BOSN: Are you ready? Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln, representing the 25th District, and I serve as the chair of the Judiciary Committee. The committee will take up the bills in the order posted. This is a public hearing and is your opportunity to be part of the legislative process and express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets on the back table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone telling us your first and last name and spelling them both to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone wishing to speak in the neutral capacity. We will finish with the closing statement by the introducer if they wish to give one. We will be using a three minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the light comes yellow, you have one minute remaining, and when the light changes to red, you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bill being heard. It is just part of the process, as many senators have bills in other committees to introduce as well. A final few thoughts on today's hearing. If you have handouts or copies of testimony, please bring up 12 co--12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. on the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. Also, you may submit a position comment for the record, or testify in person, but not both. I will now have the committee members with us today introduce themselves, starting with my far left.

HALLSTROM: Bob Hallstrom, representing Legislative District number 1, Otoe, Johnson, Nemaha, Pawnee, and Richardson County.

STORM: Good afternoon. Jared Storm, District 23. All of Saunders, most of Butler, and all Colfax County.

STORER: Good afternoon. Tanya Storer. I represent District 43, Dawes, Sheridan, Cherry, Brown Rock, Keya Paha, Boyd, Loup, Blaine, and Custer, Garfield. That's right, I have all 11.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

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

McKINNEY: Good afternoon. Terrell McKinney. I represent District 11, north Omaha.

ROUNTREE: Good afternoon, Victor Rountree, and I represent District 3, which is comprised of Bellevue and Papillion.

BOSN: Also assisting the committee today, to my left is our legal counsel, Denny Vaggalis. And to my far right is our committee clerk, Laurie Vollertsen. The pages for the committee today are Ruby Kinzie, Alberto Donis, and Ayden Topping, all from UNL. With that, we will begin today's hearings with the gubernatorial appointment for Jeff Bucher for the Nebraska Board of Parole. Come on down. Welcome.

JEFF BUCHER: Thank you.

BOSN: I have a written copy of your statement, but if you'd like to go ahead and begin and read through that, that would be great.

JEFF BUCHER: Good. Well, good afternoon, Chairman-- Chairperson Bosn and members of the Judiciary Committee. My name is Jeff Bucher. It's B-u-c-h-e-r. It's an honor to be before you today seeking confirmation to my appointment for Governor Pillen to the Nebraska Board of Parole. I'm a very humble person, but I wanted to briefly talk about myself and how my career path has led me to the Board of Parole. I was raised on a farm in Richardson County. My mom and dad both worked on the family farm and they raised three children. I'm still active with the farm and try to keep on my-- an eye on my 86 year old mother who still lives there. I moved to Lincoln, attended University Nebraska, obtained my criminal justice degree. I always knew that I wanted to go into law enforcement because it's similar to growing up in a small community and being there to help each other in times of need. For the

past 34 years, I've been employed with the Lincoln Police Department. I met my wife on the police department and she's a retired officer. We have two adult children. Our daughter lives in Salt Lake City, and is a pediatric transplant pharmacist at Primary Children's Hospital, and our son recently completed his service in the Navy and is currently working on a ranch near Bridgeport, Nebraska. During my tenure at the Lincoln Police Department I was promoted through the ranks, serving my final ten years as a captain. In this role, I led Criminal Investigations; Lincoln, Lancaster County Narcotics and Gang Unit; and the Northeast Team. I was a member of the SWAT team for 21 years. Throughout my career, teamwork has always been a top priority. My passion was major case investigations, where I thrived on building rapport and trust with people. My guiding principle was always try to leave somebody in a better place than where you found them. I was able to surround myself with highly talented individuals, and together we fostered a strong team of philosophy that emphasized collaboration and dedication. I firmly believe in leading by example and have always strived to demonstrate a strong work ethic, effective communication, teamwork, and treating others with the respect and fairness I would expect myself. This simple approach has always been a key to my success for the past 34 years. So the ultimate question is why do I have an interest in the Board of Parole? As mentioned earlier, my goal was always try to leave somebody in a better place than when I found them. This principle also applies to my work on the Board of Parole. During the past 50 days of training with Chairperson Roslyn Cotton, I've been allowed to attend review of parole hearings, offender review meetings, and ultimately Parole Board hearings. With my experience in major case investigation, I can decipher the background information received of all individuals who are incarcerated. I have the opportunity to meet with them, discuss the facts of the case, listen, and be fair to them and treat them with respect in attempting to develop a plan of action for a successful entry back into the community. Public safety is the priority when making these decisions. I base that decision on their behavior while incarcerated, their completion of mandatory core programing, and lastly, do they have a realistic parole plan that will give them the best chance to succeed while on parole? Family should always come first, and I'm a strong believer in family support while transitioning back into the community. A transition living facility may be a better fit, but they also need that support from family at all times. My decisions will be fair, and everyone will be treated equally. While making these decisions, we must balance the best interests of the state in Nebraska with those of the individual incarcerated before me. I'm asking for

your support to be confirmed as a member of the Nebraska Board of Parole. Thank you. And I can answer any questions you may have.

BOSN: Thank you. Any questions from the committee? Senator McKinney.

McKINNEY: Thank you. Thank you, Mr. Bucher, for your testimony. My first question is, in the past, members of the Parole Board have had issues with showing up. If appointed, will you make it a priority to be at parole hearings?

JEFF BUCHER: Absolutely. For the past 34 years, I worked with the Lincoln Police Department. I go to work every day. That's what my mom and dad told me. I will promise you-- I don't know why that was an issue in the past, but that's not a good practice to have. I, I will be there. When I retired from the police department, my sick banks were all full, my vacation banks were full, just because I go to work and that's what I expect to do. And that's what I expect of my colleagues to do, too. As we all-- we have a job responsibilities, and we are expected to be there.

McKINNEY: Thank you. Given your background in law enforcement, how do you plan to ensure a balanced and fair approach to parole decisions that prioritize both public safety and rehabilitation?

JEFF BUCHER: Well, throughout my career in law enforcement, I've kind of gained a deep insight into the justice system, including the rehabilitation process and the factors that contribute to public safety. You know, serving on the parole board allows me to use that experience in a different way by evaluating cases objectively and making decisions based on fairness, evidence, and the potential for success of reintegration into society. My role is not to punish, but ensure that decisions are balanced in the best interest of both the individual and the community. I'm committed to impartiality and the principles that everyone deserves a fair review of their case.

McKINNEY: Thank you. What are your views on second chances for individuals who served their sentences, and how do you plan to assess parole applicants beyond just their criminal records?

JEFF BUCHER: Second chances. I'm a firm believer in second chances. I mean, everybody, everybody makes mistakes, sir. I made a lot of mistakes in my career, trust me. We learn from those mistakes. We get enough another opportunity, we try to improve off of those mistakes. And I believe everybody deserves that opportunity if they're fulfilling the obligations that they also need to fulfill within the

institution. I don't remember your second part of your question there, if you could repeat that.

McKINNEY: And how do you plan to assess parole applicants beyond just their criminal records?

JEFF BUCHER: By talking to them. By getting some background on them when we meet them. To simply, you know, sit down with them, have a conversation with them to see who, who is their strongest support. Again, as I mentioned earlier, I'm a strong believer in having a strong family support, somebody out there that they can turn to that has impartiality to them to be able to sit down with them, make sure that they're doing things right. And by simply talking and communicating with them, I think we can make that decision together.

McKINNEY: How will you also work to ensure that parole decisions are not influenced by political or ideological considerations, but are instead based on evidence based rehabilitation and risk assessments?

JEFF BUCHER: Well, I think every case is a case by case example that you've got to take individually. I think there is, there is a balance between community safety versus of getting this person reentry back into the community. I think to answer that question, I'd have to know the details to go into a lot further detail, but every case is specific in trying to keep that balance. And again, giving that person the opportunity to get back in a successful reentry into the community, that's the goal of everybody. Should be.

McKINNEY: All right. I only got a couple more.

JEFF BUCHER: That's all right.

McKINNEY: Our state has struggled with prison overcrowding. Do you believe the parole board has a role in addressing this issue? And if so, what steps would you take to ensure more eligible individuals are granted parole?

JEFF BUCHER: You know, I have very limited knowledge on that. I know I've met with Rob Jeffreys. He has a vision, and he's easy to fall into that vision. How do we address that overpopulation? I mean, since my time with on the parole board, I think we've been doing a very good job of trying to get people out on parole, give them that opportunity to succeed. My biggest frustration thus far is when they come back to us because they, they had a law violation, they, they didn't attend training or the educations. It's like we just need to get better with our communication and letting them know what is-- what are they

responsible for, what are they accountable for, so we're on the same page and we're working together to find that balance of them being successful. And I'm not sure I answered your question.

McKINNEY: Yeah. All right. The last one, kind of going off of what you just stated. Many returning citizens face barriers to reentry, such as housing, employment. What role do you believe the Parole Board should play in supporting successful reintegration into society?

JEFF BUCHER: I would like to take that and again, use the teamwork. I mean, the parole board is one entity and we work with several. My frustration is-- one of my frustration is why don't we have enough housing? You know, why are we waiting for core curriculum classes to get taught to these individuals when they're eligible for parole? I think it needs to be better tuned, create-- give that individual a chance for success. And, you know, when we parole somebody, we, from my limited experience, we may have to hold them a while because there's no bed. There is no bed for them to go to. And that's a little bit of a frustration. There's a-- why it-- why don't we have enough facilities to put individuals in? And I think we as a unit working together can work towards that goal to make things better, to make, make it more successful for that individual paroling back into the community.

McKINNEY: All right. Thank you.

BOSN: Any other questions from the committee? Senator Hallstrom.

HALLSTROM: I just wanted to thank you for your volunteering to serve, and coming in and visiting with us so, so we can look you in the eye and, and get a little bit about your background earlier. Just a short, simple question. Would you view yourself as an independent thinker and somebody that doesn't just follow the crowd?

JEFF BUCHER: Well, absolutely. Unfortunately, the role I played within the Lincoln Police Department as being a captain, you have to slow the roll a little bit and be an independent thinking and thinking at the big-- thinking with the big picture of what effects this may have instead of just going with the crowd. So I like to think, yes, I am an independent thinker.

HALLSTROM: Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chair. Sir, as we had talked earlier, I want to go back to that lack of temporary lodging facilities, since we have identified that that's a key cog in a member's rehabilitation, or on their transition, and they don't get to see you again. In this position, how would you go forward to collaborate and ensure that we had all of those facilities available for our members to transition into, since it's an identified item?

JEFF BUCHER: Well, I mean, you know, ultimately it comes down to money.

ROUNTREE: Yes, it does.

JEFF BUCHER: It comes down to money, I hate to say that, but it comes down to money. Short term, I mentioned to a few of you that I'm going to have a goal to myself to go out to these facilities and actually view them, meet the director, because I, I'm a very visual person, and I need to know where we're paroling individual X to. And I can say I've been there, this is a successful program, you have every opportunity to succeed. And I think that's my short term goal of how we can do better. Then once I get out there and start seeing these facilities, then I can probably make a better game plan of how do we get better as a whole to make this a better process, make it a more successful process for everybody to succeed within the community.

ROUNTREE: All right, thank you so much.

BOSN: Thank you. I think that unless anybody has any additional questions, I appreciate you being here and thank you very much for your time.

JEFF BUCHER: Thank you all for your time.

BOSN: Yes, that will conclude our-- Oh, I'm sorry. You're right. Are there any proponents for Mr. Bucher? I'm used to calling you Captain Bucher. I won't do that, though. Any opponents? Anyone wishing to speak in the neutral capacity. Now, we will close our gubernatorial appointment hearing. Thank you. I appreciate it. That leads us to LB132 and Senator Kauth.

KAUTH: Good afternoon, Chair Bosn and committee. My name is Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h, and I'm here to present LB132. In 2022, traffic deaths in Nebraska increased by 15%. The state has not seen this many traffic deaths since 2007. Speeding, distracted driving, and failing to use seatbelts were the main causes for people to lose their lives. According to a study by the Nebraska Highway

Safety Office in Nebraska last year only 77% of drivers were wearing seatbelts. This is an almost 10% decline in seatbelt use since 2017. As of 2021, Nebraska's seatbelt use was in the bottom five states in the nation. Seatbelt use is the most effective way to prevent death and serious injury in a crash. Data from the CDC and National Highway Traffic Safety Administration show seatbelts reduce the risk of death by 45%, and reduce the risk of serious injury by 50%. People who don't wear seatbelts are 30 times more likely to be ejected from the vehicle during a crash. More than three out of four people who are ejected during a fatal crash die from their injuries. Current law prohibits the admissibility of evidence at trial that a person in a motor vehicle was not wearing an occupant protection system or a three point safety harness, a.k.a. seatbelt. This prohibition on the admissibility of evidence of seatbelt use has been in place for almost 40 years, since 1985. This was put in place when our understanding about the importance of seatbelt use was very different and not informed by the data I shared with you today. Due to the updated data, we have all seen the campaigns by Nebraska and the federal government to encourage people to wear their seatbelts. LB132 would eliminate this prohibition and allow as evidence when any person in a motor vehicle was not wearing an occupant protection system or the three point safety belt to be admissible in evidence in a civil proceeding. Science and expectations surrounding seatbelts have changed immensely over the last 40 years. Occupants of a motor vehicle in Nebraska are required by law to wear a seatbelt. This prohibition in Nebraska statute has outlived its usefulness and purpose. It prohibits parties to a lawsuit from presenting all relevant evidence to a jury. Increasing seatbelt use and modifying this prohibition to be more in line with modern rules of the road is critical to reduce injury and save lives. Understanding that their use of a seatbelt may be allowed in a courtroom might actually change someone's decision to wear. Seatbelts are something that, I think, when I was growing up, we had the whole campaign this, this started when I was a kid, to wear your seatbelt. We don't get into a car without it. So for me to even read that 77% is all we're having buckled up is really, really shocking. So I think any little thing that we can do to make it more, more of an incentive to wear your seatbelt is really important. I'd encourage the committee support of LB132. There'll be a few other testifiers following me that will be available to answer your questions. Go ahead.

BOSN: Thank you. Any questions? Senator McKinney.

McKINNEY: Thank you, Chair Bosn. Thank you, Senator Kauth. Just first question. So, like, seatbelt use is an act that takes place before an incident, right? And the Nebraska Supreme Court has ruled that a

seat-- seatbelt use is not a mitigation of a damage, of, of damage, of damage issue prior, be-- before.

KAUTH: Could you say that again? It's--

McKINNEY: The Supreme Court has ruled a while, while ago that seatbelt use is not a mitigation of damage issue.

KAUTH: OK.

McKINNEY: How, how would you respond to that?

KAUTH: Well, I respond we know a whole lot more than when that happened. So one of-- what this is actually talking about is the transparency of what's happening in a civil proceeding. If you are in a car accident and you were injured and you go to a civil lawsuit about those injuries, the fact that you have chosen to abide by the law and wear a seastbelt should actually be introduced because your injuries, if you chose not to wear that seatbelt, could be far greater. So now all of a sudden, you're, if you're showing up at a trial and saying, you know, I'm desperately injured because of this accident, but I wasn't wearing a seatbelt. So, don't, don't tell anybody. We have injuries that are consistent with not wearing a seatbelt, and, and the civil, the civil case is about those injuries. So we don't have full transparency about injuries that occur. If you're saying that, you know, the mitigating factor between getting those injuries and not getting those injuries was wearing the seatbelt, and nobody-- everyone assumes it's the law, you must have been wearing your seatbelt, but yet you're super injured. So this is just to provide more transparency in those civil proceedings.

McKINNEY: But does theseatbelt use caused the incident?

KAUTH: Most likely not. But that's just it. This, this isn't about the cause of the incident. This is about when you're in a civil case about the injury. How was that injury-- how did it occur? Would you have been less injured had you been wearing a seatbelt? And should that or should that not be admitted into evidence? Should, should the civil case that is being heard have all of the evidence presented? Or just some of the evidence presented?

McKINNEY: I've probably got some more questions.

KAUTH: OK.

McKINNEY: I'll let somebody elese ask, but all right.

KAUTH: OK.

McKINNEY: All right. Thank you.

BOSN: Any other questions?

KAUTH: Senator DeBoer has one for you.

BOSN: Oh, sorry. Did you have your hand up?

DeBOER: No, I didn't.

KAUTH: Oh.

BOSN: Are you staying to close?

KAUTH: I can't, yes.

BOSN: OK.

KAUTH: Thank you.

BOSN: And I meant to ask this, and I forgot. Can I see a show of hands of how many people are here to testify on LB132 in any capacity? One-- OK, five. Thank you. All right. We will take our first proponent. Anyone wishing to testify in support of LB132.

KENT GRISHAM: Well, good afternoon, Chair Bosn and all the members of the Judiciary Committee. My name is Kent Grisham, K-e-n-t G-r-i-s-h-a-m, and I am the president and CEO of the Nebraska Trucking Association. For reference, the NTA is one of the largest state trucking associations in the country, with more than 900 members representing motor carriers in Nebraska of all sizes and types. We're more than just for hire carriers. We are all types of farms, ranches, businesses that run trucks as part of their operations, as well as companies who fuel, service, and equip them all. My members make up a large part of the industry in Nebraska, one that demonstrates its essentialness every single day. Especially true when you consider that about half of all the communities in Nebraska receive everything they need by truck alone. I also appear today on behalf of the Nebraska Insurance Federation. With that background information in mind, I come before you today in support of LB132. We sincerely thank Senator Kauth for bringing it forward. Essentially, it is not fair for the owner of a motor vehicle, whether a commercial big rig or a personal minivan, should be held fully liable for injuries to another driver when that other driver was negligent themselves when it comes to using a

seatbelt. Yet in Nebraska, that unfairness is exactly what we have written into statute. The unlawfulness and negligence of not using a seatbelt is something that we choose every time we get in our vehicles. We need to stop supporting that bad choice by allowing plaintiffs to claim higher levels of damages after an accident when the severity of their injuries could have been dramatically lessened with a simple click. Judges and juries should be allowed to consider that evidence and decide what is fair in a courtroom. They are denied that opportunity now. There is ample data to show damage awards have grown at a rate greater than inflation, including the inflation for health care. There is, of course, a clear correlation between that data and the cost of insurance for motor carriers. The average cost of truck insurance premiums rose 42% in recent years, with the most dramatic cost increases hitting the small fleets the one and two truck grain and livestock transporter, the owner operators, those are hit the hardest. In fact, in terms of cost per mile for insurance premiums, fleets under 25 trucks pay quadruple the rate of fleets over a thousand trucks. But in Nebraska, those small fleets and owner operators make up more than 85% of all the trucks being operated in the state. We know these issues are about more than costs. They are also about people, many of whom have legitimate needs and claims. The trucking industry does not want to shirk its responsibilities here. We are only asking for fairness in terms of determining damages following an accident by allowing judges and juries to consider the use of seatbelts, and LB132 we believe brings about that fairness. One other side note very quickly for you. You were also provided a data sheet. It's interesting information for you. If you don't know this about your districts, each of your districts there is shown with the number of trucking companies, and those can be companies that have a DOT number. Could be any combination, somebody who uses trucks in the course of their business. This committee altogether represents 4,500 companies, 10,920 trucks generating taxes, and 12,000 drivers. Thank you. I'll take your questions if you have any.

BOSN: Thank you. Any questions? Senator DeBoer?

DeBOER: Thank you. So I can't remember, I know we met briefly earlier today.

KENT GRISHAM: Yes.

DeBOER: Did you say you're an attorney?

KENT GRISHAM: No, ma'am.

DeBOER: OK. I'm probably--

KENT GRISHAM: I don't even play one on TV.

DeBOER: Well, sometimes I do. I am going to wait to ask some of my more technical questions to an attorney then.

KENT GRISHAM: You just became one of my best friends, Senator.

DeBOER: Well, I'm happy to ingratiate myself. Thank you.

BOSN: Any other questions? Senator McKinney?

McKINNEY: Thank you. Are you aware of the current law that if somebody fails to wear a seat belt their recovery can be reduced by 5%.

KENT GRISHAM: Yes.

McKINNEY: And you think that's unfair?

KENT GRISHAM: We don't think 5%-- we don't know. And that's-- Essentially what this bill does that we believe is important, is it allows judges and juries in a courtroom to decide what the fair amount of mitigation would be. To have it codified at 5%, it, it becomes a rather moot point in many cases. We think this evaluation belongs in the context of a courtroom where all of the evidence can be brought forward, by the plaintiffs as well as the defendants, and let the judicial system, in a fair and balanced way, answer that question.

McKINNEY: All right. Thank you.

BOSN: Senator DeBoer.

DeBOER: I will ask one question of you, though, sir.

KENT GRISHAM: Yes.

DeBOER: Maybe I won't be your best friend now. If you're presenting the evidence of a, of a seatbelt or not, do you think that, that a jury would have an emotional response to evidence about seatbelt or non-seatbelt?

KENT GRISHAM: I would hope not. I-- you know, again, not being an attorney who practices in the realm of litigation, my hope as a citizen would be that jury members and judges have gone into that situation with a sense of impartiality, and have taken an oath to not allow their emotions to steer their decisions. I would hope that they

would, in light of all the evidence from both sides of the argument, be allowed to make that decision. And I would trust them that they're not going to do it emotionally.

DeBOER: Thank you so much.

BOSN: Any other questions? Oh, sorry, I apologize. Senator Rountree.

ROUNTREE: Thanks so much, Chairwoman. So, and looking at the bill and looking at the testimony, we're talking about the 5%, and you don't know if that's a good number. So this bill, then, for the trucking company would allow the judge in a courtroom to be able to reduce it by more than 5% based upon, so it could be reduced by 40, 50, 60% instead of this 5% limitation that we're dealing with.

KENT GRISHAM: That, that would be true, Senator, but it can also be used to go far less than 5%.

ROUNTREE: OK.

KENT GRISHAM: It would be based on the evidence that's presentable in the courtroom.

ROUNTREE: Thank you.

BOSN: Just to clarify off of that. So you're not asking to make it a percentage. The ask here, what I'm understanding is right now, if I'm an attorney, I can't even ask, were you wearing a seatbelt during the course of the trial?

KENT GRISHAM: It is-- and I am going to refer probably to the lawyers who, who work in this area. But it is my understanding as a layman that you can ask as you get into the arguments in court over damages. You can ask the question, and you can present evidence about it. But once that evidence is presented, it can never make more than a 5% difference.

BOSN: And that's--

KENT GRISHAM: Even though the evidence might suggest that it's much more.

BOSN: OK. And that's what I wanted to understand. OK. Thank you. And this would just-- you can ask and there's no--

KENT GRISHAM: You can ask, and, and it's up to the judge or the jury, whichever the con-- you know, however that case is being handled, by jury or by judge. It's up to them, once they've reviewed everything that everybody has to show, what the appropriate amount is, if any. We could still find where it makes no difference--

BOSN: Sure.

KENT GRISHAM: --in the minds of a jury or a judge.

BOSN: In light of that, any other questions? Thank you for being here.

KENT GRISHAM: Thank you.

BOSN: Next proponent? Good afternoon.

ANDREW RICHARD: Good afternoon, Chairman Bosn and Judiciary Committee. Thank you for your time and consideration. My name is Andrew Richard, A-n-d-r-e-w, Richard, R-i-c-h-a-r-d. I'm the CEO of Sapp Brothers and a member of the Petroleum Marketers and Convenience Association. Sapp Brothers is a Nebraska based fuel, fuel retailer and a wholesaler founded in 1971. We own and operate 17 travel centers, of which 8 are located in Nebraska, as well as a large fleet of trucks that distribute gasoline, diesel fuel, propane, and lubricants to Nebraska farms and businesses across the state. I'm here today to ask you guys to support LB132. At Sapp Brothers, we pride ourselves as a safety first company in every aspect of our business. Wearing a seatbelt is the law in Nebraska, and for good reason. It saves people's lives. At Sapp Brothers, we follow and enforce the seatbelt law every day. In every truck that we own and operate, we have invested in internal and external facing cameras that u-- that use AI capabilities to monitor our professional drivers are wearing seatbelts while the vehicle is in operation. If one of our vehicles is going down the road, and the driver is not wearing his or her seatbelt, the camera system will audob-- audibly tell the driver to put their seatbelt on, as well as automatically notify the direct manager with corresponding video. We're blessed to live and work in Nebraska, a pro-business and commonsense state. Commonsense measures like LB132 which allow for the evidence that a person was not wearing a seatbelt to be admissible in a civil proceeding for the purposes of determining liability and mitigation is an important step to help restore balance and fairness in a civil system that desperately needs it. Seatbelt gag rules reward unbelted plaintiffs by allowing them to avoid legal consequences of choosing not to use a seatbelt in violation of state law. All parties should be held accountable for their negligent acts, which cause

injury, including the decision to not buckle up when buckling up may have avoided or lessened the severity of the injury. I'm here today to ask you to vote for LB132. thank you.

BOSN: Thank you. Any questions of this testifier? Looks like you got off easy.

ANDREW RICHARD: All right. Thank you.

BOSN: Thank you for being here. Next proponent? Welcome.

BOB LANNIN: Good afternoon, Senators. My name is Bob Lannin, B-o-b L-a-n-n-i-n. I'm a private practice attorney here in town, I almost didn't want to say that, but I have now. I have 40 years experience, and tried about 50 plus jury trials that involved primarily defense of property and casualty insurers in car accident cases, slip and falls, that type of thing. So I'm a member of two electionally organizations, the American Board of Trial Advocates and the American College of Trial Attorneys. I am here in support of LB132 as a private citizen, I'm not a paid lobbyist. In my practice involving car accident cases, I've had a couple examples that I thought reached onerous results because of the 5% limitations. One was a driver, not seat belted, that hit the windshield, breaking the windshield, suffering a severe concussion and an extended course of treatment. Would her damages have been less had she been wearing a seatbelt? Of course. But under the current system, all my client was entitled to was a 5% reduction in the damages because that's how the current statute reads in this state. Another one was even more egregious, where a passenger was not seatbelted, thrown from the car rendered quadriplegic, with a life care plan in the millions of dollars. Again, seatbelt lack of seatbelt use, was not admissible. And therefore the best we could do was a 5% reduction in damages. I'm a firm believer that you give juries a lot of information that they need to know, and one of them is whether a person was complying with the law and wearing a seatbelt at the time of any such accident. We're not allowed at present to do that. And if we do get that evidence in, it results in a 5% reduction. Letting li-- letting a jury decide liability, proximate cause, and mitigation as provided for in LB132 is the right course to follow. I suspect there's questions, so I'm going to shut up and try to answer questions as best I can.

BOSN: Any questions? Senator DeBoer, followed by Senator McKinney.

DeBOER: Thank you so much for being here. I'm Senator DeBoer. And I'm glad that I have a lawyer to talk to about this, because as I was

looking at this bill, one of the things I was thinking is, and it's been a while since I practiced, and even then I was not very long.

BOB LANNIN: I'm not that great at it, so.

DeBOER: That's why you keep practicing, I guess.

BOB LANNIN: It hasn't made perfect so far.

DeBOER: So my understanding of the structure of these trials is you would first have a trial about liability and then damages. Is that correct?

BOB LANNIN: Well, trials are all-- I mean, I start one on Monday. They're all tied into one, we'll spend three days presenting who's at fault in the accident, and then what were the damages that were incurred. In that trial, it's a declared fault, so there's no mitigation. But yes, it's all rolled into one. Both liability, how much was the plaintiff at fault, how much was the defendant at fault? If it's 50% or more, plaintiff gets no recovery. And then damages.

DeBOER: OK. So is the, is the evidence about damages? Is that presented separately?

BOB LANNIN: No, it's all in one. It's all in--

DeBOER: OK.

BOB LANNIN: --the same proceeding.

DeBOER: So as to the question, current, under current law, as to the question of liability, that's a question about who breached the duty of care that they owed to someone else.

BOB LANNIN: Exactly.

DeBOER: So if I am driving without a seatbelt down the street and I don't get hit by anyone, no one's breached their duty of care to me. If I get hit by someone because they just plow through a stop sign and don't even stop, they've breached their duty of care that they owe me.

BOB LANNIN: Correct.

DeBOER: I've still not breached any duty of care that I owe when I don't have my seatbelt on.

BOB LANNIN: You have not. The inquiry under that situation would be would your damages have been less had you been wearing a seatbelt?

DeBOER: So that would be a damages issue.

BOB LANNIN: Correct.

DeBOER: But it's not a liability issue, because whether or not I owe a duty of care to not go through a stop sign and hit someone is a different question altogether of whether or not I, as a citizen, owe a duty of care to all those folks who could potentially hit me by running through stop signs, by wearing my seatbelt.

BOB LANNIN: Wearing by complying with the law or not. I think that is not a liability issue in the situation you presented.

DeBOER: OK. So what I'm seeing here is that this is not a liability issue, it is a question about damages. As Senator Kauth pointed out, there is both a state interest in getting more people to wear a seatbelt. OK. We can argue about how effective that would be, but hopefully there'd be some effect. Bygones. But the question of whether or not they would be damaged as much, in your two cases that you explained, we all can understand that they would have been less damaged if they had been wearing a seatbelt.

BOB LANNIN: That is my point, yes.

DeBOER: It seems to me that the 5% amount is very small.

BOB LANNIN: It's ridiculous.

DeBOER: So I would concur with you that the 5% is small. Where I'm going to really have questions is how we would present on the question of liability information that has nothing to do with my breach of a duty of care.

BOB LANNIN: And I probably didn't do a very good, good job of explaining. Lo-- everything is tied up to one case unless there's a motion to bifurcate, to separate out the liability from the damages issues, you could always do that.

DeBOER: Or you could stipulate to, to liability.

BOB LANNIN: Yeah. There's-- I rear ended you, there's no fault.

DeBOER: Yeah.

BOB LANNIN: Now, you could still present, say, the person I rear ended, I was at such a high speed, I forced him through the windshield. Do I get to present evidence that had they been-- had their seatbelt on, they would have not gone through the windshield? I think under this bill, that is a issue goes to damages.

DeBOER: It's a damages issue.

BOB LANNIN: Correct.

DeBOER: It seems to me a damages issue. Now, we know there was a 1988 case. I think Senator McKinney mentioned it, I can't remember the name of it right now, but the Supreme Court of Nebraska said that the issue of whether or not someone wears a seatbelt cannot go to mitigation of damages because it's an act which occurs beforehand. And the theory of mitigation of damages is once you injure me, it's my duty as a citizen to do the best that I can to not make the injuries worse.

BOB LANNIN: Correct. That's mitigation of damages. I don't know the 1998 Supreme Court case off the top of my head, but I believe it was interpreting the statute, section 66-- section 60-6273, that the, the Legislature had decided that this is what there is is a 5% reduction. The Supreme Court has decided and made it clear that to be entitled to the 5% reduction, the proponent of seatbelt evidence has to show that the injuries would have been less severe. So that has always been, in the cases I'm involved in, my burden to show had there been seatbelt use injuries would have been less severe. As such, I take on that burden, but I do it for a 5% reduction. I just don't think that's sensical.

DeBOER: For the 5% part.

BOB LANNIN: Yeah, the 5% just to me does not make sense.

DeBOER: I think that, I think you're right there. I mean, I do. I, I don't think it makes sense to allow evidence of seatbelt use for questions of liability because it doesn't go to liability.

BOB LANNIN: And I think you could, as LB132 is written, maybe you take out line 7 subsection (1)on liability just as to causation and mitigation. That would be-- I think that would address your concerns that I think you've proposed.

DeBOER: OK. I think that's what I've got for you right now.

BOB LANNIN: OK.

DeBOER: As I'm thinking through this. Thank you.

BOB LANNIN: Have at me.

BOSN: Senator McKinney.

McKINNEY: Thank you. How do you-- how are you even able to get the 5% if you can't reach the duty of care burden?

BOB LANNIN: I-- if I'm understanding your question, Senator, I-- when I've had seatbelt issues come up, let me answer this way, when I have seatbelt issues come up, it's come up in a variety of things. I'll have a police report that says seatbelt not used. The party might say, yes, I was wearing my seatbelt, the police officer got it wrong. So on more than one occasion, I've had it come up where the injured party has said that police report is wrong, I was wearing my seatbelt. So it can come in, but it will never come in unless I show the injuries would have been less had they been wearing their seatbelt. I'm, I'm not sure that answers your question, but that's where I'm going.

McKINNEY: I guess what I'm trying to understand is if your driver is at fault and you breached a duty of care, how are you able to get the 5%?

BOB LANNIN: I have to show that the plaintiff's injuries would have been less severe had they been wearing their seatbelt. That is Supreme Court law. So a situation would be rear ended, not restrained, hit the steering wheel. Passenger not restrained, ejected from the vehicle or hit the dash. There's all kinds of instances when it comes up that it's my burden to show that person, one, was not restrained, and two, their injuries and damages would have been less had they been wearing it. Then I get a 5% reduction.

McKINNEY: It's just automatic?

BOB LANNIN: Well, I've never argued to a jury that it should be 4 or 3. I've never understood how we came up with 5%, but the Legislature passed this as 5%, that was the reduction. That's the one that I think is, is frankly just stupefying. I don't understand why we decided on that number.

McKINNEY: All right. Thank you.

BOB LANNIN: Mm hmm.

BOSN: Senator Rountree.

ROUNTREE: Thank you, Madam Chair. Sir, do you have numbers, or maybe someone is going to come behind us with the numbers of accidents and cases that show-- let's say that I'm driving home tonight and one of the trucks pulled over and knocked me off the road when I wasn't wearing my seatbelt. So of course, that's going to be on that individual. Do you have numbers that show how those cases work out? Either if I'm guilty or, you know, if it's a truck driver's accident fault?

BOB LANNIN: I, I don't have numbers. I will tell you, when you're limited to 5%, you usually just don't even mess with it. If it was $100,000 case, you know, if the plaintiff's medical bills totaled that you're evaluation cases, it's a $100,000 liability. Do I want to invest the effort to get a $5,000 reduction? Generally, you just let it go. I do want to answer your question quick. How's it going to proceed among drivers and jurors? You asked that earlier, and I've thought about that, that I've tried cases throughout the state, and I want to say this the right way, and I'm probably not going to, that sometimes in the western part of the state, ranchers feel like I'm not going to be told what to do in terms of wearing a seatbelt. A lot like helmets on motorcyclists. But I do trust the system to allow jurors to hear all the evidence and testimony that I think is relevant to their decision, and to reach a fair decision based on everything. Some people are big seatbelt proponents. I should wear a seatbelt all the time, I should never not do that. Some people might feel like you can't tell me what to do and I'm not going to penalize that person. That's why we have total strangers come together and reach a decision, a consensus on what, what the outcome should be. So I just went off on that because of the question you asked earlier.

BOSN: Senator Hallstrom.

HALLSTROM: Perhaps you could dummy it down a little bit. You referenced an egregious case where someone was ejected from the car, rendered a quadriplegic. Wouldn't the burden be to come forward and reflect that had that individual been wearing a seatbelt, expert testimony would show that they would not have been ejected from the car, would not have been rendered a quadriplegic, and then be able to show that the difference in their damages would be less than, would be more than 5%?

BOB LANNIN: I agree. You should be allowed to show that it would be more than 5%. Under present law you cannot. That is a case where you'd actually consider litigating because you're dealing with a $1 million life care plan. But again, at the end of the day, I'm going to get a

$50,000 reduction. And it just-- that's why I think there's an absurdity in 5%.

HALLSTROM: And, and is the law different with regard to your ability to reflect in a motorcycle accident if someone was wearing a helmet or not wearing a helmet?

BOB LANNIN: I haven't had it come up yet, but I think we repealed helmets. And so I don't think-- I've never tried a motorcyclist case where we got into it.

HALLSTROM: But is it only if it's a violation of law as opposed to a mitigation of damages issue?

BOB LANNIN: I think it always should come in, Senator, on just what are your damages and how did you contribute to them? By your failure to follow this, I think we should have the right to say your damages would have been less or almost nonexistent. I've never had the chance to put on to a jury that had they been seatbelted, they would not have been ejected. And instead of $1 million life care plan, they have $5,000 in chiropractic treatment.

HALLSTROM: And in response to Senator DeBoer's question about admitting liability when you're bifurcating, potentially, is there any reason to, to provide to the jury after you've admitted liability that the driver was speeding and he--

BOB LANNIN: Drunk.

HALLSTROM: --was driving? I mean, is, is that sur-- superfluous?

BOB LANNIN: You tactically evince those sort of things to keep other evidence like that out. So there's egregious cases by my clients where you don't-- you want to say, hey, they were at fault and keep that out.

HALLSTROM: But once you've done that, you should be able to keep that out.

BOB LANNIN: You should be able to. I've seen it go otherwise.

HALLSTROM: Thank you.

BOSN: Any other questions? Thank you for being here.

BOB LANNIN: Thank you.

BOSN: Next proponent? Welcome.

KAREN BAILEY: Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Karen Bailey, K-a-r-e-n B-a-i-l-e-y. I am here today in my role as the president of the Nebraska Defense Counsel Association. I'm an attorney at Bailey Law, and I've been in private practice defending personal injury cases for the past 20 years. I'm also a member of other trial organizations, including organizations that are also include members of the Plaintiff's Bar. And I would suggest that amongst those various organizations that I'm involved in, the common goal of both sides is for parties to get a fair day in court. I'm here in support of LB132, as I believe the new legislation proposed does help level that playing field for personal injury cases when the plaintiff fails to wear a seatbelt. I'll briefly discuss the current status of Nebraska Revised Statute 60-6273. In my 20 years of practice, I can count on one hand the number of times that the statute has actually been used as a defense at trial. I believe the law as written is not often used because it only goes to a 5% mitigation, and as Mr. Lannin talked about, it's just sometimes not worth it. However, in those cases, I do plan on using that statute. I will also offer him often have plaintiffs counsel simply stipulate that their client wasn't using their seatbelt, they'll stipulate to the 5% reduction because they don't want evidence that their client failed to use a seatbelt. In almost every case I've tried, I have plaintiff's attorneys telling the jury that my client needs to be held accountable because they violated some rules of the road. But there's also a law for occupants of motor vehicles to wear their seatbelt. That law is in place for the safety of individuals. The proposed language of LB132 will make a plaintiff be held accountable for their own safety if they fail to wear a seatbelt and sustain injuries. There are studies that have been discussed by Senator Kauth that the failure to wear a seatbelt absolutely causes and contributes to injuries. This is more important with the number of TBI cases that we see. The proposed change in LB132 help address that issue. It allows evidence of a person's failure to wear their seatbelt for both proximate cause and mitigation issues. This information is relevant to a jury's determination on proximate cause and damages. The current legislation takes that decision away from the jury. Now, opponents may suggest that this creates confusion for the jury, but it is the same as comparative fault and proximate cause arguments. Similar to those issues, this is adequately addressed in jury instructions for the jury. LB132 helps level the playing field for a defendant's day in court, which is why the Nebraska Defense Counsel Association and I

support this bill. Thank you for your time and I'll take any questions.

BOSN: Thank you. Senator DeBoer.

DeBOER: Thank you. So can you talk to me about how these-- you mentioned and maybe I didn't hear it right, you mentioned that seatbelt use should be admitted for purposes of determining proximate cause.

KAREN BAILEY: Yes. So with the jury instructions that we have in, in all personal injury cases. The first is, is the defendant, was their negligence, a proximate cause of the accident?

DeBOER: Yes.

KAREN BAILEY: That's the first question. That does not come into play with a seatbelt.

DeBOER: Well, first you'd say, was there a duty?

KAREN BAILEY: Yes.

DeBOER: Then was there a breach of that duty? Was there-- the, the breach of the duty, the proximate cause of the damages?

KAREN BAILEY: Correct.

DeBOER: OK. So here I don't understand how it would play into proxi-- proxi-- whether the, the breach was a proximate cause, because it sounds like you're creating a duty of care here, saying that you have a duty of care to wear a seatbelt to someone else, which is a whole huge thing to try and be suddenly creating.

KAREN BAILEY: And I see it as a two step process. In any personal injury case, you first have to say, OK, was the negligence of the defendant a proximate cause of the accident? If they say yes, or even if you have to compare fault with-- in a disputed liability case, with the plaintiff and the defendant. That's question one. The second one is, is that person's either, one, failure to wear a seatbelt a proximate cause of their injuries, or is the defendant's negligence a proximate cause of the injuries? So it's going to be kind of a two step comparative process as I see it.

DeBOER: But, but the, the duty is to not break the rules of the road and hit somebody. You have a duty to act reasonably, to not disobey the rules of the road and hit them. Right?

KAREN BAILEY: Yes.

DeBOER: So, so if you're talking about whether or not somebody is liable, the, the, the thing that has gone wrong is that they have hit someone, right?

KAREN BAILEY: Yes. And I, I don't believe that the proposed legislation has anything to do with creating liability per se for a person who is not wearing their seatbelt. Certainly their seatbelt, their failure to use a seatbelt, didn't cause the accident.

DeBOER: OK.

KAREN BAILEY: But it's--

DeBOER: It never, it never will have caused the accident.

KAREN BAILEY: Correct, correct.

DeBOER: OK.

KAREN BAILEY: But then you have that second step, you know, so once you have an accident, well, a person who's claiming injuries from an accident, you have a defendant. And one of the questions that goes to the jury is, was that def-- you know, the accident that the defendant caused, was that a proximate cause of the injuries? But you can also take that was the plaintiff's failure to wear a seatbelt as proximate cause of their injuries. And that's something that's going to require expert testimony in each case.

DeBOER: OK.

KAREN BAILEY: But it's something that we should be able to, to prove.

DeBOER: OK. So let's talk about that for a second. If we're doing expert-- because I'm not sure I, I agree with you on the proximate cause question, but let's talk about the expert testimony for a second. What kind of expert would you bring in to testify as to the effect of the seatbelt use on the damages?

KAREN BAILEY: A biomechanical engineer, accident reconstructions type person who's done those studies, PAR studies with seatbelt use and what can happen to people if they don't use seat belts.

