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Business and Labor Committee
January 28, 2013

[LB21 LB58 LB141 LB291 LB297]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 28, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB21, LB58, LB141, LB291, and LB297. Senators present: Steve Lathrop, Chairperson; Burke Harr, Vice Chairperson; Brad Ashford; Ernie Chambers; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: Good afternoon. Welcome to the Business and Labor Committee. I thought while we're waiting for a few more people to show up I'd kind of go through a couple of simple ground rules. And it looks like most everybody here has been a testifier before, but just in case. We operate by the light system. That's just to keep things moving and so that everybody has a chance to be heard. The light system functions like this: you'll get a green light for two minutes, and a yellow light for a minute, and after three minutes, we'll just ask you to stop. Now, if you aren't done or if you've given us some thoughts and somebody has a question, a question won't be...you know, you can still talk, even though it might show a red light and if you've been asked a question by a committee member, so you have the opportunity to do that. It's the only way we can make sure...or I can make sure I'm getting my senators out of here on time so that they can get home, and conduct the hearings in a reasonable way. If you intend to testify, this is the process, we will have the senator introduce the bill, followed by proponents. So if you're in favor of the bill you'll come up when we do proponents. What's that noise?

SENATOR MCGILL: Cell phone, it was a cell phone.

SENATOR LATHROP: Okay. Yeah, turn off your cell phones, okay. (Laughter) And that should be...that's going to be the rule everywhere you go in this place. If you are a proponent, then you'll fill out a sheet and put it in the box so that we can make a correct record of who you are and who you're here to represent when they make a record of these proceedings. Have a seat in the chair and you can begin. Make sure you tell us your name and spell your last name so that the record reflects who you are; and if you represent a group, tell us what group you're here to represent. And then you may begin your testimony. Cell phones off or in vibrate. No talking on your cell phones in here. And do we have any other rules? (Laughter) I'm still waiting for a few of my colleagues to show up, but I'm going to introduce you to my staff. Molly Burton is the legal counsel. A lot of you already know Molly because she's been with me now...three years?

MOLLY BURTON: Three years.

SENATOR LATHROP: Four years? It's gone by quickly. This may be your last hearing for awhile, Molly is going to have a baby soon, so it will be the Business and Labor and "Molly is in labor" committees. (Laughter) I feel like I'm about to have my fifth child.

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

Business and Labor Committee
January 28, 2013

We're all very anxious.

SENATOR HARR: Whoa, whoa, what are you saying?

SENATOR LATHROP: We're all very anxious for Molly and looking forward to her baby.

MOLLY BURTON: Thank you.

SENATOR LATHROP: And then Paige Hutchinson has joined me as my committee clerk this year. And now we probably got enough people to proceed, so I'm going to introduce my colleagues. To my far left is Senator McGill from Lincoln. She used to be on the committee, went over to General Affairs, messed around over there for two years, and now she's back to do some real work in Business and Labor. Norm Wallman is here from Cortland. And Tom Hansen, this is his first trip down...or through Business and Labor Committee, comes to us by way of a ranch around North Platte and I'm sure will be a great contributor to Business and Labor Committee. And then Burke Harr, who has been here for two years and will join us again. Also on the committee, Senators Ashford and Chambers who are not here yet, but hopefully we'll see them before our committee hearings are done. And the last thing I'll say is that from time to time you'll see senators get up in the middle of hearing and we have to introduce bills, we have to leave to introduce bills and it's not that they don't care what you're saying or they're not interested in what you're saying, but just taking care of some other legislative responsibilities. So please don't take offense if that happens. We'll take the bills in the order that they were presented out on the notice out front. And that takes us to LB58, our first bill of the year and Senator Larson from O'Neill. Welcome, Senator Larson. Oh, and Evan Schmeits, our trusty page for a second year in Business and Labor.

SENATOR LARSON: (Exhibits 1 and 2) Thank you. I'm Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I'm here representing District 40 from O'Neill, Nebraska, and I would like to introduce LB58. LB58, also known as the Workplace Privacy Act, would restrict employers from requesting or requiring that an employee or applicant provide his or her private social networking site account information to the employer. It also restricts an employer from asking an employee or applicant to log into his or her social networking account so that the employer can view the private information. In addition, it prohibits an employer from using social networking contact...using a social networking contact of the employee or applicant to view the private account or profile of that employee or applicant. With the ever-increasing popularity of social media and social networking sites, there comes a growing need to protect the privacy of individuals who take advantage of the benefits that social media has to offer. Web sites like Facebook, Twitter, and LinkedIn, among others, are used by hundreds of millions of people throughout the United States and the world. While people can choose to make the networking they do on these Web sites public, most understand the risk of having all their information out there for the world to see. It is common for social media users to

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

Business and Labor Committee
January 28, 2013

take advantage of the privacy settings these social networking sites offer their customers. Privacy settings allow users to restrict content from being seen by the general public and can tailor their profiles and accounts to ensure that only their closest friends and family have access to certain information. LB58 would restrict employers from accessing the private content social media users choose to keep out of the public domain. Information that is kept private by an employee or applicant should remain private, and an employer should not be entitled to access this private information just because it is kept on the Internet. How would an individual react if an employer required him to bring his family photo albums with him to an interview or if the employer asks an employee to bring his or her mail every day to see who that person has been corresponding with at home? This is the same kind of situation applicants and employees are placed in if an employer asks for their access information to get into their private social networking account and view the photo albums, messages, wall posts, or other private information. Six other states including Michigan, Illinois, and California, have passed laws similar to LB58 with the intent to protect the privacy of employees and applicants on the Internet. Nothing in those bills or in LB58 prohibits the employer from looking up information that is made available to the public. LB58 also makes sure employers can control and have access to any and all account information when the employee is using technology provided by the employer. But this bill, and those passed in other states, establishes basic privacy protections for individuals employed or seeking employment. Employers should be allowed the right to access private information just because it...shouldn't be allowed to access private information just because it's on the Internet when employers would not have been able to obtain that information in any other context. The Nebraska Department of Correctional Services has sent a letter in opposition to the bill stating that the bill prohibits employers from utilizing social networking information during investigations into staff misconduct. I want to point out that the language in this bill specifically states that nothing in the Workplace Privacy Act restricts employers from conducting investigations into employee wrongdoings. This is just one of the several provisions that aim to protect employers within the context of this act. Since introducing this bill, I have been approached by different organizations regarding additional language and changes to further ensure employer and employee protection and have drafted an amendment for the committee to consider; which Evan passed out. Thank you, and I'd be happy to answer any questions that the committee has. [LB58]

SENATOR LATHROP: Anybody have questions for Senator Larson? I do. In looking at the bill there are a number of prohibited acts. In other words, the employer can't ask the prospective employee, let me look at your Facebook account, give me the password to your Facebook, and I get that. Section 8 is where the teeth is...teeth are to be found in your bill. And I'm going to read that section because it's only two sentences: upon a violation of the Workplace Privacy Act, an aggrieved person may, in addition to any other available remedy, institute a civil action in a court of competent jurisdiction within one year after the alleged violation. Here is my question, what is that lawsuit about? Is

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

Business and Labor Committee
January 28, 2013

that a lawsuit for damages? Is that a lawsuit to force the employer to hire them? Is that a lawsuit to enjoin the employer from some activity? What do you contemplate with that remedy? [LB58]

SENATOR LARSON: You know, I'm not the lawyers on the committee, and I noticed there's a few of them. And that will be up to you guys. I don't have the personal knowledge in terms of what that lawsuit should or should not be about and definitely open to suggestions on something of that nature. The focus and the energy that I put into this bill is, obviously, a line to be drawn between an employer/employee relationship of what is, you know, the individual liberty aspect, what should and should not be public. In terms of what that lawsuit is about, we used, obviously, a...drew from other legislation that has been passed in other states, and this is similar language to that. So in terms of what the lawsuit is about, I know you do things of that nature for a living and maybe we can work on that or consider that. [LB58]

SENATOR LATHROP: Okay, that's fine. [LB58]

SENATOR LARSON: So I'm sorry, I can't answer your question more specifically. [LB58]

SENATOR LATHROP: I have another question for you. Okay, thanks. I have another question for you and that is in terms of the prohibited acts, I get an employer not having access to information that's private if I'm not going to let them be a...one of my followers or somebody who would, generally, have access to my site. I understand that. What if you don't have any privacy settings and I can get on your account and look and there you are, you know, doing something foolish that would make me pause before I would hire you. Is it just those things that are private to the employer? Or if you have your settings or such that Molly Burton could get on there and look, what are you contemplating there? [LB58]

SENATOR LARSON: We're not eliminating anything that's in the public domain. So if you don't limit your profile, and I mentioned that in my opening, if you don't limit your profile, or you chose not to limit your profile, anything in the public domain, I feel, is public information and any employer, prospective employer should have the right to that. But if you are limiting what is in the public domain, I think you are ensuring or trying to ensure that you keep some things private. And we have to be very mindful of the employer/employee relationships moving forward in terms of an ever-evolving technological world that...to ensure, as I said, an employer doesn't ask you to bring their mail to work to go through their mail. If you're trying to keep it private, it should be private. But if it's public, if it's out there, then free reign on it. [LB58]

SENATOR LATHROP: Let me ask another question. If you have a Twitter account, and I'm not that familiar with Twitter, but if you have a Twitter account and you have 1,200

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

Business and Labor Committee
January 28, 2013

followers and you've never turned some...do you have to accept somebody as a follower? [LB58]

SENATOR LARSON: I have a Twitter, and if you ever run for higher office, I recommend you get a Twitter. A lot of people use it. (Laughter) [LB58]

SENATOR LATHROP: Okay. [LB58]

SENATOR LARSON: But you can block...you can make your Twitter account private as well, so you would have to accept followers...you can accept the followers that you want. [LB58]

SENATOR LATHROP: Okay, what about the guy who hasn't? [LB58]

SENATOR LARSON: Then it's... [LB58]

SENATOR LATHROP: Okay, 1,200 followers and he goes into a bank for...to take a job at a bank and has never set the privacy settings. And now the bank guy is like, hey, this is open to anybody; I'm just going to start following Tyson and seeing what he's up to. [LB58]

SENATOR LARSON: Public domain. [LB58]

SENATOR LATHROP: So you would have the employee limit...or essentially set the parameters for what your expectation of privacy is. [LB58]

SENATOR LARSON: Essentially that that...following this, yes. What is public domain, what...if it's out there on the Internet and anybody and anyone can access it, then, essentially, the employer...that there's no restriction on what the...I felt there was definitely a line. You can't tell an employer that, you know, you can't search or you can't Google them; I mean, every employer wants to be able to do, you know, homework in terms of who they're hiring. And I would expect them to do that. But, obviously, you know, the employee locks their home at night and doesn't want their employer to come in there. It's the same thing, as I said, as we move in an ever-evolving technological world, you, just like you lock your home, you lock your Facebook, you lock your Twitter so that other people can't access it. [LB58]

SENATOR LATHROP: In your bill, would you limit an employer's access to the Facebook, for example, if the employer is trying to investigate theft or if the employer is trying to investigate embezzlement, or something like that? [LB58]

SENATOR LARSON: As I mentioned, we have the recourse that if an employer is...if there is misconduct or something, specifically states that nothing in the Workplace

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

Business and Labor Committee
January 28, 2013

Privacy Act restricts employers from conducting investigations into employee wrongdoings. Plus, any social media accessed on an employer's computer is also...essentially, the employee is giving them consent in the bill. [LB58]

SENATOR LATHROP: That's interesting and something that maybe we didn't think about, or maybe you have, and that is...I'm going to tell you, I've had a secretary or two get on Facebook in the office and on the...on my office computer, as I know, because they click it off as soon as I walk by. (Laughter) There are programs that allow, say, the office administrator to look at what somebody is looking at. This would let them. [LB58]

SENATOR LARSON: Yeah, essentially, if... [LB58]

SENATOR LATHROP: If you want to do Facebook at work... [LB58]

SENATOR LARSON: If the employer...or the employee is accessing it on either an employer's machinery, whether that's a phone or computer or whatnot, essentially, the way that the bill is written that they are therefore giving their employer consent to monitor what they're doing at work. [LB58]

SENATOR LATHROP: Okay. I'm just thinking, that might be a little problematic, if we're inadvertently opening the door to something that hasn't been really thought through whether... [LB58]

SENATOR LARSON: I'm, obviously, open to suggestions. [LB58]

SENATOR LATHROP: Okay. I appreciate that. Thanks, Senator Larson. Senator Chambers. [LB58]

SENATOR CHAMBERS: Senator Larson, if an employer requests any of these types of information from a prospective employee, and the employee refuses, the employer doesn't have to hire the person. And the person who is applying should know that that is a possibility. Okay, just so that that is clear, now I'm a bit older than you, and most of the people in this room, there was an expression that said: do right, r-i-g-h-t, and fear no man; don't write, w-r-i-t-e, and fear no woman. Once you put something out there in writing, I don't use a computer, but I heard a program the other day and this expert said, with all the talk of privacy settings and so forth, don't put anything on it that you don't want shouted in Times Square. Well, that seems to me to be a warning to people that you're doing this at your own risk. If that is true, your bill relates only to an employer. Right? [LB58]

SENATOR LARSON: As it stands right now, yes. [LB58]

SENATOR CHAMBERS: Okay, and if somebody else has access to this information,

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

Business and Labor Committee
January 28, 2013

and they know you're applying for a job, and say they have fallen out with you, and they supply it to the employer and say, I think you ought to see this, the employer didn't get it from the prospective employee, this bill wouldn't apply then, would it? [LB58]

SENATOR LARSON: There is one provision in the bill that, and in your case, no, there is a provision that the employer, the prospective employer can't ask someone else at the company, that works there, that may be friends with that person to look at that Web site as well. Do you kind of get what I'm... [LB58]

SENATOR CHAMBERS: That's not what I'm asking. [LB58]

SENATOR LARSON: No, but... [LB58]

SENATOR CHAMBERS: If somebody...if this information comes to the employer by any means other than initiation by the employer, in the example you mentioned, of a workplace person,... [LB58]

SENATOR LARSON: Private...privacy. [LB58]

SENATOR CHAMBERS: ...anybody else, and any other means, of getting that information to the employer would lift the employer out of this bill...the coverage of this bill. Now, I'm curious about the same thing Senator Lathrop asked for, asked on what kind of action you would bring. Let's not require you to be a lawyer in giving it a name. If it happened to you, what would it be that you would be seeking if you were going to sue this person? [LB58]

SENATOR LARSON: Well, you can say...take me from being a lawyer, since I have no legal training, I'd probably seek a lawyer to see what they would have me bring. [LB58]

SENATOR CHAMBERS: Um-hum. [LB58]

SENATOR LARSON: If I...I don't know the correct legal definition terms of what I would bring. [LB58]

SENATOR CHAMBERS: Now suppose the lawyer said...I'm the lawyer. What is it that you would like to get out of this? [LB58]

SENATOR LARSON: Like I said, I would ask the lawyer, what are my options? I don't... [LB58]

SENATOR CHAMBERS: I'm the lawyer. [LB58]

SENATOR LARSON: Well, what are my options? [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LARSON: Well, you can try to get damages; you can show that something resulted from this that harmed you; and this is the extent to which it harmed you; and maybe you could persuade a judge or a jury that there's a dollar value that can be placed on this. Let's say your prospective employer... [LB58]

SENATOR LARSON: I don't think Nebraska allows punitive damages, do they? Would this fall under the... [LB58]

SENATOR CHAMBERS: Damages, actual damages,... [LB58]

SENATOR LARSON: Oh, just... [LB58]

SENATOR CHAMBERS: ...you cannot get punitive damages. But if you can establish that you were damaged, that's why I say you put a dollar amount on it. Okay, you would want money damages if you could get it. [LB58]

SENATOR LARSON: Possibly. Like I said, I would listen to my lawyer. I would have to have a true sit down conversation with my lawyer, you know, and say, you know, what are my options, what are the,... [LB58]

SENATOR CHAMBERS: Okay, because I don't want to drag it out. [LB58]

SENATOR LARSON: ...you know, what are the legal options? [LB58]

SENATOR CHAMBERS: This final thing, how many people having access to this supposedly private site would it take to cross a threshold where it could be argued there's no intention that that be kept private. There's no expectation that it will be kept private. This person exposed it to so many people that he or she cannot say it made him or her any difference who found out. [LB58]

SENATOR LARSON: I don't think there is a threshold. If you want to take an example such as Facebook where you have to accept or...either accept a friendship or give somebody else...or "friend" someone else, if we want to use that example, you were, essentially, giving your consent to that individual. No matter how many individuals you give consent to, I don't think there's a magic threshold of, oh, I've given consent to a thousand individuals therefore it's acceptable. [LB58]

SENATOR CHAMBERS: Okay, then you've answered that, you've answered. Suppose something on that site constitutes a crime, an actual violation of the law, criminal violation, and the employer asked you, have you ever been charged with or convicted of a crime and you can honestly say, no, because you haven't been caught, you haven't been charged, you haven't been convicted. But what is on that site would constitute a

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

Business and Labor Committee
January 28, 2013

crime...let's say it's child pornography. Suppose I want to make...I'm trying to get to something. [LB58]

SENATOR LARSON: That's it. They monitor that very well on...yeah, okay. [LB58]

SENATOR CHAMBER: But to make a point, I'm trying to make something so obvious that everybody could understand what would be a crime simply by being on this site or you confess to a murder or something. And an employee knew about this and the employee said, you know, Tyson's first name gives him away because there's a fighter named Mike Tyson and he was convicted of rape. And all I'm going to tell you is that birds of a feather flock together and they drink from the same water hole. So the employer says, well, what are you trying to tell me. And the employee says, well, it would be in the best interest of the company to know some things. I'd say, well, can you get this information for me. That would be covered by this bill also, you feel? Protection from exposure of having committed a crime? [LB58]

SENATOR LARSON: From...essentially, an employer can't ask another employee to get information off a social medial site...cannot...for the prospective employee. [LB58]

SENATOR CHAMBERS: No matter what the information consists of? [LB58]

SENATOR LARSON: Off social media, on the social media, if it's just on social media then I guess probably not. But, obviously, something like a confession to a murder or child pornography or...yeah. [LB58]

SENATOR CHAMBERS: I don't know if you saw where that girl held up all this money and she said: I robbed a bank and this is the money and that's the bank I robbed, and it was used in court against her. So people have done foolish things. This kind of network makes people crazy. Maybe the way to settle people down is to make everything they say, if they're coming for a job, available to the potential employer and then they'll be more careful. And they'll say, I'm not going to put in on here. What about that? [LB58]

SENATOR LARSON: You know, what is the difference between the employer...again, I'll ask the question, and I don't know if you were here. [LB58]

SENATOR CHAMBERS: I won't answer it. I'm the questioner. [LB58]

SENATOR LARSON: Well, what is the...I think every individual has a certain reasonable expectation of privacy wherever it goes, especially when they're signing terms of agreements with social media sites, such as Facebook or Twitter, they have user agreements; they have expectations of privacy with the...if you want to use the United States Postal Service, they have an expectation of privacy of everything that they receive in the mail. Just because it's on the Internet doesn't necessarily mean that they

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

Business and Labor Committee
January 28, 2013

lose their expectation of privacy. And I think that's something that we have to be very... [LB58]

SENATOR CHAMBERS: Cognizant of, okay. [LB58]

SENATOR LARSON: ...cognizant of moving it forward in the future. Just because we have new technologies does that mean that an individual loses their, you know, their individual liberties or their rights to privacy? I don't think so. [LB58]

SENATOR CHAMBERS: Well, what the police can do, if you have a wireless phone, they can get your information without getting a warrant or having probable cause. [LB58]

SENATOR LARSON: And the... [LB58]

SENATOR CHAMBERS: That's something that, because of technology, it took it away from the land line where you have to actually, physically tap into the that. You need a warrant. And just like if there's going to be a search, well, technology has changed that. And the citizen may not have been informed of the fact that now there's a legal difference between when you use your land line and when you use your cell phone. Anybody who can get that information is welcome to it. That's where technology, contrary, maybe, to the understanding of the public, has destroyed the expectation of privacy that most people have when they use a telephone and they dial a number. And all...the only reason I'm saying it, you mentioned going forward. So I think it should be kept in mind that if this bill is passed, it's dealing with what exists now. And there may be other developments by the company which will change all of this because, as I read this, and I'm not an authority on any of this, but just trying to understand the principles involved, an agreement between a person and a company saying, this will be private. Now if the government can show a reason to get at that information, and sometimes it seems the "Pharaoh Government" is more and more willing to do that, then it's not private anymore. They can get it. All they need to do is get a judge to say, give it up. Now if the employer got a court order, then that would take away what this bill says. [LB58]

SENATOR LARSON: And I have no problem with them going about it the legal way. [LB58]

SENATOR CHAMBERS: Okay. [LB58]

SENATOR LARSON: And I think you and I are on the same page in terms of this bill does only deal with what is the here and now, but is it better to have something that is dealing...should our laws be continuing to evolve with the technology that we have so certain cases, as you said, land... [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: And here's the point that I want from this. Do you agree that there might be a legal process the employer could go through to get this information? And this bill does not create absolute privacy under all circumstances for the person who has put that crazy stuff out there like a fool when he or she should use better judgment. [LB58]

SENATOR LARSON: No, it doesn't create...no, it doesn't create absolute privacy. [LB58]

SENATOR CHAMBER: Good, that answers the question, and I'm through. [LB58]

SENATOR LARSON: Yeah, it doesn't create absolute privacy. [LB58]

SENATOR CHAMBERS: I'm through. [LB58]

SENATOR LATHROP: Thank you. [LB58]

SENATOR CHAMBERS: Thank you. [LB58]

SENATOR LARSON: Thank you, Ernie, Senator Chambers, I'm sorry. [LB58]

SENATOR LATHROP: Any other questions for Senator Larson? Any other questions for Senator Larson? I see none. Thank you. I assume you'll want to stick around and close. [LB58]

SENATOR LARSON: (Inaudible). [LB58]

SENATOR LATHROP: Okay, good. Are there folks here that want to testify in support of LB58? If there are, you may come forward. Good afternoon. [LB58]

