to get into certain sports in both north and south Omaha that's been a tremendous success and has been

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raved about by community leaders and people in the community alike; the Black Police Officers Association that does outreach in north Omaha and lately has been trying to do things like teen summits to help teenagers get access to information, especially if they're at risk, on schools and other counseling services and things of that nature; the Women's Police Officers Association which advocates on behalf of women police officers because there's some very unique concerns for women in this profession; and then the Omaha Police Welfare and Benefit Association which is an organization that has gotten together over the years that provides for when somebody has a life-altering event, maybe it's an illness of a child that requires travel or some other type incident, that they will step in and help out financially. All of these organizations would be impacted. And so that's why at this point I would encourage you to vote against LB288. [LB288]

SENATOR HARR: Thank you, Officer Wells. Any questions for Officer Wells? Senator Johnson. [LB288]

SENATOR JOHNSON: Just curious, of the dues that's paid, and I don't know how much...I don't want to know the dollars, what percentage of it stays within the union to support the administration and whatever of the union, and how much of it goes for other philanthropy-type projects? [LB288]

JOHN WELLS: As far as when you mean the administration, could you clarify that for me? As far as? [LB288]

SENATOR JOHNSON: Well, it costs something for union officers to meet, to do things. [LB288]

JOHN WELLS: Very little. We have a hall that we own our own property. It's almost paid for, but that mortgage is almost self-sufficient through hall rentals. That myself and my counterparts, we have three other chair officers who are paid a stipend. It's a minimal amount compared to our dues, that the vast majority of our money is controlled by the membership itself who is very active, and the vast majority of that dues money is set aside for the legal defense of the members to give them access to due process. [LB288]

SENATOR JOHNSON: So a majority of their dues actually goes through the union and out for other support versus a union activities as...I mean, you have union events that the union pays for. [LB288]

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JOHN WELLS: Right. I would say that less than 5 percent of our dues goes to any administrative or anything, function, outside of members services. It's literally less than 5 percent. [LB288]

SENATOR JOHNSON: Okay. Five percent. Thank you. [LB288]

SENATOR HARR: Any other questions? Seeing none, thank you for your service to the city of Omaha. [LB288]

JOHN WELLS: Thank you. [LB288]

RODNEY VLCEK: (Exhibit 3) Chairman Harr, members of the Business and Labor Committee, my name is Rodney Vlcek, spelled R-o-d-n-e-y V-l-c-e-k, and I am president/secretary treasurer of the Nebraska state AFL-CIO. I am here to testify in opposition to LB288, paycheck deception as we call it. This bill is completely unnecessary and just another blatant, corporate power grab at the expense of Nebraska's middle-class, working men and women. I think the key question for each view is why. Why is this being introduced? Why are nurses, teachers, firefighters, bus drivers, police officers, correctional officers, transportation drivers, utility workers, state workers, etcetera, etcetera, being singled out? Why? The answer is because there's a all-out attack on the middle class by people who have not one clue as to what my brothers and sisters do for our communities, our neighborhoods, our families, our friends, or even people we may never have or ever will meet in our lifetime. Organized labor has been the voice for the voiceless, the hand for the helpless, the vision for the sightless, the embrace for the lonely, the hope for the needy, and the love for each child no matter who they are. I would like for you to know some of the things my fellow union brothers and sisters do for our communities through financial and volunteer contributions during the year for our charitable state and local organizations: United Way of the Heartland; Red Cross blood drives; Muscular Dystrophy Association; the IAFF MDA boot drive; Santa Cop Christmas program; Coats for Kids; food bank; caps, coats and mittens fall drive; People for the Center in Need (sic); letter carriers annual food drive; annual back-to-school supplies for kids; Nebraska Heart Association; Harley Owners Group guardian dog bike ride; September LaborFest; October breast cancer awareness and screening; Toys for Tots bike ride; Central Labor Council picnic fund-raisers; Community Outreach for Families in Need; United Support and Memorial for Workplace Fatalities; Make-A-Wish Foundation; Kids' Chance Nebraska; Trunk or Treat Halloween party' Harvest in the Heartland; and numerous parades and raffles for great causes. I could go on and I know I've left some very important events out and for that I do apologize, but my point being each of you may not be educated on what we do on a daily basis in the communities across the state. Labor has taken a bad rap lately because of false media accusations and the contempt by some individuals who have no respect for the working-class men and women of this great state. Now we have Senator Ebke introducing LB288 on

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behalf of these outside interests who have no ties to our communities but a bigger agenda at the expense of us all. Paycheck deception is unnecessary, has no, and I repeat, no fiscal impact or added cost to the state, and attempts to silence the voices of people we trust, like nurses, teachers, and firefighters. What is really shocking is public-sector workers are the only ones singled out in this bill for payroll deduction. Why? I implore each of you as members of the committee to adamantly oppose this legislation and show how much you appreciate the work the men and women of the public sector of the state of Nebraska do each and every day. Thank you very much and I will be happy to answer any questions you may have. [LB288]

SENATOR HARR: Thank you, Mr. Vlcek. Any questions? Seeing none, thank you for your patience today. [LB288]

RODNEY VLCEK: Okay. Thank you. [LB288]

DANNY BEGLEY: Good afternoon. Thank you for taking the time, Senator Harr and committee members. My name is Danny Begley, D-a-n-n-y B-e-g-l-e-y, and I'm here on behalf of...I'm the vice president of the International Brotherhood of Electrical Workers, Local 1483, and I come today to oppose LB288 on behalf of our members. I'm briefly just going to talk about the history of the labor movement, is the...my deceased mother was a history teacher and my father was a proud mail carrier for 45 years. And I'd be in trouble not to put you on notice that my oldest daughter Megan is a freshman at Creighton, over my right shoulder, on spring break. And she is a premed freshman and then she's also minoring in political science. So she's watching, so. (Laughter) I'll just talk about the understanding of organized labor as a public good. Government in our democratic republic has more responsibility to use our common wealth in ways that protect and empower all of us equally. Even so, government should never grow larger than the size needed to adequately fulfill this moral mandate. Abraham Lincoln was an early advocate for everyday wage earners. He understood that the government might need to intervene when our economic system worked in ways to disadvantage wage earners. In 1847, Illinois Congressman Lincoln made this observation: To secure to each laborer the whole product of his labor or as nearly as possible is a most worthy object of any good government. Congressman Lincoln also believed there were limits to government reach. In 1854, Congressman Lincoln noted: The legitimate object of government is to do for a community of people whatever they need to have done but cannot do at all or cannot so well do for themselves in their separate and individual capacities. But in all that people can individually do as well for themselves, government ought not to interfere. Labor unions are a public good that exists outside of government. Unions help ensure that the economy functions in ways that advances the general welfare of all who live within our borders. Unions work to directly improve the well-being of its members and indirectly improve the lot of nonrepresented wage earners. Every workplace right and safeguard enacted into legislation was supported by unions and opposed by large employers and their allies in elected office. For a brief 25-year period coming out of World War II, unions help ensure that

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our nation's economic might was broadly and fairly shared. Dwight David Eisenhower's presidency coincided with the beginning of the era of shared prosperity. President Eisenhower understood the importance of organized labor to the nation's economic health. He spoke for the Republican Party when he said: Unions have a secure place in our industrial life. Only a handful of reactionaries harbor the ugly thoughts of breaking unions and depriving working men and women of the right to join the union of their choice. A decade later, Dr. Martin Luther King, Jr. understood unions were allies in ensuring that civil rights are accompanied by good-paying jobs. Many know that Dr. King was assassinated in Memphis while helping public-sector employees gain a meaningful voice in determining their future quality of life. It's less widely known that Dr. King had long been an advocate for organized labor. He shared President Eisenhower's understanding of the importance of organized labor. Here is Dr. King back from 1861 (sic): History is a great teacher. Now everybody knows that the labor movement did not diminish the strength to the nation but enlarge it. By raising the living standards of millions, labor miraculously created a market for industry and lifted the whole nation to undreamed levels of production. Those who attack labor fought these simple truths, but history remembers them. Sixty-four years later, this basic understanding of labor as a public good seems forgotten. Too many elected officials have forgotten the role unions play in ensuring the economy helps everyone who works hard and plays by the rules. Some elected officials, rather than directly say all labor unions must go, are subjecting the labor movement to a death by a thousand cuts. Laws limiting bargaining rights, eliminating dues checkoff, and creating hurdles to establishing effective unions are appearing in Nebraska and elsewhere. This would be a big mistake. It would not only limit access to the American dream for today's work force but for generations to come. Thank you. [LB288]

