

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 25, 2023

**WAYNE:** Good afternoon and welcome to the Judiciary Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County. I serve as Chair of Judiciary. We will start off by having members of the committee and committee staff do self-introduction and starting to my right, Senator Ibach. I haven't said your name enough. You can talk to my staff. I am horrible at names. It took me a year to learn Angenita's first name so.

**IBACH:** It's OK.

**WAYNE:** All right.

**IBACH:** Senator Ibach, District 44.

**McKINNEY:** Senator Terrell McKinney, District 11.

**MEGAN KIELTY:** Megan Kielty, legal counsel.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**DeBOER:** Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10 in northwest Omaha.

**BLOOD:** Good afternoon. Senator Carol Blood, representing District 3.

**HOLDCROFT:** Rick Holdcroft, District 36.

**DeKAY:** Barry DeKay, District 40.

**WAYNE:** All right. Also assisting us is our committee pages, Logan-- how do you-- is Logan here? Logan, how do you say your last name?

**LOGAN BRTEK:** Brtek.

**WAYNE:** Brtek. Logan Brtek from Norfolk, who is a political science and criminal-- criminology, criminology-- I'll get that word right-- major at the UN-- at UNL and Isabel Kolb from Omaha, who is a political science and pre-law major at UNL. This afternoon, we will have five bills and we will be taking them up in the order listed outside. On the tables in the back of the room, you will find a blue testifier sheet. If you are planning to testify, please fill out a blue sheet and hand it to one of the pages so we can make sure we have an accurate record. If you do not wish to testify, but would like your record to be-- at this hearing to be recorded, please fill out a gold sheet in the back of the room. I will also note it is the

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Legislature's policy that all letters must-- all letters or records must be received by the committee by noon the day prior of the hearing. Any handouts submitted by testifiers will also be included as part of the records of exhibits. We will ask you to have 10 copies. If you don't, hand them to the pages and we will get copies for you. Testimony for each bill will begin with the introducer's opening statement, followed by proponents of the bills, which are the supporters, and then those in opposition and then those speaking in a neutral capacity. The introducer of the bill will be given the opportunity to make a closing statement at the end. We will ask you to begin your testimony by saying and spelling your first and last name. We will be using the three-minute light system today. When your testimony begins, it will be green. At yellow, please start wrapping up because you will have one minute and then at red, we will cut you off. I would like to remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that, we will start today's hearing with LB315. Welcome to your Judiciary.

**FREDRICKSON:** Thank you.

**WAYNE:** Have you given an opening yet?

**FREDRICKSON:** I have not. This is my, my grand premiere so.

**WAYNE:** We will stop you during your opening and ask many questions. No, I'm joking. Go ahead. [LAUGHTER].

**FREDRICKSON:** Thank you so much. Good afternoon. Thank you, Chair Wayne and members of the Judiciary Committee. For the record, I am John Fredrickson, J-o-h-n F-r-e-d-r-i-c-k-s-o-n, and I represent District 20, which is in central west Omaha. I'm happy to be here today to introduce LB315, which supports victims of domestic violence, sexual assault and child abuse by ensuring that they do not experience financial debt and additional trauma as a result of seeking necessary medical care. LB315 provides-- prohibits providers of medical care and services related to the examination or treatment of domestic violence, sexual assault or child abuse, from referring victims to collections or distributing information that would affect the credit rating of the victim or the victim's family. This bill does not prevent health care providers from seeking reimbursement for services from the survivor, insurance or other forms of payment. Accessing medical care is often an essential resource for survivors, whether that be receiving a forensic examination or treatment for an injury arising from domestic or sexual violence. Accessing medical care might also be the first time that a victim is provided with additional support services

critical to their safety and well-being. That said, payment of medical bills and accruing medical debt can serve as a major financial burden to survivors and prevent them from seeking the care that they need. LB315 will eliminate a critical financial barrier to seeking appropriate care by protecting survivors from medical debt. This legislation is particularly important for the type of victims that it covers. Those who have been affected by domestic violence, child abuse, trafficking and sexual assault face a unique type of trauma and stigma from these crimes. During its acute stages, this trauma can create challenges for seeking help and plays a role in why these cases are so frequently underreported. Health care providers serve as a critical resource in identifying survivors and connecting them to other professionals for help. This bill will allow for greater access to medical care by alleviating the financial burden placed upon survivors. As a result, medical providers can ensure that survivors are identified, their situations are reported as needed, and most importantly, that they are provided with appropriate support. In the last few years, this Legislature has worked to ensure that the costs of care do not serve as a barrier to victims seeking the help that they need. The passing of two bills to make the Crime Victims Reparation Program more accessible to survivors serve as examples of the Legislature's commitment to supporting survivors. LB315 is an important next step. With an already established avenue for survivors and health care providers to seek reimbursement, we now need to ensure that survivors are not sent to collections for the cost of health care resulting from their victimization in the meantime. Unfortunately, cases still fall through the cracks and debt collectors are sometimes engaged, which undermines the assurances to the survivors that this Legislature has worked hard to create. Sending these bills to debt collectors is unnecessary because health care providers already directly bill the CVR program that cover medical care and services related to the examination and treatment of these survivors. There are also other programs available to providers as well, including the Sexual Assault Payment Program. The victim may also apply for additional funds through the CVR to cover other medical costs, mental health and lost wages as a result of the crime. In those specific cases, an individual must report the crime to law enforcement, obtain a protection order related to the incident or present for a forensic medical exam. The survivor must also cooperate with criminal justice officials in the investigation of the crime. So it is important to note that the CVR program is intended to unburden survivors of these financial expenses, while also creating a public safety benefit. All of this is governed by Nebraska Revised Statute 81-1801 to 81-1842 and Crime Commission Rules and Regulations Title 80, Chapters 1 through 7.

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For your convenience. I have included this information from the Nebraska Crime Commission in my handouts. I ask that you advance LB315 from the Judiciary Committee so we can help ensure survivors come forward and receive the care that they need. And with that, I'm happy to answer any questions you may have.

**WAYNE:** Any questions from the committee? Seeing none, will you be around for closing?

**FREDRICKSON:** I will.

**WAYNE:** First up, we'll have proponents, proponents. Welcome to your Judiciary Committee.

**ANGIE LAURITSEN:** Thank you.

**WAYNE:** I almost said Urban Affairs because that's where I usually see you at.

**ANGIE LAURITSEN:** Um-hum. I know. So thank you, Chairman Wayne and committee members. I thank you for this opportunity to speak in support of LB315. My name is Angie Lauritsen, A-n-g-i-e L-a-u-r-i-t-s-e-n, I am a survivor of childhood sexual assault, domestic violence, physical, mental and financial abuse. My role here today is to make sure that the survivor voice is front and center concerning policy. Today we have victims of assaults being told by victim advocates and nurses that the fees for medical services performed after their assault will not be their responsibility. But unfortunately, that is not always the case. There are so many barriers for victims to seek services following an assault that it becomes critically important to make the process of medical treatment and evidence collection to be as comfortable as possible for the victim. During these initial conversations, it is explained to them that any medical procedures performed due to the assault against them will be covered. So as a victim, you start to compartmentalize and place these procedures as something I do not need to worry about. Once the initial physical injuries-- once the initial physical injuries, which can include not only the fees associated with being seen in one of these facilities, but strangulation, lacerations and contusions. Once these have been taken care of, the victim/survivor must learn how to survive in their new normal. Their case may be moving through the judicial process. They may have had to change all aspects of their life, including a new job, new home, new routines, while also trying to maintain a feeling of safety that was taken from them. Financial security is integral when a victim is seeking safety. But

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unfortunately, due to the hospital or clinic miscoding or not straight billing to the CVR program, a bill is sent to the victim or survivor, which might be weeks, if not months, after the assault. Just looking at that bill is a reminder of the assault. What is happening today is that our system is revictimizing assault victims through collection notices and threats of collections and that is why LB315 is needed. In my role, I have been meeting with Sarpy County victim advocates, law enforcement, and the county attorney's office. I have learned through these meetings that we have a victim currently in Sarpy County that has been receiving bills with collection notices from the medical treatment that was necessary after their assault. This victim placed their trust in a system that we helped to create, but the system failed them. This legislation takes a big step to ensure that victims in Nebraska will have the support they need during one of the most traumatic times of their lives. Victims should not have to be revictimized by a system that should be supporting them during their time of healing. We need to do better. I appreciate your support of LB315 and I can answer any questions that you may have.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here today.

**ANGIE LAURITSEN:** Thank you.

**WAYNE:** Next proponent. Welcome.

**KATIE WELSH:** Thank you. Good afternoon, committee members. My name is Katie Welsh, K-a-t-i-e W-e-l-s-h, and I'm an attorney and the legal director at the Women's Center for Advancement. We're a nonprofit organization that serves survivors of domestic violence and sexual assault in Omaha. And I'm here today to express the WCA's support for LB315 because no survivors should choose between debt and necessary medical care in the aftermath of a domestic or sexual assault. As a victim services organization, we are accustomed to serving clients with severe injuries that require costly medical care. For example, we once met with a victim who sought our assistance apply for a protection order after a brutal assault by her longtime boyfriend. The victim sustained a concussion, broken ribs, lacerations from being punched and bitten, and extensive bruising across her head and torso. She delayed going to the hospital immediately following the assault, but eventually decided she was in too much pain. All told, her medical bills for treating all of her injuries amounted to \$30,000. And this was not the first trip to the hospital and that's not her only medical bill for treatments of injuries for domestic assault. For victims like her, medical bills are just one of many expenses that result from

fleeing your abuser. These bills act as an additional burden that stands in the way of fully restarting life after violence. Their abusers may have drained their bank account, ruined their credit or refused them access to the insurance cards. In other cases, victims don't want to use their insurance because they worry about privacy or safety issues if family members or others find out, so they pay out of pocket. They may be searching for new housing, seeking to retain an attorney to file for divorce or custody and are crunching numbers to figure out how to manage their family's expenses entirely on their own. As a result, it's not uncommon that victims in this situation will live with the pain of untreated injuries merely to avoid the expense and debt collectors. On a different occasion, we met with a victim who explained that despite the responding officer's encouragement, she chose not to seek medical attention after sustaining lacerations and severe bruising from being beaten with a belt by her husband while holding their child. This victim did not have insurance and thus was worried that she would not be able to afford a trip to the hospital in addition to all the other expenses that she was shouldering. Essentially, the monetary cost of the medical services are routinely billed directly to the victim, either because they have not used their insurance, they use their insurance but those services aren't totally covered or they are uninsured. Victims are in these situations through no fault of their own, but are bearing the brunt of the consequences. When the bill goes unpaid, it gets sent to a collection agency, in some cases years after the original incident, which leads to more phone calls and letters ordering the victim to pay up. The original crisis that brings the victim through our doors of the WCA will have long since been addressed so that we are no longer in their lives and can't provide them the resources they need to address these collections cases. If we happen to still be involved with that victim, they may not know that they need legal help. Even when they know they need legal help, the WCA legal team doesn't have the capacity to provide anything more than a consultation for collections cases. Victims are often navigating the systems to pay the debt on their own.

**WAYNE:** I'm going to ask you to wrap up.

**KATIE WELSH:** Thank you. Without the protections offered by LB315, victims will continue to shoulder the monetary costs of the domestic and sexual assault, even though they did nothing wrong. No victim should hesitate to choose necessary medical treatment for fear of the debt that may result. LB315 effectively ensures that victims will not be punished for their behavior of their abusers and subjected to further trauma. I'm available for any questions.

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**WAYNE:** Any questions from the committee? Seeing none, thank you for being here today.

**KATIE WELSH:** Thank you.

**WAYNE:** Next proponent.

**MELANIE KIRK:** Good afternoon, Chairperson Wayne and members of the Judiciary Committee. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k, and I'm an attorney and the legal director at the Nebraska Coalition to End Sexual Assault and Domestic Violence. I'm here to speak in support of LB315 on behalf of the coalition and its network of local services, the provider programs across our state. These programs offer a wide range of services and supports to sexual and domestic violence survivors, including medical advocacy and referrals. Access to medical care is essential resource for many survivors, yet some survivors fear that accessing care may lead to significant debt or other negative financial consequences. I'd like to share with you one recent example from a rural area of our state. An advocate from a local service provider program worked with a survivor who was physically assaulted and strangled. The advocate visited with the survivor about seeking medical care for injuries. The survivor wanted to seek medical care but was hesitant to do so out of concern that they would not be able to pay for it. The advocate explained that under existing state law and processes in place, the Nebraska Crime Victims Reparation Act covers the cost incurred of health care providers in treating and examining survivors' injuries. The survivor was relieved to hear this and the advocate accompanied the survivor to the emergency room. Later, the survivor signed a medical release of information for use in criminal charges, filed for a protection order and cooperated with the police and the county attorney in the prosecution of charges. The following month, the survivor received a bill for medical expenses. The survivor brought a copy of the bill to share with the advocate and signed a release of information to grant permission for the advocate to contact individuals on their behalf to help with this. The advocate contacted the medical provider and both the county-- or the Attorney General's office and Nebraska Crime Commission about the established processes already in place for the payment of forensic exams. In the meantime, the victim received more bills which landed in collections. After the advocate made additional calls and explored financial hardship exemptions, the survivor ended up not having to pay the bill and the facility removed it from collections. It's clear that despite the current processes in place, survivors' medical bills are still being sent to collections, while medical providers wait for reimbursements or claims to-- from the Crime Victims Reparation. That

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process takes time and sometimes hospitals and their billing staff move a little bit more quickly. Even though the situation ended with the survivor not paying the medical bill, it required a significant amount of hours from both the advocate and the survivor to resolve it. And the burden fell on a survivor who was trying to find and relocate to a safe house, file a protection order, maintain employment, work with police and with prosecutors, all the while working through the trauma from the violence that they experienced. Additionally, when survivors' medical bills are sent to collections, there's an impact on the survivor's credit scores and that can jeopardize their efforts for safety at the very time that they need it most as they find new housing and a safe place to live. This process is even more traumatizing for survivors who do not have the direct support of an advocate and are navigating this process on their own. I urge you to vote LB315 out of committee and I thank you for letting me share this example with you today.

