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Business and Labor Committee  
February 27, 2017

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[LB211 LB244 LB354 LB507 LB553]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 27, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB354, LB211, LB244, LB553, and LB507. Senators present: Joni Albrecht, Chairperson; Sue Crawford, Vice Chairperson; Steve Halloran; Sara Howard; and John Lowe. Senators absent: Ernie Chambers; Matt Hansen.

SENATOR ALBRECHT: (Recorder malfunction)...then go ahead and get started. You're in the Business and Labor Committee. Good afternoon. My name is Joni Albrecht, I am the Chair of Business and Labor and I'd like to introduce our senators who are here. We have one more walking in. But Senator Chambers and Senator Hansen will be absent today. But I'd like to start with Senator Crawford, who is our Vice Chair of the committee, do you want to go ahead and introduce yourself?

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

SENATOR ALBRECHT: Thank you. Senator Lowe.

SENATOR LOWE: John Lowe from District 37, which is Buffalo County, Kearney, Gibbon and Shelton.

SENATOR ALBRECHT: Senator Halloran.

SENATOR HALLORAN: Steve Halloran, District 33, which is Adams County, southern Hall County, and western Hall County.

SENATOR HOWARD: Senator Sara Howard, I represent District 9 in midtown Omaha.

SENATOR ALBRECHT: Thank you. And for the committee staff, we have Meghan Chaffee as our counsel and we have Beverly Neel as our committee clerk. And we have two pages with us today, Lee-Ann Sims who's a sophomore at UNL studying political science and global studies and Toni Caudillo is a sophomore at UNL studying elementary education. Just a few housekeeping items, not ideas; this is an item, not an idea. Please turn off your cell phones. Senators, note that the microphones again are very sensitive and are able to pick up on side conversations. Testifiers should have the appropriate number of copies of handouts ready for distribution and you can give them to the page. The Business and Labor Committee requires ten

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copies. Each witness appearing before the committee must sign in using the forms, a yellow sheet provided at the entrance of the hearing room. Sign in only if you're to testify. Your form must be given to the page before you begin presenting your testimony. Each testifier will be allotted five minutes before the committee. We use a light system. The green light indicates that you may begin, yellow indicates that you're nearing the end of your time, and red indicates it's time to end your testimony. Please begin your testimony by stating your name clearly into the microphone and then please spell your first and last name for the record. Note that the committee members may need to leave in the middle of the hearing as they might have a bill to introduce in another committee, so don't be offended if senators are coming and going. Today's agendas are posted out front. We'll start with Senator Kolowski, then move onto Senator Hansen's bill, Senator Bolz's bill, Senator Lowe, and then Senator Albrecht. So we have a busy schedule, so we'll try to keep moving along. The agendas are also posted outside the door. We'll have introducers make the initial statements, followed by proponents, opponents, and those in neutral...testifying in neutral. Closing remarks will be also presented by the introducing senator. And the first item on our agenda today will be Senator Kolowski, LB354. [LB354]

SENATOR KOLOWSKI: (Exhibit 1-3) Thank you and good afternoon, Chairwoman Albrecht and members of the Business and Labor Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31. I'm here today to introduce LB354, which adopts the Wage Disclosure Act. This bill was brought to me by a constituent who has recently been applying for jobs and was concerned that she was not being considered for positions based on her past salary history. LB354 makes it unlawful for any employer or potential employer to request or require as a condition of being interviewed that job applicant's prior wages or seek information regarding a job applicant's current or prior wages. Similar laws to this have been passed in the state of Massachusetts, in Philadelphia, and for the city of New York. This concept is growing around the country. I have a handout of an article from Forbes Magazine, "Ten Reasons It Should Be Illegal To Demand A Job-Seeker's Salary History." This law would protect women or minorities who have been discriminated against in salary in the past and it will allow a market-based approach to salaries. Employers and employees will negotiate a salary based upon skills and assets for that job, not what the employee was previously paid. I think LB354 can be common sense and does not create an undue burden upon employers. They may need some time to adjust their hiring practices and train their HR representatives. I appreciate your time and would answer any questions after my last comment now. And on a personal basis I simply want to state, having been 41 years in public education, maybe we were ahead of the curve because male or female, as you'd come into a district in the metropolitan area you're judged according to degree level and years of experience. It doesn't matter male or female, you're looked at as an asset coming into that district for whatever job you're filling based on those factors alone, which are part of the negotiated contract or part of the administrative salary range that you come in on. So I think in some ways education has been ahead of the game, depending on where you are and

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what you've done. But it's also an important factor that gives fair and equitable treatment to everyone as they come seeking jobs. Thank you. [LB354]

SENATOR ALBRECHT: Thank you. Do we have any questions from the senators? Would you be sticking around? [LB354]

SENATOR KOLOWSKI: I'm planning on it. We have another bill to present. I'll do my best to stay here. [LB354]

SENATOR ALBRECHT: Okay. See how many proponents and opponents we have. [LB354]

SENATOR KOLOWSKI: Thank you. [LB354]

SENATOR ALBRECHT: Thank you. Okay, we'll begin with any proponents wishing to speak to LB354. Do we have any proponents wishing to speak? [LB354]

DANIELLE CONRAD: (Exhibit 4) Good afternoon. Good afternoon, Chairman Albrecht, members of the committee. My name is Danielle Conrad, that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, and I am a registered lobbyist and the executive director for the ACLU of Nebraska and I'm here on their behalf today. Initially, we would like to thank Senator Kolowski for his leadership on this critical gender equity issue and we would encourage the committee to give favorable consideration to LB354. And let me tell you why. It's grounded in both a legal and policy perspective to address a real need that exists in Nebraska. I have the page passing around our written testimony, so I won't bore you with repetition in that regard, but instead will try just to hit a few of the highlights and the top lines in abbreviated comments today to be respectful of everybody's time with a busy schedule. But it's been over 50 years since equal pay laws have been on the books and we still have a lot of work to do. Despite these strong laws, there is a persistent, pernicious wage gap that exists in Nebraska and across the country. The most recent data for Nebraska shows that Nebraska women continue to make pennies on the dollars to what our male counterparts in the marketplace make. For example, in Nebraska women make 79 cents on the dollar for every dollar a man makes and the disparities are larger for people of color. African-American women today make only 62 cents on the dollar to our male counterparts and Latina women earning only 54 cents on the dollar. There's also a pay gap for mothers. In Nebraska, working moms make 73 cents for every dollar a working father makes. And this has impact not only for individuals, but for families in our economy as a whole. Issues like equal pay, family work supports like family medical leave that Senator Crawford had before this committee recently and updates to accommodations for pregnant employees are common sense solutions that enjoy broad support across the political spectrum. Not only do we see this bearing out in ballot initiatives and in public opinion polling, but just this last year at both the republican

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national convention and the democratic national convention we heard a lot from the dais about these very issues. So it's a really exciting set of issues to work on across the political spectrum. In Nebraska, we consistently rank as one of the states with the highest percentage of women working outside of the home. If we're not number one year to year, we're always in that top five. And the most recent statistics I've seen put Nebraska as second in line with over 80 percent of Nebraska women working outside of the home, so equal pay issues are absolutely important for Nebraska women and Nebraska families. Additionally, I did want to highlight for the committee, even though it comes in a different policy prerogative, our own Senator Deb Fischer has demonstrated great leadership on these issues on the federal level as well. Again, some very exciting notes that we want to make sure are before you. We also would like to echo Senator Kolowski's comments that this legislation, LB354, is a low-cost, common sense alternative to move our equal pay laws forward. The Legislature has made important strides in strengthening equal pay over the last couple years, thanks to the leadership of Senator Cook and Senator Mello and we're moving up the rankings in shrinking that pay gap, which is good news for Nebraska, but we still have some work to do. This is one solution that is an emerging best practice that we can take a look at and see how it might work out for Nebraska. I did provide a little bit of policy and legal guidance that has been bandied about in the wake of passage from Massachusetts, New York, and other jurisdictions that shows it's really in an employer's best interest to look at policies like this, because in many ways they're almost like insurance for litigation on pay inequities that may exist. So I provided that and the cites for you that are there. We can go into more detail for you if need be, but I put a lot on the table. I want to thank you for your time and open it up for any questions. The final note, Chairman, they're not here on any specific piece of legislation, but I'm happy to welcome young professionals from the Urban League who are here for the first ever Black and Brown Legislative Day who are trying to get up to speed with our legislative process in Nebraska. [LB354]

SENATOR ALBRECHT: Very good. Thank you, Ms. Conrad. Do we have any question from the senators? Senator Halloran. [LB354]

SENATOR HALLORAN: Thank you, Chairwoman Albrecht. Thank you, Ms. Conrad. This is a broad question. [LB354]

DANIELLE CONRAD: Sure. [LB354]

SENATOR HALLORAN: But from an employer's perspective, how are we to gauge or know what the marketplace is, market value is for any number of dozens of job descriptions that we may be trying to fill? [LB354]

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DANIELLE CONRAD: Sure. That's a great question. And I know that you have a lot of experience on the front-lines of these hiring decisions in your private-sector life. [LB354]

SENATOR HALLORAN: I have some experience, not a lot. [LB354]

DANIELLE CONRAD: Well, I defer to that and I'm grateful that you bring this perspective to the Legislature. But I think, again, we can learn from other jurisdictions that have adopted this policy to see exactly how that plays out on the front lines. But, typically, what we'll do is, we'll see businesses either advertise a salary or a salary range and then the marketplace will decide. People will make an individual decision whether or not that specific job is worth their while. And if employers don't get a great deal of applicants they may have to go back to the drawing board and make an adjustment on that salary range. But what this legislation does is it says, because we recognize that the pay gap is real and persistent, rather than tying future wages to past wages, we're going to just come in with a little bit more objective criteria. [LB354]

SENATOR HALLORAN: Okay. What if I'm a school administrator from another school and I'm applying for a job as a school administrator in Nebraska? [LB354]

DANIELLE CONRAD: Right. [LB354]

SENATOR HALLORAN: Do I bring that information to the table when I'm being interviewed or would it be okay under this law for them to ask me what my previous salary was? [LB354]

DANIELLE CONRAD: And I think if we go back and we do look at the legislation itself, it does provide for some opportunities with appropriate notice and waiver for individuals to disclose that information as they work through the process and there are appropriate safeguards. [LB354]

SENATOR HALLORAN: Thank you. [LB354]

DANIELLE CONRAD: Thank you. [LB354]

SENATOR ALBRECHT: Any other questions? Thank you for coming. [LB354]

DANIELLE CONRAD: Thank you so much for your time. Thank you. [LB354]

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SENATOR ALBRECHT: Do we have any other proponents wishing to speak? Any other proponents on LB354. Seeing none, we'll go on to opponents. Do we have any opponents wishing to speak? [LB354]

RON SEDLACEK: (Exhibit 5) Good afternoon, Chairman Albrecht and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce. And our labor relations counsel did review LB354, talked a little bit about what's going on in other states, and ultimately recommended to our board to oppose the legislation, which it did. The bill did pass in Massachusetts and it's law, still waiting to see how that works. However, it's a lot different than what this legislation is all about. In Massachusetts you can ask these questions after you make a job offer. This bill does not give that opportunity. Montana also heard the bill this year and after its hearing the committee decided to indefinitely postpone the bill. At any rate, I'd like to give you our reasons why we base our opposition. Those employers--and not all of them do--but those employers who make their request for past or current compensation package information most often do so to easily determine to help sort applicants. The employers' policy for the request may be used to qualify the right collection of candidates for further consideration. A candidate with a compensation requirement that is too high may be removed from competition. Compensation history also provides these employers with a window into the frequency and size of raises, promotions, and possibly past performance. This helps them understand the value of the candidate as measured by former employers. Not only is it efficient for employers to screen out unaffordable candidates, it is good for the candidates as well. It saves the employer or the recruiter and the job candidates wasted time and effort. If an applicant is expecting far more in compensation or perhaps in benefits or a combination of the two than the job is ever going to offer, it's efficient to clear up that issue early in the hiring process. For example, when an employee interviews a qualified and desirable candidate who lived in a high-cost market and now has moved to a lower-cost market, the employer may inquire into past compensation and benefits so as to be more competitive rather than guess whether the applicant is willing to consider reduction in salary or benefits based on the new location. Asking for pay history may provide employers with valuable information about the current state of the market, particularly for smaller businesses, not-for-profit associations or institutions, and for sole proprietorships who cannot afford access to sophisticated employment market reports. If an employer seeks to add a new position and budgets a set amount, the employer may soon find out that applicants are already making significantly more in wages or receiving more in benefits. This information allows the employer to reevaluate. In fact, the data could lead the employer to offering a higher salary or enhanced benefit package for the position or to decide to delay its plan for hiring entirely or at least for the time being. There's more at play here than maintaining a negotiation advantage by employers. By preventing employers from asking for compensation information, the employer could potentially end up compensating people less and not more. The proposed legislation would likely have the greatest impact on employers who are screening applicants with

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higher skills for executive or professional positions and particularly for sales persons. The going market rates for such applicants are generally quite fluid. In addition, these job seekers are often the most capable of negotiating their potential compensation package and demonstrating their value to the employer based on past performance. If an applicant's salary history shows that he or she was compensated well, the potential employer may realize that the applicant is likely to be more competent than his or her job history otherwise suggests and that the applicant should be offered more than the perceived market demands. On the other hand, employers will generally know the local market rate or salary scale for entry level and skilled applicants and these questions don't have to be asked as often. The State Chamber believes that current prohibitions against discriminatory pay practices under both the state and federal equal opportunity laws are much stronger than a law to prohibit the asking an applicant about his or her current or past wages and benefits. It doesn't prevent an applicant from negotiating later under current situation. And with that, I'll stop my testimony. [LB354]

SENATOR ALBRECHT: Thank you. Very good. Do we have any questions? Senator Crawford. [LB354]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you for your testimony. So just for the record, the bill does allow a conversation about wages after the job is offered if the job applicant allows that. And so I just wanted to have that on the record in terms of what the language of the bill allows. [LB354]

RON SEDLACEK: Right, (inaudible). [LB354]

SENATOR CRAWFORD: So when you're trying to prevent someone...so if the job applicant feels that their wages are an appropriate part of that conversation, that can be a part of that conversation what the wage should be. But this is trying to prevent that reveal from happening before the job is offered. So I guess the other question...the question I would ask is, in many cases I suspect, because we are on the low cost...low-living cost side of the scale, if we're talking about bringing in applications from across the country, we would expect that we are having to figure out whether or not someone...what the wage would be here in Nebraska versus what they were being paid somewhere else, so we're still having that sense of conversation. And I hope we aren't ruling out people who may be wanting to come to Nebraska because they received higher wages and benefits where they were, because they may very well be wanting to come to Nebraska because they have family who need care or some other reason. So I guess the question is, wouldn't businesses be ruling out some qualified people who would want to come to Nebraska if you are ruling out people because their past wages are above a certain level of what the business would want to hire? [LB354]

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RON SEDLACEK: That is...you know, that certainly is a consideration, because in the offering of compensation it may be in salary or it may be in other benefits, an employer is trying to attract the applicants that are the most qualified and they find one and understand in looking at that applicant that they come from a higher-cost market, how are they going to entice that applicant? You know, certainly that's part of the thinking when they walk away from the table. So again, both sides are in a negotiation, essentially, both buyer and seller, but no one knows the price. How do you buy a product and you don't know the price? If you don't ask for the specific information, you cannot...it does not prohibit an employer right now from saying, okay, I won't ask for your information, but what is the salary range that you're looking at? What are the benefit ranges that you're looking at? They could ask that question. Now the applicant could either tell the truth or give a range. They could lie about it and they could say, I don't like this, I'm going to walk away from it, or...but at that point, then at least the potential employer and employee can negotiate the process or get a feel as to whether or not they should walk away from the table. I have one comment. The e-mail that kind of addresses this, it says, I understand the goal of this law, but I don't see how it even solves it. I usually ask people what their current salary is now. I want to offer them at least a modest raise to come here. I want them to be happy and excited. I also want not to waste a lot of time negotiating salary if they're going to want \$50,000 more than I have available in my budget. It says, you're worth whatever you can get someone to pay you. Some people come in with lower ask than what you would normally have given them. Are they a bargain or are they just less talented? That becomes a consideration. If they come in high, are they over priced or are they just that good? And it says, I also think this only works for the employee if there is a shortage in this field and employers are desperate. But the market usually will force those prices up. Or if you're trying to just get more, then your experience may warrant it. And then he gives a couple of examples. But he says, both parties can get pretty annoyed. Talking about this is an uncomfortable subject in that part of the negotiation, but they're trying to come to some understanding. And so as I say, particularly for smaller businesses or sole proprietorships, it's their first hire, they may know. If it's a less skilled job, they pretty much know what people are making in the marketplace. But when you're getting into things like sales and you wonder, what is their compensation? How good of a sales person were they? What kind of bonuses did they get? How talented were they? You are dealing with someone who was a more highly trained professional or an executive position, you pretty much want to know the facts in order to make a hire, as opposed to playing that guessing game. And those are the people, as I said, that are very much in the position to stand up for themselves and are able to negotiate a little bit better. [LB354]

SENATOR CRAWFORD: Thank you. [LB354]

SENATOR ALBRECHT: Thank you. Any other questions? Senator Halloran. [LB354]



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SENATOR HALLORAN: I have a quick question, Mr. Sedlacek, for your testimony. And you may not be the right person to ask and I can save this for Senator Kolowski maybe. But if someone in the course of an interview volunteers their wage or salary from a previous job, do I then...would I have the authority to be able to contact the previous employer to confirm that? Is that your understanding or not? It's unclear to me. [LB354]

RON SEDLACEK: That specific contact is, I don't believe, addressed in the legislation. There's all kinds of varieties of policies, some--not many--employers will require verification and may want W-2 forms and may want to get permission to talk with the previous employer. Generally speaking, they ask the applicant if that's okay, because they don't want to jeopardize the applicant... [LB354]

SENATOR HALLORAN: The current job. [LB354]

RON SEDLACEK: ...current job. And their current employer then knows they are fishing around for another job. So out of courtesy, generally, permission is best, because that's the best policy. [LB354]

SENATOR HALLORAN: And in partial answer to that thing to Senator Crawford's question, if a person is running a restaurant here in Lincoln or Omaha or central Nebraska...for example, if I was doing that, I would not be competing on a day-to-day basis with a restaurateur in New York City. And clearly, the cost of living is higher in New York City. So if a chef from New York City comes to Omaha and wants to interview for a job, they're coming here for whatever reasons and that's great, but they're also...part of the benefit of coming here is their cost of living is substantially lower. And at some level I think most people understand when they're moving to Nebraska, part of the advantage of a lower cost of living and, consequently, in some parallel in the universe their wages or salary are less than they would be in New York City, for example. I don't know if that helps, but I appreciate your input, thanks. [LB354]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony. [LB354]

RON SEDLACEK: Thank you. [LB354]

SENATOR ALBRECHT: Any other opponents? [LB354]

DEB ANDREWS: Hi. My name is Deb Andrews, D-e-b A-n-d-r-e-w-s. I oppose LB354. I worked as an employment interviewer, a job developer, and an employment security code for 11

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years with Nebraska Department of Labor and Comprehensive Employment and Training Agency, both. LB354 is a bill looking for a problem. I see this bill as merely bait. It attacks liberty and free markets, as described in Sections 4 and 5. The "webinization" of speech during the interview process for private businesses does not benefit the citizen or taxpayer, nor does it affect health or safety, the primary roles of government. You're elected to represent us and honor our constitution. LB354 suggests some are working on behalf of those who intend to rule over us. I'd like to share a quote with you: The reliance upon force to gain the compliance of followers to perform any task is tyranny. That's from Xenophon in 300 B.C. That has not changed. I urge you to not support LB354. Thank you. [LB354]

SENATOR ALBRECHT: Thank you. Does anyone have any questions? Seeing none, thank you for your testimony. Do we have any other opponents wishing to speak? [LB354]

ROBERT HALLSTROM: (Exhibit 6) Chairman Albrecht, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Businesses, in opposition to LB354. I have also signed in on behalf of the Nebraska Bankers Association in opposition to the legislation. We believe employers ought to have the flexibility to ask questions regarding salary history. This is particularly true for small business owners, as it helps them understand the market for the position they're trying to fill. I think when you look at the likelihood of successful matches between employers and employees, the more information that the employer has about a prospective employee and the more information that the applicant has about the employer, the greater the likelihood that you will have a successful match. Previous pay indicates an employee's value to their previous employers. Mr. Sedlacek talked about the wasted time that can occur when you don't have the proper match and the ability to ask those questions early in the process. Mr. Sedlacek also talked about sales commissions and salesmen being problematic in this particular area. I have an example in my testimony that indicates that for the most part you're probably going to find sales positions that have the same base salary, but obviously the better the sales person the better the commissions are. And having the ability to figure out what the gross salary is, base plus commissions, is important in evaluating perhaps how capable and how productive that individual might have been in that position. The level of pay indicates the requirements and conditions of a job for employees. For employers, the level of pay indicates the value of that employee. For the same reason that potential employee should be allowed to ask what the level of compensation might be at that job, we believe employers should have that same right to ask what prior pay levels were for the employee. With that, I'd be happy to address any questions which you might have. [LB354]

SENATOR ALBRECHT: Thank you, Mr. Hallstrom. Any questions? Senator Crawford. [LB354]

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SENATOR CRAWFORD: Thank you, Chairman Albrecht. From the...I understand the arguments about the value of the information to the employer and then the hiring process. So one of the questions is, what someone can do if they get stuck in a low-wage start. I think that's the concern of the advocates who want to do whatever they can to reduce a gender wage gap is someone got started in a lower wage position in part because of a gender bias. And then that ends up following them in their career, because they started lower. And I suppose a similar thing might happen to someone who starts in a very low-cost setting, it follows them. So do you have any way that we can understand the ways that current business practices may help an employer to counter that problem in current practice? [LB354]

ROBERT HALLSTROM: Well, I think you may have the issue of that perpetuation, but I think for the most part the concern in terms of wasted time is probably going to fall on the other end of the spectrum, that somebody is coming in with a higher salary level and there's just no way that the employer is going to be able to meet that expectation. To the rest of that issue, I would suspect that the market is going to govern what the individual employer will pay, based on the applicant base that they have for that particular position. I think in kind of a demented sort of way, you could argue that this may end up in employers without having that base information they may end up actually low balling what that particular position would be. I would like to think that what's going to happen is that the market is going to dictate you're going to have a range of salary within which you can fill that position and you're going to pay that salary to the most qualified individual who's applying for the position. [LB354]

