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Business and Labor Committee
February 10, 2014

[LB731 LB793 LB951 LB961 LB997 LB1083]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 10, 2014, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1083, LB961, LB951, LB731, LB793, and LB997. 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: Welcome to the Business and Labor Committee. My name is Steve Lathrop. I'm the Chair of the committee. I apologize to all of you for being late. We had Exec Board up until ten minutes ago so I had to grab something to eat. Today it looks from the crowd like everybody has been through this before, but we're going to use the light system today. We do have six bills in front of the committee. That's a significant number of bills to try to get through and have people out of here at a reasonable hour. So there will be a three-minute timer; two minutes on the green, one on the yellow. When the red comes up, please stop talking. And I guess that's going to be it. We'll have everyone introduce themselves beginning with Senator Harr. I will say this, and you all are mostly frequent flyers in the committee. But we do have people that won't be here from time to time. My guess is Senator Chambers is having something to eat for lunch, and Ashford may be introducing a bill somewhere. It's not out of disrespect or indifference to the subject matter, but we do have other commitments that take us out of the committee. Go ahead.

SENATOR HARR: Thank you, Chairman Lathrop. Burke Harr, Legislative District 8, representing the true midtown Omaha.

SENATOR WALLMAN: Senator Wallman, District 30, south part of Lincoln to Kansas.

SENATOR MCGILL: Amanda McGill, I represent northeast Lincoln.

SENATOR LATHROP: And it would appear that we're waiting on a senator.

SENATOR MCGILL: Or are you here to go first?

SENATOR LAUTENBAUGH: I'm willing to jump in if you'd like.

SENATOR LATHROP: Yeah, if you...we didn't get a response from Senator Garrett's office. So I guess we can start with Senator Lautenbaugh and LB951.

SENATOR LAUTENBAUGH: No harm in volunteering.

SENATOR LATHROP: Good afternoon, Senator Lautenbaugh.

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SENATOR LAUTENBAUGH: Good afternoon.

SENATOR LATHROP: This may be your first time that you actually appeared.

SENATOR LAUTENBAUGH: It's bigger than I remember. (Laughter)

SENATOR LATHROP: All right. LB951.

SENATOR LAUTENBAUGH: Yes, I'm here to introduce LB951. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. LB951 is designed to address the issues raised by the Nebraska Supreme Court in the case of Holdsworth v. Greenwood Farmers Co-Op in which it was determined that the waiting time penalty and attorney fees do not apply to lump-sum settlements for which court approval is not required. A few years back, we made a change in the law that said lump sums could be submitted if both parties have counsel. Apparently there was a dispute that arose where a lump sum had been submitted if you will, or agreed upon by the parties then not paid within 30 days. The plaintiff sought a penalty, and the Supreme Court eventually held there was no longer jurisdiction. This is meant to address that issue. I believe it is a rare Lautenbaugh workers' compensation-related bill in that it enjoyed bipartisan, if that's the right way to put it, support from both sides of the aisle. I was even advised by John Lindsay that Dennis Crawford wanted to come testify in support of this. I told him, no (Laughter) because today is Dennis' birthday of course, not because I didn't want Dennis' support. And I shouldn't speak for Dennis. [LB951]

SENATOR LATHROP: It would be a rare bill indeed. [LB951]

SENATOR LAUTENBAUGH: It would indeed. But in any event, simply put, that's what the bill is designed to do. It was brought to me. This is not a passion of mine or an idea of mine to say the least. It likely won't be my priority bill. I don't want to break anybody's hearts behind me, but simply put, that's what it does. [LB951]

SENATOR LATHROP: Okay, very good. Are there any questions for Senator Lautenbaugh on LB951? Seeing none, are you going to stick around to close? [LB951]

SENATOR LAUTENBAUGH: I think I've pretty much covered the ambit of the bill. [LB951]

SENATOR LATHROP: Okay, all right. We'll see if there is any opposition or support. Those who are here to testify in support may come forward. LB951. [LB951]

DALLAS JONES: Good afternoon, my name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I am an attorney with Baylor Evnen law firm here in Lincoln and here in support of the bill on

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behalf of Nebraskans for Workers' Compensation Equity and Fairness. Senator Lautenbaugh aptly characterized what the issue is. And that is historically we had one way to settle workers' compensation cases, and that was through a court of approval process. If the employer after that process failed to timely pay benefits, the employer was subject to penalties. Then 48-139 was amended some years ago to add another way to settle cases, and that is through a release. The assumption was that that release method which expedites the process would also have the same rules applied to it if the employer failed to timely pay. The Supreme Court case that Senator Lautenbaugh mentioned threw a wrench in that. And the net effect to the system was both on the employer and the employee side. We saw fewer cases being resolved through the release which again, is a more expedited approach that benefits both sides of the aisle. So last summer, Dennis Crawford and Rolf Shasteen and I and a few others talked about how to rectify that because it was good for both of our clients that we use this process. The point of the bill is to make sure that whether the parties use the traditional approach or this new approach, that the net effect is, if the employer pays late then the employer is going to be subject to penalties. By having it dealt with the same way, it's a good approach and good development in the system so that we settle cases more quickly. And those who are representing the employee are not reluctant to use that process by virtue of the absence of the penalty provision. [LB951]

SENATOR LATHROP: Dallas, I'm just wondering if...can an employer kind of circumvent the intent by filing the release late? So I send you a release, and I say, here's my...my client signed the release. And we're trying to get ahead of the guys that pay late. What about the guy that files his release late? [LB951]

DALLAS JONES: The bill won't speak to that because the trigger for the penalties is the filing of the release, just as was the trigger in the old... [LB951]

SENATOR LATHROP: Right, so if somebody waits five days to file a release, we don't even start the 30 days until... [LB951]

DALLAS JONES: That's correct. [LB951]

SENATOR LATHROP: ...the dilatory employer gets the release file. [LB951]

DALLAS JONES: We...you know, the same thing could be said of the old system. If the employer was dilatory intentionally in submitting the application for the court approval, it would effectively delay it that way as well. [LB951]

SENATOR LATHROP: Okay. [LB951]

DALLAS JONES: And the old system doesn't address that either. [LB951]

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SENATOR LATHROP: Okay. Thank you. Any other questions for Mr. Jones? Burke Harr. [LB951]

SENATOR HARR: Would you object to an amendment to that degree to make the change recommended by Chairman Lathrop? [LB951]

DALLAS JONES: I guess I'd want to see the language and how you would define what that triggering moment is because that's the key. [LB951]

SENATOR HARR: What would you recommend it to be? [LB951]

DALLAS JONES: My recommendation would be to leave it the way that it is. I don't see that as a problem. When we get to the stage where the two lawyers have decided that they're going to resolve the case, I've not seen a situation where it has been a problem, quite honestly, Senator. I don't think it's an issue. I mean, perhaps the guys behind me will say, no, we're seeing that a lot. I have not in my experience. [LB951]

SENATOR HARR: Then why would you be objecting to it? [LB951]

DALLAS JONES: I think it will complicate it further and we will have definitional problems that we probably don't need. [LB951]

SENATOR HARR: All right, thank you. [LB951]

SENATOR LATHROP: I see no other questions. Thanks, Dallas. [LB951]

DALLAS JONES: Okay, thank you. [LB951]

SENATOR LATHROP: Other proponents? [LB951]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the National Federation of Independent Business, the Nebraskans for Workers' Compensation Equity and Fairness, and I'm also appearing to express the support of the Nebraska Chamber of Commerce and Industry to LB951. The main thing that I've done for the record is to include a copy of the Holdsworth opinion with my testimony. I think both Senator Lautenbaugh and Mr. Jones have highlighted that we were supportive of the original approach to allow bypassing the court for approval of lump-sum settlement. And with the release process, the case has thrown a monkey wrench into that system in terms of the willingness to use the approach which we think adds to the economics and the efficiency of the system for both employers and employees. And we think LB951 will remedy that problem and put it back on an even keel. Be happy to address any questions. [LB951]

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SENATOR LATHROP: Very good. I see no questions. Thanks, Bob. [LB951]

STEVE HOWARD: Good afternoon. My name is Steve Howard, H-o-w-a-r-d, and I am here as counsel for the Nebraska State AFL-CIO. And we come before you in support of LB951. We join with the Chamber of Commerce and Senator Lautenbaugh and the Nebraskans for Workers' Compensation Equity because this is a bill that that case just cries out for some correction on. You know, oftentimes there will be a decision from the Supreme Court that maybe only affects a few cases, and it's sort of used as an example of why there should be some broad sweeping change. This just clarifies and corrects the process, and it will allow for predictability with both employers and employees, should drive up efficiency, should drive down cost. And that's what we're in favor of. And so we appreciate you considering our comments this afternoon. [LB951]

SENATOR LATHROP: Very good. [LB951]

STEVE HOWARD: Thank you. [LB951]

SENATOR LATHROP: Thanks, Steve. Anyone else here as a proponent? [LB951]

JUSTIN BRADY: Senator Lathrop... [LB951]

SENATOR LATHROP: Just a lovefest today. [LB951]

JUSTIN BRADY: Yeah...members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I am a registered lobbyist for the Property Casualty Insurers Association of America in support of LB951. And not to take up any more of your time, I'll just say, me too. See if there are any questions. [LB951]

SENATOR LATHROP: I don't see any questions. Thanks, Justin. [LB951]

JUSTIN BRADY: Thank you. [LB951]

SENATOR LATHROP: Anyone else here as a proponent? Anyone here to testify in opposition to the bill? Opponents? [LB951]

TIM HIMES: Tim Himes with the city of Omaha, H-i-m-e-s. I reviewed this case, and I reviewed the proposed change in the law. And I have several comments regarding it. First of all, the Holdsworth decision, I think even the proponents have conceded, is a case that was unusual in some respects and is not likely to affect a great number of claimants. The streamlining of the lump-sum settlement process has been a boon to both plaintiffs and defendants. The old process could be laborious, time consuming, and get tripped up three or four times and have to resubmit and resubmit when both sides

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wanted a settlement. The streamline settlement does speed things up in my experience representing the city of Omaha. However, the change which seems to me to be somewhat of a knee-jerk reaction to this decision is inappropriate I think for a couple of reasons. Now if you read the decision you'll note that there is a dissent. And so that means that learned judges have reviewed the situation and being presumably reasonable persons that they disagree. I don't disagree at all with the intent of the change and that is to kind of close a loophole where both sides want to resolve the case, the release is exchanged, the check is not produced within 30 days. That can be, for lack of a better word, bureaucratic inertia drags a lot of this stuff down in my experience. Getting a check issued from a political subdivision is no easy feat. Now in the underlying rule, the waiting-time penalties in the underlying rule, great idea. Fifty percent of unpaid indemnity is assessed if the employer slow walks the claimant. However, in this case, the 30 days seems arbitrary and unreasonably short; furthermore, 50 percent penalty of what? In the underlying situation, it's 50 percent of unpaid indemnity. In this case, a delay of 12 days which I submit is de minimis and not what the original rule was designed to halt, and that is employers intentionally wearing down claimants by slow walking the system. This resulted in the trial court awarding \$10,000 penalty and a \$500 attorney's fee for a 12-day delay. And I submit that when the employer and the employee decide rather than to litigate a case they approach it as a lump-sum settlement, right there the employer has expressed a willingness, if not a desire, to speed the process up. So the 30-day time limit seems arbitrary, and I would encourage you to consider making that more reasonable in terms of extending it to 45 or 60 days. And in addition, lump-sum settlements can range easily into the hundreds of thousands of dollars. So this 50 percent penalty of \$100,000...we could be in a situation where something is delayed in the mail, you got a delay of 2 or 3 days, and then you're soaking an employer with a \$50,000 penalty which is just inappropriate. So I think the intent is good. I think the approach should be refined. [LB951]

SENATOR LATHROP: Okay, thanks, Tim. Are there any questions for Mr. Himes with the city of Omaha? I see none. Thanks for your...oh, wait a minute. [LB951]

SENATOR HARR: Was he neutral or against? [LB951]

SENATOR LATHROP: He was opposed. [LB951]

SENATOR HARR: Oh, okay. Sorry. [LB951]

SENATOR LATHROP: All right. Thanks, Tim. Anyone else here in opposition to LB951? And for those of you that have come along late, I'll just tell you we went to LB951 because Senator Garrett wasn't here yet, and we thought to keep things moving we'd take up LB951 so that's why we're on LB951 right now. No other opposition, how about neutral testimony? Brings us to the judge. [LB951]

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JAMES MICHAEL FITZGERALD: James Michael Fitzgerald, 4260 Garryowen Road, P38, Fort Calhoun, Nebraska, 68023, and I'm neutral on the bill. I just came to point out a couple inconsistencies because I think this bill has got a green light or has more favor...has real favorable support. But if you look in paragraph 4 where it says, the release... [LB951]

SENATOR LATHROP: What page is that, Judge? [LB951]

JAMES MICHAEL FITZGERALD: Paren 4 on page 5. [LB951]

SENATOR LATHROP: On page 5, got it. [LB951]

JAMES MICHAEL FITZGERALD: All right, it said the release "shall be final and conclusive unless procured by fraud." All right, if you go to page 6 on line 5 it...well, you go below it. The "release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release..." See in one place it says, unless by fraud; in the other place it says, unless medical expenses. The existing law allows releases to be signed and filed and reserve the right for future medical expenses. If you see page 4 on line 16 through 20, you can see what the exclusions are. [LB951]

SENATOR LATHROP: So you would add... [LB951]

