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Business and Labor Committee
February 08, 2016

[LB743 LB821 LB836 LB983 LB1001 LB1005]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 8, 2016, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB836, LB743, LB1001, LB1005, LB983, and LB821. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Ernie Chambers; Sue Crawford; Laura Ebke; Sara Howard; and Jerry Johnson. Senators absent: None.

SENATOR BLOOMFIELD: The bewitching hour is upon us. Our first introducer is not here yet. He will be up directly. But we can go through the preliminaries here. I'm Senator Dave Bloomfield from District 17. I'm the Vice Chair of the committee. And it looks like for the biggest part of today I will be kind of in the Chairman's seat. We're going to ask you to turn off your cell phones. And if you plan on testifying, make sure you have the appropriate number of copies. It requires ten copies. If you don't have ten copies, talk to the page. They will help you get them. Each witness appearing before the committee must sign in using the green forms provided at the entrance and your form should be given to the committee clerk when you come up testify. And we will be using the light system today. You've got five minutes. You have four minutes on green, one minute on yellow, and we expect you to be done when the red light comes on. And when you begin your testimony, we need you to spell your name. State your name and then spell it, both first and last. And the agenda that we will follow today is what you saw posted outside. Let me see what else I'm supposed to tell you here. You've probably all been in here more times than I have. (Laughter) The introducers will make the initial statement, followed by proponents, opponents, and neutral. And the first bill we will be going to today is a Heath Mello bill, or Senator Mello bill LB836. And as soon as he is here, we will start that, but now I'm going to ask the senators to self-introduce themselves starting over on that side of the room.

SENATOR EBKE: I'm Laura Ebke, District 32 which is Jefferson, Thayer, Fillmore, and Saline Counties and the southwest portion of Lancaster.

SENATOR CRAWFORD: Good Afternoon. Senator Sue Crawford, District 45 which is eastern Sarpy County, Bellevue, and Offutt.

SENATOR JOHNSON: Senator Jerry Johnson, District 23, Saunders County, Butler County, and most of Colfax County.

SENATOR BLOOMFIELD: That brings us to you, Senator Chambers.

SENATOR CHAMBERS: Ernie Chambers, Omaha.

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SENATOR BLOOMFIELD: Okay, as soon as Senator Mello shows up we will get under way. He is introducing another bill in another committee and hopefully it won't tie him up too long.

BREAK

SENATOR BLOOMFIELD: Welcome.

SENATOR MELLO: Good afternoon, Senator Bloomstead (sic), members of the Business and Labor Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Let me catch my breath a little bit because I was running from downstairs up here. [LB836]

SENATOR CHAMBERS: You youngsters can't do like an 80-year-old man (laughter), so watch yourselves. [LB836]

SENATOR MELLO: I'm here today to introduce LB836 that would create the In the Line of Duty Compensation Act. As drafted, LB836 would provide a \$50,000 death benefit to a family of a first responder or correctional officer who dies in the line of duty. Every day thousands of Nebraska law enforcement officers, firefighters, and correctional officers go to work and put their lives in harm's way for the sake of public safety. In the past 16 years, Nebraska has seen eight in-the-line-of-duty deaths. It is critical that we as policymakers do everything we can to ensure the financial stability of families of first responders through the In the Line of Duty Compensation Act. While the benefit is near the average of an annual law enforcement compensation, it is only a one-time payout. This compensation can provide for the immediate needs to families of those Nebraskans who pay the ultimate sacrifice in the line of duty. To receive a line-of-duty death benefit from the state, a first responder or correctional officer would have to be killed in the line of duty. This is defined as: losing one's life as a result of an injury received in the active performance of duties as a law enforcement officer, firefighter, or correctional officer. The benefit would be eligible whether the death occurred from an instance of violence or accident. Of our surrounding states, all have a state line-of-duty death benefit in relationship to law enforcement. And I know I have some details here in regards to three...four out of the seven have one in regards to firefighters in regards to a line-of-duty death benefit. In Nebraska, some local jurisdictions provide for a death benefit to first responders but not all cities and/or counties. It's my intent that this benefit would be in addition to any local death benefit payment that a first responder would receive. In my recent discussions with stakeholders, there were concerns raised as to how the death benefits would be disbursed. I'm currently working with the committee's legal counsel and other stakeholders to draft an amendment that would streamline how claims are made by sending them through the State Claims Board process. Directing any claims under this act to the State Claims Board would provide a more streamlined

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process by taking advantage of a system that we already have in place that this committee is well aware of. This change will ensure that there are several people reviewing any claims and the potential of fraud would be mitigated. My goal with LB836 is for the state of Nebraska to recognize the ultimate sacrifice made by first responders and/or correctional officers in the line of duty by providing their family with a one-time \$50,000 death benefit to help secure their financial stability in moving forward from their tragedy. With that, I'd be happy to answer any questions the committee may have. [LB836]

SENATOR BLOOMFIELD: Do we have any questions for...Senator Chambers, proceed. [LB836]

SENATOR CHAMBERS: Senator Mello, these people are not volunteers, are they? [LB836]

SENATOR MELLO: No. [LB836]

SENATOR CHAMBERS: They are paid well, aren't they? [LB836]

SENATOR MELLO: In many cases they are; in some cases they are not. [LB836]

SENATOR CHAMBERS: And they have much better benefits than most people on most jobs, isn't that true? [LB836]

SENATOR MELLO: There's an argument that could be made that, in some respect, they have benefits that counter what I would say you would see in the private sector. [LB836]

SENATOR CHAMBERS: Suppose one of these officers is killed while conducting a high-speed chase. [LB836]

SENATOR MELLO: Okay. [LB836]

SENATOR CHAMBERS: Then would that qualify him or her? [LB836]

SENATOR MELLO: If they were killed in the line of duty, which taking your example of them pursuing someone in a high-speed chase, they were in the act of performing their duties as a law enforcement officer or a firefighter and/or let's just say for the example purposes of a correctional officer, yes, they would qualify for the one-time death benefit. [LB836]

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SENATOR CHAMBERS: They know what the conditions are in which they work, don't they? [LB836]

SENATOR MELLO: They do. [LB836]

SENATOR CHAMBERS: Are you aware that there was period of time in Omaha and it may still exist to some extent where family members got special privileges in the police department and the fire department and you could go down the roster and see the same names, family name? [LB836]

SENATOR MELLO: I'm not...Senator Chambers, maybe it's because of my age, I'm not as familiar with the historical aspect that you're referring to. [LB836]

SENATOR CHAMBERS: So you mean you're so old that you'd forgotten (laughter) or you're so young that you never knew? [LB836]

SENATOR MELLO: It may be in the sense that I'm...due to my youthful age, I just can't speak to that issue. [LB836]

SENATOR CHAMBERS: Suppose there are employees for the state or other political subdivisions and that work that they do has inherent dangers. Should they be included also? Why stop with these categories? [LB836]

SENATOR MELLO: You know what, that's a good question, Senator Chambers, and we thought about that in regards to looking at the issue of a death benefit as it relates to public employees. And that's part of the reason why we included correctional officers and in light of their day-in, day-out duties, as you're well aware of this regards to working on corrections issues for decades, that their role sometimes puts them in a position in regards to having to address bodily harm from an inmate and/or in the case of a firefighter, police officer day in, day out risking their lives whether going into a burning building, trying to mitigate gun violence, and/or try to apprehend a criminal, that there are risks, inherent risks associated with those specific positions that there may not be in regards to someone who is--I don't want to pick out one specific public employee position--the administrative assistant, so to speak, let's say at the Tax Equalization Review Commission at the state level. That administrative assistant position in the TERC does not have the same inherent risks as those who are going out day in, day out, I would say, putting their lives in more of a risky environment for the sake of public safety. [LB836]

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SENATOR CHAMBERS: I hear that expression all the time: They risk their life every day. Do you think every cop risks his or her life every day? [LB836]

SENATOR MELLO: Oh, I think...I would say any police officer that's out on the beat obviously...I mean there is...I would say absolutely they risk their lives every day because no one quite knows what may or may not happen day in, day out to our own individual lives in regards to whether or not we get in a traffic accident, whether or not someone mistakenly would pull a gun in regards to trying to commit a crime in the middle of what would be our everyday lives. And so I think in that respect, yes, I would say that they do. [LB836]

SENATOR CHAMBERS: So by risk you mean possibility, not likelihood. [LB836]

SENATOR MELLO: Yes, that's maybe...that's a good way to say it. There's a possibility that...obviously there's a risk every single day regarding what they do. I think when you say possibility of risk, that possibility is very high simply in regards to the nature of the work that they do though. [LB836]

SENATOR CHAMBERS: In the last ten years, how many police officers died in the line of duty in Omaha? [LB836]

SENATOR MELLO: We got statewide information for the last 16 years and we had we had six law enforcement officers statewide, one firefighter, and one correctional officer. Within the city of Omaha, we had two officers: one Jason Pratt in 2003 and Kerrie Orozco in 2015. [LB836]

SENATOR CHAMBERS: So if we multiply the number of days and the years that we're considering and that few officers have been killed, if you deal with probability or statistics, that's not a high likelihood that somebody in that position is going to die. I don't think there's a high likelihood that cops are going to be killed in Omaha or anywhere else in the state every day they go out. And in fact, while they're on duty they go places where they're not supposed to be where they're not going to risk dying unless eating too much saturated fat would do that. And if look at my community you see them, some of them, on a regular basis in places where one car is facing one direction, the other car is facing the opposite so the two officers are side by side. And you can see them there for a considerable period of time. And the reason I don't think it's a stakeout, unless they think one is watching one direction and one is watching the other, but they're in such plain sight that I doubt that's what they're doing. And it could be argued that citizens are not aware of what officers do. But I think it's a stretch to say that these people, every day they go out there's a likelihood they're going to die. That's not true. [LB836]

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SENATOR MELLO: I...I... [LB836]

SENATOR CHAMBERS: And if they knew that, they wouldn't take the job. [LB836]

SENATOR MELLO: I don't think I said, Senator Chambers, there's a likelihood that they would die in the line of duty. I think my specific language may have been that they...their job, they risk their lives every day due to the inherent risk that their job entails in regards to them obviously-- firefighters having to go into a potential burning building every day, if that's what...if there is a fire every single day, that would...they obviously are risking their lives every day. We don't know obviously when there's going to be fires. [LB836]

SENATOR CHAMBERS: But they don't go into buildings every day. I've known people who were firefighters and police officers and I have so much information because they gave it to me. Do more people die in car accidents than police or firefighters die on the job? [LB836]

SENATOR MELLO: Yes. [LB836]

SENATOR CHAMBERS: So there's a greater risk of me dying on the highway than there is, every day, than one of these officers or firefighters dying every day on their job, isn't that true, if we go by statistics? [LB836]

SENATOR MELLO: I think if you go by statistics obviously there is. In 16 years, there were eight in-the-line-of-duty deaths in comparison to well more than eight obviously traffic deaths resulting of some kind of traffic fatality over the last 16 years. So the reality...I don't know if we can draw I think a direct comparison in regards to traffic fatalities versus in-the-line-of-duty fatalities when it comes to public safety officers. I think obviously there is considerably fewer in-the-line-of-duty deaths as the research that we have shows in comparison to a number of other potential ways that someone could...their life could end. [LB836]

SENATOR CHAMBERS: Senator Mello, the reason I'm questioning you, I don't have any interest in questioning the people who come here because when there's a financial interest, anybody is going to try to get that. But you're the introducer of the bill. You're the Chairperson of the Appropriations Committee. And you know what is entailed in the state is spending money in a situation where the locales are already doing it. This is in addition to any death benefit that may come to this individual's family as a result and you think... [LB836]

SENATOR MELLO: It is. [LB836]

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SENATOR CHAMBERS: Where is the state's duty with regard to this? And I know the usual thing: Everybody owes a duty. I'm not interested in any of that today. I want to know where the state's duty is with reference to this as the state has a duty to provide a public education to all the children. [LB836]

SENATOR MELLO: I think the state's interest, Senator Chambers, is in regards to ensuring and protecting families whose lives are affected by public safety when public safety takes the life of someone who has given their life to it, I think in that respect. The difference is every state around us as I mentioned provides a state death benefit for law enforcement. Nebraska is the only state in our region that does not do that. And in respect to firefighters, there are two other states besides Nebraska that do not offer a state death benefit for firefighters in that respect. I didn't have that information in respect to correctional officers but it's something that we could easily look into a little bit further. But I think the simple fact that their line of work in regards to public safety, that alone is above and beyond what maybe our line of duty is in regards to state legislators and/or as I said other public employees. It's the state recognition that this is very dangerous work. It's the recognition that there is a strong possibility that one's life could be ended in regards to providing this service to the public. And I know... [LB836]

SENATOR CHAMBERS: That's not the state's duty. They don't work for the state. [LB836]

SENATOR MELLO: They don't, but some people do work for the state in the sense of State Patrol officers in that respect, state correctional officers in that respect. So there is a difference. We included all public safety: all firefighters; police officers or law enforcement; and all correctional officers, state and county and city correctional officers in that respect. So we took a very broad approach in the simple fact that I think, as the data shows, is that this doesn't occur very often. But it does occur occasionally. It's something...it's a state policy that most states around us currently already have in regards to acknowledging that ultimate sacrifice that someone in public service is making on behalf of the greater good of the community and the greater good of the state. I think good people can maybe disagree in regards to whether or not you think or anyone else may think that's a good enough public purpose for the state. I simply believe that it is and I think it's only right for us to consider acknowledging that ultimate sacrifice by providing their family essentially equivalent of a one-year...one-year equivalent of their average salary so to speak for a death benefit in regards to not every county, not every city, and obviously the state, not everyone provides the same death benefits when someone dies in the line of duty and/or just simply passes away or expires not in the line of duty. And so this creates kind of a statewide scope so to speak. And I think it's good policy. And fiscally, as you can read from the fiscal note, there's a disagreement in regards to what the real fiscal impact would be when the State Patrol in their initial note said they thought it would be someone every single year in law enforcement. Obviously the data shows there's been six statewide in the last 16 years when it comes the law enforcement. [LB836]

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SENATOR CHAMBERS: See, they fudge the truth and they know that the facts go contrary to what they say just as there was a corrections officer who told a lie about an incident that happened at Tecumseh and the video was concrete evidence that that officer lied. The director did nothing to the officer but punished an inmate who had been lied about and the video showed that a lie had been told. So why should I believe that these people who lie and when they lie they're covered up for by their superiors are entitled to this? You don't have to answer that. That's kind of a statement. But here's what I want to ask you. Which would be harder on a family to happen over the long haul: a person die or a person be rendered a quadriplegic who needs ongoing care? That ongoing care is going to cost a lot more to that family than the one who died. And if we're talking about valuing the life of a person, \$50,000 is not enough to compensate anybody. So if we make a comparison and we're really interested in the family and not just trying to make a grandstand at the time everybody is talking about I support blue and all the other slogans, then the quadriplegic might be in a position where that family should get more assistance from the state than something like this in my opinion. What do you think? [LB836]

SENATOR MELLO: Senator Chambers, I agree wholeheartedly with you and that is one of the reasons why I have been a staunch defender of the state's Medicaid program when it comes to the aged, blind, and disabled because families who do see a loved one who becomes quadriplegic and/or disabled has the ability to access state Medicaid dollars to be able to help cover their costs in regards to taking care of their loved one. I know that maybe there's...that may be a minority opinion in the Legislature nowadays, but I think that critical program provides not just law enforcement, a firefighter's, a correctional officer's family, that's a program that provides that needed care to any family who would qualify for it. [LB836]

SENATOR CHAMBERS: Just two more questions. Is this a prioritized bill? [LB836]

SENATOR MELLO: I believe that there is a number of senators who are thinking about prioritizing it. I think to some extent... [LB836]

SENATOR CHAMBERS: But right now it's not? [LB836]

SENATOR MELLO: It's not prioritized yet. [LB836]

SENATOR CHAMBERS: My other question, are you aware that that cop who shot that black kid 16 times is suing that kid's estate because he said he's undergoing psychological trauma as a result of shooting him? So he's suing the estate of the kid he killed. That's what these people in blue will do. [LB836]

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SENATOR MELLO: Is that, Senator Chambers, the case in Chicago you're referring to?
[LB836]

SENATOR CHAMBERS: Um-hum. [LB836]

SENATOR MELLO: I'm not as well versed in the details of that case. I do know that it's...
[LB836]

SENATOR CHAMBERS: It was on television. [LB836]

SENATOR MELLO: I do know it is a very controversial issue surrounding the city of Chicago, their community, and their law enforcement agency. And so I can't speak to the details of what you just said. I do know it's very controversial and it's raised a lot of concerns in regards to some of the community policing practices in the city of Chicago and that's not really what my bill is about. [LB836]

SENATOR CHAMBERS: And I should have said (inaudible)... [LB836]

SENATOR MELLO: But I do acknowledge it is an issue out. [LB836]

SENATOR CHAMBERS: I should have said a bifurcated question because here's what I was getting to and I might have to ask more than one question to focus in but it deals with one issue. If it can be established that the police in Omaha show more concern if something happens to a white cop or a white person than they do what happens in the black community, would that make any difference in how we look at this and other kind of bills where we say that they risk their life all the time, they're doing a great job, and almost heroic just to put on the uniform? In other words, do people who have different experiences with these people come to the table with a different point of view about them? [LB836]

SENATOR MELLO: Yes, absolutely. [LB836]

SENATOR CHAMBERS: And there are a lot of people who are afraid to say publicly that point of view because they know what will occur, yet these same police will criticize a community when they won't come forth when a person has been shot. The cops won't come forth to point out the wrongdoing of other cops. And the chief fired one for destroying evidence and the only reason that happened because there was other video evidence of what had happened. So usually if they take action against a cop it's because somebody else has brought the evidence. But here's the thing and then I'm going to let you and you don't even have to respond to it. I've been railing

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for decades about the unwillingness of the police to seek out and eradicate to the extent that it can be done the almost unmitigated flow of guns into my community. And they wind up in the hands of very young kids. But when a white female officer got killed, they traced the gun all the way to a pawn shop in Alabama. So they know how to do this but they don't do it in my community. So I'm going to listen to what you say, but I don't have the same reaction to any of this that everybody else in this room has. And I'm the only one who represents this set-upon community and it's my job. It can make the chief angry. It can make the mayor angry. It can make the State Patrol angry. It can make the cops angry. It can make the firefighters angry. But if we were to convert anger into a solid force, theirs would look like a pebble on a beach and mine would look like the Rock of Gibraltar. So those kind of attitudes, the attempt to bully, the attempt to intimidate people, none of it works with me from anybody. I don't care whether they're in a uniform, out of a uniform. I don't care if they're as white as you are or as black as I am. I don't like marauders in my community--uniformed or not, white or black. But I'm not hired to enforce the law. I'm not hired to seek out and arrest criminals. These people have taken an oath and took the job. We don't feel like they're doing a favor when they do the job they're paid to do. We feel like they're not doing their job when they don't do it. So when people say why don't you thank the cops for what they do? They're paid, they wanted the job, and they're not doing the job. And we don't have to say thank you. People don't have to thank me because I'm in the Legislature and do my job. That's what I'm supposed to do. And like I said, I'm putting it on you because you can talk back to me not only here but everywhere else. And other people, they come here to give us their views and I'll listen to everything everybody has to say. [LB836]