SENATOR CRAWFORD: Can I just do a follow-up? In your understanding of talking with business owners and clients, would you understand that range that is a part of that future conversation to really be derived from salaries that you have seen from multiple applicants? And would a practice along those lines of ensuring that when you're thinking about a future salary you're looking at multiple applicants as opposed to a single applicant help to address the possible gender wage gap, but also help businesses make sure that they are clearly trying to avoid any kind of perpetuation of discrimination? [LB354]

ROBERT HALLSTROM: Well, I would certainly think that that is the case. But you're going to have an array of applicants to come in that may have different and distinct expectations, experiences, qualifications, and you're going to have to put that whole mixture together in finally determining, number one, who's the proper applicant to issue that place of employment to; and number two, what the appropriate salary is for that individual. You may have someone that has...that perhaps may be less qualified but you can afford to hire them based on where they are and where they should be, as opposed to somebody that may come in with the greatest of qualifications, but has a salary expectation that far outweighs what your small business can afford. [LB354]

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SENATOR CRAWFORD: Thank you. [LB354]

ROBERT HALLSTROM: Thank you. [LB354]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you. [LB354]

ROBERT HALLSTROM: Thank you. [LB354]

SENATOR ALBRECHT: Do we have any other opponents? [LB354]

KATHY SIEFKEN: Good afternoon, Chairman Albrecht and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association, here in opposition to LB354. And most of what I had to say was said by Ron Sedlacek and Bob Hallstrom. Basically, my members took a look at the bill and their reaction to it was simply that without knowing the potential employee's wage you don't know if they are way beyond what our industry is willing to pay. And there are people that do want to come back to Nebraska. They're interested in finding jobs here, but if they are in another state and the pay is much higher than what our rural grocers are willing to pay, they need to understand that before they spend the money and the time and the effort to come back and go through that interview process. So this is a matter of efficiency. It's a matter of finding someone quickly, because in our industry when someone quits you need someone right now, today, or the owner of the store is the one that has to make up all of those hours. So it's imperative that they get someone in as quickly as possible. And this bill would remove one of those tools that our members use. If you have any questions, I'd be happy to answer. [LB354]

SENATOR ALBRECHT: Thank you. Any questions, senators? Senator Crawford. [LB354]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for being here to represent your industry's perspective. So in the grocery industry, it sounds like the concern would be often for positions that are pretty well established. So would they have a lot of questions about what the wage would be or wouldn't they pretty much know what the wage range would be and that could be advertised with the position? [LB354]

KATHY SIEFKEN: They would know what the wage range would be in their area, but if you go to Ord, Nebraska, or Valentine or Broken Bow, one of our rural communities and they put a notice out through their wholesaler that they're looking for someone to manage--and it depends upon what position they're looking for--but someone to manage the store or be an assistant manager, the wages in different areas of the country are probably higher than what they are in

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Nebraska, due to our cost of living. And so you would want to know that going in before those people make the trip back and do a face-to-face interview. [LB354]

SENATOR CRAWFORD: Is it not common to post a possible wage range or let people know that ahead of time? [LB354]

KATHY SIEFKEN: Some do and some don't. Some do and some don't. [LB354]

SENATOR CRAWFORD: It would be, I think, a part of the question I think people might ask before they even applied or get that information. [LB354]

KATHY SIEFKEN: It depends upon how bad you want to get back home and be close to your family, because as you said earlier, health reasons. People come back for those reasons. I just dealt with a gentleman who was originally from Nebraska, he moved to Florida and then his parents needed his assistance so he wanted to come back and he ended up finding a job in Iowa that paid a little bit more than jobs here. So again, it's a tool that we use to determine whether you want to continue that interview process or not. [LB354]

SENATOR CRAWFORD: So someone who really wanted to get back to a certain community might get screened out just because they got paid more in their previous place. [LB354]

KATHY SIEFKEN: I think it's part of the discussion. [LB354]

SENATOR CRAWFORD: Thank you. [LB354]

SENATOR ALBRECHT: Thank you. Any other questions? Seeing none, thank you for coming in. [LB354]

KATHY SIEFKEN: Thank you. [LB354]

SENATOR ALBRECHT: Any other opponents wishing to speak? [LB354]

JOE NEUHAUS: Good afternoon, Madam Chair Albrecht and members of the Business and Labor Committee. My name is Joe Neuhaus, J-o-e N-e-u-h-a-u-s, and I am the policy and research director for the Lincoln Independent Business Association, also known as LIBA, and I just would kind of echo what has been said before. The bill would make it unlawful for an employer to attempt to ascertain a prospective employee's wage information, but it wouldn't

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merely make it unlawful, it will criminalize the act and we have concerns with that. First and foremost, talking about salaries is not a criminal act. It's a fair conversation for both the applicant and the employer. Second, the bill would subject employers with as few as four employees to be guilty of a class-four misdemeanor for violating the proposed law. The current state and federal laws prohibiting discrimination based on gender or race do not cover private-sector employers with fewer than 15 employees. Third, it would impose further responsibilities on county attorneys who are already overwhelmed by their current workload. County attorneys would criminally prosecute employers with as few as four employees for screening job applicants--and I'm quoting this from the bill--applicants based on their current or prior wages requesting or requiring as a condition of being interviewed or as a condition of continuing to be considered for an offer of employment that a job applicant disclose his or her current or prior wages seeking information regarding a job applicant's current or prior wages from the current or former employer of the job applicant unless authorized by the job applicant and done after the employer has made an offer of employment to the job applicant. And we just believe, I think, these are really burdensome, especially to the small businesses. That's already been argued. But we'd also argue that imposing such a restriction prevents a conversation from taking place, just a reasonable conversation about what expectations are on both sides so that an arms-length deal can be reached. And so for those reasons, we ask you to oppose LB354. Thank you. [LB354]

SENATOR ALBRECHT: Thank you. Any questions? Senator Howard. [LB354]

SENATOR HOWARD: Thank you, Senator Albrecht. Thank you for visiting with us, Joe. It's nice to see you. [LB354]

JOE NEUHAUS: Good to see you. [LB354]

SENATOR HOWARD: So I wanted to ask, your testimony revolved around the criminal issue. If those criminal liabilities were removed, would LIBA feel more comfortable with the bill? [LB354]

JOE NEUHAUS: Certainly, we'd feel more comfortable. I'm not sure we could support it even then. I assume you're talking about just a fine or something of that nature? [LB354]

SENATOR HOWARD: Yeah, something where there wasn't a criminal liability. [LB354]

JOE NEUHAUS: Well, certainly the criminal nature we think is way too harsh, but I suppose the Labor Commissioner has imposed fines for other things. And again I don't think we would necessarily support it, but it would be at least not a criminal deal. I think that's a big thing

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because you're talking about a lot of small employers. They make up the bulk of employers in Nebraska. And if you're going to criminalize them, then they're going to have a record. I was talking about this with someone earlier. Interestingly, if for some reason the employer decides to work somewhere else, they're going to have to disclose things like that. So it's one of those things that just...it puts a burden on, especially small business owners. [LB354]

SENATOR HOWARD: And I appreciate the burden. I would never want to place a burden on businesses unnecessarily. Have there been times in history where as policymakers we've had to examine the weight of a burden on an employer versus the weight of the burden on an employee? [LB354]

JOE NEUHAUS: Absolutely. I think you have to do that with a lot of employment relations types of issues. [LB354]

SENATOR HOWARD: Broadly, I was thinking of things like slavery was really great for the employer, but not great for the employee. Or the industrial revolution when we had children working. And so when I think about the burden I always try to think about how are we getting ourselves to a fair and balanced policy perspective. And my concern is that the employer and the employee will never be on a fair playing field, so to speak. [LB354]

JOE NEUHAUS: I don't think that's necessarily the case. I think if the employer and the employee can have a fair conversation about what's expected, then perhaps it's the prospective employee that will decide, well, I don't think the pay is going to be right, I'll try something else. I've been in that situation before and I've turned down offers and I would be willing to bet that many people have. So I don't think it's just... [LB354]

SENATOR HOWARD: Do you feel like you had those conversations upon offer? [LB354]

JOE NEUHAUS: I'm sorry? [LB354]

SENATOR HOWARD: You had those conversations upon offer of employment? [LB354]

JOE NEUHAUS: The conversations specifically about wages? [LB354]

SENATOR HOWARD: Uh-huh. [LB354]

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JOE NEUHAUS: Usually it was before offer. There is an expectation of, you know...I mean, you have to know... [LB354]

SENATOR HOWARD: What's your range, that sort of thing? [LB354]

JOE NEUHAUS: ...to plan your life, what you're going to end up making. So I think... [LB354]

SENATOR HOWARD: Has an employer ever called a previous employer of yours and asked how much you were making? [LB354]

JOE NEUHAUS: I'm not sure about that. I wouldn't be able to tell you. [LB354]

SENATOR HOWARD: And would it bother if that impacted how much they offered you in the first place? [LB354]

JOE NEUHAUS: Well, I'd have to speculate on that, but it depends on if they go up or down, I guess. But certainly, I think...I guess from my personal perspective--and I can't speak on behalf of LIBA in this sense--but in my personal perspective I've been pretty transparent with my wage history and I think that that transparency is a good thing. If somebody decides not to hire me because I've earned too much or not enough, then that's their choice, I guess. [LB354]

SENATOR HOWARD: I worry a little bit for my next job, because my wages will be \$12,000 a year... [LB354]

JOE NEUHAUS: I think they'll probably take that into consideration. [LB354]

SENATOR HOWARD: ...and that maybe they'll low-ball me because of it. No, thank you, Joe, it's nice to see you. [LB354]

JOE NEUHAUS: Thank you. Good to see you, too. [LB354]

SENATOR ALBRECHT: Thank you. No other questions? Thank you for your testimony. [LB354]

JOE NEUHAUS: Thank you. [LB354]



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SENATOR ALBRECHT: Okay, do we have any other opponents wishing to speak? Any other opponents? Seeing none, is there anyone in a neutral capacity that would like to speak? [LB354]

STAN ODENTHAL: (Exhibit 7) All right. Good afternoon. Senator Albrecht, members of the Business and Labor Committee, my name is Stan Odenthal, I am the...that's S-t-a-n O-d-e-n-t-h-a-l, I am the executive director of the Nebraska Equal Opportunity Commission. I'm here to testify in a neutral capacity for LB354. The Nebraska Equal Opportunity Commission is a state agency and we have 27 employees and three office locations in Nebraska. Our mission is to eliminate unlawful discrimination in Nebraska through effective case processing as well as public education activities. The NEOC plays an active role in protecting equal rights for Nebraskans. Our dedicated staff investigate discrimination claims throughout Nebraska within the context of employment, housing, and public accommodations. This bill would have an indirect impact on three of the laws that govern the NEOC, including: the Equal Pay Act of Nebraska; the Nebraska Age Discrimination in Employment Act; and the Nebraska Fair Employment Practices Act. Statistical data shows significant differences in the average wages of individuals across gender, race, ethnicity, and age categories. And this has been mentioned before, but it bears repeating some of these statistics. So according to the U.S. Census Bureau's American Community Survey, women in Nebraska only make 79 cents per dollar compared to men. African-American women make 62 cents on the dollar, and women of Hispanic or Latino ethnicity average 54 cents on the dollar. Nebraska is consistently in the bottom half of states when it comes to the wage gap with women. When an employer requires that an applicant disclose previous or current wages, it increases the likelihood that this wage gap problem will continue to perpetuate itself, as statistically it has a disparate impact on individuals that fall into certain demographical categories. This often leads to an economic environment where the overworked and underpaid continue to be overworked and underpaid even when they receive promotions or advance to new jobs. In my handouts, I provided three different things. First one is median weekly earnings data from the U.S. Department of Labor's Bureau of Labor Statistics showing earnings data for fourth quarter of 2016 across various demographical categories. And you can see the discrepancies there. The second is a 2016 study from the Pew Research Center showing that racial and gender wage gaps continue to persist in the U.S. And in that study it's kind of interesting, even when they control for education there still exists significant wage gaps. And three, a fact sheet from the National Partnerships for Women and Families regarding Nebraska Women and the Wage Gap. The NEOC works diligently to ensure that all of Nebraska's workers are treated fairly in the terms and conditions of employment, as well as during the hiring process. We seek out opportunities to ensure that employers and the business community are aware of Nebraska's Equal Pay law, and that is the reason I am here testifying today. The NEOC is taking a neutral stance in regards to this bill, because in its present form it does not have a direct impact on the way we do business. However, we believe that this bill aligns significantly with the laws our agency has been charged to enforce and promote. And as such, we felt the need to provide the committee with the statistical information that has been

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handed out today. And with that, I will close my testimony. And if anyone has any questions, I'd be happy to answer those. [LB354]

SENATOR ALBRECHT: Thank you very much. Any questions? Senator Crawford. [LB354]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. So I just want to clarify one point in your testimony. When you say Nebraska is consistently in the bottom half of states when it comes to the wage gap of women, do you mean bottom half as in our gap is bigger than other states or bottom as if our gap is smaller than other states? [LB354]

STAN ODENTHAL: Oh, yeah, I just need to clarify that. Sorry. We are...our wage gap is bigger than other states. In fact, we were ranked 29th. We've actually moved up in recent years. As recently as a decade ago we were in the bottom ten as far as states go with that wage gap. And right now we're 29th, which still puts us in the bottom half. So nationally the latest statistics I looked at I think it was 83 cents on the dollar and we're at 79 cents on the dollar and so we still are in the bottom half. But that's what my agency is around to do, so we're working on getting that information out and hopefully improving that in the future. [LB354]

SENATOR ALBRECHT: Another question? Senator Crawford. [LB354]

SENATOR CRAWFORD: So if someone were to come to your agency with a concern about discrimination in terms of wages for a particular employer, would their history of past wages be relevant evidence that would be a part of that case? [LB354]

STAN ODENTHAL: Yeah, in certain respects it would, but primarily...well, really it depends on whether it's with the same company or not. And with the wage law in Nebraska all of those cases are actually referred directly to the EEOC and so it's the EEOC that investigates that. We promote it here in Nebraska, but there's some weird stipulation in federal law where they have to complete the cases in a certain matter of time and so they prefer to process those cases. Typically, with most of our other cases that we work with the EEOC on, we dual file those cases with the EEOC and we actually investigate and make the determination on those cases. For wage-specific cases, it's the EEOC that makes the determination. [LB354]

SENATOR CRAWFORD: So the federal...your federal counterpart are doing those investigations? [LB354]

STAN ODENTHAL: Yes, they are. [LB354]

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SENATOR CRAWFORD: Right. And so do you know if they consider past wages of that particular employee or if that's something we'd need to check? [LB354]

STAN ODENTHAL: Absolutely, no. They would look at the past four years, essentially, of wages when it comes to the time that the individual feels that they've been harmed by a wage complaint, by that. And so if it was with the same employer they would look at that, but if it was a different employer then it really... [LB354]

SENATOR CRAWFORD: That's what I was trying to get. If it was a different employer,... [LB354]

STAN ODENTHAL: Okay. [LB354]

SENATOR CRAWFORD: ...is that some kind of defense that, oh, you were paid lower in a previous position, so that explains or would justify why you would be paid lower in this...for your current employer? [LB354]

STAN ODENTHAL: I don't believe so. I think it's just looking strictly at where they're at right now and where they feel the harm is with their current employer. [LB354]

SENATOR CRAWFORD: Okay, thank you. [LB354]

STAN ODENTHAL: You're welcome. [LB354]

SENATOR ALBRECHT: Thank you, Senator Crawford. Any other questions? I have one. [LB354]

STAN ODENTHAL: Yeah. [LB354]

SENATOR ALBRECHT: Is it a state or a federal law that you...if someone came to me and they wanted me to hire them and I wanted to know more about their salary--maybe they told me about it--do I have the ability as an employer to contact their previous employer and can they really give me any information except to ask...I mean, I guess I've always heard that you can only ask if they're eligible for rehire. So how would you get that information from the previous employer on what they were paid? [LB354]

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STAN ODENTHAL: Well, if it's a public employee, it's much easier because that information is public. But you know there's always...I think a lot of times employers use waivers that individuals sign that allow them to contact a previous employer. That's always best practice any time you're seeking a reference or seeking information about an employee is to make sure that you have something in writing from that potential employee allowing you to talk to the previous employer. And something to the effect that you will be discussing wages. I would have to double check on that, but I think that's allowable. [LB354]

SENATOR ALBRECHT: I just...I would like to know from someone, whether it's Senator Kolowski's office or...just to know, because that would have a huge impact on where we would probably go with a bill like this, I would think. [LB354]

STAN ODENTHAL: Okay. Well, if you don't get that answer I can follow up with you and get that for you. [LB354]

SENATOR ALBRECHT: Well, thank you. I appreciate your testimony. Thank you. [LB354]

STAN ODENTHAL: Definitely. [LB354]

SENATOR ALBRECHT: (Exhibits 8-12) Do we have any other neutral testimony? Seeing none, let me just go through the letters first and then we'll take the closing so we can get you on to your other committees. Okay, for proponents of LB354 we have Larry Scherer, Director of Research for Nebraska State Education Association; Sherry Miller and John Else, League of Women Voters of Nebraska; and Traci Bruckner, Research and Policy Director for Women's Fund of Omaha. Those are the letters for proponents. I have one opponent letter from a Rocky Weber, President and General Counsel for the Nebraska Cooperative Council; and I have one neutral for LB354, Nathan Leach, it's just a self letter. So we'll take the closing for Senator Kolowski. Thank you. [LB354]

SENATOR KOLOWSKI: Thank you, Madam Chairwoman. I appreciate all the comments today and you can see the range of challenge and difficulty with this topic in our society and the bigger picture for Nebraska, as we all know. As we celebrate our 150th anniversary as a state and this March 1 we're going to be doing something special here this week as a Unicameral, and I know the 50 years that I've lived here, I'm here because of the mountains and the seashore. Well, we don't quite have that, but we do have a great quality of life and that's built on everything that we have done over these years to make Nebraska as great as it is and we want to continue to do that. When I see the discrepancies that I've heard over and over again between males and females in our society for the same jobs I want to relate that to two things that happened to me this weekend. Life and work many times come together in a most interesting fashion. And the two

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things that happened to me this weekend, I was talking with a friend of mine who is looking at coming back to Nebraska and we'll be glad to have him back. And he's in an opportunity to...he's in a final three of a job that he's looking at and, if chosen, in a managerial position he said, then I'll sit down...if I am chosen I'll sit down and negotiate salary and benefits. So there's not always a connection, but there's a disconnect between where you're going to be placed because of the level of the job. If I'm working in the food store as someone mentioned or the grocery store, being a stock boy or a stock girl, putting things on the shelves and doing all that, that's a different situation than the assistant manager or the manager or where someone else might be placed in that organization as they look at what they're going to be doing in the future. So we have to look at early versus middle versus managerial positions and how that might play out. The second thing that happened this weekend--and I'll finish with this--was the good news in our own family. We have two sons, they each have a boy and a girl, we have four grandkids. And our oldest son told us this weekend they're expecting again, so we're going to have another grandchild come August. Now we already know, they tested, and it's a boy and the thought came to me because of this committee and this topic, he just won additional salary in his life because he's a male. How fair is that in the range and realm of things as you heard those numbers being mentioned, just because the egg and the sperm joined in a certain way and he became a male? Is that fair? Is that equitable? Is there an equity issue there? I think there is. And whatever the topics might have been today, whatever exploring, wherever we might end up in this, I think we have room to make Nebraska a more welcoming place and a more satisfying place to live, to work, and to grow old and watch our grandkids grow with us as we have an opportunity to make the good life even better. Thank you very much. [LB354]

SENATOR ALBRECHT: Thank you. Do we have any questions, any last questions? We don't have any from the senators. I just do have one more. [LB354]

SENATOR KOLOWSKI: Sure. [LB354]

SENATOR ALBRECHT: When we did discuss...how did you end up with the amount of, say, punishment, if you will, or misdemeanor? How did that come into play? Did you look at the other states that currently have this? [LB354]

SENATOR KOLOWSKI: We looked at some additional topics at different states and where things were at those states. I think we're very open and flexible on discussing those. I think we're trying to make it as fair and equitable as possible for all concerned. And that's a full generation of both males and females in our future, as well as those who are employed right now. [LB354]

SENATOR ALBRECHT: Okay. Thank you very much. [LB354]

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SENATOR KOLOWSKI: Thank you. [LB354]

SENATOR ALBRECHT: No other questions. Thank you for your time. [LB354]

SENATOR KOLOWSKI: Thank you for your time today. Appreciate it very much. [LB354]

SENATOR ALBRECHT: You bet. We're going to move right along. We have LB211, which is Senator Hansen's bill. Mr. Adler, correct? [LB211]

JOEY ADLER: Yes, ma'am. [LB211]

SENATOR ALBRECHT: Now it's my understanding that we won't ask you personally any questions. If we have questions, we'll ask Mr. Hansen, but we'll ask questions of any of the proponents or opponents or neutral. Okay? [LB211]

JOEY ADLER: Sounds wonderful. Thank you, Senator. [LB211]

SENATOR ALBRECHT: Okay? Make it easier. Yes, thank you. [LB211]

JOEY ADLER: (Exhibits 1, 2) Good afternoon, Chairwoman Albrecht and members of the Business and Labor Committee. My name is Joey Adler, J-o-e-y A-d-l-e-r, and I am here on behalf of Senator Matt Hansen, who represents District 26 in northeast Lincoln. I'm here today to introduce LB211, which would increase the minimum wage a person is compensated by way of gratuities, commonly referred to as tip minimum wage. Our state's tip minimum wage, which is currently \$2.13, has not been changed since 1991, when the federal tip minimum wage was uncoupled from the standard minimum wage. At that point in 1991, the federal minimum wage was \$4.25, with the tip minimum wage being 50 percent of that wage. LB211 would increase the tip minimum wage from the current \$2.13 per hour to an indexed rate of the standard minimum wage. This would be 40 percent or \$3.60 of the current \$9 minimum wage starting on August 1, 2017, and 50 percent or \$4.50 starting on January 1, 2018. Indexing the tip minimum wage to 50 percent of the standard minimum wage would put it back to where it has historically been. Senator Hansen believes that this is good public policy and would put us in line with some of the states around Nebraska. Iowa currently pays tipped employees \$4.35 an hour; Colorado, \$6.28; and Missouri, \$3.85. Overall, 31 states have higher tip minimum wage than Nebraska. Further, the votes in Nebraska overwhelmingly supported a traditional minimum wage increase as recently as 2014. Senator Hansen believes the majority of Nebraskans would support a tip minimum wage increase as well. Senator Hansen is passionate on this issue and plans to continue working on addressing the issues facing hardworking Nebraskans. He was disappointed