DeBOER: That sounds kind of expensive.

KAREN BAILEY: It would be. And currently under what we have, a lot of cases, like Mr. Lannin said, it's just not worth presenting that because we only get a 5% reduction. Whereas if we have expert testimony that says this could have reduce their injuries by 40%, it makes it much more worth-- and much more fair for awarding damages.

DeBOER: OK. So, this is going to increase the cost of litigation just across the board. If we're bringing in expert testimony about and, you know, whatever you described those experts, I can imagine someone who's an expert in whatever kind of engineering that would figure that out. And then you'd have to have a doctor that would also participate, or however you would find the right person.

KAREN BAILEY: It, it could. But I believe the senator's statistics were that there's 77% of people use seatbelts. The number of cases that we see, seat belts are used. This is just--

DeBOER: Well, that's good news.

KAREN BAILEY: Yeah. I mean, so this is not something you're going to see all the time, but there are certain cases that you have significant injuries that there wasn't seatbelt use that I think would be very important, and the current legislation does not help.

DeBOER: OK. So, I see as-- with respect to damages, I can see how on the question of how much the damages caused by so and so were, that's a question where a seatbelt could come into it. I don't see the proximate cause piece. I will listen, continue to listen, because I don't want to create a duty of care for all of us to sort of like go around wearing seatbelts or else we've violated our duty of care to other people, because I would have that-- I mean, there's just a lot of reasons why that, I think, could be really problematic.

KAREN BAILEY: And again, the jury instructions that we currently use for auto cases, for instance, there's kind of a four part question that the jury has to answer in their deliberations. The first, is the defendant, is their negligence a proximate cause of the accident? If you answer yes, and that has nothing to do with seatbelts, the second question is, was that accident a proximate cause of the injuries alleged?

DeBOER: Yes.

KAREN BAILEY: So, again--

DeBOER: That should have nothing to do with the seatbelt because--

KAREN BAILEY: It doesn't. But then you can also have that compared. Does the plaintiff's failure to use a seatbelt contribute, or was that a proximate cause of their injuries? I understand where you're coming from, and--

DeBOER: Yeah.

KAREN BAILEY: --but that's just the way I see it.

DeBOER: I, I understand, and I appreciate the conversation. Thank you.

BOSN: Any other questions of this witness? Senator Hallstrom.

HALLSTROM: In your written comments, you indicate plaintiff's counsel will simply stipulate to the 5% reduction to prevent evidence of their client's failure to use the seatbelt. Plaintiff's attorneys want to avoid this evidence because they know it would have a negative impact on the jury. So even though 5% would be the maximum reduction, you're indicating that plaintiff's attorneys will stipulate to avoid having that evidence because it could have an inflammatory--

KAREN BAILEY: Correct.

HALLSTROM: --effect or incite the jury--

KAREN BAILEY: It can.

HALLSTROM: --to reduce damages that they might otherwise award.

KAREN BAILEY: Yes, it can.

HALLSTROM: Thank you.

BOSN: Any other questions? And just for the non-attorneys in here, once it's stipulated, then you can't ask about it.

KAREN BAILEY: Correct.

BOSN: Right. So it is being excluded then from what the jury would hear all together if so stipulated?

KAREN BAILEY: Correct.

BOSN: OK. Thank you for being here.

KAREN BAILEY: Thank you.

BOSN: Next proponent. Anyone else. Next, we'll move to opponents, anyone wishing to testify in opposition to this bill?

MARK RICHARDSON: Good afternoon, Chair Bosn and members of the Judiciary, Judiciary Committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n, and I'm here today on behalf of the Nebraska Association of Trial Attorneys to testify in opposition to LB132. And I just going to kind of go point by point through I think what's kind of been discussed and let you know what our general reaction to this is. First, I am heartened to hear that the trucking and insurance industry trusts Nebraska juries to make the right decision when they're given all the information. I assume we'll hear the same thing from them when we talk about LB205 and caps on damages in a few minutes or a few hours. Secondly, you know, I've been hearing about this stipulation to-- we agree that our client wasn't wearing a seatbelt. There's-- our client's going to take a 5% hit. That's exactly how it works. That's exactly how it works when the other side-- because we, because we don't want inflammatory information in front of a jury that they're going to make an emotional decision based on. It's the same exact thing of why we can't put on evidence of drunk driving when they admit that it was their client's fault. That's information that would be relevant to the jury in every single case about why the person was negligent. It's a natural question that every juror would have, well, why did this happen? We don't get to talk about that because there's rules in place to make sure the jury is coming to an unbiased decision. That's the-- that is clearly part of what was intended for this 5% compromise that has come through. As it relates to the current bill, it talks about two forms in which you could provide this evidence. You could use this as a defense in two ways. One, for contributory negligence, and two, for mitigation of damages. I've heard a lot of people talking about the contributory negligence issue, and, and that is a huge issue because in every case I've ever had, I've never had the seat belt cause the collision. So you're-- but if you put this in contributory negligence framing, then if the jury determines that the seatbelt was 50% of the contributing factor to the injury, then the way the ma-- Nebraska law works right now, you would get a 0% recovery. It would be a defense verdict because our client wasn't wearing a seatbelt. On the mitigation of damages, the case is Welsh v. Anderson, 1988. The Nebraska Supreme

Court has said established law from across the country is the mitigation of damages is not a seatbelt use issue. Seatbelt is not mitigation damages. Mitigation damages can only be stuff that happens after, once you know you're injured, what steps are you taking? So anybody not wearing their seatbelt has not violated any rules until they just happened to be in the wrong place at the exact wrong time. The hearing that we're talking about, all of these issues, is why we have the current statute we have. If 5% isn't the right number it needs to be 10, fine. But our clients shouldn't be paying a 50% price because somebody else hit them. I see my time is over and I'll stop right there. Thank you.

BOSN: Questions for this witness, Senator DeBoer.

DeBOER: I will make this quick, but this-- something that I should have asked some of the other lawyers, but you kind of struck me with, which is this 50% and you're done rule.

MARK RICHARDSON: Right.

DeBOER: So that what happens is if you give evidence that you hit me out of nowhere, I'm injured, I don't have a duty to wi-- to you to wear my seatbelt, and now I get nothing because I wasn't wearing my seatbelt. That is not a great outcome.

MARK RICHARDSON: I would agree. And the way the sta-- the way this bill is written, it would make seatbelt use a defense of contributory negligence, which would bring in that 50% cut off, the comparative fault status, or, or work up of in Nebraska, which is 50%-- if you're determined that your negligence, and that's what contributory negligence is, your negligence was 50%, so equal to or greater than the defendant's, then you get a zero recovery. So in those cases, you would get a zero recovery.

DeBOER: And is a person negli-- do-- how could I be negligent if I don't owe a duty of care to you to be wearing my seatbelt?

MARK RICHARDSON: Under current Nebraska law, you don't owe a duty to wear a seatbelt to anybody else. This is not a contributory negligence issue. Passing this bill as currently drafted would create that duty. It would affirmatively say you have that duty to your fellow driver to make sure you're wearing your seatbelt, and you can be found contributory negligence if you don't.

DeBOER: So establishing a new duty of care.

MARK RICHARDSON: I don't know how you would read the bill as currently drafted any other way.

DeBOER: All right. Thank you.

BOSN: Questions? Senator Hallstrom.

HALLSTROM: Thank you, Mr. Richardson. If, if you take out the admissibility of evidence for proximate cause, does that address adequately your concern with regard to that issue?

MARK RICHARDSON: So, Senator Hallstrom, then you're left with peer--there's two parts of the bill, there's proximate cause, contributory negligence, and then it's mitigation of damages. It doesn't address that because mitigation of damages is a hugely messy area of the law.

HALLSTROM: I'm just talking. If, if we were to take the proximate cause out for admissibility purposes, would that adequately address that part of your concern?

MARK RICHARDSON: Yes, it would.

HALLSTROM: And then when you were talking about contributory negligence, you, you referenced both interchangeably, I think, 50% of the accident and 50% of the injury. Is there a distinction between-- it seems to me that contributed 50% to the accident is the determining factor rather than 50% of the injury, or is that your concern where this, this bill goes?

MARK RICHARDSON: I think you're probably opening up a bit of a can of worms for the Supreme Court to try to juggle. But if you're asking me, how do I think that would work?

HALLSTROM: How does it work currently? Is it 50% of the injury?

MARK RICHARDSON: It's-- what if--

HALLSTROM: Or the accident, excuse me.

MARK RICHARDSON: It's, it's what-- so you, you have 100 point pie, and you've got to break up whose negligence was 50% of the cause, you say, of the collision, but what you're really saying is of the injury, it has to be-- because it has to have that proximate cause element in there.

HALLSTROM: But it's the injury, not the act.

MARK RICHARDSON: It's really-- fundamentally it's what caused the injury. Yes, sir.

BOSN: Any other questions for this witness? So if I'm understanding you, if we fix the proximate cause portion of this, your dislike of this goes from 100% dislike to less than 100% dislike.

MARK RICHARDSON: Sure. I just-- I think that mitigation of damages confusion is going to remain if you make this a miti-- If you make this a mitigation of damages issue, I just think the judge, the, the, the court system is going to have a hard time balancing that when we have, you know, 300 years of US case law that says this is not a mitigation of damages, not that long ago, because I guess cars didn't exist all the way back then. But as long as cars have been around, this has been an issue. And you're-- we're going to go and say arbitrarily, we're going to make this a miti-- we're going to say this is mitigation of damages, and we're going to deal with the court fallout for that for the next 20-- 10, 20 years.

BOSN: But how do you do it otherwise? So that's the subjectivity of the-- of this entire day. Right?

MARK RICHARDSON: Right.

BOSN: Is how do we appropriate damages? And what the testifiers before you have said is 5% is, and I'm not putting words in their mouth, but I don't want to put words in their mouth, but they were saying that's laughable. Right? That in some cases it may be 75%. And it seems like you agree, but what you're saying is that is a difficult decision to make based on percentage. And so what you started with was your excitement over how much we should trust juries. And so why shouldn't we trust them with this as well? You can come in and say, nope, we think the seatbelt was 5% responsible and the defense can come in and say, nope, we think it was 75%. And then we hash that out rather than put a percentage on it when there are cases that are going to be 5% and there are cases that are going to be 75%.

MARK RICHARDSON: So I think my response to that would be a fundamental understanding of the jury's role. The jury's role is to determine the facts of the case, the judge's role, the court system's role, is to determine the law of the case. And from my perspective, you would never have a situation-- it's hard for me to wrap my mind around a situation where failure to use a seatbelt was 75% the cause of their

injury. Because the person that wasn't wearing their seatbelt did nothing wrong to invite getting hit by another vehicle. So we're going to-- if we're going to develop a system that says you can be found to be more at fault for your own injuries, despite the fact you were abiding by every single rule of the road in the operation of your vehicle, except you didn't have a personal safety belt on, because do we then take it to the next step and say, well, if you're driving a car that doesn't have an airbag, we're also going to put in evidence of that. You should have made sure that you were driving a car that had an airbag. It, it comes down to that fundamental concept of who determines what the law should be in terms of who's going to be held responsible for injuries and their base causes, as opposed to ask answering the factual questions once, once that information is allowed to get in front of the jury.

BOSN: But I think that's a fundamental difference between what your example is, is that we have laws that say you have to wear seatbelts. We don't have laws that say you have to have airbags. And so that-- and, and I think my example was the 75%, there may never be one. But the point is that once you set an amount, it's really applicable to nothing, because it doesn't matter if it's less and it doesn't matter if it's more. It doesn't matter if it's 6% right now, or if it's 4% because the cap is 5, so everything's 5, right? But the point is, is if your injury, your-- if your TBI, traumatic brain injury, is an injury that wouldn't have happened had you been wearing your seatbelt, you would have just had, you know, neck pain, let's just say. I'm, you know, using examples and I'm not a doctor and I also don't play one on TV. But if there is evidence of that seatbelt having resulted in a significant change in what your damages are, why shouldn't the jury be able to, to see that? I mean, why are we saying, I'll give you all my medical bills, and we aren't saying, ope, you can't even tell them what your medical bills are. We want that because we want the jury to know what these costs are to this plaintiff for their injuries. But then we're saying, but you can't decide how much a seatbelt might have changed that.

MARK RICHARDSON: And I, I, I completely understand the principle of what you're talking about. And from a fundamental standpoint, I'm not disagreeing with what you're saying, but I think we're, we're not getting the full picture either, about what they have to come in and prove. Because all-- if you allow this to go to 30 and 40 and 50 and 60 and 80 and 90% reductions, all they have to prove to get that kind of reduction is that this specific, in your, in your example, the, the head injury would not have occurred because they wouldn't have hit, necessarily, their head where they hit it. All they have to prove is

that, that injury wouldn't have occurred. It begs the question naturally, OK, well, if they had a seatbelt on, would there have been other injuries? And there is-- all they have to do is knock it down. There is no way-- and there's no human factors or biomechanical engineer that's going, or medical testimony that's going to come in and give you the alternate version of history. So we know maybe this injury doesn't occur, but some injury is going to occur, how are we going to tell a jury what that injury is going to be? And you're inviting, you're inviting a jury to speculate as to what, what's going to happen there. And I can tell you, this happens as a matter of fact. I did have a seatbelt case three years ago because it happened in a UTV instead of a car, and they-- and this, this seatbelt issue without the 5% overlay was brought up by the other side, and it was, it was a jumbled mess that honestly never got sorted out.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. I, I guess I just tend to kind of try to get to a more simplified version of this. And I know it's not necessarily simple, but we do have laws in the state of Nebraska that require a we wear a seatbelt, correct?

MARK RICHARDSON: Correct.

STORER: Do you think those laws were created for people to be safe only in accidents that were their own fault or in all accidents?

MARK RICHARDSON: I believe they were created to be across the board to improve safety of, and results of, any sort of collision.

STORER: So we, we, we all agree that we have seatbelt laws to prevent injury in the event of accidents, whether it's driver's fault or otherwise.

MARK RICHARDSON: Absolutely.

STORER: Thank you.

BOSN: Senator DeBoer.

DeBOER: Thank you. So I'm remembering my very first day of law school. You probably weren't born, whatever. Bygones. And I remember the case in tort law was about a little boy. It was in England. Some of you may remember reading this case. And the little boy kicked another little boy, and that other little boy had some kind of weird, brittle bone disease, and he caused this huge damage to this little boy from what

would have just been a small kick to some other little boy. Do you recall this case?

MARK RICHARDSON: Yes, That's called the eggshell plaintiff rule.

DeBOER: Yes. And what we learned that day in law school was you take your, your--

BOSN: Victim.

DeBOER: --victim, your person as you find them. Is that right?

MARK RICHARDSON: That's exactly right.

DeBOER: So what we're saying with this here is that you take your person as you find them, whether they're wearing a seatbelt, whether they're not wearing the seatbelt, because they don't owe you a duty to not be an eggshell defendant. You owe them a duty not to hurt them. Is that right?

MARK RICHARDSON: That's right. And I would say that that's exactly the same argument that sometimes you'll hear about, well, this person didn't physically take care of themselves prior to being hit. And had they been in better physical shape when they got hit, their damages wouldn't have been so bad. And you can get a bio-- biomechanical engineer to come in and testify to that. But that's never been the law in this country, and it's always been exactly as you've described it, Senator DeBoer.

DeBOER: So even though we might say that a seatbelt would help them, that the seatbelt-- they have no duty of care to you who just hit me to go around making themselves as safe from you as possible. Right? So that's where you said they don't have a duty of care to wear-- to have a car with airbags. They don't have a duty of care to, I don't know, drive fewer miles every day and take the shortest distance so that they're not getting hit by someone. We don't have a duty of care to protect ourselves from other people's injuries that just hit us. Is that right?

MARK RICHARDSON: You don't have a duty to protect yourself from other people's negligence, Correct.

DeBOER: OK. And you are-- yeah. You never cause an injury by not wearing-- you never cause an accident by not wearing a, a seatbelt.

MARK RICHARDSON: I've not seen that case yet.

DeBOER: So what I'm hearing here is that this is not a liability issue. And then you're saying the second piece of this is that the confusion here is that it's not really a mitigation of damages issue either.

MARK RICHARDSON: That's what long established Nebra-- Nebraska and U.S. law says, yes.

DeBOER: So this is something else. It's like premitigation. And that's where I'm starting to be concerned that we are in some way creating a duty of care for people to make themselves not an eggshell victim.

MARK RICHARDSON: I would share that concern.

DeBOER: OK. Thank you.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. I just want to follow up, kind of, on that discussion with my previous question. So what should we-- would you recommend we have no seatbelt laws? Are they of any value?

MARK RICHARDSON: I firmly believe in seatbelt laws and abide by them every day of my life.

STORER: And, and, again, the value is to limit the harm when and if we're in an accident.

MARK RICHARDSON: 100%.

STORER: Regardless of whose fault the accident was.

MARK RICHARDSON: Absolutely agree with that.

STORER: So would that not still be valuable in the case of an accident that was not necessarily your fault, but you chose to not abide by the law which is intended to limit the harm, physical harm to someone in the event of an accident, right?

MARK RICHARDSON: Yep. And again, I completely understand where you're coming from on that. What I'm telling-- what-- all I'm trying to impress upon y-- upon everybody is that how you take that and turn that into-- we're not asking you to do away with the 5% rule. Our clients, if they need to take a hit, they need to take a hit. But it's got to be miti-- that has to be mitigated. How you're going to set, how you're going to spread the responsibility from the person that

actually did the wrongdoing to the person who, by all other accounts, is an innocent victim and saying they can actually be more liable for their own injuries because they didn't wear a seatbelt as opposed because somebody hit them with their vehicle.

STORER: So, so then what is the basis of having a seatbelt law? Why? Why is that a law and not a choice? Because if I am choosing to break the law, but I can't claim any responsibility for my injuries just because it wasn't my fault, what is the value of the seatbelt law?

MARK RICHARDSON: Well, the value of the seatbelt law, my understanding is that laws are meant to be punitive, to punish people for not abiding by them--

STORER: And is that--

MARK RICHARDSON: --and, and that they picked--.

STORER: --claiming a higher responsibility for my personal harm in the event of an accident sort of punitive in nature? And I'm not, I'm not putting that in, but, but in essence that is sort of punitive, that I have a certain responsibility for my injuries because I chose to break the law and not wear a seatbelt.

MARK RICHARDSON: In, in Nebraska, the punitive side is taken care of by the criminal side of the law and the, and the, and the breaking of statutes, and you pay a, you pay of civil-- or you pay a criminal penalty for that. If you're going to start saying that there should be additional civil penalties because you're doing that, now you're getting into punitive dama-- you're, you're making our civil justice system in Nebraska a punitive one. And that's not what it's supposed to be, and that's not what it is right now.

STORER: And I'm not a lawyer. It's probably become obvious. However, you know, just the common sense of, you know, as you say, and full disclosure, I am, one of the previous lawyers mentioned, you know, western Nebraska, we're a little more independent. I'm from western Nebraska, full disclosure. But where I'm-- the longer this discussion goes on, the more it becomes actually a little bit more clear to me, quite frankly, that the value of having the seatbelt laws was to limit injury. And I don't think the fact that we are picking and choosing when that is allowable in a court, a court case, or when we're, when we all of a sudden get to be absolved of our responsibility as the person who chose to not wear the seatbelt, which by the-- which we all

agree is breaking the law, I just don't see how you get to have it both ways, but--

MARK RICHARDSON: And, and the only thing I'd add to that is, I don't-- my understanding of the Criminal Code and how that works, in no way were they contemplating we're going to differentiate between ones that were caused by other people and ones that weren't. It wasn't even a factor in their minds. So to say that you're going to use that to absolve the person who actually did the wrongdoing, that seems like a step in the wrong direction.

STORER: But to not get to use that as absolving the person who chose to not wear the seatbelt and break the law.

MARK RICHARDSON: Again, if you're saying--

STORER: Which was intended to limit injuries.

MARK RICHARDSON: If you're saying that that duty isn't to the criminal code and the public, and that duty is to that specific person. And that's, that's where I think there's a pretty big differentiation there between who, who it was that caused this.

STORER: If I get behind the wheel of a car, I have an obligation to know the rules of the road and the rules of operation, which include wearing a seatbelt. Thank you. Thank you.

MARK RICHARDSON: Sure.

BOSN: Senator DeBoer, followed by Senator Hallstrom.

DeBOER: Sorry. Let me see if I can clear this up in my mind and maybe everyone else's. The, the, the requirement to wear a seatbelt is a criminal requirement. It's in the criminal code.

MARK RICHARDSON: That's my-- I don't do criminal law, but that's my understanding, yes.

DeBOER: The, the requirement is a criminal requirement. There is no civil requirement to wear a seatbelt.

MARK RICHARDSON: In, in a civil case, you would never be allowed to introduce evidence of a criminal act or a criminal violation in a civil case. That's not allowed. You couldn't say, here's the seatbelt statute, you violated it, therefore you're negligent, or therefore you

violated a duty. That's not how we allow-- that's not how the civil justice system allows you to use the, the criminal code, I guess.

DeBOER: So these two questions of criminal responsibility and civil responsibility are entirely separate in terms of what evidence comes into a criminal case.

MARK RICHARDSON: In terms of what evidence comes in, yes. I will say there are, there are, there are codes, there are laws that will give somebody a duty. But again, if we're going to say that this is going to give somebody a duty to wear a seatbelt to the person that injured them, you have now flipped 300 years of U.S. case law, so.

DeBOER: Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: What are the evidentiary rules with regard to a drunk driver in a civil case?

MARK RICHARDSON: I mean, if, if there's a dispute over who is liable, then the evidence comes in and the jury weighs the, the, the conduct of the drunk driver compared to the conduct of the other person.

HALLSTROM: So if that incites or inflames the jury to enter a higher award, that's OK?

MARK RICHARDSON: No, because--

HALLSTROM: It can, it can result?

MARK RICHARDSON: What's that?

HALLSTROM: And it can result in higher damages?

MARK RICHARDSON: It, it could, yes, if they, if they choose to defend the case by saying this is not our fault.

HALLSTROM: And how's, how's that any different than not wearing a seatbelt being used to inflame or incite the jury to reduce damages?

MARK RICHARDSON: I think if I'm following you correctly, Senator Hallstrom, I think it's exactly the same. Seatbelt use, more often than not from our perspective, is used because they know they can find people on the jury that don't like people not wearing their seatbelts.

HALLSTROM: But you're in here opposing any changes to this law for a notion that would allow damages to be reduced. If we have a similar bill to say, you can't bring in evidence of drunk driving because it might increase damages, would you be sitting in the same chair in the same position?

MARK RICHARDSON: Can you say that again? If you, if you had a bill that didn't allow for drunk driving evidence?

HALLSTROM: Yes. Because it might increase damages. And if we're going to sit here and suggest that not wearing seatbelts shouldn't be allowed because it serves to reduce damages in the minds of some jurors, why don't we treat them equally?

MARK RICHARDSON: I think, I think what we do now does treat them equally. This provides the current structure, provides a mechanism to allow the person that was not wearing the seatbelt to take some responsibility for the fact they weren't wearing a seatbelt, but yet keep it out from the jury itself, from having that be an issue that gets inflamed by admitting what they did. That is exactly the way the drunk driving evidence works in cases right now.

HALLSTROM: And with regard to the mitigation of damages and the long standing U.S. and Nebraska Supreme Court law, I, I recall somebody one time saying, if that's the law, then the law is an ass. And if we look at it in this perspective, first collision, there's usually two collisions when you don't wear a seatbelt. First one is the accident that caused your injuries initially. The second one is when you hit the windshield or when you hit the pavement when you get ejected.

MARK RICHARDSON: Sure.

HALLSTROM: The mitigation of damages from the second collision resulted principally, if not exclusively, from not wearing a seatbelt, correct?

MARK RICHARDSON: Absolutely.

HALLSTROM: And then why shouldn't that be utilized? And, and why should it be limited to 5% if that's all we're going to do?

MARK RICHARDSON: Well, and, and, and again, I mean, my understanding is in 1988, the 1985 law was a compromise to resolve this lack of clarity in the law writ large. You know, and I'm sorry I missed the first part of your question. I just forgot it. The--

HALLSTROM: You said there's two collisions.

MARK RICHARDSON: Yeah.

HALLSTROM: And, and, and you seem to say that the Supreme Court and the long standing law doesn't require you to have a seatbelt on for the first collision in order to mitigate damages. But you certainly ought to have a seatbelt on to avoid the consequences of the second collision.

MARK RICHARDSON: Because the way that the law is, the way all personal injury laws worked, is that defense is best fits into what we call mitigation of damages. The problem is that long standing law, which makes all the sense in the world to me, is that mitigation means the damages have occurred, and now you have a responsibility to do your best to get as good as you can, get as good of a recovery as you can get. A seatbelt being put on sometimes will happen five minutes before the collision and sometimes will happen five hours before the collision. It's not something that the person is act-- Mitigation of damage is you have an active affirmative responsibility to take steps once you're injured, to reduce the impact of those injuries. That-- this doesn't fit in that because there's no active decision to say, I'm going to, now that I've been injured, I'm going to now buckle my seatbelt or something like that. It's just, it's a square peg in a round hole in the legal system. The current system that we have that-- I mean, this current statute that we have, it fixes that. It, it, it it's, it, it's the best, best compromise we can do so that they still get a reduction for it, it's still accounted for, but it's not throwing the baby out with the bathwater in terms of the entire legal claim, because, again, the person themselves hasn't done anything wrong to cause a collision. It's a tough issue. I'm fully acknowledging that.

HALLSTROM: Would you have any interest in looking at a higher percentage?

MARK RICHARDSON: I think if there's a higher percentage that makes sense, it's something we'd be willing to take a look at. NATA's always committed to engaging in good faith conversations to make things fair.

HALLSTROM: I appreciate your testimony. Thank you.

MARK RICHARDSON: You're welcome.

BOSN: Thank you for being here.

MARK RICHARDSON: Thank you.

BOSN: Next opponent. No other opponents. Anyone wishing to speak in the neutral capacity? While Senator Kauth is coming up to do her close, I will note for the record, there were six proponent comments submitted, one opponent comment, and no neutral comments. Thank you. Senator Kauth.

KAUTH: Thank you very much, Committee. I think this was absolutely a fascinating discussion. For me, this boils down to transparency. Should the jury or the judge have the information? And as much as, as horrible as it is to think of things in terms of two collisions, or, or two impacts, Senator Hallstrom is exactly right. The second impact, when you get thrown into something, if you were wearing your seatbelt, that wouldn't have happened or wouldn't have happened so badly. And I do think that the jury and the judge deserve to hear that kind of information. I, I'm glad to hear that the NATA group is interested, and they'd be happy to look at increasing the percentages. But to me, that, that says that they know that you should be able to hear this. They just want to lessen it as much as possible. So even if they give a little bit, go up to maybe 10%, I think he said, they're acknowledging that this is something that is valid. They just want to make sure it's not too much. Every time there's a huge settlement, yes, it does take care of people, but it also raises insurance rates. And it doesn't raise insurance rates just for that person, it raises them across the board. So I think as we're looking at this, we need to make sure that, as Senator Storer said, your personal responsibility is an important part about being an adult and about driving that car. Seatbelt use is not in the criminal code, it is a rule of the road. And I think that everybody needs to remember that, first of all, it's your responsibility. But secondly, if you don't wear your seatbelt and you are seriously injured, your damages, your ability to take care of yourself, might be lessened because you made a choice that impacts you negatively. So thank you.

BOSN: Thank you. Any questions? Senator Hallstrom.

HALLSTROM: Senator Kauth, you don't have to answer this. Please don't feel compelled to. But would you entertain an, an amendment that would limit any increase in damages to 5% in the case of a drunken driver being involved in an accident?

KAUTH: So you're asking if we could amend to this bill a similar type of limitation--

HALLSTROM: On the other side--

KAUTH: On the other side, so that it's-- I-- certainly.

HALLSTROM: Thank you.

BOSN: Any other questions? Thank you for being here.

KAUTH: Thank you very much.

BOSN: That concludes LB132. Next up, Senator Sorrentino. I'm not sure if he's here yet.

STORER: I saw him.

BOSN: Oh, he's here. We will take up LB199. Can I see a show of hands for how many individuals are here to testify? One, two, three, four, five, six, seven, eight, nine. Thank you. Welcome to the Judiciary Committee.

SORRENTINO: Thank you. I should start off on a lighter note, but it's not that light. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Tony Sorrentino, T-o-n-y S-o-r-r-e-n-t-i-n-o, and I represent Legislative District 39, which is Elkhorn and Waterloo in Douglas County. Today I bring you LB199. LB199 would reduce Nebraska's statute of limitations for personal injury actions from four years to two years and require disclosure of any contract for non-recourse civil litigation financing, which I'll define in a moment. Currently, Nebraska has a four year statute of limitations for personal injury actions. However, the statute of limitations is shorter in 44 states. Most commonly, 26 states have adopted a two year statute of limitations. I'll also go into that a little bit later. It is important to bring Nebraska in line with the majority of the states in the country in order to protect Nebraskans and businesses. In Nebraska, over half of the cases are brought for personal injury within the first year of the accident. A very major trucking firm domiciled in the state of Nebraska had 140 cases filed against them last year, and all but 8.6% of those actions were brought within the two year limitation that we spoke of. A two year statute of limitations would incentivize parties to bring claims sooner, preserving evidence and witness testimony while memories are still fresh. I would-- it would reduce the likelihood of lost documents or unreliable recollections, which can impact the fairness of legal proceedings. Long statute of limitations can leave businesses and individuals in a state of prolonged uncertainty about potential lawsuits. The goal is to achieve faster resolution of disputes,

enabling parties to move forward without lingering legal risk. In short, bringing uniformity across legal areas can create consistency and predictability for individuals and businesses. This bill would also require non-recourse litigation financing agreements, also known as litigation funding or pre-settlement funding, to be disclosed during the discovery process, which currently is not required. It is becoming common for the-- these third party-- parties to provide high interest rate loans to the plaintiffs involved in a lawsuit for a portion of the potential settlement or judgment. A non-recourse civil litigation finance agreement is a type of funding that allows individuals to pursue their legal claims without the risk of repaying that loan if they lose the case. The financing is for profit and is non-recourse, which means that repayment of the funding is obligated only if the case is successful in litigation. The problem with this practice is once third party funding is involved, a case is no longer just about compensation for the injured plaintiff, but also about profit for the financier. This distorts the purpose and function of the tort system. When I heard earlier testimony, you were talking about torts earlier. Litigants interest in obtaining funding to assist with expenses, paired with the funder's potential for a significant return on the investment have sparked the expansion of this business model. At present, though, there is no comprehensive regulatory scheme, see-- excuse me, scheme. It's a patchwork of state statutes and judiciary decisions under which access to funding varies dramatically. Because of the expanding influence of litigation funders, they have essentially become silent parties to the lawsuit, and influence litigation decisions. The goal of LB199 is to promote transparency and fairness by ensuring that any non-recourse resource litigation finance agreement is disclosed to all parties in the suit. Very important, this bill does not exclude the existence and purpose of non-recourse litigation agreements from the process. It just identifies them early in the process and brings them to the table. It's nice to know who the parties are going to be early on. Please note, this legislation is intentionally silent on the admissibility of a non-recourse litigation finance agreement in court. As you know, every case has unique facts and circumstances. Therefore, it should be up to the judge, not statute, in each case, to determine the admissibility of such agreements. In closing, the intent behind LB199 is to do two things. One, reduce Nebraska statute of limitations for personal injury from four years to two years. And two, require disclosure of any contract for non-recourse civil litigation financing. Thank you for your attention. I am happy to answer questions you may have.

DeBOER: Are there questions? Senator McKinney.

McKINNEY: Thank you, Vice Chair DeBoer Thank you, Senator Sorrentino. How does this bill promote fairness when some individuals who deal with injuries because of an accident or something like that are still going through the rehab phase and treatment phase, sometimes two years or beyond, and they're just trying to get through just rehab and treatment.

SORRENTINO: The bill-- shortening it from four years to two years brings the parties together quicker, number one. Number two, if there's injuries or treatment that are ongoing, that's fine. What we're trying to do is not have people wait to year three, year four o bring these cases. If you study the actual claims paid by insurance carriers, the vast majority of those claims have either been actuarially determined to be of a certain value, and it's included in the settlement. You could easily say, oh, this is trying to take away money from them, from the plaintiff. That's not the intention.

McKINNEY: I'm not, I'm not arguing that it's to take money away from them. What I'm trying to say is, as somebody that's been through a bunch of injuries, rehab, the rehab process for everybody is different.

SORRENTINO: Oh yeah.

McKINNEY: And maybe somebody's rehab, especially if you're older in age, your, your rehab can be very extended. And I know going to rehab, you're only worried about trying to get back on your feet.

SORRENTINO: Right.

McKINNEY: So I can imagine some people are like, I'm only focused really on getting through this rehab, trying to walk again or use my arm again or something else. And limited-- limiting this to two years, then they're done with rehab, and just like, OK, I have a claim and they're, they only focused on this rehab.

SORRENTINO: And the focus on the statute of limitations is actually bringing the lawsuit. If you're still in rehab in year two, there should be some sort of actual evidence as to how long it's going to be, three years, it's going to be four years. That should be incorporated into the settlement. It shouldn't take away your potential for settlement. We're just trying to get the parties to the table and adjudicate the lawsuit instead of waiting for year three, year four. Could it happen? It could. It, it could reduce potentially

a settlement simply because you don't know, you're still in the rehab phase. Sometimes one thing could lead to another. I, too, have been through that. It's a valid point, and I appreciate the question, but it's a little bit of a question mark. I don't personally think that the four years down to two years is going to--

McKINNEY: And I--

SORRENTINO: --affect it in most cases.

McKINNEY: --I've had just using myself as an example, when I have surgeries before and had to go back in because some things didn't go right. All right. And my next question, why does the funding need to be disclosed?

SORRENTINO: It's not necessarily the funding. What we want to do is, as you as a plaintiff, and by the way, these type of agreements are sometimes used by the defendant as well. But all we want to know is upfront, who are we dealing with? You take this to-- take in a sporting event. What is the first thing to do in a basketball game? The coaches have to give the referee the roster. Who's on your team? I don't have to say your strategy is, I want to know who's on the team. Did you hire one or not? That's going to change the settlement. Somebody's got to pay that third party. And I'm OK with the third parties. I just want to know who they are. And, and somebody will, I'm sure testify-- right now, if the opposing attorney, the defense attorney, asked the plaintiff, are you using a non-recourse litigation finance agreement, they have to disclose that. And most, and I'm going to say, qualified attorneys probably would ask. But let's not leave it up to chance. Let's get it up front. Let's know who the parties are.

McKINNEY: All right. Thank you.

SORRENTINO: Thank you.

DeBOER: Other questions? I have a few short questions for you. Hopefully they'll be short.

SORRENTINO: Well, I am, so, OK.

DeBOER: We had a discussion about that earlier.

SORRENTINO: Yeah, we did. Quite a bit.

DeBOER: So if I am a plaintiff and I file my lawsuit at 18 months, let's say, and I don't at that time have the benefit of the full

discovery. So I don't necessarily know, in a more complicated case, when I was practicing law, I used to represent the manufacturers of ethyl mercaptan, which is this, the odorant that they put in propane and natural gas.

SORRENTINO: If you say so. OK.

DeBOER: And so there were quite a few, as you might imagine, defendants and along the long line of who they bought it from, and did they da da da da da. So there are folks who don't always know who all their defendants are. In Nebraska, do you know, because I didn't practice here, If I want to add a defendant after the statute of limitations has run. Can I do that?

SORRENTINO: It's an excellent question for somebody who practices in this area.

DeBOER: OK.

SORRENTINO: And that is not me.

DeBOER: OK. Because I, I suspect you cannot. And so that's one of the reasons I would be a little hesitant about something as short as two years. But we'll let, we'll let some of the lawyers--

SORRENTINO: I apologize I don't know the answer to that.

DeBOER: I have some others then, I'll just wait for--

SORRENTINO: All right.

DeBOER: --someone else to answer them. Thank you for being here. Thank you. Any other questions? Senator Rountree.

ROUNTREE: Thank you, Vice Chair. Senator Sorrentino. I'm looking at the bill as written. In that Section 4, you've stated that the [INAUDIBLE] should be disclosed up front, and the current practice says it is discoverable, and you are able to request that from the individual. What kind of lack are we seeing that forces us to come and make it mandatory to put it on the table? Are you having responsiveness from [INAUDIBLE]?

SORRENTINO: I couldn't put a number to it, but it happens enough that there was purpose behind this for those who sponsored the bill, that-- eventually during discovery, eventually somebody is going to ask the question. But you might be two or three ways through that. And then we

find out, gosh, there's a third party. You know, that does change the strategy, both for plaintiff and defendant. Again, both parties can use this. I'm just saying, I'm not practicing in that area, I think things are a little more equitable, and they're certainly more transparent, and we live in a transparent world, if we know who the players are. You can't know the players without a program, they always say. This is just adding them to the program and eliminating the evidentiary process of having to ask.

ROUNTREE: And thanks so much. So knowing who the players are, who is asking for this particular bill?

SORRENTINO: Who is asking for it?

ROUNTREE: Yeah, who's asking for this [INAUDIBLE]?

SORRENTINO: There may be quite a number of people proponent. It was brought to me by a lobbying firm who represents the trucking industry.

ROUNTREE: The trucking industry. OK.

BOSN: Any other questions of this testifier? Of this proponent. Introducer. Excuse me. Senator Storer.

STORER: Thank you, Chairman. Thank you, Senator Sorrentino. And I'm just kind of trying to understand this whole concept a little bit better as well. Help me understand how the third party becomes attached to the--

SORRENTINO: Plaintiff?

STORER: Plaintiff. I mean, in terms of the outcome of the lawsuit.

SORRENTINO: Typically, what would happen is, I've been involved in an accident. I'm going to use trucking, it could be anything. But I have injuries, and now at some point in time, I'm going to seek to recover damages for my injury. During that period of time, my injury, I may be disabled, and I have day to day costs that I need to meet, electric, house, car. Not legal fees, because these agreements are typically you only pay if you win the case. And maybe I can't work for the next year. So I need money to bridge that gap. So I will reach out to a non-recourse litigation financing firm. They will say to me, we will give you X dollars. They're not allowed to ask me what my credit rating is. They know nothing, they are not allowed to ask, and what my income is, they just give me money. It's kind of a dark hole. And I would have to say, and I'm not testifying on their behalf, but it'd

have to be kind of a, a tough business. You're, you're taking a guess on not only the verdict, but how much money to lend them. So it's a high risk, high reward business. They're only paid back if and when my case is successful. There's probably somebody who can attest what the average loan is, I don't know. It could be $5,000, it could be $50,000. I'm not sure of that. That's the scenario.

STORER: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: You indicated that the plaintiff reaches out to the non-recourse litigation.

SORRENTINO: Can.

HALLSTROM: I've had some, some experience on the probate side, and they seem to market rather aggressively to people that they find out are beneficiaries. Is it a different type of marketplace?

SORRENTINO: I don't think so. I guess I can't attest to the aggressiveness of marketing. There are not a lot of players in this market, I do believe, and there will probably be testimony to the fact that there are smaller players. And like every industry, there's the big ones. If you look at pharmacy benefit managers, there's the big three, and there's, you know, 5,000 of the other ones. I think there are some major ones that proba-- probably predominantly practice in this. Nebraska is not a huge state for this, but I guess I can't attest to the zealousness of the marketing.

HALLSTROM: Thank you.

SORRENTINO: Thank you.

BOSN: Any other questions? Are you staying to close?

SORRENTINO: I will stay to close.

BOSN: Thank you.

SORRENTINO: Thank you.

BOSN: First proponent. Welcome.

KORBY GILBERTSON: Good afternoon, Chairwoman Bosn, members of the Committee For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing as a registered lobbyist

on behalf of the American Property Casualty Insurance Association and the Nebraska Insurance Federation in support of LB199. My testimony is going to focus just primarily on the financing portion of the, of the bill, because that is something that has ballooned. And I sent all of you a link to a video this morning because I know that when I first heard the term non-recourse litigation financing, I thought, big deal, what is this? And didn't really understand what it did. I happened to be watching 60 Minutes and saw that part, that part of the show, and since that has even run, the size of this industry has ballooned to around $19 billion a year, and it's turned into an international investment-- form of investment. So there's numerous reasons why our legislation probably need-- is time to have an update. This bill is intended to protect consumers and everyone in-- related to the litigation process. It--Senator DeBoer brought up a question on the last bill about the potential to raise the cost of litigation expenses, the cost of insurance, the cost of everything. This is obviously something that can have that effect as well. And that's why a lot of states and also NCOIL, the National Conference of Insurance Legislators has come up with legislation to try to address this. Now, in 1-- in LB199, we decided to just try to leave it at a basic notice and disclosure provisions. The NCOIL bill is a 16 page bill that deals with how you deal with foreign investors, has penalties in it and other language that digs even deeper into the litigation financing issue. But I want to say that this doesn't only affect just the consumers and folks that are involved in the case, it can also affect the law firms dealing with it. And last week there was, actually it was the 23rd of January, a firm in Houston, Texas, filed bankruptcy because they own-- owed one of the larger litigation financiers over $200 million. And so this is an issue that is big and getting bigger. And we believe that Nebraska should step up and take the lead, not take the lead, there are many other states that require this, but at least require the disclosure of these contracts.

BOSN: Any questions from the committee? Senator Hallstrom.

HALLSTROM: Do you have any examp-- I just don't know that much about this area, any examples of who the big non-recourse litigation funding firms or entities are?

KORBY GILBERTSON: So there are several. I believe the biggest one is Bradford or Buford, I can't remember the exact names, but there are five top ones that are doing the hundreds of millions of dollars in investments. But there are also new-found investment groups out of Saudi Arabia that are very much involved now in cases in Nebraska and,

and other countries. And that's why NCOIL and others have started taking a deeper look at how to regulate the financing.