SENATOR HARR: Thank you, Mr. Begley. Any questions for Mr. Begley? Senator Crawford. [LB288]

SENATOR CRAWFORD: Thank you, Chairman Harr. Thank you, Mr. Begley. So we've talked quite a bit about the role collective bargaining plays and you actually have to bargain to get the payroll deduction in place in the first place. But the testifier from the city of Lincoln talked also about professional development, so I wonder if you would talk as an electrician about the importance of the dues or other professional association deductions in terms of the work force development and your professional development. [LB288]

DANNY BEGLEY: I appreciate the question, Senator Crawford. The union I represent is made up of OPPD employees that are professional and technical/industrial. I don't know, we don't represent electricians but maybe one of my brothers can speak a little better on that issue. I'm sorry. [LB288]



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SENATOR CRAWFORD: That's okay. [LB288]

DANNY BEGLEY: We don't represent electricians, so. [LB288]

SENATOR CRAWFORD: But...so maybe you just speak for who you represent as a professional development focus in what your doing for members and helping them perform? [LB288]

DANNY BEGLEY: Well, basically the job of our union is to get collective bargaining agreements reached and it costs a lot of money to do that and costs a lot of time, as Mr. Corrigan said earlier. And it's a body of democracy that were elected by our members and we determine, based on what our membership tells us, what we'll do. As far as groups that you're talking about, we don't really belong to anything other than IBEW and we kind of teach our members based on what we're taught there to our membership. [LB288]

SENATOR CRAWFORD: Thank you. [LB288]

SENATOR HARR: Thank you, Mr. Begley. Any other questions? You're a very fortunate man that your daughter looks like her mother. (Laughter) [LB288]

DANNY BEGLEY: She's glad to be here. [LB288]

SENATOR HARR: Anyone else coming forward? And as you come forward, you know, we're getting late in the day, don't be afraid just to say me too, so. (Laughter) So with that, go ahead and start. [LB288]

NANCY FULTON: And that's not what I'm going to do. (Laughter) [LB288]

SENATOR HARR: Okay. [LB288]

NANCY FULTON: (Exhibit 4) Good afternoon, Chairman Harr and members of the committee. I'm Nancy Fulton, N-a-n-c-y F-u-l-t-o-n. I'm a 34-year elementary school teacher and I'm currently president of the 28,000-member Nebraska State Education Association. NSEA is strongly opposed to LB288. LB288 is an extreme example of government overreach: state government imposing unwanted and unneeded changes to political subdivisions and the public lives of public employees. This overt intrusion of government delves into and subverts an educator's relationship with his or her employee and denies educators the freedom and ability to manage their own paycheck. Currently, public employees have the freedom to designate personal

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payroll deductions from their paychecks for, as mentioned, United Way contributions, YMCA, the zoo, savings bonds, transfers into mortgages and checking accounts, just to name a few. In this modern computing society, these transfers occur electronically without any or very, very little fees imposed on either the employee or the employer. LB288, however, seeks to limit the freedom employees have in choosing these deductions and limits the employer's choice in what payroll transfers it offers to the employees. Just as onerous is this: LB288 specifically targets collective bargaining by public employees and, even more, pointedly targets by name public school employees. This raises the question as to whether LB288 is a political retribution or whether supporters are biased against public employees in general. Legislation based on either perspective does not and never will make sense nor is it sensible policy. Nebraska is a right-to-work state. Members of our association make these contributions voluntarily on a year-to-year basis. A teacher at any time may choose to join or to discontinue association membership. It is their choice to do so. Finally, the Nebraskans who utilize this simple and virtually no-cost service for their employer are your neighbors, your friends, your family. Thousands of them teach Sunday school and lead choirs in your churches. They shop in the stores, they hold second jobs, and they pay taxes, too, including the property taxes that support the public school districts where they educate your children. We respectfully ask you to oppose this bill and leave the freedom to contract and the freedom to choose in the hands of the people we trust to teach our children. Thank you for your time and consideration today. [LB288]

SENATOR HARR: Thank you very much, Ms. Fulton. Any questions? Senator Johnson. [LB288]

SENATOR JOHNSON: Little bit of follow-up from another...some of the other unions do a lot of philanthropy-type things and other deductions. How much of your dues that's collected stays within your teacher's union for projects and contributions and then what percentage? [LB288]

NANCY FULTON: I would say almost all of it. [LB288]

SENATOR JOHNSON: Just about all of it? [LB288]

NANCY FULTON: All of it. Almost all of it. [LB288]

SENATOR JOHNSON: Okay. Thank you. [LB288]

SENATOR HARR: I would just say less as a question more of a comment, while we've been here, we have been hit with an e-mail requesting us to give to the zoo from this legislator's office.

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So there you go. (Laughter) The zoo drive ends this Wednesday, March 11th, so there you go. [LB288]

NANCY FULTON: Couldn't have happened at a better time. [LB288]

SENATOR HARR: There you go. [LB288]

NANCY FULTON: Thank you. [LB288]

SENATOR HARR: Thank you. Any other opponents? Opponents. [LB288]

SCOTT UTECH: Good afternoon, Chairman Harr and members of the committee. My name is Scott Utech, S-c-o-t U-t-e-c-h. I'm the director of organizing for the International Brotherhood of Teamsters, Local 554, in Omaha, Nebraska. I'm here in opposition to LB288 and I've prepared a statement that I'll read, and in conclusion will answer any questions you might have. The Nebraska right-to-work statute is a mandate for which public- and private-sector employees are provided the full benefits of any collective bargaining agreement at their workplace without an obligation of being a union member or paying dues to that same union that negotiates and enforces their contract. If an employee covered by such a contract so chooses to become a member of the union by their own freewill and by doing so agrees to pay dues, then a provision negotiated in their contract provides for union dues to be remitted through payroll deduction. Payroll deduction just makes it easier for working people to keep their lives better organized without the difficulty of trying to remember some things that are otherwise not a priority. Banks provide the convenience of automatic bill paying to assist customers in day-to-day business. Technology works for us and is the obvious reason we continue to expand the various fields that allow us to be more efficient. To imply with cause that LB288 is a deliberate attempt to discriminately prohibit the remittance of union dues, one need only take into consideration all common and standing practice regarding similar deductions made for child support, charitable organizations, taxes, and all other relative forms that do not consequently create any administrative quandary. By the many technological means available today, software programs make it easier to administer payroll deductions regardless of which organization they are remitted to or from. Aside from the technical aspect of this subject, it could be said of LB288 that its purpose is the singling out of one particular organization and creating a means to compromise its effectiveness by interrupting its revenue source. This bill could also essentially put the individual's member status in jeopardy by creating inconsistencies and, thus, diminish their ability to help sustain the union of their choice. If the purpose of this bill is to save taxpayer dollars, I don't see the value of it. If the purpose of LB288 is to compromise the effective representation for public employees in the state of Nebraska, then I believe it does serve that purpose well. It is disturbing to think that this political maneuver to preclude public employees

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their rights already bargained for in a contract, agreed by their employer, and ratified by the majority would ever find its way out of this committee and on to the floor for debate. Please give your consideration to opposing LB288 and continue to provide public employees the means to conveniently remit any and all reasonable payroll deductions free of any antiunion animus. [LB288]

SENATOR HARR: Thank you, Mr. Utech. Any questions? [LB288]

SCOTT UTECH: Thank you. [LB288]

SENATOR HARR: Seeing none, thank you for your testimony. Appreciate it. Mr. Salerno. [LB288]

