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Business and Labor Committee
January 30, 2012

[LB738 LB906 LB909 LB1008 LB1012 LB1151]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 30, 2012, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB738, LB906, LB1008, LB1151, LB909, and LB1012. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Brad Ashford; Tom Carlson; Burke Harr; Jim Smith; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: Welcome to the Business and Labor Committee. Man, there's a lot of lawyers here today. (Laughter) It looks like the docket call in Lancaster County. My name is Steve Lathrop. I'm the Chair of the Business and Labor Committee and the State Senator from District 12. Just a couple of items, and for those of you who are here frequently, you'll be familiar with these rules, but a couple of things: Turn your phone off or turn it into the vibrate, please, so that it's not interrupting our hearing. The second thing I'd like to tell you about is, when you're going to testify, we'll have you fill out a testifier sheet, and hand that to the clerk so that we can get your name and spell it right for the transcript. When you...and the process, for those of you that are not regulars here, the process is, each bill will be introduced by the senator. It will be followed by proponents, or those people here to testify in favor of the bill. Then we'll take up those who are here in opposition, those who are here in a neutral capacity, and then the senator will close on the bill. We use the light system here. You'll see the lights displayed in front. You have three minutes to testify and I appreciate that that may seem like a short time. Sometimes you may testify and senators will have questions and that's not counted as part of your three minutes. You will have two minutes on the green, one minute on the yellow, and then when it turns to red, we'll ask you to wrap it up. Please do not make me interrupt you. And it is...I always feel discourteous when I interrupt people who are here and then they go on past the light. Recognize that the probabilities are somebody will ask you a question and you'll be afforded a little bit more time through that process. The reason we do that is we have so many bills today, it looks like six different bills, all of them, in one manner or another, dealing with workers' comp. And in order for us to move the agenda along and to afford everybody an opportunity to be heard, we have to observe the light system. Let me introduce my colleagues. On my left, Senator Smith, Jim Smith; Norm Wallman; and to my right is Senator Tom Carlson. We have some members who are absent at the moment and you will see from time to time senators will get up and leave and come back and they may be in and out of the hearing room. That's not intended, and please don't interpret that, as any disrespect for your testimony or the bill, but we also have the responsibility of introducing our own bills. I, for example, will be going down to Appropriations Committee at some point today to introduce a bill I have there. So you'll see senators come and go and that's, as I said, not an indication of a lack of interest. I think that's it. We're going to start today with LB738, and that brings us to Senator Mike Gloor.

SENATOR GLOOR: Thank you, Senator Lathrop. [LB738]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: Welcome to the committee. [LB738]

SENATOR GLOOR: Thank you. And thank you to the members of the Business and Labor Committee. This is a small bill but an important bill, certainly a sad bill. I'm Mike Gloor, M-i-k-e G-l-o-o-r. This bill was brought by a constituent after they experienced the loss of their son in an accident at work. The current compensation for burial expenses, burial expenses, for a work-related fatality through workers' compensation insurance is \$6,000 paid to dependents. This bill proposes to raise that to \$10,000. This amount was last raised in 1997, 15 years ago. Here's some relevant statistics as relates to work-related deaths. The Nebraska Workers' Compensation Court has annual reports, and according to the most recent report, 2011, we had 41 fatal injuries in 2011, 47 fatal injuries in 2010, 61 fatal injuries in 2009, 46 fatal injuries in 2008. The Workers' Compensation Research Institute is a not-for-profit organization in Cambridge, Massachusetts, that gathers and provides data on workers' compensation issues. Their publication from October 2010 shows 20 states that have higher reimbursement than our current \$6,000. Of those 20, 7 have rates even higher than the \$10,000 proposed. Within the contiguous or near vicinity of Nebraska, those states include Colorado, Iowa, North and South Dakota, Minnesota, and Wyoming. So you'll see, we have neighbors who, in fact, are far higher than we are. Analysis of the National Council on Compensation Insurance, Inc., another national organization that studies workers' compensation issues, estimates an overall impact of zero percent on systems cost, meaning it would not raise workers' compensation insurance premiums on businesses. The reason I give you the fatality injuries, even though it's an unfortunate number, those numbers are small enough so that it's expected it would have no impact on those rates. There's no fiscal note attached to it. I have a constituent, Albert DeLeon, whose son, unfortunately, was the one who generated this bill for me. He's here to testify. And I would be glad to answer any questions that you might have. [LB738]

SENATOR LATHROP: Okay. Thanks, Mike. Do we have any questions for Senator Gloor? I have one for you before you get away. [LB738]

SENATOR GLOOR: Certainly. [LB738]

SENATOR LATHROP: Can you tell me or give us a little bit of background, if you know, what the average cost of a funeral is? [LB738]

SENATOR GLOOR: I think there are going to be testifiers who talk about that. I asked that question. We actually went on-line and looked, and I think the answer to that would be, I was very comfortable that the \$10,000 amount would be a reasonable compensation for burial expense but nothing that any of us would consider to be on the high end of burial expense. But there are representatives, I think, of the funeral industry here who probably can better answer that question, Senator. [LB738]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: Okay. Very good. Thanks. Any further questions? I see none. Will you stay to close? [LB738]

SENATOR GLOOR: I will. [LB738]

SENATOR LATHROP: Okay. Thanks, Mike. [LB738]

SENATOR GLOOR: Thank you. [LB738]

SENATOR LATHROP: Those who want to testify in support, you may come forward. Good afternoon. [LB738]

DANIEL NARANJO: Good afternoon. For all of you that serve on the committee and choose to serve this great state of Nebraska, I know it's a privilege for you, as well as it's a privilege for me to be here this afternoon. My name is Dan Naranjo. I am a licensed funeral director. I have been a licensed funeral director of the state of Nebraska for 27 years. Currently, am the owner of All Faiths Funeral Home in Grand Island. Once again, indeed it's a privilege to be here, but a sad time to be here also. In...Senator Lathrop, I'd like to address your question to Senator Gloor a little bit within the confines of my three minutes here, so... [LB738]

SENATOR LATHROP: Okay. [LB738]

DANIEL NARANJO: ...I'm going to read from this, so we can move right along. When a family is given the news that their son or daughter, husband or wife has been suddenly taken from them during a work-related accident, a fatality, suddenly their lives have been changed forever. They are now on a journey, a journey of change but a journey of deep grief. Average cost of funerals can well exceed \$10,000. Now, taken from the Nebraska Funeral Directors Association, their last status on that was taken back in 2006, and I think the average cost was \$7,500, but it did not include several other things that a family is confronted with at a time of such sudden loss. Other items that families are confronted with when it comes to expenses include cemetery plots, having to go out to a cemetery. The hardest thing for me in a time of a tragedy as a funeral director is to not only make the funeral arrangements and minister to the family during this journey, but also to tell them, okay, now we need to go out to the cemetery. Cemeteries, they're going to charge...they're going to want payment in advance. Cemetery costs could range anywhere from \$500 to \$1,500 per space. Also the digging of the grave, which we refer to as opening and closing of the grave; a headstone after the service is over, some type of monument to signify that their loved one mattered; flowers; and not mentioned, time lost from work and following the funeral service; professional counseling--these are all matters that must be taken into account when looking into this. Remember a couple points with workmen's comp with the laws: They are written so that wrongful death suits

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

against an employer are almost impossible. They are almost impossible. In the past three years, myself, as a funeral director, have worked with two families where a wrongful death occurred. One was a work-related accident right here in Lincoln, Nebraska, a young man by the name of Ryan Hitchler. I'd like to put names to these people. I want you to have names and faces. Ryan Hitchler was a young man that was working at the Army Air Base here and was tragically killed during that work-related accident. The next was Emilio DeLeon. He was a 19-year-old young man that just finished high school. Actually, he just graduated with my son. They had been best friends since the 6th grade, so I am going to put a face and a name with this bill. It is important that these families have more than \$6,000 to try to move forward on this journey that they've been confronted with. Once again, with workmen's comp laws, it is most difficult to sue an employer. The laws are written to protect the employer. I will go on record to say that. Six thousand dollars does not begin to cover the expenses that these families have to go through. The question I have, or the question you must think of, is \$10,000 enough? In my mind, it helps, it helps, but nowhere is it enough. Thank you. [LB738]

SENATOR LATHROP: Okay. Yeah, thank you for your testimony. Are there any questions? [LB738]

DANIEL NARANJO: Not one? (Laugh) [LB738]

SENATOR LATHROP: Well, I first start with the... [LB738]

DANIEL NARANJO: Okay. [LB738]

SENATOR LATHROP: Senator Carlson. [LB738]

SENATOR CARLSON: Yeah, thank you, Senator Lathrop. Having gone through three funerals in the last year and a half, I certainly don't argue with the fact that there are expenses. And so you're not exaggerating. [LB738]

DANIEL NARANJO: Yeah. Well, and the sad thing is like with Emilio, he was just out of high school, wasn't in college, so life insurance generally drops from many of the parents' benefits that they have, you know, while they had...they're kind of right in that age, so, yes, thank you, Senator Carlson. [LB738]

SENATOR LATHROP: Did I understand you to say the last average that you had was in 2006 and that was \$7,500... [LB738]

DANIEL NARANJO: And...yes, yes, Senator. [LB738]

SENATOR LATHROP: ...but did not include the cemetery plot, the cost to open and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

close, and the headstone? [LB738]

DANIEL NARANJO: Yeah. Basically, what that entailed was what's considered a service cost plus the merchandise items, which would be like a casket and a vault. Yeah. [LB738]

SENATOR LATHROP: Okay. If we took...and I've not been through this, so thank God. [LB738]

DANIEL NARANJO: Sure. Yeah, amen. [LB738]

SENATOR LATHROP: But the \$10,000, is that still within...do we cover the average cost, or is that...gets us closer to the average cost? I'm just trying to make sure that at \$10,000, we're... [LB738]

DANIEL NARANJO: I would suggest...I would suggest for the majority of the expenses, you're going to cover the average cost. [LB738]

SENATOR LATHROP: Okay. [LB738]

DANIEL NARANJO: It's not going to include counseling, headstone, things like that. [LB738]

SENATOR LATHROP: Okay. [LB738]

DANIEL NARANJO: It's basically going to be service costs, merchandise items, and the cemetery. Yeah. [LB738]

SENATOR LATHROP: Okay. Very good. I see no other questions. Thank you for your testimony. [LB738]

DANIEL NARANJO: Okay. You're very welcome. Thank you. [LB738]

SENATOR LATHROP: Anyone else here as a proponent today? [LB738]

ALBERT DeLEON: Thank you for allowing me to speak and testify today on this behalf. Thank you, Senator Gloor from Grand Island, for giving me the time to come here. Yes, I am one of those ones that had to face that call. It's every parent's worst nightmare to receive that call. On August 16, 2010, I received that call. [LB738]

SENATOR LATHROP: Sir, can you give us your name? [LB738]

ALBERT DeLEON: Yes, my name is Albert DeLeon. I am the father of Emilio R.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

DeLeon, Grand Island, Nebraska. [LB738]

SENATOR LATHROP: And spell your last name for us. [LB738]

ALBERT DeLEON: D-e-L-e-o-n. [LB738]

SENATOR LATHROP: Okay. Pardon me, but... [LB738]

ALBERT DeLEON: Yes. And shortly after I received that call, we were called to St. Francis Memorial Health Center in Grand Island. We were in the emergency room. It's that voice, or whatever would you like to call it, that the emergency staff position said, who wants to call it. At that point, my heart just went out. The days preceding that, I received a letter from EMC Insurance Company. They are the workmen's comp providers of this. They stressed to me to contact them at my earliest convenience. About a...within a week I did because I knew that, you know, there was funeral expenses and everything like that that had to be paid. I spoke with the senior claims officer there. She gave me her deepest condolences and told me the best they can do is \$6,000. I said, you got to be kidding me. And she said, no, unfortunately, those are the state of Nebraska laws. It doesn't mean that I'm going to receive \$6,000, it means that's up to. It depends on the price of the funeral and what it cost. That's what you get. So if it's lower, you get less. To me that's just a crying shame. No parent should ever have to deal with that. We send our young men and women to work. We feel that this a great state--Nebraska, the good life. In the last 18 months it hasn't been very good for me and my wife. We struggle every day just to get up. It's...I don't know, it's just like a nightmare every day. And then for them to tell me that because my son was single and had no dependents, that's the best they could do. In my opinion, that's terrible. Nebraska can do better. I'm going to talk a little bit on the other bill coming up later... [LB738]

SENATOR LATHROP: Okay. [LB738]

ALBERT DeLEON: ...and I will talk a little bit more about that. [LB738]

SENATOR LATHROP: Okay. [LB738]

ALBERT DeLEON: But without family and friends to help us financially, I don't know what we would have did. Probably would have sold our home. I don't know. It didn't matter. Things like that don't matter to you when you're in our shoes. And I just want to take the time right now to...for a moment of silence for a worker this past week in Omaha that was killed. You know, those are the ones that we forget about. You know, so with that, I'd just like to take a moment of silence for that. And I thank you for allowing me to speak on this behalf. [LB738]

SENATOR LATHROP: Okay. Thank you, Mr. DeLeon. And we certainly...our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

condolences for your loss. I'm sure it's not easy being here today. Any of the committee have questions for Mr. DeLeon? I see none. And we'll look forward to your testimony on the other bill. [LB738]

ALBERT DeLEON: All right. Thank you. [LB738]

SENATOR LATHROP: Anyone else here to testify in support of Senator Gloor's bill? [LB738]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lathrop, members of Business and Labor Committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraskans For Workers' Compensation Equity and Fairness to testify in support of LB738. We have visited with Senator Gloor. The fiscal note on this bill shows a modest impact to the state. The National Council of Compensation Insurers have shown little impact financially with regard to the increased benefits. And we would suggest that it is an appropriate thing to do to raise the benefits to \$10,000 as proposed by LB738, and would express our support, and ask the committee to move the bill. Thank you. [LB738]

SENATOR LATHROP: Very good. Thanks, Bob. We appreciate your support. [LB738]

ROBERT HALLSTROM: Thank you. [LB738]

SENATOR LATHROP: Oh, I'm sorry, Senator Carlson, do you have a...? [LB738]

ROBERT HALLSTROM: Oh, excuse me. [LB738]

SENATOR CARLSON: Thank you, Senator Lathrop. Bob, were you...you wrote the bill? [LB738]

ROBERT HALLSTROM: No, Senator Gloor did for his constituent. [LB738]

SENATOR CARLSON: Okay. You didn't help him? [LB738]

ROBERT HALLSTROM: I did not. [LB738]

SENATOR CARLSON: Because I was going to ask, how was the amount really arrived at, so. And then the other statement, and I don't see anything about it in this section of law, does it make any difference whether an individual dies that has...is married or not married, has children or doesn't have children on this particular benefit? [LB738]

ROBERT HALLSTROM: My understanding with respect to the funeral benefit is, no, the funeral benefit is paid irrespective of those other contingencies. The bill that we'll hear

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

later this afternoon would go into the issue of providing additional benefits in cases where there are no immediate family members or dependents such as spouse or children. [LB738]

SENATOR CARLSON: Okay. Thank you. [LB738]

SENATOR LATHROP: Thanks, Bob. [LB738]

ROBERT HALLSTROM: Thank you. [LB738]

SENATOR LATHROP: Anyone else here in support? [LB738]

JANET LIND: My name is Janet Lind. My son... [LB738]

SENATOR LATHROP: A little bit louder, if you can. [LB738]

JANET LIND: (Exhibit 2) My name is Janet Lind. My son was named Neil Cary. He died June 15, 2010, as the result of a work-related accident. I just want to testify briefly because I'm going to be testifying again on the other bill. I was hearing about how the cost of this was around \$10,000. When my son passed away, we also received only the \$6,000 funeral benefit. And I have pamphlets here from my memorial home that we went to that tells the price of everything, from a casket to the plot of ground to everything, the price that I thought maybe you guys would like to be interested in to see and look over. And to see that, jumping it up to \$10,000 does help, but our son's funeral cost \$18,000. We...his father and I do not have a lot of money and so when we went here and planned these arrangements, we really looked at prices and we tried to keep everything as simple as what we possibly can and basic because we were working within a budget. And there are people out here who...or out there that have even less than what we do and cannot afford this. Most people are taking out mortgages on their homes. You know, they're going out and doing a loan so they can afford to properly bury their children or their loved ones. Eighteen thousand dollars seems like a lot, but when you're paying \$2,000 for a plot of land, and over \$1,500 for a liner for it, and a headstone, and opening up the ground for \$950, it adds up fast. And this is all at a time when you are in shock and dazed by grief for your loved ones. Thank you. [LB738]

SENATOR LATHROP: Thank you for your testimony and for coming in here today. Can you spell your last name for me? [LB738]

JANET LIND: L-i-n-d. [LB738]

SENATOR LATHROP: Okay. And the page just went to make a copy so we'll share that with all the members of the committee because I think we're all interested and your testimony has been very helpful today. Are there any questions for Ms. Lind? I see

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

none. Thank you for coming in today. [LB738]

JANET LIND: Thank you. [LB738]

SENATOR LATHROP: Anyone else here in support? [LB738]

GENE CARY: Yes, my name is Gene Cary. I'm also...I'm the father of Neil Cary that was killed in that work-related accident she referred to at Raymond Heating and Air Conditioning. The cost of the funeral, like she said, was \$18,000. He had no children, he had no spouse. For that, we are a minority in the state as far as, you know, the families in that predicament and not receiving much for benefits, and \$6,000, you know, basically a third of the cost. The funeral arrangements that we had for Neil were very modest. It was done at the funeral home right here in Lincoln, so this isn't somewhere else in the state, this is right here in Lincoln, Nebraska. All of the other expenses that come along with it besides all the burial stuff, you have a small meal. We had sandwiches. You know, we had a lot of people missed a lot of work because of it as well, you know, as far as family members. I'm going to testify at the next portion of the hearing as well, but the workmen's compensation of \$6,000 doesn't come close. The companies are not held responsible for unsafe working conditions even though OSHA does have the regulations for them. Everybody that's been raised by a decent family, you're told to be responsible for your acts. They should be held responsible too. I don't feel anyone should have to pay for a funeral that was definitely caused and the sole responsibility of a company in the state. [LB738]