JASON HAYES: (Exhibit 5) Good afternoon. Good afternoon, Senator Lathrop and members of the committee. For the record my name is Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, and I represent the 28,000 members of the Nebraska State Education Association. NSEA supports LB58. We believe the bill does a good job addressing the issue of employers obtaining access to an employee's or applicant's personal social networking Web site and other private information. We do have one point of concern with regard to Section 6 of the bill on page 4. That section prohibits an employee from downloading an employer's proprietary and financial information and placing it on that employee's Web site. In the instance of a school employee downloading information from a school district that is already public information, we suggest an amendment be added to Section 6 indicating that such information already in the public domain and provided by a public employer is not covered by this restriction. We believe the

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

Business and Labor Committee
January 28, 2013

suggested addition to Section 6 will improve the overall intention of the proposal and thank Senator Larson for introducing the bill. [LB58]

SENATOR LATHROP: Very good. Any questions for Jason? Senator Chambers. [LB58]

SENATOR CHAMBERS: Are there rules and regulations that school districts have relative to what use can be made of computers? You're talking about the school's computer now, is that correct, their system? [LB58]

JASON HAYES: I'm talking about a situation where they would have access to public information, maybe, the school district's budget which would be out in the public domain and that they would, perhaps, have an issue with it and maybe put it on their own Facebook site. [LB58]

SENATOR CHAMBERS: So, the budget, based on your understanding of a school district, is proprietary information? [LB58]

JASON HAYES: I would look at that...or financial information. [LB58]

SENATOR CHAMBERS: Are you a lawyer? [LB58]

JASON HAYES: Yes, I am. [LB58]

SENATOR CHAMBERS: What does proprietary generally refer to? [LB58]

JASON HAYES: Proprietary refers to something that pertains to an individual business, that it's, maybe, their business model or something of private nature of how they conduct their business. [LB58]

SENATOR CHAMBERS: And you said private nature. [LB58]

JASON HAYES: Um-hum. [LB58]

SENATOR CHAMBERS: So would their budget...do you think they...the budget...let me go back to what I asked you. Would the employee be using the school system's equipment at work? [LB58]

JASON HAYES: They possibly could, but if you look at Section 6, it doesn't speak specifically to... [LB58]

SENATOR CHAMBERS: I'm asking you since you're here. [LB58]

JASON HAYES: Okay, okay. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: What are you talking about? [LB58]

JASON HAYES: I'm talking about a situation where they would, perhaps, have a PDF of the budget that would just been passed by the school district, and they download it to their own Web site. Now that could be on the servers of the school, which would be open for everybody in the public domain to access and to download. [LB58]

SENATOR CHAMBERS: Let me try to make clear what I'm talking about. Would this person you're talking about be sitting at a piece of equipment at a school facility and would use that equipment to access this information that you're talking about in Section 6? Where would the locus of the individual be at the time the information is being accessed? [LB58]

JASON HAYES: In regard to your question, they could be either at their desk in the school building or they could be at their desk in the school building with their iPhone accessing the information and putting it on their Facebook from their iPhone. [LB58]

SENATOR CHAMBERS: This could violate the school's systems rules relative to use of their equipment though, couldn't it? [LB58]

JASON HAYES: It could. If somebody was at a school computer and they went to even a public domain server of the school district's and pulled off the budget and put it on their own Facebook account, then that would, most likely, be a violation of the school district's policy. [LB58]

SENATOR CHAMBERS: Now let's go to this, you have stated what proprietary means. I'm not a lawyer in the sense that I don't practice law, but I've had a bit of training in the law. I have a degree. Proprietary is a term of art, as you know. And it has a special and specific meaning in a business context. If information is proprietary, that puts it in a category different from ordinary information that is just available to everybody. Now when you go farther down in Section 6 you see "without authorization." That seems to me to underscore the notion that this is information that is not available to the public. [LB58]

JASON HAYES: Um-hum. [LB58]

SENATOR CHAMBERS: So I don't see that this has anything to do with these teachers unless, like has happened so many times, some of them are putting illicit text messages out there to young students that they've got. [LB58]

JASON HAYES: Well, that would never be okay. [LB58]

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Transcriber's Office

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: I know...right. [LB58]

JASON HAYES: But in... [LB58]

SENATOR CHAMBERS: But the...so teachers misuse equipment like other people. If this is not amended in the way that you say, then it will just let teachers know, don't be getting this information if it's proprietary and it requires authorization to have access. Are teachers so lacking in understanding that they couldn't go to their superior and say, is it...am I authorized to get this information? And if the superior said, no, then the employee shouldn't get it. Is that correct? [LB58]

JASON HAYES: Well, they could certainly go to their employer and ask for permission. But if you look at... [LB58]

SENATOR CHAMBERS: And if permission is denied... [LB58]

JASON HAYES: Um-hum. [LB58]

SENATOR CHAMBERS: ...and they get it anyway and the employer finds out that they got it, then...here's what I'm getting at. I don't even see how what you're talking about has anything to do with what this bill is talking about. [LB58]

JASON HAYES: And with all due respect, Senator Chambers, I think if you look at just the text of the language and with the conjunction "or" you could be talking about just financial data, and with this language I could be at my home computer as a school employee, download financial data, and put it on my personal Facebook account and that would be restricted by this section. I think it's very narrow. [LB58]

SENATOR CHAMBERS: Is this financial data proprietary information? [LB58]

JASON HAYES: Well,... [LB58]

SENATOR CHAMBERS: If it's not proprietary information,... [LB58]

JASON HAYES: Yeah. [LB58]

SENATOR CHAMBERS: ...that lifts it out of the language of the section. I'm not going to delay or prolong it. [LB58]

JASON HAYES: Well, okay. [LB58]

SENATOR CHAMBERS: But, as you said, let's read the language. It doesn't say public information, it doesn't say information available to everybody, it says proprietary

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

Business and Labor Committee
January 28, 2013

information. [LB58]

JASON HAYES: I think you could read it as proprietary information or financial information. And we would just ask that a distinction be made that if it is already in the public domain, even as a private business, if somebody put their business model on-line, on their company's Web site, this could be construed as downloading that information in the public...off a public server and putting it on their own personal Facebook page without the permission of the employer, they would be restricted by this provision. [LB58]

SENATOR CHAMBERS: Could...or financial data be modified by proprietary, that information relates to words, financial data refers to numbers. So both could be modified by proprietary. There is no comma after "information." Proprietary information or financial data, so they're both modified by the word "proprietary." If you were a lawyer, isn't that the way you would argue? [LB58]

JASON HAYES: I would...it would depend who my client was, sir. [LB58]

SENATOR CHAMBERS: Now you got it. [LB58]

JASON HAYES: Okay. [LB58]

SENATOR CHAMBERS: Okay. [LB58]

SENATOR LATHROP: Okay, welcome to the Business and Labor Committee.
(Laughter) Senator Hansen. [LB58]

SENATOR HANSEN: Thank you. Jason, let me ask a question just in a little bit different light and maybe it will help and maybe it won't. What about if an employee found out that 3 percent of the teachers in a district were going to be RIFed. And this was proprietary information to the school board. And...or a preliminary budget, now we're talking about words and numbers at the same time here, but what if an employee sent that out that had access to those numbers? [LB58]

JASON HAYES: Yeah, if this was private information that was just for the board members only on the district and it had not been already released to the public domain, then, yes, I can see where that would be a necessary protection for the employer. [LB58]

SENATOR HANSEN: Thank you. [LB58]

JASON HAYES: Sure. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LATHROP: I see no other questions. Thank you. [LB58]

JASON HAYES: Okay. Thank you. [LB58]

SENATOR CHAMBERS: Just one. [LB58]

SENATOR LATHROP: Oh, I'm sorry, Senator Chambers. [LB58]

SENATOR CHAMBERS: This young man sees the value of language and the significance of it. In your third paragraph, you write: we do have one point of concern with regard to Section 6 of this bill on page 4. That section prohibits an employee from downloading an employer's proprietary and financial information. The bill says "proprietary information or financial data." Information is not connected to financial. Information relates to...immediately follows "proprietary" and then "financial" is followed by the word "data." And I think that indicates that the information comprises words, financial data, the figures, but at any rate, I'm sure other members of the committee will take very seriously the point you were trying to make and review it because usually I'm out of step. [LB58]

JASON HAYES: Well, I was trying to be concise, but thank you for pointing that out. [LB58]

SENATOR CHAMBERS: Okay. [LB58]

SENATOR LATHROP: I think that is it. [LB58]

JASON HAYES: Okay. Thank you. [LB58]

SENATOR LATHROP: Thank you. Anyone else here to testify in favor of the bill? [LB58]

ALAN PETERSON: Chairman Lathrop and members of the committee, I'm Alan Peterson. I'm an attorney and lobbyist for the ACLU Nebraska, which is a local affiliate of the national ACLU. Two points to make: one of them practical, the other, I think, an ideal. The first one is, this bill, it seems to me, is very good in that it will help protect employers from their own "snoopiness." I have tried a number of discrimination cases over the years, mostly for the University of Nebraska, and sometimes on the plaintiff side. It is very dangerous to ask certain questions in an interview. The Internet is full of tips and advice on that subject. I brought just one little one. It says steer clear of these ten illegal job interview questions: Where were you born? What is your native language? Are you married? Do you have children? Do you plan to get pregnant? How old are you? Do you observe Yom Kippur? Do you have a disability, a chronic illness? Are you in the National Guard? Do you smoke or use alcohol? You can't ask those. But if you could require somebody to turn over their passwords, you're going to learn the

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

Business and Labor Committee
January 28, 2013

answers to most of these. And so if there is a lawsuit, let's say you don't hire that person, or demote them, or whatever, you've just created, by your "snoopiness" into their background, some of the early first steps to prove a case of discrimination. As Senator Lathrop mentioned in a hearing the other day, the original burden of a plaintiff in those cases is pretty small. You show you are in a protected class, whether it be age, race, national origin, gender; and you show that you were turned down for a job or demoted or whatever, the burden of proof and going forward both shift to the employer to show that there were other reasons. And then if some prima facie reasons are shown, the burden of proof shifts back to the employee or applicant to prove the case ultimately. But if you create that evidence, you got a good start. Why do it? Not worth it. Point two, when we take a job, we give up a lot. We must...we have a duty of loyalty and so forth. But we don't turn over and should not have to turn over our whole personal life. And maybe our freedom of expression to our friends, our relatives, whatever the group that is secretly communicated with on social media might be, we shouldn't have to turn that over. That's privacy. In cases where we're talking about a government job, then the federal constitution and Nebraska Constitution come into play. There is a federal right to privacy, as far as government positions. Probably not, as to private jobs. This bill covers both. But the principle, which ACLU tries to protect where it can, is that part of our lives are private, deserve to remain so, and that is a precious civil liberty. Thank you. [LB58]

SENATOR LATHROP: Interesting observation. Senator Chambers. [LB58]

SENATOR CHAMBERS: Mr. Peterson, it seems to me, and this is not what you said with your words, that when a person takes a job, he or she is renting to the employer time, skill, and ability; it's renting, but not selling himself or herself. [LB58]

PETERSON: Exactly. [LB58]

SENATOR CHAMBERS: And as to the content of these sites, whether they are ingenious or stupid, if the person expects it to be private, it is not the nature of the content, it's the idea that there is an umbrella of privacy that protects this whatever it is. [LB58]

ALAN PETERSON: Yes. [LB58]

SENATOR CHAMBERS: Even if, as I've characterized some of it as being stupid, lamebrain, and so forth, they, if they want to be that way, have a right to that privacy protection. [LB58]

ALAN PETERSON: Yes, and it may be partial. You may say, it's a secret between me and my closest friends and relatives, and it is not for the world to know. [LB58]

SENATOR CHAMBERS: And an example, if an officer would approach somebody on

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

Business and Labor Committee
January 28, 2013

the street, that officer could not take a woman's purse and rifle through it, or put his hand in a person's pocket and say, if you have nothing to hide, you shouldn't object to me doing this. It's just that you don't want your space and your dignity invaded by somebody who has no right to do that without having proper authority and proper basis for undertaking that. [LB58]

ALAN PETERSON: Yes. [LB58]

SENATOR CHAMBERS: Okay. [LB58]

ALAN PETERSON: I just feel there is a part of each us that belongs only to us and that's critical. The constitution protects it partly, the Legislature can protect part of it by passing this bill in a perfected form. It may need tinkering, but I think it's a good bill. Thank you very much. [LB58]

SENATOR LATHROP: I'm not sure Senator Larson expected the ACLU to come in and support his bill, so. (Laughter) You might have made a new friend today. [LB58]

ALAN PETERSON: I'm proud to support the principles of his bill and his trying to pass it. [LB58]

SENATOR LATHROP: Yeah, thanks, Alan. We always appreciate hearing from you. Anyone else here as a proponent? Okay, how about in opposition to the bill? Come forward if you would, testify. Good afternoon. [LB58]

STEVEN LAMKEN: (Exhibits 3 and 4) Good afternoon, Senators. My name is Steven Lamken, L-a-m-k-e-n, and I'm the police chief for the city of Grand Island, Nebraska, and also the first vice president for the Police Chiefs Association of Nebraska. The Police Chiefs Association of Nebraska, PCAN, has certain regard...concerns regarding LB58 as it has been introduced. We recognize the use of social media as a popular...and used by many people today. LB58 proposes to forbid employers from requiring, requesting, or using a third party to access an applicant for employment or an employee's social media accounts as an invasion of privacy. There is an expectation of privacy, but it varies from personal communication between two people, to posting to numerous friends that can be forwarded to countless other people, or posting to the general public. The expectation of privacy is not the same. We believe LB58 goes too far in the restrictions on employers. I will share with you an event that occurred in my department involving an employee who was a police officer and this employee's use of social media. The patrol division commander was approached by officers of the department. The officers expressed concern regarding a fellow officer on their patrol shift regarding statements and information he was posting on Facebook to his friends. The reporting officers expressed serious concerns regarding the fitness of the officer. The captain requested the officers provide him copies of the officer's Facebook postings

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

Business and Labor Committee
January 28, 2013

that were of concern. Once the captain had reviewed the postings provided by the officers, he accessed the officer's in-question Facebook account using one of the reporting officers' access as a friend. The officer in question had a posted a photograph of himself in his police uniform and standing at the door of a department patrol car with the emblem of the police department clearly visible. This was a violation of the department's policy and clearly identified the officer as a member of our department. The officer made other postings that were much more egregious. He posted negative comments about his fellow shift officers using derogatory remarks and profanity and made the statement that he didn't care if they died. In another post, he made derogatory statements about citizens he served, and one described a citizen using derogatory remarks and profanity. The department initiated action against the officer based upon the complaint and the internal investigation. I tell you of this event and this investigation to point out that once the captain requested the officers to provide copies of the officer's post, our department was in violation of LB58 as written. We would be further in violation when the captain accessed the officer's social media site using another officer's permission as a friend. I hope this illustrates some of the concerns PCAN has with LB58. We have been entrusted by our communities to ensure both high moral and mental fitness standards for those who serve our agencies. We know that you share those same expectations. We request that you address the barriers that LB58 will create in allowing us to fulfill this trust. Thank you. [LB58]

SENATOR LATHROP: Senator Ashford. [LB58]

SENATOR ASHFORD: Yeah, I'm not going to question you about this, but I'm going to say something for the record. I had this...I was...before I came up here this afternoon, I noticed that a group of Republican and Democrat senators have come up with a bill on immigration reform that allows many of our immigrants here, who may not be here legally, to remain here and to have a pathway to citizenship. And, Chief, one of the greatest profiles of courage, in my experience, is the way you dealt with the immigration issue at, I think, it was a meat packing plant in or near Grand Island, Hall County. And I personally think it was people like you, whatever this bill says or doesn't say, but it's people like you that stood up for a balanced approach to dealing with human beings, no matter where they may have been born, is, in my view, an example to all of us. So again, I've thanked you before on the record, I'm going to thank you again on the record, because you were right then and you're right now and we're finally waking up to the fact that these immigrants are going to have an opportunity to remain in this country. And you are, in my view, not a small piece, but maybe in the overall sense of it, maybe you and I are small pieces in that. But it all comes together to have a good, positive policy. So I wanted this opportunity to publicly thank you again for what you did. [LB58]

STEVEN LAMKEN: Thank you. [LB58]

SENATOR LATHROP: I have a question, perhaps, and that is, I just listened to Alan

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

Business and Labor Committee
January 28, 2013

Peterson testify from the ACLU, and it shows the complexity of this question, because I appreciate your concerns when you're trying to maintain order. You want to make sure that the officers that work for you are fit and belong there and don't have some...they could be on there, saying terribly racial...racially charged statements or other things. But one of the concerns I have, I think Mr. Peterson made a real good point which is, so if you have access to this information and you're a prospective employer and you get on to Facebook and there is somebody holding a rosary. And you go, well, I'm not hiring them for whatever reason, and now you're getting sued because, boy, you got on his Facebook and saw he was Catholic. And maybe some things...maybe some things you're better off not knowing. I don't know. I mean, I think that's the balance that we're going to have to try to achieve with this bill because you could be inviting...as soon as you have access to that information, then you're going to be, effectively, presumed to know all of it. And what if you find out that the guy beat his wife on there or could have found out and you didn't look? And now he goes into a situation, beats somebody, and they say, well, you know what, it was on his Facebook, you should have checked. So, I mean, I'll be interested in your thoughts after you drive home and you come up with a solution (laughter) because... [LB58]

STEVEN LAMKEN: I don't...yeah. [LB58]

SENATOR LATHROP: ...that...that is...you know, we had this bill down in Judiciary Committee dealing with what do we do when somebody dies and they have a Facebook. It is way more complex than just turning the switch off. And I appreciate the conversation we're having today and the different points of view. Senator Chambers. []

SENATOR CHAMBERS: Thank you. Chief, I'm considered by some people to be anti-police. I'm anti-everybody when they don't do their job the way they're supposed to. And when they're a member of a profession whose job is to protect and serve with dedication and competency and they do that job, they could find no greater supporter than me. But because somebody wears a badge, a title, whether senator, police officer, Pope, preacher, or parent, if that person is committing vile acts, then they cannot be excused or erased simply because of the title the person wears. It is often said that a police department is a paramilitary organization. Have you heard that characterization? [LB58]

STEVEN LAMKEN: Yes, sir. [LB58]

SENATOR CHAMBERS: Many, many, years ago I was in the Army. There are...not the Civil War, and I was not there during the Revolutionary War either, I've read about them, however. But there are in these types of organizations restrictions placed on the individuals which do not apply to persons in civilian life. There are powers that police officers have which nobody else in society has, even the judge or the president, and that's the discretionary power to take human life. Without a trial, without a conviction,

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

Business and Labor Committee
January 28, 2013

without a sentence of death, if in the officer's discretion it is believed that an individual is in a position to do great bodily harm or even fatal harm to the officer or somebody else, that officer can use deadly force. The judge cannot say, I think this person might have committed a crime, I know he's here for burglary, but I'm going to sentence him to die so he won't go the next step. I'm trying to make a point. Is it your contention that in the realm of law enforcement, because of the nature of the work that they do and the powers that they have, that there is a justification for viewing restrictions involving them differently from the way those restrictions would be viewed if applied to civilians or private individuals? [LB58]

STEVEN LAMKEN: There is now, Senator. We can do background checks using criminal history checks that other organizations can't use. [LB58]

SENATOR CHAMBERS: And could police agencies simply notify prospective employees and current employees that because of technology and things that the Internet may be used for, we're serving notice that you're going to have to agree to make this information available to us. And before anybody says, you're violating privacy, the person can agree to it or not agree to it, and be hired or not hired. But here's the question that I want to ask you: As serious as some of those allegations were, and taking seriously your oath to protect the public, would you be willing to risk a possible lawsuit for a violation of that misbehaving officer's privacy in order to find information that might prevent far greater damage to other people? [LB58]

STEVEN LAMKEN: I would rather do it legally, but I think at my age and time in the profession, I would protect the people of the city of Grand Island. [LB58]

SENATOR CHAMBERS: And I'm going to leave it at that. And everybody, like they do on these movies they see and dramatic productions, draw their own conclusion. But I for one do see a radical difference in status between law enforcement people and private citizens. And if there's anything I can do to work with you on that, I'd be willing to do it, because I think it's what you call a dilemma. Neither decision that you make is one that you would like to make, but a decision must be made. So you weigh other considerations between two bad things. Which can I find some good in if I do it as opposed to doing this other or not doing anything? As a moral person, as one who undertook an oath to protect the public, there might be an issue of one thing trumping another. But I would not be one who would join those who would seek legal action against you; and I couldn't anyway, because you procured information that an officer made available which information would show unfitness to be an officer. I'm not encouraging you to do anything wrong, but there are different ways that people view this. And despite...oh, wait a minute, this might be an anti-police position that I'm taking, it's just pro-chief. But at any rate, I think your situation is even more difficult than ours when we're just...we're trying to formulate a policy, but we're not in a position of something coming back later and saying, Chief, you could have gotten that information

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

Business and Labor Committee
January 28, 2013

and this crime would not have been committed. This person would not have done this thing; somebody would be alive today, but you didn't do what you could have done, you didn't get the information. And maybe somebody will say, well, you can't sue the chief, but it goes beyond that. And I just want to put some other things on the record, because ordinarily I want to hold everybody who is a police officer to a high standard, even a chief. But a chief has decisions to take that even modify my generally hard line in this area. And I'm not in a position to exonerate you no matter what you do. I'm not in a position to justify you no matter what you do. But I just wanted these comments to be in the record so people would have something else to chew on instead of tobacco when they leave here. That's all I have, Mr. President...I mean, Mr. Chairman. (Laughter) [LB58]

SENATOR LATHROP: Thank you. [LB58]

SENATOR ASHFORD: Wow. [LB58]

SENATOR LATHROP: I think I got a field promotion there. I think that's it. Thank you for coming. [LB58]

STEVEN LAMKEN: Thank you. [LB58]

SENATOR LATHROP: We appreciate your thoughts. Anyone else here in opposition? Opponents? How about folks in a neutral capacity? [LB58]

