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Health and Human Services Committee January 21, 2022  
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**ARCH:** Well, good afternoon, welcome to the Health and Human Services Committee. My name is John Arch. I represent the 14th Legislative District in Sarpy County and I serve as Chair of the HHS Committee. I'd like to invite the members of the committee to introduce themselves, starting on my, on my right with Senator Murman.

**MURMAN:** Hello, I'm Senator Dave Murman from District 38, and I represent most of eight counties along the Kansas border in the middle part of Nebraska.

**WILLIAMS:** Matt Williams from Gothenburg, Legislative District 36.

**B. HANSEN:** Ben Hansen, District 16, which is Washington, Burt, Cuming, and now parts of Stanton County.

**ARCH:** Also assisting the committee is one of our legal counsels, T.J. O'Neill; our committee clerk, Geri Williams; and our committee pages, Aleks and Savana. A few notes about our policies and procedures. First, please turn off or silence your cell phones. This afternoon, we'll be hearing four bills. We'll be taking them in the order listed on the agenda outside the room. 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 from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. For those of you who are planning to testify, you will find green testifier sheets on the table near the entrance of the hearing room. Please fill one out and hand it to one of the pages when you come up to testify. This will help us keep an accurate record of the hearing. 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. We use a light system for testifying. Each testifier will have five minutes to testify. When you begin, the light will be green. When the light turns yellow, that means you have one minute left. That's kind of like the traffic light, isn't it? You speed up at that point. When the light turns red, it is time to end your testimony. We will ask you to wrap up for your final thoughts. If you wish to appear on the committee statement as having a position on one of the bills before us today, you must testify. If you simply want to be part of the official record of the hearing, you may submit written comments for the record online via the Chamber Viewer page for each bill. Those comments must be submitted prior to noon on the workday before the hearing in order to be included in the official

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record. However, there is a sign-in sheet at the entrance where you may leave your name and position on the bills before us today. With that, we will begin today's hearing with LB704. Welcome, Senator Williams.

**WILLIAMS:** Good afternoon, Chairman Arch and members of the committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I'm from Gothenburg representing Legislative District 36. And it's Friday and this is the bill you've all been dying to hear.

**ARCH:** He's been dying to say that.

**WILLIAMS:** I've worked on that for a week getting ready to, to say that. This is actually a, a serious bill for a very serious industry. The funeral industry is struggling with some workforce shortages, as are many other businesses in our state and across the country. The number of funeral directors is not likely to be replaced in the foreseeable future, creating the need to not only maintain the current level of participation in the industry, but to also grow the number of new participants entering the field. Try to explain this in a, in a simple way. LB704 is designed to deal with the workforce shortage through changes in the postsecondary higher education requirements for funeral directors. Right now, a licensed funeral director and embalmer has a number of things that they have to do to be licensed. First of all, they have to complete a course of study at an accredited school of mortuary science. They have to complete a 12-month apprenticeship and then they have to pass a national licensing exam. But in addition to that, current law requires them to complete 60 credit hours of postsecondary education. This bill would lower that 60 hours to 40 hours, and those 40 hours must include 6 hours of English, 12 hours of business, 4 hours of chemistry, 12 hours of a biological science related to the human body, and 6 hours of psychology or consulting or counseling. Excuse me. Again, the bill does not change the requirement that candidates must successfully complete the course of study at an accredited school of mortuary science, as well as engage in a successful completed 12-month apprenticeship program. Nor does the bill change the licensing requirements that candidates pass the national standardized exam for funeral directors. There is also one other substantive change. Currently, Nebraska statute 71-609 requires that funeral directors support all casket-- or, excuse me, report all casket sales to the state of Nebraska. Through work of the Funeral Directors Association that they have done with the state of Nebraska, it has been determined that there is no longer any need for this reporting requirement. Therefore, LB704 simply removes this

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requirement from the statute by outright repealing Section 71-609. Along with these proposed changes and updates, LB704 harmonizes the changes with other governing position-- provisions within Nebraska statutes. Funeral directors provide a critical public service. Funeral directors have close bonds with people in the community they serve. However, these important relationships are becoming strained and harder to maintain as young people look at many different options available to them as they, as they explore career opportunities. LB704 is an attempt to creatively deal with a growing workforce shortage in the funeral industry by making these small adjustments that will hopefully provide incentives for people to enter the field and maintain important local bonds. I would draw your attention to the letter, which we received from Dr. Anthone at Department of Health and Human Services, where they support these changes that are laid out in LB704. With that, there are people behind me that will be able to answer some specific questions. But if you have questions at this point, I'd be happy to try to address them.

