

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Business and Labor Committee January 31, 2022

**B. HANSEN:** [RECORDER MALFUNCTION] district in Washington, Burt, Cuming, and now part of Stanton Counties, and I serve as Chair of the Business and Labor Committee. I'd like to invite the members of the committee to introduce themselves starting on my left with Senator Gragert.

**GRAGERT:** Tim Gragert, District 40, northeast Nebraska.

**HALLORAN:** Steve Halloran, District 33, Adams, Phelps, and Kearney County.

**B. HANSEN:** Now if Senator Hunt wants to introduce herself, I'll wait.

**HUNT:** I'm Senator Megan Hunt and I represent District 8 in midtown Omaha.

**B. HANSEN:** A few notes about our policies and procedures: Please turn off or silence your cell phones. This afternoon we will be hearing six bills, and we'll be taking them in the order listed on the agenda outside the room. On each of the tables near the doors to the hearing room, you'll find green testifier sheets. If you're planning to testify today, please fill one out and hand it to Christina when you come up to testify. This will help us keep an accurate record of the hearing. Also, the pages will take them, too, if you need to. If you are not testifying at the microphone but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. Also, I would note, if you are not testifying but have a position letter to submit, the Legislature's policy is that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask, if you do have any handouts, that you please bring ten copies and give them to the page. We do use a light system for testifying. Each testifier will have five minutes to testify. When you begin, the light will turn green. When the light turns yellow, that means you have one minute left. When the light turns red, it is time to end your testimony, and we will ask you to wrap up your final thoughts. When you come up to testify, please begin by stating your name clearly into the microphone, and then please spell both your first and last name. The hearing on each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then for those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given

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the opportunity to make any closing statements if they wish to do so. And we do have a strict no-prop policy in this committee. And I also forgot to mention that also assisting the committee is our legal counsel, Benson Wallace; and our committee clerk, Christina Campbell; and our committee pages for today, Kate Kissane and Kennedy Rittscher-- Rittscher, Rittscher. Have to make sure I get that right. All right. And with that, we'll begin today's hearing with LB719, and we welcome again from the "fighting" district, that he always claims-- I was going to say "Fighting" District 16 when I did my introducing statement, but I didn't want-- I didn't want to steal your thunder.

**MORFELD:** You can steal it after I'm gone.

**B. HANSEN:** All right. Well, welcome, Senator Morfeld.

**MORFELD:** Thank you, Chairman Hansen. Members of the Business and Labor Committee, my name is Adam Morfeld, for the record, A-d-a-m M-o-r-f, as in "frank," -e-l-d, representing the "Fighting" 46th Legislative District, here to introduce LB719. This pro-- bill provides important updates to the Nebraska Workers' Compensation Act to ensure that the Act provides sufficient, accessible support to all that need it. Specifically, it uses a variety of strategies to increase compensation rates, update choice of doctor rules, and provide for interpreters during medical exams. I'll get into some of those details in just a bit here. Speaking to the Nebraskans that-- who have navigated our state workers' comp system, you'll see common themes. While the system is designed to provide injured and fallen workers with two thirds of their lost wages, the reality is that most workers are surviving on much less than this. Legal fees, lost-over-time premiums, inflation, and other unexpected benefits-- or expenses reduced the ultimate value of weekly benefits to something much less. Today, for instance, you'll hear from a former meatpacking worker who will explain firsthand how the compensation she received after a permanent injury was only half of her pretax wages. LB719 recognizes the unique financial relation-- challenges faced by injured Nebraskans. Addressing these, the bill's provisions are largely modeled on the legal framework created by nearby states like Texas, Oklahoma, Florida, New-- and New Jersey. Those aren't so nearby, but there are some, like Iowa, that we did model this after as well. This bill will allow for compensation rates greater than two thirds of the worker's lost wages. Similarly, it provides for annual adjustment of benefits to combat inflation, a step taken by at least 21 other jurisdictions, including South Dakota and Wyoming. Many other states have statutory formulas that allow for maximum weekly benefits that are great-- greater than those available in Nebraska. In Iowa, most maximum weekly benefits are capped at

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\$2,005 per week. Today, in Nebraska, they stand at \$983, so less than half. Some of the details on this is, first, it will update worker compensation weekly benefits rates by increasing the compensation rate for total injuries to 80 percent of the worker's average weekly wage and all other compensation rates by an additional 9 percent, so essentially a 66 and two thirds-- 66 percent up to 75 percent with that 9 percent increase. The bill also provides for a cost of living-- living adjustment, allows 500 weeks of whole-body permanent partial disability-- I believe it's 300 right now; requires inclusion of overtime premium in the calculation of wages; and permits a \$25,000 lump-sum payment to the personal representatives of the estates with no surviving dependents. Weekly maximum benefits are increased to 200 percent of the state average weekly wage. Death benefits are increased to 200 percent of the worker's average weekly wage in some instances, and the minimum benefit is set at 50 percent of the state average weekly wage. The bill also provides workers without a documented preexisting relationship with a physician an opportunity to choose one that provides for interpreters in all medical exams as well. This afternoon, you'll also hear from community organizations about other gaps in the workers' comp system. For instance, although interpretation services are provided in legal proceedings and lost earning capacity determinations, there is no regulatory framework to provide for these services during medical appointments. Often, it's family members who must provide the aid. A similar gap exists with Nebraska's choice-of-doctor rules today as well. Nebraskans who do not have a documented preexisting relationship with a physician have no opportunity to select one. Now is the right time to adopt all or some of LB719's provisions. Here in Nebraska, the median workers' compensation insurance premium is the lowest it's been in 30 years. At the same time, total benefits available to injured workers eroded 25 percent between 2009 and 2019. LB719 addresses a broader array of challenges faced by Nebraskans relying on workers' compensation. In doing so, it establishes a solid foundation upon which the committee and the Legislature can find common ground to address at least some of these issues. As such, I ask the committee to support and advance LB719, and I'd be happy to answer any questions that you may have.

**B. HANSEN:** Thank you, Senator Morfeld. Are there any questions from the committee at all? All right. Seeing none--

**MORFELD:** Thank you.

**B. HANSEN:** --thank you. So we will take our first testifier in support of LB719. Welcome.

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**TONYA FORD:** Thank you very much. My name is Tonya Ford, T-o-n-y-a, Ford, F-o-r-d, and I am a constituent of District 21 and the executive director of the national not-for-profit organization United Support and Memorial for Workplace Fatalities. We offer support, guidance and resources to families that have been directly affected by work-related incidents, illnesses, or diseases. I want to thank you for this opportunity to share the issues and concerns that Nebraska Appleseed and USMWF have heard regarding Nebraska workers' compensation from those directly affected by an occupational incident, illness or disease. I testify on behalf of our injured workers and family member victims that are left behind to deal with the everlasting pain, suffering, inconvenience one endures after such a tragic, unexpected loss. I personally have heard the cries of men and women regarding their pain, lack of medical treatment, delays and sometimes denial of medication by the workers' compensation system and the financial hardship they endure due to their injury. I've held the hands of the widows who lost their spouse and now are searching for adequate, yet affordable, health insurance for their family that once was through their spouses' employers. I have heard the pain of family members that suffer severe PTSD since their loss and find it hard to go back to their job where they were told their spouse or child was lost. I firsthand understand the frustrations because 13 years ago today I held the hand of my grandmother at my Uncle Bobby's funeral, reminding her that we were at her son's funeral. Only a few minutes later, as she was looking at a picture of a baby in the memorial video I created, I heard my grandmother say, oh, so softly, that's my baby, Bobby, look at him. See, her baby was 51 years old when, on January 29 of 2009, he went to work at a grain elevator only blocks away from here and he fell approximately 80 feet off of a belt-operated man-lift device and was found below on the cement ground by my father, his brother-in-law. My uncle broke every bone in his body that day, except his pinky. He died in a traumatic, horrible way, no fault of his own. I will be honest. I sit here with frustration, not because of the loss of my uncle, but because of the loss of the over 53 Nebraska fallen workers in 2021 and the approximately 34,385 injured workers in 2020. I cannot say enough they died or were injured at no fault of their own. These were incidences, not accidents, and they were preventable. The reality is, there are thousands of other stories similar to the one of Owen Jaukens, who unfortunately was going to testify today but was asked to go get tested for COVID right prior to this, so he is unable to. However, he has taken the time and has written testimony and asked that I please give it to you guys as his story is very important. He is an injured worker. He fell in a trench and is lucky to be here today; however, deals with every injury and will suffer

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from the injuries for the remainder of his life. His story is very important, and I hope you guys take the time to read this today. This is why sections of LB719 are very important as the truth is currently state of Nebraska injured workers are entitled to two thirds of his or her average weekly wage, subject to maximum and minimum levels. Even when an injured worker receives a maximum weekly rate of, say, \$983, they are seriously under compensated using 2020 rates of \$882 and other available data from this year-- that year. My written testimony will show exactly how someone is undercompensated. Eight hundred and eighty-two may sound like a lot of money per week as the average out-of-pocket-- or, sorry, out-- average out to be approximately \$3,528 a month. However, for one to receive \$882 a week, then he or she would have to make approximately \$1,323 per paycheck prior to his or her work incident. Let's put a few things into perspective. Not everyone makes \$33 an hour. The top industries' employment of Nebraska are healthcare, retail, manufacturing, education and construction. The average Nebraska household has approximately 2.46 individuals, and the current cost of living in the state of Ne-- Nebraska is 89-- 89.1. In conclusion, workers' compensation was created to be a benefit, not a burden, to our injured worker/family member victims left behind and ultimately protect the companies from any loss due to negligence. Then we have a responsibility to create an adequate system that helps families in a time that they are in need. I urge you all to stand in support of this bill because occupational incidents, illnesses, and diseases can happen to anyone. It's not discriminatory to age, race, religion, or occupation. It is varied and is every individual that works in Nebraska to receive benefits that will allow them to survive in today's society. Please support the memory of Jesus, David, Keith, John, Raven, my Uncle Bobby, and all the thousands of other injured workers here in Nebraska. I thank you very much for your time. So any questions?

**B. HANSEN:** Yeah, thank you. Are there any questions from the committee at all? Thank you for coming.

**TONYA FORD:** Thank you.

**B. HANSEN:** We'll take our-- we'll take our next testifier in support. Welcome.

**RUBY MENDEZ LOPEZ:** Hi. Thank you. Hi. My name is Ruby Mendez Lopez, R-u-b-y M-e-n-d-e-z L-o-p-e-z, and I'm here to testify in support of LB719. I'm testifying on behalf of my mom, who is directly affected but could not make it here due to COVID. I'm going to read her testimony as if she was the one that-- the way she wrote it. My name

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is Teresa Mendez. I was working at a plant in Crete, Nebraska, when I was injured at work. I had been working there for five years. I am a single mother of six kids, so I would work all the hours I-- so I could get at the time, so I could-- I worked a lot of seven-day workweeks. My injury was due to a forklift accident where my foot got caught under a pallet and forklift. This completely crushed my foot. I was lucky in the way that there was no denying my injury, but still it did not make navigating the workers' compensation process any easier. I navigated the process by myself with the help of my daughter until we found out how bad my injury really was, then we hired an attorney. There was a surgery to try and salvage my foot right after my injury. But after that and some attempted physical therapy, the doctor felt my foot would never recover. I was told that I would not be able to walk for at least a year, and even after that, I would have to attend extended physical therapy to try and regain my walking skills. Eventually, I had a second surgery, setting me back even further. At that point, I was told that my foot would never recover and never be able to handle the working conditions again. Once I got that news, I hired an attorney to help navigate the rest of the workers' compensation process as I was becoming permanently disabled. The process was long and complicated. I was constantly in medical appointments trying to figure out when or if I would be able to return to work. I began by visiting my primary healthcare provider, and they were eventually able to transfer-- to help me transfer to a specialist due to how severe my injury was. The specialist was an hour and a half away and I could not drive or speak English, so my daughter took a lot of time off work to drive me back and forth and also interpret during my medical appointments. Although mileage was reimbursed, that was the only thing accounted for, and the time my daughter was off work and her interpretation work was never even considered. My daughter and I did this back and forth for two years. Most importantly was compensation. As I mentioned, I'm a single mother of six children and I was working as much overtime as possible to make ends meet. I was working a lot of seven-day weeks. If I was working a seven-day week, I could make approximately \$1,800 every two weeks. There were weeks where I was working up to 80 hours. From what I know, usually, they do not even include overtime when they are figuring out how much you would get through workers' compensation. But due to the high amount of overtime I was consistently working, they actually calculated it into my weekly workers' compensation check I would be getting. Since injure-- my injury was undeniable, I was able to file the claim right away. However, even though it was filed immediately, it took me two weeks to get my first workers' compensation check. I do not know how the math worked, but I do know, even with my overtime included in my

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workers' compensation check, I was only making a little over \$500 per week. When I eventually hired an attorney, they took 30 percent of my weekly check, lowering that amount even further. I was expected to make \$400 work weekly when I was used to-- to over \$900 per week. Somehow, we made it work for the next two years. After two years, we agreed upon a settlement as I am permanently disabled. The settlement was about what I would make working there for two and a half years. It was never enough to support my family permanently. Now that I look back on the process, I can say it was long, difficult, and would have been impossible for me to navigate without my daughter and eventually an attorney. The money was not enough then or now. Today I make ends meet because of my disability benefits, not my workers' compensation payments even though my life was forever changed due to my injury at work. My foot is still a daily barrier to everyday tasks as I cannot sit or stand for too long, have to wear special footwear, and, due to constant pain, have difficulty walking. There are many ways the system could be better, and I hope this legislation is one step closer to making it work better for future workers. Thank you for your time and attention today.

**B. HANSEN:** Thank you for coming here and sharing that, appreciate it. Are there any questions specifically for Ruby at all? OK. All right, thank you very much.

**RUBY MENDEZ LOPEZ:** Thank you.

**B. HANSEN:** Thanks for coming, appreciate it. Yeah, we'll take our next testifier in support. Welcome.

**NICK GRANDGENETT:** Thanks. Good afternoon. My name is Nick Grandgenett; that's spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t, and I'm a staff attorney with Nebraska Appleseed testifying in support of LB719. Appleseed is a nonprofit, nonpartisan organization dedicated to opportunity and justice for all Nebraskans. Unlike injuries caused by car accidents or consumer products, workers cannot sue their employers for the injuries or deaths sustained at work. Instead, workers' comp is designed to provide financial security during recovery while sparing employers the expense of costly litigation and damage awards. First enacted in 1913, Nebraska's Workers' Compensation Act fails to account for the economic realities facing injured workers and their families in 2022. This, in turn, shifts the cost of workplace injuries away from the insurance system designed to cover it and onto families, communities, and taxpayers. Although two thirds of lost wages are compensated, short benefit duration periods, lost overtime premiums, and legal fees result in a spendable sum of money far less than this amount.

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Additionally, once benefits are received, the absence of a cost-of-living adjustment allows inflation to erode their value over time. While LB719 updates interpretation and choice-of-doctor rules, much of the bill is designed to mitigate financial hardship. Common justification for not compensating injured workers 100 percent of their lost wages is that generally benefits are not taxed. Few workers, however, are taxed one third of their wages. As such, LB719 increases total compensation rates to 80 percent of a worker's lost wages and other injury classifications to 75 percent. Florida, Texas, Oklahoma, and New Jersey have all enacted statutory schemes that allow for compensation rates in excess of two thirds for some injuries. Where Nebraska's minimum compensation rate has been \$49 since 1973, LB719 would require annual adjustment at the minimum of 50 percent of the state average weekly wage. Similar measures have been taken by Iowa, South Dakota, North Dakota, Alabama, and Texas. Like every surrounding state, except Colorado and Wyoming, this bill will compensate whole-body injuries for longer than 300 weeks, like Iowa law permits up to 500 weeks of compensation. The bill also ensures that the true value of an individual's work is accounted for by requiring the overtime premium be accounted for in all workers' comp cases. Like 21 other jurisdictions, LB719 guards weekly benefits from inflation by including a cost-of-living adjustment, which, like South Dakota and many state pension plans, is tied to the CPIW. LB719 also acknowledges that death is different. It acknowledges that for each of us and the 48 workers killed in 2020, void left after a death is greater than 75 percent of our wages. As such, LB719 increases a widow's benefit to 75 percent of the worker's wages and provides a 9 percent increase for all children and other eligible dependents. To better ensure eligible dependents are not prevented by the maximum from receiving a weekly benefit, LB719 increases death benefit maximums to 200 percent of the worker's average weekly wage. This is similar to Oklahoma, which permits a 100 percent maximum in addition to lump-sum payments of up to \$150,000. In doing so, Oklahoma has made a policy choice, allowing for greater financial support for some unique family dynamics. We are asking Nebraska to make a similar choice. Like Iowa, LB719 caps the maximum weekly benefit for both injuries and death at 200 percent of the average weekly wage. Today, regardless of how maximum limitations are statutorily structured, Nebraska's maximum benefit lags behind Iowa, Missouri, and Colorado. Adjusting the maximums in this matter-- manner better creates sounder support systems for Nebraskans. Today, if there are any concerns voiced about insurance premium increases, the committee should note that premiums are influenced by much more than just the benefits schedule. Other factors include waiting periods, administration of the

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law, collective bargaining agreements, and litigation activity. Additionally, employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly. Over the last couple of decades, insurance premiums in Nebraska and across the United States have been declining. Today, they stand at a 30-year low. Nebraska, our state's median premium rate decreased from a high of \$3.31 per \$100 of payroll in 1994 to \$1.44 as of 2020. At the same time, fewer total benefits have been paid. In 2009, injured Nebraskans received 95 cents in total benefits per \$100 of covered wages. And as of 2019, they decreased 25 percent to 71 cents. Finally, concluding, it's important to acknowledge the broad scope of LB719. By design, the bill addresses the decades of shortcomings workers and community partners have identified in the current system. Thank you for your time and I'm happy to answer any questions.

**B. HANSEN:** Thank you for testifying. Are there any questions from the committee? Seeing none, thank you very much, appreciate it.