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that he was unable to attend this hearing, but he had to be with family due to a medical issue today. And in closing, Senator Hansen would ask that the committee support hardworking Nebraskans and advance LB211 to General File. Thank you. [LB211]

SENATOR ALBRECHT: Thank you very much. Will you stick around for closing? [LB211]

JOEY ADLER: I will be listening (inaudible). [LB211]

SENATOR ALBRECHT: All right. Very good. Very good. Thank you. Do we have any proponents wishing to speak to LB211? [LB211]

SUSAN MARTIN: (Exhibit 3) Good afternoon, Senator Albrecht and the members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, I am the president of the Nebraska State AFL-CIO. I'm testifying today in support of LB211. While some tipped workers may earn enough in tips to bring their hourly earnings well above the minimum wage, the vast majority of tipped workers earn low wages just above the minimum wage. Tipped workers are more than twice as likely to fall under the federal poverty line and nearly three times as likely to rely on food stamps as the average worker, according to a 2011 study by the Economic Policy Institute. The vast majority of tipped workers aren't teenagers working after-school shifts. They are breadwinners who rely on their wages to support their families. More than a quarter are raising children and nearly 90 percent are age 20 or older. Tips are notoriously erratic, varying from shift to shift and from season to season. Tipped workers are hit especially hard during economic downturns, as financially squeezed consumers often have no choice but to leave smaller tips or cut back on spending at diners or restaurants altogether. A higher tipped minimum wage would help cushion the impact of these fluctuations and ensure a guaranteed basic income for tipped workers. A 2013 study from the University of California-Berkeley examines each instance of an increase in the tipped minimum wage on the state level since 1990 and finds that each 10 percent increase boosts earnings for tipped workers by 0.45 percent. This model policy has proven effective in reducing poverty among tipped workers. In the seven states involved in the study, tipped workers are 25 percent less likely to fall under the federal poverty line compared to states with lower tipped minimum wages. A 2013 analysis from the University of California-Berkeley examines every increase in the tipped minimum wage on the state level since 1990 and concludes that the evidence does not indicate that there are significant negative effects of tipped wages or regular minimum wages at the levels experienced in the U.S. since 1990 in full-service establishments. For example, in Washington, Oregon, Nevada, and Alaska, the tipped minimum wage ranges from \$7.75 per hour up to \$9.19 per hour--over 360 percent higher than the current \$2.13 federal tipped minimum wage--yet restaurant industry job growth in all of these states is projected to significantly exceed the national average. Providing tipped workers a stable base income paid directly by their employers is a key step for improving the

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economic security and working conditions of low-paid tipped workers. According to the U.S. News and World Report, April 1 marks 25 years since tipped workers last got a raise. All workers deserve a fair wage for their work and tipping oftentimes comes up short. For these reasons, I ask that you support LB211. [LB211]

SENATOR ALBRECHT: Thank you. Any questions for Ms. Martin? Senator Halloran. [LB211]

SENATOR HALLORAN: Thank you, Senator Albrecht. Thank you for your testimony. [LB211]

SUSAN MARTIN: Sure. [LB211]

SENATOR HALLORAN: Again, from an employer's perspective, when we close out at the end of the day with our servers--and just a little disclaimer here so that no one picks on any local restaurant here associated where I may have an investment in other parts of the country--but when we close a server out at the end of the day or at the end of the week, we calculate...we depend upon the server to tell us precisely how much they got in tips. Some of those are calculable because it's on a credit card. Some of those, oftentimes you could share those, are cash and so we have to rely very heavily upon the information that the server gives us about what they got for tips, because we have to report those. We have to report those along with the income. It's one of those...it's just one of those sweet things that we have to keep track of and it's okay with us. The problem is, we don't have any control over the level of--for lack of a better word--honesty on how much they're declaring. It's a cash part of their business. And so that's part of the issue because it's in the bill. But the other part of the issue is...you're familiar with what the acronym TIP stands for? [LB211]

SUSAN MARTIN: To insure prompt service. [LB211]

SENATOR HALLORAN: To insure prompt service. There is a strong correlation and I would ask anyone here who dines out, and we all do from time to time, who can relate to this. I tip very heavily when I get good, prompt service. And I often tip in spite of the food not being very good, but I tip because the server did their best providing me the service that they're responsible for. On the other hand, if I'm given poor service at the table I may not tip anything. And so, yes, those servers who don't do a good job then are relying on the tip credit wage, minimum wage that we pay them. And on the surface it seems low but sometimes the service I've seen given, it's almost too much. It's a...in other words, it's a reward situation that we allow for our servers to have a part of our business. When I hire someone I say to them, I'm giving you a small franchise opportunity within this restaurant and you're part of that, that's your business. We expect you to abide by certain procedures in service, but the amount of tips that you get are going to be directly related to how well you operate your franchise as a server in this store. Some of them do very



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well, some of them don't. Some of them make \$150 a night in tips in a four-hour shift. Not bad. And you add \$2-and-something to that, that's just extra; but not much, I'll grant you that. But they do very well. Those that do very well, do very well. And so my concern is, is that we take away some of that incentive for them, some of that incentive, for them to be prompt with their service, because that's driven more by the customers tipping them than it is by whatever we may pay them as an employer. I could pay them \$15 an hour and I could almost guarantee you that the service would go down, because the customer no longer has that much input into what they might tip them for it, so. [LB211]

SUSAN MARTIN: Can I just respond to you personally on that? I still feel that not all restaurants have that type of a clientele in them and you still have people that are making \$2.13 an hour in a, say, a small diner in western Nebraska where maybe the clientele doesn't tip as well. And so I think these are the people that we're looking out for are those that don't work in nice, fancy restaurants and get good tips and so that's basically, I guess, where I'm coming from on this bill. [LB211]

SENATOR HALLORAN: And I appreciate that. But back to help, when I eat at a truck stop when I'm traveling or a local diner, the food is local diner and it's fine, I know what I'm getting. But I'll tip...again, I will tip very well for that local diner service if it's done well and I think most people do. Honestly, if they can afford to, I think they do. [LB211]

SUSAN MARTIN: I understand and I wish that was true, but oftentimes it's not. [LB211]

SENATOR HALLORAN: Okay, thank you. [LB211]

SENATOR ALBRECHT: Thank you. Any other questions? Senator Lowe, did you...I'm sorry. I'm sorry, Ms. Martin. Mrs. Martin, he has a question. Senator Lowe would like to ask a question. [LB211]

SENATOR LOWE: Thank you, Chairman. Thank you, Ms. Martin, for being here today. You refer back to the \$2.13 that they're paid. Now if they do not make enough to come up to minimum wage, is it not the employer's responsibility to pay them to bring that up to minimum wage? [LB211]

SUSAN MARTIN: I think that's in...I think that's the way the bill is written. [LB211]

SENATOR LOWE: I think it's the law now. [LB211]

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SUSAN MARTIN: Yeah. [LB211]

SENATOR LOWE: So they're still getting minimum wage, they're not getting \$2.13 an hour. [LB211]

SUSAN MARTIN: Well, and that depends on...and I'm not for sure, because I haven't gone out and found out what tipped workers are getting paid at different businesses. I have asked and I have found out personally, but, so. [LB211]

SENATOR LOWE: I think it's been tried where we raise the tip up to be equal with minimum wage and it's been tried across the country and the service does go down. The employees do not like a high minimum wage for tip service, they'd rather have it low so that they can tell people that, hey, I'm not making minimum wage and I'll give you good service for a little bit of tip. [LB211]

SENATOR ALBRECHT: Very good. Any other questions? Seeing none, thank you, Ms. Martin. Do we have any other proponents wishing to speak? [LB211]

JILLIAN CARTER: My name is Jillian Carter, J-i-l-l-i-a-n C-a-r-t-e-r, I'm a restaurant manager here in town, but I'm not representing my restaurant, just myself. [LB211]

SENATOR ALBRECHT: Okay. [LB211]

JILLIAN CARTER: I came up through the ranks as a single mom, working my way up from being a waitress, bartender, up to being a manager. And I think that this bill just makes sense to me. If it was tied to minimum wage originally, if it was 50 percent of \$5.25, why wouldn't it just keep being 50 percent? Why would everyone else deserve a raise except for tipped employees? That just doesn't make sense to me. And I think that going back to what we were talking about in the past bill with the burden of the employer versus the employee and where that burden falls, I don't understand why the employer in these situations doesn't have a burden for the employee. When we hear the statistics about how many of these tipped employees are receiving food stamps or childcare subsidies or Medicaid, anything else, I don't understand why the burden doesn't go onto the employer a little bit more for that. Everybody made a big hoopla about Walmart's employees all getting welfare. Well, if so many restaurant employees are getting welfare, why don't we look at the restaurant practices? On top of which, I think the burden that is on the patrons to pay the wages is not always fair, because when you ask people what they're tipping for and you call it to insure prompt service, so they're paying for the service. They don't expect that they're paying us when we are sweeping and mopping and vacuuming the floors,

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when we're cleaning the bathrooms, when we're doing all of our side work, when we're rolling silverware. Patrons don't think they're paying us for that, but we're making that \$2.13 while we're doing that, so actually they are. They're paying our wage no matter what we're doing. And I know that there have been some lawsuits about how much of that cleaning work we can do, but as restaurant employees, we all know that's what we're signing up for. We all know that we're going to have to do that. And it would be hard to say, well, I spent too much of my time doing this so now I can sue you, because you're doing it throughout your entire shift. You're rolling silverware the entire four, eight, six, whatever hours you're there. You're doing that the whole time, so it's not really fair to be able to say, okay, well, I should have been paid an hourly wage while I was doing this because I did it an amount of time at this point in between my tables. But our employers don't really have to pay us a regular wage for that, so I don't think that that's particularly fair. In addition to which, when you talk about the honesty that servers have to have to report their cash tips correctly, I think that there are certain safeguards that restaurants take in that. I think that we generally look at the statistics as far as, okay, well, I know that you're making this percentage of tips off of your credit card paying customers, so this is the percentage that you have reported off your cash paying customers. If those don't match up, as an employer I'm starting to say, okay, either something is wrong with the service that you're providing and you're just not making enough money or you're not reporting correctly. So we do have safeguards in place to kind of assure that honesty. And as far as the incentive for giving better service because we have a lower wage, I personally would never be able to go to a table and say, I only make \$2.13 an hour, so please make sure you tip me well or I'm going to take really good care of you because I only make \$2.13 an hour. I don't think that giving us \$4.50 an hour is going to take away my incentive to give good service. I mean, who in their right mind says, \$4.50 is enough for me, \$4.50 is going to buy my diapers for my kid, \$4.50 is going to feed my family. I mean, I just don't think that the incentive is going away. If you are a decent employee in the service industry you want to give good service because you take pride in what you do. Whether you are scrubbing toilets or you are waiting tables, you should take pride in what you're doing and you should do it to the best of your ability. So to say that we don't deserve a fair wage because we won't do as good of a job, that's mind boggling, demoralizing, and insulting. And I'm shocked that anyone would think that way, quite frankly. And I'm glad that you tip really well and that lots of people do, but just because I have a \$200 or \$300 Saturday night doesn't mean that I didn't work that Tuesday afternoon for \$5. And I don't get paid for that and my tips are going to make up for that, it's going to even out throughout the weeks. So I just think these are hardworking people who are doing the best they can in jobs that a lot of other people don't want to do and some of the best jobs that you can get as an uneducated or unskilled laborer. And I just hope that we can find a way to reward these employees correctly. [LB211]

SENATOR ALBRECHT: Very good, thank you. Any questions? Seeing none, thank you for your testimony. Are there any other proponents? [LB211]

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BEN KRUSE: Good afternoon. Chairwoman Albrecht and committee members, thank you for a moment of your time. My name is Ben Kruse, last name is spelled K-r-u-s-e. I am the director of communications for the Center for People in Need. We are a 501(c)(3) charity operating here in Lincoln, Nebraska. We serve tens of thousands of people a year, all of whom have an income 150 percent or below federal poverty guidelines. I think that this is...you know, I'm reminded of one of the few things I learned in economics class and that's sticky wages. And I think the idea is that wages will eventually catch up with the supply and demand and in this case it's 25 years and that is well beyond any type of sticky wage concept. You have to account for inflation, you have to account for Consumer Price Indexes, purchasing power, all these things. If we're going to have a minimum wage period, it only makes sense that this would stay in line with the standard minimum wage. Now, yes, most people are going to make slightly above minimum wage when you count tips, but I would think...I would argue that this conversation should be about a living wage. And if we were doing our job right we would be talking about that, as controversial as it may be, depending on your family size it could take anywhere from \$12 to \$18 an hour just to make ends meet in this country. A Harvard study recently was actually broke down by metro areas, major metro areas. Lincoln, within Omaha, was one of those. And with the exception of a single person, everybody within a family size over two was generally well below that living wage. And so I would argue that, yes, the cost of an increase in this tipping wage would go to the consumer, but I guess what we're talking about, waiters and waitresses, there's--steal a pun, I guess--there's no free lunch. That cost for healthcare and food is going to be incurred by somebody somewhere. It's going to be either the taxpayer or the consumer in this case. I wouldn't think that the business owner would incur the cost, because that business owner is going to increase their prices to meet that. And unlike a manufacturing job or something that can be globalized, this is service so it's local so it's a little different than some of the other arguments. But real quick, I'm glad that I was here for the first hearing about the other bill, because I would challenge anybody in this room to think of the last time they went into a establishment that paid tips that was overwhelmingly male. It's almost overwhelmingly always female. And I was racking my brain trying to think of a position in this state or elsewhere that might pay lower than \$2.13 an hour guaranteed and I couldn't think of one until someone brought up state senator, so there's that. But I don't have a lot of statistics for you, I just have kind of anecdotal experience. And I can say that I have seen people come into the Center for People in Need wearing aprons and name tags from various eating establishments and utilize our services. And I have seen them go directly to their car with their bags of groceries and proceed to eat while they're still in their car. So I think this is really a moral issue. The previous bill we talked about negotiating power and that seemed to be more middle management and skilled labor, so to speak. You know, there's a high supply of unskilled labor and a low demand and so you're usually not going to go and negotiate your pay as a server. I'm sure it happens, but generally it's not. And so I think it's a duty of those that we elect to represent us to do that negotiation on their behalf. And that's all I really have, and I'd be more than happy to answer any questions if I can. [LB211]

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SENATOR ALBRECHT: Thank you. Any questions? Seeing none, thank you, Mr. Kruse. [LB211]

BEN KRUSE: Thank you for your time, I appreciate it. [LB211]

SENATOR ALBRECHT: Do we have any other proponents? [LB211]

KEN SMITH: (Exhibit 4) Good afternoon, Chairwoman Albrecht and members of the Business and Labor Committee. My name is Ken Smith, that's K-e-n S-m-i-t-h, and I am a staff attorney in the Economic Justice program at Nebraska Appleseed. I appreciate the opportunity to testify today in support of LB211. As Mr. Adler noted in his opening, Nebraskans in 2014 went to the ballot box and voted to raise the minimum wage, affirming the belief that in this state hard work should pay. However, the tipped minimum wage was not included in this standard and it should be increased to ensure that tipped workers are making a reasonable wage. As we've heard, Nebraska's current tipped minimum wage is \$2.13 per hour and has remained unchanged for I think 26 years now, maybe 27. The law does require that employers ensure workers' wages plus tips equal minimum wage at the end of a week, but some workers may be unaware of this and the requirement is difficult to enforce. A federal review of employment records of 9,000 full-service restaurants between 2010 and 2012 showed that 84 percent of the 9,000 restaurants had committed some wage and hour violations. This impacted about 82,000 tipped workers; it included about 1,100 incidents of improperly calculated wages that ultimately resulted in about \$5.5 million of back pay being paid and about \$2.5 million in civil penalties. Obviously, the study is not specific to the state of Nebraska and 9,000 is not an overly large sample size, so I don't think it would be fair to impute those precise results to this state or the state of this industry. But I think it is informative in that it illustrates that, at least to a certain extent, on a national level those wage protections built into federal law don't always translate to people in the industry being paid what they are entitled to. We have seen that tipped workers in the state of Nebraska earn a medium wage of about \$8 an hour, which is the equivalent of about \$16,640 a year. And also in this state tipped workers are living in poverty at a rate of about four times the rest of the work force. So because LB211 would bring tipped wages into line with the recent wage increases already in place and because it would affirm the dignity of work and support hardworking Nebraskans that we would urge the committee's support of this bill. Thank you. [LB211]

SENATOR ALBRECHT: Very good. Thank you. Do I have any questions of the senators? Seeing none, thank you for your testimony. [LB211]

KEN SMITH: Thank you. [LB211]

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SENATOR ALBRECHT: Any other proponents wishing to speak? How you doing? [LB211]

TOM BRODER: Afternoon, how are you today? [LB211]

SENATOR ALBRECHT: Fine. [LB211]

TOM BRODER: Good afternoon, Chairman Albrecht and members of the committee. My name is Tom Broder, T-o-m B-r-o-d-e-r. I currently reside in Omaha. Main purpose today is to show how a few dollars added onto the service wages is not the burden it's believed to be. For 25 years I've waited tables in Omaha, not this town in particular, but Omaha and that wage has stayed at \$2.13. Do any of you actually believe that in 25 years in the rest of the world nothing has had a raise? Cost of goods? People? There are currently 19 states that I was aware of--but the gentleman here I believe said 31, I'll gladly take his number if that's okay--that exceed the laws garnering the minimum wages. Arizona, where I previously worked--and I've been back a little over a year now--we saw in the three years an increase from \$3.65 an hour to \$5.05 an hour. The \$2.13 does not cover the taxes that you have to pay on what you are declaring on your tips. Frequently, a second job is needed to keep up with what you owe. My last checks at \$5.05 in Arizona were minimal. I don't, personally, have a lot of deductions. The single moms, because of the kids or if they have families they weren't single, but their checks seemed to be a little bit more but they were declaring more in their deduction column on their taxes so they were getting more back. But at the end of the year when it comes down to it, I would get a few hundred dollars back. They would get a little bit more than that, but you were seeing a little bit back. Your taxes were actually being paid. When I returned here I only had three months on my taxes in Nebraska and I wound up owing \$300 in that short time. And that was starting where I wasn't making what I make now. Since I've been at a restaurant for a while I've developed into the staff and get bigger shifts, I'm there on more weekends. So, exponentially, as the money increases your taxes are increasing with that. And you wind up...I don't know many people in the business who don't at some point wind up owing. Additionally, that money can be used...single moms are getting benefits, WIC, food stamps, whatever. The additional money they receive there will offset some of that to a degree, so in some instances it can be considered almost like a wash there. These extra wages we're talking about, it's a few dollars. In a smaller unit where you only have maybe, say, five servers on there, even at somewhere between \$2 and \$3 you are only increasing their labor cost by less than 10 percent on a \$1,000 a day business, which...you have a restaurant, you know that's not exactly a large amount going on there. Obviously, as you go up that increases, but it's still the servers' wages that is being increased and it's only at a rate of about 10 percent. That additional money does not seem to be affecting the businesses in Arizona. Last year Arizona was considered one of the top ten states in which to open a restaurant. Once again, their wages are above \$5 at this time; I don't know if they went up again last year. Tips aren't a guarantee. Some people tip well, some people don't. I seem to find over the years that it comes out to be a wash. But what's not included in that is that I have to pay other people who are

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helping me, people who are running food, the bartender who's making my drinks, there's certain bussers. You give out...some places require you to give money to the cooks, the hostesses, so it depends on where you work how that is, but they don't take that consideration into what we claim. We have a cash amount that you're supposed to claim by law, everything, but they never give you that opportunity to take out what you've tipped out. They're just asking you what you made there. During this time someone had mentioned previously about rolling silverware, taking out the trash, cleaning the bathrooms. That's covered under the Fair Labor and Standards Act and claims that you should have no more than 20 percent of your day doing those duties. That's what's balanced out there. No one watches it. If you sat there and said, okay, well, my hour and 20 minutes of time is up doing that, you're not doing a lot for career advancement, because you're battling the system even though the system is set there to protect you. So it's there for looks more than anything. I'd like to mention that none of the people working...not...very few of the people working in the restaurant business, they have no included benefits as far as medical or dental or anything, so you're also having to pay for that. Since 1991 there have been 14 raises in the House of Representatives and 15 in the Senate. This has reflected rising costs and were granted by the politicians themselves. Minimum wage has only seen seven increases over that same time. While this doesn't apply directly to the Nebraska Legislature--I understand that you also work for less money in what you do than what senators in other states do--the last time that you folks were given a raise it went through on the first pass. This did not even get out of committee last year. It didn't even get to a vote. [LB211]

SENATOR ALBRECHT: Thank you. Appreciate your testimony. Do we have any questions?  
Senator Crawford. [LB211]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you for providing your testimony. And your personal experience as well as the personal experience of the other testifier has been very valuable in thinking through what this looks like on the ground. I wondered if you...so we've talked about the fact that tips end up getting shared now. So do part of the...one of the arguments that has been made is that a restaurant is supposed to make sure that the workers receive minimum wage at the end of the week or at the end of the two-week period. And I wondered if, when you're talking about the sharing of your tip to other places if any of that sharing to bring other people up to minimum wage occurs out of your tip wages as well or if trying to make up for a low minimum wage hurts fellow wait staff also because there is efforts to make up that wage out of tips? [LB211]

TOM BRODER: If I'm understanding the way you're doing the question, I would agree that that is true, that the tip outs that we are giving to, let's say, the bus, who are usually younger kids to begin with, that money is being given to them to assist in them to get a higher wage. I don't know, per se in my restaurant specifically, what they are paying them. I think generally they pay them somewhat more than they pay the servers, but it's still under minimum. And are they

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calculating to make sure that they're getting above...and to be honest, I don't even know what regular minimum wage is right now. It's irrelevant. Twenty-five years I've been away, so I don't look at that. And I don't have trouble giving them money, because they're helping me. But if it is making up for a wage and I'm being denied an extra few dollars, somewhere everybody...you're giving and everybody else wants a little piece of the pie. So I'm sure that there's a number that everybody can come and look around and get it to be there. The other thing with the tips when you get that is I understand that the law actually says on an hourly basis you're supposed to get that. Well, I don't know that it says, do you compensate that hourly...do you figure it out weekly, daily, monthly to get that? Because when you get into the incidences like was said before, I may make \$300 on a Saturday but I only made \$5 on a Tuesday. Well, Tuesday, obviously, I was owed some money if it's by a daily basis. But if you wait until I get around to Saturday and add it in, then I'm not doing good one day and bad another day, I'm just balancing it out. And I'm not sure how that law is written to affect that overall. [LB211]