**ARCH:** Any questions for Senator Williams? Seeing none, thank you.  
First proponent for LB704.

**WILLIAM LAUBER:** Good afternoon, Chairman, Senators of the committee, my name is William Lauber, L-a-u-b-e-r. I'm the legislative chairman for the Nebraska Funeral Directors Association and this will mark my 30th year as owner and operator of funeral homes and a crematory here in Nebraska. LB74-- LB704 is basically a housekeeping bill that's designed to clean up outdated statutes relating to our profession's educational requirements, much of which hasn't changed since the 1940s and 1950s. Mortuary schools around the country have focused on today's students, and many offering associate degree only programs. LB704's proposed changes to our prerequisite college courses required to enter mortuary schools addresses these needs. Over the years, we have found that many students wishing to practice funeral directing in our state are satisfied with an associate degree. Again, LB704 reflects this approach. On the other hand, licensed funeral directors who hold a bachelor's degree, like myself, have found holding a bachelor's degree gave us the benefits we needed to own and manage our day-to-day business. LB704 does not inhibit those who want to take this path. In fact, we suggest that they do take the bachelor's degree path. There are mortuary schools that offer bachelor's degree programs, but what we've found is, is that most of the mortuary schools throughout the United States, there's about 30 of them, offer mostly associate degree programs. Another reason for introducing LB704 is to address our growing labor shortage as Senator Williams has mentioned in the

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funeral profession. Our occupation, among others, are faced with labor market trends that are becoming alarming. Although our profession may not be hit as hard as, say, the leisure or healthcare profession, it is nonetheless an issue that we're finding to be very difficult to replace positions. I'm not sure if you know this, but there are very few people in the world who want to grow up and become a funeral director. Caring for our dead and serving the living 24 hours a day, 7 days a week, 365 days a year is abrasive and is, and is obviously not for everyone. And we get it. Living in this pandemic also is indirectly affecting our ability to recruit. Turnover is another cause for our labor shortage in our profession. Many baby boomers are beginning to retire and the supply is not keeping up with the demand. Both urban and rural owners are affected by our labor shortage. LB704, on its own, of course, will not serve-- not solve the labor shortage. But our intent is to hopefully, number one, update its provisions into our modern workplace and, two, reflect today's mortuary school enrollment standards without watering down our license. That is very important to us, important to the families we serve, and important for our public's-- public health safety by taking care of those who have died. I urge you to consider this testimony this afternoon. Try to get it out of committee and get it to the consent calendar for a vote on the floor. I open it up for any questions you may have.

**ARCH:** Thank you. Are there questions?

**WILLIAM LAUBER:** Chairman, I do have one thing, I do have if anyone asks or wants to know information, I got educational requirements for all 50 states regarding our funeral profession if you need to look into it.

**ARCH:** OK, thank you. Seeing no questions, thank you very much for your testimony.

**WILLIAM LAUBER:** Thank you.

**ARCH:** Next proponent for LB704.

**STEVE BRUNKEN:** I guess that would be me. Mr. Chairman, my name is Steve Brunken, S-t-e-v-e, and the last name is B-r-u-n-k-e-n. I've been a licensed funeral director and embalmer for over 40 years now. I also had the pleasure to serve as president of the Nebraska Funeral Directors Association in 2005. And I'm the current board member and chair of the Board of Examiners for the funeral directors and embalming for the state of Nebraska. I am the executive director and

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general manager of Forest Lawn Funeral Home and Cemetery in Omaha. Today I come here, though, as a hiring funeral director in full support of LB704. As Bill mentioned previously, there is now and has been a shortage of funeral directors in the state. Oftentimes we look for students right out of school and or we go to other neighboring states to see if we can recruit people to come into the state to help us with our shortages. And one of the things that we often find, especially with funeral directors from neighboring states, is that they don't have the chemistry requirements, they don't have the accounting requirements. They might have some, some college already done. But it's the specific classes of chemistry and accounting that create issues for them. I have two apprentices that are working for me right now, and they both have to make up accounting classes and chemistry. The-- most of the directors in the state will, will share with you that I have been and always will be a firm believer in the education requirements that we need. However, the times and the skills to be the funeral director have changed, the chemistry requirements date back to when funeral directors made their own embalming fluids. Bill mentioned the 1940s in the '50s. Back then, it was common practice for the funeral directors to make their own fluids. I started in the '70s, and at that time that had already been discontinued, but yet the chemistry requirements are still on the books as a requirement for us. I do support the basic four hours because we do have chemicals that we work with on a daily basis, and a basic knowledge of chemicals is a safe knowledge of the chemicals. And as far as the accounting classes, again, a basic understanding is all that is needed because we all have QuickBooks or CPAs to do our books. I do agree that general business is important, especially contract law and business management. I, I will continue to support the requirements for the mortuary college requirement and then also for the current apprenticeship program of 12 months. When it comes to the casket sales report, with today's online reports with the state, this is just duplicate busy work that funeral directors have to do at the end of every month. It isn't, it isn't needed anymore, but it's still on the books that we have, have to do it. What a lot of Nebraskans don't realize or don't know that most of the funeral homes in the state, especially west of Highway 81, York, are single-licensed, mom-and-pop businesses. Many of these directors have grown their businesses with the hopes of one day selling to a family member or a younger director wanting to take over for them. The sale is intended to be their retirement, but without new, younger directors coming into the business, many of these owners will be working much longer, and I fear some due to age and/or health might have to close their doors, which

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would be devastating to their communities. If you can imagine western Nebraska, somebody having to drive 200 miles to make funeral arrangements, that's very burdensome, especially under those situations. And finally, one of my favorite sayings is that, "If you always do what you've always done, you'll always get what you've always got." Today what we've always done is not working, and I encourage you to support this bill. Thank you.