SENATOR MELLO: I will respond a little bit. I appreciate that, those questions and statements. One, I think you can agree that myself and I think a number of our legislative colleagues have acknowledged both publicly and privately the concern in regards to what I would say has become a more widespread understanding of gun violence in your community and the simple fact that we do know that there are illegal guns being trafficked in the north Omaha community. And the hope is that I think of anything we've seen this year, that there is a bright light shined at least from discussions on the floor, in committees, and at least with our colleagues that this is becoming more of a statewide...it's more of a statewide issue to acknowledge the simple fact that gun violence in one portion of the state has a direct impact in other areas of the state when it comes to public policy. The second issue I would say is public service I think still is a noble calling regardless if you're a law enforcement officer, whether you're a state senator, or whether or not you work taking...whether you're a trash man in a small community out in rural Nebraska. It's a noble calling to enter into public life knowing that you are trying to serve the public and trying to serve the greater good. Yes, there are times in regards to public servants of all kinds in all classifications in all positions that do not meet the public expectations that have been set both whether you're in elected public office or you're an appointed or hired public officer. But I think the simple fact of trying to recognize in this particular case that public service does sometimes require us to make a sacrifice more than simply our time, our energy, and our effort, there are

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occasions when public service does require in some cases for people to give their life in regards to what they think is trying to protect someone else's life and/or the community's life and/or the community good. And this bill simply tries to acknowledge that public service in a way that I think is respectful in the simple fact of not singling out one particular case, one particular instance and any particular industry of law enforcement, firefighters, or correctional officers but more so I think that the job itself requires something more. And it's acknowledging that that public service does carry an awful lot of burden not just to that individual but the people that they do leave behind in case they do give their life. [LB836]

SENATOR CHAMBERS: You did make me think of one more. How did the figure, how was that arrived at? [LB836]

SENATOR MELLO: Well, the figure we utilized was roughly the average salary. And we took law enforcement. We did not take correctional officer or firefighters. We can get that information though if that's a discussion of wanting to talk through what that death benefit is. We took the average law enforcement officer salary statewide which is near \$50,000. And that's where we came up with. It's actually one of the lower amounts of all of our surrounding states when it comes to a one-time death benefit. Most states range between that \$50,000-100,000 range, so we're at arguably the lower end. [LB836]

SENATOR CHAMBERS: And I am through with you now for real. [LB836]

SENATOR MELLO: Thank you. [LB836]

SENATOR BLOOMFIELD: Senator Crawford has a question. Thank you, Senator Chambers. [LB836]

SENATOR CRAWFORD: Thank you, Senator Bloomfield, and thank you, Senator Mello, for bringing this bill to our committee. I appreciate the work of the first responders in my community. And in talking to them, one of the challenges that they face in my community is really competition for personnel. And in a last discussion I've had with several of them, they talked about more generous pension benefits or other benefits in other states and those are communities that are near a state border. That obviously then does become a part of the issue locally but also part of our larger statewide concern about work force and the population of our state. So I have noticed that discussion again, with talking with some of the police officers in my community. And I just...so in terms of thinking about the state interests or why what the state does matters, I think that's one reason why comparing ourselves to other states does matter in those communities like Bellevue that are where there is competition for these officers. And I wondered if that was any part of the discussion you had with first responders in terms of why it

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matters what a state policy would be in terms of...since there are differences and there are opportunities for the local community to provide some death benefit. [LB836]

SENATOR MELLO: Well, I think what we saw...that's at least in respects to...and we'll have a testifier actually from a city that borders the Nebraska-Iowa border, actually the city of Bellevue will have someone who testifies and can explain maybe a little bit more when it comes to recruitment and retention of law enforcement officers and public safety officers in regards to different communities. We looked at it I think more than anything, Senator Crawford, it does enhance the ability to retain first responders in regards to Nebraska's work force knowing that we're the only one who does not provide some direct state-related benefit one way or another whether in our direct one-time payment and/or retirement plans and/or some states actually do a compensation package in respects to the state providing a death benefit. We looked at it I think as much as anything else in the sense of trying to acknowledge of catching up with every other state in the simple fact that we don't do this. It, we know, acknowledges that it does have a retention and recruitment aspect of keeping people here. But I'll let...I'd like to let some people after me kind of describe that maybe a little bit more in detail so I don't take away from some of their testimony. [LB836]

SENATOR CRAWFORD: Thank you. [LB836]

SENATOR BLOOMFIELD: Thank you. And I'd like to point out that we have been joined by Senator Howard. And Senator Johnson I believe has a question. [LB836]

SENATOR JOHNSON: Yeah, thank you, Senator Bloomfield. Thank you, Senator Mello. I appreciate the fact that you've included volunteer firefighters. Law enforcement people in rural Nebraska are paid, but the fact that volunteers are in the same class as far as this compensation. I guess kind of a question would be dealing with the fiscal note. Would a claim like this since there's...we don't know when they're going to be, very few of them. Would that be...could that function as a claim that comes to this committee... [LB836]

SENATOR MELLO: Yes. [LB836]

SENATOR JOHNSON: ...and not be a fiscal note? Or would it still have to be a fiscal note? [LB836]

SENATOR MELLO: Well, it would...as you can read the fiscal note as the bill is drafted, there is an...it's an indeterminate amount because, once again, the Fiscal Office's analysis said that the State Patrol's numbers were...seemed inflated in the simple fact that they said there would be

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someone who would have a claim every single year. Looking at recent history, looking at it over a 16-year period, it was eight out of 16 years. And that was both county, state, and city. And so it's simply will follow...the amendment that we will give the committee in regards to the process would go through...it would take it away from the State Patrol and take it away from the Fire Marshal, go through the state claims process which it would come to this committee. It would go through that process. It would then come up in the claims bill that this committee sees every year and makes a vote on in regards to whether or not the state pays that state claim or does not pay that state claims. But the maximum benefit for a first responder or a correctional officer would be that \$50,000 death benefit. So the fiscal note I think to some extent it's in one of those scenarios where it's unable to come to a determination of...you know, it's purely a hypothetical guess in regards to whether or not. Obviously no one I think wants to see someone die in the line of duty. But the fiscal note lays out that it's an indeterminate amount in regards to when someone may seek to file a claim against the state moving forward. But it would go through this committee. If this bill became law, this committee would have to ultimately agree through the claims bill process to pay that death benefit after it goes through the state claims process and the Department of Administrative Services. [LB836]

SENATOR JOHNSON: Thank you. [LB836]

SENATOR BLOOMFIELD: Thank you, Senator Johnson. I believe Senator Ebke has a question as well. [LB836]

SENATOR EBKE: Thank you, Senator Bloomfield. Like Senator Johnson, I did want to clear up the volunteer aspect of it. My district has no paid volunteer...no pay firefighters or first responders, so that's an important piece of it. And I think we do actually have some volunteer police officers and sheriff's deputies who work on occasion as well. One of the questions that I would have is about other insurance or benefits available to especially those who are paid-- firefighters, first responders, and so forth. Are you familiar with any that's available either through their negotiated agreement or...? [LB836]

SENATOR MELLO: Different cities...that's a good question, Senator Ebke. And obviously different cities and counties and political subdivisions have different policies regarding their first responders, law enforcement, and firefighters and correctional officers, at least at the county level. And so each obviously political subdivision has their own benefit package that they have created for their public employees in the sense...we...I understand that there's...some provide death benefits in this sense, some don't, some provide it in insurance and through other insurance means. That's still not the focus of the bill. I mean we really...it was more of an acknowledgement that statewide policy, all first responders, law enforcement, correctional officers would receive a uniform statewide \$50,000 death benefit. We could...you could

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obviously parse that in the sense of saying, well, you've got some that are paid, some that are not paid, some that give a \$10,000 death benefit, some that give a \$25,000. The reality is to some extent these are obviously individuals who, you know, as I said before in Senator Chambers' questioning, I think it's the simple fact of the state acknowledging that this is a benefit that we are willing to give that this special set of public employees who are risking, as I mentioned earlier, whose jobs are inherently more risky than any other job there is in the public sector right now. And providing a statewide death benefit, I think, only brings us in line with what all of our neighboring states do. [LB836]

SENATOR EBKE: Thank you. [LB836]

SENATOR BLOOMFIELD: Are there any more questions for Senator Mello? I'm going to throw one in there that kind of follows along the same lines as Senator Ebke. Have you done any research at all, Senator, on whether or not it would maybe just be cheaper to go buy a life insurance policy for everybody than to have this come up every year? [LB836]

SENATOR MELLO: You know actually it's...that's a good question. Someone actually raised that to us, Senator Bloomfield, in the sense of considering...maybe considering that as an option for the state with what we want to do with the bill in regards to the state purchasing a health insurance option...a life insurance policy so to speak that would cover all first responders and correctional officers in the entire state. It's something that we want to look into a little bit more. I think the difference is different states obviously have come up with different concepts of how they provide this death benefit to first responders. We simply tried to take what I thought was the simplest route and most direct route which is going to the claims process, \$50,000 maximum death benefit. But the insurance policy is an option obviously that we would consider as a state knowing that we don't know if and when we would ever see a claim come forward. [LB836]

SENATOR BLOOMFIELD: Okay. Thank you. Are there any more questions? Do you intend to be here to close? [LB836]

SENATOR MELLO: Actually I'm going to waive closing only because I've got Health and Human Services back in Appropriations Committee right now that I've got to get back down there for. [LB836]

SENATOR BLOOMFIELD: Understood. Thank you for your testimony. [LB836]

SENATOR MELLO: Thank you. [LB836]

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SENATOR CHAMBERS: I'll close for you if you want me to. (Laughter) [LB836]

SENATOR MELLO: Thank you. [LB836]

SENATOR BLOOMFIELD: Looks like we have proponent testimony. Please state your name and commence. [LB836]

JASON CVITANOV: (Exhibit 1) Good afternoon, Senator Bloomfield, Senators of the Business and Labor Committee. My name is Jason Cvitanov, J-a-s-o-n C-v-i-t-a-n-o-v. Thank you for the opportunity to speak with you this afternoon on this bill. I've been in law enforcement for more than 20 years in two states. I'm also currently the president of the Bellevue Police Officers Association and the secretary of the Nebraska Fraternal Order of Police. My duties over the last 20 years include upholding the constitution; enforcing the law; protecting citizens, communities, and businesses--people that are constituents in the areas that you all represent. I also represent the interest obviously of law enforcement professionals, both in the city of Bellevue and throughout the state of Nebraska. The Nebraska Fraternal Order of Police currently has more than 2,800 members from 51 separate police and sheriffs agencies, many of whom live and work in your districts. These members are police officers, deputy sheriffs, and corrections officers. I'm here today to support Senator Mello's legislative bill, the Line of Duty Compensation Act. This is important legislation for many reasons. First, there are many dedicated men and women throughout our state that placed their lives in harm's way. Much of this comes with different calls for service that are related to both police and fire type calls. We are here to serve and protect. We don't complain and we don't shy away. We've each taken an oath to protect and serve those in our communities and hopefully we all take that oath very seriously. People like you, your families, friends coworkers, and neighbors are the people that we represent and protect each and every day. We do this voluntarily but with pay as Senator Chambers pointed out. But it is a calling. It's not a job, like being a senator, that everyone can carry out. After the initial shock wears off in one of these tragedies, we are faced with communities who are overdrawn with sorrow. There's a huge loss that faces the people in the community, the police and fire agencies as well as the families that have lost their loved one. But after that shock wears off, there's a family left with a huge loss and a life they must return to. Children going to school, paying bills, playing sports, growing up and advancing through life. We have to pay mortgages, car payments, school activities, things for our children and now we do it with one less paycheck coming in. Oftentimes that may be the only paycheck that was available to the family when this tragedy occurred. The income that once supported these families is now gone, but it's not limited to just that. The loss may include health benefits, retirement accounts, 401(k)s, dental, vision, those types of things that are very important in raising a family, basic necessities we're used to having. And again, that biweekly paycheck is no longer available. These are major life changes to a family trying to get back on track and to continue their progress through everyday life. I've worked law enforcement in two states. During my tenure, I've had the very unfortunate experience of attending several

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funerals of fellow law enforcement officers who have been killed in the line of duty. This includes a neighbor when I was growing up. I'll never forget the day my siblings and I returned home from school one afternoon. My parents sat us down and told us that Chris Moon (phonetic), our neighbor, had been shot and killed in the line of duty. And I watched as my two friends next door that I had grown up with were overcome with the grief and how it turned that family over. Just last year, Omaha police officer Kerrie Orozco had her life tragically taken. There are so many of these examples, ladies and gentleman, that we could go on for an extended period of time. States surrounding Nebraska, as Senator Mello pointed out, have a similar-type benefit and we are asking that today you consider providing this benefit to the first responders in the state of the Nebraska. On behalf of the men and women who are our public safety professionals throughout this state, I'm asking for your support to help take care of the families whose loved ones have made the ultimate sacrifice for the citizens in your communities. Thank you and I'll sit for any questions. [LB836]

SENATOR BLOOMFIELD: Thank you. Does anyone have questions? I'm going to jump the shark on you just for a second. I have great respect for law enforcement officers. But you went through a list of things that their family must endure if something happens to them. That is no different than any other family that loses the breadwinner. You know, I...while I, I said, have great respect for what you do and for what the fellow officers do, the idea that you suffer any more than someone whose father was killed in a car accident or mother, it's the same grieving process. I've been through it enough times that I'm unfortunately familiar with it. Senator Crawford. [LB836]

SENATOR CRAWFORD: Thank you, Senator Bloomfield, and thank you for being here today. I just wondered if you would want to respond to the question about the extent to which this is a recruitment or retention issue at all. [LB836]

JASON CVITANOV: Yes, thank you, Senator Crawford. In our surrounding states, we have significant competition in recruiting and retaining both police and fire professionals, the reason being other states have things like a defined benefit for retirement. They may pay a little more. They offer benefits and packages that are, in some cases, substantially better than what is afforded at some of the agencies throughout our state and certainly in the smaller rural agencies. This piece of legislation is just another step in recruiting and retaining people who want to come or have an interest in our profession and maybe to keep them in the state and from moving out to go work. I actually have just completed several background investigations for my police department and listening to people who actually left during the background process to go to other agencies and in fact other states because of some of these issues that have come up. So it is a piece that can be used. It may not be the deciding factor, but it adds something to the pot for sure. [LB836]

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SENATOR CRAWFORD: Thank you. [LB836]

SENATOR BLOOMFIELD: Senator Johnson. [LB836]

SENATOR JOHNSON: Thank you, Senator Bloomfield. A situation came up in my district a year ago when the county sheriff died. And I know I rode with another sheriff through the procession and whatnot. And his comment was that they were going to determine whether he was in the line of duty and receive some sort of compensation. Is there something else out there that is available through some kind of a system? Or what were they referring to that he might receive some compensation because he was in the line of duty? I don't know that it ever came to that point because the situation was in Butler County, he had had a confrontation with the issue, got into a little bit of a tussle, fight, and as he was leaving there and got into his vehicle he had a heart attack. Now maybe that didn't qualify so maybe that never became an issue. I just wondered if...what were they maybe referring to as some other type of compensation? [LB836]

JASON CVITANOV: Throughout our state that, there are several different types of coverages that are offered from assistance with burial costs up to some cities that will give the decedent's family up to \$100,000. Part of that depends on contracts, on what the city engages in. Some are life insurance policies. Others have nothing. When it usually comes to cardiac conditions, some of that is considered presumptive as it relates to the job. So that may have been one of the factors that they were going to use to determine whether or not he received the benefits, Senator. [LB836]

SENATOR JOHNSON: So that compensation is based on a county or city policy agreement with paid or volunteer? [LB836]

JASON CVITANOV: That would be correct, sir. [LB836]

SENATOR JOHNSON: Okay. Thank you. [LB836]

SENATOR BLOOMFIELD: Senator Chambers. [LB836]

SENATOR CHAMBERS: Since you're in the nature of a lobbyist rather than a line officer, and maybe that's what you do also, so I'll ask you a question or two. [LB836]

JASON CVITANOV: Yes, sir. [LB836]

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SENATOR CHAMBERS: It would seem to me that these officers, and I will concede, you know, you want to say they're devoted and dedicated to the community and so forth. I'll let that all go. But when I hear you get into the nuts and bolts and meat and potatoes of the argument, if they can get more money somewhere else, the community here doesn't register that high. It's what they can get by way of remuneration that will sway them more than any dedication to any given community, isn't that true? And nothing is wrong with it. That's why people get jobs. But it makes the point that I'm making. These people are employees and they work a job like everybody else. They are swayed by the same things that sway people on other jobs. And you said that you saw when you were interviewing much of this. I can get more money somewhere else so that's where I'm going. So does that in any way give coloration or flesh out this notion of all this dedication and devotion and willing to give your life and lay it on the line for the people in this community? [LB836]

JASON CVITANOV: No, and if I can clarify as to why. [LB836]

SENATOR CHAMBERS: Sure, answer (inaudible). [LB836]

JASON CVITANOV: I think you bring up a good point. And, yes, I think most people want to go where there are good pay, good benefits. However, the competition believe it or not is very, very stringent getting into law enforcement, and in some cases, much more difficult to get into the fire services. They're highly competitive fields with significant goals that you have to meet to be able to get hired. We're not perfect, Senator. We are just men and women and we make mistakes. [LB836]

SENATOR CHAMBERS: I'm not even talking about the fact that... [LB836]

JASON CVITANOV: But the fact is some people do stay communities because that's where they were born and raised. They love it there. I know of personal friends who are out west in smaller agencies that I think would do a phenomenal job down in Bellevue, would love them to come work for us. It's where they were born and raised and they love it there. The money isn't everything to them. Is it a factor in some decisions? Unequivocally, sir. But it's not the only goal. Regardless, once you get into this profession, whichever of the three it may be, you have to be dedicated to work nights, weekends, holidays, to at times put your life on the line. I'll give you the point that you made that maybe it's not every day. But it is a fact of life and it's unfortunate. [LB836]

SENATOR CHAMBERS: And that's all that I have. Thank you. [LB836]

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JASON CVITANOV: Thank you, sir. [LB836]

SENATOR BLOOMFIELD: Are there any more questions? I'm going to ask one more. [LB836]

JASON CVITANOV: Yes, sir. [LB836]

SENATOR BLOOMFIELD: And I don't know if you have the answer to it or not. How often if ever does workmen's compensation come into effect here if someone is killed on...? [LB836]

JASON CVITANOV: There generally are some workers' compensation benefits. Again it depends on the local jurisdiction what's covered. I couldn't give you specifics on all agencies throughout the state but as far as payment to the families, I don't know that there's an actual disbursement out of workers' comp that goes to the family. Workers' comp is generally focused on the individual that was injured. And getting them back hopefully to work, and if not, then that person if they're no longer able to do the job, they are given a disability rating and then generally a payment because they're leaving the profession. [LB836]

SENATOR BLOOMFIELD: I will have to look into further. There used to be a death benefit from workmen's comp as well and I'll do some (inaudible) myself. [LB836]

JASON CVITANOV: Yes, sir. [LB836]

SENATOR BLOOMFIELD: If there are no further questions, thank you, sir. [LB836]

JASON CVITANOV: Thank you. [LB836]

SENATOR BLOOMFIELD: Are there any more proponent testifiers? [LB836]

RUSSELL ZEEB: Good afternoon, Senator and committee. My name is Russell L. Zeeb, Z-e-e-b, Papillion, Nebraska. I retired a little over two years ago after 39.5 years with the Sarpy County Sheriffs Department and I've spent over 40 years on the volunteer fire department, too, so I wear several hats. First off, I'm here representing the Nebraska Law Enforcement Memorial. We are in charge of all the officers who unfortunately have paid the ultimate sacrifice and are memorialized at the monument in Grand Island on city park there just off South Locust Street. I would extend an invitation to all of you. May 9 at 10 a.m. is the memorial service. You're all welcome as we unfortunately add the name of Officer Orozco this year to the wall. I'm also representing Nebraska Sheriffs Association. They've asked me to speak in favor of this so both