SENATOR LATHROP: Thank you, Mr. Cary. Any questions? I see none. Okay, thank you for your testimony. Anyone else here in support? [LB738]

STEVE HOWARD: Good afternoon. Steve Howard, H-o-w-a-r-d, on behalf of the Nebraska State AFL-CIO and we support LB738 or generically some change to the funeral and burial benefit under the Nebraska Workers' Compensation Act. I...it's just not a time when families ought to have to struggle with the financial concerns versus the notion of burying their family member inexpensively or within the \$6,000. So we generally support an increase and a change in the statute to come into conformity with the rising costs and the change in the time. So that's all I've got. [LB738]

SENATOR LATHROP: Very good. Thanks, Steve. [LB738]

STEVE HOWARD: Thank you. [LB738]

SENATOR LATHROP: Oh, I'm sorry. [LB738]

ROD REHM: That's fine. [LB738]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: I was just reading the handout. [LB738]

ROD REHM: I didn't want to interrupt you. [LB738]

SENATOR LATHROP: No, that's all right. [LB738]

ROD REHM: Yeah. My name is Rod Rehm and I'm here on behalf of the Nebraska Association of Trial Attorneys. We support this bill, but I'm going to talk more about LB738 in a few minutes, but we should be on the record as supporting it. It's an improvement over what we have, but we'll talk more about LB738. [LB738]

SENATOR LATHROP: Okay. Thanks for coming, Rod. Anyone else in support? Anyone here in opposition to LB738? Anyone here in a neutral capacity? [LB738]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, it's spelled S-e-d-l-a-c-e-k, here on behalf of the Nebraska Chamber of Commerce. Our labor relations council actually meets tomorrow and our board meets on Thursday and we have not yet had an opportunity to have an official position. We may be supportive of the legislation, we'll let you know, or we may continue to monitor whatever level that the council might suggest, as well. And so would like to just be on record to indicate that we are interested in looking at this particular issue, but because of the previous times I believe we were...we had just monitored the issue, so I did not want to come in and support at this point. [LB738]

SENATOR LATHROP: Okay. I don't think that would provoke any questions,... [LB738]

RON SEDLACEK: Okay. Thank you. [LB738]

SENATOR LATHROP: ...and it hasn't. (Laughter) Thanks, Ron. [LB738]

RON SEDLACEK: Thank you. [LB738]

KORBY GILBERTSON: Good afternoon, Chairman and 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, appearing today as a lobbyist on behalf of the Property Casualty Insurers Association of America. PCIA did not take an official position on this bill, but I called to get authority to at least be able to come and testify. I did have a lengthy conversation with their workers' compensation policy person who looks at what goes on across the country. And in her words, this is a very...she felt that this was a very reasonable adjustment to the amount of money, and so while they did not officially come out in support of the bill, I wanted it to be known that that's what their opinion was. (Laugh) [LB738]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: So to be clear, their opinion is it's reasonable. (Laughter)
[LB738]

KORBY GILBERTSON: It was very reasonable. [LB738]

SENATOR LATHROP: Okay. All right. That's pretty straightforward. Any questions? I see none. Thanks, Korby. [LB738]

KORBY GILBERTSON: Thank you. [LB738]

SENATOR LATHROP: Anyone else here in a neutral capacity? Senator Gloor, to close.
[LB738]

SENATOR GLOOR: Thank you, Senator Lathrop, committee members. I'll be brief. I wanted to answer Senator Carlson's question about how the \$10,000 amount was arrived at. As I mentioned, we asked some questions of funeral directors, we went on-line on the Internet to try and gather some information, began to feel comfortable with \$10,000 and then looked at the legislative history. And when this bill came out of committee to the floor back in '97, it was, in fact, pegged at \$10,000. And on the floor, it was amended to \$6,000. And I thought, you know, if the committee felt appropriate to advance it at \$10,000 15 years ago, and I felt \$10,000 was in the reasonable range in this day and age, \$10,000 ought to be a number we peg and see where the discussion goes when it comes to committee. So that's how we came to the \$10,000 amount. And I'd also tell the committee, one of my reasons for being interested in this, when it was first brought to me by constituents, by the DeLeons, I started my career in hospital administration actually working in the personnel department. I was in human resources. And through my entire career, clear up until I was the CEO, I still had the HR department report to me because I felt it was that important given my original footings in business and in HR. One of the things that I always did was, when presented--and when you've got 1,300 employees you have a lot of requests that come your way--I would subject it to a reasonable test, and is this request from employee groups reasonable? And when I thought about this bill, and when I thought about my previous role, put myself in the position of being an employer, assuming employers had to pay for this directly by writing a check as opposed to going through insurance companies, but if I had an employee who, working for me, had died at work, could I comfortably and reasonably sit down with the family, whoever that family might be, and say, I'm sorry that they worked for me and died while they were working for me, but I'm sorry I can't pay you enough to bury him. And I could not, in all honesty, say that I could have that conversation with anybody. And for me, it was going back to my roots in HR and reasonableness tests. And that's one of the reasons I think this is an important bill, as sad as it is, and I think \$10,000 is a reasonable request for workers who die in this state, working for employers. Thank you for your consideration. [LB738]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: Thanks, Mike. That will close our hearing on LB738. And that will bring us to LB906, and our own Senator Wallman. [LB738]

SENATOR WALLMAN: Good afternoon, Chairman Lathrop, members of the committee. My name is Wallman, Norm Wallman. And you want me to spell that? [LB906]

SENATOR LATHROP: Sure. Go ahead. (Laughter) [LB906]

SENATOR WALLMAN: W-a-l-l-m-a-n, and I'm here to introduce LB906. This bill makes two changes to the workers' compensation statutes. First, current law provides that when an employee is killed in an on-the-job accident, he or she is entitled to burial expense, \$6,000. LB906 would change the burial benefit to 13 times the average weekly wage, so for 2012 that total would be \$9,230. That's how we come up with that. And the bill would also provide that if an employee is killed in a compensable accident, and that employee has no dependents, the employee's estate would receive a lump sum payment of \$25,000. And maybe that would take care of some of this extra expense. And it seems like two bills pretty close, except for this \$25,000. So I have people behind me that will testify. Thank you. [LB906]

SENATOR LATHROP: Okay. Very good. Any questions for Senator Wallman? I see none. Thank you, Senator Wallman. We'll begin with supporters of LB906, if you want to come forward. [LB906]

TONYA FORD: Hi. I'd like to start off by saying thank you very much for this opportunity to speak today. My name is Tonya Ford, F-o-r-d, and I live here in Lincoln. I am on the board of directors of the national not-for-profit organization, United Support Memorial for Workplace Fatalities. We are an organization made up of family members who have lost loved ones from workplace hazards and we work to improve the rights of family members of fatal workplace incidents. It's a great honor to sit here and represent my family and other families who have lost their loved one due to preventable work-related accidents here in Nebraska. In 2009 alone, Nebraska had the fifth highest number of workplace fatalities in the United States. My family was sadly one of those families. On January 29, 2009, three years ago yesterday, my uncle Bobby died at a local Archer-Daniels-Midland plant. Our lives changed forever that day when my uncle stepped onto a belt-operated man-lift in order to go on to his work break and he fell approximately 40 feet. As he fell, he struck each wall in a cement elevator shaft and landed on an air duct, hitting it so hard it slid an additional 19 feet from the connection point. My uncle Bobby then slid off that and went through a manhole and fell an additional 40 feet. That day my father found him. Each family that has lost their loved one due to preventable work-related accidents may have a slightly different story of their circumstances surrounding their loved one's death. What binds us all together, however, is we are all left with a lot of unanswered questions. What happened? Did he or she suffer? How are we going to pay for the funeral? Does he or she...buried or cremated?

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Transcriber's Office

Business and Labor Committee
January 30, 2012

How are we going to get all the family here? Are we going to...how are we going to live? How are we going to go on? At this time when we are supposed to honor, remember, and grieve our loved ones, we have so many other worries on our minds. That is why I fully support the two changes in the workers' compensation statutes being discussed today. I have been honored to meet many families from across Nebraska that have lost a loved one from work-related causes. I've heard their stories and listened to their concerns. Our topic that always comes up is workers' compensation, including the modest assistance they received to bury their loved one. Regrettably, they learn that \$6,000 pays a fraction of the funeral cost, on the average that most modest funerals cost anywhere from \$8,000 to \$15,000. If a family wants to simply view, or a headstone, the \$6,000 would not be enough to cover those costs, not the items that most of us Nebraskans think of as extras or luxuries. I personally know of the expense in death in the family came because I helped with the planning of my uncle Bobby's funeral. My family relied on workers' compensation benefits to help cover the cost. My uncle Bobby was cremated. Financially, we could only afford an urn this big. What remains of his ashes were tightly wrapped in a plastic Walmart bag. That is how my cousin picked up her father. And I support the proposal to increase the burial benefits to 13 times the average weekly wage. That would have taken a lot of the burden away from my family and allowed us to give Uncle Bobby the burial. I apologize, I know I'm over time, so I can stop right there. I support everything else regarding \$25,000 lump sum. And being as a part I have in United States Memorial for Workplace Fatalities, I've had the chance to meet all these families. I've heard their stories. I've heard all of their stories and it's very hard to listen to their sorrow and their pain, their loss, and then on top of that they have so much more to handle. And if I could just take a few moments, these are just a few of the family photos. I'd loved to put...I like how you said, put a face. This is my uncle Bobby; Travis Lee Lunn, O'Neill, Nebraska; Emilio; and Ryan. And like I said, these are just a few and there are so many out there. And I thank you for your time. [LB906]

SENATOR LATHROP: Thank you for your testimony. We appreciate it. Are there any questions? Maybe I'd like to make a point that I think the bill tries to make and that is, it does two things. It offers us a different formula for determining what the burial expense will be and that's 13 times the employee's average weekly wage. [LB906]

TONYA FORD: Okay. [LB906]

SENATOR LATHROP: Right? [LB906]

TONYA FORD: Yep. [LB906]

SENATOR LATHROP: The second thing it does is that it provides for a lump sum payment of \$25,000... [LB906]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

TONYA FORD: Right. [LB906]

SENATOR LATHROP: ...in the event an employee dies without dependents,... [LB906]

TONYA FORD: Right. [LB906]

SENATOR LATHROP: ...which is the circumstance where under current law if an employee dies without a spouse or without children,... [LB906]

TONYA FORD: Uh-huh. [LB906]

SENATOR LATHROP: ...there's no benefit at all other than what the funeral expense is. [LB906]

TONYA FORD: Exactly, and I apologize, I kind of got cut off, so... [LB906]

SENATOR LATHROP: No, no, no, that's okay. I want to use your testimony as an opportunity to help the committee... [LB906]

TONYA FORD: Right. [LB906]

SENATOR LATHROP: ...understand that the second component of this addresses that situation where if one dies with children, then there's a benefit that's paid to help them for the loss of the money from their wages. But if there are no dependents,... [LB906]

TONYA FORD: Right. [LB906]

SENATOR LATHROP: ...nothing is paid. And this would allow for \$25,000. [LB906]

TONYA FORD: Exactly. [LB906]

SENATOR LATHROP: Okay. [LB906]

TONYA FORD: Thank you. [LB906]

SENATOR LATHROP: Does that present any questions for anyone? I see none. Thank you for your testimony. [LB906]

TONYA FORD: Thank you. [LB906]

SENATOR LATHROP: Next person in support. [LB906]

DANIEL NARANJO: My sheet had already been picked up, so, yeah. Once again, my

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Transcriber's Office

Business and Labor Committee
January 30, 2012

name is Dan Naranjo from Grand Island, Nebraska. I'd like to also speak in favor of this bill. As mentioned in LB738, \$10,000 just begins to cover the funeral expenses. A little background: Before 1997 when the \$6,000 was adopted, actually the limit was \$1,000 for many, many years and then in 1997 was increased to \$6,000. Now with this bill, I come as a business owner, as a business owner, and with the words that Mike Gloor shared, if it was one of my employees that was killed because of what I've done, it would be difficult to tell the family \$6,000. We started at \$10,000 with the other bill. Basically, if the individual that is the victim of the fatality is single, no dependents, with this bill, it would increase that to \$25,000, which I think would be a huge benefit to any family to the families that have to go through this. And lastly, the only thing I'd like to close with here is, you keep in mind when a workplace fatality happens, one of the first organizations that comes in is OSHA. And in most instances, where there is negligence, OSHA issues a pretty hefty fine. Keep in mind, none of that money goes to the victim's family. OSHA keeps that money. I thank you for your time. [LB906]

SENATOR LATHROP: Very good. Thanks, Dan. Any questions of this witness? I see none. Thanks for your testimony. [LB906]

ROD REHM: (Exhibit 4) Good afternoon. Rod Rehm on behalf of NATA--R-e-h-m. I already signed up also. A couple of things about this bill: Many states provide the additional benefit beyond just the burial costs, some as high as \$60,000 up in Minnesota. Kansas has \$25,000, I think. There's a variety of ways to deal with this issue of the wrapping up of a loved one's affairs. The formula for the funeral costs is based on Iowa law. There's a lot of different approaches, but Iowa's made sense. I think it makes sense because it increases every year and actually the language is keyed to the state maximum benefit, not the worker's benefit. So for instance, this year it's 13 times \$731, next year it will probably be 13 times \$740 something, the idea being that, hopefully, the law keeps up with inflation and we don't have to have another hearing ten years from now unless it proves that costs are way out of whack. I've been testifying in this room, and in other hearing rooms, for the Business and Labor Committee for over 20 years. And, gosh, this is just one of those things that is just the right thing to do. And I know that the folks on the other side can always find reasons to say it's going to cost too much and it's not intended to be part of the original act, and we're going to hear those arguments. There's a lot of things that people are getting paid workers' compensation for now that weren't in the bill in 1917 or '18 when workers' comp was enacted in Nebraska. They had never heard of carpal tunnel. People weren't getting paid for any repetitive motions. The death benefits were much lower. Widows were the only people that got money, not...now actually if there are dependent adult parents, if they get 50 percent or more of their income, they get paid ongoing benefits as well. I think that somebody smarter than me said, politics is the art of the possible, you know, and probably should have started this number a lot higher if it's going to get a bidding war, because I have a feeling we're going to hear that this is just too expensive. And that's why I handed in this handout. The back page of the handout is a summary of benefits. It

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Transcriber's Office

Business and Labor Committee
January 30, 2012

also shows the number of deaths that happened in Nebraska in a given year. It's just copies of a court's annual report and then the statistical report. You know, two or three million dollars in death benefits are paid every year under our system out of hundreds of millions of dollars--a couple hundred million dollars. This is a small amount. You know, and there's 41 people killed...or 40 or so people killed. I don't have access to the numbers of how many are not dependent. But let's just say it's ten. Can they really say and tell that it's fair and equitable that we can't afford to add another \$250,000 to the cost of workers' compensation in Nebraska? That's what they're going to say. I don't care how their actuaries do their business, the numbers don't lie. This is not a big issue except for the people that lose the loved ones. That's all I have. [LB906]

SENATOR LATHROP: Thanks, Rod. Are there any questions for Mr. Rehm? I don't see any. Thanks, Rod. [LB906]

STEVE HOWARD: Good afternoon. Steve Howard, H-o-w-a-r-d, appearing on behalf of the State AFL-CIO. And it is true that this bill would, if passed, would prevent or hopefully prevent future sessions from having to take up an increase as to the dollar amount because it would be tied to the state average weekly wage. The same merits as were presented on Senator Gloor's bill would apply with respect to that amount, but I want to talk about the \$25,000. Currently, of course, unless a person is statutorily dependent upon the deceased worker, there's no recovery. That doesn't mean that the family has no loss. Many adult children support their elderly parents, and that is setting aside even the other loss, the nonfinancial loss that comes associated with a death of a family member, even in the absence of actual statutory dependents. If we go back to the time when workers' compensation was originally passed, it replaced personal injury claims. It replaced tort claims or common law claims against employers. Common law claims against employers are not...or against tortfeasors, against negligent entities, are not...don't have as a system excluded from a benefit like this. In other words, when workers' compensation was passed, it took away rights against the employer. Well, there's nothing in the current act that substitutes for that with respect to the loss that would otherwise be recoverable in a tort claim. I'm not explaining that very well. If you can sue someone because they hurt you and they were negligent, there are certain things that can be recovered. But if a worker dies on the job and has no statutory dependents, that's not replaced by the current system. That's what I want to say. So the \$25,000...I would also point out, isn't like it automatically goes to family members. It goes to the personal representative of the estate. That's how I read the bill. So if closing up an estate, there may be local creditors, there may be the utility company or the landlord or a credit card company, someone in business that's owed money by the deceased individual that may have a claim. But if that person doesn't have assets, if there are no funds there to go into the estate, then those creditors are not going to get paid out of that. So certainly, hopefully, it's designed so that the nondependent family members do have something who, when a worker dies, they may have bills. This goes into the estate and it ties the source of the funds to what happened, and that being an

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Transcriber's Office

Business and Labor Committee
January 30, 2012

on-the-job injury. So that's all I have. [LB906]

SENATOR LATHROP: Very good. Thanks, Steve. Senator Carlson. [LB906]

SENATOR CARLSON: Thank you, Senator Lathrop. Steve, help me understand, under current law if there is someone that is dependent on the person who died--was killed on the job--it could be a spouse, it could be a child or children, it could be spouse and children, it could be parents? [LB906]

STEVE HOWARD: It could be if they can meet the statutory definition of actual dependents, which is the majority of their dependents, yeah. [LB906]

SENATOR CARLSON: Okay, and today what happens if there is dependency? [LB906]

STEVE HOWARD: Then it's a formula and it's different for children. Children would be able to recover until they reach the age of majority or if they're in school. And there's a formula that divides it as between spouse and children and any other actual dependents. But if no one meets that statutory definition of actual dependents, then it's zero. It's just that... [LB906]

SENATOR CARLSON: But there's a limitation on that, correct? [LB906]

STEVE HOWARD: There is, correct. [LB906]

SENATOR CARLSON: Yeah. Okay. [LB906]

STEVE HOWARD: And it's tied to the average weekly wage and the statutory benefits, so. [LB906]