**ARCH:** Thank you.

**STEVE BRUNKEN:** Any questions?

**ARCH:** Are there any questions? Senator Hansen.

**B. HANSEN:** Thank you, Mr. Chairman. Is 12 months apprenticeship pretty typical?

**STEVE BRUNKEN:** Yes.

**B. HANSEN:** OK.

**STEVE BRUNKEN:** Some states are 24. Some states, Bill handed them out to you, don't have any college requirements. Texas, Missouri, you can graduate high school, go to mortuary school, get your license. But they still have the apprenticeship program.

**B. HANSEN:** OK.

**STEVE BRUNKEN:** In my opinion, and this is only my opinion, I believe that needs to be changed. I think what we need to look at is a minimum of maybe 3 months, a maximum of 12 months to get all your work done. But within that timeframe, I believe it's important that you have so many cases of embalming that you've done, so many funerals that you have worked and arranged, etcetera. Once you get those numbers in, that's basically what you're doing for your apprenticeship is getting the numbers in for the state. I think once you've accomplished that, that would be a good time to come and appear before the board and take your final license, you're on the, on the jurisprudence exam and everything else like that.

**B. HANSEN:** Because that's kind of what I was wondering is I know your apprentice at one place that might see a whole bunch of--

**STEVE BRUNKEN:** Absolutely.

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**B. HANSEN:** --cases.

**STEVE BRUNKEN:** Absolutely.

**B. HANSEN:** And, and then no one not, not see hardly any or, you know, it might be varied so is education different, so I was just wondering about some.

**STEVE BRUNKEN:** That's, that's very correct. Some, some situations you can have right now, it's 25 cases, you can have those done in 2 months. You go out western Nebraska or northeast Nebraska, it could take you the full 12 months. But I will share with you that a lot of those directors will go to Omaha or Lincoln to get all of that experience and then go home after they've got their 12 months and there are 25 cases done. And I share one other thing with you, when I, when I entered mortuary school in August of 1976, the dean of the college came in and on the first day said that ten years from now, only 10 percent of you that graduate will still be in the business. I graduated with, started with 140, graduated 89. Of those nine that are in the business, allegedly, I know of at least three that have passed away. So we're down to six from my graduating class that are still in the business. The challenge is for the small towns, western Nebraska, and up north. If they don't have family members that want to get into the business, there's got to be something to attract somebody to go to those communities to take over the business and, and replace those directors. There could be-- I've, I've been looking for over a year right now for a fully licensed funeral director, and I've been fortunate to hire two apprentices, but it's a challenge.

**B. HANSEN:** Thank you.

**STEVE BRUNKEN:** Thank you.

**ARCH:** Thank you. Any other questions? Seeing none, thank you very much for your testimony.

**STEVE BRUNKEN:** Thank you.

**ARCH:** Next proponent for LB704.

**MICHAEL BUTLER:** My name is Michael G. Butler, M-i-c-h-a-e-l B-u-t-l-e-r. Chairman, Senators on the committee, good afternoon. I have been in funeral service since 1972 as an owner/operator of funeral homes and a crematory. LB704 will take care of some needed changes to our profession's educational requirements if it is passed.

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But these needed changes will not take care of the urgent need for more funeral directors right now. With the changes in the last ten years in funeral service preferences, mainly cremation and the national death rate going up, we are extremely short of funeral directors. However, there is an opportunity now with LB704 for you to consider an amendment to help alleviate the shortage of funeral directors. This is not the first time that Nebraska has helped alleviate the shortage of funeral directors. This was implemented after the war, World War II years. I am proposing that there be an assistant funeral director's license, which would take care of present and future needs. The term assistant funeral director means a person who assists a duly Nebraska licensed funeral director in one or more of the principal functions of funeral directing and is actively engaged in such work. An assisted funeral director must be an employee of the funeral director under whom which the employee is registered and shall be a person to whom the funeral director delegates the responsibility of conducting funeral services and making interments. The requirements shall be the applicant has earned the equivalent of 40 semester hours, the same as what is proposed in LB704 and pass the Nebraska funeral director and examining-- or embalming jurisprudence exam. I have personally been approached by many people in Hastings, Nebraska, which is west of 81, looking for second careers or wanting to work in retirement. They are truly interested in helping people this time of need. They would be qualified but do not want to go back to college to get licensed. Thank you for allowing me to speak on LB704. If you have any questions, which I may have brought up, I'm willing to answer.

**ARCH:** Thank you. Are there questions? Seeing, seeing-- oh, Senator Murman.

**MURMAN:** Yeah, thanks for coming in and testify. The, the assistant funeral director position is not part of the bill right now, is that correct?

**MICHAEL BUTLER:** That's what I understand.

**MURMAN:** It sounds like it's something that's worth pursuing with an amendment or something in the future possibly.

**MICHAEL BUTLER:** I believe it is, and a lot of other funeral directors are, too. We're not in need of a lot of embalmers right now. We will need them eventually. But what we're short of is funeral directors that can meet with families. I don't know if you've all experienced a



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death or not and been in the arrangements conference. There are people qualified that can do that that have degrees, but don't want to go back to get all this other stuff to become licensed.

**MURMAN:** Thank you.

**MICHAEL BUTLER:** OK. And the state of Kansas has this particular assistant funeral director's license and it has work good down there. Thank you.