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 appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association. The realtors are not opposed to the concepts of this legislation. However, they met on Saturday and come up with a couple of concerns. Currently, brokers are responsible for the actions of their agents and people in their office. And the concern is that if social media was used just the same as private letters and phone calls, it probably wouldn't be an issue. But when you have 700 Facebook friends and you're using it as a business model or to promote your business, then it does become an issue for employers who are responsible for your actions. And so we ask you that you keep that in mind. It's my understanding that there is an amendment that takes care of legal requirements for employers. I'm not sure if that goes far enough to cover if you're liable for the actions of people in your office, but we would hope it would. [LB58]

SENATOR LATHROP: What is your...I listened to you and I'm trying to figure out where you're at. Do you...so there is the...you can never get to it, and then there is the "I need to get there, because I'm responsible for that guy" and they may have CBSHOME real estate on their Web site saying they're a real estate agent saying all kinds of crazy stuff, right? [LB58]

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

Business and Labor Committee
January 28, 2013

KORBY GILBERTSON: Um-hum, yes. [LB58]

SENATOR LATHROP: Where do you come down? What do the realtors want? [LB58]

KORBY GILBERTSON: Kind of all over the place right now. They're actually meeting Wednesday to have their official meeting on bills. But the group that we met with on Saturday, they're just concerned that if they, for some reason, can't get access, or if they would ask to see advertisements or things that are on these social networking sites that they would be then in violation of the law. And because they are liable for activities of their agents and employees, that gives them some concern. And so they want to either make sure that there is a clear definition of employee that would make it so that agents...because many times they have contracts with the agent, and the agent is actually legally considered an independent contractor. However, if it was taken to court you might argue that they have enough strings attached to their position, they would be arguably an employee. And so it can get into a gray area. [LB58]

SENATOR LATHROP: Oh, so what you're saying is, this is good for employees, but our guys are independent contractors and we want access to their... [LB58]

KORBY GILBERTSON: And we are concerned... [LB58]

SENATOR LATHROP: ...to the guys...okay, well, I think I get your position. I mean it's like, go ahead and do that to the employees, but don't bind the brokers who are responsible for the associate brokers. [LB58]

KORBY GILBERTSON: Right. [LB58]

SENATOR LATHROP: We want to be able to snoop on our associate brokers. [LB58]

KORBY GILBERTSON: Well, because we're...if they say something, we can...we...I...the brokers can be held liable for it. [LB58]

SENATOR LATHROP: Okay. [LB58]

KORBY GILBERTSON: That's the concern. [LB58]

SENATOR LATHROP: Okay. Senator Chambers. [LB58]

SENATOR CHAMBERS: Now I'm coming back to the employer situation that is different, as I have stated, from that of law enforcement. You are against this bill for...oh... [LB58]

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

Business and Labor Committee
January 28, 2013

KORBY GILBERTSON: Neutral...we're neutral on the bill... [LB58]

SENATOR CHAMBERS: Oh, you're neutral. [LB58]

KORBY GILBERTSON: ...because we don't necessarily think it is a bad idea, however, there was some concern expressed that if an employer or a broker, in this instance, because the employee is not defined in the bill, if a broker would ask one of their agents or employees in their brokerage office for access to whatever they're posting on Facebook...the example that you gave, you heard something had been posted and you went to them and asked them for access to it, they could not do that under this. And they, the broker, is held liable for it. [LB58]

SENATOR CHAMBERS: Suppose...is there any way that the group you represent could support...I don't have to ask that, because even the way the bill is right now, the people you represent are not opposed to it, correct? [LB58]

KORBY GILBERTSON: We would...I think...as I said to Senator Lathrop, they do... [LB58]

SENATOR CHAMBERS: Please, please, ma'am, I respect women, but you said you're here as a neutral and that means you have no position either way. [LB58]

KORBY GILBERTSON: No, I later then said, when you were speaking with Senator Ashford, that the realtors have not met to take official positions on bills yet. But they asked me to come, express their concern about this fact. [LB58]

SENATOR CHAMBERS: So they're opposed to it. [LB58]

KORBY GILBERTSON: They have not taken a position, sir. [LB58]

SENATOR CHAMBERS: Are they in favor of it? [LB58]

KORBY GILBERTSON: They have not taken a position, sir. [LB58]

SENATOR CHAMBERS: Well, the fact that they refuse to take a position doesn't mean at a hearing that their position is neutral. That's why I got the impression that they're against it. But since they are neither yea nor nay, and we're free to choose what we want, I would say that at last these realtors have taken a position with which I agree and I applaud them for it. They support a bill such as this. (Laughter.) And that's what I take (inaudible). [LB58]

KORBY GILBERTSON: I would expect nothing less, Senator Chambers. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LATHROP: Okay. [LB58]

KORBY GILBERTSON: Thank you. [LB58]

SENATOR LATHROP: Anybody else that is neutral? [LB58]

RON SEDLACEK: Chairman Lathrop, and members of the Business and Labor Committee, my name is Ron Sedlacek, it's R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. We don't currently have a policy position in regard to the legislation. However, we have polled some of our members and we will be meeting to discuss it because this is kind of a new concept that we haven't had a previous position on. That's why I'm testifying neutral on the legislation. However, just would like to make some comments. Generally speaking, in reviewing the legislation it appears that there is some support in regard to the fact that it provides certainty and it does provide protection for both parties, so some expectations as to what should not be done. That's a good, positive part of it. Would like to (inaudible) your attention to the...just one area here, we're dealing with the definition of employer. And you can see that in Section 2, subdivision 3. It's pretty broad, but then you look at Section 3 and it says: no employer shall require request. And I think, keying on the word "request," and you think of a real small employer, let's say, who may have a...it may be a parent who is employing their child, or the spouse is employed in a small operation and you ask, honey, can I get access to your account for whatever reason or whatever. Now that request may...the question becomes, in close familial situation, is this something that should be under consideration or not? Does..you know, this is just draw to your attention only. [LB58]

SENATOR CHAMBERS: So I understand, you are applying this to a family operation where a spouse or a child could be involved? [LB58]

RON SEDLACEK: Could be. Sure. Could be an employee...there could be an employer and employee relationship. [LB58]

SENATOR CHAMBERS: I look at this like I do when a child says, you can't come into my room. I say, is your name on the lease? (Laughter.) Well, no. [LB58]

RON SEDLACEK: Exactly. [LB58]

SENATOR CHAMBERS: Then nothing in this house is yours. [LB58]

RON SEDLACEK: That's right. [LB58]

SENATOR CHAMBERS: When your name is on a lease, then it's yours, until then everything in this building is mine. [LB58]

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

Business and Labor Committee
January 28, 2013

RON SEDLACEK: That is correct. [LB58]

SENATOR CHAMBERS: Now if a person is working for his or her parent, then how do you separate the parental role from the employee role? [LB58]

RON SEDLACEK: That's a good question. And I'm not sure...I don't have the language to offer. [LB58]

SENATOR CHAMBERS: Is that a genuine concern, or is this just an opportunity for the chamber to express opposition without saying they're opposed? [LB58]

RON SEDLACEK: Oh no, not at all. In fact, as I say, generally speaking, this does make clarification and certainty, and that's the good part of the bill. [LB58]

SENATOR CHAMBERS: Okay. [LB58]

RON SEDLACEK: I guess the bottom line is that if this bill were to advance in the current form and pass into law, you may be following up with some exceptions down the road. Okay, that's all I'm pointing out. [LB58]

SENATOR CHAMBER: Okay. And think about that example you gave of the family member. I believe in families, but children don't...children are not adults and when they're under the roof, there are certain rules they have to comply with. [LB58]

RON SEDLACEK: There may be college graduates under the roof as well, yeah, so. You know, it becomes a question. [LB58]

SENATOR CHAMBER: Well, if they're at home and under the roof, then they're still under my domain. [LB58]

RON SEDLACEK: But they're adults. [LB58]

SENATOR CHAMBERS: But see, they're lucky that I'm very lenient and forgiving. (Laughter) [LB58]

SENATOR LATHROP: I will make this observation: I have four daughters, not one of them will "friend" me on Facebook. (Laughter) Or I've been a friend and as soon as I caught wind of something, they "defriended" me so. (Laughter) (Inaudible). [LB58]

RON SEDLACEK: I've been good, I have two daughters and a son. The daughters are fine, it's my son that won't (inaudible). I don't know what he's up to, but... [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LATHROP: Yeah. Okay, thanks, Ron. [LB58]

RON SEDLACEK: Okay, just continue on very quickly though. You know, certainly we like the idea of distinguishing what is in the public domain and what is not because, really, when it comes down to it, there's got to be some expectation of privacy as a prospective employee, as an applicant. You don't normally have an employer say, okay, by the way, could you give me the keys to your house or apartment, your safe deposit box, we'd like to see what is all in there before we hire you. And so there is that expectation of privacy. And quite often, you know, I can...I would relate that, as well, to those who want privacy in regard to this. Here's the problem, quite often they "friend" someone and there have been cases such as this, where, for example, the Dominos Pizza case where there was a...YouTube would apply here, there was a number of employees doing really gross things to food that they eventually delivered to customers. And it was restricted on the account. Someone, "some friend," eventually released it; made it into the public domain. And of course, those employees were readily identified and they were either disciplined or fired in that regard. By the same token, there was, I believe, it was either employee or a teacher who had posted slurs in regard to students or fellow employees dealing with some sexual activities and so forth that...just really a case of defamation. Those were supposed to be private, eventually they were leaked out into the public, and the employer, I know, fired that particular employee because of that conduct after sufficient investigation, at least as far as I can see. [LB58]

SENATOR CHAMBERS: And, Mr. Sedlacek,... [LB58]

RON SEDLACEK: Yes. [LB58]

SENATOR CHAMBERS: ...not to interrupt you, even though that's what I'm doing, that's what I was trying to get at when I mentioned the type of conduct that might be involved. If it's a crime or something like that, does it become protected and shielded because it's pursuant to an agreement with a private profit-making organization. So I think you did come with a genuinely neutral position. You pointed out some specific areas where there could be some improvement. And I agree on the definition of "employer." I don't know what it ought to be. [LB58]

RON SEDLACEK: Um-hum. [LB58]

SENATOR CHAMBERS: But these are areas where I think work should be done. And I think, Senator Larson, not speaking for him, but going by what he suggested, he's willing to listen to other people who may have concerns. [LB58]

RON SEDLACEK: Um-hum, um-hum. And those are minor, I think, minor concerns in that regard. And Senator Larson does have an amendment that he offered to the committee and we reviewed that. We're supportive of that particular amendment. But

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

Business and Labor Committee
January 28, 2013

other than that, we did identify Section 8, as you did, as, you know, what are the damages and so forth. But that might need a little bit of a tweaking as well. But the other remaining sections appear pretty good. [LB58]

SENATOR LATHROP: Okay, thanks, Ron. I see no other questions. Anyone else here in a neutral position on this bill? [LB58]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And we are, indeed, neutral on this bill for this reason: we support the general concept of what this bill is intended to address. But we think there are some serious issues. Chief Lamken outlined some of them. Let me outline just a couple more. And I won't repeat the ones that he noted. If you look on page 2 of the bill, line 11, on the definition of employer, it means a public or nonpublic entity which, obviously, could include a school as well, municipalities, including any agent, representative, or designee of such employer. And then you go to page 3, line 9: no employer shall access an employee's or applicant's social networking site, profile, or account indirectly through any other person who is a social networking contact with the employee or applicant. What happens if someone calls an employer and says, you know, I understand Harry or Sally, they're applying for a position with you, are you aware that they've had X, Y, and Z occur, which may involve criminal activity, may involve some other things that, basically, would really have a play in terms of a hiring decision? Secondly, what if it is a student who reports to a teacher that he has been looking on another student's Facebook and the student is indicating that they are going to bring a gun to school? You know, we encourage kids, make sure that you tell teachers; make sure you tell someone if you hear these sorts of things. Well, you tell a teacher who is an agent of a school district, i.e. an employee...an employer, can the employer act on that? I mean, obviously, you want them to. I mean, so, what we're saying is we think this bill conceptually is addressing an important issue of privacy, which is extremely important. But there is a competing element here where I think it just needs to be tightened up significantly. And, in addition, another concern that we bring to your attention is on page 5, Section 8, and I do think that on line 4, you might also want to include the word "employer." So an employer would have a cause of action under this, certainly based on Section 6, page 4, Section 6, line 4: an employee shall not download an employer's proprietary information or financial data to a personal Web site or to social networking site without authorization from an employer. Those sorts of things can happen. It can happen with any number of employers, it certainly can happen with cities. We've actually had that experience at the League of Nebraska Municipalities and we're a nonprofit corporation. It seems to me that an amendment to Section 8 making that clear that the employer also under this would have a right would be important. So in closing, we're neutral on the bill. We support the overall concept. I think it's extremely important. But the challenge for this committee is, how do you anticipate the kinds of electronic issues that will be coming in the future to make sure that you cover as many of those as you can? And then secondly, how do you balance

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

Business and Labor Committee
January 28, 2013

those kinds of needs that Chief Lamken had brought to you and that others have brought to you today in terms of concerns that are really legitimate concerns that need to be acted upon? With that I am happy to respond to any questions you might have. [LB58]

SENATOR LATHROP: I see no questions. Thanks, Lynn. [LB58]

LYNN REX: Thank you. Appreciate it. [LB58]

SENATOR LATHROP: We appreciate your thoughts, thoughts of the league. Anyone else here in a neutral capacity? Seeing none, Senator Larson to close. [LB58]

SENATOR LARSON: Thank you, members. Any time the ACLU and the NSEA comes in on one of my bills in support, I know I'm doing good because...(laugh)...a few things, and I...and to follow up and they may be a little scattered as I run through these, so please excuse me. One thing that I just heard on the last testifier, you know, it is hard to anticipate things. And I think my two years on the Judiciary Committee, we dealt with a lot of things that with, you know, with evolving technology how do we write these into our statutes? And...and well...and, you know, new drugs there being, we're always making new drugs illegal and everything else. Some things you can't anticipate what is going to come next; obviously, that's technology, but the thing that I think we do need to move forward on is, yeah, we can anticipate it, but we do have certain things now that we can make sure are protected. A few things that a number of people mentioned, concerns about information that is brought to employers, that's not covered in the bill. You know, information that, you know, somebody else sees or just being a good citizens and they say, I saw this, you know, that isn't restricted for the employers to act on information. Obviously, we talk about conduct...employers can conduct an investigation based upon the receipt of information about employee wrongdoing. I mean, I think that's pretty clear that, you know, we're giving employers that authority if they have the information of employee wrongdoing. You know, also, I mean, an employee could "friend" a boss and therefore they're opening up to investigation. I'll close real quick and kind on...on what Senator Chambers and Mr. Peterson said. You know, I really do think that we have a right to privacy; and to steal your words, Senator Chambers, you know, we have to be very careful about how the space and dignity of people are invaded. And I think this bill is a step towards that and we have to ensure the civil liberties of our individuals and that's something that I think we are all are very cognizant of. And I appreciate your guys' time in the hearing. [LB58]

SENATOR LATHROP: I have a hypothetical for you as I'm listening to this. This is...this is...strikes me as very, very complex because on the one hand I get somebody's right to privacy, and if it were the mail and it's delivered to my house from...a letter from Senator Chambers to me, no one is going to open that but me. And no one is going to read it but me, or anybody I share it with. But let me give you a hypothetical briefly. If you are a

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

Business and Labor Committee
January 28, 2013

school district and you are about to hire a teacher and you don't get on the teacher's Web site or on the teacher's Facebook account, but somebody says, you know, they let that teacher go because there's a picture of that teacher with a 16-year-old student on her Facebook account or on his Facebook account. [LB58]

SENATOR LARSON: This teacher has already been fired is what you're...they let... [LB58]

SENATOR LATHROP: It doesn't...no, no. [LB58]

SENATOR LARSON: Oh, okay, because you said, they let that teacher go. [LB58]

SENATOR LATHROP: They're moving districts. They're going from Gretna to OPS. You know, there's a picture of that teacher with one of her 16-year-old students; got her arm around the student. And now you're the school district. Part of the problem with Facebook in my judgment or my experience is it also is a terrific rumor mill, a lot of stuff that is just nonsense that gets posted on there. But what if you're a school district and now you've learned through rumor that there's a picture on there that shows the teacher with an underage student and something that would suggest a relationship? So should the school district that's contemplating hiring this person be charged with the knowledge? Because I can tell you this, if that teacher assaults a student at the new school district, there's going to be a lawsuit. Right? And should that school district be allowed to get on there by one means or another, which is another problem with that Facebook thing, which is creating a fictitious person? And I...from whole cloth I make up Tom Smith and I give him a job and I give him an education and a hometown and a couple of phoney friends and now he's a person. And now that person is trying to "friend" the guy who is trying to get the job. You know, I hear everybody saying, we love the idea of privacy, but there's some really serious issues as soon as we cloak this with some protection, because a lot of people can be doing things that are criminal that would expose an employer to liability. Jim Smith, our friend from District 14, runs a garage door opening business. He has to be careful that he doesn't hire somebody who was a former burglar. What if he finds out that there's some guy that's, you know, got a picture on Facebook with a stolen TV and he knows about it? Could he look into to it or not look into it? And all I'm suggesting to you is, as we try to work through those issues, those are some of the questions I would have and some of the things...and I don't know if anybody has thought all that stuff through. [LB58]

SENATOR LARSON: And I'll...just...obviously, we can all have hypotheticals and I come back...it doesn't stop an employer from conducting an investigation based on the receipt of information. [LB58]

SENATOR LATHROP: It's not an employer, it's a prospective employer and under your bill they're prohibited from even looking. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LARSON: And that is something...if you want to change. But we...and all I'll say is we can have all the "what ifs" in the world and every piece of legislation that comes through this body can have all the "what ifs" in the world. But in the end we have to decide whether or not we're going to act or if the policy or the situation in which the policy is trying address is important enough to protect those citizens. Is there a reasonable...we have to decide is there a reasonable amount of concern to protect individuals from either employers, in this instance employers, from invading their privacy; or are we not that concerned about the potential of employers invading... [LB58]

SENATOR LATHROP: The easy solution would be Senator Chambers'. If you're crazy enough to put that stuff on there, just plan on everybody seeing it. That really is the easiest solution probably. And just say, you know what, guess what, you don't have an expectation of privacy. If you want to put stupid stuff on Facebook, I don't care if you limit it to 200 of your closest friends, it's still on the public domain because I don't know how we sort through a prospective employer's liability. [LB58]

SENATOR LARSON: In today's ever-changing technological world, I would say that's shortsighted. [LB58]

SENATOR LATHROP: Well, we'll see. Senator Chambers. [LB58]

SENATOR CHAMBERS: The person has a right to do what he or she wants to do within his or her own home. Now, a person can walk around naked, but if the shades are up, there's no expectation of privacy; or do you think there would be? [LB58]

SENATOR LARSON: If the shades are up, you're letting anyone see. In a...I think that's the point with...if you want to use Facebook or Twitter, you... [LB58]

SENATOR CHAMBERS: Well, do you remember when the duchess was walking around outdoors in the state of seminudity and people all over the world were outraged because it was the duchess whom a person got photographs of and said her privacy was invaded? Were you on the side of those who said the one who took the photograph was right, or on the side of those who said her privacy and dignity should have been respected and the photograph should not have been taken? [LB58]

SENATOR LARSON: When was this? I don't remember this, so (laughter)... [LB58]

SENATOR CHAMBERS: Just a few weeks ago. Just a short time ago. [LB58]

SENATOR MCGILL: Kate Middleton. [LB58]

SENATOR ASHFORD: A couple of months ago. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LARSON: I missed the tabloids. [LB58]

SENATOR CHAMBERS: It was published in newspapers, it was on television, and...do you live in a cave? (Laughter) [LB58]

SENATOR LARSON: I missed that one. [LB58]

SENATOR CHAMBERS: Well, assuming what I'm saying is true, she did not have an expectation of privacy, did she? [LB58]

SENATOR LARSON: I think she...I think one thing that we have to be cog...again, very mindful of is that these on-line social media sites have user agreements that I think, if you want to use the blinds in your home... [LB58]

SENATOR CHAMBERS: You're in the realms of the "what ifs." [LB58]

SENATOR LARSON: When you signed that contract with that social media company, you were essentially choosing, through that user agreement, that contract you're signing with the company, you're saying, I have the ability to put those blinds down. You're saying, just because they're on the Internet, the blinds are up. [LB58]

SENATOR CHAMBERS: And here's the thing, right there, this is a contractual right. This is not something created in the law. This is between you, the user, and me, this provider. And I'm telling you, I'm making representations about what I can do. And I may represent to you that I could do something that I cannot do. I cannot ensure your privacy. Now, I am not as a policymaker, for everybody in this state, going to let an agreement between two people where money is exchanged and that is the basis of creating privacy between them cause me to render a decision and a judgment where there are a lot of "what ifs" which cannot be answered to my satisfaction. I see the complexity, as Senator Lathrop mentioned, as others have mentioned, who are for and against the bill. And a judge and a lower court is in a position that nobody else is in to the same extent. When a case comes before a judge in a lower court, that judge must make a decision, no choice. That judge must decide one way or the other. The judge may be conflicted. The judge may say the evidence is equal. So if it's a criminal case, should I say, tie goes to the accused? Or if I'm a conservative, should I say, well, to protect society, even though the law says unless proved guilty beyond a reasonable doubt, there is some suspicion here so I'm going to find him guilty? Either way that judge must make a decision, but there are appellate courts to make corrections of what was done. Those courts can either say, yea or nay, or that, we're not going to act. They can say it's outside their jurisdiction. When something is brought before us, our decision can be not to pass the bill, not to kill it, hold it, and see what comes forward. But the "what ifs" are very important, especially in an area where everything practically is new.