HALLSTROM: And obviously, from your example, there are funding sources that are going directly to law firms to assist?

KORBY GILBERTSON: Yes. And that's-- and so the amendment-- thank you for saying that-- the amendment that you got after we heard from some of the opponents and then talking to several senators, stated the concern about whether or not we're, we're covering everything, because a lot of the stories that have circulated are specifically about the commercial side of this and the financing that's going to the law firms instead of just the folks that you hear the stories about that are helping them with their living expenses. And so that amendment that you have would just simply add to the definition that it covers both types of contracts.

HALLSTROM: So that this would be a step removed from Erin Brockovich, where it appeared that the law firm was funding some of the ongoing costs.

KORBY GILBERTSON: Yes. Interesting insight.

BOSN: Any other questions? Senator Rountree?

ROUNTREE: Thank you, Chairman Bosn. Yes, ma'am, I appreciate you sending that link out today. I tried to get in it because I really wanted to watch that, but it made that I had to have an Apple account or something like that.

KORBY GILBERTSON: Oh, sorry.

ROUNTREE: I couldn't get to it. But it did spur me to go on and do some research, so I'm familiar with the big firm you just mentioned, and I've done a lot of reading on that. So for us in Nebraska, have we been impacted by what we call these nuclear or thermonuclear verdicts as a trucking company is concerned? How prevalent is that, and how prevalent amongst us is this type of social financing?

KORBY GILBERTSON: And I know there are people behind me that can talk specifically, specifically about those lawsuits, so I'll let them answer to those questions. I'm trying to just do the overview from the insurance industry side, why they've been interested in it.

ROUNTREE: OK

BOSN: Senator McKinney.

McKINNEY: Thank you. I guess, I'm just sitting here thinking, I guess is the insurance industry worried that people are now able to fight back against them?

KORBY GILBERTSON: No, they're worried about increasing costs to, to ratepayers, that they-- the increase in litigation costs, they're worried about protecting their insured.

McKINNEY: But I guess I asked that because if people are finding ways to defend themselves, I wouldn't say defend themselves, but argue for themselves and, and kind of go through the-- go through litigation and and not have to, I guess, just take anything, in a sense, from insurance companies or just cave. Then I guess that's what I'm wondering, because I, I, I would get like insurance companies would argue against this if people have found a way to basically kind of fight back so.

KORBY GILBERTSON: I thi-- but this doesn't cha-- this-- all this is a disclosure. Yeah. This doesn't change anyone's ability to have one of these contracts. And they are avai-- they happen on both sides.

McKINNEY: I know it changes disclosure, but you-- but current law allows for the request, right?

KORBY GILBERTSON: Right.

McKINNEY: So why does it need to be automatic?

KORBY GILBERTSON: Because the prevalence of these types of contracts is getting a lot more, and it's becoming a bigger issue across the country, and we think it's smart to step forward instead of waiting till there's a problem.

McKINNEY: OK. What's the-- so if a correc-- if a request is made, what's the, what's the timeline?

KORBY GILBERTSON: What's the timeline for responding?

McKINNEY: Yes.

KORBY GILBERTSON: I'm not sure. I don't do trial law.

McKINNEY: So what if it's a day?

KORBY GILBERTSON: I, I can't- I-- Yeah, that's why we're saying it, it should just be disclosed at the beginning of the case. Then everyone knows who the parties are at the table.

McKINNEY: But I guess what I'm wondering is, I wa-- maybe you can't give it to me, and I apologize. I just would like to know if disclosure is a big issue or not. I guess, you get what I'm saying like, if you can request it, is the problem, the disclosure taking any-- a long period of time to get back, or is it short? I would like to see that information. That's all I'm asking.

KORBY GILBERTSON: And I think our position is why, why should everyone have to go through that? Why can't it just be disclosed upfront so people know going into it what they're-- what is on both sides.

McKINNEY: That's fair, but thank you.

KORBY GILBERTSON: Sure.

BOSN: Any other questions? Are we done? We're done. Thank you for being here.

KORBY GILBERTSON: Thank you.

BOSN: Next proponent.

KENT GRISHAM: Well, good afternoon again, Chairman Bosn and Senators. My name is Kent Grisham, K-e-n-t G-r-i-s-h-a-m, and I am the president and CEO of the Nebraska Trucking Association. I'll skip over all the other introductory things and just tell you that I come before you today on behalf of the Nebraska Trucking Association in support of LB199. And we certainly thank, Senator Sorrentino, for bringing it forward. Statutes of limitations ensure that legal disputes are brought to the courts and resolved in a timely manner and prevent cases from litigation long after witnesses' memories have faded or evidence is deteriorated. Statute of limitations do not deny justice. They encourage timely justice where plaintiffs receive appropriate restitution and defendants do not have to live with years of uncertainty. We encourage you to move Nebraska into the majority of states categories by passing LB199 establishing a two year statute of limitations for personal injury litigation. And I want to point out, the NTA is not asking for this just on behalf of trucking. This will benefit all Nebraskans, business owners and private citizens alike. Now, with respect to the update on the non-recourse litigation funding statutes in Nebraska, we encourage you also to pass 199 in its current form so that we can shine a better light of transparency on litigation

transactions as they are becoming more prevalent. There's a quote from just this past October, the U.S. Chamber of Commerce, quote, Third party litigation funding is a multi-billion dollar global industry that operates largely in secret and is designed to maximize profit for its investors at the expense of the legal system, defendants, plaintiffs and consumers. Third party litigation funding allows hedge funds and other financiers, including sovereign wealth funds and foreign interests, to secretly invest in and control lawsuits within the United States in exchange for a percentage of any settlement. Third party litigation funding can drive up settlement costs or awards, and third party litigation funding drives up the pressure on plaintiffs to do as they're told. These are not passive investors. They exercise control over the litigation, and plaintiffs using the funding tool have encountered difficulty settling litigation against the wishes of their funders. So while LB199's provisions are not as aggressive as some states have passed and some are proposing, it's a commonsense, economical, less intrusive step in the advancement requiring transparency of the existing funding agreements in Nebraska litigation. So we encourage you to pass LB199 to the floor of the Legislature. Thank you.

BOSN: Questions of this witness. Testifier. Senator McKinney.

McKINNEY: Thank you. So are you arguing that the third party support is to drive up litigation costs?

KENT GRISHAM: It will drive up litigation costs, and it-- because the investors are seeking to increase settlement amounts or awards and they will exercise their control over the case itself in order to maximize those profits. So once the bucket is open and the money is flowing out of it, they can stay in that case for as long as they need to to drive up that return.

McKINNEY: Is there-- I guess my, my question, is there evidence to show that an individual without that third party support would get the same or less in a settlement. Is there any, is there any evidence that you could show that if an individual was going against you guys, would they get the same settlement or less? Or if they had the third party support, they got more?

KENT GRISHAM: That is a level of detail of research, Senator, that I don't have off the top of my head, but I would be more than happy to--

McKINNEY: I, I would be curious to see that, because you're saying that they are, they are profit driven, but I would love to see that.

Maybe you're right, maybe you're wrong. But I would love to see that. What if those people who are getting that support are actually also getting higher settlements because they're getting support?

KENT GRISHAM: At the same time, I do believe that that research is going to show specific cases where the litigant, the plaintiff, believed that they were harmed by the pressure the investors put on them to not settle or to not agree to an award in a more timely manner because these investors believed that, oh, let's pay for this one more-- Here's the money. We're going to pay for this one more expert witness to come in, or we're going to pay for this, or we're going to pay for that, and going to make the case better and it's going to get you more money. And in the end, their lives are disrupted by how long the case has taken.

McKINNEY: But how could you make that argument without the evidence?

KENT GRISHAM: The argument of--

McKINNEY: That last argument. How could you make it without any evidence or research?

KENT GRISHAM: No, I'm, I'm more than happy to provide you with that, because we know that, that those cases do exist. They've been reported on, and I'm happy to provide you with those reports.

McKINNEY: I would love to see them.

KENT GRISHAM: You bet.

McKINNEY: Thank you.

KENT GRISHAM: Mm hmm.

BOSN: Senator DeBoer.

DeBOER: So this non-recourse, this whole thing is kind of new to me. And it seems like what I'm hearing is that there's sort of two different kinds of these folks. There's one that is giving the law firm money to pursue their claims, and there's one that's giving the plaintiff money to live by until they get the, the result of their settlement. Would you agree those are kind of separate kinds of processes?

KENT GRISHAM: The thing that I would encourage you, Senator, to ask of the attorneys who practice in this area, I-- it is my understanding

that all of the agreements are going through the attorneys, whether it's a plaintiff's attorney or a defendant's attorney. So even if the agreement is, investor, you're going to provide this amount of money into this case so that the plaintiff is able to fund their living expenses for a period of time, or you're going to be providing funding for expert witnesses or whatever, whatever, the, that all of that is going through their legal representation. Those plaintiffs, the person who's been injured, is not hiring these firms directly. This--.

DeBOER: OK.

KENT GRISHAM: --they-- Yeah.

DeBOER: That makes sense. So here's my concern and maybe you can speak to this. Something that's occurring to me is that if I am, and I'm sure no one in any of the cases that you would be involved in would do this. But if I am a bad actor, and I am told that my-- the plaintiff in my case for which I am a defendant, is on one of these agreements so that they can survive long enough to get through to settlement. Wouldn't that, in an unscrupulous person's hands, be something that they would use to say, aha, if I just wait them out, if I just do this, if I, if I offer them a lowball settlement now, then they're going to take that. Then they're going to understand that they, you know, that I'm going to wait them out. I can do this to get them to a position where they're desperate to take any settlement that I might offer them. Do you see what I'm saying?

KENT GRISHAM: I absolutely do. And the fact that that kind of scenario could play out, I think is further evidence as to why we need this kind of disclosure. Because as, as Senator Sorrentino pointed out, this can play to both sides. This can play to plaintiffs and to defendants who are able to elongate the case, delay fair and responsible settlements or awards for the sake of, of profits for a third party, not the injured party, and perhaps not even the defendant.

DeBOER: And I get that point, and I think that's an argument that I have to consider. And I am and I'm listening to it, and I think that's valid. My concern, though, is for this plaintiff who's the most likely of all of the people we've been describing, a regular person on the street, to, to sort of need the money in order to survive. To need it in order to make it a little further. And I'm concerned that they could-- that someone could use their bad financial status as a way to sort of manipulate the system against them. That's my concern. And--

KENT GRISHAM: And I applaud your concern.

DeBOER: OK.

KENT GRISHAM: Because I, I believe we're-- whether we're talking about the plaintiff or the defendant, you know, it could be a-- and I if I may sidetrack for one brief second. Senator Rountree, you, you mentioned nuclear verdicts. I'd like to remind you all that in Nebraska, 95% of all of the motor carriers are smaller than 100 trucks in their fleet. A $2 million verdict is a nuclear verdict to that company. Those kind of verdicts become unsurvivable as a business for the one truck owner operator, the five truck grain or livestock hauler. So while we may not have seen the high profile $90 million verdicts or whatever, when we talk about nuclear, my members are 85% small, individually owned companies, and a $2 million award is nuclear for them.

DeBOER: So, so--

KENT GRISHAM: Back to-- I'm sorry.

DeBOER: --this is not really my question.

KENT GRISHAM: I'm sorry. I know.

DeBOER: That, that wasn't really my question.

KENT GRISHAM: But it-- my brain went that way, and I do apologize.

DeBOER: That's OK. I-- so I guess my concern is about the disclosure which you're asking for here, the disclosure itself, the act of disclosure of financial, basically, insolvency of a plaintiff or a defendant.

KENT GRISHAM: Or a defendant, yes.

DeBOER: That that, that the disclosure of that itself is problematic. I don't disagree with you that I don't want people overseas betting on our, you know, legal system. I-- that-- I don't like that. But I do see what you've requested for in this bill is not some sort of regulation on that business, but it is a disclosure. And that gives me pause, because I know when people find out about financial insolvency, they can use that as a sword against someone, either party in the litigation that has that problem.

KENT GRISHAM: Either party in the liti-- sure.

DeBOER: All right. Thank you.

BOSN: Just if I can clarify. This bill isn't saying that you can't finance them.

KENT GRISHAM: Correct.

BOSN: All it's saying is if you're doing it, you have-- if, if I am a plaintiff and I cannot pay my mortgage because I can't work, and so that's what we're going to trial on, but we all know that that's going to take a year. Right? And that's, you know, probably short. But you get my point. For my example we'll say it's going to take a year. I'm not working, I can't pay my mortgage. This bill is just saying I have to disclose that fact that DeBoer Enterprises is funding my mortgage during the pendency of this trial.

KENT GRISHAM: Yes.

BOSN: OK. And absent that, how does it play out right now?

KENT GRISHAM: Well, the only requirement at this point in time for these kinds of financiers is that they have to file an annual report into our Secretary of State's Office that they've done this business in Nebraska. They don't have to identify themselves as they're associated with any particular case. They don't have to get into the details of it. They just say, hey, I'm a litigation financer. I have financed litigation in Nebraska to this amount in 2024.

BOSN: But is it also true that my attorney, Mr.-- Senator McKinney, over here is my attorney in my case and my contract to pay my mortgage is through DeBoer Enterprises, but that she has the right-- she has a seat at the table as to whether or not I accept a settlement agreement.

KENT GRISHAM: Yes.

BOSN: And so she can dictate whether or not, even if I came in and said, oh my gosh, let's take this, this is fair, I want to do this. And my attorney says, I think that's good legal advice. She has a voice to say, you can't take it.

KENT GRISHAM: Absolutely.

BOSN: Thank you.

KENT GRISHAM: And it-- I'm sorry.

BOSN: Well that-- I mean-- go ahead.

KENT GRISHAM: And, and it is really only fair that the defendant who is making that offer knows that there is DeBoer Enterprises in the mix dictating terms that the plaintiff may or may not be able to live with.

BOSN: Thank you. That answers my questions. Thank you for being here.

KENT GRISHAM: A new business for you, Senator.

BOSN: In her free time. Next proponent. Welcome back.

ANDREW RICHARD: Thank you, Chairperson Bosn and Judiciary Committee. I'll, I'll skip the introductions like Kent as well, and get right into it. My name is Andrew Richard, A-n-d-r-e-w R-i-c-h-a-r-d. I'm representing the Nebraska Petroleum Marketers Association, as well as Sapp Brothers. We're blessed to live and work in a Nebraska pro-business, common sense state. Common sense measures like LB199, which require disclosure of any contract of non-recourse civil litigation financing. It is becoming common for third parties to provide high interest rate loans to plaintiffs involved in lawsuits for a portion of the potential settlement or judgment. The problem with this practice is, is once third-party funding is involved, the case is no longer about compensation for the injured plaintiff. Instead, it's about profit for the financier. This distorts the purpose and function of the tort system altogether. We believe there are many ethical and transparency issues associated with third party litigation financing. More than my allocated time, more than my allocated testimony time would allow. However, we believe at the very least, it should be disclosed to all parties that there is a third party financing agreement in place. That's just Nebraska common sense and fair to all parties involved. All parties should know who has a financial interest in the litigation. Secondly, Nebraska has a four year statute of limitations for personal injury action. The statute of limitations is shorter in 44 states. Most commonly, states have adopted a two year statute of limitations. Nebraska businesses and individuals alike need common sense and reasonable time frame to ensure accurate and relevant evidence preservation, a pragmatic ti-- a pragmatic timeline to get equipment back into service, and timely outcomes and justice for all parties involved. Thank you. I'll take any questions.

BOSN: Any questions from the committee? Thank you for being here. Next proponent. Welcome.

SARAH DEMPSEY: Good afternoon to the members of the committee. My name is Sarah Dempsey, S-a-r-a-h D-e-m-p-s-e-y, and I am an attorney with the Fraser Stryker law firm in Omaha. I am a member of the Nebra-- Nebraska Defense Counsel Association, and I am also here today on behalf of Werner Enterprises, who, as I'm sure many of you know, is a very large nationwide motor carrier here based out of Omaha, Nebraska. And I'm here to talk about both provisions in-- included in LB199, the first being the two year statute of limitations change in Nebraska. I won't repeat the statistics from other states that some of our, some of my predecessors have already talked about. But I do want to point out that this is really not a unique or novel concept in Nebraska, that there would be a shorter than four year statute of limitations for a personal injury case. Such a, a limitation already exists for medical malpractice cases, and it also exists specifically for tort claims against political subdivisions. So, for example, if you were driving on the streets of Omaha and you were hit by a city of Omaha truck, you would have a two year statute of limitations to file your claim against the city of Omaha in that instance. So I want to provide a little bit of color for the committee on how this impacts defendants in these types of cases on a practical level. When you have a four year statute of limitations, memories fade, witnesses don't recall situations that they would have, you know, in a shorter period of time. Sometimes when you're representing corporate entities, they have employees that leave the company, and then by the time the lawsuit gets filed, there's nobody left who has any memory of this case, or doesn't have the documents, or doesn't know where the investigation that was done four years ago is stored anymore. And it can be very difficult sometimes for defendants to be able to effectively defend themselves, especially in situations where they may have had no notice at the time when the incident occurred that incident did occur or that, you know, a claim was likely to be forthcoming. In particular, as to the trucking industry, it's very common in my experience, working with trucking clients, that employees in that industry will switch jobs frequently. So again, having trouble tracking down the driver who caused the accident four years after the fact can be a challenge. I don't think that the two year statute is, is going to cause some of the problems that others have raised. I think many times, I can think of an example of a case I settled just a few weeks ago that actually the case was filed, we completed a very large amount of discovery, and it was settled within two years of when the accident occurred. So it's very common for, for cases to be filed very early after the accident happens, and to get very far down the discovery path. In Iowa, where they have a two year statute, it's very common for the court to stay the case or push out the progression deadlines

very far in the future if the plaintiff is still receiving medical treatment and needs additional time to complete that treatment. The court wants to be fair to the plaintiff and will take that into account. So I don't think the two year limit impedes the plaintiff from being able to have their medical treatment addressed. Finally, on the litigation financing, I just would add, I know my time is, is up, but if I may just add, I think it impedes the ability of, of companies to settle cases because we can't find out right now whether there is litigation financing. So to the extent that plaintiffs are going to say, well, I can't settle my case for that low amount of money because it won't cover my litigation loan, right now, we can't even find out if there is one. So with that, I would welcome any comments from the committee.

BOSN: Thank you. Senator DeBoer.

DeBOER: Thank you. An attorney, yay. So if I am filing the case, you heard my question, I think, to someone else, to maybe Senator Sorrentino, if I want to add a party that I discovered through discovery and it's past the two year statute of limitations, I can't add that party.

SARAH DEMPSEY: I, I think it depends on the circumstances, of course, I have to give you my lawyerly response. But, but there's a discovery rule in Nebraska, which means that if you did not know the facts and circumstances indicating that you had a claim against a defendant until a period of time after the statute of limitations has passed, it adds on extra time for you to--

DeBOER: It tolls it during the time that you didn't understand.

SARAH DEMPSEY: Correct.

DeBOER: But would that count if you know that the injury has occurred, but you didn't know that they were the party-- like is it tolled as, as to the individual parties, or is it tolled as to you didn't know the injury occurred?

SARAH DEMPSEY: That I do not know the answer to as I sit here off the top of my head today.

DeBOER: Because, you know, that would be the difference. And then when does the discovery calendar begin?

SARAH DEMPSEY: The discovery calendar in litigation?

DeBOER: Yes. So you file it and it begins immediately, right?

SARAH DEMPSEY: So there, there is sometimes, depending on the circumstances, a slight delay, but many times, yes, the plaintiff can file their lawsuit and serve the defendant with discovery requests with a copy of the complaint. And then as soon as the defendant receives that, the complaint, they have the ability to serve discovery requests.

DeBOER: So it seems like then that if you're saying we have to get these filed right away, first of all, because we might need to add somebody later, like I'm, I'm seeing how this timeline is becoming pretty tight because then we immediately have to go into discovery. And I may not be ready to go into discovery because my plaintiff may not be treated, treated, may not even know what treatment they need yet. You know, so they're still in the shock of the, the situation and all of that. I mean, I think the two year timeline starts to get eaten, eaten away really quickly. It's not like someone's just sitting on their, you know, whatever for two years waiting, and then at the last minute, they run to the courthouse. Oftentimes these cases right? There's a lot that has to happen first, including good faith attempts at settlement, right?

SARAH DEMPSEY: I think you have-- I'm going to try to answer, I think, multiple questions. So, first of all, as far as treatment, I think it's extremely uncommon, and I almost have never seen it happen where if within a two or four, or three or whatever time, your time frame, a lawsuit for a personal injury has been filed and the plaintiff has had no medical treatment yet whatsoever. That is extremely uncommon.

DeBOER: That's not what I'm saying.

SARAH DEMPSEY: OK.

DeBOER: I'm saying, especially, let's say, in a year's time, you may not know the extent of your damages, or not your damages, the extent of your injuries, because you know, you're starting to find them out, you've had one surgery, you need to have another surgery. You don't know how big this is going to get.

SARAH DEMPSEY: Sure. And that's, that's a fair point. And I would say to that, you know, I, I practice very extensively in Iowa where they have a two year statute. Iowa, interestingly, also, in my opinion, has more aggressive case progression standards than the Nebraska court system does. And by that I mean that the courts try to push cases very

quickly relative to other states through the beginning to the end of the process. That being said, I recently had a case where a gentleman had an initial surgery not long after an accident occurred, and he was doing well for a couple of years and litigation was going through the normal process and we were on schedule and all of that. And then all of a sudden he started having more problems because of his injury. And his attorney let us know that, you know, he needs to have a second surgery, as it turns out. And we immediately alerted the court and the court paused the case and we waited for the surgery to happen, and we collected all the medical records, and we continued on with discovery and took all that into account. So I--

DeBOER: So--

SARAH DEMPSEY: --that happens all the time in Iowa, and it doesn't seem to present, prevent the plaintiffs from-- I mean, as the defendant, we want to know that when we're moving towards trial, that we have all of the information and we're going to be able to fully evaluate, you know, what the possible verdict range could be. We want to have that information.

DeBOER: So, so let's talk for a second about settlement, though, right? If, if you have to file it within two years, and you're not sure if you've got all the parties and all of this, you really have to file it within 18 months, so you could make sure that it-- you kind of get a little turn and you get to figure it out, got to make sure that you have everyone. And 18 months, somebody may not have even contacted a lawyer for the first few months because they're still in the hospital, they're still whatever. So now we're getting an even smaller window. OK? So now we have this window of time in which the lawyer has to get on the case, get briefed on the case, understand the case, and now has to reach out to the other side and try to do a settlement. My concern is I think there's going to be a lot more cases that get filed as cases that would have, under the current system, been settled.

SARAH DEMPSEY: Perhaps that's true. You do have an additional six months after you file in which you don't actually have to even try to serve the lawsuit. So there is a baked in six month window of time, you could say, to where you don't have to start discovery, you don't have to serve the lawsuit, the parties can engage in settlement negotiations. So that's already baked into the system as it stands today. But as to your question on settlements, I mean, I'm seeing many, many cases now that are settling before the lawsuit is filed. I don't necessarily think that the two to four year timeframe plays much into that. I think that's more a factor of both parties coming to the

table, trying to avoid, you know, what, in our world today seems to be the increasing cost of litigating a case on both sides. So I think the desire to--

DeBOER: But you do have to preserve your claim, so you'd have to-- even--

SARAH DEMPSEY: Right.

DeBOER: --if you were in the middle of negotiations. You'd have to file the suit--

SARAH DEMPSEY: Right. And that does happen. And then they'll say--

DeBOER: --to preserve your claim.

SARAH DEMPSEY: And then the plaintiff might say to me, well, we, we have to file it because the, the statute is going to pass. And so we're going to file it, and let's keep talking about settlement. So, and sometimes the defendant may even, you know, put in a written agreement with the plaintiff that they will waive their statute of limitations defense so that that additional time can be had for both sides to try to settle the case. So there's many ways to work through the process without the two year statute causing, you know, a complete impediment to the settlement negotiations continuing.

DeBOER: Why are we suddenly here now where we suddenly want to change it? It's not like in Nebraska there's been a big shift. In fact, I know that there are fewer and fewer cases being filed in Nebraska of all sorts, right? I work a lot on court fees and we don't have enough because there's not enough cases. So we have fewer and fewer and fewer cases coming before the court. We got rid of a worker's comp judge last year because we didn't need him. So we have less and less stuff coming before the court. Why, suddenly, are we trying to bar more claims? What's, what's the precipitating factor?

SARAH DEMPSEY: I don't think that the effect of this change is going to bar claims largely. I think it's just an attempt to solve some of the problems I mentioned in my testimony, which is that you lose from the defense side, and, you know, I'm, I'm here to say kind of the defense perspective, but I think we're all here to try to talk about what's justice for both sides in a dispute like this. But I think from the defense perspective, the inability to keep the present and fresh knowledge of what has occurred in a situation is harmed by the fact that you have to wait four years. And, and again, like I said before, not everyone waits that long. But I think, you know, as to the point

of less cases being filed, I think that's largely driven by the cost of litigation, not, not so much by, you know, the timeframe for when a lawsuit needs to be filed.

DeBOER: But I think-- well, it doesn't matter. Thank you, you've answered my questions.

BOSN: Any other questions? Senator Hallstrom?

HALLSTROM: And would it be fair to assume that memories fading can be equally applied on the plaintiff and the defense side?

SARAH DEMPSEY: Sure, that's fair.

HALLSTROM: And I'll ask you a technical question rather than waiting for Senator Sorrentino. On the non-course [SIC] civil litigation funding side, it appears to me, as I read the statute that there is a 30 day timeframe for responding, but only for new funding contracts or existing ones that are amended, and there does not appear to be a time limit for disclosing the original existence. Is that purposeful or--

SARAH DEMPSEY: I don't know the intent behind why it was drafted that way. But I would agree with your reading that that is how I read it as well.

HALLSTROM: And, and do you believe there should be a time frame set into law for that initial disclosure if we're going to require the disclosure, there should be some?

SARAH DEMPSEY: Sure, so I-- the way that I read it now, I think what it's saying is, you know, that has to be disclosed at the outset. My reading of that is it's somewhat vague about what, what does the outset mean? Is that when the lawsuits actually filed, is that when you serve a copy of the complaint, do you have to provide the copy of the litigation contract? I, I agree, it's somewhat--

HALLSTROM: Or within so many days after, thereafter?

SARAH DEMPSEY: Right, it, right. It's somewhat unclear, but I think, you know, looking at what we have in front of us today, I think the purpose behind it is good in the sense that now the way the system works, it's, it's impossible for defendants to get this information. I've had cases where I've suspected that litigation funding is involved. I've tried to ask the plaintiff to give me that information and they refused, because there's nothing in our law that requires it to be disclosed at the present time. So then when you go to try to

settle the case, they'll say, well, we can't take that amount of money because we have to satisfy our client's litigation loan with the settlement proceeds. And then, I mean, you have been working very hard to gather all the relevant information to try to give the plaintiff a reasonable settlement offer that you think is going to be effective at settling the case, and then at the 11th hour, you find out, oh no, there's this huge loan I have to satisfy, which, you know, arguably isn't really even relevant, but it's going to impede the defendant's ability to get the case resolved. So that's kind of the reasoning behind it.

HALLSTROM: Thank you.

BOSN: Any other questions? Senator Rountree, followed by Senator McKinney.

ROUNTREE: Thank you, Chairman. So in response to that question at the outset, would it be feasible, then, that you would, once that case is filed, reach out to the person that's filing the case and ask this question? They receive that letter, certified, registered, however it is, and they have 30 days to provide that information. So within our first 30 days, we have that information as to whether or not there's someone funding that particular process [INAUDIBLE].

SARAH DEMPSEY: Right. So I think the way the statute is currently drafted, there is-- it's automatic at the beginning. So again, I don't think it's clear what the beginning of the lawsuit means. It, it probably just means, you know, if I were advising a plaintiff, I would say, you know, we need to disclose this when we serve the complaint on the defendant But then you're right. If, if another-- if there is no litigation financing in place at the beginning of the case, but then the plaintiff goes out and seeks that later, then I think you're right, they would have 30 days to then disclose that to the defendant. Right.

BOSN: Senator McKinney.

McKINNEY: Thank you. I'm-- I guess I'm just wondering if you're so concerned about these third party entities, why aren't you proactively requesting for these? Because why are you waiting until you get to the end to say, to figure this out? Why aren't you proactively requesting these, these documents?

SARAH DEMPSEY: Sure. So I can include the requests for this information in my discovery request that I serve to the plaintiff as

soon as I know about the lawsuit being filed. However, they're going to object, under the current practice that I have experienced in the present day, they're going to object and say, I don't have to give you that information, it's not relevant to any of the issues in the case, it's not going to be admissible at trial, and I'm not going to tell you anything about my clients, whether they do or don't have litigation financing. I've never had a judge require a plaintiff to produce that information because, again, it's not required. So, so, yes, I can ask for it, and maybe I should in every case, I don't always because sometimes I don't suspect that that's at play. But, but the response that I've gotten in my experience, and maybe others will have different experience, is that the plaintiffs won't provide it right now.

McKINNEY: How often have they denied it?

SARAH DEMPSEY: I can think of two cases that I've personally worked on where they've said, we're not going to tell you that information. But those are the only two cases where I've asked for it. I haven't routinely asked for it in every case, I think there's cases where it would be unlikely that, that would be happening, although I suppose it could be happening in every case, theoretically.

McKINNEY: So only two times? All right. Thank you.

BOSN: Just to follow up on that, if I'm understanding your question, what he's asking is why aren't we asking it? But right now, what you're saying is there's nothing in statute that allows or that requires the disclosure of that. And he's-- his line of thinking is that it's required, but we're just reducing the time. And you're saying, no, it's not even required.

SARAH DEMPSEY: It's, it's not required to be disclosed. Similar to a medical lien if, if a plaintiff has, you know, their insurance company or the provider that provided medical treatment has said, I, I have a lien on the amount of this care that was provided because a third party caused the injury that necessitated the care. Right now, that is not required to be disclosed either. So I can ask the plaintiff that question, and I often do, and they will tell me-- sometimes they will disclose it, because I think it does, I think they understand it helps facilitate settlement because we also have to satisfy those liens out of the settlement proceeds. But many times they'll tell me, I won't, I'm not going to disclose that. And then, you know, two years into the case, you decide to go to mediation and you're, and you think you're going to get it settled, and they say, I can't settle this, I have

$100,000 medical lien I have to satisfy out of the proceeds. And then you can't settle the case that day. So, I mean, the, this, this information about what really needs to happen from a financial perspective to resolve a case, that not being required to be disclosed is impeding us being able to efficiently and effectively settle these types of cases, in my experience.

BOSN: And that's not because you're going to offer them less than the $100,000 medical lien, it's because you're going to take into consideration the $100,000 medical lien and then whatever you would offer on top of that, because that's not going to the plaintiff anyway.

SARAH DEMPSEY: Right. Right. The medical lien nor the litigation loan, those-- that money is not going to the plaintiff. That money is going to satisfy those financial obligations.

BOSN: Sounds like more information is better. Any other questions? Thank you for being here.

SARAH DEMPSEY: Thank you.

BOSN: Next proponent. Anyone wishing to testify in opposition to this bill? Welcome.

JENNIFER TURCO MEYER: Thank you. Hello, my name is Jennifer Turco Meyer, J-e-n-n-i-f-e-r, Turco, T-u-r-c-o, space, Meyer, M-e-y-e-r. I am an attorney here in Nebraska, and I am here to speak on behalf of the Nebraska Association of Trial Attorneys in opposition to LB199. Specifically, we are opposing cutting the current four year statute of limitations in half, a statute of limitations that, I might add, has provided us predictability and consistency since statehood. And I just wanted to talk about a few facts in response to what's been said. There are actually 24 states that have a statute of limitations more than two years. And interestingly enough, there's a couple of states that have a shorter statute of limitations, but then they increase it for motor vehicle accidents in particular, like Colorado or Kentucky. And I think the reason we're here today to oppose LB199 is because it's a bill in solution-- it's a solution in search of a problem. We're not hearing anything about Nebraska cases. We're not hearing about how this is affecting Nebraska's judicial system. It was quoted that Werner Trucking had experienced 140 cases filed in-- within a year, and when we did our research, there's only two of those cases filed in Nebraska. And I think that the real issue here is more about patient, or client access to the judicial system than it is about

anything else. Senator Sorrentino actually said we want these cases filed sooner, and that's exactly what's going to cause the problem that Senator DeBoer was suggesting will happen is when our cases actually don't have the benefit of a negotiations period and we have to start litigating them. And while I respect that, yes, we can go to the courts and we can ask them for more time, we have to go through the legal judicial process to do that, and we suck up resources and judicial time asking judges to extend deadlines in every case where our clients haven't treated. I do want to point out that earlier this year, our courts altered our discovery rules in our cases, they went into effect January 1st, 2025. And interestingly enough, we are now required as attorneys to provide medical disclosures very far in advance. And so what happens when a client isn't done treating, we have to actually worry about it being detrimental to the case. The notice in the discovery period that we were talking about earlier, there is no discovery rule for a car accident in the sense that you know the injury happens immediately. And so you're charged with the knowledge of that injury coming out of that at that time. We don't have any kind of failure of investigation on the part of the defendants. They call injured parties, they interview them, they preserve their testimony. When we have drivers that aren't working for the company anymore, in my experience, I'm the one that has to go find them and depose them. It's not a lack of, of defendants not having drivers to be able to defend these cases. And that is my time.

BOSN: I just want to have you finish your thought. Drivers not finding defendants?

JENNIFER TURCO MEYER: The defendants not being able to locate the drivers that caused the collision and being able to do a-- like defend with their deposition or them appearing at trial. Like most times I'm the one that they say we can't find them, sorry. And they're perfectly fine with not calling them because there's no witness really to answer the questions about why they did what they did, or-- and so I actually have to go find them and depose them in other states and create a record myself. And so I'm just answering the point that from the very beginning and a crash happens, there's communication between the parties immediately preserving testimony and evaluating the case. And, and it's typically not with an attorney. Within the first 24 to 48 hours, usually somebody from an insurance company will contact the person that was in the crash and immediately start taking information, taking recorded statements, and discussing the case with them. Several clients that I've had have come to me eight months after an injury has happened, usually because they've had a conversation with an insurance company that just didn't leave them feeling quite right, and they

wanted to know what their rights were, and they wanted to know, you know, what they needed to do to protect themselves. And so I just wanted to dispel the illusion that we're having a crash that happens, and four, you know, three years and eight months go by, and then all of a sudden everybody is trying to figure out what happened. It's just not typical. And so any reason to accelerate a statute of limitations based on, like, memory or consistency or knowledge of, or notice of a claim just doesn't really seem factual to me when you put it within the context of what I've experienced in 18 years representing injured Nebraskans.

BOSN: And, and I'm, I'm not arguing with you, but you were cut off because of the red light. So I guess I'm just trying to understand your example and perhaps you just didn't get it all out before your time ended. What you're saying is, is that if Senator DeBoer and I are in a car accident and it's my fault, and I'm of-- I own a commercial company in town, so I have a CDL, so your, your point, if I'm understanding it, is that my insurance company is going to-- or hers, both probably, are going to come and interview me as the driver who's likely at fault with the CDL and her immediately after the accident.

JENNIFER TURCO MEYER: Yes. Also, it's not just your insurance companies. So like you're going to have an insurance company potentially, or you're going to have requirements because a crash happened with a type of certain truck that an investigation is going to have to happen, reports are going to have to be generated--

BOSN: Who's doing that? That's what [INAUDIBLE].

JENNIFER TURCO MEYER: Well, a lot of times it's on the employer to satisfy the federal law to do that.

BOSN: OK.

JENNIFER TURCO MEYER: And it's also, you know, the insurance company will come in and assist because they're the ones insuring the risk. And so they want to make sure things are documented and-- documented and preserved. And that usually involves calling the injured party and interviewing them by recording.

BOSN: But it's not a deposition like there's a. So this isn't involving lawyers at this point is what you're--

JENNIFER TURCO MEYER: Correct.

BOSN: OK.

JENNIFER TURCO MEYER: It's just, may I record the questions that I'm asking you about the accident you were just in? And most people say yes.

BOSN: OK. So if I'm understanding the other side argument to this, what they're saying is, is that that may all have happened January 1st, accident happened shortly thereafter. Two years pass by and they-- and now I'm in front of you for a deposition, right? And you're asking me questions. And they're claiming that I'm going to say, well, I don't really remember what the facts were on that January 1st, two years ago because it was so long ago. Is that-- am I understand what their claim is?

JENNIFER TURCO MEYER: I honestly couldn't tell you what their claim exactly is, just because usually by that time when you're in a deposition, there's been a discovery period where we all exchanged all the information and documents that we have, which if it's involving a truck, sometimes that'll be a formal investigation where they say what happened and-- or there's a state patrol report. There's just a lot of facts and a lot of evidence that have switched hands.

BOSN: Sure.

JENNIFER TURCO MEYER: And then when somebody gets in a deposition, whether it be a client that's injured or a driver, sometimes they don't remember something that happened two years ago. But sometimes they don't remember what happened four months ago. Sometimes they remember something different, and that's just the nature of presenting evidence in general. So my point was just-- their point is, evidence gets stale, memories go cold. But my point was there's a process by which it starts immediately when a collision happens where doc-- there's documented evidence about what happened. And we use that to refresh memories. And there's all these things that we do on both sides to make sure the evidence is properly presented, either when we're, we're negotiating or when we're in trial.

BOSN: OK.

JENNIFER TURCO MEYER: And so I just don't feel like there's this problem of, of waiting so long that nobody knows what happened because there's just a lot that goes on immediately.

BOSN: And that's all fine. I just wanted to make sure I was at least understanding your position. Senator DeBoer.

DeBOER: Sorry, it's a lot of questions today, sorry.

JENNIFER TURCO MEYER: Oh, it's OK.

DeBOER: So can you take me through, I was thinking about this as you were talking just now about the statute limitations, do you know what the statute of limitations is in Nebraska for breach of contract?

JENNIFER TURCO MEYER: It's depending on if it's oral or written. If it's written, it's five years.

DeBOER: Five years?

JENNIFER TURCO MEYER: Yes.

DeBOER: OK. What's the statute of limitation-- what-- do you know what other statute of limitations are?

JENNIFER TURCO MEYER: You freaking me out. But I mean, I know some of the ones maybe what I learned in law school.

DeBOER: Why don't you just list some ones you remember, and then I won't put you on the spot.

BOSN: Is this a deposition?

DeBOER: Yeah.

JENNIFER TURCO MEYER: This is a law school exam that I'm going to fail.

DeBOER: you're going to have, you're going to have a dream about this for years to come.

JENNIFER TURCO MEYER: You know, the medical malpractice statute of limitations that was alluded to earlier is, is two years.

DeBOER: What about the--

JENNIFER TURCO MEYER: Wrongful death is two years.

DeBOER: What about the tort claims, because my understanding is that one is weird.

JENNIFER TURCO MEYER: It is--

DeBOER: That it's not precisely two years.

JENNIFER TURCO MEYER: It is. And that's statutory, right? And so if you bring a political subdivision tort claims act, you have to give notice within a year, and then you have to wait six months for a response, and then you get an additional six months from the response to file.

DeBOER: OK. So that's a weird one. So we have a number of different time frames in which we apparently think people will still remember. I-- it's somewhat funny to think that people will still remember breaching a contract five years later, and they will not remember a traumatic event of hitting someone with a, a car five years, but only four years later. So there are, there are a number-- is it fair to say that in the Nebraska statutes there's a number of different statute of limitations in time frames?

JENNIFER TURCO MEYER: There are several.

DeBOER: OK.

JENNIFER TURCO MEYER: All different types of all different kinds of claims, whether it be injury or contractual--

DeBOER: Whatever else.

JENNIFER TURCO MEYER: Yeah.

DeBOER: OK. Yeah, that's all I'm going to ask.

BOSN: Any other questions for this testifier? Senator Rountree.

ROUNTREE: Thank you, Chair. I appreciate your testimony today. So my question goes back to the bill as written. We've talked about discovery. You know, a lot of actions take place as soon as the incident happens. And so of the bill as written says except as otherwise stipulated or ordered by a court of competent jurisdiction, a consumer or the consumer's attorney shall with, without waiting, awaiting a discovery requests disclose and deliver a copy of any contract for non-recourse civil litigation funding to the following persons, and it lists those. So when this discovery happens, is it still-- coul-- is it feasible that during that process you can ask that individual for this, this other type of funding, whether somebody is going to be funding their case or whatever it might be and have that request within 30 days? I'm sure there's a time frame that when a discovery request goes forward, that time frame, that you have to get the information back.

JENNIFER TURCO MEYER: Yes. So a few things. First of all, in terms of-- I just want to clear one thing up. The question about non-recourse litigation funding. There are two types. There's like plaintiffs who go out and say, I've had one client in 18 years go out and get funding and it was because she didn't have a refrigerator. And so she went to a nonprofit that gave her funding to buy a refrigerator during the pendency of her case. Then you've got funding where law firms are, are getting loans to finance cases. I can, I think, pretty confidently say that's just not a typical thing that we see here in Nebraska. And that's why, you know, I'm not talking to you about that outright. But I think in terms of the discovery, so you've got-- when you file a lawsuit, discovery is the process by which both parties, through the rules, can discover information from the other side. So when you're not in litigation, like you don't have the right to discovery-- I mean, there's a lot of informal discovery. Like I'll say, please give me the recorded statement of my client, and they will send it over to me sometimes. Right? So when you talk about discovery, I think there's nothing in the rules now that would stop you from asking the other side in one of your interrogatories or your request for production of documents, which are like the tools we use, right? To do the discovery. There's nothing to stop you from asking about that funding. Now, I think the thing that, you know, in my mind, which is difficult, is how that's different than maybe a plaintiff asking the same kind of business financing questions from a defendant, right? In terms of where are you getting your money, how are you financing this case, are you taking out loans to, you know, against property to fin-- you know, it-- those questions, I think, in interrogatories would be objected to by defendants in discovery, just like sometimes maybe the objection would be for plaintiffs. Now, the thing that I find to be also interesting is in discovery, the questions are asked of the client, not of the law firm and the lawyers. And so I have a real question about at what point are we starting to ask people who are not involved in the dispute as parties like their financial information about how they conduct their business. And it raises the question again about the defense firm or the financial arrangements for their firm. You know, it just seems very infinitely regressive. And information is power. And I think, I think there needs to be a real look at how this would affect the power dynamic in a lawsuit too.