**ARCH:** Thank you. Next proponent for LB704. Are there any opponents for LB704? Anybody who would like to testify in the neutral capacity? Seeing none, Senator Williams, you're welcome to come up and close. I, I would say that we have received two letters as proponents of to support: Laura Ebke from the Platte Institute; Mary Beth Mau representing herself; and then one in a neutral capacity from Bryson Bartels representing self.

**WILLIAMS:** Well, thank you for taking time this afternoon to listen to this testimony, and I think you're clearly hearing the importance of this industry to our state and the fact that it is struggling with the same shortages as many others are with, with employees and LB704 presents a, a modest change in the, in the credit hours requirement. Everything else remains the same. And I would certainly encourage the committee to adopt that and move it forward as soon as possible. Thank you, Mr. Chairman.

**ARCH:** Thank you. Any final questions for Senator Williams? Seeing none, that will close the hearing for LB704, and we will now open the hearing for LB705.

**WILLIAMS:** Good afternoon, Chairman Arch and members of the HHS committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, from Gothenburg representing District 36. I'm here today to introduce LB705. LB705 is a straightforward bill relating to the Barber Act, which was brought to me by the Board of Barber Examiners, the regulating entity overseeing barbers practicing in the state of Nebraska. LB705 would make two changes to the Barber Act. The first change eliminates the requirement that barbers who rent a space in a shop have a booth permit. The booth permit requirement was enacted in 2009 to track barbers that rent booths or chairs in barber shops for inspection purposes. The board no longer tracks those barbers who rent booths and chairs so the board has determined the permit is unnecessary and voted unanimously to request the Legislature eliminate

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the requirement. The second change in LB705 deals with the requirements of becoming a registered barber instructor. A person can be a-- eligible for registration as a barber instructor if, number one, they have completed 18 college credit hours. Number two, they have been actively practicing barber for one year immediately preceding the application, and, three, they have served as a registered assistant barber instructor for one year. LB705 reduces the one-year requirement to nine months. There is currently a shortage of barber instructors. The barber board voted to make this change. The board feels that nine months is an adequate period of time to work as an assistant. There will be representatives of the barber board following me who can, in detail, discuss those items with you, but I would be happy to answer any questions that, that you would have of me.

**ARCH:** Any questions for Senator Williams? Seeing none, thank you very much. First proponent for LB705.

**KEN ALLEN:** Good afternoon, Senator Arch, members of the committee. I appreciate your time for this, this matter. I'd like to thank Senator Williams for bringing this to our attention. This bill is pretty, pretty simple, straightforward. This booth permit--

**ARCH:** Could you, could you state your name--

**KEN ALLEN:** I'm, sorry.

**ARCH:** --and spell it please?

**KEN ALLEN:** Yes. Very good. Kenneth-- Ken Allen, K-e-n A-l-l-e-n. I'm the executive director of the Board of Barber Examiners. Let's go straight to the booth permits. This was enacted in 2009, and at the time it was used to track barbers that were leasing spaces or chairs from barber shops. The board recognized during an annual review that this was no longer needed and it was beyond our scope of practice to carry these booth permits. So elimination was inevitable. They recognized that and unanimously voted to get rid of the booth permit. Now you will know on the-- note there is a fiscal note, a negative revenue on the fiscal note. The board recognizes this and there is a plan, we'll meet this Sunday to address that particular item. Our licenses are currently about \$50 per year, and that would probably raise that price a little bit per year for a barber license, which is less than a haircut. So that is the plan for the negative on the revenue side. So let's address the barber instructors. There's been

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two new schools that have come into our licensure program in the last three years, and because these two new schools came in, there was a shortage-- instant shortage of barber instructors. So the board recognized this right away. They-- one of our board members is an instructor, and he's volunteered his time to look deeper into this. And we were consulted with more professional people that are in the educational industry that deal with instructors for secondary schools. And the confirmation from all of the above said that, yes, we could reduce the time spent in schools learning as long as they finished the rest of their curriculum. We could reduce it to nine months, and the board also has the ability to expedite that if somebody has got some extra training that was above and beyond. So anyway, the decision to, to reduce it to one year came after consulting with educators. The different types of students still require special education, and learning is paramount for each student to comprehend subject matter and our requirement-- our required instructor courses do address the issues often found in today's students. I'd appreciate your consideration to get this through committee and, if possible, get this on consent file. We are currently in a license year, our license expire on June 30 of this year. If this does not clear the hurdle of getting through the floor, we would inevitably, because of statutory regulations, would have to charge the booth permits for the next two years. With that, I'd be happy to answer any questions you might have.

**ARCH:** Thank you. Are there any questions from the committee? Senator Hansen.

**B. HANSEN:** Hey, thank you, Chairman Arch. You said you're on the board, right?

**KEN ALLEN:** I am the director. Yes.

**B. HANSEN:** OK. And so the board is responsible for doing inspections?

**KEN ALLEN:** Correct.

**B. HANSEN:** OK. All right. You have somebody hired specifically to do that?

**KEN ALLEN:** That's me.

**B. HANSEN:** OK. All right.

**KEN ALLEN:** Yep. I cover the whole state. All 93 counties.

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**B. HANSEN:** OK. All right.