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the Sheriffs Association and the Nebraska Law Enforcement Memorial Committee are here as proponents to this bill. I want to tell you a little story. I'll try not to take up too much of your time, but I want to tell you a little story. Those that know me know I like to tell stories. May 30, 2011 at 8:09 a.m. I walked up on a car in Schramm Park, a state park south of Gretna along the Platte River. I've been to that park a hundred times. My grandparents farmed near there and we used to hold family reunions there. It used to be called the Gretna Fish Hatchery. As I walked up on this car from here to monitor behind Senator Johnson, a shot rang out and at 8:09 in the morning or 8:09 in the evening, it doesn't make any difference. It's definitely something that grabs your attention. At that time, the individual in the car had fired a shot from a shotgun. Not knowing the situation, I took cover, called for a lot of help, and took up a tactical position. At the time I had 37 years on the department. I thought that I had made a long career, got through this, didn't have to worry about a thing. I knew that retirement was somewhere in the near future and that I'd be doing it. But at that time, I thought about a couple of things and that's my two grandchildren, my daughter, my wife and how they were going to survive without me in that because I absolutely had no idea what was going on other than shots had rang out at that time of the morning. Not long after that, we determined that the individual in that car was a very highly sought out individual who was on numerous alerts for threats and endangerments that he had posed on not only law enforcement, all public safety and the courts. The next eight hours I went through complete and thorough internal investigation. I went through a criminal investigation by the Nebraska State Patrol and everything else. On that, was cleared of any wrongdoing the individual killed himself. That was the shot. He killed himself. But I'll tell you and again, not picking on you, Senator Johnson, but again, from about me away to you, I've been around weapons all my life. I've hunted as a child growing up on a farm. I'm served in the military overseas for 17 months and been in law enforcement all those years. And when that blast took off, it makes you think and it makes you wonder. The others have testified that we need to make sure that our public safety officers are included in some type of benefit. The officers that are out there every day, the public safety officials that are out there every day need to know and their families need to know that they are covered. I know my time is ending. I want to say one last thing if I could. First off is to thank Senator Crawford publicly for her support and for everything that she has done for me. She's not my senator, but sometimes I feel that she is with all the support that she's given me. So, Senator, on public record, thank you. And I'll stand for any questions. [LB836]

SENATOR BLOOMFIELD: Are there any questions for Mr. Zeeb? Seeing none, thank you, sir. [LB836]

RUSSELL ZEEB: Thank you, Senator. Have a good day. [LB836]

SENATOR BLOOMFIELD: Further proponent testimony? [LB836]

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ROSEANNE SCURTO: (Exhibit 2) Good afternoon. My name is Roseanne Scurto, R-o-s-e-a-n-n-e S-c-u-r-t-o, and I'm the president of the Nebraska Serious Injury and Line of Duty Death Response Team. We are an organization that was formed in the state of Nebraska ten years ago in 2006 when we saw the need after two firefighters were killed in the line of duty in Wood River, Nebraska. Saw the need for their family to be taken care of in respects to planning their funeral and that wasn't necessarily available when they died. So our team was put together following the guidelines of the National Fallen Firefighters Foundation in Maryland. That organization sponsors what's called LAST teams: Local Assistance State Teams. And that is what we are. We come into fire departments, rescue squads, law enforcement agencies when requested and assist with funeral preparations for their officers and firefighters that have been killed in the line of duty. Our other primary function is to assist those organizations in applying for the benefits that they are entitled to because of the nature of their death. So we help with that type of assistance. I have been in the fire service for 31 years. Started as a volunteer firefighter, spent all of my time as a volunteer firefighter, I've also been an instructor for the State Fire Marshal's Office for 19 years. I taught for a Southeast Community College in the fire science program for 17 years. So I spent a long time doing this kind of stuff. We spend all of our efforts to the fallen fire, rescue, law enforcement officers in the state of Nebraska just to make sure that they're given the proper honors and tributes that they deserve and part of that is the benefits that they are allowed. This benefit, this bill, LB836, our organization is very much in support of this bill with some modifications. And I apologize for the lengthy handout, however, I did share this with Senator Mello ahead of time and I have actually spoken to the office about our concerns. There was a little too much vagueness in the bill that we are concerned about and so when you look through those things you'll kind of see what some of our concerns are. And our background comes from working directly with the federal death benefit that is paid to emergency responders in the state of Nebraska. There's a very, very laid-out program out there that's been tried and true since 1976 when the program was put together. It includes all public safety officer benefits...all public safety officer people, which is fire, rescue, law enforcement, corrections officers, U.S. Marshals, fire marshal investigators, more. There are more to the whole...anybody who does the type of things that we do, I guess essentially. As I said, we very much support the bill with some of the considerations to the concerns that we see in there. The death...the PSOB benefit includes not only the death benefit of a substantial amount of money that gets paid to the family of the fallen but also it includes a disability benefit that if you were catastrophically disabled, which in their definition is you couldn't do anything, there is a benefit that is paid to that incident as well. There's also educational benefits that are paid to the children of those that have been killed in the line of duty. Any public safety officer benefit this is...I'm not...I know it says National Fallen Firefighters Foundation, but it's through the Department of Justice and so it comes...it covers all fire, rescue, law enforcement. So there is a greater benefit. But any benefit that can be attributed to the family is generous and accepted and well needed. That's all I have to say if you have any questions. [LB836]

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SENATOR BLOOMFIELD: Thank you. Are there any questions? I have one. [LB836]

ROSEANNE SCURTO: Yes, sir. [LB836]

SENATOR BLOOMFIELD: You mentioned a federal benefit. Do you have a dollar figure on that? [LB836]

ROSEANNE SCURTO: \$339,881 is the death benefit. And it's the same if there is a catastrophic disability. It's that same dollar figure. [LB836]

SENATOR BLOOMFIELD: When you said catastrophic, you said total. Is there a percentage where they get less if they're 70 percent or anything? [LB836]

ROSEANNE SCURTO: No, it is not. According to the Department of Justice, it is a flat amount and it...and I don't want to be crude in my way to describe it, but the way they describe it is you basically have to be a vegetable. So forgive me for that. [LB836]

SENATOR BLOOMFIELD: How long does it take for this federal funds to be distributed? [LB836]

ROSEANNE SCURTO: In the state of Nebraska, our team has been very successful at getting these benefits paid relatively quickly compared to other states. We usually have a benefit paid within 18 months of losing... [LB836]

SENATOR BLOOMFIELD: Eighteen months? [LB836]

ROSEANNE SCURTO: Eighteen months. And it's...sometimes it two years, three years. It's a lot longer. [LB836]

SENATOR BLOOMFIELD: Unfortunately that is quick by federal government standards. It's... [LB836]

ROSEANNE SCURTO: Okay, see I think it's a long time. (Laugh) [LB836]

SENATOR BLOOMFIELD: It is. It's way too slow. [LB836]

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ROSEANNE SCURTO: And it depends on what's going on in the United States as to how fast that might be paid. When the Prescott 19 were kill or when west Texas happened and all the firefighters were killed, because there were so many claims filed at the same time it did slow down the process. And you would think that they could just say, well, this one was accepted so this one, this one, this one would be. But that's not how the process works. [LB836]

SENATOR BLOOMFIELD: Okay. Thank you for your testimony. [LB836]

ROSEANNE SCURTO: Yes, sir. [LB836]

DARREN GARREAN: Good afternoon. Members of the committee, my name is Darren Garrean; first name is D-a-r-r-e-n, last name is Garrean, G-a-r-r-e-a-n, and I'm president of the Nebraska Professional Firefighters representing approximately 1,300 paid firefighters throughout the state of Nebraska. We are a proponent for this bill and feel very strongly about it. I think what this bill does should this Legislature pass it is it sends a message that the state of Nebraska believes in its first responders so much so that should somebody protecting the lives or the property in the state of Nebraska so much so that they believe in them that they give a one-time death benefit should somebody give that ultimate sacrifice in the line of duty. Albeit it...you know, the \$50,000, Senator Chambers, it may be a drop in the bucket of what a family may need. But if it might ease them burying that police officer, that firefighter, that EMT whether it be paid or volunteer, it might ease that family just a little bit knowing that I have the backing of the state of Nebraska and believing that the job that I did that my husband, my wife, my family member, inherently dangerous was felt by the Nebraska government that they did something to ease that family's pain. I realize that we're talking about money, but if the family has one less thing to worry about, particularly if you're burying a family member, it does matter. We've got into some other discussion, I think, about the local aspect of it and the federal aspect of it. The...I think what we've got to get back to, of this bill particularly, is a one-time death benefit should somebody die catastrophically in the line of duty outside of any other benefits which in the state of Nebraska for a firefighter, there is no death benefit. Iowa provides \$100,000 benefit. Missouri provides a \$25,000 benefit. Kansas provides \$100,000 benefit. And just in the region alone we're talking about a one-time death benefit of \$50,000 should somebody die in the line of duty. There are some work comp issues and those vary from state to state as well. But I think if we get back to the issue at hand of a one-time death benefit of what this does is what we're talking about, I think, keep it to that item alone. The issue about the local aspect of it, those being individually, whether it be negotiated or just out of the goodness of the local government, hey, we want to provide a benefit. I think that's separate, too, because that's...all across the board it's going to be different. If I want to protect my family and get a life insurance policy of, you know, \$50,000 or more, that would be upon my wishes, my family wishes. But I think this is sending a message that the state of Nebraska believes in its first responders. I know there's a lot of stuff in this committee. I'll keep it brief. So if there's questions, I'll gladly answer them. [LB836]

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SENATOR BLOOMFIELD: Do we have any questions for Mr. Garrean? Doesn't look like it. Thank you. [LB836]

DARREN GARREAN: Thank you. [LB836]

MICHEAL DWYER: Thank you. Good afternoon, Chairman Bloomfield, members of the Business and Labor Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r. I'm a 33-year member of the Arlington Volunteer Fire Department and secretary-treasurer of the Nebraska State Volunteer Firefighters Association. I apologize, I don't have prepared testimony. But I would offer a couple of things this afternoon: (1) qualified support for this bill. We really appreciate Senator Mello's efforts to advance what we think, particular to volunteer firefighters it's incredibly important; and (2) to act as a resource for any questions you might have. I know there was a number of questions earlier with respect to how this affects volunteers and I would be happy to help with that. If I could respond to a couple of mentions that were made earlier. Just to clarify that this does include volunteer firefighters in the state of Nebraska and I think there was some debate about that. But I think, particularly in Section (2), it clarifies that it absolutely does apply to that. Senator Crawford, you had mentioned work force, the importance of this for the work force. In the volunteer world that's a little bit different in that recruiting work force for us this is an ongoing, ever-troublesome procedure for lack of a better way to put it. We've been doing a lot of work with EMS volunteers particularly because about 80 percent of the volunteer world is EMS calls. And in Nebraska over the last four years, we've lost 1,200 providers. Last year we lost 205. So this, from that perspective, is incredibly important to the volunteer fire service world. Senator Bloomfield, you had referred to the death of a firefighter and I want to say this with all the respect that I can say and I hope that in no way this will be misunderstood, but with great respect, the death of a volunteer firefighter is different. It's incredibly tough. Praise God, I've never lost anybody in our department, but I know from attending those, they're incredibly emotional. Our LODD team will stand by the coffin from the time that it's released until the time that it's buried. The bunker gear hangs on the back of the truck as we go to the funeral. All of the firefighters that are able to attend process together. And the last thing that typically happens at the ceremony is that they page that volunteer firefighter for the last time. And having experienced a couple of those, they are different. And again, I mean that with great respect. So thank you for the opportunity to testify and be happy to answer any questions I can. [LB836]

SENATOR BLOOMFIELD: Do we have any questions for Mr. Dwyer? Seeing none, thank you. [LB836]

MICHEAL DWYER: Thank you. [LB836]

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BRUCE BEINS: Good afternoon, Senators. My name is Bruce Beins; it's B-r-u-c-e B-e-i-n-s, and I'm here representing the Nebraska Emergency Medical Services Association. And I would say that we are cautious proponents of this bill. We see some real issues with the bill. The state of Nebraska is so diverse. With due respect to Senator Chambers' comments earlier, as you heard, about 80 percent of the volunteer firefighters in the EMS providers in the state are volunteers. Nebraska doesn't have an EMS system per se. We have a system that came about by evolution. I am the rescue captain for Republican City rescue squad, which is a village of less than 200 people. And I've provided that service for over 30 years now without any compensation and without any benefits. The problems that we see with the bill is with the definition of emergency medical services provider. Because Nebraska is so diverse, EMS is provided in Nebraska not only by some volunteer fire departments but from some stand-alone volunteer services, some third-party paid services, and also some hospital-based services. The way the definition, EMS per se is not even in the bill. It's under a definition of firefighter and it says you must be a volunteer firefighter, a paid or volunteer firefighter. Well, we have a lot of EMS providers out there and a lot of volunteer EMS providers out there that are not members of their volunteer fire department. They're still providing the service to their communities. So while we are a proponent of the bill, we would really like to see an amendment to clarify that you don't have to be a member of a fire department to be able to get this benefit. And I would be more than happy to answer any questions. [LB836]

SENATOR BLOOMFIELD: Are there any questions? Seeing none, thank you. [LB836]

BRUCE BEINS: Thank you. [LB836]

SENATOR BLOOMFIELD: Further proponent testimony? [LB836]

TIM DOWD: Good afternoon. My name is Tim Dowd, last name spelled D-o-w-d. We're a proponent of the bill. I'm appearing on behalf of the Nebraska AFL-CIO. I don't want to rehash all of the great comments and observations made by this committee as was the proponents. I do want to emphasize, however, that this bill does provide an acknowledgment. It provides an acknowledgment for what is clearly an inherent and a dangerous job. In any job, in any industrial occupation you're going to have some inherent risk. But I think it goes without question that the services provided to us as public service by these firefighters, by law enforcement agencies...and it is a dangerous job. We're dealing with violent offenders. We're dealing with the possibility of being stuck with needles contracting HIV, other types of contagious diseases, you're talking about going into burning buildings. These are all inherent risks that are not normally faced in any other type of an industrial setting. And what this death benefit does, it doesn't provide a grossly generous benefit to them, but what it does provide is an acknowledgement that these individuals are willing to risk their lives to provide a public service that is this necessary for this society to

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continue. And by providing this \$50,000 benefit, it provides some security for their families to bridge the gap in the unfortunate event something were to happen to these individuals. Additionally, Senator Crawford, I'd like to follow up on a question you asked. Does it provide any type of recruitment or retainment value? And I submit that it does. I think it goes to certain extent of common sense that, you know, the greater pay, the greater benefits, the greater compensation package, the better recruits you're going to have and you going to be able to retain them. And I think it does serve that additional purpose in addition to acknowledging the service that these individuals do provide for us. And, Senator Bloomfield, to follow up on a question you had asked, are there workers' compensation benefits available, a death benefit? There are. As the current statute is written, there's a \$6,000 burial benefit and there is a benefit payable to the spouses, The surviving spouse, for as long as they shall remain married. And that benefit is limited to two-thirds of the average weekly wages the employee was earning at the time their death as well as a benefit to their minor children limited to the..until they reach the age majority. However, that benefit is capped. It's capped at two-thirds of the wages they're earning at the time of the work accident. And if their wage rate is greater than the statutory weekly maximum benefit set by the state Legislature, presently that's \$785, there's no additional benefit coming. And again, as Senator Mello had indicated, this \$50,000 in response to Senator Chambers' question, is essentially an average of what the one-year salary would be which again would provide that financial bridge a gap for the services provided by these individuals. [LB836]

SENATOR BLOOMFIELD: Are there any questions of Mr. Dowd? Seeing none, thank you. [LB836]

TIM DOWD: Thank you. [LB836]

SENATOR BLOOMFIELD: Mr. Chairman, welcome back. [LB836]

SENATOR HARR: Thank you. [LB836]

SENATOR BLOOMFIELD: We're still in proponents. [LB836]

SENATOR HARR: Excellent. Well, I always appreciate Senator Mello bills. Anyone else here as a proponent? Opponents? Anyone here in the neutral on LB836? [LB836]

ROD REHM: Good afternoon. My name is Rod Rehm, R-e-h-m. I'm a lawyer here with a cold in Lincoln, Nebraska. And I wasn't going to testify on this, but as I listened to it, I support firefighters and policemen and I think it's a great bill. But statistically we've been averaging at least 36 workplace deaths in Nebraska over this 16-year period. That's 576 families. And those

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workers have died in horrible ways. They've been chewed up in the equipment on construction projects, literally chewed into a thousand pieces. And their families have suffering everything that all these firefighters and policemen have. And I...if you want to create a special category for people so be it. But we ought to honor all the people that do these things. Steel workers have this motto: Building America one building at a time. I've had those guys fall off roofs and die and get crushed. They're doing a hell of a community service, so are road workers, so are the packing plant workers who get chewed up and spit out like the hamburger they're making. Just think about it. [LB836]

SENATOR HARR: Great. Thank you, Mr. Rehm. Anyone else in the neutral capacity? Welcome. [LB836]

BRAD RICE: (Exhibit 3) Good afternoon. Senator Harr and members of the Business and Labor Committee, I am Colonel Brad Rice, B-r-a-d R-i-c-e, superintendent of the Nebraska State Patrol. I would like to thank the committee for giving me the opportunity to appear before you today to offer my agency's neutral testimony on LB836 and to share some concerns with the language as it currently exists. Before I go on with my prepared testimony, it's my understanding that Senator Mello's intention is to bring an amendment which addresses a number of my concerns with the bill as drafted. As the superintendent of law enforcement and public safety, and as colonel of the Nebraska State Patrol, I would certainly support the concept of a line-of-duty death benefit for public safety officers. Nebraska State Patrol officers could benefit from such a program and we have experienced 11 line-of-duty deaths over the Patrol's 76 year history. Their sacrifice should have been recognized by such a benefit as proposed in this bill by Senator Mello and we thank him for bringing this issue forward on behalf of the brave men and women who protect and serve. The difficulty of this particular bill comes down to the administration of the line-of-duty death benefit. The bill proposes that as colonel of the State Patrol, I would be the compensation administrator. In cases in which a Nebraska State Patrol trooper is killed in the line of duty, it would seem to be a conflict of interest for the agency to determine whether the benefit should be payable and to whom it should be paid. In other cases when sheriffs and police chiefs have an officer who they believe died in the line of duty, determining whether that death is a result of an injury occurring during their service puts the Nebraska State Patrol in a position of making judgments that may cause hard feelings and potentially damage working relationships with our law enforcement partners. It would seem more appropriate to have an alternative agency, such as the Public Employee Retirement Agency or the State Claims Board, administer a complex benefit like the one proposed in this bill. I believe the determination of payments in a 45 day time frame would be an extremely difficult requirement to meet. Even disability claims through the Nebraska Public Employee Retirement System are not processed that rapidly. The Nebraska Workers' Compensation Courts do not make a determination of whether a death was caused in the scope of employment that quickly. Further, the probate courts do not probate an estate within 45 days. However, this bill requires that the Nebraska State Patrol determine the

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cause of death, determine whether it was in the course of duty, and not caused by willful misconduct or intoxication, all within a 45 day time frame. Further, the bill requires benefits to be paid out in accordance with a legally binding will. This would create issues if the court system has not yet determined that the will is a legally binding document. Clarification is necessary to clarify if benefits are to be paid after the estate has been probated which seems to be the only method in which these benefits could be allocated to be consistent with the language of the bill. The federal government has a similar line-of-duty death benefit. Less than half of their claims are approved within one year. In the Commonwealth of Virginia, their line of duty death benefit takes six to nine months to process. For a claim that requires review of law enforcement reports, medical records, autopsy reports, toxicology reports, marriage license, birth certificates, and a will, forty-five days may not be sufficient to read, research, and process such an extremely important claim. I believe all claims in Nebraska would be filed in good faith; however, I would note that federal benefits have been denied 26 percent of the time in 2013 and 12 percent of the time in 2014, utilizing a broader federal definition of what constitutes a line-of-duty death than what is proposed here. In LB836, any process must meet State Auditor requirements as this involves state funding. The process of administering the benefit simply cannot be a quick rubber stamp of approval on the application for benefits. Due diligence with regards to the investigation must be done and the time frame of 45 days simply does not offer enough time to do the benefit and the officer's family justice. In closing, I want to thank you Senator Mello for bringing forward this bill and hope that through further discussions with Senator Mello and the committee we can work together to make this bill workable. I will be happy to try to answer any questions that you may have. [LB836]