MARK SALERNO: Good evening, Chairman Harr, members of the committee. I'll try to be brief. My name is Mark Salerno, it's S-a-l-e-r-n-o. I'm currently president/business manager IBEW Local 1483, International Brotherhood of Electrical Workers. And I want to encourage you to not advance this bill. And I know there's been a lot of testimony here before and I'll try not to repeat it, but I just think it might be important just to kind of highlight the process, what takes place for a union to represent employees. First of all, unions are democratically chosen by the employees that it's going to represent. Typically, this is done through the time-honored process of an election. People vote to have that union come in there. Second of all, even after they've designated a union as their representative, they voluntarily choose to become a member of that union and support it. And as said before, more specifically to this bill, the dues deductions by the employer must be negotiated, the voluntary dues deduction, and this is done through the bargaining process. And as testified before, bargaining always involves a give-and-take. Real quickly, I don't believe this bill saves...has been shown to save any money. I believe it's another example of government overreach where legislation is thrust between the employer and the employee relationship, and it really restricts the freedom of both the employees as well as the employers. That's really all I have to say. Just to address a previous question by Senator Crawford, as far as the joint...we have joint apprenticeship programs that are done, it's not necessarily in my local, the one that I represent, but typically it's done for the trades, all the trades--electricians, pipe fitters, linemen--and it's done through a dues deduction where they pay jointly for that. That's all my testimony. I'll be happy to answer any questions. [LB288]

SENATOR HARR: Any other questions? Seeing none, thank you, Mr. Salerno. Any other opponents? [LB288]

BRIAN PETERSEN: I will be extremely brief, Senator Harr and committee members, because we are officially...it is good evening versus good afternoon. [LB288]

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SENATOR CHAMBERS: Thank you very much. [LB288]

BRIAN PETERSEN: So, Senator Chambers... [LB288]

SENATOR CHAMBERS: Oh, you're still going on. (Laughter) [LB288]

BRIAN PETERSEN: You're very welcome. So in light of me too, I testify here today on behalf of the State Troopers Association and the State Law Enforcement Bargaining Council. I debated whether I need to come up here and reiterate some of the key points. This is more of an opportunity for you to ask me questions, but I will point out a few issues that are specific to us. And the reason I am here again is because my membership expects me to be here and to oppose this bill specifically. So the question is asked and I'll follow on to a few things with Mr. Corrigan who testified quite a while ago. The question that we had specifically as an association--and we are an association, not a union--a right-to-work state but we are collective bargaining, is why? What does this bill particularly accomplish? And I wrote my notes down or I typed them on my small phone here so that might have been a mistake, but. And, nonetheless, the practical sense of it is, is the union dues or the association dues are collected for the Troopers Association for the overarching SLEBC state law enforcement, which is game officers and fire marshals as well as troopers. Those dues are forwarded to a collective bargaining or to the overarching State Law Enforcement Bargaining Council for the purposes of collective bargaining. But large in part, those dues are utilized specifically for officer's defense should they need it through internal affairs, and more so most important, those dues are collected for the defense of the officer in post-critical incident cases. So in post shooting we know that there's a potential for a grand jury always in a post shooting. Also with a 1983 case. So large in part are those dues as well as to a political action committee where they're utilized. That is a large portion of it. The second point I'll make, and it'll be extremely quick, is the fact that it's been touched on already and I'm always the glass-is-half-full type of person, and so I look at it from not only the labor side but the management side. Collective bargaining allows the management to have those rights within the workplace, to have the workplace set within parameters. So it's very important for that just as well that we understand, we operate underneath a collective bargaining, what's called an agreement, so a big one right there. Thirdly is the portion that I'll touch on in the philanthropy that goes out. The State Troopers Association are big supporters of the Children's Hospital, big supporters of Regional West Medical Center, of the Buckboard Society, big supporters of St. Elizabeth, so on and so forth, Game and Parks comes up with trophies in supporting education for different charitable events, and it goes on. So the big things I would bring up to you and the last thing I'll bring up to you and it's been said many, many times and I just say this in very humble terms, in the economic sense of republican, this goes against the principles of the overreach. And the State Troopers Association and the State Law Enforcement Bargaining Council are proud to represent what they do, they're proud to work with the employer, and they're proud that there's a healthy, productive employee in the workplace, he and she, for

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troopers, Game and Parks officers, and fire marshals. So a large percentage of our dues are spent in the areas of the defense, in the area of post-critical incident, in the area of...to Senator Johnson's question that's come up before, also in the area of political action committees to support senators and to be a part and be heard. So with that, I'll entertain any questions and I hope I was quick. [LB288]

SENATOR HARR: Thank you, Trooper. Can you please state your name and spell your last name for the record? [LB288]

BRIAN PETERSEN: I'm sorry, yes. Brian, B-r-i-a-n, and Petersen, P-e-t-e-r-s-e-n. [LB288]

SENATOR HARR: All right, Trooper Petersen. Anyone have any questions? Seeing none, thank you for your time and waiting patiently... [LB288]

BRIAN PETERSEN: All right. Thank you. [LB288]

SENATOR HARR: ...and your service to the state. Any other opponents? Anyone in the neutral capacity? Seeing none, Senator Ebke, the floor is yours. [LB288]

SENATOR EBKE: Well, since I promised Senator Bloomfield that I would close, I will. (Laughter) A few notes here. I'm going to tell you a little story. Right after this bill was introduced about ten days into the session, less than ten days into the session I guess, my office got a phone call. And it was an anonymous phone call and the person on the other end made it very clear to my 19-year-old AA that their union was not very happy with this bill and stated that they would be bringing some friends in to talk to us. And my AA, in her very bubbly way, said, well, would you like me to make an appointment? And this person said, no, I will...you'll know when we show up. I'm paraphrasing. I wasn't on the other end of the...but that was the essence. Okay. My AA is very resourceful, had the caller ID, and with a little bit of Google action managed to figure out who it was. I won't mention the name but it was a person that sat before you here a few minutes ago and mentioned how wonderful the unions are. I am not against unions. I sat on a school board for 12 years. I sat on the other side of the collective bargaining table as a member of the negotiations team. I fully support the right to negotiate. But the question becomes in this particular instance whether the taxpayers have a responsibility to be the middleman for the unions. Let me just suggest, and the NSEA president Mrs. Fulton suggested that all sorts of payroll deductions are made, mortgages and things like that. Frankly, I didn't know that. And, frankly, that bothers me even more than union dues. I don't think that public entities ought to be acting as bankers. It may be convenient but I...you know, if I want to have my church donations withdrawn from my state paycheck, should the state be expected to do that? If I want NRA membership, Senator Chambers, should I put my (laughter) NRA membership or my

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National Wildlife Federation membership. You know, should I be expected...you know, should the state be expected to deduct from my paycheck in order to do that? Those are all voluntary organizations. So that bothers me. I don't think our public entities ought to be acting as banks, you know, for our employers...our employees. Much was made on several occasions about the concept of government overreach, and I dislike government overreach as much as the next person. But we already have the Commission of Industrial Relations, which I would argue already infringes on the employer-employee relationship in the purest sense of the word. Having sat on the other side of the bargaining table, you know, sitting in the superintendent's office talking about, well, how far can we go on this, you know, we always had to keep in the back of our mind the Commission of Industrial Relations. Those who say that this attempts to discourage union membership I think are being somewhat disingenuous. Writing out our own checks or having automatic payments from our checking accounts does not discourage us from buying insurance, getting mortgages, subscribing to newspapers, paying our cable bills. These are all things that most of us already do. As I said, the NSEA is already engaged in this practice, at least in Crete, and I don't know how many other places. And so I would be happy to take any questions at this point. [LB288]

SENATOR HARR: Thank you, Senator Ebke. Any questions for our fellow Business and Labor senator? Senator Crawford. [LB288]

SENATOR CRAWFORD: Thank you. Thank you, Senator Ebke. So I think the example of Crete is a good example of showing like their options. So I guess that still comes back to this point of why not allow a school district or a city to say this is something that is valuable to us and our...and if the voters don't like it, then the voters will say, hey, we need different people on the school board or different people on the our city council. [LB288]

SENATOR EBKE: Then we ought to put a dollar amount on it as part of the negotiations process and be very up-front about how much that's costing. [LB288]

SENATOR CRAWFORD: So that would be a good question for people to ask their... [LB288]

SENATOR EBKE: Sure. [LB288]

SENATOR CRAWFORD: ...city council members or school members of how much does it cost and that could be a discussion. [LB288]

SENATOR EBKE: Right. And I think it probably varies from place to place. If you've got, you know, one person who does all of the payroll as we do in the Crete School District, I think...well,