SENATOR CRAWFORD: Thank you. [LB211]

SENATOR ALBRECHT: Thank you, Senator Crawford. Senator Lowe. [LB211]

SENATOR LOWE: Along that same line, when...at the end of the evening when you collect your tips and you tip out, you give, I don't know, 10 percent to the bartender and 10 percent to the busboys, maybe 5 percent to the cooks, I don't know what it is. When you figure up your tips to report, do you report your gross tips at the beginning before you tip out all these other people or do you figure out your tips that you report after you tip out to the other people? [LB211]

TOM BRODER: I'm usually... [LB211]

SENATOR LOWE: Without telling the IRS, right now. [LB211]

TOM BRODER: Before I tip out is what I declare. I'm a little bit different than some because I...if you need to buy a house, if you need to buy a car...if I remember the laws correctly, the government says that you have to claim all your tips, but you can claim no less than 8 percent. Okay? So if one table left me 10 percent and I have to leave...and we'll go easy with it...1 percent to the cooks, 1 percent...and that's 1 percent of food sales, not necessarily...you know, some places will do 10 percent of what you make in your tips. Other places will do a percentage of your food sales. So if I got to go 1 (percent) to the hostesses, 1 (percent) to the bussers, and 1 (percent) to the cooks and someone only left me 10 percent on a bill, now I'm at 7 percent that I made off of that and now I'm paying to have waited on those people. And then there's people who, for whatever reasons, they just don't believe in tipping. And it's surprising. You know, cook



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dinner at home. So it's depending on where you are. And I'm not sure if I finished answering that for you. [LB211]

SENATOR LOWE: I was just curious on... [LB211]

TOM BRODER: And I see what you're saying. I could adjust...I could figure out what I need to tip out and claim less would be... [LB211]

SENATOR LOWE: That's what I was wondering, if that's what you did, yes. [LB211]

TOM BRODER: And I just, I look at it, this is what I have. Bam, I hit the computer, there you go, there you go, there you go. You guys have a good day, see you tomorrow, see you Tuesday. You know, see you in three weeks when I come back from my vacation. [LB211]

SENATOR LOWE: Okay. [LB211]

SENATOR ALBRECHT: Thank you. Senator Halloran. [LB211]

SENATOR HALLORAN: Thank you, Madam Chair. I don't want to start a row for your employer, but that's not...there's a difference between tip credit and tip share. Tip credit is what we're talking about here in this law. Right? [LB211]

TOM BRODER: Okay. [LB211]

SENATOR HALLORAN: Tip share is what you were talking about where you take a portion...you've got some agreement with the restaurant where you take a portion of your tip and share it with other employees. Right? [LB211]

TOM BRODER: Right. [LB211]

SENATOR HALLORAN: To Senator Lowe's point, it's grossly unfair to you to have to declare 100 percent of your tips and then diminish those tips to pay out to other employees. It's good for the other employees. They deserve more. But I believe it's federal statutes that say that's not legal, so I'm just cautioning. I don't want to start a row with your employers, but I would pass that along as a word of caution to that. [LB211]

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TOM BRODER: Right. And it's not necessarily an agreement, it's a statement that you have to abide by. [LB211]

SENATOR HALLORAN: Yeah, that's even worse. Anyway, yeah. I'm guessing, from my own personal experience, that's not legal so again I don't want you to (inaudible) employer. [LB211]

TOM BRODER: No, I understand. In a lot of places that's kind of how it works. And I think that's just the way that the industry has melded into, that the way it happens. And I don't think anybody is intentionally breaking any laws in doing it, it just kind of... [LB211]

SENATOR HALLORAN: The intent is certainly good. [LB211]

TOM BRODER: Ignorance is no excuse for the law. [LB211]

SENATOR HALLORAN: Right. The intent is certainly good, the concept, but your employer should simply pay those people that aren't getting tips a little better than they're getting... [LB211]

TOM BRODER: Yes. [LB211]

SENATOR HALLORAN: ...to make up for that. But they shouldn't have to pull from your tips to do that. [LB211]

SENATOR ALBRECHT: Any other questions? Thank you, Senator Halloran. Thank you for your testimony, Mr. Broder. [LB211]

TOM BRODER: Yes. Thank you very much. [LB211]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak? Any other proponents? Seeing none, we'll move on to the opponents. Anyone in opponent on LB211? [LB211]

JIM PARTINGTON: (Exhibit 5) Senator Albrecht, members of the committee, my name is Jim Partington, J-i-m P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association and I appreciate the opportunity to represent the association and testify in opposition to LB211. I'm also representing the Nebraska Chamber of Commerce and Industry and the National Federation of Independent Business today as well. The American practice of tipping

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was introduced after the Civil War during the Gilded Age by Americans returning from European tours and it's been controversial since that time. Some opponents of tipping believe that it creates or exacerbates the class divide between tipper and tipped employee. Others are concerned that it allows the employer to shift part of the wage burden to customers and that it hides the real cost of dining. Tipped employees in the restaurant industry like tipping as a part of their compensation, because it allows them to earn more based on the quality of the service they provide. Restaurant owners like tipping because it ensures excellent service and a good customer experience. It provides a direct link between the customer, performance of the server, and server compensation. In those occasions when the tip wage and tip income do not equal the minimum wage the restaurant makes up the difference so no restaurant employee earns less than the Nebraska statutory minimum wage. This is a matter of law, not opinion. Tipped employees are some of the most highly compensated employees in the restaurant industry. The point is often made that the minimum tip wage has remained static for years while the minimum wage has increased. Two points regarding this, the statutory minimum wage has risen significantly in Nebraska just in the last year or so and all restaurant employees earn at least the minimum wage. Menu prices have also increased over the years and since tips are calculated as a percent of the total tab, tip income has kept pace with inflation. Acknowledging the validity of an earlier concern about tipping, that it reduces the cost of labor to the employer by transferring it to the customer, it's important to note that in all businesses the cost of goods and services is transferred to the customer in some way. Tipping is one of several traditional ways of transferring these costs that has the additional benefit of encouraging excellent service. Cost of labor ranks with cost of goods as one of two major expenses for the restaurant industry. LB211 would increase the hourly pay for tipped employees by \$2.37 an hour resulting in a 10 percent to 15 percent hourly raise for some of the most highly compensated employees in the industry. Given the low profit margins in the industry this would almost certainly limit options for increasing compensation for other groups of employees equally deserving. Options available for accommodating a wage increase of this magnitude include: increasing menu prices resulting in reduced patronage; hiring fewer employees resulting in reduced customer service; less compensation for nontipped restaurant staff; or imposing service charges and eliminating tipping. None of these options are attractive but the one having the least negative impact on the bottom line would be the last one and this could result in less income for tipped employees. Service charges are revenue for the restaurant and to the extent that they are shared with the employees are wages, not tip income. I'll conclude my testimony with the following thoughts. No restaurant employee earns less than the minimum wage. Menu prices rise over time with inflation and since tips are a percent of the total tab, tip income automatically increases with inflation. Increasing the minimum tip wage limits wage options for other restaurant staff. I appreciate the opportunity to testify in opposition to this legislation and look forward to answering any questions you may have. [LB211]

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SENATOR ALBRECHT: Thank you, sir. Do we have any questions, comments? Senator Crawford. [LB211]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for this testimony. So the idea of tipping to encourage service and allow wait staff to earn more if they provide higher service, wouldn't that logic still apply if they received half of the minimum wage? They'd still have an incentive to provide good service because they're still only being paid half the minimum wage. [LB211]

JIM PARTINGTON: I don't think it would change the motivation for service. I think it would increase the cost to the restaurant by a fairly significant amount and increase the differential between tipped wait staff and other restaurant employees probably. [LB211]

SENATOR CRAWFORD: Can you tell us a little bit about who those other restaurant employees are? We heard some from some testifiers about them sharing their tips with some of those other employees. So who would be the other employees in restaurants that would be adversely affected if the tipped minimum wage were to increase? [LB211]

JIM PARTINGTON: Who would be adversely affected? [LB211]

SENATOR CRAWFORD: Correct. Who are those other employees who would be adversely affected? [LB211]

JIM PARTINGTON: Actually, I don't think there would be a difference in tip income in whichever way you go on this, but tip pooling is governed by federal laws pretty specifically and it has to be shared with people who are directly in the line of service, such as chefs, table bussers, the people who are actually connected to the serving, not necessarily all the back-of-the-house employees. [LB211]

SENATOR CRAWFORD: So I'm still trying to understand how they would be adversely impacted by increasing the minimum wage to...by increasing the tipped minimum wage, how those other people who are in this tip share would be adversely affected. [LB211]

JIM PARTINGTON: Wages in the restaurant industry probably range between 30 percent to 33 percent of total revenue or total expenses. That's a pool that you really can't deviate too much and still be profitable. So however you transfer this cash that's available through all of these things we're talking about, you can't...the pool doesn't grow. It doesn't go beyond the 30 percent or 33 percent. So you're talking about how you're dividing up this pie of compensation. So if

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you're taking more compensation and directing it towards the tipped employees who are already pretty well compensated, then you're limiting the amount of money that's left available to share with the other employees and still have a profit. [LB211]

SENATOR CRAWFORD: But I think that you said you didn't think that the amount of the tips would necessarily go down, so that shared pool should be similar, but all the tipped employees would be making... [LB211]

JIM PARTINGTON: However...I'm sorry, I didn't mean to interrupt. I'm sorry. This pool, this minimum tipped wage, as it increases is a direct cost to the employer. So that's going to constrain the...it's going to be an increase in the employee compensation that they have. And if that goes to the tipped employee there is even less to share it with some of the other employees. And that's only one option that's through here. There are four options I mentioned that were available to deal with this issue. [LB211]

SENATOR CRAWFORD: And who in a restaurant are your most common untipped employees? [LB211]

JIM PARTINGTON: I guess it would be anybody in a restaurant that's not directly involved...I guess it would be those other than chefs, those other than bus the tables, the people who take people to seats, those sorts of things, those have a direct connection to customers would be eligible for the tip pool. All the other employees would not be. Specifically, I can't list who they would be. I don't know what every restaurant would have. [LB211]

SENATOR CRAWFORD: So if the minimum wage for...I'm trying to figure out who in a restaurant would be not in your pool that would be tipped wages, which we assume it would be...if all of those folks like a hostess or host have to get up to that minimum wage, I'm just trying to figure out who else...when the testimony talks about other people being adversely affected, I'm trying to figure out who of the employees of the restaurant would be adversely affected by the increase in the tipped minimum wage. That's what I'm trying to figure out. [LB211]

JIM PARTINGTON: It would be those in the back of the house who wash the dishes, clean the facility and do that kind of work. [LB211]

SENATOR CRAWFORD: Don't you pay them minimum wage? [LB211]

JIM PARTINGTON: Yes. [LB211]

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SENATOR CRAWFORD: So they would still be required to be paid minimum wage. You wouldn't be paying them less. [LB211]

JIM PARTINGTON: No, they always get minimum wage or they probably get more than minimum wage these days, because it's hard to find people that do that. [LB211]

SENATOR CRAWFORD: So that's why I guess I'm still trying to figure out, of the employees at your facility, who would be adversely affected by increasing the tipped minimum wage. [LB211]

JIM PARTINGTON: Well, if we're talking just the minimum wage and we're assuming that we're only going to pay these folks who are not entitled to share in the tip pool only the minimum wage and that's the standard, it wouldn't make any difference. But I think most restaurateurs would tell you that they'd like to pay these people more. And if you take this money from them in some other area, they don't have the money then to compensate these people more. [LB211]

SENATOR CRAWFORD: Right. So we might expect the dishwasher or some other folks who currently make over minimum wage, that wage might go down? [LB211]

JIM PARTINGTON: I wouldn't expect it to go down, I would expect the potential for raising it. It would not go up. [LB211]

SENATOR CRAWFORD: Thank you. I appreciate that. [LB211]

JIM PARTINGTON: That would be my analysis of it. [LB211]

SENATOR CRAWFORD: Okay. Thank you. [LB211]

SENATOR ALBRECHT: Very good. Any other questions? Seeing none, thank you for your testimony. [LB211]

JIM PARTINGTON: Thank you. [LB211]

SENATOR ALBRECHT: (Exhibits 6-12) Any other opponents wishing to speak? Any other opponents? Seeing none, we'll move on to anyone in a neutral capacity. Well, then you probably want to waive the closing? Okay. I will read into the record the letters that we have. For proponents of LB211, proponents are: (John Else) and Sherry Miller, President, League of Women Voters of Nebraska; Tessa Foreman, Board of Directors, Nebraskans for Peace; Julia

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Tse, Policy Associate, Voices for Children in Nebraska; Sarah Ann Kotchian, Holland Children's Movement. An opponent would be Bob Hallstrom, the National Federation of Independent Businesses; Jim Otto, the Nebraska Retail Federation. And then in a neutral stand for LB211 is Nathan Leach. And we can move right on to Senator Bolz. Welcome. On to LB244. [LB211 LB244]

SENATOR BOLZ: (Exhibit 1) Thank you. Good afternoon. My name is Kate Bolz, that's K-a-t-e B-o-l-z, and I represent District 29 here in Lincoln. I'm here today to introduce LB244. This bill came out as a part of the work of the Department of Correctional Services Special Investigate Committee. That committee's report included the recommendation that the Legislature consider amending the statute that authorizes first responders to receive workers' compensation benefits for emotional and mental trauma to include employees of state institutions. The bill adds front-line workers to the list of employees who are eligible to qualify for what are often deemed mental-mental workers' compensation claims. A mental-mental injury is where stress or psychological stimuli causes a psychic injury; posttraumatic stress disorder is a class example. In 2010, the Legislature authorized first responders to qualify for mental-mental workers' compensation. First responders include: sheriffs, police officers, State Patrol, and firefighters, either paid or volunteer. There is no doubt that these first responders often see horrific accidents. The staff at the state's correctional institutions, psychiatric hospitals, and youth rehabilitation and treatment centers also experience traumatic events and their aftermath. During the prison riot two years ago at Tecumseh, two inmates were murdered and the staff had to barricade themselves inside the gymnasium. In this incident and far too many others, staff have been assaulted, sometimes very seriously. At the Lincoln Regional Center a doctor died after being attacked by a patient in 2007. At the YRTC in Kearney, a staff member was stabbed with the jagged end of a broken broom handle. Current law provides for workers' compensation for the physically injured, but what of the Corrections' staff who helps regain control over the housing unit who comes across the murder victims, the Regional Center employees who witnessed the killing of their colleague, or the staffer at Kearney who fears her bodily safety after watching a colleague get stabbed. Staff who experience traumatic events and others like it may develop symptoms of posttraumatic stress disorder as well as depression and other mental health injuries. Covering traumatized staff with workers' compensation is the right thing to do by our state employees who work with some of the most high-risk, sickest, and dangerous people. Ensuring the staff that experience serious emotional and psychological trauma are treated will also help those facilities in retaining qualified staff. All of these institutions have significant vacancies. In June, more than 20 percent of the Corrections' mental health staff positions were vacant. Approximately 100 protective staff slots were totally vacant, and another 60 in the hiring, training in Kearney and Geneva at YRTC had a 30 percent vacancy rate as of February 15 of this year. Even with these persistent shortages, ensuring that staff who have experienced trauma are able to receive the treatment and care they need may keep them employed at their state institution. Further, I don't expect this to be a frequent claim. According to the administrator of the Nebraska Workers'

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Compensation Court, since 2010 when the bill was first enacted, 21 claims have been filed for first responders' mental-mental claims by 18 individuals, approximately three a year. Of those claims, four payments were made for relatively low dollar amounts. The highest claim paid was for under \$200. We're not talking about dozens of traumatized people but instead, a few individuals who witness horrific events and their aftermath that may need additional support. The Legislative Fiscal Office expects no fiscal impact. Thank you. I appreciate your time and attention to this issue. I do think it will be of critical importance to the retention, safety, and well-being of our workers at our state institutions. And I'd be happy to answer any questions. [LB244]

SENATOR ALBRECHT: Do we have any questions? Senator Crawford. Thank you. [LB244]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Senator Bolz, for bringing this bill and for thinking about the mental condition of our people who are on the front line. So I'm just wanting to understand what the benefit or the claim is about given, as you say, the costs are pretty low. What is it that the worker receives? [LB244]

SENATOR BOLZ: It's just like any other workers' compensation claim. If someone were to twist an ankle running after youth at the YRTC and needed time to put her ankle up, however much time it takes to heal, that person could qualify for workers' compensation. So it's simply treating a psychic injury just like we would treat any other injury under workers' compensation law. [LB244]

SENATOR CRAWFORD: Okay, thank you. [LB244]

SENATOR ALBRECHT: Any other questions? Senator Howard. [LB244]

SENATOR HOWARD: Thank you, Senator Albrecht. Thank you for bringing this bill to us today. I remember we had previously considered something for social workers who are also...who have also been attacked, who are also on the front line. And so...and I think this kind of gets us a little bit closer, even though it's only for YRTC, is that correct? [LB244]

SENATOR BOLZ: It's for Department of Corrections, YRTCs, and the Regional Centers, the state institutions. [LB244]

SENATOR HOWARD: Okay. And then I wanted to see, just for the record, if you could clarify state custody, because often when a caseworker is transferring a youth that youth is considered to be in their custody. And so just for the record can you clarify that state custody means in the YRTCs and Corrections and then state institutions? [LB244]



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SENATOR BOLZ: Are you referencing to custody as it's used in the legislation? Can you point me to the language? [LB244]

SENATOR HOWARD: So on page 3, line 1, "High-risk individual means an individual in state custody..." [LB244]

SENATOR BOLZ: Thank you. So we can work on that language if that's necessary. Basically, we mean anyone who's being served by the state institutions. And if that needs to be further clarified to make sure that transportation is included or visits to the community or anything like that, we can certainly do that. I think the goal is to cover the employees who work at the state institutions in whatever capacity that means, working with those individuals. [LB244]

SENATOR HOWARD: Thank you. [LB244]

SENATOR BOLZ: And if I could... [LB244]

SENATOR ALBRECHT: Yes. [LB244]

SENATOR BOLZ: There's certainly been plenty of conversation about who should and shouldn't be covered under mental-mental and there's also been discussion about county attorneys, for example, who have to respond to scenes where people have passed away. I'm certainly empathetic to all of those sets of circumstances. This bill is specific to covering those employees at institutions who serve high-risk individuals who are at great risk of managing these difficult circumstances and I think specifically tries to solve or help address one of the problems of retention at those institutions. So I really have no comment about whether or not other populations should be served. Rather my argument is that this population should be. [LB244]

SENATOR ALBRECHT: Thank you. Any other questions? Senator Halloran. [LB244]

SENATOR HALLORAN: Thank you, Madam Chair. For the record, you explained it to me and maybe you did to all of us when you were working the floor, as you call it, and you did a very fine job of that. What...the fiscal note... [LB244]

SENATOR BOLZ: Oh, sure. [LB244]

SENATOR HALLORAN: ...or lack of one, so that we'll understand. [LB244]

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SENATOR BOLZ: Sure. The Legislative Fiscal Office estimates no fiscal impact. Basically, they're saying that the workers' compensation claims won't significantly increase the view to this bill, basically because when we look at other mental-mental claims we see that there's not a significant increase. In any given year the number of workers' compensation claims flexes a little bit. And so I think that the fiscal note says that it could result in a workload increase, but at this time it wouldn't result in additional staffing and the trust fund is in healthy condition. [LB244]

SENATOR HALLORAN: Okay, thank you. [LB244]

SENATOR ALBRECHT: Okay, I just have just a couple of questions. So this bill, it talks about on page 2, line 22, so first responders are already addressed in this, whether it be the sheriff, deputy sheriff, police officers, State Patrol, volunteer or paid firefighters, correct? So they're already listed and they are already taken care of, so you're just adding these state institutions to this. And they already are covered with workman's comp and all those kind of things? They're just not spelled out. So if it happened already without this bill, what's happening? Do they still claim workman's comp for medical? [LB244]

SENATOR BOLZ: I'm not sure I understand your question. [LB244]

SENATOR ALBRECHT: Okay, you're adding them to this bill. But if it were this past year they were hurt or injured or they watched something that they shouldn't have had to, what would have happened at that point? [LB244]

SENATOR BOLZ: I understand. If an individual, say, was working at the Department of Correctional Services and--and this is a real scenario--had to respond to a suicide, for example, if they were interested in filing a mental health claim on the basis of what's called a mental-mental so that that crisis had a significant impact on that person's mental health, if that person was filing a workers' compensation claim for an episode of posttraumatic stress disorder, it would have been denied because it's a mental-mental versus a physical interaction. If that person had again twisted an ankle trying to remove a body, that person could qualify for workers' compensation, but not if they're diagnosis was posttraumatic stress disorder or depression or another mental condition. [LB244]

SENATOR ALBRECHT: Thank you for that. And just real quick on the fiscal, I do see the Attorney General states that this bill would require an additional attorney for \$107,000. [LB244]

SENATOR BOLZ: That is the Attorney's General's opinion. Again, we always refer to our legislative fiscal note and the fiscal analyst states that cost would come from the Workers'

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Compensation Claims Revolving Fund. So Doug Nichols' analysis is that the Workers' Compensation (Claims) Revolving Fund is sufficient to cover any necessary costs. [LB244]

SENATOR ALBRECHT: Okay. Because I'm seeing another one on the third page of the form. So, okay. [LB244]

SENATOR BOLZ: I see what you're referring to, which is the Attorney General's analysis, but the only thing I can work off of as a legislator is the legislative fiscal note, which says that the funds can come from another source, so it seems like there's maybe a difference of analysis between what the Attorney General might think and what the legislative fiscal analyst thinks, but again the legislative fiscal note shows no fiscal impact. [LB244]

SENATOR ALBRECHT: Okay. Very good. [LB244]

SENATOR BOLZ: Thank you. [LB244]

SENATOR ALBRECHT: Are you going to stick around? [LB244]

SENATOR BOLZ: I'm going to do my best. [LB244]

SENATOR ALBRECHT: Okay. Very good. We'll start off with any proponents wishing to speak. Thank you. [LB244]