**KEN ALLEN:** Yes.

**B. HANSEN:** OK. Just kind of curious. All right. Thank you.

**KEN ALLEN:** Yeah, yeah. Thank you. Any other questions?

**ARCH:** Are there any other questions? Seeing none, thank you very much for your testimony.

**KEN ALLEN:** Appreciate your time. Thank you.

**ARCH:** Next proponent for LB705. Is there anyone that would like to speak in opposition? Or the neutral capacity? Seeing none, Senator Williams. We received one letter on LB705, which is a proponent from Laura Ebke from the Platte Institute.

**WILLIAMS:** Again, I appreciate the attention and I appreciate Mr. Allen being here. I've had the opportunity to work with him on several other items over my years here in the body and find him to be very competent and easy to deal with. So this is a modest change that I hope that our committee can move forward with as quickly as possible. If there are any questions, otherwise I would waive anything else.

**ARCH:** Thank you. Senator Murman has a question.

**MURMAN:** Sounds like a cut above to me. Would you agree?

**WILLIAMS:** There we are.

**ARCH:** You know, I was going to-- I had to say that they need to pick somebody with good hair to carry bills like this.

**WILLIAMS:** Right.

**ARCH:** Nobody's asked me.

**WILLIAMS:** Nobody asked you?

**ARCH:** Nobody's asked me. Thank you for bringing this bill. That will close the hearing on LB705, and we will now open the hearing on LB824.

**B. HANSEN:** All right, good afternoon, Chairman Arch and members of the Health and Human Services Committee. I do not have a joke for you right away, so I'm sorry. Nothing-- I couldn't think of anything

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pertaining to bathing, so apologize for that. My name is Ben Hansen, B-e-n H-a-n-s-e-n, and I represent Legislative District 16. Today, I'm bringing LB842 [SIC--LB824] before this committee to clarify a provision of law related to in-home personal care services. First, I'll explain the issue that LB842 [SIC--LB824] will fix. In 2007, the Legislature passed LB236. The bill established that in-home personal care services provided to nonmedically fragile individuals did not require caregivers to be licensed under the home health agency statutes. Help with grooming, medication reminders, and feeding are examples of the activities of daily living that in-home personal care services providers can provide without the additional layer of licensure and regulation. During the floor debate on LB236, Senator Joel Johnson, who was the Chairman of the Health and Human Services Committee at the time, stated that personal services such as bathing, dressing, and grooming were all intended to be included in the bill's definitions of activities of daily living. Since LB236 passed in 2007, the personal care services industry in Nebraska and the Nebraska Department of Health and Human Services have operated under the understanding that bathing assistance was something that in-home personal care service providers could provide. Earlier this year, in reviewing the terms of, of the statute, the department identified the mission and the text of the statute. The word bathing was not specifically included with the definition of activities of daily living in LB236. As a result of that omission raised some questions about whether Nebraska's in-home personal care services providers can lawfully provide assistance with, with bathing. That is the problem LB842 [SIC--LB824] will fix with a minor statutory language changes that you see in the bill. The Nebraska Association of Health-- of Home Healthcare and Hospice and the Department of Health and Human Services have worked together on this bill to make sure that the personal care service providers in Nebraska can continue to provide all of the services that their customers need to remain independent and in their homes. I do have an amendment to this bill, AM1604, that I would ask the committee to consider. The amendment simply strikes Section 1 from the green copy of the bill. After some discussions, both the association and the department agree that the language in Section 1 is not necessary to accomplish the goal of this bill and should be removed. I'm happy to answer any questions that you might have, but I believe there is a representative of the Home Care Association that will testify behind me, who I know will be able to answer any questions about personal care services and the need for this bill. So with that, I'll take any questions if you have any.

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**ARCH:** Thank you. Are there any questions? Seeing none, thank you for your introduction.

**B. HANSEN:** Thank you.

**ARCH:** Now first proponent for LB824.

**DUSTIN DISTEFANO:** Hi, good afternoon. Senator Arch and fellow members of the Health and Human Services Committee, my name is Dustin Distefano. It's Dustin, D-u-s-t-i-n, Distefano, D-i-s-t-e-f-a-n-o. I'm the CEO for A Place at Home and serve on the Nebraska Association for Home Healthcare and Hospice Board. I'm testifying on behalf of our association's members who include personal care home care companies-- that's a mouthful-- across Nebraska, and we do support LB824. Last year, personal care home care providers were being informed by the Nebraska Department of Health and Human Services that they would need to become licensed as home health agencies if we wanted to continue providing bath aide services. We met on June 21, 2021 with Nebraska Department Health and Human Services public health staff to clarify this concern. They informed us that the statute 71-407, Health Care Facility Licensure Act, needs to be changed because the definition of in-home personal services implies a licensure requirement for activities of daily living, also known as ADLs, within the, within the home health statute. The department asked our association to work with the Legislature to amend the statute and include, and include bathing within the personal care statute. Bathing is recognized by the Centers of Medicare and Medicaid, also known as CMS, as part of the family of personal hygiene services, along with hair grooming, nail care, oral hygiene, shaving, and dressing. They are all defined as activities of daily living. Additional in-home personal care services that are activities of daily living include housekeeping and laundry, companionship, toileting, bowel and bladder care, and mobility and transfers. Going into the industry, the demand for home care services right now is at a, a historic high. I am actually the CEO of A Place franchise. I have 25 locations all over the country and it is absolutely astronomical right now. It's continuing to grow and it's going to only continue to grow. In home care agencies are experiencing significant challenges in recruiting and retaining caregivers to provide these services. Believe the last number I saw on Medicaid, there's over 100,000 people on waiting lists. In our, in our-- if our in-home care agencies were required to complete all the licensure requirements that home health agencies follow and if our caregivers had to become licensed to provide just bathing services, the additional administrative costs and burden would further reduce the