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there may be two that manage it now. But you know, you have one or two people that do all the payroll, I suspect that, you know, many people have mentioned the electronic nature of things, and certainly that's a big time-saver, but the initial effort of logging things in. The other thing that I'm not sure about, frankly, is the...because Crete doesn't do it anymore so I didn't have any...I didn't have anybody to actually go to, is how the dues are paid. Are they paid monthly to each organization or are they paid in a lump sum at the beginning of the year? One of the arguments that I heard early on from a teacher was that the problem with asking, you know, and not having it deducted was that the teachers couldn't afford to pay it all up-front, okay, at the beginning of the year because they were...you know, they had bought supplies for their schools and...you know, for their classrooms, and I recognize that that happens. But my concern is, okay, well, if the employees are paying it all up-front, would have to pay their dues all up-front, does that mean that the schools and the counties and the cities are paying the dues all up-front as well for the next year? And what is the mechanism in place? You know, are we floating...essentially floating a loan for those dues, you know, because we pay it up-front but then we deduct monthly each paycheck. So if the dues are \$500 and it's paid...like I said, I don't know how this is done. Okay. But if, for instance, the dues were \$500 for the year and the government entity pays that \$500 up-front to the union or whatever organization but then deducts, I don't know, I should have used \$480, you know, but then deducts, you know, an even amount from the paycheck over the course of a month, are we essentially floating a loan to the...you know? So that's something that needs to be identified and it may be that it happens differently with different groups. [LB288]

SENATOR HARR: Did you have a follow-up question? [LB288]

SENATOR CRAWFORD: Just one other question. So...and this may be something you can check on. One of the testifiers mentioned that the ability to have the paycheck deduction was a mandatory subject of bargaining by the National Labor Relations Board. So I don't know if you had examined that or if anybody had brought that to your attention beforehand. [LB288]

SENATOR EBKE: I've never had that brought to my attention before. [LB288]

SENATOR CRAWFORD: Okay, okay. So it gives you a chance to look at that. [LB288]

SENATOR EBKE: We'll look it up, yep. [LB288]

SENATOR HARR: Any other questions? Do we have any letters, Mr. Wyatt? [LB288]

JAMISON WYATT: (Exhibits 5-9) Senator Harr, I have a letter of support for LB288 from Matt Litt with Americans for Prosperity; I have a letter of support for LB288 from Coby Mach with



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Lincoln Independent Business Association; I have a letter of opposition for LB288 from John J. Francavilla of the Nebraska Fraternal Order of Police; and I have a letter of opposition on LB288 on behalf of 124 interested labor interests across both the public and private sectors. (Also, a letter of opposition to LB288 from Chris Jerram, Pete Festersen, and Garry Gernandt from the Omaha City Council.) [LB288]

SENATOR HARR: With that, that closes LB288. Thank you, Senator Ebke. And we will move on to LB554. As we clear the room out just for the members, maybe, maybe not...all right. How this bill will work because it's a technical bill, Meghan Chaffee, legal counsel for Business and Labor, will do the introduction. She'll go through the bill. And then I think the way the order is going to be, so those in the audience know, we'll have Allen Beermann come up, and then Bo Botelho, interim Risk Manager, Jim Smith from the AG's Office, Jeff Beaty from the Department of Corrections, David McManaman from DHHS, Braden Sheppard from Game and Parks. And then if the committee has any additional questions, there are representatives present, I hope still, from Treasurer's Office, Retirement System, Board of Ed Land and Funds, Nebraska State Patrol, Nebraska State Energy Office, Nebraska Department of Insurance, and Department of Roads. With that, I will turn the floor over to Meghan. Please go ahead, Ms. Chaffee. [LB288 LB554]

MEGHAN CHAFFEE: Good evening, Chairman Harr. My name is Meghan Chaffee, M-e-g-h-a-n C-h-a-f-f-e-e, legal counsel for the Business and Labor Committee here to introduce LB554. LB554 are those claims against the state that are approved for payment and processed through the State Claims Board. These claims include some tort claims, miscellaneous claims, and some agency write-off requests. Here to testify for those claims, as Chairman Harr has said, we have Mr. Jim Smith from the Attorney General's Office, Mr. Jeff Beaty from the Department of Corrections, Mr. David McManaman from the Department of Health and Human Services, and Mr. Braden Sheppard from Game and Parks. As has been said, we have additional agency reps available. Also present is Mr. Bo Botelho who's the interim Risk Manager involved in the claims process. Mr. Botelho can answer additional questions regarding the claims and also speak to the amendment AM744 which includes two additional tort claims. That's my testimony. [LB554]

SENATOR HARR: Thank you, Ms. Chaffee. Any questions? Oh, we're not giving questions to you. All right. [LB554]

MEGHAN CHAFFEE: Appreciate it. [LB554]

SENATOR HARR: All right. Mr. Beermann, if you want to go quickly. [LB554]

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ALLEN J. BEERMANN: Good evening, Senator Harr, Chairman, and members of this committee. I'm Allen J. Beermann, B-e-e-r-m-a-n-n. I'm probably in a position today to recommend it's Miller time, but you have some more claims to go. (Laughter) I make reference to Claim 14295, which is found on page 3 of the green copy. This claim arises from the publication in every newspaper three times of the constitutional amendment that was voted upon, actually in this case it was a statutory amendment relating to the statutory wage, minimum wage of the state of Nebraska. The constitution and state statutes require this to be published in every legal newspaper, which was done. All of the tear sheets pursuant to law have been filed with the Secretary of State, as well as the claim. And we also filed with the Governor's Office, as is required, the statement and listing of all the newspapers, and that was also filed with the Secretary of State. This is a usual claim that's been going on since the last century, and I can report that these were published in the newspapers as required, and that would be the end of my testimony. I would yield to questions. [LB554]

SENATOR HARR: Any questions for Mr. Beermann? Senator Chambers. [LB554]

SENATOR CHAMBERS: Mr. Beermann, the part of last century that you served as Secretary of the State, those years were memorable and I really appreciated working with you during that time, Sonny. [LB554]

ALLEN J. BEERMANN: And we won't tell anybody we came on the same day to be sworn in and we are officially living state fossils. (Laughter) [LB554]

SENATOR CHAMBERS: I'll buy that. I accept it. [LB554]

SENATOR HARR: Thank you, Mr. Beermann. [LB554]

ALLEN J. BEERMANN: Thank you for your courtesy. [LB554]

BO BOTELHO: My name is Bo Botelho, B-o-t-e-l-h-o. I'm appearing as the interim Risk Manager for the state of Nebraska. I was asked to introduce the amendment. The amendment you have has two...it's a settlement, it has two companion cases that was settled by the Nebraska Attorney General. This was heard this preceding Friday at the most recent Claims Board. It was approved by the Claims Board and upon that approval, because it's over \$50,000, proceeds to you all for consideration. I was also asked to briefly talk to the claims process. Claims come into the state of Nebraska through the Risk Manager. Up to \$5,000 can be approved by the Risk Manager. Above \$5,000 has to go to the Claims Board. The Claims Board only has approval up to \$50,000. If it exceeds \$50,000, it comes to the Business and Labor to be added to the claims

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bill, if you all approve it, and then it goes to the Legislature. If you do not approve any of these claims, they move over to the denied claims bill, which right now is empty. [LB554]

SENATOR HARR: Senator McCollister. [LB554]

SENATOR McCOLLISTER: What's the amount of the claim? [LB554]

BO BOTELHO: For which one? [LB554]

SENATOR McCOLLISTER: The one you just... [LB554]

BO BOTELHO: The amendment? [LB554]

SENATOR McCOLLISTER: Yeah. [LB554]

BO BOTELHO: There's two of them and they are both for, I believe, the same amount for \$95,000. [LB554]

SENATOR McCOLLISTER: From the same action or the same... [LB554]

BO BOTELHO: Yes. And the Attorney General is here and they can speak to the facts of this case, or a representative of the Attorney General. [LB554]

SENATOR McCOLLISTER: Thank you. [LB554]

SENATOR HARR: How much did you say the actions were? Was it \$95,000? [LB554]

SENATOR BLOOMFIELD: Ninety-five (thousand) on each. [LB554]

SENATOR HARR: \$95,000. [LB554]

BO BOTELHO: Yes. [LB554]

SENATOR HARR: Okay. Thank you. Senator Crawford. [LB554]