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

Business and Labor Committee
January 28, 2013

And we're talking about a very lucrative enterprise and where there are large amounts of money involved. People's judgment can be swayed. Walmart did that in various countries by bribing officials. Other American companies have done the same thing. The European, you've heard of the European...what should I call it, in case you haven't heard the official name? No, he might not have heard "European Union", he might think that's a workers group because he is not aware of what... [LB58]

SENATOR LARSON: Oh, I know what the European Union is, trust me. [LB58]

SENATOR CHAMBERS: Okay. You're thinking of looking with much greater scrutiny at all American corporations and companies because of the way they operate. So, the dishonesty, the corner cutting of Americans when money is involved are well-known throughout the world to the point where they're going to be examined. Now, when I see something that involves large operations, I do have an automatic skepticism, but my mind is open. I don't think it's wise to dismiss the "what ifs" when you're talking to those who must make the decision. If the "what ifs" that are very serious to you...to us are dismissed by you, then it creates a possible response and reaction to what it is you're presenting. This idea might be good, but it is not so valid and clear cut that it's going to carry its own weight by itself. I meant it when I said I'm going to keep my mind open. I will listen to everything that everybody says, because I don't have the ultimate answer. I think that it's a mixed issue, as I tried to point out, where I see the police activity different from that of a private citizen. And I will talk to you, not just here because it will take too long, to hear other views you have, ask my questions, and you might be able to allay some of my concerns. [LB58]

SENATOR LARSON: Be happy to talk to you, Senator Chambers. [LB58]

SENATOR CHAMBERS: So even though you dismissed us in that offhand, flippant manner, I'm not going to hold it against you for good. But just to give you a little advice, you're a young man. The old bear has an obligation to teach the young cub how to avoid possible pitfalls. That's all I'm doing. (Laughter) [LB58]

SENATOR LARSON: What do you consider young? [LB58]

SENATOR CHAMBERS: Okay. [LB58]

SENATOR LATHROP: Senator Harr, please. [LB58]

SENATOR HARR: Well, first of all, thank you for bringing this bill, Senator Larson. I mean we have an ever-evolving expectation of privacy in our society and I think it's important that we do have a conversation and decide where we want it to be, and I think we as policymakers probably should do this as opposed to the courts. So thank you for bringing it. But that being said, I have to agree with a lot of what Senator Chambers

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

Business and Labor Committee
January 28, 2013

said. And, you know, we talk about the ever-evolving world of electronics--Instagram. Now any picture I post on Instagram, is there...if you read that contract, it states very clearly in there that they can use it however they want, they see. So under this legislation, would I be allowed to go and look at any employee or potential employee's Instagram picture? Because you have waived it to Instagram, does it now apply to the employer? [LB58]

SENATOR LARSON: I think...I'm not as familiar with Instagram as others, but I think with Instagram you can still have...restrict your...the Instagram profile or whatnot. Now you may waive the rights exactly to Instagram through that contract by using that application, but does that mean that you waive your rights of privacy to every other individual? I think every time you "friend" someone on Facebook or allow someone to access your Twitter account, you're waiving your privacy rights to that individual, but you still have some expectation of privacy to those that you haven't given access to. [LB58]

SENATOR HARR: But you pierced that expectation of privacy because you no longer control it. You have given Instagram complete control and they...you have, by definition, I guess, you've "friended" them up-front, is what you're saying, so they're now your friend. [LB58]

SENATOR LARSON: Yes. [LB58]

SENATOR LATHROP: And they can retweet. [LB58]

SENATOR HARR: And how does this work on MySpace? [LB58]

SENATOR LATHROP: I mean with a button they can retweet, right? [LB58]

SENATOR LARSON: Would it? [LB58]

SENATOR HARR: I guess, you know, we have to remember that how we make money and how they make money off of this is they are taking our data and they are selling it to a third party. They don't give this away for free. They don't do this out of kindness. They do this to make money. And they take all that information about you and sell it to a third party. And I'm not quite sure that when you...like I said, I'm happy we're having this conversation and I think we're going to have to have this conversation a little bit more in depth, but when you...you are basically giving away all that information about yourself. And it's one thing when I give it to a friend. I get that. That's fine. But I'm giving it away to more than just a friend. I'm giving it away to a corporate entity. As Senator Chambers brought up so eloquently, the EU is evaluating this and there's a reason they're evaluating it. I'm not sure if you do have an expectation. I think from day one you may have waived that expectation of privacy. I, personally, do not have a Facebook page, I do not have a MySpace page, I do not have a Twitter account, I do not have a

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

Business and Labor Committee
January 28, 2013

(inaudible)... [LB58]

SENATOR LARSON: I think there is a Burke Harr fan page on Facebook. [LB58]

SENATOR HARR: There is, but that's my account but not a personal, that's right, and it's a conscious decision I made. If I want to protect my privacy, there already is a remedy for that and that remedy is, as Senator Chambers says, do not write. And so I think if we...that this...we are and we need to have this conversation about this ever-evolving expectation of privacy. [LB58]

SENATOR LARSON: Real quick, and you brought it up in terms of third parties selling information, I think you probably understand and if you want to have the conversation, we need to start having conversations about things such as Gmail.com. They sell every...all the information under your e-mail,... [LB58]

SENATOR HARR: Including our legislative. [LB58]

SENATOR LARSON: ...including our legislative accounts. Anything that's written on our legislative accounts, they have access to that information and are selling it to third parties. Now does that mean, since that's a...you know, are we giving them the access or essentially, since we agreed to them, are we giving them access so employers can access personal e-mail accounts now? Since we essentially have given, you know, since we pierced the scope of that,... [LB58]

SENATOR HARR: The veil, pierced the veil, yeah. [LB58]

SENATOR LARSON: ...and in terms of if you want to use your Instagram, your Instagram approval, so...but yet we have laws of, you know, privacy laws. [LB58]

SENATOR HARR: That is exactly the function. [LB58]

SENATOR LARSON: But I'm just saying, you...to use that as a concept of, oh, we've already veiled that... [LB58]

SENATOR HARR: Pierced the veil. [LB58]

SENATOR LARSON: ...or pierced that veil, I'm sorry, I can't...don't have the legal term as you did, but do employers have the right to ask for our e-mail passwords then, since they're on-line? And I think that raises a...and under that example you're saying, yes, they do, because we've pierced that veil. [LB58]

SENATOR HARR: It's a great question. I don't know. And I don't know where the line is. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LARSON: And I think that's...and I think this is something that starts to protect that. What's the difference? At that point, maybe Gmail is just social media. [LB58]

SENATOR HARR: Great question, and that is, I mean at the end of the day that is the question: Where do we want to draw that line and how do we want to draw that line? What seems like a very, as Senator Lathrop said, seems like a very simple bill, probably warrants a little further conversation, more than just the hour and a half we've given it so far. But you're exactly right, in this day and age, it's not so much...we have to remember, we're not so much getting them giving us a service. We are giving away our information to a third party. [LB58]

SENATOR LARSON: As state senators, yeah, we are. [LB58]

SENATOR HARR: They aren't...yeah, they aren't selling us a service. It's what we're giving them. It's not what we're buying; it's what we're giving them. And so we have to think about that when we are looking at privacy issues: Have we already given that away? Have we given our pie away for free and now we want it back? Well, it might be too late. [LB58]

SENATOR LARSON: As state senators, we protect our e-mails from the public, except Gmail. Gmail has access to all our e-mails, but we protect them from the public, where our e-mails aren't, you know, publicly... [LB58]

SENATOR HARR: One would argue we...one may argue we pierced the veil there, because how can we say Gmail can look at our mail and no one else can? Some would... [LB58]

SENATOR LARSON: Which we did. [LB58]

SENATOR HARR: What's that? [LB58]

SENATOR LARSON: Which we've done. [LB58]

SENATOR HARR: Well, we didn't have Senator Chambers to protect us at that time. [LB58]

SENATOR LARSON: (Laugh) Yeah. [LB58]

SENATOR LATHROP: Okay. Well, that was a great discussion. [LB58]

SENATOR LARSON: Thank you. [LB58]

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

Business and Labor Committee
January 28, 2013

SENATOR LATHROP: We appreciate the bill. I mean that very sincerely. It's one of those things that will take a lot of thought before we... [LB58]

SENATOR LARSON: I'm happy to work with the committee... [LB58]

SENATOR LATHROP: ...balance all the interests. Sure. [LB58]

SENATOR LARSON: ...on the bill to make it a better piece. [LB58]

SENATOR LATHROP: (Exhibits 6 and 7) Okay. Before we close the hearing, I do have two letters: one from the Department of Corrections, state of Nebraska Department of Correctional Services, signed by Bob Houston in opposition; and another from the city of Lincoln, signed by their assistant police chief, who suggests making some exceptions. And those will be made part of the record. And that will close our hearing on LB58. We'll be just a moment while we wait for Senator Bolz to arrive. Okay, we're ready to go, I think, with LB297 and Senator Bolz's first time through Business and Labor Committee. Welcome, Senator Bolz. [LB58]

SENATOR BOLZ: (Exhibits 1, 2, and 3) Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Kate Bolz, that's K-a-t-e B-o-l-z, and I represent the 29th District in the Nebraska Legislature. First, I would like to state my full support for the current provision that allows Nebraska's first responders, our friends and neighbors who respond to difficult and often traumatic situations, to access the care and treatment they deserve. Second, I would like to share with you that the bill before you creates equity for coroners who are called upon to occasionally witness the same situations. This is a change prompted by the experience of a coroner serving in North Platte, Nebraska. And I would like to thank Senator Hansen, who represents Lincoln County, for cosigning this legislation. Coroners investigate deaths that are sudden, unexpected, and unexplained, or that are thought or known to involve external circumstances, such as injury, poisoning, violence, or circumstances that warrant special investigation, such as deaths in custody of law enforcement personnel or agencies. This bill, however, is not aimed at the ordinary but at those extraordinary circumstances of which an individual cannot predict his or her response. There are several reasons why coroners deserve to be equally included in this law. First, unique only to Nebraska, county attorneys serve as coroners. As both coroners and prosecutors, they play a role in crime scene investigation. Current law does not include coroners or, more specifically, county attorneys acting as coroners. Further, the county coroner does not have...does have authority to delegate coroner duties to a law enforcement official. If a law enforcement official serving as a coroner would experience a mental injury serving in this very same role, the law enforcement official would receive workers' compensation, according to the definition of a first responder, whereas a coroner would not. This change would provide equity to coroners and law enforcement

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

Business and Labor Committee
January 28, 2013

officials providing services in crisis situations. To provide an example for you, in Lancaster County a county attorney has delegated the duty of a coroner to the sheriff's department. Typically, a duty (sic) would fulfill the role of a coroner when called. In Lincoln County, by contrast, and in Douglas County it is the county attorney or deputy county attorney carrying out those duties. It is important to note that this legislation does not add coroners to the list of first responders. Rather, it adds coroners separately to the list of people eligible for mental health workers' compensation coverage. There are also reasons that coroners deserve to be uniquely included in this legislation. In Nebraska's unique system, county attorneys serve as coroners with only short-term training. As professionals trained in law rather than in medicine or emergency response, county attorneys may have less of a foundation to prepare them for difficult circumstances. Nebraska asks county attorneys, as coroners, to face difficult scenes of natural and unnatural death. If these professionals face mental health challenges as a result, they deserve our support. Finally, I would like to share with you that while coroners may have opportunities to delegate tasks or make determinations based on medical examiner reports without going to the scene, that is not the current practice or expectation in every circumstance. Many county attorneys are expected, in the practice of their local office, to attend scenes of crimes and accidents in person. Further, the nature of the work and of emotional responses to difficult circumstances is unpredictable. When we ask coroners, as a part of their duties, to respond to troubling circumstances, we should support them when they do. In closing, I share with you a letter of support from Ms. Jen Wellan, assistant county attorney in North Platte who shares her personal story involving a response to a call where children were involved, the positive effect that therapy had for her, as well as her personal request that this change be made. I ask you to advance LB297. [LB297]

SENATOR LATHROP: Senator Chambers. [LB297]

SENATOR CHAMBERS: Senator Bolz, this is the first chance I've had to be sitting on a committee where you came and I'm glad for the opportunity. Now as you pointed out very well, the word "coroner" is a word to whom we don't even know for sure it will be applied in a given county. So my personal view is to be reluctant to take a word, which does not designate any definite position or any definite individual, and put that word in a statute such as this. Even though the term "first responder" might be broad, there are additional comments. For example, this individual who's going to get these benefits, "Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment." Now this coroner, if it's a county attorney, and a county attorney is not trained, then we're, I hate to use cliches, comparing apples and oranges. It may be unusual and extraordinary for a county attorney, but a coroner, by definition, if you're going to go by a definition, would be a person who is exposed to these types of things, maybe somebody with a head hanging on by a cord of flesh or somebody with a heart torn out, not that you'd want to

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

Business and Labor Committee
January 28, 2013

see it, not that it's not to some degree traumatic. But this statute is written with the understanding that there are certain very unpleasant, disturbing things that are going to be seen. So I am unable, in good conscience, to put this term, that really has no specificity, on the same par with first responders and the additional language that tends to modify the type of person who is qualifying when there is a strictly mental injury without any physical evidence. And I'm just saying that so you'll understand my position and why. [LB297]

SENATOR BOLZ: Certainly. And I do appreciate that concern and I would be happy to work with you on an amendment, perhaps, that would say, "county attorneys acting as coroners." I think the special and unique circumstances where we ask county attorneys who are not necessarily prepared for those gruesome circumstances... [LB297]

SENATOR CHAMBERS: That wouldn't change it for me because the person still is a county attorney and chooses to act as a coroner or a county chooses not to designate a person who is a coroner who's going to do this work. [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR CHAMBERS: So when you have odds and ends of people who might be available and we're going to say, we'll put the coroner hat on you and you run out there, and the person is not even trained to do what you think a coroner should do, then that's on the subdivision that put that person into that situation... [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR CHAMBERS: ...without that person being qualified and competent. But to put a statute in place that applies all across the state... [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR CHAMBERS: ...and, in a sense, maybe exonerates these officials who appoint people as coroners... [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR CHAMBERS: ...from responsibility for putting somebody unqualified into that position is not something I could do. In other words, dress a monkey as you will, a monkey is a monkey still. So if the county attorney is going to act as a coroner, that person still is a county attorney. [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: But I will talk to you later,... [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR CHAMBERS: ...if the bill survives your getting back to your office, and see if there's anything that can be done... [LB297]

SENATOR BOLZ: Certainly. [LB297]

SENATOR CHAMBERS: ...to change my mind. [LB297]

SENATOR BOLZ: It's my understanding, and in the handouts that will be coming around we pulled some statutes that articulate exactly the role of coroners and exactly who coroners...to whom coroners may delegate their duties. So I think there is some specificity existing in law about exactly who we would be referring to, whether we use the term "coroner" or "county attorneys acting as coroners." [LB297]

SENATOR CHAMBERS: But if the coroner can designate somebody else to do the work, then the coroner is not the one doing this. To say that an apple is a carrot doesn't make it so. But if a person is a tyrant and whatever he says becomes what he says, then it is so. But in the real world, it's not. Just as when Galileo was being stretched because he said the earth moves, and they stretched him until he couldn't take it anymore and he said, all right, the earth doesn't move, the sun moves around the earth, the earth doesn't move. Then when they released him, it's stated anecdotally that Galileo said, but it does move. So they can say that the county attorney is the coroner, but the county attorney is still the county attorney and not the coroner. But I will look at whatever handouts they've got and I'll listen to what they say. [LB297]

SENATOR BOLZ: Appreciate that. [LB297]

SENATOR CHAMBERS: And that's all that I would have. Thank you. [LB297]

SENATOR LATHROP: Senator Harr has got a question. [LB297]

SENATOR HARR: Thank you. Thank you, Senator Bolz. I guess my question is a little different than Senator Chambers', because I think we all agree, like first responders, there is somebody who has to do this job. And so if this does affect that person, I don't necessarily have a problem with them because this is in the scope of their employment. My question is why do you limit to just coroners within the county attorney's office? And how am I supposed to know, if I go to a crime scene, if I am both the coroner and the prosecutor on it, how do I know that I was injured and how does...how can one determine if they're injured in their role as coroner or in their role as prosecutor, investigating a crime scene, seeing these horrific actions? [LB297]

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

Business and Labor Committee
January 28, 2013

SENATOR BOLZ: I'll do my best to answer your questions. In the specific circumstance of Ms. Wellan, Ms. Wellan is asked by the county attorney's office to carry a pager and to respond to those pages and to serve as the coroner in circumstances that happen during her call. So in her circumstance, it's very clear that her role there is the role of coroner. But I think you're also getting at one of the core issues that leads us to address this bill, and that is that there are deep inconsistencies in the way that different roles play out for coroners in our state. In the handout that perhaps we could get...okay, in the fact sheet that you'll see in front of you, you'll see examples in Lincoln County, in Lancaster County, and Douglas County that treat coroners in very different ways, and I think part of the core inequality here is that law enforcement officers acting in one role do get this coverage, whereas coroners acting in the same role do not get the coverage. [LB297]

SENATOR HARR: And maybe I wasn't very clear. Okay, so I'm Burke Harr and I am a deputy county attorney and I go to a crime scene and I am wearing the pager because at this time I happen to be the acting county coroner. But at the same time, I'm also out there because, let's be honest, that's not a full-time job always in every county, or I might be covering for someone who's gone and I have my other duties plus I am the acting county coroner, okay? Now I go to a crime scene and it is horrific. Let's make up a scene. It is a mother, a child killed, and two children killed, okay, and it is God-awful. You name it. The body has been there 13 days; the bodies, boys, have been decapitated; one of the bodies is on the mother and you can tell, by the way it's happened, that the mother was killed after the child. And I'm there as both the prosecutor and a coroner. This had an awful effect, okay? How do you determine whether I was harmed as the coroner or as the prosecutor who was going to that crime scene to try to figure out what's going on so I can turn around and tell a jury to give them an accurate picture if I have been harmed? [LB297]

SENATOR BOLZ: I would have two responses to you. The first is that if you were wearing multiple hats, if you were playing dual roles,... [LB297]

SENATOR HARR: That is correct. [LB297]

SENATOR BOLZ: ...then I think whatever coverage you have for whatever role should apply to you. Whether you're playing that role 50 percent or 60 percent or 20 percent, I think your access should remain the same. [LB297]

SENATOR HARR: So if you are a coroner, you are always a coroner, even if it's just 1 percent of your job, and you're injured on that 1 percent of the job and the other 99 percent is something else. [LB297]

SENATOR BOLZ: If you are acting as a coroner, and a coroner does have specific

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

Business and Labor Committee
January 28, 2013

duties. He or she may call for an autopsy or call for a test. And if he or she is doing that job, is playing that role, then I think they deserve coverage. [LB297]

SENATOR HARR: Okay. [LB297]

SENATOR BOLZ: Beyond that, in your scenario there, and this may be a difference that I have from the committee, but I think that if that person is playing a public role, that he or she deserves access to mental health assistance. [LB297]

SENATOR HARR: Okay. So let's take it a step further. I am no longer acting county coroner. I have taken the beeper and I've left it outside, but I am acting as the county attorney and I am now seeing, for all intents and purposes, a horrific crime scene. Why do I no longer get that protection of mental-mental? [LB297]

SENATOR BOLZ: Senator, I would also be willing to work with you to include prosecutors, if you think that they also may be vulnerable to a mental injury. [LB297]

SENATOR HARR: Well, I'm asking you why. Do you think prosecutors should be included? [LB297]

SENATOR BOLZ: I think that the county attorney in Nebraska has a specific and unique role and that our statutes should reflect that. [LB297]

SENATOR HARR: Okay. So I'll ask you, yes or no, do you think prosecutors should be included, county attorneys and/or deputy county attorneys should be included? [LB297]

SENATOR BOLZ: I think certainly a case could be made for that. [LB297]

SENATOR HARR: Okay. Let me ask you, do you, yes or no, not a case being made for it,... [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR HARR: ...a case not being made for it, but how do you personally feel? [LB297]

SENATOR BOLZ: Uh-huh. [LB297]

SENATOR HARR: Should deputy county attorneys and county attorneys be included in this? [LB297]

SENATOR BOLZ: Uh-huh. For me, I would not include the prosecutor role because I think that the prosecutor role has more discretion in choosing that career path, whereas

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

Business and Labor Committee
January 28, 2013

the county attorney may or may not wanted to have originally taken on the role of coroner but has been asked to do so in the line of duty. [LB297]

SENATOR HARR: No one...I think we probably would disagree there... [LB297]

SENATOR BOLZ: Okay. [LB297]

SENATOR HARR: ...because no one forces you to be a coroner or a county attorney. [LB297]

SENATOR BOLZ: Uh-huh. Uh-huh. [LB297]

SENATOR HARR: You kind of choose whether you want to be or not. [LB297]

SENATOR BOLZ: Okay. [LB297]

SENATOR HARR: So I think in that regard, I think we're going to disagree. But thank you. [LB297]

SENATOR BOLZ: All right. Sure. [LB297]

SENATOR LATHROP: Okay. I think that's it. [LB297]

SENATOR BOLZ: Okay. [LB297]

SENATOR LATHROP: Do you want to stick around to close? [LB297]

SENATOR BOLZ: Sure. [LB297]

SENATOR LATHROP: Okay. Then we will take proponents. Those who are here to testify in favor of the bill, you can come forward. [LB297]

RICH HITZ: My name is Rich, R-i-c-h, Hitz, H-i-t-z. I'm appearing on behalf of the Nebraska Association of Trial Attorneys and we are appearing for the bill today. We're here essentially to support this bill in that it's about someone that's going to make a claim that they were injured in the course and scope of their employment and they need help. And the purpose of work comp law is to give people help and get them back on the job. And this being a coroner that's added to this is someone that is going to respond, and if they are unable to work and need the assistance of the work comp system, then they ought to be able to make their claim and be able to...so we can get them back on the job and working, and that's what we're here today to support. [LB297]

SENATOR LATHROP: Very good. [LB297]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: Now there is a status that the law recognizes as first responder, and that would not include...well, let me ask it this way. Would it include anybody who is the first one on a scene where a person needs help and that individual either attempts to give help or attempts to summon help? Should first responder be expanded to include whoever is the first one on the scene? [LB297]

RICH HITZ: If they are responding in the course and scope of their employment. [LB297]