ROUNTREE: I appreciate that response. Just so we knew who all the players were, so I wanted to ask that question, but thank you so much. And I appreciate the input to that. A lot of this is not prevalent to Nebraska. A lot of the information that's being presented has been maybe worldwide, U.S. wide numbers. But when you break it down and

look at what's happened to us here in Nebraska, sometimes the numbers get to be greatly reduced. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: I was not familiar until this afternoon about some of the arrangements that we've heard with law firms getting funding from some of these major companies. I don't begin to know what the arrangements are for how that's paid. I'll presume maybe it's a percentage of the contingency fee recovery, and maybe you can enlighten me on that. But the question that comes through my mind is, are there or are there not ethical considerations if a law firm is receiving funding from a nonlawyer and sharing fees in some form or fashion? And again, I apologize, I don't know what the answers to those underlying presumptions are.

JENNIFER TURCO MEYER: Yeah, I think that's a really good question because I, I have never, like, handled a multi-state civil, you know, civil action involving thousands of plaintiffs, right? And that in my mind is when maybe a firm to sustain a claim wants to take on funding. And I have never heard or been privy to anybody saying that as an attorney, they had to do things in a litigation subject to taking financing or funding from someone else to fund their business and their case. So I, I don't know because I've never done it and I've never really heard of it. I, I do know that a lot of times it's, we give you a percent-- we give you an amount of money, and we charge you interest. And so, you know, from that perspective, I start to kind of wonder how that's any different than financing something on a line of credit or, you know, yeah, like what's the, what's the difference, really? And maybe the difference is if it's really happening that these big firms are getting big funding and they're telling them what to do. But then I start thinking to myself, why does that matter? It's not happening here. Like, it's just not. And so it's just tough for me to answer those questions because it's just not something that I've ever heard of or I've done myself.

HALLSTROM: Thank you.

JENNIFER TURCO MEYER: Yeah.

BOSN: Senator Storer.

STORER: Thank you. Chairman Bosn. Thank you. I guess to follow up on that question, is it possible, as I've said, listen, how do we know it's not happening if we're not actually getting access to that

information? If we're not-- if that's not-- if that information can be withheld?

JENNIFER TURCO MEYER: Yeah, I think very candidly, when this sort of thing comes up with all-- it's a small community, we all start talking to each other and asking each other like, does anybody oppose this? Does anybody have a problem with this? Is anybody using this? Or in our organization, we as a group, we're conservative lawyers, you know, speaking compared to other places. And like we don't encourage our clients to take on litigation funding. Actually, we tell them it's predatory and we don't like it, or we don't have big funding groups funding, like, our continuing legal education luncheon, you know, like there's just not a lot of activity of those groups among our group members for me to be able to tell you, oh, this firm does it, and this is why, and this is how it works, because there's just, it's-- you know, I think the reason why I started out with this as a solution in search of a problem is every time we tried to find information about why this needs to happen in Nebraska, we're just having a really hard time finding it because it's just not something that-- there's --it's not going on a lot.

STORER: And I guess just to-- and thank you. To follow up on that a little bit, and I understand that sometimes we, we look for, like you said, a solution to a problem that doesn't exist. But sometimes it's also wise to be proactive when we know that this is happening in other places. I mean, as I understand, this is indeed happening across the nation. Would that be fair to say?

JENNIFER TURCO MEYER: I mean, if we rely on the people who are saying that, yeah. Yes. I mean, if we take them at what they're saying. The only thing that's kind of curious to me, and this is just the lawyer part of me, is like nobody is really explaining how these things work. Like they're relying on the lawyers to do it and they're not really telling you specifics about things that have happened here. And so me, in my mind, it's kind of a question, question everything sort of a thing. And I just-- I'm-- I, I think we've had a misconception up until I came up here and barely talked about this amount that I know about it. I mean, I don't even know if we knew what non-recourse litigation funding was and who takes it and how it works. And so I think it just begs the question, if the people bringing the bill think it's so important, we need them to explain to us why, and what the issues are, and it be more about Nebraska than about preventing something that maybe could happen. And I just honestly, I just have a problem with asking any business to start disclosing a bunch of

financial information. I think defendants would have a problem with that, just like plaintiffs should have a problem with that.

STORER: And the only-- I guess my only, and there may be others yet that can answer this question, but this would be a unique form of financial information in the fact that it's more of an investment, so to speak. It's an investor. And somebody else, maybe, we can answer that later, too. But, but it seems like this is more of an investment into that litigation, not just how they're funding their costs.

JENNIFER TURCO MEYER: I mean, maybe. I, I look at it more like a loan if there's no control over the outcome. Right? And so that's what the question in my mind that I cannot answer for you, and I'm not sure anybody can. If there really is control over the outcome in the decision making, perhaps there's a vibe of investment there. The way I look at it, if there's no control, is there loaning somebody money and expecting a certain return percentage, and that happens every day, all the time. And it's not something that's required to be disclosed in every single case on either side. So.

STORER: Thank you.

JENNIFER TURCO MEYER: But I don't have enough information to really answer that investment part of it.

STORER: OK. Thank you.

JENNIFER TURCO MEYER: Yeah.

BOSN: Senator Hallstrom.

HALLSTROM: I'm just going to make more of a comment since you raised the issue about why are we going to all this fuss about it. My recollection is when we passed the original non-recourse civil litigation funding bill, there was none of it going on in Nebraska, but it was happening elsewhere, and we wanted to be proactive and, and preemptive and put something on the books. So I think there are reasons to do that from time to time.

JENNIFER TURCO MEYER: Yeah. And I think that's probably why there wasn't-- I mean, I don't remember in the time frame us opposing it necessarily because it just maybe doesn't affect our members as much. But I do see it coming from other states. I would agree. I get cases from other states and, and they'll be client funding, not law firm funding, but client funding.

HALLSTROM: Thank you.

JENNIFER TURCO MEYER: Yep.

BOSN: I guess if there's no other questions, just I think part of my concern is that I'm-- my, my concern over the it's not happening here, this is a solution in search of a problem. But the flip side can then be true. If this isn't a problem and this is a solution, we can fix it before it's a problem.

JENNIFER TURCO MEYER: Yeah. And I think what I'm trying to say is the cost of fixing a problem that isn't there will be requiring a disclosure of information that I don't think would-- the defendant would reciprocate. I don't think they would want to disclose the same kind of information. So it's still that idea of when I get injured in a vehicle and I hire an attorney, like, what do I, by filing some sort of claim, like, what do I have to disclose to them? And there are limits on that, right? And so for me, it's not a matter of why not do it. Me, it's a matter of we're going to require disclosure of information that typically, you know, maybe a judge would say is not appropriate if they were given the discovery question and they were allowed to answer that. So it's not just it's not going to hurt anybody or hurt anything, let's just do it, it's there is probably an issue with requiring disclosure of information if it's, it, it's, not harming people, like there's no harm coming out of it.

BOSN: But, but what you're saying is, is it's not happening. So there is no disclosure then, because you're saying we don't need this because it's not happening.

JENNIFER TURCO MEYER: Right.

BOSN: But if you require it, it still isn't happening. So there's no disclosure because you're just, your answer, then, in those discovery questions would be, we do not have this. It is not happening in Nebraska.

JENNIFER TURCO MEYER: Sure. That I would agree with you. Like the answer for me would always be no, and I wouldn't have to disclose it. But the idea that it's going to give an, an-- the knowledge of that could be used to, you know, in a negotiation, it could be used as power in terms of the relationship between the two parties and how they resolve their dispute. I mean, I'm-- or the idea that lawyers into-- what if I say no and they think that I did and then they have me disclose my, my bank information like, three years of my banking

records, like there's just a problem with the idea that to solve something that's not happening, we're going to safeguard it and then not understand what we're giving up in exchange, right? That, that once we do this, then what's the next thing? So I-- it's just tough for me to say, let's solve a problem that doesn't exist and when we don't know that it's actually going to ever come here and be here. So.

BOSN: Well, I guess I, I, I respectfully disagree, because when I look online at this third litigation, third party litigation funding, everything you look at online talks about how it's exploding. It started in the mid 90s in Australia, spread across the globe, the United States within a decade, and in recent years, explosive growth, multibillion dollar industry estimated $15.2 billion in commercial litigation investments in the United States alone. It's coming. I mean, it's, it's-- if it's not here today, we can't fix it until we bring this bill back next year is what you're saying then essentially, let's wait until and see if it comes next year or we can have a plan in place and address an issue that based on that explanation alone, I mean, I don't think the Institute for Legal Reform is lying, I think this is a solution to a problem that we're being faced with. And so we're asking for your input on how we can solve that.

JENNIFER TURCO MEYER: Yeah, I guess I think what maybe we're discussing is the problem-- I don't see a problem with somebody using litigation funding. I don't, I don't see a problem with that. I don't see why that's harmful. I think, you know, kind of like Senator McKinney had alluded to, if plaintiffs are getting funding so they can last through litigation to get fair compensation, that's not a problem. I don't know why--

BOSN: So stipulated.

JENNIFER TURCO MEYER: Yeah. Yeah. And I don't know why a law firm getting a third party loan to fund, you know, maybe a class action based on, you know, water being inappropriate for children in Michigan, like how that is a problem.

BOSN: I totally agree, I--

JENNIFER TURCO MEYER: Yeah, so I just don't know what the problem is.

BOSN: The problem is, is those third party investors have a seat at the table telling me I can't settle my claim when I want to, because they now have a financial stake in the claim. And so if what you're saying is, OK, you would be fine with us keeping it secret, but then

they can't even take any voice in terms of whether or not plaintiffs and defendants come to a settlement agreement, I think they'd scream running away, right? They want to get their money back. And so that's where it lies for me, is if, if the plaintiff isn't the sole decision maker in terms of whether or not, with the advice of their counsel, they should settle these cases, and we're now giving them an ability to be the voice in the room. That is where the problem lies.

JENNIFER TURCO MEYER: And that, I think, is where I'm saying I don't-- I've never heard of that. And in my one experience, the funding company literally said, let us know when thing is done, when it's done, and pay us. And so, and if you don't pay it, then they collect against your client. And so I've never, ever heard of a funding company having a seat at the table. And that's why I'm questioning what the problem is, because I just don't, I don't, I don't have any experience or any evidence to show that that's happening. It didn't happen in my case, that's for sure, you know.

BOSN: That's fair.

JENNIFER TURCO MEYER: Yeah.

BOSN: OK

JENNIFER TURCO MEYER: So.

BOSN: Senator Hallstrom.

HALLSTROM: I've just get something about consistency and hobgoblins that's going through my mind, but I can't capture the essence of what I'm trying to think about. But you're testifying on behalf of the trial lawyers, correct?

JENNIFER TURCO MEYER: The Nebraska Association of Trial Attorneys, yes.

HALLSTROM: And we heard testimony from a witness in an earlier bill today that you said it's not going to be fair if we have to disclose this, and and then when we ask them for their financial information, they're not going to give it to us. But in a, in a bill earlier today, I'm pretty sure I heard that it was OK for us to get information regarding one violation of law, which is drunken driving, which may have the potential to enhance a jury verdict, but not OK to get information regarding another violation of the law, which is a seatbelt violation, which might enhance a reduction in the damages.

JENNIFER TURCO MEYER: I have to make a distinction for you. Obviously--

HALLSTROM: Please do.

JENNIFER TURCO MEYER: Most of the time. If you think of, of the legal system in discovery, it's like a funnel, right? And so I think in every case, typically you're going to have evidence that's disclosed to the other side, whether it's somebody is wearing a seatbelt or not, and you're going to try to discover whether a driver is drunk. And the parties may very well know those facts. What we're talking about is when you get to the bottom of the funnel, that's what's admissible and relevant in court. And we have all these rules about what's admissible and what's not based on, you know, what's prejudicial, unfairly prejudicial, and what's not. So I just want to make the distinction that I think everybody is going to know if somebody is wearing a seatbelt or not, or whether or not the person who was driving drunk. Like that stuff comes out. The question then is, is how does the law determine what goes to the jury and what doesn't and why? And I think the problem with the seatbelt versus drunk driver is if somebody is drunk and that's their reason why they plowed into somebody going 87 miles an hour in a giant commercial truck, that's relevant if they're saying it wasn't their fault. Now, once they say, our fault, we're not allowed to bring in the drunk driving, even though we know it happened. And so I just think we just have to be careful. It's not like a-- I really think everybody's saying we trust juries, and everybody's saying it should be fair. And so that example is really about admissibility to the jury and not about who gets to, who gets to find out what.

HALLSTROM: So once they've admitted that liability and you say it's inadmissible, then we shouldn't worry about other theories of negligence coming into play because I've already admitted liability?

JENNIFER TURCO MEYER: I don't-- in terms of other theories of negligence, so if you get into a car wreck, the theory is they breached a duty of care, there's no-- against the driver, right? And vicariously, because somebody employed the driver, then that means they're liable too. Other types of negligence claims like negligent hiring or something like that, no, I don't think once they admit liability, that that-- and this goes to your bill, right, sir?

HALLSTROM: If it's not, I wouldn't have asked the question.

JENNIFER TURCO MEYER: Yeah, I know. But I'm just saying, I don't think the question is-- I don't think you take away another theory of liability because somebody admitted a driver, you know, crashed into somebody and violated the rules of the road, so.

HALLSTROM: That's not what I understood you to say earlier, but go ahead. Thank you.

JENNIFER TURCO MEYER: Yeah, yeah, yeah, yeah. Thank you.

BOSN: Senator Storer.

STORER: Thank you, Senator Bosn, I guess I have a-- and this is not to be at all argumentative, but just maybe, hopefully for some clarification of the conversation of is it here, is it happening? But a quick search on the Secretary of State website, there are currently five active non-recourse civil litigation companies licensed in the state of Nebraska. So whether they're doing business here or not, I would presume they would seek that in order to do business here.

JENNIFER TURCO MEYER: I think they're required to. Yeah.

STORER: Yeah.

JENNIFER TURCO MEYER: Yeah.

BOSN: Thank you for being here.

JENNIFER TURCO MEYER: Thank you so much.

BOSN: Next opponent. Welcome.

ERIC SCHULLER: Thank you. My name is Eric Schuller, E-r-i-c S-c-h-u-l-l-e-r. I'm the President for the Alliance for Responsible Consumer Legal Funding, a large trade association represents the companies that offer consumer legal funding. This isn't my first time here. I was here in 2010, and I actually wrote the original bill. We as an industry want this industry-- as an association, rather, want this industry regulated. And we chose Nebraska as one of the first states to do this. In fact, it was the third state in the country to implement regulation on this industry. And we're not opposed to it. Our concern with the bill as drafted is on the disclosure is not the fact that having disclosure is the mechanism for it. What we have actually talked with APCIA, Institute for Legal Reform, and other like-minded organizations is kind of-- is a standard which we passed in Indiana this past year, which is upon request that you will within

30 days say yay or nay, yes. Mrs. Jones has one of these types of transactions. And then it follows the normal course of discovery in it. And that's what we're really asking for here, is keep it par-- on par-- parity with the rest of the country, and what-- and where this, this situation is leaning towards. The fact that it's on automatic disclosure of a financial tool that a consumer has is a little bit troubling. It's the same thing as saying you have to automatically, as soon as you file a lawsuit, turn over your bank account, or you have to turn over your credit card statements, because a lot of times people put household expenses on their credit cards, or they may take out a line of credit from their household. What we're just saying is upon request that it be turned over, and then it follows the normal course of discovery. One of the things I'd like to do is kind of clear up some of the, the issues that have been surrounding this, and I'm happy to answer any more questions on this. There are two distinct products here, and they are unfortunately getting mucked up together. What we do is give money to a consumer, typically $3,000 to $5,000 to make sure they cover their household expenses. The other end that we're talking about is litigation financing. And that's where those funds are used specifically to finance the litigation. Those transactions start at $3 million. So just a little bit of a difference. As far as the, the companies that you're talking about, the five specifically that are registered here having influence in the case, in statute, and this is the actual statute, it prohibits that from happening. And we actually work with Attorney, at that time, Attorney General Bruning, in drafting that legislation and allowing his office to have the ability to come in and slap somebody if they do violate that. If a company comes in and says, oh no, Mrs. Jones, you can't settle today, I don't, I'm not making enough profit in here. They can't do that by statute. And every single statute we have passed across the country, and I welcome you to go to our website, on the lower right hand corner, it states it, that there is a hallmark of every single statute we passed is that the funding companies cannot have a say in this whole [INAUDIBLE] process, and I'm happy to answer any questions.

BOSN: Were you finished? Because--

ERIC SCHULLER: Yeah, that's--

BOSN: OK. And you are the first of those two groups. You're the money to consumers, not litigation finance.

ERIC SCHULLER: Correct.

BOSN: OK.

ERIC SCHULLER: Do you know, does that same language apply to the litigation financing?

ERIC SCHULLER: In Nebraska? No. And to my, and to my knowledge, there are no statutes other than Louisiana and in West Virginia, where there is disclosure, and also Indiana. In Indiana and Louisiana, it's, it's the prohibiting of foreign investment firms. And in West Virginia, it is similar type language that you're seeing here, but it's on the commercial side and no one's operating there.

BOSN: OK. Senator Hallstrom.

HALLSTROM: And does your company take an assignment of a potential amount that you're entitled to recover from your advance, from the actual recovery of proceeds, so it is an assignment of, of a share of the proceeds that you covered?

ERIC SCHULLER: Yeah. Just to be clear, I represent the trade association, so not a specific company. But in the statute it does allow the companies to take an assignment. And it is, it is not a percentage of the case is clearly delineated in the contract what that fixed amount is. We cannot take a percentage of the case because it's an old English thing, champerty and maintenance, where you cannot take a percentage of-- and then also fee-- it goes on, it bumps, I think, your question earlier about fee splitting. It bumps up against that if we take a percentage of the claim.

HALLSTROM: but you, you are clearly defined under this--

ERIC SCHULLER: Yes.

HALLSTROM: --statute, the same as the larger companies.

ERIC SCHULLER: In, in that, in that instance. But it's the-- how the proceeds are used is totally different, when we're clear that the funds, and in our contracts with the consumers. The funds we provide the consumer cannot be used to further the litigation.

HALLSTROM: Thank you.

BOSN: Senator Storm.

STORM: Thank you. Thank you. So what-- you say it's like a percentage of-- say you're going to loan $3,000 to somebody for a household-- is that what I understand?

ERIC SCHULLER: Right. We're not, we're not taking a percentage of the case.

STORM: No, but what percentage are you charging, you know?

ERIC SCHULLER: Typically fees are probably in the 40s.

STORM: So 40% interest on top of that.

ERIC SCHULLER: But you have to remember, too, we don't ask for a consumer's credit. We don't ask for their job history. We don't ask them if they have any money in the bank. We don't ask them, what is your credit score? We're not getting any money along the way. And about 10% of the time, our companies get absolutely zero back, and about 30% of the time, we get less than contracted amount. These are very high risk financial tools. And so we may give someone some money today. We will not realize that for probably two to three years. So it's a very high risk product.

STORM: Is that-- would you say it's the average is 40%? Are there some higher than that?

ERIC SCHULLER: Some may be higher. And the, and-- what the company's allowed to do is basically risk assess, the same thing as a property casualty insurance company. If you have two drivers. Both drive a 2021 Ford Explorer. One has had three DUIs and four speeding tickets in the last seven years, the other one hasn't had anything in the last 30 years. Are they paying the same amount for car insurance? No. They're risk assessing which one's more, and the same thing with this. But we are clear on in the statute we have here, the consumer and their attorney knows what the transactions are right up front. And what's also in the statute is if their attorney does not acknowledge and sign off on the transaction, it doesn't happen. This is the only financial product out there that I know of, just to get $500, you have to have an attorney say, this is OK for you to do. In Nebraska and I think most states you can go and get a $500,000 mortgage and you don't have to have an attorney there at closing saying this is OK for you to do.

STORM: OK. Thank you.

BOSN: Am I understanding the amendment that you proposed would if it's disclosed upon request would preclude you from opposition, you would--

ERIC SCHULLER: Take me out of the bill.

BOSN: OK. Thank you. Any other questions in light of that? Thank you for being here.

ERIC SCHULLER: Thank you. Appreciate it.

BOSN: Yeah. Next opponent.

RACHEL SUHR: My name is Rachel Suhr, spelled R-a-c-h-e-l S-u-h-r. I'm here testifying on behalf of my sister, who lives with my parents in Senator Bosn's district. My sister cannot testify on her own behalf because she suffered a traumatic brain injury ten years ago and that affected her ability to communicate. She is 16 months older than me. When my sister was just 23 years old and a senior in college, she suffered a catastrophic brain injury caused by the responsible party. Were it not for the extraordinary work of emergency, emergency personnel and her remarkable trauma team, my sister would not have made it. Her brain injury robbed her of her bright future. My sister was on track to graduate in four months and become a teacher. She had her post-college career meticulously planned out. My sister's traumatic brain injury changed all of that. She requires round the clock care and monitoring. My parents and I have been her primary care providers since her injury. She now has a hired caregiver three days a week providing daily care in addition to what my parents and myself continue to do for her. While she has made a miraculous recovery. Her brain injury means she will never have the life she meticulously planned out. My sister was fortunate in one sense. The responsible party had sufficient insurance and a desire to get her resulting personal injury dispute resolved in good faith. My family had no interest in filing a lawsuit. We met as a family many times about how to handle the claim. We prayed for guidance often. We ultimately instructed our attorneys to make every effort to resolve my sister's legal dispute without filing a lawsuit. That is exactly what happened. If there were a two year statute of limitations in place, then it was likely would have been to file a lawsuit. We would have had to do it within those two years. My sister's doctors told us it would take at least one year from the date of injury to determine what her long term recovery would look like. She continued to show improvement beyond that one year time frame. We were fortunate to get my sister's dispute resolved in less than two years. Had there been a two year statute of limitation in place at that time, that likely would not have happened. Instead of working with the other side to resolve the dispute, our and our attorney's efforts wouldn't necessarily have had to focus on preparing and filing litigation to ensure we didn't jeopardize her

claim by waiting too long. A two year statute of limitations would unquestionably have caused an enormous amount of stress and heartache for our family at a time when I can tell you from experience that we were suffering from enough of both. The first two years were so important to her recovery that all I wanted to do was focus on her at that point. We were grateful that my sister's dispute was able to be resolved behind the scenes and in a way that placed the least amount of stress on our family as possible. Future injured people and their families should be afforded the same opportunity. Shortening the statute of limitations will not allow that to happen for a lot of people. I sincerely appreciate being able to speak with you today. I urge you to vote no on LB199 because LB199 shortens the statute of limitations.

BOSN: Thank you. Any questions for this testifier. Thank you for being here--

RACHEL SUHR: Thank you.

BOSN: --and thank you for sharing your story. Next opponent?

TIM HRUZA: Good afternoon, Chair Bosn, members of the Judiciary Committee. My name is Tim Hruza, last name's spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in opposition to LB199. I do want to take a moment to thank Senator Sorrentino for our conversation about this bill ahead of time. And, and just to, just to clarify my appearance here today on behalf of the association, it is with respect primarily to section one of the bill which deals with the two year statute of limitations that you just heard the previous testifier test about, testify about. I've talked to Senator Sorrentino about it in terms of where, where we come from. But from the association's standpoint, I think a lot of our conversation has surrounded one of our, our main focuses is a mission from the association, which is to protect and promote the administration of and access to justice. I think in discussing whether or not it's appropriate to reduce the statute of limitations, you have to look at fairness for both parties, right? The theory behind a statute to prevent a party from bringing a claim is-- the reason it exists in the first place is to protect the defendants, right? From having to defend against claims or actions that might arise that they might not be otherwise prepared to as a result of the passage of time. Whether or not four years is the right answer or not, it's our standard in Nebraska, and it's what both attorneys, injured parties and defendants have come to expect. Making a change like this, and particularly cutting it to two years, raised a lot of questions for our membership,

right? Things like the fact that we lack rural attorneys in several parts of the state, from an access to justice standpoint, how easy is it to find an attorney to help assist you in navigating a potential claim that you might have after you've been injured? Sometimes in rural areas, it might take a long time to realize that you should call an attorney, right? It's a little bit different, and I think we focus sometimes on what happens in the Lincolns and Omahas and a little less about what happens outstate. I think the other thing that our conversation really focused on, and you've heard a little bit of testimony about it, is the idea that a rush to filing, so to speak, right? A failure to give the parties time to sort through some of the initial discovery things that, as you've heard here, happens sometimes informally, whether at the assistance of insurance companies or by the discussion between the parties after a demand has been made and settlement begins. And, and I think there's just a concern that you'll have a rush to file a case to preserve your claim when it might otherwise be settled prior to the need to do that. With that, I'm open to any questions that you might have. As I've indicated to Senator Sorrentino, we're open to discussion too about what that, what that number should be or what it looks like moving forward.

BOSN: Any--

TIM HRUZA: Thank you.

BOSN: Any questions for Mr. Hruza? Senator Hallstrom.

HALLSTROM: If, if a four year statute balances the interest of plaintiffs and defendants alike, wouldn't a five, or a six, or a three year, or two year maintain that symmetry?

TIM HRUZA: I think I have to admit to you, Senator, that there's probably not a science to what that right number is. And that's why, as you've heard testify today, states have different approaches, Nebraska has different approaches. Our standard generally is four years. There are exceptions to that in certain instances. And with each of those that we've determined, I have some of them written down here, I mean, ten years for a title action. There are-- there's different reasons that we've settled to those things, right? With that length of time. I think that there's, there's a point at which you have to decide from a public policy standpoint where you're going to determine that the interests of both parties, the defense and the plaintiff, is, is balanced. Whether four years is the answer, I don't know that I know that, and I don't know that we have consensus among our, among our members. I think you've heard today from several of our

members, right? Both from the defense and plaintiff side. I do think, though, that there is a clear consensus from us in multiple discussions that a reduction of half without some further thought or some further conversation about give and take is, is concerning.

HALLSTROM: Thank you.

TIM HRUZA: Thank you.

BOSN: Thank you for being here.

TIM HRUZA: Thank you.

BOSN: Next, Opponent. Anyone wishing to testify in a neutral capacity? Sorry. Were you in opponent or in neutral capacity? I maybe jumped the gun and got to neutral before you got a chance to get up.

WILLIAM RASMUSSEN: Oh. Pardon me, what was that?

BOSN: Are you here in the neutral capacity or as an opponent.

WILLIAM RASMUSSEN: On the opponent, opposing it.

BOSN: OK.

WILLIAM RASMUSSEN: OK.

BOSN: Thank you.

WILLIAM RASMUSSEN: So, good afternoon Chairman Bosn and Judiciary Committee. I'm here to testify on changing the statute limitations from four years to two years. There are many reasons this bill should not be passed. It only mentions--

BOSN: Could I just have you state and spell your first and last name for the record?

WILLIAM RASMUSSEN: Oh. Sorry about that.

BOSN: That's OK. You're, you're, you're fine.

WILLIAM RASMUSSEN: William Rasmussen. William, W-i-l-l-i-a-m, Rasmussen, R-a-s-m-u-s-s-e-n. The only one that's going to benefit is insurance companies. I drove semi, and had an accident back in 2021 out in western Nebraska. Truck came across the line and pretty much, well, totaled my trailer and five other vehicles collided with them. A lot of people got injured. I suffered a cervical injury, had to have a

fusion in my neck. And still this day I have chronic neck pain, back pain, head pain. I was off work for eight months. Liability insurance company from the truck that caused the collision, employer's liability insurance company also didn't do anything for quite some time, along with workman's comp, and they took almost eight months to do anything with my injuries or anything. They kept denying me all my health care. It took so much time, and took even a year after that for the other insurance company to kick in to help out. If this bill passes, it would cause some-- someone in my shoes to deal with insurance companies, find in an attorney filing claims, then, you know, just trying to battle with the insurance companies and phone calls with attorneys. This bill jeopardizes access to the courts to address the wrong and speeding up the process when injured. And Nebraska, like me, shouldn't have, have to worry about that while I'm trying to survive and recover at the same time. Only going from two incomes to one income and waiting sometimes up to a year to even get seen, you know, or, or we have anything done because everybody keeps fighting over it. And, and just not my situation, I know another young man that's-- he's battled it and he's in three years and still has nothing going in the courts after Iraq. So that's kind of the reason why I stepped up and come here. So.

BOSN: Thank you very much for sharing your story. Any questions from the committee? Seeing none, thank you for being here.

WILLIAM RASMUSSEN: Thank you.

BOSN: Are there any other opponents? Good afternoon.

TRACIE RASMUSSEN: Good afternoon, Chairman Bosn and Judicial Committee memm-- Committee members. I'm sorry. My name is Tracie Rasmussen, T-r-a-c-i-e R-a-s-m-u-s-s-e-n. It's a privilege to be here. I echo my husband's sentiments. This bill only benefits insurance companies. By pushing the statute of limitations from four years to two years, insurance companies benefit by significantly reducing the window of time in which a family like ours could file a claim, giving us, us a shorter time for investigations and evidence gathering. My husband's drove a semi for the last 28 years for a living. His accident on I-80 that night, being sideswiped by another semi could have killed him, not to mention five other Nebraskans. Willie suffered a cervical injury that it resulted in a surg--- in a fusion, and still has chronic pain. Though he was off work for eight months while liability insurance from the company's truck that caused this collision, his employer's liability, my health insurance, and work comp insurance, all of which denied medical care and payments of medical bills during

this time. None of this was being paid, and we were a one household-- one household income being mine. During this time Willie was dealing with his pain and waiting for surgery, I was trying to hold it all together for our comp-- for our family, keep our heads above the water while taking care of him and our daughter. If this bill should pass, it would be-- add stress to having to deal with the insurance companies, medical decisions, financial decisions, and having to fight the legal process significantly earlier, especially when a spouse who's-- who was injured and having to make decisions while they are not mentally or physically able to do it. This bill also jeopardize, jeopardizes access to our courts. Speeding up the process only helps the insurance companies. Nebraskans like me, like us, should not have to worry about trying to survive to get medical care for a spouse and make sure we get to court on time. I simply request that you do what is right with compassionate and oppose this bill. Thank you.

BOSN: Thank you for being here and sharing your story. Any questions for this testifier?

TRACIE RASMUSSEN: Thank you.

BOSN: Thank you. Next opponent? We'll move on to neutral testifiers. Anyone wishing to testify in the neutral capacity? And while Senator, seeing none, while Senator Sorrentino is making his way up here, I will note there were five proponents, five opponents, and no neutral comments submitted for the hearing record. Welcome back.

SORRENTINO: Thank you, Chairwoman Bosn and members of the Judiciary Committee. I will offer a simple closing on just a few points. First, there was a reference by one of the parties who oppose LB199 that I would like to clarify. It was actually my testimony that referenced a major carrier that had 140 cases filed, and within two years all but 8.6% of the lawsuits were brought. During my testimony, I did not identify that carrier as Werner Transportation, so I just wanted to state that for the record. Second point, it's been stated on more than one occasion that the statute of limitations on filing medical malpractice claims is two years, one of the few areas that I have practiced in, and that is correct. And I would just ask that you give that a great deal of weight. That is a very, very suitable, I think, comparative. Number three. For the record, all parties in Nebraska can agree to toll the statute of limitations to add defendants, and we would most probably be open to adding a clause to toll the statute if at least production-- productive discussions are taking place. Fourth, the bill is drafted in a current manner because it was assumed that the existence of a financing arrangement would be disclosed at the

outset with other automatic disclosures. But we're not opposed to clarifying that point, as discussions between Senator Hallstrom and some of the opponents and proponents would indicate. And finally, I believe it was Senator Bosn and Senator Storer who may have brought this up. The Nebraska Secretary of State's website lists five active non-recourse civil litigation company licensees in Nebraska. For the record, one is domiciled in New Jersey, two are in Illinois, and two are in Florida. None of them are in Nebraska. That's the end of my closing. Any questions?

BOSN: Any questions? Senator Storer.

STORER: Thank you, Senator Bosn. Just for clarification, Senator Sorrentino, did you say currently the state statute for medical malpractice is two years?

SORRENTINO: Medical malpractice, yes.

STORER: OK Thank you.

BOSN: Thank you for being here.

SORRENTINO: Thank you.

BOSN: We will now move on to LB341 with our very own Senator Hallstrom. Before we get started, can I see again, just because it's helpful for the next bills, who intends to testify on LB341 in any capacity? One-- Thank you, you're anticipated, two, three. Got it. Thank you.

HALLSTROM: Chairman Bosn, members of the Judiciary Committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, and I'm here today as the state senator representing Legislative District 1. LB341 would adopt the Nebraska Statutory Thresholds for Settlements Involving Minors Act, a model act from the National Council of Insurance Legislators, otherwise known as NCOIL, a legislative organization founded in 1969 and comprised of legislators serving on state insurance and financial institutions committees across the nation. I was asked to introduce this legislation by the Nebraska Insurance Federation. LB341 addresses a process issue related to settlements involving minors. Under current law, if a minor is to receive a settlement, parties must go to court to establish a guardianship or conservatorship for the minor and get court approval before the minor can receive the settlement. LB341 would adopt a permissive statutory process that would permit minors who are to receive a settlement of $35,000 or less to receive the settlement without having to go to court. Under the provisions of the

act, a person having legal custody of the minor may enter into a settlement agreement with a person against whom the minor has a claim, if a conservator or guardian ad litem has not already been appointed. The settlement, not including medical costs, the attorney fees, and cost is $35,000 or less, and if the person entering into the settlement agreement for the minor attests via affidavit that the minor will either be fully compensated, or there is no practical way to obtain additional amounts of settlement. If the above conditions are met, LB341 spells out how the settlement is to be paid, depending upon whether the minor is represented by an attorney, has no attorney, is a ward of the state, or is paid by an annuity as opposed to being paid by cash, check, or draft. Subsection 4 of section 3 provides the necessary protections on how the settlement may be used until the minor reaches the age of 19, which would be similar, in effect, to having a conservator or guardian appointed by the court. The remainder of the bill provides that court approval of a settlement is not necessary if the agreement is in compliance with the provisions of LB341, necessary liability protections for those persons acting in good faith under the provisions of LB341, and finally LB341 makes it clear that the court guardianship, conservatorship, and approval process remains an option if a party so desired. The current process involving minor settlements is needlessly complicated and a waste of valuable judicial resources. Adoption of LB341 will provide a faster, cleaner process for smaller amounts while still providing needed protections for minors involved in settlements. I have distributed AM176 which is attached to my opening statement. Those are fairly modest changes. We worked with the Trial Lawyers Association with regard to changing the amount of the settlement from $35,000 to $40,000. That conforms to a bill that was adopted by the Legislature last year with regard to amounts that can be deposited on behalf of a minor without court intervention or involvement. It also removes unnecessary language regarding district court approval of settlements and removes a provision that required a notice to the minor when they're not represented by an attorney, which was superfluous. With that, I'd be happy to address any questions, and would ask the committee to advance LB341 to General File with the proposed amendments.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you. Just a quick question. How would somebody become a minor's representative if no conservator or guardian ad litem is appointed?

HALLSTROM: It, it might be a parent. Even, even under current law, Senator, if if a minor gets a settlement below the-- obviously below the age of, of majority, the age of 19, even with the parents involved, an insurance company provides a settlement for some type of, let's say, an automobile injury, something of that nature, the parents don't get automatic control of that money. There would have to be a conservator or a, or a guardian appointed. And so that would be how the process currently works. This with regard to those amounts of $40,000 or less as proposed under the amendment, could go into a, a uniform transfer to minors account, but there would be protections on how those funds could be used. I've been involved with guardianships and conservatorships over time. For example, one of the limiting factors is even with a parent being appointed as a guardian and conservator, the court typically is not going to approve the expenditure for funds by that guardian or conservator who happens to also be the parent if they're purchasing necessaries for the child.

McKINNEY: Would the parent be required to have an attorney?

HALLSTROM: The, the, the, the bill, there's no requirement to have an attorney. The, the bill provides for the different provisions that would apply if you do have an attorney, if you don't have an attorney, if you're a ward, and so forth.

McKINNEY: I guess my concern is a parent that isn't-- that doesn't-- that don't fully understand, and agrees with something without a rep-- an attorney or a representative. That's just my biggest concern is a parent, although they are the parent, agreeing to something without legal representation. That's just my biggest concern.

HALLSTROM: Yeah. It's a, it's a, it's a fair comment. I think you'll have some, some folks from, from both sides of the protective side of the aisle, both insurance representatives and those that might be representing minors who get settlements who believe that this is a balanced bill and it provides necessary protections.

McKINNEY: All right. Thank you.

HALLSTROM: Thank you.

BOSN: Thank -- You're staying to close? First proponent.

HALLSTROM: I'm not going anywhere.

BOSN: Welcome.

ROBERT BELL: Good evening. Chairwoman Bosn and members of the Judiciary Committee, my name is Robert M. Bell, last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, the state trade association of insurance companies. I've have also been asked to add the Nebraska Bankers Association to the record on this bill. We are in support of LB341. First, let me express my sincere appreciation to Senator Hallstrom for introducing LB341 at our request. It would adopt the Nebraska Statutory Thresholds for Settlements Involving Minors Act, which is a mouthful. I think Senator Hallstrom did a fantastic job of describing LB341, so let me just add a little bit of color to his testimony. As he stated, the model was from the National Council of Insurance Legislators, NCOIL, and was brought to the federation's attention by member company Shelter Insurance, who has been active in the passage of this model in other states in their, their regional insurers. So their territory includes Kansas, Missouri, Oklahoma, Kentucky, and Arkansas. Those are states that have passed the model. The legislation seeks to solve this issue of having to go to court to have a guardianship or conservatorship appointed and to get court approval of smaller settlements involving minors. And many of these types of settlements, of course, involve insurance companies. Like many parties to these agreements, insurance companies are interested in setting up claims-- in settling claims outside of court if possible, and LB341 sets up the necessary protections in statute to allow parties to avoid going to court to set up the unnecessary guardianships and conservators and seek unnecessary court approval when all the parties are more interested in settling the claim. LB341 does not eliminate the ability to go to, go to court if necessary and wanted by one of the parties so that avenue remains open if necessary. As the federation was seeking a sponsor and introduction, the bill, I've got to admit, was not as in good a shape as I would have hoped. So I appreciate the input of all the interested parties, and that amendment represents, that was handed out in it-- represents the involvement of other interested parties. And I am sure if you've worked with Senator Hallstrom in the past, or working with him on this committee, you know, he's very thorough. So I appreciate his comments and tweaks on this before we had it adopted, including the leveraging of the Uniform Transfer to Minors Act and fixing incorrect references. Also, the State Bar Association and Association of Trial Attorneys, as well as the Bankers Association, also added comment as well. I see I'm running out of time. We're certainly open to further discussions if further language is needed, but we think with this amendment it's in pretty good shape. So I appreciate the opportunity to testify.

BOSN: Any questions of this testifier? Thank you for being here.

ROBERT BELL: You're welcome.

BOSN: Next proponent.

MICHAEL LEAHY: Good afternoon, Chairperson Bosn and members of the Judiciary Committee. For the record, my name is Michael Leahy, L-e-a-h-y, and I'm a Nebraska attorney practicing at the law firm of Woodke and Gibbons in Omaha, Nebraska. I'm speaking today in support of LB341. Our law firm provides legal services in the areas of civil insurance litigation. In any given year, our firm and its insurance company clients settle many cases involving injuries sustained by minor children. The proposed legislation resolves a persistent issue regarding obtaining an appropriate lease for certain settlements involving a minor child. Currently, a parent is empowered to settle a claim below $40,000, but is unable to give an effective release as part of that settlement. LB341 addresses this issue by providing the means for the parent of a settling child to provide a valid release of the claim. In addition, this measure gives parents the choice to settle the claim by either, one, utilizing the current court approval process, guardianship, etc. or two, settling the case by way of the affidavit process and protections provided by LB341. In either case, the parents are always the ones who determine whether the proposed settlement is in the best interests of their minor. In addition to expanding parental choice, LB341 saves money by eliminating the necessity that parents and settling parties incur to present the settlement to court for approval; saves time for parents and the minor child by eliminating the necessity of waiting for a court date when the settlement can be presented for approval; third, reduces time consuming and costly strain on Nebraska courts and judicial resources; fourth, gives deference to parents by permitting them a choice of settlement methods; and five provides liability protection for those acting in good faith. LB341 also contains values-- valuable safeguards in terms of the process. First, by way of choice. The settlement by affidavit process and small personal injury claims for minors can occur only if both parties choose to settle by affidavit. If there is no agreement, the settlement then must be reviewed and approved by the court. Second, maintains protection of the minor's finances. Even if the affidavit method is used, the settlement funds still must be paid according to the Uniform Transfers to Minors Act, as Senator Hallstrom noted. And finally, the process distinguishes between small injury settlements and large. LB341 provides the affidavit option only for small personal injury settlements under $40,000. Current court review and approval processes will remain in place for large more serious

claims. In summary, Senators, LB341 streamlines and improves what is often a costly and time consuming process for Nebraska families and the courts, while simultaneously protecting the best interests of minor children who have been injured. We urge the Commission to approval LB341. And I would welcome any questions you might have.

BOSN: Any questions from the committee? Senator Rountree, followed by Senator McKinney.

ROUNTREE: Thank you so much, Chair. My question is very easy. About how many cases are we talking about that we normally process $40,000 or below that you're concerned about?