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SENATOR CRAWFORD: Thank you, and thank you, Bo. I just wanted to...I didn't hear the end of your sentence. You were talking about the process and you said and if the claims aren't approved, what happens? [LB554]

BO BOTELHO: You have two bills. You have the claims bill... [LB554]

SENATOR CRAWFORD: Right. [LB554]

BO BOTELHO: ...and you have denied claims bill. So if they're denied, they still I think go forward to the Legislature, but they get moved over from the claims bill to the denied claims bill and they're heard under a separate bill. [LB554]

SENATOR CRAWFORD: Okay, okay. All right. Thank you. [LB554]

BO BOTELHO: But right now it's just a shell bill. It's empty. [LB554]

SENATOR CRAWFORD: Okay. Thank you. [LB554]

SENATOR HARR: Thank you. No other questions, I appreciate the testimony, Mr. Botelho. Next, we have Mr. Smith from the AG's Office. Mr. Smith, thank you for being patient. [LB554]

JAMES D. SMITH: Thank you. Mr. Chairman, members of the committee, I'm James D. Smith. I'm chief of the Civil Litigation Bureau for the Nebraska Attorney General's Office, and I'm not sure how you want to proceed. I was going to just go through each one just generally and then hopefully then we could go back if there are specific questions if that would make sense. [LB554]

SENATOR HARR: That works for me. [LB554]

JAMES D. SMITH: Okay. First one we have is Miscellaneous Claim 2014-13890, and that's a total of \$477,087.50, and that is the settlement of a federal lawsuit by five Department of Corrections officers and guards for racial harassment, a hostile work environment, and retaliation. The settlement total was \$777,087.50, and of that amount of the settlement \$225,000 is payable to Mr. Ellis; \$100,000 was payable to each of Officers Hunter, Zeiger, Johnson, and Delaney; and there are also attorney's fees of \$152,087 payable to their law firm. The initial payment of \$50,000 was made to each officer and the law firm, and that's why the balance in the claim bill is \$477,000. The next is Miscellaneous Claim 2015-1432 (sic--2015-14382) and

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14383. That's for \$625,000. That's a federal court judgment for attorney's fees and a civil rights lawsuit against former AG's essentially patent troll consumer protection enforcement action. The one plaintiff, Activision TV, their judgment was \$325,000 for attorney's fees; the other plaintiff, MPH Technology, their judgment was for \$400,000 in attorney's fees, and initial payments of \$50,000 had been made to each plaintiff, leaving the balance of \$625,000. Both of these companies filed suit claiming that the Attorney General's consumer protection cease and desist order violated the due process clause in the First Amendment. The federal court granted summary judgment and injunction in favor of the two companies. State appealed. It ended up getting remanded to the district court and the case was settled after a remand. Next is a Tort Claim 2010-04089. That is to Mr. James Dean. He is one of the remaining Beatrice Six people, and his tort claim of \$270,094.80. That is how much is left on the \$300,000 judgment granted in Mr. Dean's favor by the district court of Gage County; \$50,000 has been paid and the balance of the claim represents the remaining amount of the judgment and interest that's been running on the judgment. Mr. Dean served 5 years 4 months 24 days in prison for his wrongful conviction. He was pardoned in 2009. The next is a Tort Claim 2010-04094, and that is for Joann Taylor and her law firm Bartle and Geier, and that was for a state court judgment in Gage County District Court. Ms. Taylor was one of the Beatrice Six. The judgment ordered by the district court was \$500,000, which would have been the full amount of the allowed under the Wrongful Conviction Act; \$50,000 has been paid, and so the remaining \$480,000 is the balance of the claim plus interest that's been running on the judgment. Ms. Taylor served 19 years, 7 months, 26 days in prison on her wrongful conviction. She was pardoned in 2009. The next tort claim is 2011-11324. That's for \$250,000. That is in favor of Debra Sheldon and her attorney Maren Chaloupka of Scottsbluff. That \$250,000 is the settlement amount that's remaining. The settlement was for \$300,000; \$50,000 has been paid, and so the balance of \$250,000 is what is in the claims bill. Ms. Sheldon served 4 years, 8 months, 20 days in prison for her wrongful conviction. She was pardoned in 2009. Next is Tort Claim 2015-13205. It's for \$213,750. It's for a law firm Fitzgerald, Vetter, Temple, and that's in favor of their client Jason Sullivan for a settlement of his lawsuit filed against Nebraska Game and Parks Commission in the Madison County District Court. The case was settled after mediation. Mr. Sullivan was injured in a motor vehicle accident in 2013 when a Game and Parks employee failed to stop at a stop sign. Mr. Sullivan incurred medical bills of \$132,435 and damage to his vehicle of \$13,037. That settlement has been approved by the Madison County District Court. Next is a tort claim for the Perry Law firm of \$80,000, and that's in the matter of Kent Sprague, and this is, I believe there's also an additional \$10,000 if I could check on that. I think two of these are the same claim. Yes. Yeah, 2015-1428 (sic--2015-14248) which also is \$10,000 for Allied Insurance, this is part of this settlement for Mr. Sprague. So Mr. Sprague's settlement total was \$90,000 and \$80,000 is for Mr. Sprague law firm, \$10,000 is for the insurance company, Allied Insurance, which made...that's a subrogation for medical payments they made on behalf of Mr. Sprague. The case was settled by mediation. Mr. Sprague was injured when a state employee rear-ended Mr. Sprague's vehicle while he was at a complete stop. Mr. Sprague had medical bills of \$29,465. He

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had \$14,400 in lost wages, \$14,226 in property damage, and that settlement has been approved by the Lancaster County District Court. The final one was the claim that was the amendment, and that's Tort Claim 2010-462 (sic--2010-04062) and 2009-3751 (sic--2009-03751). The total of those two is \$190,000 but it's \$95,000 for each claim, which those are wrongful death actions by the state of two employees of a construction company that was a subcontractor for the state Department of Roads. And both of those employees had died when they were working on a trench on a construction project and I think it was up in Knox County and the trench walls caved in and they died. The state Department of Roads was sued. The construction company was sued. Construction company employer did not take proper safety precautions. The Department of Roads on-site personnel who were present, they were sued on the basis they noticed there were not proper safety precautions and observed that and did nothing essentially to take appropriate action. The state's share of the settlement was approximately 21 percent. The total amount of the settlement, include overall when you configure...consider what the insurance company paid or construction company paid was \$877,500, so the \$190,000 represents approximately 21 percent of that settlement. I think I've covered all of them, so if anyone has questions. [LB554]

SENATOR HARR: Excellent. Any questions? Senator Bloomfield. [LB554]

SENATOR BLOOMFIELD: Yeah. Thank you. This is just a clarification for my nonlegal mind. You were talking about a couple of people from the Beatrice situation. They were wrongfully corrected and yet they were... [LB554]

JAMES D. SMITH: I correct, it should have been convicted. [LB554]

SENATOR BLOOMFIELD: They were wrongfully convicted and yet they were pardoned. I don't...it wouldn't seem to me like a pardon would be necessary if you were there wrongly. [LB554]

JAMES D. SMITH: Well, the term of art, I guess, for the civil suit, you would have to prove that you were wrongfully convicted. They received the pardon before having to go through the, I guess, the process because it was determined that the person, the perpetrator who was guilty of the crime, and that was determined by DNA, they determined who that person was. [LB554]

SENATOR BLOOMFIELD: That I don't understand. I just don't understand the use of the word "pardoned" when they weren't guilty to start with. [LB554]

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JAMES D. SMITH: Oh, well, they had been convicted and they had been convicted and they did serve time in prison and then they were pardoned when it was...they were released and they were pardoned. That was just a mechanism to end their time in prison. [LB554]

SENATOR BLOOMFIELD: Thank you. [LB554]

SENATOR HARR: Excellent. Senator Chambers. [LB554]

SENATOR CHAMBERS: And further clarification of record, what were they all convicted of? I don't mean each individual but what was the crime for which they were convicted? [LB554]

JAMES D. SMITH: They...each...it was different crimes and I'd have to look, Senator. I know it was a murder case but some of these individuals made plea agreements, and so they plead to lesser charges than homicide, and so I'd have to look at what each crime was that they were convicted of. [LB554]