SENATOR CHAMBERS: Suppose a teacher in a classroom hears a scream out in the hall and runs out in the hall and sees...and it need not be necessarily a crime but somebody who is horribly injured. Say that a child fell into the trophy case and this glass cut through veins and arteries and there's blood everywhere, and it's so traumatic that she faints. Should she be allowed to be considered as a first responder or, without that designation, an employee who did or attempted to do what she might have thought it was her job as a teacher to do, which is to render aid? Should she be included, or he, the teacher, also? [LB297]

RICH HITZ: I believe that they would not be included as a first responder, but they would be an employee of the school system and they would make their claim. The issue would become whether there was a physical injury that was included. I think that's the distinction. As a teacher, they would see an event and make a claim. They wouldn't fall under the first responder...under the statute. [LB297]

SENATOR CHAMBERS: Can a teacher claim mental injury without an accompanying physical injury? [LB297]

RICH HITZ: I believe the answer is no. [LB297]

SENATOR CHAMBERS: Okay. So if we're going to look at the damage done to the individual, why exclude the teacher, who has no reason to think he or she ever would be confronted with that, but somebody who could have the coroner hat put on his or her head on whom could know that at any time he or she might have to go to one of these scenes? Why should the coroner be given more protection than a teacher? [LB297]

RICH HITZ: Because I think that's what we're asking them to do is to go into that situation, and it's going to be the unusual case where someone that is trained to do that role is so impacted or affected that they need the assistance. And again, it's the purpose of work comp law to provide the care or the treatment in order to get that person back working. [LB297]

SENATOR CHAMBERS: I'm aware of that, but we're categorizing those who suffer a

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

Business and Labor Committee
January 28, 2013

traumatic experience without an accompanying injury who are going to be allowed this compensation, but we're not allowing it to everybody similarly situated. You've got to have a particular designation. And what is being presented here is somebody whose job it is not, somebody who does not carry that title, somebody whose job does not say the circumstances under which he or she will carry that title but it's up to the whim of a county attorney. I just ate some oysters and drank some bubbly and my stomach is upset and I don't want to go out there. Amanda, go out there and see what you can do. And she goes out there and she hasn't been trained and she has...and we're not even questioning the validity of the reaction, and she has this reaction. It may not be out of the ordinary at all in terms of this kind of scene, but it's totally out of the ordinary for her. The fact that she's named a coroner means that she is not trained or anything else. It's just one occasion. So when you say it has to be extraordinary and unusual in comparison to the normal conditions of the particular employment, her employment has nothing to do with this. So it's extraordinary and unusual. And I'm not looking for a definitive answer from you but pointing out why this bill...I'm not sympathetic to what this bill is doing, not from the standpoint of the individual. But if we were going to do what I'm sympathetic toward, it would be any person who attempts to render aid and it results in these mental injuries that can be established, that person ought to be entitled to the same consideration. That's my view and there's nothing that I'm asking you to say to overcome it but to let you know why your comments have not persuaded me any more than Senator Bolz's comments. [LB297]

RICH HITZ: Understand. [LB297]

SENATOR LATHROP: Senator Wallman, did you have a question? [LB297]

SENATOR WALLMAN: Yes. Thank you, Chairman. Thanks for coming. Yes, like you...like Senator Chambers was talking about school districts, you know, like the terrible tragedies, most school boards put in mental health counselors for students as well as teachers, and that's in...it's in their budgets. [LB297]

SENATOR CHAMBERS: But I'm not just talking about counseling. I'm talking about compensation. [LB297]

SENATOR WALLMAN: Compensation? [LB297]

SENATOR CHAMBERS: Uh-huh. [LB297]

SENATOR LATHROP: Senator Hansen. [LB297]

SENATOR HANSEN: Thank you, Mr. Chairman. If you represent all the county attorneys, we have 93 counties, do we have 93 county attorneys? [LB297]

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

Business and Labor Committee
January 28, 2013

RICH HITZ: To make it clear, I'm with the Nebraska Association of Trial Attorneys. But as county... [LB297]

SENATOR HANSEN: I'm sorry. [LB297]

RICH HITZ: ...they're...the way I...I have the statute here and as far as the coroner, not...there aren't...some counties do not have coroners and they assign a physician. But actually, 23-1817, the sheriff is, where there is not a coroner, the sheriff becomes the coroner or they can assign a deputy to go out. [LB297]

SENATOR HANSEN: Do you know if the sheriff has any training in being a coroner? I think that's... [LB297]

RICH HITZ: It is my understanding they don't. I think that's another issue that we would say that there needs to be more coroner training, but for this instance the statute does allow the sheriff to act or to assign a deputy to go out and act as coroner. [LB297]

SENATOR HANSEN: Okay. Thank you. [LB297]

SENATOR LATHROP: I think that's it. Thank you, Mr. Hitz. [LB297]

RICH HITZ: Yep. [LB297]

SENATOR LATHROP: Anyone else here in support of LB297? Anyone here in opposition? Opponents? You can tell it's the first part of the year. People kind of shift around in their chair and they're not really jumping up. I expect in a couple of hearings we'll have people hopping out of their chair but... [LB297]

SENATOR ASHFORD: Or they won't come at all. [LB297]

SENATOR LATHROP: Or they won't come at all. Welcome. [LB297]

TIMOTHY CLARKE: Thank you, Chairman Lathrop. Members of the committee, my name is Timothy Clarke. I'm an attorney Baylor Evnen, here on behalf of NWCEF, officially in opposition to LB297. And I'll admit... [LB297]

SENATOR CHAMBERS: Excuse me. One thing: Could you tell us what those initials stand for? [LB297]

TIMOTHY CLARKE: Sure. Nebraskans for Workers' Compensation Equity and Fairness. [LB297]

SENATOR CHAMBERS: Okay. [LB297]

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

Business and Labor Committee
January 28, 2013

TIMOTHY CLARKE: And I'll have to admit at the outset that the reasons for our opposition, frankly, I couldn't have said any more eloquently than Senator Chambers has said. First and foremost, the problem is a definitional one in from county to county there are different people acting as coroner. In some cases it may be an individual with specific medical training, in other situations it may be the sheriff, in other situations it may be the county attorney. And within the statute itself there is this language that says it has to be unusual and extraordinary for someone in that capacity. Well, what is unusual and extraordinary for someone with medical training may be very different than a sheriff acting in this particular capacity or may be very different than a county attorney acting in this capacity, the latter two examples, people who don't have specific medical training. And we think that creates some problems. Beyond that there is an additional problem of where do you draw the line. If you say that coroners, who can be sheriffs in some situations, could be a county attorney, do you expand it to all county attorneys? And if you expand it to all county attorneys, as Senator Chambers points out, why not teachers who may be responding to a particular situation? And so again, for us, it's primarily a definitional problem and the reason we oppose the bill. Thank you. [LB297]

SENATOR LATHROP: Very good. Senator Ashford. [LB297]

SENATOR ASHFORD: Yeah, just so I understand this, and I'm sorry I missed Senator Chambers' line of questioning, but if...to me, any teacher, anybody who responds to a...and I've been to those tragedies. I wasn't there when...immediately afterwards but I've been to several of them and I didn't have anything to do with giving them aid or trying to save their lives. But I'll tell you, to me, if there's anybody that is in a position where they have to try and save the life of a child who's been shot in the head, to me, I don't care who they are, they should be given as much protection as the law can provide, because that is something that is unbelievable to witness. Even from coming maybe an hour later and not even seeing some of what those first responders or anybody else may see, it is incredible. So I'm not sure what Senator Chambers was asking. But I don't know where the line is drawn but one of the lines I would draw is if you're giving aid to a child who's five years old, who's been shot laying in their beds and they have to be taken care of, and we're not going to provide them with the ability to have workmen's comp or whatever it is, then I don't know who...what kind of country we are. But anyway, maybe that's not...just a statement, not a question. [LB297]

SENATOR LATHROP: Okay. I see no other questions. [LB297]

TIMOTHY CLARKE: Thank you. [LB297]

SENATOR LATHROP: Thank you. Anyone else here in opposition? [LB297]

ROBERT HALLSTROM: (Exhibit 4) Thank you. Chairman Lathrop, members of the

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

Business and Labor Committee
January 28, 2013

Business and Labor Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business, also appearing on behalf of the Nebraskans for Workers' Compensation Equity and Fairness, and have been authorized by Mr. Joseph Young of the Greater Omaha Chamber of Commerce to also express their opposition to LB297. For many of the same reasons expressed by Mr. Clarke, I am opposed to the legislation on behalf of the clients that I appear before you on behalf of. I would also note, even though this only applies to what would be referred to as public employees in the realm of a coroner, whatever capacity they are, sheriff, county attorney, etcetera, that our organizations have always been concerned about the slippery slope of how far we go in terms of expanding the coverage of the mental-mental benefits without the necessity of a physical injury to accompany. And from some of the comments that are made today, certainly those considerations and discussions continue to percolate as we talk about these issues. Be happy to address any questions. [LB297]

SENATOR LATHROP: I see none. Do I? [LB297]

ROBERT HALLSTROM: Thank you. [LB297]

SENATOR LATHROP: Wait a minute. [LB297]

SENATOR CHAMBERS: With all due respect to those who oppose the bill, and I'm not referring to anybody who was up here who testified, I'm beginning to feel like the lawyer who was put in the position of having defended Jack the Ripper. (Laughter) [LB297]

SENATOR ASHFORD: Those horrible visions (inaudible). [LB297]

SENATOR LATHROP: Anyone else here in opposition? Anyone here in a neutral capacity? All right, Senator Bolz to close, your thoughts. [LB297]

SENATOR BOLZ: I have two brief thoughts to share with the committee in closing, first relates to the previous comment made regarding the slippery slope. And I think the due diligence that this committee has given every bill before them today negates the concern of a slippery slope occurring, coming out of the Business and Labor Committee. Second, I would just ask that the committee consider the question of equality. If a sheriff serving in the role of a coroner, no matter if they were wearing that hat, if they were carrying that pager, they would be covered, whereas a coroner playing the very same role would not. I believe there's an issue of fairness at stake and I believe that coroners should be covered. And I thank you for your consideration. [LB297]

SENATOR LATHROP: Very good. Thank you, Senator Bolz. We appreciate that and your thoughts. And that will close the hearing on LB297 and bring us to LB21, which is mine. Good afternoon. [LB297]

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

Business and Labor Committee
January 28, 2013

SENATOR HARR: If you would like to begin, Senator Lathrop.

SENATOR LATHROP: Good afternoon, Mr. Vice Chair and members of the Business and Labor Committee. My name is Steve Lathrop, state senator from District 12. I'm here today to introduce LB21, which looks like a very short bill, and probably so short it's hard to put it into context, so let me provide a little context for LB21. About three years ago, I'm not sure of the exact year, three years ago I think, we passed the mental-mental bill, and that was the discussion of last bill introduced by Senator Bolz. The mental-mental bill carved out an exception in work comp. Generally, work comp requires a physical injury, and if you suffer a physical injury that's accompanied by a mental injury, like depression, you can be compensated under the work comp statutes for both the physical and the mental injury. On the other hand, if you have an emotional injury, purely emotional--so if you see something so gruesome that you cannot comprehend it and it forces you into posttraumatic stress disorder or some other mental or nervous disorder--that's not covered until or but for the exception that we made for mental-mental. The exception was carved out for first responders. This has as its origin, for those of you that remember--even during your time, Senator Chambers--we passed the first mental-mental bill in the wake of the Von Maur shooting, and that was ultimately vetoed by the Governor. We came back and the bill was passed, I think after you left, that provided for mental-mental coverage in work comp situations for first responders. The definition of first responders you'll find in the bill that Senator Bolz had before us just a moment ago. When we passed the bill on mental-mental, there was a great deal of discussion regarding the fiscal note, and the predictions were that we would spend millions of dollars each year on mental-mental injuries and this would get away from us. I'm happy today to report...so we put a sunset provision on it and today we're going to take that sunset provision out in LB21 and let mental-mental for first responders stand on the books. Before I came down here, maybe a week ago I contacted the Work Comp Court. And as those of you who know work comp, when someone gets hurt in your employment, you're obliged under work comp laws to file a report of first occupational injury. That means you have to tell the Work Comp Court that somebody suffered an injury at work because they keep track of those things. There has been one first report of occupational injuries filed with respect to the mental-mental bill since it passed. I think that's a pending claim. The advantage or the logic behind this, it is very important, particularly to the volunteer fire guy. The volunteer firemen, you know, they might be plumbers, they might be the guy that runs the theater in a small town. They have all kinds of jobs and one of which is they sign up to answer the bell when it rings. And three years ago when we passed this bill we heard testimony from the first responders and the volunteer guys who told us that what makes their job particularly difficult is oftentimes they know the person who they go to rescue. So there's a car accident. The guy in the small town that signed up to be a volunteer fireman goes to the scene and it's a family member or it could be a friend of the family, and oftentimes that's more than they can handle but not very often. And most of the time they take care of it with the

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

Business and Labor Committee
January 28, 2013

debriefings and the care they get at the firehouse, but once in a while they need the help. And the work comp is there to provide them with medical care, psychiatric care that does not have a copay and a deductible. And if they need time off work in order to overcome and to get the care and treatment they receive, they're compensated as well. What's the rationale for it? We spend a great deal of money, whether it is a sworn law enforcement officer or a fireman in Lincoln or is it a volunteer fireman in Broken Bow, we spend a lot of money training these guys. And getting them back on the job after they receive proper care is a benefit to the community and it is saving the resource, which is that volunteer fire person or law enforcement person. And for that reason, I would encourage your support of LB21, which will remove the sunset provision as it has not been the disaster it was predicted to be. [LB21]

SENATOR HARR: Senator Chambers. [LB21]

SENATOR CHAMBERS: Thank you. Senator Lathrop, I think I feel the need, on the record, to distinguish my position that I took on that coroner bill from this one. We are dealing with a discrete, identifiable category of persons who, when they are carrying out duties and responsibilities, you know who they are, you know what they are, you know what they're doing, and there's a difference between a person who is designated a volunteer firefighter and somebody who might see a fire and be going down a country road and maybe has a bucket of water and pours it on the fire. We're not just taking people who at random can be designated by somebody else to be in that capacity. So I do see the validity of what it is you're doing. I'm glad you're doing it. And I'm especially glad that you cited that statistic because usually, or often, these kinds of what I would call humanitarian, humane, compassionate bills will bring a parade of horrors about what will happen; it never does. This is one time when you have the concrete specific facts from an unimpeachable source, and I consider you unimpeachable when you're telling us what this unimpeachable source said, that I can easily and readily support this bill, even though the other one I am not in a position to do right now. [LB21]

SENATOR LATHROP: I appreciate that. [LB21]

SENATOR HARR: Thank you for those comments. Anybody else? Any proponents of the bill? Mr. Corrigan, a pleasure to have you down here. [LB21]

JOHN CORRIGAN: Thank you, Mr. Vice Chair. John Corrigan, C-o-r-r-i-g-a-n. I'm testifying today on behalf of Nebraska AFL-CIO in support of LB21. The AFL-CIO represents affiliates with members throughout the state of Nebraska who are first responders, who are covered by this bill, and this bill was a lesson in the art of the possible, that is, politics in the last...when it was passed. And so while we're very mindful of the concerns of some that maybe there are other people who are doing other jobs important in our society that should be protected, this class of people that are protected by this statute clearly are being asked to do the extraordinary on a daily basis

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

Business and Labor Committee
January 28, 2013

and deserve the protection. And the waterfall of claims that was a concern that resulted in the sunset has not manifested itself, and so the sunset provisions, for purposes of having some certainty in the law, should be removed and the bill should stand as a statement of policy by the Legislature. I would ask...I would respond to any questions if there are any. [LB21]

SENATOR HARR: Questions? Comments? Concerns? Seeing none, thank you, Mr. Corrigan. [LB21]

JOHN CORRIGAN: Thank you. [LB21]

SENATOR HARR: Any other proponents? [LB21]

MICHEAL DWYER: (Exhibit 1) Good afternoon. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I'm from Arlington, Nebraska. I'm a 29-year member of the Arlington volunteer fire department and captain of our rescue squad. I'm also a member of the Nebraska State Volunteer Firefighters Association legislative committee, and I'm here today to testify in support of LB21. In my 29 years as an EMT, I've responded to over 1,350 incidents, including fires, accidents, cardiac and breathing episodes, diabetic emergencies, farm injuries, and broken bones. I've rescued two cats from roofs, treated the wrong person once (laughter), and responded to calls in the middle of the night having forgotten to get fully dressed. I've also performed CPR 21 times, 4 times on children. All but two of those patients died. I responded to a partial decapitation, the death of my son's best friend, a school bus accident with 26 patients, and seven suicides, which is how my father died. While none of those calls were ordinary, I/we continue to respond until that one horrible call that takes us to the brink of quitting and, in some cases, to PTSD. That is why the protection afforded under LB780, the original bill, continues to be so important, especially for volunteers. For us, it's personal. So many of our calls, as Senator Lathrop mentioned, are with and for family and friends, and makes the recovery from a critical incident so much more difficult. Given the dangerous shortage of volunteer responders in Nebraska, it makes that recovery that much more important. The original sunset provision in 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 of fire service and EMS is not the kind that would encourage members to produce frivolous lawsuits. Not only as a firefighter but as a business person, a member of the Arlington School Board, and a board member of the Blair Area Chamber of Commerce, I can with good conscience and great confidence ask you to support LB21 and repeal the sunset provision of LB780. Truly appreciate Senator Lathrop's work on this issue and I would welcome any questions. [LB21]

SENATOR HARR: Thank you, Captain Dwyer. Senator Ashford. [LB21]

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

Business and Labor Committee
January 28, 2013

SENATOR ASHFORD: Yeah, go ahead. Do you want... [LB21]

SENATOR CHAMBERS: I was just going to say, I know chambers of commerce vary, but what's a good man like you doing associated with an organization like that? Just a little humor. (Laughter) [LB21]

MICHEAL DWYER: They're both good organizations, as is true of small-town business people and certainly volunteer firefighters. We wear a lot of hats sometimes... [LB21]

SENATOR CHAMBERS: Gotcha. [LB21]

MICHEAL DWYER: ...and sometimes those hats get bounced back and forth on a regular basis. [LB21]

SENATOR ASHFORD: Just a statement: There were, I think, in Omaha, 1,700 shootings over an 11-year period of time. We had the opportunity to take a look at those shootings and they were based upon the hospital emergency room admissions. And the average cost of those admissions is around \$28,000. Obviously, if someone is dead then there's very little they can do at the hospital if they're dead before they get there. But what's happened, at least in our city, is that because we have two trauma hospitals and we have EMTs that are able to get to the scene within minutes, that we're saving the lives of a lot of these kids. And so if we're talking about...what I don't understand, I'd like to hear, if there are any opponents to this, I would love to hear the opposition from any public entity that says somehow it's costing them money when we're...when the EMTs who are going to those scenes of those shootings and save the lives of umpteen numbers of people every single year, you know, let's say we have 200 shootings and maybe 30 or 40 result, unfortunately, in the death of a young person, many of them are juveniles, what the incredible savings to our society by that work is...well, first of all, it is calculable in numbers but is incalculable in human...the saving of a human life. Truthfully, I don't know of anybody more valuable than the work you do in our society and I would love to hear an argument on the other side that says somehow it's not good economics to intervene and to save the life of a young person who's 17 years old and has been injured by a drive-by shooting and the EMT person is there within five minutes and saved their lives. I'd love to hear the argument. I am so tired of hearing opposition to this bill, I would love to hear the argument on the other side. So I appreciate your service and your incredible service really. [LB21]

MICHEAL DWYER: Well, thank you. And if I could perhaps respond just real briefly to that, I think that Senator Lathrop touched on this and part of the dynamic of LB780, part of the objective of LB780 was to be able to take people who had responded, who had years of dedicated service and tons of training but really hit the wall on that one call. LB780 gives us at least a little bit of opportunity to retain them. [LB21]

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

Business and Labor Committee
January 28, 2013

SENATOR ASHFORD: Well, there's, for example, in Senator Chambers' district there's a fire headquarter or fire station in that area and they're called...and I asked these guys. I said, you know, how do you do it? And they're not filing claims with the Workmen's Compensation Court. They're out there doing their job, helping to save kids. And anybody that helps to save kids in my view is worthy of a medal as opposed to being somehow thought not to be eligible for workmen's comp because somehow they got into a, you know, a posttraumatic stress syndrome situation, which can happen but doesn't happen that often. Anyway, that's...I won't say anything more about this bill, I guess.