JAMES MICHAEL FITZGERALD: It would be complete release "unless such expenses are specifically excluded from the release." So you need to do a little tweaking. [LB951]

SENATOR LATHROP: You would on line 22 of page 5 put in the language about exclusions. [LB951]

JAMES MICHAEL FITZGERALD: Right...or "such expenses are specifically excluded from the release." And then on the next page put in, "by fraud." [LB951]

SENATOR LATHROP: Fraud, yeah. [LB951]

JAMES MICHAEL FITZGERALD: Okay, and the other thing I'd ask you to do is, is that since some of these releases leave something open. There are really, honest to goodness, there are releases that leave medical open in the future because the release just release the weekly benefits and is permanent benefits payable to the employee. But there are those releases so. I would ask that upon filing a release the case is automatically dismissed without. And that way we don't have to file a stipulation...in the release, the statute as written provides that once the sums are paid the court shall enter an order of dismissal with prejudice. Now number one, how are we going to know that

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the sums are paid unless there's a satisfaction filed or another stipulation? What I'm trying to do is I'm trying to get out of extra paper for the court because right now they file the release, then they file a stipulation, they file an order with or without. And if you just let them be without...if they're all just without...because any future case you would end up with the fellow raising a release right away. Thank you. [LB951]

SENATOR LATHROP: Okay. Always appreciate hearing from you. [LB951]

JAMES MICHAEL FITZGERALD: Thank you. [LB951]

SENATOR LATHROP: Good to see you. Thanks, Judge. Anyone else here in a neutral capacity on LB951? Seeing none, Senator Lautenbaugh waived closing, and so we'll go back to the top of our batting order. And that brings us to Senator Garrett who's here for the first time. Welcome, Senator Garrett. [LB951]

SENATOR GARRETT: Thank you, Senator Lathrop. My apologies for the miscommunication. I thought we were last on the agenda. So my apologies for running late. [LB1083]

SENATOR CHAMBERS: Well, the penalty is that after we give you a fair hearing, we'll kill your bill. (Laughter) I'm kidding. [LB1083]

SENATOR LATHROP: It should be a fun afternoon. [LB1083]

SENATOR GARRETT: (Exhibit 1) Indeed, indeed. Good afternoon, Senator Lathrop and members of the Business and Labor Committee. For the record, my name is Tommy Garrett, T-o-m-m-y G-a-r-r-e-t-t, and I represent the 3rd Legislative District in Sarpy County. I come before the committee today to bring you LB1083 which expands the current customized job training program administered by the Nebraska Department of Economic Development to offer additional incentive to grant applicants that hire recently separated military veterans. This bill addresses two separate issues. The first is a lack of skilled labor in Nebraska, and the second is an exceedingly high and growing unemployment rate for veterans. The idea for this bill evolved as part of a strategy devised by the Nebraska Chamber of Commerce and Industry and the Nebraska Department of Labor to meet Nebraska's growing workforce needs. Last year, the Chamber's Forging Nebraska's Future initiative identified that the availability of qualified labor was a top concern among Nebraska employers. In fact, a 2013 Nebraska Chamber survey found that more than half of nearly 450 survey respondents had experienced difficulty hiring qualified employees during the last year. More than one in four respondents said that the lack of available labor or skilled employees was the key issue limiting their growth. Recruiting military veterans is seen as part of a comprehensive solution to resolve the impediment to business growth in Nebraska. Former service members possess unique skills and technical expertise in addition to

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personal qualities like a strong work ethic, self-discipline, and a commitment to personal responsibility. Veterans are traditionally highly mobile and are comfortable living in urban and rural locations. Additionally, the unemployment rate among veterans well exceeds the national average. It's just about 10 percent, especially in the 18 to 24 age group. This situation will be further exasperated by the current federal budget sequestration, looming budget reductions, and troop demobilization which will necessitate a major reduction in military force in the coming one to three years. LB1083 is designed to provide job training to recently separated veterans. As defined in Section 81-1203, a recently separated veteran is "any person who served full-time duty with military pay and allowances in the armed forces of the United States...and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) within the twenty-four-month period prior to the date of application for the training grant." I also bring before the committee an amendment which would strike the sentence "except for training or for determining physical fitness" when defining a veteran. There are situations in which military members, especially those in the Guard and Reserves, where they forfeit their current employment in order to attend full-time active duty training. This military training is often required as part of that member's job-specific duty. Thus this training grant would prove to be beneficial to those members who returned after active duty training, are in need of employment and still require civilian job-specific training. It is my understanding the Nebraska Chamber of Commerce will be testifying on this bill and can give you some insight into the veteran training program. Thank you all for your time. I will be happy to answer any questions that the committee may have. [LB1083]

SENATOR LATHROP: Senator Harr. [LB1083]

SENATOR HARR: Is this part of...I think we passed this, but is this part of the internship bill we passed a couple years ago? Or how does...what does this fund? [LB1083]

SENATOR GARRETT: It's job training and part of the intern program, yes, indeed it is. [LB1083]

SENATOR HARR: And so would it move money from...it would create...it would move money from where it's currently spent to veterans, right? [LB1083]

SENATOR GARRETT: It creates a subaccount under that program that allows up to \$7,500 grant for employees...for a company that...for an employee that makes less than \$30,000, and up to \$15,000 grant...training for an employee making over \$30,000. And then there's an intern program that provides the lesser of 75 percent of the program or \$7,500. [LB1083]

SENATOR HARR: Is the fund currently fully allocated? [LB1083]

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SENATOR GARRETT: No, it's not. As of November 30, the latest statistics I have, there was \$9,260,776. [LB1083]

SENATOR HARR: There's \$9 million in it? [LB1083]

SENATOR GARRETT: Yes. I think it was originally funded at the \$25 million level. The program was created in 2006. [LB1083]

SENATOR HARR: What funds this program, do you know? [LB1083]

SENATOR GARRETT: I believe, if I'm not mistaken, it came from the General Fund, I think the initial allocation. [LB1083]

SENATOR HARR: And how did you come up with the dollar amounts because it is substantially more? The \$15,000 is substantially more than we give the others. [LB1083]

SENATOR GARRETT: The dollar amounts are actually in the original bill. [LB1083]

SENATOR HARR: But \$15,000 if a job exceeds \$30,000? [LB1083]

SENATOR GARRETT: For employees making over \$30,000 a year, up to that amount. [LB1083]

SENATOR HARR: Where is that? [LB1083]

SENATOR GARRETT: That would be on page 7, "For any job training grant involving the training of recently separated veterans as defined in section 81-1203, an average expenditure of seven thousand five hundred dollars per job created if the proposed wage levels do not exceed thirty thousand dollars per year or which exceeds an average expenditure of fifteen thousand dollars per job if the proposed wage levels exceed thirty thousand dollars per year." [LB1083]

SENATOR HARR: So why is...yeah, so it's \$15,000. We don't give interns that large amount. Why the larger percentage? Why the larger amount? It's double what we give anywhere else in the state. [LB1083]

SENATOR GARRETT: I suspect for a higher wage earner like that making over \$30,000 a year, it presupposes in my mind anyway that it's going to be some higher technical training standard. And we get individuals that are making that much, they're paying that much more in state income tax. [LB1083]

SENATOR HARR: But that's just an assumption, right? [LB1083]

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SENATOR GARRETT: That's just an assumption, yes. [LB1083]

SENATOR HARR: Okay. [LB1083]

SENATOR LATHROP: Okay. Thanks, Tommy. Are you going to stick around to close? [LB1083]

SENATOR GARRETT: Yes, I will. [LB1083]

SENATOR LATHROP: Very good. Then we'll take proponents of LB1083. [LB1083]

RICHARD BAIER: (Exhibit 2) Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Richard Baier, R-i-c-h-a-r-d; last name is B-a-i-e-r. I appear before you today on behalf of the Nebraska Chamber of Commerce in support of LB1083. I'm also testifying in support of the Greater Omaha Chamber and the Nebraska Bankers Association. And I'm going to probably...I'm going to hand out my written comments and I'm going to actually digress from those just a bit. I did include for you a copy of a press release Senator Garrett referenced; the fact that the Chamber has announced plans to be going out and trying to do and participate in job fairs around the country trying to recruit military veterans back to Nebraska. As you look at our population and workforce numbers, we think there's a real opportunity for us to be able to capture an increasing share of those veterans as part of our Nebraska community. Some Department of Defense folks are actually suggesting we may see as many 1 million military separators in the next year. That's a pretty significant labor pool for us to be targeting. I just wanted to briefly address a couple of questions. Senator Harr, your question about the number on the grant; I don't think there's any magic bullet in that number. And I would also tell you that this program actually has three different accounts within it: one for training for people that are creating new jobs in the state; a subaccount that was created several years ago to target rural areas, high-poverty areas, and early small business opportunities; and then the third one is actually the internship piece. And the intern has a different level at \$7,500. So it does have a little bit smaller level. But, you know, as we begin to look at the next generation workforce in Nebraska we really encourage you to think about this and think about how recruiting these veterans fits into our long-term growth strategies in the state. I don't need to be repetitive, so with that I would be happy to take any questions. I know you've got a long schedule today. [LB1083]

SENATOR LATHROP: Okay. Senator Harr. [LB1083]

SENATOR HARR: Yeah, I guess I don't understand...me, average Joe, if I needed job training and the job paid less than \$30,000, it's \$5,000. But if it's a veteran, it's \$7,500. Why do we treat them differently? [LB1083]

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RICHARD BAIER: Well, Senator, it's a fair question. I think there's really a couple of things, and one of them is this transferability of skill sets. What we're finding, and as we've done our research with folks like Bellevue University and UNO and a few other institutions that are really trying to place those veterans, there's sometimes a bit of a skill set transferability issue that maybe a student coming out school...coming out of a community college might not have. And then the second piece is really an incentive as we go out and market this program around the state, we want to be able to say to those veterans, look, Nebraska is being aggressive with the veteran community. We'd like you to be part of the solution. And so really it's sort of a marketing component, and it's also a recognition that their transferability and transportability of skill sets is a little different coming out of the military. We're having great...some success now in retaining folks leaving Offutt as an example. And they're finding some homes in some unique places, and I'll give you one example. It happens to be at Furniture Mart. Right now we have a lot of retirees or folks leaving the service finding their way into that logistics field because it's a lot of what the Air Force is about. You're moving planes. You're moving fuel, that kind of thing. So...but that transferability of skill set is really the biggest challenge. [LB1083]

SENATOR HARR: Well, and I appreciate it, and I appreciate everything our veterans do for our country. But, you know, I just question why if I have a transferability-of-skill issue, I get less money than a veteran? If I've lived here, and I've been a taxpayer for 18, 20 years, a veteran moves in, lives here 2 years and they get more money than I do...I mean, granted I understand they're serving their country. But there seems to be a fairness issue there too. [LB1083]

RICHARD BAIER: Sure. Well, the other thing I would tell you, Senator, in terms of the grants, these actually go to the companies and then are used to reimburse the actual training of the employees. I wanted to make that clear to start with. I do recognize your concern and that we have that discussion a lot. For us this really is about more of a marketing component right now. And then that transportability perspective, I'll just give you a couple of examples. If we have people who are leaving the community colleges as an example in a welding environment, trying to target those folks, they probably worked on welding equipment at the local community college that's similar to what they're going to see in the workplace. You pull somebody off of a Navy ship...probably don't have that quick uptick in terms of them being able to match that learning process and be able to adapt to those skill sets as quickly. So there is a bit of a learning curve coming from out of state potentially in that process. [LB1083]

SENATOR HARR: Okay, thank you. [LB1083]

SENATOR LATHROP: Senator Chambers. [LB1083]

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SENATOR CHAMBERS: This program as you envision it here really helps the businesses, doesn't it? It gives them more money, doesn't it, for hiring somebody? [LB1083]

RICHARD BAIER: It does provide training dollars to businesses, yes. [LB1083]

SENATOR CHAMBERS: And that's the only reason the Chamber of Commerce is here, because it represents the businesses not veterans, isn't that true? [LB1083]

RICHARD BAIER: No, Senator, for us this really is about attracting those sparks to our workforce. I mean that's really our goal right now. I would tell you as I've traveled the state a lack of workforce seems to be the number one factor that's sort of limiting our growth across the state of Nebraska. [LB1083]

SENATOR CHAMBERS: But what does giving the additional \$2,500 or whatever it is have to do with that? If the companies...are the companies the ones that need people to work? [LB1083]

RICHARD BAIER: Yes, they are the ones trying to recruit employees. [LB1083]

SENATOR CHAMBERS: And they cannot find an adequate number of people? [LB1083]

RICHARD BAIER: Many of the companies are struggling with finding the right people and the right skill sets of people, correct. [LB1083]

SENATOR CHAMBERS: And the only way you can get them to train veterans is to offer them...sweeten the pot for them. [LB1083]

RICHARD BAIER: Well, I don't know if it's the only way, Senator, but it is a way to try and incent and encourage that behavior. [LB1083]

SENATOR CHAMBERS: I'll tell you what I resent, and by the way, I have an honorable discharge which means nothing except that I didn't do anything to wind up in the brig. [LB1083]

RICHARD BAIER: I understand. [LB1083]

SENATOR CHAMBERS: People talk about veterans and will use that to exploit them for some other motivation. If these companies want to hire veterans, they are the ones who would reach out and say, if you are a veteran and they can say what the bill says if you want to, that you were separated from the service within 24 months of your application. They don't even have to say that. Then we will train you for this job. If the veteran has