SENATOR CHAMBERS: But the underlying offense was murder. Okay. [LB554]

JAMES D. SMITH: Was murder. A woman by the name of Ms. Wilson was murdered in her home in Beatrice and the Beatrice Six were alleged to have all been involved in committing the crime. And some made plea agreements to plead to lesser offenses, some pled to lesser offenses, testified against others. Mr. Dean who...or, I'm sorry, not Mr. Dean but there was only one individual, as I recall, who went through the trial. The others made plea agreements. Only one individual went through trial and was convicted but, in part, based upon the testimony of the others. [LB554]

SENATOR CHAMBERS: And it's fortunate that he was not sentenced to death and the sentence expeditiously carried out. And I think he probably is the only one who died before he was actually compensated. And the money did go to a relative, I believe, if I have that correct. [LB554]

JAMES D. SMITH: I'm not sure of the time sequence if the compensation got to him before he passed away or not. I'd have to check. [LB554]

SENATOR CHAMBERS: You did your job. Okay. I was just trying to tidy up the record. [LB554]

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JAMES D. SMITH: Yeah. Okay. [LB554]

SENATOR CHAMBERS: Thank you. [LB554]

JAMES D. SMITH: Thank you. [LB554]

SENATOR CHAMBERS: Oh, one thing. These trolls, that sounds like a fairy tale. You don't even have to respond. I couldn't resist that. [LB554]

JAMES D. SMITH: Yeah. I would tell you I did look, it wasn't my case, but the basis for...apparently the reason for that judgment amount, the companies that sought attorney's fees, they sought \$1,367,728. The \$725,000 of which a \$100,000 has been paid, \$625,000 is left, that represents 53 percent of the amount the attorneys were seeking in fees. [LB554]

SENATOR CHAMBERS: Thank you. [LB554]

SENATOR HARR: Excellent. Thank you. Senator Johnson. [LB554]

SENATOR JOHNSON: These are cases that have happened over the years and it's all come to fruition right now. I know you probably don't know on a dollar number, but what cases are still out there that we're going to anticipate paying out? [LB554]

SENATOR CHAMBERS: Which cases did Jon Bruning handle? (Laughter) That's a little inside. [LB554]

SENATOR JOHNSON: I wondered. I mean, it's big numbers and there's several of them and I'm assuming hopefully there's not this many every year. [LB554]

JAMES D. SMITH: I would tell you that I do an annual report. It goes to the State Auditor. I would have done that at the end of last year that lists all the pending claims in which the amount is, I believe, it's three-quarters of a million. There's a list on that letter and I could get that letter to the committee. [LB554]

SENATOR JOHNSON: No, so I just kind of...the dollar amount maybe was what I'm looking at. [LB554]

JAMES D. SMITH: It's always tough to say. [LB554]



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SENATOR JOHNSON: Yeah. [LB554]

JAMES D. SMITH: And part of these when you get federal civil rights suits, sometimes the amount of damages turns not to be as significant as the attorney's fees because if you recover a dollar on a federal civil rights suit in federal court, you're entitled to attorney's fees. And so cases that are pending that we're litigating, the attorney's fees are still going even if the damages have remained static. [LB554]

SENATOR JOHNSON: Yeah. Thank you. [LB554]

SENATOR HARR: Senator Crawford. [LB554]

SENATOR CRAWFORD: Thank you, Chairman Harr. And thank you for explaining what these cases are. This is very helpful. I just missed one on the...and that's at the bottom of page 2, line 30 and 31. I didn't catch that one. The 205... [LB554]

JAMES D. SMITH: That one I don't know and when I asked internally was told that's not our office, so. [LB554]

SENATOR CRAWFORD: Not your office. Okay. Well, that explains it. [LB554]

JAMES D. SMITH: I had the same questions, Senator. [LB554]

SENATOR CRAWFORD: All right. Thank you. [LB554]

SENATOR HARR: Senator McCollister. [LB554]

SENATOR McCOLLISTER: I assume you come to us once a year with the accumulated settlements. [LB554]

JAMES D. SMITH: Yes, yes, and if they're over \$50,000, they do require a legislative approval, and so we would come to you once a year on that essentially it's a blanket approval after the Claims Board. [LB554]

SENATOR McCOLLISTER: What's the grand total if you have that? [LB554]

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JAMES D. SMITH: I haven't added it up? A lot. (Laughter) [LB554]

SENATOR McCOLLISTER: That is right. [LB554]

JAMES D. SMITH: Yeah. [LB554]

SENATOR McCOLLISTER: Sadly. [LB554]

JAMES D. SMITH: Yeah. [LB554]

SENATOR HARR: How many more of these Beatrice Six settlements do we have? Is this the last of them or... [LB554]

JAMES D. SMITH: This is the last one. Ms. Shelden's was the last one, and that settlement was really driven by the fact we had the judge made the judgment in the Dean case and the period of time in prison was comparable, so. [LB554]

SENATOR HARR: Excellent. Senator Bloomfield. [LB554]

SENATOR BLOOMFIELD: I could have probably asked you this at another time, but what if we simply said no to these and they went to the other bill and we said no again? [LB554]

JAMES D. SMITH: Well, one, since they're judgments I guess I don't know I'd want to go visit Judge Bataillon and say the state doesn't want to pay the judgments. (Laughter) As far as otherwise if you said no I suppose, and I frankly don't know but I assume it's policy, just involves a matter of just the state's responsibility in financial acceptance. [LB554]

SENATOR CHAMBERS: And I think the court can enforce its judgments, so it could levy against some state property and recover that which is due because courts have the inherent power by virtually being courts to enforce their judgments and they can do whatever is necessary to see that the judgment is carried out. So that money will be paid. And if we delay, that could add some additional... [LB554]

SENATOR BLOOMFIELD: Some interest. [LB554]

SENATOR CHAMBERS: Um-hum. So it's best to just fess up and pay it. [LB554]

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JAMES D. SMITH: Yeah, on the heels, I made that argument in the Supreme Court about two weeks ago that the court has authority to enforce its orders. We'll see how that one comes out, but. Yeah, I've been...anecdotally, I was told a couple years ago that there was an attorney threatening to execute and file a lien and sell the State Capitol, but I guess it never got to that. [LB554]

SENATOR CHAMBERS: I would buy it. (Laughter) [LB554]

JAMES D. SMITH: We probably...if we made him repair it, I guess, you know. [LB554]

SENATOR HARR: And just to clarify the record,... [LB554]

JAMES D. SMITH: Sure. [LB554]

SENATOR HARR: ...Keating O'Gara is receiving some funds. [LB554]

JAMES D. SMITH: Yes. [LB554]

SENATOR HARR: That is the Attorney General's old law firm, but he is not receiving any of that funds. Is that correct? [LB554]

JAMES D. SMITH: Yes, yes. Mr. Peterson specifically wanted to make that clear that he was not part of that settlement, he is not getting any compensation out of that, he has no financial interest in that at all. So he's not getting anything out of that. [LB554]

SENATOR HARR: Excellent. Thank you, Mr. Smith. Any other questions? Seeing none, thank you for your testimony. Next batter up is Mr. Batay (phonetically), Batty (phonetically). [LB554]

JEFF BEATY: Beaty. [LB554]

SENATOR HARR: Yes, sure. Jeff? [LB554]

JEFF BEATY: Yes. [LB554]

SENATOR HARR: Excellent. [LB554]

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JEFF BEATY: Good afternoon, Chairman Harr and members of the committee. My name is Jeff Beaty, it is spelled J-e-f-f B-e-a-t-y. I am the research director and legislative liaison for the Department of Corrections, and I'm here today primarily to answer questions about our claim. I wasn't certain that I was going to be asked to testify this afternoon, so I apologize I don't have copies of the materials that I've prepared. We have \$6,702.30 in write-offs in Claim 14274. I can go through the specifics of those. They fall into three basic areas. We had the correctional facilities cash fund, essentially \$6,413.69 of the debt were debts incurred by inmates. These were for checks written by inmates to cover costs for legal copies and legal postage. We had one individual inmate, Patrick Howley, has deceased and two other individuals, two other inmates have filed bankruptcy, Billie Joe Chapman and Frankie Levi Cole. They were granted a discharge of their debt by the United States Bankruptcy Court. And so we had applied the amounts of \$6,413.69 in debts that they had owed to the department that we have to write off. The second fund was a total of \$78. This relates to the Oriental Trading Company. They had owed Cornhusker State Industries a total of \$20,323 when the Oriental Trading Company filed for bankruptcy. They had an agreement where OTC had employed inmates as part of our private venture program. There was...we were offered a settlement of \$2,844.98 or about 14 percent of the debt to settle the claim. And we determined that this was as much as we were going to get out of the situation with the Oriental Trading Company as part of their bankruptcy. And so a settlement of \$2,844.98 was received by the department. Then what happened was we had a miscellaneous claim filed with the Claims Board. That claim was erroneously filed for \$78 less than the total amount still due to the department. So in 2013, we had a claim that was written off for \$20,245 when it should have been \$20,323. So today I'm here to ask the committee to allow us to write off the remaining \$78 from that uncollectible debt. [LB554]