**WAYNE:** Thank you. Any questions from the committee? Senator Geist.

**GEIST:** Thank you for your testimony. I'm curious about-- is there an average of how much financially this often costs or a range that we can have an idea of what are the dollars that, that are billed to these victims?

**MELANIE KIRK:** The amounts that are sent to collections or just the total amount that is billed as a part of--

**GEIST:** Either, either one or both.

**MELANIE KIRK:** So I don't know the number off the top of my head. And if somebody else testifying today doesn't get it for you, I will find out and get it to you.

**GEIST:** OK. Thank you.

**MELANIE KIRK:** All right.

**WAYNE:** Seeing no questions, thank you for being here today.

**MELANIE KIRK:** Thank you.

**WAYNE:** Welcome to your Judiciary.

**JENNIFER TRAN:** Thank you. We'll talk fast because I've, I've learned the system. Good afternoon, Chairperson Wayne and members of the Judiciary Committee. My name is Jennifer Tran, J-e-n-n-i-f-e-r



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T-r-a-n, and I am a forensic nurse examiner at Methodist and Methodist Women's and have been for the past 13 years. I come before you today to ask for your support of LB315. As a forensic nurse examiner, I have the privilege of providing medical leave, forensic examinations for patients following sexual assault and domestic violence. The examination in our area entails an emergency department visit. Just the thought of that will prevent many survivors from coming in. Should they come, every patient will see an emergency room provider in addition to the forensic nurse. The visit always includes a forensic or physical examination, may include evidence collection, diagnostic studies such as CT, bloodwork, medications and sometimes procedures. If you're like many patients, that can sound overwhelming and, quite frankly, expensive. Methodist began the Heidi Wilke SANE/SART program in 2003 and even then believed that the medical costs should not be a burden or have a detrimental effect to a survivor's credit. It has been our practice to never send patients to collections, but this is possible due in part to the Heidi Wilke endowment. We recognize that not every program has this luxury. However, over the last several years, we have made significant strides in the reimbursement for medical care associated with our sexual assault and domestic violence care. This includes a sexual assault payment program and more recently, the ability for hospitals to build crime victims reparations on behalf of the patient. As long as the patient completes the application and they are a U.S. citizen or have citizenship paperwork, they qualify. The hospital is unable to seek reimbursement from CVR after other payer sources such as insurance. I have heard from survivors that every time they receive communications such as an explanation of benefits or hospital bill from immediately after their assault, it can be traumatizing. They're almost forced to relive their experience. LB315 does not prevent that. However, it could limit the amount of times the patient receives a hospital bill. If the hospitals are required to seek payment from insurance and ultimately CVR, the bill should be paid, at minimum, the Medicare rates of reimbursement. We are not the first state to make such a request. At Methodist Jennie Edmundson in Council Bluffs, Iowa, their CVR program prohibits us from billing private insurance. Instead, we place a hold on the patient's account and they send the bill directly to their payment program for payment. Methodist has been fortunate to have a similar practice. Each week, the forensic nursing team sends a list of patients to a member in our billing department. That person places a hold on their account. This prevents them from being sent to collections while we wait for payments from SAP, insurance and CVR. Truthfully, this can take a lot of time and ultimately there are instances where a patient will receive a bill. However, that should not entail a hit to their credit

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rating. We-- they've already been assaulted by a human. Let's not assault them again by the system that's here to help them. So in closing, since we have other payment resources for our programs, I ask that you support LB315 as our examination truly is priceless. I can answer any questions.

**WAYNE:** Any questions? Senator DeBoer.

**JENNIFER TRAN:** Yeah.

**DeBOER:** Hi. Thank you so much for your testimony.

**JENNIFER TRAN:** Yeah.

**DeBOER:** Do you have information? I thought you might be someone who would have information--

**JENNIFER TRAN:** Sure.

**DeBOER:** --on the average costs and things like that.

**JENNIFER TRAN:** So I think the hard part is that it is so compartmentalized right now. So we'll get reimbursement, \$500, from the Sexual Assault Payment Program and that covers the forensic nursing. Well, there's still that other hospital bill piece where they're still seeing a provider. They could still have, because of the assault, the CTs and stuff. So I would say costs range anywhere from a thousand, a thousand dollars to several thousands of dollars. I mean, we've had patients that have had to have in-patient hospital stays and multiple surgeries. So that's obviously-- that's more of an outlier than the normal, but I would say a normal bill is probably right around a thousand, if not a little bit more.

**WAYNE:** Any other-- Senator Blood.

**BLOOD:** Two quick questions. So I actually did some research-- the number I came up with, the average is \$3,555.

**JENNIFER TRAN:** That's a big bill.

**BLOOD:** Does that sound about right?

**JENNIFER TRAN:** I mean--

**BLOOD:** They're averaging all the bills so that would be--

**JENNIFER TRAN:** OK.

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**BLOOD:** --a hospital stay versus-- so one of the questions I have that I haven't heard yet is that more and more, we're seeing when bills go to creditors, that if they have that bill for a period of time that they're now selling those to, lots of times, attorneys' offices. I know that's happening to people that are using the Med Center right now, where they'll ask you for the entire amount. There's no more monthly payments. You, you need to pay it or you are going to court. Have we seen that happen yet, to your knowledge?

**JENNIFER TRAN:** I haven't seen that happen in my personal experience. I did lead the program for a while and that has never come up. But I mean, not surprising.

**BLOOD:** I, I know.

**JENNIFER TRAN:** Unfortunately.

**BLOOD:** And that's one of my concerns. That's also why I think this is a great bill, so.

**JENNIFER TRAN:** Yeah.

**BLOOD:** Thank you.

**JENNIFER TRAN:** Yeah.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here today.

**JENNIFER TRAN:** Thank you.

**WAYNE:** Next proponent. Welcome.

**LINA BOSTWICK:** Good afternoon, Mr. Judiciary Chair and committee. Thank you for being here to hear test-- testimony. My name is Lina Bostwick, Dr. Lina Bostwick, L-i-n-a B-o-s-t-w-i-c-k. I'm a registered nurse and I've been a registered nurse for 39 years in a variety of settings. I'm here on behalf of Nebraska Nurses Association. I've been a member there for a long time as well. I also have been a volunteer for 20 years now for a, for a shelter for women, abused women. The, the Nebraska Nurses Association represents, represents more than 30,000 registered nurses across the state. We support the bill, LB315, which would prohibit certain providers of health care and medical services from taking certain debt collection and actions against victims of sexual assault, domestic abuse and child abuse. Along with my colleagues, I have seen many of the immediate and long-term

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psychological and physical health problems experienced by victims and their families of domestic assault, child abuse and sexual assault. I've cared for children under the age of five that have been abused to a point where the police officers investigating, taking pictures, have had to be cared by myself in that setting because they felt that they were going to pass out taking those pictures, having to sit down and put their heads between their legs. So those psychological and physical health problems are experienced and they are long lasting. It's a violating and horrific experience and victims may have to worry then about financial burdens associated with such a life-altering event. Organizations seeking remuneration for services should not be allowed to revictimize those directly impacted by sexual, domestic assault or child abuse. This demographic is already at an increased risk of vulnerability, and there is no need to amplify their risk through the debt of-- collecting debt for this. On the behalf of the Nebraska Nurses Association, we request your support for LB315. We-- as in nursing theory, we also think of Maslow's Hierarchy of Needs. Any questions?

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**LINA BOSTWICK:** Thank you.

**WAYNE:** Any other proponents? Proponents. Welcome.

**ERIN FEICHTINGER:** It's not Urban Affairs. That's usually where I see you, too. Chairman Wayne, members of the Judiciary Committee, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, policy director for the Women's Fund of Omaha. We work to ensure that all people are free from violence and the significant impacts that come with victimization. We offer our support for LB315 and thank Senator Fred-- Fredrickson for introducing this legislation. As Senator Fredrickson described in his opening, the Nebraska Legislature has already made the decision that neither victims nor health care providers should be left with the burden of medical costs associated with these specific crimes. Demonstrating further support for the victims of these crimes and the Nebraska health care provider-- providers critical to their treatment and recovery, Senator DeBoer introduced LB497 in 2021, which attempted to streamline the payment process between health care providers and the Crime Victims Reparations Program by allowing providers to bill the CVR directly for medical services provided as a result of domestic violence, sexual assault and child abuse. This helps victims by reducing both barriers to care and continuing trauma as a result of financial stress. It helped health care providers by

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ensuring more efficient payment for those medical services and helped the state of Nebraska continue demonstrating its commitment to helping victims of these crimes. LB497 was passed unanimously out of this committee, received no dissenting votes on the floor and was signed into law by Governor Ricketts. The Sexual Assault Payment Program through the Attorney General's Office is another available fund. They are contacted weekly by victim advocates helping victims who have been threatened with collection actions for bills related to their care for one of these crimes, despite several protections put in place by this Legislature, including yesterday, for a sexual assault victim in Chadron being threatened with collections for a \$2,500 bill related to their care and this morning, a rape victim in Scottsbluff who is being threatened with collections for the payment of her own rape kit. The Sexual Assault Payment Program provides reimbursement to health care facilities that provide examinations to victims of sexual assault. In the last fiscal year, medical examinations of 1,467 people have been reimbursed statewide. Five hundred eighty-eight of those examinations occurred on children aged 0 to 12, another 400 on children aged 13 to 17, the remainder were for adults. The total reimbursement for all exams was \$730,000, 600 and-- \$730,613. Additional funds that are not related to the medical forensic exam are covered through the CVR for up to \$25,000 per incident. This is all to say that there are funds available for victims and health care providers and no victim of domestic violence, sexual assault and child abuse should be sent to a debt collection agency to pay the cost of their own victimization. Nine hundred eighty-eight children and their caregivers who love and want to protect them should not be further traumatized by collections. This is a problem across the state and for the victims of these crimes who will be helped by this legislation, this is going to be life changing. Thanks for your consideration and I am happy to answer any questions that you may have.

**WAYNE:** Any questions? Senator DeBoer.

**DeBOER:** Can you tell us when was the CVR put into place or the SAPP? Either one.

**ERIN FEICHTINGER:** The Crime Commission was created in 1967 by an executive order. The CVR-- the Crime Commission assumed control of the CVR in 1979. The Sexual Assault Payment Program I would not know off the top of my head, but I believe-- yeah. I will follow up on that.

**DeBOER:** OK. So we've had a system in place since the late 1970s, before you were born, to--

**ERIN FEICHTINGER:** You don't know that [LAUGHTER].

**DeBOER:** --to, to help victims with these expenses. That's correct?

**ERIN FEICHTINGER:** Yes.

**DeBOER:** And has it worked over the years?

**ERIN FEICHTINGER:** I would say the fact that we are in this current situation that just in the last two days we've had two victims who are being further traumatized by the inability to fully utilize or perhaps even access these systems in the first place, that no, these systems are not working in the way that the Nebraska Legislature has intended them to work. I might also mention that the applications that are sent to the CVR are denied at a pretty high rate, further complicating efforts to help these victims.

**DeBOER:** And is this one of-- like, if we put this measure in place, LB315, does that help to kind of patch up some of those problems? Maybe we don't get all the way there, but does that help us to get back to the intention for the CVR?

**ERIN FEICHTINGER:** I would say that it fulfills absolutely the intention of this Legislature to protect victims of these crimes and ensure that they're not left carrying the burden and being further traumatized. I wouldn't say that this bill fixes the inefficiencies or inaccessibility of these funds generally, particularly the CVR. That said, it is an incredibly important backstop because if this went into effect, like I said, we had two cases in just the past two days. That's two Nebraska families, two Nebraska victims who would be helped immediately towards safety and survival.

**DeBOER:** And the, the CVR has enough money to pay for these claims or theoretically would?

**ERIN FEICHTINGER:** Yes, they have \$494,000 currently sitting in the fund.

**DeBOER:** OK. Thank you.

**WAYNE:** I have a question. So one of the things I've noticed is that this bill doesn't have anybody overseeing or, or enforcing. It sounds like part of the problem is people don't maybe know where to go?

**ERIN FEICHTINGER:** Um-hmm.

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**WAYNE:** Problem Senator's going to have is if you put it into the Agency, it's going to have a fiscal note, which is how it always works. But do you think that's part of the problem is that there isn't, there isn't a place that somebody can call and say, this bill's here and they can just put the two together and tell the hospital, this is part of it? I mean, right now we're, we're relying on hospitals to do the work or, or the victim to do the work. Is that, is that more of a problem?

**ERIN FEICHTINGER:** I would say that the way that the Crime Commission, in particular the CVR, should be working is by making that fund as accessible as possible and helping to coordinate that outreach. I do know that the Sexual Assault Payment Program, which is under the Attorney General's Office, has done a significant amount of outreach across the state to make sure that hospitals and health care providers are aware of this fund. I think what we would see is that further down the process, you know, the health care provider, perhaps, it could be a problem with billing, it could be the fact that in particular the CVR is very slow to pay out. So it could be that, you know, you just get tired of waiting. And certainly there-- you know, a mechanism for enforcement would be good. We would just hope that putting this bill into place would help to at least facilitate that conversation even more. But you're correct, it does lack an enforcement piece at this point.