**NICK GRANDGENETT:** Thanks.

**B. HANSEN:** We'll take our next testifier in support. [INAUDIBLE] there we go. Welcome.

**FELICIA HILTON:** Thank you. Take my mask off. Good morning-- good afternoon. Sorry about that. My name is Felicia Hilton, F-e-l-i-c-i-a H-i-l-t-o-n. I'm with the North Central States Regional Council of Carpenters and I'm here to testify in favor of LB719. I don't-- I'm not going to go through all the details on what the bill does, but I do think that it's important that the bill does a couple of things, that it modernizes the compensation laws in Nebraska to recognize how the workforce has changed by allowing interpreters for medical exams and recognizing that there are a lot of people that have never, especially working people that don't have healthcare and don't have a doctor, selected on their own, and this allows for them to choose their physician as they go [INAUDIBLE] modernizes the bill to recognize what's happening in the current workforce. I also think that the financial hardship that the bill is trying to address is a real issue when it comes to workers' comp and disabled workers in the state of Nebraska. I do believe that this bill recognizes that people that work with their minds and their hands do a lot of dangerous work. And as the carpenters, I like to say, we're NASA on the ground. We can be tied off as high as the-- the scaff-- the dome of-- of the Capitol. We're up there. And so the work that we do is very dangerous and we pride ourselves in safety. And I think that modernizing the workers'

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comp bill will do one thing. It will make employers focus on safety, training and safety and proper ways to wear a mask to protect yourself if it's something with chemicals, proper safety training, and over and over, putting safety first in the workplace is what this bill will do. Modernize the workplace is key to a safe, healthy work environment for a number of people that work [INAUDIBLE] But when you modernize the-- the work comp bill, that's what it will do. Hopefully it makes the business industry respond to making sure that workers are safe and that the training is first. That is the top investment that we focus on in construction is the training, constantly having journeymen come in for upgrade classes. We focus on training first and foremost with apprentices when they come into the trade, so it's OSHA 30. It's constant CPR. It's everything you can possibly do if someone gets injured on the job. The real emergency and the life-saving things happen right there on the job site, first and foremost, and so this bill modernizing work comp, I think, will modernize a number of businesses to focus on safety, safety, safety first. So thank you.

**B. HANSEN:** Thank you for testifying. Any questions from the committee at all? Yes, Senator Hunt.

**FELICIA HILTON:** Oh, I'm so sorry.

**HUNT:** Thank you, Chairman Hansen. That's OK. Hi, Ms. Hilton.

**FELICIA HILTON:** Hi. How are you?

**HUNT:** Your testimony just made me think. Do you ever see businesses sort of take safety a little bit more seriously in states that modernize their workers' comp laws or haven't-- whenever there's like a workers' comp reform, do you see that as a motivation for companies to take safety a little bit more seriously for their workers?

**FELICIA HILTON:** I don't know about every industry, but I know that, you know, in construction, that is something that we take seriously. And I think that whenever you modernize it and start putting places-- putting in place things that address the hardship of workers' comp because the-- for us, we see workers' comp as it allows for the worker to not have to sue the employer for an injury that took place. And so we think that when it's modernized-- I can't say that I-- I have data that shows that that happens, but I believe in construction it does. It's for safety. I mean, it's something that we focus on, and that's all I can speak to, is the construction industry.

**HUNT:** Thank you.

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**FELICIA HILTON:** Thank you.

**B. HANSEN:** All right. Any other questions? Thank you for testifying.

**DENNIS CRAWFORD:** Hello, everybody. I'm Dennis Crawford, D-e-n-n-i-s C-r-a-w-f-o-r-d. I'm here to testify in support of LB719 on behalf of the Nebraska Association of Trial Attorneys. My background is I've been a workers' compensation lawyer for injured workers in the Lincoln area since 1986. I've practiced workers' compensation law for 36 years all over the great state of Nebraska, so I've seen just about everything you can see when it comes to workers' compensation cases. LB719 looks like a pretty complicated bill, a lot of fine print, a lot of legalistic language, but it's really a pretty simple bill in the bottom line. There's two simple concepts. Number one, it increases the benefits; and number two, it provides interpretation services for immigrants when they see the doctor or when they need to learn about their right to select their own doctor, those two things [INAUDIBLE]. Let's talk about provisions regarding the interpreter, OK? Under the bill, if an employee does not understand English or another language spoken by a medical provider, the employer is responsible for the reasonable cost for interpretation services. And I think this is a good thing for companies and workers alike. I mean, obviously, companies want the workers to get well, they want them to get better, so it's very, very important, in my opinion, that the doctors get accurate histories from injured workers who do not speak the English language, so in that respect this bill is very good for companies. You get an accurate medical history from the worker, get him or her better sooner, back to work, win-win-win for everybody, OK? And the bill also gives the-- also, the employee has the right to select a doctor under Nebraska law. They're to be provided with this right under Nebraska law in their own language. And once again, that's a good thing for the companies and the workers alike. If the worker can get in sooner with a good doctor, they're going to get well sooner and everybody wins; the worker, the company, everybody wins, OK? And this is a pretty important provision because immigrant labor is a huge factor in the Nebraska economy right now. We have thousands of workers working in both meatpacking and agriculture businesses and other businesses. They work in a lot of other industries as well. In the absence of immigrant labor, the meatpacking and agriculture industries in Nebraska would have some serious problems, serious problems, OK? If we're going to continue to encourage hardworking immigrants to come to Nebraska to benefit the state, help our economy, this modest provision of the bill would make Nebraska a more welcoming state for these essential workers that have kept the economy going very-- going very difficult times over the last two years during this once-in-a-century pandemic

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situation, OK? The other important part of the bill is it increases workers' compensation benefits across the board for both injury and death cases. Since I've been practicing law in Nebraska since '86, I'm sure for decades beforehand, workers collect two thirds their average weekly wage for workers' compensation benefits. Obviously, that's a lot less money than they take home. And under this bill, various "bennies" would be increased to 75 or 80 percent of the average weekly wage. And the bill would provide a cost-of-living adjustment for the benefits after they are increased. OK? Now this is really important because right now the country's experiencing its highest inflation rate since the late 1970s and early 1980s. Inflation in 2021 was 7 percent. I don't think it's been that high since maybe 1981 or 1982. And the inflation, of course, is generated by the supply chain problems created by the pandemic, and nobody has any idea how long this problem will continue. And I'm sure we've all seen this in the news. There's a lot of concern for people who don't make as much money. They're getting hurt by inflation. An increase in the benefits would help to remedy this problem in a small way. OK? I think everybody would like to see injured workers and, you know, working families be able to withstand the, you know, the disadvantages of inflation that are happening right now. Just let me give you a simple example from my own practice. I won a permanent total disability award for a Fremont worker in the year 2000. He's been collecting benefits for nearly 22 years, and he's collecting the same amount of money now that he collected way the heck back in 2000. I mean, back in 2000, Nebraska was good in football. You know, it's been a long time. This bill would also create a-- fix a major deficiency in the workers' compensation laws, OK? Under the death law, if somebody is, God forbid, killed on the job and they don't have any dependents, nobody collects any compensation. An example would be a young man or young woman, young adult, don't have kids, you know, financially independent. God forbid they're killed on the job and nobody gets any compensation. It's-- it's a strange quirk in the law. Under this bill, under this unfortunate scenario, a personal representative of the estate of the deceased worker would collect a one-time benefit of \$25,000, so it's a very modest benefit, OK? My educated guess is opponents to the bill will express concerns about the cost and predict that insurance premiums will increase. In my opinion, those concerns are-- are probably misplaced, OK? I'm an employer myself. I pay workers' compensation insurance premiums. I have for many, many, many years. OK, so I can understand those-- those arguments, OK? As a starting point, the volume and number of reported workers' compensation claims has probably declined about 20 percent over about the last 15 years. If you look at the annual report from the Nebraska

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Comp Court, they're down about 20 percent over the last 15 years, so that's a good thing. I mean, it's-- basically, it's two factors that have created this decline in reported work comp claims. Number one is there are increased safety features on the job. A good friend of mine is a partner with the Baylor Evnen law firm and he-- he attributes part of the decline in claims to increased safety in the workplace for the employers. I mean, some of the employers are getting it, and it's a win-win situation for everybody, obviously, OK? And the other thing that has reduced the amount of claims is just the economic uncertainty since the economic crash of '08. You know, we've been through the crash of '08, '09, the pandemic, the lockdowns. I mean, it's just been a crazy, crazy time in the nation's economy. A lot of people are just simply afraid to file a claim because they're afraid they're going to lose their job. I mean, I've had a number of conversations with injured workers, and they're afraid to lose their job. And sometimes they'll just say, Crawford, I don't want to hire you. I'm going to go through health insurance and the disability benefit provisions of the-- my employer. I don't want to lose my job. So, I mean, that's a rational decision, but that's one of the reasons why the claims are down.

**B. HANSEN:** Mr. Crawford?

**DENNIS CRAWFORD:** Yes, sir.

**B. HANSEN:** I'll have you wrap up your thoughts, if you could. The red--

**DENNIS CRAWFORD:** Oh.

**B. HANSEN:** The little red light came on [INAUDIBLE]

**DENNIS CRAWFORD:** I'm really sorry. I just lost track of time.

**B. HANSEN:** If you could wrap up, that'd be great.

**DENNIS CRAWFORD:** Yeah, I'll just say this. The biggest problem in Nebraska right now economically is a worker shortage. And if we improve and modernize our workers' compensation laws, it will allow us to recruit more workers, better workers, and we'll solve the biggest economic problem that our employers face. Thank you for your time. I'm sorry I went over time. I'm sorry, sir.

**B. HANSEN:** That's all right. That's OK. Appreciate it. Are there any questions from the committee at all? All right, seeing none, thank you.

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**DENNIS CRAWFORD:** Thanks for having me.

**B. HANSEN:** We'll take our next testifier in support. Hello.

**SUSAN MARTIN:** Good afternoon, Chair Hansen and members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testify-- submitting this testimony on behalf of the Nebraska State AFL-CIO and all working families in the state of Nebraska in support of LB719. For many years, I have sat in this chair testifying on behalf of the worker on workers' compensation issues. For many years, legislation has been brought forward to improve the system. For many years, I've testified in support of that legislation. In the six years and the many bills that I've been-- been-- that have been introduced, I can't remember a change that's been made to benefit the worker. Workers' compensation was created to help injured workers in exchange for the employee not coming back on the employer and suing them. We have a real opportunity here to make a difference with the components contained in LB719. You have heard the details of the bill from other testifiers, so I'm not going to reiterate them. But I believe that the legislation, as introduced, gives the Nebraska Legislature an opportunity to update workers' compensation benefits to better align with today's economy and workplace without adding additional burdens on insurance companies who are seeing workers' compensation profits very high and employers who are seeing insurance premiums low. We, as Nebraskans, need to ensure that our workplaces are safe, that our employees are treated with dignity and respect and treated fairly. All of this contributes to the success of employers and increases profits for them. This is a beneficial bill to those workers who are injured while working for their employers, and I thank Senator Morfeld for introducing this much-needed updated legislation.

**B. HANSEN:** All right. Thank you. I always have to ask. I think every time you give us a letter, you always hand sign it. You have like the nicest signature.

**SUSAN MARTIN:** Oh. My handwriting is not that good.

**B. HANSEN:** After-- after a while here, it'd be like your signature, it like always looks like a stamp every time you do it, so I appreciate that.

**SUSAN MARTIN:** That's why I have to type everything.

**B. HANSEN:** Are there any questions from the committee at all? All right, seeing none, thank you.

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**SUSAN MARTIN:** Thank you.

**B. HANSEN:** All right, is there anybody else wishing to testify in support? Welcome.

**JEFF STRIZEK:** Hello. Senator Hansen, other members of the Labor and Business Committee, my name is Jeff Strizek, J-e-f-f S-t-r-i-z-e-k. I am here as a member of the UFC double-- sorry, UFCW Local 293 meatpackers union. We represent approximately 6,500 people in the state of Nebraska, and that's actually our members. We really represent twice that many. I also feel like I'm here representing all workers of Nebraska. I've worked in multiple industries before I got to the meatpacking department. I've worked in automotive. I worked in construction. I actually worked at the grain mill that was mentioned earlier where that man unfortunately died. I have seen the destruction that workers' comp injuries can do to people on a very personal level. I'm not going to go into all the details of the bill because it's been gone over by all the people who have much more expertise in the legalities of it than I do. It will raise the rate of compensation for people, which is really important. As someone who is a laborer and has worked for 30 years as an hourly employee, I've never put in a 40-hour week in my life. The only time I've worked less than 48 hours in a week is if I've had to take time off for something. So when the wages get based on 40 hours of wages, you're not only getting only 66 percent of your wage, you're only getting about half. Most people I know in our meatpacking plants, I work at Nestle Purina, Hughes Brothers in Seward, Tenneco, many of the odd-- the employers around here in factories work a minimum of 56 hours a week, often 80. So to have your wage based on 66 percent of a 40-hour workweek is completely unreasonable. The workers of Nebraska need to have their health and safety prioritized. We have prioritized profit and corporations for a long time. And while I completely understand these businesses need to turn a profit because, without a profit, there is not a business, I think it is time that we prioritize the workers of this state. Thank you.

**B. HANSEN:** Thank you for coming to testify. Are there any questions from the committee? Seeing none, thank you for coming. Is anybody else wishing to testify in support of LB719? All right. Is there anybody wishing to testify in opposition to LB719? Welcome.

**DALLAS JONES:** Good afternoon. Chairman Hansen, members of the Business Labor Committee, my name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I am an attorney with Baylor Evnen law firm here in Lincoln, and I am testifying in opposition to LB719 on behalf of the Nebraskans for

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Workers' Compensation Equity and Fairness. Let me just say at the outset, Senator Morfeld's bill is a proposal to force taxpayers and employers in Lancaster County, as well as the rest of the state, to pay the largest increase in the 100-year history of the Workers' Compensation Act, period. Every single benefit category is proposed to be increased. Let me run through what those percentages are for you because nobody has addressed that yet, other than the 9 percent, which I don't understand that math. Temporary total: temporary total disability are those benefits paid to a worker while the worker is off work and healing from a work injury. Those are proposed to be increased by 20 percent. Temporary partial disability benefits are those where an employee is actually going back and working part time after injury while still healing, and those are proposed to increase 12.5 percent. When a worker reaches what's called maximum medical improvement, the employee is entitled to permanent disability benefits. There are a couple of different kinds of those benefits. The first one is what's called a schedule member benefit. Those are arms, legs, hands, feet, toes, etcetera, eyes, ears, hearing, sight. Those are proposed to increase 12.5 percent. Here's the kicker, the big kicker. The other category of workers' compensation benefits for permanent disability is when a person has a back injury or a head injury or psychiatric injuries or a neck injury. With regard to those injuries, those are going to increase a minimum of 87.5 percent, up to over 200 percent, depending on several factors we don't have time to review today. When a worker, unfortunately, is no longer able to work and they're totally disabled on a permanent basis, those increase 20 percent. When workers are in vocational rehabilitation, that's that program that is supposed to train the employees so they can return back to suitable employment, they're paid temporary total disability benefits. Again, those are increased 20 percent. Death benefits in those tragic cases that nobody wants, those benefits are proposed to increase a minimum of 12.5 percent, up to about 267 percent, again, depending on several factors. So what's the aggregate increase to this system just across the state? Well, nobody knows that for sure, but the Workers' Compensation Court publishes data, and from that data what we don't exactly know are all of the details underlying it, but it shows all the categories of benefits. I used that data from 2019, the last year where there appears to be com-- full data and that's the way that it's kept and reported, not a criticism. The aggregate increase is from approximately 18 percent to 22.5 percent. In other words, in 2019, if LB719 would have been in effect, employers and taxpayers would have paid anywhere from 18 to 22.5 percent more. What that means on a dollar basis to the system is about \$9 million to \$11 million more. Let me illustrate some of these points with a couple of

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common scenarios. Let's go back to the situation where common injury is a worker, generally somebody who is aging, gets up from work and feels pain in their knee, and it's found that the degenerative arthritis, degenerative condition in the meniscus has been torn from standing up. That employee, if we use the state average weekly wage-- and the numbers come out the same, it's just higher or lower depending on the wages. But just to use that as an example, because we've talked about the state average weekly wage, the current value of that claim if that employee is off work for three months and then has a 10 percent impairment to the lower extremity is about \$22,500. Under LB719, you would see a 15 percent increase in the overall value or cost to the employer and taxpayer, in that case, to about \$26,000. So what about the back injury? Let's assume that there is an employee who has had some back problems, puts that employee at risk of having more back problems, and bends over to pick a box-- pick up a box, has pain. End of the story, that employee has some limitations on a permanent basis because of that incident that results in a 50 percent loss of earning capacity. Under current law, again, if we use the state average weekly wage just for sake of discussion, the value of that claim is about \$98,000. Under LB217, [SIC LB719] everything else considered equal, the value of that claim increases to \$184,000, an 87.5 percent increase. Let me close by mentioning a few of the things. Obviously, the bill is full of lots of other topics, but there has been discussion about lawyers and fees lawyers are charging. I can tell you one thing. When the dollars go up in a system, so does the litigation. So if your intent is we don't like litigation, we don't want employees having to pay for those dollars, what you would do with LB719 is guarantee an increase in litigation. As a person who defends those cases, I like that. But as a matter of policy, I think it's wrongheaded. With that, I will close, because the light is going to turn red any moment, and take questions if you have them. Thank you.

