M. HANSEN: Good afternoon and welcome to the Business and Labor Committee. My name is Senator Matt Hansen and I represent the 26th Legislative District in northeast Lincoln and I serve as the Chair of this committee. We're going to start off today by having the member of our committee and committee staff do committee introductions, starting with-- we'll start with our legal counsel.

TOM GREEN: Tom Green, legal counsel for the committee.

HALLORAN: Steve Halloran, state senator and second legal counsel for the committee.

[LAUGHTER]

HALLORAN: District 33, which is Adams County and parts of Hall County.

KEENAN ROBERSON: Keenan Roberson, committee clerk.

M. HANSEN: Thank you. And we may have other senators join us. I know Senator Chambers is the only committee member who has let me know that they cannot attend. Also assisting today are two committee pages, Kaitlin and Hallett, over on our left. This afternoon, we'll be hearing six bills and be taking them up in the order listed outside the room. On each of the tables in the back of the room, you'll find pink testifier sheets. If you're planning to testify today, please fill one out and hand it to Keenan when you come up. This will help us keep an accurate record of the hearing. Please note that if you do want to have your position listed on a committee statement for a particular bill, you must testify in that position during that bill's hearing. If you do not wish to testify, but would like to record your position on a bill, please fill out the sheet in the back of the room. I would also like to note that the Legislature's policy-- that all letters for the record must be received by the committee by 5:00 p.m. the business day prior to the hearing. Any handouts submitted by testifiers will be included as part of the record as exhibits. We would ask that if you do have any handouts, that you please bring nine copies and give them to the page. If you need additional copies, the page can help you make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill followed by those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given an opportunity to make closing statements if they wish to do so. We would ask that you begin your testimony by

giving us your first and last name. And please, also, spell them for our record. That's for our transcriber purposes. We will be using our five-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we'll ask you to wrap up your thoughts. I would like to remind everyone, including senators, to please silence your cell phones. Also, to ensure an accurate transcription, we cannot have any outburst or noise from the audience. That's out of courtesy to the senators asking questions as well as to our transcriber preparing the record. With that, I will note we did have two committee members join us since we first did introductions. So Senator Crawford, Senator Slama, if you'd like to introduce yourselves?

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

SLAMA: Julie Slama, District 1: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

M. HANSEN: All right. And with that, we've got a quorum just in time. Our first bill for today is LB927, which was a committee bill being the state claims bill so we will invite our legal counsel, Tom Green, to open.

TOM GREEN: Unless the other legal counsel, Senator Halloran, wants to do if for me--

[LAUGHTER]

TOM GREEN: Chair Hansen, members of the Business and Labor Committee, my name is Tom Green, T-o-m G-r-e-e-n, and I'm the legal counsel to this committee. I'm here to induce LB927, which provides for payments of claims against the state. You should have in your materials a spreadsheet that provides details of each of the claims. In this bill, there is one tort claim, two workers' compensation claims, and various agency write-offs. There is also an amendment, AM2507, that includes some claims that were settled by the Attorney General's Office after the drafting of the bill. Included in the amendment is a self-insured claim and two settled tort claims. Also, we are pleased to report the Nebraska Workers' Compensation Court has collected 25 percent of its outstanding debt, reducing their write-off from $4 to $3. So maybe we can, maybe we can pass the hat and clear it up before the end of the hearing. Following me will be Allen Simpson, the Risk Manager for the

state, who will provide additional details on the claims and the process. Also, testifying today will be a representative from the Attorney General's office and individuals from state agencies on the write-off requests. Procedurally, the state claims will be advanced and debated as part of the budget process. I'd be happy to answer any questions you may have.

M. HANSEN: Thank you, Tom. Any questions from committee members? Seeing none, all right, thank you. And with that, we will invite up our Risk Manager. Welcome.

ALLEN SIMPSON: Senator Hansen, members of the Business and Labor Committee, good afternoon. My name is Allen Simpson, A-l-l-e-n S-i-m-p-s-o-n, and I am the Risk Manager for the state of Nebraska. LB927 provides for the payment of claims against the state. I am here to discuss those claims within the bill and to provide an overview of the claims process. Tort miscellaneous indemnification and contract claims are filed with the Office of Risk Management. Claims in the amount up to $5,000 can be approved by the Risk Manager. Any claim $5,000 to $50,000 must be approved by the State Claims Board. Claims totaling more than $50,000 must be approved by the Legislature and thus, are added to the claims bill. Agency write-offs for uncollectible debts and the payment of workers' compensation settlements and judgments greater than $100,000 must be approved by the Legislature and are also included in this bill. That's a quick summary of how the claims make it to the claims bill. We will now go through the process and provide a brief description of the tort claims, workers' compensation claims, state self-insurance liability, and miscellaneous claims listed within the bill, which have been settled by the Attorney General's Office. I will discuss the workers' compensation claim for Randy Bradley. Randy Bradley filed a suit when he was injured in the course of employment when he was punched in the head by an inmate. The negotiated settlement included a payment of $116,898.88 to American General Annuity Services for the benefit of Randy Bradley, to the purchase and annuity for Randy Bradley. The second portion of the negotiated settlement is payable to Randy Bradley and David Handley, attorney, in the amount of $140,834.84. Senators, do you have any questions on that workers' compensation claim? If not, Ryan Post, Assistant Attorney General, will present claims 2017-16279, 2017-16406, 2016-16049, and discuss settlement case 8:16CV546. After Ryan Post's testimony, the following individuals will discuss their specific agency write-offs: John Albin, Nebraska Department of Labor; Teresa Zulauf, Nebraska Public Retirement System;

David McManaman, Nebraska Department of Health and Human Services; Dale Shotkoski, Nebraska Department of Veterans' Affairs; Lyn Heaton, Nebraska Department of Transportation; Carol Averson, Nebraska State Patrol; Chris Peters, Nebraska Game and Parks Commission; Regina Shields, Nebraska State Fire Marshal; Kenneth Lackey, Nebraska Department of Motor Vehicles; and Jill Schroeder, Nebraska Workers' Compensation Court. Senators, do you have any questions for me?

M. HANSEN: Thank you, Mr. Simpson. It seems Senator Lathrop does.

ALLEN SIMPSON: Yes, sir.

LATHROP: Can I ask you a question about this Randy Bradley?

ALLEN SIMPSON: Yes, sir.

LATHROP: Apparently, he was a corrections officer?

ALLEN SIMPSON: He was, yes, sir.

LATHROP: OK. And do you know when this took place, this assault on this poor guy?

ALLEN SIMPSON: That sir, was in 2016. I have it right here. Those incidents occurred on March 29, 2016, and December 9, 2016.

LATHROP: There were two?

ALLEN SIMPSON: There were two.

LATHROP: And what-- I got the March 29. When was the second one?

ALLEN SIMPSON: It was December 9, 2016.

LATHROP: So apparently he got assaulted and that was a-- in the order of a fistfight, not hit with a device or any kind of an object?

ALLEN SIMPSON: I believe he was. Sir, I can check into that, but I believe he was punched.

LATHROP: They, they both say-- almost identical and I didn't know if it was two separate occurrences or one. You're giving me two dates so there were two assaults on the same individual that led to two separate work comps?

ALLEN SIMPSON: Sir, I will have to get back to you on that.

LATHROP: OK because the fact that they have an annuity makes me wonder if they didn't set up a, a monthly payment in lieu of work comp by buying an annuity for the guy.

ALLEN SIMPSON: He will no longer get workers' compensation. That is in the settlement.

LATHROP: Yeah, OK. Do you know what facility he was in when these assaults took place?

ALLEN SIMPSON: I do not, sir, but I--

LATHROP: Were they at the Pen or Tecumseh or, or do you have any idea?

ALLEN SIMPSON: I do not, sir. But I will get you that.

LATHROP: Is somebody else here that, that's going to have an answer to that on the mike? Are you going to have to get back to me?

ALLEN SIMPSON: I'm going to have to get back to you.

LATHROP: I don't mean to put you on the spot.

ALLEN SIMPSON: No, that's--

LATHROP: But I am-- my interest was piqued when we're paying now $256,000, $257,000 to somebody for an assault on security staff at the Department of Corrections. I think that's all you have for me today, right?

ALLEN SIMPSON: That is, sir.

LATHROP: OK, thanks.

ALLEN SIMPSON: Yes.

M. HANSEN: All right. Thank you, Senator Lathrop. Any other questions from committee members? Seeing none, thank you very much. I guess with that, I'll note that Senator Lathrop has joined us. Hi, welcome.

RYAN POST: Thank you. Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Ryan Post, R-y-a-n P-o-s-t. I am an assistant Attorney General with the Nebraska Attorney General's Office. I'm going to address four more claims that you have

in front of you today. I'm going to go in the order I have them. I don't know what order they are in the bill. The first is a claim by Ruth Cecetka. It's coming out of the Lincoln Regional Center. This was a combination tort and civil rights and American Disability Act lawsuit alleging that she was denied necessary medical care and other ADA accessibility during her treatment and while she was committed at Lincoln Regional Center. The Attorney General's Office settled the case in the amount of $385,000; $50,000 was already paid by Risk Management. The next claim is the claim involving Riley Shadle. Riley Nicole Shadle filed a lawsuit against the state of Nebraska and the Nebraska Department of Correctional Services. She filed the suit asserting she suffers from gender dysphoria and that the defendants and their predecessors in office failed to adequately treat her gender dysphoria. A new treatment plan has been agreed to. The parties are, are moving forward and this amount is actually just to pay the attorney fees for Riley Shadle. The next two claims both involve motor vehicle accidents. The first one was out of York County. This is claim number 2016-16049. Again, this claim arose out of a motor vehicle accident June 1, 2016. There was a vehicle operated by an Erica Fortier, I believe, and one by a state of Nebraska employee. Basically, the state of Nebraska employee struck the passenger side of the vehicle. The plaintiff alleged neck pain, headaches, etcetera. That claim was settled for $112,000. And the last claim is 2017-16406. The claimant was Kevin Nibble. This is another motor vehicle accident. Nibble alleges he was rear-ended and suffered a back injury and lumbar-- had surgery and a lumbar fusion. The court found that it was-- the state needed to pay for the surgery as well as for lost wages and a future impairment. And so that's why that settlement is $320,899.80. I'm happy to answer any questions you may have.

M. HANSEN: Thank you, Mr. Post. Senator Lathrop.

LATHROP: I have two and I'd like to go to the first one involving the individual at the Regional Center. I think you've described her name as Ruth Cecetka.

RYAN POST: Correct.

LATHROP: And this lady apparently asked for but was denied necessary medical care?

RYAN POST: Yeah, there was, there was a lot of claims. So there was, there was a state case, a federal case. There was ADA claims. What it comes out of is while she was at the Regional Center, she developed

breast cancer and she was alleging claims related to both the identification, treatment, follow-up, as well as ADA accessibility.

LATHROP: I think I met with this lady when I was at the Regional Center. Is she still there, if you can say? Or maybe we shouldn't have that conversation. Let me, let me ask you this.

RYAN POST: I don't know.

LATHROP: She alleged that she made a timely complaint and that no one got her to proper care and that her breast cancer advanced and she is terminal.

RYAN POST: That was the allegation. There was, there is obviously some dispute, but that's a correct characterization.

LATHROP: But we're paying her $385,000.

RYAN POST: Yes. How timely, I think would be the question.

LATHROP: I do have a question about the claim of Erica Fortier. I'm not sure exactly how to pronounce that. It does say the agency is the Supreme Court. Is this the Supreme Court employee that was responsible for this accident, do you know?

RYAN POST: I believe so, if that's what the notes say.

LATHROP: Well, I'm just looking at this claims bill and it says the agency is the Supreme Court.

RYAN POST: I only have what you have on that part.

LATHROP: OK.

RYAN POST: So I can get you more information, if you wish.

LATHROP: I appreciate that.

RYAN POST: So-- sure.

LATHROP: OK, thank you. That's all I have, Mr. Chairman.

M. HANSEN: Thank you. Any other questions from committee members? Seeing none, thank you, Mr. Post.

RYAN POST: Thank you.

M. HANSEN: I'll note that the other Senator Hansen has been able to join us, for the records.

B. HANSEN: Do you want me to say something?

M. HANSEN: No, you're fine.

B. HANSEN: OK.

M. HANSEN: I was just saying you had joined us.

B. HANSEN: Yes, thank you.

M. HANSEN: Welcome back, Commissioner.

JOHN ALBIN: Good afternoon, Chairman Hansen and 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'm the Commissioner of Labor. I'm appearing here today in support of the write-offs of uncollectible unemployment taxes, payments in lieu of contributions, penalties, and accrued interest in LB927 requested by the Department of Labor. Last year, NDOL wrote-off unemployment insurance benefit overpayments for the first time in LB464 and then in October 2019, launched a new unemployment benefit system. NDOL is now in a similar position with its unemployment tax division. NDOL is again in the midst of implementing a new system, this time unemployment tax. A part of the implementation process is cleaning up the database transferred from the old system to the new system. As was the case for unemployment benefits, there is no statute of limitations on the collection of unemployment taxes. And NDOL has never written-off an unemployment insurance tax debt. Businesses have ceased operation, employers have passed away or declared bankruptcy, but all debts remain outstanding in our UI tax system. The debt that NDOL is proposing to write-off is currently in a "doubtful account." This account was part of a Nebraska Auditor of Public Accounts finding in 2012. Since the audit finding, NDOL has made acceptable changes to make the process more transparent, but it recognizes carrying its uncollectible debt on the books is not sound accounting practices. NDOL has been collecting unemployment taxes since the unemployment program was enacted in 1937. NDOL is asking this committee to write-off that portion of the unemployment debt which is uncollectible so that NDOL does not carry forward uncollectible debt to its new unemployment tax system. Going forward,

NDOL plans to propose debts for write-off on an annual basis. At least three of the uncollectible debts are from businesses that were in operation in 1937. Department of Labor is seeking to write-off $11,489,275.48 in unemployment insurance taxes and payments in lieu of contributions and $51,897,369.20 in penalties and accrued interest. Unemployment tax debts accrue at 18 percent interest. This number consists of 9,788 separate employer accounts over the past 82 years. The debt sought to be written-off include debts discharged in bankruptcy and businesses no longer in operation. No debt owed by an active business is proposed for write-off. NDOL makes a considerable effort to collect on payments owed. NDOL has collected over $1.3 billion in unemployment taxes in the last 10 years alone. Further, NDOL actively pursues delinquent tax payments. In 2018, NDOL collected $6,820,906.86 in delinquent tax payments. A little bit about NDOL's collection process; when a business fails to pay unemployment taxes, NDOL makes several attempts to collect on the overpayment. NDOL has statutory authority to collect through civil action set off against any state income tax refund and set off against federal income tax refunds. Further, NDOL may place a state tax lien on the business and if personal liability is established, may pursue personal liability of an individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership. All of the debts proposed have been the subject of multiple collection efforts. NDOL is seeking to write off all debts over five years old that have not had a repayment of any kind in the last three years, debts that have been written off through unemployment or through bankruptcy, and debts of businesses that have closed. So that concludes my testimony and I'd be happy to try and answer any questions you might have.