SENATOR HARR: Excellent. Any questions? [LB554]

JEFF BEATY: And we did have one, I'm sorry, there was one other debt of \$210 that were various inmates on parole had collected debts, including parole programming fees, and all of the inmates that incurred these debts are deceased. [LB554]

SENATOR HARR: The reason I called you up here is because of the torts claim. [LB554]

JEFF BEATY: Okay. [LB554]

SENATOR HARR: It was a rather large settlement. [LB554]

JEFF BEATY: Yes. [LB554]

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SENATOR HARR: And my question is, what is Corrections doing to correct that situation?  
[LB554]

JEFF BEATY: Well, this is a...and I don't have a lot of background, this is a lawsuit that had taken place originally, I believe, ten years plus was when the original lawsuit was filed. Director Frakes is very strongly committed to eliminating any racial discrimination that occurs in the department. He is committed to that. I don't know that he's taking any specific action since he's been in office to address this particular lawsuit because this was two directors previous to his administration. This would have taken place under, I'm not even sure if it might have been three. I don't know it if was when...before Director Houston was in office or if it was when our former director was still there. [LB554]

SENATOR HARR: If you can get me information on anything that has done... [LB554]

JEFF BEATY: Sure. [LB554]

SENATOR HARR: ...or being planned to be done, because I'm sure when this gets to the floor, you know, this is a large payout and we don't like racial discrimination. [LB554]

JEFF BEATY: And I...neither does the department. [LB554]

SENATOR HARR: And, you know, obviously we don't pay those out every, like give it out like candy, so... [LB554]

JEFF BEATY: Correct. [LB554]

SENATOR HARR: ...I think people are going to want to know what were the underlying facts and what you have done to fix the problem. [LB554]

JEFF BEATY: Okay. And some of those...and the department, this was a settlement that was initiated by the Attorney General's Office, so they made the determination to settle the claim. [LB554]

SENATOR HARR: Fair. [LB554]

JEFF BEATY: But we will provide you that information. [LB554]

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SENATOR HARR: They don't give money out like candy either, so. [LB554]

JEFF BEATY: And I don't disagree. [LB554]

SENATOR HARR: So I appreciate that. Any other questions? Seeing none, thank you very much. [LB554]

JEFF BEATY: Thank you very much. [LB554]

SENATOR HARR: HHS, Mr. McManaman. Welcome. [LB554]

DAVID McMANAMAN: Good evening, Chairman, members of the committee. My name is David McManaman, first name D-a-v-i-d, last name M-c-M-a-n-a-m-a-n. I'm an attorney with the Department of Health and Human Services and I'm here today to speak to our write-off request, which I think as you will see in Section 5 is that Claim 2015-14273 in the amount of \$583,469.40. The total of the debt that we are requesting to write off this year is the lowest that we have asked for since 2009. It's obviously a considerable amount of money but it involves payments, overpayments made to folks who are receiving financial assistance or services for which we haven't been reimbursed. Primarily they come from 12 different categories ranging from things such as Aid to Dependent Children, AABD, foster care payments, as well as payments for folks who are receiving services at our regional centers, at our veterans' homes, and I believe...I don't know that we have any from BSDC this year. But I think there are about 707 accounts that are included this year. If you look at them, on average they're around \$825. The overwhelming majority of them are small amounts. The problem that we run into...well, let me back up. We have a collection policy that we've worked on that most recently has been put in place in 2011 and it directs certain steps be taken in order to collect on debt. It directs certain time frames and then it also helps us identify when debt is, in fact, uncollectible. The debts that we've included this year generally fall into five categories. They're resulting from people who have passed away and have not had a probate open up in a year's time. They involve people who have declared and been discharged in bankruptcy. They involve small debts, perhaps \$25 and under. They involve debts where people have continued to be on needs-based assistance which is it's self-evident is an inability to pay the debt back. And they involve debts of folks who have now passed over from the statute of limitations or the debt has passed over from the statute of limitations or a combination of those things. So, again, a majority of the debts are folks who are on needs-based assistance and where the situation is such they've passed over the statute of limitations. So if you have any questions I'd be happy to try to answer them. [LB554]

SENATOR HARR: Senator Crawford. [LB554]

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SENATOR CRAWFORD: Thank you. So I'm just...thank you very much and thank you for coming to testify. I'm just trying to understand what we mean by someone who was receiving benefits owing a debt. So this is something where you paid someone and you weren't supposed to and they were supposed to pay you back or what is the debt part of that? [LB554]

DAVID McMANAMAN: Typically in the type of thing you're talking about or I'm talking about, the overpayments would be a situation where someone has to have financial eligibility to get a benefit from the Department of Health and Human Services. Part of that would include, you know, that they be under a certain income reporting, and if they don't have the income, then they qualify. An overpayment might occur when the beneficiary, the person receiving the benefit, doesn't report that they recently got a job. And so they would get a payment, a month or two payment, and then we find out, whoa, they're working now. And so we'll send out a notice of an overpayment. They have an opportunity to appeal that. At some point, we'll determine if there has in fact been an overpayment and then we'll seek reimbursement. The problem is oftentimes the folks are back on public assistance then or back on a department benefit and we're not able to recoup that loss. So there is an overpayment that's occurred and we're not able to garner the payment back. [LB554]

SENATOR CRAWFORD: So we're using General Fund dollars to repay you for money you paid out as a benefit to someone who just didn't quite qualify? [LB554]

DAVID McMANAMAN: No. The write-off process is, we have categories, again, some of these are what we call the non-SNAP categories that...where it's not all federal monies but it's some state monies--Medicaid, ADC, and so forth. But the write-off process, we're simply requesting that we be allowed to remove these debts from our books for purposes of accounting and fiscal purposes. So write-off request is not one where we're asking for additional monies to take the place of this, but rather that we be allowed at this point, given that the debt is uncollectible, to remove it from our books and move forward. [LB554]

SENATOR CRAWFORD: Oh. Okay. Okay. Thank you for that clarification. [LB554]

SENATOR HARR: Senator McCollister. [LB554]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. I'm thankful the amount is low compared to previous years. Thank you for that. But I would...after just coming off the campaign trail and talking to people about HHS, you know, the fraudulent claims, paying back the federal government for claims that were improperly documented or weren't properly researched, people find that particularly galling. So I would hope you would work on your systems so you can

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correct these problems and not have them to the extent we've seen in previous years. I'll just make that comment. [LB554]

DAVID McMANAMAN: Okay. Thank you. [LB554]

SENATOR HARR: Senator Bloomfield. [LB554]

SENATOR BLOOMFIELD: I was going down that same road. I think four years ago when I first saw this number, there was another digit in front of it. [LB554]

DAVID McMANAMAN: There was. [LB554]

SENATOR BLOOMFIELD: Yeah. And I appreciate seeing it smaller too. Are we continuing to do things to tighten that down so that hopefully it will be smaller as we go forward? [LB554]

DAVID McMANAMAN: Well, I think this is more consistent with what we saw before 2010. The year that you're talking about, 2010, it was \$3.6 million. [LB554]

SENATOR BLOOMFIELD: Yeah. [LB554]

DAVID McMANAMAN: And then it was a little over \$2 million, and last year I think it was around \$750,000. I think it's a downward trend. I don't think that we get to a point where we don't have a sizable write-off request each year just because of the nature I think of the business, the folks that we work with on a daily basis who don't have the financial means to pay us back. And we have clients pass away from time to time, declare bankruptcy as well. I do know that when it comes to fraud that they take a much more defined line on pursuing that separate and apart from the errant situation. [LB554]