**B. HANSEN:** All right. Thank you. Are there any questions from the committee? All right, seeing none--

**DALLAS JONES:** Very good. Thank you.

**B. HANSEN:** --thank you. Take our next testifier in opposition.

**ROBERT J. HALLSTROM:** Senator Hansen, 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 a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business. I've also signed in with authorization on behalf of the Nebraska Defense Counsel Association. When I first sat down to read

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this bill, I looked at the benefit increases and I determined that we'd thrown in everything but the kitchen sink. I read a little bit further and I found the kitchen sink. Virtually every, if not every, possible benefit is increased under LB719. What that means, and some other witnesses have testified to this, that there's going to be increases for self-insured employers, for sure directly with the increased cost, as well as the premiums for other employers. In my testimony, I've noted that there are, according to the ALFA International Compendium of 50 states' workers' compensation laws, I believe there are 37 states that retain the 66-and-two-thirds-percent criteria. I only found five states that were at 80 percent or above, so Nebraska is in the mainstream with regard to that particular issue. One of the things that I would caution against, we've heard a lot of things that we patterned this after, this law in Iowa or this law in another state, is it's fairly easy to cherry-pick from other states and take the best of this state or the best of that state. In fact, we have had conversations in years past with the trial lawyers association with regard to the issue of increasing the 300 weeks for permanent partial disability. That's patterned after Iowa to increase to 500 weeks, as this bill would do, as well; but the rest of the story, as Paul Harvey would say, is that Iowa doesn't have vocational rehabilitation. And so there are some tradeoffs and I think, with that, I would suggest for this committee that the problem with this bill is it's very one-sided. I'm obviously not criticizing because you'll see bills from the business community that are very one-sided as well. I don't think we move the needle much when we take that approach. I've been around when-- in 1993, when we had real workers' compensation reform; in 2007, when we reformed the medical fee schedule and did some things that were positive for both employers and employees. And I think that's the way that we get something done, is to get the parties together in a-- in a room, lock the doors if you need to, and try to settle in on some things that could be good for both the employer community in terms of the cost or the types of provisions that need to be changed in the workers' compensation system and, at the same time, provide some benefit increases for employees in-- in setting off that balance. So, be happy to address any questions of the committee.

**B. HANSEN:** All right, thank you. Are there any questions? Yes, Senator Hansen.

**M. HANSEN:** Thank you, Chairman Hansen. And thank you for your testimony. Kind of addressing the comment that it's a lot of the different benefit increases tied together. Is there any individual benefit increase you would support if it was on its own?

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**ROBERT J. HALLSTROM:** Senator, I think there's-- there's some things that we've had conversations on. You can look, for example, at the minimum benefit of \$49. That might be one. I think this bill goes to 50 percent of the state average weekly wage, which is a significant increase that probably takes us up to almost \$500. And obviously, the worker has to have earned that much to-- to get the minimum.

**M. HANSEN:** Right.

**ROBERT J. HALLSTROM:** But there's a-- there's a benefit there. There's been some period of time that's elapsed since there's been any change in the number of weeks for scheduled member injuries. Those are the types of things that I think if they're-- if they're balanced again, the-- the-- probably the bigger dollar issue that we've had some conversations with the trial lawyers about, and they testified, I think, at LR206 this summer, and it's in this bill to go from 300 to 500 weeks for permanent partial disability benefits. But at the same time, I think there's other issues. And you've been on the committee long enough, you've seen the legislation that we've brought over the years, and those are some of the things that we think would-- would be offsets to balance that. We've heard some witnesses talk about the attorney fees and the-- and the impact of attorney fees. We've had a bill on confidentiality of first injury reports that we think there are situations where individuals are represented by attorneys where they probably didn't need to be represented. They lose money in that particular arena. That's an offset that would-- we'd look at and say, you know, if you want to reduce attorney fee expense, is that a proper way to do it? We think it is. We've brought that legislation. So I think those are all things that-- that can be put on the table and discussed in trying to-- trying to see if we can gear up some workers' compensation reform.

**M. HANSEN:** OK, thank you.

**ROBERT J. HALLSTROM:** Thank you.

**B. HANSEN:** Any other questions? Thank you.

**ROBERT J. HALLSTROM:** Thank you.

**B. HANSEN:** Good afternoon.

**RON SEDLACEK:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. Our labor relations council did meet and discuss the

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legislation before you, under no surprise, looking at the extent of-- of the benefit increases. It's, as I say, no surprise that we would have opposition at this point, particularly not knowing the overall cost, because we represent both insurance as well as self-insurance. And in addition, I suppose it's a good way of starting the conversation again this session on workers' compensation. But I have to agree with Mr. Hallstrom before me, as well as Ms. Martin in her testimony. We've had this conversation started many, many, many times, and I think the last real major reform bill was in 1993. That's a long time. But we did that when labor and business was able to sit together and we were able to hammer out a compromise. And for many years, that compromise stuck. Trial attorneys did not support that at the time and-- and perhaps engaging them once again would be a benefit. But as mentioned before, and just to answer your question, as well, from our part, you know, certainly there are areas that can be changed and should be looked at. But we'd like to see more than just a one-sided conversation in this regard. So, be willing to work with the committee and the introducer.

**LATHROP:** Can I ask a question?

**B. HANSEN:** Yes.

**LATHROP:** You were done-- I didn't mean to interrupt you, Ron.

**RON SEDLACEK:** I'm finished.

**LATHROP:** OK. Did I hear that the premiums have actually gone down?

**RON SEDLACEK:** That's what I heard here in testimony. I can't-- I can't tell you if that has to do with what years exactly and if it has to do anything with the COVID situation or not.

**LATHROP:** It might have something to do with the fee schedules for the medical providers, though, right? While everything's going up like this in the medical, it's not happening like that for work comp.

**RON SEDLACEK:** That is a thought, as well as demographics, as well as additional safety.

**LATHROP:** OK. And the trial lawyers were involved in some of those efforts to establish fee schedules that you now benefit from.

**RON SEDLACEK:** To some extent, yes. Yes, sir.

**LATHROP:** Well, not to some extent, they were involved in that, right?

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**RON SEDLACEK:** Um-hum.

**LATHROP:** OK.

**RON SEDLACEK:** And I have to-- I have to beg a little bit of forgiveness there because with the Chamber, we were a little bit standoffish in regard to some of the issues in regard to the fee schedules--

**LATHROP:** OK, that might--

**RON SEDLACEK:** --because of diversity--

**LATHROP:** --have been more of a Hallstrom thing than a--

**RON SEDLACEK:** --diversity of our membership, correct.

**LATHROP:** OK. But-- but it's had the effect long term of keeping premiums low.

**RON SEDLACEK:** I would hope it had a positive effect, yes.

**LATHROP:** OK. Yeah--

**RON SEDLACEK:** [INAUDIBLE]

**LATHROP:** --hospitals and your doctors may not appreciate it, but it's kept premiums apparently going down.

**RON SEDLACEK:** And I can't answer that.

**LATHROP:** OK.

**B. HANSEN:** Any other questions--

**LATHROP:** That's all I had.

**B. HANSEN:** Any other questions from the committee? Thank you.

**RON SEDLACEK:** Thank you.

**B. HANSEN:** Is there anybody else wishing to testify in opposition? Is there anybody wishing to testify in a neutral capacity? Welcome.

**PHOEBE GYDESEN:** Good afternoon, committee. My name is Phoebe Gydesen. I'm an assistant attorney general with the Nebraska Attorney General's Office and I'm here to testify on LB719 in a neutral capacity on

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behalf of the office. LB719 proposes broad reforms to the Nebraska Workers' Compensation Act that are outlined in the introducer's statement and the fiscal note prepared by the Department of Administrative Services. Our office recognizes that the proposed changes are policy decisions for the Legislature to make after hearing all of the information available to it. I'm here today just to identify how those proposed changes will have an economic impact on the state of Nebraska as an employer. Because the proposed changes are-- are very all-encompassing, their implementation will have long-term financial impacts on the state. First, it will result in increased administrative costs to the state's third-party administrator that will have to be paid by the state workers' comp fund. Second, it will result in a substantial increase in the value of work comp claims and the amount of money paid out on those claims. Third, it will have increased time and expense to the Attorney General's Office in advising the third-party administrator and the State Risk Manager on claims that are not yet in litigation, as well as increased cost to our office in defending those claims that do become litigated. Finally, the proposed changes will eventually need to be funded by higher appropriations and eventual assessments against state agencies. Again, the Attorney General's workers' compensation section believes that work comp benefits are there for a reason. There are many legitimate claims that the state pays, and we do our best to treat all state employees fairly and try to get them back to suitable employment after their injuries have healed. In closing, I would just reiterate that our office is not advocating for or against the changes proposed by LB719. We simply want to ensure the Legislature is aware that these will have a significant economic impact on the state of Nebraska for the foreseeable future. Thank you for your time and I will try to answer any questions you may have.

**B. HANSEN:** Thank you. Are there any questions from the committee? Thank you very much.

**PHOEBE GYDESEN:** Thank you.

**B. HANSEN:** Anybody else wishing to testify in a neutral capacity? All right, well, with that, we will welcome back Senator Morfeld to close.

**MORFELD:** Thank you, Chairman. And I appreciate everybody that came and testified, and even those in opposition. I-- I think it's important to get some good perspective and context. I guess a few different things. One, I'm-- I'm really glad that we were able to catch increasing all the benefits possible for the workers. I would have been really disappointed if we missed one. But in any case, I also think that, you

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know, one of the things that's striking to me is, if you look at the actual numbers and how much working folks actually make at most of these jobs and then you look at the pay-out benefits, it's poverty-level types of wages, I mean, things that literally nobody could live on in many cases, and they don't. They have to rely on family members. I've talked to some of these folks. They have to sell their home. They have to move out. They have to do all kinds of different things to be able to survive, and that's really unacceptable. And so I'm happy to work with the committee or any of the folks behind me that testified in opposition on finding some targeted approaches, maybe picking one or two of these things out. But we really do need to change it. It's currently not acceptable. It's not allowing people who work and live off of regular wages of regular Nebraskans, it's not allowing them to survive; and I think that that's something that really warrants change. So with that, there's a lot more things I could say, but I'll be happy to work with the committee on this and I hope that we can get something, something out of committee. Thank you.

**B. HANSEN:** All right. Thank you, Senator Morfeld. Are there any questions from the committee at all? All right. Well, thank you very much. And just to mention, we did have some lett-- 19 letters of support for LB719 and then 2 opposed. All right. And with that, that'll close the hearing for LB719. Oh, that's right. All right. With that, we'll welcome back Senator Morfeld again to introduce LB1133.

**MORFELD:** Can't get rid of me today, Chairman Hansen. Members of the Business and Labor Committee, my name is Adam Morfeld, for the record, A-d-a-m M-o-r-f, as in "frank"-- here today to represent-- or, excuse me, representing the "Fighting" 46th Legislative District here today to introduce LB1133. LB1133 amends the Nebraska Worker Compensation Act to include healthcare workers to the provision of the Nebraska Workers' Compensation Act that concern mental injury-- injuries and mental illness. Healthcare occupations have always been regarded as a stressful occupation, nor-- no more so than the last three years of a global pandemic in which we find ourselves still battling. You hear it every single night on the news. Our healthcare workers, our heroes in the-- in the hospitals, are exhausted, burned out, and to the breaking point. And yet they're still showing up to take care of their patients and families to the best of their abilities, despite a lot of short-- healthcare staffing shortages and other illnesses and procedures that are out there. The best of their abilities are taxed as well. Hospitals are full, patients aren't getting the care that they desperately need in a timely manner, given the sheer numbers of people hospitalized with COVID-19. They see people die on a daily basis. This

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is difficult, heartbreaking, and necessary work, and the Nebraska law should change this to reflect the times that we are in right now and into the future. When we get through this current time in our history, many of these essential workers will suffer from posttraumatic stress disorder, and many do now. We need to recognize this and make a change in the Worker Compensation Act to reflect this new reality. I urge your favorable consideration of LB1133 and I'd be happy to answer any questions that you may have.

**B. HANSEN:** All right, thank you. Are there any questions from the committee? Thank you very much, Senator Morfeld.

**MORFELD:** Thank you.

**B. HANSEN:** So with that, we'll take our first testifier in support of LB1133. Welcome back.

**DENNIS CRAWFORD:** Thank you. Thanks for having me. Good afternoon, Senators. I am Dennis Crawford, D-e-n-n-i-s C-r-a-w-f-o-r-d. I'm here to testify on behalf of LB1133 on behalf of the Nebraska Association of Trial Attorneys. As I told you in earlier testimony, I've practiced workers' compensation law in the state of Nebraska since 1986 so I've seen just about everything there is, OK? I'm here to support this bill because there's a major deficiency in Nebraska work comp law when it comes to mental injuries, OK? To collect for mental injury under Nebraska law, there must first be a physical injury. Classic example: Somebody suffers a serious back injury, go through a lot of pain, disability, discomfort, and they de-- develop depression as a consequence of that serious physical injury, OK? That's only fair and only just. But if you suffer a mental injury only, you cannot make a workers' compensation claim. It is simply not allowed, OK? Mental injury only, and here's the origin of this bill, is that I was at Bryan Health and I was bantering with a nurse and, you know, we struck up a conversation and I told her I was a workers' compensation lawyer. And she said, there's a lot of healthcare workers here at Bryan suffering bad cases of PTSD due to treating COVID patients for-- for nearly two years now. They're-- they have PTSD. They're burned out. They've got all these medical problems, all these medical issues. And she was shocked when I told her she-- her coworkers could not collect a single dime of workers' compensation or any-- get any medical care approved under Nebraska's current workers' compensation law. She couldn't believe it. She was in complete and total disbelief. And-- and so the nice thing about workers' compensation laws, if you're injured on the job and you go through medical treatment, there's no deductibles and no co-pays, so it save-- saves an injured worker a

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heck of a lot of money. So somebody from-- suffering from PSD-- PTSD would save a lot of money if this bill should pass. And as I said in earlier testimony, workers' compensation claims have declined in volume about 20 percent over the last 10 or 15 years. You know, it's not enough just to pay lip service to our true healthcare heroes. It's not enough to put a yard sign in the yard, "A healthcare hero lives here," or throw a pizza party for her. It's time for us to put our money where our mouth is and help these people. If we want to truly honor our healthcare heroes, we must make medical care for mental injuries and PTSD injuries more-- less expensive and more accessible. That's the least that we can do for these great people who have been working under great stress and great strain-- strain for nearly two years and simple-- and with no end in sight. So thank you for your time and if you have any questions, I'd be happy to field them.

**B. HANSEN:** Thank you. You even-- you even beat the yellow light this time. It's good.

**DENNIS CRAWFORD:** All right. Well, I hope you liked it. I don't know.

**B. HANSEN:** Thanks for testifying though.

**DENNIS CRAWFORD:** I don't know. I--

**B. HANSEN:** Is there any questions from the committee? All right, thank you very much.

**DENNIS CRAWFORD:** Thank you.

**B. HANSEN:** Appreciate it. Anybody else wishing to testify in support of LB1133? All right, is there anybody wishing to testify in opposition? Welcome.

**ERIC SUTTON:** Thank you. Good afternoon, Chairman Hansen, members of the committee. My name is Eric Sutton. That's E-r-i-c S-u-t-t-o-n. I'm an attorney at the Baylor Evnen law firm here in Lincoln, testifying on behalf of Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB1133. We oppose this bill as a matter of public policy for several interrelated reasons, the first of which is that it's a fundamental change to an expansion of the Nebraska Workers' Compensation Act. As someone previously testifying indicated, mental-only injuries are not compensable under the Nebraska Workers' Compensation Act, the exception being if it's accompanied or caused by physical injury. However, in addition to that, there have been some recent changes to the Nebraska workers' compensation law beginning in 2010 with LB780, which allowed mental-only claims for first

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responders. This was again followed by additional exceptions for front-line state employees and correctional officers. And the concern, at least our concern at that time, was this was the start of a process to slowly chip away at the traditional Nebraska Workers' Compensation Act design of mental-only injuries being not compensable. And LB1133 is the realization of that concern of expanding it to a significant portion of employees in Nebraska. And there's a valid concern that expanding mental-only claims to healthcare workers will lead to expansion to other industries. I think it's reasonable to assume that employees from areas other-- various other industries will be before this committee seeking similar accommodations until the exception essentially swallows the rule. And I think the Legislature might also be faced with difficult questions of line drawing of what jobs qualify as stressful enough for mental-only claims. And I think the-- the solution to that is to leave the line where it is, so to speak, and to stand with the current system as it is, allowing mental claims in certain situations but in large part recognizing that mental claims are only compensable if they're accompanied by a physical injury. In addition, this expansion of eligibility and introduction of a new type of claim to the Nebraska Workers' Compensation Act is going to increase costs for both insurance carriers and for businesses in Nebraska, including self-insured businesses. Healthcare workers do not only work at large hospitals, but they work at small clinics, other businesses, and essentially anyone that employs a healthcare worker, as it's defined by this bill, will have new concerns to worry about. And it's likely that these increased costs will eventually be passed on to consumers or patients in Nebraska. And finally, mental injury claims, at least from a legal perspective, are difficult to evaluate due to their subjective nature, and by subjective nature I mean there's not an obvious cut or scrape or bruise, broken arm, or even a torn rotator cuff; they can neither be seen with the naked eye or on medical imaging. Diagnosis of these conditions requires medical expertise and thus challenges anyone evaluating the compensability of a mental-only claim to find their own expert and expend the time and energy to get the necessary information before making a compensability determination. The-- finally, LB1133 is a-- a concrete and permanent action in response to a temporary condition. This bill is a response to the COVID-19 pandemic, but at some point, hopefully sooner rather than later, the pandemic will either end or be completely under control. And when it is, Nebraska's insurers and employers of healthcare workers will still be faced with this additional cost should this bill be passed. The workers' compensation system at its core is sort of a grand compromise or a system of balance. Not all injuries or things are included within the umbrella of the Nebraska

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Workers' Compensation Act; but on the other hand, injured workers do not have to prove that anyone was at fault to recover workers' compensation benefits, unlike a tort or a personal injury lawsuit. With that in mind, I think the best course of action is to indefinitely postpone LB1133 and leave the Nebraska Workers' Compensation Act as it is. And with that, I'd be happy to answer any questions if I can.