M. HANSEN: Thank you, Commissioner Albin. Questions from committee members? Senator Lathrop.

LATHROP: That's a big number, John.

JOHN ALBIN: Yes, it is. It's 82 years in accumulation.

LATHROP: Yeah. How much of that is in the last 10 years? I get, I get that, 80-- you know, there's a lot of years there, but are, are most of these in the last 20 years?

JOHN ALBIN: I would have to get you a specific breakdown on the figures; most of it is older and most of it is stuff that has closed down. I don't think it's all in-- mostly in the last ten years. I'm-- they can't-- the system has gone through an accounting system change,

like, two or-- at least two, if not three different times and the figures get kind of fuzzy as they get older.

LATHROP: Did we authorize you at one point or another to send these to collection and have a collection agency or a collection attorney sue people over these?

JOHN ALBIN: No, there isn't-- I don't believe that legislation has ever even been proposed, if I recall.

LATHROP: OK. So do you do anything besides write them letters and get angry with them?

JOHN ALBIN: Oh, yeah, yeah, yeah. First of all, if you look at the Secretary of State's files, you will find an incredible number of tax liens that are placed upon employers and businesses. We also pursue offsets against state income taxes, federal income taxes, and we pursue actively in bankruptcy on collections.

LATHROP: Let me, let me offer a hypothetical. Let's say that I have a, a business and I sell shoes and I don't pay my unemployment compensation withholding and I go under. I close my door and I go across town and open a shoe store with a different name and I'm selling a different brand of shoes, but I'm still in the shoe business or I'm still a guy selling shoes that owes you money from the last business I ran. Do you, do you track him down or--

JOHN ALBIN: I think--

LATHROP: --can I just close my business and open it up tomorrow under a different name and avoid having to pay you what I owe you in unemployment compensation?

JOHN ALBIN: Well, I think you may have been Chair of the committee when we introduced two different sets of legislation to address that issue; one on the anti-SUTA dumping provisions that the-- ownership of the two corporations is common. There's a possibility that you can transfer the-- that the department can enforce the liabilities of the predecessor over the successor. And also, there is the provision that we added-- and I'm pretty sure this one was definitely during your term-- and that is if a corporate officer is in a position to pay the tax and chooses not to pay the department, then the corporate officer can be held personally liable for that debt. And we do pursue on those debts.

LATHROP: I just wonder if we had some form of publication before we got to this point where we said the following people-- and we list these guys owe us money for unemployment compensation. At least the public would have a chance to go, there's Lathrop again--

JOHN ALBIN: Yeah.

LATHROP: --opening up a shoe store in Kearney this time and he still owes them on, on his unemployment from when he operated in Omaha.

JOHN ALBIN: We do have a listing of our employers-- as they call it, the "wall of shame," along with Department of Revenue, where we publish employers with larger tax liabilities and that is on-- it's on their Internet website. And I think it's-- yeah, it's on their site, but it's both offices' debts.

LATHROP: OK. And I--

JOHN ALBIN: And just to put some perspective on the numbers, I know it's huge. But first of all, it's the same thing you try and teach your kids about credit cards. Interest really adds up because if you look at that whole $63 million, $11 million of it is debt or is actual taxes and the rest of it is interest that's been owed or accrued over that time. And like that list of 96 debts, I mean, that's 24 years with 18 percent interest. It rolls up pretty doggone significantly during that time period. And secondly, if you look at it-- you know, I think in the last-- since 2005, we collected about $1.9 billion, I'm told-- I just got that number a little bit before the hearing. And if you look at this $11 million that we're-- in taxes that we're actually writing off, that's, like, one-half of one percent or thereabouts. So it-- and that's-- and a lot of this debt goes back beyond that. So I know the number is big, but we do--

LATHROP: It's huge--

JOHN ALBIN: --actively collect.

LATHROP: Huge--

JOHN ALBIN: It is big.

LATHROP: --to quote the President. That's all I have, Mr. Chairman.

M. HANSEN: Thank you, Senator Lathrop. Any other questions from committee? Seeing some along that line, there was a way to get a

breakdown and, kind of, some of the length or the history of how long some of these debts-- maybe by decade or something, the best estimates would be, I think, helpful.

JOHN ALBIN: All right. I can get you that.

M. HANSEN: Perfect. All right.

JOHN ALBIN: Although I wouldn't want-- one caveat, like it-- there was an accounting change in 1996 that I still don't understand. And so I think there's a lot of stuff that got lumped together that shouldn't have been. But I can't go back and undo that one, but-- so we will get that for you, though, and get it into some decades.

M. HANSEN: All right, perfect. All right, seeing no others, thank you very much. All right, we'll invite up our next agency.

TERESA ZULAUF: Good afternoon, Chairperson Hansen and members of the Business and Labor Committee. My name is Teresa Zulauf, T-e-r-e-s-a Z-u-l-a-u-f. I am the controller of the Nebraska Public Employees Retirement Systems Agency 85. And I'm here to ask you for an agency write-off of $8,045.21; nothing like his $63 million.

[LAUGHTER]

TERESA ZULAUF: The need for these write-offs stem from retirement benefits that were paid out to five deceased members in subsequent months after the member passed away. The agency had not received timely notification of death so the payments continued. The member's retirement benefits ceased following or ceased the month the member passes away and these payments were made in the following months after the member had passed away and therefore, not due to the member. Our agency's staff and legal counsel have made multiple attempts to correspond with the beneficiaries and collect the money without any success. Copies of the documentation of the attempts to collect the overpayments have been submitted with the request for write-off forms. We feel that all our options have been exhausted to collect and believe the overpayments to be uncollectible. I respectfully ask your permission to write off these debts and I'd be happy to answer any questions that you have.

M. HANSEN: Thank you. Are there questions from the committee?

TERESA ZULAUF: Thank you.

M. HANSEN: Seeing none, thank you.

DAVID McMANAMAN: Good morning, Chairperson Hansen and members of the Business and Labor Committee. My name is David McManaman. My name is spelled D-a-v-i-d M-c-M-a-n-a-m-a-n, and I'm an attorney with the Nebraska Department of Health and Human Services and my department submitted this year's write-off request that's now before you. As you can see, the amount of uncollectible debt included in this year's request is $1,469,717.55. That debt relates to 15 different programs within the department where the agency either made an overpayment to a client or provided a service for which it has not been fully reimbursed. Prior to submitting these debts for write off, the agency pursued recovery through one or more of the following efforts: (1) regular billing statements; (2) recoupment; (3) demand letters signed by the program, one of the agency's directors, and/or one of the agency's attorneys; and (4) litigation. Each of these debts is currently uncollectible because first, the debtor has since passed away with no probate recovery or there's been a dissolution of a drug manufacturer and there were insufficient funds to satisfy Medicaid's claims, (2) the debt was discharged in bankruptcy, (3) the debt passed the applicable statute of limitations, to include debt owing from persons who remained on needs-based assistance at the time the limitations period passed or where the debt was referred to an outside collection agency or to the Department of Health and Human Services' legal counsel and returned as uncollectible, (4) the debt is less than $100 and remains unpaid despite program efforts, or (5) the account balance remains following an agreed upon settlement. These categories and the department's presentation of these debts for write off is consistent with the agency's collection policy. The majority of this year's submission is debt that is now past the statute of limitations. That's approximately 65 percent. Much of that debt is owing from persons who were on needs-based assistance at the time their debt went past the limitations period. By way of example, the largest number of accounts included in this year's request involve debts that came about due to overpayments made to recipients of Aid to Dependent Children. Over half of the overpayment accounts are of that type. Of those accounts, nearly 96 percent involve debts where it has been at least five years since the last payment was made and so the statute of limitations has run. I don't have precise numbers, but I can tell you from past experience that the overwhelming majority of these involve debtors who remained on needs-based assistance at the time the debt accrued. Almost all of the-- I'm sorry, at the the time the debt went past the statute of limitations. Almost all the rest of the debt

included in this year's request for write off is debt that has either been discharged in bankruptcy or was owing from debtors who passed away without leaving a sufficient probate estate to recover from or from the dissolution of an entity. All told, about 99 percent of this year's submission involves debt that is past the statute of limitations, of which that's about 77 percent, was discharged in bankruptcy, of which was just a little over 2 percent, or was owing from someone who subsequently died where no estate was probated or from the dissolution of an entity where there was insufficient funds to satisfy the Medicaid rebate claims. And that's about 21 percent of the total debt. We would ask that this claim be approved and I thank you for your time and I'll try to answer any questions you might have.

M. HANSEN: Thank you for your testimony. Any questions from committee members? Seeing none, thank you very much. Welcome.

DALE SHOTKOSKI: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Dale Shotkoski, D-a-l-e S-h-o-t-k-o-s-k-i. I'm the agency legal counsel with the Department of Veterans' Affairs and I'm here to support the agency's request to write off $110,998.88 as set forth in this year's claims bill. The write-off request arises out of three debts owing in relation to unpaid monthly maintenance charges from members of the homes. The debts are associated with members staying at the Eastern Nebraska Veterans' Home in the amount of $106,629.38, the Norfolk Veterans' Home in the amount of $796.03, and the Western Nebraska Veterans' Home in the amount of $3,573.47. These debtors have passed away with no probate being filed for any of these three members. Prior to submitting these debts for write-offs, there were numerous attempts to pursue recovery through regular billing statements, multiple demand letters, and demand for notice filings with the relevant county courts following the members' deaths. Unfortunately, the agency has not been able to recoup the debt following these members' passings. That concludes my testimony and I would be happy to try to answer any questions the committee may have.

M. HANSEN: Yes, Senator Lathrop, for a question.

LATHROP: I have one that's unrelated--

DALE SHOTKOSKI: OK.

LATHROP: --but related to your role. Have we fully occupied the veterans' home in Kearney yet?

DALE SHOTKOSKI: No.

LATHROP: What percentage of occupancy-- what's the total occupancy in that home?

DALE SHOTKOSKI: I don't know--

LATHROP: What was it designed for?

DALE SHOTKOSKI: --the total number today. I don't remember-- I don't know the total number of day-- I know we're under 50 beds that we're waiting to fill. There's under 50 that are still unfilled.

LATHROP: Do you know what the waiting list looks like?

DALE SHOTKOSKI: It's several hundred.

LATHROP: Do you know what the reason is we don't have it fully occupied?

DALE SHOTKOSKI: No, I do not.

LATHROP: Is it staffing in the kitchen?

DALE SHOTKOSKI: I-- sorry, I would have to go back to you with that information.

LATHROP: But in any case, it's been open for how long, two years?

DALE SHOTKOSKI: A little over-- they had their one-year anniversary of the opening in January.

LATHROP: OK. And after having the place open for a year, we still have 50 beds that we--

DALE SHOTKOSKI: I think it's--

LATHROP: --don't let people into, with a couple hundred people waiting to get in?

DALE SHOTKOSKI: They're processing admissions on a regular basis. And since I've been at the Department of Veterans' Affairs, which is a little over about five months now, I've seen it coming in at the rate

of about two to three per week. But then there's also offsets of members' deaths so they're filling on a regular basis. And I know one of the Governor's goals has been to have that home filled to the total occupancy by the end of this year.

LATHROP: OK. But, but as we sit here, there is still 50 beds that have never been occupied?

DALE SHOTKOSKI: Approximately. I'm not giving the exact number as of today, just last known-- as of last week, I thought I saw 49 on the board. The director keeps a count on his board--

LATHROP: I just want to make sure--

DALE SHOTKOSKI: --to work on that number.

LATHROP: --nothing has changed.

DALE SHOTKOSKI: Yeah, they're working very hard on that.

M. HANSEN: All right. Before you-- I was going to say, before you go, can you repeat the total number of write-off you are requesting?

DALE SHOTKOSKI: Yes. It's different than what's in the claim bill. The amount we're requesting is $110,998.88 rather than the $113,813.12, which was originally submitted to the claims.

M. HANSEN: OK, so we'll have to amend that to lower--

DALE SHOTKOSKI: Yes, if you could amend that. Sorry, I should have clarified that.

M. HANSEN: No, thank you.

DALE SHOTKOSKI: Thank you for catching that.

M. HANSEN: I was reading along and thought I heard a different number. So any other questions from committee members? Seeing none, thank you very much.

DALE SHOTKOSKI: Thank you. Hi, welcome.

LYN HEATON: Thank you. Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Lyn Heaton, L-y-n H-e-a-t-o-n, and I'm the chief financial officer for the Nebraska Department of Transportation. I appreciate having this opportunity to

testify in support of the department's write-offs claim in LB927. The department's duties and responsibilities include protecting and maintaining the 10,000-mile state highway network and our numerous yards and other facilities across the state. From time to time, that infrastructure gets damaged due to the negligence of others. Common examples include damaged guardrails and sign installations. We make diligent efforts to recover the damage to state property. Annually, the department is able to recover over 90 percent of the state property damage claims we pursue because we have a systematic and well-established process in place. Ultimately, though, some claims must be written off for various reasons, such as inability to locate the responsible party, bankruptcy, or the party is deceased with no assets. In many cases, the party had no valid insurance coverage at the time of the incident. I've reviewed past write-off amounts for the department and this year's total is consistent with those. Having had the opportunity to visit with department personnel directly involved in the process about the recovery procedures undertaken by the NDOT, we are confident that the department's recovery process is thorough and effective. Thank you for the opportunity. With that, I'd be glad to answer any questions.

M. HANSEN: Thank you, Mr. Heaton. Are there questions? Seeing none, thank you very much.

LYN HEATON: Thank you.