MICHAEL LEAHY: More than you might imagine, Senator. Frequently, if it's a little fender bender, let's say, a minor child might have an emergency room visit, maybe a little after care. Sometimes their medical bills are $1,500, under $2,000. So it's a, it's a relatively small amount, real money to a Nebraska family. But the process happens more often than you might imagine. Is the child-- had they received life's-- life changing inju--injuries in those cases? Probably not. But, but the parents don't really know. And so this, this process kind of eases, you know, the burden of having to get a conservatorship, providing notice to interested parties, and sometimes when parents are separated, or divorced, or going through some, some relationship strain, I have seen many times where, you know, one parent is kind of the lead on trying to get a claim settled. The other parent, sometimes for reasons having nothing to do with the child, are sort of playing games. And it, and it takes a lot of time to get everybody, you know, in front of the county court judge to get those approvals. This really does streamline that. And it d-- you know, I think, I do think, Senator, you'd be surprised how many really relatively small claims there are. We read about the big ones in the newspapers.

ROUNTREE: Thank you so much. Appreciate it.

MICHAEL LEAHY: Thank you, Senator.

BOSN: Senator McKinney.

McKINNEY: Thank you. I'm just curious, kind of following up from what I asked Senator Hallstrom about the parent that might not be as aware of just the legal system, legal problems and maybe don't know whether or not this settlement offer is good or bad.

MICHAEL LEAHY: And, and I was listening carefully when you asked that question to your colleague, because it's a good one. And it, it is

certainly the case that you have parties of differing sophistication. And what LB341 sort of has backing it is this good faith element that if the parties are executing this process in good faith, that the release that the settling party receives at the back end can be effective. If it's later determined that there's been some misuse, abuse, manipulation of a less sophisticated settling party, I think that would immediately call into question that good faith that would open doors for other avenues of recourse. I-- that, that's kind of the, you know, the best answer I was thinking of as I was listening to you ask the question to Senator Hallstrom.

McKINNEY: I understand the good faith piece, but I'm just thinking about the person who might take it and never know that it was a bad offer.

MICHAEL LEAHY: Yeah. You know, in those cases and, you know, a good offer versus a bad offer is kind of the eye of the beholder ultimately. But for-- I think that's also a why the, the measure is setting a ceiling on the amount that you can be utilized for this optional process. Where a child has received catastrophic injuries, or very obvious objective injuries that require, you know, surgery, hospitalization, things like that, more likely than not, you know, members of the bar are involved. And in those cases where those injuries are more severe, attorneys, sometimes on both sides of the case, want that conservatorship process. So there is court approval, restricted accounts for, for the funds, and annual reporting requirements.

McKINNEY: I get that. I'm just thinking of a parent in that situation, a parent that might not be in the best financial situation, end up in a situation the kid gets injured and you have an attorney saying, hey, we just-- we've got this $35,000 over here. You should take it. And there's no legal representation saying, hey, you should think about this. And they're really in a vulnerable position because their kid's hurt, they might be in poverty, and it's a $35,000 check just sitting there.

MICHAEL LEAHY: Yeah. And Senator, I would, I would guess I would say I don't think LB341 specifically addresses that overarching concern of, I guess, imbalance between, let's say it's a big insurance company settling a claim with a, a family that's experiencing financial strain. I think those risks and those dangers for the interests of the child are always present, far less so when you've got counsel involved representing the child and the family, and even further less so when you've got the county court involved overseeing a conservatorship or a

guardianship. Is this a substitute for conservatorships? I think the-- you know, Senator Hallstrom might-- would probably tell you no. Instead, what this is, is it kind of creates a two track system for those smaller settlements by way of an option.

McKINNEY: All right. Thank you.

MICHAEL LEAHY: Thank you, Senator.

BOSN: Any other questions of this testifier? Seeing none, thank you for being here. Next proponent. Welcome back.

TIM HRUZA: Hello. Good afternoon, Chair Bosn, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a. Appearing today on behalf of the Nebraska State Bar Association in support of LB341. I have the rare privilege sometimes of coming to you and telling you that during our discussion on this legislation, both the trial attorneys in the room and the defense attorneys in the room thought that this was a pretty good solution to what is a fairly common problem in terms of the-- just the ability and ease of settling some of these lower level amount claims. Senator Hallstrom, in his opening, excuse me, mentioned a tweak to the Uniform Transfers to Minors Act last year. I think that came by way of Senator Bosn's bill, LB1220, which was amended into LB1195 and passed that way at our request. As time passes, the value of the dollar, right, changes. And so we made some adjustments last year to deal with the inflation factor that you apply when you don't regularly routinely raise these. I think our lawyers who work in this area and have seen this and deal with clients who are trying to settle these claims, both on the insurance defense side and on the plaintiff side, see this as an option for people to get, get things resolved a little bit quicker with a little bit less of the hassle of opening that conservatorship, guardianship case, doing the annual reports and dealing with that, while, also, as has been testified to before, protecting the minor by requiring that the, the moneys are held in trust for them in the future. So with that, I'm happy to answer any questions that you might have. I thank Senator Hallstrom. And I would also say, too, that we did have input on the amendment. I agree with what Mr. Bell testified to before. Those are good changes. So thank you.

BOSN: Any questions for this testifier? Seeing none.

TIM HRUZA: Thank you very much.

BOSN: Next proponent. Any opponents? Anyone wishing to testify in the neutral capacity? And while Senator Hallstrom is making his way up, I will note there were two proponent comments submitted, no opponent, and no neutral comments submitted for the record. Welcome back. Bless you.

ROUNTREE: Bless you.

HALLSTROM: Senator Bosn, members of the committee, I'll just close by thanking everybody who came in today to testify in support of the bill. It's a temporary kumbaya moment until we go back to business as usual on my next bill. So I will introduce that unless we're going to take a break. Just a suggestion.

BOSN: Noted. Declined. Do you have any questions? All right, that concludes LB341 And with that, we will carry on to your next bill, numbered, thank you, LB79.

HALLSTROM: Chairman Bosn, members of the Judiciary Committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I represent District 1 in the Legislature, and here to introduce LB79. LB79 would codify the admission rule, or McHaffie rule, which is based on a Missouri Supreme Court case in the state of Nebraska for commercial motor vehicle drivers and employers. Iowa and 14 other states have adopted this doctrine. Under the admission rule, claims of direct negligence against an employer are barred once the employer accepts vicarious liability for its employee or independent contractor's conduct. Claims of direct negligence are generally claims for negligent hiring, training, supervision, and entrustment. The reasoning behind the admission rule is that the additional claims against the employer would serve no real purpose once the employer has admitted vicarious liability, and that potentially irrelevant and inflammatory evidence could be admitted into the record if the plaintiff were allowed to pursue these additional claims. Such evidence is designed to encourage jurors to punish the employer when punitive damages are not recognized in Nebraska. Under LB79, a defendant accepts vicarious liability for the negligent act of its employee or independent contractor by, one, admitting that the person whose negligence is alleged to have caused the damages was its employee or independent contractor, and two, the person whose negligence is alleged to have caused the damages was acting within the course and scope of employment with the defendant, or acting as an independent contractor of the defendant. In Nebraska, state courts have not addressed the admission rule in case law. However, Judge Gerrard on the Federal District Court of Nebraska opined that the Nebraska Supreme Court would likely follow the

admission rule because most states follow the rule. That case was Gibson v. Jensen. If it is not disputed that the employee's negligence is to be imputed to the employer, there is no need to prove that the employer is liable. Once the principal has admitted its liability under a respondeat superior theory, the cause of action for negligent entrustment is duplicative and unnecessary. To allow both causes of action to stand would allow a jury to assess or apportion a principal's liability twice. Furthermore, a plaintiff could offer evidence of the employee's previous misconduct, which would be unnecessary, irrelevant and prejudicial. LB79 By codifying the admission rule for CMV drivers and employers simplifies the trial for the jurors, parties, and courts because if the plaintiff can prove the CMV driver was negligent, proving that the employer was separately negligent does not increase or decrease the compensatory damages or change who will pay them, and so it is unnecessary. Thank you for the opportunity to open on LB79, and I would be happy to answer any questions.

BOSN: Questions for Senator Hallstrom. All right. Seeing none, we'll take our first proponent. Welcome.

MARVIN DIKEMAN: Thank you. My name is Marvin Dikeman, M-a-r-v-i-n D-i-k-e-m-a-n. I am a practicing lawyer in Atlanta, Georgia. All of you may say, what the heck? I was born and raised on a small farm ranch north of Hershey, Nebraska, I'm a Nebraska grad, I will be a Nebraskan when I die. I heard a lot of discussion about is this a solution in search of a problem? When all of your neighbor's cattle are getting attacked by coyotes, it's not on your land, but you've still got a problem. I am here to tell you that for 20 years I lived in Georgia and practiced, as we watched in amazement as Alabama tore itself to pieces with multi-million dollar verdicts for scratches on BMWs. We in amusement thought we were always immune. Georgia has had in excess of 50 verdicts in excess of $10 million in the last couple of years. It is decimating the state. I could have been tru-- talked about any number of subjects here today, whether it be litigation financing, where I have seen emails in discovery where litigation finance companies directing a plaintiff to go to Florida to get surgery for double what they can get in the state of Georgia. But I'm here about LB79. LB79 makes sense and it avoids what we deal with in Georgia. We all think of a common car wreck case or a truck wreck case as being a simple tort. But there's this idea called anchoring. And what anchoring is, is that little 4 page complaint we used to get is now a 40 page complaint, because there is a count for negligent hiring, there's a count for negligent training, there's an-- a count for negligent supervision. And sometimes those are even broke down

into, broken down into sub counts. And this anchoring concept is I need to bring as many claims as I can, attach dollar values to them, and state an anchor number that I can then build on to get a big number. So what was a car wreck that had a value of X has now turned into five separate claims with five separate numbers. And the numbers that come out of jurors, we're asking juries to, on the fly, understand things that are hard for juries to under-- for lawyers to understand. I've been on a jury. I've heard the confusion from the other 11 members. LB79 clarifies things, and I think distills down and makes sense-- I think was mentioned Gibson v. Jensen That's a good outline of the logic that goes behind this bill. Stop fluffing things up beyond what they are. And this is coming from someone who probably two thirds of my work is defense work, but a third is plaintiff's work. Thank you for the opportunity as a Nebraskan to return to the state and participate in this. But the problem is, in fact, here, it just may not be obvious yet.

BOSN: Thank you. Questions for this testifier?

MARVIN DIKEMAN: Yes, sir.

BOSN: Senator McKinney.

McKINNEY: Thank you. I'm kind of reading through this. I'm just curious. So if I own a company and I have an employee and my employee gets on the road drunk and crashes. If this passes, I'm not liable?

MARVIN DIKEMAN: It's really not that simple. What you're going to-- what you would eliminate is, and I, and I probably could find a complaint on my desk in Atlanta right now that, that has some similar factual scenario. It is, you didn't give them proper alcohol awareness training. That's one. Two, you didn't, you didn't educate them well enough about the truck driving rules. That's another claim. All down the line, I can make up lots of different claims out of that, but we can all recognize that what has happened is a wrong, it's a tort. And when the employer steps up and says, that's my person, I'm responsible for them and I want to, I want things to be made right. My concern is not about making it right, as a defense lawyer, I paid out millions of dollars. And on many occasions you feel like you have upheld the legal system by doing it. The problem is, is when that scenario turns into, in effect, five different claims for the same act.

McKINNEY: I guess-- my-- listening to you, I could see if somebody, if the company was required to show that they made the employee go through all the training, this, this and that. But that's not clear

in, clear in what's written in the bill. It just says the court shall dismiss based on if the following are true. But it doesn't say if the company can show that ex-employee took alcohol training, road training, and those type of things to-- that you would require an employee to take, safety training and those type of things. There's no standard from what I see that the company or employer is having to meet.

MARVIN DYKEMAN: Well, there are a number of standards outside of-- I'm always reluctant to use litigation, particularly nuclear, it's the term people come up with, it's everybody commonly believes it's $10 million or more, verdicts to control action and get people to do the things that they need to do. What I see is, is to the extent that that's a deterrent, it's not a very effective one. Because Alabama, I saw a case study over the course of about 15 years. It cores out the middle of the state. Lot-- a company that gets hit with one of these verdicts because of they could bring five different claims and they could anchor five different claims, they can amalgamate them into a big number. Put them out of business, they're done.

McKINNEY: I get that. But what I'm saying is, if, if the, if these employers want to be dismissed from these civil actions, shouldn't they have to meet some type of standard?

MARVIN DYKEMAN: They are by acknowledging respondeat superior, essentially which is to the extent the actor, the driver, if you will, the actor is liable. That goes straight to the, the company.

McKINNEY: But shouldn't they have to show that this person, that our employee that we hired, shouldn't they have to show that they did everything as an employer to ensure that the person that they put on the road was qualified?

MARVIN DYKEMAN: But you're circular right back, and I could come up with perhaps a half dozen other things that if I wanted to make a five count complaint into a 20 count complaint, I could also do that. But I think to me the significant thing is, is that the employer says, I'm the responsible one. And in the, in the Gibson v. Jensen case, the court did a good job of analyzing that you're ta-- earlier today there was a lot of discussion about seatbelts, and that's an act here, but it really didn't cause this. You could kind of make that same argument in the context of a negligent training case.

McKINNEY: I guess I would be, I would be probably a little more understanding if there was a level of accountability placed into this.

MARVIN DYKEMAN: Well--

McKINNEY: And we're probably talking over each other [INAUDIBLE].

MARVIN DYKEMAN: Yeah. And I'm not sure I'm 100% understanding you, but-- because I do see a level of accountability, and that is the, the trucking company saying they were operating within the course and scope. They're our person. We're, we're on the hook for whatever comes their way. Do you follow?

McKINNEY: But under what you're saying is I could start a trucking company and just hire anybody off the street with a CDL, don't put them through no safety training, and say, hey, they was an employee, it's their fault.

MARVIN DYKEMAN: I don't know that this bill would make all of those things irrelevant in litigation. I think it's just saying from a legal standpoint--

McKINNEY: But it says the trial court shall dismiss it, that's [INAUDIBLE].

MARVIN DYKEMAN: Right, Right. But that doesn't mean that in the trial that would proceed forward, these things would not be perhaps relevant to consider. So I don't think, I don't think it's an admissibility statute. You follow?

McKINNEY: I hear what you're saying, but--

MARVIN DYKEMAN: Again, the overall all encompassing thing is, is this notion that all of these things are solutions looking for a problem I don't think is accurate.

McKINNEY: Maybe I'm just maybe we're reading this different. So that's probably the issue.

MARVIN DYKEMAN: Could be. Could be. And I know that's the frustration for you guys is you give all this thoughtfulness to a statute and then only to-- it goes out into the world and you one day look down and go, that's not at all what I thought. And-- but that's the nature. It's, it's our system. It's the best we have.

McKINNEY: Thank you.

BOSN: Any other questions for this testifier? Thank you for being here.

MARVIN DYKEMAN: Thank you.

BOSN: Next proponent?

KENT GRISHAM: Good evening, I believe we say now.

BOSN: Yep.

KENT GRISHAM: I'm Kent Grisham, K-e-n-t G-r-i-s-h-a-m, president and CEO of the Nebraska Trucking Association. I also appear today on behalf of the Nebraska Insurance Federation and the Nebraska Petroleum Marketers and Convenience Store Association, all of us in support of LB79, and we really do thank Senator Hallstrom for bringing it forward. This bill, in our opinion, really is about justice. There is no motor carrier that I know of that wants to shirk justice when an accident occurs involving one of its trucks. If it is their truck, their employee driving it, and that driver is found to be responsible for the accident, then we accept our liability and will pay what is right and just in the case, and that is when the case should be closed. Unfortunately, in many jurisdictions, that's when additional claims are brought against a defendant solely to inflame the jury and seek monetary damages which exceed the losses incurred. I'll offer a very Nebraska illustration. Say, for example, a rancher, because as we know, commercial motor vehicles are used for a lot of purposes, a rancher or farmer in central Nebraska is growing, selling, and transporting large round bales of alfalfa hay to buyers in Nebraska and other contiguous states. Flatbed semi belonging to that farm is being operated by a ranch employee with a commercial motor vehicle driver's license. As a result of a faulty tie down strap on one of the bales, it rolls off the trailer into adjacent lanes of traffic, and an accident occurs. Through the course of the investigation and subsequent claim, the farm has stipulated and agreed that the driver was an employee acting within the scope of employment and accepts responsibilities for the proven damages. The plaintiff, excuse me, should not then be allowed to attempt to extract excessive monetary damages from the employer by means of additional claims of direct negligence or theories regarding hiring practices or retention of employees. These strategies are used to admit irrelevant evidence and inflame juries. In our example, if the ranch hand driving the commercial motor vehicle had one or two speeding tickets in his personal vehicle and the plaintiff alleges directly against the employer that he was negligent in hiring that ranch hand. This allegation has nothing to do with the facts involved in the accident and the focus of proper contem-- compensation for the plaintiff. The employer's already admitted the employee was acting within the course

and scope of employment at the time. This bill, LB79, will streamline and focus the trial process while preventing plaintiffs from transforming traffic accident litigation into unfair expansions of liability based on completely unrelated information. We urge you to pass it out of committee to the floor. Thank you very much.

BOSN: Thank you. Any questions for this testifier? Seeing none, thank you for being here. Next proponent? Welcome.

MATT QUANDT: Good evening. Good evening, Chairwoman Bosn, Vice Chair DeBoer, members of the Judiciary Committee. My name is Matt Quandt, M-a-t-t Q-u-a-n-d-t. I appear you-- appear before you today on behalf of the NDCA, the Nebraska Defense Counsel Association. I am a partner at Erickson Sederstrom law firm in Omaha, Nebraska, and my practice concentrates on defending trucking companies and drivers. I represent motor carriers and drivers from some of the biggest in the nation to your local Nebraska mom and pop companies, including farms and feed yards with one tractor trailer unit. I'm also a member of TIDA, the Trucking Industry Defense Association. The changes in Nebraska law proposed in LB79 originate from the Missouri case, McHaffie. And following that case, those changes have spread throughout the nation. I practiced in Kansas City for seven years defending trucking cases before moving to Omaha. So I'm very familiar with McHaffie and its implications in everyday practice. First, the changes in LB79 simplify the case for the jury. Under a negligent hiring, training or supervision claim, plaintiff must prove that negligent entrustment makes them liable, and then the entrusted driver caused the accident. Under McHaffie's admission rule, the motor carrier is admitting that first part, the first claim. They admit that the driver was in the course and scope of their employment, and they admit that the motor carrier is responsible for that driver's action. The issue for the jury to determine, then, is whether the driver negligently caused the accident. Second, the changes in LB79 streamline the discovery process. Motor carriers are subject to the federal motor carrier safety regulations. And as you might expect with federal, federal regulations, they're voluminous. Motor carriers must follow certain rules, procedures, and documents, or be subject to agency discipline and penalties. Well, the plaintiff's bar has pounced on this. In a basic, basic accident case, say a fender bender or a left turn failure to yield, defense counsel will get very little discovery regarding the mechanics of the accident, but instead we will get 30, 40, 50 discovery requests on everything else: driver files, how they're paid, company policies and procedures, company assets, etc. And this places an inordinate burden on the motor carrier, including effort, time and money. It also wastes judicial resources when we need to go to the

court to explain how these inquiries are irrelevant. Lastly, the changes in LB79 focus the case on the true issues at hand. Joe Fried is one of the big plaintiffs trucking attorneys. He's from Atlanta. On a recent podcast, he disclosed, quote, If it is a sideswipe case, we don't look at the five seconds leading up to the sideswipe. I can lose that case because there's always a built-in defense. Red light, green light, same thing. I'm not looking at the direct cause of the crash. If I can make the case about something else, something systemic, that is a recipe for getting the jury pissed off. Excuse my language. I realize I'm about out of time. I just want to say that I agree with the plaintiff's attorney earlier when he testified that our civil justice system is, quote, not supposed to be a punitive one. And I think that is the intent of part of this bill. And that is why I support LB79. Thank you for your time.

BOSN: Thank you. Any questions from the committee? You got off easy.

KENT GRISHAM: Thank you very much.

BOSN: Thank you for being here.

KENT GRISHAM: Thanks for your time.

BOSN: Next proponent. Are there any opponents? Are you here as a proponent?

JASON AUSMAN: Opponent.

BOSN: OK. That's fine. Come on up. Opponents. Welcome.

JASON AUSMAN: Thank you. Thank you. Good afternoon, Chairperson Bosn, members of the committee. My name is Jason Ausman, J-a-s-o-n A-u-s-m-a-n. I'm here on behalf of the Nebraska Association of Trial Attorneys in opposition to LB79. I want to start with some recent statistics. In 2023, 4,999 large trucks were involved in preventable fatal crashes resulting in nearly 5,000 deaths. Fatal truck crashes have increased by nearly 49% over the last decade. Additionally, injuries from crashes involving large trucks have risen by 3.7% since 2021, according to trucking industry and government statistics. These preventable, preventable crashes are occurring on Nebraska highways and roads. Members, this bill is flawed for many reasons, but before discussing those reasons, it's essential, essential to establish a fundamental truth. Motor carriers have an obligation under federal and state traffic regulations to ensure that safety is a top priority. The Federal Motor Carrier Safety Administration exists for this very reason, to make our roads safer. The Nebraska Commercial Rules of the

Road integrate these standards, mandating that all carriers implement and uphold safety management controls, policies, and procedures. There are three basic ways, three basic causes of action in a typical motor vehicle case, or excuse me, commercial vehicle case. The driver and the driver alone was negligent, that's number one. Number two, the driver alone was negligent and acting within the course and scope of employment with a company at the time of the wreck, in which case that driver's negligence is imputed to the company. That's the doctrine of respondeat superior that we find in LB79. And three, the company itself was directly negligent. Examples of direct negligence: choosing to hire an unfit driver, maybe a driver with a history of substance abuse or reckless driving, choosing not to train their hires, choosing to overload their trucks, choosing not to maintain their trucks, or mandating delivery by a certain date and time despite the presence of inclement weather. Folks, I see my time is short here. LB79 seeks to accomplish two things. One, It flips the doctrine of respondeat superior on its head. Rather than legal liability flowing from employee to employer, this bill serves to incentivize legal responsibility flowing from the employer to the employee. We heard the gentleman from Atlanta. I wrote this down. He said the negligent actor is the driver. That's not always the case. Many of these wrecks involve crash reconstruction experts whose job, many of whom are employees of the state of Nebraska, whose job is to take a deep dive or perform a root cause analysis into what causes these wrecks to learn how and why they happen. In fact, rarely do they ever conclude that these crashes are the result of a single factor, like we heard earlier from Mr. Quandt, a decision to turn into traffic, or a fender bender, failing to yield. These cases involve much more than that.

BOSN: I'm going to ask you to just give us your last thought so we can see if there's any questions.

JASON AUSMAN: Yes. Folks, we don't have a problem with runaway verdicts here in Nebraska. I would ask yourself with this bill, what happened to accountability? Is this what we want? Trucking companies avoiding responsibility for their own negligent conduct, their own accountability? I think this bill turns its back on Nebraska values. And my very last thought. When you consider this bill, I urge you to challenge your fellow senators with this question. When we take to the roads, our families, our children, our loved ones, our friends, when we take to the roads with semi tractors and trailers, how does this bill make our roads any safer? When you remove accountability from the equation, I submit to you that it does not. Thank you.

BOSN: Thank you. Any questions for this testifier. Thank you for being here.

JASON AUSMAN: Thank you.

BOSN: Next Opponent.

MAREN CHALOUPKA: Maren Chaloupka My first name is spelled M-a-r-e-n. My last name is C-h-a-l-o-u-p-k-a. I'm from Scottsbluff. I'm an attorney. My calling and my ministry is to try to help families to bring something positive from the tragedies that they suffer. You're going to hear shortly from Tressa Nelson, one of my clients. Her family lost someone very important, 19 year old Emma, when Emma and her dear friend Korey [PHONETIC] were rear ended by a truck owned by one of the largest motor carriers in the United States. I want to tell you what we were able to do in that case and how LB79 would have made this outcome impossible. Through the lawsuit for the deaths of Emma and Korey, we learned that the motor carrier knew that this driver was dangerous the day they hired him, and learned more about how dangerous he was in the two months before he killed these two kids. We learned that the dri-- the motor carrier, in fact, had many drivers on its payroll who had been caught driving dangerously and gotten final warning after final warning. That was simply the culture. It was just the culture at that motor carrier. And we told the motor carrier that money alone was not going to make this case go away. They could change their lax hiring practices and pay attention to how many drivers were getting caught driving dangerously, or option two, go to trial and take the risk that their program of gambling with innocent lives would be exposed in a public trial. In the end, that motor carrier agreed it would make changes. And if that motor carrier follows through, the roads are going to be safer. And guess what? There's going to be less lawsuits. But under LB79, and I'll tell you, this Wyoming case, but it's Nebraska people that got-- that lost their daughter. Under LB79, we never would have had the chance to push for those important changes. LB79 creates the fiction that, however a crash happened, it's just one bad apple truck driver. And that fiction is a fraud. It is a cover up, and it lets motor carriers do things like hire drivers they know are dangerous, like hire drivers who do not speak English, or do not read, cut costs on maintenance, and send a truck with bald tires onto I-80, where the blowout causes multiple deaths. They can cover all that up and they can rig the system. They can rig it. So why are we even considering protecting out-of-state companies who send their trucks in disrepair and their dangerous drivers to roll through Nebraska? Why are we telling these companies, if your driver crashes and kills a little girl, Nebraska will rig this system against its own

people. Nebraska will help you cover up the truth. This case makes me very upset, and this bill makes me very upset, because it is promoting cover ups. It's against truth. When Emma Nelson and Korey Bowers [PHONETIC] lost their lives, their families heard their calling in this tragedy and they said, we will fight until the motor carrier agrees to change. We got that change because there was no LB79, and the families could apply that pressure. If you pass this bill, that will never happen in Nebraska. Families will not be able to exert pressure on motor carriers to stop sending dangerous trucks and drivers into our state. And if they can't do that, who will? Will you? Thank you.

BOSN: Any questions for this testifier. Thank you for being here.

MAREN CHALOUPKA: Thank you.

BOSN: Next opponent?

TRESSA NELSON: Hello. My name is Tressa Nelson, T-r-e-s-s-a N-e-l-s-o-n. I live in Juniata, Nebraska, District 33. I am first and foremost a follower of Christ. I am also a wife, a mother of four children, and a home educator. I urge the senators to vote against LB79. I wish I were like most Nebraskans who don't-- didn't even know that a bill like this exists or they think it doesn't matter because it won't happen to me. I confess I might not have noticed this bill until the gross recklessness of a billion dollar trucking company that killed my daughter three years ago. That loss broke my heart and opened my eyes. Emma had just turned 19. She was in Bible college training for ministry. She was in a relationship with a special young man, Corey. They were both seeking God's guidance to grow as a couple. Emma and Corey were rear ended by a trucker who saw that they were driving slowly but never took off his cruise control, never braked until less than one second before he slammed into their car and killed them both on Corey's birthday. Trucker dro-- the trucker drove for a company that has a $3 billion valuation. It sends trucks through every state in the nation. In order to have enough drivers, the company hires drivers it knows have dangerous histories. The company says that's OK because we use an AI program to catch its drivers in unsafe behaviors and coax them into being safe. Here's how that worked in reality. The driver that killed my daughter and her dear friend had been fired by another motor carrier for falsifying logs. Then he lied on his application to this trucking company and they caught him in a lie and hired him anyway. They hired him even though he lied about a preventable accident, and had multiple speeding tickets. In this-- in his first month of employment with this trucking company, its program

caught him driving dangerously three times. And then the driver covered up the video camera in his truck and they caught him doing that. Their policy said covering up your video camera is an immediate termination event, but the trucking company did nothing. Three days later, that driver killed my daughter and her friend. Turns out this is how that trucking company does business. Not just the driver who killed my daughter, but with many other drivers who should never have been hired and keep getting caught in dangerous driving. The trucking company let a computer program take over for common sense safety management, and now my daughter and her friend are dead. If LB79 becomes law, trucking companies can get away with that. Juries will be deceived to believe that the problem is just one driver going rogue. Trucking companies can pretend that they are good and responsible and that's just one bad apple. And you know what? If trucking companies can cover up their own dangerous practices, they will never have incentive to do better. They can hire drivers they know are bad apples, knowing they will be protected when they kill my daughter or her dear, dear friend, or your daughter, or your son. LB79, makes a mockery of a jury trial. If this crash had happened in Nebraska, LB79 would bury the truth of the crash that killed my daughter. A vote for LB79, is a vote for cover ups and against keeping Nebraskans safe. Thank you.

BOSN: Thank you for your testimony and sharing your story. I'm very sorry for your loss. Ma'am, let's just see if there's any questions, if that's OK.

TRESSA NELSON: Yes.

BOSN: Any questions from the committee? OK. I think I speak for everyone saying I'm sorry for your loss.

TRESSA NELSON: Yes.

BOSN: Next opponent. Good evening.

CHRISTOPHER WELSH: Good evening. My name is Christopher Welsh, W-e-l-s-h. I'm here in opposition to this bill, LB79, on behalf of the Nebraska Association of Trial Lawyers, I had the privilege to serve as the president of the Nebraska Trial Lawyers Association. I'm here to follow up on some of the things that have been said. I think one of the important things that's not being said, and we provided in our materials a list of 39 states now rejecting this bill, this type of bill, or at least acknowledging that are, that there are exceptions. You know, you heard testimony that Iowa does this. That's not true.

They have specific exceptions. Let's look about-- around the surrounding states of Nebraska. Kansas doesn't allow this. If you admit that this is your employee and remember, in every single complaint that's filed, there's an allegation that this is their employee. They file an answer. 99% of the time, they admit that that's their employee, right before the case even gets started, at the answer stage. You heard comments that this is somehow the majority rule. It's not. We've provided you a very detailed listing of all the different states that say no. And you know why they say no? One of the main things is we have a system in place in Nebraska. We have a comparative fault system. It's-- it, it compares the fault of all parties' negligence. In this particular bill, the mere fact that they admit, which they do all the time, that the driver's their employee, it takes away a negligent maintenance claim. So if a family was driving down the road on their way to a Nebraska football game, and they get killed because of a faulty maintenance that the trucking company chose to ignore, they may have been out of service because of those violations, they were stopped by the DOT and that shouldn't have been on the road. Guess what? We admit that that's our driver. No claim, because guess what? In that case, the driver didn't do anything wrong. It's the trucking company. This bill makes our roads unsafe. It promotes trucking companies to cut corners and put unsafe vehicles and drivers on the road. And you know what it does to those small trucking companies here in Nebraska? It makes them not competitive against the big boys. Because they do what's right. They're out there doing the mom and pop shop, doing the safety training, all the things that they're supposed to do with these federal regulations. If I brought those in there like this. You're essentially saying with this bill, trucking companies can ignore the regulations, because if they don't follow them, guess what? We'll just admit that our driver was our employee and therefore it doesn't come into play. I see that my time is up. Are there any questions from the committee?

BOSN: Any questions? Thank you for being here.

CHRISTOPHER WELSH: Thank you.

BOSN: Next opponent.

BETH PETERSEN: Madame Chairwoman--

BOSN: Good evening. Welcome.

BETH PETERSEN: --Judiciary Committee. My name is Elizabeth Petersen, E-l-i-z-a-b-e-t-h, Petersen, P-e-t-e-r-s-e-n. I'm basically here, I

think, to put a face to speaking against this bill. In October of 2023, my husband went-- he's a retired man and he got a part time job driving elderly people and disabled people. So he left early in the morning to go to his job, he called it the best job he ever had. So on October 5th, 2023, he was traveling on Highway 1, less than two miles from our home outside of Elmwood. He was on his way to work at about 5:50 in the morning, and it was very, very dark. Unbeknownst to my husband, an 18 wheeler from Nim Transportation LLC, a si-- a subsidiary of Norfolk Iron and Metal, was attempting to perform a backup maneuver to make a delivery in the dark. While doing so, and it was just over the rise of a hill, while doing so, the driver of the tractor trailer stopped in the middle of the highway, started the backup maneuver without a ground guy, without using flags or flares, and keeping his headlights directly into oncoming traffic, which was my husband and another person in our community. He had no flags, no flares, and his headlights were opposing the oncoming traffic. All those things are required by law, by the way, to have the flares and the backup, and even a person when you're occluded the highway. While the driver was attempting this maneuver, he was blocking both lanes of Highway 1, which has a posted speed limit of 65 miles an hour. My husband was the second person over that small rise and directly into the trailer of that truck, which was parked completely across the highway in the dark. The other individual reached the vehicle about 90 seconds before my husband. We've seen the videos. He was obviously critically injured. My husband was critically injured. He sus-- he sustained injuries that have permanently changed our lives. Those injuries include a crushed and displaced chest, a crushed sternum, crushed clavicle, 14 broken ribs, collapsed and bruised lungs, vocal cord paralysis. He cannot swallow food properly anymore. May never be able to after a year of swallow therapy. He is on a feeding tube at this time. He spent 25 days in the ICU, two months in Madonna inpatient, and over a year now in outpatient therapy. That also speaks to the two year limitation, we didn't even know this was going to be coming. I have a brother-in-law that is a-- he, a lawyer that worked for the Department of Transportation, and the day after the accident, he gave me the names of five lawyers and said, you're going to need one to go through this. I oppose this bill because not only is the driver at fault, but should he not have been given instructions to deliver to this place, should he not have been trained to follow the basic rules of driving a big rig? The other man just about died, and so did my husband. And it's only, it's only by God's grace that either of them are here. Thank you.

BOSN: Thank you. Any questions for this testifier? Senator Rountree.

ROUNTREE: Thank you, Chairwoman. Yes, ma'am, I'm so sorry for all that has happened. And you were going to need a lawyer. Did you acquire a lawyer and have you gone through a process? Are you in a process?

BETH PETERSEN: We are in a process with a lawyer. And I cannot even begin to imagine walking, listening to the people that tried to walk this by themselves. I'm so glad my, my brother-in-law called me the day after the accident. He had five names that he had researched and gave me names to, to ask to-- for help, because I can't imagine walking through this process by myself.

ROUNTREE: All right. Thank you so much.

BOSN: Thank you for sharing your story. Next opponent.

MURRAY PETERSEN: I appreciate you giving me extra time. I'm yellow, green color blind. Sorry. I've always got to tell. My name is-- excuse my-- might have to adjust. My name is Murray Peterson, M-u-r-r-a-y P-e-t-e-r-s-e-n. I have lived in Elmwood Nebraska with my wife for 31 years. You just heard from my wife, Beth, who described the injuries that I sustained in a collision with an 18 wheeler while it attempted to back off of Highway 1 to make a delivery in the early morning hours of October 5th, 2023. When I was driving, I did not expect to see an 18 wheeler blocking both lanes of that highway in the dark making a delivery during the early morning hours. Other drivers did not expect that either, for I was not the only one. Another person was injured in his collision. For the Legislature to consider eliminating claim for negligent supervision and negligent training would be a huge mistake. This driver had never delivered to this address before for Nim Transportation LLC. He had questions about the delivery. He was not provided any directions from his employer on how to effect, effectuate the delivery. He was told-- he was not told whether he could just pull into the address. Instead, he was left to his own devices in the early morning hours of October 5th. He made a split second decision to back into the address off the highway. He was trained extensively how to use the ground guy if he was on the customer's property, but he was provided no instruction on making such a maneuver here on the highway, or whether he had different options. Despite the fact that the Nebraska State Patrol found that the cause of the collision was, number one, the maneuver he was doing, number two, dirty and old reflective tape on the trailer, the company still insists they did not do anything wrong, nor did its driver. Instead, they doubled down and claimed that there would be no changes to their policies or procedures as a result of this. Apparently I wasn't one of the lucky ones that got one of the trucking companies with integrity, as these others

testified. See, they would not even admit being wrong. So I implore you to please vote against these bills. Thank you.

BOSN: Thank you. Any questions? Thank you very much for being here and sharing your story.

MURRAY PETERSEN: Thank you.

BOSN: Next opponent? Are there any testifiers here in the neutral capacity? Seeing none, while Senator Hallstrom makes his way up, I will make note that on LB79 there is one proponent and one opponent comment submitted for the record. Senator Hallstrom.

HALLSTROM: Chairman Bosn, members of the committee, I certainly appreciate everyone that came in today. And my heart goes out to those who have been injured or, or lost a loved one. I've had that same situation, different context, myself, so legitimately concerned for those folks. However, with regard to LB79, first thing I'd like to address, Senator McKinney, I think you were right that you and the witness or the testifier were talking over each other's head. The employer in this case under LB79, once they admit that imputed or vicarious liability, they are not dismissed from the case. Direct negligence claims against them, other extraneous causes of action are dismissed from the claim. They've admitted liability. They 'fessed up. They are going to be responsible for the amount of damages that the individual has sustained by virtue of their employee or independent contractor's negligence, and they will pay for those damages. They are admitting it. Little by way of background, in, in visiting with a personal injury lawyer whom I greatly respect shortly after introducing the bill, I was informed I believe I had got this correctly, that judges would most likely rule that evidence relating to negligent entrustment and other forms of direct negligence would be deemed irrelevant and inadmissible in cases in which the employer has admitted vicarious liability. Most likely to be ruled inadmissible is not sufficient. LB79 would properly provide for the dismissal of any claim of the defendant's direct negligence in a civil action in which the defendant has accepted vicarious liability. I think it's important to, to read into the record a few of the quotes from the McHaffie court decision. The court noted, once the respondeat superior is admitted, alternative theories of imputed liability become superfluous. If all of the theories for attaching liability to one person for the negligence of another were recognized, and all pleaded in one case where the imputation of negligence is admitted, the evidence laboriously submitted to establish other theories serves no real purpose. The energy and time of courts and litigants is

unnecessarily expended. Additionally, the court noted that a contrary rule would permit inflammatory evidence into the record, which is irrelevant to any contested issue in the case. Thus the court held, once an agency relationship is admitted, a plaintiff cannot pursue additional and redundant theories of imputed liability. I'll address Mr. Welsh's comments about the states that have other provisions or exceptions. My assumption is that few, if any, of those states have constitutional prohibitions against punitive damages. So any of those exemptions, I would anticipate, are probably related to the willingness and the desire to punish the defendant for particular acts, either of the defendant or of their employee. And as a result of our constitutional prohibition, the interest and the desire to get this type of extraneous evidence into the record, in my opinion, is driven by a desire to punish the defendant. And given our constitutional prohibition, I don't think that's appropriate. I commend Ms. Chaloupka for the approach that she took. But I would also note that most likely, if you're faced with a situation where a multimillion dollar type of damage is in front of you, I don't know the particulars, so I won't suggest one way or another, but I could envision a situation where a trucking firm had met all of the federal standards, but if faced with the opportunity to say yes, we'll try to make some changes to our operating procedures and practices versus a multimillion dollar verdict potentially, because we're bringing in all of these extraneous items, you can make your own mind up as to where that decision making might lie. Trucking firms are required to meet extensive federal standards, and I would suspect that even those firms that happen to meet those and do meet those routinely are still probably, if they have an accident that occurs due to the negligence of their employee or independent contractor, are inevitably going to face these same types of claims of direct negligence. They bring inflammatory and insightful information before the jury, and that is the sum and substance of LB79. Be happy to address any questions.

BOSN: Any questions for Senator Hallstrom? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Hallstrom. I guess I'm still wondering why shouldn't the defendant that wants this dismissal not have-- why should they have to meet a standard if they want to dismiss? Why shouldn't they have to say, we did this, we did that, we did that? Like, why shouldn't they say the employee did this, this, this, and this. This is why we should, this is why this is why this should be dismissed? They're meeting no, no, no standard at all.

HALLSTROM: Yeah. Pure and simple, that's probably not going to be the case, Senator, but pure and simple, it's a matter of piling on. A-- as

the first witness indicated, you know, you, you routinely see five or six different claims that are designed to aggregate and, and get the potential for damages up there, either for settlement purposes or ultimately, if you do have a claim before the jury, that the jury's going to see that, that information, hear that information, and be incited into providing a larger award.

McKINNEY: I don't think this is a matter of piling on, because we're dealing with a bill in the Legislature that we could clearly add to this. It's not a matter of piling on, because if this moves forward, we could add things to it to say if the employer would like to have these dismissed, they have to reach this standard. But piling on could be-- I don't think it's a matter of piing on if we say if they meet these five, five things.

HALLSTROM: Well, at this moment, we disagree on that issue. But I'm certainly more than willing to talk about some of those other things. I am assuming if this bill gets out to the floor of the Legislature, that we'll have plenty of time to talk about it.

McKINNEY: True. But I mean, I'm just saying it's not a matter of piling on to say, meet a standard.

HALLSTROM: And I'm disagreeing, but that's fair.

McKINNEY: Thank you.

BOSN: Senator DeBoer.

DeBOER: Sorry, just one question. And I, I'm sorry, I had to step out for a second, so I don't, I don't know if you addressed this, but the, the fact pattern that I heard that sort of brings me some pause here is if the negligence is really about the company's negligence. The person who hit them maybe should have known that they had bald tires, maybe should have X, Y, Z. But the real negligence here is the pattern and practice of behavior of the trucking company or of whatever company we're talking about here. And I wonder if your bill envisions some avenue for, for recovery for those plaintiffs?

HALLSTROM: Well, much like your line of questioning in an earlier bill, these issues are going to liability and liability's being admitted. The damages are the damages, the extraneous information that's brought before the jury is designed to inflame and incite the jury to grant a larger award.

DeBOER: So my-- so is the question of liability being resolved if the liability isn't-- so, the, the duty was for them to-- sorry, the duty is for them to provide their employees with all the things they need, the safety training, the correct functioning materials, or I mean truck or whatever. Is that the same thing as respondeat superior for a failure to turn left or signal before you turn left?

HALLSTROM: Well, I, I think it's extraneous. You know, there's-- you're liable or you're not liable.