**B. HANSEN:** Thank you. Are there any questions of the committee? Seeing none, thank you very much.

**ERIC SUTTON:** Thank you.

**B. HANSEN:** We'll take our next testifier in opposition.

**ROBERT J. HALLSTROM:** Chairman Hansen, 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 and the Nebraskans for Workers' Compensation Equity and Fairness. I've also been authorized to sign in on behalf and express the support of the Nebraska Chamber of Commerce and Industry. Mr. Sutton has done a nice job of talking about the substantive concerns of the business community and-- and our organizations have with the bill. But just historically, we started with, as Mr. Sutton indicated, first responders. We subsequently expanded the mental-mental injuries and illnesses without a physical manifestation of an injury to front-line state employees and then to county correctional officers. We originally came in and said that we were concerned, the old camel's-nose-under-the-tent theory of gradually eroding and expanding this. We did not come forward when we were simply looking at public sector employees, but now we're in the private sector employee arena. And for those reasons, we oppose the bill. I would like to note, for the record, while probably not completely unbiased, somewhat unbiased was Mr. Sutton. His mother is a-- is a physician and his fiancée is a physician, so he comes from an understanding. And I think one of the other things that I want to close with is to say that our opposition to this bill obviously in no way detracts from the heroic efforts of our healthcare workers, front-line workers and the-- the impacts that they've-- they have seen from the-- from the pandemic. With that, I'd like to-- or be happy to address any questions that you might have.

**B. HANSEN:** Thank you. Yes, Senator Gragert.

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**GRAGERT:** Thank you, Chairman Hansen. Thank you for your testimony. Just to clarify for myself then, right now, the way it is, physical disability you can get compensation for?

**ROBERT J. HALLSTROM:** We have-- you have physical injuries.

**GRAGERT:** Physical injury, OK.

**ROBERT J. HALLSTROM:** Yeah, and-- and-- yeah, go ahead.

**GRAGERT:** OK. So if they had that and PTSD, can they get additional compensation for PTSD now with a physical injury?

**ROBERT J. HALLSTROM:** Well, they-- they would be entitled for-- for-- to recover benefits if they have a physical manifestation of an injury and it's coupled with a mental-- mental health condition. That would be compensable, but they would-- it would still be subject to the rules of benefits with regard to workers' compensation, I believe.

**GRAGERT:** Is the compensation just based on that payment, and it's not-- it doesn't-- it-- if it doesn't add up, like I lose a leg and then I lose an arm or something?

**ROBERT J. HALLSTROM:** Well, you have a workplace injury that triggers the benefits under the statute, but there are different elements in terms of scheduled member injuries. And then you have two or more scheduled member injuries that can correlate to a whole body injury, and there are differing levels of disability, permanent, partial, total, temporary partial, and so forth, that are accompanied by those differing levels of injuries that-- that you could receive compensation for.

**GRAGERT:** What if the individual had an injury, you know, and-- and live-- you know, got through that. You know, PTSD comes on at all different stages; you know, it could come on right away, could come on two years from now. So if it was related or correlated to the physical injury, yeah, there wouldn't be any compensation--

**ROBERT J. HALLSTROM:** Well, typic--

**GRAGERT:** --for any--

**ROBERT J. HALLSTROM:** Typically, Senator, and you may be getting above my pay grade here, but typically you have a manifestation or a workplace injury that occurs at a designated point in time. There are exceptions to that for occupational injuries and diseases that might

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work their way into the mental health type of issue where-- where you could have that relation back or that correlation back concept. But I-- I don't practice in the area of workers' compensation, so I wouldn't--

**GRAGERT:** OK.

**ROBERT J. HALLSTROM:** --I wouldn't put bank on-- on that.

**GRAGERT:** Thank you.

**B. HANSEN:** Any other questions from the committee?

**ROBERT J. HALLSTROM:** Thank you, Senator.

**B. HANSEN:** Anybody else wishing to testify in opposition? Seeing none, is there any that wish to testify in a neutral capacity? All right. Seeing none, Senator Morfeld, you're welcome back up-- back up. And just for the record, there have been three letters, one as a proponent from Amy Behnke, from the-- representing the Health Center Association of Nebraska; and two opposed, Andy Hale from Nebraska Hospital Association and Korby Gilbertson for American Property Casualty Insurance Association. You are welcome to close.

**MORFELD:** Thank you, Chairman Hansen. As always, I'm more than happy to work with the committee to narrow the scope of this. If we want to make it a period of time in which we're a pan-- in a pandemic or something of that nature, I'm happy to do that, but I do think it's important that we not only-- I think actions speak louder than words, so I think it's important that we do something. Thank you.

**B. HANSEN:** All right. Thank you. Any questions from the committee at all? All right. Thank you, Senator Morfeld. And with that, we will close the hearing for LB1133. All right. We will move on next to LB1062 and we'll welcome-- welcome up Senator Albrecht.

**ALBRECHT:** Well, thanks. You guys are the best-kept secret back here.

**B. HANSEN:** Yes, it's-- it's cozy. It's cozy.

**LATHROP:** We're moving right along today too.

**HUNT:** It's like a speakeasy.

**ALBRECHT:** Hey, we're still on our first bill. OK, ready?

**B. HANSEN:** Yes.

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**ALBRECHT:** Well, good afternoon, Chairman Hansen and members of the Business and Labor Committee. For the record, my name is Joni Albrecht, J-o-n-i A-l-b-r-e-c-h-t, and I represent District 17 in northeast Nebraska, which includes Wayne, Thurston, Dakota, and a portion of Dixon Counties. I've introduced LB1062 on behalf of the Nebraska Workers' Compensation Equity and Fairness. The legislation would provide for the termination of total disability benefits at age 72 unless an employee is injured after age 67, in which case total disability benefits would cease after compensation has been paid for a period of 5 years. The bill would exclude certain catastrophic injuries from the limitation on duration of the total disability benefits, including, including spinal cord injuries resulting in paralysis, severe brain or close-- closed head injuries, and total and industrial blindness. Currently, the total disability benefits only stop when the employee passes away or if disability is removed. This results in benefits being paid long beyond the normal or anticipated retirement of the employee and is extremely expensive for the employer. The workers' compensation system is intended to replace lost wages, and once a person reaches a certain age, it is unlikely that he or she would be working, even if not injured. As a result, there are no wages to be replaced under the circumstances. Most of these individuals receive not only workers' compensation total disability benefits, but also Social Security income benefits under our current system. According to the 2019 data provided by the U.S. Chamber of Commerce, 26 states have some form of limitation on the duration of the total disability benefits. These limitations include offset provisions for Social Security, limitations on the duration of total disability payments, or a combination of offset provisions and limitations on duration. I believe Nebraska should join these states by adopting the limitations proposed under LB1062, and there will be a number of witnesses to follow me who should be able to address any technical questions that you may have regarding the bill.

**B. HANSEN:** Thank you.

**ALBRECHT:** Thank you.

**B. HANSEN:** Are there any questions from the committee? All right. Thank you. We'll see you in closing here.

**ALBRECHT:** Thank you.

**B. HANSEN:** All right. So with that, we will take our first testifier in support of LB1062. Welcome.

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**CURT RUWE:** Members of the committee, thank you for the opportunity to appear before you today to testify in, in favor of LB1062. My name is Curt Ruwe. I am employed as the vice president and general counsel of Crete Carrier Corporation, but I am here today on behalf of Nebraskans for Workers' Comp Equity and Fairness, as well as the Nebraska Trucking Association. Passing LB1062 would allow Nebraska to join, to join the majority of states, which have either time limited or offset current total disability benefits awarded through the workers' comp system. LB1062 accomplishes this by establishing a sunset of benefits at age 72, with an exception for workers 67 or older who have found to be permanently, totally disabled from a workplace injury would be entitled to benefits for a period of time that would extend past the benefits sunset of 72. Just as an aside, when looking at the bill as written, if the committee decides to work on looking at this bill, we would suggest there probably needs to be an amendment on the five-year period that is currently in the bill to, to extend to at least six or maybe longer, depending on what would happen with LB719, so that it can at least match what's in the permanent partial disability statute of, of six years. It doesn't make sense for the period to be shorter than that. So I just, I just give that input in terms of as we're talking about this bill. I think it's also, also beneficial to be clear about what the bill is not intended to do. The bill is not intended to limit medical coverage related to workplace illnesses or injuries in any way. LB1062 does not affect benefits for families who lose a member to a workplace fatality. And, as noted by Senator Albrecht, does not affect benefits for workers who suffer from, from certain very severe head injuries or spinal trauma. So what does LB1062 do? The bill is a response to the reality that life expectancies and work-life cycles are such that an award of permanent total disability in Nebraska had a different impact than it did at the time the act was originally passed. The entitled to so-called perm total benefits was-- has been a feature of the Workers' Comp Act passed by the Legislature in 1913. However, the life and retirement cycles of, of people are very different from when the bill originally passed. In 19-- I looked this up last night, in 1913, the life expectancy for a male in the United States was 50.3 years old and a female was 55.3. In today's world, those are 74.5 and 80.2, respectively. Likewise, in the early 1900s, there really wasn't the concept of retirement as we know it today. People worked until they physically were not able to. You didn't have retirement benefit systems for employees the way we do today, didn't have Social Security that kicked in at 67. You didn't have 401(k)s. In short, the landscape is very different from the time it was originally determined that workers should be entitled to perm total benefits for life. Taking

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these realities into account, perm total indemnity benefits for life can exceed the actual work-related loss suffered by the worker. So how have states outside of Nebraska reacted to this reality? Basically, there's three approaches: there is offsetting for those other benefits, 13 states offset perm total benefits by Social Security, retirement benefits, certain pension benefits, different things like that. That's one approach. Number two, states have gone the route that we're asking for in LB1062, which is a time limitation of benefits. This can either be a total number of weeks applicable to all workers exactly the same or a sunset provision, such as, as what's being proposed here. Then there's states that have done a combination of both. I would note that the states that have adopted limitations are a combination of red and blue states. California, Michigan, Oregon, and Washington are all states that have adopted offsets. Massachusetts, Minnesota, and New Jersey are among the states that have adopted combinations of both limitations and offsets. I'd ask the committee to seriously consider LB1062 because it's fair to both business and workers. The bill proposes a benefits period that extends long beyond the average retirement age of 62 in the United States. The bill gives businesses and insurers the ability to reasonably estimate and calculate the exposure for perm total losses in the near term. And it also maintains the promise of the workers' compensation system that a worker will be fairly compensated for the scope of their work-related loss, while not overextending the promise to a point where the recovery exceeds that loss. Thank you very much for your time.

**B. HANSEN:** Thank you. Are there any questions from the committee at all? All right, seeing none,--

**CURT RUWE:** Thank you.

**B. HANSEN:** --thank you for your testimony. Take our next testifier.

**ROBERT J. HALLSTROM:** Senator Hansen, 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 and the Nebraskans for Workers' Compensation Equity and Fairness to testify in support of LB1062. I want to thank Senator Albrecht for introducing the bill on behalf of NWCEF. I think I'll, I'll limit my testimony. I think Mr. Ruwe has done a nice job of outlining the substantive issues in LB1062. I would note in my testimony, I do have a specific breakdown of those states that have some form of limitation on the duration of permanent total disability benefits derived from the 2019 analysis of workers' compensation laws by the U.S. Chamber of Commerce that show those states that either

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have a limitation based on age, duration, and number of weeks, Social Security offsets or some combination of those items. I would just note for the record as well, these types of cases, as you might expect if they go on for life, are quite-- can be quite expensive. I've noted and did some, some calculations on a 67-year-old worker, whether male or female, and of course, there will be different life expectancies for males and females. But based on \$600 a week average weekly wage, two-thirds of that is \$400 a week, about \$20,800 a year. And for a male with the life expectancy of about 16.5 weeks or 16.5 years, excuse me, that is \$343,000. And for a female with just over 18 years life expectancy, about \$393,000. So this is an expensive proposition, as Mr. Ruwe noted. These are individuals who in the normal course of business would not be earning wages for too long beyond 67. I would agree with his analysis that if we have the roughly 300 weeks now for temporary permanent disability, that the time period after age 67 should match with that. If there are any changes in that 300-week period, that those should be changed commensurately. And perhaps this is the type of bill that can be looked at in, in tandem with Senator Morfeld's LB719, parts of it, to see if there's a balancing that can be done in, in that regard. Be happy to address any questions.

**B. HANSEN:** Thank you. Any questions from the committee? All right, seeing none, thank you.

**ROBERT J. HALLSTROM:** Thank you.

**B. HANSEN:** Is there anybody else wishing to testify in support? All right, seeing none, is there anybody that wishes to testify in opposition to LB1062? Welcome back.

**NICK GRANDGENETT:** Thanks. Mr. Chairperson and committee members, my name is Nick Grandgenett. That's N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed. We are testifying in opposition to LB1062. Currently, Nebraskans who are totally disabled as a result of a workplace injury receive two-thirds of their lost wages as a result-- as long as a physician indicates their injury prevents them from working. For those Nebraskans whose total disability is permanent, the promise of the law is that wage support be retained as long as needed. Often referred to as the grand bargain, workers' comp requires the forfeiture of any legal claim related to a workplace injury in exchange for lesser but more certain wage support through the employer's insurance. Employers in return are spared the expense of costly litigation and damage awards. By terminating wage support at age 72, LB1062 attempts to shift the employer's financial responsibility away from the employer and back onto the employee at

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the conclusion of the employee's life. Like all states, Nebraska's workers' compensation system is dated. As we've heard today, it was adopted in 1913, and when it was, when it was adopted, there was a failure to account for many of the modern phenomena that disadvantaged workers, especially those who were totally, permanently disabled by on-the-job injuries. It is, for instance, unlikely that original drafters foresaw the significant, deleterious effects inflation would have on permanent, total benefits over time. In the year 2000, for example, Nebraska's average weekly wage was \$487 per week, which is approximately \$25,000 per year. That year, a totally disabled worker who received a benefit-- would have received a benefit of \$324 per week. To have the same value today that this benefit had in 2000, a worker would have needed \$536. Already, this example illustrates how current statutes allow the value of benefits to shrivel over time. LB1062 compounds this problem by snuffing out wage support altogether. Instead of modernizing workers' comp laws to ensure they are adequately-- workers are adequately supported in the 21st century, lawmakers have, across the United States, eroded workers' compensation benefits as employers and insurance companies have chased lower premiums and larger profits. Today, we're at a moment in time where premiums are at their lowest point in 30 years and fewer total benefits are being paid. Now is the right moment for Nebraska to pass legislation which would strengthen rather than erode our workers' compensation program. Instead, for workers who watch their benefits erode by inflation, LB1062 offers not a solution, but more financial obstacles. While the current life expectancy in Nebraska is 79 years of age, life expectancy of someone who's permanently and totally disabled is almost certainly lower. One academic study, for example, found that people with, with disability in activities of daily living and mobility have a 10-year shorter life expectancy than nondisabled people. At the age of 72, many people with permanent total disabilities are at the conclusions of their lives. For many, this is a moment in time when financial instability and stress are at their apex. By terminating wage support, LB1062 will only compound that instability and stress. Nebraska's injured workers deserve more. This is certainly not the grand bargain that was envisioned more than a century ago. As such, we urge this committee to vote no on LB1062. Thank you for your time, and I'm happy to answer questions.

**B. HANSEN:** Thank you. Are there any questions from the committee? All right, seeing none, thank you.

**NICK GRANDGENETT:** Thanks.

**B. HANSEN:** Take our next testifier in opposition.

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**JON URBOM:** Good afternoon, Mr. Chairman, members of the committee. My name is Jon Urbom, J-o-n U-r-b-o-m. I'm testifying in opposition to LB1062 on behalf of Nebraska Association of Trial Attorneys. LB1062 strips lifetime benefits from injured workers that have been determined to be unable to work in any well-known branch of the labor market. Those workers obviously suffered a shortened work life. They did not earn what they are ultimately-- or what they were previously capable of earning because of their work injury and their inability to work. Because Social Security retirement benefits are based on earned credits during one's work life, these injured workers will receive less in Social Security benefits because of the work injury. And now this bill would take away the work comp benefits that are necessary to compensate them for their work life being cut short. This bill also has a major impact on immigrant workers. If an injured worker is permanently, totally disabled and was working with a visa or work permit when they were injured, they are not eligible for Social Security benefits. In this day and age, this bill would cut out perhaps the only income that individual has in the work comp benefits. Ultimately, they will become dependent on the state for Medicaid, housing assistance, and food assistance. That's essentially what this bill is, is a cost shift from the responsible entity, the employer or the workers' compensation carrier, to our government-funded programs. If you rob the work comp benefits, you are shifting the cost to the public welfare system by way of Medicaid, Medicare, housing, and food assistance. This bill does provide some exceptions for severe spinal cord injury involving severe paralysis or severe brain injury. Those terms are ambiguous and interject new terms and enhanced burden of proof that do not currently exist in the Nebraska Workers' Compensation Act. Those exceptions listed are also arbitrary. There is no reason that brain injuries or spinal cord injuries should be compensated any differently than if you got both legs amputated as a result of a work accident or you suffered a permanently disabling occupational disease such as silicosis, a long-term and disabling lung disease that has no cure. I'm not sure what this bill is trying to fix in Nebraska. It seems to be a solution in search of a problem. But the, the proposal is going to create problems for those that are permanently and totally disabled and unable to work, and then we will have problems to, to solve there that require a solution. For those reasons, we oppose LB1062. Thank you. Any questions?

**B. HANSEN:** Thank you. Are there any questions from the committee? I might have just a couple actually of what you mentioned in your testimony. The list that they have here in the bill of certain kinds of spinal cord injuries, do you think that's still ambiguous or is--

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**JON URBOM:** I believe interjecting a term such as severe and then the descriptions below it also include severe require an enhanced burden of proof, and that doesn't exist anywhere in the Nebraska Work Comp Act at this point.

**B. HANSEN:** OK. OK. And that's just what I was mainly curious about, just kind of get your opinion on that. OK, thank you.