SENATOR HARR: Any questions? Senator Bloomfield. [LB836]

SENATOR BLOOMFIELD: Thank you, Chairman. Colonel Rice, welcome to the committee. Currently if a Highway Patrolman is killed in the line of duty, is there any death benefit for him at all? [LB836]

BRAD RICE: The state provides for \$10,000 life insurance. And then there are various life insurance policies that they can apply for on their own. And then of course they are eligible for the federal line-of-duty death benefit. [LB836]

SENATOR BLOOMFIELD: The 300-some-odd thousand (dollars). Okay. Thank you. [LB836]

BRAD RICE: Yes, sir. [LB836]

SENATOR HARR: Senator Crawford. [LB836]

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SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you, Colonel Rice, for being here. In your testimony when you talk about the federal benefit being denied 26 percent of the time in '13 and 12 percent in 2014. Do you mean for Troopers? Is that your rate of rejection? [LB836]

BRAD RICE: No, overall. [LB836]

SENATOR CRAWFORD: Overall, overall. [LB836]

BRAD RICE: Overall, nationwide. [LB836]

SENATOR CRAWFORD: And can you characterize what generally gets someone disqualified? I mean, you're raising this as a concern that you think their definition is broader so you're concerned about the narrowness of the definition. [LB836]

BRAD RICE: Yes, ma'am. I would...I know of some cases where an altercation may have occurred two or three days prior to an officer's death. And then there is the process of trying to tie the cause of death with the altercation. And sometimes those are very hard bridges to cross and a definite nexus has to be made. And that's just a single version of why it might be denied. [LB836]

SENATOR CRAWFORD: Thank you. [LB836]

SENATOR HARR: Any other questions? Let me ask you then, I'm trying to clarify your testimony. You are in favor of raising it to \$50,000, is that correct? [LB836]

BRAD RICE: Say that again? [LB836]

SENATOR HARR: You're in favor of raising the amount of the death benefit to \$50,000, is that correct? [LB836]

BRAD RICE: Yes, sir. [LB836]

SENATOR HARR: Okay. It's just you have technical issues with the bill. [LB836]

BRAD RICE: Yes, sir. [LB836]

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SENATOR HARR: Okay. Great. Thank you, Trooper Rice. Any other questions based on that? Seeing none, thank you for your time. [LB836]

BRAD RICE: Thank you. [LB836]

SENATOR HARR: Anyone else here in the neutral capacity? Seeing none, and Senator Mello I believe stated he would waive closing on LB836. (Exhibit 4) For the record, we have a letter from the Fraternal Order of Police, Nebraska State Lodge from John Francavilla in support of LB836. And that closes LB836 and we will move on to LB743 with Senator Hansen. Welcome to your Business and Labor Committee. You may begin at your will. [LB836]

SENATOR HANSEN: Thank you, Senator Harr. Good afternoon, Chairman Harr and members of the Business and Labor Committee. My name is Matt Hansen, for the record, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here today to introduce LB743. Under current law, a shoulder injury is treated as an injury to an arm. Thus, if a worker sustains an injury to the shoulder, he or she is limited to the compensation provided in the schedule contained in Section 48-121 of the Nebraska Workers' Compensation Act. LB743 would allow the Nebraska Workers' Compensation Court to award a loss of earning capacity in a case involving the loss of use of a shoulder. This means that the court would determine to the extent to which the injured worker's earning capacity has been diminished on account of the injury. The shoulder is probably the most mobile joint in the body. It's this mobility that makes the shoulder so critical to so many body movements. But this mobility can also stress the shoulder in ways that would make it prone to injury. When those injuries occur, they have a tremendous impact in the ability to perform daily activities. Think about how each one of you uses your shoulders during this hearing, repositioning the arm so that we can adjust the microphone or take notes or sip from a cup of coffee and so on. All of these affect us, although our jobs are fairly sedentary. Imagine the impact if a painter can no longer reach over his head or a mechanic can no longer work on a car raised on a hydraulic lift. For those whose occupations are limited to more manual labor, the impact is more than significant. A shoulder injury can occur as a result of repetitive job process or operation. Employees involved with tasks such as painting walls, lifting, and filing are at risk for shoulder injuries due to excessive overhead arm motion. The most common workplace shoulder injuries are rotator cuff tears and impingement. To me, treating the shoulder as an arm injury does not reflect the importance of that joint. Indeed the shoulder itself can compensate for some limitations due to injuries to the arm, this having diminished the impact...thus diminishing the impact an arm injury might have. But there's no similar joint that can compensate for an injury to the shoulder. I believe that our policy of the state should reflect the importance of the shoulder, especially in those cases where the workers' other skills are limited. Thus, why LB743 would allow the Nebraska Workers' Compensation Court to earn a loss of earning capacity in cases involving loss of use of a shoulder. With that, I will close and would be happy to answer any questions from the committee. [LB743]

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SENATOR HARR: Thank you, Senator Hansen. Any questions for Senator Hansen? Seeing none, will you stick around to close? [LB743]

SENATOR HANSEN: I believe I will waive my close today. I have an appointment in my office that I'm late for. [LB743]

SENATOR HARR: All right. Well, thank you very much. [LB743]

SENATOR HANSEN: Thank you. [LB743]

SENATOR HARR: Anyone here to speak as a proponent of LB743? [LB743]

ROD REHM: (Exhibits 1 and 2) Once again, thank you, Chairman. My name is Rod, R-o-d, Rehm, R-e-h-m, a Lincoln attorney. I'm here on behalf of the Nebraska Association of Trial Attorneys in support of this bill. I've got a couple of pieces to circulate. I'd like to talk about reality about...one of my favorite law school professors talked about what happens down on the ground, what happens on these cases. And I wrote up a little illustration and for some odd reason it got labeled as LB847. I don't know where that came from, but that was a mistake. I'm going to give an example of a worker that's about a \$10 an hour worker. She gets her shoulder injured. She has to have a surgery. Depending upon who does the surgery she...and most likely she will have been sent to some surgeon by the employer because that happens all the time. And one of the reasons that the employers select the surgeons is there are different disability guidelines, different editions. Some are more conservative and some are less conservative. And the latest one typically gives a 2 percent or 3 percent disability to a shoulder, an operated shoulder. And what that boils down to in the case of this \$10 an hour injured woman is two \$266.68 a week for 4.5 weeks. That's a 2 percent disability. And the math comes out to about \$1,200. That's what she gets unless her injury is so severe that she can't return to work. And she may get some help with job searching, but the way these cases typically operate is that people are sent back to work rather quickly, particularly where there's nurse case managers pushing the doctors. And they will get back to work, you know, anywhere from two to three months after the operation. Many of them just don't make it and the doctors release them with little if any work restrictions. And they're forced with either working in constant pain or quitting. If they quit the employer will object to any type of voc rehab because there was a job available. That's how it works. And she'll go to a lawyer and a lot of lawyers will look at that and say, well, you are a low-paid worker and it's going to cost me a couple thousand dollars to put a case together because I'm going to have to send you out for doctor's examinations and maybe physical therapy testing. And then we're going to have to go to court to see if we can get you paid for a higher disability rating or maybe we can get you voc rehab. Most lawyers turn those cases down. Workers' comp is really an awful lot about leverage, the financial leverage of who runs the show. And they used independent

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medical exams which more...can be most likely labeled as defense medical exams to throw in and get the low rating sometimes if the doctors aren't willing to give a rating. I gave some examples of a medical examiner that is very popular with the defense just because I wanted to show you what this is about. I want to take you down on the ground of what happens to worker. There's a guy that's...that we did of research on the Worker's Compensation Court on their website you can go to something called decisions and orders and put in a doctor's name. And you're going to get a listing of every time his name has shown up in a court record that's been kept by the Nebraska court, go back five years at the time. This particular fellow, and I'm not going to name his name, showed up 276 times; 273 of those times he was there for the employer. We took his deposition about this and he didn't deny it. He admitted in the deposition, and it's here in front of you, that, yeah, 98 percent of what I do I work for the employer. Well, this bill as a practical matter gives the worker a chance at getting somebody help because a 10 percent disability for a loss of earnings for somebody that can't work above their shoulders and can't lift much in this \$10 an hour example amounts to about \$7,000. Well, \$7,000 is going to get a bigger fight than trying to increase a 2 percent rating which gives you 4.5 weeks to 5 percent because you can't afford to do it because the worker doesn't have the money and they're the ones that reimburse their lawyers for it. We're not ConAgra. We're not Tyson Foods. We can't afford to pay some guy a couple thousand dollars--and that's what they cost--to say what you want them to say. And this bill gives the worker some leverage to get paid the way they should be paid for how this takes away their earning ability. [LB743]

SENATOR HARR: Great. Thank you, Mr. Rehm. Any questions? Thank you for your time. Appreciate it. Anyone else here as a proponent on LB743? Welcome. [LB743]

DARCY TROMANHAUSER: (Exhibit 3) Good afternoon, Senators. My name is Darcy Tromanhauser; that's D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r, and I'm here from Nebraska Appleseed, a nonprofit dedicated to justice and opportunity for all Nebraskans. And today...we work at Appleseed on worker safety issues interacting with hundreds of workers across the state in meat packing and food processing every year. And unfortunately, shoulder injuries are pretty common. We see that all the time. And so we support LB743 because we believe it's important that the Nebraska workers' compensation system adequately addresses shoulder injuries. Again, the purpose of the workers' comp system is to provide an incentive, an important incentive to employers to bear the cost of maintaining a safe workplace and ensure that they and not society and individual families are bearing the costs workplace injuries. And so by doing that we have a public interest in making sure that if a Nebraskan is injured at work, he or she can access the treatment and the proper benefits that they need to return to work. And in that way we ensure that Nebraska's families are strong and that our industries are sustainable. So in ensuring that we're properly addressing shoulder injuries, we support LB743. [LB743]

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SENATOR HARR: Thank you, Ms. Tromanhauser. Any questions? Seeing none, thank you for your testimony. Anyone here as a proponent, LB743? Welcome. [LB743]

TIM DOWD: Good afternoon. Tim Dowd, D-o-w-d. I'm a proponent for LB743. This is an extremely important legislative bill. To give you a CliffsNotes version of how workers' compensation works, as I explain to all my clients, you have two types of injuries to generalize. You have injuries called your scheduled member injuries. Those your limbs: your feet, your arms, your hands, your toes. On those types of injuries you're compensated based on a doctor consulting the American Medical Association Guides to the Evaluation of Permanent Impairment. And as a previous proponent, Mr. Rehm, addressed, you can find doctors one of which he found 273 out of 276 times gives an opinion based on his arbitrary figure he's pulling from the AMA Guides to sign an impairment. And based upon that impairment for a scheduled injury--a limb, a shoulder--that's what that injured employee is to be compensated for. A different type of injury is what you call a whole-body injury. That's an injury to your neck, the trunk of your body, your whole body. The benefits your entitled to compensation for in those injuries are loss of earnings capacity. And those benefits aren't calculated based on some arbitrary figure pulled out of a book. Instead those are benefits that are determined by somebody called a vocational consultant, an expert in the labor field. And that individual will sit down and meet with the injured employed go over their age, their educational background, the abilities and wages they used to be able to earn, and their restrictions, the restrictions indicating what loss of access do they have from this labor market. It looks at what was the injured employee able to do before they got injured to what they're able to do now. When we're dealing with a shoulder injury, as Senator Hansen indicated, the shoulder is a part of the body you use in everyday life activity. All of us are using it here. It's your main thrust and ability to perform job functions. And the proper way to compensate that is not by grabbing some arbitrary figure out of a book where you can find your own defense doctor to provide that, rather it's to take into consideration the true effect it has on that individual's earning capacity. And we can talk theory or we could look at real-life examples to really show how this affects someone. And I have an individual, a client who is a mechanic. He's got a seventh grade education. But due to hard work, he taught himself a trade skill and that trade skill is being a mechanic. And he worked his way up despite a seventh grade education to earning a wage of about \$26, \$27 per hour. Unfortunately, he was involved in work action which resulted in the amputation of his arm. Based on the current statute, the only compensation this individual is going to be entitled to is whatever percentage of disability he has for that shoulder injury multiplied by the amount of weeks he's entitled to for the shoulder injury. Doesn't it make sense the true compensation should be...here we've got a limited education individual who I believe he's 44 years of age whose only occupational base has been that of a mechanic where he's able to work himself through the hard work teaching skills of the trade and to compensate him on a loss of earnings capacity as opposed to some arbitrary impairment? It only makes sense because by loss of earning capacity you're truly looking at what is the loss of occupational basis the individual has sustained as a result of an injury to a part of

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your body that is required in the everyday life activity, both recreational as well as work. It's only fair and that is the spirit intent of the Nebraska Workers' Compensation Act. And with respect to any type of financial burden that it would cause to the employer or the insurance agencies, this is something that the state of Iowa has compensated for years. The state of Iowa compensates shoulder injuries as a whole-body injury entitling the individual over there it's called industrial loss as opposed to a loss of earning capacity. But it has not resulted in any bankruptcies being filed or any major financial consequences. And I see that I'm out of time. If there's any questions, I'd be happy to answer them. [LB743]

SENATOR HARR: Thank you, Mr. Dowd. Any questions for Mr. Dowd? Senator Johnson. [LB743]

SENATOR JOHNSON: Thank you, Senator Harr. Just a comment I guess, you talked about how often we use our shoulders. [LB743]

TIM DOWD: Correct. [LB743]

SENATOR JOHNSON: So probably the most wear and tear, maybe it's in your knees because you're overweight. But you're using your shoulder all the time. How hard is it to quantify a percentage or...you could hurt your shoulder, throw it out of place or whatever doing anything and then coming back and filing a claim. Is it...how is that different from somebody blowing out a knee at home and trying to hobble to work and claim it? [LB743]

TIM DOWD: If I understand your question, Senator Johnson, the response would be it's going to be subject to a medical opinion from a physician indicating the extent of the permanency and restriction sustained as a result of that work accident. So you might have an arthritic condition in your shoulder, but if you're involved in a work accident that accelerates, worsens, aggravates, speeds up that preexisting arthritic condition because of a work accident and there's limitations because of it, that's what is going to drive and determine what your benefits are for the shoulder injury just as it is with any other body part. [LB743]

SENATOR JOHNSON: Okay. Thank you. [LB743]

SENATOR HARR: Great. Thank you, Senator Johnson. Any other questions for Mr. Dowd? Seeing none, thank you for your time, sir. [LB743]

TIM DOWD: Thank you. [LB743]

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SENATOR HARR: Any other proponents here on LB743? Anyone here in opposition? Welcome back, Mr. Jones. [LB743]

DALLAS JONES: Good afternoon. My name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I'm appearing on behalf of the Nebraskans for Workers' Compensation Equity and Fairness as well as the Nebraska State Chamber of Commerce and Industry. I appear in opposition to LB743 for several reasons. First of all, let's make sure that we just call it what it is. This is...represents a significant increase in the cost of workers' compensation both to private as well as public employers. I want to correct something that Senator Hansen mentioned during the introduction, not to be critical of him but to make sure that we all understand exactly what the rules are. In workers' compensation, as Mr. Dowd explained, you have the scheduled members and you have whole-body injuries. A shoulder injury may or may not be one or the other. We have a test that's a very workable test and has been in place for a number of decades that helps us determine is this injury one that impacts the whole body so that the compensation mode should be for earning capacity loss, or is it an injury that impacts this employee's upper extremity, how they use and manipulate only the upper extremity, in which event then it's a scheduled member. That's a system that has worked well and continues to work very well. Sometimes it's hard to know and that's why we have judges who have to decide those. But in terms of what is it, a schedule or a whole-body injury? The system works quite well. I will tell you that to say that shoulders should be compensated one way or the other misses the primary point. How do you define a shoulder? I'm sitting by Dr. Bozarth. I don't know if he's going to testify today but he's an orthopedic surgeon and he's far better equipped to tell you about all the different pieces of the anatomy of that area we generally kind of refer to as a shoulder. But it...you would have to define what neurological impact results in a shoulder, what is the vascular problems that can be related to a shoulder injury, you have to define that in terms of the bony injuries, the muscular pieces of it. It is a very complex area. And I can assure you that if the bill goes forward and it defines shoulder...it doesn't define shoulder, you will see a significant amount of litigation over what is and what is not a shoulder because there are a lot of pieces and parts that go into that. Focusing on what's the function which is the primary basis of our entire system, how does an injury...how does an injury affect function is where the focus needs to remain. If that injury causes significant functional loss to that arm, for example, the guides that various folks have mentioned take that into consideration. The number goes higher the greater degree to which that function is limited. As we go backwards and it's less function, the number goes down. So what they're talking about in large part is taken account for in the guides that the doctors are interpreting. I will close on this point. There...while a shoulder is certainly important, it's no more important than a hand. As a matter of fact, if you don't have the hand, you're not to use the shoulder very much. There is no limit to the same argument being made with each and every body part that we have. Some have more, some have less significance. They're all harmful to the employee when they lose some function. But we have a balance that this state has to maintain in terms of the no-fault system that entitles employees to all the benefits to which they're entitled and the cost of those benefits.

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And each time that we start tinkering with what is and what is not a shoulder, what is not an extremity, what is not something compensated on an earning capacity loss, we have put that balance out of place and we've opened Pandora's door if you will. And this won't be the last time we address that. I would be happy to field any questions. [LB743]

SENATOR HARR: Thank you, Mr. Jones. Any questions? Seeing none, thank you for your testimony and your time. [LB743]

DALLAS JONES: Very good. Thank you. [LB743]

ROBERT HALLSTROM: (Exhibit 4) Chairman Harr, 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 in opposition to LB743. Mr. Jones has covered most of the comments that I have in my written testimony. We, too, are concerned about the precedent of, where does this end? Do we go to a hip having an impact on the body as a whole and providing for loss of earning capacity in every situation? It does increase significantly the cost of workers' compensation for employers. And with that, I'd be happy to address any questions that the committee may have. [LB743]

SENATOR HARR: Any questions for Mr. Hallstrom? Seeing none, thank you for your brevity. [LB743]

ROBERT HALLSTROM: Thank you. [LB743]

SENATOR HARR: Anyone else here in opposition to LB743? Seeing none, anyone here in the neutral capacity? Welcome. [LB743]

DENNIS BOZARTH: Senator Harr, Senators, my name's Dennis Bozarth, B-o-z-a-r-t-h. I am an orthopedic surgeon here in Lincoln. I was here to testify about a different bill. And then listening to this and so I had to make some comments. The...in my private practice at Lincoln Orthopedic Center, I do workmen's compensation. That's what I primarily do. I also do independent medical examinations. The determination of an impairment is based on using what we have as references, mainly it's the AMA Guides (to the Evaluation) of Permanent Impairment. This has been set down and physicians have tried to determine what each part of the body is worth as far as a percentage, not as about what its use is. It's just what its value is. So in the upper extremity if you lose your hand at your wrist, you've lost 90 percent of your arm with a completely normal elbow and shoulder. So when we give these impairments. We don't just do these haphazardly or arbitrarily. We try to use the objective findings that we can find, and by instruction, you're to give

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the highest value that you can come up with, not the smallest value. I just wanted to clarify also that independent medical examiners, for the most part when you do those, who sends you the people are the insurance companies, not the plaintiffs attorneys. It's the defense side. So if there is...if it appears that an independent medical examiner is skewed in their people they see, it is for that reason. As I've told the attorneys all the time, I'm more than willing to see anybody anytime. So I just wanted to bring those points up and see if you had any questions regarding shoulders. [LB743]

SENATOR HARR: Great. Thank you, Dr. Bozarth. Any questions? Senator Ebke. [LB743]

SENATOR EBKE: Thank you, Senator Harr. And I would just attest to Dr. Bozarth's capabilities with respect to shoulders. He set a fractured dislocation of my shoulder almost 20 years ago. [LB743]

SENATOR HARR: Excellent. (Laugh) Seeing no others, thank you. Anyone else in the neutral capacity? With that, that closes LB743 and we'll move on to Senator Ebke's LB1001. [LB743]

SENATOR EBKE: Thank you, Chairman Harr and fellow members of the Business and Labor Committee. For the record, my name is Senator Laura Ebke, L-a-u-r-a E-b-k-e, representing Legislative District 32. I am here today to introduce LB1001 to the committee. LB1001 would provide definitions for "loss or loss of use", meaning permanent loss of physical function and "member", which would be an arm, leg, ear, eye, or a nose for purposes of a loss of earning capacity determination when an injured employee suffers the loss or loss of use of more than one member or parts of more than one member. LB1001 is designed to clarify the provisions of Nebraska Revised Statute 48-121 relating to the circumstances under which Workers' Compensation Court can award benefits based upon loss of earning capacity when a loss or loss of use of more than one member or parts of more than one member have resulted in the same accident or illness. The Nebraska Legislature amended the Workers' Compensation Act in 2007 through LB588 by adding a provision in Nebraska Revised Statute 48-121(3) to allow employees suffering injuries to more than one scheduled member in the same accident to be awarded benefits based upon a loss of earning power if, (1) in the Compensation Court's discretion, benefits payable pursuant to the schedule do not adequately compensate the employee, and (2) the employee's loss or loss of use results in at least a 30 percent loss of earning capacity. The Legislature adopted workers' compensation reform legislation in 2007 in the form of LB588. The primary component of the legislation revised the manner in which large hospitals were reimbursed in connection with workers' compensation claims. In addition, the legislation revised the manner in which benefits could be determined in cases in which an employee suffered multiple scheduled member injuries. It is this issue that is addressed by LB1001. With the passage of LB588, a substantial change in policy was adopted which benefited injured workers.