M. HANSEN: Hi, welcome.

CAROL AVERSMAN: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Carol Aversman, C-a-r-o-l A-v-e-r-s-m-a-n, and I am the controller for the Nebraska State Patrol. I appreciate having this opportunity to testify in support of the agency's write-offs claims in LB927. As you have heard through the testimony of Mr. Simpson, the agency has a write-off in the bill totaling $910,000. The State Patrol has multiple federal grant awards, the largest of these existing in the Carrier Enforcement Program. The agency receives reimbursement in arrears from our federal partners for grant eligible expenses. Depending upon the grant, some reimbursements occur quarterly in arrears and others are monthly in arrears. Accordingly, many years ago, the agency recorded accounting entries to create a transfer of funds from its cash funds to the agency's federal fund. This allowed for up-front liquidity to enable the payment of the grant-eligible expenses from the federal fund until such time as reimbursement is received from the agency's federal partners. The

accounting entry created an accounts receivable due to the cash fund and an offsetting accounts payable owed by the federal fund to the cash fund. These entries date back over ten years, in some cases nearly 20 years. From an operational perspective, these amounts will not be able to be settled between these two funds, as the agency will continue to receive reimbursement in arrears. Accordingly, in consultation with our DAS budget officer, it was recommended that we submit these to be written off through the claims process. Thank you for the opportunity to testify. Are there any questions?

M. HANSEN: Thank you. Are there questions from committee members? So I guess I would have one. So understanding what you're doing here-- so these are federal funds we still expect to receive?

CAROL AVERSMAN: We will, but they will always be received in arrears. So in the meantime, we are paying out those funds and they're being coded against the federal fund. So there was a transfer of funds from the cash funds to the federal fund to be able to provide that liquidity to do that, to facilitate that process.

M. HANSEN: I got you. So, so ultimately, at some point, this money we expect to receive as a state, but it's reconciling difference between two accounts?

CAROL AVERSMAN: And it will always be in arrears so there's always going to be a lag.

M. HANSEN: OK, thank you. Any other questions from committee members? Seeing none, thank you for your testimony.

M. HANSEN: Hi, welcome.

CHRISTINA PETERS: Good afternoon, Chairman Hansen, Business and Labor Committee members and counsel. I'm Christina Peters, C-h-r-i-s-t-i-n-a P-e-t-e-r-s. I'm an accountant for the Nebraska Game and Parks Commission. I'm here to discuss the write-off request before you, which covers transactions from calendar year 2018, totaling $5,952.89. The submission includes four different types of issues. The first group are related to 45 uncollectible or insufficient check-- insufficient fund checks received at various parks throughout our state, totaling $2,205. They range in size from $6 for a daily park permit up to $280 for a multi-night camping stay. More than 65 percent of these return checks are under $50. The second issue totals $1,098.02, which is uncollected fees from two different park events.

Next, our Nebraskaland Magazine sells individual issues to various resale locations around the state and one vendor owed $2,424.87 at the time that they filed bankruptcy. The last $225 was uncollected from two external permit agents for sold permit fees. The agency follows set collection processes to attempt recovering these amounts unpaid, from our park and office locations across the state, with additional attempts from our accounts receivable staff here in Lincoln. The permit section attempts to collect all sales proceeds from our permit agents located throughout Nebraska. None of these claims were deemed sufficient enough to warrant involvement of our agency legal counsel or assistance of the Attorney General. We would respectfully request your approval of the submitted write-offs. Thank you.

M. HANSEN: Thank you. Any questions from committee members? Seeing none--

CHRISTINA PETERS: Thank you.

M. HANSEN: --thank you. Hi, welcome.

REGINA SHIELDS: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s, and I am the agency legal counsel and legislative liaison for the Nebraska State Fire Marshal. I am here today to ask you to write off $760 of debt that has been deemed uncollectible. This amount comes from the inspection fees and annual underground tank registration fees. These inspection and tank fees were from 2013 through 2016. The agency's efforts to collect these amounts include sending multiple letters requesting payments, phone calls, and for the tank fees, a referral to the Attorney General's Office to request collections. It has been determined that the additional costs for collection efforts would exceed the amounts owed so the agency respectfully requests that these amounts be written off. Thank you for your time and I'd be happy to answer any questions.

M. HANSEN: Thank you. Are there any questions? Seeing none, thank you very much.

KEN LACKEY: Good afternoon--

M. HANSEN: Welcome.

KEN LACKEY: --Chairman Hansen and members of the Business and Labor Committee. I am Ken Lackey, K-e-n L-a-c-k-e-y, legal counsel for the

Department of Motor Vehicles. I'm appearing before you today to offer testimony on the DMV's portions of the claims bill, claim number 2020-19999. This is an agency write-off request in the amount of $83,171.24 for uncollectible checks for the International Registration Plan fees and uncollectible International Registration Plan billable fees. These uncollectible fees are for IRP plates and registration fees for commercial motor carriers apportionable vehicles covering the period of 2003 to 2019. This total amount includes six uncollectible bad checks and in the amount of $22,347,39 from February of 2012 until February of 2019. And then, in addition, 88 uncollectible billable fees from 2003 to 2017 in the amount of $60,823.85 for a total of $83,171.24. In each case, there has been multiple letters, notices, and then the revocation of the registrations themselves. I encourage the advancement of the DMV portion of the claims bill and the write-off amount. Chairman Hansen, at this time, I would take any questions.

M. HANSEN: Thank you. Are there any questions from committee? Seeing none, thank you.

KEN LACKEY: Thank you.

JILL SCHROEDER: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. I am Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r, the administrator of the Nebraska Workers' Compensation Court. I'm here today because the court has $3 in fees that it seeks to write-off as uncollectible debts owed to it. The request is labeled as number 2020-20010 in LB927. Mr. Green is correct that we anticipate we will be able to collect 25 percent of this outstanding debt. So page 4, line 21 of the bill can be amended from $4 to $3 in terms of the amount that we're seeking. In two of the situations that are remaining, litigants who were representing themselves in our court filed appeals from orders entered and in that process, incurred a $1 fee for a certified copy of the transcript of the pleadings. Neither of those individuals paid the $1 fee for the certified transcript and attempts by court officials to try to collect those amounts were unsuccessful. In the third of the remaining cases, Attorney Michael Meister requested a certified copy of records from the court. Mr. Meister has declined to pay the $1 invoice sent to him for that certified copy. Follow-up efforts by the court staff to recover that amount were unsuccessful. So on behalf of the Workers' Compensation Court, I'm asking that this committee approve the court's request to write off the remaining $3 in uncollectible debts.

SLAMA: That's going to be a tough one.

JILL SCHROEDER: I'm happy to-- [LAUGHTER]

M. HANSEN: Thank you, Ms. Schroeder. Let's see if there's questions.

JILL SCHROEDER: Thank you, Senator Halloran. Your efforts are appreciated.

M. HANSEN: Any questions from committee members?

JILL SCHROEDER: Thank you.

M. HANSEN: Seeing none, thank you. I believe that was our last planned testifier. Is there any other proponents to LB927? Seeing none, is there any opponents to LB927? Seeing none, any neutral to LB927? All right, with that, we will close the hearing on LB927. We'll invite legal counsel back up to briefly open on LB928 and then we'll be ready to move on to the Vargas bill, Senator Vargas' bills here. When you're ready, Mr. Green.

TOM GREEN: OK. Chairman Hansen, members of the Business and Labor Committee, my name is Tom Green, T-o-m G-r-e-e-n. I am the legal counsel to this committee. I'm here to introduce LB928, which is a placeholder bill for denied claims against the state. At the time of introduction of the bill and currently, there are no denied claims. So the bill remains as a placeholder. That concludes my testimony. I'd be happy to answer any questions.

M. HANSEN: Thank you. Are there any questions for committee counsel? Seeing none, all right. Is there anybody wishing to testify in support of LB928? OK, seeing none, anybody neutral? Seeing none, anybody opposed? Seeing none, anybody in any capacity? All right, seeing none, that will close the hearing on LB928 and close the hearing on our two state claims bills. With that, we will welcome Senator Vargas to open on his first bill, LB1126. Welcome, Senator.

VARGAS: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. And today is Workers' Comp Day. I'll be introducing all four of my bills, LB1126 through LB1129, which deal with various components of workers' comp law. I'll tell you from the outset, I introduced these bills on behalf of attorneys in Omaha practicing in this area who are experts in this and will be testifying and they are here today. So you will be able to talk in-depth about why these changes are not only necessary,

but are pragmatic ways forward for both clarity in the law and for the workers affected by the laws we make here. LB1126, we'll start there, overrules two court cases; Dawes v. Wittrock Sandblasting and Painting and Armstrong v. State in 2015, which held that benefits can be denied even if there isn't a basis in law or fact to deny the benefit without a risk of penalty or attorney fee. There are issues because they are contrary to the claims handling provisions that require good faith in claims handling, meaning that you pay a claim until you have a basis in law or fact not to. Unfortunately, what these attorneys have seen happen is these insurance companies will violate the claims guidelines and deny, without a reasonable basis, and then are immune from any fees or penalties as long as they can get a doctor on board by the time of trial. LB1126 would ensure that they have a reason to deny the benefit and further reinforces that claims handling practices from the statute are to be taken seriously. The addition of paragraph 7 in LB1126 resolves some confusion among judges about the state of the law and whether an attorney fee may be assessed when an insurance company fails to provide authorization for medical treatment. All judges agree that a fee is warranted when a bill is undisputed and unpaid after more than 30 days after it was presented to the insurance company. Some judges believe that there is an affirmative duty to authorize when a medical provider requires it before providing treatment. However, at least one judge interprets the statute to allow a fee only when treatment and the bill has been incurred, presented, and is unpaid after more than 30 days. That means in cases with that judge, the injured worker can't get treated because the insurance company says they don't have to authorize and there is nothing an attorney can do besides go to court and get an order from the judge that the insurance company can then ignore. This is becoming a bigger problem because more medical providers are requiring preauthorization for treatment from insurance companies. With that, I'll close and ask the committee to save any questions about these bills for some of the more upcoming proponents. Thank you.

M. HANSEN: Thank you, Senator Vargas. Any questions from committee members? All right, seeing none, thank you for your opening. And we will welcome up our first proponent on LB1126.

JUSTIN HIGH: Good afternoon, Chairman Hansen, members of the committee. My name is Justin High. As Senator Vargas indicated, I'm an attorney from Omaha, Nebraska, practicing exclusively in the areas of workers' compensation and personal injury law, representing injured workers and injured individuals and Nebraskans. LB1126 is necessary

because it closes what I consider to be an unfair loophole that insurance companies have been exploiting since the passage of the two cases that we discussed: Dawes and Armstrong. What an insurance company can do now is simply deny an injured worker treatment, medication, therapy, things that they need, things that they need to get better, without having any basis in law or fact for the denial. That forces the injured worker to have to call somebody like me. The real crux of this bill, the real thrust of this bill is to return the workers' compensation system to a self-executing system so that those injured workers don't need to call somebody like me who will have them sign a fee agreement, obligate them to pay for my time and my expertise, obligate me to file a petition in the Workers' Compensation Court, obligate me to take up the court's time and eventually, have a trial seven, eight months later over something that never should have been in question to begin with. That's the thrust of LB1126. Any questions from the members of the committee?

M. HANSEN: Thank you. Before we get to questions, can we have you spell your name for the record?

JUSTIN HIGH: Oh, I'm sorry, Justin High, J-u-s-t-i-n H-i-g-h, I apologize.

M. HANSEN: No, not a problem. Questions from committee members? Senator Hansen.

B. HANSEN: Thank you. So you're saying the-- first of all, I'm just trying to wrap my head around this. How often does this kind of stuff happen?

JUSTIN HIGH: In my personal experience, I would say 1 out of every 10 consults I have, maybe 2 out of 10. Somebody comes in solely because the workers' compensation carrier tells them that they're not entitled to certain medical treatment. The doctor says they get it and the workers' compensation carrier simply denies it for no reason. They don't give-- they don't have to give them an explanation and so they don't.

B. HANSEN: And mostly does that end up going to court or does it get settled outside of the court quickly or--

JUSTIN HIGH: It depends. It all depends on the case. Honestly, the cases that I take, we end up trying more of them than I would say average attorneys do, than the other folks that are similarly situated

to me. But it's still a very-- a smaller percentage that end up getting tried. The point is they should never have to call somebody like me. It's supposed to be a self-executing system and the insurance companies make these decisions without having any basis in law or fact.

B. HANSEN: Thanks.

M. HANSEN: Thank you, Senator Hansen. Any other questions? Seeing none, oops, Senator Crawford.

CRAWFORD: Yeah, I just wanted-- thank you, Chair. I just wanted you to clarify what you mean by self-executing.

JUSTIN HIGH: Self-executing--

CRAWFORD: So it's usually self-executed, yes?

JUSTIN HIGH: Self-executing, meaning an injured worker is recommended some treatment from a doctor. That treatment recommendation goes to the insurance company. The insurance company agrees to pay for it, communicates that to the doctor, and then the treatment is given.

CRAWFORD: OK.

JUSTIN HIGH: It becomes non-self-executing when that system breaks down and it necessitates somebody like me to come in. Now that's not to say that there aren't claims that are fairly debatable. Certainly, there are many, many claims that are fairly debatable and require somebody to, to show up on the injured worker's behalf, require somebody to show up on the employer insurance carrier's behalf. This is designed to prevent those cases from-- to prevent that issue from spilling over into cases that should be completely self-executing. Any additional questions?

M. HANSEN: Thank you, Senator Crawford. Seeing no other questions, thank you for your testimony.

JUSTIN HIGH: Thank you. Would you like me to stay up and discuss LB127 [SIC] or--

M. HANSEN: No, we'll do them, we'll do them in order, but thank you. All right. We'll invite up our next proponent for LB1126. Hi, welcome.