**JON URBOM:** Thank you.

**B. HANSEN:** All right, thank you for testifying. Take the next testifier in opposition. Welcome back.

**FELICIA HILTON:** Thank you. Good afternoon. Thank you for hearing my testimony, Chairman Hansen and the rest of the committee members. My name is Felicia Hilton, F-e-l-i-c-i-a H-i-l-t-o-n. I'm with the North Central States Regional Council of Carpenters. I'm here to speak in opposition of this bill. First, I wanted to address the fact that when you are injured on the job, depending on when the injury took place, that your Social Security benefits are based on how much you've actually earned. And so having a worker that had been permanently injured at the age of 72, knowing that they're still surviving with that injury, depending on when it happened, we know that they're not making the earned Social Security benefit that they would have had if they could have continued their full work life. So that's the first thing that we have an issue with. And then in the fiscal note, it says that there were over the last 4 years only 49 workers that would have actually received this, this or fallen under workers' comp in this way, and that 39 of them wouldn't have been impacted by the language, but 10 of them would have been cut off of work comp. And I see those 10 people being carpenters when I think of the 10 and I think of how their lives would be disrupted if they were to be subject to this, this language. So I don't see the extreme cost. It appears that there's not a ton of workers that are in this, this situation, so I'm not clear on why we would target 30-- 49 workers in the state and then make it a big enough issue to bring it to the senators to cause this type of disruption for, for 10 workers. But I'm also concerned about the fact that it, it mentions that workers over the age of 67, to me, it's an admission that people are working past 65, past retirement. And to admit that that is happening, that a worker that is injured after the age of 67 would only be eligible for 5 or 6 years, we also have some concerns with because we know that people are working after the age of 67. People are working in many different capacities. And if they were to be injured and have their benefits cut off after 5 years or amend it to 6 years, I just think that it was curious that-- I

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would like to see the fiscal note address how many workers actually are working after the age of 67 and are injured. That wasn't in the fiscal note when that when-- the one, at least, that I, I looked at online. And so our, our real concern is we don't think that it's necessary; that there are 49 injured workers over the last 4 years that were over the age of 60-- or 72; there is no express understanding of how many workers are injured after the age of 67. And so with those-- with the, the number being 49, possibly impacting 10 people, we believe that those 10 people are, like I said, if I see him as a carpenter, I would be devastated if this happened to my father, who's a carpenter, my husband's a carpenter, my, my son is a carpenter, and my in-laws are carpenters. And it would be a devastating thing if we had a permanent, injured carpenter in the-- this happened to him because we know how they would have to be on assistance. They would have to apply for a number of federal assistance or state assistance. And we just think it's unfair to do to a worker-- to do this to someone at the age of 67. It sounds cruel. I'm just going to say that. these people are at the end of their life and the folks in their life have been taking care of them this long. And it just doesn't make any sense when it's only 49 people over the last 4 years. We just don't think there's a reason to change the work comp law addressing this issue at all. Thank you.

**B. HANSEN:** Thank you. Are there any questions from the committee? All right, thank you for testifying.

**FELICIA HILTON:** Thank you.

**B. HANSEN:** Is there anybody else wishing to testify in opposition? Welcome back.

**SUSAN MARTIN:** Good afternoon again. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO. You don't have a fancy little handout because I wasn't originally going to testify. I changed my mind. So what I want to remind everyone is that the person receiving these benefits got injured while working. They were, were performing work for their employer. If they were permanently disabled in whatever way, this was a direct cause of being at work that day working for their employer. Workers' compensation isn't a fortune. You don't make a living off of it. You can't sue your employer. But yet you are left permanently disabled for the rest of your life no matter how long that would be. We don't know if this person would have continued working if they could have, and by cutting off this permanent disability benefit at the age of 72 is beyond me. This bill is outlining exceptions, but can we really know what those

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might be? I'm going to use an example of someone working on a line in a manufacturing company. These people typically make, I don't know, let's guess, \$20 an hour. All the while working, they may or may not continue to be contributing to a pension plan or a retirement savings account, but hopefully most do, hoping that one day they will be able to retire, draw their Social Security, and live off their retirement savings that they contributed to over the many years that they're working. Then all of a sudden, at age 30, they're injured at work and are permanently disabled for whatever reason. they are the breadwinner for their family of four, and now they will never be able to work again, do not have that much money saved up in their retirement account, and are making a measly percent of their salary for the rest of their lives. There goes their kid's college education, there goes their daughter's wedding, there goes their hopes and dreams of retirement because the measly income that they're making from workers' compensation payments will more than likely go to their own daily care and the complications that have arisen from a permanent disability while at work. I don't think this is what anyone wants, and I don't think that, for any reason, someone that has a permanent disability should quit receiving those workers' compensation benefits at any age. This bill just doesn't make sense to me, and I would ask that you keep it in committee.

**B. HANSEN:** All right. Thank you. Are there any questions from the committee? All right, seeing none, thank you very much. Is there anybody else wishing to testify in opposition? All right, seeing none, is there anybody who wishes to testify in a neutral capacity? And seeing none, Senator Albrecht, if you wish to come up and close. And for the record, before you start talking, sorry, because I always forget about this. We do have two letters in support: one from Korby Gilbertson from American Property Casualty Insurance Association, and one from Kristen Hassebrook from the Nebraska Chamber of Commerce and Industry.

**ALBRECHT:** OK. Again, I'm just going to say, if, if I'm hearing the public that you had a bill with Senator Morfeld, if-- I've not heard about that. I'll certainly take a look at that. If that's something that there's something in here that needs to be amended or looked at, I'm, I'm very much amenable to talk it through and see what we can do to get it taken care of. That's all.

**B. HANSEN:** With that, are there any questions from the committee? All right, seeing none, thank you very much.

**ALBRECHT:** Thank you.

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**B. HANSEN:** And that will close our hearing for LB1062. And we will open it up next for LB871 and welcome Senator Matt Hansen to open.

**M. HANSEN:** Ready?

**B. HANSEN:** OK. Welcome.

**M. HANSEN:** Perfect. Good afternoon, Chairman Hansen and fellow members of the Business and Labor Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. Today, I'm here to introduce LB871. As we know, our state's economy is reliant on the meatpacking industry and the workers who support it. Although immigrants account for approximately 7 percent of Nebraska's population, the majority of our state's meatpacking workforce are immigrants. This creates a unique workplace dynamic where language access and industry transparency have important implications for fair treatment of meat and poultry workers. In recognition of this fact, the past Legislatures have created the meat parking-- excuse me-- have created the meatpacking coordinator position, which is housed under the Department of Labor. This position was designed to work with meatpacking facilities, workers, and public officials to ensure that the largely immigrant labor force was not taken advantage of by the industry. This bill would make that meatpacking coordinator a full-time position from its current part-time status. This bill also defines specific responsibilities, requires them to organize readily available information into their annual report, and reduces the threshold requirements for certain translation services. It also provides for some procedural clarifications when the coordinator exercises the current powers and some additional enforcement provisions. As the position's title implies, the meatpacking coordinator is, first and foremost, a coordinator. LB871 recognizes this fact by requiring the coordinator to visit with the state's large meatpacking plants. When these visits are made, the coordinator would be required to invite a collective bargaining representative. Additionally, state law requires all large employers who actively recruit a labor force, 10 percent of which speaks a language other than English, from more than 500 miles away, to have a bilingual employee onsite and to translate key employment documents. Again, that's current law. As active recruitment of immigrants occurs both in and out of Nebraska, LB781 would eliminate the 500-mile requirement and reduce that threshold to 5 percent of the workforce. During visits to large meatpacking plants, the coordinator would now be tasked with documenting compliance with this law and coordinating with workers, collective bargaining representatives, and processing plants to ensure there is compliance. LB871 also requires

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the coordinator to include in their report readily available information that's relevant to the fair treatment of workers; they'll include information about complaints made to the coordinator, injury data made publicly available to-- by OSHA, and reporting of injuries to workers' comp, including the amount of overtime worked and the frequency with which workers get rest days. To be clear, the coordinator is not a workplace safety official. To prevent confusion, the new language would-- excuse me, lost my line. So to be clear, the coordinator is not a workforce safety official. To prevent that confusion, the new language would, if the coordinator became aware of a safety violation, merely require the coordinator to be available to help a worker report to the proper authority. So we're not adding duties there. I will note that I also passed out copies of AM1700, which limits the scope of the workers' compensation data that the coordinator would be responsible for collecting. We worked closely with the Workers' Compensation Court on the amendment to actually clarify and define data that they currently have and could make available to the court later. I appreciate the Workers' Compensation Court brought their concerns with us and I'm happy to work with other interested parties on the bill as well. Last session, it was clear that policymakers need more information to adequately assess the unique threat public health emergencies pose to workers in the meat and poultry industry. At its core, this is a simple bill that asks the coordinator to organize information we already have to be-- better understand the industry. With that, I appreciate your time on this bill and be happy to answer any questions.

**B. HANSEN:** Are there any questions from the committee? Seeing none, thank you very much.

**M. HANSEN:** Thank you.

**B. HANSEN:** Actually, yes, one question. Yes, Senator Lathrop.

**LATHROP:** You want to tell me what you're after? What-- are we trying to, like, get cumulative data on the meatpacking industry so we can see, like, they need to do something about carpal tunnel injuries or--

**M. HANSEN:** Yeah.

**LATHROP:** --back injuries or what--

**M. HANSEN:** Basic--

**LATHROP:** --what do you hope to accomplish?

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**M. HANSEN:** My goal is to take the work-- the meatpacking coordinator and kind of fully realize what's already in the statute. We have a meatpackers' bill of rights. This position is created via statute, and we've seen that it's a part-time position that probably deserves to be a full-time position, as well as giving them some authority to get information from other agencies and like having some more authority to do inspections. So it's to kind of beef up the position.

**LATHROP:** OK, thanks.

**M. HANSEN:** Thank you.

**B. HANSEN:** Any other questions? All right, thank you.

**M. HANSEN:** Thank you.

**B. HANSEN:** All right, we will take our first testifier in support of LB871. Welcome back.

**NICK GRANDGENETT:** Thanks. Mr. Chairperson and committee members, my name is Nick Grandgenett; that's spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t, and I'm a staff attorney with Nebraska Appleseed. So this is a commonsense bill that benefits Nebraska's workers and meatpackers. It does so by making Nebraska's meatpacking coordinator a full-time position, clarifying basic data to include in the coordinator's annual report, and increasing availability of translation resources in large workplaces. So legislation in 2003 created the coordinator position with the purpose of reviewing the practices and procedures of the meatpacking operations in Nebraska. In support of this, the coordinator compiles an annual report and details recommended actions necessary to provide for the fair treatment of workers in the industry. Our staff and other organizations have seen the immense utility and dedication of people serving in this position. Although no statute dictates the contents of that report, past reports have helpfully summarized the volume of and character of complaints received by the coordinator. Clarifying a few basic metrics to include in the report will help provide more consistent year-to-year information and better position the Legislature, the public, and policymakers to accurately assess the fair treatment of workers-- of Nebraskans in the meat and poultry industry. Additionally, when public emergencies threaten safety and well-being of the industry, these materials will help enhance the ability of policymakers to find meaningful-- meaningful solutions to better protect the workers. LB871 adopted into statute the basic content of the 2020 report, in other words, the number of complaints received by the coordinator,

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characterized by type, such as sexual harassment, adequacy of bathroom facilities, etcetera, and has publicly available OSHA data on injuries and deaths, the number of injuries reported to workers' compensation, and access to translation resources which are already promised by the act. The goal is a very reasonable amount of data that, again, relies on already-available data to ensure the coordinator is responsive to all calls from workers. The Non-English Speaking Workers Protection Act was enacted in '95 to protect employees who were transported from great distances to work in Nebraska's meatpacking plants after the employers made misrepresentations regarding the type of work, working conditions, and hours and wages employees could expect. This was seen as exploitation by the 94th Legislature, which wisely passed LB20, which required any business employing more than 100 people with 10 percent or more of its workforce being recruited from more than 500 miles away, speaking a non-English language, to provide certain translation services to these employees. If those threshold requirements are met, the business has to: (1) have a bilingual employee on site; and (2) communicate in a language understood by the employee at the time of hiring basic facts of the position related to minimum work expectations, compensation, and physical demands or hazards of the job. LB871 recognizes that since '95, linguistic--linguistic diversity has increased in large workplaces and that problematic recruitment practices can happen both far away and in local communities. As such, it lowers the threshold requirement from 10 to 5 percent and eliminates the outdated "500 mile" language. This better meets the original spirit of the statute. Finally, LB871 provides the meatpacking coordinator with the tools they need to successfully fulfill the responsibilities of the position; extends the enforcement provisions of the act beyond sections covering the translation services to the entire act; and allows the coordinator to issue a fine when their duties under the act are interfered with. Under LB871, the coordinator must make an annual visit to meatpacking operations employing more than 500 people, and it adopts procedures similar to those used by the natural resource districts under the Nebraska Chemmigration Act when onsite inspections are permitted. When the coordinator exercises their power to make a visitation, which already exists under current law, this new bill clarifies that a union rep may be present, as well and provides for a notice period. Finally, if the coordinator becomes aware of a workplace safety vi-- violation, as Senator Hansen said, it requires the coordinator to offer assistance in filing a complaint with the appropriate authority. So in conclusion, we would just urge the committee to support this important bill. And if you have any questions, I'm happy to answer them.

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**HALLORAN:** Thank you, Mr. Grandgenett. Are there any questions from the committee? Seeing none, thank you for your testimony.

**NICK GRANDGENETT:** Thank you.

**HALLORAN:** Next proponent for LB871, next proponent. Please state your name and spell it, too, please. Thank you.

**JANE SEU:** Afternoon. My name's Jane Seu, J-a-n-e S-e-u, and I'm testifying on behalf of the ACLU of Nebraska in favor of LB871. We thank Senator Hansen for introducing this legislation. Our immigrant neighbors make up the majority of the workers in meatpacking plants where working conditions have had little accountability for health and safety. Additionally, meatpacking plants are likely to have a workforce who predominantly cannot read or speak or understand English, and many of the rights afforded to workers are not adequately communicated or represented, which makes them particularly vulnerable to retaliation, mistreatment, and harassment. The ACLU of Nebraska continues to fight for equitable and dignified working conditions and to uplift and protect the rights of workers. During our advocacy for COVID-19 protections for meatpacking workers, we heard workers' stories about the lack of access to adequate bathroom breaks and threats of retaliation and mistreatment for voicing and reporting inadequate or dangerous working conditions. This lack of oversight of the difficult and dangerous conditions at meatpacking plants means that immigrants and people of color are disproportionately subjected to unsafe working conditions, are at increased risk of injury and illness. We saw and continue to see during the COVID-19 pandemic, during which over 7,000 meatpacking workers contracted COVID, at least 256 were hospitalized and 28 had died due to complications of COVID, the Department of Labor assign our sole government representative, tasked to enforce the meatpacking bill of rights, spend the majority of her time processing unemployment claims rather than upholding the rights of meatpacking workers. LB871 gives the meatpacking coordinator tools to increase accountability in our meatpacking plants to protect the rights of workers. Elevating the meatpacking coordinator to a full-time position and giving them increased access to meat-- meatpacking plants and reporting requirements will help ensure that meatpacking workers are afforded their rights, increased safety, and reduced harassment and retaliation while at work. The meatpacking coordinator will report on the number of complaints, identify language access gaps between employees and employers, and will visit and inspect large plants with more than 500 employees at least once a year, among other requirements included in this bill. Meatpacking workers ensure that food remains available and during the COVID-19

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pandemic, meatpacking workers continue to work at the front lines, often under unsafe public health conditions in meatpacking plants where physical distancing is not possible and masks are not available. The daily pressure to meet line speed and supply demands also puts workers at high risk of physical injury. Department of Labor failed to protect meatpacking workers the past couple years from COVID. This troubling trend cannot continue, and we urge the committee to advance the bill to General File. Thank you for your time, and I'm happy to answer any questions.

**B. HANSEN:** All right, thank you for testifying. Are there any questions from the committee? All right, seeing none, thank you.

**JANE SEU:** Thank you.

**B. HANSEN:** We will take the next testifier in support of LB871.

**SUSAN MARTIN:** Good afternoon again, Chair Hansen and members of the Business and Labor Committee. My name is Susan Martin,, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and our 20,000 members in support of LB871. Nebraska workers throughout the state have dealt with this raging pandemic over the past two years, now going on three. Last year, legislation was introduced by Senator Vargas to address concerns of workers during COVID-19, particularly those in the meatpacking industry, and the bill died, with senators ignoring that there was a health crisis that wasn't going away anytime soon. These workers are critical to the food supply chain, and it's incumbent upon the state to make sure that they are protected and healthy, not only during this health crisis but into the future. We've looked nationally to OSHA, who has produced guidelines for these companies to follow. But unless complaints are filed by employers-- employees, nothing is done about the enforcement. Our national leaders have failed to pass an emergency OSHA standard specifically dealing with the pandemic, so now we are back, urging our elected state leaders to implement some commonsense legislation to assist in the aid of helping workers in the meatpacking industry. Last year, you heard testimony from workers in this industry on the difficult working conditions in these plants, which were exasperated due to COVID-19. But what it also did was bring to light these often-ignored working conditions in an industry that has little or no accountability. As I testified last year, the state of Nebraska did not follow through implementing any meaningful guidance and enforcement to protect these workers. LB871 contains changes that we feel will be beneficial to not only the worker but the industry itself, making accountability and reporting more transparent. We also

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feel that the bill will strengthen the protections for the many workers employed who are immigrant workers who may have language barriers, do not completely understand their rights, have a strong worth-- work ethic, and are scared about retaliation. LB871 is a bill that can be implemented easily by the state of Nebraska. Through previous legislation, the state of Nebraska has created a meatpacking bill of rights coordinator position and LB871 as introduced will provide this position the ability to improve accountability and transparency and to provide a reporting mechanism to truly show a picture of the working conditions in this industry. What it comes down to is recognizing that these workers are working every day to provide food to the nation, and we continue to raise up the issue of protections and ensure that companies provide them. As I testified before, we still have a crisis. We need our state legislators' support to keep ourselves and our families safe. Nebraska needs to take matters into their own hands and pass meaningful legislation to protect our workers in the meatpacking industry. I thank Senator Hansen for working on this bill and for fighting-- finding a way to ensure protections for these workers. And I thank Nebraska and the unicameral system for the opportunity to testify today, and I urge the Business and Labor Committee to make this bill a priority and to move it out of committee.