**WAYNE:** Thank you. Yes, sir. Senator DeKay.

**DeKAY:** Thank you, Chairman Wayne. There is a \$2,000 cap on the payment for the mental trauma that these victims endure. Is there-- if it exceeds that amount is there other avenues for funding, if there's continued counseling needed going forward?

**ERIN FEICHTINGER:** So just to clarify, are you referring to the \$5,000 cap that health care providers can bill directly?

**DeKAY:** Yeah.

**ERIN FEICHTINGER:** OK. Yes, you can-- there-- through the CVR, this Legislature has decided that there is up to \$25,000 available per victim, per incident of cost that could be covered. So if you reach that \$5,000 cap, which is rare but does happen, you would be able, theoretically, to apply to the CVR fund for another \$20,000. And as Senator Fredrickson mentioned, this also does not preclude hospitals or health care providers from seeking payment in the way that--

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through insurance or that kind of thing. So whatever else is left over should be covered. Does that answer your question?

**DeKAY:** Yes, thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Next proponent. Any more proponents? Welcome to Judiciary.

**RYAN NICKELL:** Oh, I've never spoken in one of these before.

**WAYNE:** Just spell your-- say your name and spell both your first and last name.

**RYAN NICKELL:** Ryan Nickell, R-y-a-n N-i-c-k-e-l-l.

**WAYNE:** Thank you.

**RYAN NICKELL:** I am for LB315. I'm representing myself. I believe that gender violence should be-- I view it as an economic problem and a community problem and not some sort of private issue. That's all I wanted to say. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Any other proponents? Proponents. All right. We'll switch to opponents. Any opponents? Anybody testifying in the neutral capacity? Anybody testifying in the neutral capacity? You're invited to close. We have 12 letters for the record, 11 proponents and 1 neutral. Senator, you are welcome to close.

**FREDRICKSON:** Thank you, Chair Wayne, and thank you to the members of the, the Judiciary Committee for being such attentive listeners. And I want to just thank all the testifiers who were there today. This is a bill that I ask that you advance from committee to bring to the floor. I think, as our testifiers highlighted, this is an important issue. It's an issue that we, as a Legislature, have committed to protecting these victims of violence. And I think we need to do everything we can to ensure that we are following through with that. So I ask that you advance this to the floor for, for full debate and I am open to any questions you may have.

**WAYNE:** Any questions from the committee?

**IBACH:** I just have one.

**WAYNE:** Yes.



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**IBACH:** I think Erin mentioned that--

**WAYNE:** Senator Ibach. Sorry. I forgot they, they transcribe these so I have to say who I'm talking to at the moment.

**IBACH:** That's OK, because I got in trouble for interrupting yesterday. I think Erin mentioned that the AG's office oversees the program. And I noticed there weren't any penalties if anybody was in violation of this program, so that might be something to think about or did you write any penalties or repercussions in for, for a hospital or an institution would not abide by this law?

**FREDRICKSON:** So the way the bill is written, we, we don't have any prescribed penalties. But I think that's-- I appreciate that feedback and I would be open to conversation about that if that were something that we think would be beneficial.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. We are now going to close LB315 and open on LB183. How many testifiers are on LB1-- LB183? Is everybody here for LB25? Three. I have one [INAUDIBLE] I'm going to keep this thing moving. Hmm. There's a large crowd already. We haven't even had gun day. That's tomorrow.

**J. CAVANAUGH:** [INAUDIBLE] that there's a choke point [INAUDIBLE] in the, in the way there.

**WAYNE:** We're opening on LB1-- LB183. Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Wayne. Good afternoon, members of Judiciary Committee. My name's John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB183, which would allow Nebraskans to change their name without a fee if they file an affidavit demonstrating that they can't afford to pay the fee. Under Nebraska Revised Statute 25-2301 and 25-- to 25-2310, an applicant is allowed to proceed in forma pauperis after signing an affidavit stating that the-- that they are unable to pay the fees and costs required to proceed with the case. This waiver of fees is allowed in all criminal appeals and civil cases-- this waiver-- except for name changes. This is because the Nebraska Court of Appeals ruled in 2015 that these sections of the statute do not apply to name change actions. As a result, petitioners for a name change will not be able to access the court if they do not have the money. This is a particularly important for survivors of domestic violence. Additional

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costs create additional barriers for survivors. Passing LB183 corrects an oversight in our statutes and will allow Nebraskans to proceed without fees in name change proceedings. As you can see from the fiscal note, there is no fiscal impact to the state. Passing LB183 costs us nothing but could mean everything to a survivor of domestic violence. I thank you for your time and your consideration, and I'd ask you to advance LB183 to General File. And I'd be happy to take any questions at this time.

**WAYNE:** Any questions from the committee?

**IBACH:** I have one.

**WAYNE:** Senator Ibach.

**IBACH:** This is probably a nuisance question, but I noticed in the bill, currently, that a town, village or city could change their name under the same law. Is that correct?

**J. CAVANAUGH:** Um.

**IBACH:** Heaven forbid any town, village or city wanted to change their name. Would it apply to that as well?

**J. CAVANAUGH:** Well, I guess I hadn't thought about that, but probably not because they wouldn't qualify under the *in forma pauperis*, so they wouldn't be able to qualify for the-- so they, they, they wouldn't change their ability to change their name. Just this-- all this is changing is that someone who does file to change their name has access to this *in forma pauperis*, which basically says if you are poor-- but if you don't have the money, that is not a reason you shouldn't be able to get into court. So in my experience, so I was a public defender, my experience-- most of the time it's used on criminal appeals when somebody's been sent to prison and they file an appeal and they don't have income. So then that appeal from the District Court to the Court of Appeals to the state Supreme Court is not required to file a filing fee because they don't have the money. And so that's-- everybody has access to that in every instance of civil cases and criminal appeals, just not in name changes. So all this is doing is putting that section of statute to apply to name change.

**IBACH:** Thank you for that clarification.

**WAYNE:** Any other questions? Senator Holdcroft.

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**HOLDCROFT:** Thank you, Chairman Wayne. Just a-- no cost to implement, but obviously there's a loss of revenue. Do you know how much, on average, name changes cost?

**J. CAVANAUGH:** So it's-- my understanding is it's \$150 for a name change, but \$86 of that is court costs and then the remainder is a mandatory publication cost. However, there's been a statute that was passed several years ago by this committee in the Legislature that allows, in name change instances of domestic violence, they're allowed to waive the publication requirement. So essentially, it's a waiver of \$86 and that's the court costs. And that's-- really it's, it's not, you know, it's a small amount to the state is basically why there's no fiscal impact, but it makes a huge difference to that person in their ability to get access to that.

**HOLDCROFT:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Are you going to stay for closing?

**J. CAVANAUGH:** I will. I'm on the next bill, too.

**WAYNE:** Any proponents? First up, proponents. Any opponents? Any Opponents? Anybody testifying in the neutral? We have six letters of support for LB183. Would you like to close or would you like to waive closing? All right. Note, Senator Cavanaugh waives closing. We will now close on LB183 and open on LB59. Welcome to your Judiciary Committee, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Wayne and members of the Judiciary Committee. This is another technical bill kind of cleaning up oversights in our statute. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. And I'm here to introduce LB59, which clarifies the one year statute of limitations on filing motions for post-conviction relief. This bill is the same bill that I introduced last year, three-- or two years ago, LB316, but-- which was advanced from this committee 8-0. Unfortunately, we ran out of time to pass this last session and so I've reintroduced LB59 this year. Briefly, LB59 simply states that if a prisoner petitions the United States Supreme Court on a direct appeal from a Nebraska Supreme Court case, the one year statute of limitations runs from the date the U.S. Supreme Court denies the petition or affirms the decision of the Nebraska Supreme Court. The prisoner would need to file the notice within 30 days in the district court of the conviction, stating that the prisoner had

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filed such petition for this new subsection to apply. The language, which was negotiated and agreed to last session with the Nebraska County Attorneys Association, and the intent of the bill reflects the common practices in many Nebraska courts. The main problem we're trying to address with this bill is a situation in which an attorney must advise their client, who has a pending appeal before the United States Supreme Court, that they may need to file a motion for post-conviction relief before the appeal is decided. As one of the grounds frequently cited on a motion for post-conviction relief is ineffective assistance of counsel, you can see that an attorney has a case pending before the U.S. Supreme Court and they're telling their client they need to file a state court appeal declaring them ineffective. And so this puts a strain on the attorney/client relationship. So LB59 is a simple but necessary change to clarify the statute of limitations on a motion, motion for post-conviction relief. And I'm asking this committee to support and move this to General File. And I'm at-- appreciate your time and I'll take any questions.

**WAYNE:** Any questions from the committee? Seeing none--

**GEIST:** Oh, I just have one quick one.

**WAYNE:** Oh, sorry. [INAUDIBLE]. Go ahead. Senator Geist.

**GEIST:** Just to clarify, you said-- you were talking fast.

**J. CAVANAUGH:** Sorry.

**GEIST:** And my notes don't go as fast.

**J. CAVANAUGH:** I can slow down.

**GEIST:** No, you're good. But you--is this the same language that you negotiated last year? It's the exact same bill?

**J. CAVANAUGH:** This is the exact same bill as last time. Yeah. That you, you all-- you and a few others here voted out, 8-0.

**GEIST:** Me and a couple others, yeah.

**J. CAVANAUGH:** Yes. And--

**GEIST:** And this is the one you got agreement with the county attorneys and all of that?

**J. CAVANAUGH:** Right.

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**GEIST:** Gotcha. That's all. Thank you.

**WAYNE:** Any other questions? Seeing none, are you going to stay for closing?

**J. CAVANAUGH:** I will.

**WAYNE:** Any proponents? This year we will be using the 1:30 light system for you-- just for you and you and only you.

**SPIKE EICKHOLT:** 15 seconds.

**WAYNE:** Welcome.

**SPIKE EICKHOLT:** Good afternoon. My name is Spike Eickholt. The first name is S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association and the Nebraskans for Alternatives to the Death Penalty in support of LB59. We want to thank Senator Cavanaugh for introducing it. To answer your questions, Senator Geist, this is the same version. It was actually introduced twice last session, LB316 in 2021, and then LB1244 in 2022, and both times they were advanced unanimously. The language is the same as was agreed to, as Senator Cavanaugh referenced earlier. Senator Cavanaugh explained the situation. I'll try to summarize it without being duplicative. But what happens, typically, and these are in very serious cases, if somebody appeals their conviction all the way to the Nebraska state Supreme Court, they can, if their attorney thinks they have a chance, petition for cert to the U.S. Supreme Court. The U.S. Supreme Court has a court rule that you have 90 days to file a request to have your case considered from a state court final decision. And what will happen is that you file a writ for cert, the Supreme Court will ask you to brief that and the Supreme Court won't even really say yes or no whether they're going to take the case. That is a several month period. But what happens is, that one year limitation that Senator John Cavanaugh talked about is running. And so many times what happens is before you even are either told, no, your cert is denied, or if the Supreme Court, U.S. Supreme Court takes your case and affirms your decision, that can take six, eight months. That's the fastest it could be. You have one year, under Nebraska law, to file what's called a post-conviction action, where you want to argue something that you did not argue in your direct appeal, because that's not in the record for the trial-- trial record for your direct appeal. And that year is very strict. And what happens is, as Senator John Cavanaugh, you have a lawyer who is representing somebody on a petition for cert to the U.S. Supreme Court and that one year clock is

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ticking by. And many times that lawyer might have a claim-- or that defendant might have a claim that their trial attorney, the one who's filed a petition for cert, is somehow ineffective and it just makes that tension. And this resolves it by having an exception for the one year if you go to the U.S. Supreme Court. I'll answer any questions if anyone has any.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Any other proponents? Any opponents? Any opponents? Anybody testifying in the neutral capacity? Seeing none, Senator Cavanaugh, would you like to waive?

**J. CAVANAUGH:** No, I'll close.

**WAYNE:** OK. Senator Cavanaugh.

**J. CAVANAUGH:** Brief closing. Thank you, Chairman Wayne. I just want to say Mr. Eickholt did a better job in terms of pacing than I did and giving good context. I apologize to Senator Geist. This is a very technical issue and it is-- it has a limited application, but it is extremely important in this context where it is important, where it comes up. When we have the few cases in Nebraska that do get appealed to the United States Supreme Court, those folks-- you need to make sure you do have a clear determination of what's going to happen. As Mr. Eickholt pointed out and I think I said in my testimony, this is gen-- this is the court rule at the time, but lawyers, being overly cautious, have been advising their clients about the most cautious approach, which is that the court may go against the rule because the statute is unclear. And so that's-- we're just trying to clarify the statute to make sure that it complies with the, the process we're going with currently.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. We have one letter of support for LB59 and that will close the hearing on LB59 and we will open on LB7. Welcome to your Judiciary Committee, Senator Blood. Go ahead. Sorry. Sorry.