MIKE MARVIN: (Exhibit 2) Good afternoon, Senator Albrecht and 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 NAPE/AFSCME Local 61. We are the union representing the vast majority of state employees. I'm here today in support of LB244. I want to thank Senator Bolz and her staff for all the work they've put in on this bill. In the last year and a half there's been many incidents of violence at the Nebraska Department of Correctional Services, the YRTC in Kearney, and most recently the Regional Center in the news. The news coverage is new. The assaults are not. This has been going on for many years. These assaults and these acts of violence have an effect on not only those employees who are the target of that violence, but their coworkers who witness and have to deal with the aftermath of these assaults. These coworkers who witness these, they have no means for treatment at this point in time because they did not suffer a physical injury. If you'll look in my attachments in the second and third pages, you will see a conversation that I had...a Facebook conversation I had with an employee who left state employment. Not providing the mental health treatment to these employees who are also victims leads to many problems not only for that employee, but for the agency. If the workers cannot receive the treatment they need it often

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leaves to them only one alternative, leaving the agency. This bill does not have a legislative fiscal note, but in my opinion it does have a fiscal impact. If you look on the last page I have a chart with the staffing levels and their turnover for these facilities. Many of these are in our facilities. They include all state employees at the highest levels, but many of those are in and I can go through each one of those if you choose to, but this turnover needs to slow down. And providing people with the mental assistance that they need when they witness one of these or have to clean up the aftermath of one of these would go a long way towards retention of the staff. You ask a lot of these dedicated employees. It's time to stand up and provide them with the support they need and do the job you ask of them. I thank you for your time. I thank you for your consideration on this. And if you have any questions and, in particular, that last page with the turnover rates may be somewhat confusing, I'd be more than happy to answer any questions. [LB244]

SENATOR ALBRECHT: Thank you. Any questions for Mr. Marvin? Seeing none, thank you for your testimony. [LB244]

MIKE MARVIN: Thank you very much. [LB244]

WILLIAM SPAULDING: (Exhibit 3) Good afternoon. I'm William Spaulding, S-p-a-u-l-d-i-n-g. I am representing the Nebraska Psychological Association, of which I am the cochair for legislative affairs. I'm also a Professor of Psychology at UNL. Much of my research over the last 30 years has touched on issues of stress and trauma. I was also a consultant at Lincoln Regional Center for about 22 years, so I'm very familiar with that environment. NPA strongly supports LB244. I think we all have seen that front-line state employees are at risk for both physical and psychological trauma. It's anachronistic that we do not provide a parity of coverage for psychological injury. It's highly timely that we do this. It's also a good investment, as has been said before, in the development of our mental health in the Corrections' work force. This is one of many things that we can and should be doing to address the problems that have become so evident in the past few years. That's the substance of my testimony. I expect that I may be of most help to this committee answering any questions you may have about the nature of trauma or belated mental illness or its treatment. [LB244]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Seeing none, Mr. Spaulding, (inaudible). Thank you. Any other proponents? [LB244]

STEVE HOWARD: Good afternoon. My name is Steve Howard, H-o-w-a-r-d, and I am with the law firm of Dowd, Howard and Corrigan and we are counsel for the State AFL-CIO and I appreciate the opportunity to address the committee in support of LB244. Just to sort of give the backdrop about workers' compensation to sort of lay the stage for what we're really talking about is, for a hundred years in Nebraska in order to recover under a workers' compensation claim it

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had to be a physical injury. And the huge majority of physical injuries don't result in posttraumatic stress, they don't result in a mental or psychological psychiatric injury. In 2010, the first responders were brought into an exception to that rule so that there need not be trauma to the body. There may not be a physical injury, but if there was a mental, psychological injury that was of the necessary threshold. It's not just the day-to-day stressors of the job, it's not just what an officer or a firefighter or a paramedic usually endures on the job, but something that is so extraordinary that it's a life changer for them. In that slim category, those were brought into the new mental-mental. And so, Madam Chair, you're right, that this expands that definition of those covered under the mental-mental, so it's called, to include Corrections' officers and folks at YRTC. And these individuals see and encounter that same type of trauma and that same type of scenes and images and it's a difficult job. You know, we represent Corrections' officers. And what they have to put up with, they have to protect their coworkers from attack. They're constantly vigilant and on edge for bad things that can happen. They have to protect their coworkers, they have to protect the other inmates, and they have to protect themselves. And sometimes they have to protect the violent from their own violent actions. And so when we look at 21 claims over six years or seven years that this has been in place, this legislation certainly isn't going to open the door to some avalanche of claims or some wave of new litigation. We have about 40,000 reported injuries per year. Now, a reported injury--you can get these statistics from the Workers' Compensation Court--a reported injury is anything that requires first aid. So if you put a Band-Aid that becomes one of those 40,000. But back in 2010, the opponents cited the possible wave of new claims. That simply hasn't been the case and so we encourage you to pass LB244. Stepping back just a bit, when you think about workers' comp, what it does is it ties the risk to the exposure. And if the harm to the psyche of the employee is truly coming from work, then the care to treat that individual ought not fall on health insurance, it shouldn't be on short-term or long-term disability, it shouldn't be paid for through a social program, it should be tied to workers' compensation. So this is a narrowly tailored bill and as Mr. Marvin pointed out, there's a lot of turnover among the staff in Corrections, it's been in the news. It would sure send a very positive sign of support that those workers are appreciated by the Business and Labor Committee and appreciated by the Nebraska Legislature. I'm not saying that all this does is say nice things and give a vote of confidence to those workers. I do think that there's merit to the heart of the bill itself with the compensation, but it would sure acknowledge the hard work that those men and women do. It's sure a job that very few of us would be able to tolerate. So thank you very much for your consideration of these comments. [LB244]

SENATOR ALBRECHT: Thank you very much for your testimony, Mr. Howard. Are there any questions? Senator Halloran. [LB244]

SENATOR HALLORAN: Quickly, Madam Chair. Thank you for your testimony. And I'm not trying to quiz you on whether or not there's overestimation or underestimation of reports of issues along this, but just speaking as a male, do you think there's maybe an underreporting on

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the part of some individuals just because it's an ego thing? You know, they don't want to...you know what I'm saying? [LB244]

STEVE HOWARD: I do. It maybe takes a little bit to admit or to step in front of the group and say, I got hurt on the job. [LB244]

SENATOR HALLORAN: Right. [LB244]

STEVE HOWARD: We shouldn't have that. Yeah. [LB244]

SENATOR HALLORAN: I'm just saying...and I'm not looking to challenge the figures on how many might end up needing this. I mean, if they need it, God knows we need to help them with it. But I'm just wondering if, in your opinion, this may be likely to be an underestimation (inaudible). [LB244]

STEVE HOWARD: You know what happens is, it works against the person. It works against that person, because they don't report it and they don't go seek mental help or they don't go seek help for their injury. And then later on a defense lawyer steps into the courtroom and says, well, you didn't tell anybody about this, so. But I'd acknowledge that there may be a tendency among the stoic. The system might punish the stoic and that's unfortunate, but I appreciate the senator's concern. [LB244]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony. [LB244]

STEVE HOWARD: Thank you very much. [LB244]

SENATOR ALBRECHT: Any other proponents? [LB244]

BRITANY SHOTKOSKI: Good afternoon, Senator Albrecht, members of this committee. My name is Britany Shotkoski, B-r-i-t-a-n-y, last name is S-h-o-t-k-o-s-k-i. I'm here in support of this bill on behalf of the Nebraska Association of Trial Attorneys. Mr. Howard has addressed many of the issues that I would have addressed here and I'm not going to replot old ground unless there's questions on them. But I would point out that the purpose of this bill is a really...it's a very narrowly tailored bill. It really creates an inequity that currently exists under existing law. Under existing law, if two Correctional workers or front-line employees come across the same traumatic event, whatever that event might be--one of the examples we used here was responding to a suicide--if two employees respond to it, one of them twists an ankle or injures

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their back while responding to that suicide and the other one doesn't sustain a physical injury, but as they both move away from the event and start processing what's occurred they both develop a mental injury, whether it be depression or posttraumatic stress disorder, the only one that has a compensable claim under existing law is the one that also had a physical injury. The bill recognizes that front-line employees are in a position to experience significant events that most of us in regular everyday life are not going to come across. Their employment puts them in a unique position where they're exposed to those dangers. The bill simply adds them to the list of people that can come in with a mental health claim and have workers' compensation benefits made available to them. If there are no further questions, I would encourage this committee to favorably move upon this bill and support its moving forward. Thank you. [LB244]

SENATOR ALBRECHT: Thank you. Do we have any questions? Seeing none, thank you. [LB244]

BRITANY SHOTKOSKI: Thank you. [LB244]

SENATOR ALBRECHT: Any other proponents? Hi. [LB244]

KASIE LIVEZEY: Hello. My name is Kasie Livezey, K-a-s-i-e L-i-v-e-z-e-y. I am currently working with the Department of Corrections. I am assigned at Tecumseh State Correctional Institution. I have worked for them since 2014 and I have been present during the 2015 May disturbance and I was assaulted in 2015 September and I am for this bill. I currently suffer from PTSD. I received a severe concussion and I know the devastating trauma that comes with it. And I have coworkers who have not have been physically hurt, but have had trauma from being threatened on a daily basis and are sometimes fearful going to their jobs daily. They often feel like they are going to war every day and they need help. The Employee Assistance Program that they offer is not enough. It is an outside service where we can get counseling through Oasis, it's an out service reach program and it sometimes helps; it's a phone call away. But it's not the same as having the help that you need within the walls of the institution or wherever you're working with high-risk individuals. So I urge you, please consider this proposal. Mental health is a huge thing to lead by example. If we are to rehabilitate these high-risk populations back into our community, we need to have strong people to lead them that way. And if we are suffering from traumatic events on a daily basis, we're going to tear ourselves down. And Corrections has a notorious rate for having high suicide rates among officers and leaving...the turnover rates. This is something that needs to be addressed, so I urge you. Thank you. [LB244]

SENATOR ALBRECHT: Thank you. Thank you for coming. Any other questions? Senator Lowe. [LB244]

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SENATOR LOWE: Kasie, first of all, thank you for working for Corrections. That's a thankless job and we really appreciate it. In your opinion, are there several people at--since you know Tecumseh--that would use this workmen's compensation for help? [LB244]

KASIE LIVEZEY: Yes. [LB244]

SENATOR LOWE: Okay. Thank you. [LB244]

SENATOR ALBRECHT: Any other questions? Thank you for your testimony. Any other proponents? Any other proponents? Seeing none, we'll move on to the opponents. Do we have any opponents wishing to speak? Seeing none, anyone in a neutral capacity? Very good. Senator Bolz, would you like to close? [LB244]

SENATOR BOLZ: I only wanted to add that the Workers Compensation Fund currently holds \$26 million, certainly sufficient funds to cover any additional needs. [LB244]

SENATOR ALBRECHT: It certainly is. Any other questions? [LB244]

SENATOR BOLZ: Thank you. [LB244]

SENATOR ALBRECHT: (Exhibits 4, 5) I'll read into the...a couple letters. I have opponent, Bob Hallstrom, Nebraskans for Workers' Compensation Equity and Fairness. And in the neutral position, Nathan Leach, a self letter. Thank you and that will be the close of LB244. Thank you, Senator Bolz. Senator Lowe, you're up next. Okay, Senator Lowe, we'll take on LB553. [LB244]

SENATOR LOWE: (Exhibit 1) All right. Thank you, Chairman Senator Albrecht and fellow members of the Business and Labor Committee. My name is John Lowe, that's J-o-h-n L-o-w-e, and I'm a senator from District 37. I'm here today to introduce LB553. LB553 attempts to address uncertainty when it comes to workers' compensation and independent contractors. Currently, an independent contractor is not required to insure themselves for workers' compensation losses. They're also not automatically covered as an individual...as an employee of another employer. This can cause a kind of no man's land when it comes to workers' compensation claims. When an independent contractor is injured while working for a third party, the discussion of whether or not the independent contractor is covered by a third party is left to the Workers' Compensation Court and so much to be determined after the fact. If the court determines that the contractor was in fact an employee for the third party, the third party is liable for the workers' compensation claim. This causes significant problems when it comes to hiring independent contractors because third parties and their insurance carriers can face tens of, if not



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hundreds of, thousands of dollars in unanticipated losses and premiums if the court sides with the independent contractor. LB553 would attempt to address this concern. This is done by requiring individual independent contractors who are not insured for workers' compensation to file a written nonelection of workers' compensation coverage with the Workers' Compensation Court. To do this, the independent contractor would have to be an individual employer, partner, limited liability company member, or self-employed person. The nonelection form would include an acknowledgment that the individual signing the form is knowingly not electing workers' compensation coverage. If the individual later decides they want to go back to being covered by workers' compensation, they can file a notice of termination with the Workers' Compensation Court and purchase valid workers' compensation coverage. At the end of the day, what this bill really does is clarify for all interested parties the workers' compensation question when it comes to the individual contractors. The general contractor will know whether the individual they are in discussions with has workers' compensation coverage or not. The individual contractor will have their coverage defined before they choose to accept a contract, and insurance carriers will know who they have responsibilities for in regards to workers' compensation claims. I will attempt to answer any of your questions, but there are many behind me who can really fulfill that duty. [LB553]

SENATOR ALBRECHT: Very good. Do we have any questions of Senator Lowe? Senator Crawford. [LB553]

SENATOR LOWE: Yes. [LB553]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Senator, for bringing this bill and having this conversation. So one statement that's in the discussion about the bill says that the nonelection of coverage is not enforceable if it's required as a condition of employment. I was just wondering if you could speak to that or what section of the bill that language is in. [LB553]

SENATOR LOWE: I think I would like to have somebody behind me refer to that. [LB553]

SENATOR CRAWFORD: Okay. So I (inaudible). [LB553]

SENATOR LOWE: They could probably speak more clearly of that. [LB553]

SENATOR CRAWFORD: Okay. [LB553]

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SENATOR ALBRECHT: Okay? So we'll just wait and see if we get an understanding. If we don't then ask someone else. Senator Howard. [LB553]

SENATOR HOWARD: I have so many questions, Senator Lowe. [LB553]

SENATOR LOWE: Wonderful. [LB553]

SENATOR HOWARD: (Laughter) I'm sorry. And this will probably be for a person behind you as well, but I'm hoping one of the testifiers behind you can talk about how a court decides that somebody is an employee, so sort of what the burden is and how they make that determination. Thank you. [LB553]

SENATOR ALBRECHT: (Inaudible) questions. [LB553]

SENATOR LOWE: Let's leave that up to them. [LB553]

SENATOR ALBRECHT: Okay, so you'll stick around. And are you going to sit... [LB553]

SENATOR LOWE: I will stick around, yes. [LB553]

SENATOR ALBRECHT: Senator Crawford. [LB553]

SENATOR CRAWFORD: Thank you. And one other question. So the workers' comp is generally seen as if you take that then you are...you're really foregoing your right to sue. And as you note in the language it says that the form is supposed to try to help people understand that if they choose to not be covered by workers' comp, they're not waiving that right. So just to clarify, the people who would choose not to be elected...not to elect this coverage, we're intending for them to have that option to sue for any injuries. Is that a fair logic? Is it a logical assumption from that? [LB553]

SENATOR LOWE: I don't believe so, but I think I'll let you ask that question later on. [LB553]

SENATOR CRAWFORD: Ask that question. Okay. That would be another question. All right. Thank you. [LB553]

SENATOR ALBRECHT: Okay. So we'll let you take a seat and hopefully we'll get our answers to the questions that we have. [LB553]

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SENATOR LOWE: I believe you will. [LB553]

SENATOR ALBRECHT: If not, we'll write them down and have them taken care of before we move on. Okay. We'll start with the proponents. Anyone wishing to speak to LB553? Hi there. [LB553]

ANDY BASSETT: (Exhibit 2) Hi there, Chairman Albrecht, members of the committee. I am Andy Bassett, A-n-d-y B-a-s-s-e-t-t. I'm with Ellerbrock-Norris Insurance. I want to say thank you to Senator Lowe, wherever he went, for introducing the bill. My company is an independent insurance agency. We provide property casualty insurance, including workers' compensation, to many Nebraska businesses. I'm here today to testify in support of LB553 on behalf of the Independent Insurance Agents of Nebraska. So what's the problem, is the main question. The problem is there is definitely a lack of clarity around the independent contractor and benefits in the workers' compensation system. Right now an independent contractor is not required to carry workers' compensation insurance, but that same independent contractor, when working on behalf of another contractor who's injured on the job, it's been proven time and again that they are able to collect benefits under the hiring contractors workers' compensation policy. So that creates a problem for the insurance carriers, who have not charged an appropriate premium on the hiring contractor's policy that ultimately ends up having to pay the injury. It also results in an issue where the hiring contractor is ultimately going to get audited against premiums that were never contemplated or originally budgeted for by that contractor as a result of the unknown. So the system is a little bit contradictory. So what's a response? LB553. It certainly would provide clarity for the independent contractors, as well as the contractors that hire them. An independent subcontractor could purchase a workers' compensation policy of his or her own which would be able to...he or she would then be able to collect benefits on that policy or, as LB553 would require, could also sign a nonelection of benefits, which would make it clear that there's no intention to collect any workers' compensation benefits if injured on the job. And of course, a person in that case could also consider going and becoming an employee of a contractor and, thereby, covered under that employer's workers' compensation policy. An example of this, and we see this every day in our business, but an example of this is we had a small utility contractor client of ours, as many would, hired several independent contractors to do work on his behalf, none of which were required to carry workers' compensation insurance and didn't. One of those individuals was injured on the job and it was a pretty significant injury, six figures type of settlement. And as it turns out, the hiring contractor's workers' compensation policy had to provide benefits. And so we got into a situation again where an insurance carrier did not have appropriate premium for the exposure and we have a hiring contractor here who, once the insurance company realized that they had this exposure and were paying premiums, turned around and audited a policy. And in this case, we have a guy that budgeted maybe \$10,000 or so for that insurance cost and, in fact, it ended up being the audit itself was about \$80,000 to \$90,000. Needless to say, he's not in business today. So that's an example that we see every day

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in our business. So the way we...what we feel is if LB553 would pass, and it's modeled, you're going to hear in a little bit, it's modeled after a very successful Iowa law that's been in place for about 20 months now or so. But it's going to give clarity to the independent contractors. It's also going to give clarity to the contractors that hire these independent contractors. It's going to give clarity to the insurance companies and carriers so there's a better understanding of where exposures are. Independent subcontractors, they're going to be more readily able to get work in the marketplace, too, because of this clearer defined position as to whether they're an independent contractor, able to get benefits or not under a hiring contractor's policy. And then of course the audit situation that I mentioned. These hiring contractors can hire these independent contractors knowing that they don't have an unknown exposure to a very large audit premium that always comes, you know, after the fact that they have not budgeted for. And the insurance companies also are not going to get hit with the burden of unexpected costs after an injury takes place. So, in my opinion, LB553 definitely provides clarity to what is...has been a long-going problem in the business. And I want to thank you for the time. I did pass around our little white paper that kind of I think summarizes the bill itself and what the problem is and the solution, and I'm more than willing to answer a question or two if I'm capable. [LB553]

SENATOR ALBRECHT: You're going to get a few I bet. (Laughter) Okay, thank you for your testimony. Anybody want to start? Senator Crawford. [LB553]

SENATOR CRAWFORD: Thank you. Thank you for your testimony. And I know this has been an ongoing issue we've discussed in the committee for a few years of trying to...how to provide clarity for all parties. So if someone elects not to have coverage, does that then indicate that they are, since they're opting out of that umbrella for workers' comp, that they're basically entering into an ability to sue for any injuries? And I assume that would be the case because I think workers' comp is this umbrella to protect you from that and saying I'm not going to be willing to sue for injuries, I'm going to be under this umbrella. And if you opt out, you're opting outside of that umbrella. That's step one. And if that's the case, will contractors now need to have their workers' comp insurance and some liability insurance if they're hiring people who would be stepping out of that protection? [LB553]

ANDY BASSETT: I think, if I understand maybe what you're asking, Senator Crawford, if you're an independent contractor that would sign the nonelection through what we've laid out in LB553, yeah, I mean you're going to make a knowing decision that you're not going to be able to collect benefits under the workers' compensation system. Always, of course, that same independent contractor could elect to purchase his or her own policy in an event that they wanted to be able to collect benefits in the workers' compensation system. And I suppose if they do waive those rights, yeah, there's other remedies with health insurance and they'd have to check with the providers that provide that to make sure that it aligns with what they're intending to do. There's disability policies and things of that nature that I think can address their ability to be able

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to collect benefits elsewhere if they do sign that nonelection. If...I don't know if that clears that up at all... [LB553]

SENATOR CRAWFORD: I just want to clarify that... [LB553]

ANDY BASSETT: ...or if it answers the question. [LB553]

SENATOR CRAWFORD: ...basically by choosing to not elect they are choosing then also to be able to have the courts as a remedy. [LB553]

ANDY BASSETT: If they sign the nonelection, they will be unable to collect benefits in the workers' compensation system. [LB553]

SENATOR CRAWFORD: In the workers' compensation system. [LB553]

ANDY BASSETT: Right. [LB553]

SENATOR CRAWFORD: But then wouldn't they be able to then pursue remedies in the courts, since they're not under that workers' comp? [LB553]

ANDY BASSETT: That I would have to defer to somebody that can maybe better answer that question. I apologize. [LB553]

SENATOR CRAWFORD: Okay. Okay. All right. Thank you. [LB553]

ANDY BASSETT: Uh-huh. [LB553]

SENATOR ALBRECHT: Other questions? Thank you, Senator Crawford. Senator Howard. [LB553]

SENATOR HOWARD: Thank you. Are you able to answer my question about how a court makes that determination? [LB553]

ANDY BASSETT: I will probably defer that to some... [LB553]

SENATOR HOWARD: Another person? [LB553]

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ANDY BASSETT: Yeah. [LB553]

SENATOR HOWARD: Okay. That's fine. [LB553]

ANDY BASSETT: I think I will because there are some guidelines out there as to what does define an independent contractor. But I will probably defer to somebody else to better answer that. [LB553]

SENATOR HOWARD: And then you mentioned in your testimony that it happens time and time again that the independent contractors are able to collect benefits. Can you tell me how often that happened to Nebraska in the last year? [LB553]

ANDY BASSETT: You know, I couldn't give you exact numbers but in my business we see it I mean really regularly. We really do. [LB553]

SENATOR HOWARD: Is there sort of a rough estimate or...? And then your business, is it a national business or is it Nebraska specific? [LB553]

ANDY BASSETT: No, we do business outside of Nebraska. But specific to Nebraska, we insure...we provide workers' compensation insurance for many, many businesses in Nebraska and it is...it would be tough for me to put a percentage or an actual number to it. But I can tell you it is a common problem where we see benefits being able to be collected on, again, a hiring contractor's policy which had not contemplated it as well as the audit scenario that I mentioned. That's happening time and again where big, big audits are being charged back to these contractors that had not in any way budgeted for it. [LB553]