SENATOR BLOOMFIELD: Do you see any opportunity to get it down to maybe a quarter of a million instead of a half million? [LB554]

DAVID McMANAMAN: I don't know that I can answer your question. Yeah. [LB554]

SENATOR BLOOMFIELD: Okay. Thank you. [LB554]

DAVID McMANAMAN: The amount of monies that go out each year in public assistance and benefits as well as the cares that are provided at the facilities, you run into situations, for



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instance, the facilities where each of the patients or their responsible...in situations parents or responsible parties have an ability to pay determination made. And we'll calculate what the patient's ability to pay is. And sometimes we won't see the patient pay anything, and other times we'll find out that the patient didn't report income and so the ability to pay was set at the maximum when, in fact, it may turn out that they didn't have anything to begin with. [LB554]

SENATOR BLOOMFIELD: Thank you. [LB554]

SENATOR HARR: Senator Chambers. [LB554]

SENATOR CHAMBERS: What is your title? [LB554]

DAVID McMANAMAN: I'm an attorney, Attorney III, I think, staff attorney. [LB554]

SENATOR CHAMBERS: You're what? [LB554]

DAVID McMANAMAN: An Attorney III with the Department of Health and Human Services. [LB554]

SENATOR CHAMBERS: Are you living on borrowed time or have you survived the purge? [LB554]

DAVID McMANAMAN: Well, I like to think that they like me and they're going to keep me. [LB554]

SENATOR CHAMBERS: I was just curious. That's all that I have. [LB554]

SENATOR HARR: Senator Johnson. [LB554]

SENATOR JOHNSON: You gave a number earlier, 700 and something. [LB554]

DAVID McMANAMAN: I think last year our write-off request... [LB554]

SENATOR JOHNSON: No, I mean the number of clients. [LB554]

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DAVID McMANAMAN: Oh, we had I think this year's claims request for write off involves 707 accounts total. [LB554]

SENATOR JOHNSON: Okay. I just... [LB554]

DAVID McMANAMAN: And so that's how I came up with the average of around \$825 per account. [LB554]

SENATOR JOHNSON: Yeah, okay. I hadn't done all that math yet. Thank you. [LB554]

SENATOR HARR: Seeing no other questions, thank you. Appreciate your time. [LB554]

DAVID McMANAMAN: All right. Thank you. [LB554]

SENATOR HARR: This bill is a little unusual. I guess I would ask the members, is there any department you would like to have come up and testify? [LB554]

SENATOR CHAMBERS: Not I. [LB554]

SENATOR HARR: All right. Well, with that, the rest of you are relieved as far as being proponents. Are there any opponents to this bill, LB554? [LB554]

SENATOR BLOOMFIELD: I might ask, Senator Harr, is there anybody that feels a burning need to come up and testify? [LB554]

SENATOR HARR: Yeah. (Laugh) [LB554]

SENATOR McCOLLISTER: Relieve their conscience. [LB554]

SENATOR HARR: Anyone in the neutral capacity? Seeing none, that will close LB554. And you're in charge. [LB554]

SENATOR BLOOMFIELD: Proceed, Senator Harr. [LB555]

SENATOR HARR: Thank you, Vice Chair Bloomfield. I'm here on LB555. This is a denial of claims made against the state and this is a bill, it's a shell bill. Both of these bills, LB554 and

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LB555, have automatic priority on the floor. This is a shell in case between now and the time we get to the end of the session there is a denied claim that we want to have a hearing on. Right now there are none. And with that, I would entertain any questions you may have. [LB555]

SENATOR BLOOMFIELD: Are there any questions? Thank you. [LB555]

SENATOR HARR: All right. [LB555]

SENATOR BLOOMFIELD: Are there any proponents to this bill? Any opponents? Anyone in the neutral capacity? Senator Harr waives closing. And we'll end the hearing on LB555. Senator Harr, you are going to open, I presume, on LB480. [LB555]

SENATOR HARR: Yes, sir. Thank you, Vice Chair Bloomfield. LB480 is a shell bill. I have been working with members on the new grand compromise. We couldn't go a week without hearing that phrase. I've been working with all the work comp bills trying to work something across to come up with a new grand compromise that is acceptable to all parties, and I think we're very close. And with that, I would ask for your support on LB480 which I do plan to give a committee priority to. And I'd entertain any questions you might have. [LB480]

SENATOR BLOOMFIELD: Does the committee have any questions for Senator Harr? Seeing none, are there any proponents for LB480? Any opponents to LB480? [LB480]

TODD BENNETT: (Exhibits 1 and 2) Good evening and I will promise... [LB480]

SENATOR CHAMBERS: No, it's not. [LB480]

TODD BENNETT: I know, it's not for me either. But I will promise I will make this brief. I understand this is a shell bill, but to the extent that this statute, 48-119, is actually going to be changed... [LB480]

SENATOR BLOOMFIELD: Sir, we're still going to need you to do the name thing. [LB480]

TODD BENNETT: Sorry. Todd Bennett, B-e-n-n-e-t-t. [LB480]

SENATOR BLOOMFIELD: Thank you. [LB480]

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TODD BENNETT: You bet. This is actually a very dear bill to me because I represented a gentleman by the name of Ed Hobza in 1999, in 2000, and went to the Supreme Court in 2001 which actually dealt with this particular statute. And even though this statute is a shell bill but it changes the word from when the disability shall begin. It is going to...if this sticks, this word, this particular word "started," it's not clear, it's ambiguous. And in the comp setting when you're in front of a judge, it is based on statutory construction. The statute must be clear. If it's not and it's ambiguous, then we come to the legislative intent to decipher what that means. I've actually handed out two handouts, one of which is the legislative hearing in 1999 which dealt why they changed the statute in 2001. And even though this may seem like a small change or a small thing, this is actually to change the word when disability "begins" to "started," it's not clear. Does it mean when a doctor gets a report? Does it mean it's temporary restrictions or permanent restrictions? Does it mean when a doctor says it's a permanent percentage of impairment to a body part? Is it when the court or the voc-rehab section of the court gets a disability evaluation? The intent of this statute is to get the benefits to the injured worker from the date of accident, from the date of injury as soon as possible so there's no delay. For example, if a doctor report comes in two years after the injury, they start the...they potentially would start the benefits then rather than go back to the date of injury, fill in all the gaps. They never received a workers' compensation benefit and get the money to them rather than paying it out weekly over time. That's the goal of this bill and the Supreme Court dealt with it in 2001. The reason they changed the statute to include it from date of disability is simply dealing with the waiting time period of when a worker, how long they wait for the period after the accident. And that was the only change. There was a Supreme Court case in 2012 called Lovelace v. City of Lincoln which dealt with permanent and total disability. That's not partial disability cases. This simply, the second handout I gave is simply to make it clear. Whether it's temporary or permanent disability, based on the legislative history you have in 1999 and what you have before that, the compensation should start from the day of accident and move forward. That's fair. It gets the benefits to the workers. One of the things that I routinely of all the hearings that I go to and testify in, someone is going to pay. If the worker doesn't get the benefits or the medical treatment soon and prompt, somebody else is going to pay, whether it's Medicaid, Social Security, or otherwise. That's the intent of this bill and I hope just for the sake of being clear on the record, I'm opposed as written. But, yes, it does need to be changed and make it clear, whether it's temporary, permanent, it starts from the date of accident. It's pretty simple. Thank you. [LB480]

SENATOR BLOOMFIELD: Thank you, Mr. Bennett. Are there any questions for Mr. Bennett? Senator Chambers. [LB480]

SENATOR CHAMBERS: Just to say that this is a piece of good lawyering. I appreciate somebody who is competent and professional. That's what you've been this evening. [LB480]

TODD BENNETT: Thank you very much. Thank you. [LB480]

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SENATOR BLOOMFIELD: Are there further questions or comments? Thank you. [LB480]

TODD BENNETT: Thank you. [LB480]

SENATOR BLOOMFIELD: Are there any further opponents? Anyone in the neutral capacity? Seeing none, Senator Harr. Senator Harr waives. And we will close the hearing. And we will close all the hearings for today. Thank you. [LB480]