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no interest in that training, offering the company more money is not going to make any difference because the veteran is not going to go there. If the companies really want to make a push, they know how to do that. I've seen advertisements by the Chamber of Commerce not only here but other states. I hear a lot of talk about, do this for the veterans, do that for the veterans. But the veterans are the sweetener because unless you're talking about Decoration Day or Memorial Day, veterans don't count even at VA hospitals. So this is not a program, even though it's supposed to be aimed at veterans, that moves me at all. As a matter of fact, whenever the Chamber of Commerce comes I look at them with a jaundiced eye because there are too many things they could be doing if they were genuinely interested in the target group as they call it that they're interested in. And now you at least know what my view is. [LB1083]

SENATOR LATHROP: Very good. Okay, thank you, Richard. [LB1083]

RICHARD BAIER: Thank you. [LB1083]

SENATOR LATHROP: Next proponent, if any. Anyone else here to testify in favor of the bill? [LB1083]

JAMES STEVENSON: Mr. Chairman, members of the committee, thank you for your opportunity to speak to you today. My name is James Stevenson, S-t-e-v-e-n-s-o-n. I appear before you today here as the president-elect of the Nebraska National Guard Association representing the officers of the Nebraska National Guard. I am currently an active colonel of the Nebraska National Guard, a U.S. Air Force veteran, the son of a veteran, and the father of a veteran. So I speak to you as one who serves and representing people who served. I support LB1083 and creation of the subaccount for the Job Training Cash Fund for the purpose of incentivizing small, rural, and high-poverty based companies to hire and train recently separated veterans. The United States military is in transition. On the 30th of January of this year, the National Commission on the Force...Structure of the Air Force released a 132-page report recommending to the President and Congress to move 36,600 active-duty billets from the active duty to the Guard and the Reserves. This movement would save the Department of Defense an estimated \$2 billion a year in personnel costs while maintaining access to these members and their training and capabilities if needed in time of national emergency. The United States House of Representatives currently is considering a similar bill to explore the same option with regard to active and reserve Army components. There is no doubt that if this commission's recommendations were implemented it will have an impact on the state of Nebraska through potential force transitions at Offutt Air Force Base but also through potential accessions of active-duty members into part-time service of the Nebraska National Guard. LB1083, if implemented with amended language, will assist active members who may already be established at Offutt Air Force Base and the vicinity to transition to a part-time military status and join the civil workforce. It will help us also with members of the National

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Guard whose training in new missions and specialties to recover from civilian employment interruptions caused by their military service and training. So I ask your support of the bill with the amended language in the definition of veteran, and I thank you for your time. [LB1083]

SENATOR LATHROP: Thank you very much, Mr. Stevenson. Any questions for this witness? Senator Chambers, you're recognized. [LB1083]

SENATOR CHAMBERS: Did you mention something, the federal government is considering doing a federal program? I might have misheard you. [LB1083]

JAMES STEVENSON: No, Senator. On the 30th of January of this year, just about 10 days ago, the federal government released a report called the National Commission on the Force...Structure of the Air Force. Currently, there are 338,000 members in the active duty of the United States Air Force. There are 72,000 members in the Reserves, and 105,000 in the National Guard which includes approximately 1,000 members in the state of Nebraska. [LB1083]

SENATOR CHAMBERS: Okay, and what is your rank now? [LB1083]

JAMES STEVENSON: I'm a colonel, sir. [LB1083]

SENATOR CHAMBERS: And how long have you been in the Guard? [LB1083]

JAMES STEVENSON: I have been in the Guard for approximately 15 years, and I was on active duty for approximately 10, sir. [LB1083]

SENATOR CHAMBERS: Is everybody who was in the military a hero just by virtue of being in the military? [LB1083]

JAMES STEVENSON: Well, Senator, I would state that they are because they've raised their right hand and they've sworn to protect the Constitution of the United States and those in the Nebraska National Guard are sworn to protect the Constitution of the State of Nebraska. And they rise up in times of national emergency but also in times of civil disturbance and disasters... [LB1083]

SENATOR CHAMBERS: But that's not what I asked you, not being rude. Do you think merely by virtue of being in the military it makes you a hero? [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: You feel like you're a hero. [LB1083]

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JAMES STEVENSON: I would not label myself such, but the people that I served... [LB1083]

SENATOR CHAMBERS: You were in the military, weren't you? [LB1083]

JAMES STEVENSON: I am. [LB1083]

SENATOR CHAMBERS: Then you qualify as a hero, don't you? [LB1083]

JAMES STEVENSON: If you define that that way, yes, sir. [LB1083]

SENATOR CHAMBERS: No, you did. I asked you what you think. And you said you think by virtue of being in the military it makes somebody a hero. [LB1083]

JAMES STEVENSON: I express my admiration for those who I serve in arms with, yes, sir. [LB1083]

SENATOR CHAMBERS: But you don't really think that makes you a hero, do you? [LB1083]

JAMES STEVENSON: I would never label myself such, sir. [LB1083]

SENATOR CHAMBERS: But it makes everybody else. [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: Okay, if a guy is in, he goes in because...or she to get the military obligation out of the way thinking only of getting that out of the way so that it would be possible to pursue an education, higher education without worrying about being drafted if it was during that time... [LB1083]

JAMES STEVENSON: There is no draft, Senator. [LB1083]

SENATOR CHAMBERS: No, no. I said it was during that time when there was a draft. [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: That might be before your time. There used to be a draft. [LB1083]

JAMES STEVENSON: Understood. [LB1083]

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SENATOR CHAMBERS: There was a draft when I was in the military. [LB1083]

JAMES STEVENSON: Absolutely understand. [LB1083]

SENATOR CHAMBERS: Now if a person goes in to just get it out of the way so you can go to school without being drafted, that person's a hero, too, isn't that right because it doesn't matter your motivation? The mere fact of being in the military makes you a hero, correct? [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: We don't see eye to eye. Do you think there are people who can get an honorable discharge or general discharge under honorable conditions who was not heroic in any sense of the word other than just by being in the military, that he or she dodged every unpleasant task that could be done, would do it half stepping and just slide through with the minimum of effort, just get by enough to get a general discharge under honorable circumstances or an honorable discharge? In other words to shorten this up, a person's motivation doesn't matter to you as to whether or not he or she is a hero? [LB1083]

JAMES STEVENSON: Senator, the process to get into the military is so stringent at this point that approximately 75 percent of today's high schoolers cannot qualify for military service. And there is no draft so you have to raise your right hand and volunteer to do so. Now I know that are many first-term airmen, soldiers, Marines, and sailors who find themselves in their first term in the United States Military and it is not what they thought it was cracked up to be, and they leave after their first term. But the simple fact of the matter is they raised their right hand and they volunteered and said, I will do this. Many of them maybe had few alternatives, but most of them are better for it. They're physically fit. They're more healthy, and they have reached at least a certain level of intelligence in order to pass the ASVAB batteries in order to complete their technical training. I think that anything that we can do to support those members as they transition from full-time, part-time, or complete civilian employment is something that would be beneficial for the state in total to have as citizenry. [LB1083]

SENATOR CHAMBERS: I want to tell you why I'm pursuing this line of questioning. [LB1083]

JAMES STEVENSON: Okay. [LB1083]

SENATOR CHAMBERS: I think rather than labeling everybody a hero simply by virtue of being in the military it's really doing a disservice to people who really do perform above and beyond the call of duty, who knowingly, willingly, voluntarily, even fearfully place his or her personal well-being at risk to carry out a mission. That person is

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lowered to the level of somebody who just put up the hand and said...because the oath is even perfunctory, who just puts up a hand and says I'll be in here for four years because if I stay here then I can get some money when I get out to go to school. And you're putting that person on the same level as a person who at great risk did something that is so far out of the ordinary that it's distinguished by the label heroic. So you and I just have a different point of view. But I don't want people to think that all they can do is wave the banner or the bloody shirt of military and I'll agree to everything they're doing. I'll ask you this question, and you came here so you've opened yourself to it. Do you think that there are ordinary people who are not in the military who are as entitled to get the kind of training as these people you say in the military should get at the hands of these companies who are going to get this money to train them, or the military people should be put on a sort of pedestal and given more? [LB1083]

JAMES STEVENSON: I do believe that, sir. Yes, sir. [LB1083]

SENATOR CHAMBERS: That they should be given more. [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: Okay, thank you. [LB1083]

SENATOR LATHROP: All right. Senator Ashford. [LB1083]

SENATOR ASHFORD: Just one question. Could I...and this may have been answered so I apologize. Do you know what the...do you have any data on what the unemployment rate of these people would be within a year after...did someone mention that already? [LB1083]

JAMES STEVENSON: I think Mr. Baier mentioned that, that it was approximately 10 percent for military veterans currently, sir. [LB1083]

SENATOR ASHFORD: That's within a year or within a period of time. [LB1083]

JAMES STEVENSON: Sir, I don't know what the time period on that would be. [LB1083]

SENATOR ASHFORD: Is it the other way around? Well, I'll ask Senator Garrett. [LB1083]

SENATOR LATHROP: So the unemployment rate for somebody discharged from the military is higher than the overall unemployment rate in the country. [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

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SENATOR LATHROP: Do you know why that is? [LB1083]

JAMES STEVENSON: Well... [LB1083]

SENATOR LATHROP: I mean, when I watch the commercials and they say, we're going to recruit you. We'll show you the world. We'll train you for an occupation. How is it that their unemployment rate is so high? [LB1083]

JAMES STEVENSON: Sir, I think it's a transitional point and finding a place, finding a...and that's partially why this bill is important. It helps a military member and incentivizes the business to find them a home and to transfer their skills. In many cases if you're a weapons loader, there is no job that transitions to the civilian world as weapons loader. But there are jobs that you can do that are similar, maybe UPS or FedEx, logistical jobs in that sense. Even more so I believe that those highly trained persons who are linguists, intel analysts, and cyber warriors who the United States federal government has invested a great deal of money into, we would like to transition those types of people into new industries and new businesses in the Nebraska metros or even rural areas for that matter. But finding them homes as those technologies are developing is crucially important. [LB1083]

SENATOR LATHROP: You know, this may go back to a point either Senator Harr or Senator Chambers made which is, why do we have to incentivize employers? Wouldn't they, because these folks are getting out of the...in other words, is this the right remedy? [LB1083]

JAMES STEVENSON: Well, to answer, Senator... [LB1083]

SENATOR LATHROP: If these guys are coming out of the military and employers, all things being equal, I would think I'd be like, yeah, go hire one of these guys. He's a vet...he or she is a vet and they've been in a disciplined environment for some period of time. Even if they don't have the skills and I've got to train either of two people. This guy, the vet is you would think a more attractive candidate without ever having to be given an incentive. So is the problem with them finding work, these kinds of incentives or do they have other social problems that involve transitioning out of the military this won't address. [LB1083]

JAMES STEVENSON: I think that the...Senator Lathrop, the target is to keep military members that are in transition from active to part-time or full civilian employment from leaving the state. And where...as Senator Harr used the example of, why would somebody who has lived here for 18 or 19 or 20 years be less worthy than a military veteran? The fact is that many times military service has brought this veteran to our state and we would like to keep them and keep them as a valuable citizen. But if they pack up and leave to return home, especially to a higher state or a state with higher

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unemployment than the state of Nebraska they become a burden on the federal government and we lose that revenue from their efforts as they begin to build a life as a Nebraska citizen. [LB1083]

SENATOR LATHROP: Okay. I just...I think about it and I'm like, why don't we give the vets some money to stay in Nebraska? We're giving the businesses the money and I don't know if that keeps the vets in Nebraska. But I appreciate your answers. [LB1083]

JAMES STEVENSON: I believe that it incentivizes the business to allow the business to be more competitive in their offer to that veteran to get him to stay here versus leave for another job in another state. [LB1083]

SENATOR LATHROP: Okay. Senator Wallman has a question for you. [LB1083]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thanks for coming, Colonel. I used to be a Guard member myself, but right now do you think part of the reason is some of the health concerns? You know, if they come back from Afghanistan and Iraq, you know, can they find a job with some kind of disorder? [LB1083]

JAMES STEVENSON: I don't know if that is as much a problem as we believe it to be in the sense that, yes, posttraumatic stress is a definite impact on those members that have served in combat zones. I'm not sure that that really parlays into a reason to not hire. I couldn't answer the question. [LB1083]

SENATOR WALLMAN: I know I have a friend that way that he won't get hired. But thanks. [LB1083]

SENATOR LATHROP: All right, thank you. Senator Chambers. [LB1083]

SENATOR CHAMBERS: If a person is a hero just by going into the military, then military service must be heroic, and the military itself must be an environment where heroism is the rule. Would that be correct? [LB1083]

JAMES STEVENSON: Yes, Senator. [LB1083]

SENATOR CHAMBERS: Do you read the newspaper and watch television and see the tremendous number of rapes, sexual assaults, and other misconduct directed toward female members of the military? Are you aware of that? [LB1083]

JAMES STEVENSON: I am, sir. [LB1083]

SENATOR CHAMBERS: And that's still a heroic environment. Are you aware of the high rate of suicides among...? [LB1083]

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JAMES STEVENSON: Senator Chambers, I think that no matter what you do you're going to be able to select people and find people who acted dishonorably to an honorable profession. [LB1083]

SENATOR CHAMBERS: Are you... [LB1083]

JAMES STEVENSON: But I would consider you, sir, a hero because you were honorably discharged. [LB1083]