ERIN FOX: Good afternoon. Thank you, Senator Hansen, members of the committee. My name is Erin Fox, E-r-i-n F-o-x. I work with Mr. High, who just testified. So I am here to talk a little bit about the more wonky side of the, of the legislative bill. The bill has two sections-- LB1126-- the first would, would require a reasonable controversy at the time the claims decision is made. The Nebraska Workers' Compensation Act has claims handling guidelines that suggest that that should be the case in all cases. But with Dawes and Anderson, the Supreme Court has indicated that, that you can just have the reasonable controversy at the time that the claim is determined to be compensable or not. So in that, in that instance, it's-- there's somewhat of a disconnect between how you're supposed to handle a claim and how a claim gets litigated. And again, going back to Mr. High's testimony, the whole purpose is to reduce the number of claims that are litigated if they don't need to be. A good example of-- an individual who, who has had something denied without reasonable controversy came up in a recent case of mine. The injured worker had a physical injury that was accepted. His primary treating doctor had provided an expert medical opinion that he had an aggravation of his anxiety as a result of the physical injuries he sustained. So in Nebraska, that's a compensable component of the injury. He prescribed medication and that medication was not provided by the insurance company. So he came to us, retained us. I asked why-- please provide the basis for the denial and I got no response from, from the insurance company and then when they retained counsel, none from their attorney either. So that's, like, I realize anecdotal, but, but that's a good example of the type of, of situation in which, you know, having a reasonable controversy at the time, you deny the medication. Specifically, if you have concerns, send them to a defense examiner or, you know, see if it's not related or whatever the instance may be. Because as Mr. High said, there are cases that are-- can be fairly debatable. And both Mr. High and I have defended cases. We've represented injured workers and I've actually worked in the Compensation Court as well. So you have this, like, broad view of, of how these things work. And it seems as if, you know, the-- I guess I would say that since I've been representing injured workers, I've been surprised at how often things that shouldn't be controversial have, have become that way or, or it's been harder for the injured worker to obtain the benefits that the act was meant to provide to them. And then the second aspect of it, with, with respect to the preauthorization, one option is to require doctors to not require preauthorization before they treat someone. That would force them to provide the treatment and then get the payment. But it's already

difficult sometimes to find doctors who want to treat injured workers so, so that's why this approach seems to be the best. And it's really meant to be a situation in which, you know, there's no reasonable controversy. The person's been hurt at work, all the elements are established, and the doctor says, well, I'm-- gosh, you know, I'm not going to do this procedure until I get preauthorization. So you say, adjuster, please provide it and you wait 45 days. That's a common situation. You shouldn't have to wait 45 days for authorization in a noncontroversial claim. You go-- in our instance, you go to court, you get the court to say, oh, yeah, you, you must, you must authorize this lymphedema pump so, you know, so the person can get better. And, and that's in a court order and it still doesn't happen. And then there's no remedy for that person because you can't go-- you can't register it in district court to execute on a nonmonetary judgment. So the idea behind the second part of the bill is just that if the court could have, could, you know, impose some sort of, you know, penalty, that it would then-- you could then at least go execute on that and maybe have a hook to get them to authorize like the court told them to, to, to begin with.

M. HANSEN: All right, thank you for your testimony, Ms. Fox. Senator Halloran for a question.

HALLORAN: Thank you, Chairman Hansen. I assume it's the Compensation Court that determines a reasonable controversy?

ERIN FOX: Ultimately, yes. There is a substantial amount of case law on what constitutes a reasonable controversy, but it has to-- you have to have a reasonable basis in law or in fact to deny an entire claim or a part of a claim. And in some cases, that can be gray. But, but the beauty of the reasonable controversy case law is when, when-- whether it was a reasonable controversy or not, that those tend to go, you know, in the favor of the insurance company because it's a gray area. So it's, it's a pretty high, high standard to-- well, it's a pretty low standard to meet, I think, for insurance companies, meaning that it wouldn't probably happen a lot. I mean, there are a lot of cases in which the denial of treatment is, is certainly within the reasonable controversy case law.

HALLORAN: Thank you.

M. HANSEN: Thank you, Senator Halloran. Any other questions? Seeing none, thank you for your testimony.

ERIN FOX: Thank you.

M. HANSEN: All right, we'll invite up our next proponent.

JOHN CORRIGAN: Good afternoon, Mr. Chairman--

M. HANSEN: Welcome.

JOHN CORRIGAN: --members of committee. John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, here to testify in favor of LB1126 on behalf of Nebraska AFL-CIO. I'm a lawyer at the firm of Dowd&Corrigan in Omaha and we do a fair amount of workers' compensation. I think that the, the problem that this bill is trying to, to alleviate is in large part motivated by the fact that the injured worker is in a very disadvantaged position because of the access to medical care. And if you're lucky enough to get the doctor to finally say yes, I think this treatment is necessary and reasonable or that the injury is work related, they're, they're faced with a long wait-out process. And if there is no controversy, that case usually does get settled, but it gets settled after eight or nine months and a medical opinion is generated that says, I agree with the injured worker's original doctor. It doesn't happen all the time, but it does happen. And when it does happen, that case goes away, in terms of the, the trial date because they know they're going to get hit. The problem is that the worker who is out waiting for that to happen. This bill is a-- is the incentive for the insurance industry, for the injured workers, and for the medical community, quite frankly, who-- it gets stuck in this tug-of-war between what's going to happen and who's going to get paid and who's going to pay for it. This bill is a positive in that regard. And it, it really makes the adjustors, the medical case managers put up or shut up and do it quickly rather than hope against hope that maybe prior to trial we can generate a medical report that will support our position, which isn't supported by the fact or law. And if they, if they can't, it's a gamble that they'll take to starve-- I don't want to say starve, but they're going to try and wait out the injured work and that happens a lot of times. We see it in the practice every day. We tell people you better be prepared for it. And it's an unpleasant conversation to have and it should be something that takes place less and less often as we have avenues to incentivize quick claims handling. With that, I would be happy to answer any questions that the committee may have. I ask that you support LB1126.

M. HANSEN: Thank you, Mr. Corrigan. Are there questions? Seeing none, thank you. Welcome.

GREG COFFEY: Welcome. Thank you, Senator Hansen and members of the committee. My name is Greg Coffey, G-r-e-g C-o-f-f-e-y, here on behalf of Nebraska Association of Trial Attorneys. I'm also an attorney with Friedman Law Offices here in Lincoln. We represent injured workers and workers' compensation cases as a large part of our practice. When I read LB1126 for the first time, I thought this is a, a solution to a big problem that is long overdue. And my experience is a little bit different than what you've heard so far. The-- in order to understand the issue, the, the concept that I want you to think about is the old adage that it's easier to ask for forgiveness than to obtain permission. In workers' compensation cases, if you need to go get medical treatment and you go get it and there's a bill and you submit the bill to the workers' compensation insurance carrier, the law imposes on the carrier a limited period of time to make a decision as to whether that is a claim that they'll accept and pay or not. If they choose not to, they have to have that reasonable basis that you heard about. There has to be a reasonable basis in law or in fact. It's very easy-- it's very difficult for an insurance company to deny a bill after the fact because they have to have that reasonable basis. It's so easy for them to deny it prospectively and say, no, we're not going to pay this because there's nothing in the law that says that you've got to make this decision. And so we get calls from people, cases that I can't take where it's only about medical bills. The Workers' Compensation Court does not allow me to charge a contingency fee for the recovery of medical expenses. So if it's all about medical bills, these people aren't going to get representation at all. They're not going to have it. They're not going to be able to find a lawyer. I've done pro bono work, taking a case all the way up to trial on a case that had nothing to do with anything but the medical bills that I felt were unjustly denied. We obtained a, a favorable result for that particular client, but I can't do that in every single case of every single person that calls me where the only issue is about $5,000 worth of medical treatment. So what ends up happening is that instead of it going through the workers' compensation system like it should, the injured worker ends up submitting it to their private health insurance company. And so your health insurance is, is paying bills that should be paid for by workers' compensation. The employers don't want to pay it. The workers' compensation insurance carriers don't want to pay it because it affects their workers' compensation insurance rates. They want the claims denied, but that ends up driving up your, your health

insurance. And it's basically insurance fraud because the health insurance companies shouldn't be paying for bills that were the result of an on-the-job accident. And it is too easy for insurance companies to say no ahead of time because there's nothing that says that they have to have a reasonable basis for doing it. They can sit out there and wait out somebody until they end up giving up because they're not going to be able to find a lawyer to help them with it, except on those rare occasions where somebody like me feels particularly incensed about the injustice of it all and decides to take it all the way to trial. But how many people do you expect give up and just say I'm going to turn it over to my health insurance and let them pay for it? And I think that happens more than what we'd like to, to believe. My experience is probably similar to Mr. High's who, who testified previously; maybe 1 in 10-- I don't know, I was trying to think about that earlier-- once a month, probably, I take a call like that where the, the medical bills are being denied for a reason that, you know, I can't figure out why they would be denied based on the facts that I'm hearing. It doesn't sound like it's a legitimate denial to me, but unfortunately, I, I can't help you. You should call your state senator. And that's why I think this is an important bill and it needs to be, needs to be passed.

M. HANSEN: Thank you, Mr. Coffey. Any questions from committee members? Seeing none, thank you for your testimony. Any other proponents to LB1126? Seeing none, we'll invite up any opponents to LB1126.

JEFFREY BLOOM: Mr. Chairman, members of committee, my name is Jeffrey, that's J-e-f-f-r-e-y, Bloom, B-l-o-o-m, and I am an assistant city attorney for the city of Omaha. I come here today to testify against LB1126. First off, let me say that we have no issue with Section 6 being added to 48-125, as part of that LB. Not only does this, I think, clarify some case law, but it also clears up some issues with payments when there is a, when there is in fact a reasonable controversy. We take issue with Section 7 added to 48-125. Now prior to taking my position with the city of Omaha, I was a workers' compensation plaintiff's attorney, amongst other things, for about nine years. So I believe I may offer a little bit of a unique perspective on this matter since I've been on both sides of this issue. I know firsthand that it's frustrating when you have a client that needs some sort of medical treatment or testing and that client is not able to get that medical treatment. There's no doubt that there are some very difficult stories of people waiting in pain while

insurance matters are sorted out. However, I caution the committee that if this legislation is based off some specific hard cases, unfortunately that can result in making some bad law-- there's an old adage that goes along with that-- despite the best intentions of the legislators. Now the need for preauthorization and assurance of payment, just so a doctor will see a patient, run tests, or perform some surgery, shows that there is in fact, not only potentially a problem with the insurance system, but a problem with the medical system. The question is where we look for, for our solutions. Is it on the employer or the insurance side or is it on the medical side? I don't think that there's anyone here that will be able to testify that an employer or a workers' compensation insurer told a doctor not to give a person treatment, told a doctor not to run a test or not to do surgery. If there is, that's news to me. An insurer may have refused to provide a preauthorization, delayed providing a preauthorization, maybe even unjustly, but that's not the same thing here. I mean, it takes two as far as to create the problem. So let's look at the practical effects of this bill. The city of Omaha is self-insured. So any money that pays workers' compensation claims comes directly from taxpayers. We believe that we have three duties when handling workers' compensation claims: to follow the law, to be fair to employees, and also to be fair to city taxpayers. We do believe that it's fair to city taxpayers to offer as medical treatment for a condition that is, in fact, work related or related to an occupational disease. We don't believe it's fair to authorize the questionable cases where we don't have a sufficient justification to justify paying those bills. This bill would likely lead to this if it were passed. Whether there is a reasonable controversy can be a tricky matter. Generally, there's a burden on the employee to prove the compensable injury. An expert opinion is generally needed to prove causation for that injury. However, there are also certain situations where an expert opinion may not be made. It may be an objective injury or there are certain situations where it comes into this gray area. We don't want to see situations where we may have a plaintiff's attorney go out and get a check-a-box report from a favorable doctor that says that this particular course of treatment is justified, only to find out later that said doctor referred no medical records or didn't have sufficient foundation for that opinion. It puts us under the gun in this situation. It's not the clear situations that would be a problem. It's the gray area occasions, it's questionable cases. Now-- and then we would be left asking the question, does the question arise to a reasonable controversy? That would in fact, be left to the trial judge. If our analysis is on the wrong end of this, we face very stiff

penalties under LB1126 as written. Now on page 7, lines 3-6 of LB1126, it says, "The compensation court may also, in its discretion, assess a penalty under this subsection not to exceed five hundred dollars per day for each day the authorization is delayed without reasonable controversy." Now that's up to $500 per day. If our goal is to be fair to, to Omaha taxpayers, a potential $500-a-day penalty is going to cause us to authorize even questionable medical treatment. Given that, that creates an issue for us. So what do we have to do? I see that my yellow light is on so I'll wrap it up quickly. You know, in situations like these, we need to go out and either seek an opinion from the treating doctor or from an independent medical evaluator. Those take time. We have to gather records to do that. We have to go that-- it is the quick turnaround cases where we have this problem, where we might get a quick case from the plaintiff's attorney and then face severe penalties if, in fact, we do not go and authorize the medical treatment right away. Not only that, there is a question of whether this $500 per day is in fact, punitive. Under the Nebraska Constitution, the question would be, would this be going to the schools or would this, in fact, be going to the, the claimant? And I know that there are cases involving 48-125 that they did not consider these punitive and a penalty. However, never in 48-125 did they mention that this was actually called a penalty and that's what the Supreme Court case on this hinged on. So in that case, just to wrap this up, we ask the committee to look carefully at this legislation and make sure that others are not allowed to game the system, in fact, to force people to pay bills in which they would not necessarily have paid when given a reasonable amount of time to do that. Thank you.

M. HANSEN: All right. Thank you, Mr. Bloom. Questions from committee members? All right, seeing none, thank you very much.

JEFFREY BLOOM: Thank you.