**BLOOD:** Just trying to follow the rules. So, good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Senator Carol Blood. That is spelled C-a-r-o-l B-l-o-o-d and I represent District 3, which is the western half of Bellevue and eastern Papillion. Thank you for the opportunity to bring forward LB7, my delayed impact bill. So the purpose of LB7 is to expand alternatives for those who are exposed to toxic or poisonous chemicals by extending the statute of limitations from four years to ten years. This will help ensure the

future-- that future generations of Nebraskans will be able to receive compensation for their illnesses that can develop from these types of harmful substances. Four years has been proven not to be a long enough time to identify chronic illnesses that develop from toxic exposure, especially if over a sustained duration. Compared to other states, Nebraska is in the middle of the pack in regards to the years granted for statute of limitations. Currently, Kentucky is the only state to have 10 years for their statute of limitations for chemical exposure. A few states other than Nebraska have four years and even six years for their statute of limitations. LB7 specifically states that a qualified medical examiner must diagnose illnesses or injuries associated with exposure to hazardous chemicals. It is imperative that a medical professional be involved because delayed health effects can take months or years to appear from acute or chronic exposure to toxins. The delay between exposure and adverse health effects is well-documented and is referred to as the latency period. It's basically the holding pattern of the unknown created by the known potential health effect that may be permanent or reversible. Legally, a hazardous or toxic substance means any chemical or biological substance that is categorized as toxic or is an equivalent-- or an equivalent by the United States Environmental Protection, Protection Agency, EPA, or the Agency for Toxic Substances and Disease Registry, which is the ATSDR of the United States Department of Health and Human Services. Chemical or biological substances which are not so categorized, may be proven to be hazardous or toxic by a preponderance of the evidence by expert testimony. This bill is a year too late to address the failure of the AltEn plant in Mead, Nebraska. We had a chance last year with LB694 to help out the families in the Mead area. This body failed at doing what was needed and, frankly, failed the people of Mead and across-- others across the state that have been and will be exposed to the contamination since. The main concerns for the residents in the Mead area are the concerns involved with the irresponsible use of neonicotinoids or neonics. Neonics are designed to diminish in plants treated with these chemicals over time, but research has shown that it has a half life that runs up to 1,400 days. This means they have the potential to accumulate into the environment. So I should also point out that neonicotinoids are water soluble, which means that water runoff can and does carry them into the lakes and rivers surrounding that area. Neonics have been banned in at least 20 countries because of the potential danger it presents. Neonics were found in abundance within the treated corn of AltEn because the corn, again, was treated with neonics. The AltEn facility had so much contaminated wet cake, which is the byproduct of ethanol production, that it was measured as big as a football field. In other words, 150

feet deep. The sheer amount of wet cake in one facility that was so poorly protective, should have-- protected-- should have made alarm bells ring, but as we all know, that's not what happened, especially since our other ethanol plants are exceptional stewards. Instead, a storm swept through the facility and the toxins went to every part of the environment. In an excerpt from an article by The Guardian, it discussed the immediate aftermath of the AltEn disaster by detailing the destruction of the environment and the immediate issues present for our fellow Nebraskans. The article read, for the residents of Mead, Nebraska, the first sign of something amiss was the stench, the smell of something rotting. People reported eye and throat irritation and nosebleeds. Then colonies of bees started dying. Birds and butterflies appeared disoriented and pet dogs grew ill, staggering about with dil-- dilated pupils. So this was just the beginning of the exposure for those in Mead. The statute of limitations for those in Mead has begun for some and will end before the possible chronic symptoms will arise. Extending the statute of limitations will allow those who are already experiencing the symptoms I just mentioned to be allowed to demand the full amount of reparations they deserve. Research shows us so far, that breast cancer, liver cancer, endocrine disruption and other serious diseases can be the result of this type of long-term exposure. A study released last year shows that neurotoxic pesticides like neonics bind to a mammal's nicotinic-- let's see if I can say this right-- nicotinic acetylcholine, there you go, acetylcholine receptors. It's your nervous system and your brain-- and I can spell it out if you need me to-- which are vital to proper brain organization during the prenatal period. And that's one of the concerns we have, by the way, are the mothers or would-be mothers in that area. It was noted in that same report that a child's cerebrospinal fluid can also become contaminated. The Legislature needs to take a hold of its responsibility and protect Nebraskans from parties that knowingly, not accidentally, exposed your constituents to hazardous chemicals. Today, I'm asking that when Nebraskans are exposed to toxins and there is a clear connection to their health issues that we give-- that we give them up to 10 years after the cause of action has accrued for victim recourse. The change to statute has been kept very narrow. It allows proper evaluation of harm caused by exposure to toxins and hazardous chemicals. Because friends, much like Agent Orange, asbestos, arsenic, benzene, hydrocarbons, radon and more, we didn't always know from the very beginning how much harm we were causing by using these chemicals until it was too late to help those who were exposed. So with that, I thank you for your time today and consideration of LB7. I would encourage you to wait for additional questions in my closing, as I do have several testifiers who will



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likely answer the questions you may have during their time on the mike and, hopefully, to expedite today's hearing.

**WAYNE:** [INAUDIBLE]

**BLOOD:** Ah, man.

**DeBOER:** Thank you, Senator Blood. All right. First proponent, please. Thank you very much. Welcome to your Judiciary Committee.

**ELEANOR ROGAN:** Thank you. Thank you, members of the Judiciary Committee. My name is Eleanor Rogan. That's spelled E-l-e-a-n-o-r R-o-g-a-n. I'm a professor at the University of Nebraska Medical Center, but I am not speaking for the University of Nebraska. I'm a resident of Omaha and I'm here to testify as a private citizen in favor of LB7, which would extend the statute of limitations on a person's ability to pursue civil actions based on exposure to hazardous or toxic chemicals. I've spent my entire career conducting research into how cancer and other diseases are started by exposure to chemicals. This is a process that takes a long time to occur. That period is generally called the latency period and it typically lasts for years. To be clear, the latency period is the time between someone being exposed to a hazardous substance and the time when symptoms appear. Let me give you some examples. The U.S. Centers for Disease Control and Prevention, or CDC, has established minimum lengths of, of time for some latency periods. Thus, for childhood cancers, the minimum latency period is thought to be one year, probably because children are growing so fast. For solid tumors, the minimal latency period is four years. For leukemia and lymphomas, the latency period can last from about two years all the way to 35 years, depending on the exact disease. Finally, the latency periods for a variety of respiratory diseases, especially those caused by exposure to hazardous occupational hazards, is at least 10 years. One of the most clear-cut examples of the amount of time it takes between exposure and a particular type of cancer comes from shipbuilding in World War II. There were numerous ports along the eastern seaboard where the U.S. military were building ships to transport soldiers, sailors and supplies to the war in the early 1940s. The shipbuilders were often working in areas full of asbestos dust, as pipes were sprayed with protective casings. In the early 1980s, doctors were surprised to suddenly find numerous cases of men suffering from a cancer called mesothelioma, which had been a very rare type of cancer until then. Pretty quickly it was realized that all of the men had worked in the shipbuilding in the early 1940s. So here was a 40-year latency period. From these examples, we can see that extending the statute of

limitations from 4 years to 10 years is a very reasonable and humane adjustment to provide recompense to people who develop cancer or other diseases as a result of exposure to a hazardous or toxic chemical. This change would recognize that adverse health effects can take a number of years to become apparent and would enable those afflicted to obtain some recompense for their unfortunate exposure. Therefore, I'm in favor of LB7. Thank you for your attention and I'd be glad to answer any questions.

**DeBOER:** Thank you. Are there any questions from the committee? Seeing none, thank you very much. Next proponent testifier.

**VINCE POWERS:** Good afternoon. Thank you. I love coming to this building. My name is Vince Powers, P-o-w-e-r-s. I'm a lawyer here in Lincoln, but when I come here, I remember what a boring world we would live in if we all thought the same. So I love the debates that go on here. Look, this is a very important bill and I just want to talk about the practical reality of a lawsuit. And I don't have that skill or that expertise from the wonderful speaker we just heard from, but I deal with human beings all the time. This is Nebraska. People don't want to file lawsuits in Nebraska. People don't want to hire lawyers in Nebraska because we're a conservative-minded folks. And so what happens is you get-- take like Roundup. Killing-- you know, it's, it's literally killing people in our agricultural world of Nebraska. But you get exposed and you don't think there's really anything wrong with you. It's like, hey, I can shake this off. You know, I'm a tough guy. I'm out here, I'm working. I'm-- you know, I'm a woman, I've done these things. And so the sinister nature of these exposures are that it takes so long, so by the time somebody comes into our office, as has happened in a toxic tort, it's like, hey, sorry. There's nothing you can do. And so the only-- you-- this is the ticket-- excuse me, this is the, you know, the key to the courthouse for people. Doesn't mean you're going to prevail. But we have to take in-- into mind that-- I imagine most everyone here, your friends, never want to file a lawsuit. And it, it just takes this really terrible thing when suddenly there's a widow or a widower and then you realize this was serious business. And so I'm here on behalf of the Nebraska Association of Trial Attorneys and I want to thank you for your time.

**DeBOER:** Are there questions for the-- hang on just a second, Mr. Powers. Are there questions for this testifier? Senator DeKay.

**DeKAY:** Thank you, Vice Chair DeBoer. Just a quick question. What happens in a case like this and say, the potential victim moves to a different area of the country or something and might be exposed,

possibly, to a different chemical or something that could cause these same symptom-- same diseases or, you know, illnesses that go forward. How do we differentiate where the exact cause comes from?

**VINCE POWERS:** You know, Senator, that's a, that's a problem. And what we find-- and it happens a lot because we're a mobile society, but it's the burden on the plaintiff. So it's the plaintiff's burden to show that, in fact, the exposure was from something that happened here in Nebraska as opposed to something that happened in Montana. The burden is always on the, on the plaintiff. That's why I'm saying this is just the key to the courthouse. And so the reality is you have an expert, a medical expert who will testify, I believe the exposure was ABC. The defendant usually will have an exposure, said, no, no, no. This occurred in this state where we have a two-year statute. But that's just-- that's a, a proof problem, an evidentiary problem. This is just a procedural problem. You get to open the door. And in Nebraska, because of a Nebraska Supreme Court case years ago, we're the only state that if you-- if someone came to you and was dying of asbestos exposure, you had to tell him, move to another state because Nebraska didn't allow asbestos cases. And so, you know, it was tragic, but that's the reality in which we live. So the burden is always on the plaintiff. Passing this doesn't change the proof problem. I hope that helps.

**DeKAY:** Thank you.

**DeBOER:** All right, Senator DeKay. Are there other questions from the committee? I--

**VINCE POWERS:** Thank you.

**DeBOER:** I have--

**VINCE POWERS:** OK.

**DeBOER:** I have one.

**VINCE POWERS:** Yes, Senator.

**DeBOER:** Mr. Powers, so the purpose of a statute of limitations is to make sure that claims which are brought to the court are fresh enough to be understood and there are witnesses around and that sort of thing. That's sort of the policy purposes for which we originally created the statute of limitations or maybe you have something to add to that.

**VINCE POWERS:** No.

**DeBOER:** OK.

**VINCE POWERS:** I mean, it's-- there are a lot of reasons.

**DeBOER:** Sure. And then one of the reasons for extending the statute of limitations is recognition of a certain kind of harm that's more difficult to apprehend in an earlier date. Is that right?

**VINCE POWERS:** Yes.

**DeBOER:** OK. So the statute of limitations doesn't say-- if, if you're within the statute of limitations, you'd file a claim, that doesn't say you're going to recover for the claim. That just gives you the opportunity to come before the court.

**VINCE POWERS:** Exactly.

**DeBOER:** OK. And so maybe there are some difficulties with proving your case after a period of time, but, but at least you have the opportunity to come before the court, is that correct?

**VINCE POWERS:** Right. As I, as I just said in my last-- the burden of proof is always on, on the plaintiff. And so the longer you wait, the more difficult it is, because the burden of persuasion to prove that it's more likely than not that there was exposure and this exposure was the proximate cause of the cancer or what have you is always on the plaintiff. The longer you wait, the more difficult the case, for those reasons. People pass away, people move, people disappear, memories fade. But at least by passing this, it gives an opportunity to the widow or the widower.

**DeBOER:** So this would recognize the particular circumstances of difficulty that are in these kinds of cases as medical technology improves and different things like that, to be able to allow the--

**VINCE POWERS:** Well--

**DeBOER:** --the person to have their day in court.

**VINCE POWERS:** Very well said. This isn't trauma. I mean, if you get hit by a truck today and you're in the emergency room, you know, you got a-- you've been injured. And this is not trauma. This is sinister how these chemicals work. It's sinister.

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**DeBOER:** All right. Thank you, Mr. Powers. Any other questions from the committee?

**VINCE POWERS:** Thanks.

**DeBOER:** Thank you. Next proponent.

**JOHN HANSEN:** Good afternoon, members of the Judiciary Committee. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I appear before you this afternoon as our president and also our lobbyist for our organization and we are in support of this bill. I am not a medical expert, but I, I did take to heart the recommendations of one of the previous testifiers who is, and she talked about latency and all of those things. And I am not a lawyer, but I do know that it is good public policy for everyone to be responsible for their own actions. And so whether there is an action that can be proven in a court of law, if there are products that are out in the market that are causing damage and causing harm, then-- and then I think that there ought to be liability that is attached to that and that, that folks ought to have their day in court. And if they can prove that they were-- that there is a cause and effect relationship there, that there should be some, some remedy. I represent a group of folks who have, a lot of them would say, have had the experience in their lifetime to be-- to know what it feels like to be a guinea pig. And in my farming lifetime, I have had at least two different sets of insecticides that were completely, totally safe. And then and to hell they weren't and then you couldn't even find anybody anywhere who would even take them because they were so toxic and yet we had been using them for years. And so all of a sudden, you're, well, how safe were they if they're so unsafe now that, that we can't even find a proper place to dispose of them? And I also would say that as a recovering insecticide, herbicide and fertilizer dealer myself, along with our farming operation, that a lot of companies went out of their way to try to convince customers how safe their products were, then sang a very different song in five years. And so with that, I would encourage the committee to look favorably on LB7 and I'd be glad to answer any questions if I'm able to do so. I'd at least give it a try.