SENATOR CARLSON: But there's a limit on how long those payments go on, isn't it? [LB906]

STEVE HOWARD: There are. The children receive until such time as they are...reach majority or if they stay at least half time in school, and then so long as the spouse remains unmarried. And you can take a lump sum, you can elect for that, but this really speaks to the other scenario when there are no dependents, so, but... [LB906]

SENATOR CARLSON: Okay. Thank you. [LB906]

SENATOR LATHROP: Steve, can you tell the committee what the statewide average would be, wages right now? [LB906]

STEVE HOWARD: I think it's just over \$700. I'm...it's a little bit over \$700 and so I

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Transcriber's Office

Business and Labor Committee
January 30, 2012

thought that calculation was correct, that average weekly wage would reach \$9,230 for the maximum funeral benefit. [LB906]

SENATOR LATHROP: I was just going to say, this is actually less money for the funeral expenses than the first bill we heard. [LB906]

STEVE HOWARD: Than the \$10,000, correct. [LB906]

SENATOR LATHROP: Okay. But it would go up as the average...statewide average weekly wage went up. [LB906]

STEVE HOWARD: Just like when the Legislature amended the average weekly wage calculation. I mean, for years and years it was stuck at \$235, then \$245. Now it fluctuates. As employees are paid more, the maximum rate is adjusted every year to conform to the state's average weekly wage. So it's tied to earnings and inflation and such. [LB906]

SENATOR LATHROP: Okay. I see no other questions. Thanks, Steve. [LB906]

STEVE HOWARD Thank you. [LB906]

SENATOR LATHROP Anyone here to...oh. [LB906]

ALBERT DeLEON: My name is Albert DeLeon, D-e-L-e-o-n, and thank you for allowing me to speak on this behalf of LB906. I would also support this because when I did receive that call, it wasn't shortly after that that the OSHA representatives contacted me and they started their investigation. And when it was all said and done, this company from Grand Island, Nebraska, was fined \$24,000, a little bit over. They settled for \$16,000. OSHA received more than I received for the death of my son. You could actually get injured at work, slip, fall, have surgery, and receive more in compensation for that than a death. Because my son was single, had no dependents, he was a minority. In today's era, that shouldn't even be a question, not at all. This state needs to do something for that. If not given this amount, allow us recourse because this was...they were proven guilty by OSHA in wrongdoing, but yet as parents, there's nothing we can do. That's just the way it is. You know, they dust their hands off, they go on. My wife has lost her job because...excuse me, she didn't lose it, she quit because she couldn't deal with the turmoil at work. She does hair and for there you have to be like a therapist and she just couldn't do it anymore. It changed her life forever, and mine too. I work for the city of Grand Island. They were very wonderful. I had sick leave. They allowed me to take time off for the weeks after that, but my wife had no benefit, none. She lost wages. We're seeing therapists, you know. Everyday we wake up, it's a nightmare, you know. And there's nothing we can do. How can you honestly sit here and think to yourselves how that happens in today's time frame? There's none. We, as

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Transcriber's Office

Business and Labor Committee
January 30, 2012

parents, can do nothing. Do any of you have children and how would that make you feel? Think of that, you know, there's nothing that you can do. Because they have no dependents and they are single, there's nothing. Six thousand, here you go. That is wrong. That is so wrong. And I thank you for allowing me to speak. [LB906]

SENATOR LATHROP: Very good. [LB906]

ALBERT DeLEON: If anybody has any questions, I'm more than happy to answer them. [LB906]

SENATOR LATHROP: Okay. Mr. DeLeon, I might make a point with your testimony and what I think Mr. Howard was trying to say is, your son is injured in an industrial accident that was the fault of his employer but you cannot file a claim, a civil lawsuit against him because the work comp law precludes you from making that claim, right? [LB906]

ALBERT DeLEON: Right. Right. In the state of Nebraska, yes. [LB906]

SENATOR LATHROP: Right, probably in every state, I think that's part of the Work Comp Act. And your point is, even though the employer is at fault, you could make no recovery whatsoever under any system of justice in this state. [LB906]

ALBERT DeLEON: Yeah. Right. Correct. Yeah. And I believe Kansas recognizes parents as dependents. So does South Dakota. And I believe one of the two states, might be South Dakota, even goes a step further and recognizes grandparents, because in today's era, I'm raising my granddaughter, you know. And there's a lot of people out there that are raising their grandkids, you know. [LB906]

SENATOR LATHROP: Okay. Okay. Thank you for your testimony. [LB906]

ALBERT DeLEON: Thank you. I appreciate it. [LB906]

SENATOR LATHROP: We know it was difficult for you to be here. Anyone else here to testify in support of LB906? [LB906]

GENE CARY: Again, my name is Gene Cary, and this time I'm just going to read what I wrote and then I have a few other things to say at the end. [LB906]

SENATOR LATHROP: Can you spell your last name for us? [LB906]

GENE CARY: C-a-r-y. [LB906]

SENATOR LATHROP: Okay. Thank you, Mr. Cary. [LB906]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

GENE CARY: I'm here to speak about my son, Neil, who lost his life to a Lancaster...in Lancaster County June 15, 2010. He was a new employee of Raymond Heating and Air in Raymond, Nebraska, for approximately one month. He fell to his death due to unsafe working condition. He had no life insurance through the company and who knows whether the company even offered the benefits. We don't know that at this point. We had to plan a funeral. We laid Neil to rest in a local cemetery in Lincoln. We did not have an elaborate funeral. If his sudden death wasn't enough, then we get hit with the financial problems with it being, like I said before, a minority of approximately five families a year that lose their children, they have no children. Neil was 30 years old. That's kind of a rare case anymore when you have a 30-year-old that does not have children. You know, he was a good boy. You know, I can still call him my son, my boy, even though he's a man. The funeral cost approximately \$18,000. Workmen's comp only paid \$6,000 of the death benefits. This nowhere came close to the cost of laying him to rest. Because of the state law in place at this time, we have no legal rights to make Raymond Heating and Air Conditioning responsible. I feel that they were solely responsible for his death because of their lack of safety measures required by OSHA. OSHA went in and fined Raymond Heating and Air. No safety rails, sending him to a workplace that was unsafe. They knew it was unsafe and they sent him there anyway. OSHA fined them. They also went into a court with that and by plea bargaining, they was able to reduce the fines. OSHA claims that they don't make any money. Well, one way OSHA can make money and make these plants safe, stick with their fines. Make the companies pay what they need to pay to keep their employees safe. Make sure they have people that can check on these employment places of industry, construction work, whatever it might be. It was a fall that took Neil's life, only ten feet. But in the state of Nebraska they should have been tied off after four feet. There's supposed to be safety railing on stairways and on the mezzanine that he was working on. There was none. He was working by himself. He's a new employee of the company. The new employees are the ones you're supposed to take care of and show them the way, not the wrong way. They took his life. They're responsible for his life. They're going about their business. We're going without our son. There's right and there's wrong. This is wrong. [LB906]

SENATOR LATHROP: Thank you, Mr. Cary. I see no questions. Thank you for your testimony, once again. [LB906]

GENE CARY: Thank you. [LB906]

JANET LIND: Afternoon, gentlemen. Again, my name is Janet Lind. At the funeral of my son, I looked down at him in his casket and I thought of all the years I would have to live without him. I could no longer hug him, or laugh with him, give him a kiss. I would never dance at his wedding, or live to see any of his children born, or be a grandmother. Neil was 30 years old when he died and he left behind a 9-year-old younger brother. They had a very special bond and they were very close. Neil was his hero, and his brother worshiped his older brother. I can never take away the memory of the day that I had to

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Transcriber's Office

Business and Labor Committee
January 30, 2012

tell my youngest son that his brother, his hero, was dead. The person he always looked up to be and the only hero he had was no longer going to be with him anymore. As I held him in my arms and he cried his broken heart out, all I could think of was how Neil's death could be so dehumanized. How could I tell my son that there would be no benefits to help us cope, not even for grief counseling, no benefits to do what needed to be done and to help my son over this area. How could I tell him that why Neil's life was worth more than gold to us, to others a human life is cheap, and point of fact, \$6,000 worth. My youngest son had a tough time accepting Neil's death. He never went to Neil's funeral. He stopped mentioning to the brother and even this day he will not go to the cemetery with me to visit my son's headstone. He hardly ever talks about his brother and very seldom mentions Neil by name. Is all this worth only \$6,000? I firmly believe that the current funeral benefit is behind the times and need to be adjusted to reflect current funeral prices. I also believe that benefits should be available to include extended family members. If a worker's death does not leave behind a spouse or children, it still leaves behind loved ones. A father, a mother, siblings, brother, sisters, these are all loved ones, all people who have been left behind, loved ones who must now cope with the death of their child or brother or sister, and with no less pain or grief and, yes, even rage, that a spouse or a child of a departed loved one has. It is my belief that these areas need to be addressed and changed, and it is my hope that in being here today and hearing my story that you will see fit to do just that. Thank you. [LB906]

SENATOR LATHROP: Thank you, Ms. Lind. I see no questions. We appreciate your testimony. Anyone else here to testify in support? How about in opposition? Is there anyone here in opposition? [LB906]

ROBERT HALLSTROM: (Exhibit 5) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness to testify in opposition to LB906. I have also signed in on behalf of the National Federation of Independent Business in opposition as well. While we have testified earlier this afternoon in support of a reasonable increase in the burial benefits, we were opposed to LB906, for one reason, that we do not want to tie the benefit to the state average weekly wage which would, if history stands, would provide us with an automatically annually increasing amount of the funeral, maximum burial expense benefit, even though as was pointed out the initial 13 times the state's average weekly wage might be slightly below \$10,000 to begin with. Secondly, we oppose the provisions that would entitle the estate of a worker who is...whose injuries result in death to receive a \$25,000 lump sum payment in cases which there is no spouse, child, or other dependent entitled to the benefits. We believe a longstanding policy of the workers' compensation system is to provide those immediate family dependents with wage replacement for the loss of the worker who was...died as a result of injuries in the workplace and that that policy should be continued. Be happy to address any questions that the committee may have. [LB906]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: Thanks, Bob. Senator Carlson. [LB906]

SENATOR CARLSON: Thank you, Senator Lathrop. Bob, you've indicated because of a longstanding history of not having these other benefits in the case where there weren't any dependents, so that's really the portion of LB906 that you're opposed to? [LB906]

ROBERT HALLSTROM: Along with tying the burial benefit, maximum burial benefit expense to a state average weekly wage. [LB906]

SENATOR CARLSON: Okay. I go back to...asked you a question on the previous bill, whether you'd had anything to do with the writing of it, and you said no. If that...if the previous bill, LB738, had been written to provide \$12,000 instead of \$10,000, what would your response have been to that bill? [LB906]

ROBERT HALLSTROM: Senator, I guess the question is in the reasonableness. If we can look...I don't have any statistics on what the average cost of a funeral is. I certainly would be open to looking at those. But I think from our conversations with Senator Gloor, he had looked at some information that led him to settle on the \$10,000 figure and that seemed to be reasonable to us. [LB906]

SENATOR CARLSON: Okay. Thank you. [LB906]

SENATOR LATHROP: Okay. Thanks, Bob. [LB906]

ROBERT HALLSTROM: Thank you. [LB906]

SENATOR LATHROP: I don't see any other questions. [LB906]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k, and representing the Nebraska Chamber of Commerce. In regard to the tying the burial expense to the state average weekly wage, we do not have a position at this point and as I reflected earlier. And so this is something that certainly would like to discuss with our labor relations council as well as our board. However, we have had a longstanding policy entering in on the second issue and that would be nondependent coverage under workers' compensation. I would be happy to answer any questions. [LB906]

SENATOR LATHROP: I see none, Ron. Thanks for your testimony today. [LB906]

RON SEDLACEK: Thank you. [LB906]

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, 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

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Transcriber's Office

Business and Labor Committee
January 30, 2012

appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in opposition to LB906. Let me make it clear, the first part of the bill where the average weekly wage is used to figure out the death benefit is not the issue with the bill that PCIA has. Our issue is just with Section 10 and the \$25,000 benefit that goes, even though there's not a dependent. Senator Carlson, I wanted to address one thing that you brought up and I think one of the proponents talked about, that the state doesn't give any rights to any brothers, sisters, or grandparents or grandchildren. Actually, we do. It's in...if you read in this bill even, it's referenced on page 5. And our issue with the legislation is not only could that money, that \$25,000, which arguably wouldn't ever be enough if you would look at anyone's outstanding bills, but the money isn't tied to just being used to be paying bills. It could be given to charity or done...a number of things with. There's no restrictions with how that money would be spent. If the actual burial expenses need to be increased, then we would much rather look at doing something like that. [LB906]

SENATOR LATHROP: Very good. Senator Carlson. [LB906]

SENATOR CARLSON: Thank you, Senator Lathrop. Korby, what you referred to here, it still...it's an "if", if there's dependency. [LB906]

KORBY GILBERTSON: If they are dependent. Uh-huh. [LB906]

SENATOR CARLSON: And other than that, if there isn't any dependency, then there is nothing additional as far as being available for that estate to pay any type of bills or anything, so strictly geared to dependency. [LB906]

KORBY GILBERTSON: Right. Yes. [LB906]

SENATOR CARLSON: Yeah. Thank you. [LB906]

SENATOR LATHROP: Okay. Seeing no other questions, thank you. [LB906]

KORBY GILBERTSON: Thank you. [LB906]

SENATOR LATHROP: Anyone else here in opposition to LB908? Anyone here in a neutral capacity for...? I called it LB908, it's LB906, pardon me. I see no one. Senator Wallman to close. [LB906]

SENATOR WALLMAN: I want to offer my condolences to the people who testified. Having been in accidents around my place, a couple of neighbor kid, so I think this is reasonable. You know, the minimum wage doesn't jump around that much. And it cost money to bury people. And to bury your loved one and then to have to hassle with money issues, I think is asinine for a state. So I appreciate your support on this bill.

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Transcriber's Office

Business and Labor Committee
January 30, 2012

Thank you. Any questions? [LB906]

SENATOR LATHROP: (Exhibit 3) Very good. Thanks, Senator Wallman. I see no other questions. We will add to the proponents a letter from Nebraska Appleseed dated January 30, 2012, that's offered in support of LB906. And with that, we'll close the hearing on LB906, and turn next to LB1008 and that brings us to Senator Fulton. Thanks to all of you who came so far to be here for the testimony today. Senator Fulton, welcome to the Business and Labor Committee. [LB906]

SENATOR FULTON: Thank you, Mr. Chairman. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 here in Lincoln. I bring to you LB1008. LB1008 would require the Nebraska Workers' Compensation Court to establish by rule evidence-based utilization and treatment guidelines for medical services. Reasonable medical, surgical and hospital services would include services consistent with the utilization and treatment guidelines adopted by the Workers' Compensation Court, as well as services falling outside of the guidelines, if the provider or supplier obtains prior authorization for the services from the workers' compensation insurer, risk management pool, or self-insured employer. The legislation would also authorize the Workers' Compensation Court to (a) hire a medical director; (b) establish by rule an independent medical review process for treatment or services denied by an insurer as not reasonable medical, surgical, or hospital services; and (c) provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines in consultation with providers with relevant experience and education. Utilization and treatment guidelines for workers' compensation cases are currently in place in at least 23 states. These states have adopted a variety of approaches, including the establishment of state specific guidelines to define treatment standards and ranges for specific injuries or disabilities; adoption of external guidelines including the Work Loss Data Institute's Official Disability Guidelines Treatment in workers' compensation and the American College of Occupational and Environmental Practice Guidelines. The most common workers' compensation treatment guidelines are for low-back, upper extremities, lower extremities, and carpal tunnel injuries. While the utilization and treatment guidelines can reduce medical costs, they also result in improved healthcare for employees. Medical treatment guidelines provide a framework for consistent and reliable decision-making regarding the diagnosis, management, and treatment of injury and illness. Adoption of evidence-based treatment guidelines will ensure that injured workers receive appropriate medical care in a timely fashion and can serve to control costs by reducing unexplained variations in care and ineffective services. The guidelines should not be designed to serve as absolute prescriptions for care, nor to replace the judgment of individual healthcare practitioners. And I'll try to answer any questions, if you have any. [LB1008]

SENATOR LATHROP: Senator Fulton, can you give us a couple of examples of what

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Transcriber's Office

Business and Labor Committee
January 30, 2012

you're trying to fix,... [LB1008]

SENATOR FULTON: Yeah. [LB1008]

SENATOR LATHROP: ...or give us an example of what you're taking aim at with this bill? [LB1008]

SENATOR FULTON: Well, this is...I've had some interest in workers' compensation for my life previous to the Legislature. I had served on some policy boards here in the Lincoln Chamber, and so I've been open to ideas that have been brought forward having to do with workers' compensation, and I've had a particular bill in front of you a couple of times. This actually was an idea brought to me by one of the workers' compensation groups and it was presented to me as an idea that's done in every...that is done in other states. And so when it was presented to me, like you, I had other things on my agenda. But this is something that I reviewed and thought about and if indeed we put in place something objective, guidelines by which to operate, it seems that perhaps we could decrease the amount of cost to employers and to employees, if indeed we're doing things that have become habitual that can't be fleshed out evidentially. And so...I'm not...it's not necessarily a specific that I'm going after. This is an idea that was brought to me that I think at least merits some attention. [LB1008]

SENATOR LATHROP: Do you have an example of something that's getting treated now that you think a utilization process would eliminate? [LB1008]

SENATOR FULTON: I do not. No, I do not. I'm bringing this generally as an idea. [LB1008]

SENATOR LATHROP: Okay. And my other question or concern as I read the bill is that if it's not on, or some approved form of treatment, you would leave it to the work comp carrier and not the medical director at the Work Comp Court? [LB1008]

SENATOR FULTON: Yeah, as the bill is drafted... [LB1008]

SENATOR LATHROP: Can you see a potential conflict there for the...? [LB1008]

SENATOR FULTON: Yeah. Right and that's one of these, I added a line here just as I was sitting here thinking through this. My intention is not to put forward prescriptions that would preclude the judgment of medical health practitioners or...so if that's problematic, then let's...and if this is something that you're willing to move forward on, then certainly that's something that we should change. [LB1008]