MICHEAL DWYER: Thank you. [LB21]

SENATOR ASHFORD: Thank you. [LB21]

SENATOR HARR: Any other questions? Captain Dwyer, thank you very much and thank you for all you do and for your 29 years of service to our great state of Nebraska. [LB21]

SENATOR CHAMBERS: And to our rural state of Nebraska. Don't be so generous with that word "great." (Laughter) [LB21]

DAVE ENGLER: Good afternoon. I'm Dave Engler, E-n-g-l-e-r. I'm the president of the Nebraska Professional Fire Fighters Association. We stand in support of this or sit in support of this bill right now, LB21. We were proponents of it when we were told that people were going to make all kinds of claims and everything years ago. I think it does show that Nebraska first responders have a lot of pride in what we do, but we are very pleased that that bill is there to protect those that do experience an extraordinary circumstance that does take them out of their employment for a brief period of time until we can get them to a point where they can return. I think the previous testifiers said a lot of the same things I was planning on saying, so I'll just open it up to questions if there's anything else. [LB21]

SENATOR HARR: Questions? Comment? [LB21]

SENATOR CHAMBERS: It's not a question. I would just say that however many people under these circumstances needed this kind of help should get it. The reason I say I'm glad that Senator Lathrop brought the statistic, it establishes that there are not just people flocking in to take advantage, if it's to be called that. But if it were 100, if it were 1,000 and there's some means to minister to these people's need, it should be done. In the same way they say that people overseas fighting, well, really, that they're American soldiers but they're not fighting for American freedom and all those things they say, but then when even those people come back then they have trouble in VA hospitals, they can't get jobs. They wind up homeless, they wind up on drugs, sometimes because they got addicted overseas on pain medications, antidepressants. And when they come back

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

Business and Labor Committee
January 28, 2013

here, they're throwaway people. Well, we cannot save everybody, but I think those who are within this state, who are performing a function that we can establish they're performing, whether it's one or many who need the help, we should be there to give the help. So I'm glad that there have not been a lot, and I hope it's because they haven't been experiencing this problem, rather than saying, if I go there it's going to hurt this program because somebody is going to say too many are receiving the help. So it doesn't have to be limited to one, and I hope that what I've said is clear. [LB21]

DAVID ENGLER: Uh-huh. [LB21]

SENATOR HARR: Thank you, Senator Chambers. Any other questions or comments? Seeing none, thank you, Mr. Engler. [LB21]

DAVID ENGLER: Okay. Thank you. [LB21]

SENATOR HARR: Any more proponents? Proponents. [LB21]

JERRY STILMOCK: Thank you, Senators. [LB21]

SENATOR HARR: Wow. (Laughter) [LB21]

JERRY STILMOCK: (Exhibit 2) Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my two clients: the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of LB21. Without being too dramatic, I want to share with you an item. If you would just picture an explosion, an explosion happened in your house, it happened at a relative's house and you live nearby enough that you are able to rush to the aid of that relative. Maybe it was even your mother or father. And the next-door neighbor was prudent enough to call 911. And just as you arrived, 911 emergency responders arrived as well. They tended to your loved one and you stepped off to the side. And they were transporting that loved one to the nearest hospital. Now if you stop there for a moment and you put yourself in that you did run that block to get to your parents' home, only instead of stepping aside you have continued to render aid because you are it. You're the first responder for that community, just as Mr. Dwyer has said he did for his father, just as Mr. Hamernik, who appeared before this committee in 2010 to testify as to the experiences that he felt and went through. In the fall of 2012, Mr. Hamernik rendered the aid, as I've described. He is a first responder. He is an emergency medical technician for Clarkson. He did get on that ambulance. He did travel from Clarkson, Nebraska, to nearby Schuyler, Nebraska, rendering aid to his father, lifesaving aid to his father. And his father did not make it in the transportation by air, by helicopter, from Schuyler, Nebraska, to Lincoln, Nebraska. So, Senators, that's the type of person that I come to you letting you know that they're out there. I've visited with Mr. Hamernik. He's shared his terrible experience with me. And looking at a person in the eye, letting him know that I was going to be here this

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

Business and Labor Committee
January 28, 2013

afternoon, I say, number one, of course, do I have your consent to share this tragedy, and, number two, is what do you want me to say. He said, I'm hanging in there, I fight it on a daily basis; I haven't filed for workers' comp, I'm trying to deal with it myself. The one...and he's doing an admirable job. On behalf of my two clients, I'd ask you to advance this provision to the full floor of the Legislature. And I do have a handout, if you would be so kind. This is testimony, written in format, from Mr. Hamernik that I'd like to have be distributed, please. Thank you. [LB21]

SENATOR HARR: Thank you. Any questions for Jerry? Seeing none, thank you for coming today. [LB21]

JERRY STILMOCK: Thank you. [LB21]

SENATOR HARR: I appreciate it. I'm sure we'll be hearing from your partner later possibly. [LB21]

JERRY STILMOCK: We take great pride at our law firm, Senator, that we do not have a conflict in this situation (laughter), and I want to make sure that you understand that had there been, I wouldn't have been able to come up in this position, sir. [LB21]

SENATOR HARR: I appreciate that. Thank you. [LB21]

JERRY STILMOCK: Yes, sir. Thank you. [LB21]

SENATOR HARR: Any other proponents? [LB21]

RICH HITZ: Rich Hitz, H-i-t-z, appearing on behalf of the Nebraska Association of Trial Attorneys, and we are proponents of this legislation. And I just wanted to support what Senator Lathrop had said about claims made and to let you know that I received from the Nebraska Workers' Compensation Court the total amount of first reports of injury, so it's the very first step when someone is injured on the job they have to do. They have to tell their employer that they've been injured. And for fiscal year 2012, there were 42,552 first reports of injuries, of people that were injured on the job and began the process. Fiscal year 2011 was 43,659. So to give you an idea, those are people that are...have any type of injuries on the job. I think we're going to hear today if there's one...if there's any proponents, that there may be one claim that's occurred and...through this legislation, so out of over 80,000 claims. We think that the people that are responding to these injuries that need help, and again, the purpose of work comp is to get people back to work, that they ought to have access. [LB21]

SENATOR HARR: Thank you, Mr. Hitz. Any other questions? [LB21]

SENATOR CHAMBERS: I just want to explain to the gentleman, if you hang around

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

Business and Labor Committee
January 28, 2013

long enough and we don't give up, we're going to wind up on the same side. (Laughter)
[LB21]

SENATOR HARR: They may term limit you though. Seeing no others, thank you. Any other proponents? Opponents? [LB21]

TIM HIMES: Tim Himes, H-i-m-e-s, assistant city attorney for the city of Omaha. I'm here today in opposition to LB21. The city of Omaha has opposed this legislation each and every time it was...it's been brought forth. And I want to be clear...it's unfortunate that Senator Ashford left since he wanted to hear this. Let's be clear about what we're talking about. LB21 is the sunset provision that was made part of the legislation as part of a compromise between the proponents and opponents of the underlying bill, which is now a workers' compensation rule, commonly known as the mental-mental provision. And simply stated, it says, as we've already been through, first responders who suffer mental injuries but have no accompanying physical injury are still entitled to workers' compensation provisions. The city of Omaha opposes LB21. I'm not here to argue the merits or the lack of merit of the rule, which is 48-101.01 now, but the sunset provision provided a four-year period during which the need for this legislation and the possible downside of the rule would be explored. And we are...we are here, I think for the third time but definitely for the second time because I was here last year, opposing early repeal of the sunset provision. We have another year to go on the sunset provision. Information that's been gathered in the first three years is unlikely to change in year four, but I haven't heard any cogent or compelling argument in support of early repeal of the sunset provision. We've heard a lot of impassioned and passionate support for the bill in terms of volunteer fire persons. The city of Omaha has professional firefighters and they both have the training and the city also cares for these people in a mental-mental injury situation through the disability pension program and the medical insurance program. The city, self-insured, pays all of those benefits. So the city benefits manager in the HR department and the city of Omaha as a corporate entity have sent me here today to ask the Legislature to not repeal the sunset provision early, let it run its course, and in 2014 revisit the issue. And if something drastic changes, we'll know. Contrary to what Senator Lathrop and Mr. Hitz have said, I presently have two mental-mental injuries that are in progress as work comp claims and they are police officers involved in shootings. They're not firefighters. They're not first responders. They're not caregivers. They're officers who have either discharged their weapon in the line of service or been fired upon, and I'll provide you with those names if you want them or need them. But I don't, again, I don't want to debate the merits of the mental-mental provision itself. I'm here simply to state that the city of Omaha sees no reason to repeal the sunset provision early. We're three years in. Let's wait and see what happens until the fourth year. [LB21]

SENATOR HARR: Understood. All right, thank you very much. Any questions, comments, concerns? Senator Chambers. [LB21]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: If this man were a gambler, he wouldn't go broke because he knows how to hedge his bets. (Laughter) [LB21]

SENATOR HARR: Well, thank you. [LB21]

TIM HIMES: I'm going to take that as a compliment, Senator. [LB21]

SENATOR CHAMBERS: It is. It is. [LB21]

SENATOR HARR: Seeing no other, thank you very much for coming down. I appreciate it. Any other opponents? Anyone in a neutral capacity? [LB21]

MICHAEL NOLAN: (Exhibit 5) Senator Harr, members of the committee, my name is Michael Nolan, N-o-l-a-n. I am the executive director of the League Association of Risk Management. Previously to that, I was the city administrator of Norfolk for 28 years, and I was also the cofounder of the Norfolk reserve fire department. I was a reserve firefighter for five years, so I have a great deal of empathy with this issue. The League Association of Risk Management is here in a neutral capacity. I'm handing out something to you that may be an idea that you'll look at now or maybe some occasion in the future. I would tell you, I know of no instances, and I would underscore the word "presently," of any, what I would consider to be, any kind of bad intent as far as mental-mental is concerned. Senator Lathrop's staff asked me about 18 months to two years ago whether or not we had had any major claims, and we had not had any. My understanding is now that one of my clients has recently put a claim in with the adjustor, and I'm not sure, but my understanding is that she may have denied the claim. I don't know anything more about it than that and I think it would be premature of me, given the kind of HIPAA protections that might be related to it and some other things, to make any comment on what kind of claim that was. What I handed out to you was something that when I was the city administrator of Norfolk that I was responsible for being introduced before the Retirement Committee. The Retirement Committee approved it unanimously. The reason was because I gave them good facts and reasons from an instance that involved an alleged physical disability that turned out to...after it was objectified, not to be true. And I don't want to belabor that. I just want to suggest that it might be of some value for you prospectively to think about putting this kind of structure in place. I don't think it would hurt what the legitimate benefits of the bill are. It might give those people who have some concerns about the bill a higher comfort level for how you would objectify that the benefit is, indeed, legitimately entitled. I'll answer any questions if you have any. [LB21]

SENATOR HARR: Seeing none, thank you, Mr. Nolan, for your time. [LB21]

MICHAEL NOLAN: Thank you. [LB21]

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

Business and Labor Committee
January 28, 2013

SENATOR HARR: (Exhibits 3 and 4) Appreciate you coming down. Any other individuals testifying in a neutral capacity? Seeing none, we have three letters I would like to enter into the record: one from Mr. Hamernik, as referred to by Mr. Stilmock; a letter from the Nebraska Emergency Medical Service Administration in support of LB21; and one from the city manager, excuse me, city administrator of Hastings, Joe Patterson, asking that we delay implementation of the waiver. Senator Lathrop, would you like to close? [LB21]

SENATOR LATHROP: Yes, just briefly, maybe three points I'd like to make. The reason we're here today is the sunset is June 30, 2014, and we really need to do it this year or if we do it next year there could be a gap in the legislation, and that's why we're here. I think I agreed to wait three years and we have. I know last year we introduced the bill and we did not move it because it was early, and this was the argument we heard last year. So I think we've given it the three years I promised Senator Carlson and others that we would give it. The second point I want to make is in response to Mr. Nolan's testimony. In work comp, the employer has the right to subject an employee to what we call an independent medical exam. It's really a defense medical exam. They can have somebody, who's making a claim under this bill or any other aspect of work comp, evaluated by their own doctor and dispute the medical testimony that says they have a particular injury. So while their pension program may not allow for that, under mental-mental, which is work comp, there is the opportunity for a defense exam. And then the last point I'm going to make is, you know, when I look at one of the justifications, there's a justification from the human aspect. These people are doing really tough work and they see some awful things that the mind can't comprehend and it throws them into a mental or nervous disorder. That should be enough. But you know, if the fire truck needs repairs, we don't hesitate. We don't have hearings about it and we don't pass legislation to say we shouldn't fix the fire truck or change the oil or give it a tune-up. And we are investing all kinds of money in these men and women that do this work, and to say we don't want them to get proper mental healthcare, we're just going to let them go by the wayside and not return to duty I think is very shortsighted. And that was the rationale for LB780 and it remains the rationale for moving LB21. That's all I'd have to say about that bill. [LB21]

SENATOR HARR: Thank you very much. And with that, we will close the testimony on LB21. Senator Lathrop, would you like to open on LB141? [LB21]

SENATOR LATHROP: I would, and thank you, Mr. Vice Chair and members of the committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, and here today to introduce LB141. LB141 is what we generally refer to as a cleanup bill. This comes to us on behalf of the Work Comp Court. In 2011 the Legislature passed LB151 which, in part, eliminated the three-judge panel review process and allowed a party to file a motion to modify a judge's order. Eliminating the

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

Business and Labor Committee
January 28, 2013

review panel made the appeal process akin to an appeal to the district...of district court orders, including the time for filing of a bill of exceptions. However, these changes were not made. LB141 fixes this oversight. Additionally, the provisions allowing a party to move the court for a modification of its order has been found to conflict with other statute provisions which prohibit the court from ruling on a motion for reconsideration. This oversight is also fixed in LB141. Glenn Morton, the court administrator for the Work Comp Court, will follow my introduction. And I'm happy to answer any questions. [LB141]

SENATOR HARR: Thank you, Senator Lathrop. Questions? Seeing none,... [LB141]

SENATOR LATHROP: Very good. [LB141]

SENATOR HARR: ...proponents? As promised. [LB141]

GLENN MORTON: (Exhibit 1) As promised. Senator Harr, members of the committee, my name is Glenn Morton, G-l-e-n-n M-o-r-t-o-n. I'm the administrator of the Workers' Compensation Court, appearing today on behalf of the court in support of LB141. I'd like to thank Senator Lathrop again for introducing the bill on behalf of the court. I'm handing out a one-page written testimony that gives some details of...behind what Senator Lathrop has already introduced. Quite frankly, I don't have a great deal more to say than what he said. So if you have questions, I'd be happy to respond to them, and I don't mean to slight this bill and certainly will talk further if any of you would care for me to. But given the weighty things you've dealt with today, this bill isn't quite in the same category. [LB141]

SENATOR HARR: Questions? Seeing none, thank you for coming down here. How are your new courtrooms? [LB141]

GLENN MORTON: Oh, they're doing great, doing great, yeah. [LB141]

SENATOR HARR: Great. Excellent. [LB141]

GLENN MORTON: Thank you. [LB141]

SENATOR ASHFORD: We almost didn't give them to them. [LB141]

SENATOR HARR: Exactly. Well, they had peeling paint so we didn't want that. (Laughter) [LB141]

SENATOR CHAMBERS: I just have a question. [LB141]

SENATOR HARR: Uh-oh, yes, sir, Senator Chambers. [LB141]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: I'm reading your testimony,... [LB141]

GLENN MORTON: Uh-huh. [LB141]

SENATOR CHAMBERS: ...so I may not have it all clear. The Supreme Court put in place a rule or a clerk is applying a rule that conflicts with a statute? [LB141]

GLEN MORTON: Yes, that's correct, Senator. [LB141]

SENATOR CHAMBERS: And we're changing the statute instead of making them change their rule or reapply the rule? I'm asking for explanation. [LB141]

GLENN MORTON: Yeah, I understand. That's a very good question, Senator, and I wasn't surprised to hear you say that. The bottom line is that the statutory...LB...excuse me, Section 48-182 has statutory provisions. You're correct in that the Supreme Court's rules relating to the district court appeals differ. We could easily...well, we went to the Supreme Court. We pointed out the statute. The bottom line is it would take a significant amount of money and time and effort for them to be able to reprogram their system in order to apply a 60-day rule, which is in this...currently in the statute, versus the seven-week rule. It means very little, if any, difference to any...to the court, for sure, or to...and to the best of my knowledge, to the attorneys, the court reporters, or anybody else who deals with this. And so we simply suggested that we change the statute simply to save some time and money and cost to the state. [LB141]

SENATOR CHAMBERS: For the record, when it comes to procedures of this kind, obviously it's within the Legislature's province to enact the statute that was enacted. [LB141]

GLENN MORTON: It is, certainly. [LB141]

SENATOR CHAMBERS: The Supreme Court is authorized to place rules in effect. [LB141]

GLENN MORTON: Uh-huh. [LB141]

SENATOR CHAMBERS: It seems that all parties are agreeing that the statute ought to prevail or they're not. They're saying that you should bring the statute into conformity with a Supreme Court rule, not because a Supreme Court rule has more legal status or validity than the statute. So to me, the Legislature is given plenary authority to legislate in this state. Neither branch is authorized to do anything that impinges on the power and authority of the other branch unless expressly authorized to do so by the constitution. I'm not aware of anything in the constitution--and I stand prepared to have my education

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

Business and Labor Committee
January 28, 2013

improved any time, any place, by anybody--I have not seen where the Supreme Court is authorized to amend a statute. They're not saying the statute is unconstitutional, if I understand this. [LB141]

GLENN MORTON: No, not at all, to the best of my knowledge. [LB141]

SENATOR CHAMBERS: And if we don't pass this bill, are they going to abrogate the statute and say, we forget the statute, and apply our rule? Is that where things stand? [LB141]

GLENN MORTON: No, that's not where things stand at all, Senator, and quite... [LB141]

SENATOR CHAMBERS: I'm glad, because... [LB141]

GLENN MORTON: No. [LB141]

SENATOR CHAMBERS: ...judges are amenable to impeachment and I wouldn't hesitate. I think this branch to which I belong has prerogatives and if nobody else will uphold them, I will. I like some of the judges. I don't know all of them. I respect the courts but they have to respect us, too, and I think this shows a tremendous and profound disrespect. And I may be overly sensitive, but I've seen the Legislature ignored, kicked to the curb, and rendered irrelevant. So maybe you ought to speak a little longer to show somebody like me why this, in this instance, the Legislature should take low and tell another branch that you have more dignity than we have; you're entitled to more consideration than we're entitled to; you're entitled to do, because the Legislature will let you do it, what the constitution does not authorize you to do; and which cases that you have decided have said you won't do, which is to say that they'll read into a statute what's not there or they'll read out of a statute what is there. It seems to me they're saying, the statute doesn't exist, as far as we're concerned. And if I'm wrong, I want to lay it out there, you can correct me. [LB141]

GLENN MORTON: My comments are, first of all, Senator, that I don't believe the Supreme Court is even aware of...we haven't talked to anyone on the Supreme Court other than with the clerk of the Supreme Court to understand how they were applying their rules. That's it. So there's no ill intent or bad intent on the part of the Supreme Court in any way, shape, or form, or any employees of the Supreme Court. This is...and there's certainly no dispute whatsoever that a statute takes precedence over a rule of the court or any other rule that's in place. All right? [LB141]

SENATOR CHAMBERS: Then you mean to tell me that an issue that applies to the king is going to be discussed with the king's coachman? [LB141]

GLENN MORTON: What I'm telling you, what I want to tell you, quite frankly, as to what

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

Business and Labor Committee
January 28, 2013

has happened here, is the fact that we have a statute in place that we've discovered, not very long ago, that there was, practically speaking, when these new procedures for appeals from our trial court up to the Supreme Court, we've discovered that when those practical things are being handled by the clerk of the Supreme Court, they have simply been applying their own rules to the district court, apparently not realizing or whatever that they should be treated differently. And their electronic systems that handle these things are only set up to deal with the time frames for appeals from a district court, not from a trial court or the compensation court. They simply don't have processes in place to implement the bill as it was passed, actually LB182, which wasn't even included in that bill. It was simply...wasn't recognized that there would be this issue. It's an issue that's come up recently. Because those time frames and the differences in Section 48-182 are not substantial, there is no real reason that the statute, in our opinion, at the Work Comp Court, has to differ from how the Supreme Court is handling it. So we're simply bringing this bill to your attention as a way practically to amend the statute, if the Legislature should want to do that, in order to bring those things in sync with how the Supreme Court has handled things in the district court, with how they're handling them at the Work Comp Court. That would simply avoid the cost and expense of changing their system to comply with the statute. That's all we're simply trying to do. [LB141]

SENATOR CHAMBERS: I can understand as courts look out for courts. [LB141]

GLENN MORTON: No, Senator, I'm trying to... [LB141]

SENATOR CHAMBERS: They're all...but that's what's happening. [LB141]

GLENN MORTON: I'm trying to look out for the cost to the state and otherwise. Why incur that cost? [LB141]

SENATOR CHAMBERS: But that's what's happening. [LB141]

GLENN MORTON: It's not necessary. [LB141]

SENATOR CHAMBERS: In this instance, courts are looking out to courts. [LB141]

GLENN MORTON: Okay. [LB141]

SENATOR CHAMBERS: You said the Workers' Comp Court is not...whatever you said. I don't want to misstate it. There was a guy in England a long, long time ago who said that ignorance of the law is no excuse because it is a plea every man will make but a plea which no man can counteract. So ignorance of the law is not an excuse, and I would add, unless you're dealing with those who administer the law. Ignorance of the law is not an excuse for me. Ignorance of the law is not an excuse for the guy driving a cab or the woman swinging a broom and a mop, but it's an excuse for the people who

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

Business and Labor Committee
January 28, 2013

administer the state Supreme Court. So I'm going to...I'm curious to see how my colleagues deal with this bill and I want it to get out on the floor because I've got a stemwinder of a speech prepared to make and I didn't even know about this. So don't worry about me trying to keep this bill in committee. I want this puppy out there on the...let me change it. I love puppies. Oh, but I love this too. Okay. (Laughter) [LB141]

SENATOR HARR: Okay. Thank you, Senator Chambers. Any other question? [LB141]

GLENN MORTON: If I could, I hope I made my point clear... [LB141]

SENATOR CHAMBERS: You did. It's not a... [LB141]

GLENN MORTON: ...that we're just simply bringing this...go ahead. [LB141]

SENATOR HARR: Yes, Senator Lathrop would like to ask a question. [LB141]

GLENN MORTON: Sorry, Senator. [LB141]

SENATOR LATHROP: How about...I want to ask some questions to give it some historical perspective. The Work Comp Court, before the passage of whatever bill it was that did away with the three-judge panel, we had a trial judge. And then if either party didn't like it, they appealed to a three-judge panel and this rule applied. [LB141]

GLENN MORTON: Right. [LB141]

SENATOR LATHROP: We eliminated the three-judge panel, in an effort to make the Work Comp Court more efficient and make the first hearing mean more. Now if you don't like the outcome and you believe you have a meritorious appeal, you appeal to the Court of Appeals. [LB141]

GLENN MORTON: Correct. [LB141]

SENATOR LATHROP: What we are doing here is reconciling the process of appealing to the Court of Appeals with the process of appealing to the Court of the Appeals from the district court. [LB141]

GLENN MORTON: That's correct. [LB141]

SENATOR LATHROP: So now the two processes will mirror one another, and what we're extracting from the law and replacing is the process to appeal to a three-judge panel that's been eliminated. Is that right? So we have a rule that pays no mind to whether you're appealing from the Work Comp Court or the district court. [LB141]

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

Business and Labor Committee
January 28, 2013

GLENN MORTON: That's correct. [LB141]