DALLAS JONES: Members of the committee, Senator Hansen, my name is Dallas Jones. I am here on behalf of Nebraskans for Workers' Compensation Fairness and Equity [SIC]. I am a lawyer here in Lincoln. I've been practicing workers' compensation matters for 32 years. D-a-l-l-a-s J-o-n-e-s. I'm here in opposition to LB1126 and let me explain why. The, the principal thing I want to talk about today is the language "at the time of." It's the entire concept of LB1126, as written, that obligates the employer to make payments both for workers' compensation benefits and the indemnity type as well as medical payments in 30 days. The reality is in the real world, to

develop evidence, to investigate, to know whether there is a reasonable controversy, to know whether it's compensable is extraordinarily difficult to do in 30 days. Why is that? Well, several reasons: one is if the employer or the insurer suspects there's something wrong with this claim, suspects that it's not compensable, what can it do? Well, it can't just go ask the medical providers, hey, give me your records and the next day you have those. The reality is, in today's world, because of federal law, nearly every provider requires that employee to sign a release. And then you send the release and then you get the records and then-- you hope you get the records, you hope you get all the records and then you review the records. And if you, you believe, yep, I'm onto something here, then what do you do? Then you have to have an expert that rebuts whatever evidence it is that the employee has provided. And how long does it take you to get in to see your personal doctor if you want to be seen? Imagine how long it takes to get into a doctor that you select who will look at the records to tell you whether or not, yeah, there is something wrong with this claim. I will tell you to get all of that done in 30 days is exceedingly difficult, if not impossible. So where does that leave the employer? Where that leaves the employer is with an unfortunate choice. That choice is either you pay the benefits, the indemnity and the medical, because this provision relates to both-- don't kid yourself. You pay both, you pay those and you will not ever get it back or you take the risk that you're right. And if you're not right, you pay the penalty that's provided in here or even if you are right, the way the bill is written, you still pay the penalty because by the time you get to trial, it is months down the road. And by that time, the way I read the bill is, a judge is-- it is fair game for a judge to make the determination that there was not a reasonable controversy in 30 days. And because there wasn't, then the penalty ensues. For employers to be able to develop the information timely to respond to this is, as I said, virtually impossible. Let me give you an anecdote; you heard a couple. The most recent decision that I received from the Workers' Compensation Court involved a gentleman who had a lot of problems. He had some hand and arm problems. He had a neck problem. And the employer paid for all of that like clockwork, but then his physician said you need a four-level cervical fusion. The employer, fairly sophisticated, looked at that and said, that doesn't smell quite right because the records that we've seen so far didn't seem to suggest that that had, that had anything to do with the work accident. Well, the only way that it could fully develop that was to go get yet additional records it didn't have and then have an expert who actually knows what he's talking about answer the question. That

expert, about six months after the fact, was able to answer the question. We litigated the case and the court dismissed the, the claim for the four-level fusion. Under this bill, that employer would have paid for a four-level fusion or it would have faced the penalty of $500 per day, which the way this is written, would have already been-- come and gone by the time we got that case to trial, which makes zero sense. This bill, finally, will also set up a got you game. Mr. Bloom referenced that and the got you game will be plaintiff's counsel prepares the case. And then we-- the employer knows nothing about that. The case will then land on the insurer's desk and says pay and I'm starting the clock today. It may take the plaintiff's lawyer months to prepare that; it typically often does. But the way this bill is written, the employer gets 30 days. And if it doesn't prepare that defense in 30 days, bad things happen. Thank you.

M. HANSEN: Thank you, Mr. Jones. Senator Lathrop for a question.

LATHROP: Dallas, I got a question about the bill here. Is it the 30 days that's the issue? You, you can agree that there are circumstances in which the plaintiff goes in and I-- this happens to me and I don't even do that much of this stuff. Guy goes into the, the spine surgeon. The spine surgeon has been treating the person for 20 years or 10 years. I have some work comp cases that are kind of old that are hanging around that were never lump summed. And they go in and the doctor says, yep, you know, you've had lumbar problems for a long time and then says, well, now I think you'd benefit from some injections or an MRI. And the doctors no longer just treat people and bill work comp. They always get prior authorization, even though it's not necessary, and they send the request over to the insurance company. This is a guy that's been treated with the same doctor for three years and the insurance company says no. No, we're not paying for it. We got a-- one of these cookbooks that the insurance companies use now that says, you know, we're not going to pay for it. This is a real problem, it seems to me. And I take your point that 30 days isn't fast enough for you, your firm, your office, or the insurance company to gather what they may need to support their decision. So if it says within a reasonable period of time of having them presented with the claim for care, does that satisfy you, when, when the court can take into account how long is it going to take, you know, Baylor Evnen to go find the medical to support its decision?

DALLAS JONES: Well, Senator, I will agree with you that there are outlier cases and that's what you've been hearing today. I will also

submit to you that none of the lawyers here in the room, including yours truly, know the extent to which claims are paid automatically and what percentage of those are. I will submit to you, again anecdotally, just like the other lawyers who look at what they see, but don't see this mountain underneath of them that never bubbles up to their, to their level. Those are paid automatically. So it might--

LATHROP: But the fact that 90 percent of them or 99 percent of them get handled properly just means this won't apply to 99 percent of the claims. We're talking about the ones where somebody-- and it happens and you have to agree-- that's been treating with a, with a neurosurgeon or an orthopedic surgeon at Nebraska Spine. And now, you know, they've tried the conservative stuff, they've had the surgery. The person is still having the problems and now they need an injection and the insurance company says no. And no one will treat him. No one will treat him until some insurance company says yes. So isn't it fair to say if you have a reasonable time-- you, the insurance company, you, the defense lawyer, have a reasonable time to come up with an answer, not 30 days, but whatever a reasonable period of time is, that if you don't and the court determines there was no reasonable controversy, that some kind of a, a penalty is in order?

DALLAS JONES: I-- I'm not sure that I can agree with that because many of the premises of your question, I am not sure that I agree with those either, Senator. I'm not sure, also-- let's set that aside-- I'm not sure what it then means in reality, what a reasonable time is. I don't know. That causes me concern.

LATHROP: Well, that allows the court to, to factor in how long does it take you to come up with records and how long does it take for you to run it by another doctor in the same discipline?

DALLAS JONES: Right and tell me what that means in a given case, and I'll answer the question whether I think that's appropriate or not. I have no idea what that means. And the penalty under this bill is if I guessed wrong or my client guessed wrong, it's in a very difficult situation.

LATHROP: What if it just says you have a reasonable time and there will be a reasonable attorney fee paid to whoever the employee has to hire to secure an order allowing for the care?

DALLAS JONES: Even if at the time of trial there is evidence that establishes a reasonable controversy, is that the question? Because--

LATHROP: Yeah. No, I, I get that for you, you, you've been doing this a long time and so have I and you can look at something and go, this doesn't smell right. Right? Yeah, I hate to agree that you can-- because we've also seen that, where somebody runs out and finds one of the regular suspects to write a report so you can avoid a penalty.

DALLAS JONES: Both sides do that. Both sides use that to support the claim in the first place.

LATHROP: I wish somebody would give me a list of the regular plaintiff suspects.

DALLAS JONES: I think I know your email address, I'll send them to you.

LATHROP: All right. Well, I'm in the Bar directory. I just think this is a real problem because I've run into it and I don't even do that much of this; where I have filed four different lawsuits over medical bills for somebody that got hurt a long time ago. And as you know, you do a spine fusion and then you get a transfer lesion and then it's moving on up the spine and all you run into is roadblocks and noes from people that haven't investigated it at all.

DALLAS JONES: Yeah. And that was exactly the case that I got a decision on, was a case that's been going on for about five years. And lots of bills were paid and all the argument was this gentleman needs is-- he just needs this last step because it all relates back to the accident. No, it didn't. Much of what you heard today assumes that the employee makes the claim, the claim should be paid. You can't assume that because I'm employed, quite frankly, because most of the cases I handle don't fall into that category. They fall into the other category, which is it shouldn't have been paid. If you-- if the premise is the employee makes it, it's self-executing, you'd better pay it or you're gonna get hit, well, I just take issue with the premise of, of that, that assertion. It's just simply not true. It's a, it's a-- it is a system, we call it the no-fault system, where the employee-- nobody has to be at fault. The employee can just claim it. And if the employee doesn't have health insurance, do you know what happens? They have no other place to go. It's unfortunate, but no

other place to go but the claim, all too often, I need to make the claim.

LATHROP: In fairness-- and by the way, Senator Hansen passed a bill last year that helps so that the employees are getting squeezed because somebody won't approve care. But it is very difficult-- if you say no, then the employee takes that no over to Blue Cross Blue Shield and says it's not work related or work comp won't pay for it so it's not excluded. And then it gets paid for under the health plan.

DALLAS JONES: Right.

LATHROP: That's very real.

DALLAS JONES: That, that's correct. I was involved in that bill, in the settlement.

LATHROP: We won't take up any more time.

DALLAS JONES: I'm taking yours.

LATHROP: Good to see you, thank you.

DALLAS JONES: Thank you, I appreciate it.

M. HANSEN: All right. Thank you, Senator Lathrop. Seeing no other questions.

ROBERT J. HALLSTROM: Chairman Hansen, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness. I've also been authorized to express my opposition to this bill on behalf of the Nebraska Chamber of Commerce and Industry, the Lincoln Chamber of Commerce, the Nebraska Retail Federation, and the Nebraska Restaurant Association. I see I've got a little bit of time left after my opening. Rather than belabor, I think both Mr. Bloom and Mr. Jones have set forth the policy reasons for the opposition to this legislation. The issue of having to look at a claim within 30 days and have to make that determination conclusively, have a reasonable controversy at that time, puts you in a position where in every other venue, if there's a reasonable controversy and you win the case at the end of the litigation, that is what rules the day. This would allow for significant penalties; $500 per day, plus the assessment of attorney fees because of a determination that has to be

made, as I think Senator Lathrop pointed out, in particularly a, a too fast or too quick of a fashion. With that, I'd be happy to address any questions that the committee may have.

M. HANSEN: Thank you. Are there questions from the committee? Seeing none, thank you for coming.

ROBERT J. HALLSTROM: Thank you.

M. HANSEN: All right, are there any other opponents to LB1126? Seeing none, does anybody wish to testify neutral on LB1126? Seeing none, Senator Vargas had to [INAUDIBLE] return to Appropriations Committee, so I believe he'll waive closing on LB1126. And we'll invite his staff to open up on LB1127. Oh, I should say to close into the record, we did have one letter of opposition for LB1126 from Steve Schneider of the American Property Casualty Insurance Association. And with that, we will close the hearing on LB1126 and open on LB1127. Welcome.

MEG MANDY: Hi, good afternoon. My name is Meg Mandy, M-e-g M-a-n-d-y. I'm the legislative aide for Senator Vargas. As Senator Hansen mentioned, he had to, he was needed in Appropriations Committee so I will be here until he gets back. LB1127 clarifies that Compensation Court judges have contempt power that is coextensive with that of other courts of record in Nebraska. State statute is clear that every court of record possesses the power to hold parties in contempt and the Nebraska Supreme Court has held that the Compensation Court is a court of record. However, the 2010 decision in Burnham v. Pacesetter Corporation suggested there are limitations on the Compensation Court's authority to hold a party in contempt for failing to follow an order. Subsequent cases included decisions that some enforcement power exists or did not reach the issue of whether contempt power exists at all. Read together, these three cases cause ambiguity in what contempt power the Compensation Court has and how that may differ from that of district and county court judges. To eliminate ambiguity and harmonize application, this bill specifically provides that the Compensation Court does have contempt power as set forth in Chapter 25. With that, I will close and allow some of the other proponents to come up and answer your questions.

M. HANSEN: All right. Thank you, Ms. Mandy. With that, we'll invite up our first proponent to LB1127.

JUSTIN HIGH: Good afternoon, Chairman Hansen, committee members. My name is Justin High, J-u-s-t-i-n H-i-g-h, here to testify in support

of LB1127. So the issue here is what powers the Compensation Court has after the Burnham v. Pacesetter case. There's been quite a bit of litigation as to what a workers' compensation judge can and cannot do. The Supreme Court has routinely and repeatedly said that the Workers' Compensation Court is a creature of statute. It only has the powers that have been conferred upon it by statute. This simply makes those Workers' Compensation Court judges the same as a district court judge and a county court judge. It's procedural only. It has nothing to do with what it is that they consider, which is purely workers' compensation accidents. The reason that they should be the same as a district court judge or a county court judge is because they deal with the same sort of parties, injured people and employers and insurance carriers. Now this bill will solve a real problem. The problem is if a workers' compensation carrier or employer is ordered to do something by the Workers' Compensation Court and for whatever reason, they decide not to, there is no remedy for the injured worker. You can't go back and get a second penalty. The law doesn't allow it. The Supreme Court has resoundingly said that that is not something that an injured employee can do. So the, the employee is left to do nothing, to do nothing. This happened in a case of mine, which you'll hear on this bill, LB1127, and LB1128. The carrier was ordered to pay. They were ordered to provide certain medical treatment; they didn't. They didn't for months and months and months. And so we ended up having to go back in front of the judge and she said I'm sorry. And correctly by the way, she correctly said I'm sorry, I don't have any authority to help you. I already ordered him to pay. If they're not paying, there's nothing I could do for you. And so because part of that order was monetary, we had to file another action in district court to try and execute on the insurance carrier. I mean, let me repeat that. We had to file another action to get the insurance carrier to do what our judge ordered them to do. So this is a recent problem and it's a real problem. That's what this LB1127 is supposed to remedy. If LB1127 was in effect, that judge could have crafted some sort of remedy that would have compelled the insurance carrier to do what they were supposed to do in the first place. And it's not as if we're creating an incredibly complicated problem or opening Pandora's box. There's a case called Smeal Fire, which discusses contempt powers extensively; Smeal Fire and its progeny, relatively simple. With that, I'd ask you to consider LB1127 and I'll answer any questions you may have.

B. HANSEN: Any questions from the committee at all? Yes, Senator Lathrop.

LATHROP: Mr. High, if they had the contempt powers, who would we hold in contempt?

JUSTIN HIGH: Either the--

LATHROP: That's, you know, it's, it's Wal-Mart and their insurance carrier, Union Insurance Company, and they don't pay, who gets held in contempt and what's that remedy look like?

JUSTIN HIGH: That's up to the judge. But if you're asking me, if I was wearing a black robe, I would hold the employer in contempt and I would say Wal-Mart or Wal-Mart's HR person, whoever is in the state, show up to court and explain to me why you haven't paid these benefits that I ordered you to pay? And if I don't like your answer, the remedies are whatever are available under Smeal Fire.

LATHROP: Do you expect a fee or is somebody going to, going to get incarcerated until they pay?

JUSTIN HIGH: Frankly, I don't expect a fee and I don't care. I just want them to be able to order the insurance company and the employer to do what they're supposed to do.

LATHROP: But they've done that already.

JUSTIN HIGH: They need, they need the power to enforce it. They need the power to compel enforcement.

LATHROP: OK.

JUSTIN HIGH: And whether that's taking the HR person and sticking him in jail until the obligation is satisfied or fining them $100 a day, whatever the judge thinks. We trust all the district court judges and the county court judges with this power, why don't we trust the seven Workers' Compensation Court judges who are experts in this sort of thing?