**DeBOER:** All right. Thank you. Mr. Hansen. Are there any questions for this testifier? I don't see any today. Thank you for being here.

**JOHN HANSEN:** Thank you.

**DeBOER:** Next proponent testifier.

**AL DAVIS:** I got here a little late, so I missed the beginning, so there may be, may be some repetition here with what I have to say. My name is Al Davis, A-l D-a-v-i-s. I'm appearing here today as the registered lobbyist for the 3,000 members of the Nebraska Chapter of the Sierra Club in support of LB7. The Nebraska Chapter believes LB7, which extends the statute of limitations on chemical exposure, will provide security and recompense to those who may be carrying a ticking time bomb in their bodies due to exposure to toxic pesticides, that are not yet aware of the potential damage that exposure may do to their bodies. Significant advances in medicine have demonstrated that many illnesses develop late in life and are tied to early exposure to environmental hazards with extensive periods between exposure to a contaminant and when the illness expresses itself. LB7 was developed in response to the developing ecological disaster at Mead, Nebraska, where an unethical company manufactured ethanol from pesticide treated seeds and stockpiled tons of toxic waste product and contaminated water on the site for a seven-year period, exposing nearby residents to airborne contaminants and polluting soil, ground and surface water for miles around. Most Americans know Vietnam veterans or Vietnamese nationals who were exposed to Agent Orange decades before the disease became apparent. One of the chemicals associated with Agent Orange was dioxin, which is responsible for many of the cancers associated with Agent Orange exposure, as well as Parkinson's, birth defects and other health problems, despite the fact that only about 370 pounds of dioxins were spread over Vietnamese jungles over several years. Dr. John Schalles is a Creighton University biology professor working with the Mead investigatory team, the Perivallon Group. Dr. Schalles has expressed concerns that the chemical mix at AltEn would break down forming new compounds and that dioxins could result. It appears that the contaminated water and wet cake will remain on the site for a significant period of time, continuing to expose the Mead area residents to airborne pollutants and the ramifications for groundwater are still unfolding. We do know that the lagoon liners at the site failed years ago and contaminated water has seeped into the ground for almost 10 years. Reservoirs six miles away are now completely dead, honeybee hives in the area were not viable, animals were sick when exposed and many residents complained of unusual afflictions. And residents of Mead have pesticides inside the HVAC systems in their homes, while the aquifer near the plant showed evidence of pesticides in at least one well and other studies show the pesticides have penetrated the ground to a depth of 30 feet. And because there are so many chemicals in the witches brew at AltEn, the potential development of compounds which are more toxic is still an open question. Because of all these reasons, I really believe strongly that the Judiciary

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Committee should Exec on this bill rather rapidly and move to the floor so it can be debated by the full body. And we really support the bill and hope that we will have some success. Thank you.

**DeBOER:** Thank you very much for your testimony. Do we have any questions for this testifier? Senator Ibach.

**IBACH:** I just have one question. Do you know how current the studies are that show the pesticides, that they've penetrated down 30 feet. Do you know how current that study is?

**AL DAVIS:** I'm thinking it's pretty recent. I'm thinking within the last six months. I will get that answer for you, Senator.

**IBACH:** Thank you.

**AL DAVIS:** Thank you.

**DeBOER:** Any other questions? Senator DeKay.

**DeKAY:** Would wet cake, would that be considered the waste coming off of the--

**AL DAVIS:** So wet cake--

**DeKAY:** Is that considered-- I guess, simple terms, is that considered the distillers that come?

**AL DAVIS:** Yes, it's the distillers that was normally fed to livestock. And because this was treated seed, it cannot be used for livestock, which has been stockpiled on that site. And I used to know the figure but it's this huge number of tons that are sitting there.

**DeKAY:** OK. Thank you.

**DeBOER:** Thank you, Senator DeKay. Other questions? I don't see any.

**DeKAY:** Thank you.

**DeBOER:** Thank you very much. Next proponent, testifier.

**TREVOR TOWEY:** Thank you, Chair and members of the committee, for the opportunity to address you today. My name is Trevor Towey, T-r-e-v-o-r T-o-w-e-y. I'm the president of Omaha Professional Firefighters. I represent 680 professional firefighters and paramedics in Omaha. I'm here today as a proponent for LB7. As a firefighter for 25 years, I have firsthand experience of the hazardous chemicals and toxic

environment that firefighters work in on a regular basis. What we have learned through scientific evidence over the years, is that not only are firefighters exposed to chemicals while inside a burning building, but they continue to be exposed by the contaminants that penetrate our gear, our safety equipment and the fire trucks we ride in. Basically, it results in a continuous exposure every time we're at work. For those reasons, all 50 states have used supporting data to declare certain cancers as occupational illnesses for firefighters, which qualifies them for death and disability benefits from their employers. Some states have even declared these cancers as workplace injuries subject to work comp benefits, no different than if they suffered a broken arm or leg while doing their job. Unfortunately, Nebraska is not yet one of those states, but I hope to work with all of you to change that at some point. So what we've established is that there's a long-term and continuous chemical exposure. It can have damaging health effects. What we don't know is if a short-term exposure to multiple chemicals or a large amount of chemicals would have the same effect. So on Memorial Day weekend, 2022, Omaha firefighters responded to the Knox Creek chemical fire. And that's what I provided you some images of. At that fire, that building contained multiple chemicals, but 19 of them had over 5,000 pounds of each chemical, three of which were known carcinogens. And I have the list here. I'll submit that to you if, if you would like. Seventy-five firefighters battled that fire for several hours and it was a total loss, meaning every pound of that-- of those chemicals inside that building were destroyed in the fire. My concern and the priority concern of my members was what effect did those chemicals have on those firefighters immediately, five years from now and 20 years from now? I don't know what kind of damage, health-wise this will do to my members, and there's no way for us to know and we might not know for several years. It is my hope that there is no damage. But my experience tells me that that's not likely. There will be some health deficits. So although some firefighters have protections in place, it is my belief that all workers should have the basic expectations that if they develop any health deficits as a result of an exposure at work, that they should qualify for the protections that they deserve. As I understand it, the current statute doesn't allow adequate time to evaluate the effects of an exposure of this type and that is why I support this legislation. So I thank Senator Blood for introducing LB7, I thank the Chair and the committee members for allowing me to be here and I hope for your favorable consideration. I'm available to answer any questions if you'd like.

**DeBOER:** Thank you very much. Are there questions for this testifier?  
Senator DeKay.



**DeKAY:** Just-- these are pretty self-explanatory pictures. With this, you talked about some of your firefighters being exposed to contaminants, especially their gear. After a fire like this, is that gear switched out? Is it somehow cleaned so that those contaminants are taken care of? And--

**TREVOR TOWEY:** Yeah. Very good question, Senator, and the answer is yes. If we're lucky enough to have a second set of gear, which we've had to fight for over the years, then you can switch it out to a new pair and have those decontaminated. In the meantime, then, you just wear the contaminated gear. In this case, all the gear that we had was switched out and replaced and/or "deconed" by an appropriate company.

**DeKAY:** Thank you.

**DeBOER:** Thank you, Senator DeKay. Other questions? Thank you, Mr. Towey.

**TREVOR TOWEY:** Thank you.

**DeBOER:** Next proponent testifier. Are there any here who wish to testify in opposition to this bill? Welcome.

**EMILY MOTTO:** Thank you. Good afternoon. My name is Emily Motto. M-o-t-- E-m-i-l-y M-o-t-t-o. I'm an attorney at Baylor Evnen law firm, but I'm here on behalf of myself, no organization. I just wanted to comment a little bit as a civil trial attorney that I would just caution this group to, to really think through extending a statute of limitations like this for this length of time. Currently, we have four years from the death, injury or damage that occurs, so I don't read that as four years from the exposure. So we do have some time to obviously unpack what, what may have happened in an exposure situation. We also have a discovery rule in Nebraska that usually allows you to toll a statute of limitations until you discover or have a reason to know that you've been exposed or that there is a connection or a problem. When we extend the statute of limitations this long, not only does it make it difficult to find just witnesses or try and unpack when this exposure may have occurred, you know, it becomes incredibly difficult to patch this back together. I understand Mr. Powers' point, that that becomes the plaintiff's burden of proof, but the plaintiff will likely be able to sort out and have a physician that will probably relate or, or may not have the difficulty at least commenting and relating this. But it's very difficult on then the defense end of-- to say, well, when were you exposed to my product? Who, who was around at this point in time? Is that person deceased?

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The burden of proof becomes very difficult to defend, unpack, have any kind of witnesses and so, I think, as, as Senator Blood acknowledged, Nebraska is in the middle right now in terms of where our statute of limitations is. So I would just caution you to really try and figure out if we're an outlier. It doesn't sound like we are. And our civil statute of limitations tend to be on the more generous ends of things as it is. So I just wanted to comment, comment personally today and be here to answer any questions.

**DeBOER:** Thank you. Senator Geist has a question.

**GEIST:** Yeah. Thank you for your testimony. So you're saying that the statute of limitations starts from when symptoms arise or from death?

**EMILY MOTTO:** It reads--

**GEIST:** When does it start?

**EMILY MOTTO:** --it reads right now from death, injury, death, injury or damage occurs. And so I think you'd have to maybe unpack what injury could mean in that regard. Does, does injury mean, you know, I'm, I'm starting to seek treatment for something that might not be right, in which case I am consulting with my doctor why am I experiencing these symptoms. So, you know, we may be arguing about that in litigation when you discovered that you had these issues, but it's certainly not, you know, the way that I read it, it's not counting from the date of exposure.

**GEIST:** But the current statute of limitations, the four years, when does that clock start?

**EMILY MOTTO:** So I think it says death, injury or damage occurs.

**GEIST:** So we're-- it's the same--

**EMILY MOTTO:** --is when it would start.

**GEIST:** --threshold--

**EMILY MOTTO:** Yeah.

**GEIST:** --as, as the one that we're changing. Am I correct?

**EMILY MOTTO:** So I think--

**GEIST:** Or is the injury what's different?

**EMILY MOTTO:** Well, I'm not sure the specific language, I guess, that Senator Blood has changed. I'm just understanding the time period would be changing.

**GEIST:** OK.

**EMILY MOTTO:** So if she's sticking with the same language and just applying it 10 years for that, you know, 10 years from when injury, death or damage occurs, that, that would be a--

**GEIST:** OK.

**EMILY MOTTO:** --a significant period of time.

**GEIST:** OK. That was, that was the basis of my question, if we're just changing the, the time or is it starting at a different point. So, thank you.

**DeBOER:** Thank you, Senator Geist. Other questions? I have a question for you. This is something that I was also wondering about. So is it from the discovery of the injury? So, for example, I get a cancer or something. Discovery of the cancer, or is it from the discovery of the connection of the cancer to the carcinogen that you were exposed to?

**EMILY MOTTO:** Yeah, and that's a good question. I think that's something you'd probably be in discussions with from your doctor, maybe at the outset. So how are we thinking this happened? And, you know, if you receive information that leads you to believe that maybe it was due to an exposure, like mesothelioma is a really good example of that, because at this point in time we're pretty confident of what it ties back to. And so if you've received information that may-- that should have tipped you off to say, hey, this is probably related to something I've been exposed to that may be different than my next door neighbor, that probably would start the clock. And those are things we argue about all the time in, in litigation in terms of, well, should you have known? Did you have information? And that's something we dig into.

**DeBOER:** So right now, under the statute, as it's currently, even if I am told-- sort of medical information advances and I'm told, oh, actually this is because of your exposure to X. There would at least be an argument that that's when the statute would begin to toll rather than-- or it would toll until that point, rather than from the date that I discover I have the cancer. Is that--

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**EMILY MOTTO:** Yeah, I think there's certainly an argument to be made that you didn't have any reason to connect that until maybe you had that conversation with your doctor.

**DeBOER:** OK. Other questions? All right. Thank you.

**EMILY MOTTO:** Thank you.

**DeBOER:** Next opposition testifier. Is there anyone here who would like to testify in the neutral capacity? As Senator Blood comes up, I will say that we had two letters, one letter in support and one in opposition. So that will bring us to our own Senator Blood for her closing.