SENATOR LATHROP: Okay. And the reason that's necessary is because the committee counsel of the Business and Labor Committee, no,... [LB141]

MOLLY BURTON: Sure. [LB141]

SENATOR LATHROP: ...or the Chair or the Work Comp Court missed the fact that we were leaving a remnant of an appeal to the three-judge panel on the books. [LB141]

SENATOR CHAMBERS: Not exactly. [LB141]

GLENN MORTON: Not exactly. [LB141]

SENATOR CHAMBERS: I'm reading his mind. (Laughter) [LB141]

SENATOR HARR: All right. [LB141]

SENATOR LATHROP: Yeah, you're not supposed to be answering my questions. [LB141]

SENATOR CHAMBERS: Did I read your mind correctly? [LB141]

GLENN MORTON: You may. Well,... [LB141]

SENATOR HARR: All right, Mr. Morton, go ahead, answer. [LB141]

GLENN MORTON: You've made your point and it's correct. The problem is that there was a procedure previously for appeal from a three-judge panel up to the district court... [LB141]

SENATOR LATHROP: Okay. [LB141]

GLENN MORTON: ...or up, excuse me, up to the Court of Appeals, right? That procedure is gone. There wasn't...there is now an appeal directly from a trial court, which is comparable to the district court trial court level, but we didn't adequately consider the processes for appeal from a trial court of the Work Comp Court up to the Court of Appeals. We didn't adequately factor in how that would change and if it would change and what we should do about that. It should mirror how appeals come from the district court, because the district court trial court, the Court of Appeals trial courts are on the same level. There shouldn't be any rational reason why the appeal procedures should be different, but they are. They are different in the statute, 48-182, and the way the Supreme Court Clerk's Office and the way that...the way it is handled with appeal

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

Business and Labor Committee
January 28, 2013

from the district courts. All we're saying is we're asking this to be changed because it's much easier, at least I assumed it would be much easier, to change and cleanup the statute than to spend all the money and effort in the Supreme Court, which has a very tight budget, in amending their IT processes and etcetera and amending their electronic processes to account for the difference. [LB141]

SENATOR LATHROP: Is there a logical reason for having two different time lines? [LB141]

GLENN MORTON: Not that I'm aware of in any way, shape, or form. [LB141]

SENATOR LATHROP: And all we're doing is making the work comp mirror an appeal from the district court. [LB141]

GLENN MORTON: That's correct. [LB141]

SENATOR LATHROP: Okay. [LB141]

GLENN MORTON: That's correct. [LB141]

SENATOR LATHROP: It's your puppy. [LB141]

SENATOR HARR: Thank you. Senator Chambers. [LB141]

SENATOR CHAMBERS: But there are things which even the highest courts in the land will describe as a legal fiction. They create an action or a course of conduct which would not exist in the world of reality but only in the world of courts, where when it comes to legal fiction some of the courts do a better job than the best Pulitzer Prize writer. So there are illogics in courts, illogics in court decisions, conflicts in existing Nebraska Supreme Court decisions, and the proof of it is that when somebody finds one and brings it to the court's attention, the court says, we did not properly consider this, we either overrule the case entirely or we overrule it with reference to this aspect of it. So there is not perfection in the court and we don't look for it. However, I'm looking at a principle that should be crystal-clear before we talk about going somewhere else. Both of these procedures can be in place, can't they? [LB141]

GLENN MORTON: Yes. [LB141]

SENATOR CHAMBERS: So it's not as though the Legislature has to take low to the court. The court can simply say, we're going to not do what this clerk has been doing, and even if it might take a little more time to process something, we're going to follow the statute. And the court would follow the statute if it remains in place. Is that true? [LB141]

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

Business and Labor Committee
January 28, 2013

GLENN MORTON: Yes. [LB141]

SENATOR CHAMBERS: And you're here saying that the court is saying...well, somebody is saying that it would be less expensive, less trouble to the court system if the Legislature, in the interest of comity and fellowship, would take low in at least this situation and roll over for the courts. And the court itself didn't ask us to do that, if I understand you correctly. [LB141]

GLENN MORTON: The Supreme Court never asked you to do that. That's correct. [LB141]

SENATOR CHAMBERS: I'm going to give one little example, then I'll be through. [LB141]

SENATOR HARR: Thank you, Senator Chambers. [LB141]

SENATOR CHAMBERS: And I'm not going to resist the bill here but I'm still going to have things to say on the floor as relates to the integrity of our institution. I saw a movie called A Man for All Seasons about Sir Thomas More, and he would not go along with the king who wanted everybody to say he had a right to put away one wife, because she was as barren as a brick, so he could marry another woman. And Sir Thomas More wouldn't do it. So there was a hearing when Thomas More was in the tower and there was a duke who was his friend. He said, Sir Thomas, sign this petition; everybody has signed it; for God's sake, man, I've signed it and I don't know whether the king is right or not. And Sir Thomas said, well, why should I sign it? He said, for fellowship. So Sir Thomas More, the person playing Sir Thomas More, a man named Paul Scofield, said, when we come and stand before the bar of judgment and you go to heaven because you did not violate your conscience by doing this and I am sent to hell for violating my conscience for doing it, will you, in the interest of fellowship, accompany me to hell? So I understand fellowship and between now and when the bill comes up for debate on the floor maybe my position will have modified. I'm not faulting you. I certainly am not going to fault our staff. But I see that there is an interplay between the Legislature and the courts in this instance that I don't particularly appreciate. And since the court itself did not ask for this and it's the clerk of the Supreme Court who is doing whatever is being done, if the court does not request that this be done, I'm not going to do it. The court is not going to hide behind somebody else. They're not going to hide behind the skirts of the clerk. They're not going to hide behind the man who's willing to fall on his sword. If the court doesn't make the request, my answer is no. And we'll have a chance to see if I'm able to do what I think I can do, but the fact that I think I can do it doesn't mean I can. I wouldn't take this time if I didn't see this as an extremely serious matter, and it's more serious to me than if a lawyer tried to get us to pass a bill to help him or her win a case. This is an interaction between the two branches, the judicial and the legislative.

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

Business and Labor Committee
January 28, 2013

The judicial serves the people; the legislative represents the people. And I'm wondering if we are adequately representing the people when we allow the Supreme Court to overstep its bounds and then ask us to take low and not live up to what our duty is. And remember this: I'm speaking as one person with my view of the constitution, and I'm trying to make it as clear as I can. So if you see fit to transmit to the court what I said, it will be clear what I meant. And then they can get the transcript of this hearing, if they want to know further. But I'm going to say it again: If the court does not formally ask that this be done, I will not do it. And they can't say it's beneath them because the Chief Justice comes here when he wants some more money. When he wants a fee raised to give money for the court, he can bring himself over here. That's not disparaging our power because we have the power to do everything he asks us to do. But if he is too proud, if he is too arrogant, if he is too embarrassed to ask that this be done, that impinges on our dignity as an institution, my answer is no and I'll tell him that if he wants to come to my office and see if it's what I said. And I'm not angry at you at all and certainly not the clerk of the court. And I don't fault my good friend, Senator Lathrop, for bringing the bill. Other people just...their mind doesn't work like mine. They follow their best lights; I have to follow mine. It just happens that we clash on this particular one. That's all that I had. [LB141]

SENATOR HARR: Thank you for that dissertation. I appreciate it, Senator Chambers. Any other questions? Seeing none, Mr. Morton, thank you for coming. [LB141]

GLENN MORTON: Thank you. [LB141]

SENATOR HARR: We will have some interesting conversation about this. Anyone else here, proponents? [LB141]

JAMES MICHAEL FITZGERALD: My name is James Michael Fitzgerald, 4260 Garryowen Road, P38, Fort Calhoun, Nebraska, 68023. I'm a judge in the Workers' Compensation Court. And unfortunately, Senator, the judges have not met on any of this legislation, but I come over here because I just want to see what's going on. I would tell you this, that as one of the judges on the court, I wish you'd pass it. That will make our procedure on appeal the same as from other courts. That's the only thing we're doing here. And as a judge on the court, I ask that you do that. [LB141]

SENATOR CHAMBERS: The only one who can get me to change my view is the Supreme Court, because they are the ones who apparently would counter difficulty if we don't do this. And for my colleague, I want him to look up dissertation in the dictionary. What I offer is not a dissertation. And maybe you didn't mean the way I'm taking it, but words have meaning to me. Judge, I have no quarrel with you or members of the... [LB141]

JAMES MICHAEL FITZGERALD: Comp court. [LB141]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: ...your court. I'm looking at the Supreme Court. This, the way I look at it, is a clash between the Legislature and the Supreme Court. And somebody might ask how in the world can one senator equate himself with the Legislature. Because I can and I do, and I will... [LB141]

JAMES MICHAEL FITZGERALD: You're looking at the same fellow who does it for a court. [LB141]

SENATOR CHAMBERS: Say it again? [LB141]

JAMES MICHAEL FITZGERALD: You're looking at the same fellow who does it for a court. [LB141]

SENATOR CHAMBERS: Oh, so you understand that. [LB141]

JAMES MICHAEL FITZGERALD: I understand. [LB141]

SENATOR CHAMBERS: Are you able to talk to any of the judges of the Supreme Court? Are you allowed to? [LB141]

JAMES MICHAEL FITZGERALD: Yes. [LB141]

SENATOR CHAMBERS: If you want to talk to them and transmit to them what I said, then you can. And I'll tell you what--it may seem arrogant, I don't care what it seems like--it's no longer just the bill. It's the interplay between these two branches of government and that's why it's more than a dissertation. It's got to be resolved. And either it's going to be resolved the way that I want it to be resolved or I'm going to be run over. But before the 90 days are up, if that happens, I will have my pound of flesh because I do not forget. I do not, since--I'll use this analogy--since guns are on everybody's mind, I do not shoot blanks and I do not blow smoke. I see this as very, very serious. An error can be made by anybody, but how it is to be resolved is the important thing. We have an accomplished fact now: a conflict between an enactment by the Legislature and a rule established by a court. And the court can change its rule. The Legislature can modify or repeal a statute. But in this case, the court is being put in the posture of telling the Legislature, you change because it's convenient for the court that you change. [LB141]

JAMES MICHAEL FITZGERALD: Well, we're not telling you to change, Senator. [LB141]

SENATOR CHAMBERS: Not you, the Supreme Court. They're the ones. [LB141]

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

Business and Labor Committee
January 28, 2013

JAMES MICHAEL FITZGERALD: Well, they asked us...listen, I don't know. We...the problem is the judges don't know anything about this. This is a babe in the woods when I'm sitting back here. [LB141]

SENATOR CHAMBERS: Which judges don't know? You mean the Supreme Court judges? [LB141]

JAMES MICHAEL FITZGERALD: The Workers' Compensation Court judge don't know anything about the workers' compensation legislation because we've never met on it. [LB141]

SENATOR CHAMBERS: Well, the Supreme Court knows about this conflict, though, don't they? [LB141]

JAMES MICHAEL FITZGERALD: Yes, they must, because they've asked somebody to introduce it. [LB141]

SENATOR CHAMBERS: So they've got to do what I said do. [LB141]

JAMES MICHAEL FITZGERALD: Okay. [LB141]

SENATOR HARR: Well, I think... [LB141]

JAMES MICHAEL FITZGERALD: Well, the only thing is, should we be at the Judiciary Committee or should we be in this one? It's an appeal from the comp court so they... [LB141]

SENATOR HARR: Well, okay. [LB141]

SENATOR CHAMBERS: I don't give advice to judges. [LB141]

SENATOR HARR: Okay, I think we have... [LB141]

JAMES MICHAEL FITZGERALD: Okay. [LB141]

SENATOR HARR: ...our opinions stated. I appreciate that. [LB141]

JAMES MICHAEL FITZGERALD: Uh-huh. [LB141]

SENATOR HARR: I think I owe Senator Chambers an apology. [LB141]

SENATOR CHAMBERS: Don't do that. [LB141]

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

Business and Labor Committee
January 28, 2013

SENATOR HARR: He is correct. What I was trying to say was he was giving a...well, a lesson on the constitution. I think he's very correct in his lesson. And it does seem strange, as a lawyer. If I were in front of the Supreme Court and I said, there is a law and a rule, which one are you going to apply, I can tell you what the Supreme Court would tell me and it would be contrary to what they are doing in their own actions. And I think they need to pay attention, as Senator Chambers said, and I think he will have some...might have the ability to have some fun with this, more than he's had so far. Is there anybody else here to testify as a proponent? Are there any opponents? Anyone to testify in a neutral capacity? Seeing none, I will let Senator Chambers...or, excuse me, Lathrop close, if he would like. [LB141]

SENATOR LATHROP: And I'll just close from here, if that's okay. First, I was kidding, of course, when I said that it was Molly's fault that this got by us when we were getting rid of the three-judge panel. I have nothing but a great deal of respect for Molly, who you all know we work very closely together. And with that said, I also appreciate your concern. I know that you are looking out for the integrity of the Legislature when you express the concerns we've heard today. And with that, we will...that will close my remarks. [LB141]

SENATOR HARR: And with that, that will close the hearing on LB141. And I will give the Chair back to Senator Lathrop, Mr. Chair. [LB141]

SENATOR LATHROP: Okay. Next up will be Senator Nordquist, who's going to introduce LB291. The sign-up sheet may have said LB297. That's an error. Yeah, LB297 we heard second. This is actually LB291. Senator Nordquist, welcome to the Business and Labor Committee. [LB291]

SENATOR NORDQUIST: Thank you, Chairman Lathrop and members of the committee. My name is Jeremy Nordquist and I represent District 7 in downtown and south Omaha. I'm here to introduce LB291. When a worker is injured on the job...in an on-the-job accident, the results to him and her or her family can be devastating. If a spouse does not have a job, the family's income dries up. Family expenses, however, continue to accrue. On top of ordinary expenses, the worker incurs medical bills related to the injury. If those medical bills are not paid on a timely basis by the employer's insurance carrier, as required under Nebraska's Work Comp Act, the additional stress of bill collectors is added to the situation and layered on top of that family. The Nebraska Workers' Comp Act was intended to provide a quick and efficient method of replacing a portion of a worker's lost income and to provide the worker's medical bills be paid so the worker can return to work quickly. To achieve that goal, the Legislature has provided that if a disability payment to cover the worker's lost income is delinquent, a 50 percent waiting penalty is added. This bill, LB291, is intended to mirror the same waiting period on disability payments. If a medical bill is more than 30 days delinquent, a 50 percent waiting penalty, payable to the worker, would be added. The goal of this bill is simply to provide an incentive for prompt payment of medical bills. While there will be those

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

Business and Labor Committee
January 28, 2013

following me that can address the technical aspects of this bill, I'd be happy to answer any questions regarding the public policy of encouraging prompt payment of medical bills by an employer's insurance carrier. This bill is similar to a bill that advanced out of this committee in 2009. That was LB622. And I ask for your full consideration of this bill before you. Thank you. [LB291]

SENATOR HARR: Thank you, Senator Nordquist. Are there any questions for the fine senator from south Omaha? Seeing none, thank you. Are there any... [LB291]

SENATOR NORDQUIST: I will be here to close. [LB291]

SENATOR HARR: All right, thank you. Any proponents? Mr. Corrigan. [LB291]

JOHN CORRIGAN: Good afternoon. Members of the committee, John Corrigan, C-o-r-r-i-g-a-n. I'm again here testifying on behalf of the Nebraska AFL-CIO and we're very much in favor of this legislation. I can tell you one quick story about a client that suffered a smoke inhalation injury this summer in July, the first week of July 2012. The employee suggested to the employer that it was work related. The employer began to investigate that claim. The hospital had a three-day hospital stay worth \$55,000. They wanted that bill paid. About two weeks ago he was served at home by the sheriff with a lawsuit on behalf of the hospital because the employer had not gotten around to deciding whether the injury was compensable. This is a man who has worked very hard his whole life to build up a credit rating and his credit rating, even though the employer, once we presented him with a copy of the lawsuit and said make a decision here, and the bill was eventually paid, his credit rating went from in the high 900s to the low 600s. That has the real effect of the dilatory policies of insurance carriers in this context. And we all recognize that there are good claims and bad claims and investigation needs to take place, but in the context of prompt pay, we already have in the law provisions which force the...a provider...allows a provider to make a claim. And as long as that's a clean claim, in the context of normal health insurance, that in order to get discounts from that provider the payor has to pay that claim within a certain period of time or risk the loss of the discounts within...and basically the rule is 30 days. You get a 15-day grace period and if it's not paid within 45 days, you're paying 100 percent of billed charges as a penalty for dilatory payment practices. The effect, in the context of injured workers, is so much more severe because it's not a situation where they have hundreds and thousands of dollars of claims tied up with one provider. This is one individual who is out on an island, waiting for somebody to make a payment or make a decision about his claim that can result oftentimes in bankruptcy, can result in maybe added stress or the walking away from valid claims, waiting the employee out, and that's certainly a tactic that you see whether expressed or implied by insurance carriers in the industry that we work in. So for those reasons, we think that this is valid legislation. We think that it is only fair in the context of the Legislature to treat injured workers with the same privilege that we give to healthcare providers in the sense there ought to be an incentive

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

Business and Labor Committee
January 28, 2013

to make sure that payments are made in a timely manner, otherwise the purposes of the law are lost. With that, I'd answer any questions that members of the committee may have. [LB291]

SENATOR LATHROP: Mr. Corrigan, I do have a question for you. When I read this provision, and you certainly do more work comp than I do, med payments payable under the Workers' Compensation Act shall be payable within 30 days after notice has been given. What's the notice that's been given? What's that term mean? Is that just the employee says, I got hurt at work and... [LB291]

JOHN CORRIGAN: What's...as I understand it, this legislation, what happens under the claim for indemnity benefits, such as a disability payment, the employee is placed on...the employer is placed on notice by a claim from the employee saying, hey, I have suffered this injury, here's the bill, pay it. And they're on notice of that claim. That clock now is ticking for 30 days if the employer has that information in its possession. There's no reasonable controversy about whether the injury is or is not covered. The disability was sustained in the course and scope of employment. [LB291]

SENATOR LATHROP: What if there is though? What if there is? Does the employer, under this language, have an opportunity to say, wait a minute, I want to make sure it didn't happen while he was playing basketball or I want to make sure he didn't have a prior back injury and now he's trying to lay it off on me? Is that...would this give them 30 days to make that judgment or does that after notice given...notice has been given, does that assume that the employer doesn't have a legitimate...a reasonable basis to object? [LB291]

JOHN CORRIGAN: Well, I think that the language, "all medical payments payable under the Nebraska Workers' Compensation Act," is limiting language. If it's not payable, then failure to pay it, if it's not compensable or if there's no reasonable controversy with respect to its coverage under the act... [LB291]

SENATOR LATHROP: Here's what makes sense to me. The second part, which is if the court...if the Work Comp Court says these are the bills...you have a trial. You run down to the courthouse because the employer will not pay; they won't pay indemnity; they say it never happened at work, this happened, you know, in a car accident a month before and, you know, it was your fault and now you're trying to get us to pay it. You have a trial over it and the Work Comp Court issues an award and the award says, you will pay the plaintiff, it actually happened at work, and you're going to pay Bergan Mercy Hospital \$50,000. They wait. Thirty days go by and they don't pay them. That's what...that's the clearest example. The court has already ruled. There isn't any controversy left. You have to pay it. Thirty days go by, you'd impose a penalty. My question, though, has to do with what in this language allows the employer to have a reasonable controversy? [LB291]

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Transcriber's Office

Business and Labor Committee
January 28, 2013

JOHN CORRIGAN: Well, it's certainly been the law of the land and if you look at paragraph (b) above, which is just a recitation of the current law, "Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or..." you know, it's the same language and... [LB291]

SENATOR LATHROP: So you're saying somewhere in there, in the interpretations of the cases that deal with indemnity penalties, that this would be...the reasonable controversy is read into this provision. [LB291]

JOHN CORRIGAN: That is how the court has treated it and the...simply sending them the bill doesn't require...doesn't now set a clock to 30 days ticking. If there is, the court determines later, no reasonable controversy, then they're going to be forced to pay that bill. If there was a reasonable controversy, such as you've pointed out, or the employee didn't give proper notice of the injury itself or the statute of limitations has actually run on the claim, any number of things that might be reasonable controversies in the case, the court can refuse to award penalties. And the employer oftentimes is in a position where they say, okay, we've made a decision, we're going to pay it but on a condition that we'll settle these outstanding claims, you waive your right to penalties. [LB291]

SENATOR LATHROP: Okay. Let me see if I understand. We already do this with respect to the indemnity benefits, which is paying the guy while he's off work. [LB291]

JOHN CORRIGAN: Correct. [LB291]

SENATOR LATHROP: We use the very same approach, the same language, and all we're doing is incorporating that to an outstanding bill, with this language. [LB291]

JOHN CORRIGAN: For medical services. [LB291]

SENATOR LATHROP: And if there's a reasonable controversy, you wouldn't get the penalty unless you went to court anyway, right? [LB291]

JOHN CORRIGAN: Well,... [LB291]

SENATOR LATHROP: That's something that's awarded by the court? [LB291]

JOHN CORRIGAN: ...the employer may pay the penalty, not so much the employer but the insurance carrier may pay a penalty when they notice, in the context of indemnity, you know, we missed it. We have an impairment rating from a doctor. It's been sitting on the adjustor's desk for 32 days. We're going to pay the penalty rather than pay an attorney to defend us when we know we're going to lose. [LB291]

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

Business and Labor Committee
January 28, 2013

SENATOR LATHROP: Okay. But if an employer has a reasonable controversy, they have a legitimate concern, their doctor said he's not hurt, your doctor said he is, they don't have to pay the penalty unless they don't pay once the award has been entered. [LB291]

JOHN CORRIGAN: Correct. [LB291]

SENATOR LATHROP: Okay. I get it. Anyone else have questions for Mr. Corrigan? Seeing none, thanks for coming down, John. [LB291]

JOHN CORRIGAN: Thank you. [LB291]