LATHROP: OK.

B. HANSEN: Any other questions? Yes, Senator Halloran.

HALLORAN: Thank you, Senator Hansen number two. This may be something to ask in the Executive Session. It may not, may not be appropriate, but in the notes here, it says a similar proposal was brought as

AM1243 in LB151, 2011 by Senator Lathrop. However, it was removed from the final bill. I don't know that you'd have the answer to that--

LATHROP: It sounds like it's a good idea.

[LAUGHTER]

HALLORAN: Well, but it was withdrawn. Do you remember-- do you recall?

LATHROP: I-- I don't.

HALLORAN: That's fine. That's all I had.

B. HANSEN: All right, any other questions?

HALLORAN: That was a long time ago.

B. HANSEN: All right, thank you for your testimony.

JUSTIN HIGH: Thank you.

M. HANSEN: Hi, welcome back.

ERIN FOX: Thank you, Senator Hansen, members of the committee. My name is Erin Fox, E-r-i-n F-o-x. And to start, I can actually answer your question, Senator Halloran. I don't remember the exact amendment, but it was the court Christmas tree bill for work comp where the, where the court needed a statutory change to move. And it was supposed to be noncontroversial and it was on General File, Senator Lathrop, and you had added in pretty much this language into the bill after it had been heard in committee that same session. And Senator Lautenbaugh had, had objected to it as controversial. That-- in terms of the legislative history, that's all I could tell as to, you know, someone having an, an objection to it. And interestingly, Senator Lautenbaugh was the defense attorney on the Burnham case, which in, in my research, is the only case that has ever said despite the fact that the clear statutory language of 25-2121, all courts of record-- Burnham is the only case that has called into question the fact that the Work Comp Court judges have any sort of, like, specially prescribed, you know, limited, limited authority for, for-- to issue contempt orders. Had it not been for Burnham, I don't think we'd be here because the statute says all courts of record and the Supreme Court has said the Work Comp Court is a court of record. And then in Hofferber, a subsequent case to Burnham, they said, well, you know, Burnham said it was-- it, it limited the power somewhat, but, but the court is a court of record.

But we decline to hold it because we don't have to reach that issue. So, so that's kind of their analysis. So, so in the discussion of the amendment, this, this being noncontroversial, I believe it was just because it was, it was to just clarify, like, we had had that one Supreme Court case that even the Supreme Court had tried to, tried to get around or modify in some way. And the only person who really seemed to have an objection to that was, in fact, the defense attorney who had obtained that decision to begin with. So that's the background there. And again, Mr. High went over-- contempt authority is, is pretty commonly used by district court judges in Nebraska. There is tons of case law. There are statutes that would tell the judges how to exercise it. Senator Lathrop had a great question on who you hold in contempt and I do think that there could be some-- you know, that might be an issue that would be of concern to the judges. Not knowing if it wasn't a party, if it's the insurance company that makes the willful decision to disobey the order, can you really hold the employer in contempt? I do think those are some, some concerns that perhaps I or, you know, when the amendment was raised that those weren't considered. I also think that there would-- potentially, I would suggest a change, an amendment, if you do advance this, to clarify that, that the-- that any fines for, for contempt or failure to follow the court's order would, would not go to the plaintiff. They would go, you know, into the school system just like any other-- in any other case. So with that, again, this is similar to the prior bill, just a way to ensure that when the, the Work Comp Court tells you to do something, you should do it. This is not, this is not a situation that comes up in a lot of cases. Like I said before, I've done defense work. I've done defense work for longer than I've done representation of injured workers. And the case that Mr. High referenced where the judge kept saying, do this, pay this, pay for this medical procedure, that was the most egregious abuse of, of, you know-- that I've ever seen and I was, quite frankly, shocked. But when you-- when the judge says pay for a medical procedure, you can't, like I said before, you can't take that to district court and execute on that. You have to have some sort of hook that makes it economically unviable for them to ignore the court. And this is one way of doing it.

M. HANSEN: Thank you for your testimony. Questions from the committee? Seeing none, thank you.

ERIN FOX: Thank you.

JOHN CORRIGAN: Good afternoon, members of committee. I'm John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, here to testify on behalf of LB1127 on behalf of Nebraska AFL-CIO in support of this bill. Quite frankly, if we're willing to let a judge in the state of Nebraska tell a husband who has transferred his assets outside the reach of the court to show cause why he shouldn't be held in contempt in a divorce case, we should be able to tell-- let the Workers' Compensation Court tell an employer who is flouting the law or prior court order to show up on a date certain and demonstrate to the court why there might be cause not to issue an order of contempt. It happens regularly in the civil justice system. It should happen here. These types of cases are, are very limited and rare. Most people who are in this business do what they're supposed to do or at least they know that there are boundaries to their behavior. But sometimes the ball gets dropped in, in really silly ways when you have an employer and a, and an insurance carrier who don't communicate with one another. And until there is that date and time when somebody has to explain themselves to the court, it's hard to get traction to help the injured worker. And so the AFL-CIO asks that this bill be advanced. It is not something that should be controversial given the status of the contempt laws as we know them to be from the civil justice system. With that, I'd answer any questions you might have.

M. HANSEN: Thank you, Mr. Corrigan. Are there any questions? All right, seeing none, thank you very much. Hi, welcome.

GREG COFFEY: Senator Hansen-- yeah, welcome to you again. Greg Coffey, G-r-e-g C-o-f-f-e-y, appearing on behalf of the Nebraska Association of Trial Attorneys. I'm not going to take up much, much time. I just want to inform the, the committee of our, of our additional support for LB1127.

M. HANSEN: Thank you. Any questions from the committee? Seeing none, thank you very much. Any other proponents for LB1127? Seeing none, any opponents to LB1127? Seeing none, anybody neutral on LB1127?

DALLAS JONES: I wasn't going to testify today, but Dallas Jones in a neutral capacity regarding LB1127. I'm here on behalf of Nebraskans for Workers' Compensation Fairness and Equity [SIC]. I'm a private practice lawyer at Baylor Evnen for a long time. The, the bill doesn't look just at bad behavior by employers and insurance carriers. The bill also looks at the other side of the aisle. Ms. Fox referenced the Hofferber decision, which I happen to have-- it was my case, I defended it. And the conduct of that employee was egregious. The trial

judge agreed it was egregious. After multiple, multiple warnings, he was threatening people; the court, court staff, counsel, even his own lawyer, if I remember correctly. It was one of those situations where I remember wishing that that trial judge had more power to try to bring some sanity to that situation. I suspect this bill will provide that support to trial judges as well. Nobody can be here and justify and try to defend bad behavior on either side. And for judges to have the ability in their discretion to try to do what is right under the circumstances seems to make some sense to me, which probably sounds a lot more like in support of than in a neutral capacity. But my board that I answer to is in a neutral capacity, so I'm here in that capacity as well. I'd be happy to answer any questions. And it's D-a-l-l-a-s J-o-n-e-s, I forgot that.

M. HANSEN: Thank you very much. Any questions? Seeing none, thank you.

DALLAS JONES: Thank you.

M. HANSEN: All right, anybody else in a neutral capacity? All right, seeing none, we will close the hearing of LB1127. We'll note there was one letter of opposition from Steve Schneider of the American Property Casualty Insurance Association. With that, we'll welcome up Ms. Mandy to open on LB1128.

MEG MANDY: Hello, my name is Meg Mandy, M-e-g M-a-n-d-y, and I'm the legislative aide for Senator Tony Vargas. LB1128 overrules a case, which held that workers' compensation insurers are immune from liability in tort when they commit acts of bad faith in administering workers' compensation claims. About half of states allow a common law or statutory cause of action against insurers when the insurer denies benefits without a good faith reason. This provision would also allow a cause of action in line with what Iowas does for bad faith. In states that have a bad faith cause of action, like what, like what we're proposing here in LB1128 and as Iowa does, insurance companies administer claims differently and more efficiently. Medications and other vital medical treatment are authorized faster and insurance companies are less likely to engage in a practice that loads adjustors with too many claims and they can't keep up. This practice is done as a cost-saving strategy to pay claims more slowly and to pay fewer adjusters to make the payments. If there's a risk of bad faith claims from this systematic practice, they are less likely to employ theis common tactic. With that, I'll close and let the others behind me come up and testify and to answer questions.

M. HANSEN: Thank you very much. All right, we'll welcome up our first testifier on LB1128.

JUSTIN HIGH: Thank you, Chairman Hansen, members of the committee. My name is Justin High, J-u-s-t-i-n H-i-g-h, testifying here in support of LB1128. My background is as an attorney working both for insurance carriers and employers and injured workers. I spent about the first ten years of my career working for insurance carriers and employers in both Nebraska and Iowa and then the last five years of my career working for injured workers in Nebraska and Iowa. And this difference between the two states is stark. In Iowa, because of the threat of bad faith litigation, claims get processed efficiently. Things get paid almost immediately. Iowa law required that an employer start paying indemnity benefits even if they didn't know what they were going to be. And the threat of that was so effective that insurers would routinely do it all the time. Nebraska, it's completely different. And I'm going to tell you the story of a case that I had and a man named Mike Lewis [PHONETIC]. But I'm going to tell you, he's not the only one. This is the most egregious example I'm aware of, but he is not the only person to whom something like this has been done. Mike had a catastrophic accident. He had his left leg crushed by a 26-ton paving machine, the things that we use to create the interstates. He was life flighted to the hospital. They were able to save his leg and he had treatment, he was undergoing treatment. But eventually, the insurance company decided they didn't want to pay for the treatment the doctors wanted so they started denying him things. So he hires me, I go to court, I get an order. One of the orders said that he was entitled to a lymphedema pump. They didn't provide the lymphedema pump. They never provided the lymphedema pump. He never got the lymphedema pump after almost a year of me asking for them to provide it and having zero power to do anything. I can't take them back to court again and have them order it again and the court doesn't have contempt power. And because it was a nonmonetary judgment, I can't very well execute in district court. So we just sat there because we couldn't do anything. And eventually, Mike's left leg got so weak that he fell and collapsed and the doctor then had to amputate his left leg. We said that that was work related, they denied. They had no evidence, they didn't have a doctor's opinion. They just denied because they wanted to. They denied all of his medical care, including the $500,000 amputation. They denied pain medication. So after having his leg amputated, he had to sit at home for several months with no way to get pain medication. So eventually, they finally get a doctor's opinion about 90 days later, which-- guess what-- agrees with us and says, yes, this is all

completely work related. They got that opinion in January. They didn't give it to me. I had to actually subpoena that opinion and get it in March, two months later. So he had a hearing in April. Obviously, we wanted the hearing. The judge called their conduct abhorrent and egregious, but couldn't really do much other than assess the small attorneys fee. And then after that, instead of paying for the medical bills that the judge had just ordered them to pay, they then decided to deny all of his benefits. So before he was getting a couple hundred dollars a week in indemnity benefits, of course reduced by one-third because of the 48-126 and then reduced by my fee because he had to hire me-- not only did they terminate medical benefits, they then terminated his indemnity benefits. He was getting nothing from the insurance company after we had this order telling them they had to pay for everything. And what can we do? Nothing. We filed four complaints, four separate complaints with the Department of Insurance, only to have them tell us we don't have the authority to provide you a remedy. We don't have the authority to do anything about this. A cause of action for bad faith would make a huge difference. A cause of action for bad faith would solve all of those problems. If you-- you're probably familiar with the Simmons v. Precast Haulers case, there are cases like this all over the place where injured workers with catastrophic cases are treated very, very differently because there's no cause of action for bad faith in Nebraska. With that, I see my yellow light is on. Any questions?

M. HANSEN: Thank you. Are there any questions from the committee? Seeing none, thank you very much. Welcome back.

ERIN FOX: Thank you, Senator, members of the committee. LB1128 would overturn Ihm v. Crawford, which was a Supreme Court case that basically said that the work comp penalty provisions we've been sort of talking about throughout the, the afternoon today are sufficient to prevent bad faith activity on the part of, of, of insurance companies. So they're, they're protected. Their liability is limited because there are penalty provisions and those are enough. I think the testimony today, at least some of the testimony, has indicated that perhaps that is not the case. Iowa, as mentioned, has a cause of action for bad faith administration of a workers' compensation case. Kansas has it. Colorado has it. So, I mean, we're out of touch a little bit, regionally, when it comes to that. And again, this was a Supreme Court decision that was assuming the legislative intent based on a handful of words in the statute. The Lewis [PHONETIC] case that Mr. High just spoke about, he spoke about the, you know, sort of the

facts of the case. We currently have-- we're attempting to bring a bad faith cause of action in the southern district of Iowa based on conflict of laws, argument that, that Iowa law should apply for various reasons. But in writing the brief on the motion to dismiss, I was charged with determining-- one aspect of the conflict of laws is, is what is the public policy of the states involved? The public policy of the state of Nebraska is to limit insurance companies' liability. That's all I could say. In Iowa, there is case after case after case that talks about how an insurance company is a public trust and therefore, they are held to a higher standard and how important it is to ensure that they live up to that public trust. Mike Lewis [PHONETIC] was a citizen of Nebraska for most of the period of time. I mean, he was always a citizen of Nebraska, but he lived in Iowa for a brief period of time. He was Senator Chambers' constituent for most of that time, when he lived in Nebraska. I think that this would give the committee and the body a chance to show that the public policy of Nebraska can be that we don't want our citizens treated less fairly in their workers' compensation cases simply because we want to limit insurance company liability. This is not employers. These employers are not making these decisions unless they're acting in the role of an insurance company, like as a self-insurer. But these are insurance companies who collect premiums and then farm out the claims to claims adjusters or to third-party administrators to save money and, and they are treated differently in Nebraska. It's been my experience, hearing from adjusters, that they treat Iowa claims differently because they know I could get stuck with bad faith and that is, that is the financial incentive that makes them administer the claim the way it should be, which is the focus of the, sort of, the three bills that we've talked about today. I think I mentioned that the, the language is loosely based on, on the-- Kansas, it has a statutory system. Most of the other states that have bad faith for workers' compensation cases have done it because their Supreme Courts have determined that the exclusive remedy does not apply, right? So they, so they looked at their, their statute and said, no, this-- like, certainly, this small penalty provision wouldn't have been included when they were-- you know, as a matter of public policy. So it shouldn't-- it doesn't seem like it should raise premiums for small businesses because the small business just wants their employee to be taken care of and get back to work as soon as possible. That's the goal of the system. It's the insurance company and people that they engage to administer the claims, third-party administrators, that are, are likely to be the ones engaging in this bad faith. And the standard within the bill certainly could be debated, but it's a high standard. It's meant to

only catch those truly egregious cases. But as Mr. High mentioned, if-- you know, as long as you're, you're avoiding those really high cases, you do tend to get a better, more self-executing system out of the whole thing, which, which again, goes back to the contempt and, and the penalties for, for failure to authorize that sort of thing.