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Thereafter, an employee who suffered multiple scheduled member injuries in the same accident or illness which resulted in a loss of earning capacity of 30 percent or more could have benefits determined based on loss of earning capacity. The rationale for the change was that when two scheduled members are injured and limit the employee, the impact of the limiting injuries is far greater than recognized by the schedule of benefits for each individual member. In such instances, the employee could be entitled to receive more benefits than the schedule allows. Conversely, if only one member injury limits the function of the employee, there is no reason to compensate the employee based upon a loss of earning capacity rather than the statutory benefits for the scheduled member. I'm bringing this bill to you on behalf of the Nebraskans for Workers' Compensation Equity and Fairness. Bob Hallstrom is here day following me, and perhaps a small parade of others, and he can explain in more depth what was happening before LB588, why further changes are needed with LB1001. I believe he may also have some examples and I would try to answer any of your questions, but it's probably better left to the experts. [LB1001]

SENATOR HARR: Great. Thank you, Senator Ebke. Any questions based on your question? Thank you very much. Welcome back. [LB1001]

ROBERT HALLSTROM: (Exhibit 1) Chairman Harr, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. Appear before you today on behalf of the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness in support of LB1001. Senator Ebke did a nice job of laying out where we started, where we've come. And I'm going to give you kind of the rest of the story. Back in 2007 we adopted workers' compensation reform package that included large hospital inpatient medical reimbursement provisions and also included the provision that is the subject of LB1001, which is the multiple scheduled injuries provision. At that time prior to the passage of LB588, if you had a scheduled member injury or multiple scheduled member injuries, you were limited to one of two recoveries. If it rose to the level of total disability, you could get loss of earning capacity based on total disability. You're not able to perform the work that you had been performing earlier. Or more likely you would get a certain number of weeks based on what the schedule tells you. An arm is 175 weeks...or a hand is 175 weeks and if you had a 10 percent disability or limitation as to that member, you'd get 17.5 weeks times two-thirds of your wage. In order to find a middle ground, if you will, LB588 contained provisions that effectively said if the combination of the two scheduled member injuries resulted in a 30 percent or more loss of earning capacity that the court could allow you loss of earning capacity awards. What has happened since that time is naturally we've had some court decisions and I have included copies of the two specific court decisions for the record, the first one being Rodgers v. Nebraska State Fair. I think the general understanding of the provisions of LB588 was that, number one, you had to have two separate and distinct member injuries in order to qualify for the loss of earning capacity determination, and secondly, that each of those members had to have some type of physical restriction or limitation associated therewith, again, to trigger the loss of earning

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capacity determination. Very briefly, in the Rodgers v. Nebraska State Fair case, there was a situation where an employee had injured both the left knee and the right knee. And so there were two separate members that were injured. But the disability had no permanent restrictions to the left knee and I think a 40 percent restriction to the right knee. So you had a situation where the loss of earning capacity was 65 percent but you only had one member that had any resulting restrictions in light with what we believe was the intent and design of LB588. Secondly, came along...and that was a Supreme Court case, by the way. Secondly came along the Wermers v. Andrews case, a Nebraska Workers' Compensation Court decision which effectively indicated that you didn't have to have two separate scheduled member injuries. It was interesting in that the court, on page 5 of my testimony, indicates, while specifically acknowledging that the right hand, wrist, arm, and shoulder are all encompassed within a single member, the court nonetheless held that the right rotator cuff and right hand satisfied the two member injury requirement. So the sum and total of the Wermers case would appear to be that you in fact don't have to have two separate scheduled members injured in order to trigger the loss of earning capacity. And the solution, LB1001, would clarify that you, in fact, do have to have physical restriction, loss of functional use for both scheduled member injuries in order to trigger loss of earning capacity benefits and that you have to have two separate and distinct member injuries, again, for that benefit determination to apply. Be happy to address any questions that the committee may have. [LB1001]

SENATOR HARR: Thank you, Mr. Hallstrom. Any questions? Thank you for clarifying most of my questions. Thank you. [LB1001]

ROBERT HALLSTROM: Thank you. [LB1001]

DALLAS JONES: (Exhibit 2) Good afternoon. Dallas Jones, D-a-l-l-a-s J-o-n-e-s, I'm a partner with Baylor Evnen Law Firm in Lincoln, Nebraska, and appearing on behalf of NWCEF in support of LB1001. I won't repeat everything that Bob said. It looks like I've finally got taught Bob what he needs to know about workers' compensation and he's doing a really nice job explaining to you these days what these things mean. I wanted to emphasize one point and I have been distributed some excerpts from the legislative history back in 2007 to help you see what we were talking about back then when we reached this compromise. And the real point here is, folks, is that the point of LB588 was to provide some middle ground so that workers who have injured two hands, for example, or two arms or two legs, we recognize that that causes that worker a greater level of disability and impact on their ability to earn money. So in 2007 as part of that grand compromise, we took our system from one that had two ends of the spectrum where that employee, if they weren't totally disabled, received only disability per the schedule, to the other end of the spectrum where they had to show that they were totally disabled to get anything more. There was recognition that in between those two ends of the spectrum there were a lot of people who were suffering injuries to two members in one accident that were impacted to

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a greater degree than what they were being compensated under the schedule. So that bill provided for this middle ground, but it was premised on when you have two members that actually limit you. Obviously if you have a serious injury to one hand but non-serious injury to the other and the serious injury still limits you when you've healed up as best you're going to but the non-serious injury doesn't limit you whatsoever, you're in no different position than the employee who just suffered the same injury to that one hand and is left with limitations. It makes little sense to treat them differently under our system. They're in the same place. They are limited in the same fashion. What happened in Rodgers v. Nebraska State Fair...and there's some debate, I will concede, in the legal community about exactly what it means, but the interpretation I think that makes the most sense is that it stands for the proposition that if an employee has injured multiple members but only one of them after the healing process has taken place limits that person, they're still entitled to be compensated on earning capacity loss which was not the intent. And when you see the legislative testimony on the clips that I provided, that was not at all what we were talking about in 2007. So I will close there and be happy to any questions. I can see this is complicated and not very exciting. [LB1001]

SENATOR HARR: Any questions for Mr. Jones? Seeing none, thank you. [LB1001]

DALLAS JONES: Thank you. [LB1001]

SENATOR HARR: Welcome. [LB1001]

RON SEDLACEK: Good afternoon, Chairman Harr and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k, and I'm here on behalf of the Nebraska Chamber of Commerce in support of the legislation before the committee. I think you've had three thorough explanations of the legislation. We were part of the parties that agreed to compromise and to find a middle ground per the situation at hand and just wanted to reaffirm our support with the intent of the legislation. And that will be all I have. [LB1001]

SENATOR HARR: Wonderful. Senator Chambers. [LB1001]

RON SEDLACEK: Hi, Senator. [LB1001]

SENATOR CHAMBERS: Mr. Sedlacek, when Mr. Hallstrom spoke the other time, you didn't speak, did you? I meant this, here today. He spoke on the others and you didn't [LB1001]

RON SEDLACEK: Oh, on the previous testimony? That's correct. [LB1001]

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SENATOR CHAMBERS: I usually expect to see the two of you, they go together like cold ham and potato salad or death and destruction. (Laughter) Now the balance has been restored, so I'm okay. Thank you. [LB1001]

RON SEDLACEK: Thank you. [LB1001]

SENATOR HARR: Thank you, Senator Chambers. Thank you, Senator Sedlacek...Mr. Sedlacek (laughter). Not a senator yet. [LB1001]

SENATOR CHAMBERS: That was worse than what I said. [LB1001]

SENATOR HARR: Anyone else here a proponent of LB1001? Anyone here in the opposition? [LB1001]

ROD REHM: (Exhibit 3) Good afternoon again. Rod Rehm, R-e-h-m, R-o-d first name, representing the Nebraska Association of Trial Attorneys. Two bad cases in nine years is what this seems to be about. Yeah, two bad cases in nine years. What a problem. I thought I'd look at some metadata, you know, big numbers. There's an...there's a think tank called the National Association of Social Insurance, NASI. They put out a free annual report that analyzes all 50 states, the big picture. And I gave you two NASI reports from the last...from the most current edition. And essentially, there's number 11, chart 11 deals with the five-year total payout of indemnity agreements or cash agreements...cash benefits to workers. And that's what they're complaining is this situation makes it easier to get money and that's creating a problem and we've got to fix it. Well, the five-year average shows that Nebraska has had a 2 percent or had a decrease in payments to workers--a decrease. So to quote the old political commercial, where's the beef? What's the problem? So I looked at another part of the report--and you're welcome to go on-line and look at the whole thing if you think I'm twisting the facts because I not--there's a cost to employees...employers, cost to employers per \$100 in payroll. Guess what that's done during the last five years since this evil LB588 has been out there in effect? It's gone down too. This is a solution in search of a problem because if this was costing the Nebraska business, if this was so bad and so unfair and tilting and skewing the delicate balance, it should show up by now. It hasn't. Facts are important. And I'm interested in noting that they didn't produce any evidence that showed indemnity benefits had gone up--not a word. I think they must agree with me. This Rodgers decision was decided by the full Nebraska Supreme Court and they read all the records and they reported in the decision what they consider is important. And I think the most important thing that they report is on the very last page of it, on page 105 of the Nebraska Reports. They state: "the Nebraska Workers' Compensation Act should be construed to accomplish its beneficent purposes." That's to pay workers. "Reading an additional requirement of expert proof of permanent restrictions" which is what their...is how they viewed it, the Supreme Court viewed

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that the defense attorneys are requiring an extra element of proof that wasn't the in the statute. That's what it boils down to. They're saying the statute didn't say and it doesn't say that you have to prove restrictions on both members, just disability. So the Supreme Court is saying there's no reason to read in this extra condition because it doesn't effectuate or doesn't accomplish the beneficent purposes of the Nebraska Workers' Compensation Act. Two cases, nine years, no facts, the Supreme Court writes a decision saying they're trying to graft on some language to the legislation that wasn't there. This thing should be defeated. Thank you. [LB1001]

SENATOR HARR: Thank you, Mr. Rehm. Any other questions...any questions? Seeing none, thank you. Anyone else here in opposition? [LB1001]

TIM DOWD: Tim Dowd, D-o-w-d, appearing on behalf of the Nebraska AFL-CIO. I join in Mr. Rehm, the previous opponent's argument that there is absolutely no evidence of any increased benefits or any financial hardship as a result of the change. The workers' compensation law is already a law of very limited benefits. It's not a generous law by any stretch of imagination. The benefits you can recover are limited by statute and I respectfully disagree with one of the proponent's previous comments that this bill is simply clarifying language. It's not. When you look at the bill, what the bill is doing, the new language, is defining what constitutes a member. And a member is defined as an arm, a leg, an eye, an ear, or a nose. That's limiting language. That's language that did not previously exist. A scheduled member, when you look at the statute and it's just part of the legislative bill that's been provided, it defines under subsection (3) of the statute what scheduled members are. That includes fingers, toes, hands, limbs, body parts other than the spine and the whole body. What this language does is it eliminates that. Under the current language, if you have sustained, permanent injury to two scheduled member injuries then you're entitled to that loss of earning capacity. And scheduled member injuries, that includes fingers, hands. What you see most commonly in work accidents is as a result of doing repetitive type of work activities, you have individuals that have limited education, limited abilities to speak, communicate, read, write in the English language, or have limited occupational skills work basis that sustain bilateral hand injuries, injuries to both hands that result in permanent restrictions that would render them disabled. Well, under this language hands are not included. It's limited to an arm, a leg, an ear, an eye, or a nose. I submit to you that in addition to the reasons advanced by Mr. Rehm, this is not a legislative bill of clarification. It's a limiting bill. It's eliminating what were previously defined as scheduled member injuries. And for those reasons as well as the others already previously provided, we are in opposition to this bill. [LB1001]

SENATOR HARR: Thank you, Mr. Dowd. [LB1001]

TIM DOWD: Thank you. [LB1001]

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SENATOR HARR: Any questions? Seeing none, thank you for your time. [LB1001]

TIM DOWD: Thank you. [LB1001]

SENATOR HARR: Any other opponents on LB1001? Seeing none, Senator Ebke, would you like to close? [LB1001]

SENATOR EBKE: Are you going to do neutral? [LB1001]

SENATOR HARR: What's that? [LB1001]

SENATOR EBKE: Neutral? [LB1001]

SENATOR HARR: Oh, neutral, anyone in the neutral? Can you be neutral on work comp? That's the question. And with that, Senator Ebke waives closing. Thank you. And now we move on to LB1005. I'll turn it over to Senator Bloomfield. [LB1001]

SENATOR BLOOMFIELD: Welcome, Senator Harr, to your committee on Business and Labor. [LB1005]

SENATOR HARR: Well, thank you, Senator Bloomfield. Good afternoon, members of the Business and Labor Committee. My name is Burke Harr, H-a-r-r, and I am here on LB1005. This is a continuation bill from last year where we worked on trying to find a mini compromise on work comp. And what LB1005 does is it requires Nebraska Workers' Compensation Court to adopt a drug formulary for a Schedule II through V prescription drugs listed in Nebraska Revised Statute 28-408. This formulary would apply to work comp claims with a date of injury on or after January 1, 2017. If a drug is listed and recommended in a formulary, it is presumed to be reasonable and may be prescribed without obtaining prior authorization from the insurer. If a drug is not listed in the formulary or is not recommended prior, prior authorization is required before it is presumed to be reasonable. Nebraska, unfortunately, is not immune to prescription drug abuse and overprescribing of opiates. In adopting a formulary, it ensures patients have access to safer, more effective chronic pain relief while reducing the misuse, abuse, and overdose of these addictive drugs. We have these injured workers who are prescribed powerful drugs. They're out of work due to their injury and then they become addicted to these opiates and become depressed and are less likely to return to work. The goal is to return the worker back in the same or better condition they were prior to their injury. To do that, this provides a set of best practices and universal precautions for safe and effective prescribing of opiates. It prevents and reduces opiate-related long-term disability, morbidity, mortality, and substance abuse; and it

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recommends opiate-prescribing practices that promote functional restoration. This bill is a way forward to help manage the opiates overprescription which is occurring. That concludes my testimony and I would be happy to answer any questions you may have. [LB1005]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Are there any questions? [LB1005]

SENATOR CHAMBERS: Any questions? [LB1005]

SENATOR HARR: What's that? [LB1005]

SENATOR CHAMBERS: Any questions? You said the word "may have." (Laughter) [LB1005]

SENATOR HARR: Well... [LB1005]

SENATOR CHAMBERS: Okay, I don't have any questions. [LB1005]

SENATOR HARR: Thank you. [LB1005]

SENATOR BLOOMFIELD: We do have a question. [LB1005]

SENATOR HOWARD: Thank you, Senator Bloomfield. Thank you, Senator Harr. Can you tell me a little bit about who would be deciding what goes on the formulary? [LB1005]

SENATOR HARR: Excuse me? [LB1005]

SENATOR HOWARD: Can you tell me a little bit about who would be deciding what goes on the formulary? [LB1005]

SENATOR HARR: Well, there are those coming after me who are better on the details, such as this. But one of the concerns we had last year and why it wasn't part of the bill of the mini compromise is we want to find a third party that is trusted by both sides. But also, that we don't change our statutes by just going to a third party, and as they change their formulas, we change our statutes. So we...and I'll let...I will let Mr. Hallstrom go on greater detail about that. [LB1005]

SENATOR HOWARD: Thank you. [LB1005]

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SENATOR HARR: Thank you. [LB1005]

SENATOR BLOOMFIELD: Thank you, Senator Howard. Any further questions? Seeing none... [LB1005]

SENATOR HARR: Thank you. [LB1005]

SENATOR BLOOMFIELD: Welcome back again. [LB1005]

ROBERT HALLSTROM: (Exhibit 1) Thank you, Senator Bloomfield, members of the committee. My name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m; appear before you today as a registered lobbyist for the National Federation of Independent Business in support of LB1005. I've also signed in for the Nebraskans for Workers' Compensation Equity and Fairness. As Senator Harr has indicated what the bill will do, for those of you who were on the committee last year, you may recall we had LB429 which was a much broader utilization and treatment guidelines approach which has been adopted by about half of the states. Based on some pushback and disdain that we got last session during the committee hearing process, we did try, as Senator Harr suggested, to work on a narrower drug formulary only. The bill that is before you is the result of some of those discussions, even though I will suggest there will be some level of opposition today. But we have narrowed it down to a drug formulary consisting of Schedule II through V drugs. In my testimony I have noted that there...in addition to the 25 states that have a broader utilization in treatment guidelines adopted, there's about seven or eight states that have adopted specific drug formularies, and another six, including Nebraska, that have drug formulary legislation pending. I've also addressed some pretty significant figures from the state of Texas that recently adopted a drug formulary in terms of reducing the number of not-recommended drugs for particular injuries or illnesses. Obviously, the major problem or the major issue that this legislation is to address is the overprescribing of opioids for chronic pain. I have noted some facts that I think are fairly stunning on pages 4 and 5, just a couple of those: more than 16,000 died in the United States from overdoses related to opioid pain relievers in 2013, which was four times the number in 1999. The FDA has seen the opioid issue as being problematic enough to announce an overhaul of its approach to opioid pain killers. And they indicate that prescription drug and heroin overdoses now kill more Americans each year than automobile accidents. And then recently in the paper, it indicated that even after overdosing on opioid medications, more than 9 out of 10 patients continued to get prescriptions, many times, from the same physician and suffered subsequent overdoses. At the end of my testimony, I've got a listing of six reasons that support the movement to a drug formulary. I think the physicians from Group Healthcare are well and familiar with the issue of drug formularies in that context. Certainly in the workers' compensation context, since we have return to work issues, there are needs for differences from healthcare formularies. But the bottom line is, look at this issue and a lot of times all the warring