**BLOOD:** Thank you, Senator DeBoer. I think I'm going to start you with a, a quick story. So my father is a Marine. You never stop being whatever you were in the military, so you still are a Marine. And my father was stationed at Camp Lejeune. And as a result, he served this country, was knowingly, by the way, in an environment that created health issues and now he deals with throat cancer, which is really a shame because my father is, and I don't say it because he's my dad, the strongest man I ever met. Ever. He's 84, 85 years old. He still climbs on the roof of his church and fixes things. And I've never seen him not accomplish something. But in the interim, he's had vocal cords damaged because of treatments that were done inaccurately at the V.A. and has suffered greatly because of one organization's ability or inability to, to say what was going on and what the health hazards were. And so here we are. That happened in the late 50s and early 60s, now dealing with it. Will he really ever be correctly compensated? I'm sure he won't be. But I just want you to think about how this can touch our lives. We have to not worry about things like people coming from out of state because there is science involved with, with what happens. They have to be diagnosed and there has to be a way to prove the trajectory of how this happened. So perhaps there could be similar symptoms, but they'd have to prove that they were here in Nebraska when it happened. Right? They might come from another state and say, hey, this happened when I was in Nebraska for a week because I happened to be by this building or in this property. That, that's probably not very realistic. Are there people who travel from state to state or ne'er do wells? Probably, because there will always be grifters. That's how it is. That's how they make their money. But what I'm worried about are real Nebraskans. I'm worried about the people in Omaha. When they had that fire in Omaha, a lot of the people that I talked to were from the black and brown community, were from communities with lower income who are working more than 40 hours a

week. What are the chances are that they're going to get to a doctor before it gets really bad? Not very good. And so when we talk about exposure, it's so much different than like, I got hit by a car. I had a tractor run over me. Right? We're talking about when the cause of action accrues. And so you may be a childbearing woman and say that you live in Sanders County. And by the way, if you follow the waterways, you know where those chemicals are coming now, too, right? Because we're sitting right in the area where those chemicals are coming out, just for clarification. And you have the ability to, perhaps, start your family and it's five years later and you find out you can't because of your exposure to these chemicals. There's nothing that you can do about it. You start having cancers, brain tumors. These aren't things that happen immediately. These are things that take an extended period of time. Now, you heard two different attorneys already show you that it's going to be challenging no matter what happens. But why wouldn't we give victims-- because they are victims, these aren't people trying to get rich. These are people who are trying to be well and stay well and provide for their families. Should they die because of somebody's inability to do the right thing? Why wouldn't we give them that benefit? And Senator Ibach, right on my desk, I have the most current information in reference to all the tests that have been, been going on thanks to Creighton University, thanks to the, the UNMC. Dr. Rogan has been a champion on this project. I encourage all of you to come to Mead, Nebraska on Monday night. They're going to have a presentation. Senator DeBoer joined me when we had a press conference about a year and a half ago and we learned a little bit about-- I think you did, right? We learned quite a bit from the victims and what was going on there. And people are concerned and people don't feel we're doing enough. This is a small piece of the puzzle in what we can do, but it's not just for Mead, Nebraska. It was what stimulated me to do it, encouraged me to do it, but mostly it's, it's my concern that when we deal with things like toxins, we, we can't always know within 3 to 4 years. And if attorneys can't even decide how long a time we have, who are we to assume that four years is enough? Now, you notice I kept it really narrow. I didn't do medical. I think medical is four years in Nebraska, too. And by the way, if you've never watched the documentary Hot Coffee, I strongly encourage you to do that because there's a Nebraska family that's actually in that documentary. I understand why we have a small window of time to sue doctors, to sue the people in the medical field. I don't agree with it, but I understand it. And it's because we already have a doctor and nursing shortage. They already have a lot of issues that are preventing people from staying in the field and getting into the field. We have to try and protect them as well as we

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do the patients. But this is different. These are people who are knowingly doing this. And the victims aren't purposely swimming in a pool full of poison. They're just living their lives. And so if we can't protect Nebraskans-- and I'm not talking about a nanny society, guys. I'm talking about it is our job to make Nebraska a better place to live and raise our families. This isn't government overreach. We're not trying to, to do the job of another organization. But if we're OK with big business coming in and purposely poisoning Nebraskans, then this is not a state that I want to live in, because this is not the Nebraska that I grew up in. I feel that, that 10 years is not excessive. It's not going to bring in a bunch of ambulance chasers. No offense to the attorneys in the room. But what it's going to do is show that we are aware of what's going on right now in Nebraska and that we don't agree that it's OK to purposely and knowingly poison our residents with toxins and hazardous materials. And so with that, I'm going to get off my soapbox and tell you thank you for the opportunity to bring forward LB7 and I really hope you consider voting this out. And if you'd like the data, I'd be happy to have my office to make you a copy of all the data. But I really encourage you to attend Monday night's presentation and we are also going to live feed it on our Instagram and Facebook. Thank you, Senator Wayne.

**DeBOER:** All right. Thank you. Are there any questions? I don't see any.

**BLOOD:** Thank you, Vice Chair DeBoer. I thought you already handed it over. [INAUDIBLE].

**DeBOER:** All right. That ends our hearing on LB7 and moves us over to our own Senator Wayne and LB25. Welcome, Senator Wayne.

**WAYNE:** Thank you, Vice Chairwoman DeBoer. I apologize, Senator Blood. I was in Revenue doing my annual cigar tax bar-- bill. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e and I represent Legislative District 13, which is north Omaha and northeast Douglas County. LB25 would allow the court to levy a fine against a party who displayed intent to cause harm or cause actual injury to others through reckless disregard to their lives and safety of others. This tool can be used to deter others who may want to do-- or perform similar behavior and we think that is outrageous or egregious. The reality is this came from a long list of Supreme Court cases where I think they misinterpreted what our Constitution says. This doesn't authorize the use of punitive damages. I would submit that our Constitution already does so. This is just clarifying that punitive damages are considered a fine, which would-- or a penalty which would have to go to the local

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school district or a local county in which that court case is brought. There are only four states that do not actually award punitive damages. And again, most of the states around us do. I do have a couple of testifiers here and I'll let them testify, but this is just simplifying that, that it can be awarded and it should be awarded properly through the school fund, just like you do if you have a speeding ticket or a fine or a parking ticket. It actually goes to their local school fund. And I submit that punitive damages is just another type of fine. So with that, I will answer any questions.

**DeBOER:** Are there questions for Senator Wayne? Senator Wayne, you know, I couldn't let this one go without asking you something. This is a special bill to Senator Wayne. And I guess we fight over this one--

**WAYNE:** Every year.

**DeBOER:** --every year. No, I appreciate that you have-- the county attorney may join into this to protect the interests of the common schools. But what sort of, I mean, I don't-- so he joins in or she joins in. What leverage do they have to kind of protect the interests? What could--

**WAYNE:** Well, there's a couple of things. In any-- if, if a school or county attorney decides that they want to make a settlement for a less than punitive, less than what the court allows-- let's say there's an appeal. Then the county attorney would be representing that county in that settlement because it doesn't go to the victim and it doesn't go to the attorney or-- I mean, necessarily. It doesn't go to the victim, it goes to the school district. So somebody has to represent that county in that situation. So typically that would occur if there was an appeal.

**DeBOER:** Wouldn't the settlement be-- so if I, if I am an attorney representing a plaintiff and I would settle with-- let's say you're representing a defendant. Wouldn't we say, look, we can get more, more money, both for my plaintiff and save you a little money as a defense attorney, if we recognize, OK, we're going to-- there's going to be punitive damages in this case. All right. I'll give you a discount on the total amount you would be spending, then I get more than my compensatory damages because I'm going to get, let's say an, an amount larger than that. So now we've got a little bit of what would, would have been punitive damages, but we're settling between the two of us. The interest of the, of the school district is not being represented in that, obviously. So I-- do you see what I'm saying? It creates a, kind of, a incentive to inflate compensatory damages in order to

prevent punitive damages from being assessed. And it's an incentive that is shared by both the defense attorney and the plaintiff's attorney in that case.

**WAYNE:** Well, I'm going to, I'm going to let Mr. Powers answer that question a little more. But here's what I would say, that, that scenario already happens and it happens in the fact that, if you have policy limits and let's say-- and it's a different, different example, but the common-- the principle you're proposing or the outcome you're proposing currently happens and here's what I mean by that. If I sue-- if I demand policy limits and you reject it, the-- not only-- if I go to trial, can I get policy limits, I could also go above and beyond those policy limits. So I put the person who is insured at risk of actually going through those policy limits. So there still already is an incentive right now for the person who is the defense attorney to try to figure out how to settle, especially if they deny your request for a policy limit. So there's already some of this negotiation, I would say, going on now, but Mr. Powers does a lot more plaintiff work than, than I ever had, so he would probably have a better idea of the way that works.

**DeBOER:** All right.

**WAYNE:** But from my perspective, we're not-- I know the, the one liner says authorizing punitive damages. I submit that they're already authorized. It's just that the first case that-- well, the couple of the first cases that came up, it was an individual who was trying to get the punitive damages and the actual language they cited was, it has to go into a county or to go through the regular fines and a-- fines and penalty statutes. And that was original. And somehow it, it morphed to we don't have punitive damages at all and I just think that's not the language of our Constitution.

**DeBOER:** OK. Thank you. Any other questions for Senator Wayne? All right. First proponent testifier.

**VINCE POWERS:** Good afternoon. Vince Powers again, V-i-n-c-e P-o-w-e-r-s. I'm here for the Nebraska Association of Trial Attorneys and on my own behalf. I, I would first like to explain punitive damages. We're one of four states that doesn't allow them. Well, I think we do allow them. I happen to agree with Senator Wayne, but there's a conflict in our courts. But most damages are what we think of as we call special damages, your lost wages, your lost profits, your medical bills. We then have what are called general damages and that's like, I lost my leg. That's a disability. We have to compensate



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for that. There's also part-- there's damages where I get cheated. You know, someone comes-- commits fraud and they conned you out of \$100,000. That's \$100,000 in damages. But think about this for a second. In Nebraska, because we don't have-- and then we have punitive damages, which are punishment damages to deter that type of conduct. In Nebraska, if you get cheated out of \$100,000, you're not going to be made whole. You're going to get \$100,000 less than your attorney's fees. And this-- and so in other states-- there's, there's just no incentive in Nebraska, because oftentimes you can't be punished. But I call your-- now, I have, for years-- I agree with Senator Wayne. And I won't bore you with the, the cases, but an individual does not get the money. The money goes-- look at paragraph five. This was a case I tried and I had the honor and privilege of representing the parents of a young woman who was kidnaped, raped and murdered while a student at Peru State College. We could not get the authorities to file charges, so this family said-- and I was happy to do it. We, we got a punitive damage award. This was the jury verdict. Punitive damages for the benefit of the schoolchildren of Nemaha County, Nebraska, and the schoolchildren of the state of Nebraska in the amount of \$2,400,000,000. It couldn't be collected. OK. But think about this. I'm here on behalf of the school children. I'm here on behalf of people like me that think my property taxes are too high. This money that would be recovered doesn't go to the individual. It goes to, as the Constitution of Nebraska says, it has to go to the school districts. And so you're going to hear-- and people always say, oh, punitive damages. They, they try to make these things up, that somehow it's a windfall. What it means is when you get cheated, when somebody steals your money through a Ponzi scheme, not only do you get your money back, but that person is punished. And the United States Supreme Court-- and please, let's not get carried-- I have said punitive damages can only be 10 times the amount of your general damages. So in this particular case, so if my general damages-- I get cheated out of \$1 million, the punitives can only be \$10 million. I don't get that money. It goes to the schoolchildren. It goes to the taxpayers. And so basically-- I also attached the district court judge who affirmed this verdict. And so there are some judges that, that follow it. But what's so good about what Senator Wayne did-- and, and to answer his question, Senator DeBoer, what Senator Wayne did is solve a problem that you articulated very well. He gives authority to the county attorney to come in. So if that were the case, the county attorney could file a motion and say, hey, judge, this settlement is not fair, this settlement is not reasonable. What they're trying to do is take the money away from the schoolchildren. And so that's what's so great about how Senator Wayne, you know, wrote, wrote the bill because that

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loophole would comes [SIC]. But ultimately, it's a real simple thing. You're either on the side of the victim or you're on the side of the murderer.

**DeBOER:** I probably need to cut you off because it's been red for a little while--

**VINCE POWERS:** Sure. Sorry.

**DeBOER:** --but, but stay up here because there might be some questions.

**VINCE POWERS:** OK.

**DeBOER:** Are there any--

**VINCE POWERS:** That's Vice Chair. Thank you.

**DeBOER:** Are there any questions?

**IBACH:** I do have one question.

**DeBOER:** Senator Ibach.

**IBACH:** Thank you, Miss, Ms. Chairman, Vice Chair. I'm still new here. Just one question. So are the damages that are collected in the states-- you said all but four states--

**VINCE POWERS:** Right.

**IBACH:** --have this law in effect. Do all the states except these four, but all the states that collect these damages, do they all go toward education for the schoolchildren?

**VINCE POWERS:** No. This would still put Nebraska in, in, in, in a unique position. Some states do like Iowa. So if you go across the river, there, there, there's a famous case in Iowa where there was an auto dealer who cheated somebody, who cheated this young man out of his life savings by, by selling him a vehicle that he knew was junk. So he had to pay not only the \$20,000, but then he had to pay a couple hundred thousand on it. In Iowa, half the money goes to the schools, the state and half goes to the victim. Other states, 100 percent-- other states have different forms. I think Georgia might be 50/50 as well. Only Nebraska would have this. And so that's why it just makes no sense to oppose this, because this money goes to lower my property taxes [INAUDIBLE] and so-- yours too. But it doesn't go to the victim. Now, maybe it should, but that's not what our Constitution says. And

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so to answer your question, Senator, and I'm sorry I'm talking so long, the idea is when someone-- I mean, you know, we're not children here. There are people that do bad things in the world. There are business people that routinely cheat people out of money. There are scams. But in Nebraska, you can't, you can't punish them. You can't deter that conduct, whereas in Iowa, you can, in Kansas, you can, everywhere around us, but for some reason, we're not allowed to do it, so.

**IBACH:** Thank you.

**VINCE POWERS:** Thank you.

**DeBOER:** Senator Geist has a question.

**VINCE POWERS:** Oh, I'm sorry. Yes, Senator.

**GEIST:** And I'm not sure that I have a question or a comment, but I wonder if you could put in the statute that if they receive let's see, is that \$2,400,000,000?