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number of caregivers to serve our constituents and the people in Nebraska. Please be assured that our in-home care agencies require caregivers to complete thorough and comprehensive training on bathing services and all activities of daily living. We're committed to ensuring that our seniors receive quality, safe, accessible home care services across the state. We respectfully ask that you vote LB824 out of committee so that our in-home personal care providers can continue providing bathing services as an essential activity of daily living for Nebraskas-- for Nebraskans. Thank you for your consideration.

**ARCH:** Thank you.

**DUSTIN DISTEFANO:** Open up for any questions.

**ARCH:** Questions? Seeing none, thank you for your testimony.

**DUSTIN DISTEFANO:** Thank you, guys.

**ARCH:** Next proponent for LB824. Is there anyone that, that would like to testify in opposition? Anyone like to testify in a neutral capacity? OK. Waives close. I just want to mention that we did receive letters on this bill: 11 proponents, and I won't go through the list of, of everyone, and two opponents as well were submitted for the comments. And with that, we will close the hearing for LB824.

**WILLIAMS:** We will begin moving forward and open the public hearing on LB753 and invite Chairman Arch to introduce his bill.

**ARCH:** Thank you, Vice Chair Williams and members of the Health and Human Services Committee. Good afternoon. For the record, my name is John Arch and I represent the 14th legislative district in Sarpy County. I'm here today to introduce LB753, a bill to require practitioners providing stem cell therapies that they would receive informed consent from patients that confirms the provider, one, explain the treatment to the patient and, two, that the patient understands the treatment is not FDA approved. Stem cell research and regenerative medicine have tremendous promise. Therapies are in development that address some of the most difficult diseases and medical conditions, such as diabetes, spinal injuries, muscle-- macular degeneration and Parkinson's disease. Each of these areas has shown significant progress in recent years with a remarkable absence of significant adverse events. They're now entering the later stages of clinical trials. There are only few widely practiced stem cell therapies approved by the FDA. They involve the use of bone marrow,

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peripheral blood or umbilical cord blood, derived, derived stem cell populations to correct diseases or disorders of the blood and immune system. These stem cell sources may be derived from the recipient patient or a matched donor. Unfortunately, the excitement around the potential of stem cell research has led to a surge in, quote, direct to consumer stem cell clinics offering therapies that are not proven by clinical trials, are not supported by evidence-based medical research, and do not have FDA approval. In late 2019, Nebraskans who received therapies at a Nebraska stem cell clinic were seriously injured after being injected with a product that was not safely manufactured. Nationally, over 360 cases of injury, death, and other adverse experiences have been linked to under-regulated stem cell therapies and unproven regenerative medicine products. Besides unsafe manufacturing practices, the other leading cause of injuries is practitioners working outside their scope of practice. While most people who receive these therapies are not physically harmed, patients are often misled into, into spending thousands of dollars on unproven therapies to treat an array of ailments, including chronic pain, orthopedic conditions, neurological diseases, autism, COPD, and even COVID-19. Nebraska Attorney General Doug Peterson has a pending lawsuit against the owners of several, of several stem cell clinics on the grounds of false advertising, and the New York attorney general recently won a similar \$5.1 million case. There are a handful of studies that show there could be some level of benefit to some of these therapies, but most have not undergone clinical trials and stem cell clinics often cite studies that are not relevant to the specific treatments they are offering. Clinical trials are important because they document both positive and negative outcomes of the treatment. Currently, therapies are being offered with no uniform tracking of doses, side effects, and effectiveness. All this is why I bring LB753 today. The bill requires the provider get informed written consent from the patient that confirms the treatment was explained to them, and they understand the treatment is not FDA approved. It's a reasonable step to ensure Nebraskans understand the risks they are taking, both to their health and their pocketbooks. Regulation of these treatments ultimately falls in the hands of the FDA. But for several reasons, the agency has been slow to take action against clinics, except when there are serious injuries or deaths. Last summer, the FDA ended a three-year grace period they instituted to give stem cell clinics the time to seek proper approval for their therapies. But instead of slowing down during that time, the industry grew. We are now waiting to see what action the FDA will take against clinics offering unapproved products. In the meantime, this



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legislation will help Nebraskans make an informed decision before agreeing to an unproven therapy. I'll be followed by Dr. David Crouse, who will talk more about his experience with stem cell research and the clinics promoting unapproved therapies. Also, I'm offering an amendment to the bill based on input I received from the Attorney General's Office and the Nebraska Medical Association. I think these changes tighten up the bill and ensures it does what is intended, which is to protect consumers, and I'd be happy to take any questions.