SENATOR CHAMBERS: Are you... [LB1083]

JAMES STEVENSON: And I would state to you that any person, fully 75 percent of my wing here in Nebraska raised their right hand and joined after 9/11 knowing full well... [LB1083]

SENATOR CHAMBERS: But that's not what I'm asking you. [LB1083]

JAMES STEVENSON: ...but, sir, you said to me... [LB1083]

SENATOR CHAMBERS: No, no, we're talking about...wait a minute, you're talking about...I asked the question... [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: ...is the military an environment for heroism? [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: Then I'm asking you questions about that military, not somebody raising their right hand. [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: You're aware of the widespread examples and cases of rape. Are you aware of the outbreak that they're finding of cheating in the military? [LB1083]

JAMES STEVENSON: Yes, sir. [LB1083]

SENATOR CHAMBERS: Are you aware that the problem has become so bad that Secretary of Defense Hagel said there needs to be an investigation to see if the overall ethics and morality of the military itself are slipping and diminishing? Are you aware that he made a statement to that effect? [LB1083]

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JAMES STEVENSON: I read that today, sir. [LB1083]

SENATOR CHAMBERS: You're aware of the higher rate of suicides among active-duty troops and those recently discharged. I'm sure you're aware of that. [LB1083]

JAMES STEVENSON: Completely. [LB1083]

SENATOR CHAMBERS: Are you aware of the fact that there are men and women who are known to have mental problems, illnesses while on duty but because they were ridiculed, they were held up to scorn and made to feel like they were not heroic if they sought mental health treatment while in the military? Are you aware of such a thing as that happening, or are you not aware of it? [LB1083]

JAMES STEVENSON: I am aware of it. It is not the norm, sir. [LB1083]

SENATOR CHAMBERS: With this bill, is it your contention that the only way you can get these patriotic businesses to hire veterans is to offer them something in the nature of a bribe? [LB1083]

JAMES STEVENSON: That is not my contention, Senator. My contention is that this would allow Nebraska businesses to remain and be more competitive in drawing those veterans that will be transitioning from active duty to either full civilian employment or to part-time military and civilian employment. [LB1083]

SENATOR CHAMBERS: But the veterans don't get the money. The business gets the money, and without the money the businesses can do just as much. [LB1083]

JAMES STEVENSON: Perhaps they cannot, Senator. [LB1083]

SENATOR CHAMBERS: The businesses can...say it again. [LB1083]

JAMES STEVENSON: Perhaps they cannot. [LB1083]

SENATOR CHAMBERS: Okay, thank you. [LB1083]

SENATOR LATHROP: Senator Ashford. [LB1083]

SENATOR ASHFORD: Just following on, here's my point. I've lived in this area my entire life and I am convinced in talking to employers that they look for veterans to hire and that they pursue veterans. And there are veterans in high corporate jobs in Omaha who have been recruited to work there because they feel these women and men are advantageous to their business and I would agree, you know, generally. We don't have

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that much money to spend on giving more incentives to employers. The incentive to an employer is that they are going to have the opportunity to hire someone that got into the military as a volunteer; 75 percent of the applicants into that institution were denied admission. So you're getting the cream of the crop coming out. And I agree with you. Some of these people are very qualified. Omaha businesses hire, and if you look at the population of Bellevue and Sarpy County, that just didn't happen overnight. People stay here because there were jobs here in the defense industry. There are jobs here in related industries. You look at Valmont, UP, every major corporation in Omaha is filled with veterans who have...like yourself as an officer or as somebody who is an enlisted person. I'm not...so in some sense I'm agreeing with you. We have...a great deal of agreement here is that many of these people are very qualified for the...I mean, we need incentives for people who...where we have 27 percent unemployment with, you know, minority youth. We need incentives for that because businesses won't hire those people without taking a risk...to take that risk, supposedly that's what they tell us. We need schools and we need public schools that will provide training, career training for people so that they can work in industries. That's what we need to spend our money on. But I think the military has done a great, in my view over the last 25 years, has done a great service to the state in training people who have made significant contributions to our employment. I just question how we...we don't have...again, spending state money on something that employers are already tuned in to do is where I have a problem. I don't have a problem with the idea that there are veterans that do a great job and that the population of Sarpy County has increased significantly because of that fact and that the employers do not need this incentive. And if they say they do, they're not being straight in my view with you because I know they hire numbers of veterans I assume like yourself who are working somewhere down there in Sarpy County or somewhere in Nebraska. So anyway, thank you. [LB1083]

SENATOR LATHROP: I think that's it. We appreciate your testimony and your thoughts. [LB1083]

JAMES STEVENSON: Thank you, sir. [LB1083]

SENATOR LATHROP: Thank you. Next proponent. Okay, are you here to testify or are you just moving in or out? Okay. Anyone here in opposition to LB1083? Anyone here in a neutral capacity? Seeing none, Senator Garrett to close. [LB1083]

SENATOR GARRETT: Thank you, Senator Lathrop. I'm sitting over here reading forward looking to try and address some of these questions and concerns. It was stated, you know, why is the unemployment higher among a lot of veterans? And it was precisely what the colonel said. There are a lot of veterans who are getting out who are artillerymen or infantry, those kinds of skills, munitions experts, those kinds of skills that don't necessarily transfer obviously over to the private sector. But nevertheless their underlying basic skills that they've learned through basic training and tech school and

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everything, you know, responsibility, job responsibility, those kinds of things. Senator Chambers, a lot of the things that you mentioned, you know, we are in the military a cross-spectrum of society. And we have the same problems obviously in the military that society has. We have, you know, we have our problems with sexual harassment, those kinds of things. We have our problems with drugs. We've got our problems with alcohol. We certainly have a problem with suicide. We've got an unbelievable suicide rate both on active duty and for the retired or recently separated and that's a very concerning, chilling statistic. I was fortunate and blessed to be a commander several times and we take suicide very seriously. It's just real hard to understand why people do some of the things they do. But with all of that said, you know, the military does have programs where every year we get sexual harassment training. We get equal opportunity training. We get suicide training. So those are a lot of good skill sets. You know, the state obviously has a shortage of "skilled labor" and I've heard this as a small businessman talking to other businesses as well. There are some companies that are very philanthropic and that go out and recruit veterans. They don't need any financial incentive to do that. Other...one such company, and it gets a lot of criticism, Walmart has said they will hire point blank any honorably separated discharged service member within two years of them getting out. I mean, period, dot they'll give them a job. I mean, and I know a lot of people have their problems with Walmart, but nevertheless that's a company that has stepped up and done that. I missed my committee meeting last Friday because I was out at the base attending a...as a business owner attending a transition assistance program. The Air Force has dictated that all members separating or retiring have to go through a transition assistance, and there are a number of companies there talking to these people who are getting out of the service about how to write a resume and how to do an interview and those kinds of things and how to sell themselves. And it was interesting to see the companies there. Obviously there were some defense contractors there, but Union Pacific was there in a big way. Union Pacific has always been a big recruiter. Do they need financial incentive to hire military veterans? I don't think so but for whatever reason some companies might need...you know, would like a little financial incentive to move somebody here and put them through a training program. Obviously I don't want to spend any more of the state's money than is necessary either, but I do know that there is a skilled labor shortage and there is in fact a need. You know, the unemployment rate for veterans is pretty high. You know... [LB1083]

SENATOR LATHROP: Can I ask you a question? Do you know, is the unemployment rate among vets 10 percent in Nebraska? Or is that the nationwide...? [LB1083]

SENATOR GARRETT: I don't know that specifically. I think that's nationwide, I believe. I'm getting a nod from my LA, yes. She's... [LB1083]

SENATOR LATHROP: Okay, so we don't know what that number is in Nebraska. [LB1083]

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SENATOR GARRETT: No, I know Nebraska has got a 3.6 percent unemployment rate. We're the second best in the country. [LB1083]

SENATOR LATHROP: Right. [LB1083]

SENATOR GARRETT: And I think the Guard and Reserve I think is about a 7.6 percent, if I remember correctly, unemployment rate. [LB1083]

SENATOR LATHROP: Seven point six percent in Nebraska or in the country? [LB1083]

SENATOR GARRETT: For Guard and Reserve, right. [LB1083]

SENATOR LATHROP: Okay. [LB1083]

SENATOR ASHFORD: In Nebraska. [LB1083]

SENATOR GARRETT: Right. [LB1083]

SENATOR ASHFORD: Seven point six. [LB1083]

SENATOR LATHROP: That...I just don't understand that, but why their unemployment rate would be two times the state average. Okay, well... [LB1083]

SENATOR GARRETT: I don't know that either. [LB1083]

SENATOR LATHROP: It's an interesting subject, and we appreciate the bill and the opportunity to kick it around the Business and Labor Committee. Senator Chambers. [LB1083]

SENATOR CHAMBERS: Senator Garrett, have you talked to business owners who said, the only way we will train these veterans is if we're given this extra money to do so? [LB1083]

SENATOR GARRETT: I have not. [LB1083]

SENATOR CHAMBERS: So this is just something that the Chamber of Commerce came up with. Are they the ones who asked you to bring this bill? [LB1083]

SENATOR GARRETT: Yes, yes. [LB1083]

SENATOR CHAMBERS: And it's for businesses I think you can see. One reason I haven't asked you a lot of questions, you and I can have our conversations in much

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greater depth. I didn't want to take all the time, but the other colonel, I wouldn't get another chance to talk to him. I probably never will again. But to keep him from thinking that I was picking on him, there's a recently breaking scandal on recruiting, the falsification of documents, recruiters and higher-placed people in the Guard and maybe the Reserves using names that are nonexistent so they can get bonuses. So when they come here telling me everything in the military and everybody in the military is heroic and a hero, that is BS. I'm 76 years old. Now I've been in the world too long to accept the GI Joe notion or John Wayne holding a .30 caliber machine gun firing it. Hey, have you fired a .30 caliber machine gun? [LB1083]

SENATOR GARRETT: I have not. [LB1083]

SENATOR CHAMBERS: Well, it's on tripods. They have a traversing and elevating mechanism. You turn it, and you raise it. And then you have to lean into it and hold it. And even then it moves you. Well, a lot of people get the impression that things that come out of fairy tales are the way that it really is. I'm not saying that people who serve honorably should be disregarded. In fact, I say the contrary. One reason I fought against license plates that they say honor veterans, because every other day of the year when we could be concerned about their mental health, they're being locked up in jail on trifling charges, when what they need is some kind of mental health assistance when they're locked up in prison and their mental health needs are not dealt with. Then I'm going to hear all these people come here and talk about veterans and it means something. They go out at the cemetery over dead people and show all this concern. But the walking dead, you can find them on the streets of Lincoln and Omaha right now homeless. And a lot of them are not lacking in basic intelligence, they do have the kind of problems that were being suggested by Senator Wallman where they can't really function well around other people. There are things that set them off, noises. Fear suddenly swoops in on them and they cannot cope. Those are the issues that I'm concerned about when it comes to veterans not bribing some of these businesses to hire veterans and then after the businesses get bribed then the Chamber of Commerce can put out a blurb, "Chamber leads effort to recruit military veterans." It's for their image. If the Chamber of Commerce wants to bribe their business members, let them do so. But what they ought to be doing is calling them together for seminars and inviting somebody like me to come and talk to them about what patriotism really means, what heroism really is and how you genuinely show concern for the deep-rooted problems that people who served in the military of the United States confront. They are there. But again, I'll have a chance to talk to you more later because we're both in the Legislature. [LB1083]

SENATOR GARRETT: Thank you, Senator. And I don't disagree with what you say. I always look at this as a multipronged strategy, if you will, about attacking a problem. There are many problems with PTSD and guys with mental health issues indeed. But then there's the common everyday GI Joe that, you know, is...I have a copy of my latest

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Air Force Times where 18,336 enlisted and 4,166 officers must go just in the next year. And a lot of these guys didn't know this was coming. And, you know, they're security forces. What are they going to do for a job? Those run-of-the-mill guys, those everyday Joes that are looking for a... [LB1083]

SENATOR CHAMBERS: Suggestion, there's somebody still here from the Chamber of Commerce probably. Why don't they team you, a colonel, and me who's supposed to be unpatriotic, in fact I was investigated when I came back and joined the Reserve unit to see if I was subversive. And J. Edgar Hoover wanted that done. I got Freedom of Information...through the Freedom of Information Act and I saw the documents. Find out if Chambers has done or advocated anything that violates federal law so that he can be prosecuted and other things where J. Edgar Hoover mentioned me by name and also where he advised his agents not to have a public confrontation with me because I would embarrass the FBI. That's what I went through, and I had a piece of paper that said, honorable discharge. Why don't we get the Chamber of Commerce to team you up where your credentials as a patriot are impeccable and me, where my patriotism...I don't have patriotism. I don't even believe in that, but where my legitimacy is subject to severe question. And you and I go around and talk to these businesses and try to persuade them why they ought to hire veterans without being bribed to do so. And maybe we can shame them into doing what they ought to be willing to do and that man from the Chamber of Commerce ought to be ashamed to come here and present something like this. I don't blame you at all. You're a new person. You're from the military. I think your motives are pure but not so with the Chamber of Commerce. I'm looking at the blurb that they put out. Chamber of Commerce, that's what they're interested in and he did admit it's marketing that he's interested in. And I don't want to market veterans. [LB1083]

SENATOR LATHROP: Okay. [LB1083]

SENATOR CHAMBERS: But that's all that I have. [LB1083]

SENATOR GARRETT: Okay. [LB1083]