SENATOR HOWARD: Is there anybody who's keeping track of how often this is happening? I'm just trying to get my arms around how big of a problem it is. [LB553]

ANDY BASSETT: I would defer that probably to our association in how well we can track that from that level. [LB553]

SENATOR HOWARD: Sure. Thank you. [LB553]

ANDY BASSETT: Uh-huh. [LB553]

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SENATOR ALBRECHT: Other questions? I have a couple. How is this list derived? It's not within the bill here, so how do you determine who these contractors are that would be deciding to not enter into this agreement? [LB553]

ANDY BASSETT: There will definitely be somebody that can answer that, better than I can, behind me. (Laugh) [LB553]

SENATOR ALBRECHT: Okay. So do independent contractors cover roofers, roofing businesses? [LB553]

ANDY BASSETT: That would definitely fall within this scope, and that is a very common industry in which this becomes a very apparent problem, yes. [LB553]

SENATOR ALBRECHT: Is...like if I were going to hire someone to replace my roof, and I would want to make certain that whoever is on the roof of my home that somebody has them covered. Because if they don't and they fall off my roof, does it get passed on to me as the consumer? [LB553]

ANDY BASSETT: And that again is a good question for somebody other than me, probably more legal. Yeah. [LB553]

SENATOR ALBRECHT: Very good. No problem. Again, we just need to try to wrap our arms around all this. [LB553]

ANDY BASSETT: Absolutely. [LB553]

SENATOR ALBRECHT: But I thank you for your testimony today. [LB553]

ANDY BASSETT: Thank you. [LB553]

SENATOR HOWARD: I just hadn't thought about that, but it's pretty interesting. [LB553]

SENATOR ALBRECHT: Well, I just...okay. Thanks. That's all. [LB553]

ANDY BASSETT: Okay. [LB553]

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SENATOR ALBRECHT: Oh, I'm sorry. Do you have another question? [LB553]

SENATOR CRAWFORD: Yes. Thank you. Thank you, Chairwoman Albrecht. [LB553]

SENATOR ALBRECHT: Senator Crawford. [LB553]

SENATOR CRAWFORD: Thank you. So I just want to clarify. This idea of allowing somebody two options to elect out entirely and then to say I'm going to purchase my own workers' comp insurance, that is modeled off of Iowa, is that correct, to allow these two options? [LB553]

ANDY BASSETT: Yeah. The LB553, the nonelection is modeled, yes, off of Iowa's law. Right now obviously any business has, even an individual subcontractor, an individual contractor can elect to purchase. There just...there is no requirement in the state of Nebraska that they do. [LB553]

SENATOR CRAWFORD: So...and that I think is the crux of the problem in the sense of making sure if somebody says they're an independent contractor, they really are and that they're providing for themselves and any workers in our system. And that, if the only...if it were the case that we just allowed option (2) on this form to say I'm personally my own workers' comp, then we'd be keeping all the workers in our workers' comp umbrella. Isn't that correct? [LB553]

ANDY BASSETT: Yeah, that would be fair. Uh-huh. [LB553]

SENATOR CRAWFORD: Right. All right. Thank you. [LB553]

SENATOR ALBRECHT: Very good. No other questions? Seeing none, we'll take the next proponent. Thank you for your testimony. [LB553]

ANDY BASSETT: Thank you. [LB553]

SENATOR ALBRECHT: Well, well, lookee here. [LB553]

SENATOR KOLTERMAN: This is highly unusual, isn't it? [LB553]

SENATOR ALBRECHT: It is. [LB553]



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SENATOR KOLTERMAN: Good afternoon, Senator Albrecht, members of the committee. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I'm from Seward, Nebraska. I own an insurance agency. I'm not here as a senator today. [LB553]

SENATOR ALBRECHT: Okay. [LB553]

SENATOR KOLTERMAN: I'm here in support of this bill primarily from the perspective of the fact that there's been years of uncertainty in this arena. And you're asking some of the same questions we ask as insurance agents, as people come and go into our offices. For many years, general contractors have ended up paying large audits because at...and you don't find these things out usually until there's a claim. So you have somebody that says I'm an independent contractor and they come to work for a general contractor and they get hurt on the job. The question is, who's going to pay that claim? In many cases you're correct, Senator Howard, the courts will determine it because they don't have any workers' compensation. In our state, you can elect out of workers' compensation if you're an independent contractor. But once you hire somebody, then you have to carry work comp on your employees, but you can still waive out yourself if you're a corporate officer. So the fail-safe isn't always there. What this bill really does...and you're going to hear from somebody from Iowa in a few minutes. What this bill really does is it provides a place that a contractor can look, a general contractor can look, through the Work Comp Courts. And I assume it will be something like an Excel spreadsheet that will list the person that's excluded themselves from workers' compensation and then they can make a contentious effort whether or not they want to hire that person or not, but they will have a definite opinion or known value of what that person is carrying. The other way you could do it is provide a certificate of insurance, but not everybody carries it. So what this really does, it provides a fairly simple avenue to spell out the difference between who is an independent contractor and whether or not they're carrying workers' compensation. If they're not carrying workers' compensation and you still hire them, you run the risk of maybe paying an audit. But at the same time, if you could show that they're on the list, the insurance company shouldn't be able to charge you an audit for that. It's pretty basic but it's an easy solution to a long-term problem that's existed. It's my understanding it's working very well in Iowa. I just wanted to support the concept. I haven't sold work comp for many years. I've sold primarily health and life and investments. But I am licensed in...going back as far as 20-25-30 years. It was a problem then; it's still a problem today. And there's been all kinds of people that have tried to figure out what constitutes an independent contractor. This way if you say you're an independent contractor, you sign up with the department of workers' compensation, it's pretty clear-cut, you knew what you were doing. So with that, I support this and hope you can move it to the floor, and would try to answer questions. [LB553]

SENATOR ALBRECHT: Thank you, Senator Kolterman. Any questions? I guess I have one because a lot of these independent contractors, a lot of their work could be seasonal. Is the price

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to be covered affordable that they could handle all year long and if they had employees they'd be able to provide that all year? [LB553]

SENATOR KOLTERMAN: One of the reasons this is being brought forward, it's becoming more and more cumbersome, is because the cost of medical care and workers' compensation has risen dramatically. [LB553]

SENATOR ALBRECHT: Uh-huh. [LB553]

SENATOR KOLTERMAN: And so for...let's use as an example, and I think somebody is going to give you some examples in a few minutes, but let's say you've got a drywaller, single person drywaller. And you got a general contractor that's short on drywallers and he goes out and contracts with somebody. You know, for them to carry a policy could be \$6,000, \$7,000 a year, maybe more than that because there's a lot of back injuries, there's a lot of finger cuts. So what this does, if they file with the Workers' Compensation Court, they don't have to pay that premium. But if they get injured, they know that they're not going to be able to collect on that person's policy. So they might want to consider it. [LB553]

SENATOR ALBRECHT: But somebody would be paying for that injury. [LB553]

SENATOR KOLTERMAN: Well, potentially the health insurance carrier would end up paying on that, or they're carrying a disability policy perhaps on their own that would pay for that. Those policies are expensive as well, but for an independent contractor to buy health insurance and workers' compensation and general liability and disability insurance, pretty soon they're looking for a job where they get all those benefits. [LB553]

SENATOR ALBRECHT: Uh-huh. And this list that you talked about, they keep it at the state level? Do you know? [LB553]

SENATOR KOLTERMAN: Yeah, I'll let the individual from Iowa... [LB553]

SENATOR ALBRECHT: Very good. [LB553]

SENATOR KOLTERMAN: ...tell you about how it's worked over there. [LB553]

SENATOR ALBRECHT: Very good. Appreciate your testimony. Do you have another question, Senator Crawford? [LB553]

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SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. [LB553]

SENATOR ALBRECHT: Sure. [LB553]

SENATOR CRAWFORD: And thank you, Senator Kolterman, for being here and testifying. So to clarify, if someone were working on a roof or working on drywall, is an independent contractor, and in electing out of workers' compensation and they were, you know, an independent contractor, relatively low income, who do you think would end up picking up those healthcare costs? [LB553]

SENATOR KOLTERMAN: Could be the healthcare provider. Could be their disability provider. [LB553]

SENATOR CRAWFORD: Whose healthcare provider? [LB553]

SENATOR KOLTERMAN: Their own. [LB553]

SENATOR CRAWFORD: If they had health insurance. If they're able to... [LB553]

SENATOR KOLTERMAN: Yeah. Well, we're all supposed to have it, aren't we? [LB553]

SENATOR CRAWFORD: Well, if you meet certain income guidelines, right, yeah. (Laugh) We have a gap here that we've been trying to solve in the past so that they would have health coverage. [LB553]

SENATOR KOLTERMAN: Well, what we know is should it be the responsibility of the general contractor if they've waived off? [LB553]

SENATOR CRAWFORD: Right. [LB553]

SENATOR KOLTERMAN: And that's what we're trying to clarify. [LB553]

SENATOR CRAWFORD: I hear you. I hear you. Thank you. [LB553]

SENATOR KOLTERMAN: It's a good question. [LB553]

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SENATOR ALBRECHT: Very good. Thank you for your testimony. [LB553]

SENATOR KOLTERMAN: Thank you. [LB553]

SENATOR ALBRECHT: We'll take the next proponent. [LB553]

TOM CHAMPOUX: Chairwoman Albrecht and members of the Business and Labor Committee, my name is Tom Champoux, T-o-m C-h-a-m-p-o-u-x. I'm an independent insurance agent here in Nebraska, representing the Independent Insurance Agents of Nebraska. It has been spelled out, the issue is pretty clear, that independent contractors don't have to carry workers' compensation coverage in Nebraska. If they are hired by a general contractor and they are injured, they can and sometimes do collect under the general contractor's workers' compensation insurance policy. That has required insurance companies to then, or at least insurance companies turn around and at audit time, which is at the end of the policy period, they add that payroll into the cost of the work comp policy for the general contractor. As we all know, I have an example today of one of those particular cases. And the premium for this general contractor was just a little under \$8,000 and this general contractor hired several independent contractors, sole proprietors, and unexpectedly had an audit due them at the end of the policy period of \$119,514. No particular claims had happened during the term of the policy that I'm aware of in this particular case, but obviously a very unexpected and large expense for the general contractor. So this is an attempt, LB553 of course, is an attempt to clarify this and so general contractors know what they're getting into, can bid jobs appropriately and that type of thing. I intentionally left this kind of short and just gave one example so that I can answer any questions that you have. But obviously, this was a surprise to this general contractor. I deal with this problem a lot. Oftentimes our contractors are checking to see if workers' compensation coverage exists for the subcontractors. But these independent contractors don't have to have this and oftentimes don't. And so this creates a big issue for us. [LB553]

SENATOR ALBRECHT: Uh-huh. Finished, yes? Questions? No? I do. Talk more about this audit. What are they looking for, to make sure that you have the coverage based on the number of employees that you have out there? [LB553]

TOM CHAMPOUX: An audit is actually an audit of the payroll. Workers' compensation works like this. An employer has class codes of employees and X number of dollars that go into those payrolls, and there is a charge per \$100 of payroll that people pay work comp based upon. [LB553]

SENATOR ALBRECHT: Uh-huh. [LB553]

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TOM CHAMPOUX: And so what we're saying is that these uninsured independent contractors, then that payroll, whatever that happened to be, is then put into the general contractor's payroll for audit. [LB553]

SENATOR ALBRECHT: But you know I guess I still go back to the question, how do you protect the business or the independent person that's hiring this general contractor that if there's a problem, whether if he has the insurance that's well and good, but if he doesn't then who takes care? And if he doesn't even have healthcare, let's say he just is a handyman and he just takes care of all kinds of things, whose liability? If you don't ask to see that certificate from that individual, you're on, correct? I mean if he hurts himself at your business or at your home, the homeowner or the commercial person who's hired that person would be... [LB553]

TOM CHAMPOUX: Yeah, I... [LB553]

SENATOR ALBRECHT: ...responsible? [LB553]

TOM CHAMPOUX: I'm sorry to interrupt you. Your example of your roof at your home, I'm not positive how that would work for a homeowner and what protections there might be there. But certainly for a general contractor, that is going to become their payroll and they are going to insure those people. [LB553]

SENATOR ALBRECHT: Because he's got the coverage. [LB553]

TOM CHAMPOUX: Yes. [LB553]

SENATOR ALBRECHT: But if it's somebody that's not the contractor that is an independent, you're just here to talk about the contractors. [LB553]

TOM CHAMPOUX: Yes. [LB553]

SENATOR ALBRECHT: Okay. Very good. And I won't ask any other questions. Any other questions? Thank you, Mr. Champoux. (Inaudible). We have another proponent. [LB553]

BOB SKOW: The last one. [LB553]

SENATOR ALBRECHT: Last one? I hope you're from Iowa. [LB553]

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BOB SKOW: I'm from Iowa and if I can't answer your questions then... [LB553]

SENATOR ALBRECHT: We're in trouble. [LB553]

BOB SKOW: ...well, I'll pass it to Illinois. I'm Bob Skow and it's spelled S-k-o-w. I'm with the Independent Insurance Agents of Iowa and we're a trade association over there that was instrumental in passing the law that you're considering here. And that law was passed to resolve a lot of the questions that you all have come up with today. We actually patterned our law after some other states, specifically Wisconsin and Florida. We looked at what they did. And let me back up and just address a few things. First of all, Iowa is a lot like Nebraska and every other state in that we do not require sole proprietors, partners, and LLC members to be covered by workers' compensation. Those entrepreneurial businesses that start up every day, everything from a lemonade stand in front of your house with your son or daughter or the neighbor child to someone who goes out and starts a business of their own. The law around the country does not require them to be covered by workers' compensation. And once that exists...and that's the case in Nebraska, it's the case in Iowa, it's the case in South Dakota. By the way, South Dakota last year passed a similar law that you're considering today. Once you exempt those people, they're not required to be covered by work comp. So if they get hurt at work, they're left to the demise of their health insurance, possibly a disability policy, or potentially to be able to sue someone. Remember, under tort law you have to be liable, meaning that if someone was up on your roof and fell off the roof, you would have had to cause the hazard--and, frankly, pretty difficult if you hired them to put shingles on your house for you to be responsible for them doing their job. Now if your dog bit them as they were climbing down the ladder, that's a tort liability issue and your homeowner's or farm owner's policy would probably come into play. Having said that, we looked at the problem that you all have and in Iowa we decided that we needed rather a simple solution to what appears to be a complex problem. The problem simply is, is that people every day hire people who are not required to be covered by workers' compensation as independent contractors. It could be someone to come clean your house. It could be someone to come clean your office. It could be someone that hires a drywaller to come in and fix the hole in a wall when your kids were playing basketball in the bedroom. You can ask those people for certificates of insurance, proof that they are covered. If they give you a proof of that, then they have coverage. It still doesn't mean that you might not be liable if your dog bit them,... [LB553]

SENATOR ALBRECHT: Correct. [LB553]

BOB SKOW: ...for example. So separate the fact that they're not required to be covered by workers' compensation and I want to hire them. The problem now has come into play that because there's a clause in the workers' compensation policy that allows a carrier to audit at the time...at the end of the policy period, unlike other insurance, you come back and you recalculate

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it at the end. And you've heard some of the horror stories, people handed huge premiums that put them out of business, small businesspeople who all of a sudden get a bill and under the situation they can't move. There is a block in place. If you refuse to pay that audit, you can't move to another carrier under the system. And remember that the carrier has the trump card. It's called an audit. And by the way, your division here approved about a year and a half ago a clause that if the small businessperson says, I won't let you come in and audit me, they automatically get to charge them double the premium and then block them. So that...I mean it is...it's very tough on these small businesses and businesses who hire somebody that is not required to be covered by workers' compensation. So in Iowa, we took what was a complex problem, came up with a very simple solution that had worked in other states. And why did we refile it in Iowa? Because Iowa did not want to charge these businesses to file and they didn't want such a complex system that created a lot of expense to taxpayers. We avoided both of those things, which I think makes it a good fit for Nebraska. How did we do that? We simply took a form that says when you're a sole proprietor, partner, or LLC member, you're not required. There are laws; 48.115(10) says you don't have to have work comp. If you say you are a sole proprietor, LLC member, you file the form that you sign and say, I am who I say I am, I'm a sole proprietor or partner, and I am not covered by workers' compensation; it's not my intent. That's my right under the law not to be covered. Now again, other states have looked at should we require everybody to be covered? It becomes a nightmare because the problem is for some of these they end up in what we call the assigned-risk pool and pay just out...huge, huge premiums and they can't get in the business. I mean it kills the entrepreneurial spirit that I think we're famous for in the Upper Midwest. The form then simply you sign and you have it witnessed, you know, so that you know that this signature is it. In our case, you file it with the Workers' Compensation Division. We had no fiscal note for that under our legislation. Our division said, this is pretty easy. We take an Excel spreadsheet, we put it on. And I would encourage you, if you want to go see how it works, go to Iowa...go to Google or type in Iowa Workers' Compensation Division. Front page, right-hand column, there's a little red box. You click on there. You jump through the hoops and then you type in a name or whatever of a person that you want to check to see if they're exempted themselves from workers' compensation. So it's not expensive. The last thing I want to tell you is that I think, I don't know your system but I think that light is telling me I'm done. [LB553]

SENATOR ALBRECHT: No, you're fine. You've got a minute. Go ahead. [LB553]

BOB SKOW: Okay. So I apologize. [LB553]

SENATOR ALBRECHT: You're fine. [LB553]

BOB SKOW: But what it doesn't do, it doesn't create a huge burden on small business. It doesn't cost a bunch of money. And it is easy and not complex. In Iowa we've had it in place for about

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almost two years now. It's working. My understanding, they passed it last year in South Dakota. It's working there. It works in Wisconsin. It works in Florida. Are there always bumps in the road? Anytime you do something new, there's an education curve. That's probably been our biggest. It's been some out-of-state insurance companies and it's been some who go, now, do I have to file this? And what we actually have had, Senators, is we've had some people decide, you know what, maybe I need to buy work comp rather than exempt myself. So I think there's a good tradeoff there. And I'll try to answer all the questions, so. [LB553]

SENATOR ALBRECHT: You'll have plenty of time. [LB553]

BOB SKOW: Okay. [LB553]

SENATOR ALBRECHT: Okay. Senators, questions? [LB553]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for being here to answer questions. So as you noted some bumps in the road, so there are still some challenges with insurance companies recognizing that in their audits? [LB553]

BOB SKOW: No. Well, an audit happens, an insurance company asks for either a certificate of insurance that you hired somebody that was covered, or they ask for proof of this form. And probably the biggest bump has been is that, whose job is it to get a copy of the form, the business or the auditor? And you know, we've been telling people I think, you know, if you're going to get audited you probably should get that form. And so now that's becoming readily...people are handing them out just like they are certificates when they get hired that I've signed a form that says I am a sole proprietor and I'm not covered by work comp and I'm accepting the fact that I'm not covered by work comp. And that seems to have fixed a huge part of the problem. [LB553]

SENATOR CRAWFORD: Just one follow-up? [LB553]

SENATOR ALBRECHT: Sure. [LB553]

SENATOR CRAWFORD: So this policy in the state of Nebraska and probably operates alongside perhaps policies that try to deal with the problem with misclassified workers. So I mean does...is there any interaction or protection from some other policy about misclassified workers that helps it work well in Iowa? [LB553]

BOB SKOW: Yeah. We passed a law in both houses unanimously. We had a house that was controlled by Republicans and a senate controlled by Democrats. And that was the topic that



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came up. This legislation does not deal with nor does your current law deal with misclassification of people. And a misclassification can happen by a carrier who moves people into a different class. It could happen by the fact that businesses misrepresent or do things that this doesn't, you know, and I've heard that in Iowa. And once we go back and read what it says, we don't talk about classification of workers. We're talking about those who are exempt under the law, declaring a public document that says, I am who I say I am, I'm an independent contractor who's a sole proprietor, partner, an LLC member, and I'm not required to be covered by work comp and I'm signing an affidavit that says that I understand that and am not pursuing under workers' compensation. You know, so in the perfect world across the country, and again, I don't know a single state that requires LLC members, partners, or sole proprietors to be covered by work comp, you could say kind of like health insurance--we'd love to have everybody covered, but it's not a perfect world and you're not going to get there. And I don't know that many states want to take on the political hit of requiring everybody to be covered by work comp. You know, look at agriculture and all the other things out there. It becomes a slippery slope. [LB553]

SENATOR CRAWFORD: Thank you. [LB553]

SENATOR ALBRECHT: Other questions? Senator Halloran. [LB553]

SENATOR HALLORAN: Madam Chair. Mr. Skow? [LB553]

BOB SKOW: Skow, yes. There was a good football player over here by the name of Skow and he was related to me, so. [LB553]

SENATOR HALLORAN: Nice. Thanks for your testimony. Thanks for the trip over. This is a cost of operation question. Since Iowa is much more flush than we are as a state, did this cost...are you aware maybe or not, did this cost the Iowa Division of Workers' Compensation? Did they have to hire an additional person to manage this? [LB553]

BOB SKOW: No, they didn't. And by the way, Iowa just did some major cuts in our current budget, so we might not be in as good of shape as you are. To answer your question, no. They took a current staff person and assigned it to them who was already doing this on corporation forms and did not ask for any FTEs, did not ask for any additional staffing. And when the division came over and was asked, they said, look, we'll make it work. This is too important of an issue not to have. And it's relatively simple. You file it once, your name goes on the form, and it's there till you choose not to be in business and pull your name off the form. The form burden is completely put on that small business owner to file it and then to remove it themselves. The state simply maintains a very simple list that is used. And then the form is verified back and then the business owner gets it and can give it to a general contractor who needs the proof. [LB553]

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SENATOR HALLORAN: Thank you. [LB553]

SENATOR ALBRECHT: Thank you. And I have a question. [LB553]

BOB SKOW: Yes, ma'am. [LB553]

SENATOR ALBRECHT: Who's auditing these people? [LB553]

BOB SKOW: Well, the insurance companies many times have their own auditors and sometimes they hire a third-party auditor, kind of like adjusters. You know how an adjuster would come out to see if your car got damaged. An auditor literally walks into the business owner's deal and says, I'm with XYZ insurance company and I'm here to audit your payroll records to determine what your workers' compensation premium should have been. [LB553]

SENATOR ALBRECHT: Should have been, meaning...? [LB553]

BOB SKOW: Because it's after the policy year. And that was the example of the 120...can you imagine getting handed a \$120,000 bill on an \$8,000 policy? [LB553]