DeBOER: But those are-- aren't those two different torts?

HALLSTROM: They are, but they don't-- they shouldn't impact under Nebraska law the extent of the damages.

DeBOER: But now you're talking about damages, not liability, right?

HALLSTROM: They're two separate and distinct issues.

DeBOER: Right, so--

HALLSTROM: But once you've proven liability, the damages shouldn't differ based on 3 or 4 other courses of liability that we might want to bring into the suit for the purpose of inflaming the jury.

DeBOER: But I'm not talking about the damages now. It sounded to me like some of the folks who were here testifying wanted their day in court to be able to say that this is a pattern and practice so that they were able to have themselves be heard, so that they-- Because the courts, yes, they award money to, to injured people, but they also provide a way for people to have their, their problems be adjudicated by the government. And if what they wanted is they want, in addition to being made whole, they want to be able to have their day to say this is a pattern and practice of this company, so that they can, can have that dispute in the courtroom. Is, is-- do you see what I'm saying?

HALLSTROM: Well, you, you can't parse the fact that the jury hears that.

DeBOER: But--

HALLSTROM: And then the jury has some impact on the amount of damages that are awarded. So I don't, I don't think you can, can parse those issues into saying it'd sure be nice to be able to talk about them. You're not going to talk about them outside the purview of the jury.

The jury's going to hear those things, and they're designed for, in my estimation, a principal purpose.

DeBOER: But, but--

HALLSTROM: And it has to do with damages.

DeBOER: I guess my question is, does your bill preclude me from choosing I would like to have the, the lawsuit be one of negli-- and I'm asking this as a-- this is a valid question, I'm not asking to catch you. I don't know the answer to this question. Are you-- if I have a client who says I don't want to go for respondeat superior, I want to go for the negligent hiring because I want that to be the claim, that's what I want to do. Does your bill automatically say no, because they were your employee you have to choose the respondeat superior instead of the negligent hiring?

HALLSTROM: I do not know the exact answer to that. I have some assumptions, but rather than assuming I will check into that.

DeBOER: Because that's something I think that we ought to-- I think what you're trying to do, and correct me if I'm wrong, is you're trying to limit it to one recovery, is that right?

HALLSTROM: Well, one theory of liability is enough.

DeBOER: OK. So--

HALLSTROM: That's where the piling on comes in.

DeBOER: So you're trying to limit it to one theory of recovery. But shouldn't the person who's hurt get to choose which theory of, of recovery they want instead of the court?

HALLSTROM: I'll get back to you on that.

DeBOER: OK. Thank you.

BOSN: Any other questions for Senator Hallstrom? Senator Rountree.

ROUNTREE: Thank you, Chairwoman Bosn. This just real quickly, Senator. On how many cases are we talking about that have occurred here in Nebraska? How, how large is this that it's brought a bill for it?

HALLSTROM: I will check and see if anybody has that data. I do not have that in my personal possession.

ROUNTREE: OK. Thank you so much.

HALLSTROM: Thank you.

BOSN: Do you have a question? OK. Any other questions? Thank you.

HALLSTROM: Thank you.

BOSN: That brings us to our last bill, LB205.

DeBOER: We now welcome Senator Bosn. Welcome to your Judiciary Committee.

BOSN: Thank you, Vice Chair DeBoer. LB205 was introduced due to a trend that we've been seeing nationwide. Oh, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I am the Senator for District 25, which is southeast Lincoln, Lancaster County, Nebraska. LB205 was introduced due to a trend that we have been seeing nationwide. According to a U.S. Chamber Institute for Legal Reform study, about 1 in 4 auto accident trials resulted in verdicts over one, or excuse me, over $10 million or more involving a trucking company. These awards were based on outrageous claims and unbalanced processes that surpassed what should have been a reasonable or rational amount for the suffered harm. While Nebraska has not had as many high verdicts as other states, the threat of these lawsuits and exaggerated settlements have unfairly driven up costs on Nebraska businesses and consumers. We must proactively address these issues to ensure these types of nuclear verdicts don't become prevalent in Nebraska by limiting noneconomic damages and addressing phantom damages. LB2O5 will cap noneconomic damages at $1 million for personal injury accidents involving a commercial motor vehicle. There are several categories of possible damage that a plaintiff could be awarded. Noneconomic damages compensate a plaintiff for non-monetary losses such as pain and suffering, emotional distress, loss of consortium, and other intangible items. Plaintiff attorneys oppose damage limits, arguing that nonec-- excuse me, noneconomic damages should not be reduced to an amount determined by Legislators because that is the role of the jury to assign damages. However, noneconomic damages are not quantifiable and have no precise value and can be and are emotionally charged for a jury. Juries are customarily, customarily given minimal guidance on how to properly assign a dollar value to noneconomic damages, creating unpredictable and inconsistent award amounts. LB2O5 also focuses on making sure that judges and juries are presented with the actual paid medical costs, not a potentially inflated rate. There is a growing trend of tactically inflating medical damages using

physicians who bill grossly unrealistic amounts that will never be paid by any party in exchange for a cut of their patient's recovery in their legal case. This bill would put Nebraska in line with other states that permit evidence of billed medical costs, and does not permit evidence of what was exact-- excuse me, of what was actually paid for those medical costs after insurance rate negotiations and other adjustments. Let me give you an example. Senator DeBoer is driving and she hits me in my vehicle. I picked you. I had to go to the hospital, and the normal bill without insurance is $10,000 for my medical expenses. The insurance company has an agreement already in place with the hospital covering those medical expenses at $7,500 for those charges. Per Nebraska law, juries are precluded from considering the fact that the hospital was accord-- compensated, according to their own contractual agreements at $7,500. The $2,500 that I keep is an amount that is not considered and doesn't go towards the pain and suffering or economic damages award amounts. In some of these instances, medical providers such as doctors offices have been known to inflate costs to get a cut or a percentage of the award. Personal injury lawyers and certain health care providers collaborate to inflate medical bills, artificially increasing lawsuit values and settlements. Many states permit evidence of what was actually paid for medical costs after insurance rate negotiations and other adjustments, as opposed to what was initially billed but not paid. The difference between billed medical costs and paid medical costs is called a phantom damage, essentially a fictitious number that generates a windfall profit for plaintiffs. The point of tort law is to make whole someone who has suffered an injury due to the negligent or intentional act of others, not to extract a gratuitous or nuclear fee from a defendant. I would argue you can't make someone whole. There isn't a dollar amount that is going to make someone perfectly whole. LB205 seeks to restore fairness to personal injury actions in Nebraska by ensuring compensation for the suffered harm is more closely aligned with actual damages, which, which prevents the exploitation of the legal system for disproportionate financial gain. I would like to point out, LB205 does not cap or include any limits on economic damages such as medical expenses or lost wages. That is not addressed in this bill or capped in this bill. I do have an amendment that I would like to share with you that makes a couple of changes to the bill. Forgot to hand that out as well. The insurance industry, in meeting with stakeholders in this bill, they requested this amendment to clarify that they are exempt from request to provide evidence of how they come up with their medical policies, reimbursement rates, and other proprietary information. The Department of Transportation also reached out to me and as referenced in their letter were working on an

amendment to fix some things in there as well. I'm always open to suggestions or amendments how to make this bill best, and I thank you all for your time and attention, and I'm happy to answer any questions.

DeBOER: Are there any questions? Senator Storm.

STORM: Thank you. Thank you. So this is pain and suffering is what were capped, capped in that, is that the way I understand this?

BOSN: Correct. Noneconomic damages.

STORM: So if someone's in a car wreck and they're quadriplegic and they need care for the rest of their life, and it exceeds millions of dollars, that would be, that could potentially be covered? Am I right?

BOSN: Well, that is, that is not considered or capped in this bill. That is separate and apart from what this bill is.

STORM: So the million dollars is just the pain and suffering part of that component, for lack of better words, [INAUDIBLE]?

BOSN: Correct.

STORM: So. OK.

DeBOER: Other questions? Senator Rountree.

ROUNTREE: Thank you, Vice Chair. So as we currently stand, and I see what we are proposed here, but what is, what is our current condition or position here?

BOSN: So right now, as it relates to the economic damages, there is no cap.

ROUNTREE: OK

DeBOER: Other questions. Senator McKinney.

McKINNEY: Thank you. So if you say there is no quantifiable way you can actually measure it, then why the cap?

BOSN: Well, because I don't, I don't think-- while I think people are doing the best, as I had my conversation with Senator DeBoer earlier, the best we can do is try and provide some sort of monetary damage. But I will not sit here and tell any of the individuals that are likely to come in in opposition that I think there's a dollar figure

that they could accept to make them, make what happened to them OK. I won't make that argument that this makes you whole. But I don't think there's a dollar figure to that ever. Unfortunately, for these situations that are accidents. I mean, this isn't an intentional infliction of emotional distress. These are tragic and very unsettling, but they are accidents by their very nature.

McKINNEY: Yeah, but these individuals could deal with that pain and suffering for their life, essentially.

BOSN: They, they likely will, regardless of what compensation we provide them, tragically.

McKINNEY: And let's say they need therapy and-- for pain and suffering, mental. I guess it-- I-- I mean, if somebody lives to 100 and they're still dealing with that pain and suffering.

BOSN: Well, I think to your example and your point, and it seems like you probably caught yourself even as you were asking it, if there is a therapy element to this, I agree those things should be covered and, and are, so this is total-- I just want to make sure everyone understands. If you need to see a therapist, or, or those types of long term care, are-- I am, I am not seeking to cap those recoveries. This is solely for the noneconomic damages.

McKINNEY: But with pain and suffering, that could be-- that means a lifestyle change, though, where you might have to-- Some people, I know people who had to move to different places because of things that happened. So I could also imagine, you know, running out of that $1 million just based on just lifestyle change things because of the pain and suffering. And it's not even non-- it's all nonmedical.

BOSN: I can't argue with you because I don't have any-- I can't think of an example that would fit what you're saying. So I won't argue with you, but that would be correct then.

McKINNEY: All right. Thank you.

BOSN: Yes.

DeBOER: Thank you, Senator McKinney. Other questions? Senator Bosn, I won't go through our whole conversation from earlier today, but I will ask you this. Can you envision a circumstance, this the question I asked you before, can you envision a circumstance or are you open to understanding that there could be a circumstance where someone's noneconomic damages would be more than $1 million?

BOSN: Anything is always possible. I can't think of one, but that doesn't mean there isn't one. And so if presented that as a, you know, resolution or an agreeable way to get the parties to the table in a reasonable manner, I would certainly entertain that.

DeBOER: So you don't feel that, that through all the things that you can think of, that $1 million is an ade-- you think $1 million, $1 million is an adequate amount for pain and suffering for any circumstance you can imagine?

BOSN: Well, admittedly, I haven't been the victim of one of these, and I always make a policy of saying I've never walked in their shoes, so I won't do that today either. But I cannot think of a circumstance where the pain and suffering is not punitive, because we don't allow punitive, it's not medical, not work, but is purely pain and suffering. I also have never had $1 million. I make $12,000 a year, so I have not experienced what it would be like or how quickly one would go through that as Senator McKinney alluded to. Perhaps I need an environment that isn't Nebraska anymore, I have to move out of state, the costs incurred with that. I mean, I'm trying to think of things that reasonably would, would result in that and, and get to a point of exceeding or even coming close, quite frankly, to $1 million.

DeBOER: How did you come to the number 1 million?

BOSN: That's a great question. I meant to put that in my speech and I didn't. OK. So that comes from other states that have a cap at $1 million. And I bet I left that on my desk to tell you which states they are. But--

DeBOER: That's o-- that's OK.

BOSN: That's where it comes from, is that there are a number of states that cap at $1 million.

DeBOER: And you're aware, because I told you earlier today--

BOSN: $5 million in Iowa.

DeBOER: $5 million in Iowa. So if I live in Council Bluffs, then I can experience pain and suffering worth $5 million. But if I live in Omaha on the other side of the river, then I can't. That's kind of what this bill says.

BOSN: That would be the impact of living and driving on one side versus the other if this bill passes, yes.

BOSN: OK. Are there any other questions? Senator Rountree.

ROUNTREE: Just a final comment for now. When we're told of pain and suffering, we've heard a lot of testimonies today, just here very recently. Would you say that they might be worth $1 million, could their pain and suffering be more? We heard from one that lost a child through a truck accident. This other gentleman has great injuries, total lifestyle changes. Would that be worth $1 million or more?

BOSN: But see, those are not considered in this. So those expenses are separate and apart from what this bill addresses, because, yes, I don't think that-- I think I can see a circumstance where someone who needs ongoing therapy or who is suffering the loss of a child, which has to be-- there is no harder thing to go through as a parent than that. Those are separate and apart from pain and suffering. Those things would still be covered at an amount that's determined not thought through on this bill. If this bill doesn't touch those things, those abilities to recover.

ROUNTREE: OK. So then what would pain and suffering encompass?

BOSN: That's a great question. So pain and suffering is uniquely defined as, I think it is just pain and suffering, loss of consortium. And those are, those are what they are described as. I can get you more information on what those exact definitions are, but that is what it is limited to, noneconomic damages for pain and suffering. And if someone has it, I, I will happily get back to you on it before we're even done here today. But it's loss of consortium. Emotional distress, loss of consortium, other intangible items.

ROUNTREE: Thank you so much, Senator.

DeBOER: Are there other questions, Senator Storer?

STORER: I'm sorry. Thank you. Senator DeBoer. So just so I understand, you said in the case of the loss of a child, that wouldn't be considered under pain and suffering, right?

BOSN: Well, I think we're talking about, and that's why this gets difficult. So there are recoveries that are for medical expenses, which would include things like parents who are, you know, or an individual who needed ongoing therapy or a care provider to come into their home to provide care for that child, whatever the case may be. Those are-- you can put a dollar figure on that. But pain and suffering is separate and apart from that.

STORER: OK. Thank you.

DeBOER: Thank you.

HALLSTROM: So the counseling, the actual medical expenses for counseling that's related to the grief of the loss of a child would be something that would not be capped or impacted by this, but separate and apart. The loss of the child may be factored into a pain and suffering award.

BOSN: Correct.

HALLSTROM: Thank you.

DeBOER: Other questions? I don't see any. I'm assuming you're staying for close.

BOSN: Always.

DeBOER: We'll have our first proponent.

KENT GRISHAM: Back again. Thank you, Vice Chair DeBoer, Senators. Again, my name is Kent Grisham, K-e-n-t G-r-i-s-h-a-m, and I am president and CEO of the Nebraska Trucking Association. I also appear today on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, and rising in support of LB205. And of course, we thank Senator Bosn for bringing it forward. It is a bill that can have a tremendous far reaching impact on so many more Nebraska businesses than just for hire motor carriers. Farm and ranch operations, health care providers, small independent businesses such as plumbers, electricians, lawn care companies, any business that operates a commercial motor vehicle requiring a CDL. I'm confident when I say that across the trucking industry in Nebraska, we all believe that when a commercial motor vehicle operator acts wrongly, and that wrongful, wrongful conduct injures those with whom we share the road, the operator must be held accountable, and those insured-- those injured, rather, should be fairly compensated outside of our industry, however, there are those who attempt to use the litigation forum to present troublesome and damaging theories of excessive recovery. One of the tools is the provision of treatment on a so-called letter of protection basis, where the provider links their recovery of medical bills to the patient's ability to recover in the lawsuit. It results in two objectionable outcomes. First, medical bills that are untethered from both the provider's cost structure and from any reasonable reference based pricing. And second, medical treatment that is driven by the likelihood of success in law, in the lawsuit as

opposed to a patient's actual medical needs. And in the absolute worst case, the patient is left holding the bag if they are not successful in recovering from that lawsuit. Both of these objectionable outcomes are minimized or avoided by LB205, which standardizes the amount a patient can recover for medical costs in a lawsuit. And of course LB205 will also permit the Legislature to place a cap on noneconomic damages in civil actions following an accident with a CMV that requires a CDL. Noneconomic damages such as pain and suffering, emotional distress and others by their very nature, are subjective and cannot be directly measured in monetary terms. After fairly compensating an injured party for economic losses, capping subjective nonec-- noneconomic damages at $1 million will have the effect of preventing runaway jury verdicts, promoting settlements, managing litigation, managing insurance costs, and establishing guardrails for inconsistent jury verdicts. So we urge the committee to pass this on to the floor for full debate. And we thank you.

DeBOER: Thank you for your testimony. Are their questions? Senator McKinney.

McKINNEY: Thank you. And thank you for your testimony. So I was curious. Did you support the $5 million cap in Iowa?

KENT GRISHAM: Yes.

McKINNEY: Why?

KENT GRISHAM: Well, that $5 million cap had been a five year long process of different negotiations and efforts to to bring it to that amount. And going from no cap to a $5 million cap was a positive step for all parties concerned.

McKINNEY: How did you get there?

KENT GRISHAM: I did not-- I mean, the Iowa Motor Truck Association was directly involved, but I, I was not. I know that it went back and forth over the course of five legislative sessions.

McKINNEY: Why shouldn't we? Why are we starting at $1 million?

KENT GRISHAM: Well, because there is, and, and we can provide the data that shows what all 50 states have for either a nonexistent cap, or some caps are much less than ours. There are-- there is a cap, for example, in Alaska that says you get $25,000 per year calculated at your projected lifespan. So if the charts say I'm projected to live another 30 years, God help me, I could get $25, 000 per year for the

non-- for noneconomic damages. We don't like that idea either, because that shortchanges somebody. What if I only live ten, for example? It's not a lottery that we're trying to run here, it's a reasonable justice system that acts, in fairness to all parties involved.

McKINNEY: So is $5 million reasonable?

KENT GRISHAM: I think $5 million, in my own estimation, is worth the conversation. But I don't know that it is reasonable. I, I'm, I'm totally open to other ideas.

McKINNEY: But, but id you support the $5 million?

KENT GRISHAM: Well, Senator, it wasn't for me to support or not because, I mean, it was happening in Iowa. But, I-- you know, I will tell you from personal experience, I've never lost a child. I thank God every day for my three children and my eight grandchildren. 20 years ago, I lost a wife, and I don't think there was any amount of money, and it was arguably a case of medical malpractice, which we cap here at a much lower rate. And that cap in medical malpractice, as I understand it, applies to both economic and noneconomic damages. So if we acknowledge in medical malpractice that there is a dollar amount that we should cap it at, with all due respect to those who've suffered the loss, that's all they're going to get, I can honestly say there's no amount of money that would have ever made it up to me for the loss of my wife.

McKINNEY: OK. I have a hypothetical.

KENT GRISHAM: OK.

McKINNEY: So let's say I live on this street. There's a, there's a stoplight at this street, and my house is here, and the stoplight is here. I have a five year old. Somehow my five year old ends up by the stoplight and gets hit by a semi and dies. I get some damages, but pain and suffering of my kid getting killed at this stoplight, and my house is right here. My house is worth $5 million and I want to move. Should you not be held accountable for that?

KENT GRISHAM: For your choice to sell your house and move to someplace else because of the--

McKINNEY: Pain, pain and suffering that happened and having to look across the street at the stoplight that my kid was killed at.

KENT GRISHAM: I think if the motor carrier is found to be in any way negligent or at fault, I think that motor carrier is certainly going to step up and do what it can to make you whole.

McKINNEY: But if I'm, if I'm capped.

KENT GRISHAM: You'd be capped at, at the noneconomic damages. Yes. And I, I, I can't speak, Senator, to all that hypothetical because I don't, I don't know how much money you want to make yourself whole by making a real estate move.

McKINNEY: Yeah, well, I don't. I definitely don't want to live in the house no more. I don't want to look across the street where my kid got ran over.

KENT GRISHAM: Well, and I totally understand that. But again, in your hypothetical--

McKINNEY: Maybe it's not even a $5 million house, maybe-- I'm just saying you're, you're, you're capping me at $1 million. Maybe I don't even want to-- I don't want to live in this house no more. The housing market is trash, everything is going up. This cap is an issue.

KENT GRISHAM: I don't, I don't think the law and the justice system was ever designed to really encompass what would ever make someone truly whole in all of those circumstances. I don't think it's even possible with any amount of money. So I think we have to be reasonable in our justice system, fair to the motor carrier, and fair to you in your hypothetical that you offer there. But the fairness, and I, and I know you're a dedicated soul to the concept of fairness in, in all that we do, and particularly in our justice system, what's fair to be put against that motor carrier and what's fair to, to address your needs, I think is a difficult formula to manage.

McKINNEY: But, but you know what you're balancing? You're balancing the life of a five year old-- let's say it's-- if you cap it at $1 million, let's say my pain and suffering is $1,000,001, Does that make sense?

KENT GRISHAM: I honestly, Senator, don't, I don't know how to--

McKINNEY: Do you see how you're trying to balance it? Does that seem fair?

KENT GRISHAM: Well, I, I-- in all due respect, Senator, I don't think if I offered you a $5 million that you would feel like you were made whole for the death of your five year old.

McKINNEY: But you're, you're saying I should-- you saying if in this scenario I should be capped.

KENT GRISHAM: But I think in, in the concept again, of fairness in the justice system, I believe that there are guardrails that need to be in place. No one can ever correct the broken heart and the damaged soul in the justice system. That-- we, we can, we can debate back and forth all day, well, is $1 million not enough? Well, is $5 million too much? We could debate that back and forth all day. But we have to agree that at some point we're going to have to agree on a dollar amount, because that's all that's available.

McKINNEY: Thank you.

DeBOER: Other questions? Senator Rountree.

ROUNTREE: Thank you, Ms. Chair. Sir, and I'm going to ask turning the same questions over, we-- numbers. How many of these outrageous settlements have we had that's impacting us here in Nebraska? We know Iowa has a $5 million limit. We're proposing a $1 million limit. How many of these nuclear cases that we've had? And do we have any redress in our current court system when those types of actions happen? I say to somebody now has gotten the $5 million, and we want to go to $1 million now, but what type of redress is in place to handle that $5 million settlement currently?

KENT GRISHAM: The, the second part of your question, Senator, I, I am going to have to defer probably to some of the lawyers who are going to follow me. As far as the number of nuclear verdicts, we have not seen the headline grabbing nuclear verdicts in Nebraska yet. But there is nothing to prevent them. There is nothing on the books right now that will protect all of us, all of us from that kind of occurrence. Again, you know, I'm talking about the, the dairy farmer who's got to haul his raw milk to the processing center. I'm talking about the lawn care guy that's got a one ton truck pulling a 18,000 pound trailer full of lawn care equipment. I'm not just talking about the, the classic big rigs that are going down the highway. For those companies, the 1 or $2 million is equally nuclear as what a $90 million verdict is to a large company.

ROUNTREE: Thank you. I think we spoke that the last time.

KENT GRISHAM: Yeah.

ROUNTREE: But I appreciate that, so.

DeBOER: Other questions. I have a couple for you, sir. You would agree that noneconomic damages are real damages?

KENT GRISHAM: Yes.

DeBOER: Because if Senator McKinney has a five year old who gets killed in front of his house while he's watching, the five year old is dead on the spot, doesn't have any medical bills. Maybe there's some small amount of burial costs, but he doesn't have any economic damages in that moment. So we could either say that that person who ran through that light and killed his son, did not have to pay anything but this small amount. Or we can recognize that a damage has been done to Senator McKinney, right?

KENT GRISHAM: Yes.

DeBOER: So in that situation, there has been a damage. It's a real damage, even though it's noneconomic. OK. You've been talking back and forth with Senator McKinney and say that-- I think you said we can debate back and forth the right number. And we know that states have different correct numbers that they've put into statute. Other states have none. And I think the question for me then is, we can either have juries who see the individual, who can see the case, who can see the damages that are being done, decide how to best make someone whole, which we always say with scare quotes, because in a thousand years everybody would rather have their kid back, or we can have us sitting here with no ability to see that person figure out what's fair for them right now. Those are the-- that's, that's the options that this bill is offering us. We can do it here with no, no idea what's actually going on. Or we can let the juries do it. Is that right?

KENT GRISHAM: Yes. I, I guess my question, perhaps, back to you is when do we put guardrails in the justice system to protect everybody involved?

DeBOER: And that's what I'll ask the lawyers, because there are a number of them. And so, I'm not going to do that to you because I'm trying to stay your best friend, so.

KENT GRISHAM: Yes. But I, but I, I do think that it's appropriate for our society to have guardrails in the justice system, and that's what this is. It's the same, same concept again, as medical malpractice.

We, we cap what can be paid out on medical malpractice claims. And I would argue, having experienced something similar in the loss of someone that I cherished, that what was missed in the medical experience that I had in her circumstances by the medical professionals created just as much grief and just as much pain for me as what other people would experience from a motor carrier collision.

DeBOER: And maybe that is the bill we should bring is to change that one, not this one.

KENT GRISHAM: Well, I will leave that one up to you and the medical community.

DeBOER: I have definitely had that bill before me before in this committee. So I appreciate your testimony. Are there any other questions? Thank you for being here.

KENT GRISHAM: Thank you all very much.

DeBOER: We'll take our next proponent.

MATT QUANDT: Good evening, Judiciary Committee. My name is Matt Quandt, M-a-t-t Q-u-a-n-d-t. I appear before you on behalf of the Nebraska Defense Counsel Association. I am licensed in Missouri, Kansas, Iowa, and Nebraska, and I've tried personal injury trucking cases and wrongful death cases throughout the Midwest. When I moved to Omaha six years ago, the medical bill rule was actually one of the ones that shocked me the most. Most or many states have codified the paid amount, or at least allow the defense to counter with it. But Nebraska's current law only allows the billed amount to be put into evidence, which can create a huge windfall, and artificially inflate damages. I was going to explain two examples, but Chair Bosn touched on them, so I'll just give one example from a recent trial. Plaintiff's counsels will often partner with medical providers. They'll direct their clients to them for treatment, and that medical provider will give them a bill, oftentimes for an inflated amount that will not be submitted to insurance and possibly never even paid. I had this happen last summer in a trucking trial. Plaintiff's counsel referred his Lincoln client to an Omaha doctor. That Omaha doctor racked up a bill for $55,000, a result of multiple $8,000 procedures that were not submitted or paid. We learned that there are multiple Lincoln providers that provided this for much cheaper, and it could actually be self-administered for $250. But under Nebraska's current law, they were allowed to present the billed amount for the $55,000 charges. As it sits now, that law allows the billed figures to

artificially inflate the economic damages, which then inflates the total verdict. The NDCA also supports a cap on noneconomic damages. In civil cases for personal injury or wrongful death. There are two types of damages, economic and noneconomic damages. Economic damages are easily defined. The parties usually have medical bills, an economist, lost wages, loss of services at home, etc. They're easily quantifiable, and LB205 does not limit those damages in any way. On the other hand, you have noneconomic damages. For personal injury, that is pain and suffering that you've been talking about. For wrongful death cases, the legal term is loss of care, comfort, or companionship. I lost a close family member in a trucking accident, and I investigate, analyze and evaluate these cases every day. I will say it's nearly impossible to accurately quantify. And these nuclear verdicts are often the result of runaway noneconomic damages. Nebraska may not have had its headline nuclear verdict yet, but we will. And without reasonable tort reform in noneconomic damages, you can't put that toothpaste back in the tube. One thing I wanted to touch on. A few, a few of you have talked about the loss of a child, and I appreciate that. And the word grief has been brought up a few times. I want to be clear that under the law in Nebraska, you're not allowed to recover damages for grief, bereavement, or solace. That's the law in Nebraska. So what you can recover for noneconomic damages is care, comfort, and companionship. And I think that ambiguity and how those two can be conflated or confused can lead to these nuclear verdicts. Thank you for your time.

DeBOER: Let's see if there are any questions. Senator McKinney.

McKINNEY: Thank you. I think I mentioned just pain and suffering. But are all doctors created equal?

MATT QUANDT: No, Senator.

McKINNEY: OK. Could two doctors of the same profession charge different prices?

MATT QUANDT: Yes, Senator.

McKINNEY: So when you say that patients went to different doctors and prices were different, is that-- does that mean something nefarious, I guess is what I'm trying to say. Because somebody could be, both could be specialists, but one could have more experience than the other.

MATT QUANDT: And I think that what we're distinguishing here is the difference between the billed amount and the paid amount, and that

delta, the, the billed amount that does not necessarily reflect the economic damage that's recoverable for, for that surgery or that treatment. I think we're talking about different things there.

McKINNEY: But could that depend on where you go, though?

MATT QUANDT: Yes.

McKINNEY: That's all I'm trying to say. I get what you're trying to argue, but you can go to two different doctors and get two different bills.

MATT QUANDT: That's correct.

McKINNEY: All right. Thank you.

MATT QUANDT: Thank you.

DeBOER: Other questions. So I think what Senator McKinney might have been onto is that you don't, for future billing, you don't know what the future cost is going to be between whether you're going to go to "Bargain Basement Bob" doctor or "Cadillac" doctor.

MATT QUANDT: Exactly. In most of these cases, when you're talking about future treatment, you're talking about maybe a life care plan or future treatment. There are experts on both sides that will opine on that and they'll talk about quality of care, quality of treatment, the cost of those and the difference between the billed cost and the paid costs. So that that would be expert testimony to go towards those things.

DeBOER: So let's talk about that for a second, because this is something I'm trying to wrap my head about with this. The, the bill provides for certain amount if you're insured or-- what if I become, later in life, uninsured? So the billed amount, this expert that you're going to bring in, is going to imagine that I'm continue to be insured, and therefore would be recovering whatever the insured cost. But if I lose my insurance, then I would be on, let's say, Medicaid. Those are very different costs. And in the bill, they seem to be very different costs. Now imagine I go the other way. I'm on Medicaid now, but later I get really good insurance. So the-- I guess what I'm, I'm trying to get at, and I'm not doing it well, is the cost going forward, the billed the cost going forward is very speculative because of the fact that we don't know what your situation is going to be in the future with respect to insurance.

MATT QUANDT: That'd be correct. And I think the statute tries to contemplate that. I think it talks about Medicaid rates or private pay rates. But I still think it comes down to you're going to have expert testimony about reasonable, I guess, costs or reasonable payments, not the inflated billed amount.

DeBOER: So if I don't have-- so if I, if I have insurance now and I come to later not have insurance, and for some reason or another, the, the actual cost is a lot greater because now I don't have insurance, that's coming out of my pocket and I have to pay, not just out of my pocket I have to pay the amount, but I have to pay this greater amount. And that delta that you're talking about is now being borne by the person who, you know, is the injured person.

MATT QUANDT: Yeah. And I-- it's hard to I mean, on that spec-- you speculate on that hypothetical. But the alternative is, I guess, the windfall and you're-- you don't know what you're going to have as far as insurance or rates or payments later. That's what we have expert testimony to talk about. And it's the same as we do now with the billed amount. You still have to set forth that by, by an expert.

DeBOER: OK. I am not able to, to, to communicate that in a-- what I'm trying to get at I'm not able to communicate, so I'm sorry about that. You, you've heard the talk about these out of control juries, runaway juries, that sort of thing that people have been talking about here today. There are remedies under law for those things. For example, a remitter, right?

MATT QUANDT: Yes.

DeBOER: So in a remitter, and I'm really digging deep here, trying to remember a remitter. But as I recall, a remitter is where the judge says, OK, something's gone awry here in,in this award, it's, it's not right. It's one of these runaway juries. And the judge can say, either you have to change the amount, and I may be getting this wrong, so please fix it for me, or you have a new trial. Or do they just say you get a new trial no matter what?

MATT QUANDT: I believe they can have an option of, I guess, reducing that amount.

DeBOER: OK.

MATT QUANDT: What they deem is reasonable. I believe your mechanism is accurate.

DeBOER: OK.

DeBOER: So there is a mechanism-- you could also do. I don't know. Now we're really getting to some reaching here. Is there something is you can just have a new trial, like a JNOV or something.

MATT QUANDT: I guess you, you could. Yes.

DeBOER: So there are, there are ways in which if a jury does this craziness that we seem to be afraid of here, that, that there are mechanisms within the law that will take care of it?

MATT QUANDT: It is possible, yes. I guess it comes back to that uncertainty. So then you going to have to go through that whole trial, not know what that amount would be because we don't have a cap. And then possibly the judge will take that into his discretion and have a remitter. I, I imagine it's the same kind of public policy considerations that the Nebraska Legislature has had when you're setting caps on political subdivisions at $1 million, or medical malpractice cases at $2 million or $2.25 million I think it is. I think there are-- it's a balancing act, and, and just for clarity, those are total damages, I believe, not just noneconomic damages on those caps that you have now.

DeBOER: So the judges are the ones ultimately that would get to be sort of the gatekeeper on whether or not there were out of control damages awarded by a jury.

MATT QUANDT: It's possible.

DeBOER: I mean, if, if I'm a defense attorney and I think that I am subject to a runaway jury, why would I not file for a remitter? I mean, wouldn't it be malpractice not to?

MATT QUANDT: Assuming you have that nuclear verdict, I presume that defense counsel probably would.

DeBOER: OK. So there are ways in the law to get at this. OK. I did, I do want to talk to you, because this thing that I've been hearing about where a medical professional teams up in some kind of weird collusion with the injured party to give a kickback to the medical professional for inflating their prices? Is that what I'm kind of hearing?

MATT QUANDT: I wouldn't go as far. I wouldn't say a kickback.

DeBOER: I, I just want to--

MATT QUANDT: Yeah.

DeBOER: --understand this.

MATT QUANDT: The, the medical, the medical professional testified under oath that he partners, is the exact language that he used, with the plaintiff's counsel and that-- and actually I evidenced at that trial that it actually says that on his website, he partners with plaintiff's counsels. So yes, the-- and then those bills were not submitted to insurance, they were not paid. But because Nebraska law allows the billed amount into evidence, that's what they were able to submit.

DeBOER: So wouldn't you be able to su-- to submit evidence to the jury of that exact thing happening?

MATT QUANDT: You could submit evidence to unreasonable billed amount, but I can't speak to the paid amount on those. That's the--

DeBOER: Couldn't, couldn't you submit evidence to the jury that, that there was this collusion going on?

MATT QUANDT: Well, it would-- that cross-examination happened, Senator

DeBOER: Yeah. I was going to say, you would definitely want to do that. So if doctors are participating in this, what sounds like to me, pretty unscrupulous behavior, you can get that into evidence, right?

MATT QUANDT: It is into evidence, Senator.

DeBOER: Good, good. I'm glad you did that, because I don't want doctors doing that. All right. So that kind of gets to that issue. I think that's all the questions I have, are their other questions? Senator Storm.

STORM: Thank you. Thank you. I'm going to shift gears here a little bit and talk about insurance. So if Nebraska would pass this, if this passes, would insurance rates be lowered in your opinion, because they'd know that there would be a set amount that would be--instead of this unlimited possible amount that we have now?

MATT QUANDT: I, I presume so, Senator, but I don't do underwriting for the insurance companies. I, I do presume so, and I've heard that from some of my motor carriers when they have claims made. Premiums have

gone up exponentially, I think, in the last decade. So, yes, I, I per-- I think that's a safe presumption.

STORM: So do you know in other states that have done this? Is there any way to see if that's changed the insurance premiums at all for commercial carriers?

MATT QUANDT: I, I, I presume there is a way to get that data. But again, not being in underwriting or the insurance industry, I don't have that.

STORM: OK. Thanks.

DeBOER: Thank you, Senator Storm. Senator Hallstrom.

HALLSTROM: Thank you. What was the outcome in that case where you got that evidence admitted es-- unreasonable billing?

MATT QUANDT: The plaintiff's counsel asked the jury for $2.11 million, and we admitted liability and the jury awarded $100,000.

HALLSTROM: And with regard to the question on future and the uncertainty that Senator DeBoer was questioning you on, for, for the bills that are in front of you that you know the difference between billed and paid, that, that's where the real-- you can really prove that.

MATT QUANDT: Yes.

HALLSTROM: No question.

MATT QUANDT: Most of these cases, you're looking at past medical expenses, past bills, past payments. But as it is right now, you could only-- the only evidence that's allowed is the billed amount.

HALLSTROM: Thank you.

DeBOER: Thank you, Senator Hallstrom. And for the record, I'll note that I badly asked those questions.

MATT QUANDT: Thank you.

DeBOER: Any other questions? Thank you for being here.

MATT QUANDT: Thank you.

DeBOER: We'll take our next proponent.

ROBERT BELL: Good evening. Vice Chairwoman DeBoer and members of the Judiciary Committee, my name is Robert M. Bell, last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, and I am here today in support of LB205. The Nebraska Insurance Federation is the primary trade association of insurance Companies in Nebraska. The federation consists of 49 member companies and nine associate members, members, right? All lines of insurance. And I, and I, I don't intend to repeat what others have said other than that we do support as amended, I know Senator Bosn and handed out that amendment, and that it's important to the health plans who negotiate those rates for their own business purposes, and much of that information is proprietary, and we would like to keep it so that they can't be used against us in negotiations with medical providers. We support that. We do support the caps. Anything that we can do to-- to Senator Storm's question, I don't know that we're ever going to say we're going to lower rates because of inflation and other factors like that, but perhaps we can bend the curve on, on increasing rates. If it was a commercial motor carrier insurer, perhaps, right? With, with the caps. It would depend on a lot of different situations. Nebraska does happen to be home of Great West Casualty located in South Sioux City, Nebraska, which is one of the largest trucking insurers in the United States. So a homegrown Nebraska company. So with that, I don't intend, I know the hour's late. Again, we support LB205 as amended. I appreciate the opportunity to testify.

DeBOER: Are there any questions? Senator Rountree.

ROUNTREE: Yes, ma'am. Thank you so much, Chair. Regarding the loss ratio, I just got a letter from our insurance, so I won't mention who they are.

ROBERT BELL: OK.

ROUNTREE: But the CEO talked about loss ratio. So what is our Nebraska to loss ratio for--

ROBERT BELL: For property and casualty? Depends on your line of insurance, right? Loss ratios, hope we won't have to discuss on the floor of the Legislature because I know there's a bill on dental loss ratios and there's medical loss ratios that, that apply to health plans. Most property and casualty insurers in the state of Nebraska, their loss ratios are above 100% for the last few years because of storms and other, other situations in our state. It's not been a good time to be in property and casualty insurance in Nebraska. Which is

why your rates have been increasing to meet that need and pay those claims of, of those individuals and businesses that have, that have filed claims. So.

ROUNTREE: So when you petition to our insurance commission here to raise rates, so let's say for automobiles rates, mine just went up as well.

ROBERT BELL: Sure.

ROUNTREE: With that as well, so what have-- what have we been increasing those in the last couple of years?

ROBERT BELL: Honestly, I don't know off the top of my head. So I'm, I'm sorry about that. They do have to file their rates with the Nebraska Department of Insurance, with their rate, their rating plans, and then the department can object to them if they so choose, if their actuary looks at them and they say, no, that, that's not right, you're, you're making some calculations that you shouldn't be. But I don't know how much has been increasing. I do know we were in a different hearing earlier this week and Farmers Mutual of Nebraska did mention they, they don't make money on their auto insurance right now, and they're the third largest auto writer in the state of Nebraska. And also a company that writes-- they're the biggest farm writer in the state of Nebraska, and many commercial motor vehicles are covered under farm policies as well. So just something I would like to point out that's related to this bill. So.

ROUNTREE: All right. And then finally, we mentioned, what is this, Great Western Casualty that's up in South Sioux City?

ROBERT BELL: Great West Casualty.

ROUNTREE: Great West Casualty. How are they operating? What kind of profit margins are they operating on since they're one of our biggest?

ROBERT BELL: Oh. So they are an-- interesting question. I don't know--

ROUNTREE: OK.

ROBERT BELL: --what their financials are. You can go find that.

ROUNTREE: I may need to.

ROBERT BELL: Their financial reports are filed with the Nebraska Department of Insurance. They're also a publicly traded company owned

by a company called Old Republic, that is, and would have to file with the SEC With that, with that said, I would like you to know as well that many insurance companies are mutual insurance companies so they don't make profit. They exist for the benefit of their policyholders.

ROUNTREE: Thank you so much. No further questions.

ROBERT BELL: You're welcome.

DeBOER: Other questions? So I'll ask you a few since I--

ROBERT BELL: Health insurance questions. Let's go.

DeBOER: So I have information that we are the sixth lowest lost rat-- loss ratio in the country. Would that surprise you?

ROBERT BELL: That would surprise me. And, and what type, what line of insurance?

DeBOER: Just Nebraska's insurance loss ratio is 57% is what I've been given, and I'm trying to--

ROBERT BELL: Yeah. So I'm shaking my head because there's so many different lines of insurance. Are we talking about liability insurance, are we talking about property insurance, are we talking about, are we talking about dental insurance? There's a bill on dental insurance, that's why I brought that up, but.

DeBOER: Oh, it's for commercial auto. Sorry,.

ROBERT BELL: Commercial auto?

DeBOER: Yeah, sorry.

ROBERT BELL: I, I have I have no--

DeBOER: I need, I need [INAUDIBLE].

ROBERT BELL: I have no information to dispute that.

DeBOER: OK.

ROBERT BELL: But I don't know that to be true either.

DeBOER: And I also have been given information, and I will get the source of this, that auto insurance premiums raised an average of 26% in '23-24 in Nebraska.

ROBERT BELL: Yeah. Yeah. That, that doesn't surprise me.

DeBOER: That does sound about right.

ROBERT BELL: I, I , I could ask the question, but, you know, raise your hand if you've had a hail claim lately on your car. So.

DeBOER: But at the same time, right? Insurance companies are experiencing in this year, in 2025, in, or in the first three quarters of 2024 unprecedented profits. The $1.3 million, I thought I saw somewhere.

ROBERT BELL: $1.3 million?

DeBOER: Billion. Sorry.

ROBERT BELL: Billion? Again, what line are we talking about?

DeBOER: Yep, I'm looking at it. Except I can't find it. I should have done this before you got up here.

ROBERT BELL: That's fine.

DeBOER: I mean, we know that they are experiencing unprecedented profits, and maybe not in the tornadoes in Elkhorn insurance business.