M. HANSEN: All right, thank you for your testimony. Any questions from the committee? Seeing none, thank you.

JOHN CORRIGAN: Good afternoon, Mr. Chairman and members of committee. John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, testifying in favor of LB1128 regarding the institution of bad faith cause of action in Nebraska on behalf of Nebraska AFL-CIO. The AFL-CIO has been in favor of this bill, of this, this cause for many years. It seems to be fair to treat our injured workers with the same rights that they would have in the surrounding states and particularly, where a lot of our injured workers do work in the trades throughout Iowa and then Kansas. And if they-- if that injury takes place in Nebraska, they are treated differently. And we think that's not necessary. We also think that the impact of this change, while, while positive for the system, will also apply to a very small number of cases; but not too many people out there that actually act with bad faith and probably less that can be caught doing it. But it is a step in the right direction. We support LB1128. Thank you.

M. HANSEN: Thank you. Any questions from the committee? Seeing none, thank you. Welcome back.

GREG COFFEY: Mr. Chairman and members of the committee, Greg Coffey, G-r-e-g C-o-f-f-e-y, appearing on behalf of the Nebraska Association of Trial Attorneys. I think it is helpful for people who are not practitioners of workers' compensation law to, to recall the history of how the workers' compensation system came into being. A little more than a hundred years ago, parties on the sides of the employers and the employees' labor got together and created this grand bargain. Prior to the grand bargain, the remedy of an employee who got hurt on the job was to sue their employer in regular courts, in which case, they had all of the access to the various kinds of damages: pain and suffering, 100 percent of their lost income, and so on and so forth. After the grand bargain, the idea was suing an employer in regular court and having to prove negligence was cumbersome and difficult and challenging and cost worthy to both sides. In order to save expense and make the system more sure, all you had to do in order to recover under workers' compensation was to prove you got hurt on the job and

then you were covered and that was it. That's part of a grand bargain that both sides have honored ever since. And so it's important to remember that these medical expenses that we're talking about or that I've been talking about today, that's not just a gift. That is something that was a bargained-for exchange that, that employers signed on to in this grand bargain 100 and whatever number of years ago. The best argument for LB1128, I hate to say, was the testimony earlier of my friend Dallas Jones on LB1126 when he says that there is some sort of justification to not require employers to have a good faith basis to deny medical treatment. Think about that, that there's some sort of justification not to require an employer to have a good faith reason to refuse to cover somebody's medical expense and have them sitting out there without medical treatment for who knows how long. That is the justification for LB1128 because believe me when I tell you, Senators, from the practitioner side of this, it happens. Bad faith denial with no legitimate basis in law or fact; claims are denied if the insurance company-- I believe from what I've seen, if the insurance company thinks this is just medical only, they're not going to be able to find an attorney to represent them, I can deny this without any risk and they'll just go away. And I'm convinced that that happens. I'm convinced that I, that I see this from time to time when it's just a medical-only claim. And I have to tell them, listen, I can't represent you because I can't charge you a contingency fee for just your medical bills. You're, you're out of luck. It needs to be fixed and one way of fixing it would be passing LB1128 and allowing people a, a separate claim against an insurance company for bad faith, not for getting it wrong, but for getting it wrong with malintent. And that-- if there are no questions?

M. HANSEN: Thank you for your testimony. Are there questions? Seeing none, thank you. All right, are there any other proponents to LB1128? Seeing none, we'll switch to opponents to LB1128.

DALLAS JONES: Good afternoon. Dallas Jones, D-a-l-l-a-s J-o-n-e-s. Senator Hansen, members of the committee, I appear before you on behalf of NWCEF, or Nebraskans for Workers' Compensation Equity and Fairness, in opposition to LB1128. There are a variety of reasons to oppose this bill, but let me start with discussing two things at the outset. What the bill says, again, much like what we got done expressing in LB1126 at the time of denial, meaning the employer has 30 days and if it doesn't have the evidence to establish a reasonable controversy in 30 days after some requests for payment of something, then there is an automatic bad faith claim that's going to ensue, is a

really bad idea for the same reasons I talked about in LB1126 because you simply cannot develop many of these complicated cases fully so you know whether it's compensable or it's not in 30 days. It-- as I said it, again in LB1126, puts the employer in a position then. Well, my choices are I'm going to get hit with a bad faith claim or I'm going to pay benefits that I suspect I don't owe. I don't think I owe it, but I can't yet prove it because I haven't had time. You will not get the benefits back if you pay it as the employer. And on the bad faith side-- well, we don't know what those damages are, but no employer, I can tell you, is going to want to face that action. So the, the choice is simply untenable. And the remedy here for a problem that counsel has told you about, which I will submit is exceedingly rare, deals with far more than what Mr. High talks about as the abhorrent and egregious conduct of an insurance company. The bill does not limit itself just to application of the worst-of-the-worst cases of conduct. In fact, the bill deals with the other end of the spectrum, I will tell you. The second section of the bill references what we generally call the "Fair Claims Practices Handling Act" portion of the Workers' Compensation Act, which says a long, long, long laundry list of things that should be done in every single case. I will submit to you that the reason all the lawyers are here is because it is not an uncomplicated system. I am not sure that there has ever been a workers' compensation claim that is handled perfectly from beginning to end in every single aspect of what the "Fair Claims Practices Handling Act" says should happen. That act literally goes through a list of anything that the insurer doesn't do right or the employer doesn't do right or doesn't do timely. Under this bill, then provides a basis for the claim that the employee is going to claim for bad faith. It is solving lots of problems or-- that, that I would submit don't exist and for which we don't need a remedy like this. I will submit to you that in every case that is probably filed now by counsel in a workers' compensation claim, what's going to accompany that will be a claim for bad faith and it's going to be used for leverage. By and large in most of them, the vast majority of cases, there will be a concession, probably wasn't much bad faith going on, but it will be used as leverage because that's what lawyers do. So when you see petitions that are going to be filed, what you're going to see is employee is entitled to these benefits and employee is making a claim for bad faith. If you don't think that that's going to increase the costs of workers' compensation in Nebraska, then we need to talk more because there isn't any result other than that that I can predict from this. I'm about out of time. I would be happy to answer questions.

Some other folks who are going to testify can address some additional points.

M. HANSEN: Thank you very much for your testimony, Mr. Jones. Are there questions?

DALLAS JONES: Thanks, Senator.

M. HANSEN: Well, Senator Lathrop had a question.

DALLAS JONES: Yep.

LATHROP: The cause of action this thing creates is a district court action and not something that would be in the Work Comp Court--

DALLAS JONES: True.

LATHROP: --am I right?

DALLAS JONES: Yeah.

LATHROP: OK.

DALLAS JONES: It will come hand-in-hand.

LATHROP: So the idea, the idea that my complaint filed in the Work Comp Court is going to include an allegation of bad faith is not true, not correct.

DALLAS JONES: What will come is there will be a petition in the Workers' Compensation Court and a companion claim. Whether it's filed in district court right away, Senator, who knows? But the two claims-- and I use that kind of generically-- employee claims these benefits and oh, by the way, you have, you have violated these agreements.

LATHROP: Let me ask you this; do you practice over in Iowa?

DALLAS JONES: I do not.

LATHROP: You're familiar with the practice over in Iowa that includes a bad faith cause of action?

DALLAS JONES: Very generally, Senator, very generally.

LATHROP: OK. They're not over there filing bad faith claims with every work comp claim, would you agree with that too?

DALLAS JONES: I do not know that and I don't know the burden of proof in Iowa either.

LATHROP: But you can't-- I just want to be clear, as long as you're making that representation, you're telling us you couldn't tell us if they do or they don't. That is just your interpretation or your forecast of what you think such a bill would create.

DALLAS JONES: Two things: I don't know how the provisions of this bill compare to Iowa because I don't practice in Iowa. And I don't-- I'm not familiar with the statute or the case law in Iowa. That's number one. And two, yes, I am forecasting that because the, the types of misconduct, if I can refer to it that way, that is referenced in the bill is virtually anything that wasn't done perfectly. And I will be surprised if I'm defending a claim and when I'm trying to resolve that claim, what doesn't accompany the claim for benefits is also-- and you know that--- and then there would be the list of items that the counsel believes were, were handled incorrectly. There's bad faith there as well. So when we're settling it, just like there is with rehabilitation, there will be the bad faith threat.

LATHROP: Well, I'm not going to testify in this case, but I will be in the Exec Session. And this is not-- it doesn't comport with reality. This isn't happening in UIM claims. It's not happening in underinsured motorist claims. People that do this work take very seriously the allegation of bad faith. It is a lot of work to do, very difficult to prove, and it's not just done willy-nilly by the plaintiff's bar, as your testimony would suggest.

DALLAS JONES: This bill specifically refers to the "Fair Claims Practice Handling Act," which refers to a variety of things, which one might say falls into the minutia category and said that serves as a basis for bad, bad faith.

LATHROP: Well, let me ask you this, then, Mr. Jones: Is there any circumstance under which you believe an employee ought to be able to file a bad faith claim against an insurance company that deliberately forces them around during the claims process?

DALLAS JONES: As a matter of public policy, I believe it's a bad idea. And as Mr. Coffey referenced, the grand bargain, it tilts the grand bargain in a way that was not contemplated.

LATHROP: Well-- and I'm-- again, I don't want to, I don't want to take up too much time. But I've been practicing long enough to remember before Corrigan's office got the, the decision on retaliatory discharge. The Supreme Court made an exception to the exclusivity provisions of work comp and said if an employer terminates somebody because they have made a work comp claim, they have a cause of action. That was not the end of the world. And by the way, I think it made employers a lot more careful about how they treat employees that make work comp claims, would you agree?

DALLAS JONES: I suspect that that's right. And the court provided a--

LATHROP: Right.

DALLAS JONES: --very clear guideline as to what the burden of proof was, all the things the employee had to show.

LATHROP: OK, thank you.

DALLAS JONES: Yep.

M. HANSEN: Thank you, Senator Lathrop. Seeing no other questions, thank you for your testimony, Mr. Jones.

ROBERT J. HALLSTROM: Chairman Hansen, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB1128. Once again, I've been authorized by the Nebraska Chamber of Commerce, the Lincoln Chamber of Commerce, the Nebraska Retail Federation, and the Nebraska Restaurant Association to express their opposition to the bill as well. I won't go into much more detail. I think the exclusive remedy has been talked about by both of the witnesses prior to this time. Senator Vargas' staff started out the testimony indicating that almost half the states recognize a bad faith cause of action. I received some materials from South Dakota. I'm not going to dispute or take issue with where her source was, but the evidence that I had indicates that maybe 10 to 12, at the most, states have some type of bad faith exclusion, very few of them statutory. Most of them may have been by, by a judicial decision.

I think-- and just to clarify-- our position with regard to the claim, Senator Lathrop, isn't necessarily that a specific claim is filed. I think that Mr. Jones, in his testimony, referenced the fact that it was used for leverage in the settlement process. And that's the type of claim that would be made, that there is a bad faith element that is existing in any particular case. The individual from South Dakota works for an insurance company where they do have a judicially-created bad faith doctrine indicated that in any disputed or denied claim, they inevitably have the allegations of bad faith that are designed to put leverage on the employer or the insurer in terms of how much the settlement is worth in any particular case. So with that, I think this would raise costs to, to employers for providing workers' compensation coverage that goes against the grain, with regard to the grand bargain or the exclusive remedy. And for those reasons, we're opposed to the bill. I'd be happy to address any questions.

M. HANSEN: Any questions from committee? Seeing none, thank you.

ROBERT J. HALLSTROM: Thank you.

M. HANSEN: Any other opponents? Hi.

JIM DOBLER: Good afternoon, Senator Hansen, members of the committee. My name is Jim Dobler. That's J-i-m D-o-b-l-e-r. I am a registered lobbyist and I am appearing today on behalf of the Professional Insurance Agents of Nebraska. The PIA organization consists of independent agents and there are about 1,000 of PIA members located in the state of Nebraska. I appear in opposition to LB1128. The bill provides a bad faith cause of action against an insurance company or its agents. We read that to mean that an insurance agent could be involved in a, a bad faith cause of action. The intentional tort of bad faith involves a, a legal doctrine arising out of the insurance contract and the insurance company and the policyholder. That's the process. The insurance agent, as I'm sure you can appreciate, is not a party to that contract. In addition, the insurance agent has no control over the, over the claims handling process of the insurance company. So the agent, in our opinion, should not be liable for or subject to a bad faith claim because of the intentional acts of an insurance company. With that, I'd be happy to answer any questions.

M. HANSEN: Thank you, Mr. Dobler. Are there questions? All right, seeing none, thank you. Any other opponents for LB1128? Seeing none, anybody wishing to testify neutral on LB1128? Seeing none, we will close the hearing on LB1128 once I read in these letters. We have a

letter of support from Schuyler Geery-Zink of Nebraska Appleseed. A letter of opposition from Steve Schneider of American Property Casualty Insurance Association, a letter of opposition from Robert Bell of Nebraska Insurance Federation, a letter of opposition from Ann Parr with the Nebraska Insurance Information Service. With that, we will close the hearing on LB1128. And we'll ask Ms. Mandy to open up on LB1129.