**VINCE POWERS:** Yes.

**GEIST:** That they also have to lower the levy?

**VINCE POWERS:** Yeah. [LAUGHS]. You know, Senator, we see eye to eye.

**DeBOER:** Thank you, Senator Geist. So other questions? So I think you may have answered my question here, but the, the sort of thing that Senator Wayne and I always talk about is this, this problem of the settlement. And if you have the allowance for the county attorney to come in, you think that would take care of the, sort of regulating the settlement? They could maybe suggest to the court that the settlement needed to be reviewed if there was sort of collusion between the parties--

**VINCE POWERS:** Yeah.

**DeBOER:** --to buy down the punitives in order to--

**VINCE POWERS:** You know, I understand that theoretical concern. I've practiced throughout this state and we've got great county attorneys. They're all underpaid, they're all elected, they all have to put up with a lot and the last thing they're going to do is sell out the school kids in their county.

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**DeBOER:** No, I'm not concerned about them. I'm being--

**VINCE POWERS:** They're going to come in and they're going to say, this isn't fair. They're going to call up and they're going to say--

**DeBOER:** Perfect.

**VINCE POWERS:** --hey, Powers, what, what's going on here? At one point, you were trying to get \$1,000,000 for the school kids. Where'd that go? And then they can go to the judge and the judge will say, and you're going to hear from Emily Motto. She's a great lawyer. She's going to be looking out for her client and they're not going to-- so it all works out. In 46 other states, it works out very, very well.

**DeBOER:** I, I applaud Senator Wayne for adding this in. This actually got added in in the last version of the bill and I think it does satisfy my concerns. So--

**VINCE POWERS:** All right.

**DeBOER:** --thank you. All right next proponent testifier. Is there anyone who would wish to testify in opposition?

**EMILY MOTTO:** Good afternoon, members of the Judiciary Committee. My name is Emily Motto, Em-i-l-y M-o-t-t-o. I'm an attorney at Baylor Evnen Law Firm. I'm here in opposition to LB25 on behalf of and as a board member of the Nebraska Defense Counsel Association. I am not a paid lobbyist. I do disagree with the Senator and with Mr. Powers. I do think these punitive damages are unconstitutional and I think our Supreme Court has said that. LB25 cites Article VII, Section 5 of the Constitution and attempts to define punitive damages in such a way as to fit into that article. Our Nebraska Supreme Court has interpreted that article, that section, and has said as recently as 2017, that punitive, vindictive and exemplary damages are not allowed in this jurisdiction. And that comes back to that, that underpinning in our law that compensation should be for the injuries sustained in the civil context. And even when the court has analyzed other laws which attempt to add a specific penalty, the court, the court has always come back to that principle. And this bill, in particular, gives the trier of fact unlimited discretion, which I believe directly contravenes this principle. This will not be compensation for the injuries sustained. And because this law attempts to define language within the Constitution, I don't think that's the purview of this body. I think it takes a constitutional amendment. I truly do. I think there's some vagueness issues here. This bill does not talk about the

burden of proof. A lot of states, almost all states, require clear and convincing evidence, not preponderance of the evidence, for these types of damages. So I believe that's an issue. A lot of states require bifurcation, which means we're separately determining whether we have, you know, the, the proper amount of compensatory damages and then whether or not we need punitive damages. And that usually requires other evidentiary requirements. Is this an isolated incident? And also, I think we have a major concern of jury bias. I mean, we're sitting here, we're talking about a jury in that county saying, should I award punitive damages because it benefits me as a tax person? I mean, that is an issue. That's an issue. And, Senator DeBoer, I do not think this solves your problem because the statute says, upon an award of punitive damages, the court shall notify the county attorney, an award of punitive damages, not a settlement. That is the court awarding punitive damages. Courts are not involved. We usually just tell the court, hey, we're settled, you know, and the court doesn't know what our settlement is. The court's not involved in that. And I don't think the county attorney would be privy to that information. We would just be saying, no, we settled it. And I think that that inflationary concern is there. And I don't think the county attorney would know about it or have the power under this bill to say, hey, hey, hey, wait a second. I think a judge should look at this. So I don't think it addresses the situation that you're, you're talking about. So I'm, I'm running low on time, but I did want to make myself available for questions.

**DeBOER:** Are there any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. I, I guess my question is, what evidence do you have that if a jury-- if, if there were punitive, punitive damages awarded, that jurors would consider whether it would be a benefit for them?

**EMILY MOTTO:** Just because they'll be sitting in their district. I mean, talking about Mr. Powers--

**McKINNEY:** But what physical evidence or examples do you have from either other places across the nation that you could say, this has happened here in this jurisdiction?

**EMILY MOTTO:** Well, I just think as Mr. Powers pointed out, this is, this would be a unique situation here in how the money is handled and I think it sounds great to say it could benefit the schools.

**McKINNEY:** Do other states award punitive damages?

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**EMILY MOTTO:** Other states award punitive damages, yes. Is that what you're saying, generally?

**McKINNEY:** So are there examples of cases where you could point to that says, jurors consider punitive damages if thinking about a benefit anywhere else?

**EMILY MOTTO:** Well, I don't think that they apply it in the same way as this bill proposes. So I don't know that we could find that evidence.

**McKINNEY:** So, so you don't have any evidence. You're just saying that.

**EMILY MOTTO:** Well, I think it's pretty obvious to understand a situation where jurors sitting there with children in the school right down the street are awarding that. I mean, I just--

**McKINNEY:** How's that obvious?

**EMILY MOTTO:** Well, because it would directly affect their-- they have the ability to point to a big company and say, I want to award punitive damages, knowing it's going to go directly to the school fund. I mean, that's--

**McKINNEY:** But you can make the argument that jurors are biased anyway, because if they're-- not even just punitive, punitive damages, they're making decisions on a case that somebody assaulted somebody. They could make the decision, oh, I got kids. This person assaulted somebody. I don't care if the person's innocent, let's lock them up. So I don't get your logic here.

**EMILY MOTTO:** There's no punititary-- there's no punitive--

**McKINNEY:** I know that. But I'm saying under your same logic, you could apply that to other instances where jurors are considering different cases and if they wanted to be biased, they would be biased. Why can't we trust the jurors-- jury system to do what's right and what's fair and just. I don't think your assumption is valid, is all.

**EMILY MOTTO:** Well, there's no other situation in which a jury is making a decision that benefits the juror, monetarily, to their own personal pocket.

**McKINNEY:** Does it--

**EMILY MOTTO:** There is not another scenario that exists.

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**McKINNEY:** Does it benefit the public to lock people up accused of murder?

**EMILY MOTTO:** Well, it doesn't affect them monetarily.

**McKINNEY:** But--

**EMILY MOTTO:** I'm talking about their own pocketbooks.

**McKINNEY:** Is it a benefit to the community and their kids to have locked people that are accused of murder up? Does it benefit--

**EMILY MOTTO:** Not accused of murder. If someone guilty--

**McKINNEY:** Or if, if they're consider--

**EMILY MOTTO:** If someone's guilty, it might.

**McKINNEY:** --if they're considering whether they're guilty or not, is that a benefit?

**EMILY MOTTO:** Well, it's only a benefit if they are a dangerous person and they believe that, then the evidence supports that this person should be locked up. That is, of course, a benefit to society.

**McKINNEY:** So could you say there's bias there?

**EMILY MOTTO:** Bias if they believe that that person is actually dangerous, certainly not to convict them if they don't. I mean.

**McKINNEY:** You're-- I'm, I'm just-- if we could just finish here. But I just don't-- if you have no examples of this ever occurring and you're making this blanket assumption that a juror would consider whether punitive damages would go to some-- to a school for kids, I just, I--

**EMILY MOTTO:** I mean, Mr. Power said, it benefits all of us. Why would you oppose this? I want my tax dollars to go to-- I mean, I want my tax burden. He said that. So I mean, it's certainly a consideration I think jurors would be thinking about.

**McKINNEY:** I don't think so. But thank you.

**EMILY MOTTO:** OK.

**DeBOER:** Thank you, Senator McKinney. Other questions? I guess I'll ask you. Other states do have punitive damages that go to-- or at least they used to when-- in the 90s, when I was practicing in Missouri, I

know that was the case, in Missouri, was that the punitive damages went to the school districts. So they were obviously able to figure out a system to make that work. I take your point about the clear and convincing standard and maybe that's something that we can ask Senator Wayne about, but-- and then whether it's unconstitutional or not is a question that I'm sure is open. And, you know, I won't make a statement now about that. But do you have alternatives or sort of solutions to propose that might help to, to-- I mean, yes, the clear and convincing standard, fine. That's something I think that we can maybe look at. But are there other pieces that you think might make this a better fit, assuming-- let's assume for a moment that it is constitutional?

**EMILY MOTTO:** Yeah, I guess from my perspective, I just don't see this as the best way to deter behavior. I mean, I think you all are, you know, writing legislation to deter or deal with bad behavior all the time. And, you know, practicing around here, I-- I'm just not aware of egregious situations, constantly, that I feel like we need punitive damages or else these-- you know, this is just running rampant. So I, I just don't feel like we're encountering that all that often, that this is the way that we need to deter behavior. So I think from my perspective, it would be addressing specific situations within the law that allows for certain penalties or that allows for other, you know, punitive measures under the law.

**DeBOER:** OK. All right. Are there other questions for this testifier? I don't see any. Thank you.

**EMILY MOTTO:** Thank you.

**DeBOER:** Next opponent testifier.

**ROBERT M. BELL:** Vice Chairwoman DeBoer and members of the Judiciary Committee, my name is Robert M. Bell, last name is spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. I am here today in opposition of LB25. I've also been asked by the Nebraska Chamber of Commerce to add their opposition to the record. The Nebraska Insurance Federation is a state trade association of insurance companies. The Federation currently has over 40 member insurance companies. Members of the Federation include companies who write all lines of insurance and who provide over 16,000 jobs to the Nebraska economy and over \$14 billion of economic impact to the state on an annual basis. Perhaps most importantly, the Nebraska Insurance Federation member companies provide high-value, quality insurance products that protect Nebraskans during difficult



times. As a general rule, the insurance industry is opposed to any statutory expansion of damages that go beyond making an insured or claimant whole. A statutory scheme of punitive damages in Nebraska will lead to higher judgments against policyholders and insurers and will result-- and the result of these higher judgments will be higher premiums, which will make insurance coverage less affordable for Nebraska residents and businesses. Notably in the property and casualty arena of coverage, higher premiums cause individuals and businesses to scale back the amount of coverage purchased, which can be a detriment to injured parties. Also, insurance companies in Nebraska are already subject to punitive action by the Nebraska Department of Insurance. The Nebraska Insurance Code contains both the Unfair Insurance Trade Practices Act and the Unfair Insurance Claim Settlement Act that subject entities licensed by the department, such as insurance companies or insurance agents, to fines and or suspension or revocation of an entity's license. Similar to the provisions of LB25, LB25, fines levied against insurers or other licensed entities by the department are remitted to the State Treasurer for distribution in accordance with Article VII, Section 5 of the Constitution of Nebraska. For these reasons, the Nebraska Insurance Federation opposes LB25. Thank you for your time and the opportunity to testify.

**DeBOER:** Thank you very much. Are there questions for this testifier?  
Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. I guess my question is, what, what would it matter if, for example, somebody in my district, that we change the law and allow punitive damages, punitive damages if already, based on their zip code, their insurance is high anyway? So we already don't have punitive damages, but if you live in the areas of 68111, your insurance is high versus if I lived in Senator DeBoer's district. So why, like so--

**ROBERT M. BELL:** Well, I, I, I, I think I have to challenge the premise that, that the insurance is higher based off of zip code.

**McKINNEY:** It is.

**ROBERT M. BELL:** Certainly, for the whole state if, if, if the, if the claims amounts of, of insurance goes higher, there has to be premium to back that up that they're, they're, they're going to be required to by the Department of Insurance to stay financially solvent. That's going to increase the premiums on all Nebraskans across the state. And those that struggle to afford insurance, whether or not they're in your legislative district or in another part of Omaha or in Lincoln or

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in Scottsbluff or Alliance or, you know, pick your spot in Nebraska, those individuals are going to have a more difficult time purchasing insurance coverage.

**McKINNEY:** But they already have a difficult time because based on the location of their residence, their insurance is high. So I'm asking, what is the difference if we allow punitive damages when already if you live in zip codes, 68111, 68112, and I could go on, your insurance is high.

**ROBERT M. BELL:** This legislation will not make the insurance--

**McKINNEY:** You, you just said--

**ROBERT M. BELL:** --be less costly.

**McKINNEY:** But, but you just made the argument that if we make this change, it would increase the cost.

**ROBERT M. BELL:** It would, yes.

**McKINNEY:** So why, why would it matter to somebody that it's already high? They're already not even held to the equal, equal costs across the board because of their location.

**ROBERT M. BELL:** I guess I really don't know how to respond other than to say, I mean, insurance premiums will go higher for, for everybody across the state. So if somebody is already struggling to afford insurance, this is only going to make it more difficult.