ROBERT BELL: Right.

DeBOER: And maybe not in the-- I don't know what else, big floods in-- flood insurance in 2019.

ROBERT BELL: Wind and hail, wind and hail--

DeBOER: Wind and hail.

MATT QUANDT: --are the big are the big things. Flood insurance is kind of a different animal. But, yeah.

DeBOER: OK. But auto insurance.

ROBERT BELL: Auto insurance is, again, I mean, I think you heard that testimony by Farmers Mutual on the DMV fee increase bill as well. They don't make money. They're the third biggest writer in Nebraska. They're a mutual company, so they exist for the benefit of their policyholders. So they don't-- I mean, so like a company like that doesn't-- that's not-- they don't make profit. They don't report profit. If we're talking about Geico or another company that's a stock

company, they may be making profit. They are in business to make profit. Unprecedented profit.

DeBOER: So--

ROBERT BELL: I'd have to-- I would want to look at the information.

DeBOER: It's apparently a Wall Street Journal article, that Travelers and Allstate have reached record highs for their, their shares.

ROBERT BELL: Might be time to sell if, if you own those stocks, I don't know. I can't really speak to the--

DeBOER: Yeah, sorry.

ROBERT BELL: --the financials of Allstate and Travelers.

DeBOER: No, that's OK. I did just--

ROBERT BELL: Although Allstate is a member company.

DeBOER: I did just want to point out though that, that in, in the research that I have done, and I have not looked at every state, the states that, as you pointed out, have enacted these kinds of caps do not see lower insurance premiums. They're not like their auto insurance premiums just go down because they enact these caps.

ROBERT BELL: Correct. I mean, you're trying to bend future curves, right, of, of costs. You're not, you're not bending-- you're not going to, you know, it-- there are plenty of other costs that are, are very expensive related to insurance premiums. So.

DeBOER: Yeah. OK. Well, thank you.

ROBERT BELL: Yep. No problem.

DeBOER: Any questions? Thanks for being here.

ROBERT BELL: You're welcome.

DeBOER: Next proponent? Now we'll switch to opponents.

JENNIFER TURCO MEYER: Hello again. I'm Jennifer Turco Meyer, T-u-r-c-o, space, M-e-y-e-r. And we have a lot of people that want to talk tonight. And so instead of giving you facts and statistics, I'd want to take a different approach. I want you to know what I think the message is when you pass this bill to Nebraskans, what the message you

send is. The first message is that your constitutional rights don't matter here. Your Seventh Amendment right to have a jury hear your case don't matter-- doesn't matter. Nebraska Constitution that guarantees you full justice when a wrongdoer injures you, doesn't matter. We need to take an attack on our Seventh Amendment rights with just as much vim and vigor as we do on our First Amendment rights and our Second Amendment rights. Because the constitution and the guarantees in that constitution are important. We're sending the message don't trust our juries. They're too emotional, they are too illogical to get this right, even though they have been doing it for centuries and they've been doing it well. You've heard no nuclear verdicts in Nebraska. Don't trust our judges who are our guardrails. Not only do we have judges that can consider excessive verdicts, we have an appeals court process that handles these types of issues. We're sending the message you won't get full justice here in Nebraska. I've handed you all a case. And on the fifth page, one insurance executive in a case said in an email, nothing is worth more than $2 million in Nebraska. That is a slap in the face to anybody who has sustained an injury with nuclear damages. Nuclear verdicts come from nuclear damages. The reason why we have juries decide these issues is because we need a fair system. So does that system, would it entail having the victims decide what is fair compensation? Or would it have the wrongdoers decide what fair compensation would be? In a system like that, we would have somebody with the impression that there's nothing valuable here in Nebraska to substantiate nuclear damages. And I just want to leave you with this. When you drive into Nebraska, the message that you're sending to truckers is, come on in, drive on our roads, break our laws, break our people, we are your sanctuary here, we will protect you because nothing in Nebraska is worth more than $1 million. That's the message that this bill sends to the hardworking people that comprise the constituents who are smart enough to serve on a jury and give an award, and they're smart enough to vote for you, and taking that power away from them is a slap in the face. Thank you. Any questions?

DeBOER: Are there questions for this testifier? Senator Rountree.

ROUNTREE: Thank you so much, Madame Vice Chair. So we heard earlier today that the limit over in Nebraska-- over in Iowa is $5 million. We're looking at $1 million here. So do-- is that sending a message then that Iowans are at least $4 million better than we are over here?

ROUNTREE: I think it clearly sends a message that for the same injury, a Nebraska citizen is worth less.

ROUNTREE: Thank you so much.

DeBOER: Thank you, Senator Rountree. Senator Hallstrom.

HALLSTROM: Just to clarify. When you, are you suggesting that there's no jury trial, right to a jury trial because we're capping the, the damages so that they don't have the right for the jury to make a determination about that amount?

JENNIFER TURCO MEYER: Well, sir, what I'm suggesting is when we go to trial and the jury is actually given amount, like in the case that they've presented to you, if the jury says it's $8 million, then what happens after the jury leaves and they've done their service is that the judge has to, by law, limit it per the cap that has been passed by the senators here, and then has to tell the, the families and the victims that they are getting less because the senators who have no idea about their situation decided this case was worth less than the 12, 8 to 12 people in the community that were their peers. That's what they find out.

HALLSTROM: But they have a jury trial. Your position is that if the some of their verdict is nullified because of the, of the cap.

JENNIFER TURCO MEYER: My position is that the juries do not have the power to make the decision in the case under the Seventh Amendment.

HALLSTROM: And would it be safe-- earlier, I thought I heard from-- I don't, I don't recall, I'm not going to attribute it to you, but someone from the trial attorneys, I got the impression that having a jury trial and trusting the jury with regard to seat belts beyond the 5% was something that we shouldn't, shouldn't do.

JENNIFER TURCO MEYER: No, I think everybody that has stood up here or sat up here on both sides have said we trust juries. I think this bill says differently.

HALLSTROM: But if you can't put evidence on with regard to that issue, then it's not an issue of trusting the jury. You're just keeping it from the jury.

JENNIFER TURCO MEYER: There's all sorts of reasons why evidence doesn't go to a jury. And in this-- in the safety belt situation, it's mainly because our courts have said it's not appropriate. Right? As a mitigation. It can't come under mitigation. It can't come in under, under cause, causation. And so it's confusing for not only juries, it's confusing for lawyers and it's confusing for judges. And so

there's, there is a difference between saying that a jury can't value what it would be like to never be able to walk again and put a value on that. And just because some people in this room may not be able to do that, juries do it every day.

HALLSTROM: And relevance would be one potential basis.

JENNIFER TURCO MEYER: Yeah, there's lots of evidentiary rules that would keep things in and let-- or keep things out and let things in. And that all goes to the jury. You know, to the point earlier, if, if you expose that a plaintiff is in cahoots with a doctor to, to do something to, you know, game the system, the jury then hears that information and probably will reflect their decision in the case. Because, you know, juries are smart.

HALLSTROM: Thank you.

DeBOER: Thank you, Senator Hallstrom. Senator Storer.

STORER: Thank you, Vice Chair DeBoer. Thank you. So I'm struggling a little bit with, with, with such a egregious claim of someone being stripped of their constitutional rights due to a limitation. Because we have, we currently have limitations, right? We've just heard on medical malpractice. The $5 Million is a limitation. Any limitation would then be, in your opinion, limiting or stripping someone of their Seventh Amendment right?

JENNIFER TURCO MEYER: Yes. If you decide that a jury's decision is, is, you know, in excess of a cap put on by the Legislature, I would say that any cap is inappropriate. But I want to revisit too like the medical malpractice caps. There are other states who have, I think Kansas is one of them that have said we won't have a medical malpractice cap because it's a violation of the constitutional right of the Seventh Amendment. So just because we have one here doesn't mean that other states don't look at that to be a violation of a constitutional right.

STORER: Has that been challenged? And has the court ruled on whether or not that's actually a violation of the Seventh Amendment right?

JENNIFER TURCO MEYER: The, the medical malpractice, medical malpractice cap has been challenged, I believe, several times, especially-- there was a really famous national case about the Gourly family that put it in the spotlight, because in that case, unequivocally, everybody would agree that they were not compensated for their injuries to their son.

STORER: So it's been challenged. And is there any rulings or any case law that would back up the claim that that actually strips someone of their Seventh Amendment right?

JENNIFER TURCO MEYER: I'm not sure if that argument has been made personally. I just know when I was researching it, Kansas has said it is in violation of the Seventh Amendment right.

STORER: The courts or--

JENNIFER TURCO MEYER: Their courts, yes.

STORER: And that was due, that was--

JENNIFER TURCO MEYER: A cap.

STORER: Based on a challenge to a cap.

JENNIFER TURCO MEYER: Yes.

STORER: And if you could possibly get--give us that?

JENNIFER TURCO MEYER: Sure.

STORER: Thank you.

JENNIFER TURCO MEYER: Yeah.

DeBOER: Senator Hallstrom.

HALLSTROM: Your testimony focused on the cap. If you want to take just a minute with regard to the bill versus paid charges and maybe clarify what the trial lawyers position is with--

DeBOER: Sure.

HALLSTROM: --regard to that issue, and does that allow someone to get a recovery that's in excess of what they and or their insurance paid with regard to medical bills? And if a-- an attorney has a contingency fee, is the contingency fee based on the paid or the billed charges that the recovery is based upon?

JENNIFER TURCO MEYER: Sure. So I'll take the questions kind of in reverse.

HALLSTROM: Thank you.

JENNIFER TURCO MEYER: So the contingency fee is always going to be based on the recovery, unless it's worker's compensation, because you can't take a recovery out of medical. But in a, in this context that we're talking to, it's going to be out of the recovery. And there's no real limit on-- you know, I think some attorneys in this room would tell you there's been cases where we've had catastrophic injuries, where there's not enough coverage, where we would reduce fees to be able to-- and medical providers will reduce charges and lienholders will reduce liens to make sure that the, the injured party is as compensated and made as whole as possible, when insurance limits, you know, prevent that from happening. But I think-- there will be a speaker specifically about these bills and how we feel about the-- we are obviously opposed to the whole bill, LB205. But I think the thing that I would say, and it kind of goes to what Senator DeBoer was kind of getting at. The problem I have as a practitioner is when I enter that courtroom and I'm presenting my past medicals, I can show what was paid. It's very easy to do, right? You just look at the bills and it shows all the contractual adjustments and write offs and all that. The problem is when I look to the future and I have a standard in a court of law to prove something that's beyond speculation, right now, what we do is we take the bills, and the experts inflate them because medical costs go up 138% over a ten year period. So we inflate them and then we present value them to account for what the money is worth today and not 30 years from now. And that is not speculative. Like we can do that in the courts, we can present that testimony. My concern is, is when I, when I then go to future medical, it's I don't know if they'll be insured, I don't know if they'll have Medicaid, I don't know-- you know, it-- I'm worried that a judge will say you can't prove the future medicals with enough certainty that this court of law will recognize those. And then we have a serious situation with a quadriplegic who gets no recovery, and then ends up having to rely on Medicaid and then Medicare. And even then they don't pay everything. So then they have debt and they get bills and, and that financial piece is not taken care of. So I'm concerned about that. But I would like to defer to the one other NATA attorney that's going to talk about that particular issue.

HALLSTROM: Thank you.

DeBOER: Thank you, Senator Hallstrom. Any other questions? So. I had a question for you. We talked for a second about the, the difference between Iowa and Nebraska. Are there other states that have sort of done different things than just having a number in statute to cap things? Are you aware of, like, exceptions or different things like that that we might do. If we're putting all the things on the table,

we ought to know all the things that exist. So are there other ways to structure something that you know of?

JENNIFER TURCO MEYER: Yes, I believe-- so, the two most recent bills that I know of were a bill in West Virginia and a bill in Iowa. And both of them have exceptions to them, a lot of exceptions for things like, you know, drunk driving and, you know, things like that. **JENNIFER TURCO MEYER:** They also have inflators, meaning like our cap won't just stay the cap forever until we get in front of the Legislature and get enough people to decide that it's an issue that we need to address. In West Virginia, they have like a tiered system, I believe. Don't quote me exactly, but I think it's $2 million, $5 million. And so those were the two recent examples, because this legislation is being brought, you know, to all these different states in kind of an incremental fashion, like North Dakota just recently decided not to implement a cap. And during their session right now, they're considering the same things that you're considering with this LB205. And so I know that there are things that, you know, that other bills have done that seem to be a compromise and seem to be what these interests that are involved in these bills have decided is fair. And I guess I don't understand why we're not starting there if we're really having a discussion about not treating Nebraskans differently than other, other states.

DeBOER: OK. I want to change courses for just a second. Because when people hear about trial attorneys, they say, they're just out here to get money. Right? I mean that, you've. Somebody--

JENNIFER TURCO MEYER: Oh, totally. Yeah, yeah.

DeBOER: --said that to you before.

JENNIFER TURCO MEYER: Absolutely.

DeBOER: OK. So is there a statutory cap on what contingency fees can be charged in Nebraska?

JENNIFER TURCO MEYER: There's not.

DeBOER: OK. I didn't know. What is the standard conti-- contingency fee, do you know, in Nebraska?

JENNIFER TURCO MEYER: That is an interesting question because I feel like everybody does things differently. What we're required to do as attorneys in the legal profession is we are required to charge for our services a reasonable amount for the, for the work that we are doing

for those clients. And so it's not necessarily always just everybody does this, everybody does that. I can tell you I do employment work too. And in other states, I'm routinely seeing people charging 40% and above for, you know, contingency fee personal injuries. I don't think that's happening here. What I see is still the standard one third. And then if it goes up on appeal, there is usually an increase to 40% because we have to brief it, argue in front of the, the courts, you know, the court of appeals. There's just more time and effort put into, into that case at that point. I personally, though, if a client comes to me and they negotiated with an insurance company and they already had money on the table, I typically won't take a fee from that. I didn't earn it, I didn't do anything to earn that. Or sometimes if the case necessitates it and I think it's a matter of, you know, there's not enough insurance coverage and it's not going to be filed in court, I will reduce my fee to 25% to basically account for the fact that it's not reasonable for me to take a fee from somebody for not doing the amount of work that I think would be reasonable. And I think the important thing and the message here is we have to be reasonable. If we are not, we lose our law license. And so there's, there is this-- I think we're a profession and we take our job and what we do for these clients that you'll hear from tonight incredibly seriously in terms of how we treat them and how we help them. And I do think there are bad actors. I think there's bad lawyers, just like there's bad doctors and bad teachers and bad senators. And I think you have to judge us based on, not on the actions of a few bad actors. And a lot of those people are just not from our state. You know, last year when you were considering taxing attorney fees as part of the tax bill, one of the things we argued was like, please don't make it an environment where other attorneys from other states will come in here because you won't like them as much as you like us. And, and, and that's just me being honest about the way we treat the profession and the way we as even a group get along and treat each other civilly.

DeBOER: So one of the concerns I've also heard expressed is that if we're the last state standing without a cap, we'll get all these bad acting lawyers that are from other states that come here as the last refuge. Is that something we should be afraid of?

JENNIFER TURCO MEYER: No, for two reasons. I think if that was the case, we'd already seeing it, right? I mean, empirically, we would be seeing it. That would be happening. The second, the second reason is like you don't get to just pick whatever state you're going to go to, right? And so, like, if the injury happens here, you have jurisdiction here, the law here governs. So it's not like they can decide what

forum they want to go to, and, and, you know, and, and kind of game the system.

DeBOER: I think they mean that there will be all these new lawyers who appear on the scene in Nebraska trolling around looking for injured people that they can get nuclear verdicts for.

JENNIFER TURCO MEYER: I mean, they could already do that now. I mean, there, there's nothing I think that would uniquely be, if we don't pass this bill, this session, this is fundamentally going to start happening like tomorrow. I think the other thing that's important about that is, is when we have laws that promote full justice, then, you know, if that is a reason why people want to seek, you know, seek justice, I mean, that's something that is purposeful.

DeBOER: Do you think a lawyer from outside of the state of Nebraska would be as persuasive to a Nebraska jury as a Nebraska attorney would be?

JENNIFER TURCO MEYER: I mean, probably not. Sometimes, yes. I mean, all lawyers are different. And even, I mean, some of us that are here today are more persuasive than others, you know, and so I think, I think the attorneys, they make a difference. But sometimes it's just the fact that the clients are really injured and their case is valued higher because they have sustained significant injuries. And, and honestly, at the point where we're saying to our, we're saying to our Nebraska citizens, if you have a small case, you get full justice. But if you have a catastrophic case and you're one of the most vulnerable people in our society, you don't get full justice because we have a cap. I just think that's a dangerous proposition.

DeBOER: My point, I think, also is that it doesn't make sense to me that someone would come in from outside of Nebraska and suddenly find all these cases that you guys aren't finding, because I assume that if there are cases of injured people, it's not like there's a lot of injured people going around in search of a lawyer. There's probably enough representation in Nebra-- I mean, we know there's 18 counties out in western Nebraska that have no attorneys, but hopefully they can go somewhere.

JENNIFER TURCO MEYER: Well, they do. And we drive out there, you know, I mean, we take on the expense and the time of going out there when they need, you know, need attorneys. And so I don't think there's a unique risk of not adding or choosing not to add a cap and then the legal climate shifting overnight.

DeBOER: Yeah.

JENNIFER TURCO MEYER: I mean, they can already do that. The Internet's done that everywhere, right? I mean, there was, there was a TikTok thing where people were saying, don't, don't hire an attorney to settle your case. And they were flooding the Omaha market with these, you know, advertisements. And then they would send them to attorneys. And I mean, there's nothing we can do to change that, except for have Nebraska attorneys represent Nebraska plaintiffs and get them full justice.

DeBOER: OK. Have you ever had a nuclear judgment?

JENNIFER TURCO MEYER: Nuclear judgment. So--

DeBOER: Have you ever had anything that would be a judgment over $5 million?

JENNIFER TURCO MEYER: I personally have not. I mean, I've second chaired something that was over $5 million, but I personally have not.

DeBOER: One time?

JENNIFER TURCO MEYER: One time, yeah.

DeBOER: And how long have you been practicing?

JENNIFER TURCO MEYER: 18 years.

DeBOER: Do you know of any other judgments over $5 million?

JENNIFER TURCO MEYER: I do. I mean, if I'm answering honestly, I do know of some. Yeah.

DeBOER: Like more than 100?

JENNIFER TURCO MEYER: More than $100 million?

DeBOER: No, more than 100 judgments over--

JENNIFER TURCO MEYER: Oh, gosh, no. Like I'm thinking of two.

DeBOER: Two. OK. Thank you. Any other questions? Thank you for being here.

JENNIFER TURCO MEYER: Thank you.

DeBOER: Next opponent.

ZACHARIAH HERGER: Evening, everyone.

DeBOER: Welcome.

ZACHARIAH HARGER: My name is Zachariah Harger, spelled Z-a-c-h-a-r-i-a-h H-a-r-g-e-r. I go by Zach. I was born and raised in Nebraska City, have lived in Lincoln for most of my adult life. I was married-- I've been married to my wife Cassie [PHONETIC] since 2019. I share custody, joint custody, with my son Zander [PHONETIC], who will be 15 in 2 weeks, and who I could not be prouder of, to be honest with you. In June of 2019, I was involved in a collision in Lincoln caused by a drunk driver operating a commercial fuel truck. My body was torn apart. My sciatic nerve was separated from my spine, and I had multiple facial fractures, including a mid face skeleton separated from my skull base. I suffered traumatic brain injury with intracranial bleeding. My pelvis and left elbow were shattered. I spent four months in the hospital. Cassie and I were engaged before the collision with the wedding date a few months after. Because of the drunk driver, Cassie and I got married in a hospital room. Cassie was a beautiful as I could imagine in her wedding dress. We took our vows with me in a hospital bed. One of the things Cassie and I will never look back at, never get back, is the wedding day she had planned and deserved. My own physical fitness was hugely important to me. I lifted six days a week, if not more. I had a hard-- I was a hard worker before the collision, I worked at a, a production facility called Honeywell in Nebraska City for 15 years before this collision. I worked-- I got up left, left Lincoln every morning at 5 a.m. to get to work. I made that drive to Nebraska City. Now, that job was impossible for me, and they fought with-- they fought to keep me there. But after 18 months, they had to let me go because there was just no other option. My injuries robbed me and my strength and my mobility. I try to stay in shape, but I'm a shell of what I could be. What I lost because of the actions of a drunk driver goes beyond the medical bills. I lost a huge part of what made me the husband, father, and man I was before the collision. I grew up without a father in my life. I'm dedicated to making sure that that is not the case for my son, Zander. He is-- he was nine when this happened. He was just then getting into sports, and I was training with him a lot. We worked out together, I helped him with football drills. Our relationship was revolved around athletics and being physically active. That was taken from me and from him. My case settled long before it ever saw the inside of a courtroom. It settled because the company that employed the drunk driver took responsibility for the terrible acts of its employee. Both

sides came together to determine what was fair for the total-- totality of my injuries. Had this legislation bill been the law, it would have limited my recovery. It would have told me my physical pain and mental suffering is not worth as much as simply because a drunk driver was operating a commercial vehicle at the time. That is not fair. That should not be how the system works. I urge you to protect the constituents that-- who find themselves in the same terrible situation as I was. Please vote no for LB205 to help keep things fair for the people that voted you guys into office. Thank you for listening to me. I'm happy to answer any questions.

DeBOER: Are there any questions for this testifier. I don't see any. Thank you so much for being here and telling us your story, sir.

ZACHARIAH HARGER: Yes, thank you.

DeBOER: We'll have our next opponent.

WILLIAM RASMUSSEN: Good evening. Name is Rasmussen. William. Sorry.

DeBOER: Can you spell your name for us?

WILLIAM RASMUSSEN: W-i-l-l-i-a-m R-a-s-m-u-s-s-e-n.

DeBOER: Thank you.

WILLIAM RASMUSSEN: Yeah. I oppose the bill, LB2O5. This bill has many issues it would be opposed to by this committee. Providing a cap on someone's pain and suffering, inconvenience is cruel. Especially if you-- if it only benefits big business, trucking companies, or insurance companies. This is a special treatment not afforded by-- afforded to other Nebraskans. I testified earlier, I drove a semi tanker for a living, in 2001 suffered a collision by the hands of another semi truck. There were five other vehicles and people hurt, damaged-- the trucking company damaged. The trucking company didn't have enough coverage for this. If this bill should pass, it only puts Nebraskans in jeopardy while giving trucking companies special treatments under the law. Commercial trucking causes more significant injuries and deaths when they hit smaller vehicles, even in my case, driving a tanker. I'm lucky to be alive. I also would like to point out in opposition of the changes for proper proof of medical bill damages. My doctors, my physical therapists, hospitals, surgery centers all billed all their full rate. I know this-- I know this was when not one was paying the bills. That is what they demanded I pay. I worked hard, provided health insurance for my family. Why should my payment of premiums benefit a bad driver and insurance companies? If I

died in a collision, do trucking companies get offset my family's loss with the life insurance I paid for it? I request you do the right thing. Do not allow special treatment to expenses of others. I oppose the bill. Thank you.

DeBOER: Thank you for your testimony. Let's see if there are any questions. Thank you for being here.

WILLIAM RASMUSSEN: Thank you.

DeBOER: Thanks for sharing your story. Next opponent.

TRACIE RASMUSSEN: Hello, again. I'm Tracie Rasmussen, T-r-a-c-i-e R-a-s-m-u-s-s-e-n. I testify to oppose LB205 because it does have many issues that should be opposed by this committee. Providing a cap on someone's pain, suffering, inconvenience does not afford equal protection to all Nebraskans. It gives special treatment to trucking companies and their insurance carriers. This cap could deprive the most seriously injured, or worse yet, deceased from having a jury of their peers decide the loss. These caps are arbitrary and only increase profits of trucking companies and their insurance companies. I am very lucky my husband is alive. Had he died in that collision, I would hate to think that a cap would decide the value of his life. I also urge you to oppose this bill of limiting the proof of medical charges by a health insurance plan contracted to pay with the provider. This is not what we were charged when no insurance wanted-- no insurance companies wanted to pay. After one to two years of fighting with all of our insurance companies, the providers still had a full balance lien for charges after the health insurance company paid. Why does the person who caused this collision and their insurance companies get the benefit from us working our butts off to pay high premiums for this coverage? This punishes those who do the right thing. If Willie had died in that collision, would the insurance companies offset my family's loss with the life insurance that he paid for? I do request you do the right thing and don't hold profits over people. Please oppose this bill.

DeBOER: Thank you for your testimony and your story. Any questions? Thank you for being here. Our next opponent.

DARIANA BURR: Good afternoon. My name is Dariana Burr, D-a-r-i-a-n-a, and I am testifying today as a Nebraska citizen who has suffered life altering injuries due to the negligence of a commercial motor vehicle operator. On October 28th, 2018. I unfortunately opened my eyes to a day that would change my life forever. I was a 19 year old premed

student at Hastings College studying biology. After work, I was going westbound on Highway 6 in Adams County, Nebraska, coming home with my five month old puppy, Journey. Then at 7:50, bam, I was hit with a bright flash. I gripped onto Journey tightly as he was shoved in between me and the steering wheel, and we began spinning uncontrollably. It was a drunk driver operating a commercial pick up who sadly blew through a stop sign and collided into my vehicle. Journey saved my life that day. But both his and the other drivers lives were both lost. Since then, my recovery has been anything but easy, with the visits to over 34 medical facilities, 170 appointments, TBI, spinal injuries and surgery in uncontrollable surgeries and seizures. My-- still preventing me from driving, finishing my bachelor's degree, and plans to become a veterinarian. I have endured emotional, physical and psychological pain, and will have to manage that for the rest of my life. I can only work due to an incredibly accommodating veterinarian, Dr. Reilly [PHONETIC], and with my whole family's help. Unfortunately, my dreams of ever becoming a veterinarian have been stripped away by this accident. It's only due to my significant personal injury recovery that I've been able to achieve any sort of independence and hope that I contin-- continue to provide for myself for the entire future. With my medical bills of over $350,000, it was impossible to meet evidentiary standard to prove, prove loss of future earning capacity since I was only a college student and yet to have a career. If LB205 was the law during my case, my recovery would have been limited to $1.35 million, with my health insurance requesting that $350,000 being paid back to it, leaving me with only $1 million to take care of me for the next 56 years of my life. The company that employed the drunk driver would not be held responsible, and instead the taxpayers will ultimately bear the burden because they probably will end up on Medicaid or Social Security disability if not for a significant personal injury recovery. Not to mention Nebraska commercial automobile liability insurers profit 13.8% on net worth as compared to the nationwide average of 3.2%. My life has been significantly impacted by this commercial motor vehicle accident, and will continue to alter my life until the day I die. Without independence, with seizures, a TBI, spinal injuries, and even more, an everlasting heartache, without the loss of my puppy, Journey, my soul will never be the same. But it can come as close as it can with at least having a significant personal injury recovery to provide for me for the rest of my life. Please don't let the next poor soul similar to mine endure anything less than what they should receive. Please watch out for them when someone else isn't. Thank you.

DeBOER: Thank you. Are there questions for this testifier? Thank you for being here and sharing your story. Our next opponent.

MAREN CHALOUPKA: Maren Chaloupka, M-a-r-e-n C-h-a-l-o-u-p-k-a from Scottsbluff. To make a few points quickly, I have not seen a trucking company yet that stepped forward and said let me help make you whole. Haven't had a trucking company until Tressa and Mark [PHONETIC] Nelson and Korey Bower's family's case that agreed to change policies. Usually the response is take your money, sign a confidentiality agreement, and go away. And holding every actor that played a part in Emma and Korey's death to account is not piling on. If you take all that someone's got and all they're ever going to have, you should have to face the jury. That's not punishment. That's justice. You pay for the harm that you cause. There is no cap on how much a motor carrier can take away from us. And yet this bill puts a cap on how much that motor carrier's got to pay you back, even with insurance. And its proponents say, well, hey, we're not capping medical expense. That's great. You can now be a collection agent for your own medical providers, but after that, good luck with your much worse life and all of your hopes and dreams snuffed out. What you're going to get is a well, some of you, because I demonstrated that counting is not in my skill set, most of you are going to get a thumb drive that I brought to show how Nebraska damages caps really do work in a real case. 24 years ago in Scottsbluff County, a deputy sheriff was speeding down Highway 26. He was not in a pursuit. He was just driving fast because he could. Crashes into a car driven by Manuel Salazar, kills Manuel's fiancee, leaves Manuel paralyzed from the waist down with spinal cord infections ever since. Under the Political Subdivisions Tort Claims Act, Manuel's damages were capped at $1 million. Well, the hospitals cut their bills, so did we as the lawyers, and the remaining money was managed by a bank trustee for over 20 years. But eventually that money ran out. People live long lives. Being paralyzed is expensive. There's a lot of needs that Medicaid does not cover. So you end up paying for that need yourself or you go without. And now there's no money left for Manuel to pay for his needs because of that damages cap and he is suffering. Traveling to this hearing is impossible for Manuel because of his medical fragility. And that's why I made a recording of Manuel sharing his life. What it's like when due to someone else's selfishness, you lose everything. You become dependent on Medicaid. Manuel Salazar was born and raised in this state. He had a job, a fiancee, he had hopes and dreams until a deputy who was abusing his badge took it all away. And now his life is misery, uncontrolled pain every day, disability and infection for 24 years running, and no money

to just give him some comfort or some quality of life. Now damages caps--

DeBOER: I'll ask you to wrap it up.

MAREN CHALOUPKA: I am. Thank you, Senator. Damages caps say, we can't imagine how your pain could be worth more than $1 million. So you figure out your awful new life and we'll walk away. And what I would say in conclusion is our justice system ought to incentivize motor carriers to maintain their trucks and not hire dangerous drivers. But this cap does the opposite. Now, a motor carrier can plan for a certain number of dead children at a tidy $1 million apiece, a line item in a budget just like brake pads and tires. Please vote against this bill.

DeBOER: OK. Are there any questions? Thank you for being here.

MAREN CHALOUPKA: Thank you, Senator.

DeBOER: Next opponent. Welcome.

ALEX McKIERNAN: Thank you. Good evening, Senator DeBoer and and committee. My name is Alex McKiernan, A-l-e-x M-c-K-i-e-r-n-a-n. I farm and ranch in Lancaster and Pawnee Counties. Thank you for the opportunity to speak on LB2O5. At 1 p.m. on January 7th, 2014, it was a clear, dry day, I was rear-ended while stopped at a light at Saltillo and 77, just south of Lincoln. The force of the impact broke my back, it damaged my spinal cord, and it paralyzed me from the waist down at that time. I did have my seatbelt on. The pain was like someone took a giant steel ball bearing and heated it up in a fire and shoved it into my lower back, just intense pressure and searing burning pain. My twin daughters were nine months old at the time. My older daughter was three. I spent two months at Madonna as an inpatient and another two years focused on outpatient therapy, not legal proceedings. I have very few family memories of that time because I was physically gone or mentally occupied with the work of recovery. I no longer use the bathroom in the same way, or share intimacy as I used to. I played soccer all through college, but I'll never run or jump again. I can't hold my wife's hand or my daughter's hands and walk with them. And what's all that worth? And of course, every injury is different. For example, I'm very fortunate to not have constant pain, but I have lots of friends in particular a woman named Quinn [PHONETIC] with a spinal cord injury. She says her pain is like her legs are in a toaster with a shorted wire. Just shocking pain on and off all day, every day for the rest of her life. How much is, is

that constant pain worth? My friend Tabitha, whom I met at Madonna when I was an inpatient, she was a quadriplegic at the age of 22 and only lived for another decade and died in her early 30s from complications from that, that spinal cord injury. Most catastrophic injuries carry a shorter lifespan. How is that compensated? These are difficult, complex questions that turn on the specific circumstances of each injury. And luckily, we have a process that creates time and space for fair resolution to be achieved in each unique situation. That process is judges, judges, juries, lawyers, defendants, and plaintiffs. And it's the legal system already in place. Although $1 million sounds like a lot, this cap, which doesn't even appear to be indexed to inflation, will mean less and less and less compensation over time. Short circuits our refined legal process and puts big government in the middle of private individuals finding fair resolution for major loss. I'm a business owner. We operate vehicles. I get very frustrated at the rising costs of insurance. I carry extra because I want to make sure that if I or my employees injure someone, they-- in a serious way they can be compensated. And this bill is a hammer taken to high settlements when in fact a scalpel is really needed. I believe the intentions behind this bill are noble, but those most hurt will be folks like me who've already suffered catastrophic loss, not trial lawyers and not non-recourse civil litigation funders. So I appreciate you opposing this and I thank you for your time.

DeBOER: Thank you for being here. Are the questions? Thank you for your story. Next opponent. Welcome.

TRESSA NELSON: My name is Tressa Nelson, T-r-e-s-s-a N-e-l-s-o-n. I live in Juniata , Nebraska, District 33. I'm a Christian, a wife, a mother, home educator. I strongly urge you to vote against LB205. Senator Bosn, you have four children. Is LB205 what you would want if your child was killed? A national trucking company with a $3 billion valuation killed my little girl three years ago. The company knowingly hired a dangerous driver. No speculation there. They knew he lied on his application about a preventable accu-- accident. They knew he had a slew of tickets. In his first month of employment, he was caught three times in dangerous driving, and then he was caught covering up the cab dash cam. Company policy said it's an immediate firing offense, but the trucking company did nothing. They wanted drivers in seats to haul freight and make money. Three days later, that driver killed my daughter and her dear friend. Profits aren't bad. Putting profit over safety is bad. LB205 reduces these beloved children to a cost of doing business. If you put a limit on how much a trucking company could be held accountable for killing a person, then you have reduced human lives to line items. Trucking companies can predict how

many people its drivers will kill per year, set aside a tidy million dollars per predictable death, then they don't have to get rid of dangerous drivers, they can budget around the losses and keep earning profits. Supposedly Nebraska values life. Unless that life is taken by a trucking company? The Nebraska Constitution, which you swore to defend, every person for any injury done him or her in his or her person shall have remedy by due course of law and justice administered without denial or delay. LB205 would say unless you're paralyzed or killed by a trucking company. Think about the message you're sending because those companies are listening. Trucking companies will ease up on safety, they will know that they can hire dangerous drivers, and it will be OK because they will never have to pay what a human life is really worth. Because there is not currently a limit on the value of her life, Emma's father and I and the parents of Emma's dear friend were able to obtain changes in that trucking company's hiring practices as a condition of settlement. If that trucking company is true to its word, those changes will make our roads safer and the company will have fewer lawsuits. But let me be clear. If there had been a limit on the value of Emma's life like LB205 imposes, we would never have discovered the need for change and not have the ability to push for changes. This company would have cut a quick check for $1 million per dead child and just gone about its business. We could only push for these changes because the company knew that a jury could agree that the lives of Emma and Korey had value. We know money cannot bring back our daughter, but money is the only justice there is. When you kill someone in, in-- someone's child in a civil trial, justice is money. It's not so that we can live the high life off of Emma's death. And if that's what you think of parents who seek compensation for the child being ripped from their lives, then I hope you will never feel this anguish. Our goal is that Emma and Korey did not die in vain, and that from their deaths, other lives might be saved. That is impossible, impossible if you pass LB205 and reduce human life to a cold line item on a $1 billion budget. Thank you. Do you have any questions?

DeBOER: Thank you. Are there any questions for this testifier. Thank you so much for being here.

TRESSA NELSON: Thank you for listening. Take it to heart.

DeBOER: We'll have our next opponent. Why don't we pause for just a second as you're coming up so we can take care of the work-- you're fine now? OK. Thank you for being here. Welcome.

ROGER GRUNKE: Well, thank you, Vice Chairwoman and committee. My name is Roger Grunke, R-o-g-e-r G-r-u-n-k-e. And we're handing out some paper, but I hope you'll take some time while I'm talking to go to the very last picture. It was mentioned earlier today by, I think it was Senator McKinney, what is a noneconomic injury? And I think that picture says a thousand words. So it's the very last picture in the, in the binder. But I'm here today testifying on behalf of my wife, Mary, who I hoped had been here, but she just isn't able to today. She struggles to talk about her collision and the impact that it had on her life. Still, when we travel by that spot today, it bothers her, and that was two years ago, January 3rd, 2023. She wanted me to make sure to tell the committee about how harmful LB205 would be to people like Mary and to family like ours. Like I said, in January 2023, a commercial truck hit Mary as it was attempting a U-turn on a Highway 15 outside of Seward. The force of the collision caused Mary's head to impact the windshield and create a star in the windshield. That truck gave Mary a traumatic brain injury and changed her and our life forever. I'm probably biased because I-- because Mary and I have been married for 54 years, but she is the most exceptional person I have ever met. She has the biggest and best heart in Nebraska. Mary and I have two biological daughters, we have adopted two other kids, and we've been guardians for three more. In addition to that, we have fostered a total of 34 children. So, yes, she does have a big heart. In addition to all those kids, Mary cared, cared for an adult ward named Samantha [PHONETIC], or as I'm going to call her Sam. But really, Sam is our daughter. We cared for her since she was six weeks old. She was a shaken baby. Sam is blind, unable to walk, talk, and cannot eat without assistance. We've had a lot of fruit smoothies in her life. We also have 13 grandchildren and one great grandchild. The TBI that Mary sus-- sustained due to the truck took Mary's life away from her in so many ways. Mary and I had built a house for Sam together a few years ago. That was supposed to be our retirement home. It was going to allow us to continue to take care of Sam. That was our goal in life as we got older, to take care of Sam. But because of the collision, I now live there by myself. And it's lonely. And it's lonely. She is at constant risk for strokes, seizures. We tried to keep her at home. I did. I really tried. But we were forced to move her into an assisted living facility because I simply couldn't take care of her. Her TBI caused her to be wheelchair bound, which she is today. She does walk somewhat with a walker. But I just couldn't get her here in today, into this room with a wheelchair. A few months before her collision, we were dancing on a cruise ship, having a great time. There's pictures of her dancing on the ship. But this collision took Sam away from us. It took Sam away from her. Before this, Mary

was able to take care of Sam, get her up in the morning, I helped. She'd feed her, bathe her. We had a shower made just, just for her, a walk in drive in shower. It sits empty. She gave her all the care that Sam needed. She took that-

DeBOER: I'm going to stop you for once second, noticing the red light, and then I'm going to ask you the question, can you please continue and finish telling us your story that you want to share?

ROGER GRUNKE: OK. Say that again.

DeBOER: Just go ahead and finish now.

ROGER GRUNKE: We had to move Sam out of the house that we had built for her, and she is now into an assisted living facility herself. And if you look at that picture, I think it was Senator McKinney said, what is a non injury of care and giving. If you look at that picture, look at Mary's face. It's last picture in that book, and I see he's going to grab it right now. Look at it. Just look at that picture. That is what they took away from us. And-- I'm sorry, it's-- I, I-- Mary lost so much because of that collision. I can't put a price on Mary's relationship with Sam. You can't. We can't live together. She can't go see her grandchildren play softball or soccer or basketball. She can't do it. That's pain and suffering. She suffers every day. She sits in that nursing home all by herself. Mary's case was settled before we went into the courtroom. Fortunately for us, they had insurance, and they had enough insurance to pay us. But I will say this. If, if this law would have been into effect, we would not have received what we did. On behalf of Mary and behalf of Sam, please take, take care of the future Marys and Sams, and vote no on LB205. And do you see what. Look at her face.

DeBOER: So, sir--

ROGER GRUNKE: That's pain and suffering.

DeBOER: Sir, I thank you so much for your testimony. And since I'm technically questioning you right now, I'll ask you. I. I was trying to follow along. You're no longer able to be the caregivers for Sam, is that right?

ROGER GRUNKE: Correct. Sam is in a assisted living facility called Emerald Isle in Columbus, Nebraska. We live in Seward. Now, Mary tries to get up there every two, three weeks. They just had Covid up there. We couldn't go up there because of that. They've had flu up there in

that facility. Type A flu's going around. It's been since before Christmas that we've seen Sam. And it breaks Mary's heart every day.

DeBOER: And previously she lived with you.

ROGER GRUNKE: She lived with-- she's 31 now. And she-- we got her when she was six weeks old. She was a shaken baby from York, Nebraska. And we raised her for 31 years and took care of her. And she's our daughter. We couldn't adopt her, but she's our daughter. God knows she's our daughter.

DeBOER: Thank you so much for coming in and telling your story. We'll see if there are any other questions. Any other questions? Thank you for being here. Next opponent.

ACE SCHLUND: How's it going? Hi, guys. My name is Ace Schlund, A-c-e S-c-h-l-u-n-d. On May 29th, '21. I was riding my motorcycle and a tanker truck pulled out in front of me. There was no way for me to stop. There was no way for me to move out of the way. Sorry about that, guys. I had a torn aorta. My column was torn. I suffered a TBI. I was in a coma for a week. I've got-- I broke my hip, my femur, both femurs, my tibia. My teeth were knocked out. My finger I couldn't bend. I broke ribs. I've got scars. I'm in pain all the time. I might get up and move today. I'll be sitting down for the next two days. My medical bills were $146 million. I've had 17 surgeries and there's more to come. Every day I've got back pain, neck pain, hand pain. It hurts to sit too long. It hurts to stand too long and look around the room. Everybody was doing the same thing, their backs hurt, their legs hurt, we had to get up, we had to stand up, move around. I get headaches. At this point, I've got a 12 year old son, I've got two kids and my wife. I don't like to be touched anymore. I have an issue with people touching me. I didn't used to have that. I used to play a lot of sports with my kid, throw the football. Now I can't really throw the football with him. He throws me the ball, I have to walk over and pick up the ball, throw it, you know, unless it gets right to me. He's an active kid. I just can't really do that stuff with him. $1 million? That's not a lot. If I live another 40 years, that's $25,000 a year I could spend, $25,000 a year. I had to buy a new home. I had to go into a new home because I couldn't do stairs anymore. For a year, about a year, I was in a wheelchair. I had to walk with a walker. I do walk with a cane every day. I've had so much to say. And now that I'm here, it's, it's hard to say. I, I just-- I don't think they should cap it at $1 million. I really don't. If it wasn't for the five people behind me when I got in that wreck, the first person behind me was an undercover cop. The second person was a trauma nurse.