**WILLIAMS:** Are there questions for Chairman Arch? Seeing none, we will invite the first proponent. Good afternoon.

**DAVID CROUSE:** Good afternoon, Senator Williams and members of the committee. I am Dr. David Crouse. I am the president of Research Nebraska, which is a 501(c)(4) nonprofit organization that supports biomedical research, education, and practice. We've done that for a long time. I'm also an emeritus professor of genetics, cell biology and anatomy at the University of Nebraska Medical Center, where I did research and taught immunology and cell biology for many years. In my career as a research scientist, I spent more than 20 years studying stem cells, mostly funded by the NIH, working to develop a better understanding of how these remarkable cells cured many diseases and led to a normal life afterwards. Was a fascinating place to work for my life. And I'm here today to add our support to LB753, which can provide some patient protection to direct-- from direct-to-consumer stem cell marketing by establishing documented informed consent for the non-FDA-approved procedures these patients may be seeking. I'm not going to repeat a lot of what Senator Arch said, because that's kind of duplicative and I don't want to waste your time. But he made good, good points about how this came about, how this is regulated by the FDA. Many people wonder why it's regulated by the FDA. And about ten years ago, the FDA decided that cells and tissues were drugs when they were used in this kind of procedure. They developed a set of guidelines for approving these products to use in clinical situations. So that's why the FDA is involved. I think he may have mentioned also the fact that the Attorney General is pursuing legal action against some of the clients that caused harm to patients in Nebraska. Some of those patients actually ended up in the emergency room and then in intensive care for about a week from the harm that was caused by the [INAUDIBLE] products that were provided to them. That was about two years ago. I believe February 1 is the Attorney General's hearing on this product on this case, and I look forward to seeing what happens there. They base their case on misleading advertising more than the harm that was done to the patients, although they could have done

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either. They pursued it because they thought actually the misleading advertising was more directly involved than what the product was, and they based it on examination of a series of seminars that the patients or clinic-- clients would attend. And they would go to these seminars and hear all about stem cells and the remarkable potential. I attended some of these informational seminars to see just exactly what was said by these clinics. And it's very, very interesting. They come across as well-meaning, sincere, patient-oriented people. There's no question they give you that sense. They're clear that the treatment is not provided-- covered by Medicare or most insurance, and they're quite happy to help you with financing either through GoFundMe sites or through financing they could help provide. I didn't know what interest rates they were charging, but they could help provide the financing. There were positive testimonials from individuals that they presented as former or current patients. There were no data presented regarding the outcomes of their treatments, although they always said that they were successful. They used tactics that I've observed in timeshare selling. It is a very interesting. If you sign up today, you get a discount. If you sign up this week, you get a smaller discount. If you sign up for the series, which of course, is much more effective than a single treatment, then you get a really big discount and they use that as kind of a-- I'll call it a high pressure tactic to get you in the door for the treatments. The sign-up sheets were available at the back to the room. And many of the people who attended the seminars walked back there and sat down and started filling out paperwork. I don't know whether they ended up doing it or not, but they certainly were interested. The typical costs associated with these treatments ranged from about \$5,000 for a single injection of, of these cells to \$25,000 or much more for multiple injections. Now I don't want you leaving here thinking that the stem cells are, are all bad because there's plenty of good things going on that Senator Arch mentioned and we have a future in stem cells that may be very effective. And I want to close by saying that Research Nebraska, the organization I represent, is-- has been proactive in educating the public about stem cell research and practice, as well as about cautioning about stem cell misinformation. And is so common today in the literature and elsewhere. Urge you to support LB753 to help protect Nebraskans from these direct-to-consumer stem cell clinics and their actions. And I thank you for your support and supporting this bill, and I'll be happy to answer any questions.

**WILLIAMS:** Are there questions for Dr. Crouse? Dr. Crouse, would you please spell your last name for the record.

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**DAVID CROUSE:** Yes. C-r-o-u-s-e.

**WILLIAMS:** Thank you. Thank you.

**DAVID CROUSE:** It's always spelled with a K by everybody else.

**WILLIAMS:** Senator Murman.

**MURMAN:** Yeah, thank you for testifying. I kind of get the indication that some stem cells or really not any stem cell therapies are useful right now. Is that true?

**DAVID CROUSE:** Except all those used in bone marrow transplantation, peripheral blood stem cell transplantation, cord blood transplantation for the treatment of a wide variety of cancers and immune diseases. And those are very common. They've been used for 20 or more years, and UNMC is a major center for that.

**MURMAN:** OK, but, but not for joint pain or--

**DAVID CROUSE:** No, you're seeing a lot of that. In fact, many of the centers have stopped treating some of these diseases that can cause great harm if they do it wrong, like COPD, for example, or autism or something like that. If they inject something in your brain, that's not good at all. And many of them have actually stopped doing that, but there's some that still do that, some in Omaha and Lincoln. There are about ten clinics operating in the state of Nebraska right now, some under the same umbrella of a parent company.

**MURMAN:** So what you're suggesting is just closer scrutiny of, of these providers?

**DAVID CROUSE:** I would call this a first step. And I think a little bit depends on what happens with the Attorney General's case. We are going to ask the Attorney General for counsel on this as to what might be a, a way to pursue this. So this may just be a first step.

**MURMAN:** OK, thank you.

**WILLIAMS:** Additional questions? Seeing none, thank you for your testimony.

**DAVID CROUSE:** Thank you.

**WILLIAMS:** Any additional proponents? Welcome.

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**MILISSA JOHNSON-WILES:** Good afternoon, Senator Williams and Chairman Arch and members of the committee. I'm Milissa Johnson-Wiles, Assistant Attorney General from the Nebraska Attorney General's Office.