RICH HITZ: Rich Hitz, H-i-t-z, appearing for Nebraska Association of Trial Attorneys, and we are here to support LB291. I will go back to the statistics from the Workers' Compensation Court. For fiscal year 2012, 42,000 first report of injury, so those are when someone gets hurt, they say they're injured. The next things that happens is the employer and the insurance company decide whether or not they believe that person was injured in the course and scope of their employment and they're going to make a decision whether they believe there's a reasonable controversy. So if someone says, I was picking up a tire, felt something pop, they make the claim, the injured employee then reports his injury and then the employer works with their work comp insurance company and there's going to be a decision about whether this was an injury that happened in the course and scope. This legislation does not change that process. All it is saying is, just like when the employer says, I think there's a reasonable controversy, I think you've got degenerative problems in your back, this wasn't from picking up that tire, they will go through the process. And if you look at the fiscal year 2000 report from the court, 42,000 claims were made. Only about 1,300 petitions were filed. So that's where the employer says, you know what, I don't think it's on us, and that made that employee prove his case. I've looked for the statistics to try to figure out how many times the employee is successful, but the point would be this provision says if you go through that process, you are successful, and a judge orders not only your compensation but orders that the medical bill that's been waiting for up to a year or how long that bill has been waiting to get paid because the employers felt that there was a reasonable controversy that it wasn't caused by that, finally, after all of that time, the judge says, pay it, pay the employee, and pay the bill. This legislation now says that if...not only if they don't pay the compensation but if they don't pay the medical bill within 30 days there's going to be a penalty on that employer. So if you can imagine when you're representing an employee, you explain to them that the employer has the right to say, we don't think you were hurt when you picked up that tire, we're going to make you go and prove it in court. They finally prove it in court. At that point the judge says pay it, 30 days goes by. And the actual compensation may have been paid. That employee may have went back to work in two weeks so there's only two weeks of average weekly wage that needs to be paid, but there's a \$50,000 bill. If that bill is not paid, that

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

Business and Labor Committee
January 28, 2013

employer is...that employee is on the hook. This legislation just says, look, if you've made it all the way through, the judge has said the bill should be paid and the insurance company doesn't pay it, they're going to pay a penalty for not paying it. That's why we support this bill. [LB291]

SENATOR LATHROP: Senator Chambers. [LB291]

SENATOR CHAMBERS: Just one question for clarification, and not of what you said because I understood it but there may be some opposition. The way this bill is drafted, the employer has every opportunity to have challenged, to present anything in the way of discounting what was said. We're at the point now where all of that has been done and the court says there was a long sentence and the period has been placed, now you owe it, pay it. That's the point we are where this bill takes over. [LB291]

RICH HITZ: That is correct. [LB291]

SENATOR CHAMBERS: Thank you. [LB291]

SENATOR LATHROP: I see no other questions. Thanks for coming down. Anyone else here as a proponent? Anyone else? Anyone here as an opponent? [LB291]

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, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. As you might expect, we read paragraph (2) slightly different than do the proponents of the bill. I think the two points that I've heard about this, number one, is that this does not require that there's a clean claim, nor does it require just the basic has received notice require that the reasonable controversy issue has been taken care of. That is our concern with the bill. Indemnity payments are different than medical payments. They are set, where medical payments are oftentimes dealt with for discounts, other issues dealing with the clean claim issue. So with that, I'd be happy to try to answer any questions. [LB291]

SENATOR LATHROP: I do have a question for you, Korby, and that is if you are...and maybe you can't answer this. I know you're the lobbyist and not somebody that practices work comp defense work. But if they get a bill from somebody, it's a bill from Bergan Mercy Hospital for care, how long does it take an insurance company to process that? [LB291]

KORBY GILBERTSON: You know, I think it can vary, depending on the claim. I know in health insurance it can take months and months. And so I'm not sure what the average is or if there is an average. Actually, I do know. When the last time the prompt pay issue came up, I think that the average return was like 22 days for all payments. And I did

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

Business and Labor Committee
January 28, 2013

make a request to get data from our member companies, but since we're a little faster this year getting to hearing... [LB291]

SENATOR LATHROP: Let me just ask the question a little bit differently. If the bill said once an award has been entered and part of the award is for medical expenses, is it reasonable to impose a penalty if that bill in an award isn't paid within 30 days? Do you have an objection with that? [LB291]

KORBY GILBERTSON: I think if the amount of the award was determined, I would say it would be harder to argue against. However, if the amount of the award or if it was determined that it still wasn't a clean claim, that there were still some negotiation to be made on the claim, then no. [LB291]

SENATOR LATHROP: When you say a clean claim, are you haggling over the bill with Bergan Mercy or are you trying to determine if the guy got hurt at work and... [LB291]

KORBY GILBERTSON: I think it can be any number of things. I think they can go back and see if there were things that were done that weren't supposed to be done. [LB291]

SENATOR LATHROP: If this paragraph said, in those instances where there is no reasonable controversy or when an award has been entered by the court requiring payment, in those circumstances where the insurance company or a self-insured does not pay within 30 days a 50 percent penalty may be added to the bill as an incentive to pay them in a timely manner, would you have an objection with that? [LB291]

KORBY GILBERTSON: I do not feel comfortable answering that, but I would be happy to take that to them. I will be meeting with them in the morning. [LB291]

SENATOR LATHROP: That would clarify the reasonable controversy piece for you, would it not? [LB291]

KORBY GILBERTSON: Yes, yes. [LB291]

SENATOR LATHROP: Okay. Anyone else have other questions for Ms. Gilbertson? Seeing none, thank you. [LB291]

KORBY GILBERTSON: Thank you. [LB291]

SENATOR LATHROP: Other opponents. [LB291]

TIM HIMES: Tim Himes, H-i-m-e-s, assistant city attorney for the city of Omaha, here in opposition to LB291. There are several reasons that the city opposes this legislation, first of all is the intent. The intent of this rule back, back in the day, and that's literally

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

Business and Labor Committee
January 28, 2013

and figuratively and every other way true, was to prevent the unscrupulous employer from grinding down the workers' compensation claimant by putting them under this pressure that they have bills, they are not being paid. And by slow walking the claims, the unscrupulous employer would reap a benefit. That's the intent of the rule that says now not just indemnity but disability payments, so not just time off work but, for example, if there's a partial permanent disability rating that's given, those are all subject to a 30-day waiting penalty. And I'll tell you, in practice, I have defended work comp claims, I've done plaintiff's work with work comp, and now I defend a municipal corporation that's self-insured for workers' compensation. I can tell you that the insurance carriers and if not the employers, but certainly the city of Omaha is acutely aware of this 30-day provision. Several of the opponents...of the proponents have now referred to this as a clock, and I can tell you that that's what it is. It's a clock. It's not a calendar. If you wanted to make this more equitable, change...I'd suggest changing it from 30 days to 45. It's a bureaucratic nightmare and far from what has been represented, and Senator Lathrop has put his finger on the problem. The way the legislation is currently worded, it's not after a judgment. It's not after a trial. It is after notice has been given. In practice, what that means is injured worker hurts his back, first report is generated, plaintiff's attorney has the guy examined, he's given a partial disability rating and notice is given, and that's in quotes. I hear air quotes, but that's what it is, notice is given. In practice what that means is the plaintiff's attorney delivers to the defense attorney or the insurance carrier a copy of the opinion that says Mr. Smith has a 40 percent partial disability of his lower extremity. That's what starts the clock running. It's not a calendar; it's a clock. And the intent is...the intent is not to provide a windfall benefit to plaintiffs' attorneys who are going to get their share of that penalty. The intent is to make sure that employers aren't taking unfair advantage of injured claimants by slow walking it. And to illustrate that we heard a horror story about a \$55,000 bill. I recently resolved a case in which notice was given, as an opinion from a doctor. It was served upon the city's risk manager and benefits manager via e-mail on December 12, late in the afternoon, 4:30. That's when the clock started running. There was no reasonable controversy and that's because the city had admitted compensability. I was not involved in this case because it was not...it hadn't been filed. It was a claim. So the city's benefits manager and risk manager were handling this without saying, Tim, come over here and help us defeat this claim. They are trying to pay this claim. Well, payment went out. It was electronically deposited along with this guy's pay, and that payment was made, depending on how you calculated the time, 29, 30, 31 days after, quote unquote, notice was given. So this was a case in which there were issues on the front end and on the back end, and we're talking about 30 days. We're not talking about somebody that's being beat down by bill collectors. We're talking about a 50 percent penalty. The amount at issue was \$8,000. So if the city missed this payment deadline, they were going to have to pay an additional 8,000 bucks. Well, it turns out neither the plaintiff's lawyer nor I nor my predecessor in the workers' compensation arena for the city of Omaha nor a recently retired Workers' Compensation Court was aware that the Supreme Court had already taken care of this. And the issue is, okay,

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

Business and Labor Committee
January 28, 2013

when does the 30-day clock start running? This was an e-mail sent late in the day. Did it start that day? Did it start the next day? Or as the rules for calculating time dictate, if notice was effective the next day, did we start the clock then the next...the day after that? So this was a close call and I'll tell you, there was never a question that the city of Omaha didn't want to pay this claim in a timely fashion. So the intent of the law is well served by the provision that's already in there, which makes indemnity and disability payments subject to the 50 percent waiting time penalty. You are absolutely right and I concur with what you said. If this were amended such that the 30 days or 45 days or the 60 days, whatever is reasonable after a judgment or an award...lots of times these cases are settled between the attorneys. They stipulate and the judge enters an award based on that stipulation. So if in fact there's a trial, which are...and those are very rare in workers' compensation, or if in fact there's an award based on a stipulation, then perhaps, if the existing waiting time penalties weren't already serving the purpose, then perhaps we should talk about upping the ante and making these catastrophically huge medical bills, \$55,000, subject to a waiting time penalty. Okay? Roughly, that's \$27,500 that the employer has got to pay to the employee? I don't think that's reasonable. I've talked about the clock versus the calendar. We've talked about the notice problem, which I think is a problem as drafted. [LB291]

SENATOR LATHROP: Tim. [LB291]

TIM HIMES: The other problem, and then I'll be quiet, is the problem of mixed medical bills. And this is a problem that the benefits manager is dealing with right now in another case. We've agreed to pay this client. We've agreed to pay all the medical bills that are reasonably related to the compensable injury. Well, what we get from the plaintiff's lawyer is 18 pages of charges and they include everything. And this is an elderly guy. He had an injury. Well, he's also got preexisting medical problems. And what we're doing, what the city benefits manager and her staff are doing is trying to sort out, okay, which of these charges is attributable to the accident and which are because this guy is old and he has peptic ulcer disease. So the 30-day penalty, the intent is currently being served by the rule as it exists. If the Legislature considers implementing LB291, it desperately needs to be amended to make sure that this is not the after-notice provision, in which the employer is not contesting compensability, is trying to comply, but is up against a 30-day clock that starts to tick the instant they get notice. [LB291]

SENATOR LATHROP: Okay. I think we got it. The one point I will make, though, in response or just as an observation and that is a lot of times people's access to medical care is a function of the bill being paid before. So at some point, you can get to a place, as a person treating with a doctor's office, where they go: Look, we're not seeing you, you're not paying your bill, it isn't getting paid, we don't...you know, we sent that bill to, you know, somebody's mutual company 60 days ago. And so they don't get care and they sit around and they're hurt and usually when that's happening they're not getting paid either. And so there's a little bit of a starving them out and it may seem inequitable

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

Business and Labor Committee
January 28, 2013

to give the penalty to the employee. I don't know who you'd give it to. If you want to give it to the hospital, there's not a great reason for that either. It's the employee that isn't getting the care because the bills aren't getting paid. That may be the logic. But I do appreciate your testimony. I think in some ways I agree with it or maybe it needs a clarification. So thank you. Other opponents, if any? [LB291]

TIMOTHY CLARKE: Thank you, Chairman Lathrop. Again, Timothy Clarke. [LB291]

SENATOR LATHROP: I'm just going to say this. Paige is going to turn the lights on. It's a little after 5:00. We're going to try to ask you guys to observe the lights, okay? When that red light comes on, that's wrap it up and look for questions and not... [LB291]

TIMOTHY CLARKE: I'm used to observing the lights in the courtroom... [LB291]

SENATOR LATHROP: ...continue on, as... [LB291]

TIMOTHY CLARKE: ...so I will attempt to do so. [LB291]

SENATOR LATHROP: ...when we're in front of the Supreme Court we have to observe the lights, right? [LB291]

SENATOR CHAMBERS: Yes. Yes. (Laughter) [LB291]

SENATOR LATHROP: Okay. Well, same thing goes here. [LB291]

TIMOTHY CLARKE: All right. Again, Timothy Clarke on behalf of Nebraskans for Workers' Compensation Equity and Fairness. I've also been authorized by Ron Sedlacek to voice opposition on behalf of the Nebraska Chamber of Commerce. Several of the concerns in opposition to this have been voiced. A couple of additional matters that I don't think have come up yet: I think LB291 would provide, in some respects, a windfall to injured workers. Employees already have a remedy for nonpayment of medical expenses under the Nebraska Workers' Compensation Act, and that's the attorney fee provision that's already in 48-125. The attorney's fee provision, in addition to allowing attorney's fees, also allows for recoupment of interest on unpaid bills in certain situations. The existing remedy is intended to compensate the employee for his or her trouble in attempting to recoup payment of medical expenses that were denied for one reason or another. The thing that's important to understand is that the existing attorney's fee provision contains reasonableness language that says the amount of the attorney's fee must bear some relationship to the time and energy spent recouping it, such that if only a small amount of time and energy was expended to recoup a small bill, the attorney's fee, presumably awarded by the court, is not going to be a large fee. There isn't that kind of check, based on the existing language of this, such that if there's a large, let's say, a \$100,000 medical bill from a surgery that's one

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

Business and Labor Committee
January 28, 2013

day past due, there's been no harm to the employee under this, a 50 percent penalty would attach to that when no bill was ever sent to the employee, there was no question about the employee receiving the surgery, there was no collection action, no nothing. There's no reasonableness provision as it exists in the statute that's currently written. In response to a question that Senator Chambers asked earlier, as the law is currently written, I think it applies to both the situation where the court is ordering payment of medical expenses but also this whole issue of when notice has been given, which would be much earlier than when a court ultimately decides. And again, that's the "or" language that's in the statute. As it relates to this issue of notice, I think there are lots of unanswered questions: When does the notice period begin? Is it when the bill was sent to the employer or its insurance company? Is it the gross amount of the bill or is it the amount that it should be reduced pursuant to the fee schedule? If it's the amount that should be reduced pursuant to the fee schedule, whose responsibility is it to find out what that amount is and how much time does that take? Is it the responsibility of the employer? Is it the responsibility of the insurance company? Is it the responsibility of the employee? At what point does that 30-day notice provision start to run? Beyond that, we have this whole issue of does reasonable controversy insulate the employer from this penalty provision. [LB291]

SENATOR LATHROP: Good. Thank you. [LB291]

TIMOTHY CLARKE: My time is up so if there are questions... [LB291]

SENATOR LATHROP: Thank you. I appreciate you observing the lights. Any questions for this witness? Senator Chambers. [LB291]

SENATOR CHAMBERS: I'm asking it for the record. I know you heard...did you hear the discussion between Senator Lathrop and a couple of the testifiers about doing something with this language to tighten it up? [LB291]

TIMOTHY CLARKE: Yes. [LB291]

SENATOR CHAMBERS: If that were to occur and you didn't know about such an amendment, do you speculate that that may do away with the opposition or at least moderate it? [LB291]

TIMOTHY CLARKE: Well, it's hard to answer without knowing what the amendment is. [LB291]

SENATOR CHAMBERS: Okay. [LB291]

TIMOTHY CLARKE: What I can say is the fact that we would eliminate, say, the notice part of it and this is only after the court says the bills must be paid, there might still be

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

Business and Labor Committee
January 28, 2013

legitimate concerns that an employer has regarding the 50 percent penalty. So I can't say prospectively that that would eliminate all opposition. [LB291]

SENATOR CHAMBERS: But that, in itself, would take away some of the difficulty if you were going to start it after this award, judgment, or whatever it was after a court proceeding. Now here's some language that I'm going to use for a different reason from what it was submitted by the city of Lincoln. (Exhibit 2) It says, "On a technical note, the city is also unclear as to whether the proposed penalty assessed on the 'amount payable' means the billed amount, the fee scheduled amount or the amount that was relevant to reasonable and necessary treatment." Suppose we added "whichever is greatest?" (Laughter) [LB291]

TIMOTHY CLARKE: Well, you could certainly answer that. [LB291]

SENATOR CHAMBERS: You don't have to answer that. [LB291]

TIMOTHY CLARKE: My opposition would stand. [LB291]

SENATOR CHAMBERS: Okay. That's all I have though. [LB291]

TIMOTHY CLARKE: Any other questions? [LB291]

SENATOR LATHROP: I see no other questions. Thanks for coming down, Mr. Clarke. [LB291]

TIMOTHY CLARKE: Thanks, Senator. [LB291]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist... [LB291]

SENATOR CHAMBERS: Mr. Hallstrom, you'll notice the light is red and you were told... (Laughter) [LB291]

ROBERT HALLSTROM: Yeah, it is. [LB291]

SENATOR CHAMBERS: Oh, I'm sorry. [LB291]

ROBERT HALLSTROM: Thank you. Thank you, Paige. [LB291]

SENATOR CHAMBERS: I jumped the gun. [LB291]

SENATOR LATHROP: Paige is just getting into the habit. [LB291]

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

Business and Labor Committee
January 28, 2013

ROBERT HALLSTROM: Just getting warmed up. [LB291]

SENATOR LATHROP: I think she's let a couple people go longer than three minutes. [LB291]

ROBERT HALLSTROM: I am a registered lobbyist for the National Federation of Independent Business, also been authorized by Mr. Joseph Young of the Greater Omaha Chamber of Commerce to express their organization's opposition to LB291. Most of the comments that I have are in my written testimony which I've submitted to the committee. I would gladly, since it's written material, I'd gladly waive any expectation of privacy to those remarks and you can gladly share it with the members of the committee. And I'd be happy to address any questions that you might have. [LB291]

SENATOR LATHROP: I think you're mixing bills but that's okay. We appreciate your brevity. (Laughter) We appreciate your brevity at this hour. And I do think we understand the opposition, the concerns expressed by the opposition, and the fact that we probably couldn't amend this to get rid of the opposition either. [LB291]

ROBERT HALLSTROM: I think there would still be some concern, Senator. [LB291]

SENATOR LATHROP: Okay. Any questions for Mr. Hallstrom? I see none. [LB291]

ROBERT HALLSTROM: Thank you. [LB291]

SENATOR LATHROP: Thanks, Bob. [LB291]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. Our concerns have pretty much been articulated this afternoon. It does all involve the notification issue, when does that start running, what type of notification. Municipalities from across the state have contacted our office and indicated that once the insurer is notified of what the claim is, it takes at least a minimum of 45 days, and then typically they have to go back and spend another 15 to 20 days because not all the medical records are there. They have to get some additional information in order to process it. So that's a concern we have and we appreciate your courtesy in trying to make the bill tighter. [LB291]

SENATOR LATHROP: Very good. Thanks. [LB291]

LYNN REX: Thank you. [LB291]

SENATOR LATHROP: Any questions for Lynn? I see none. Thanks. [LB291]

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

Business and Labor Committee
January 28, 2013

LYNN REX: Thank you. [LB291]

SENATOR LATHROP: Is that all the opposition? Anyone here in the neutral capacity, wish to testify on the bill? Seeing none, Senator Nordquist to close. [LB291]

SENATOR NORDQUIST: Thank you, Mr. Chairman and members. I'll be brief, given the late hour. You know, we heard about the initial provisions of this section. Paragraph (1) was really focused on preventing workers from being ground down by not getting their wages in a timely manner when injured, but this equally can be as taxing on those workers in a family and that's why I introduced this. We heard it described as a potential windfall for those injured workers. Well, it's only a windfall when they get jerked around, and we are seeing that more and more. And we know that there's people in this business that stand to profit by delaying payments. We know that that money turns around and generates profit for those companies. I will say we introduced the bill as I introduced it in 2009. The committee did move it out, as that was LB622, with an amendment clarifying that if not received within 30 days of notice of injury when there is no reasonable controversy, or 30 days after final order issued after an appellate court mandate. So that would clarify that the clock would start when there is no reasonable controversy. Thank you. [LB291]

SENATOR LATHROP: Any questions? Oh, I'm sorry, Senator Chambers. [LB291]

SENATOR CHAMBERS: (Inaudible). [LB291]

SENATOR LATHROP: No, go ahead. [LB291]

SENATOR CHAMBERS: No, your question... [LB291]

SENATOR LATHROP: No, I don't. [LB291]

SENATOR CHAMBERS: Senator Nordquist, if the committee advanced a bill with an amendment which made the bill different from what you offered this time, why didn't you draft your bill the way the committee had amended it? [LB291]

SENATOR NORDQUIST: That is a good question. Talking to some folks, they thought, as some of the proponents did, that that wasn't necessary, that the court would interpret it that way. But certainly we probably should have, in hindsight. [LB291]

SENATOR CHAMBERS: To whom were you presenting the bill at the first stage, whoever "they" are, or to the committee? [LB291]

SENATOR LATHROP: To the proponents of the... [LB291]

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

Business and Labor Committee
January 28, 2013

SENATOR CHAMBERS: Now you're a very intelligent man. You're young but you're intelligent. [LB291]

SENATOR NORDQUIST: That's very nice of you to say. [LB291]

SENATOR CHAMBERS: Which should you have been more concerned about in terms of an opinion, the committee's or "they," whoever they are? [LB291]

SENATOR NORDQUIST: Well, I trust the committee to be wise enough to include that if they think it's important. [LB291]

SENATOR CHAMBERS: Do you wish you had paid attention to the committee now? [LB291]

SENATOR NORDQUIST: I probably do. I probably do. (Laughter) [LB291]

SENATOR CHAMBERS: Lesson learned, I've done my job. [LB291]

SENATOR NORDQUIST: Yes. Thank you. [LB291]

SENATOR LATHROP: Very good. That concludes our business today. We're going to have a short Exec Session if we can get some people to stick around. Thank you. [LB291]