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factions come before this committee and it reminds me of an old joke of a prosecutor, a defense attorney, and a judge who had worked together on cases for many years and they came up and said: same motion, same objection, same ruling. In this case, I don't think that necessarily should apply to this particular legislation. We have drug formularies that are proven in other states to provide benefits to employees that have been injured on the job in terms of getting them better treatment, getting them to return to work faster, and avoiding some of the dependency and addiction issues that apply specifically to opioid use for pain purposes. With that, I would be happy to address any questions that the committee might have. I will note that following me, Mr. Mark Pew from PRIUM, is someone who has been involved in many other states that have adopted drug formularies and can probably provide more expert testimony and background to the committee than I might be able to. But I'd be happy to address any questions. [LB1005]

SENATOR BLOOMFIELD: Thank you, Mr. Hallstrom. Senator Howard. [LB1005]

SENATOR HOWARD: I'll ask my question again then. Who would be deciding what goes on the formulary? [LB1005]

ROBERT HALLSTROM: Under the legislation as drafted, as we do in other areas of workers' compensation, medical fee schedules, the Workers' Compensation Court would be tasked with that undertaking. Last year when we had initially looked at this issue, the Nebraska Medical Association, in particular, had expressed some initial interest in having a panel of physicians and pharmacists involved. I don't think that that was necessarily a formal task force that the Workers' Compensation Court felt was necessary, but the Workers' Compensation Court's protocol and procedure, as long as I've been around, has been to do that informally to take significant input from interested parties. So I think that would happen as part of the process. And based on what's happened in other states, the most likely outcome would be that the Workers' Compensation Court would either determine that they will prepare the drug formulary from whole cloth, so to speak, or they might look to some of the nationally recognized, evidenced-based drug formularies that are out there from companies such as ODG and ACOEM. [LB1005]

SENATOR HOWARD: May I ask another one? [LB1005]

SENATOR BLOOMFIELD: Continue. [LB1005]

SENATOR HOWARD: Thank you. Is anybody on the Workers' Compensation Court, do they have a medical background or an expertise in pharmaceuticals? [LB1005]

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ROBERT HALLSTROM: I would suggest they don't have a medical director at this time that would have that type of expertise. But at the same time, if the decision was, either informally they're going to work with a group of providers, or if they go the route of taking a nationally recognized, evidence-based formulary, medical experts have already vetted these issues and determined what are Y or "yes" recommended drugs, or N or "not recommended" drugs so that there already has been that type of expert vetting, if you will, from those nationally recognized formularies. [LB1005]

SENATOR HOWARD: So, no one on the Workers' Compensation Court has expertise in this area? [LB1005]

ROBERT HALLSTROM: Not to my knowledge. [LB1005]

SENATOR HOWARD: Okay. And just this one more follow-up, I apologize. [LB1005]

SENATOR BLOOMFIELD: No problem. [LB1005]

SENATOR HOWARD: When we're talking about Schedule II through V, when I think about a formulary through a third-party payer, I generally think of it as--here are the brand names that you can use, and here are the generics that you can use; and one of the challenges is that sometimes certain types of medications don't work properly for certain individuals. So in your view, if you're trying to address opioid abuse, are you thinking that the formulary would completely remove things like OxyContin? [LB1005]

ROBERT HALLSTROM: There's nothing that's completely removed, Senator. And you're right. The healthcare type of formulary is probably going to work somewhat completely different than what the Workers' Compensation. We look from other statutes that tell us, effectively, that the treatment has to be reasonable and appropriate to the injury. What the general Workers' Compensation formularies in other states, whether they've been drawn from panels of providers that have established them or from the ODG or ACOEM is that they, basically, provide that there are certain drugs that are recommended for first-line treatment. A particular drug may, for example, be authorized for pain but not depression, might be an example of the drugs. So you've got the situation where...the way that the legislation is designed is going to say that you have drugs that are on the list and they are either recommended "yes" or recommended "no." If they are recommended "yes," then there should be no questions, no issues as to payment for the providers. If they are "no", then the provider has the ability to provide documentation as to why that particular... [LB1005]

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SENATOR CHAMBERS: Just one thing by way of explanation, I'm not afraid of her, that chair was close to the table. (Referring to a BANG sound by his chair hitting the table.) (Laughter) Maybe I am. [LB1005]

ROBERT HALLSTROM: If it's a "no" recommendation, then the provider can provide documentation as to why it ought to be preauthorized. So there is nothing that's going to say an absolute yes or no. There is a second bite at the apple, if you will, if something comes up on the list as a "no" to say this is why I think this particular regiment of treatment or prescription for length of time or particular drug is what we ought to use. [LB1005]

SENATOR HOWARD: And just to clarify, so you're tying the formulary to a specific diagnosis code? So for pain you would be able to get OxyContin, but you wouldn't be able to get it for other diagnosis codes? [LB1005]

ROBERT HALLSTROM: That may be a particular example. [LB1005]

SENATOR HOWARD: So that's a little bit different than a third-party payer. [LB1005]

ROBERT HALLSTROM: And it wouldn't be...excuse me. [LB1005]

SENATOR HOWARD: That's more like Medicaid. Medicaid ties specific coverage for prescription drugs to a certain diagnosis code. Whereas third-party payers provide you with a formulary, but don't tie them to diagnosis codes. [LB1005]

ROBERT HALLSTROM: I think that's probably correct. [LB1005]

SENATOR HOWARD: Okay. Thank you. [LB1005]

ROBERT HALLSTROM: Thank you. [LB1005]

SENATOR BLOOMFIELD: Are there any further questions of Mr. Hallstrom? Seeing none, thank you. [LB1005]

ROBERT HALLSTROM: Thank you. [LB1005]

DALLAS JONES: Good afternoon, Dallas Jones, D-a-l-l-a-s J-o-n-e-s, appearing in support of LB1005 on behalf of Nebraskans for Workers' Compensation Fairness and Equity, as well as the

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Nebraska Chamber of Commerce. Others, particularly Mr. Pew, will be able to address some of the more technical questions that have arisen. But I wanted to address two points. One is, very quickly, I've been doing this for 29 years. And what I can tell you, very anecdotally to be sure, from my perspective I am seeing increasing, year over year, cases where it is clear that in part what is driving them, in part, are the addiction issues, as well as, believe it or not, sometimes efforts to obtain the narcotics for a secondary sale. Those are, fortunately, far less often. But it is something that I can tell you, just as the data suggests, that we have a growing problem, not only in Nebraska, but nationally. My practice reflects that as well. My second point is really towards the construction and how this is supposed to work. And I want to make sure you understand how our system works now and what this change would represent. For any medical service, whether it's medication or it's a surgery or it's an office visit, it doesn't matter, outside the context of hospitalization, for any medical service, what we have is a system that says the employer shall pay for whatever that service is if it is reasonable. We don't have any rules that articulate what "reasonable" means, so what we end up defaulting to, really, are the opinions from experts as to what is reasonable treatment. What's the right thing to do for a particular condition or what isn't? And as long as the conclusion is--yes, this particular service is reasonable, then the employer pays for that. All that LB1005 does is add to that; maybe a shortcut, if you want to call it that, for this narrow, particular service or medical service that's provided for the medication. In other words, what it says is: It is presumed reasonable, which means--employer you have to pay, if, whatever formulary the Compensation Court adopts, it's on there. What it does not mean--and this is important--is if it's not within the formulary, it does not follow, that means it's unreasonable and, therefore, the employer doesn't pay. It does not say that. It is a shortcut that is added on top of what the system is right now so that if it's on the formulary, it is presumed reasonable; an employer has no...they have to pay, as long as it's related to the injury. So that's really the technical point I wanted to be sure that I left you with, because I think what you will hear is--oh, if it's not on the formulary, that means that the employer is not going to pay. It does not mean that now and it won't mean that in the future. I would be happy to field any questions. [LB1005]

SENATOR BLOOMFIELD: Senator Crawford. [LB1005]

SENATOR CRAWFORD: Thank you, Senator Bloomfield. And thank you for testimony on those two points. So I'm trying to understand exactly how it battles addiction and trafficking then if someone is addicted or trafficking then they probably have a physician that will give them that override. So I'm not sure it really battles that problem that you're talking about that you want to battle. [LB1005]

DALLAS JONES: Well, I'm not going to hold myself out as the very best expert on that point. I think Mr. Pew is probably in a better position to speak to that. But my understanding is it provides the physician who is in an incredibly difficult spot when they have patients who fit into

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those categories. It's very, very hard for them, I understand, to say no under those circumstances. Some will tell me privately in their office it would be nice to have a way to say to that patient in that situation--sorry, I can't do it. So that they're not putting themselves in that position where they're the bad guy, if you will. They may have known this patient for many, many years and have taken care of their entire family. It's a basis upon which they can at least say to that patient--sorry, in this instance this is not a prescription that I can write to you for this particular condition at this particular time. I would encourage you to ask that question of Mr. Pew. I'm sure that you will, Senator. That's the general approach to it is to basically set forth some guidelines that when it becomes apparent that that's what we're dealing with, then there is a basis upon which to say no. [LB1005]

SENATOR BLOOMFIELD: Any more? [LB1005]

SENATOR CRAWFORD: Yeah, I do. [LB1005]

SENATOR BLOOMFIELD: Go ahead. [LB1005]

SENATOR CRAWFORD: Thank you, Senator Bloomfield. And this is a different topic. So I believe I read somewhere that some of the third-party pay...like the workers' compensation insurance providers may have formularies. I mean, they're insurance formularies in that case which is different than a workers' compensation formulary. So explain the difference between the...so if we have a state formulary, that then replaces the insurance formulary? Or what's the interaction between the insurance formularies that exist right now and then this state formulary? [LB1005]

DALLAS JONES: In private health insurance, there are different insurers who have...that follow formularies for many of the same reasons. Of course, we don't know what the formulary is going to be yet because what this legislation does is simply directs the Compensation Court to adopt what it thinks is appropriate to serve the purposes of the legislation. So I can't compare the two in which is better and which is not. But for purposes of all workers' compensation claims, this would be the formulary if there's going to be a formulary that would go to whether or not that prescription medication is reasonable for purposes of payment or it gets the presumption or it doesn't get the presumption of reasonableness. And that's what it does...or would do. [LB1005]

SENATOR CRAWFORD: Thank you. [LB1005]

DALLAS JONES: So it would replace it, I suppose, is the way to put it. But again, the issue is does that particular prescription in any particular instance fit the formulary so that it is entitled to

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that presumption of reasonableness so that the employer can't object to it and it must pay for it. That's what it goes to. [LB1005]

SENATOR CRAWFORD: Thank you. [LB1005]

SENATOR BLOOMFIELD: Thank you, Senator Crawford. Senator Howard. [LB1005]

SENATOR HOWARD: Thank you. Thank you, Mr. Jones, for your testimony today. Can you tell me a little bit about how it works now. Do you need prior authorization for every prescription? [LB1005]

DALLAS JONES: No. And great question. That goes to my second point. Right now, whether it's prescription or it's any medical service, right now, certainly, there are many providers who will ask the claims handler--are you going to have a problem if I provide X, Y, Z service? And when the claims handler says--oh, no, that's fine. Obviously, they're going to move forward without concerns of payment. But there are many, many times when that preauthorization is not requested and the provider just does what he or she believes is appropriate and reasonable...provides the reasonable care under the circumstances. I will guess, I don't have data, but I would guess that most often most of the services tend to fall in the latter category where it's fairly straightforward, the provider provides what that provider is trained to do under the circumstances to treat this particular injury and they do it. The bill is sent and it's paid. So what this statute does is...says--if you don't want to have to worry about there being a reasonableness argument after the fact, if it's within the formulary, you need not make a call to ask for preauthorization. It is presumed to be reasonable if it's in the formulary and the employer is going to pay for it without being able to make that reasonableness argument. [LB1005]

SENATOR HOWARD: So do individuals who are receiving these benefits generally only have one primary care provider and then a few specialists? [LB1005]

DALLAS JONES: That's the way that it's supposed to work. It's supposed to be kind of a gatekeeper, that primary care physician, and then going to whatever specialists are necessary. [LB1005]

SENATOR HOWARD: So, I guess, and I go back to Senator Crawford's comment, I'm having a hard time tying it to opioid abuse primarily because doctor shopping is such a key element to that? [LB1005]

DALLAS JONES: Um-hum. [LB1005]

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SENATOR HOWARD: Going to multiple doctors in the same day with multiple dispensers so that you can get multiple prescriptions filled. [LB1005]

DALLAS JONES: Right. [LB1005]

SENATOR HOWARD: And so in this instance, there would be one main gatekeeper who would be filling one prescription, working in coordination with the specialists, hopefully, and so you wouldn't see that same type of doctor shopping which would make a formulary somewhat irrelevant. [LB1005]

DALLAS JONES: I don't know that it makes it irrelevant. Certainly, we see a number of cases where it...the doctor is in a difficult position and the prescriptions are being made and probably should not be. [LB1005]

SENATOR HOWARD: Thank you. [LB1005]

SENATOR BLOOMFIELD: Any further questions? Thank you, Mr. Jones. [LB1005]

DALLAS JONES: Thank you. [LB1005]

SENATOR BLOOMFIELD: Welcome. [LB1005]

MARK PEW: (Exhibit 2) Good afternoon, my name is Mark Pew, M-a-r-k P-e-w. I'm affiliated with PRIUM, a medical intervention company based out of Atlanta, Georgia. I hope I can live up to everyone's expectations that have been set for me. But I'm here to argue in support of the drug formulary. My personal passion has been since 2003 the overuse and misuse of prescription drugs, especially in workers' comp and the effect that it has on injured workers. You probably understand that the United States consumes 80 percent of all opioids and 99 percent of all hydrocodone in the world. We have a significant problem with that as a societal issue. It is not, necessarily, a work comp issue. My company has given me the platform to speak over 300 times to almost 19,000 people in 40 states on a variety of subjects around chronic pain prescription drugs and how we deal with this issue. So I come equipped in talking about drug formulary and especially the impact. I appreciate the questions that have already been posed and I'll try to address them because I don't have, necessarily, any prepared statements per se. But I did have a couple of points, specifically, about the bill. It talks about being effective for dates of injured on or after January 1, 2017. It's really important to understand that people who are getting the first opioid prescription or the first Xanax prescription or the first Soma prescription is different than someone who has been getting it for two years or five years or ten years. And you have to

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provide for mediation period. Texas allowed for two years, California is considering one year. I'm a technical advisor to California, have been for two years, was a key part of the governor signing a bill last year, very similar to this, that just basically gives the state the mandate to create a drug formulary and it's in the rule-making process right now. Tennessee is in the process of rolling out a drug formulary as well...follow Texas quite a bit. And one of the things that I constantly encourage is that new claims versus legacy claims, people who have used drugs for a while, have to be treated differently. The other thing is the list of drugs that are included and excluded. Just because a drug is included in a drug formulary does not mean that it's automatically appropriate. If you look at official disability guidelines, which is the treatment guideline for Texas, Vicodin is an included drug. But we know that Vicodin and Percocet and those kinds of drugs are massively abused and misused and there's a huge black market for that. So there has to be the ability to assess, even though a drug is included, if it's the most appropriate drug. By contrary, those that are excluded, drugs that are excluded from drugs, aren't automatically inappropriate either. And there needs to be the process, and you talked some about the preauthorization process, that needs to be in place for the doctor to allow...to be...to present the evidence that this is the right drug for this particular patient at this particular time for this particular condition. That's the way it needs to be presented. If the doctor cannot pursue that and cannot present that evidence to that (inaudible), then that drug should not be distributed and dispensed to that patient. The use of Soma, which is a very, very dangerous drug, it's a muscle relaxant, it's typically very inexpensive, you mix it with an opioid, it's called the Vegas Cocktail; has nothing to do with pain management or muscle spasm control, has everything to do about getting high. That particular use of Soma dropped by 90 percent in Texas on day one because the doctors realized they had to validate the medical appropriateness of Soma. And it was an excluded drug and if there truly were muscle spasms, there were other muscle relaxant drugs that were included that were less dangerous and had less side effects. And so the doctors just stopped writing the scripts. So, ultimately, what a drug formulary does is creates a pause moment for the doctor and the patient to say--is this the most appropriate treatment for this particular patient at this particular time? Is this the right drug to prescribe for the very first time or is it the drug continuation that needs to happen? Chronic pain was never meant to be managed by opioids. That was not the purpose for them. The purpose of opioids was for short term, acute pain; end of life care, cancer, and age treatments. It was never meant to help somebody treat chronic pain that lifted a 50-pound box the wrong way five years ago. That was not the intention. It's been misused and it's abused and we have an epidemic according to CDC, according to the director of National Institute of Drug Abuse, according to the Governor of Massachusetts, and according to President Obama. So I think that a drug formulary creating that pause moment in workers' comp will create a prescribing behavior change that will have a ripple effect through the medical association. It's not a coincidence that Texas had the Texas Medical Association in support of this. It's not a coincidence that California has the California Medical Association in support of this. It's not a coincidence that Tennessee has the Tennessee Medical Association. Everybody

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knows we've got a problem and we've got to fix it somehow. So with that, I'll open it up for follow-up questions. [LB1005]

SENATOR BLOOMFIELD: Are there any questions for Mr. Pew? They don't even want to test you. (Laughter) Thank you, sir. [LB1005]

MARK PEW: Thank you. [LB1005]

SENATOR BLOOMFIELD: Are there any more testifiers in support? Opposition? Welcome. [LB1005]

KIM ROBAK: Senator Bloomfield, members of the committee, my name is Kim Robak, R-o-b-a-k. I'm here today in opposition to the bill on behalf of the Nebraska Medical Association. It was kind of a nice segue into this...into my testimony with the prior testifier. You've heard a lot of testimony today about opioids and trying to control for opioid abuse. The bill, as it's presented to you, would create a formulary for Schedules II through V, which is much broader than opioids. So it would be all drugs in Schedules II through V. So that's the first reason that the Nebraska Medical Association expresses some opposition to the bill. But you've heard about a national problem with opioid abuse. And I think members of this committee are familiar with that issue because there's been a bill before the Legislature, LB471, that is on final reading as a result of a significant amount of work that Senator Howard has done in the subject. What you've heard is that there is an issue societally. What you haven't heard is that there is an issue in the state of Nebraska with regard to workers' compensation. And while there is an issue with opioid abuse and controlled substance abuse, what we are suggesting is that Senator Howard's LB471, which is a prescription drug monitoring plan, or the PDMP, would allow physicians and pharmacists to look at and determine the amount of opioid or controlled substances that an individual is using. This bill will, if it passes, go into effect at the beginning of next year and would allow the medical community to look at this particular issue and to determine if there is abuse and to take steps to address it. So we would ask that LB471 be allowed to go into place and that we allow it to go into effect and actually have an impact. And then finally, I would point out that the issue of physicians being able to prescribe the appropriate drugs for the appropriate injury. Chronic pain is an issue and there are individuals who have chronic pain. And to say, well, we are no longer going to allow you to have a particular drug and take you off of it immediately doesn't make sense. If there is an issue with regard to abuse, then there is a process to deal with abuse and that would be to refer the individual to a pain specialist and that that pain specialist would set up a treatment plan and that there would be a pain contract that is entered into. So rather than simply drawing a line and saying these are okay and these are not okay, what we would do is help the individual who actually has the addiction or might actually be abusing those particular drugs. So we would suggest that we move in that direction, if there is a problem,

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rather than drawing a bright line and saying some drugs can be used and some drugs could not. And so for those reasons the NMA is opposed to the bill and I would be happy to answer any questions. [LB1005]

SENATOR BLOOMFIELD: Are there any questions for Ms. Robak? Senator Crawford. [LB1005]

SENATOR CRAWFORD: Thank you, Senator Bloomfield. And thank you for your testimony. Can you explain just a little bit what you mean by a pain contract? Is that something that's done currently under workers' comp? Or what do you mean by a patient entering a pain contract? [LB1005]