SENATOR LATHROP: I think that'll do it. [LB1083]

SENATOR GARRETT: All right. [LB1083]

SENATOR LATHROP: Thanks for your bill and coming here today... [LB1083]

SENATOR GARRETT: Thank you very much. [LB1083]

SENATOR LATHROP: (Exhibit 3) ...and for all those who participated in the hearing. The next bill...oh, pardon me. Before we close on LB1083 we do have a letter from the

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Nebraska Community College Association in support, and that will be made part of the record. And that will take us to LB961 and Senator Tanya Cook. Good afternoon, Senator Cook. [LB1083]

SENATOR COOK: Good afternoon, Mr. Chair, members. My name is Tanya Cook, T-a-n-y-a C-o-o-k. I appear before you today as the state senator representing the 13th Legislative District and as the introducer of LB961. Under current law if an employee is guilty of intentional willful negligence, he or she is barred from receiving compensation under the Nebraska worker compensation law. LB961 would apply that principle to employers. LB961 proposes that if the Workers' Compensation Court finds that an employee's injury is the result of the willful negligence of their employer, the employee may seek damages outside the workers' compensation framework and allow for an action at law. An example of an employer's willful negligence would be an employer removing a safety device that had been installed at the manufacturing level from a piece of machinery for the purpose of increasing the speed of production. In this type of case, the employer has chosen to put his or her employees at risk in order to increase its profit. Unfortunately, these types of incidents do happen. Personally, I had a conversation not long ago with a friend of mine who happens to be a labor attorney who relayed the safety conditions in certain industries. That conversation relayed how certain injuries were occurring over and over again at a particular site. This employer's practice appears to be that paying worker compensation premiums were cheaper than improving the conditions for the workers and minimizing the risk in that workplace. If employers are unable to run a cost benefit for the cost of preventing injuries, then certain employers will err on the side of profit protection through relying on the limited remedies under workers' compensation. They would rather rely on the workers' compensation recovery than make investments or changes in business practice that will prevent predictable injuries. You will hear testimony this afternoon that will give you examples of the types of injuries to which employees are willfully exposed. This legislation is not designed nor will it have the impact of penalizing safety conscious employers. Rather, it is designed to make employers who in a willfully negligent manner put their employees at risk to make them accountable for their choices. The public policy for this committee to consider is whether employers who act in a willfully negligent manner should be treated similarly to employees who act in a willfully negligent manner. I would argue they should and would ask the committee to do so as well. There will be testimony to follow that can address any technical aspects of the worker compensation law, but I would be happy to answer any questions regarding the policy posed by this bill at this time. Thank you. [LB961]

SENATOR LATHROP: Very good. I see no questions, Senator Cook. [LB961]

SENATOR COOK: Thank you. [LB961]

SENATOR LATHROP: Proponents may come forward. [LB961]

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GREGORY COFFEY: Senator Lathrop, members of the committee, my name is Greg Coffey, last name spelled C-o-f-f-e-y. I'm an attorney here in Lincoln, and I'm appearing on behalf of the Nebraska Association of Trial Attorneys in support of LB961. About a hundred years ago, business and labor got together and struck a deal which we now call the grand bargain out of which workers' compensation was created. There was a give and take on both sides, and both sides benefit from the protections under the act. In exchange for greater certainty in recovering benefits for injuries, employees gave up the more significant damages that would be available through the regular civil courts. But the success of this system depends on having employees who aren't doing anything deliberately to hurt themselves and on having employers who are concerned about workplace safety and the well-being of their workers. Now in that regard, the Nebraska Workers' Compensation Act excludes from coverage injuries that result from the willful negligence of an employee. If a worker is intoxicated on the job, for example, and suffers an injury because of being intoxicated, they shouldn't be covered. That's understood, and no one would argue that it should be otherwise. But an employer who is willfully negligent in causing an employee to get injured is still covered by the Nebraska Workers' Compensation Act and is therefore insulated from facing the more significant damage claims that might be available under a regular civil claim in district court. In this way, the Nebraska workers' compensation system has almost created a perverse disincentive with low payouts being a part of the workers' compensation system. Some employers seem to view the potential for claims as an insignificant concern and take unwarranted risks with employee safety. I'd like to tell you about a former client of mine name Doris Ripp. Doris is from Gibbon, Nebraska. She's 71 years old and wanted to join us today, but she was afraid of the road conditions and traveling down and back from Gibbon. So she asked me to tell you what happened to her. About ten years ago, Doris was involved in a workplace accident where her right thumb was amputated. She was using a mechanical power scissors to cut industrial foam in her job at a manufacturing facility in Kearney. The scissors did not have guards on them to protect employees' hands, and Doris had complained to her employer that they were dangerous. Plastic guards were available, but those guards made the work of cutting the material slower and more time consuming. While at work one day in the process of trying to move the material to cut it, Doris's thumb got in the way of the power scissors, and it took off her thumb all the way to her palm. The day after getting her thumb amputated at work, the employer brought her back on one-handed light duty. And when she came back the next day, she found out that the employer had put plastic guards onto the scissors and basically locked the barn door after the horse had already been stolen. The Nebraska Workers' Compensation Act says a person's thumb is worth two-thirds of your average weekly wages for 60 weeks. And so that's all Doris was paid for losing her thumb, about \$20,000. And for Doris, not only doesn't she have a thumb but she has what they call phantom pain which is to say that the nerve in her hand thinks her thumb is still there, and she still feels intense pain where her thumb used to be. This fall, I was introduced to Steve Richards (phonetic). Steve is from Cozad and

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works at an alfalfa dehydrating plant there. Steve also had intended to be here and was likewise unable to make it. Steve also had some fingers amputated in a work accident, and his experience was what prompted us to move forward with seeking this legislation. Steve was performing maintenance on a chain and sprocket that went to the electric motor on a blower attached to a scale at work. Without informing Steve, the employer had installed an automatic switch that would start the electric motor as soon as there were 100 pounds of pellets on the scale. While working on this chain and sprocket, the automatic switch kicked on, and Steve instantly lost three fingers on his left hand, fingers the compensation act says are worth a combined 65 weeks of benefits. You can argue about whether these examples reflect an employer's willful negligence, and LB961 says that there would have to be a finding of willful negligence for a civil claim against the employer to proceed. But there needs to be balance. And if an employee who is willfully negligent should not be protected by the Workers' Compensation Act, we would suggest that neither should a willfully negligent employer. And I would gladly entertain any questions. [LB961]

SENATOR LATHROP: Thanks, Greg. Any questions for the witness? I see none. Thank you for your testimony today. Any other proponents? [LB961]

STEVE HOWARD: Good afternoon. Steve Howard, H-o-w-a-r-d, for the Nebraska State AFL-CIO. So what we're really talking about here is the exclusive remedy. If something bad happens on the job and someone is injured, it generally collapses into the exclusive remedy of workers' compensation. The employer can't be sued under common law, in tort. They get zero for pain and suffering, wage loss is at a percentage, medical expenses are paid. But that's really what this bill is about, the exclusive remedy. So the law says now, if the employer didn't buy work comp because of misclassification which is still a big problem in Nebraska...but if they didn't buy work comp, then you can sue them in district court, just like you were in a car accident or just like someone created a negligent condition. So it's outside the work comp arena. And what this bill does is say that if the employer is guilty of willful negligence, that same consequence of taking you outside of the Work Comp Act exists. So we support this. You know, my story from a case tried years ago was a gentleman working in a packing plant cutting up ham. So he cuts up chunks of ham, he lifts it up over his head into this dicer that's sort of above him and behind him. And he didn't know that it was held up by a Vise-Grip. You know, the rivets had come off. And eventually, after so many pieces of ham and him tossing it up there, it comes down and hits him in the neck. And, you know, that was workers' comp. It collapsed all into workers' comp. But what else does this...so that would be an example of willful negligence. But what this really does is it makes for a more level, even playing field for those good Nebraska businesses that are following the rules. You know, safety costs money, and following rules and not cutting corners comes at a cost. Now our membership really doesn't have a lot of these problems or at least not on the same level because labor has a voice in terms of terms and conditions of employment. But their employers compete against companies that are under the current system

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striking their own economic bargain that it may be cheaper to have an unsafe work environment and just pay the work comp claims. So we want a healthy business environment for those Nebraska companies that want to follow the rules. And so we support LB961 because it'll result in hopefully no willful negligence on the part of the employer. I mean, the purpose of this bill is before the person gets hurt, not some compensation so much afterwards. Thank you. [LB961]

SENATOR LATHROP: Very good. Thanks, Steve. I see no questions. I might have one or two though just to get to sort of the, how would this work. It says if an employee is found by the Work Comp Court to have been injured by reason of the willful negligence of the employer. Tell me how that would put in issue. So do I file...if I have the plaintiff in that case, do I file a petition with the Work Comp Court seeking benefits, and this is sort of an incidental finding? Or do I ask the court to make a conclusion that the employee's injuries are the result of willful negligence? [LB961]

STEVE HOWARD: It looks under Section 2 that the amendment to subsection 127 means you file in the Workers' Compensation Court. And the way I read it, the judge would say, there's been a finding of willful negligence of the employer. Then you can file an action at law in the district court, and the district court is instructed that there has been this finding. [LB961]

SENATOR LATHROP: Does the employee receive work comp benefits in the meantime? [LB961]

STEVE HOWARD: That's...I don't think the bill speaks to that, no. [LB961]

SENATOR LATHROP: Okay. [LB961]

STEVE HOWARD: Now, the employer may voluntarily pay those. They'd probably be entitled to a credit, you know. [LB961]

SENATOR LATHROP: Do you think that the effect of that is to deprive the employer of a right to a jury trial on the issue... [LB961]

STEVE HOWARD: Well... [LB961]

SENATOR LATHROP: ...if it's being tried? I haven't looked at this bill before now, and I'm just asking the questions as I'm reading it. [LB961]

STEVE HOWARD: It does place it before the work comp judge just like the issue of the employee's willful negligence is before the Work Comp Court. And I suppose that from a public policy standpoint that would be the consequence of having committed willful negligence. So... [LB961]

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SENATOR LATHROP: Okay, all right. You've answered my questions, and I don't see any more. Thank you for your testimony today. [LB961]

STEVE HOWARD: Thank you. [LB961]

SENATOR LATHROP: Anyone else here in support of LB961? Anyone here to testify in opposition to LB961? [LB961]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB961, also appearing on behalf of the National Federation of Independent Business and the Nebraska Chamber of Commerce and Industry. We've heard the description of grand compromise. That grand compromise was entered into many, many years ago and struck the balance as was described by the initial witness, Mr. Coffey, on this matter, so I won't go into that again. We have real concerns with regard to upsetting that balance, and we also have procedural concerns along the lines, Senator Lathrop, of your question. Procedurally, this appears to set up a system where the willful negligence determination will be made in accordance with the Workers' Compensation Court rules in which the rules of evidence are not as stringent as I understand it with regard to general tort claims. It would also take that determination with regard to willful negligence outside the purview of a jury determination that would otherwise seemingly apply in general tort determinations. Mr. Coffey referenced the perverse disincentives to safety. Other suggestions that employers are not providing safe workplaces because they're free to exercise willful negligence I guess would be the argument. That goes against the grain in terms of the statistics that are showing that are far fewer claims that are being filed under workers' compensation. I would also, in closing then, draw the committee's attention to the Estate of Teague v. Crossroads Co-Op Association case, a 2013 case...a quote from the court where they're signaling the exclusive remedy doctrine and why they should be wary of removing that. The court stated, "One may understand the urge to chip away at the exclusiveness barrier in some of the more egregious cases of employer negligence, but 'experience has shown that, once a breach is made in that dam to accommodate an appealing case, it will be very difficult for the courts to know where to draw the line.'" And we would suggest that that would be a significant problem, particularly with regard to the procedural aspects that are set up in the bill. [LB961]

SENATOR LATHROP: Very good. Thanks, Bob. Senator Chambers has a question for you. [LB961]

SENATOR CHAMBERS: Mr. Hallstrom, welcome. [LB961]

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ROBERT HALLSTROM: Thank you, Senator. [LB961]

SENATOR CHAMBERS: You're welcome. You quoted from a court case. What was the name of the case again? [LB961]

ROBERT HALLSTROM: In re Estate of Teague v. Crossroads Co-Op, 286 Neb. 1, 2013. [LB961]

SENATOR CHAMBERS: And was that a case where somebody was trying to go outside the workers' comp provisions to make an employer liable differently from what workers' comp law would make the... [LB961]

ROBERT HALLSTROM: That is my understanding, Senator Chambers. It involved a grain bin situation. There were violations of OSHA safety regulations. Instead of seeking compensation under the act, the employee's estate brought tort actions for wrongful death, assault, battery, and a declaratory judgment that either the act did not apply or was unconstitutional on its face. [LB961]

SENATOR CHAMBERS: And...wait a minute, what did not apply? [LB961]

ROBERT HALLSTROM: The act. Workers' Compensation Act. [LB961]

SENATOR CHAMBERS: What act? [LB961]

ROBERT HALLSTROM: Workers' Compensation Act. [LB961]

SENATOR CHAMBERS: The court found the workers' compensation... [LB961]

ROBERT HALLSTROM: No, that's what the allegation was. [LB961]

SENATOR CHAMBERS: Oh, okay. [LB961]

ROBERT HALLSTROM: That's how the action was brought. [LB961]

SENATOR CHAMBERS: What I want to find out, was the action brought in district court or in the Workers' Comp Court? [LB961]