SENATOR ALBRECHT: Maybe we should be looking at...sorry. Maybe we should be looking at a bill to look at those auditors. Who charges that kind of money to put people out of business? [LB553]

BOB SKOW: Well, they charge it based on the fact that there's payroll, not a whole lot different than an auditor would with taxes would come in and look at it after the fact and then audit you. Workers' compensation in every state is an audited premium because businesses can go up rapidly, small businesses sometimes start with five employees and at the end of the year they have ten employees, so they have to pay for those additional employees through the year. [LB553]

SENATOR ALBRECHT: So your...the insurance company who gave this general contractor this \$8,000 bill to cover his people for workmen's comp is going to get audited from the same insurance company? [LB553]

BOB SKOW: Correct. [LB553]

SENATOR ALBRECHT: At \$119,000 that could put him out of business. [LB553]

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BOB SKOW: Right. And then if they don't pay it, it's not as if they can go to an alternate market. [LB553]

SENATOR ALBRECHT: I'm just... [LB553]

BOB SKOW: Under the law in this state as well as Iowa, you have to pay that premium or you can fight it. You can go to a court of law. You can do those things but... [LB553]

SENATOR ALBRECHT: It just doesn't seem like... [LB553]

BOB SKOW: And it is, in all...every state, it is an audited policy based on payroll. [LB553]

SENATOR ALBRECHT: I mean how can we keep businesses in business if they have to (inaudible)? [LB553]

BOB SKOW: Well, pass this law and it will help, in my opinion. [LB553]

SENATOR ALBRECHT: Well, but passing this law, they could still get audited. [LB553]

BOB SKOW: They could still get audited but they're not going to get charged for people who are not required to be covered by workers' compensation for those people. That's the key here. All of a sudden, I'm only going to get charged for the people I hire, the people that I agree to do payroll for and I provide their benefits. They're an employee of mine, under my supervision. Someone earlier asked what are the tests. There are a series of tests that adjusters use as well as the courts use to determine whether somebody is, in fact, an employee or not. [LB553]

SENATOR ALBRECHT: Uh-huh. [LB553]

BOB SKOW: And one of those things is that, you know, did I hire you? Do I control...tell you when to come to work, when to leave? I provide the tools and the materials to do and I'm paying you typically on an hourly basis or a specific amount to accomplish a day's worth of work, so. [LB553]

SENATOR ALBRECHT: Okay. So this general contractor who's doing what he's supposed to be doing and he may or may not have certain number of individuals on his policy because they don't work with him full-time but he has ten employees that do, maybe eight that come on if he's busy and he needs them. So he gets audited. They're looking for the ten, not these others? [LB553]

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BOB SKOW: They're looking for if you hired an independent contractor and you don't have proof that they have work comp, that's what's happening now, then they're going to charge you for hiring those people, even though they're exempt under the law for being required to carry work comp. [LB553]

SENATOR ALBRECHT: Uh-huh. [LB553]

BOB SKOW: So that's what this resolves. It simply resolves the fact that people who say they are a sole proprietor, partner, an LLC member and are an independent contractor going to help somebody on a project. So I hire you to come and put wallpaper in my bedroom or my living room and I hire you to do that and you say, I'll come in and do that for \$600, that would not be picked up on audit. That person would probably be a sole proprietor and they would have the form they filed with the state and they would give it to the builder who was hiring to wallpaper the wall, for the one project, and they would not then be allowed to charge them for that. That would be clearly the intent of the law anyway is not to charge them for that. [LB553]

SENATOR ALBRECHT: Uh-huh. Uh-huh. [LB553]

BOB SKOW: By the way, carriers still have the ability to underwrite them. If they don't want to write these risks, they don't have to write them. They can say, you know what, that doesn't fit our profile of the kind of contractor we want to hire. Then it, like I say, this has worked pretty well in Iowa. It's worked pretty well in South Dakota. It's worked pretty well in Wisconsin. That's kind of the Upper Midwest, kind of like us. [LB553]

SENATOR ALBRECHT: Okay. Senator Howard...or Crawford. [LB553]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you again for testifying to the experience in other states. I wondered if you could comment on what's happened in other states in terms of ensuring the protection that the nonelection of workers' compensation is not enforceable if it's required as a condition of employment, what that actually looks like in practice. [LB553]

BOB SKOW: Well, in practice, with or without a law, I think you always would have...most states have contractual laws that say when you sign something you can't do it under duress, and I'm guessing, I've not researched that for Nebraska but I'd be surprised if you didn't have contract laws that prohibits someone from being, you know, a gun held to their head, if you will, or being threatened to sign, if you don't sign this. Those contracts are null and void typically in every state, and I'm assuming that's the case here. So with or without that language, you have contract

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provisions in law that don't allow people to be able to enforce contracts that are done under duress. Now that's a question the court sometimes would have to ask: What happened? That's why it's important to have, in my opinion, a witness. If you sign this, I witness it. I didn't see anybody threatening you and you sure didn't tell me that, you know, I'm a witness to the thing, that's admissible of course in a court of law: Did you appear to be under duress when you signed this? Why do you feel that? So that's a question that's probably again, you know, whether it's this kind of agreement form or I'm signing an agreement for a covenant not to compete as an employee if I ever leave you, you know, you can say, well, that's under duress because you won't hire me if I don't sign it. Probably not. Courts typically don't rule those things to be under duress. [LB553]

SENATOR CRAWFORD: Yeah. So the bill language doesn't indicate duress. It just says as a condition of employment. [LB553]

BOB SKOW: Right. [LB553]

SENATOR CRAWFORD: So... [LB553]

BOB SKOW: Covenants not to compete are the same. I mean I was using that example. [LB553]

SENATOR CRAWFORD: Right. Right. [LB553]

BOB SKOW: You know, if you're employed, the very word says that that infers that you're an employee rather than an independent contractor, so. [LB553]

SENATOR CRAWFORD: I was just curious if Iowa or Wisconsin or any other state had some protections like...that a job posting couldn't require that or some other way that they were trying to effectuate that protection. [LB553]

BOB SKOW: No, we have basically that same exact language. And again, I would say that the court tech people, they can show that they had to sign something under duress, it's usually not ruled as an enforceable contract So... [LB553]

SENATOR CRAWFORD: So more at (inaudible). [LB553]

BOB SKOW: ...you know, we got more problems than just that. We've got fraud, we've got criminal intent. You know, there's...I don't know enough about your law but I just got to believe

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that you've got contractual protection that provides a remedy for people who are forced to sign something against their will. [LB553]

SENATOR CRAWFORD: Thank you. [LB553]

SENATOR ALBRECHT: One last question: If I go on to this Iowa site, it will list all the contractors. [LB553]

BOB SKOW: When you go to the site, go to the Iowa Workers' Compensation Division, front page, there's a...at the very top banner on the right-hand corner there's a verification, workers' compensation verification. It's over there. Now the way ours works, you can get the list from the state alphabetical. Otherwise you have to type in a name of a business if you want to check. You know, otherwise the list is, you know, long. So if you were going to hire Bill's wallpaper company, you'd type in Bill's wallpaper company and it will come up and it will show you whether or not he's... [LB553]

SENATOR ALBRECHT: So do the insurance companies provide that list to the state? [LB553]

BOB SKOW: No. The sole...or the small businessperson, sole proprietor, partner, LLC member who says I'm not wanting to cover, they have to submit that form to the state. That's how your law is drafted here. They would have to voluntarily submit that form, declaring they are in fact who they say they are, and they're not being covered by work comp and they're choosing not to be covered by work comp. [LB553]

SENATOR ALBRECHT: Very good. [LB553]

BOB SKOW: Does that help? [LB553]

SENATOR ALBRECHT: Yes. [LB553]

BOB SKOW: Okay. [LB553]

SENATOR ALBRECHT: Thank you for coming today. [LB553]

BOB SKOW: You know, and feel free. My contact information is there. You can send me an e-mail or I can send you over to the Iowa Workers' Compensation Division or whatever and try to get you your answers if you're looking for some additional ones. [LB553]

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SENATOR ALBRECHT: Very good. Thank you so much. [LB553]

BOB SKOW: Thank you for inviting me. [LB553]

SENATOR CRAWFORD: Thank you. [LB553]

SENATOR ALBRECHT: Okay. Any other proponents wishing to speak? We have one more. [LB553]

MICK MINES: Madam Chair, members of the committee, my name is Mick, M-i-c-k, Mines, M-i-n-e-s. I'm here as a registered lobbyist for the National Association of Insurance and Financial Advisors of Nebraska, NAIFA-Nebraska. I'll keep it very simple. We support the bill and urge you to advance it to General File. I would answer any questions. [LB553]

SENATOR ALBRECHT: Any questions? Seeing none, thank you. [LB553]

MICK MINES: Thank you. [LB553]

SENATOR HALLORAN: Thanks for your testimony. [LB553]

MICK MINES: Yes, sir. [LB553]

SENATOR ALBRECHT: Any other proponents wishing to speak? Any other proponents? Seeing none, opponents. Anyone in opposition? [LB553]

KORBY GILBERTSON: (Exhibits 3 and 4) Good afternoon, Chairwoman Albrecht, members of the committee. For the record my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in opposition to LB553. Where do I start? Let's start with I'm having handed out to you a couple of things. Number one is the actual Iowa law that has been referred to a number of times today during proponent testimony. One thing of particular interest is if you look at the specific names who are listed as who can opt out of comp insurance, it's mostly directors or actual owners of businesses. So it's a little more clearly drafted than what LB553 is. It also, as you'll note in that statute, shows what has to be signed and also witnessed, which is not required under LB553. The biggest issue I think that we have found with this legislation is I heard numerous times during the proponents' testimony that this bill helps make things more clear and easier for insurers and others to find out what is going on. I truly wish that was the

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case, because the more we look into this legislation the more questions that we have come up with. If you look at LB553, one issue with the legislation is simply where it's being placed into statute. LB553 would place this in the beginning of the labor statutes into the workers' compensation area, actually where right now it just clearly says the Workers' Compensation Act is from section X to Z. And this, instead, goes into that place. Right now in statute, if you look at Section 48-115, which I also gave you a copy of a certain...and I did not give you the entire thing because it was eight pages long. I'm sorry, I'm trying to find it here in my notes. But if you look at that, the language that is in LB553 comes straight out of 115, out of 48-115. And if you read LB...or if you read 48-115, you will see that the specific language is already in statute for those...that same group of people are already not covered by workers' compensation unless they choose to elect into it. I apologize. Let me find this quickly so I can talk on point. While I'm looking for this, the bottom line of the bill is that it does not change anything regarding how the court determines whether or not someone is an employee. You can sign a piece of paper saying you are a banana; it doesn't make you one. This legislation does not change that. Senator Albrecht, you had a question about the audit issue with insurance companies. What happens is the insurance companies come back in and audit to ensure that what you were claiming as having as employees is truly the case. So if someone got audited and then charged a large sum of money, it was because they were not correctly accounting for who should have been covered under that policy. It's not that the insurance company is trying to come in and put someone out of business. It's because that employee was...the employer was looked at through the audit and then held to have more employees than was originally covered under the policy for that year. Does that...if that makes sense. Senator Kolterman, when he was testifying on the bill, said that he...that we have had years of uncertainty and that audits will still happen. That is very true under this bill. It does not change anything. One other thing that Mr. Bassett said talked about that if injuries would happen if you have someone that has opted out then their health insurance or disability insurance or perhaps liability insurance of someone who sues under tort would be used to pay for those types of injuries. That is true. That is a shift from what is now covered under workers' compensation. That, I guess, is a decision for policymakers, you, the Legislature, to decide if that's the shift you want to make. But that's what the end result would be. Senator Albrecht, in your question about the roof, you're correct. If that would happen then you better have a good umbrella policy to make sure that you can cover that. So those are the questions. I would, when looking at this bill, we aren't trying to stop anything from happening, but I do truly believe that if you look at Section 48-115, which I believe at the top of that it should say (10) and then be highlighted--I may have given your person all of my copies. So...thank you. But you'll have it in red ink. If you'd look at changing this (inaudible) somehow changing this section of law where this issue is actually already dealt with, that would seem to us to make a lot more sense than putting it in a separate section in the statute. So I will leave you with that and be happy to try to answer any questions. [LB553]

SENATOR ALBRECHT: Okay. Senator Crawford. [LB553]



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SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Ms. Gilbertson, for being here. Just specifically to the location of the bill language, can you just clarify why you think it is important that it is located here? [LB553]

KORBY GILBERTSON: Well, I think when you're looking at anytime you draft legislation, or at least when I do for clients, I try to put the change in legislation or change in statute in the appropriate statute or in the statute where that issue is being dealt with already. If you look at Chapter 48, there are a lot of different sections. And this, if you put it where LB553 would purport to put it, it's in a completely separate area than in 115, which as you can see I just gave you one out of nine pages of that section. So we would argue that if you want to try to address something like this, to try to do it in that statute. However, if you look at the existing statute, you can already elect. Those same people already need to elect to bring themselves under workers' compensation. They are already held to be out of it in Nebraska. So the question is, are we actually providing more clarity or are we actually having it now in two different places saying, well, you have to opt out but in another place it says you need to opt in? And they don't eliminate the second. [LB553]

SENATOR ALBRECHT: Interesting. [LB553]

KORBY GILBERTSON: And even if you had one of these opt-outs on file with the Workers' Compensation Court, they will still do their ten-step test to determine whether or not that person is an employee. They will not just look at the sheet and say, they're an independent contractor, it's over. And the insurance companies would have to do the same. [LB553]

SENATOR ALBRECHT: Very good. [LB553]

SENATOR CRAWFORD: So... [LB553]

SENATOR ALBRECHT: Go ahead, Senator Crawford. [LB553]

SENATOR CRAWFORD: So just to clarify,... [LB553]

KORBY GILBERTSON: Uh-huh. [LB553]

SENATOR CRAWFORD: ...you are not expecting a difference in the audit process by providing this ability to sign this...check this box and sign this form. [LB553]

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KORBY GILBERTSON: What I'm saying is that perhaps you could argue that if you had a clear definition. One of the things we had issues with is the words used, and they're in current statute, is the "individual employer" language. That's not defined anywhere in Nebraska statute. But typically an individual employer is just someone who hires people. It's not as if you look at the Iowa statute that clearly shows that it is more so officers of corporations or actual independent contractors covered. So you could have times when those could be referred to and you could see, yes, they are clearly...they've opted out. But in Nebraska they're already technically not covered. Does that makes sense? So... [LB553]

SENATOR CRAWFORD: The independent... [LB553]

KORBY GILBERTSON: Contractors. [LB553]

SENATOR CRAWFORD: ...contractor... [LB553]

KORBY GILBERTSON: Uh-huh. [LB553]

SENATOR CRAWFORD: ...and someone...and who fits these definitions of a limited liability... [LB553]

KORBY GILBERTSON: Right. [LB553]

SENATOR CRAWFORD: ...member. [LB553]

KORBY GILBERTSON: And that's the same language that's in LB553, right. [LB553]

SENATOR CRAWFORD: And so if in an audit, if someone fits that classification of an officer in their own company... [LB553]

KORBY GILBERTSON: Right. [LB553]

SENATOR CRAWFORD: ...or a partner, then an audit would not sweep them in. It's only sweeping in people who don't fit that classification of worker that's exempt in our state? [LB553]

KORBY GILBERTSON: Or...well, what could...what...I think what gets confused here is you have two sets of people. And one thing that we talk about is the example of a roofing contractor who has employees working for them. And that roofing contractor, there's been numerous stories

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over the years in the paper of having them not have workers' compensation insurance for their employees because they consider them independent contractors because they come on/off jobs and don't do anything. But then if they have filed a claim with the court, the court can determine whether or not that person is an employee. What we are saying is, this bill does not change that. So as an officer or director of a corporation or an independent contractor, sole proprietor who under Nebraska statute is already not covered by workers' compensation unless they opt in, this bill would then say perhaps do all of them need to specifically opt out? That is not clear under this bill because we don't eliminate the existing statute which says they are not covered... [LB553]

SENATOR CRAWFORD: Not covered unless they opt in. [LB553]

KORBY GILBERTSON: ...unless they opt in. So it, in our opinion, actually creates more questions than answers regarding who is covered and who is not, and the actual process. If it's intended that everyone should have to opt in or out, then perhaps that's what it should say. [LB553]

SENATOR CRAWFORD: But can I just clarify? [LB553]

KORBY GILBERTSON: Absolutely. [LB553]

SENATOR CRAWFORD: So when there is an audit,... [LB553]

KORBY GILBERTSON: Uh-huh. [LB553]

SENATOR CRAWFORD: ...the fact that the people in those categories, would an insurance company be careful not to sweep them in because, because of their definition as a proprietor or a partner, they would not get swept in, in an audit? Or is it the case they're currently probably getting swept in, in those audits? [LB553]

KORBY GILBERTSON: No, I think...I don't...I think that in those circumstances, when you clearly have someone that fits in those limited areas... [LB553]

SENATOR CRAWFORD: That the law defines. [LB553]

KORBY GILBERTSON: ...the law defines, then perhaps it would make things easier. The problem goes further down when you look at someone who is an independent contractor who

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should have been treated as an employee regardless of whether or not they sign an opt-out.  
[LB553]

SENATOR CRAWFORD: Who does not fit those definitions of a self-proprietor,... [LB553]

KORBY GILBERTSON: Right. [LB553]

SENATOR CRAWFORD: ...partner,... [LB553]

KORBY GILBERTSON: Exactly. So it's someone who holds themselves out as being a sole proprietor, but really, in that...working for that general contractor, they were actually an employee. Does that make sense? [LB553]

SENATOR CRAWFORD: (Inaudible). [LB553]

KORBY GILBERTSON: They signed a form saying I'm an independent contractor but really they're not. They're an employee by virtue of the control that general contractor had over them.  
[LB553]

SENATOR CRAWFORD: Okay. All right. They're still...I (inaudible). [LB553]

KORBY GILBERTSON: Right. [LB553]

SENATOR ALBRECHT: Any questions? Thank you very much. [LB553]

KORBY GILBERTSON: Thank you very much. [LB553]

SENATOR ALBRECHT: Okay. Opponents. [LB553]

TAD FRAIZER: (Exhibit 5) Good afternoon, Senator Albrecht, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm local counsel and registered lobbyist for the American Insurance Association, a national trade association of over 300 property and casualty firms, including a number that write workers' compensation insurance. I will kind of echo the comments that Ms. Gilbertson made. We understand or kind of think we understand the intent of this bill is trying to provide some exemptions, but we don't think it provides the clarity necessary to successfully accomplish that, at least as drafted. First, LB553 basically lifts the language out of the current provision of the worker comp statute, Section 48-115(10), which I've highlighted

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on my handout to you, and basically that's the portion of the worker comp statute that says owners and principals of these smaller entities are automatically outside of workers' compensation coverage unless they opt in. So the starting point is you're out till you're in. What LB553 appears to do is set up a parallel system that is not coordinated with the existing statute that says, although under current statute you're out till you're in, you still have to say you're out. And then when you terminate saying you're out, you're still not in until you elect in under existing 48-115(10). So we think rather than providing clarity there, that muddies the waters. Then I'll...we've been informed more recently that this is not really aimed as much as that is trying to create this separate list of people who claim to be independent contractors who you can rely on as being independent contractors and not purchase worker compensation coverage insurance to cover them. We can kind of see that intent, but again we're concerned that the law is not that clear, that it doesn't make it absolutely clear that if you sign this nonelection of coverage that that prevents you from bringing a worker comp action. It says you're aware of it but there's nothing that really ties you down. And of course the concern in the insurance carrier area is it's always easy to say you're an independent contractor and you don't need worker comp coverage, but when you get injured on the job all of a sudden and you don't have other resources, all of a sudden you start thinking, you know, I'm an employee after all, and you make a claim against the comp carrier and the employer, and then you get into a dispute over whether you were or were not in fact an independent contractor, whether benefits have to be paid. You get into the audit situation that several people have expressed concerns about. So we, one, think it confuses the situation under the current 48-115(10) as far as principals and owners of small businesses; and two, if it's intended to create this list to exclude independent contractors, it doesn't do it clearly enough and with sufficient teeth to make it binding, prevent people coming back against the general contractor/employer and the insurance carrier to make a claim. And for those reasons, we'd oppose LB553, at least as initially drafted. And I would be happy to try to answer any questions the committee might have. [LB553]

SENATOR ALBRECHT: Thank you very much. Questions? Senator Crawford. [LB553]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for being here. Just to clarify, someone has this actual signed form that they say they did not...that they're choosing to be outside of workers' comp. You don't think that would stand up in terms of being able to keep someone from coming against (inaudible)? [LB553]

TAD FRAIZER: Possibly; possibly not. I mean you have to go back to the original or a frequent statement in the interpretation of the comp...Workers' Comp Act is that it is going to be liberally construed to achieve its beneficent purposes. That's kind of old language... [LB553]

SENATOR CRAWFORD: Okay. [LB553]

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TAD FRAIZER: ...going back to the early days of the comp court but basically means if we're going to err, we're going to err on the side of the injured individual as to whether they're an employee or not, an independent contractor or not. And although this form says I understand I'm not covered by comp insurance, it doesn't specifically say in the statute, at least as we read it, that if you sign this form you are absolutely precluded from bringing an action under the Nebraska Workers' Compensation Act. And when you leave those kind of vague areas open, that's where someone will decide, well, you know, I need some sort of benefit. I'm going to claim I'm an employee after all. And that's where you get into litigation and you get less clarity rather than more. So at least as written, we have sufficient problems with the bill to oppose it at this time. [LB553]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony, sir. Do we have any other opponents wishing to speak? Opponents. Seeing none, anyone in a neutral position? Oh, yes. Hi. [LB553]

BRITANY SHOTKOSKI: Good afternoon. Britany Shotkoski, S-h-o-t-k-o-s-k-i, on behalf of the Nebraska Association of Trial Attorneys. We are here in a neutral capacity. I guess we have a number of concerns. Specifically, we don't want the bill to be construed as providing additional opt-out provisions with respect to work comp. As has been noted previously, 48-118 already...or 115, excuse me, 48-115 already provides under our current law an opportunity for executive officers and sole proprietors of a company to elect out of work comp coverage. [LB553]

SENATOR ALBRECHT: Okay. [LB553]