SENATOR LATHROP: Okay. [LB1008]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR FULTON: More than anything, I think this is an idea worthy of consideration anyway. [LB1008]

SENATOR LATHROP: Okay. Senator Wallman has a question for you. [LB1008]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thanks, Tony, for bringing something like this. Is there a cap on how long you can receive treatment for a medical condition, you know, work-related injury, you know? [LB1008]

SENATOR FULTON: I mean I think that's...that would be specific to an injury and right now that's per...there's some judgment to be employed there. But I don't...and I'm not advocating putting forward any...yeah, I'm not going to that type of specificity in the bill. [LB1008]

SENATOR WALLMAN: Thanks. [LB1008]

SENATOR LATHROP: Okay. Do you have a question, Senator Carlson? [LB1008]

SENATOR CARLSON: Uh-huh. Thank you, Senator Lathrop. [LB1008]

SENATOR LATHROP: You gave me the look but not the finger. (Laughter) I want to be clear, he doesn't give me the finger. He gives me one of these to indicate his interest in asking a question. (Laughter) That didn't come out right. [LB1008]

SENATOR CARLSON: I want to follow up a little further on Senator Lathrop's question because it appears that you've studied this and you feel like this might be a way of making treatment more economical and, in the same way, making it more effective. Would that be fair? But you didn't have any specific problem right now that you're aware of that you're trying to solve with this? [LB1008]

SENATOR FULTON: The answer to your question is, you are correct. I don't have a specific problem that I am honing in on and targeting. This was an idea that was brought forward and it seems reasonable on its face. I'm not immersed in this as you are in Business and Labor Committee, but I look at this from my own life experience. I'm an employer and so we do everything we can to make sure that our employees are informed and educated such that they can continue serving our clients. I also grew up...my dad worked in a meat packing plant and so he experienced, he needed workers' compensation insurance, so on the other end of it. It seems to me that if we're doing things over and over by force of acquired habit, that that actually hurts both of those parties. And when this idea was presented to me, it seemed like one of these, at least ostensibly, that we ought to be able to incorporate such that both entities are indeed served, because typically those are the entities that are...that militate against one another when they're in front of you. [LB1008]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR CARLSON: Thank you. [LB1008]

SENATOR LATHROP: Okay. Thanks. Are you going to stick around to close? [LB1008]

SENATOR FULTON: I will not, regrettably. [LB1008]

SENATOR LATHROP: Okay. Well, I'll see you soon. I'll be down in Appropriations before the end of the day. [LB1008]

SENATOR FULTON: Oh. [LB1008]

SENATOR LATHROP: So thank you, Senator Fulton, for your introduction. We'll take those who are here in support of Senator Fulton's LB1008. [LB1008]

ROBERT HALLSTROM: (Exhibit 7) Chairman Lathrop, members of the Business and Labor Committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness to testify in support of LB1008. I've also signed in on behalf of the National Federation of Independent Business in support of the bill as well. As Senator Fulton noted, I think the background of this bill and our interest in the bill is twofold. The first one is that it has the ability to enhance the quality and timeliness of medical care that's provided to injured workers by recognizing and providing for the best treatment practices, and secondly, by doing so, can serve to minimize or reduce disputes. If you have a standard protocol for a treatment for a particular type of ailment or injury incurred in the workplace, in most of the states that have adopted utilization and treatment guidelines, those practices and protocols are deemed to be reasonable and, therefore, subject to payment without dispute or without the need for litigation. And so we would hope that it would minimize the cost of the system in that respect. Secondly, our organization has been involved in looking at reducing the medical cost component of workers' compensation system over the years in terms of looking at medical fee schedules. There are obviously two components of costs in the medical area for workers' compensation. One is the fee schedule and the other is utilization of services. The guidelines will provide a protocol for treatment that is recognized by scientific evidence, and again, we think there could be a by-product of reduced cost if we were to adopt the protocols. One of the things that we have done...and you'll notice that I don't ask in my testimony for you to advance this bill to General File. We have met so far with the Medical Association. We've had conversations briefly with the Hospital Association. Also look forward to meeting with anyone else that may express an interest in this concept in terms of looking for informal meetings or perhaps even requesting an interim study hearing through this committee to continue the dialogue and the public discourse on this issue. We've introduced this in a bare-bones fashion, not wanting to send a message that we're predisposed to any particular proposal or approach. Some states have adopted their own guidelines

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Transcriber's Office

Business and Labor Committee
January 30, 2012

through a medical panel of experts. Others have adopted the official disability guidelines or other recognized treatment guidelines that are based on scientific evidence. So we look at this as a longer term project and look forward to working with those that are interested in the subject matter. [LB1008]

SENATOR LATHROP: Very good. [LB1008]

ROBERT HALLSTROM: Be happy to answer any questions. [LB1008]

SENATOR LATHROP: Very good. Bob, do you have an example? And I'm...the first thing that comes to mind is maybe physical therapy or chiropractic care. Do you...if you brought this forward, tell me in those states where it's done, where do you think things would be different in Nebraska, or what kinds of care, or can you give me an example of what might be eliminated in the treatment process? [LB1008]

ROBERT HALLSTROM: I think there are some states that have gone the direct approach, maybe in line with Senator Wallman's question, if I heard that correctly, of looking at limitations on visits. That is not something that it was my understanding they go to the specificity of in the treatment guidelines, if we were to adopt guidelines from the ODG or ACOM, which is the other group. I think, however, there are back treatments that are recognized in terms of protocols, the best practices under these guidelines that perhaps they would set up to say if you perform the surgery on the back in a particular way, that those fall within the guidelines and, therefore, there should be no dispute with regard to the entitlement to compensation and payment for those benefits. If someone wanted to go outside those boundaries with a treatment that is not as clear or well-established, that could still be subject to being compensated for but it would have to go through, in some states, a prior authorization protocol to get approval in order for that to be preapproved. But some states don't go through prior authorization. So there's a whole host of different...this is...we're kind of on the...we're not on the cutting edge but we're on the front edge in terms of our looking into the situation. But it's been adopted. We've talked with some of the individuals that are in charge in Colorado and Minnesota and other states where it has been in place for a good number of years and it has worked very well for all parties concerned, I believe, in those states. [LB1008]

SENATOR LATHROP: Okay. I see no other questions. Thanks, Bob. [LB1008]

ROBERT HALLSTROM: Thank you. [LB1008]

SENATOR LATHROP: Anyone here to testify in support of LB1008? Anyone here in opposition? [LB1008]

ROBERT MOODIE: I'll go first. [LB1008]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: Mr. Moodie, welcome to the Business and Labor Committee.
[LB1008]

ROBERT MOODIE: Thank you, Senator. Senator Lathrop, members of the committee, Robert R. Moodie, M-o-o-d-i-e, testifying on behalf of the Nebraska Association of Trial Attorneys. I am a lawyer in Lincoln, practicing in the field of workers' compensation. My comments on this bill are essentially four points. The first point is that evidence-based utilization, medicine, treatment the way it's envisioned by LB1008 would take the treatment decisions and control away from the treating doctor and the patient. It is our position that this represents a governmental intrusion into individual healthcare decisions. The proponents seek to save costs by rationing healthcare and intruding on the personal relationship between the patient and the doctor. My second point is that the bill would take the authority away from the workers' compensation judge to decide issues of the reasonableness of medical care. Currently, the way workers' compensation law is organized, employers are responsible to pay for reasonable medical treatment required due to an injury that would relieve pain and promote healing. If the employer or its insurer feels that some treatment is not reasonable, they can and will refuse to pay for that treatment, thereby setting the stage for the issue to be presented to a judge of the Workers' Compensation Court. That judge does what judges are supposed to do. He or she receives evidence and argument from both sides, considering what is relevant and reliable, acting as the gatekeeper, if you will, disregarding what is not relevant and reliable. The judge then makes a decision based on the information received about that patient, his injury, and the opinions from the doctors who have treated or examined him. Our judges have gone through an exhaustive process of determining their qualifications to serve in that role. They are qualified, impartial, and capable of making those kinds of rulings. The proponents of LB1008 would rather have this decision be made strictly based upon statistics accumulated in other cases and studies oftentimes done in other parts of the country or even other countries. We have good judges in Nebraska. We need to let them do their jobs and not turn the decision over to a statistical equation. My last two points are only to suggest that I would challenge the proponents and the committee should challenge the proponents to do two things. They should prove to you that evidence-based medicine will result in improved quality of patient care. And they should prove to you that the implementation of this actually results in sustainable cost savings. This meeting...this hearing came up rather quickly on me and I haven't been able and done all the research that I would like. But my cursory research indicates that, for example, in California, where this type of program was instituted in 2004, there was a temporary reduction in the escalation of medical costs, but starting in 2009 those costs have increased at a rate which is as great or greater than they were before the implementation of this program. [LB1008]

SENATOR LATHROP: Thanks, Bob. Are there any questions? Senator Carlson.
[LB1008]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR CARLSON: Thank you, Senator Lathrop. Appreciate your testimony and I would say that I like your arguments and I'm agreeing with what you've said. Would you have the same arguments toward Obamacare? (Laughter) [LB1008]

ROBERT MOODIE: Different...it's a different...I would have...well, you're asking a different question. I would have objections to any governmental intrusion into the doctor-patient relationship. To the extent that the federal law imposes that, then I would have that same argument. I would not, necessarily, have that argument as applies to all sections of that federal law. [LB1008]

SENATOR CARLSON: Okay. Thank you. [LB1008]

SENATOR LATHROP: I think that's it for questions. Thanks, Bob. [LB1008]

ROBERT MOODIE: Thank you. [LB1008]

SENATOR LATHROP: Anyone else here to testify in opposition? [LB1008]

ROD REHM: (Exhibit 8) Just a quick...Rod Rehm and I'm testifying on behalf of my law firm and our clients that are in the workers' compensation system. I'm handing out another handout that the back page, once again, is the important page. There's some background information showing essentially that the workload and the numbers of injuries in the Nebraska workers' compensation system have been pretty static for a long time. And the back page is a summary of the court's statistical record of types of benefits paid since 2001. The cost of medical care has been going down here in Nebraska, so I guess I'm a conservative to the extent that I say we shouldn't fix something that ain't broke. And there isn't a crisis. There isn't anything going on with medical costs exploding, at least as far as the court's records indicate. Looks like they've gone down of late. So, interesting, that's all. Facts...evidence is kind of pesky stuff. [LB1008]

SENATOR LATHROP: Rod, some of the...when we see a downward trend on the medical expenses since probably 2007, that would reflect... [LB1008]

ROD REHM: Right. [LB1008]

SENATOR LATHROP: ...providing for schedules for the doctors and schedules for the hospitals, bills that we've passed out this committee. [LB1008]

ROD REHM: Yeah, it's dropped hugely. I mean, it was \$157 million in 2007, which was about the time there was this Cunningham study that some of us participated in. And that resulted in some changes in the guidelines for charges and now the costs are way

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

down. Good job. What do you want workers to do, you know, give up all their choice? My question on this whole situation is, would you want a situation, would you want a system where the care that your loved one, your family gets is made essentially by a registered nurse second-guessing a doctor based on studies that shows that if your cartilage loss is 27 centimeters instead of 40 centimeters, you only get this type of surgery? None of us would want that. That's what this evidence-based medicine does in its extreme. I'm not saying that happened all the time but that's what it does. That's how it works. [LB1008]

SENATOR LATHROP: I see no other questions. Thanks, Rod. [LB1008]

ROD REHM: Thanks. [LB1008]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, for the State AFL-CIO. So I adopt what Mr. Rehm just said and so I'll cross a whole bunch of things I was going to say. But I will say this, that in the real world of workers' compensation, it's not as if the injured worker goes out and convinces the doctor to do some surgery or to rack up some bills, and then later on they get stuck for it by the court. In the real world they go without care because it's being denied and you have to get a judge to approve it. And so it isn't like some runaway train where the doctor is willing to treat the person. When you go in for treatment or you schedule surgery, the first call goes to the workers' compensation people. And many times the procedures are approved. You know, those are the good cases. Those are cases that don't go to lawyers. But usually the approval comes ahead of time and so...and judges don't just blanketly sign off and order all of the bills paid. A lot of times those bills have been paid by someone other than workers' compensation if the person is fortunate enough to have health insurance or Medicaid or Medicare. And it's a point to keep in mind that as we whittle away or erode the rights of workers to have medical services paid for, that may drive up costs elsewhere in society, governmental programs, tax-based, tax-funded programs. So the other thing is this, and I just state this for the record, that if Obamacare is unconstitutional, then this may be unconstitutional because...and I'm not suggesting one way or the other, but when you take away the judicial function from judges and give it to a nurse case manager, that may be a violation of the judicial branch and the powers that are there with the judicial branch. So generally, the State AFL-CIO opposes this. I guess, the other thing I would say is that I don't know that it's an automatic conclusion that the number of disputes and conflicts would go down. Anytime there's a new change in the law, lawyers and insurance companies will test that. And this may cause the number of claims...of people that have to go hire lawyers to go up. And if we're speaking purely out of self-interest, the more conflict there is, the more the lawyers are involved. And so, anyway those are my comments. [LB1008]

SENATOR LATHROP: Thanks, Steve. I see no questions, so thank you. [LB1008]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

STEVE HOWARD: Thank you. [LB1008]

SENATOR LATHROP: Anyone else here in opposition to LB1008? Anyone in a neutral capacity? [LB1008]

DAVID BUNTAIN: Senator Lathrop, members of the committee, my name is David Buntain, B-u-n-t-a-i-n. I am legal counsel and registered lobbyist for the Nebraska Medical Association, and we are appearing today in a neutral capacity on LB1008 for several reasons. Number one, our legislative commission does not meet until Wednesday, and so we have not taken an official position on this bill. Secondly, when this was first brought to us in December by the proponents, it was our understanding that the bill that is before you was the opening of a dialogue that we anticipate will go beyond this session, over the interim, and with an indefinite final date. So it did not come as a surprise to us, but we are very interested in the bill, obviously, because it affects the way medicine is practiced. Right now, there is a lot of interest in evidence-based practices and evidence-based protocols well beyond the workers' comp area. So we do not reject that out of hand, but for some of the reasons that you've heard today from the opponents, there are a lot of concerns about how it would be implemented and certainly our interest is being sure that the patients that are served by medical providers through the workers' comp system receive timely and excellent care. And so we will gladly participate in the conversations. We found the court to be very easy to work with on this and so we're looking forward to having that conversation. [LB1008]

SENATOR LATHROP: Very good. Any questions for Dave? I see none. [LB1008]

DAVID BUNTAIN: Thank you. [LB1008]

SENATOR LATHROP: Thanks for being here today. [LB1008]

DAVID BUNTAIN: Yep. [LB1008]

SENATOR LATHROP: (Exhibit 6) Anyone else in a neutral capacity on LB1008? Seeing no one, that will...wait a minute. Before we close the hearing, we have a letter from the Nebraska Hospital Association dated January 30, 2012, in a neutral capacity that will be included, and a letter from the Workers' Compensation Court hand-delivered January 26, 2012, is the date of that, and that's also in a neutral capacity. They will be entered in as part of the record, and that will close our hearing on LB1008, and bring us to LB1151, which is my bill. (Exhibit 10) Good afternoon, members of the Business and Labor Committee, my name is Steve Lathrop, L-a-t-h-r-o-p. I'm the State Senator from District 12 in the Ralston-Millard area in Douglas County. I'm here today to introduce LB1151. LB1151 removes the June 30, 2014, sunset provision contained in LB780 passed by the Legislature in 2010. As most of you will recall...and LB780 is the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

mental-mental bill, that's the shorthand for LB780. As most of you will recall, LB780 allowed workers' compensation coverage for mental injury claims suffered by first responders. The mental injury must have arisen out of extraordinary and unusual circumstances in comparison to the first responder's normal employment conditions. It's my understanding, through correspondence with the Nebraska Workers' Compensation Court, that there have been no known claims made pursuant to LB780. This information is supported by employers...included in the fiscal note. And while LB780 has not been used, it's important that our first responders know that, if needed, they will be taken care of in the case of extreme distress, and I ask for your support of LB1151. I'm going to make a couple of comments off the script in support of LB1151. The sunset is not until 2014 so you might ask, why don't we wait until next year? I think it's useful to take it up this year because with term limits we will have six of our senators leave who participated in LB780, and I think we have enough experience with LB780, or the mental-mental bill, to appreciate that when I...and I'll hand around the fiscal note from LB780, because you'll remember this was the subject of considerable debate when we passed the mental-mental bill and that was, what's this going to cost? The fiscal note, I think was...well, you can see it. It was a small amount. I want to say...well, Evan took the only copy that I had (laughter) so now I'm going to have to guess at it. But it was, it was...the fiscal note came to \$7,500. And, in fact, it hasn't...in the time since LB780 passed, no one has paid a claim on the mental-mental bill. This is important, committee members, to, in particular, the volunteer firefighters who work at retention and have members who volunteer, but they're not the paid professionals that see this day in and day out and they're the people that are most likely to have to go to the scene of a bad accident and pick up a family member or someone they know in the community. And so I'm grateful that no one has had to take advantage of LB780, but at the same time I think that we need it to help the volunteer firefighters with their recruitment and retention, and that this service or this benefit should be available to those first responders who see something so horrific in the course of their employment or in the course of their work as firefighters and police officers that they need that kind of counseling. So I'd be happy to answer any questions. [LB1008 LB1151]

SENATOR COOK: Are there any questions from the committee? Seeing none...oh, Senator Smith. [LB1151]

SENATOR SMITH: Thank you, Chairwoman. Senator Lathrop, so how do you define or determine when that extreme event occurs? You know, it sounds like the language is not real clear as to exactly when it is that they are encountering something that is beyond their routine work? [LB1151]

SENATOR LATHROP: Right. We took that up when we passed LB780 and had a considerable amount of debate. And what we learned is that most fire departments, for example, and law enforcement agencies have employee assistance programs. So if you were...if you went to a house fire and three people perished and you're involved in trying