ROBERT HALLSTROM: I think it was brought in district court against the employer. [LB961]

SENATOR CHAMBERS: And did it make it to the Nebraska Supreme Court? [LB961]

ROBERT HALLSTROM: Yes, it did. [LB961]

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SENATOR CHAMBERS: And the Nebraska Supreme Court is the one that said what you quoted about the breach. [LB961]

ROBERT HALLSTROM: That is correct. [LB961]

SENATOR CHAMBERS: And would you read that again? [LB961]

ROBERT HALLSTROM: The court stated, "One may understand the urge to chip away at the exclusiveness barrier in some of the more egregious cases of employer negligence, but 'experience has shown that, once a breach is made in that dam to accommodate an appealing case, it will be very difficult for the courts to know where to draw the line.'" [LB961]

SENATOR CHAMBERS: But obviously such a breach has never occurred in Nebraska, or it would have been a precedent. So what is the court referring to in terms of a breach occurring and the consequences that would flow from it, or was the court speculating? [LB961]

ROBERT HALLSTROM: My assumption is, Senator, they're referring to if they were to breach the exclusive remedy doctrine in response to the facts of that case... [LB961]

SENATOR CHAMBERS: Do you think the court understands ordinary English? I'm serious. [LB961]

ROBERT HALLSTROM: Well, I would hope so, Senator. [LB961]

SENATOR CHAMBERS: I'm going somewhere. [LB961]

ROBERT HALLSTROM: I'm following. [LB961]

SENATOR CHAMBERS: Do you think the court knows what the word experience means? [LB961]

ROBERT HALLSTROM: I would think so. [LB961]

SENATOR CHAMBERS: Experience refers to something that actually happened, doesn't it? [LB961]

ROBERT HALLSTROM: Yes. [LB961]

SENATOR CHAMBERS: It's not in the realm of the speculative. [LB961]

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ROBERT HALLSTROM: Correct. [LB961]

SENATOR CHAMBERS: So what experience did the court refer to where this breach occurred and it resulted in these other things? Didn't you quote the court as saying, "experience has shown"? [LB961]

ROBERT HALLSTROM: Yes. [LB961]

SENATOR CHAMBERS: Whose experience and where? [LB961]

ROBERT HALLSTROM: That I do not know, Senator. [LB961]

SENATOR CHAMBERS: There's no experience of that in Nebraska though, is there, because if there had been that case would have been cited as... [LB961]

ROBERT HALLSTROM: Precedent. [LB961]

SENATOR CHAMBERS: ...a basis for recovery. So you and I can assume, as with some other things, that there was no prior case where the breach occurred in Nebraska, correct? [LB961]

ROBERT HALLSTROM: I assume that. [LB961]

SENATOR CHAMBERS: If you take though what the court says, then the only way you could go outside of what is allowed under the workers' comp law is to have a provision like this in statute, isn't that true? This would be the only way to. [LB961]

ROBERT HALLSTROM: That has generally been the position of the court, is that if it's not provided by statutory province, it's not within the realm of the court to do. [LB961]

SENATOR CHAMBERS: And there would be nothing unconstitutional about the Legislature tweaking the workers' comp law, is there? [LB961]

ROBERT HALLSTROM: Not that I'm aware of. [LB961]

SENATOR CHAMBERS: And on page 1 of your presentation, in the last paragraph it says, LB961 would undermine the balance struck. Well, now if an employee is injured by way of willful negligence, the employee cannot recover anything through workers' comp, is that right? [LB961]

ROBERT HALLSTROM: That is correct...intentional willful negligence I believe the statute says. [LB961]

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SENATOR CHAMBERS: Okay, but there is no penalty on the employer for intentional willful negligence, is there, under the workers' comp law? [LB961]

ROBERT HALLSTROM: That is correct. [LB961]

SENATOR CHAMBERS: So where is the balance? It's good because...sauce for the goose but not for the gander. That's not balance, is it? [LB961]

ROBERT HALLSTROM: Well, this was the balance that was agreed upon years ago when give and take was made to put the system in its current position. [LB961]

SENATOR CHAMBERS: But things change. Circumstances alter cases, don't they? [LB961]

ROBERT HALLSTROM: They can. [LB961]

SENATOR CHAMBERS: And times change and attitudes change, and things which at one time were considered lawful under the law are no longer lawful, isn't that true? [LB961]

ROBERT HALLSTROM: That has occurred. [LB961]

SENATOR CHAMBERS: And one startling or striking example is where execution by electrocution was considered constitutional but the Nebraska Supreme Court finally said that standards of decency and civilization make electrocution violative of the Nebraska constitutional provision against cruel and unusual punishment. So if the Legislature which is the policy-making body, which put in place the original workers' comp arrangement should conclude that now there is an imbalance, then the Legislature would be the one to have to act because the courts are not going to do so from that case you cited I would assume, correct? [LB961]

ROBERT HALLSTROM: That could be argued, yes. [LB961]

SENATOR CHAMBERS: So the only alternative that an employee injured through the willful negligence, or however they frame it, of the employer is to seek assistance from his or her elected representative rather than the courts, correct? [LB961]

ROBERT HALLSTROM: That is one avenue, yes. [LB961]

SENATOR CHAMBERS: So this is the proper place for such a request to have been made, would you agree? [LB961]

ROBERT HALLSTROM: Certainly, we're not disputing the fact that the bill is introduced.

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It's before you, and it's being considered. We just simply take exception to the change that's being requested. [LB961]

SENATOR CHAMBERS: If you were a plaintiff's attorney rather than the water carrier for these businesses and these other exploiters then you'd have a different tune that you would sing? You don't even have to answer that. [LB961]

ROBERT HALLSTROM: I'm not in that position, Senator. [LB961]

SENATOR CHAMBERS: That's the way he and I...we banter. That's all that I have though. Thank you, Mr. Hallstrom. [LB961]

SENATOR LATHROP: I think that's it. [LB961]

ROBERT HALLSTROM: Thank you. [LB961]

SENATOR LATHROP: Thanks, Bob. We appreciate your thoughts. Next person to testify in opposition. [LB961]

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, members of the committee. My name is Korby Gilbertson, 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. Fortunately, I walked in just a few minutes ago, but I think I got the gist of what the discussion was. PCI opposes this legislation because it can erode the exclusive remedy. And I heard what Senator Chambers was talking with with Mr. Hallstrom, and I can understand both sides. But we still choose to oppose this legislation. So I'd be happy to try to answer any other questions. [LB961]

SENATOR CHAMBERS: I, through Mr. Hallstrom's back and forth, gotten out all the things that I would ask except one question I would ask of you. What's a nice young lady like you doing in the company of...I'll just leave it hanging? Everybody's got to make a living. (Laughter) I'm just kidding. [LB961]

KORBY GILBERTSON: It pays the bills, yep, Senator. [LB961]

SENATOR LATHROP: I want to know where you were on the first bill. [LB961]

KORBY GILBERTSON: I was stuck down arguing with the trial attorneys in the Banking Committee, Senator Lathrop. [LB961]

SENATOR LATHROP: What are they doing in the Banking Committee anyway? [LB961]

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KORBY GILBERTSON: You don't even want to know. [LB961]

SENATOR LATHROP: Okay, thanks, Korby. [LB961]

KORBY GILBERTSON: Thank you. [LB961]

SENATOR LATHROP: Next person to testify in opposition. Anyone? Is this the criminal defense attorneys? [LB961]

COLEEN NIELSEN: Good afternoon. My name is Coleen Nielsen, and I am the registered lobbyist for State Farm Insurance and the Nebraska Insurance Information Service testifying in opposition to...is it LB951? Is that correct? [LB961]

SENATOR LATHROP: LB961. [LB961]

COLEEN NIELSEN: LB961. I don't really have anything to add to Mr. Hallstrom's testimony, and I'd be happy to answer any questions if I could. [LB961]

SENATOR LATHROP: Senator Chambers. [LB961]

SENATOR CHAMBERS: You know that in 15 minutes or less you can save 15 percent on your car insurance? (Laughter) [LB961]

COLEEN NIELSEN: I do. [LB961]

SENATOR MCGILL: Discount double-check. [LB961]

SENATOR LATHROP: Anyone else here in opposition? The city of Omaha. [LB961]

TIM HIMES: Tim Himes from the city of Omaha in opposition to LB961. Senator, I have that case. I printed it out. And I don't really intend to quote from it, but you can have it when we're done here. It's an interesting case, and I think it illuminates the discussion here today. The plaintiff's bar, and I think that's who has testified on behalf of the change, would like to convince the committee through a parade of horribles and anecdotal evidence that there has been, as one of your questions was directed towards...whether there has been an imbalance in the playing field and whether what has been characterized as a grand compromise or a deal long ago...whether that situation has changed justifying this...chipping away was one way to describe it. I would go further than that. And this comes from the Teague decision. This would go beyond chipping away. This is a subversive suggestion. Workers' Compensation Act, and I'm speaking from the perspective of an attorney in Nebraska who did plaintiffs' work from 1994 until 2008 when I joined the city of Omaha and not to do workers' compensation defense, by the way...that I inherited one when one of our attorneys retired. The man

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that taught me about workers' compensation law back in 1998 had been doing it for about 30 years. His name is Tom Wolf (phonetic). I know Senator Lathrop knows him. And I was being recruited against my will to do some work comp defense, not what I wanted to do. I was a plaintiff's lawyer. He said to me, work comp is not about winning or losing. It's about damage control. He said that more money flows through Workers' Compensation Court than the district court and county court combined. And the balance that was struck is in fact that...the intent was to remove the uncertainty that accompanies a plaintiff's personal injury action. To use the words of the Teague decision, "...to do away with the inadequacies and defects of the common-law remedies; to destroy the common-law defenses; and, in the employments affected, to give compensation, regardless of the fault of the employer." And that's what we're talking about here. The Workers' Compensation Act, regardless of what you might have been led to believe by a few horrible instances...there aren't any employers that I'm aware of, and certainly not the city of Omaha, who think it's cheaper to go and be willfully negligent and injure employees and just let work comp handle it. The city is self-insured. That's for health insurance and workers' compensation purposes. We have a vested interest in keeping our employees safe. The Workers' Compensation Act says, if you're hurt at work, doesn't matter if the employer was good, bad, negligent, willfully negligent, doesn't matter. Doesn't matter if the employer is at fault or if the situation was ideal in every respect. If you slip and fall at work, you're covered. And that goes so far as to say that in certain situations horseplay at work is covered. So the balance that was struck long ago was good. And it's been defended repeatedly, and not just in this jurisdiction. I think the experience that you questioned in the Teague decision was they looked at other jurisdictions. The vast majority of other jurisdictions have stuck religiously to this rule. And that is, if you're injured at work, your exclusive remedy is the Workers' Compensation Act. To allow the court, and it doesn't matter whether it's the district court or the Workers' Compensation Court, to consider whether or not the employer was willfully negligent is literally pushing employers out onto a slippery slope. That then becomes an approach that plaintiffs' attorneys can take in every case, whether it's nothing more than a bargaining chip. To allege that that's the case and to get something for it. [LB961]

SENATOR CHAMBERS: Let me ask you a question because the red light is on. Were we misinformed when it was said that if an employee, through his or her willful negligence, is injured there is no recovery though workers' comp? Is that false, or is that true? [LB961]

TIM HIMES: No, no, Senator, that is right out of the act. And the other exception is if they are intoxicated. [LB961]

SENATOR CHAMBERS: So there are conditions under which the employee would not recover. But there... [LB961]

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TIM HIMES: That's correct. If you're willfully negligent or voluntarily intoxicated, you can deprive yourself of the right to pursue Workers' Compensation Act. [LB961]

SENATOR CHAMBERS: So I see that as an imbalance, but you representing the city would not even be involved in this because the city is never going to be intentionally willfully negligent, correct? So it would never apply to the city anyway. If we allow this exception, it's not going to apply to the city of Omaha. [LB961]

TIM HIMES: Well, I believe it would. It would allow a plaintiff's attorney to allege that the city was willfully negligent and... [LB961]

SENATOR CHAMBERS: An allegation doesn't guarantee a win. [LB961]

TIM HIMES: That's correct. That's absolutely correct. [LB961]

SENATOR CHAMBERS: And maybe for the wholesome value for society, looking at it from a societal angle and making employers careful and cautious and not feel they have carte blanche, put that out there. Now it was found in documents, and you may not believe me when I say this, you may think that I misheard or misread, but there were automobile companies that said it would be cheaper to pay for the few accidents even that include death and maiming than to recall all these cars and fix them. So manufacturers do use that as a part of their calculating, and it's based on money. So let me ask you this because you didn't disagree with that. What is the theory behind punitive damages if you can remember back before you defended the wrongdoers who exploit the poor and the helpless, the widows and the orphans. [LB961]

TIM HIMES: Senator, I get to wear the white hat. I represent a benevolent employer that's concerned. We don't see work comp claimants as our opponents. We see them as our employees. We want them to get better. We want to avoid accidents in the first instance. [LB961]

SENATOR CHAMBERS: So it's not going to apply to you anyway. [LB961]

TIM HIMES Well, it could. [LB961]

SENATOR CHAMBERS: But it's not going to. [LB961]

TIM HIMES: It could, and that's why we oppose the chipping away which is what this would be the first step out onto the slippery slope. To allow any inroads on the exclusive remedy which is the basis, the foundation of the Workers' Compensation Act is bad policy. And I encourage you to read this decision and... [LB961]