The third person was a fire and rescue for the military. The people that were there the day this happened are the reason why I'm alive today. Without that, I wouldn't be here. There were three motorcycle wrecks that day. I'm the only one that survived. And I've got a lot of scratch here, but I'll remember it later. Thank you.

DeBOER: Thank you for sharing your story. You did a great job. Let's see if there are any questions. I don't see any. Thank you so much for being here.

ACE SCHLUND: Hey, thank you.

DeBOER: Next opponent.

MARK RICHARDSON: Good evening, members of the Judiciary Committee. My name is Mark Richardson. Once again, M-a-r-k R-i-c-h-a-r-d-s-o-n. I'm here in my capacity as an attorney for a couple named Terry [PHONETIC] and Kay Mimic [PHONETIC]. Terry wanted to be here to testify. We worked together to make sure he wasn't going to run afoul of any confidentiality agreements or anything like that. And then yesterday, he had a medical emergency. It allowed-- it made it so he can't be here. So I'm going to try to step in for him a little bit and just make sure that his story gets told. Terry lives in southeast Lincoln. He's in Senator Bosn's district. Served in the Army in Vietna-- during the Vietnam War. He taught at the West Point Military cas-- Academy in the 1970s. He returned to his hometown of Columbus. Him and his wife, Kay, eventually retired to Lincoln in 2016 to be closer to their kids. Five years ago, Terry and Kay were the victim of a motor vehicle collision just two minutes from their home. Terry was driving, Kay was in the passenger seat when a heavy duty commercial truck blew through a red light at 84th and Highway 2 and impacted directly into the driver's side of their vehicle. Kay's injuries were serious. She broke her pelvis, broke several ribs and more. But Terry's injuries were catastrophic. The hand out that you've been provided has an actual illustration that shows the myriad of injuries that he suffered. They included an internal brain bleed, broken clavicle, seven broken ribs, broken sternum, multiple broken vertebrae, broken right arm, broken pelvis, broken left a-- leg and ankle. It took years and multiple surgeries to put him back together in the shape that he's even in today. Terry would tell you the medical treatment that he received was not the worst part of how this impacted his life. Before he was reti-- before his injuries, he was retired and enjoying that retirement. He was healthy. He was active. He was an avid runner. He was a weekly volunteer at the Salvation Army and the Lincoln Humane Society. All of that was taken away from him because of the negligence of this

commercial motor vehicle driver not paying attention. Terry and Kay's-- Terry, Terry and Kay's case was resolved against the negligent commercial driver just a year ago. They were grateful that the defendant had appropriate levels of insurance and was willing to take responsibility and amicably resolve their, both, both of their cases for an amount that accounted for all of their injuries. In Terry's case, that recovery was for more than the proposed limits permitted under the legislative bill. I guess Terry and Kay's confusion with this bill is how it would treat the two of them arbitrarily different. If this bill were in place when the, when the collision occurred, it would tell Kay that she probably could have gotten full compensation for everything, her case settled for under what this cap would be. But then it would look at Terry, who had exponentially worse injuries, and say, we're not going to treat you the same way we treated your wife even though you were involved in the same incident caused by the same negligence. And in talking to them, I think the best thing they want to convey is confusion over how it could be that you treat both of them differently. I'm honored to be providing this testimony on behalf of Terry and Kay, and I'm happy to answer any questions you may have.

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

MARK RICHARDSON: Thank you, everybody.

DeBOER: Sorry. Senator Hallstrom had one at the end.

MARK RICHARDSON: Almost made it.

HALLSTROM: Before you leave, I just want to-- the appreciation and respect that I expressed earlier for Mr. Wegman goes for you as well.

MARK RICHARDSON: I appreciate that. I learned everything I know from Mr. Wegman, so I owe a lot to him, too.

HALLSTROM: Good matter.

MARK RICHARDSON: Thank you.

DeBOER: Next opponent.

ELIZABETH GOVAERTS: Good evening. My name is Elizabeth Govaerts. The last name is G-o-v-a-e-r-t-s. Senator Hallstrom, I'm the one that's going to talk about the medical bill value, billed versus pay.

HALLSTROM: Thank you.

ELIZABETH GOVAERTS: I'm going to focus my testimony just on sections 2 and 4 , the ones that seek to abrogate the collateral source rule. The collateral source rule's been a staple of Nebraska tort law forever. It's both an evidentiary rule and a substantive rule. It's an evidentiary rule in that our years of jurisprudence, and also our law, 52-401, currently requires that evidence of payments from third parties are not admissible to prove a plaintiff's damages. The only proof is the actual billed amount of the medical bills. It has a substantive effect of not allowing defendants to mitigate their damages because the plaintiff had health insurance that was paid. With respect to the other testifiers earlier, the practical application of the collateral source rule, as it is today in Nebraska, has literally nothing to do with conspiracies between trial lawyers and doctors and all of those things, as is evidenced by the testimony already given. Are-- those get worked out by means of, of evidence and trials and discovery. And I just want to talk to you about how this practically applies in just the everyday business of the work that we do. I represent people like these good people that have been here testifying today. They are mostly insured. They pay premiums either for private health insurance or they qualify for Medicare. They've been paying into the system for their whole life, and now they take their premiums out of their Social Security check. They may qualify for Medicaid because of their poverty, but our rule is that none of that matters because that is extrinsic to the issues in the litigation, which is how to value the harm caused by the defendant. Right now, the collateral source rule benefits the plaintiffs because regardless of whether or not their insurance companies paid the fair value of their medical expenses, is the private pay rate or the billed amount. What that means is we all have seen medical bills. Bryan Hospital says this medical procedure is worth $10,000. They have a contract with Blue Cross Blue Shield, which says Blue Cross Blue Shield gets a reduced rate. That doesn't have anything to do with the value of the medical services provided. What that has to do with is a, is a third party contract with that medical provider.

DeBOER: OK. I see, I've seen your time. I'm confident there are going to be other questions.

DeBOER: Yes.

DeBOER: We'll start with Senator Storm.

STORM: Go ahead.

ELIZABETH GOVAERTS: I will--

HALLSTROM: What he said.

ELIZABETH GOVAERTS: Yeah, I, I will try to cut to the chase a little bit. I know it's a long night and I'm almost the last person. So here's how this works for people. My people are regular people. The elephant in the room here is that these bills are designed to protect the profits of insurance companies. I heard an attorney who represents insurance companies tonight say that they would not bother trying to recover 5% of $1 million because that amount of money just wasn't worth it to them. I can tell all of you here that that $50,000 would be worth all the money in the world to the people I represent. So Senator Bosn mentioned that there could be a windfall for plaintiffs if, for instance, because they've paid their $900 premium for their health insurance every month, they got a break on their medical bills. Well, to whom should that benefit go to? Should it go to that person that's paid for their health insurance? Or should it go to State Farm with their billion dollar profits? I think the answer is fairly simple. And p.s., this is not a huge amount of money in the scheme of things. But I will tell you, it makes a difference to my people. Also, it gives them some little amount of leverage that they would never have against an insurance company. Remember, the insurance company is the one that has the money. We, our only leverage we have is our ability to go into a courtroom and in front of a jury. And if there's some risk that they have to pay the full freight for these medical bills, we actually-- that helps us settle cases. That's a benefit to all of us. And again, if we're trying to protect society, society is made up of its people. And the way to protect them is to give them the benefit of their Medicare or their insurance that they paid for. I do want to-- I think Jennifer did a very nice job explaining the problem with the future meds, so I'm-- I won't touch on that. I am super concerned about the formulas in here. The 100% of Medicare and the 170 of Medicaid, I think those are very outdated ratios. I know that, you know, maybe those are-- were current in the '90s, but at the very least, there should be some study to indicate why that should be how we're valuing medicals. Seemingly, there's no rational relationship to what might be actually billed or accepted. That used to be sort of how people configure fee schedules, but I don't think it's current anymore. I can tell you that the Nebraska Worker's compensation court fee schedule is 150% of Medicare rates, so already were below what, what they value it. Any questions?

DeBOER: Senator Hallstrom?

HALLSTROM: Are there any states that either modify the collateral source rule based on coverages that you don't pay for, such as Medicaid?

ELIZABETH GOVAERTS: You know, I don't know the answer to that. I will tell you this, though. The states have-- some states like us who allow the collateral source in its entirety. Some states only allow the paid amount to be the fair measure of damages. Some states actually have a hybrid kind of situation where the plaintiff could present evidence of what's fair and reasonable, and so can the defendant by way of what was actually paid. So I, I don't know if there's a specific exception out there for Medicaid, so I can't answer that.

HALLSTROM: I, I have a thimble full knowledge on collateral source rule, but I, I always thought it was so that you, you can't reduce damages based on the amount that's received or recovered from a third party.

ELIZABETH GOVAERTS: Correct. Yes.

HALLSTROM: And the amount that's billed which exceeds the amount that was received is different, is it not?

ELIZABETH GOVAERTS: I don't think I'm following your question.

HALLSTROM: Well, if, if I receive $10,000 for a medical procedure from my insurance company and I was billed $20,000, and the re-- and, and what I've recovered elsewhere is $20,000, I've only received $10,000 from the insurance company, or am I missing a connection somewhere?

ELIZABETH GOVAERTS: I don't-- I-- I'm not following exactly, but are you ask--

HALLSTROM: Well, I've fallen into Senator DeBoer's trap of not asking the question very well, so I'm sorry.

ELIZABETH GOVAERTS: Yeah, and, and like everyone else here, I've been here since 1:00 too, so I may not be tracking as well as I, as I should either. But, but are you making the distinction because it's different from Medicaid that we've--

HALLSTROM: No, the second part of my question is, and it may have to do with the recovery and I may be going down a rabbit hole here, but collateral source talks about not, not being able to reduce the recovery by the amounts that you receive from insurance.

ELIZABETH GOVAERTS: Correct. Yeah.

HALLSTROM: And you receive a certain amount of insurance. And the issue in the bill here is the distinction between what you actually receive for insurance versus what you were billed.

ELIZABETH GOVAERTS: That's exactly right. Yes. Yeah. That's--

HALLSTROM: That's, that's where there's a disconnect, and maybe given the late hour, we can talk off the mic as to, as to helping me understand that.

ELIZABETH GOVAERTS: Yeah. And, and are you concerned that, OK, the jury is going to award, let's use round numbers now for all of our sakes, for math purposes, but if the jury is going to award $100,000 for medical bills, and my insurance--

HALLSTROM: Based on bill charges.

ELIZABETH GOVAERTS: Yes, based on the $100,000 charged, and my insurance company only had to pay, you know, $75,000, the benefit that I received from my insurance company is $75,000. And--

HALLSTROM: And I don't want to reduce anything because of that.

ELIZABETH GOVAERTS: Right. So also, and, and this is a whole 'nother thing, but of course subrogation principles apply to all of this too, so that we're sort of collection entities for also for the insurance companies too, because they get paid back for, you know, know. The plaintiff, by the way, is not getting a double recovery here. The money that the insurance company pays goes back to the insurance company. So the, the question is this. Again, somebody used the word windfall. Somebody is going to get a windfall here. It's-- the benefit will go to the plaintiff the way we do it now, for 52-401 and per our-- the judges of our Supreme Court that said, this is how we should do it. Or if we change that law, State Farm's going to get the windfall because they happened to hit a person who was either insured, or was old, or was poor. So if we're talking about justice and fairness, shouldn't that benefit go to the victim and not the wrongdoer?

HALLSTROM: Thank you.

ELIZABETH GOVAERTS: You're welcome.

DeBOER: Thank you, Senator Hallstrom. Let me see if I can kind of clear this up for a second, at least in my own mind. So let's say that I-- I'm in a car accident. My insurance company pays $75,000 because they've negotiated with Dr. McKinney. Dr. McKinney is going to charge $75,000 to me because I have a great insurance company who's been able to negotiate that price with Dr. McKinney. So my cost, the actual cost that is, I guess, billed is $75,000. But the, the, the cost of the procedure that then they discount down to $75,000 is $100,000. So that delta of $25,000 is what we're talking about here.

ELIZABETH GOVAERTS: Yeah, that's right.

DeBOER: And that $25,000 delta, is it your testimony that your payments into insurance over the years to get yourself that good insurance company that's going to be able to negotiate to a great price, that, that's what you get for being such a good insurance premium payer and such a good finder of a good insurance company.

ELIZABETH GOVAERTS: That's right. I-- my insurance premiums are $900 a month. That's how much I pay for health insurance. Shouldn't I get the benefit of that bargain? And why should State Farm get the benefit of my $900 a month?

DeBOER: So if-- we're saying State Farm is the, the--

ELIZABETH GOVAERTS: Sorry.

DeBOER: We're saying--

ELIZABETH GOVAERTS: To anybody from State Farm.

DeBOER: Or, or we'll say "State Insurance."

ELIZABETH GOVAERTS: Yes.

DeBOER: State Insurance Company is the one who insures the defendant. And right now my insurance, "Medical Insurance Company," has negotiated this great price. Because the premiums I pay, I get that great price. And now the question is, should "State Insurance" get the windfall of that delta of $25,000 because they happened to hit me as opposed to Senator Holdcroft, who has "Cut Rate Insurance," and their insurance only gets a $90,000 charge for that inst-- instead of $100,000. So the delta with him is only $10,000. The delta with me is $25,000 because I'm a good citizen and I have-- Who should get the, the money? Is it the insurance company or is it the person who paid and has that good insurance? Is that the question?

ELIZABETH GOVAERTS: That's the question. Yeah.

DeBOER: OK. I think I have it straight in my head, then.

HALLSTROM: Thank you.

DeBOER: Any other questions? Thank you for being here.

ELIZABETH GOVAERTS: Thank you.

DeBOER: Next opponent.

ROBERT KEITH: Good evening. My name is Rob Keith, R-o-b K-e-i-t-h. I'm a practicing attorney and with Rembolt Ludke here in Lincoln. But in the past 28 years of my life, I served as an insurance defense attorney in Omaha. I'm kind of a unicorn, because not only have I worked for the insurance industry for a majority of my life, the last three years I've spent mediating disputes between insurance companies and injured parties. In the last nine months, in full disclosure, I have helped members of our firm represent injured parties, including three individuals that are here tonight to testify in front of you. I've seen it from all sides, in other words. I can tell you from my experience in the 28 years that I worked as an insurance lawyer, I did not once, not one time pay a settlement over $1 million that I did not think was 100% warranted. Not once. I have litigated over a thousand cases in this state. I've tried cases in over 17 counties. There is a cap. It's called the Nebraska jury system. There's a reason why a lot of people like to settle their cases before going to Nebraska juries, because they're very conservative. We trust them. And what you did not hear today was a single member of the defense bar stand in front of you and say the jury system is slanted in the plaintiff's favor, because it is not. The jury system works. You did not hear is simb-- and these people are my colleagues. It's because they believe it's fair. There wasn't a question, a single defense attorney here that was asked whether they believe $1 million cap is fair. That's because I know the answer they'd give you. It isn't, plain and simple. I will tell you that working for the insurance industry taught me one thing. They are keepers of data. What you have not heard today is that the number of cases that have been filed, civil cases, that in the state of Nebraska, has significantly decreased over the last ten years. The number of jury trials have significantly decreased. 97% of cases now resolve prior to trial. There is no data that's been presented here today that ins-- in any insurer or any insured, has not been able to get insurance because of raising verdicts. They have not presented any data of any large verdicts in the state of Nebraska. They have not

provided any data that shows that there are unfair settlements in the state of Nebraska. And the answer to that question you're asking is why not is because there isn't any. There is simply none out there. I have lived it for 28 years, and I know, in fact, that it does not exist. That the thing that I will acknowledge is that I worked for an industry that's for profit. The ten largest commercial vehicle insurers, and I worked for seven of them. Combined, they wrote $28 billion in commercial vehicle premiums last year. And they want Nebraska citizens to assist them in reducing their premiums on the back of the injured citizens? Folks, I've, I've been on both sides. I've played a neutral. And at some point the law has to be fair. Normally, I would find myself on this side of the room. Tonight, I'm on this side of the room because fairness should matter. Not premiums, not cost, not, not data. But these individuals that you've heard tonight of which I've been extremely humbled to listen to. And I would offer to answer any questions you may have because I would love to expound beyond my three minutes.

DeBOER: Are there questions for this testifier? Senator Rountree.

ROUNTREE: Thank you, Vice Chair. So having been on both sides, why the $1 million?

ROBERT KEITH: I'll tell you why. Because here's what will happen. $1 million will allow them to cap any loss that's catastrophic, number one. Number two, in negotiations, this is exactly how it'll work. If I have a client that has $10 million in value, they will come to me and say, Why don't you take $950,000? Because they know that my client won't take two years to file suit and chase an additional $50,000. They will leverage them into lesser settlements than $1 million. I've seen it done, and it's shame when we-- I've done it. That's why I don't do what I do anymore. Now, I will tell you that $1 million, there was questions about Iowa. It was $5 million. Not only is it $5 million in Iowa, right across the river, but they have 12 exceptions. If you're on your phone, if you're driving over hours. And Iowa has punitive damages. So here we are trying to cap Nebraskans at $1 million when you just heard a series of individuals. That's the tip of the iceberg. Now, 97% of these cases settle. The reason why you haven't heard of a single nuclear verdict in Nebraska? Because they don't exist. They don't exist. So why are we here? Is the question that I think really needs to be asked. And I understand they're for profit businesses. And they should do all they can if it's fair. $1 million is not even close to being fair to these people that you heard from tonight.

ROUNTREE: All right. Thank you so much.

ROBERT KEITH: Thank you.

DeBOER: Other questions for this testifier? I don't see any.

ROBERT KEITH: Thank you. And I have a new appreciation for what you folks do.

DeBOER: Thank you for being here. Let's take our next opponent.

PETE WEGMAN: Vice Chair Bosn, members of the-- I'm sorry, Vice Chair DeBoer, members of the committee. My name is Pete Wegman, P-e-t-e W-e-g-m-a-n. I practice law here in Lincoln with the Rembolt Ludtke law firm. I've been here for 44 years. I do primarily personal injury work representing injured people and families of those who have lost loved ones. I've probably done 50 or 60 death cases in my career. I've never stood in the way between myself and dinner. I'm not gonna let that happen tonight, so I've got three quick points to make. First one's a history lesson. The last time we did major tort reform in this state was in 1992. I know because I had a front row seat. It came out of our law firm, Rembolt Ludtke. One of my then partners, Dave Parker, who's now passed away, put together a group of business interests called Project Justice. And they did it the right way. Project Justice sat down with all the involved parties. Back then I was doing defense work. I represented Phillips Petroleum. I was one of two members of the Nebraska Propane, National Propane Defense Council Association because we represented them because they made [INAUDIBLE].

DeBOER: Yeah.

PETE WEGMAN: So I had a seat at that, and I watched how we did it, and we did it the Nebraska way. Everybody sat down, open, transparent. There was a lot of give and take. And over the course of a year, we developed some really good reforms that were passed by the Unicameral, I think in 1992. That's over 32 years ago, and it's served the system well. That's not what's happening this time around. You heard Mr. Grisham talk about shining the light of transparency. I heard that three or four or five times. That's not what's happening this time. This is all done behind closed doors. And you got to ask yourself, where does this stuff come from? Do any of you have citizens calling you up and saying, hey, I want you to reduce the statute of limitations if myself or one of my neighbors or family members get hurt? No. Do any of you have individual people that voted for you calling you up and saying, hey, we need to reduce the amount of money

wrongdoers got to pay to make things right in this state? No. Let's not kid ourselves where this is coming from. Nebraska Constitution, Article I, Section 6 says the right of trial by jury shall remain inviolate. Had to look up the word inviolate to make sure I had it right. Kept sacred or unbroken. That's probably the only place in our Constitution where it talks about inviolate. You folks have a-- took an oath to support and defend our state constitution. Any time you put caps in, you shorten statute of limitations, you're chipping away at the right to a trial by jury. That's a sacred right in Nebraska. It always should be. The last thing I will say is Mr. Grisham told you that there's nothing to prevent nuclear verdicts here in Nebraska. Well, how about Nebraska juries? You know, I've tried and handled cases all across Nebraska. I've drilled some pretty deep, dry wells in courtrooms across Nebraska. I've been rode hard and I put up wet in courtrooms across Nebraska a number of times. And what have I learned? Nebraska juries get it right. Pragmatic, reasonable, commonsense people who are fair. And then we have conservative trial judges generally. And then we have an extremely conservative Supreme Court. There's lots of checks and balances in Nebraska to prevent nuclear verdicts from happening. I'm not here to talk about Alabama law, or Georgia law, or Alaska, or Missouri, or some U.S. Chamber study. I'm talking about what happens here. And what happens here is this system works. The old adage, it's not broken, don't fix it? Our system doesn't need fixing. And if it needs fixing, it needs to be done the right way. You know, this is all special legislation for trucking companies and insurance companies.

DeBOER: I'm going to ask you, sir, to wrap up since your light is on.

PETE WEGMAN: I will do that.

HALLSTROM: And I'm going to ask you to continue on.

PETE WEGMAN: So the last thing I want to ask you is, is limiting the rights of Nebraska citizens to fair justice, is that the good life? Is that the Nebraska way? No, it's not. Keep this bill in committee. Thank you. Any questions?

DeBOER: Are there questions beyond the one that Senator Hallstrom asked, where he told you to continue on? Senator Hallstrom, continue with your questions.

HALLSTROM: Mr. Wegman, thank you for coming in. I-- when you, when you said you'd been here for 44 years, I was hoping that it hadn't felt that long. But I, I was around with Project Justice. I would suggest

that if you or your organization have some issues that you would like to bring, to bring some balance to the issue, I'm certainly all ears to, to listen and see what you've got to come forward with.

PETE WEGMAN: And I appreciate that. And I appreciate all, all you folks do. This is just a really difficult arena and it's been a session with all the other difficult issues you've got to face to try to deal with things in our court system. So I really think this needs more time, and I appreciate your service again.

HALLSTROM: Thank you.

PETE WEGMAN: Anything else?

DeBOER: Any other questions? Thank you for being here. Next opponent.

TIM HRUZA: Good evening, Vice Chair DeBoer, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing tonight on behalf of the Nebraska State Bar Association. I, I, I testified earlier today on one of the other bills that you heard and I quoted from, I think, our mission statement. I'm going to do that again for you here because I think this is what really drove our House of Delegates to take the position that we did. I'm testifying with respect to the last section of the bill only, the $1 million cap on damages relative to specific types of personal injury claims, noneconomic damages, just to be clear on that. Our mission statement that I quoted to you earlier is to protect and promote the administration of and access to justice. And I think that's what led to the, the motion on the floor of the house that leads me to testifying here before you today. I don't have anything to add that you haven't heard from attorneys and from the injured persons who appeared before you this afternoon and this evening, except to say that similar to what I, what I testified to before when it came to the statute of limitations, when you take a step like this and you reduce, you change the system in a fairly drastic way. It has-- it results in a response from attorneys in a lot of-- for a lot of different reasons. Right? When we talk about balancing things, we talk about balancing the interests of justice, when you talk about balancing the expectations of a defendant who is out doing business, as you've heard from with the proponents here tonight. And you balance the, the justice end and how you compensate somebody for those noneconomic damages in the system that we have here in Nebraska. Right? In terms of the different ways that we calculate things, the fact that we do not have a punitive damages system. All of those things taken into account, our body thought that $1 million was, was a little bit too

low, too much of a change. I've had good conversations with Senator Bosn before the hearing. I look forward to more of those. I thank you for your time and attention to the issue. I am happy to be of assistance however I can in terms of getting questions and stuff answered from our membership throughout this process. I thank the proponents of the bill for the conversations we've had, and thank you for serving, that's-- these are long nights. I really do appreciate everything that you all do. With that, I'm happy to answer any questions you might have.

DeBOER: Are there questions for Mr. Hruza? Senator Hallstrom.

HALLSTROM: I don't want to tie up to this issue or anything else that you've testified on tonight. But it seems to me that as a bar association, you have personal injury lawyers, you've got defense lawyers. And for an issue like this, it seems to me that there is a, a potential for whoever squeaks the loudest at a particular meeting to have undue influence at that particular moment. And, and I think that's something that we always have to be cautious and careful, and I know it puts you in a delicate situation.

TIM HRUZA: Yeah. Thank you, Senator. I think that's an interesting conversation that we've had throughout this process in addressing this entire slate of bills. Like I said, I, I appeared earlier on Senator Sorrentino's bill. We've got a process which I've all-- I think I've talked with you all about. This particular issue was one that I think early on in our process, there was general consensus among our, our legislation committee, which is comprised of about 50 attorneys that talk about it. And we might not take a position on this. When it gets to the House of Delegates level. You got up to 100 attorneys that sit in that room. The motion came to take the position that we have from the floor from an attorney that I would say I know personally does, does not do a lot of plaintiff's work, probably not an insurance defense attorney either. As you've heard pointed out earlier today as well, that individual stood up and said, hey, we should talk more about this. There was general conversation, I think we heard from the other, the other attorney saying there's a split in the bar, there's a rift in the bar. The vote was not particularly close from that body. So.

HALLSTROM: Not critical, just pragmatic.

TIM HRUZA: No, I understand. I think that context is, is important, too.

HALLSTROM: Thank you.

DeBOER: Other questions? Senator Storer.

STORER: Thank you, Vice Chair And thank you.

TIM HRUZA: Yeah.

STORER: Just a couple questions, I guess, following up on all the-- we've heard a lot tonight. Is your-- is the Bar Association concerned with the issue of limiting or, or theoretically stripping people of their Seventh Amendment rights?

TIM HRUZA: The extent to which we've discussed the constitutional issue, I think I have heard both sides of that argument. I don't think that I can take a position with respect to the constitutionality argument. I am not the person that would tell you the best, I think-- I guess that I've heard attorneys argue both sides of that.

STORER: And I just wanted to know if that was part of the discussion or if there was any, you know--

TIM HRUZA: Certainly it was part of several conversations. Like I said, I, I can't sit here and tell you that I think that, that I have a good answer to that question, or to that concern. I think--

STORER: And do you think there-- Well, to fol-- one other question. Do you think there is a number that seems reasonable? And that-- maybe that's not a fair question, but I mean--

TIM HRUZA: Yeah.

STORER: Not asking you for a number, but but do you think there is a number that, that would be deemed--

TIM HRUZA: I think that's a conversation that we need to have. Senator Bosn and I have had that conversation as to whether or not-- I, I do think that, and as, as I mentioned earlier, I think there's a balance that needs to be taken in terms of the conversation surrounding all of the moving parts. Right? To maybe to echo Mr. Wegman's testimony here, there's a lot of things that ripple when you make any sort of change, and particularly as I testified to earlier with the statute, whether it's the statute of limitations, or whether it's a damages cap. There's a lot of justice related things that are impacted there. And I think the conversation, the conversation is a delicate one. I, I don't know what the number is, I--

STORER: And I, and I'm not asking you for a number--

TIM HRUZA: I can't, I couldn't tell you that--

STORER: --I don't want to put you on the spot.

TIM HRUZA: --that Iowa's $5 million would be the answer. I-- like I said, systems are just different, state to state too.

STORER: And, and part of that, I guess, and mine is in context of, you know, the medical malpractice. So we already have--

TIM HRUZA: Certainly.

STORER: --some-- So it seems like we could have a real imbalance here.

TIM HRUZA: Maybe just to, maybe just to address that, because that was, that has been part of our debate internally too, whether it's at the Legislation Committee or the House or with the Executive Council. I think there is some distinctions in terms of how you approach the medical conversation, and I mentioned balance because I think that's part of it there. Obviously, it's a hard cap situation. It also comes, though, with some state interest in how that's operated. Right? Physicians who are part of that pay into an insurance, it's a trust fund, right, that the state manages, that deals with how they manage claims and handles that. So it is a bit a unique system that Nebraska has in terms of how we operate that. And I would tell you, I think too, the history of that medical malpractice cap arose out of the fact that you couldn't get malpractice insurance in a lot of places. You're facing a situation where physician, physicians would be practicing in the state without any option. The state stepped in and kind of negotiated out a give and take there. So, I don't think it's not without mentioning because I do think it's important, right, to look at what we do in other contexts. But I do think that there's, a there's a distinction in terms of that versus a situation like this. And maybe there is a good public policy position for saying that these types of accidents should be treated differently. I just, I don't think we're there yet.

STORER: So the motives for how they're different, for the realities of, of the why. But when we flip it around to, you know, we've heard a awful lot of testimony about some heartbreaking stories here tonight and the argument of, you know, what, what does make one whole again? And I would, I would agree that there's nothing that fills the void of, you know, losing-- your life not being the same again, whether it's due to the loss of someone, or loss of, of freedoms that you

physically had and don't have anymore. But-- So somehow I'm just trying to wrap my head, head around-- and it is-- there-- you can't put a number, there's not a number, on that. But creating some sort of balance within how we try to provide some justice and equity for loss. You know, whether it's medical malpractice or whether, you know, we're talking about, you know, injury.

TIM HRUZA: Yeah.

STORER: Anyway. Thank you for the conversation.

TIM HRUZA: Thank you.

DeBOER: Other questions for Mr. Hruza. I don't see any. Thank you for being here.

TIM HRUZA: Thank you very much.

DeBOER: Next opponent. Friends, it looks like we've come to the end of the opponents. Is there anyone here who would like to testify in the neutral capacity? No neutral testifiers. As Senator Bosn is coming up for her close, I will read into the record the fact that there were three po-- proponent position comments submitted online and four opponent position comments submitted online.

BOSN: Thank you, Vice Chair DeBoer. And thank you to the members of the committee. In the interest of time, I certainly think there's going to be an ongoing conversation with my committee members. This is the part in the night where I say I now know what it's like to be Spike Eickholt and come up after a hard day of testifiers and say, no one wants to hear my side of this issue. And those words burn to say. The stories you heard today are very, very heartbreaking. And nothing, whether we cap it at $100 million, or we come to some negotiation, that's some number, nothing I say or that we do is meant to diminish what they've experienced. And I want to take a moment to say that because I think it's important these individuals took the time, and it is now 8:55, to come here and to share their stories. I think the difficulty that we face, and I mean this with the utmost respect and I know the members of this committee have worked with me enough to know that I am not a disrespectful person, but the people behind me don't, so I want to say that. The impassioned feelings that you are all experiencing right now about this issue are the identical issues that an emotional juror will experience when trying to tell someone how to compensate themselves for that pain and suffering. And so it is a responsibility of the Legislature, fun or otherwise, to come up with

some sort of solution to what are nuclear verdicts in other states. And I greatly appreciate those who said we don't have them here. Nothing prevents them tomorrow from being here. They weren't in Oklahoma a couple of years ago until they were. There's not a problem until there is. And then, as the testifier said, I believe it was a toothpaste analogy, putting toothpaste back in the bottle. So is this is the consensus then? We should not fix what is a foreseeable future problem until we have a nuclear verdict? And then we're going to tell people, well, the first guy had the nuclear verdict. We then, we then learned a lesson and now we're going to say this. No, we come in and we come to a consensus as to what that amount, or how we determine how to respectfully compensate someone for the unimaginable experiences that they go to. I also-- there was so much vitriol towards these large trucking companies that-- I, I think we all received a hand out from someone at the beginning of previous testimony, and hopefully you all kept it, that talked about 90% of trucking industry. Industry companies in Nebraska have less than, a fleet of less than ten. So this isn't really just the big guys or the big dollars. These are the companies that are the backbone small businesses of Nebraska. And so what we're saying to these mom and pop shops who have one semitrailer is-- because those companies will go bankrupt under these circumstances, right? Like they don't have the large coverage amounts of insurance that some of these other larger companies may have. They will go bankrupt. And maybe they deserve to, maybe their negligence rises to that level. But you can't treat them all like the enormous companies that we think of based on the testimony we've received from, from a couple of different individuals. This is for all trucking industries, 90% of which have a fleet of ten trucks or less. Senator DeBoer, you asked some questions about remittance, and I did some very brief working while we were sitting, while I was sitting over there. In 20 years, there has not been a remittance in any jurisdiction in the United States. That's what I was able to locate. So I may be wrong, but that's what I was able to locate was 20 years, no remittance in any jurisdiction. The concern is that, that it's an uncertain. You're asking a judge to then go back on something someone else said. It's an uncertainty that wouldn't really play out. I, I can't think of a circumstance, and maybe you can because obviously there's individuals behind me who are audibly disagreeing with me, that a remittance would be appropriate. I just can't foresee any. So I'd be very curious in having that conversation. Then we talked a little bit about--We talk-- so then we go back to the billed, that was the other component of this, billed versus actual expenses. And I su-- I think the-- I think there was a misunderstanding between you and the individual who was explaining things at that point, because you were

saying that it's a windfall for the insurance company. And I don't think that that's a windfall for the insurance company. Arguably, it's a windfall for the defendant, but the insurance company isn't-- they're, they're getting what they agreed to as well. And you can ask me those questions, but I guess I would ask you to think about it again, because if my bill, the amount that the insurance company paid, is $7,500, and what the piece of paper that you're offering at trial says $10,000. The person-- the insurance company got paid their $7,500 through the subrogation. The $2,500 that is the delta is going to the plaintiff. It's not coming out of what their noneconomic damages figure is, but it's the insurance company who paid the $7,500. Or I'm sorry, it's the trucking company who pays the insurance premium $7,500, not the insurance company who pays out. It sounds like we can have a further conversation about that. But I guess my concern is, is I think it's really actually not. There's a lot of conversation about insurance companies here that I guess baffled me, and it wasn't on my radar of things that we would be talking about. I guess I maintain that. I think that this is claiming that not solving this problem because we haven't seen one yet is, is a, is a-- it's a risky road to run because once you do that and you say that you're, you're inviting the issue to come and then saying, we'll fix it once it's here, which is, I can assure you a much harder thing to do than to anticipate and base it off of what other states are doing. We also talked about how much better it would be if this had been on the other side of the river, you would be able to cap it of at $5 million. Just for example's sake, since we like to talk about our sister states, Missouri is less than $1 million. South Dakota is $500,000. Colorado is capped at $1.5 million. So those are the states that are also surrounding us that are at or near what this legislation is proposing. And so I don't, I don't want to paint this picture that we would become this anomaly in the Midwest where we're saying we don't care about Nebraskans, which is patently untrue. I'll take any questions.

DeBOER: Are there questions? Senator McKinney.

McKINNEY: Thank you. Couple questions. The first question I have is if we place this cap, have you forecast the potential impact that this cap will have on taxpayers if, let's say somebody does get $1 million, but the million runs out and they need Medicaid or Medicare? How much impact is that going to have on the state?

BOSN: No, I have not run those numbers. I guess the, the counterargument to that, and I-- you're not-- I'm not suggesting it, and neither are you, but is that when we have these windfalls, these trucking companies or these other groups are passing those increased

costs that they're incurring onto the consumers, to all of us. Right? So if they're hauling for, I'll use Dollar General, right? Let's say they're hauling for that. Everything's going to go up because their costs incurred have gone up. Right? There's a trick-- there's a trickle down impact to that, much like what your question is about an impact on taxpayers due to these individuals potentially needing to go on to Medicaid at some later time. I don't have the exact answer to that, but I'm happy to look into it, and I wrote it down to follow up.

McKINNEY: And my last thing, you said something about jurors being emotional, but under that argument, like even-- I could raise the argument that jury-- if jury-- if, if the argument is juries are potentially emotional, we need to do this, then let's say in a criminal sense, I, I would say, I would argue, people have been over sentenced because of emotional juries. Should I come in and try to make changes because of that?

BOSN: Well, in the state of Ne-- first of all, they're totally separate burdens of proof.

McKINNEY: I understand--

BOSN: But in the state of Nebraska, the jury, jury doesn't pick the sentence, that's done separately and apart. So our jury instructions clearly tell the jury you have no role in the sentencing of this individual. Your job is only to find did the state meet its burden of proof on this, this, this and this element beyond a reasonable doubt? If so, you must find the defendant guilty.

McKINNEY: Well, in the civil sense, are we not trusting of the juries to make the right decision?

BOSN: I don't know that I-- I, I mean, I-- you can make that, I understand your point. And I'm not necessarily disagreeing with you. I don't know this is about trusting a jury. I think the concern is more that you're, you're impassioned, all of us are right now, right? We just heard from several individuals that were extremely traumatic stories and nothing takes away from that. But then you're telling someone when a plaintiff's attorney says, you know, we're asking for $100 million for pain and suffering for this individual, and you're going to be the one as a, as a juror to sit there and have listened to the several days of trial and say, yeah, I don't think that's right. I'm going to, I'm going to put it at, you know, something different. And, and I think that that is my point, is that there is an emotional charge to all of this. And nothing we do here today is going to change

that. But it's how do we fix the reality that there are states where there are nuclear verdicts?

McKINNEY: I guess-- Do you think the 49 people in this place make good decisions all the time?

BOSN: Oh, man.

HOLDCROFT: On, on advice of counsel, yeah.

BOSN: Some days are better than others. I think we all try, though. I think that's-- I think I would say unequivocally, even when we disagree, I think everybody in this building is trying their best on all their legislation.

McKINNEY: But don't you-- I would say I think anybody that's sitting through a jury, sitting on a jury, is trying to evaluate the circumstances and come up at the end of it and make the right decision, just like we will when we sit in these hearings and go through debate and try to make the best decision possible for the state and for our constituents.

BOSN: I think that's true. And I guess I think, and, and perhaps the best way I can say that is in light of what we've all seen and heard today, perhaps our committee should sit down and what we-- and talk about what we think that cap should be. And your answer could be there shouldn't be a cap. Your answer could be it should be $100 million. Your answer can be whatever it is. But I think it would be a unique experience for the eight of us to sit together and have that same conversation, similar to what I think a jury would do when they're making those decisions and see how it comes out for us.

McKINNEY: All right. Thank you.

DeBOER: Are there other questions? Well, obviously, I have to follow up with you.

BOSN: Yep.

DeBOER: So what I was talking about, there are two insurance companies. There's the medical insurance company, which you said doesn't get a windfall because they just get the amount that they paid. Then there's the auto insurance, trucking company's, insurance company. We can talk about that here because we're not in a trial, so I can mention the insurance company. So there's their insurance company. They're the one, if we put this bill in place, that would

potentially gain that windfall of the fact that my insurance company, my health insurance company was really good at negotiating. Because the Delta is going to be bigger if they hit someone who has a really good insurance company than if they hit someone like Senator Holdcroft, who has a crappy insurance company.

HOLDCROFT: I'm on Medicare.

DeBOER: So, so the delta then is smaller. So they-- under this bill--

BOSN: I think we are saying the same thing then, because I was saying defendant, And you're saying defendant's insurance company for that purpose, and I was referring strictly to medical insurance.

DeBOER: Right. I think--

BOSN: We're on the same page.

DeBOER: I think that's what I'm saying, is that the defendant's insurance company is the one, or the company themselves, if they--

BOSN: Sure.

DeBOER: --don't have insurance--

BOSN: Self-insured.

DeBOER: --self-insured, are going to be getting the benefit of my medical insurance company's prowess at negotiating a lower price. And shouldn't I, the injured party, who has paid premiums to that insurance company to cover me well, get the benefit if there is going to be one?

BOSN: I understand what you're saying. You and I are, are on the same page. I guess where I would push back is then that that, that amount should then be taken into consideration for your noneconomic damages, because that is a windfall that you've got. And I guess we can maybe just fundamentally disagree. But I, I do think that not allowing someone to take that into consideration, that windfall, incentivizes those bad actors, none of which are here, I'm--

DeBOER: But--

BOSN: --not suggesting that, to--

DeBOER: I don't think it's--

BOSN: --inflate those medical bills--

DeBOER: I don't--

BOSN: --substantially.

DeBOER: --think it's a windfall. It's a benefit that you get for being a good insurance premium payer and for having a good insurance company.

BOSN: Right, but you're assuming--

DeBOER: It's a benefit that you paid for.

BOSN: --they're going to their insurance company. And what I'm suggesting is that in a lot of these cases and what has been proposed is, is that some of these individuals aren't going to their insurance because they're being told, use my friend. This is how we do this.

DeBOER: And I think having evidence of that get in, I mean, you heard the, the situation where the, the gentleman said he had that situation. What was the verdict? They asked for some astronomical amount, they got $100,000.

BOSN: Right. I don't think that's always the case, though. So that's all I'm trying to fix. And, and perhaps that is an agreement that's totally different than what's in this proposed bill. But it sounds like we're in agreement.

DeBOER: I understand what your problem is that you're trying to solve. I think you now understand the situation where I don't think this is the solution, or at least why I'm arguing that right now. OK. And I would, I would also ask you if-- because somebody sent me-- Missouri does not have the caps that you said. Apparently they have a different cap. Doesn't matter. Whatever it is, we can look at that later. We'll all look at them. There are-- I'm sure that there are many caps that are what-- similar to what you're saying. And there are many places that don't have caps. It's kind of a mixed bag across the states. So what I would suggest, because I would not make-- it, this is not the kind of argument that generally I would make where I would say, well, it's not here, so put your head in the sand and don't worry about it. But the argument I think that was being made-- some people were making that one, I'm sure-- but I think the argument is being made that Nebraska hasn't had since the '90s or whenever they negotiated this. We haven't had these because Nebraska has unique elements to its system that is not just that one line of tort law but the entire tort

law in general. So that-- including not having punitive damages, including the way our Nebraska juries operate, and, and, I don't know, voir dire, who knows all the pieces of why we're not getting those, but that it's systemic. And that's not going to change unless we put these changes in, which then are going to change the ecosystem. So anyway, that wasn't a question. It should have been a question. It's late. Sorry. Any other questions? That will end our hearing on LB205 and end our hearings for the day.