**WILLIAMS:** And would you please spell your name for the record?

**MILISSA JOHNSON-WILES:** Yes. The first name is M-i-l-i-s-s-a, Johnson with an o dash Wiles, W-i-l-e-s. And by way of introduction, I am the section chief of the division of our office, which handles disciplinary actions against medical professionals for violations of the Uniform Credentialing Act and rules and regulations of the Department of Health and Human Services. We have a separate division, our consumer division, that is handling the, the lawsuit that was discussed earlier today. And we are here today testifying in support of LB753 with the amendments that Chairman Arch indicated had worked out with our office. In our view, it is clear-- the bill makes it clear that specific informed consent would be necessary for certain stem cell therapies and that those practitioners who do not obtain that specific informed consent could be subject to discipline. This bill provides notice to the provider and an outline for discipline if this statute is not followed, and we also believe that the bill protects the public by requiring this specific type of informed consent to the patient. So that includes my formal comments, and I'm happy to answer any questions if I can.

**WILLIAMS:** Are there questions? Seeing none, thank you for your testimony.

**MILISSA JOHNSON-WILES:** All right, thank you.

**WILLIAMS:** Any additional proponents? Good afternoon.

**JOHN MASSEY:** Good afternoon. Chairman Arch, members of the committee, my name is Dr. John Massey, J-o-h-n M-a-s-s-e-y. I'm an interventional pain physician in private practice and I'm testifying in support of LB753 on behalf of the Nebraska Medical Association. Informed consent is fundamental to the patient-physician relationship. It's a component of the NMA's Code of Ethics. It's especially true for treatments such as stem bill-- stem cell-based therapy. Stem cell therapy, as it's currently offered most of the time, is one component of regenerative medicine. Regenerative medicine is a field that essentially uses components of an individual's own body or blood, modifies it in a way to attempt to provide some sort of therapeutic benefit. This often

includes platelet rich plasma therapy anti-inflammatory effects. But the term stem cell therapy is increasingly used to claim additional benefits by insertion of medically manipulated stem cells into parts of the body to provide relief, therapeutic relief of inflammation, arthritis and so forth. It's not fully proven clinically and is seen as investigational by all insurance companies, including CMS. Therefore, it's paid out of pocket and quite highly paid out of pocket by individuals seeking this kind of therapy. Under the circumstances, easy to see how patients could be potentially exploited financially if not given full disclosure of the unproven nature of this type of therapy, and I'm personally aware of patients who have attended these seminars. Dr. Crouse mentioned in hotel ballrooms by organizations that come in and give a very rosy description of what stem cell therapy can do. They have loan officers included in this stem cell therapy, and they offer loan rates, and these are 15, \$25,000 available to arrange financing on the spot, fairly high pressure techniques. There's obvious concern for predatory behavior under these circumstances. The ones I'm aware of are even out in the Panhandle, not just here in the greater metropolitan areas. So the NMA views written informed consent for this type of treatment is an important tool to ensure patient safety, understanding on the lack of FDA approval especially important for patients seeking the treatment in the clinic that might be providing this run by nonphysicians. Finally, the NMA appreciates the exclusions provided in the bill and amendment for stem cell-based treatments already approved by the FDA and for those which approval investigational use has been obtained. We don't want to throw the baby out with the bathwater. As a whole, this bill strikes the right balance with regards to the current state of stem cell-based therapy. Thank you. I'd be happy to answer any question.

**WILLIAMS:** Any questions for Dr. Massey? Senator Murman.

**MURMAN:** Thank you for testifying. Just kind of for general information. Are we talking about embryonic stem cell usage here at all or is it all [INAUDIBLE]?

**JOHN MASSEY:** No, not, not really. I don't think that gets into this area at all. The-- it's interesting because there's, there's different types of companies that provide different types of manipulated stem cells. They're usually, they're usually umbilical or placental or derived in other ways. I don't think it wades into the area of embryonic stem cell therapy, but there is a question as to how often these purported stem cell therapies actually would qualify. And I

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would say that the majority of the time they would not qualify under the rigors explained by Dr. Crouse and that kind of stem cell therapy.

**MURMAN:** Thank you.

**WILLIAMS:** Additional questions? Seeing none, thank you for your testimony. Any additional proponents? Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Chairman Arch, you're willing-- or recognized to come up and close. We do have one letter and, and it's an opponent from Marrienne Williams from Lincoln representing herself.

**ARCH:** Thank you. Yeah, I would just add that, that we're, we're in this position because this is really brand new and the FDA really hasn't gotten a handle on it. They, they, they had this three-year period of grace, grace period where they were asking for research to be presented and, and evidence, evidence brought forward. But they have not-- they've really not gotten a handle on it. So we, we've had just a lot of this, a lot of this developed within the, the, the community. And so again, this is really patient protection. We just want to make sure that if people choose to do this, that they understand the risks and they understand that this is not FDA approved and that, that really is the heart of the bill, so. And I'd be happy to answer any questions.

**WILLIAMS:** Any final questions for Chairman Arch? Seeing none, that will close the public hearing on LB753 and end our hearings for today.