KIM ROBAK: And I don't know whether or not it is currently being done in workers' comp or whether or not the...how that's worked in...workers' comp. But I do know in the medical field it is used. And what happens is an individual who has chronic pain, and people do, they work with a pain specialist to try and be able to figure out other ways to address that pain. And then they'll enter into a contract which will say--we will do certain things and I will only agree to take a certain number of pills. So I won't take two pills a day; I may take one pill a day or I may take a half a pill in order to ensure that the individual has some relief for that pain, but that we don't over abuse the medication and that people aren't taking it for the wrong reasons. [LB1005]

SENATOR CRAWFORD: Thank you. [LB1005]

SENATOR BLOOMFIELD: Senator Ebke. [LB1005]

SENATOR EBKE: I'm a little bit puzzled why the NMA would be against this. I guess I missed something because physicians work with formularies every day and different insurance companies have formularies so I'm curious what the beef with this one is. [LB1005]

KIM ROBAK: Actually, Senator, that's a good question because this bill was worked on last year with the NMA and the workers' comp individuals. And there was some discussion about whether or not the Blue Cross/Blue Shield formulary could be used because it's a formulary that they're used to using. And my understanding is that that's a proprietary formulary and it can't be used. And therefore the question was, what kind of formularies were used? And I think that there are other people who could answer this question better than I can, and I'm happy to get that information for you after the hearing. But I understand that there are a couple of formularies that are not well liked by the medical community that are used in this area. And that's my understanding. I can get you some more information about that. [LB1005]

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SENATOR EBKE: Thanks. [LB1005]

SENATOR BLOOMFIELD: Any further questions? Seeing none, thank you. Welcome back. [LB1005]

DARCY TROMANHAUSER: (Exhibits 3 and 4) Good afternoon again. Again, my name is Darcy Tromanhauser D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r. And I'm here representing Nebraska Appleseed to respectfully express our opposition to LB1005. Again, we work with hundreds of meat packing and food processing workers across the state every year. And while we appreciate and support addressing addiction issues, certainly, we are concerned that LB1005 improperly interferes with the patient/doctor relationship and could contribute to the weakening of Nebraska's workers' compensation system. So by deferring to guidelines to determine proper treatment for injured workers, LB1005 removes discretion from doctors to determine treatment for their injured patients, each of whom deserves a individualized diagnosis and treatment recommendations. While the bill provides for approval of prescriptions that come from outside the guidelines, as was asked about earlier, it does place serious barriers for injured workers to actually obtain such treatment by requiring prior approval from an insurer or to request an independent examination in the case of a denial. Either or which could further delay critical and deserved treatment and care. And then to the previous testimony, please remember the other piece of the larger context here. A major nationwide study by ProPublica and NPR, last year, found that worker's compensation systems across the country have been substantially eroded in the past decades. Ultimately, that shifts the cost of injuries to injured workers themselves, their families, and taxpayers. One form this erosion has taken is through the introduction of what is commonly known as medical utilization or evidenced-base guidelines such as LB1005 proposes. So again, it's critical to protect our workers' compensation system and its ability to fulfill its original purpose. It provides that important incentive to employers to maintain safe work places and to provide for the full and proper care of injured workers. Then for these reasons we hope that the committee will chose not to advance LB1005. [LB1005]

SENATOR BLOOMFIELD: Are there any questions? Seeing none, thank you. Any further opponent testifiers? [LB1005]

DENNIS BOZARTH: My name is Dennis Bozarth, D-e-n-n-i-s B-o-z-a-r-t-h. I'm an orthopedic surgeon here in Lincoln. And as previously testified, I do take care of a lot of workman's compensation injuries. We have tried to come up with ways with the NMA, tried to think about how to address opioid abuse. The pharmaceutical record, or whatever that bill is, would help us at least identify who are abusers, who is prescribing the most medications. And that would be one issue to try and help. Other issues with the narcotics is in the 1980s, doctors were successfully sued for not providing adequate pain medicine for physicians. So then pain became

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this fifth vital sign. It was very important. That's when you go to the hospital, they ask you what your pain rating is, even though that is completely subjective and there's no objective findings to it. And so we have to address that. As Mr. Jones did say, it is very hard when you're sitting across from an individual to say--no. They say, Doc, I hurt. No. Why? Well, and that is hard to come up with. There is evidence of...that if we can decrease people's opioids, get them back into more functional activity, getting them off, it will be a benefit. This guideline or pharmaceutical formulary only gives you yes and no in drugs. It doesn't address other issues. Some states have ways to see when a patient gets on a certain amount of medication. Then they need to be referred to a pain clinic. And then they need to get treatment. They need to have pain contracts, the appropriate treatment. This doesn't address that. Also, as part of the...a member of the Nebraska Medical Association, we didn't see that we had a lot of input into formulating this. So that's my main objective to it is there's no doctor input into this. Other things with the guidelines, when you have guidelines, which Texas went to, then you have to buy those. That has a subscription that you have to buy every year to maintain that. That's not a free thing that they give you. Then you have to have education on how to use the guidelines which usually you have to pay for, too, every year. And so those are my main objectives. I think there are better ways and there are needed ways to address opioid abuse. Personally, I would like to be involved in trying to help instead of just being told what we're going to do. That's all I have. [LB1005]

SENATOR BLOOMFIELD: Thank you, Doctor. Are there any questions? Senator Howard. [LB1005]

SENATOR HOWARD: Thank you, Senator Bloomfield. Thank you for your testimony today, Dr. Bozarth. I've recently read an article about a physician who was found criminally liable for overprescribing narcotic medication. And I know there's been a lot of attention paid about opioid prescribing. And the proponent testimony seemed to indicate that doctors are often guilty into prescribing narcotic pain medication. Do you feel as though that is the case and do you feel as though the court case is indicative of a trend towards trying to remove that type of guilty prescribing? [LB1005]

DENNIS BOZARTH: Yeah, when you're sitting next to a person and they've had an injury, but, you know, you think, gosh, he should really be getting better; he ought to get off this. But oh, but just one more prescription, it just hurts so bad. And then other things that it will...it leads to...I did mention that it leads to some of our overprescription is that now the government has limited us to refills. So now a person actually has to come into your office and to obtain a refill, a handwritten prescription, where before you might call something in. So let's say after surgery, you might actually prescribe twice the amount of medication that you might otherwise do. Why? So it saves you a phone call. Save them a trip to come into the office knowing that they will probably need a refill, but you just do that. Now, and that's one of the concerns that some of these medications, and it is our fault, we give out too many. They get in the hands of other

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people. And there is a big problem in narcotics and it starts with us. But we have other issues that we have to deal with. [LB1005]

SENATOR HOWARD: Thank you, Doctor. [LB1005]

SENATOR BLOOMFIELD: Any further questions? Thank you, sir. [LB1005]

TIM DOWD: Tim Dowd, D-o-w-d, appearing on behalf of the Nebraska AFL-CIO and we're an opponent opposing this bill. I think one thing we can all agree on is that we're all different. God made us different. We have different bodies. Our bodies respond differently to injuries, as they do to medical treatment. For example, you've got Peyton Manning who just won the Super Bowl last night. He had a multi-level herniated disc. And he underwent fusion to his neck. Medication that was prescribed and necessary for an athlete of that nature was a fraction of what would be required of somebody else. For example, a client of mine who is 63 years old, closely approaching in on her retirement, slips, falls, herniates her disc. The treatment that is going to be required to treat that injury is a whole different universe than what is required of somebody in a different health or medical condition. And then I think that's what we're dealing here with. What this legislative bill does is it is taking away the decision making of the very individual that is in the best position to make the decision on what is in the best interest of their patient. Everybody is different. Everybody responds differently. In that sense, what it almost requires this committee to do or this legislature is to say that the doctor who is rendering treatment to that patient is either (A) incompetent, or (B) not acting in the best interest of their patient. I think that's a very large step to take. Because those physicians, as attorneys do, as most other professionals do, they take an oath, a professional responsibility, and that is to act in the best interest and do it as well within their training, education, experience as a physician. And to suggest that that physician and the treatment of their patient is going to do something to harm the patient, I don't...I think that's incredible, to be quite frank. Does it happen? Absolutely. Senator Howard, you read an article about it where somebody was criminally charged. There's bad apples in every bunch. That doesn't mean you can make a general statement that each and every physician out there is prescribing or over prescribing medication. And to take that decision making away from a trained medical expert, I think, would be ill advised and it would be the wrong thing to do. And really I'd ask you to yourselves consider, let's take ourselves out of the workers' compensation arena. You have an injury. You're in a car accident. You slipped and fell at a grocery store. You see the doctor. You have all the faith in the world, that's why you selected that physician because they're competent, they're well trained, they know what they're doing. Are you going to defer to a book that was created by someone that's never examined you? Or are you going to look at the doctor who knows you; has a history of treatment of you and says this is what's necessary? Senator Crawford, you asked an excellent question, if I understood it correctly, which is...then what can you do if you don't agree with this? What they can do? What they can do right now. They can deny it. And then what do we do? We go and let a judge, after we get expert medical

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opinions, make the determination. That's the role and the function of the trier of fact. The trier of fact being the judge of the Nebraska Workers' Compensation Court. That's why the whole Workers' Compensation Court exists. That's their role. And by implementing this bill, what we're going to do is add an unnecessary obstacle for individuals to get medical treatment. A remedy already exists for the workers' compensation carriers and employers. They can deny it. And by implementing this, we're prolonging the agony for those individuals that may be needing this medication. If the medication wasn't properly prescribed, then let the individual who is bestowed the legislative authority to do so make that decision, and that is a judge of the Nebraska Workers' Compensation Court. If anybody has any questions, I'd be happy to answer them. [LB1005]

SENATOR BLOOMFIELD: Thank you, Mr. Dowd. Are there any questions? Seeing none... [LB1005]

TIM DOWD: Thank you. [LB1005]

SENATOR BLOOMFIELD: Any further opponent? [LB1005]

ROD REHM: (Exhibit 5) Good afternoon, again, Rod Rehm, R-e-h-m, on behalf of NATA. We're opposed to this bill for many of the same reasons that have been put forth by the medical association and other speakers. One of our concerns is...we're...you're being asked to pass into law some sort of guidelines that don't exist. They haven't...there's no specific proposal that I'm aware of for anybody to look at, figure out what it's going to do to the medical profession or to our clients. There just isn't. I mean, as I understand, the courts have been tasked with, under this bill, to come with a guideline. They don't have the people to do it. My research tells me there's only a couple of firms out there in the United States that produce these formularies, one of those being ODG, who was here last year telling us that they didn't really care about Nebraska too much. We're a small market. What are...that's some of the questions we have. Another question is, why should workers be treated different than everybody else? Senator Howard's prescription drug monitoring act protects all the citizens of the state and names that trying to keep drug addiction and over prescription of drugs under control. Why do we want to have some commercially-produced program from a player in the cost-containment industry give workers a different set of standards; give them a different way of...giving them a different quality of treatment. Looks like there's going to be a different standard. I don't know there's any guarantee it's going to be better. I handed out a brief summary of workers' comp legislation going around the United States, produced by a company called IWP, Injured Workers Pharmacy. I think...I just wanted you to look at this to see what's going on in other jurisdictions and tell you that I don't think there's any consensus for formularies in the United States. And I think that's what their summary shows. California has been messing around with a drug formulary for a couple of years. They still don't have one. I just read another article yesterday in a place called

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workcompcentral by a commentator named David DePaolo who indicates that they've tried all kinds of things to come up with a consensus drug formulary that people involved in this workers' comp system can agree on. They still don't have it. They've been going at it for two years. They've appointed task forces and committees to try to come up with it. That may be what we come to here, but passing a bill that says, hey, it's your job to give us a list without any type of procedure or without a certain task force or somebody that's involved in it, I don't know how it's going to work. Just don't know how it's going to work. And as a workers representative, we want our people cared for. We're the ones that sit with them across the table and hear when they're miserable. And their treatment isn't as self effectuating as Mr. Jones leads you to believe. There's a lot of material...well, I can tell you from my experience, this was 35 years practicing workers' comp law, 90 percent of the people that call a lawyer's office are calling because their care has been denied or affected. I just got done resolving a situation for a gentleman in Hastings that had an angle iron come in and impale him in his chest and he had a whole bunch of Hastings doctors, local people that knew him, putting him through treatment and saying that he needed pain medication and so forth. Some insurance adjuster, without any medical opinion, denied the medical care. This guy was miserable, totally miserable until they trucked him down to Lincoln to a pain specialist who said, yeah, he needs the help. But this is why there's lawyers like me and Mr. Dowd involved because this stuff gets denied. And they just do it. And I don't know how this bill is going to help it because they can deny it even if it's on the "yes" list. They can say--we're not paying for it. Then we're flipped into trying to get a decision made. And we don't want to have the decision process, some corporate thing that ODG is running from Texas and having doctors in Brownsville, Texas, that are, you know, reviewing Dr. Bozarth recommendation that his client gets Soma. What a ridiculous system. There was a ProPublica article that all of you ought to read, and I regret that I didn't bring it. It talked about a convention in Las Vegas where there was this extravagant event that was put on and was with all kinds of exhibitors where cost containers like this PRIUM company. They may be a great company, but there's also in this article an indication that some of these companies have been traded for billions of dollars, billions. I don't know how that's going to help Nebraska workers to hire a company to write a program that our doctors have to buy if the next thing that's going to happen is they're going to sell to some other trader and make another billion bucks. Read the article. And if not, I'll send one to the committee and you're more than welcomed to read it because it's a fascinating piece. [LB1005]

SENATOR BLOOMFIELD: Thank you, Mr. Rehm. Are there any questions? Seeing none, thank you. [LB1005]

ROD REHM: Yeah. [LB1005]

SENATOR BLOOMFIELD: Any further opposition? Anyone in the neutral position? I am going to throw out a reminder that this is not church. You don't have to sit in the back of the room.

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(Laughter) So if you're going to testify, please move forward a little bit. And I think when this bill is over, if Senator Harr agrees, we're going to take about a ten-minute break. Thank you. Welcome. [LB1005]

GLENN MORTON: (Exhibit 6) Thank you. Good afternoon, Senator Bloomfield, members of the committee. My name is Glenn Morton, G-l-e-n-n M-o-r-t-o-n. I'm the administrator of the Nebraska Workers' Compensation Court appearing today in a neutral capacity primarily to address the court's fiscal note in this bill, but I suspect maybe to answer a few questions as well. In the court's fiscal note, I noted that no fiscal impact would be expected of the court as a result of this bill as it's currently written. Our understanding as...in talking with the proponents and so on of the bill and as currently written, the court will be required only to adopt a drug formulary using the court's existing rule-making process, assigning a medical examiner under the existing rules if one is requested, and then to resolve disputes under our existing litigation process. That means there would be no administrative interpretation of the formulary; there would be no outreach or education of providers; there would be no special dispute resolution process, which are all things that others have said are important for a drug formulary to be successful. Providers also would have no standing to bring disputes on a formulary...before the Compensation Court, which is currently the case for all...any issues before the court. Should the bill be amended to add any of those requirements or otherwise increase the expenditures of the court, there would be an amended fiscal note, almost for sure. Now I stress the importance of this both for this bill and for others that may come up is that the Compensation Court's cash fund, which supports all the operations of the court, pays the salaries, everything to do with work comp, there's been no General Fund money appropriated for Workers' Compensation Court since 1996. That fund for the last six fiscal years, the actual appropriations which support that fund have fallen below the expenditures of the court. When the interest and miscellaneous income are added in, it's been right on the line for those six years. Some years a little below, some years a little above. But the point of that is that if there are any additional expenditures, it's going to have to come from General Fund money or there's going to have to be an increase in the assessment rates...the statutory assessment rates which support the fund. That's all that I have and I would be happy to answer any questions. [LB1005]

SENATOR BLOOMFIELD: Thank you, Mr. Morton. Senator Crawford. [LB1005]

SENATOR CRAWFORD: Thank you, Senator Bloomfield. So I guess I'm a little concerned about what the court's administration of the formulary means if there's no administrative interpretation of the formulary and providers have no standing to bring disputes about the formulary. Is it your understanding that if you adopt a formulary...let me just back up. I'll just ask you...so if it's true, there's no administrative interpretation of the formulary and providers have no standing to bring disputes to the court, then what can happen if someone...if a provider thinks

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that someone should have something that's not allowed or not recommended on the formulary?
[LB1005]

GLENN MORTON: I think Mr. Jones explained it fairly well earlier and when he was describing the current litigation process. Current litigation process...well first of all, as he said, the employer or the insurer and so on, under our system, is responsible for all reasonable medical services and that includes medications. Right? If there is a dispute about what is a reasonable medical service and any party, which a provider is not a party, the employer side, the employee side, can file a petition with our court and have a hearing before the judge. And then the parties bring in expert witnesses and expert testimony and so on. And that's how the process works. [LB1005]

SENATOR CRAWFORD: So the employee has standing to bring the dispute? [LB1005]

GLENN MORTON: Yes. Yes. [LB1005]

SENATOR CRAWFORD: Okay. [LB1005]

GLENN MORTON: Just not the provider, whether it be a physician or the pharmacist or anyone else...any other supplier services. [LB1005]

SENATOR CRAWFORD: And when you say there's no administrative interpretation of the formula, what do you mean by that? [LB1005]

GLENN MORTON: Well, I mean by that that we have no medical director on staff. We have no medical expertise despite which we are...this Legislature has already said that the court will adopt an in-patient hospital fee schedule and a medical fee schedule which we have. And we've administered those over the years, I hope and think fairly well. But that takes a tremendous amount of time and staff time to be responding to inquiries, to be dealing with inquiries for people who just really don't understand what it means, they don't know what their rights are. What are our rights under the system? That takes a great deal of staff time to do that. We don't have the staff that's able to do that now...that's in a position to do that now. [LB1005]

SENATOR CRAWFORD: So you currently provide this administrative interpretation for those medical kinds of (inaudible.) [LB1005]

GLENN MORTON: Not officially. We provide input and assistance. I'm a lawyer so I have to step back a little bit there. We don't provide an interpretation or opinion. Right? Our staff is cautioned and constantly you cannot provide legal opinions. But the statute does allow us to

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provide assistance and advising folks as to their rights and responsibilities and so on. And we do that. It's a fine line, but we do that. [LB1005]

SENATOR CRAWFORD: And do I understand your testimony correctly, that you're warning us, you will not be able to do that for a formula? [LB1005]

GLENN MORTON: Warning us that without additional appropriation or fiscal note, we won't have the staff to be able to do those things. [LB1005]

SENATOR CRAWFORD: Thank you. [LB1005]

GLENN MORTON: That's what I'm saying. [LB1005]

SENATOR BLOOMFIELD: Senator Howard. [LB1005]

SENATOR HOWARD: Thank you...thank you, Senator Bloomfield. Thank you for your testimony today, Mr. Morton. Since your organization would be tasked with a formulary, can you tell me what a formulary is and how it would function? [LB1005]

GLENN MORTON: Absolutely not. (Laugh) No, no, absolutely not, at this stage of the game, we would have a great deal to learn in order to do it...to do this. I can't...I'm not saying that we can't, I think we've successfully done it with other schedules, but I have no idea at this stage. In fact, I've told proponents of this bill, and I've said it not only in this bill but in others that I'm testifying neutrally and this may sound a little as an opponent, I don't mean it to sound that way, but the judges of our court prefer that substantive issues of this type be developed or be addressed by the Legislature. Right? And I'll give you two prime examples of that over the years. There's been a physician...a requirement that the court adopt a physician fee schedule for decades. Well, before...I've been with the court close to 30 years and it was before that or close to that. It simply says the court will adopt a schedule of medical fees. Now recently, and I think probably released in the last ten years or so, which is recent for me anyway, the Legislature adopted an in-patient hospital fee schedule. That schedule is in Section 48-120.04. Basically, that lays out what the schedule is in the statutes. Now it assigns the court some very significant responsibilities, but they're ministerial type things. You will collect the...how many services are provided under each diagnostic related group, etcetera, etcetera. You will identify those DRGs that meet certain requirements and that becomes the fee schedule. So there is a role for the court to play. But the substance of that is decided in the statute and directs the court to do those ministerial type things. So that's the distinction I'm talking about here. Not that there's no role for the court to play. [LB1005]