**B. HANSEN:** Thank you. Are there any questions from the committee at all? Seeing none, thank you. Take our next testifier in support of LB871. Anybody-- welcome back.

**JEFF STRIZEK:** Thank you. My name is Jeff Strizek, J-e-f-f S-t-r-i-z-e-k. I am here representing UFCW Local 293 and its nearly 6,500 workers. On behalf of these members and workers across the state of Nebraska, I urge you to support this bill because the health and safety of meat and poultry slaughter and processing workers are essential to ensuring that every Nebraskan can feed their families safely. The meatpacking coordinator position was established with the purpose of inspecting and reviewing these practices. The coordinator's objective is to highlight for employees the importance of worker safety and fair employment practice for workers in the meatpacking industry. The position is currently part-time, as you know, and requires a submission to the Unicameral and the Governor. Because of the expansion in the meatpacking industry, I think we're all aware there's been plants added just in the last couple of years. There's one being built currently in North Platte, the Costco processing facility. As the industry continues to get larger, it is a very vital part of the state and I don't think a part-time employee can nearly do all the work they need to do, make it to all the plants, represent the

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people and the state the way it needs to be represented. When the COVID-19 pandemic hit in 2020, the Department of Labor, along with the meatpacking coordinator, did not have the adequate resources to support the health and safety of the employees of these plants. These commonsense reforms will incrementally improve the health and safety of the meatpacking workers in the state and provide consumers with an undis-- sorry-- with an undisrupted access to products for everyone to eat safely. Thank you.

**B. HANSEN:** Thank you. Any questions from the committee? Seeing none, thank you very much. Is there anybody else wishing to testify in support of LB871? With that, we will take the first testifier in opposition to LB871. Welcome.

**MICK MINES:** Thank you, Chairman. Chairman Hansen and members of the Business and Labor Committee, thank you for the opportunity to provide comments on LB871. My name is Mick Mines. I'm a registered lobbyist here representing Cargill. Cargill has 15 facilities in Nebraska. They employ about 4,000 people throughout the state, including three major protein facilities. The Cargill Beef Plant in Schuyler provides more than 2,200 jobs and processes 5,000 head of cattle each day. Cargill also operates further processing protein facilities in Nebraska City and Columbus, employing 360 and 665, respectively. These plants are critically important to Cargill's beef supply chain, including supply beef products to grocery stores and food service customers right here in Nebraska, two examples being Taco Bell and Costco. Cargill opposes LB871 because existing federal standards make additional state level regulations unnecessary. Cargill's first priority has always been the health and safety of their employees on the front lines. Our workers are fully protected through the federal scheme, and this proposed state obligation would just add additional cost and burden without resulting in any protection for the workers or benefit for consumers. Cargill values the diverse workforce in Nebraska. Cargill and our employees find shared value in stable, well-paying jobs in rural communities where we operate. Cargill offers free or reduced-cost English classes for employees and provides bilingual staff or the use of a language line to support training programs in the plants. Recently, all protein plants in North America deployed new employee communication platform called Beekeeper, which translates news and updates for employees into multiple languages. Cargill is a people-first organization providing full-time positions with competitive pay and benefits, including free healthcare for Cargill protein employees and their families at Marathon Health clinics located near their facilities. Employees also enjoy medical, dental, vision, and prescription drug insurance, health and wellness

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incentives, paid vacation and holidays, 401K with Cargill matching contributions, short-term disability and life insurance, employee assistance programs, tuition reimbursement, generous signing bonuses, referral bonuses, and employee discounts. We are committed to keeping our employees safe, feeding the world, and ensuring farmers and ranchers have access to markets. Doing all three simultaneously requires tremendous care. We stand behind the support and safe work environment in our protein processing facilities, making LB871 unnecessary. Cargill has a 155-year history of nourishing the world in a safe, responsible, and sustainable way, and our people will continue to carry out that essential work safely. For that, we're unfailingly grateful. Thank you, and I'm glad to respond to any questions.

**B. HANSEN:** Are there any questions from the committee? Seeing none, thank you very much.

**MICK MINES:** Thank you.

**B. HANSEN:** Is there anybody else wishing to testify in opposition? Welcome.

**SUZANN REYNOLDS:** Good afternoon, Mr. Chairperson and committee. My name is Suzann Reynolds, S-u-z-a-n-n R-e-y-n-o-l-d-s, and I'm here on behalf of Tyson Foods. Thank you for taking the opportunity today. Through my work in human resources with the company, both as a former complex human resource manager at our Lexington, Nebraska, facility, and now as the senior manager in the corporate office working with all of our beef production facilities, I am actively involved with Tyson's employee relations efforts. I have had a positive relationship with the former meatpacking industry Bill of Rights Coordinator, Mr. Santos, in addition to working with the current and helping coordinate her visits to our Nebraska beef facilities. The health and safety and well-being of our team members is our top priority. We take very seriously our role as an employer to a very large and a very diverse workforce. We offer team members a variety of avenues by which they may address any concern in our workplace. That's taught in orientation and reiterated constantly throughout their tenure. Our employment compliance department, our TellTysonFirst help line, and also our location human resources offices are just a few of those examples of ways that team members can come in and report issues. Our industry has historically attracted immigrants and refugees because we do offer good paying entry-level jobs with benefits. And at Tyson Foods, we are very proud of that diverse workforce and more than a third of our Nebraska team members are Hispanic. We also employ team members that speak over 26 languages. We employ interpreters. We use the language

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line for most of our team members so that they can comprehend the terms and conditions and responsibilities of their job. Of our seven facilities in Nebraska, two of which are unionized, we maintain good working relationships with those unions in creating a positive work environment and resolving any issues that may arise. At the other five facilities that don't have unions, the human resources through the various options I mentioned before, they use those options to resolve any and all issues. We believe that this direct line of communication is the best way to understand and resolve issues with our team members. This bill is further overreaching in its attempt to redefine a reportable injury under the applicable health and safety laws. Tyson follows the requirements related to reporting injuries and illnesses under state Workers' Comp and federal OSHA regulations. Meatpacking companies already provide electronic data interchange reporting of claims and payments, as well as a semi-annual subsequent reports on all open claims with additional information on payment activity. The proposed requirements in this bill is duplicative of reporting that is already provided to the state. As an employer of over 10,000 employees in the state of Nebraska, we'll continue to strive to create a safe and meaningful work environment for our team members while we continue to cooperate with the meat packing Bill of Rights Coordinator in her work. This legislation is overreaching. It is not necessary to create additional positions or steps that could interfere with or delay processes and laws that are already in place for the same purposes. This proposed legislation further singles out Nebraska meatpackers and holds them to different standards so that then employers in other industries with regard to and among other things, the relocation of employees health and safety rules, including the reporting of workers' comp information. That is all. Any questions?

**B. HANSEN:** Thank you. Are there any questions from the committee? Seeing none, thank you very much. Welcome back.

**RON SEDLACEK:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, here today with comments on behalf of the Nebraska Chamber of Commerce, as well as being authorized to enter testimony on behalf of Nebraskans for Workers' Compensation Equity and Fairness. With the State Chamber's part, our labor relations council did review the legislation and had a number of concerns expressed, particularly two major categories. One dealing with workers' compensation and then the court itself in the act, and secondly, with the coordinator role under the other act that was contained in the legislation. The concern in regard to the Work Comp Court would be the precedence of using the court and administrative offices to single out specific employers by

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primary NAICS codes. We acknowledge that there are circumstances where nonexempt employees in a number of industries do assume specific or unique workplace risks when they decide to take on the job. However, exempt employees likely, and generally in the same industries, such as the executive, the administrative, professional, sales and I.T. people generally do not. They generally have the same risk as in any office-type setting. We don't believe that law should begin to single out and target specific industries for separate treatment. And so it's a matter of precedence in that regard. Secondly, in regard to the other portion of the act, there's been concerns expressed in the interpretation of the interplays of Sections 3, 9 and 10 of the act. Not sure if they were really intentional, but it appears there are some issues in regard to the drafting of the legislation. Section 3, new Section 3 proposes that a Department of Labor employee can be involved in any employer complaint, any employee complaint. Now, I'm not sure that's the intent of the drafter. There could arguably be used to say that any particular grievance complaint issue that employee has, can take that to-- to the department or the department's representative. Now, couple that with the provisions of Section 9, proposed subsection 4, this is where an employer may not take any personnel action for an employee participating in their discussions with that particular Department of Labor employer-- employ-- employee or representative. So, for example, let's say you have a situation of embezzlement. You accu-- the employee is accused of it. The employee denies it. The employee takes that complaint to the department. The department gets involved in the investigation. The employer cannot, under the plain reading of the act, take any personnel action against the employee for participating. And now you have a situation where the employer cannot take disciplinary action. It can be that or another issue of gross misconduct, for example. But then you couple it with 10, which says the employer can neither face nor otherwise confront an accuser, since the name and identity of the accuser is to be held confidential by the Department of Labor representative. So the interplay of these sections, it seems to be a little bit heavy-handed and I don't know, and as I say, I'll give the benefit of the doubt, and I don't think that was the direct intent of the drafting, but it could certainly be interpreted that way. Also, there's concerns regarding Section 8 in the accompaniment of collective bargaining agent, let's say, or representatives, which is fine within-- with a coordinator. However, there is no clarification as to whether the employer may also be present at such-- at such encounters. Additionally, then there are public available reports that are being asked for that do affect competitive information, market information, information that distributors and retailers could also use. And so I

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think the committee should be very careful in looking at what types of reports are going to be made available to the public under the proposal. With that, I'll end my testimony and be happy to entertain any questions.

**B. HANSEN:** All right. Thank you. Is there any questions from the committee? All right.

**RON SEDLACEK:** Thank you.

**B. HANSEN:** Seeing none, thank you very much. Anybody else wishing to testify in opposition to LB871? OK. Seeing none, is there any that wish to testify in a neutral capacity? Welcome, Commissioner.

**JOHN ALBIN:** Thank you, Senator Hansen. Chairman Hansen and members of the Business and Labor Committee, for the record, my name is John Albin, J-o-h-n A-l-b-i-n, Commissioner of Labor. I appear here before you today as commissioner in a neutral capacity on LB871. As proposed, LB871 makes significant changes to the Non-English-Speaking Workers Protection Act. Currently, the Nebraska Department of Labor employs the Meatpacking Industry Workers Rank Coordinator. The teammate in this role spends approximately 45 percent of her time in this role, and her remaining time is spent on other labor standards programs such as Wage Payment and Collection Act, Child Labor and the Contractor Registration Act. In calendar year 2021, the coordinator conducted 61 meatpacking facility-- visits to meatpacking facilities, and of those visits, 52 facilities had more than 50 employees. Under LB871, NDOL would require to have this teammate be dedicated full-time to the coordinator role. NDOL will need to hire new labor law specialists to cover the shift and workload of the coordinator. LB871 also gives the coordinator authority to issue a citation to employers that interfere with their duties. NDOL does not anticipate a significant impact as the overwhelming majority of employers covered by this law already cooperate with the coordinator. Throughout the bill, LB871 amends requirements that apply to employers with 500 or more employees to 100 or more employees. Nebraska has 16 meatpacking facilities with 500 or more employees and 39 with 100 or more employees. As proposed, LB871 additionally makes changes to the current operation of the Non-English-Speaking Workers Protection Act. Right now, the definition of "actively recruit" is limited to employees that reside more than 500 miles from the place of employment. This change means any meatpacking facility with more than 100 employees will need a bilingual employee who is conversant in English and the non-English language for all languages that exceed more than 5 percent of the employer's workforce. Secondly, because of the broad definition of

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"actively recruit," NDOL anticipates a dramatic increase in the number of employers, regardless of size that will be required to file with the commissioner a written-- written statement for non-English-speaking employees, as outlined in Section 5 of the bill. LB871 expands the data elements required to be kept by the employer in the data NDOL receives from the Nebraska Workers' Compensation Court and the Occupational Safety and Health Administration. That concludes my testimony. I'd be happy to answer any questions.

**B. HANSEN:** Thank you. Are there any questions from the committee? Seeing none, thank you very much.

**JOHN ALBIN:** Thank you.

**B. HANSEN:** Anybody else wishing to testify in a neutral capacity?

**JILL SCHROEDER:** Members of the Business and Labor Committee, I'm Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r, and I'm the administrator of the Nebraska Workers' Compensation Court. I really come here today for two reasons. First, at the time we submitted our fiscal note, there were issues that needed to be further clarified and now we have-- we are comfortable that, as amended in the proposed amendment, we would be able to provide the data that is being requested without any impact upon our fiscal operations. So we did clarify that. The second point that I wanted to make for you today is that if we are going to be required to provide the data that is described in the amendment, it would be helpful if we had a list of the specific employers who fall within those industry codes, if we received that from the Department of Labor, because then we can doublecheck to make sure that the report we're giving is accurate. So for example, if we're using a NAICS Code of 311611, that's what gets submitted to us. That is animal slaughtering. But if it is one number off, if it's 311811, that's retail bakeries. So if we're only searching by NAICS Code, something could get missed. We would, if we're going to produce the data, appreciate having that double-checked by receiving a list of those employers. So with that, those are the comments that I have to make about LB871. Are there any questions?

**B. HANSEN:** Thank you. Are there any questions from the committee? Seeing none, thank you very much.

**JILL SCHROEDER:** Thank you.

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**B. HANSEN:** Anybody else wishing to testify in a neutral capacity? All right. Seeing none, we'll welcome Senator Hansen back up here to close.

**M. HANSEN:** Thank you, Chairman Hansen and members of the committee. Addressing kind of a couple of things. One, again, the overall point was these are two statutes that we've had on the books for many decades, most of my life, for some of them. And they're currently being done by, as we heard, a .45 FTE. And I think you've heard some of the proponents that additional scrutiny, additional oversight could be helpful so that's the goal with bumping up to a single full FTE. Notably rather, the fiscal note doesn't represent just going from .F--45 to 1. It instead increases an entire FTE, which I think kind of is the concession by the department that person might be overworked because I'm not asking them to do a full person's duties. I'm asking them to do half a person's duties, but they need a full person. In addition to some of the opposition, one about the duplicative information to Work Comp. It was our intent to kind of specify the same information, so it was duplicative. But my goal would be not to be duplicative to the employer because we're getting it from Work Comp, so if that's hopefully something we streamlined in the amendment, if we need technical changes on that, happy to look at it. Additionally, to the other propo-- opponents, I didn't necessarily fully, for example, from Cargill didn't see what their opposition was other than they feel like they provide good benefits and are a good employer. And the last thing I'll say is the Chamber, I was trying to follow their argument about those two sections interplaying. The provision they seem to have a problem with is kind of like an antiretaliation against whistleblowers. I don't think in any way, shape, or form that is intended or meant to cover up a crime. It's just the same way you can't cover up a crime by hiring an attorney and claiming everything's attorney privilege. You can't,-- if you're accused of embezzlement, you're accused of embezzlement and, you know, reporting grievance to the workplace industry doesn't prevent anything else from happening. It just prevents that particular conversation from being used against you. If they've got, you know, all the altered bank statements, everything else, they can use that to fire you just as easy as that. And if there's anything we could clarify there, I think that should be pretty streamlined. With that, happy to answer any questions.

**B. HANSEN:** Thank you. Are there any questions from the committee? There are none.

**M. HANSEN:** Thank you.

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**B. HANSEN:** Thank you very much. All right, and that will close our hearing for LB871. We'll keep moving here and move on to LB967, and welcome Senator Lathrop.

**LATHROP:** Good afternoon, Mr. Chairman and members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent Legislative District 12, which includes Ralston and parts of southwest Omaha. Today, I'm here to introduce a process bill. LB967 makes four changes regarding the administration of the Work Comp Court. One, it would allow the court to conduct any hearing or trial before the court telephonically or by video conference. Two, it would change the amount of time for filing a summons once the petition has been filed from 7 to 14 days. Three, it would change the time requirement for public notice of rules or regulations hearings from 30 to 14 days prior to the hearing. And finally, I would change the method by which notice of the rules and regulations-- regulation hearings is given to the official website of the court rather than a newspaper having general circulation in the state. After I get done with this introduction, the Court Administrator, Jill Schroeder, who you just heard from, will be up here to tell you why these things are necessary or appropriate or will help the court run more smoothly. I do want to talk just briefly about the video conferencing. I have two bills this year that deal with video conferencing, one for the Work Comp Court, this bill, and another one for the rest of the courts. And I can tell you that I've talked to lawyers on both sides. Some go, this is great, we need to do more of it. Then I hear from others. They go, oh my God, we can't do this; we need to be in person. I don't think we've sorted it out yet. Certainly, the Bar Association, I understand, is coming in opposition to my other bill that deals with how we run all the rest of the courts. My friends at the Bar Association and perhaps my friends over at the trial lawyers organization may be opposed. I think it's the beginning of an important conversation, however, and that is what we found during the pandemic is there is a lot of the court's business that can be done by video conferencing. We don't just have trials as lawyers, we have motions. We have different things that we put before the court that can be done by video conferencing, saving the court time and saving lawyers time driving down to the courthouse just to jump on Zoom and argue a motion, for example. Whether that extends to trials, whether-- if it does extend to trials, why that should-- whether that should include those circumstances where the parties agree to it or the court imposes it without the parties agreeing to it is part of what's going to be worked out as these bills are introduced and as we have more discussions and frankly, as we get people to actually step forward and tell us who they are and what their problems

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are with the bill. So with that, I'm happy to answer any questions. You will learn much more about the logic behind these four things from Ms. Schroeder who who can tell you sort of why that-- why it will make running the Work Comp Court more smooth.