SENATOR CHAMBERS: But as a representative of employers, you're taking the

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employers' side. And you have to because you must represent your client zealously, and I'm not condemning you for that even though I banter with Mr. Hallstrom. But what is the theory behind punitive damages because that is saying, you don't just recover what it takes to make you whole? This money is to punish the one who did the wrong. What is the theory behind that? [LB961]

TIM HIMES: The theory behind punitive damages as I understand them is, for example, McDonald's and the hot coffee case got plenty of play in the media. Even if they've ordered McDonald's to pay that injured person \$5 million, well, McDonald's makes \$5 million every day. They make more than that every day. So the standard damages available in a tort are not sufficient to punish a corporation like McDonald's. So in addition to making the plaintiff whole, to the extent that you can do that through damages, they are going to assess a penalty proportionate. And by proportionate I mean big and bad enough to deter that corporation from doing this kind of stuff in the future. [LB961]

SENATOR CHAMBERS: Punishment doesn't necessarily mean you damage somebody. It means you inflict a degree of discomfort. [LB961]

TIM HIMES: Disincentive. [LB961]

SENATOR CHAMBERS: So to punish your child, you might say, don't do that. The child doesn't even blink. But that is in the nature of a punishment. It's an act to show that there's disapproval of this. And I think you know the direction that I'm going. There has to be a price to pay by those who willfully harm somebody else. We could make it a crime and say, not only will you pay civilly, you'll go to jail and prison. One question, let's say that an employer is willfully negligent, and a person is harmed. Can that employer be charged with a crime of say assault and battery? [LB961]

TIM HIMES: I didn't quite catch that. Say that again. [LB961]

SENATOR CHAMBERS: If an employer is found to be willfully...of course if you say willfully...if you put negligent in it, that might take away one of the elements you need to convict a crime. So then you don't use the term willfully negligent. You say this person deliberately, intentionally placed an act or refused to place an act that he or she was required to place that resulted in this individual being harmed, and that's an assault. And we're going to prosecute this person for assault. I don't think that's likely to happen though in reality. So we are going to... [LB961]

TIM HIMES: I don't...in addition, I don't think that the Workers' Compensation Act would bar that. That would be something that would take place in a different arena. That would be in the criminal arena. [LB961]

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SENATOR CHAMBERS: You would be entirely right, so it takes it away from what we're talking about. But you know what, you're such a competent attorney. I've listened to you. Have you ever thought about acting? I don't mean though in the basis of the way that you present your case. [LB961]

TIM HIMES: No. [LB961]

SENATOR CHAMBERS: Have you ever looked at any of the Godfather movies? [LB961]

TIM HIMES: I have. [LB961]

SENATOR CHAMBERS: Have you looked at some of those steely-eyed, unflinching, square-jawed, individuals? [LB961]

TIM HIMES: You bet. [LB961]

SENATOR CHAMBERS: Have you ever looked in the mirror after looking at one of those movies? [LB961]

TIM HIMES: Yes. [LB961]

SENATOR CHAMBERS: You could play the part, couldn't you? Have you ever thought about it, seriously? [LB961]

TIM HIMES: No. [LB961]

SENATOR CHAMBERS: I've been told I could play Jack the Ripper if he was a black guy, but, you know, that takes me out. Here's what I'm getting to in all seriousness. With attorneys like you, or the way I've come to view you...and I'm not cheesing up to you because I wouldn't have to do that. I think if you became aware of any activity by the city that could harm an employee, whether it amounted to willful negligence or not, you would try to see that they correct that. That's why I say... [LB961]

TIM HIMES: You bet. I'm on the safety committee. [LB961]

SENATOR CHAMBERS: And that's why I say it's not going to apply to Omaha unless you go to sleep at the switch. [LB961]

TIM HIMES: Let's assume LB961 is enacted right now as it's suggested. [LB961]

SENATOR CHAMBERS: Okay. [LB961]

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TIM HIMES: The city of Omaha could potentially be affected tomorrow because it's an allegation that can be made; and if it gets traction, it's going to upset that balance. And right now in the city of Omaha there are approximately 500 workers' compensation claims that are open. There's about 20 that are being litigated, and most of those are going to be resolved by settlement. The city of Omaha doesn't want to litigate work comp claims. [LB961]

SENATOR CHAMBERS: Right. [LB961]

TIM HIMES: They want to pay work comp claims, but stepping out ahead of that, they don't want workers to be injured. So I've represented people who were horribly injured in work situations. And that's not pretty. But what happens day in and day out and what the Nebraska Supreme Court observed by looking at other jurisdictions is that the balance is a good one. And it shouldn't be tampered with by chipping away at the exclusive remedy position. [LB961]

SENATOR CHAMBERS: So what I'm going to do...when you give me a copy of that case, put your card with it. [LB961]

TIM HIMES: You can have this one. [LB961]

SENATOR CHAMBERS: I'll read...because I have to put things together so I remember where I got it from. Do you have a card with you? [LB961]

TIM HIMES: I do. [LB961]

SENATOR CHAMBERS: And I'll take that now if you don't...Mr. Chairman, may I? [LB961]

SENATOR LATHROP: You may. [LB961]

SENATOR CHAMBERS: And then I'll be through with this because I'm really going to read it, and then I'd like to discuss it with you. I'm serious. [LB961]

TIM HIMES: They make a reference to a very good work in there. It's Larson on work comp, a professor who has done a...I'm struggling for the word. [LB961]

SENATOR LATHROP: The treatise. [LB961]

TIM HIMES: There you go. [LB961]

SENATOR CHAMBERS: A what? [LB961]

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TIM HIMES: A treatise, it's a multivolume... [LB961]

SENATOR CHAMBERS: Oh, treatise. Yeah, those things that...okay. [LB961]

SENATOR LATHROP: Larson has a treatise of... [LB961]

TIM HIMES: ...on the theory of workers' compensation. And they quote from Larson in that case. [LB961]

SENATOR CHAMBERS: (Inaudible) nothing else works. Okay, but I really will read it. Thank you. [LB961]

SENATOR LATHROP: Okay, thanks, Tim. Anyone else here in opposition to the bill? Anyone here in a neutral capacity on LB961? Senator Cook to close. [LB961]

SENATOR COOK: Thank you, Mr. Chairman, and thank you, committee. And I will very briefly close on this bill proposal. When I hear terms like, nose under the camel's tent...or camel's nose under the tent. That's one of the first ones I learned. (Laughter) I suppose a camel could have a tent. Or I hear chipping away, or my favorite new one that I've gotten from this committee, parade of horrors, I know I'm working on the right bill proposals because I ran to help individuals who might not otherwise be represented in a corporate, using the broadest definition of that term, context. When we think about a parade of horrors, whether it's a thumb or three fingers or a ham dropped on your neck or lives lost in the explosion in Omaha a few weeks ago or in the fertilizer plant down in Texas, I think they're each a human being clearly with families, lives, neighbors that have been disrupted. And as we know at least from initial investigation and allegations the explosion in Omaha, there were some violations evident there. So I would ask the committee to take the bill seriously, and I appreciate the input that you have offered procedurally. There may be some opportunities to clarify those areas that you mentioned, Mr. Chair. Thank you again for your consideration. [LB961]

SENATOR LATHROP: (Exhibits 2, 3, 4, and 5) Thank you, Senator Cook. That will close our hearing on...wait a minute, wait a minute. We might have some letters to enter. Yes. We have some letters to enter in the record. Opposition from the city of Lincoln to LB961. Lincoln Human Resource Management is likewise in opposition. Nebraska Grocery Industry is opposed, and SHRM Nebraska State Councils is also in opposition to that bill. That will close our hearing on LB961 and bring us to LB731. Senator Kolowski or his stand-in. Welcome. [LB961]

ANNA WISHART: Thank you. Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. I am here on behalf of Senator Kolowski. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I am his legislative aide. Unfortunately or fortunately, he is down testifying on another bill that he introduced so he asked me to

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come and relay his message to you. We introduced LB731 on behalf of a constituent of ours whose son received an avalanche of solicitations after he filed an injury report at work. And since then because of the pace of the session and it being a shorter session and because this is very similar to LB324 which is Senator Lautenbaugh's bill which came out last year...which was introduced last year, we feel that it's...we would ask that you indefinitely postpone this bill. [LB731]

SENATOR LATHROP: Okay. [LB731]

ANNA WISHART: And I'm happy to take any questions. [LB731]

SENATOR CHAMBERS: Bless you. (Laughter) [LB731]

SENATOR LATHROP: And hopefully the people that came in support or in opposition will appreciate what you've just said. Anyway, thanks, Anna. [LB731]

ANNA WISHART: Thank you. [LB731]

SENATOR LATHROP: Anyone here in support of this bill that she wants IPPed? [LB731]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. For those who support the bill perhaps not so much, but I did want to get my testimony into the record. I had spoken with the Chairman and was aware of what was going to go on at the hearing this afternoon. I would also enter the support of the National Federation of Independent Business, Nebraska Chamber of Commerce and Industry, and PCIAA and would hope there will be no questions under the circumstances. [LB731]

SENATOR LATHROP: I see no questions. Thanks, Bob. Anyone else here in support of LB731? Anyone here in opposition to LB731? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB731 and bring us to LB793 and our own Senator Wallman. [LB731]

SENATOR WALLMAN: Good afternoon, Chairman Lathrop, members of the committee. My name is Norm Wallman, W-a-l-l-m-a-n. I'm here to introduce LB793. The Nebraska Supreme Court in Olivotto v. DeMarco Bros. held that an injured worker who contracted an occupational disease which did not exhibit itself until after the worker was retired was not entitled to workmen's compensation disability payments or death benefit because there was no wage rate at the time of filing of the workers' compensation claim. So when a worker is injured in an on-the-job accident or contracts an occupational disease, the results can be devastating. If a spouse does not have a job, the family's income dries up. Family expenses, however, continue to occur. On top of ordinary expenses, a

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worker or former worker incurs medical bills related to the injury. The Nebraska Workers' Compensation Act was intended to provide fair compensation for workers who have been injured on the job. Therefore, LB793 would establish that their wage rate at the time of last employment would be the wage rate used for a worker who contracts an occupational disease arising out of and in the course of employment but is retired or deceased at the time the claim is made. The bill would similarly establish a wage rate for latent or progressive injury or disease arising from employment. There will be those following me who can address the technical aspects of the bill much better than I. I'd be happy to answer any questions regarding the public policy of encouraging fair injured worker compensation. And some of these workers' compensation issues I think it's time we address the compensation because they've been in place for so long. [LB793]

SENATOR LATHROP: Very good. I see no questions, Senator Wallman. We appreciate you introducing LB793, and we will take proponents' testimony next. [LB793]

TODD BENNETT: Todd Bennett on behalf of the Nebraska Association of Trial Attorneys and I've had some personal involvement with this situation. And I don't think anybody could fully comprehend and appreciate what this does until you've seen the face of a widow and a widow with any dependent children. This is a case, yes, dealing with the Olivotto case. That was a retiree person who was subject to asbestos 20 to 30 years before he retired. And what the Supreme Court essentially did in this case was say, you were not...your disability did not manifest itself while you were working so you're not entitled to any benefits. The widow was not entitled to any benefits because that person had been retired for about 20 years. What this bill does, yes...number one, in 48-126(1)(b) sets the wage rate based on the employer who's found liable based on the wages that person earned at the time he last worked for that employer. The most important loophole, and it's a technical gotcha, is the second part which is set forth in subsection (2) of that chapter. That it's conclusively presumed that this retiree had a diminution and a loss of employability and of earning capacity and had a loss of access to the labor market. Without that language, this bill has no teeth. This is a technical gotcha. They basically discriminated against this retiree person because he wasn't working at the time of the...when this disability manifested itself. I've had two scenarios since this case came out where specifically this gentleman came down with silicosis. And I can guarantee you he found out that he had silicosis when he was 62. The employer managed to get him to retire before he was 65. He actually didn't want to retire. So at the time of his death when he was 67, I looked in the face of his widow and he was without benefits. That's a horror story, and, yes, it's an example. But that's exactly what happened in Olivotto. This is about fixing a loophole and a technical refinement. In my mind, I see this as essentially, as dark as it may sound...this is a no-free-kill bill because in this case if someone dies based on an exposure or latent progressive injury or condition based on employment there should be a widow and dependent children provided a benefit for the service that worker performed. This is what this is. This is not the bottom line. This is about providing benefits, at least some

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benefit to a widow and their dependent benefit. There's going to be opposition to this bill. This isn't the bottom line, and this isn't a technical refinement of trying to get something somebody is not entitled to or double recovery. This is about paying for a loss because in the end that injured worker had an exposure, provided a service. They're a lost widget to that employer if there's no benefit. And this is essentially taking care of that loophole and technical refinement. And I urge you to read it and pass this bill. I'd be happy to take any questions. [LB793]

SENATOR LATHROP: Okay, any questions for Mr. Bennett? I see none. Thanks, Todd. Anyone else here in support? [LB793]