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

to bring them back or bring them out of the house, something that you see that just throws you over the top, the first line is for you to go to the employee health assistance type program. And they have those set up where they do debriefings, they talk about it, they make the firefighters talk about it so that it doesn't become a posttraumatic stress disorder. But these are the kinds of things that just become too much for the employee to endure. That kind of a process doesn't help you, doesn't get you over it, and now you can't go to work. [LB1151]

SENATOR SMITH: And you say it would vary for the individual, would it not? [LB1151]

SENATOR LATHROP: Oh, absolutely. And just as some people can lift up a...you know, a wheelbarrow full of cement without hurting their back, some people can't. This is for the person who has a condition that would be on the order of posttraumatic stress disorder. They can't work, they can't function, and that's the type of an injury we're talking about, and frankly, it hasn't happened yet. And that really is a testament to the fiscal note that we had in 2010 when there were many skeptics on the floor that said, we're going to put a sunset provision on this because I can't believe that there won't be a bunch of claims and, in fact, there haven't been. But it's important to the Ralston volunteer fire guys or the La Vista, the Papillion. If somebody needs it, it needs to be there. [LB1151]

SENATOR SMITH: Okay, thank you. [LB1151]

SENATOR COOK: Any other questions from the committee? Seeing none... [LB1151]

SENATOR LATHROP: I will stay to close. I may get pulled away down to Appropriations in which case you can close without me. Okay? [LB1151]

SENATOR COOK: Thank you, Senator Lathrop. First testifier in support of LB1151. [LB1151]

DAVE ENGLER: Good afternoon. My name is Dave Engler, E-n-g-l-e-r. I'm the president of the Nebraska Professional Firefighters. We're in support of this. I think Senator Lathrop spelled it out. Those that were opposed to it, to the initial bill, their concerns didn't come to fruition. We've got two years under our belt. I think it's very comforting that this is available to employees out there. But it's not something that's going to be abused, as there was concerns about. So we'd like to see this passed and the continued coverage. I'll answer any questions. [LB1151]

SENATOR COOK: Any questions for Mr. Engler? Seeing none, thank you very much. [LB1151]

DAVE ENGLER: Thank you. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Next testifier in support of LB1151. [LB1151]

DAVID HEYWOOD: My name is David Heywood, H-e-y-w-o-o-d. I'm the current president of the Nebraska Volunteer Firefighters Association. We represent all the volunteer fire and rescue personnel across the state. We strongly supported the mental-mental bill when it was passed by the Legislature. We saw a need for a healing process for firefighters and EMS personnel, help they could get when that memory of that bad accident or fire scene just would not go away. That need still exists. The bill was passed by the Legislature and we thank them for that, but it did contain the sunset clause, and now we support the repeal of the sunset clause so we can permanently offer our first responders the help they deserve to overcome their mental stress and return to our departments and to the service of the citizens of the state. [LB1151]

SENATOR COOK: Thank you. Thank you, Mr. Heywood, I apologize. Are there any questions? Senator Harr. Senator. Mr. Heywood. [LB1151]

DAVID HEYWOOD: Oh, I'm sorry. I am sorry. [LB1151]

SENATOR COOK: (Laugh) Thank you. You're popular, more than you know. Thank you. [LB1151]

SENATOR HARR: Thank you, Mr. Heywood, and thanks for all you do as a volunteer firefighter. Do you know how many unit firefighter, volunteer firefighter units there are in the state of Nebraska? [LB1151]

DAVID HEYWOOD: How many volunteers there are? [LB1151]

SENATOR HARR: Well, units, and then how many volunteers, yeah. So how many different municipalities have volunteer firefighters? [LB1151]

DAVID HEYWOOD: How many municipalities have volunteer fire departments? [LB1151]

SENATOR HARR: Yeah, yes. [LB1151]

DAVID HEYWOOD: Omaha, I believe, and...can you guys help me here? [LB1151]

AUDIENCE: Seward, 400 services, and we're talking about 10,000. [LB1151]

DAVID HEYWOOD: Yeah, we're talking 12,000 volunteers throughout the... [LB1151]

SENATOR HARR: Thank you very much. I appreciate that. [LB1151]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

DAVID HEYWOOD: Yeah. [LB1151]

SENATOR HARR: Yeah. Senator Carlson has a question. [LB1151]

SENATOR COOK: Thank you. Senator Carlson. Senator Carlson has a question? (Laughter) You really want to get out of that chair. (Laughter) [LB1151]

DAVID HEYWOOD: I don't do this every day. All right, where are we at? (Laughter) [LB1151]

SENATOR COOK: I would say the hot seat, but that would be kind of like a pun, the "hot seat." [LB1151]

SENATOR CARLSON: This is just a short statement because I had some concept of what you people do and appreciate what you do and know what...we would be in a heap of trouble without you. So keep doing what you're doing. We appreciate it. [LB1151]

DAVID HEYWOOD: We thank you very much and we will keep doing what we're doing and this will help us. [LB1151]

SENATOR CARLSON: Okay. [LB1151]

DAVID HEYWOOD: Thank you very much. Now... [LB1151]

SENATOR COOK: Yes, and there he goes again. Thank you, Mr. Heywood. I was just going to thank the volunteer firefighters. [LB1151]

DAVID HEYWOOD: Can I get out of here now? (Laughter) Thank you very much. [LB1151]

SENATOR COOK: No, I was in a house fire and volunteer firefighters from Irvington put it out,... [LB1151]

DAVID HEYWOOD: Yeah. Yeah. Okay. Good. [LB1151]

SENATOR COOK: ...so it's kind of a scary thing, so thank you very much. [LB1151]

DAVID HEYWOOD: We do the best we can. Thank you very much. [LB1151]

SENATOR COOK: Yes. Now you may leave the chair. [LB1151]

DAVID HEYWOOD: Thank you very much. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: The next testifier in support, please, of LB1151. [LB1151]

MICHAEL DWYER: (Exhibit 11) Good afternoon. My name is Michael Dwyer, D-w-y-e-r, and I'm from Arlington, Nebraska. I'm a business owner, member of the school board, and a board member of the Blair Area Chamber of Commerce. I am also a member of the Nebraska State Volunteer Firefighter Association's legislative committee, an EMT, and a 28-year member of the Arlington Volunteer Fire Department. I am here today to testify in support of LB1151. In my 28 years I've responded to over 1,300 incidents, including fires, accidents, cardiac and diabetic episodes, farm injuries, broken bones. If memory serves, I have rescued two cats from roofs. I have also performed CPR 18 times, 4 times on children. All but two of those patients passed away, all but three of those patients were people that I knew. I've responded to a partial decapitation, the death of my son's best friend, and seven suicides, which is how my father died. While none of my 1,300-plus calls were ordinary, I--we--have recovered and continue to respond. I'll try not to rehash my testimony from LB780, except to remind you that the protection afforded under LB780 continues to be so important. In the past two weeks I've had critical calls with a client of 20 years and the guy that I sit next to in my church choir. My point is that for volunteers especially, it's personal. We rarely respond to a call that we don't know somebody on or connected to the call, and that makes the recovery from a critical incident that much more difficult. Given the significant shortage of volunteers, it makes that recovery that much more important. The original sunset provision of LB780 was included because of concerns that we would open the proverbial floodgates, and clearly that has not happened. As I indicated in my original testimony on LB780, the culture in the fire service is not the kind that would encourage these kinds of claims. Not only as a firefighter but as a businessperson and as a school board member and a member of a chamber board of directors, I can with good conscience and great confidence ask you to support LB1151--the repeal of the sunset provisions of LB780. I truly appreciate Senator Lathrop's continued work and I would welcome any questions. [LB1151]

SENATOR COOK: Thank you, Mr. Dwyer. Are there questions for him? Yes, Senator Carlson. [LB1151]

SENATOR CARLSON: Thank you, Senator Cook. In your 28 years, how many incidents have you...can you recall where people actually required and had follow-up treatment? [LB1151]

MICHAEL DWYER: To answer you honestly, I can remember three. One of them was personal, it was my own case. But in those 1,300 calls, three. As the previous testifier mentioned, we have critical incident stress debriefing which is incredibly invaluable, but frankly, it's a one-hour, one-and-a-half-hour process. Many of us have been through it a number of times. And there's a critical need for, in those rare cases, something beyond

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

that. In my personal case, a horrible car accident involved a very good friend. Her husband, who is an...happened to be an ER nurse, responded to the...or happened to stumble onto the call, so part of my job was to tackle him and keep him away from viewing the body of his dead wife. So I took three months off from fire service and just continued to try to work, but it haunts you. It was...again out of 1,300 calls, it was really the only one that really rattled my cage, but that was the one. [LB1151]

SENATOR CARLSON: So you, yourself, were one of the three that you're counting? [LB1151]

MICHAEL DWYER: Correct. [LB1151]

SENATOR CARLSON: The other two, are you aware of that they finally recovered and served again? [LB1151]

MICHAEL DWYER: I know in one case, yes; I know in one case, no. It was a little bit of an unusual case without going into details that I, for other reasons, can't reveal: a young gentleman, it was a middle-of-the-night car accident at an intersection. I went around to the one side of the car. He was very new on the department. He went around to the other side of the car. I asked him to check and he found a body and he quit the next day. I believe, knowing him, he's okay, but I also know we lost a critically important member of the department. I hope that answers your question. [LB1151]

SENATOR CARLSON: Well, it does...it partially does but in these three instances, there was really no professional treatment given. [LB1151]

MICHAEL DWYER: That's correct. [LB1151]

SENATOR CARLSON: Okay. [LB1151]

MICHAEL DWYER: In my personal case, talked with my pastor but didn't seek any professional help and didn't seek the remedies under LB780. [LB1151]

SENATOR CARLSON: Okay. All right. Thank you. [LB1151]

MICHAEL DWYER: If I could add just one thing, Senator Smith had questioned earlier, how do we define those extreme symptoms? And in...just in addition to what Senator Lathrop said, in my case and in my experience it's those symptoms, when there's specific things that the responder can't seem to get over, when he has difficulty going back to work, when he has difficulty sleeping, when he has difficulty functioning within the department or within his job. When there's something symptomatic that attaches to that, as there would be in a regular workmen's comp claim, to me that's when you identify that that was a critical incident. I hope that helps. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Thank you, Mr. Dwyer. Any other questions from committee members at this time? Seeing none, thank you very much, sir. Next testifier in support of LB1151. [LB1151]

TOM HAMERNIK: (Exhibit 12) Good afternoon. My name is Tom Hamernik, H-a-m-e-r-n-i-k, and I am a member of the Clarkson Volunteer Fire and Rescue Department. I serve as the fire chief, and I'm a member of the NSVFA legislation committee. And I, too, testified in support of the original LB780. As a 30-plus year volunteer EMT in a rural community, I am here in support of LB1151. I was disappointed to understand that the sunset clause was added to LB780. I believe it's extremely important to continue to provide mental health support in the form of workmen's comp to our emergency responders, particularly those in volunteer services who are without the structure and support provided in a full-time service like a paid department. I have responded to many terrible calls over the almost 33 years and have personally witnessed the stress it places on our responders. On March 14 of last year our service responded to an apparent suicide of a fellow Clarkson fireman committed with a large caliber handgun. It was an extremely gruesome sight, especially disturbing because of the relationship we all had with this young man. He worked for me for three years. He was a volunteer fireman for about three. We had ambitions of getting him to take the EMT class. He had been a Marine. He was in the Marine Reserves. He had everything in front of him. He was just a super young guy and he had driven the ambulance for me six days before on a call...routine call. And without being really graphic, we have responsibilities at a scene like that, and we can't simply wait outside the door until law enforcement arrives. You can't hide from the scene. You have to check that victim to see if anything is possible. You have to make sure the weapon is secure. You have to make sure that what you think happened there, the evidence supports it, and you have to protect the scene for law enforcement to arrive so that they can do the investigation. As a squad, we were all in shock for several days. We provided support within the squad and requested the critical incident stress debriefing team to come in and provide a debrief, which they did three days later which is their protocol. The mental health professional that was provided through the CIST did a super job and provided counseling both in the session and after the session to the people that really needed it. I know for a fact at least one of our responders sought counseling through their own physician. I know that none of these services were provided through the workers' comp program, even though it very well could have been. In the end, we lost that particular EMT because they struggled with dealing with that case. Our squad currently has three people taking the nearly six-month-long EMT training class. Prior to that class, the husband of one of the people in the class asked me specifically about what aid we could give his wife should she have to answer a call of someone she knew or a relative. And I was able to tell him all the steps that we would go through, including the legislation that was passed as part of LB780. Providing mental health services as work comp in extreme situations is absolutely necessary for our emergency responders. We ask them

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

to handle situations many people simply won't subject themselves to. In small towns across the state, responders continue to serve long after they've really done their part, 20, 30, and 40 years and even more--my previous chief retired after 50 years, 40 of them as an emergency responder--because they feel the responsibility and there simply aren't people waiting in line to take their spot. I respectfully request that you move LB1151 out of committee and on to the floor for debate. The sunset clause needs to be removed from the legislation to provide stability and a true commitment to supporting our emergency responders. And with that, I'd take any questions that you might have. [LB1151]

SENATOR COOK: Thank you, Mr. Hamernik. Are there questions? Seeing none, thank you very much for your time. [LB1151]

TOM HAMERNIK: I thank you for your time. [LB1151]

SENATOR COOK: Next testifier in support of LB1151. [LB1151]

ROBERT MOODIE: Members of the committee, thank you. My name is Robert Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys, just briefly to say that we are in favor of this bill. The original bill was a good idea. It's still a good idea. We think the sunset provision should be removed. [LB1151]

SENATOR COOK: Thank you very much. Any questions for Mr. Moodie? Seeing none, any more testifiers in support of LB1151? [LB1151]

MATT SCHAEFER: Good afternoon, Senator Cook, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, registered lobbyist appearing today on behalf of the State Troopers Association of Nebraska. Again, just briefly, we wanted to register our support for LB1151 out of the importance for workers' compensation covering these sort of mental injuries and illnesses arising out of extraordinary and unusual employment conditions. [LB1151]

SENATOR COOK: That's it? [LB1151]

MATT SCHAEFER: Thank you. [LB1151]

SENATOR COOK: Thank you very much. Oh, do you have any questions? [LB1151]

SENATOR WALLMAN: No. No. [LB1151]

SENATOR COOK: Waving good-bye? [LB1151]

SENATOR WALLMAN: Yep. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Thank you, Mr. Schaefer. Next testifier, please. [LB1151]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, for the Nebraska State AFL-CIO, just here to make the point that if a sunset provision, philosophically, is put in place in the form of a compromise to avoid unforeseen consequences to avoid a floodgate of claims that may not be foreseeable, if that's the purpose of it, then that hasn't happened. And so, not that the issue is unworthy of redebating, but if the reason the sunset clause is in place is to avoid something that wasn't planned for, then that certainly hasn't happened. So nothing else from us. [LB1151]

SENATOR COOK: Okay. Any questions for Mr. Howard? [LB1151]

STEVE HOWARD: Thank you. [LB1151]

SENATOR COOK: Seeing none, next testifier in support of LB1151. Seeing none, testimony in opposition to LB1151. [LB1151]

ROBERT HALLSTROM: (Exhibit 13) Vice Chairman Cook, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness to testify in opposition to LB1151. I've also signed in, in opposition for the National Federation of Independent Business. I think looking back, historically, it's probably important for the committee to note that before LB780 was introduced, there was a bill that would have applied the provisions of LB780 both to the private employers and public employers. That bill was vetoed by the Governor, I think, in 2009. In 2010 when LB780 was introduced, even though it only applied to public entities and certain first responders, our organization and organizations I represent in the business community remained opposed to the bill. During the course of the negotiations on that particular legislation, there was a lot of discussion and I think Senator Carlson had first promoted a sunset amendment that we considered. If I remember correctly, there was discussion about putting a two-year or a three-year or a four-year or a five-year sunset on the bill. Part of the grand compromise ultimately was the four-year, June 30, 2014, compromise that is in place at this time. Certainly do not fault Senator Lathrop for being anxious to remove the sunset. It's an issue that he's interested in and passionate about, but I think we should look closely to the issues of whether or not there are reported decisions to the Workers' Compensation Court, whether there are litigated cases that are currently pending, or perhaps whether or not the court is in control of information regarding claims that are pending. I cannot tell the committee today because I've not been authorized to disclose any information, but when LB1151 was introduced, we asked some of our members that are in the insurer side to determine if there were any claims pending that had not been litigated or taken to final judgment. And it was suggested to us that there is a fairly...potentially, fairly significant claim that is pending from one of our insurers. We will be asking them

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

to get information regarding that claim and will convey that to Senator Lathrop and the committee at our earliest possible convenience. I think another issue I'd just note is that with regard to the sunset and the four-year period, one of the concerns had to do with not only the number of claims but the severity of claims. For those of you who were here when LB780 was debated, one of the major issues was the significant dollar volume of the claim involved with the state trooper up in Norfolk in the bank robbery and murder cases. That was a significantly high, somewhere in the neighborhood of \$500,000 to a million dollars that the state, as a self-insurer, incurred. So there are...there is a potential in this area for a few number of cases to be large in severity and I think we should let that particular scenario play out through the four-year period. It's not about going back to rehash the merits of whether the law should be in place. It's simply whether or not the sunset should be allowed to go through the 2014 Session with the Legislature to come back more closely in time to that to repeal it, if appropriate at that time. Be happy to address any questions. [LB1151]

SENATOR COOK: Are there any questions for Mr. Hallstrom? Seeing none, thank you very much, sir. [LB1151]

ROBERT HALLSTROM: Thank you. [LB1151]

SENATOR COOK: Next testifier in opposition to LB1151. [LB1151]

RON SEDLACEK: Thank you, Senator Cook and members of the Business and Labor Committee. My name is Ron Sedlacek, S-e-d-l-a-c-e-k, representing the Nebraska Chamber of Commerce. Mr. Hallstrom has fairly outlined similar reasons why we would come in to opposition. He gave the historical background in that regard. My recollection is the same and that is that we had talked about a testing period, so to speak, because there were claims that there may be significant costs, not necessarily a number of cases, but just as Mr. Hallstrom said, there may be these specific ones. And I remember specifically trying for a five-year sunset to increase that sunset, but it looked like four was the compromise and felt that would...at least two cycles would be able to determine. So far no costs. We still have next session or the session after to repeal the sunset provision and just like to give it the time that we all thought we agreed to. With that, I will close. [LB1151]