BRITANY SHOTKOSKI: But to do that, what they really have to do is elect into coverage, and to do that they have to send a written notification to the secretary of the company as well as the insurance company. So we've already got a provision in our law that allows a sole proprietor to opt out. The additional provisions here under the proposed bill create some confusion, I guess from my perspective and from our perspective, as we're looking for it in terms of what its intended purposes is. And I'm not sure that it accomplishes its purpose. The other concern we would have looking at it is it doesn't include anything that says, okay, but in the event you didn't file this elective form under the new bill, that you are covered under insurance. It doesn't go that next step. Rather, it leaves an enforcement gap in terms of what is the intent of it. If the intended purpose is to cover the audit situation that we've heard here today, I'm not sure this is the most effective way or even an accurate way of getting there. I'm not sure that it would cover it. I guess, in short, I'm here neutral but I have a lot of concerns that the bill, as proposed, creates a Pandora's box of problems that I'm not sure that it addresses what it's intending to do. [LB553]

SENATOR ALBRECHT: Very good. Thank you. Questions, Senator Halloran? [LB553]

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SENATOR HALLORAN: I'm just trying to determine where your neutral part of this is.  
(Laughter) [LB553]

BRITANY SHOTKOSKI: You know, I will (laugh)...and I need to... [LB553]

SENATOR HALLORAN: I'm not trying to be smart. I'm just... [LB553]

BRITANY SHOTKOSKI: As I sat here initially coming in, as the committee sat down and looked at it, we were very neutral on the bill. As we sat here, I guess from the four corners of what's printed here, we had no idea that it was intended to address the issue of a contractor, independent contractor. And the longer I sat here and the more I listened, my concern became that I'm not so sure that it's not really just trying to either create an additional opt-out or, perhaps even worse, messes with the classification of whether you're an employee. I'm neutral but have some concerns. [LB553]

SENATOR HALLORAN: Subjectively you're neutral, but objectively you have concerns.  
[LB553]

BRITANY SHOTKOSKI: I have some concerns. [LB553]

SENATOR ALBRECHT: But you'd certainly be willing to work with Senator Lowe on trying to find the right answer so we can get it cleaned up so that everybody is...has a better understanding. Would that be fair? [LB553]

BRITANY SHOTKOSKI: We are always open to addressing problems and seeing if we can't reach a resolution. [LB553]

SENATOR ALBRECHT: Thank you very much for being here. [LB553]

BRITANY SHOTKOSKI: Thank you. [LB553]

SENATOR ALBRECHT: Any other one in neutral? Good evening. [LB553]

RICHARD REISER: Good evening, Senator Albrecht, members of the committee, member of the committee. (Laughter) My name is Richard Reiser, it's R-i-c-h-a-r-d R-e-i-s-e-r. I'm a lobbyist for the Nebraska Trucking Association. We're appearing here today, testifying neutral on this bill. I certainly support the concept of trying to find a way, and people have been doing this

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for 50 years, trying to find a way to apply a litmus test to the independent contractor question. It's just not an easy thing to do because generally it's a fact-based question that requires you to look at all of the facts to decide if a person is independent or not. I share the concerns and I'm not going to beat it to death. This bill does not appear to repeal 48-115(10), which in defining what an employer/an employee is says someone who elects...defines these same people, elects to bring themselves under. If they want to do that they need to file with the...in writing with the workers' compensation insurer. So there's a requirement they have to file if they want to be under it. This bill would just do exactly the opposite and say that if you don't want to be under it, you have to file. So if we took a small company of five people, two of the people are principals. They own the company. One of them says I want to be covered. So he doesn't file or need to under this LB553. He's automatically covered. But he must file with the insurance company under 48-115 or he's not covered. So what if he doesn't file under 115? Is he covered? We have one statute saying he is; one saying he isn't and it works the other way. A couple other points that really haven't been touched on that I think would need to be looked at, LB553 also says that the individual who has filed a nonelection may terminate that nonelection by filing with the compensation court saying, I haven't...I don't want to be...I don't want this nonelection anymore. There's no provision for any notice to the employer that's working for them or that's employed this person, has him working for him, no provision for any notice to that company that this person is no longer covered by the nonelection. So now they got this person working for them, and this will get back to your audit situation. It really isn't realistic to expect the employer to check daily or weekly to see if all their employees are still covered or their independent contractors are still covered. On the independent contractor issue, there's a real question I think of whether this will solve that problem because it's not employee or...it's not employer specific. So let's say Joe the painter is an independent contractor and Joe files and says, I'm independent and I don't want to be covered. So he's on file; it's there. Joe a month later, half year later, whatever, goes down to a major painting company and signs on. That company looks over here and says, well, Joe says he's not covered so we're good there. We don't have to add him to our policy. They treat him exactly like every other employee they've got. They tell him when to work, where to work, how to work. They penalize him if he doesn't work, just exactly like they treat their other employees. Now he's badly injured when he falls off the ladder. He's going to say, wait a minute, you treated me just like everybody else; I'm an employee. I want my workers' comp. They're going to go, no, six months ago when you worked for somebody else you signed this form. We're covered. There's a real question of whether a court would enforce that. You know, it's kind of like your mother used to say, it's all fun and games till somebody gets an eye put out. [LB553]

SENATOR ALBRECHT: Uh-huh. [LB553]



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RICHARD REISER: Well, where this is going to come up is when you have a seriously injured employee, who has got no medical benefits, lying there. Then there's going to be, you know, an effort made by that person's lawyer to prove the individual was an employee. [LB553]

SENATOR ALBRECHT: Correct. [LB553]

RICHARD REISER: So we support the concept but we think there are a lot of problems with the drafting. Not sure that it really clarifies that workers' comp or independent contractor issue. And we also wonder, in Section 48-115 there's a provision dealing with insurance coverage which says if you have elected not to be covered, a provision in your other insurance, whether it's healthcare insurance, which would exclude coverage for a workers' compensation related injury, is null and void. There's no such provision in LB553 so I'm not sure what's intended there. Thank you. [LB553]

SENATOR ALBRECHT: Good. Well, thank you for your testimony. Senator Halloran, do you have a question? [LB553]

SENATOR HALLORAN: Kind of reminds me of Abbott and Costello, who's on first, what's on second, that it's kind of (inaudible). Yeah, I think there's...I think, if I'm wrong correct me, but I think there are some people here that will work with Senator Lowe, to your point,... [LB553]

SENATOR ALBRECHT: Uh-huh. [LB553]

SENATOR HALLORAN: ...to help bring some clarification to the wording on this, hopefully. [LB553]

RICHARD REISER: Good. [LB553]

SENATOR ALBRECHT: I appreciate your testimony. Thank you. [LB553]

RICHARD REISER: Thank you. [LB553]

SENATOR ALBRECHT: Do we have anyone else in the neutral position? Yes, one more. Yes, come up. Come up. [LB553]

TAMRA WALZ: (Exhibit 6) Good afternoon or evening, Senator Albrecht and Senator Halloran. Nice to see you. My name is Tamra Walz, T-a-m-r-a W-a-l-z. I'm the Court Administrator for the

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Nebraska Workers' Compensation Court and I'm here testifying in a neutral capacity because we did indicate a fiscal impact for this bill. What I want to do first, though, is correct the record or perhaps explain things a little bit that have been brought forward. First of all, Senator Halloran had a question about fiscal impact and whether Iowa had noted a fiscal impact. Iowa did in fact note a fiscal impact. They said it would require an additional staff person at a higher level to be able to assemble the data, analyze it, things of that nature. Iowa also noted a fiscal impact for IT infrastructure to develop a database to house the information of \$80,000. So I wanted to alert you to that first, just to kind of clarify that point. The second thing I wanted to clarify is when the court looks at whether a person is an independent contractor or an employee, there's a ten-part test that's employed that's based in case law. Some of the things have already been mentioned: control, tools, hours of work, things like that. I won't bore you with all of them. But basically, when we looked at this bill, filing the nonelection would be a piece of evidence that the court would consider when it looks at is the person an independent contractor, is the person an employee, but it would not be dispositive. The court would still employ the ten-part test. So this would be something that the court would look at as possible evidence of being an independent contractor but it would not resolve the issue. The court would still have to go through its ten-part test. That's just the way it works. So I just wanted to say those few things at first. The bill as it's currently drafted requires that I develop the forms, the nonelection form and the termination of nonelection, and that's not a problem. That's not an overly burdensome thing. We can do that. That's not an issue at all. The question we have is that the bill requires that this nonelection be filed in a, quote, written form. So if we take that literally, the way the court perceives it, that means that these are going to be documents and, in fact, that's what happened in Iowa is they got a bunch of paper documents that were filed that are now in file folders (laugh) waiting to be processed, at least that's what my counterpart in Iowa has shared with me. So even if we were to say that electronic filings were permitted, which would be much easier if people could just go on line, make their election on line, do an electronic signature like you do with many other things. That would be great. But we're not sure that we read the statute like that at this point. The good news is that our IT manager has said that we don't foresee any fiscal impact in terms of the IT portion that Iowa saw. We would have no fiscal impact in terms of developing that database to house all of that data. The real issue that we have is that there's no way to accurately quantify how many forms we're going to be receiving. For example, we contacted the Secretary of State's Office on...and we were only able to get information on one of these subsets of classes of entities and people that are mentioned in this bill, and that was LLCs, limited liability corporations. So at this time they have over 70,000, actually just over 72,000 of LLCs registered with the Secretary of State. So let's say that maybe half of those may have a person that files a nonelection form. That would be 36,000 forms. So if you look at that, that's a lot of forms to be entered in the computer, to put in this database to have available for the public, and someone needs to process these forms, enter the data, even if it were only a few fields. We're not talking about a huge, expansive form. It's 25 fields to enter. But nevertheless, we would need to have somebody enter the data. Even if it were electronic, there are still folks that don't use electronic means to submit

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data, so we'd still have to have paper forms available for folks that choose not (sic) to file paper forms. So let's say that we have, just for this one group, 36,000 filings in a given year. Let's say that someone files a nonelection, then they decide to terminate the election, and then they decide to file another nonelection. I mean, it's possible. I mean that's a scenario that we looked at. So in a given year we're not sure how many that would be. There's just no way that we can really quantify that number in terms of how much work it would create for us. This also doesn't account for the out-of-state businesses that are required to hold workers' compensation coverage here in Nebraska because they do business here. And again, we have no way to really quantify what that might mean. So even though our IT department has said, we don't see a fiscal impact, we did note a fiscal impact on the bill in terms of our operations to administer the bill because we don't have a staff person who has the time, we don't have an extra person to do this entry, to maintain this database, to be able to produce this documentation should someone from the public want to review it or receive it. Because of that, we did put in our fiscal note the addition of just one staff assistant position. Like I said, Iowa had listed a higher level person. I believe it was some sort of analyst. Ours is a staff assistant position because it's basically a data entry and database maintenance kind of situation, and they could be trained to pull the data out and to run the necessary reports very easily. So based on Iowa's experience and even though their system doesn't function the same way as ours, we did indicate the fiscal note just to show you that at this point we don't have the staff to deal with it and we just wanted to be fair about what we think the impact is on us to administer it. We don't have a position policywise. That's for you to decide. But just in terms of how our court operates, we thought it was important to explain to you how we had a fiscal note. So we think that's a fair assessment of what the bill would cost us to administer and to implement. And with that, I'd be happy to answer questions from either of you. Thank you. [LB553]

SENATOR ALBRECHT: I'm good. Are you okay? Thank you for your testimony. [LB553]

SENATOR HALLORAN: Thank you, Ms. Walz. [LB553]

TAMRA WALZ: Thank you. [LB553]

SENATOR ALBRECHT: Anyone else in the neutral capacity? Oh, yes. [LB553]

BUB WINDLE: (Exhibit 7) Senator Albrecht, Senator Halloran, my name is Bub Windle, B-u-b W-i-n-d-l-e. I'm here on behalf of the Nebraska State Bar Association. We have no position regarding the policy decision of creating or not creating this reporting requirement, but I'm circulating an amendment which attempts to kind of address the concern that we had and that a number of people have raised, which is that with this bill there's kind of no default rule under the law. Under current law, if you want coverage you have to opt in. Under the bill, if you do not opt

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in you must expressly the opt out. And so this kind of leaves a gap. What if somebody has not opted in and they have not opted out? They're kind of in a no man's land under the current law. And there is some concern that with LB553 a lack of action could actually be interpreted or construed to be an opt into coverage. This gets somewhat into the point that Mr. Fraizer raised about kind of interpreting the law liberally to effect its purpose and coverage and also just potentially the ambiguity in a lack of action. So the amendment just seeks to kind of set out a default rule or at least to clarify that if you have not opt...that the only way to opt in, essentially, is under Section 48-115(10) and you have to use that mechanism to opt in. A lack of action is not an opt into coverage. Therefore, if you choose to advance or entertain the bill, we'd simply request that you consider this amendment or some other default rule. [LB553]

SENATOR ALBRECHT: (Exhibits 8, 9, 10, 11, and 12) Very good. Thank you. Any questions, Senator Halloran? Thank you for being here. Any other neutral testifiers? Anybody else? Seeing none, let me read some letters in before...okay. We have LB553 proponents: Aaron Boyd, executive vice president of Midwest Family Mutual Insurance Company; Kathy Magnuson; Doug Steffensmeier, past-president of the Independent Insurance Agents of Nebraska; Aaron Kobza, Columbia Insurance Group, Omaha branch underwriting manager. And in the neutral position we have Nathan Leach. And you're open to close, Senator Lowe. [LB553]

SENATOR LOWE: I'm open to close, all right. [LB553]

SENATOR ALBRECHT: You're open to close. [LB553]

SENATOR LOWE: It's nice to see the sun has finally met Steve Halloran. LB553 is attempting to address a gray area in Nebraska law. Right now there are situations that arise in which an individual independent contractor does not have their own workers' compensation but they are also not automatically brought under the workers' compensation coverage of the general contractor. The question is then, who is responsible for coverage? Currently, that decision is left up to the Workers' Compensation Court after the fact. LB553 attempts to address that gray area by making it clear to all interested parties what the expectations of coverage are before any work is started. LB553 allows general contractors to be able to check to see if the independent contractor they're hiring does or does not have workers' compensation. The independent contractor will know what coverage expectations are. The insurance carriers will be aware of what responsibilities they have and who they are expected to cover. And lastly, the courts will have to spend less time figuring out what should be a rather clear picture. I believe LB553 is a good step forward for all the individuals and companies, and I ask for your support on this bill. Now we've heard many different suggestions and many different concerns. I am open to listen to these concerns before we go to Exec on this. I believe what we want is clarity on who has insurance and who doesn't have insurance and who is going to pay. The form that was passed out

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in the beginning is a very simple form. It is not something that is very complicated and pretty much anybody can fill out. It is not complicated, so I believe that would be a good form that we could follow. And you know, when we talk about independent contractors, we're talking about everybody from doctors to drywallers, and I'm only using those two because they start with D. It can go on indefinitely for all different types of independent contractors because there is work to be done by everybody. And what we want is coverage and we want to know who is covering who. That is what LB553 is attempting to do. [LB553]

SENATOR ALBRECHT: Finished? Thank you. Questions? [LB553]

SENATOR HALLORAN: No questions. [LB553]

SENATOR ALBRECHT: I guess I'd just like to ask you how you feel about the 48-115, rolling what you have into that if it should be in that particular area of the statute? [LB553]

SENATOR LOWE: I think we're going to take a look at it to see what we can do to accomplish what needs to be done. [LB553]

SENATOR ALBRECHT: Uh-huh. Very good. Well, that ends the testimony and we'll be moving on to LB507. [LB553 LB507]

SENATOR HALLORAN: Welcome, Senator Albrecht. [LB507]

SENATOR ALBRECHT: Thank you, Chairman Halloran. Okay. Good evening, colleagues one and two. My name is Senator Joni Albrecht, J-o-n-i A-l-b-r-e-c-h-t. LB507 will eliminate the Farm Labor Contractors Act. The original purpose of the act was to regulate the activities of seasonal and migrant labor here in Nebraska. In the 1980s, problems had developed where farm contractors would advertise in places like California and Texas for seasonal farm labor. Sometimes the response to these advertisements would draw dozens of migrant laborers, often immigrants from Mexico, to small towns in western and central Nebraska that were not prepared for such an influx. There was also a problem of contractors treating laborers unethically, such as promising jobs that did not exist, not paying laborers the agreed-upon amount, or mistreating them in some way. The bill required that any promises made to farm laborers be put in writing and created a license for contractors. Over the years, various tweaks have been made to the law. In 2000, an interim study resolution was introduced which asked Business and Labor Committee to examine and study the Farm Labor Contractors Act. In the process of this study and meetings with the Department of Labor it was determined that the fee and the bond associated with the act should be eliminated. A bill, LB415, was introduced to do just that, but failed to move forward.

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In 2002, LB931 added an exclusion for summer detasseling operations, referenced in the bill as any work force of at least 80 percent children who were 17 years old or younger. Another change in 2015 combined the cash fund for the act with a couple of other Department of Labor cash funds, because the amounts were so minimal. I want to make sure that the rights of the migrant workers in Nebraska are protected and that there are multiple resources which do just that, such as Nebraska's Wage and Payment Collection Act and the federal Migrant and Seasonal Agricultural Worker Protection Act. But with only seven contractors actually applying and getting the license here in Nebraska, this act does not seem to be an effective protection, only another governmental requirement. Also, you will see in your committee binders an amendment submitted at the request of the Department of Labor that will allow for the refund to applicants who applied after January 1 of this year. There are some testifiers behind me who will be able to speak more on the issue, but I will be willing to take any questions that you may have. [LB507]

SENATOR HALLORAN: Thank you, Senator Albrecht. Any questions? I have none. [LB507]

SENATOR ALBRECHT: Well, thank you. I'll just sit aside and I'll be right back. [LB507]

SENATOR HALLORAN: Okay. Proponents. [LB507]

JOHN ALBIN: (Exhibit 1) Senator Halloran, members of the Business and Labor Committee, for the record my name is John Albin, J-o-h-n A-l-b-i-n, and I am the Commissioner of Labor. I am appearing here today in support of LB507. LB507 eliminates the Farm Labor Contractors Act. When originally passed, the Farm Labor Contractors Act was intended to protect migrant seasonal farmworkers that move from state to state harvesting crops. In Nebraska, this work traditionally included the dry bean and sugar beet harvests in western Nebraska. As the dry bean and sugar beet farming operations have become more mechanized over the years, Nebraska has experienced a significant decline in the amount of migrant labor. Farmers hiring workers directly for work in their own farming operation are not subject to the Farm Labor Contractor Act and many farmers choose to hire workers directly rather than utilize a farm labor contractor middleman. In calendar year 2016, there were seven applications for a farm labor contractor license. All seven license applications were approved. An additional 29 applicants applied for and received certificates of exemption from the act's coverage as 80 percent of their work force was under the age of 18, i.e., detasseling crews. Of the seven licensed farm labor contractors, only two listed farm labor work performed outside of the state of Nebraska in the last three years. Each of the seven approved farm labor contractors were required to pay a \$750 licensing fee. The department currently has a pending regulation that would reduce this fee to \$250. That concludes my testimony. I'd be happy to try and answer any questions that you might have. [LB507]

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SENATOR HALLORAN: Thank you, Commissioner. Are there any questions? No? Okay, I have none either. Being late is a good thing. Welcome. [LB507]

NICOLE FOX: (Exhibit 2) Good afternoon, Senator Halloran and Senator Lowe. My name is Nicole Fox, N-i-c-h-o-l-e F-o-x, and I am director of government relations for the Platte Institute. I'd like to say thank you to Senator Albrecht for introducing LB507. I am here today to testify in support of this bill. A Farm Labor Contractor is someone who recruits, solicits, hires, employs, furnishes or transports migrant and/or seasonal agricultural workers or provides housing to migrant agricultural workers. Agricultural employers, agricultural associations and their employees are not included in the term. Requirements for farm labor contractors are more burdensome in Nebraska than in other states. Currently, Nebraska law requires persons hiring seasonal and migrant workers to apply for a farm labor contractors license. Nebraska is just one of nine states that require licensure at the state level. None of Nebraska's neighboring states require this type of license. The Migrant and Seasonal Agricultural Worker Protection Act protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. MSPA also requires farm labor contractors to register with the U.S. Department of Labor. Before performing any farm labor contracting activity, a farm labor contractor must register with the U.S. Department of Labor and obtain a certificate of registration. Persons employed by farm labor contractors to perform farm labor contracting activities must also register with the U.S. Department of Labor. According to the Institute for Justice, registration is a less burdensome regulatory alternative, and in this case, the federal government is already using it. Farm labor contractors and farm labor contractor employees who perform farm labor contractor activities must carry proof of registration and show it to workers, agricultural employers, agricultural associations, and any other person with whom they deal as contractors. Reform of occupational licensing laws to lessen burdensome regulation is an economic issue that needs to be addressed. Nearly 200 different occupations in Nebraska require a government license, affecting nearly one in four workers. This is negatively impacting small businesses trying to hire employees, potential entrepreneurs wanting to start a business, and individuals seeking a means to earn an honest living. Occupational licensing laws were initially created as a means of protecting the public from negligent and unqualified practitioners, but more and more, instead of protecting the public from harm, we now understand that the patchwork of state-by-state occupational licensing rules leads to dramatically different requirements for the same occupations depending on the state in which one works. Licensing also poses a financial barrier to small businesses and often the cost is passed on to consumers by raising the price of goods and services. In Nebraska, a farm labor contractor must pay an annual fee of \$750; essentially, a tax to work. A study by the Heritage Foundation showed that occupational licensing reform could save Nebraska households over \$900 annually. In July of 2015, the White House put out a set of best practices for state policymakers to enact reforms to reduce the prevalence of unnecessary occupational licenses that are hurting workers. LB507 eliminates the Farm Labor Contractor Act and saves Nebraska farm labor contractors the red

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tape of excessive paperwork and fees associated with applying for an occupational license that is unnecessary as current federal standards require federal registry. In the state of Nebraska, migrant workers have access to advocacy assistance through the Nebraska Department of Labor as well as through Legal Aid of Nebraska's migrant project. The Platte Institute strongly supports occupational licensing reform as a means of lessening burdens to work. I ask that you advance LB507 out of committee and I thank you for the opportunity to testify today. I am happy to answer any questions that the committee may have. [LB507]

SENATOR HALLORAN: Thank you, Director Fox, for your testimony. Any questions? [LB507]

NICOLE FOX: All right. Thank you. [LB507]

SENATOR HALLORAN: (Exhibits 3, 4) No more proponents? Any opponents? Any really, really neutral? Senator Albrecht. You waive? Okay, Senator Albrecht waives. We have a proponent, Tom Newell, Senior Fellow, Foundation for Government Accountability. And Nathan Leach, self, there neutral...he is. Okay. That concludes the hearing for today. Thank you everyone. [LB507]