**McKINNEY:** And it's already difficult because people live in certain communities.

**ROBERT M. BELL:** It is. There, there are, there are people that struggle to afford insurance. Yes.

**McKINNEY:** Thank you.

**ROBERT M. BELL:** You're welcome.

**DeBOER:** Are there other questions for this testifier? I don't see any. Thank you.

**ROBERT M. BELL:** You're welcome.

**DeBOER:** Next opp-- opponent testifier

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**KENT GRISHAM:** I will first say I think it's awesome how so many of you senators have stayed in your seats for almost 3 hours. That's amazing to me. Good afternoon. Thank you, Senator DeBoer, all senators on the committee, my name is Kent Grisham and I appear today as the president and CEO of the Nebraska Trucking Association. For reference, the NTA is one of the largest--

**DeBOER:** Can you spell your last name, please.

**KENT GRISHAM:** Oh, I beg your pardon. K-e-n-t G-r-i-s-h-a-m. The Nebraska Trucking Association is one of the largest in the country, with more than 900 members, representing motor carriers in Nebraska of all sorts and types. We are about more than just the four higher motor carriers as well. My members are businesses of all types: farms, ranches, anything that uses trucks as part of their operations, as well as the companies who fuel, service and equip them all. My members make up a large part of the trucking industry in Nebraska, one that demonstrates its essentialness every day. Every one of us benefits from a safe and successful trucking industry. After all, if you've got it, the truck brought it. And that is especially true in Nebraska, where about half of all of our communities receive everything they need by truck alone. No rail, marine, air or pipelines, just trucks. With that background information in mind, I come before you today in opposition to LB25. Punitive damages in civil suits are a common topic of discussion in the trucking industry because motor carriers are all too often the target of such actions. The American Transportation Research Institute recently released comprehensive research that confirms that large verdicts against trucking fleets are increasing dramatically, both in number and size of awards. ATRI's research is partially based on a newly created trucking litigation database that provides detailed information on 600 cases and counting between 2006 and 219 [SIC]. In the first five years of that data, there were 26 cases over \$1,000,000 and in the last five years there were 300. The number of verdicts over \$10 million nearly doubled in that time. And in response to arguments that nuclear verdicts reflect real-world increases, in that time period, the size of the verdicts grew 51.7 percent annually at the same time that inflation grew just 1.7 (percent) and health care costs 2.9 (percent). There is a correlation in these litigation data and the cost of insurance for motor carriers. The average increase in premiums rose 42 percent in the eight years ending in 2018, with the most dramatic cost increases affecting the small fleets and the two or, or three grain or livestock truck transporters and the owner-operators. In terms of cost per mile, the fleets under 25 pay quadruple the rate of fleets over 1,000. The point is clear. Where punitive damages are allowed, higher costs of

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insurance heading to higher costs of shipping are sure to follow, as well as the issue of lawsuit abuse. I see my red light. I will stop there.

**DeBOER:** Thank you. Are there questions? Senator McKinney.

**McKINNEY:** Thank you. If LB25 passes, do you think drivers would drive more safely?

**KENT GRISHAM:** No.

**McKINNEY:** No?

**KENT GRISHAM:** No, I don't, because there are several factors in the trucking industry, just in the last year alone, where we've implemented the entry-level driver training requirements. Our drivers are trained better. Our drivers are watched. We're implementing safety equipment, which is driving the cost of the trucks higher, but it's worth the investment to us. And one of the biggest debates right now are the driver-facing cameras and whether or not drivers want to have them in the trucks. So we are implementing all of these new safety measures. We are increasing the training on our drivers. We take the safety issue very seriously because our drivers also want to go home at night or at the end of their work week to their families. There are so many regulations that the, the average truck driver is more regulated than the airline pilots.

**McKINNEY:** So if you take safety-- if you value that as a high priority in making sure drivers are doing the right things, what's wrong with having something else that, you know, if you mess up this, this could happen?

**KENT GRISHAM:** Well, in the history of what we're talking about from the litigation database that I referred to, we're seeing the verdicts being out of proportion to whatever the driving error may have been. So there, there is not a proportionality that exists in the states that have punitive damages.

**McKINNEY:** But isn't it also based on a lot of other factors? Like, for instance, if I'm a doctor and a trucker makes a mistake, isn't it also-- you could also base those claims of damages on future earnings? If I was a doctor and I use my hand--

**KENT GRISHAM:** I, I--

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**McKINNEY:** --something happened to my hand so I can't make-- let's say the doctor makes \$250,000 a year and he's 35 years old. You break that out for the rest of their life or, or whatever. So I don't see how that's successful.

**KENT GRISHAM:** Well, Senator, I'm not an attorney. The room is full of them. But I would believe that what you're referring to there, the loss of a hand, would be something that can be calculated in the compensatory damages. That person has an opportunity to be made whole, if you will, in Nebraska without this \$100 million punitive damage that they would never see in the first place, because as proposed, that money's not going to go to you that lost your hand, it's going to go somewhere else.

**McKINNEY:** Yeah, but it also is security for, for the public to know that if a driver makes an error, they'll be held accountable.

**KENT GRISHAM:** And they are and they will be. They can be cited, they lose their career. They may very well have been injured in the same crash that you refer to. Drivers are and will be held accountable and that driving record goes against the company as well. The federal government maintains a database of points that are assessed against every motor carrier. So when that motor carrier gets to a certain point in points or a certain level of points, they lose their DOT number. There is accountability. There are punitive actions that are taken against trucking companies and the drivers now.

**McKINNEY:** You just don't want punitive damages.

**KENT GRISHAM:** Punitive damages will serve really one purpose, and that is to drive up insurance rates and open the floodgates for lawsuit abuse. That's our opinion.

**McKINNEY:** If it'd open the floodgates, then obviously, there's something wrong, but, but you can finish and we're done here.

**KENT GRISHAM:** OK.

**McKINNEY:** Thank you.

**KENT GRISHAM:** Thank you, sir.

**DeBOER:** Thank you, Senator McKinney. Senator Blood.

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**BLOOD:** Thank you, Vice Chair DeBoer. And you may not know this answer, but I thought I heard it earlier. How many other states do this besides Nebraska?

**KENT GRISHAM:** I believe there are a total of four states that currently do not have punitive damages.

**BLOOD:** So you're telling me 56 other states do have it?

**KENT GRISHAM:** 46.

**BLOOD:** Forty-- oh, sorry.

**KENT GRISHAM:** It's OK.

**BLOOD:** I really can add.

**KENT GRISHAM:** I was afraid to correct you.

**BLOOD:** No, please correct me. I'm going on three hours' sleep so--

**KENT GRISHAM:** I know.

**BLOOD:** --thank you for that. There's not enough caffeine in the world today. So how do the insurance companies then, in those states, how do they schedule their fees? And-- I'd like-- I, I'm an avid reader. I don't ever remember reading anything about these other states where the insurance costs, like, went sky high as soon as this happened. Where, where's the documentation, where's the evidence that shows that it has happened in other states since that's-- we keep hearing the sky is falling in Nebraska if this happens. Where do we find that information?

**KENT GRISHAM:** I'll refer back to what I said before. The average premium for motor carriers between 2010 and 2018 went up by more than 42 percent. That includes motor carriers in Nebraska because they conduct interstate commerce. So if I'm a trucker and I get my DOT number and I'm based in Omaha, Nebraska, as soon as I get into business, I have to have that insurance coverage. The federal government says what my minimum insurance coverage is. I go to every provider of insurance I can and they're going to quote me premiums. And for every motor carrier that's out there in those 46 states that allow punitive damages, as the insurance companies rack up the losses from those punitive damages, they spread the cost of those losses over the entire industry, including me, who's never had an accident.

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**BLOOD:** But yet, they're still obviously in business, correct? I haven't seen-- I mean, that was always what I was taught when I was a kid is like, if you want to know how well the economy is doing, count your semi-trucks on the interstate, right?

**KENT GRISHAM:** Sure.

**BLOOD:** So I, I guess-- that was the concern I had, is that we already know that a large portion of the states do it, we're not seeing people close their doors. It seems like-- and, and while I know that's your job, I'm, I'm not-- have anything compel me, that shows me that it's going to be an immediate effect in Nebraska. More so, it just seems like we're just going to be on the bandwagon with the other states and I don't think we're going to see the sky fall.

**KENT GRISHAM:** If I may, neither-- I am not an attorney, neither am I--

**BLOOD:** Nor am I.

**KENT GRISHAM:** --an economist. But I-- it, it is clear, the impact when motor carriers experience something like a 42 percent increase in the cost of their insurance, they're experiencing double- or triple-digit inflation in the cost of the workforce, they're experiencing double-digit inflation in the cost of their fuel, all of those things result in an increased shipping cost for your energy drink or for the paper cup or for the grain and the beef and anything else. So as those shipping costs continue to increase is when we see shelf prices, when we see gasoline prices, when we see everything else having to go up. It does all fit together.

**BLOOD:** And I-- look, I don't want to like, continue to discuss and go on and on, but the things that you're mentioning to me are things that are static, right? Like, we know that gas prices are not always going to be high. We know that inflation is not always going to be happening and we're not going to live in a perpetual state of high prices, high gas, high inflation. So when those go down, do your insurance costs go down or do they stay the same or do they keep screwing you over regardless?

**KENT GRISHAM:** I'm going to refer back to the previous testifier who represents the insurance industry.

**BLOOD:** I-- but you know what I'm saying? I, I-- and Rob and I are acquainted--

**KENT GRISHAM:** Yeah.

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**BLOOD:** --and not in a negative way. Maybe after today, but-- so I just-- I'm going to keep listening for something more compelling, but I'm not hearing it right now. And that's what we always hear, you know, the sky is falling, the insurance costs are going to go up, but--

**KENT GRISHAM:** OK.

**BLOOD:** You know, but I'm not, I'm not hearing, I'm not hearing this in other states. I'm not seeing this in other states and I did a little research before today's hearing and I need something more compelling and I'm not hearing or seeing it yet. So I'll have to do more research.

**KENT GRISHAM:** Happy to help.

**DeBOER:** OK. Uh, Senator DeKay.

**DeKAY:** Thank you. Am I understanding you right? So, like with the punitive damages coming forward, not only does it cost the trucking firms more for insurance premiums, there's also additional costs passed down to the consumers because of the surcharges that they're having to charge to offset the costs of the premiums, so it's kind of a two-way fold on that, paid out going forward?

**KENT GRISHAM:** Yes, everything that affects all of our costs when we think of it as a consumer. How much does it cost you to be a state senator when you're having to pay for gas and you're having to buy food and all those kinds of things? The same thing affects the trucking industry. How much are they having to pay for diesel? How much are they having to pay in order to solve our critical driver shortage and our critical diesel technician shortage? They're paying more and more and more in wages for that, hiring bonuses. All of those costs get reflected in a per-mile cost to operate that truck and the per-mile costs have increased dramatically and a huge percentage of that, as I've said, is the cost of insurance.

**DeKAY:** Thank you.

**DeBOER:** All right. Thank you, Senator DeKay. Any other questions for this testifier? Thank you--

**KENT GRISHAM:** Thank you all.

**DeBOER:** --very much, sir. Any other opponent testifiers? Anyone who's here to testify in the neutral capacity? While Senator Wayne is coming



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up to close, we have two letters that we received in opposition.  
Senator Wayne.

**WAYNE:** Thank you, vice Chairwoman DeBoer. I don't mind putting a clear and convincing standard in here. You know, this is one of those bills I always bring. And I'm never sure how much I'm going to push it, but this year, maybe it's just that I have the, the lack of patience, maybe because of everything that transpired in my life over the last year. And so where-- what I'm not going to do is blow smoke about anything anymore. And I'm looking right at this, the letters that are out here-- let's just go back. Punitive. It's a penalty. The question for this body is, does the Constitution allow for penalties? The answer is yes. That in Article, Article VII, Section 5, fine, penalties and license money. And it's, if you are subject to a fine or a penalty, it has to go through the county to the school fund. That's in our Constitution. The question isn't whether this is something new, it's just, is this a penalty? And if it is, our Constitution authorizes it. Now, we could talk about the sky is falling and everything else, but what's interesting is nobody brought up an example of where they moved from a punitive state to Nebraska and somehow they got a break on their insurance. Somehow their fees are lower. Nobody brought specific cases because the reality is it's 40 other states, 46 other states do this. And guess what? If you're headquartered in Nebraska and you're in a state that does it and you're driving, you're sued in that state, so the punitive damages still apply to a Nebraska company in a different state. Happened in Texas to a big company here. That's where the wreck occurred. You can, you can sue anywhere where the accident actually occurs. And this idea of cases went up and the number of \$10 million cases went up. Yeah, maybe it was one person who got hit in a car by a truck, but maybe it was a family of four who died. Give us real examples if you're going to come to Judiciary. Anybody who's coming to Judiciary while I'm Chair, we need real examples, because the gamesmanship is over with. We don't get paid enough to deal with this. The question is this simple: are penalties allowed? They are allowed. And if penalties are allowed and this is punitive damages, then it's a damage that is punitive. We already have a system where it goes. We may not like it, but that's the Constitution. And if you're saying that the Constitution doesn't read that way, then somebody needs to explain to me what a penalty is, what a fine is. This is perfectly within our Constitution. And I understand the trucking industry and other insurance companies may have issues with that, but the cost of medical care, the cost of all these things we're going to talk about this year have gone up. Maybe that's why damages have gone up. That has nothing

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to do with what we're doing. We can't ignore the Constitution because it may cost too much. I'll answer any questions.

**DeBOER:** Any questions for Senator Wayne? Senator Geist.

**GEIST:** And I can't help you with the constitutionality. I just do have a question, just so that I understand how this works. So in Texas, you said punitive damages were exacted from a company here in Nebraska. So did that money go to school kids in Texas?

**WAYNE:** I don't know Texas law 100 percent, but I can pull the case in and get it to you, everybody on here.

**GEIST:** But is that how it would work?

**WAYNE:** Yes, it would--

**GEIST:** OK. So--

**WAYNE:** it, it could go to the-- Texas could have a law that it goes to the person.

**GEIST:** So it's whatever that Texas law--

**WAYNE:** Correct.

**GEIST:** So our kids don't benefit.

**WAYNE:** At all.

**GEIST:** OK. All right. That's all. Thank you.

**DeBOER:** Thank you, Senator Geist. Other questions for Senator Wayne? All right, Senator Wayne, thank you very much. That ends our hearing on LB25 and will end our hearing for today.