SENATOR COOK: Thank you. Questions? Mr. Harr, Senator Harr. [LB1151]

SENATOR HARR: Thank you, Senator Cook. But to the best of your knowledge, there have been no claims at this time? [LB1151]

RON SEDLACEK: I'm not aware of any personally, no, sir. [LB1151]

SENATOR HARR: Okay. Thank you. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Any more questions? Senator Wallman. [LB1151]

SENATOR WALLMAN: Yeah, thank you, Senator. I noticed here other states like Missouri and Arkansas, they haven't hardly had any claims, you know, so it doesn't look like it's a big issue. Thanks. [LB1151]

SENATOR COOK: Any more questions for Mr. Sedlacek? Thank you very much. [LB1151]

RON SEDLACEK: Thank you. [LB1151]

SENATOR COOK: Next testifier in opposition to LB1151. [LB1151]

KORBY GILBERTSON: Good afternoon, Vice Chairwoman Cook and members of the committee. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in opposition to LB1151. (Laugh) When I first saw this bill, I first thought, okay, I don't even care anymore, we should just let this go. But then I'm reminded of the old fact that a deal is a deal is a deal is a deal, and we all agreed at the time in order to let this bill go that we would walk away from the table until 2014. And it gives me, personally, a lot of heartburn to see this come back...the 2014 date wasn't just pulled out of the air. There were concerns at the time that there could be cases that hadn't even been filed yet that could have time to ripen and still be filed if the sunset was any shorter than that time period and that this would give us a full two-session cycle and still give time for Senator Lathrop, who would still be in the Legislature at the time, to introduce legislation in 2014 and have it pulled back then. With that said, I and PCIA oppose LB1151 and would ask that we stick to the original plan. Thank you. [LB1151]

SENATOR COOK: All right. Thank you, Ms. Gilbertson. Are there questions for Ms. Gilbertson at this time? Seeing none, thank you very much for your testimony. [LB1151]

KORBY GILBERTSON: Thank you. [LB1151]

SENATOR COOK: Any more testifiers in opposition to LB1151 today? Don't see any. Are there any to testify in a neutral...opposition or neutral? [LB1151]

TIM HIMES: Opposition. [LB1151]

SENATOR COOK: Opposition. Thank you very much, sir. [LB1151]

TIM HIMES: Senator Lathrop, members of the committee, my name is Tim Himes. I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

an assistant city attorney for the city of Omaha and recently inherited the workers' compensation practice, if you will, from Jo Cavel, who had handled those matters for the city for about a quarter of a century. And for that, I apologize. I'm sort of a new player to the...I came late to the party, let's say. I was notified on Friday that for personal reasons Ms. Cavel is in St. Louis. Her mother recently died. And so I was chosen to come down here on behalf of the city and oppose LB1151. I'd like to echo the last opponent's remarks and not repeat them regarding the sunset provision. Senator Lathrop admitted in his presentation that when this bill was introduced it was the subject of considerable debate. My consultation with the city of Omaha, human relations department, the benefits manager and the city's registered lobbyist, who is unfortunately also unavailable, makes it clear to me that this was a grand compromise, if you will. And by that I mean, this bill went forward with...under the assumption that there would be a four-year sunset provision. Contrary to some of the other testimony, I'm going to accept volunteer fire department concerns because those are clearly not part and parcel of the city's caseload. There are claims out there, and I feel at this point it's important to distinguish between claims and cases. I reviewed the fiscal note on Friday and I was disappointed to learn that nobody from the city of Omaha had been consulted. Consulting the Workers' Compensation Court is less than perfectly pleasing to the city also because a great majority of the city's claims are resolved without becoming a case. We're self-insured not only for our medical program but also for our workers' compensation program. There are at least two files on my desk presently that could result in the payment of significant workers' benefit, workers' compensation benefits under this provision. I would implore the committee to stick to the original deal. We're only halfway through the sunset provision. If, in fact, there are justifications for this...continuing this benefit outside of volunteer fire departments, the city would like to see the next two years and the information that we gather in that time, and the way that these present claims and cases work their way through our system are considered. And I would respond to any questions that anybody might have. [LB1151]

SENATOR COOK: Thank you very much, Mr. Himes. Are there questions? Senator Harr. [LB1151]

SENATOR HARR: Thank you, Senator Cook. And I'm new to this game too. I wasn't here two years ago and so I wasn't able to be a part of this deal. But I do understand the Legislature, that one Legislature can't bind a future Legislature. Is that your understanding as well? [LB1151]

TIM HIMES: Would you say that again, sir? [LB1151]

SENATOR HARR: One Legislature session cannot bind a future legislative session. Is that correct? [LB1151]

TIM HIMES: I have no basis to form a response to that. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR HARR: Well, you're a lawyer, aren't you? [LB1151]

TIM HIMES: I am,... [LB1151]

SENATOR HARR: Did you go to law school? (Laughter) [LB1151]

TIM HIMES: ...but I'm a trial lawyer. Your question is better directed at Senator Lathrop than me. I would say that the sunset provision, the arguments that I've heard in favor of it are circular, and that is the sunset provision was instituted as a compromise that allowed the bill to go forward. The concerns at the time of passage were a great floodgate of claims, which hasn't happened, all right? And yet there's this pressing need. And I haven't heard one cogent argument in support of this, eliminating the sunset provision, outside of the volunteer fire department arena, if you will. So whether the subsequent Legislature is bound...now that I've had a chance to think about it, I think the statutes are what the statutes are. And what we're dealing with here is an attempt to short-circuit a four-year sunset provision and make this bill effective in perpetuity, and the city of Omaha is opposed to that. [LB1151]

SENATOR HARR: And I guess what I would say is that I wasn't a part of the original deal, and that while legislation is legislation, it could be changed by future sessions, as we as a body witnessed a couple...or just last week on another issue where it was brought up that there was a compromise made at the time, and there was an attempt to change that. And I think this is very similar to that and at the time it was really a well-respected argument. So while I appreciate your argument, I tried to make that a couple of weeks ago. It fell upon deaf ears. (Laugh) So thank you very much. [LB1151]

SENATOR COOK: Thank you, Senator Harr. Senator Carlson. [LB1151]

SENATOR CARLSON: Thank you, Senator Cook. And, Mr. Himes, I'm going to make a statement and it isn't to make you uncomfortable, because you're doing what citizens of Nebraska are supposed to do and that's come to a hearing and give an opinion on a bill and testify. And we appreciate that you do that and we want that to continue. But it is a fact that we operate in such a way. This can work both ways, in terms of your concern for this coming up too quickly, and we have a sunset date, let's wait and see what happens when that date comes. On the other hand, we have issues that come before us as a Legislature that we debate and we vote down. The next year it comes back again. And sometimes you'd like to say, we settled it once, but that's not the Nebraska way. That's not the good way. And I have a bill that's coming up that we're going to rehash something that was settled before and I hope that we rehash it again. So that's kind of our procedure and we appreciate you coming, but that's just part of the way things work. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

TIM HIMES: And, Senator, if I may respond, I think Senator Lathrop could clear that up. But the legislative history of LB780, as I understand it, is that it was the only successful attempt in a series of attempts to get this legislation passed in the wake of the Von Maur shooting in Omaha, and that it came up, was voted down; came up, was voted down; came up and was finally passed with the four-year sunset provision. And this...far from insisting that future Legislatures are bound by this compromise, the city of Omaha's position is that the statute provides for a four-year sunset provision and that that should be honored. And if there are, in fact, hasn't been a flood of cases, then why the rush to eliminate the sunset provision? So in that respect, it's sort of a non sequitur from the city's point of view and we advocate further...well, we advocate patience. We want to wait and see, as the bill was passed, how things progress over the four years. [LB1151]

SENATOR CARLSON: And I understand that. Appreciate your response. And I think you understand the part of this whole process is this committee will discuss in Executive Session this bill and either advance it or not advance it. And if it gets advanced, it will be debated on the floor and either voted or not voted. But that's just the way we do things. So thank you for coming. [LB1151]

TIM HIMES: Thank you. [LB1151]

SENATOR COOK: Thank you, Senator Carlson. Senator Smith. [LB1151]

SENATOR SMITH: Thank you, Madam Chair. Mr. Himes, and I think we're getting tangled up on what a deal is and whether we have the ability to revisit things in prior sessions, and I don't think that's the real issue so much as I'm hearing prior testimony that there were no cases out there and, therefore, no concerns, and why can't we just eliminate this restriction on it. And then I'm hearing some doubt cast on that and I think that's what's being missed here that, you know, that four-year period of time to determine if there was significant risk to the taxpayer and should we do anything else to mitigate that risk. And I'm hearing from you, and maybe there's a part of testimony as well that there is some concern out there that there could be more to this. Could you just...am I missing that, or is that what I've heard? [LB1151]

TIM HIMES: I believe your statement of what you've heard is accurate. And to be clear, when I was notified that I was to come and testify on Friday, I reached out to everybody in the city and there was a review done of cases filed from '73 to the present and during that time there were 13 claims, not all of them became cases, 13 claims, 8 of which were PTSD claims handled through the city. That does not include the case...the three cases that I'm aware of now, one which reached my desk within the last month. So again, there is the potential for paying significant claims. At this point in time I haven't heard anybody say that that has, in fact, happened. I think the potential is there. [LB1151]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR SMITH: But due to that potential, we're saying that there should be continuation of this process and to the completion of the sunset to fully understand what that risk is. [LB1151]

TIM HIMES: Now you've said it better than I was able to. I did also consult with Jack Cheloha, who couldn't be here, and his advice and counsel to me in preparing to address the committee had a much broader array of arguments against eliminating the sunset provision, but I think that you've outlined the most significant. [LB1151]

SENATOR SMITH: All right. Thank you. [LB1151]

SENATOR COOK: All right. Any more questions from the committee? Seeing none, thank you very much, Mr. Himes. Any other testifiers in opposition to LB1151? Neutral testimony today? Senator Lathrop, would you care to close at this time? [LB1151]

SENATOR LATHROP: Oh, sure. (Laughter) I wonder, as I sat in the front row listening to this, what would happen if we had 35 claims and the average claim was \$200,000. I suspect the city would be down here saying, stop this, we don't need the experiment any longer, end mental-mental for the first responders. There wasn't a deal that required that we wait this long. The idea was that we would have a sunset so that we could have an experience. And what we found is, the experience was just as I predicted on the floor and just as you see in the fiscal note that we had on LB780. We didn't just come up with this and then hope that we wouldn't have any claims or that they wouldn't be expensive. What we did when the fiscal note was done is that we looked at Missouri and Arkansas that had mental-mental claims for first responders. Okay? So we have two years' worth of experience in Nebraska and we have the experience of Arkansas and Missouri, and what we found is, the average cost of the claim is \$2,300. And for those of you, Senator Carlson will remember this because we did talk about it a long time on the floor, and for those of you that weren't here, what we found about these claims is that most of the people just need care. They're not missing time from work and they're not going on disability for the rest of their life. What they need is some care. And that's all we tried to do with LB780. And all we're trying to do now is say, this is a good idea. Now if people...sometimes when people say things, my older brother who I practiced law with for a long, long time said, that's pretty hard to cross-examine. And while I was sitting in the front row I thought about my brother's line which is, it's pretty hard to cross-examine, we think there might be some claims out there. Well, really? I'll tell you what. This committee has kept the first report of occupational injuries open to the public and for a reason just like this. So if somebody thinks that there is a claim that's been made under LB780, they can go up to the Work Comp Court, who tells us they don't have any, and bring me a first report of occupational injury. Right after something happens to you that would give rise to a work comp claim, you and the employer fill out a first report of occupational injury. It goes to the Work Comp Court where it gets filed. And they're open to the public, as they should be. If someone thinks there's a claim, bring me the

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Transcriber's Office

Business and Labor Committee
January 30, 2012

first report of occupational injury. Otherwise, I would tell you that the experience is exactly what I predicted. And everybody talks about the catastrophe of a mental-mental claim. What we're talking about is providing volunteer fire guys and law enforcement and firemen who do this for a living, providing them with mental healthcare if they see something that would result in posttraumatic stress disorder. There is a public purpose to be served by LB780 and that is providing mental healthcare for first responders so that we don't lose and waste all their training and have them go away. That's what this was about. And the fact of the matter is that while they experience on average two claims, if we "Nebraskatize" the numbers, to use one of my old terms from last year, when we take our population and use Missouri and Arkansas' experience, we would expect to have two claims a year for \$2,300-\$2,400 a claim. That's somebody getting mental healthcare that would probably leave the force and along with them would go tens of thousands of dollars worth of training. This makes a lot of sense. And there are people that have the natural reaction, they've all come up here--and I know them and like them all--but they come up here because it's their responsibility to be against this stuff. They always are. I told them we wouldn't expand this beyond first responders and I have no intention of doing that. I told them that the cost wouldn't be other than what we see in the fiscal note from LB780, and it hasn't been. This is good policy because the first responders deserve the mental healthcare they'll get with it by LB780, and I think that alone justifies getting rid of the sunset. So if there's no questions. [LB1151]

SENATOR COOK: Seeing none, thank you, Senator Lathrop. [LB1151]

SENATOR LATHROP: Thank you. [LB1151]

SENATOR COOK: (Exhibit 9) I would like to read into the record an additional letter of support signed by the Nebraska Emergency Medical Services Association; that is Bruce Beins, B-e-i-n-s, on behalf of that organization. I would like to take this opportunity for us to do a little break because we have some workers' rights too as elected officials. (Laughter) Minimally, we have some human rights, I'm pretty sure. And let's come back at 4:00, Senator Lathrop? Okay, we're going to start back at 4:00. Thank you. [LB1151]

BREAK

SENATOR COOK: Thank you very much and welcome back to the Business and Labor Committee. We're now going to have the introduction of LB909 sponsored by Senator Lautenbaugh and introduced by his able legislative aide. [LB909]

BRENT SMOYER: Yes, Madam Chair, members of the committee, my name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, aide to Senator Scott Lautenbaugh who regrets that he could not be here today. But as we've seen multiple times, the courts do not like him when it comes to scheduling. So I get to introduce today two bills, the first one being LB909. LB909 is not necessarily an alteration of Workers' Compensation Act but a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

clarification to the Work Comp Act based on the recent decision from the Supreme Court, Bassinger v. Nebraska Heart Hospital. The court noted in Bassinger that the Workers' Compensation Court is statutorily creative and therefore does not have equity powers. In an absence of language providing for equity powers, it is improper to add common law defenses such as misrepresentation. Essentially what Bassinger did was remove the 30-year-plus standard of...that employee misrepresentation could be an affirmative defense for the employer. That misrepresentation defense was first established in Hilt Truck Lines v. Jones in 1979. So essentially what the Senator wishes to do here is codify the Hilt decision that the common law misrepresentation defense is an affirmative defense for employers because, simply as stated by various individuals that we've spoken with, it makes no sense that someone should be able to lie about their condition, have that employer reasonably rely that they are healthy enough to do the job and then have them get injured as a result of a previous injury they had lied about for...to bring about the rigmarole, if I may. There are some folks following behind me who have a little better understanding of workmen's compensation law. I merely dabble, I don't immerse (laugh) in this. But again, it's merely to codify what has been a legal precedent in Nebraska for workers' compensation law for over 30 years. I guess I'm willing to take any clarification questions or insults that you might have. [LB909]

SENATOR COOK: Okay. Any senators want to help Mr. Smoyer? Thank you, Senator Carlson. [LB909]

SENATOR CARLSON: Did you help write this? [LB909]

BRENT SMOYER: Yes. [LB909]

SENATOR CARLSON: Okay. [LB909]

BRENT SMOYER: The Senator and I put our heads together. Is there something we need... [LB909]

SENATOR CARLSON: Well, yeah, and I think that it's maybe fairly clear,... [LB909]

BRENT SMOYER: Sure. [LB909]

SENATOR CARLSON: ...but I just want to make sure I'm understanding it. On page 2, line 13, your word "injured" is crossed out. Is that because it's referring back to 48-101 and it is personal injury up there and so "injured" is unnecessary? [LB909]

BRENT SMOYER: Uh-huh. Yes. [LB909]

SENATOR CARLSON: Okay. [LB909]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

BRENT SMOYER: That was the intention as we looked, it was just essentially cleanup. [LB909]

SENATOR CARLSON: Okay. That really doesn't have anything to do with the bill, that's just cleaning it up. [LB909]

BRENT SMOYER: Yes, sir. [LB909]

SENATOR CARLSON: Okay. Thank you. [LB909]

BRENT SMOYER: Figured while we were in there we'd scrub it up a little bit. (Laugh) [LB909]

SENATOR CARLSON: Okay. [LB909]

SENATOR COOK: Thank you, Senator Carlson. Any more questions? Seeing none, thank you, Mr. Smoyer. [LB909]

BRENT SMOYER: Thank you. [LB909]

SENATOR COOK: First testifier in support of LB909. [LB909]