MEG MANDY: Good afternoon for the last time. My name is Meg Mandy, M-e-g M-a-n-d-y. I'm a legislative aide for Senator Vargas. I know you closed the hearing on LB1128 and I just want to clear up two things from the opponent testimony. One is that it was not our intent for insurance agents to be included in the bill. So if we need to clear that up, we can. And the second was about the comment I made in Senator Vargas' opening testimony about half of states having bad faith causes of action. I have some research here from Ms. Fox and Mr. High's law firm that shows about 20 states have that independent cause of action for bad faith. Some of them are codified and some of them were just through case law. So I'd be happy to share that with the committee. Moving on to LB1129, LB1129 clarifies that entities that contract out a portion of their usual business to contractors remain liable to independent contractors unless the entity also requires the subcontractors to carry their own workers' compensation coverage. In many industries, it is common for employees of uninsured subcontractors to recover from the general contractor for work injuries. But in other industries like truck driving, roofing, and construction, it is common for entities to contract out the core of their work as a way to reduce or eliminate workers' compensation premiums and underinsure the risk of injuries while performing the work in these dangerous occupations. Some recent decisions have held that those contractors are independent, even though they are treated the same as direct employees except for payment schemes. Other trial decisions have found that 48-116, our statute regarding employers in evasion of workers' comp law, does not apply because the uninsured subcontractor is not an employee. These individuals are not truly independent contractors because they are essentially limited to working just for the entity that employs them and they are doing unskilled labor. They have no authority to set the price of the service, earn a profit, and they're not educated on how to insure the risk of work injuries so they should be classified as direct employees. Insurance companies who provide coverage in an assigned risk pool already calculate their premiums based on his interpretation of the law. However, in at least one case where a premium was

collected from a small business based on payroll to an uninsured sole proprietor, the insurance company has declined to pay the claim. That claim is one in which the laborer fell off of a roof and was paralyzed from the neck down. He lived three years in various care facilities and ultimately died from his injuries. He incurred almost $5 million in medical expenses, Medicaid paid over $1 million in medical treatment, and the insurance company who collected a premium from the employer refused to pay. The testifier behind me-- behind me represented this person and their family and could talk more about this case, but I think we can all agree that this is wrong and it's a loophole in the law and we have to continue being diligent to ensure nothing like this could happen to another worker and his or her family. LB1129 would ensure that the law matches with how insurance companies are functioning and that claims are paid by insurance companies who collect premiums for these types of labors. With that, I'll close and let others come up behind me to answer your questions.

M. HANSEN: Thank you, Ms. Mandy. With that, we'll move to our first proponent on LB1129.

JUSTIN HIGH: Good afternoon for the final time, Chairman Hansen and members of the committee. My name is Justin High, J-u-s-t-i-n H-i-g-h. I'm an attorney from Omaha, Nebraska. The case that was just referenced, the issue we're facing is the interplay between the statutory employer doctrine and the subcontractor, independent contractor exclusion. Now what this bill does is clarifies all of that. There is an understanding from some of the Workers' Compensation Court judges that even if a subcontractor is in the same business as a contractor, if the contractor doesn't require them to carry workers' compensation coverage, they can be called an independent contractor and not a statutory employer. Now let's make this really simple. If a contractor is doing a certain business like roofing or truck driving and they do not require an independent contractor, whether that person does or does not have employees, to carry workers' compensation insurance, they should then be considered an employee covered under the contractor's policy. That's what we think the law should be. Today, that's not the way the law works because a defendant, an employer, or their carrier-- their insurance carrier can then call the contractor who is doing the same kind of work, the exact same work, whether it's roofing, truck driving, doesn't matter what it is, can then say that they're an independent contractor and you fall into this incredibly confusing ten-factor test that is highly fact specific and requires lots and lots of work and discovery to prove or disprove. We

don't think that's the way it should be. If an employer lets a contract and they do that same kind of work, they should be required to make sure that the contractor either has coverage or is considered an additional insured on their policy. Now the case that we were talking about was a roofer. He'd been in the roofing business for ten years. He had been doing roofing exclusively for the employer for eight of those years, exclusively for the employer for eight of those years. He had employees. He did not have workers' compensation coverage. He did not elect to not come under the act and he fell off a roof, fell off a roof and unfortunately was rendered a quadriplegic. The roofing company who contracted with him said that he was an independent contractor, OK? They said that he was not an employee, he wasn't a statutory employee, and entered into this highly convoluted analysis on something that we believe should be incredibly simple. You either make sure they have coverage and if they don't, then they're going to fall under your policy. Now this does not apply to another independent contractor that the roofing company contracted with to put in a driveway or install doors because they are not in that kind of business. The end result of this unfortunate incident was my client, a gentleman named Gerry Robles, languished for about two and a half years in an institution in Omaha and unfortunately died. Travelers Indemnity Company took premium, they took the money as if this guy was an employee. And then when it was time to pay the claim, they didn't want to. They denied coverage. That's a, that's a separate but related issue. And as a result, Nebraska Medicaid, Nebraska Medicaid spent about $1.5 million covering this guy, providing treatment for him, which coincidentally, is almost the same amount of money that DHHS asked you guys to waive today. I mean, $1.5 million to fellow Nebraska taxpayers because of this wrinkle in the law. That's what this bill is designed to remedy. That's what this bill is designed to solve, that particular problem. Are there any questions?

M. HANSEN: Thank you, Mr. High. Are there any questions? Senator Hansen.

B. HANSEN: I apologize for my legal ignorance, but doesn't it sound like everything was already in place appropriately? Like, he was a classified independent contractor, he had his own insurance, so it seems like it's more of a problem that his insurance didn't cover his claim--

JUSTIN HIGH: He did not--

B. HANSEN: --versus him not being an independent contractor.

JUSTIN HIGH: I'm sorry, Senator, I probably wasn't clear. He did not have workers' compensation insurance.

B. HANSEN: Oh, OK. I thought you said he did, but they didn't cover it.

JUSTIN HIGH: No.

B. HANSEN: OK.

JUSTIN HIGH: The contractor who puts on roofs and then contracted with him to put on roofs had coverage on their employees. And interestingly, I don't think there's any dispute. He had-- Navarro had four employees. And if any one of those guys fell off the roof, they would have been covered. If any one of the contractor's guys would have fell off the roof, they would've been covered. So why is this one particular person not covered? It's because he might arguably [SIC] called an independent contractor.

B. HANSEN: Sure. Isn't that what it's supposed to be like?

JUSTIN HIGH: No because the statutory employer doctrine says that if a company who, lets a part of their contract to a subcontractor, if they don't exact coverage, then that individual gets hurt and becomes one of their employees. That's been the law of this state for 90 years.

B. HANSEN: OK.

JUSTIN HIGH: Any additional questions?

M. HANSEN: All right. Thank you, Senator Hansen. Are there questions? Seeing none, thank you for your testimony. Welcome back.

ERIN FOX: Thank you, Senator, members of the committee. Mr. High discussed the purpose of this bill, which is to address a gap in coverage that has resulted from some recent trial decisions. In the process of working with Senator Vargas' office on this bill, we recognize that there is some opposition and concerns about this particular approach and how it would work along with LB129 [SIC], which you're probably somewhat familiar with, but which did try to address this issue of employee misclassification because that's what the concern is here, is that when you work for one company doing the same work that that company does, you look a lot more like an

employee. But there is a gap within the ten-factor test. So with that said, we have had discussions with some of the stakeholders. And I, I do think that perhaps this language is not, not maybe the right approach to address this issue. But I do hope the committee is open to, you know, future discussions about this issue, particularly when it's very clear that an insurance company can assess a premium based on payroll to Mr. Robles, in our case, and collect a premium, but not have to cover the claim because that to me is, like-- the real core issue here is that the, the small business, the roofing company, I mean, sure, they would have been fine if they just would have made him carry his own coverage. Then we, you know, then he would have had his own coverage and, and the claim would have been covered. But they were essentially de facto insuring him because they had been charged a premium for what they had paid to him. So under those circumstances, you know, they didn't get the benefit of their bargain, certainly. And I, and I think the law does provide for them with some cause of action against the insurance company. But for our guy, he was, he was out of luck. And, and it doesn't seem really fair that the Nebraska taxpayer should have to bear that burden. So maybe, you know, some-- perhaps some sort of presumption when-- if you can prove that they collected a premium, maybe then they have to cover the claim even if it's an independent contractor; some sort of language in that regard or something to address this issue because it was a particularly-- it is-- it does appear to be along the lines of, like, LB129 [SIC] and trying to just bring-- make it more clear for small businesses what they're getting when they pay their insurance premium and prevent companies from charging for subcontractors on one hand and then not paying out claims on the other. That's it.

M. HANSEN: Thank you. Any questions from committee? Seeing none, thank you. All right, welcome back.

JOHN CORRIGAN: Good afternoon, Mr. Chairman and members of the committee. John Corrigan, J-o-h-n C-o-r-r-i-g-a-n. I'm here to testify on behalf of Nebraska AFL-CIO in favor of LB1129. This is an endemic problem in sectors of our economy. And from the labor movement's perspective, the, the support for this type of legislation is really based on punishing the bad actors and rewarding the good employers. And when I say the good employers are-- we have contracts with good employers that do it right and we want to support them in the business that they do because their successful business results in wages being paid to hardworking people. The bad employers are the people who are in the business generally. Somebody goes and puts a yard sign out all

over the city saying we do roofing, we'll repair your roof. They get that $8,000 contract to replace the roof. They turn around and subcontract that for $4,000 to three people they use all the time, but they're not employees. They don't-- they pay them by the day or maybe by a percentage and somebody falls off the roof. And I have two cases, just this year alone, within the last calendar year, where these clandestine, post-accident meetings-- where the subcontractor had to come and sign an agreement saying, I know I'm an independent contractor and I'm responsible for this work comp injury and this is the-- the otherwise statutory employer had him sign a contract. In both cases, they didn't know how to read that contract and signed it anyway. But in any event, it is an endemic problem. And to the extent that people are in these businesses generally and they don't have insurance, it becomes a, a terrible problem to try to collect from them. And those type of people who are getting rich quick on the backs of and sometimes on the lives of injured workers should be hounded out of the business. And this is one way to do it. So if it's not this language, maybe some other effort to ensure that the statutory employer should apply to anybody who's generally in the business. And he's-- all they're doing is selling that contract that they've received in order to have somebody else do the work that they've gone out and been in the business holding up, that they're going to do it themselves. So LB1129 is a good way to start changing this endemic problem. And we would ask for your support. Thank you.

M. HANSEN: Thank you, Mr. Corrigan. Any questions? Seeing none, thank you. Any other proponents to LB1129? Seeing none, we'll take our first opponent to LB1129.

DALLAS JONES: Good afternoon, again. Dallas Jones, D-a-l-l-a-s J-o-n-e-s. Senator Hansen and members of the committee, I appear on behalf of Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB1129. Let's be clear what this is not. This is not a provision which protects employees of subcontractors who have failed to meet their obligation to buy insurance for their employees. We already have those protections in the law. This is not a situation where we are trying to protect people who are really employees, but others are calling them independent contractors. That's not what this is about. We have a ten-step test that the court has to look at to determine if that person is an employee or an independent contractor. If the result is they're an employee, they're entitled to benefits. It doesn't matter what the employer called them; they're an employee entitled to benefits. This is not about those two things. What this is

about is sole proprietors and whether they're allowed to be in business, their choice, and not purchase workers' compensation coverage to protect themselves; not their employees, this is them. The proponents are asking you to say to sole proprietors, you may not be in business unless you purchase insurance, unless you can find some general out there who's willing to essentially pay for it for you. Now, I, I assume that there will be some general contractors who will; I assume so, I don't know that. I haven't taken a poll. But I also assume that there will be general contractors who will say we will contract with sole proprietors who are insured and we will not with those who are not. And if you, sole proprietor, are not insured, you're not on our list and we'll find somebody else to do our drywall, somebody else to do whatever it is that that sole proprietor does. And that's really it. And as a matter of public policy, do we wish to say to sole proprietors-- an added burden that you have to be in business so that you have the full range of generals in your area for whom to contract or with whom to contract-- you're going to have to incur this additional expense to cover yourself? Or are we going to say you're an adult, you're a business person, and you are free to contract with the general as you are right now? And if you get injured, you've made the decision that that's gonna be on you. But if you don't wish to purchase that coverage, you don't have to. So my position is in this state, the public policy is that sole proprietors-- not talking about are they an employee-- people who are true independent contractors should be allowed to make that decision and not be forced to incur that additional cost to remain in business. Thank you. I'd be happy to entertain any questions.

M. HANSEN: Thank you, Mr. Jones. Are there questions? Seeing none, thank you for your testimony.

DALLAS JONES: Thank you.

ROBERT J. HALLSTROM: Chairman Hansen, members the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the National Federation of Independent Business and Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB1129. I have also been authorized to appear in opposition on behalf of the Nebraska Chamber of Commerce and Industry, the Nebraska Retail Federation, the Lincoln Chamber of Commerce, and the Nebraska Restaurant Association. I think Mr. Jones noted the two things that this bill isn't designed to do. We've had misclassification of employees legislation that Senator Lathrop was

very instrumental in years ago and the contractor registry in LB139 from the last session of the Legislature, which did, did something to address parts and component parts of this issue. But I think the one thing I'd like to note is when we talk about contractors and subcontractors-- and most of the discussion today has focused on the construction industry and somebody that's doing drywalling or doing something that another construction industry company would do. And the way I read this, the contractor and subcontractor can apply in a whole host of other areas. For example, if I am referred a case as an attorney, if Senator Lathrop refers a case to me and I found an area where I might be able to do something that he can't so he refers the case to me, I'm a sole proprietor if that's the case. I'm not obligated. Statutes currently authorize me not to have workers' compensation insurance under those situations. Again, I don't have any employees. If I'm injured, should we have Senator Lathrop have to treat me as an employee under those circumstances? I would think not. The, the legislation is probably much more broad than it needs to be if there's an area of concern. This one seems to take a shotgun approach. And the cases that-- the case, I should say, that was indicated would not seem to justify a change of this magnitude. With that, I'd be happy to address any questions.

M. HANSEN: Thank you, Mr. Hallstrom. Are there questions? Seeing none, thank you. Are there any other opponents to LB1129? Seeing none, is there anybody who wishes to testify neutral? Seeing none, I believe that will close our hearing. Let me read in a few letters: We have one in support from Schuyler Geery-Zink from Nebraska Appleseed. And then we have three in opposition: one from Steve Schneider of American Property Casualty Insurance Association, one from David Slattery of the Nebraska Hospital Association, and one from Jean Petsch of the Associated General Contractors. With that, we'll close the hearing on LB129 [SIC] and our hearing for the day and our bill hearings for the year. Thank you, everyone.