**B. HANSEN:** Thank you. Are there any questions from the committee? All right, seeing none.

**LATHROP:** OK.

**B. HANSEN:** Thank you. We'll take our first testifier in support of LB967.

**JILL SCHROEDER:** Thank you, members of the Business and Labor Committee. I'm Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r, and I am the administrator of the Nebraska Workers' Compensation Court. The court does support LB967 because it makes three changes that would be beneficial to the court. I'm going to talk about them in a little different order than Senator Lathrop. I'm going to turn first to the timeframe and notice for our public hearings. The court establishes rules of procedure that apply to litigants in the court, as well as govern administrative processes within the court. Reducing the time for notice of the court's public hearing would give sufficient notice to the interested public, but also provide more flexibility to the court in holding its public hearings. In particular, judges approve updates to the medical fee schedule that are effective each January 1. The court relies upon data from Medicare in order to establish its fee schedule. We have no control over when Medicare releases the data so that we can update our fee schedule. Once we receive that data, we apply the methodology-- methodology that's contained within Section 48-121(b) and apply that methodology to the data, prepare a report and then our judges vote on it. It's difficult for us to adopt the rule changes effective January 1, because for the last two years, Medicare hasn't even released the data until December. So having a 30-day notice time frame makes it extremely difficult for us. LB967 would also modernize the method of notice for public hearings by permitting the court to publish notice on our website and the state public meetings calendar. In the context of the public that we serve and the methods available for those without Internet access to learn of our public hearings, we believe this is reasonable. Currently, we publish notice of our public hearings at cost in a newspaper and in the online. So a newspaper can be online version of the newspaper and then electronically or by regular mail to anyone who requests a copy of the proposed rule updates. We voluntarily use the following methods at no cost. We send a news item to people who've signed up for our court

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news emails. We post to our website. We have a copy of the proposed rule changes available for the public at each of our physical locations. We post to the workers' compensation section of the Nebraska State Bar Association online community and we post to the public hearings calendar on Nebraska.gov public meetings calendar. People who want to be informed about our hearings yet don't have Internet access may call the-- call the court, write to the court to request that they be notified, or they can stop by any of our offices to do so. The court strives to carefully protect the money entrusted to us by the insurers and self-insured employers who fund our operation. Over the past three years, we've conducted seven public hearings. A total of four people have shown up to either observe or testify at those hearings. All of them, each one of the four people, was an attorney who would arguably be connected to the community of work comp through the other ways that I've mentioned. On average, we've spent \$738 to publish notice of those hearings in a newspaper. Given the alternative methods available to give notice, publishing in a newspaper should no longer be required by our court. As for the summons issue, currently the time for someone to return summons to the clerk of the court, after receiving it when a petition is filed, is seven days. The U.S. Postal Service delays are causing issues for us, so our clerk of the court is getting calls from people saying my summons return date is to date-- today, I have just received the summons in the mail today. May I have additional time? So that is why we're requesting the extension from 7 to 14 days. And then turning very quickly to the question about video hearings, first, please remember that the Workers' Comp Court has statewide jurisdiction. The proposed changes to 48-177 will help ensure that employees' claims for benefits as well as employers' questions-- may I continue just briefly, thank you. So the proposed changes to Section 48-177 would help ensure that both employees' claims for benefits as well as employers' questions about the extent of their liability are addressed as promptly as possible by the court. Over the past two years of pandemic challenges, our court has been able to conduct hearings because of the option to do so virtually. LB967 supports the ability of our judges to exercise their discretion when determining when-- when determining when it is best to conduct a hearing or trial using virtual means. The proposed revisions to Section 48-177 would allow our judges to order video conferencing without the need for a stipulation between parties who are involved in litigation because they can't agree as to issues. The foundations of the public access to the courts and the desire to preserve an accurate record are already included in Section 48-177 and would remain unchanged if this bill were enacted. Does anybody have any questions?

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**B. HANSEN:** Thank you. Are there any questions from the committee? There are none. Thank you very much.

**JILL SCHROEDER:** Thank you very much.

**B. HANSEN:** And we will take our next testifier in support of LB967. All right. Seeing none, is there anybody that wish to testify in opposition to LB967? Welcome.

**DENNIS DeROSSETT:** Senator Hansen, how are you? Good afternoon, Chairman Hansen and members of the committee. My name is Dennis DeRossett, D-e-n-n-i-s D-e-R-o-s-s-e-t-t, and I'm the executive director of the Nebraska Press Association. We are the oldest trade association in the state of Nebraska, and we represent all daily and weekly newspapers in the state. I'm here to speak in opposition to LB967 because this bill changes the notice requirements for public hearings in the Workers' Comp Court. I would like to specify that our opposition is strictly for this portion of the bill. Currently notices of public hearing for this court are required to be published in a newspaper with general circulation in the state. State statutes clearly establish the legally recognized method of publishing notice by an independent third party, that being legal newspapers, in order to reach and inform the public. The court determines which newspaper it would use for publishing the notices. LB967 would change the notice requirements from being published by an independent third party and simply allow public notices to be posted on the court's website. While we applaud the court's efforts for all their transparency, this would also greatly restrict public access and awareness of the notices and of the information they contain. Limiting access and transparency is clearly not in the best interest of the citizens and the taxpayers. I'd like to specify, too, that public notice requirements require the publication notice, but they do not require any action on the part of the public receiving notice to respond by attending or-- or any other performance. It's just they need to be aware. According to the National Public Notice Resource Center, there's a long tradition going back centuries. They're-- there are four elements that might make a valid public notice. The notice must be published in an independent party. The publication must be archivable. The publication must be accessible and the publication must be verifiable. If any one of these elements is absent, the public notice loses and itself may be challenged. The current Nebraska publication requirements with those, all four of these elements are achieved. The independent third party aspect is very important. Allowing the courts or government entities to solely place their notices on their website removes an important element. In effect, it would be allowing tax-supported entities to

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be accountable only to themselves. That could lead quickly to questions of trustworthiness and integrity of notice in an unproven public notice process. The current method of notice by publication is a long-held and proven legal process. It's trustworthy and reliable, which allows the flow of information from the courts and the government to proceed without unnecessary interruption. I point this out because in case of an error with the printed notice, the subject or action in the notice, whether it's a meeting, a budget hearing, passage of an ordinance, even assessment of taxes, cannot continue until the error is corrected and the public is properly informed through a corrected published notice. Website only notices cannot fulfill the key elements of these notification requirements. The public must have confidence in that information in a public notice that was not altered in any way. Currently, a notarized affidavit is provided to the publisher or by the publisher for its notice, which demonstrates that a true copy was published and the exact wording was used. We talk about modernizing notices, and we agree with that. In fact, we recognize the digital era and printed circulation of newspapers has declined. However, readership has not. Newspapers have evolved their business model to embrace the Internet and digital world, giving readers their information on 24-7 cycle. Total audience of readership has increased because of their combined audiences. To further that audience and reach, newspapers now upload all public notices to an aggregated statewide public notice website, [www.nepublicnotices.com](http://www.nepublicnotices.com), which was developed and is maintained by Nebraska newspapers at no additional cost to government. The Nebraska Press Association now requires by its bylaws all of its members must upload notices from their print edition to this website. There is a bill in this session, LB840 by Senator Brewer, that would mandate by statute that all public notices after appearing in print be uploaded to this website. All public notices in Nebraska on a searchable website and that's good policy and service to the public. The key in the printed notice-- the key is the printed notice remains the basis for meeting the legal requirement, and the notice can only be uploaded after appearing in print. May I have 30 seconds, please?

**B. HANSEN:** Uh-huh. Yep.

**DENNIS DEROSSETT:** In summation, the change of notice requirement in LB967 would set bad policy. It reduces transparency and is not in the best interest of taxpayers. Since our opposition is in direct proportion to this aspect of the bill, we ask that it be removed and not included in any form in LB967 that might move out of this committee. Thank you for your time and I would welcome any questions you might have.

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**B. HANSEN:** Thank you. Are there any questions from the committee? Seeing none, thank you for testifying. I appreciate it.

**DENNIS DEROSSETT:** Thank you.

**B. HANSEN:** We'll take our next testifier in opposition. Welcome back.

**JON URBOM:** Thank you. Chairman Hansen, members of the committee, my name is Jon Urbom, J-o-n U-r-b-o-m. I'm testifying in opposition to LB967 as it is written on behalf of the Nebraska Association of Trial Attorneys. Our only concern with LB967 is that portion of the bill that allows the trials and hearings to be conducted telephonically or through a video conference, and that decision is left to the sole discretion of the trial court without any deference to the preference of the parties. The concern is that we could potentially end up in a similar situation, as we see in Social Security hearings, where the judge sits in an office in one location and hears the case by telephone or video without ever actually laying eyes on the claimant or the injured worker. In my experience trying workers' compensation cases, one of the biggest factors in determining whether an injured worker is awarded or denied benefits is the credibility of that injured worker's testimony at trial. I think an evaluation of that credibility is much more difficult if we are forced into a situation where the case has to be heard telephonically or through video conference, again without any deference to what the parties desire to do there. I do understand that the bill allows for the parties to agree to have the case heard in a different county than where the work accident occurred. For example, if a work accident occurred in North Platte, we could agree to have the case heard in Lincoln at the Nebraska Workers' Compensation Court here. But if we're stuck with a decision where our options are, we either have to video conference or do a telephonic hearing where I've got to tell my client who's got a severe lumbar spine injury and can't sit for longer than 30 minutes, that they've got to do a 6-hour round trip to have their trial, we're left with two bad options, in my opinion. In that sense, I think the bill has-- does have the potential to deny equal access to justice for injured workers who don't live in Lincoln or Omaha. If the language of the bill left the decision to have remote trials to the discretion or agreement of the parties, then we would have no issue with the bill. Thank you.

**B. HANSEN:** Thank you. Any questions from the committee? Seeing none, thank you.

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**DALLAS JONES:** Afternoon again, Senator Hansen, members of the committee. My name is Dallas Jones. I am appearing on behalf of Nebraskans for Workers' Compensation Fairness and Equity, as well as a lawyer practicing in the Workers' Compensation Court in opposition to at least one-- to only one portion of the bill today, LB967. And my name is spelled D-a-l-l-a-s J-o-n-e-s. I apologize for that. As Mr. Urbom just got done discussing, the primary concern, I think that most trial lawyers-- lawyers who try cases, let me put it that way, is with the video conferencing part of it. Senator Lathrop, I appreciate you raising the question and starting the conversation because the times require it. Haven't been able to come up in support of three parts of your bill, but I'll oppose the other. It might [INAUDIBLE] sense. So let me talk about the video conferencing piece. Mr. Urbom made the points generally that I think any lawyer who tries cases will make, and that is, it is great that we have the option to use technology when it serves the interests of the clients on both sides of the case. It is less than great when the parties don't control whether their-- or the lawyers don't control whether their clients' interests are being served. Somebody else does. Let me read to you, so you're not listening to my words, words that judges have used when they explain how important it is to them to actually have a chance to have human connection when you're in the same room, watching the other person that you're-- because you wear the robe, are asked to judge. I'll read a few snippets from a few cases. My written materials are providing more. But the court watched plaintiff intently throughout the proceedings, and she seemed more bored than in pain. In other words, the court did not find that she was in extreme pain or in any discomfort at all, contrary to her assertions. That one obviously swung towards the employer. Another case. The court observed the plaintiff walked to and from the witness stand with an awkward gait and using a cane. She sat in the witness chair, leaning on her right side and a bit forward and regularly changed her position. She was considered by the undersigned to be a believable witness. The fact that the judge in that case could see the employee in person tipped the scales in favor of the employee because of what he or she saw. In another case. The court watched plaintiff carefully during testimony and throughout the trial, and she did not appear to be in any visible discomfort and moved her arms and neck freely and without hesitation. Obviously, that one went the other way. But again, the point is, the judge wasn't watching a person or persons in the trial on a television screen with the opportunity to listen. See facial expressions, yes. Judges watch witnesses from both sides from beginning to end so that they can make judgments based upon as much of the human communication as they can extract from that interaction. When you put witnesses on a

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television screen and ask judges to assess the credibility of those witnesses, on both sides, you are limiting their ability to do justice, in my opinion. In closing, the system as it exists right now in the Workers' Compensation Court leaves to the parties to tell the court whether or not it believes justice can be done using technology which we all use and we use it frequently and we're grateful for that. But it also provides the parties to the system the ability to say, no, I don't think justice can be done if the witnesses are not there in person judged, so you can see them, and it should remain that way. If justice is the point of this exercise, then the question whether that's going to be met ought to be answered by those who are seeking it, not anyone else. Thank you. I'd be happy to entertain any questions.

**B. HANSEN:** Are there any questions from the committee? I got one question.

**DALLAS JONES:** Yes.

**B. HANSEN:** So, I know it says any hearing trial-- any hearing or trial before the Compensation Court may be conducted telephonically or video conferencing.

**DALLAS JONES:** Correct.

**B. HANSEN:** So what if they had something in there that said, any hearing or trial before the Compensation Court that was agreed to by both parties?

**DALLAS JONES:** That's essentially what it says right now. Now to distinguish the concern that I have, and I think most of the lawyers have is, it's when you have live testimony. There isn't a concern in the law presently allows a judge to say, ladies and gentlemen, lawyers in the case, we're going to hold this motion hearing telephonically or via Zoom a week from tomorrow, here's the call-in number, the link. That exists right now and that should continue. The concern is that, well, if we limit what you said to those proceedings where there is live testimony, those have to be by stipulation of the parties, that's the way it ought to remain. And that's essentially how it works right now.

**B. HANSEN:** OK, just curious. Thank you.

**DALLAS JONES:** Thank you.

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**B. HANSEN:** All right. Thank you for your testimony. We'll take our next testifier.

**ROBERT J. HALLSTROM:** Senator Hansen, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, appear before you today as registered lobbyist for the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness to testify in opposition to LB967. Since there's only so many ways to talk about the issues that the witnesses before me have addressed the committee, I won't take long. But I do echo the issues with regard to the video conferencing for any type of hearing that involves live witnesses for many of the reasons that Mr. Jones noted in his testimony. He's got a number of compelling court decisions or snippets from court decisions that highlight the importance of live witnesses and the ability of the courts to observe the demeanor and credibility of the witnesses in that context. I'd just close by saying I started out in an earlier hearing today suggesting that we needed to find a way to-- to get to the top equity group and add it together on a bill. This wasn't exactly the one that I had in mind since we both oppose it for the same reasons, but I would hope, in all seriousness, that maybe we can work on those other issues together as well. With that, I'd be happy to address any questions.

**B. HANSEN:** All right, thank you. Any questions from the committee?

**ROBERT J. HALLSTROM:** Thank you.

**B. HANSEN:** Thank you much. We will take our next testifier. Welcome.

**TIM HRUZA:** Afternoon, Mr. Chairman, members of the committee, my name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. I might be batting cleanup for the lawyers here. I do appear in opposition to the bill and I appreciate Senator Lathrop's willingness to have a conversation about this. I've been meeting with him, Ms. Schroeder, and then other representatives, I guess, in this area. Well, maybe for the last 12 months or so, we've been talking about virtual court hearings through the pandemic. One thing that-- I appear today in opposition to the bill. Senator Lathrop mentioned his component bill that deals with the trial courts right, the civil courts and the juvenile courts that's in Judiciary Committee. I appear today in opposition for the same reasons that the attorneys who are all members of our association have represented today. But also just to let you know, as I've been working with Senator Lathrop and others, that we have put together an ad hoc committee of attorneys from various practice areas within the Bar

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Association. That-- that ad hoc committee includes judges, representatives from the Workers' Compensation Court who have been invited to participate as well, and then representatives of the Supreme Court too. We're hoping over the next couple of weeks until that bill in Judiciary is heard, to hammer out some of the concerns and figure out if there is a more narrow way forward. Right now, both of the bills that Senator Lathrop has introduced apply-- or allow judges broad discretion even over a party's objection in-- in certain instances. We're hoping to maybe find a way to narrow the scope to allow more broad use of virtual hearings without a blanket right discretion to the judges or to allow parties to object. We think we have a good committee. It will be chaired by our chair-elect of the House of Delegates and our president-elect of the Nebraska State Bar Association, along with a number of attorneys. We start our Zoom meetings on that tomorrow and we will be working on finding a pathway forward for both of these bills. So thank you very much. I'm happy to answer any questions. And again, thank you to Senator Lathrop and to Ms. Schroeder for their work on this.

**B. HANSEN:** Are there any questions from the committee? Seeing none, thank you. Anybody else wishing to testify in opposition to LB967? All right, seeing none, is there anybody who wishes to testify in a neutral capacity? Seeing none, Senator Lathrop, you're welcome to close.

**LATHROP:** I was just thinking that I think I paid dues to two of those components. (LAUGHTER) For the first time, I had Hallstrom, Nebraskans for Work Comp Equity and Fairness, the trial lawyers and the bar all on the same side, that happens to be in opposition to my bill. As you can see, there are-- there-- I started this by saying there's four issues. I appreciate from hearing from the Press Association. The Work Comp Court has a little bit of an issue when it comes to this notice thing. And just so that you understand, when they talk about the fee schedule, it's not the lawyers, it's the doctors and hospitals. And some time ago, in my 12 years on this committee, we tied the-- what doctors and hospitals can earn or be compensated for in treating a injured worker to Medicare. And so the Work Comp Court, in order to come up with what we're going-- the fee schedule, what we're going to pay the doctors and the hospitals, they have to wait for Medicare to come out with their schedule because they're tied to it at some percentage of the Medicare reimbursement rate. And because they're issuing these things in December or sharing that information in December, and the Work Comp Court needs to come up with a fee schedule for the upcoming year in January, the window to get that all done has been shortened. And the-- the notice requirements both are intended to

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narrow that window to allow the Work Comp Court to get the fee schedule put together in a timely manner. It is one of those agencies that's sort of an administrative court. And-- and as a consequence, the number of people that are interested in what the rules are and the regulations are, the Workers' Compensation Court, are narrow. It's different than if we're changing the liquor laws that we want to-- or the zoning in your community where there is broad interest in that topic. Dallas Jones and Mr. Urbom can both find that stuff out if they want to know what the-- what the-- and the insurance companies. Everybody that-- that cares about what goes on in the Work Comp Court will be provided with adequate notice. And as it relates to the video conferencing, obviously we got some coming together to do. You know, I knew that there was going to be an issue both on this bill and the one I have in Judiciary Committee, but I can't get these people to stop working and tell me where the middle is, if there is a middle. And maybe it may be that there won't be a middle and the middle looks like if the parties agree and the court thinks it's a good idea, then it happens. But I got to-- I got to get them moving and dropping these two bills seems to have accomplished that. And so I'm happy to answer any questions. I do think there's portions of this that should move, and I'm happy to answer questions.