DALLAS JONES: Good afternoon, Senator Cook, members of the committee. Dallas Jones is my name. I am an attorney in Lincoln, Nebraska, practicing with Baylor Evnen law firm, and I am appearing today on behalf of Nebraskans for Workers' Compensation Equity and Fairness, and I have also been asked by the State Chamber to express to you general support for the proposition. They have not yet had a chance to meet through the labor relations council of the chamber and then have the board meet to approve that decision, so they are generally in support of the concept. So I will speak specifically on behalf of Nebraskans for Workers' Compensation Equity and Fairness. This bill is designed to do something very simple and easy. As Mr. Smoyer indicated, for 33 years Nebraska has had the rule that if an employee misrepresents his or her physical condition, and the employer hires that employee, and because the employee misrepresented his or her physical condition, was placed in a job which then resulted in that employee becoming injured, that employee was not entitled to benefits. This is one of those situations, as is the four in the next bill, where we are addressing behavior that is not behavior that, as a matter of public policy, we want to promote. In this instance, the Supreme Court...we're here because the Supreme Court reversed itself after 33 years and basically said, look, we don't think we had the ability to go where we went in 1979; this is a matter for the Legislature to take up as a matter of policy. So we are here taking this up with the Legislature as a matter of policy. And plain and simple, there is no good public policy, I would submit, that is served by a rule which says to employees, it matters not that you lie to get a job and, because you do, the employer places you in a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

position that you should not be, because, had you been honest, you wouldn't have been there, and then you're injured. The employee loses, the employer loses, nobody wins. So this is simply an effort to go back to where we have been for 33 years. Let me make one note. I am sure some of the opponents are going to point out that the way that Senator Lautenbaugh drafted this bill is a bit broader than what the Supreme Court decision was in 1979, and they will be right in that respect. This bill does not include that part of the Hilt decision from '79 that simply says, if the misrepresentation causes the employer to put this person in a position where they shouldn't have been because they have some inherent weakness, then the employee is not entitled to benefits. So that clarification is one that if the committee is interested in exploring that, from our perspective, we are interested in going back to the decision from 1979 because it has worked; there has not been substantial litigation over it. But don't let the absence of many court decisions cause you to assume that there is not a lot of discussion in the industry about this because there is. Many, many decisions...many, many cases, rather, are resolved long short of being in the Workers' Compensation Court and undergoing litigation. Personally, when this situation comes up, I am almost always talking with plaintiff's counsel and we resolve cases based upon this and other reasons why the cases need to be resolved. So the absence of many, many decisions out there should not lead you to conclude that this is not a matter of good public policy that should remain in the law. [LB909]

SENATOR COOK: Thank you, Mr. Jones. Any questions at this time? Senator Smith. [LB909]

SENATOR SMITH: Thank you, Madam Chair. So what responsibilities then does the employer have to define the physical requirements of the job, because I'm trying to understand this. In an application process, there may not be any physical requirements defined, so the employee, I'm not certain why they would necessarily, you know, divulge what their limitations are, as opposed to the employer explaining the physical requirements up-front, giving the potential employee, the candidate for employment, an opportunity to say yes or no that they can comply with that. Explain that to me. [LB909]

DALLAS JONES: Well, the typical process is the employee...some...let me say, Senator, some employers, many employers now, far more than used to be the case, have the essential functions of their jobs very well-defined because federal law, the ADA, has basically said thou shalt do that in order to comply with it. So that's the norm. There are still some that do not have their job duties well-defined, but the problem exists whether the job duties are defined or they're not defined. And here's how that works. Merely because the employer doesn't say to Mr. Jones, the applicant, this is exactly where I'm going to put you, are you able to do it, the employer is asking at the proper time in the process, per the ADA, tell me what you're able to do, tell me what injuries you've had, tell me what work accidents you've had, compensation claims, which is something they may do after a conditional offer of employment has been made. Based

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

upon that information, the employer is then determining, okay, where's the right place for this employee? That's where the breakdown occurs. If the employer doesn't have that information to enable it to determine that the placement into this job or that job is a proper placement and one the employee has the ability to perform, that's when the risk of injury comes about. I don't know if that got your question and I apologize if I didn't. [LB909]

SENATOR SMITH: Yes. So is the willful negligence whenever there is an explicit request of the employee, or is the willful negligence just in the general application process? [LB909]

DALLAS JONES: I think we're...the way the bill is drafted, it's the broader approach. It's in the general application process where there is an intentional misrepresentation as to the physical condition. That's the way I read the bill. And as I mentioned, I will concede that that's broader than the way the Supreme Court had decided the rule in 1979. [LB909]

SENATOR SMITH: Thank you. [LB909]

SENATOR COOK: Any other questions? Seeing none, thank you very much, Mr. Jones. [LB909]

DALLAS JONES: Thank you. [LB909]

SENATOR COOK: Next testifier in support of LB909, please. [LB909]

ROBERT HALLSTROM: (Exhibit 16) Vice Chair Cook, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for both the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business. There's not too many different ways to say what's already been said by the introducer and by Mr. Jones, but again, we are in support of reinstating that 33-year precedent of the Supreme Court with regard to the ability of employers to utilize an affirmative defense to employee misrepresentation. I'd be happy to answer any questions of the committee. [LB909]

SENATOR COOK: Any questions for Mr. Hallstrom? Senator Carlson. [LB909]

SENATOR CARLSON: Thank you, Senator Cook. Bob, is it possible for me as an employee applying for a job to not understand maybe my limitations? And you're the employer and so you ask me to talk about things that might be limitations on what I can do, by sickness, accident, whatever, previous experience. I don't think I've got any but I do. What happens then? [LB909]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

ROBERT HALLSTROM: Well, Senator, I'd probably make a distinction between generalized discussions about limitations with respect to ability to perform functions as opposed to those that I think were more directly highlighted in the Hilt Truck Lines case, which had to do with a specific misrepresentation of medical condition or physical condition of the employee. So if there is a more specific question asked, and pursuant to the ADA, that may be after a conditional offer of employment has been extended, depending upon when you can ask certain questions. Before and after that dividing line, that at that point if someone inquired into prior injuries, back injuries, knee injuries, anything of that nature that might be related to the job, not in general in terms of whether or not anything that might have happened limits your ability to do the job but more with regard to have you had an injury, have you had a situation of that nature. [LB909]

SENATOR CARLSON: Okay. Thank you. [LB909]

SENATOR COOK: Thank you. Senator Wallman. [LB909]

SENATOR WALLMAN: Thank you, Chairman, Chairwoman. Thank you, Bob. I had a cousin that had a heart attack driving for Crete Carrier and he rehabbed himself and he's driving again. Now would that be a preexisting condition? Could...if he got hurt on the job, how would that work with workmen's compensation? [LB909]

ROBERT HALLSTROM: Well, it depends on whether or not he had had anything prior to that employment. I don't think that necessarily, in and of itself, would be captured under this bill. This bill would relate to if, in the course of applying for a job, someone had asked him questions about his health or medical condition and he said, clean bill of health, never had any injuries, never had any type of condition that would affect my ability to work. That's what this bill gets to, that that would be a employee misrepresentation that should at least form the basis of an affirmative defense by the employer if, in fact, at some subsequent point in time there is an injury of that individual perhaps in a context where he or she should not have been. [LB909]

SENATOR WALLMAN: Thanks. [LB909]

SENATOR COOK: Thank you. Any other questions for Mr. Hallstrom? [LB909]

ROBERT HALLSTROM: Thank you. [LB909]

SENATOR COOK: Seeing none, thank you very much. Next testifier in support of LB909. [LB909]

KORBY GILBERTSON: Good afternoon again. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as registered lobbyist on behalf

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

of the Property Casualty Insurers Association of America in support of LB909. The case that everyone keeps referring to and what the PCI folks looked at when they were discussing this legislation really involves someone who willfully misrepresented something on a prescreening before they actually took a job. And the bottom line on this, on our position on this legislation, is that we should not be able to help people or promote willfully lying on an application in order to get a job. In this specific case, it was conceded that, you know, if that person would have told the truth on the employment application, the employer would have had the right not to hire them and they most likely wouldn't have hired them. But because the employee neglected to mention one injury and a settlement on that injury, they were allowed to do the types of work that they probably should not have been doing. And for that, we support this legislation. [LB909]

SENATOR COOK: Okay. Questions? Senator Wallman. [LB909]

SENATOR WALLMAN: Thank you, Chairwoman. Yeah, Korby, thanks for coming. [LB909]

KORBY GILBERTSON: Uh-huh. [LB909]

SENATOR WALLMAN: But if I falsify my employment records, doesn't that nullify what I do? I mean... [LB909]

KORBY GILBERTSON: Not under the...I think, it's Bassinger case. Literally said the court did not have the...they can't do it if all...there in the case, there were three different things that had to be met, but they reversed it because they did not find all three. So if you would lie...now if you just forgot something or didn't realize it was important or, you know, if you're like me and have had 12 knee surgeries, you forgot about the 1 in 1987, that's another thing. But if you willfully misrepresent your health, that's another issue. [LB909]

SENATOR WALLMAN: Thank you. [LB909]

SENATOR COOK: Any more questions? [LB909]

KORBY GILBERTSON: Thank you. [LB909]

SENATOR COOK: Thank you. Next testifier, please, in support of LB909. Anyone to testify in opposition to this proposal? [LB909]

ROD REHM: I'm Rod Rehm, R-e-h-m, from Lincoln, testifying on behalf of the Nebraska Association of Trial Attorneys in opposition to this bill. Ever since Hilt v. whatever the last name on that case was--it's getting to the end of the day and the sun is kind of coming down (laughter)--was enacted, there's been three things you have to...an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

employer had to prove in order to defeat a claim: first, there's a misrepresentation about condition; two, that they relied on it; and three, that there's a cause and effect relationship between the...we call "proximate cause" in the law, between the misrepresentation and their injury. And it's not a widely used defense. There's a way you can search decisions of the Workers' Comp Court at their Web site that you can punch on a thing called "decisions and orders" and if you punch and search for the Hilt case, you'll find that in the 17 or 18 years since this was on-line electronically, there's only been 12 cases decided under the Hilt standard, 12, including the Bassinger case. And the defense has failed nine of the twelve times, including in the...ultimately, in the Bassinger case, which was reversed on appeal in the Workers' Comp Court because the Comp Court found that there was...they hadn't met the burden of the third part of the test, the cause and effect relationship between what she was doing vis-a-vis whatever had been misrepresented. And that is the common thing that happens on these cases is that...and the way that it happens is somebody would have, for instance, with a shoulder injury, a work restriction that says, you're not supposed to work above your shoulder. That's a common restriction for a rotator cuff injury because when you get your hand above your shoulder level, it hurts. And they rip their shoulder up carrying 45 pounds beneath the waist and their shoulder goes out again and they'll defend that kind of case, saying, well, wait a minute, you didn't...you know, and they left out the rotator cuff on their application. And the court will say, well, there's no relationship between leaving that out and the injury you have. So I don't think that the Bassinger did much (laugh) or that took much of a defense away, and they're replacing it with a much broader defense. It's not as specific. It's kind of an automatic, you lie, you lose, where we've had a system for 32 or 33 years that says, you lie and you lose if it matters. And if this Bassinger decision gets overruled, your lie matters, your lie led to your injury. Let's be fair about it and just reinstitute that the rules of the game and, you know, go ahead and see if the judges who are good judges, as one of the other people argued, figure out whether it really mattered. Because the whole issue of what restrictions are isn't written in stone. It's not like anybody can predict exactly what the restrictions are. People get better. People think they can work, either more or less in their restrictions. You know, in a lot of cases there will be two or three sets of work restrictions. There will be one from one doctor saying you can't do this and another from another doctor saying, well, you can do anything. That's common. And so, if you're going to make a change, this bill is way too broad. It creates a defense that was never there. They're replacing it with something that's way overkill, and if it was such a big problem there would have been more than 12 cases. It's not a big deal. [LB909]

SENATOR COOK: Okay. Senator Harr. [LB909]

SENATOR HARR: Thank you, Senator Cook. Would you object to going back to the Hilt Truck Lines standard? [LB909]

ROD REHM: I...of those 12 cases, we won 3 of them. Heck, no. You know, I know how

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

to deal with that decision and good comp lawyers do on both sides of the table. It's the rules of the game. It was kind of a surprising decision. It was my office that handled the worker and I'm not justifying her misrepresentation. The whole...that's a be careful of what you ask for. The appeal...it went up to the Supreme Court because the defense lawyer was upset that the court sent it back down. You know, they said, wait a minute, there's no proximate cause. The misrepresentation didn't matter. You know, go ahead, judge, figure out...we probably would have lost anyhow on the remand. But they appealed, and it's be careful what you ask for, and a defense that we had all lived with for 30-some years gets thrown out, and now they want to overreach and ask for a way more aggressive and punitive defense. And I'm not justifying lying. You know, I don't...that's not justifiable, but I mean the penalty should fit the crime, to use that old saw. [LB909]

SENATOR COOK: Any more questions for Mr. Rehm today? [LB909]

ROD REHM: Thank you. [LB909]

SENATOR COOK: Thank you, sir. Any other testifiers in opposition to LB909? [LB909]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, on behalf of the State AFL-CIO. I congratulate my colleague, Mr. Jones, for picking up on the scope and how far-reaching this bill is. Let's picture someone that knew they couldn't get hired unless they said, you know, I can lift 75 pounds, so they check, yeah, I can lift 75 pounds. And they work for 10 or 15 years and they're doing fine and then a forklift runs over their foot and has nothing to do with lifting, has nothing to do with 75 pounds. The way the statute is...the bill is drafted, that would be a false statement and that would result in no benefits whatsoever. That's how broad it is. It doesn't have that three-part test from the old case. And that was a truck driver that was driving under a different name with multiple driving under the influence charges and probably deserved to lose that case. But it's very, very broad, and I sound like a broken record when I say, when you start cutting out those claims, you start placing a greater burden on state and federal tax dollars. We talked about that earlier. But here's a thought. If there's going to be a look at this bill and an amendment, what's good for one side is good for the other. Why not consider an amendment that says that when an employer says you're only going to have to lift 50 pounds in this job, and then the person gets on the job and to keep it they have to lift 70, 80, 100 pounds, and that extra weight results in injury, to have an increase in benefits. I mean, if misrepresentation in the hiring process is key, then it ought to go both ways, so. Nothing else to add beyond that, so. [LB909]

SENATOR COOK: Thank you, Mr. Howard. Are there any questions? Senator Carlson. [LB909]

SENATOR CARLSON: Thank you, Senator Cook. In the example you used, if...I think

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

there was a 15-year period in there, on the application I can lift 75 and 15 years later was injured on the job, what's the proof? [LB909]

STEVE HOWARD: Well, when you get hurt, your life becomes an open book. You have to sign a form that lets them go back and find all of your medical records. And the employer is going to go digging for that. Well, we want all your records going back to when your in childhood. They don't do that at the employment process when a person is being hired, but when you get hurt, thorough and competent and experienced defense lawyers go find out all of your medical records. So you're right, Senator, there's no proof, there's no connection. But the way the bill is drafted, misrepresentation about a 75, or whatever, pound lifting restriction would cut you out of a claim for a forklift running over your foot or a machine cutting off your finger. [LB909]

SENATOR CARLSON: Oh, I heard your example wrong. You said that... [LB909]

STEVE HOWARD: What did I say? Sorry. [LB909]

SENATOR CARLSON: Well, I think you said on the application, they said I can't lift 75 pounds. [LB909]

STEVE HOWARD: Oh, I'm sorry, I... [LB909]

SENATOR CARLSON: If I say I can lift 75, and 15 years later I can't, who is going to go back and prove that I could or couldn't lift 75 pounds 15 years ago? [LB909]

STEVE HOWARD: Well, there is...presumably, a doctor would have put that in writing. But Mr. Rehm is correct, there may be multiple doctors. There's a defense doctor saying one, and someone else saying something different. So there's no bright line there and so you will drive more cases into the courtroom. It just says if it's a false statement and then later on you get hurt, you get nothing. And that's how I read it. If I said can't lift 75, I meant to say, I can do this job. But if you get your finger cut off in a machine, that doesn't have anything to do with the statement. That's how broad LB909 is, so. Sorry for the confusion if I said that backwards. [LB909]

SENATOR CARLSON: Okay. All right. Thank you. [LB909]

SENATOR COOK: Any more questions for Mr. Howard? Thank you, sir. [LB909]

STEVE HOWARD: Thank you. [LB909]

SENATOR COOK: (Exhibits 14 and 15) Next testifier in opposition to LB909. Any testimony in a neutral capacity? I think I've got a couple of letters to read into the record. This is a letter from Nebraska Appleseed, opposition to LB909; a letter from the city of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

Lincoln in support of LB909. With that, I'll close the hearing for LB909, and... [LB909]

SENATOR CARLSON: Does he want to close? Does he want to close? [LB909]

SENATOR COOK: Oh, I'm sorry. [LB909]

BRENT SMOYER: Well, I guess I don't know if I have any closing, ma'am. [LB909]

SENATOR COOK: I presumed. [LB909]

BRENT SMOYER: Oh, no, and you know, ma'am,... [LB909]

SENATOR COOK: You're going to wrap it all up for us right now. [LB909]

BRENT SMOYER: Ma'am, you are the Chair. I am not to step on anybody's toes. I would just touch on a couple of things momentarily, briefly, to share with you from Senator Lautenbaugh. As far as the construction of the bill he always has and always will be open to the construction. It's the intent that he was going for. And I know Mr. Jones pointed out to us that, of course, we could have a little tighter restriction and put the exact Hilt language in there, which I do apologize. That was an oversight on both my part, the part of the Bill Drafters. And of course, when we did the final review with the Senator, it kind of escaped us all. But if I may just briefly, for the record, point out as listed in the Hilt decision, briefly they took it from a common law treatise by a Professor Larson, a well-known professor of law. Basically, it just states the three-part test would be the employee must have knowingly and willfully made a false representation as to his physical condition; two, the employer must...the employer must have relied upon this false representation, and this reliance must have been a substantial factor in the hiring, i.e. again, you assume you can lift 100 pounds if you're required to lift 100 pounds for that job, otherwise they put you at a desk; and number three, there must have been a causal connection between the false representation and the injury. So again that goes back to the finger getting cut off as opposed to the lifting restrictions. I would say if we...of course, I know Senator Lautenbaugh would be open to that kind of an amendment, open to making that work for the best interest of both the employers and the employees. Other than that, I believe, again, the Senator would be happy to work with you when he does get back, and would hope that you would advance LB909. [LB909]

SENATOR COOK: Thank you very much. Senator Carlson. [LB909]

SENATOR CARLSON: Thank you, Senator Cook. I think that as an amendment would be an important document, so. [LB909]

BRENT SMOYER: Yes, sir. I will get you a copy that's not all doodled up. (Laugh)

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Business and Labor Committee
January 30, 2012

[LB909]

SENATOR CARLSON: Okay. Thank you. [LB909]

SENATOR COOK: Okay. Thank you. Probably for the whole committee, just to have a look. [LB909]

BRENT SMOYER: Yes, ma'am, I'll make sure I get copies. [LB909]

SENATOR COOK: Great. Thank you very much. Are you prepared now to open on LB1012? [LB909]