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SENATOR HOWARD: And then if the court was tasked with the creation of a formulary, just to clarify your position, that would be an additional responsibility and that would change the fiscal note? [LB1005]

GLENN MORTON: Not if we're simply...not if we're simply asked to address the formulary in the same manner that...and under the same rule-making process that we do. That would mean that we would informally identify the interested parties. We would...and when I say "we" I mean, basically, the staff of the court which is myself and a person in charge of medical issues. Right? Would bring all interested parties together informally, try to work something out. If we can arrive at a solution, then the staff would make a recommendation to the court...to the seven judges of the court, which would hold a hearing, an administrative rule hearing, and that recommendation along with any other testimony that anybody else wanted to make to the judges would be considered at that hearing. So that would be the normal process. [LB1005]

SENATOR HOWARD: If the stakeholders on this bill haven't gotten to an agreement, do you feel confident that you could get to an agreement? [LB1005]

GLENN MORTON: I feel confident that we would do what was necessary to see that I would be confident. (Laugh) As the court administrator, we, obviously, take our responsibilities very seriously. I would have to consult with a whole lot of people who know a whole lot more than we do about it before I would be comfortable saying that. [LB1005]

SENATOR HOWARD: Thank you, Mr. Morton. [LB1005]

GLENN MORTON: Thank you. [LB1005]

SENATOR BLOOMFIELD: Senator Ebke. [LB1005]

SENATOR EBKE: Thank you, Senator Bloomfield. I wonder if you could just help me get out of the weeds here. How many insurers are there in the workmen's compensation system, approximately? [LB1005]

GLENN MORTON: The Department of Insurance approves work comp insurers...insurers to do work comp insurance. And last I recall, there were over 200 of them. [LB1005]

SENATOR EBKE: Okay. And do any of them have their own formularies? [LB1005]

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GLENN MORTON: I'm...they may...just as if you allow me to maybe go into the weeds just a bit, it's a hugely complex system. Some insurance companies have their own and do their own claims administration, have their own departments that do it. Others hire third-party administrators that particularly process claims and handle claims on behalf of the insurance companies. Some of those third-party administrators hire bill review companies or pharmacy companies to do these things. So, maybe...hope that answers your question. [LB1005]

SENATOR EBKE: It sort of does, yeah. [LB1005]

GLENN MORTON: And many of them I don't know exactly how many of them have formularies, but I would suspect it's a large percentage of them. Yes. [LB1005]

SENATOR EBKE: Thank you. [LB1005]

SENATOR BLOOMFIELD: Senator Crawford. [LB1005]

SENATOR CRAWFORD: Thank you, Senator Bloomfield. So some of the testimony we've heard talking about drug formulary has talked about a formulary that someone might put together. And then we might adopt a formulary that someone else has put together, perhaps a contractor would put a formulary together. The process you described was I'm going to put the stakeholders together in a room and there would be discussion about what the formulary would be. And those are two very different possible paths that could happen. And I wondered if you would comment on the likelihood of each of those two paths, if you were asked to administer this bill. [LB1005]

GLENN MORTON: I think the...I'm not so sure they're completely different paths. First of all, I think I can say with some confidence that the court is not going to develop its own drug formulary. Now I'm speaking as the court administrator, not the judges, but I doubt...I think the chances of us doing that are slim. Right? Now whether or not the...if we were talking informally to these...I think it would informally act much like a task force if you would. But without the...of course we'd always have to deal with who wants to be part of the task, who wants to be consulted? That's always an issue. But I've been involved in a few other bills where they attempted to create a task force and that's always a contentious issue--who do you put in the statute to be on these things. In practice, we found that we generally have been able to identify everyone that's interested and make sure everybody has a voice. But still, with that aside, if there was a task force that decided that we really needed to come up with our own formulary or put together pieces of formularies, that wouldn't be out of the question. Right? On the other hand, as has been said, there are two national formularies. One is called the Occupational Disability Guidelines (sic-Official Disability Guidelines) by an organization called the Work Comp Data

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Institute (sic-Work Loss Data Institute). That's, as I understand it, those...some states that adopted treatment guidelines, they're tending to go that direction. Not entirely. There's another one that was originally created by the American College of Occupational (and Environmental) Medicine, ACOEM Group. That has since been sold to another commercial company that's competing, if you would. So those are the two, so-called, national guidelines. Some other states-- Colorado, very early on, developed...put a lot of time and a lot of effort, lot of staff time and money developing their own treatment guidelines and which includes a drug formulary. And some states have picked up part of what Colorado has done. So there are other models out there. The two national guidelines put some other...various different state models. And we'd certainly have to look at all of those. If that answers your question. [LB1005]

SENATOR CRAWFORD: Yes, it does. Thank you. [LB1005]

SENATOR BLOOMFIELD: Are there any further questions? Seeing none, thank you, sir. [LB1005]

GLENN MORTON: Thank you. [LB1005]

SENATOR BLOOMFIELD: Are there any further neutral testifiers? Seeing none, Senator Harr, would you like to close? [LB1005]

SENATOR HARR: Briefly. First of all I would like to thank Senator Hallstrom...gosh darn it, Mr. Hallstrom for bringing this. I want to compliment him on his choice of suits today. I think we can see that this bill needs a little bit of work, but the concept is there. I think we all agree that we want to avoid opioid abuse. I look forward to working with the committee on this. Thank you. [LB1005]

SENATOR BLOOMFIELD: Thank you. And I am going to take a ten-minute break here. We'll see everybody back that wants to be here at 5:00. Thank you. [LB1005]

BREAK

SENATOR BLOOMFIELD: Welcome back, everybody. Senator Harr is going to introduce LB983.

SENATOR HARR: Thank you, Senator Bloomstead and members of the Business and Labor Committee...Bloomfield. Jeez, I'm slow today. I'm on cold medicine. [LB983]

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SENATOR JOHNSON: Been Bloomquist. [LB983]

SENATOR BLOOMFIELD: Bloomstead a couple times. [LB983]

SENATOR HARR: Bloomstead. I'm on cold medicine. Jeez. My name is Burke Harr, H-a-a-r...oh, wait. No, that's H-a-r-r, and I am here to introduce LB983 which was brought to our attention by Bill Drafters. LB983 updates Nebraska's Fair Employment Practice Act, the NFEPA, to change the definition of disability to make it in conformance with the definition found in the federal Americans with Disabilities Act. The bill leaves intact the current definition of disability under the NFEPA in that homosexuality and bisexuality are not considered disabilities. However, the bill separates homosexuality and bisexuality from gender identity disorders, compulsive gambling, kleptomania, and other psychoactive substances use disorders resulting from the use of drugs. The purpose is to separate homosexuality and bisexuality from disorders that may have a negative stigma associated. I don't want to equate homosexuality with kleptomania. This is simply a clean-up bill to conform the state definition with a federal definition. With that, I would entertain any questions anyone may have. [LB983]

SENATOR BLOOMFIELD: Senator Johnson. [LB983]

SENATOR JOHNSON: Other than updates and the wording, there's no other changes? [LB983]

SENATOR HARR: That is what I understand, yes. [LB983]

SENATOR BLOOMFIELD: Are there any further questions? Thank you, Senator Harr. Is there anyone wishing to testify in favor of the bill? In opposition? Or in a neutral position? I assume since he's moving to the front, that Senator Harr is waiving his right to close. Thank you. [LB983]

SENATOR HARR: (Exhibit 1) Just quickly for the record, there is a letter in support from Barbara Albers of the Nebraska Equal Opportunity Commission. Thank you, Senator Bloomfield, for covering for me. We will now move to the final bill of the day, LB821, which is Senator Larson's bill and he should be here shortly. Here he comes, right on cue. [LB983]

SENATOR LARSON: (Exhibit 1) Good afternoon, Chairman Harr and members of the Business and Labor Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I am here to present LB821, also known as the Workplace Privacy Act. This bill is similar to a bill I introduced in 2013, which the committee may recall as LB58. LB821, simply stated, would restrict employers from requesting or requiring that an employee or applicant provide his or her

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private social networking site account information to the employer. It also restricts an employer...restricts an employer from asking an employee or applicant to log into his or her social network account so that the employer can view private information. Additionally, it prohibits an employer from using a social networking contact of the employee or applicant to view the private account or profile of that employee or applicant. With the ever-increasing popularity of social media and social networking sites, there comes a growing need to protect the privacy of individuals who take advantage of the benefits social media has to offer. Web sites like Facebook, Twitter, and LinkedIn among others are used by hundreds of millions of people throughout the United States and the world. While people have the choice of making their social networking on these Web sites public, most people understand the risks of having all of their information out there for the world to see. It is common for social media users to take advantage of the privacy settings these social network sites offer their customers. Privacy settings allow users to restrict content from being seen by the general public and also allow users the ability to tailor their profiles and accounts to ensure that only their closest friends and family have access to certain information. LB821 would restrict employers from accessing the private content social media users choose to keep out of the public domain. Information that is kept private by an employee or applicant should remain private and an employer should not be entitled to access this private information just because it is kept on the Internet. Imagine if the employee...employer interview...imagine in an employer an interview of which the employer asked you to bring family photo albums or your personal mail for review. This is the same kind of situation applicants and employees are placed and if an employer asks to access information to get their private social networking account to view albums, messages, wall posts, or other private information. Nine other states have passed laws similar to LB821 with the intent to protect the privacy of employees and applicants on the Internet and similar efforts are currently pending in other states. Nothing in these bills or in LB821 prohibit the employer from looking up information that is already made available to the public. Furthermore, the bill makes sure that employers can control and have access to any and all account information when the employee is using technology provided by the employer. LB821 establishes basic social media privacy protections for individuals employed or seeking employment and I strongly urge the committee's support of the legislation. Since we introduced the bill, we have received a number of comments from groups that had small technical concerns with LB821 including the bankers and some insurance organizations on some federal regulations on selling insurance and banking law as well as the social networking group that consists of Facebook and Twitter and what not, just some clean-up language. So we'd asked the committee consider those concerns. And I can pass around some of those amendments. [LB821]

SENATOR HARR: And do you have any objections to any of those? [LB821]

SENATOR LARSON: Not right now, no. [LB821]

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SENATOR HARR: Okay. Thank you. [LB821]

SENATOR LARSON: Thank you. [LB821]

SENATOR HARR: Questions? Senator Johnson. [LB821]

SENATOR JOHNSON: All of their issues from the past are covered in this document? [LB821]

SENATOR LARSON: This one getting passed along is the banking one. And then there will be Facebook, we're working with Facebook and the group that they are a part of to help alleviate some of their concern. It's a lot of technical... [LB821]

SENATOR JOHNSON: So there's still some... [LB821]

SENATOR LARSON: It's a lot of technical...I mean it's just technical that we have the amendment and we'll work with the committee. And then the bankers and insurance as well. [LB821]

SENATOR HARR: Any other questions? Seeing none, thank you. [LB821]

SENATOR LARSON: Thank you, Senator Harr. [LB821]

SENATOR HARR: Any other...any proponents on LB821? [LB821]

SPIKE EICKHOLT: (Exhibit 2) Good afternoon, Chairman Harr and members of the Business and Labor Committee. Spike Eickholt; last name is spelled E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. I did drop off a statement earlier which I think you might have in your committee book. So I'm not going to read from it. You've got that. But we are testifying in support of this bill and we thank Senator Larson for introducing this bill and the bill he did introduce last year. Social media is how people communicate more and more nowadays. It's where people talk about politics. It's where people talk about current events. People share personal information about themselves with others. As part of that freedom to speak and freedom to associate with whomever you want to is the ability to control who you speak with and who you have in your group. This bill is important because it allows for employees to have the right of privacy and the right to associate with whomever they want to without feeling pressured or obligated by their employers. While employees are...do owe a duty to their employers, it's not always. It's not 24 hours a day and it's not all the time. This bill is significant because it does

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protect the employee's right to privacy in that regard. The bill also does provide, however, for the rights, certain rights of employers. As Senator Larson indicated earlier, the bill does not require employers to let employees use electronic equipment to be on Facebook during work hours. Employers are still able to restrict and control what employees do with the equipment and phones and that kind of thing that they provide to employees for work purposes. This bill is similar to many efforts in other states. As Senator Larson indicated, nine states have passed similar laws to this. There are several other states that are considering similar language. I identified those states in the handout that you received. And we would urge the committee to advance this bill. We have been, at least indirectly, in some contact with some of the other groups that the Chair asked about earlier regarding some of the service providers about their position on the bill. And they have alternative definitions, if you will, than this bill does regarding social media and social networking. In our opinion those are not really material and I think that for a large part we're in agreement with what they want as well in this bill. I also know that the Uniform Law Commission is looking at this subject and I think there might be a handout from Steven Willborn that may identify some concerns they have. And I just mention that because more and more states are looking at this issue and there is some sort of effort to make them uniform approach to this matter. So we'd urge the committee to advance the bill. [LB821]

SENATOR HARR: Great. Thank you very much. Any questions? Yes, Senator Bloomfield. [LB821]

SENATOR BLOOMFIELD: Thank you. I understand the idea of protecting the employee's privacy. Is there anything we need to be doing to protect the employer's privacy, keeping an individual from taking his smartphone in and taking pictures of things the employer does not want taken? Can we, as an employer, bar an employee from bringing his cell phone on to the premises? [LB821]

SPIKE EICKHOLT: The bill does state--and I can't quite find exactly where it is--but the bill does provide that the employer still has the ability to protect his private proprietary or financial information or information relating to client data and that sort of thing. That would be considered employee wrongdoing. Depending on what the employee does regarding taking things from an employer, it could be criminal. That would not be affected by this bill. [LB821]

SENATOR BLOOMFIELD: Okay, but in your mind, can you...can an employer just say you can't bring your smart phone in and have it here during business hours? [LB821]

SPIKE EICKHOLT: Of course, yeah, absolutely. That's not affected also by this bill. [LB821]

SENATOR BLOOMFIELD: Okay. [LB821]

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SPIKE EICKHOLT: I mean that's a completely reasonable expectation to have your employees not be on their personal phones during work time. [LB821]

SENATOR BLOOMFIELD: Thank you. [LB821]

SENATOR HARR: Thank you. Any other questions? Seeing none, thank you for your time. Any other proponents on LB821? Seeing none, anyone in opposition? Go ahead, Colonel. [LB821]

BRAD RICE: (Exhibit 3) Good afternoon, Senator Harr and members of the Business and Labor Committee. I am Colonel Brad Rice, B-r-a-d R-i-c-e, Superintendent of the Nebraska State Patrol. I would like to thank the committee for giving me the opportunity to appear before you today to offer my agency's testimony in opposition of LB821. When the Nebraska State Patrol hires new troopers, we are governed by the Police Standards Advisory Council regulation which requires an extensive background check for anyone desiring to be a law enforcement officer. In this modern era, that background check necessarily includes social media. While the Nebraska State Patrol does not require its applicants to provide passwords to social media sites, the background investigator as part of the in-home background investigation, which occurs during the final stages of the application process, does ask to view their social media. We owe it to the citizens of Nebraska to do a complete and thorough check in an effort to ensure the applicant is free from bias towards any particular race or creed, has no associations with organized crime or gangs, and is not displaying or showing any disrespect for the laws of the state of Nebraska he or she will be called upon to enforce. To not allow such access would mean that a private person such as a defense attorney could use information from social media sites to impeach an officer's credibility with bias or other such issues, but the law enforcement agency he or she works for would be unaware of the information contained therein. This is unworkable in a context of hiring and retaining employees whose job requires them to testify in court. While it is true that employees have privacy rights, in a law enforcement context that privacy right is limited. Certain negative associations could impact their ability to effectively do their jobs and would run contrary to the public policy of the state of Nebraska. It seems odd that an employee who states in a public forum that they are a member of a group encouraging the overthrow of the government would be unprotected in this bill, but that same employee who advocated the overthrow of the government in a social media post would be protected. I would argue social media speech, while protected by the First Amendment, should not be treated any differently than any other type of speech. In closing, I want to thank the committee for allowing me to testify here today in opposition to LB821. I'll be happy to try to answer any questions you may have, but I would also like to say that we have reached out to Senator Larson's office. I believe he understand our concerns and has indicated that he is more than willing to work with us. Could I any questions? [LB821]

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SENATOR HARR: Thank you. Any questions? I guess I have one. [LB821]

BRAD RICE: Yes, sir. [LB821]

SENATOR HARR: So this was kind of brought to your attention because of State v. Henderson, is that right? [LB821]

BRAD RICE: Would you say that again? I am really sorry. [LB821]

SENATOR HARR: This kind of came to your attention because of State v. Henderson, which is where... [LB821]

BRAD RICE: That would be one reason. [LB821]

SENATOR HARR: Yeah, so you had a State Patrol officer who belonged to or advocated for some group that was... [LB821]

BRAD RICE: Yes. [LB821]

SENATOR HARR: ...contrary to public interest. [LB821]

BRAD RICE: We have also had, in instances during the background stage, where we have discovered things on the social media site that gave us better insight. We kick these...kick people out of the process, people who have got there. [LB821]

SENATOR HARR: Okay. So do you believe this should be limited to officers or people who are State Patrol and public officials, or is this across the board, all state employees should be allowed to have this...the state should be allowed to search all employees, or is just those that are just first responders? [LB821]

BRAD RICE: That's a good question. And quite honestly, I'm only prepared at this point to talk about law enforcement officers... [LB821]

SENATOR HARR: Okay. [LB821]

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BRAD RICE: ...and not any other employees other than sworn officers. I guess that's our main concern right now is that...you know, Director Frakes may have a different take on a prison guard... [LB821]

SENATOR HARR: Okay. [LB821]

BRAD RICE: ...because of gang affiliations, whatnot that would...I can think that would be of particular interest to him. But I really am not prepared to probably go outside that umbrella. [LB821]

SENATOR HARR: That's a good point. Okay. Great. Thank you very much. I appreciate your testimony. [LB821]

BRAD RICE: Yes, sir. Thank you. [LB821]

SENATOR HARR: Anyone else here to testify in the negative? Anyone here in the neutral capacity? [LB821]

ROBERT HALLSTROM: (Exhibits 4 and 5) Chairman Harr, 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 Nebraska Bankers Association in a neutral capacity. I trust that the amendment that I'm handing out is identical to the one that Senator Larson presented to the committee. The background on the need for our amendment is that there are broker-dealer relationships that banks and other entities have where federal rules or regulations or self-regulatory organizations have requirements that compliance and monitoring is mandated. And this simply recognizes that as an exception to the restrictions in the bill under LB821. And with the amendment being agreed to Senator Larson and I believe the ACLU representatives who are interested in the bill as well, we would encourage the committee to adopt those amendments, and address any questions that the committee has. [LB821]

SENATOR HARR: Great. Thank you, Mr. Hallstrom. Any questions? I have a quick question. Have you had a chance to review the Uniform Law Commission's bill or proposed legislation? [LB821]

ROBERT HALLSTROM: Have not, have not, Senator. [LB821]

SENATOR HARR: Okay. And maybe I should have asked Colonel Rice as well. All right. Thank you very much. [LB821]

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ROBERT HALLSTROM: Thank you. [LB821]

SENATOR HARR: I appreciate it. Anyone else here in the neutral capacity? Senator Larson waives closing. I would like to read into the record. (Exhibits 6-10) There is a neutral letter from the Uniform Law Commission on LB821 from Steven Willborn. And we also have a letter of support for the record from Jason Hayes of the NSEA; in opposition from Robert Anderson of the Nebraska Cooperative Council; Julie Bauer from the Financial Industry Regulatory Authority; and in the neutral from Brian Jackson of the Lincoln Police Department. With that, we would end the hearing on LB821. Thank you. [LB821]