**B. HANSEN:** Are there any questions from the committee? Yes, Senator Halloran.

**HALLORAN:** Thank you, Chairman Hansen. Just curious, do you think there should be some legislated fee schedules for trial attorneys?

**LATHROP:** No, no.

**HALLORAN:** Just had to ask.

**LATHROP:** I knew you would ask. And actually-- actually, that's-- yeah, no. I don't want to go into a long-- long account of how these people can't pay as they go and how this works to keep the doors of the courthouse open.

**B. HANSEN:** Any other questions? All right, seeing none.

**LATHROP:** OK. Thank you.

**B. HANSEN:** Yep. And I'll just mention for the record, there was two letters in opposition, one from Korby Gilbertson from the American Property Casualty Insurance Association and Media of Nebraska, and Kristen Hassebrook representing the Nebraska Chamber of Commerce and Industry. That will end our hearing for LB967. And also for the

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record, I didn't mention on LB871 that there were some letters for the record as well, 22 in support of LB871 and one in opposition, so want to mention that. And now we're on to our final bill, LB1137, and we welcome Senator Hunt to open.

**HUNT:** Hello, colleagues. My name is Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 and the north part of midtown Omaha. And I'm intro-- I'm introducing LB1137 to kind of build upon and give an update to the proposal from 2020 that we passed on name, image, and likeness stuff for Nebraska college athletes that was known as the Nebraska Fair Pay to Play Act. And this fall, I was approached by both the University of Nebraska system and Creighton University about making updates to the Fair Pay to Play Act, which was LB962 in 2020, and both institutions really wanted to update the framework that allows students to participate in the name, image, and likeness arena in Nebraska. And as this committee might remember, LB962, the original bill, was the product of multiple discussions with various stakeholders, and we passed that in January 2020. So after that point, the NCAA issued some different guidance around the name, image, and likeness rules for college athletes. Other states have done things. We've seen how it works in practice, and Creighton and the University of Nebraska came to me with some ideas about how to improve it for Nebraska. And our discussions kind of helped us to, to put together like a consensus proposal in LB1137 that accomplishes four main updates to the original framework. A lot of negotiation, a lot of meetings went into LB1137 over the interim; and I think it's important that we update the name, image, and likeness framework that we have in Nebraska to work for all the institutions that we have here. So first, LB1137 changes the name of the act from the Nebraska Fair Pay to Play Act to the Nebraska Student-Athlete Name, Image, or Likeness Rights Act. And that's fine with me. I think that that better reflects the scope and the purpose of the law of allowing students to monetize their name, image, and likeness and make money off of their reputation and their own work, and not to imply that our colleges are paying them or something like that. So it's a good idea to change the name. Second, the legislation clarifies that compensation provided to student athletes has to be for work that they actually did while they were in an athletic program. So it can't be later or before. It has to be for work that they actually did as a student athlete. Just to clarify that. Third, LB1137 provides discretion to postsecondary institutions to protect their trademarks, logos, and brands from any name, image, and likeness contracts or agreements signed by the student athlete. And it also gives them the right to prohibit any name, image, and likeness contract that would reasonably be deemed to

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be inconsistent with the educational mission of the institution, and that discretion would be given to the institution. And finally, this legislation builds on my focus from the original bill and specifically outlines various educational supports and programs that might be provided to student athletes by their postsecondary institution to assist them in understanding the name, image, and likeness landscape and opportunities that are available to them as, as entrepreneurs. So the colleges just want the ability to make sure that some education comes along with this, and that was a big conversation in the original bill as well. The name, image, and likeness issue has been worked on in pretty much every state in the country over the past few years, and that's after the initial bills were passed first in California, then Florida, and then Nebraska. We were the third to do it, and we would have been the second to do it if we hadn't had to go out of session for COVID. I have really appreciated the work of the University of Nebraska-Lincoln in announcing groundbreaking name, image, and likeness programs for their student athletes last June to help ensure that our state was both proactive and responsible in entering this arena of collegiate athletics. LB1137 is a product of a pragmatic approach to providing student athletes the right to monetize their own work and their own reputation, their own name, image, and likeness, and also to incorporate the best practices for that that we've learned from our state and from other states over the past six months. Coming up behind me, there are testifiers from both the University of Nebraska and from Creighton to give their perspective about why we need to move quickly to move LB1137 to guide our student athletes and their postsecondary institutions in this really fast-changing world of name, image, and likeness in student athletics. And I would be happy to take any questions you have.

**B. HANSEN:** Thank you. Are there any questions from the committee? I just have one quick one. Why change-- why add "or agreement" on page 5?

**HUNT:** We talked about that.

**B. HANSEN:** Is it like a, like a handshake-type thing or is it--

**HUNT:** You know, we talked about that. I'll leave that to the-- one of the attorneys from the university because I had the same question and they explained it to me and I was like, OK, after they explained it to me. But you know, I'm not an attorney, and that's why we work, work on them-- work with them on things like this. But I, I agree with that question and--

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**B. HANSEN:** OK.

**HUNT:** --I was convinced that it's a good idea.

**B. HANSEN:** All right. They're shaking their heads back there yes, so we'll see.

**HUNT:** Yes. OK.

**B. HANSEN:** All right, thank you. All right.

**HUNT:** But I asked the same thing, so.

**B. HANSEN:** All right, cool. Thank you. All right.

**HUNT:** Thank you.

**B. HANSEN:** All right, we'll take our first testifier in support of LB1137.

**JAMIE VAUGHN:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Jamie Vaughn. It's spelled J-a-m-i-e V as in Victor -a-u-g-h-n. I serve as the executive associate athletic director for compliance at the University of Nebraska-Lincoln. On behalf of the University of Nebraska system, our four campuses, and more than 50,000 students, I'm here today in support of LB1137. I want to thank Senator Hunt for continuing to engage the university on this important issue for our student athletes. In 2019, the passage of California Senate Bill 206 opened the door for collegiate student athletes to profit from the commercial use of their own name, image, and likeness. In 2020, LB962 was adopted in the state of Nebraska and provided student athletes the opportunity to monetize their name, image, and likeness while allowing postsecondary institutions to preserve their marks, ensure compliance, and protect their educational missions. However, it was not until July 1 of 2021 that the NCAA rules changed to permit the student athletes at the University of Nebraska and our peer institutions to participate in these types of activities. Today, I am before you not only to express my support for LB1137, but to explain why the changes from the original bill are important for both the student athletes and the university. First, changing the name of the original bill from the Fair Pay to Play Act to the Student-Athlete Name, Image, or Likeness Rights Act allows the legislation to better reflect the purpose and scope of the rights being granted to the student athletes through this bill and recent NCAA rule changes. Second, student athletes have been permitted to be employed while participating in their collegiate sport

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for decades. However, their ability to maximize employment opportunities and earnings potential was limited by strict NCAA rules, particularly as it relates to the use of their name, image, and likeness or NIL. This bill and its predecessor provide more opportunity for student athletes in the state of Nebraska and align well with the rules the University of Nebraska and other postsecondary institutions are required to follow. Adding language to require compensation for NIL activities to be for third-party services actually performed while a student athlete is a participant in an athletic program aligns with NCAA rules and legitimizes the employer-employee relationship. It also allows the third-party business and the student athlete to mutually benefit from the arrangement. Another important provision to this bill is the additional language regarding the preservation of trademarks, logos, and the university's overall brand. Much like LB962, this bill creates a framework to allow universities to move forward with protecting their intellectual property without compromising their core values. It also provides the flexibility needed for universities and their athletic departments to create fair and reasonable policies that are easy to understand without creating strict limitations on a student athlete's ability to pursue legitimate business opportunities. Lastly, LB1137 also revises the description of the educational support that may be provided to student athletes by universities to aid them in understanding the business and NIL opportunities available to them. In February 2020, my colleague Garrett Klassy stood before many of you and detailed the ways in which we support our student athletes at the University of Nebraska-Lincoln. Two of those ways are through nationally recognized services in the areas of academic support and life skills programming. This revision in the bill aligns well with the support we have historically provided at UNL and the additional programming and educational opportunities we have created in response to NIL legislation. While I cannot speak directly to what our peers are doing on their campuses, student athletes at UNL now receive additional education about many topics including, but not limited to, personal strength assessment, personal brand building, interpersonal communication skills-- may I have just a, a few-- another minute--

**B. HANSEN:** Yeah, you can take it.

**JAMIE VAUGHN:** --networking strategies, financial literacy, and compliance. In addition, we are currently working with multiple stakeholders on our campus to provide additional education about income tax preparation. The business college has also provided educational resources to the student athletes in the form of guest speakers and to the entire student body through the addition of

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multiple course offerings applicable to name, image, and likeness topics. In closing, I would be remiss if I did not further address the importance of compliance with regard to this issue. As I stated in my opening comments, my title is executive associate athletic director for compliance. First and foremost, one of my primary responsibilities is to look out for the best interest of our student athletes, as well as the university athletic department and our coaches and staff. It is my belief that LB1137 provides the necessary framework to allow institutions and student athletes to mutually support each other without compromising the importance of rules compliance or other matters of integrity. Thank you for your time and the opportunity to speak. Are there any questions?

**B. HANSEN:** Thank you. Are there any questions from the committee? Yes, Senator Blood.

**BLOOD:** Thank you, Chairman Hansen. Thank you for coming today.

**JAMIE VAUGHN:** Yes, ma'am.

**BLOOD:** I just have a real quick question and it's more one of clarification based on what you said.

**JAMIE VAUGHN:** Yes.

**BLOOD:** So, so it is my assumption based on what you said, that these students also have the ability to have under state statute the right of publicity and then the right to copyright when it comes to their-- the photographers who take their pictures as they utilize their images to generate income. Is that correct?

**JAMIE VAUGHN:** Yeah, so this, this provides the opportunity for student athletes, whether it's their name, an image of them like a photograph.

**BLOOD:** That the right to publicity would, would protect somebody from using their image without their permission.

**JAMIE VAUGHN:** Correct.

**BLOOD:** OK. So I just want make sure they're protected. That's my main concern.

**JAMIE VAUGHN:** Yes. And that's one of the reasons that we support this is that it provides a framework to help protect young people that are involved in this new venture while also protecting the university.

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**BLOOD:** Thank you.

**JAMIE VAUGHN:** Yes.

**B. HANSEN:** Any other questions from the committee? Can I ask you that question now?

**JAMIE VAUGHN:** Yes.

**B. HANSEN:** Why do we have-- why, why did you add agreement to it instead of contract?

**JAMIE VAUGHN:** Actually, I think our colleagues at Creighton are going to--

**B. HANSEN:** I got to pick the right one, so.

**JAMIE VAUGHN:** Yeah, Creighton, Creighton can speak to that.

**B. HANSEN:** You're wearing the crimson tie so I thought that's the person I was supposed to ask so. All right.

**JAMIE VAUGHN:** Yeah, you know, Creighton, I think wanted that word in there.

**B. HANSEN:** All right, thank you. Thank you for your testimony.

**JAMIE VAUGHN:** Thank you.

**B. HANSEN:** And we'll take our next testifier in support. Welcome.

**KYLE WATERSTONE:** Hi there. Thank you for having me. Chairman Hansen and members of the Business and Labor Committee, good afternoon. My name is Kyle Waterstone, K-y-l-e W-a-t-e-r-s-t-o-n-e, and I'm the associate athletic director at the university-- at Creighton University with oversight and implementation of name, image, and likeness or for ease of this conversation, NIL. And I'm here today in support of LB1137. At Creighton, we have approximately 300 student athletes participating in 14 different NCAA sponsored sport programs, many of whom have benefited greatly from the passage of LB962 and the monetary impact of commercial NIL activities over the last seven months. On July 1, 2021, Creighton announced compliance with LB962. We implemented a NIL policy and associated programming for all of our Creighton student athletes. I personally serve as Creighton's official disclosure designee, a liaison to several third-party vendors who assist us in our programming and regularly provide education to

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student athletes, coaches, staff, donors, and the general public on issues related to NIL. Since July 1 of 2021, NIL and its impact on college athletics has become a significant portion of my job, as many others like me who are charged with managing this process. LB962 was a great start for student athletes in our state and it well-positioned us for success in this new era of college athletics. However, after living with the statute for the past seven months, it has become apparent to practitioners like myself that additional clarity was needed. LB1137 achieves that goal. Specifically, it renames the statute to more appropriately represent its intent. This will answer your question, Chairman Hansen, it expands the language to include agreements for NIL activities that do not necessarily have a contract. Many young people think that if it didn't involve an actual written contract, that they did not have to fall under the requirements of the, of the previous bill. As an 18- to 22-year-old, they sometimes felt that if I just do a deal with somebody on Twitter that that wasn't necessarily a real agreement. So we're trying to expand it so that they understand this is all forms of agreements, not just written contracts.

**B. HANSEN:** OK.

**KYLE WATERSTONE:** It aligns with rule interpretations that have been provided by the NCAA since the onset of the NIL era, and it allows for institutions to adequately set policy that govern aspects of NIL that were not contemplated by the statute originally. With that, I respectfully request your support of LB1137 and I'm here to take any questions if you have any.

**B. HANSEN:** Are there any questions from the committee? I got maybe-- I got one more question.

**KYLE WATERSTONE:** Sure.

**B. HANSEN:** I could have asked the previous testifier, too. So for my understanding on section (8), on page 4, they talk about-- it does not grant them the right to use the name, trademark, service logo of the organization-- postsecondary institution that they're part of?

**KYLE WATERSTONE:** That's correct.

**B. HANSEN:** What happens if the student breaks that?

**KYLE WATERSTONE:** It's a good question. Part of that was for us wanting to be able to, outside the scope of this statute, establish an institutional policy as to what that would be, whether that's a cease

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and desist letter, if it's education for those individuals, if it's, you know, we have to reach out to the third party. But, yeah, it's tough for us because we're trying to uphold our IP rights while also giving them the education and the tools necessary to maximize their personal NIL. It's a challenge for us, but our hope is that our institutional policies will cover that space.

**B. HANSEN:** OK. And I think you kind of mentioned Twitter and being on-- online as well, and sometimes you can have a profile then that might have--

**KYLE WATERSTONE:** Exactly right.

**B. HANSEN:** --the logo or they might have, like, pictures that somebody can look at that might show [INAUDIBLE], that's kind of a gray area.

**KYLE WATERSTONE:** Correct. And, and, and working with UNL, one of the things we talked about was rather than explicitly have that outlined in the statute, we felt that there are certain circumstances where it could be for a reason that we would want our logo attached. They could be promoting something that we're also in support of or that it's a charity or if it's a goodwill. So we wanted the ability to allow that under a preapproval process or something like that if your policy would allow for such a thing.

**B. HANSEN:** OK. And so just for clarification, so then when a student gets involved in a contract, they have to run it by--

**KYLE WATERSTONE:** Yes.

**B. HANSEN:** --you first, and then you approve it, and then they move on with it?

**KYLE WATERSTONE:** If they're going to try to use our IP rights. If they don't have to use our IP rights,--

**B. HANSEN:** Got you.

**KYLE WATERSTONE:** --the disclosure mechanism, again, that's something that we talked about a lot with UNL, we didn't want to put in there specific parameters. We wanted the institution to be able to determine when we want those disclosures to take place, whether that be before a deal is made or after or a certain time frame. But unless our IP rights are being used, there is no approval. They can go ahead and have those agreements.

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**B. HANSEN:** OK, thank you. Appreciate it. Any other questions? Seeing none, thank you very much. Is there anybody else wishing to testify in favor of LB1137? Is anybody wishing to testify in opposition? Anybody in neutral capacity? All right, seeing none, Senator Hunt, you're welcome to close.

**HUNT:** Thanks, everybody. Yeah, that's right, with the-- that part about the agreement. You know, sometimes-- in, in my day, I used to be a professional blogger, actually, like, 20 years ago when that started and I would get offers to, you know, we'll pay you this if you write a post about this or if you review this, you know, thing, we'll pay you that. And that's now, like, a very normal part of the economy. And part of the reason I wanted to do this bill in the first place was not because I'm like the biggest Husker fan or because I love sports or something. Like, that's the last thing about me. No offense, I love the Huskers, of course. But I'm really an entrepreneur, and I wanted to make sure that these kids in college have the same opportunity to explore, you know, the entrepreneurial opportunities that they had as athletes because they obviously have experience and skills that are valuable to people and that have value in our marketplace. But they were barred at that time from being able to explore those. And I know that's why many of you ended up being supportive of the bill. So, yeah, I know, I know that it would be very likely that a student athlete would get just a message on Instagram or something and say, you know, can you do a post about our juice brand and we'll Venmo you money or something. Like, this is just an extremely normal thing to happen. And I don't think that would be considered, like, a formal contract or something. So-- but what is great about LB1137 and the original bill is that all the parameters of those agreements are kind of up to the university and the institutions. So this bill gives them even a little bit more latitude to tailor the policy to what works for their institution. To address your question quickly, Senator Blood, I wouldn't call this like a right to publicity or something like that. You know, if, if a student has their photo published, they don't have the right to that photo. It just means that they're able to enter contracts and make agreements to promote themselves on their own terms. So that's all I've got. Happy to answer questions.

**B. HANSEN:** All right. Are there any questions from the committee? All right, seeing none--

**HUNT:** Thank you.

**B. HANSEN:** --before I forget again, I believe there were no letters for the record, so.

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**LATHROP:** Have we got a notice in for the next hearing?

**BENSON WALLACE:** The next two are in.

**B. HANSEN:** Yes. Yep. Yeah, we do. And that'll close the hearing for LB1137 and for the hearing for today.