BRENT SMOYER: Yes, ma'am, I am. LB1012 is again more of an equity establishment, much like the previous bill was. It just provides for the termination of compensation or adjustment of temporary disability benefits under various circumstances involving what we would call misconduct or bad behavior. The first aspect of misconduct that would be addressed with LB1012 would grant authority to the Workers' Compensation Court to terminate compensation otherwise payable under the Compensation Act when an injured employee unreasonably fails to comply with medical or surgical treatment provided by the employer or when the injured employee, without reasonable cause, refuses to undertake or cooperate with a physical, medical, or vocational rehab program determined by the Compensation Court as suitable. In doing so, it's basically saying they're offered the option for treatment, they're given every chance to have treatment, and they just choose to refuse for whatever reason. The second aspect of LB1012 amends the statutes to clarify that an employer may provide work which meets temporary restrictions imposed by a treating physician as a result of a workplace injury by providing work which meets the restrictions for the employee at the employer's own company or at any other for-profit or nonprofit organization. So again, we go back to the lifting requirements. If you find you can no longer...you used to be hauling grain, you can no longer 75, 50, 25 pounds, they could hopefully find you a desk job or something acceptable, again, as recommended by the court. Third aspect is that it would provide an employee...that an employee is not entitled to compensation for temporary disability in cases which the employee has been terminated for cause or voluntarily resigns. So if, you know, they find the employee engaged in an inappropriate activity that is found...that is traditionally cause for termination, then those disability benefits would be discontinued, as well, of course, if they choose to resign, voluntarily resign following that injury. Finally, LB1012 would authorize termination of temporary disability benefits by an employee or insurance carrier in the cases which employee has been incarcerated following conviction for a misdemeanor or a felony. Kind of makes no real sense to try to rehab them when they are, of course, behind bars, not working. You know, it just kind of ruins the whole point of vocational rehab I guess. Again, we have experts who are immersed in this field who can cover most of the questions and issues that might pop up. And again, I'm happy to clarify any minor questions you might have. [LB1012]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Thank you, Mr. Smoyer. Any questions? Seeing none, thanks. You're going to stick around to close I'm guessing. [LB1012]

BRENT SMOYER: Yes, ma'am. [LB1012]

SENATOR COOK: Thank you. First testifier in support of LB1012. [LB1012]

DALLAS JONES: Good afternoon, Senator Cook, members of the committee. My name is Dallas Jones, J-o-n-e-s. I am a member of the Baylor Evnen law firm, attorney practicing in Lincoln in the area of workers' compensation. I am testifying today on behalf of Nebraskans for Workers' Compensation Fairness and Equity as well as in a very general sense on behalf of the State Chamber of Commerce and Industry, again because that entity has not had a chance yet to vet this through its leadership. It is supportive of the concepts in this bill but has not had a chance to vet the details of it. I have limited time and could be here much more than three minutes so I'm going to start out and focus my attention on that aspect of LB1012 which deals with employee's failure to treat. As a matter of public policy, obviously everybody around this table agrees that employees who have been injured should be provided the proper treatment by employees (sic) immediately after the injury. And when that treatment is provided, employees ought to follow through with it. This issue is before you because of a Supreme Court decision that came down within the last several months which weighed into this issue, and where it left it is basically this: The accountability for an employee who, for no good reason, decides not to treat, and there was really no dispute about that in this case, the accountability for that essentially resides on the employer, on the employer unless the employer can prove that the employee's failure or refusal to treat somehow made that employee worse or prevented that employee from getting better. What this bill does is simply flip that on the opposite side, which is to say why are we placing the accountability on the party that was doing what you all would want them to do, which is provide the treatment and provide it timely, to prove that the employee who refuses to do what you all think he should have done must prove that, in fact, that made him worse or it didn't prevent him from getting better. Let me say that right. It made him worse or it didn't help him get better. My position, our position is make a rebuttable presumption, put a rebuttable presumption on the employee who is engaging in that bad behavior and that misconduct to prove that his conduct didn't count, it didn't matter, as opposed to putting the employer in the position to prove that it did because here's the practical problem. Next time you go to the doctor, ask your doctor what would happen to you and if that doctor would testify under oath about what would have happened down the road had you done something for medical treatment that he proposed or had refused to do that or if, in fact, you'd had gotten better or gotten worse. Doctors are going to tell you, I don't have a crystal ball. I can tell you I think that he would have gotten better. That's why I made the recommendation. But I'm not going to go on record. I am uncomfortable testifying under oath that I know exactly how much better he would

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Transcriber's Office

Business and Labor Committee
January 30, 2012

have been or how much worse he wouldn't have gotten, which are the two parts of this. That's the practical problem. So when the problem is created by a person who is engaging in misconduct, put the burden on them to deal with the practical problem as opposed to the employer who is doing what you think they should. I am out of time and will entertain questions about this or the other three pieces if you have any. [LB1012]

SENATOR COOK: Any questions from the committee? Seeing none, thank you very much, Mr. Jones. [LB1012]

DALLAS JONES: Thank you. [LB1012]

SENATOR COOK: Next testifier in support of LB1012. [LB1012]

ROBERT HALLSTROM: (Exhibit 18) Chairwoman Cook, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business in support of LB1012. I've also signed in on behalf of Nebraskans for Workers' Compensation Equity and Fairness. As Mr. Jones indicated, there are four parts of this bill. Time limited him to talking about one of them. In my testimony, I've gone through the other issues. I'll try to generally provide the provisions of the bill or go through the provisions of the bill relating to the consequences of bad behavior or misconduct as we've set forth in Senator Lautenbaugh's legislation. One of the issues is under Workers' Compensation Act the employee chooses their treating physician. In Section 2 of the bill, we have the potential to terminate temporary disability for failure to accept accommodated work. If that treating physician recommends that the employee can go back to work with certain restrictions and they unreasonably refuse to do so, we would create a rebuttable presumption that that employee is ineligible to receive compensation for temporary disability. And we think that the employee under those circumstances, if their own physician has said you can go back to work under these restrictions, should do so or at least have to prove why they will not or cannot. The third issue also in Section 2 has to do with the potential termination of temporary disability when there is termination for cause or a voluntary quit. In my testimony I've referred to the Manchester case which involved the type of situation which we would address here where an individual, because of some form of negligence, misconduct, or violation of company policy, has been terminated for cause. And but for their separation from that employer's workplace, they could have or should have come back to work with light duty restrictions or accommodated work that the employer is willing to offer, that if they cannot come back to work to do that light duty restriction they should also be ineligible for temporary disability under those circumstances. And finally under Section 2, the final issue addressed by the bill has to do with termination of temporary disability during periods of incarceration. If an individual is incarcerated as a result of a misdemeanor or felony, during that period of incarceration benefits could be terminated or in essence suspended until such time as they were able to come back to work. And we would also not provide any credit under

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Business and Labor Committee
January 30, 2012

the bill for the time periods during which they were incarcerated, so it would count against the maximum number of weeks that they were entitled to benefits otherwise. I'd be happy to address any questions that the committee may have. [LB1012]

SENATOR COOK: Senator Wallman. [LB1012]

SENATOR WALLMAN: Thank you, Chair. Thank you, again. You mean if a person gets shot doing a felony he can get workmen's comp? [LB1012]

ROBERT HALLSTROM: No. The issue is if he's had a workplace injury and he separately gets incarcerated which prevents him from being on the job and coming back, whether it's through light duty restrictions or accommodated work, that the fact that he has through his or her conduct put him outside of being able to come back to the work force that we would suspend or be able to suspend benefits under those circumstances. [LB1012]

SENATOR WALLMAN: Thank you. [LB1012]

SENATOR COOK: Any more questions? Thank you, Mr. Hallstrom. [LB1012]

ROBERT HALLSTROM: Thank you. [LB1012]

SENATOR COOK: Next testifier, please, in support of LB1012. [LB1012]

KORBY GILBERTSON: Good afternoon. My name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in support of LB1012. Simply put, LB1012 helps so that you don't incentivize bad behavior. When I read through the case that this legislation was introduced because of, it gave me pause because when I sit in these hearings we always hear about how horrible the insurance companies are and how horrible the employers are. And I think, frankly, this is one of those instances where you had a clearly, really horrible employee that treated some people very inappropriately. And unfortunately, the court said their hands were tied and there really wasn't anything they could do about it. And for that reason, we support LB1012. [LB1012]

SENATOR COOK: Thank you. Any questions for Ms. Gilbertson? Seeing none, thank you very much. [LB1012]

KORBY GILBERTSON: Thank you. [LB1012]

SENATOR COOK: Anyone else in support of LB1012 this afternoon? Any testimony in opposition to LB1012? [LB1012]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

ROBERT MOODIE: Senator Cook, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm an attorney in Lincoln. I'm also testifying in opposition to LB1012 on behalf of the Nebraska Association of Trial Attorneys. LB1012 seeks to unreasonably tilt the playing field in workers' compensation cases in favor of the employer to the detriment of the employee, particularly the unaware and unrepresented employee who is just counting on the employer to treat them fairly. Now the employers already have the ability to present the arguments and the defenses that are addressed by this bill. This doesn't really create any new defenses. These defenses mostly already exist. What LB1012 does is make it so the defendant does not actually have to raise the defense or make the argument. It makes it so that the defendant does not have to argue that the defense is reasonable. The defense just exists unless it's rebutted. It would become the default position unless the employee presents evidence to the contrary. Section 48-120 of the Workers' Compensation Act already says that the court can suspend or limit benefits of an employee that unreasonably refuses medical care, and that "unreasonably" is the important word there. If there's a legitimate question as to whether the employee is unreasonably refusing medical care, that's taken to the judge and the judge makes a decision. This bill takes the "unreasonably" out. It doesn't have to be unreasonably. If the employee refuses any medical care, then the automatic assumption is that he would have gotten better. With respect to the portion under Section 2 of the bill, returning to work or returning to a nonprofit, this remedy also exists under the act, but the employment that they're returning to must be suitable. An offer of employment that is not suitable should not affect the employee's eligibility for benefits. Again, we're taking the suitable out where just any offer of employment, suitable or unsuitable, is going to create the presumption. Regarding suspension during incarceration, there are many types of incarceration. Some incarceration allows for employment. Some incarceration allows for seeking employment. We need to leave these issues to the judge to decide whether the employee has met all of the criteria for temporary disability. The last section which nobody has talked about purports to do the same thing for vocational rehabilitation that the first section did for medical treatment, which is create a presumption that if the employee doesn't ask for vocational rehabilitation, vocational rehabilitation would have succeeded in improving him. I suspect that this is really a situation of the proponents wanting their cake and eating it too. Certainly I'll bet they still want to be able to turn down any vocational rehabilitation plan that's presented to them. Each of the changes in LB1012 would cause some inconvenience but would not be insurmountable to an employee who is represented by counsel, but could be disastrous for the unwary and unrepresented employee who perhaps mistakenly thinks that the employer's insurance company is out to take care of him. [LB1012]

SENATOR COOK: Thank you very much. Any questions for Mr. Moodie? Seeing none, thank you. [LB1012]

ROBERT MOODIE: Thank you. [LB1012]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Next testifier in opposition to LB1012. [LB1012]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, from the State AFL-CIO. And, you know, things aren't always so clear in the Workers' Compensation Court. It isn't always so...there aren't these bright lines that tell you that this treatment will definitely make you better and that treatment over there will not. And to shift the burden on to the injured worker just seems unfair. Mr. Jones is right. It's difficult for a doctor to say, I'm going to go under oath and raise my hand and swear or I'm going to write out a report and sign my name to it that if you'd done this surgery you would have gotten X percent better. You know, when you go have surgery, they have you sign this real scary form and it says, here's all the terrible things that could happen. It's called informed consent. You might get an infection or you might have paralysis or you might have a reaction to anesthesia and die. And to put workers in that position of trying to decide, well, do I run the risk of cutting off my benefits or do I have the surgery that my doctor is offering that, you know, I have some thoughts about? Clients ask me, should I have a procedure done, and I have a routine answer. That's between you and your doctor and your family and you decide, but ask a bunch of questions and make a logical conclusion. But I suggest the real problem isn't workers not taking advantage of and availing themselves of healthcare that's available and voc rehab. It's trying to get it. These clients, these workers, they want to get better. They want to improve their situation. And to shift the burden to them to say you're going to run the risk of losing benefits unless you do something that you really aren't otherwise inclined to, I don't think there's a need for that. Mr. Moodie is right--every time an employer says to our client, we've got light duty work available, then they cut off the employer...or employee's benefits. They cut it off unless a judge has ordered otherwise. And when we say we want a voc-rehab plan, we want this person in school, the employer can say, no, we think we have work and we think it's within the restrictions. And so it isn't like these things happen automatically and then somehow the person is receiving benefits where they otherwise wouldn't. These defenses are all still there. If the committee had interest in discussing this further, perhaps an amendment to once again make what's good for one side good for the other is in order. If it turns out that a person has a physical condition that is getting worse and worse because care is being denied or they're missing opportunities for vocational rehabilitation because it's being delayed, then perhaps greater benefit for the injured worker would be in order if the employer refuses. But, you know, it may be right that we come up with all these terrible stories about things and insurance companies and how they behave and that's because those are the cases that come to lawyers. For the most part, hopefully things go smoothly. Those are all my comments unless there are questions. [LB1012]

SENATOR COOK: Thank you, Mr. Howard. Any questions for Mr. Howard? [LB1012]

STEVE HOWARD: Thank you. [LB1012]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR COOK: Thanks. Seeing none, any more testimony in opposition to LB1012?
[LB1012]

OMAID ZABIH: (Exhibits 19, 20, and 21) Good afternoon, Mr. Chairman and members of the committee. My name is Omaid Zabih. My first name is spelled O-m-a-i-d and my last name is spelled Z-a-b-i-h, and I'm a staff attorney for the immigration program at Nebraska Appleseed. I'm here to testify in opposition to LB1012. Because Appleseed doesn't litigate in the workers' comp system and the attorneys who testified before me are well versed about the intricacies of the system, I instead want to illustrate how LB1012 would create additional and unnecessary burdens on injured workers by providing the committee with some quotes and stories from workers through our own work in the meat packing industry specifically. As many of you may know, Appleseed is extensively involved in trying to improve the safety and health of meat packing workers across the state. In 2009, we released a study that surveyed 455 meat packing workers in five communities across Nebraska. Since that time, we've continued to interact with hundreds of workers each year. Instead of reading off of my written testimony verbatim, I'd like to just focus on the two additional handouts that I provided the committee. The one that's entitled "The Speed Kills You" is just an overview of all the worker quotes that we collected for our 2009 study. But the one that I'll be talking about today is the fact sheets which has worker quotes that directly relate to this bill. As an initial matter, it is clear that this bill would undermine the critically important right to choose one's own doctor as currently provided by Nebraska law. The idea that workers who do not accept the medical care chosen by their employer is deeply worrisome. In our study, about 70 percent of workers didn't know that they had the right to choose their own doctor. Furthermore, many workers that we surveyed expressed very serious concerns about the neutrality of company or company-referred nurses and doctors and felt the treatment they received was perfunctory at best. Even today we hear of workers who tell us that serious injuries are treated only with ibuprofen or ice. Some quotes to read to you from workers such as, when you report an accident or injury, the nurse only tells you to put ice on it and then you have to live with the pain. Or they give you ice, they give you hot water, they sell you pills and tell you that you have to learn to live with the pain. Some of these quotes illustrate that sentiments, some of these sentiments. We've also provided quotes from workers that demonstrate how this bill's provisions would provide an incentive for employers to fire or pressure injured workers to, quote unquote, voluntarily leave work since workers frequently tell us that employers pressure them after an injury is reported with even more work and/or worse treatment in the hopes of having the worker again, quote unquote, voluntarily leave. Some quotes that we've collected from workers have stated that sometimes people don't report their injuries because afterwards they marginalize those workers and give the rest of us too much work. And lastly, we've provided a story on the back page of the fact sheet that we collected last year of a Nebraska meat packing worker who we've named Gloria, which is not her real name. I see that my red light is up. [LB1012]

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Transcriber's Office

Business and Labor Committee
January 30, 2012

SENATOR LATHROP: If you can just finish your thought, that would be great. [LB1012]

OMAIID ZABIH: Thank you, Senator. But this story illustrates how this bill's provisions essentially deal with work restrictions and injured workers refusing to do certain work. Essentially this worker injured her hands, had surgery on it after being essentially ignored by the employer's medical providers, had surgery at 9:30 in the morning, came back later that day and had to report to work at 3:00, was visibly bleeding from her hand and was told that she could work with her other hand. And that technically could be construed as being within the restrictions of that person's medical treatment. So I'd be happy to answer any questions. [LB1012]

SENATOR LATHROP: Thank you for your testimony. I see no questions. [LB1012]

OMAIID ZABIH: Thank you. [LB1012]

SENATOR LATHROP: Anyone else here to testify in opposition to LB1012? Anyone else here in a neutral capacity? Mr. Smoyer to close. [LB1012]

BRENT SMOYER: (Exhibit 22) Just very briefly, Senator. Actually if I could get the page to help for a moment, this is the amendment I had promised from earlier to LB909. I'll get that passed out. Unfortunately, highlighter doesn't photocopy very well so I had to bracket it. You guys can...be easy enough to find. But back initially or back to LB1012, again, I will always echo the Senator's sentiments that we are willing to work with the committee on any sort of amendments, any sort of changes. I do notice that one of the common threads throughout the testimony, both proponent and opponent, nobody touched on the last portion saying if you were incarcerated how benefits should end. Nobody really touched on those bad acts that are clearly so obvious and erroneous that we should deal with them. In the other cases, as far as termination of compensation and benefits, it's not a definite. I know that the approach has been, well, if we do this it's going to happen. It's just a chance for the court to review. Again, being a creature of statute that the Workers' Compensation Court is, it's best to give them the opportunities to operate equitably, which I think this statute was intended to do and is intended to do. But again, I echo Senator Lautenbaugh's sentiments always that he is willing to work with the committee, come out with the best possible outcome possible. [LB1012]

SENATOR LATHROP: Okay. Very good. Thank you. [LB1012]

BRENT SMOYER: Thank you. [LB1012]

SENATOR LATHROP: That will conclude our hearing on LB1012. And we are adjourned. (See also Exhibits 17 and 23.) [LB1012]