JOHN CORRIGAN: Good afternoon, Mr. Chairman, members of the committee. My name is John Corrigan. I'm here on behalf of the Nebraska AFL-CIO, and I would like to testify in support of LB793. I think Mr. Bennett did a wonderful job of describing the problem. As an attorney in this field myself, I've experienced this problem. We have in Nebraska a law called...a number of laws but there's presumptive legislation with respect to firefighters and police. But primarily with the firefighters they have a presumption that is applicable only for pension purposes. And if they can demonstrate, or their estate or their widow can demonstrate that the firefighter worked for a number of years, was exposed to known carcinogens as identified in the statute then they have...they can demonstrate that they...and then suffered that same cancer that was a known cause of the carcinogen that they were exposed to, they can demonstrate entitlement to line-of-duty death benefits under the law through the pension. The problem is that it doesn't apply to work comp. And I've had that case. Guy retires, ten days later--ten days--he was diagnosed with brain cancer. Clearly presumptive, applied for the pension purposes but he died. And he retired before he could apply because he was not employed at the time that he retired. And we cured that in the statute somewhat. I mean, it was a resolution, but the statute...now it gives you more time. It was a loophole in the law that we saw and tried to meet it. And the Legislature did and now that...there has been an extension under the law for that purpose. This is no different. LB793 is no different in the sense that these conditions will not manifest themselves until the time that the employee has left employment on occasion and it leaves them without a remedy when clearly there is a harm. And so for that reason LB793 should...we'd ask that you bring it out of committee and put it on the floor. Thank you. [LB793]

SENATOR LATHROP: Thank you, Mr. Corrigan. Senator Chambers. [LB793]

SENATOR CHAMBERS: Maybe Senator Wallman mentioned it. Is there a period of time after leaving in which this condition that leads to death must manifest itself? [LB793]

JOHN CORRIGAN: There isn't under the law. The problem that's identified here is that

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there's no...the employee couldn't identify a wage. They were making no wage at the time that they became disabled. The statute of limitations, you know, can step in and deprive people of...because you have to demonstrate that you suffered an injury within two years of the time that you filed the action. You have two-year statute of limitations. [LB793]

SENATOR CHAMBERS: But this suggests it had been contracted, the disease, while working. [LB793]

JOHN CORRIGAN: But it... [LB793]

SENATOR CHAMBERS: Would that disease have to manifest itself within a certain period of time after leaving the job? Could it manifest itself 20 years later, for example? [LB793]

JOHN CORRIGAN: Yes, and that happens in the asbestos cases. And that's the problem, 20 years later the individual has no wage because they're not working and they haven't filed a claim, have had no medical benefits. Now they're disabled. By virtue of the condition it becomes disabling and it kills them but at the... [LB793]

SENATOR CHAMBERS: How would that be traced back to the job? [LB793]

JOHN CORRIGAN: Well, all these cases take medical testimony. You have to produce medical testimony that the condition was either caused or substantially aggravated by work exposure. And with asbestos, in my understanding, is it's fairly simple because you don't get that any other way than being exposed to that product. [LB793]

SENATOR CHAMBERS: But it's still a matter of evidence and proof to make that nexus or connection between the job condition and what the person suffered later. Okay. [LB793]

JOHN CORRIGAN: The disabling condition has to be...you have to have evidence that there was a causal connection. And in the case that is the emphasis of this bill there was that causal connection. The problem was that because of the time and because of the lack...there was no way to identify the wage at the time the employee became disabled, there was no recovery. And that needs to be cured. [LB793]

SENATOR CHAMBERS: I just wanted that clearly in the record. [LB793]

JOHN CORRIGAN: Thank you. [LB793]

SENATOR LATHROP: John, does the employee...can the employee get a death benefit, like a burial allowance? But they can't get the loss of earning capacity? [LB793]

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JOHN CORRIGAN: I'm not sure if the death benefit...if the burial allowance applied. I mean, the problem is trying to establish the death benefit for the dependents. And if there's no wage to establish that rate, there's no recovery. But I don't know the answer to that following question. [LB793]

SENATOR LATHROP: But that's indemnity benefits. They still would have the burial allowance if you can trace a condition back to an employment. [LB793]

JOHN CORRIGAN: I'll have to check. I just don't know. [LB793]

SENATOR LATHROP: Okay. [LB793]

JOHN CORRIGAN: Thank you. [LB793]

SENATOR LATHROP: Thanks, John. Next proponent, LB793. Anyone here in opposition? [LB793]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness, also on behalf of the National Federation of Independent Business and I believe the Nebraska Chamber of Commerce and Industry. Basically, our position on this is that you truly, as Mr. Bennett suggested, probably have to create a true legal fiction in order to provide benefits under the traditional notion of the Workers' Compensation Court. Benefits are generally determined based upon the wage rate at the time of the injury. In this case...and Senator Chambers, you talked about the situation where there may be instead of 10 days after retirement when the issue manifests itself, you could have as much as 10, 15, 20 years down the road. At that point in time, the employee may have voluntarily because of age removed themselves from the job market and the underlying notion of the Workers' Compensation Court is to provide for loss of earning capacity or loss of...economic loss. At that point, clearly there's no wages being earned. There was no expectation of wages being earned. And theoretically and logically, there's no loss of wages that the dependents were relying upon at that time under those circumstances. So we think that the bill would require the committee and the Legislature to enact a legal fiction to get to that point. I would indicate also if that employee has moved on to another job and is earning wages, certainly the fact that they're still in the job market would not dictate that they would lose the entitlement to disability benefits or benefits for dependents. With regard to one of the questions, Senator Lathrop, it's my understanding that both burial benefits and medical expenses would be subject to reimbursement. It's just the fact that there's no wage to latch onto for purposes of determining what the disability benefit or the benefit for dependents would be. And I would note in closing this is certainly one of the issues the chairman has solicited some

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input on possible workers' compensation compromises. This is one of those issues that may reach out to us to say that this is one that should be put on the table to be considered. [LB793]

SENATOR LATHROP: All right. Senator Chambers. [LB793]

SENATOR CHAMBERS: Mr. Hallstrom, I'm looking at your testimony. What are the other groups that you said you're lobbying for in opposition to this bill? [LB793]

ROBERT HALLSTROM: I lobby for both the Nebraskans for Workers' Compensation and Equity and Fairness and the National Federation of Independent Business. I've also been authorized on behalf of the Nebraska Chamber of Commerce and Industry to express the opposition. [LB793]

SENATOR CHAMBERS: Do you know what? You have just demonstrated the truth of this statement that I'm going to make. I often will say that a person cannot ride two horses going in different directions at the same time. How in the world you can be for the Chamber of Commerce and those others and also for Nebraskans for Workers' Compensation Equity and Fairness when they're going in opposite directions? You don't even have to answer because you have to watch those two horses going the opposite directions. That's all I have though. [LB793]

ROBERT HALLSTROM: Thank you, Senator. [LB793]

SENATOR LATHROP: Or they may not be going in opposite directions. But that's a matter of interpretation I suppose. [LB793]

ROBERT HALLSTROM: Thank you. [LB793]

SENATOR LATHROP: Thanks, Bob. Anyone else here in opposition? [LB793]

KORBY GILBERTSON: 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. I think Mr. Hallstrom covered it, but our position is that the purpose of workers' compensation is to return lost wages to employees. LB793 goes beyond that by not requiring that there's actually a loss of wages. And I think one of the proponents said that the purpose of the bill was to make sure that people were still able to get something out of the Workers' Compensation Act, and I think that in the case that they referred to and it is existing law that they still do recover the medical expenses and the death benefits. So I think this bill goes beyond what we were talking about a little bit earlier. With that, I'd be happy to try and answer any questions. [LB793]

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SENATOR LATHROP: I see none. Thanks, Korby. [LB793]

KORBY GILBERTSON: Okay, thank you. [LB793]

COLEEN NIELSEN: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Coleen Nielsen spelled C-o-l... [LB793]

SENATOR LATHROP: Can you speak up a little bit, Coleen? [LB793]

COLEEN NIELSEN: Sure. [LB793]

SENATOR LATHROP: So they can transcribe it properly. [LB793]

COLEEN NIELSEN: Sure. C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for State Farm Insurance and the Nebraska Insurance Information Service testifying in opposition to LB793. And the statement of intent of this bill referred particularly to the case of Olivotto v. DeMarco. And in that case, it was an asbestos-related illness in which apparently manifested itself 23 years after the person involved in this case had retired. And there were medical benefits paid as well as burial expenses. The court found that because of the general injury or the general nature of that sort of injury that the date that that injury was incurred was the date...the last day of his employment. And so consequently there were no wages after that. So with that, I'd be happy to answer any questions. [LB793]

SENATOR LATHROP: Senator Chambers. [LB793]

SENATOR CHAMBERS: He cringes when I do this. Your company is the one that uses Russell Wilson, the quarterback for the Seahawks, to sit on there and say, do you want to go on-line or whatever it is and ask me questions about my career at Wisconsin, my career in baseball, my career with the Seahawks? And that's your company that hired him to do that, isn't that right? [LB793]

COLEEN NIELSEN: I don't know. [LB793]

SENATOR CHAMBERS: I was trying to get...okay. [LB793]

COLEEN NIELSEN: I don't know. [LB793]

SENATOR CHAMBERS: Then I have to go this way. Did you know that Old MacDonald is a terrible speller? (Laughter) That's all that I have. [LB793]

SENATOR LATHROP: (Exhibit 2) Okay. Seeing no other questions, anyone else here in opposition to the bill? Anyone here in a neutral capacity on LB793? Seeing none, we

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have a letter of opposition from the Nebraska Grocery Industry Association, Kathy Siefken, dated February 10. And that will be made part of the record. And Senator Wallman to close. [LB793]

SENATOR WALLMAN: I'll be very short. [LB793]

SENATOR LATHROP: Okay. [LB793]

SENATOR WALLMAN: I want to thank all those testifiers and if there's room here to modify this bill to make it better. I'm surely not for fraud and anything. And thank you for everybody here. [LB793]

SENATOR LATHROP: Thanks, Senator Wallman. And that brings us to our last bill of the day and our own Senator McGill, LB997. Why don't you give them just a second to do the whole exchange of people? All right, Senator McGill to open on LB997. [LB793]

SENATOR MCGILL: (Exhibit 1) Hi. Good afternoon, committee. I'm state Senator Amanda McGill, M-c-G-i-l-l, and I'm here today to introduce LB997, a bill to reclassify the Nebraska training and support trust fund as a cash fund. The dollars in the fund are generated through interest on the State Unemployment Insurance Trust Fund. The fund supports public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers. This bill does not change the program itself. Rather, it renames and reclassifies the fund as a cash fund to bring the dollars in the fund in line with all other funds of a similar nature. Right now the dollars are automatically appropriated and subsequently spent with the authorization of the Governor upon the recommendation of the commissioner. There's currently \$4.15 million in this fund. This is the only fund of its kind operating as a program fund but unaccountable to the Legislature's appropriation process. LB997 would require the dollars to go through the regular budget process. This change would make a good program even better by increasing transparency and accountability. I'd like to thank the Fiscal Office and Director Lang for working with me to ensure the language in this bill accurately reflects the changes we're making. We actually have an amendment that I need to pass around to everyone that becomes the bill, and if the page can come on up. And a letter of support for the amendment from Commissioner Lang. The amendment makes... [LB997]

SENATOR LATHROP: You're going to hand around a letter of support... [LB997]

SENATOR MCGILL: Yes. [LB997]

SENATOR LATHROP: ...from the Commissioner of Labor? [LB997]

SENATOR MCGILL: Yes, yes. [LB997]

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SENATOR LATHROP: Okay, good. [LB997]

SENATOR MCGILL: That's why I'm like, this room should be pretty empty because I've got the...been working with them to make the appropriate changes needed to the green copy. The amendment makes two primary technical revisions. The first replaces "trust fund" with the words "cash fund" throughout the statute, and it clarifies a one-time transfer of dollars from the current trust fund to the newly created Nebraska Training and Support Cash Fund. So just very technical in nature, and I'd be happy to answer any questions. [LB997]

SENATOR LATHROP: Senator Harr. [LB997]

SENATOR HARR: What does the money...how much money was appropriated last year from it, do you know? [LB997]

SENATOR MCGILL: I have the a...the last quarterly report was over \$300,000. [LB997]

SENATOR HARR: And what was it appropriated to? [LB997]

SENATOR MCGILL: A variety of businesses. Well, the money gets...there's a board that makes the decisions, a board appropriated by the Governor that make decisions on where all the funds go. And I have a full list of all the different businesses that were given these grants last time around. [LB997]

SENATOR HARR: And the board members are appointed by the Governor. [LB997]

SENATOR MCGILL: Yes. [LB997]

SENATOR HARR: Are they approved by us, the Legislature, currently? [LB997]

SENATOR MCGILL: No. [LB997]

SENATOR HARR: All right. Thank you. [LB997]

SENATOR MCGILL: Which is why it'd be nice if the Legislature was at least involved in this appropriations process. [LB997]

SENATOR HARR: How did this come to your attention? [LB997]

SENATOR MCGILL: Someone on the Appropriations Committee brought it to my attention. [LB997]

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SENATOR HARR: Thank you. [LB997]

SENATOR LATHROP: I think that's all there are for questions. [LB997]

SENATOR MCGILL: All right, okay. Thank you. [LB997]

SENATOR LATHROP: Thank you, Senator McGill. Anyone here to testify in support of LB997? Anyone here to testify in opposition? Anyone here in a neutral capacity? Okay, all right. Well, we had these people still here. I thought somebody was going to testify. It doesn't look like it. Senator McGill, do you wish to close? [LB997]

SENATOR MCGILL: I will waive. [LB997]

SENATOR LATHROP: (Exhibit 2) She waives close. Do we have...we do have a letter from Commissioner Lang that will be...her letter of support with the amendment AM1880, and that will be made part of the record. That will close our hearing on LB997 and our hearings for today. [LB997]