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Business and Labor Committee March 13, 2023

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**RIEPE:** [RECORDER MALFUNCTION] --and I'd like to tell you that we're going to get started and I will go ahead and read through the introductions. We're waiting here-- in about X minutes we'll have a quorum. We'll be able to officially start business. Today is the 13th day of March as you know. I'm Merv Riepe, I'm Chairman of the Health and-- former chairmanship-- Chairman of the Business and Labor Committee. And my district is District 12, which is southwest Omaha and the good folks of Ralston. When the committee members arrive and I get through my remarks, we'll come back and we'll have them introduce themselves. I'm going to ask you, if you all will, to make sure that your phones are silenced and any beepers or other distractions that they will be turned off so as not to disrupt this committee. Today and before each hearing, all bills to be heard will be posted outside the hearing room and outside of my office and heard in the order posted. On each of the tables near the doors, you will find green testifier sheets. If you intend to testify today, please fill out one of the green sheets and make sure that it's legibly in print and with all the information and hand it to the page when you come to testify, this will help us keep an accurate record of the hearing. If you're not testifying at the microphone but want to go on record as having a position on a bill being heard, 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-- to-- received by the committee by noon the day prior to the hearing. The senator introducing the proposed legislation today will first present and will be given the time needed. For purposes of the recorded record, we ask each presenter to state one's name, spell it, and state who you represent. Senators who serve on the committee are encouraged to ask questions for clarification. That said, the presenter and those testifying are not, I repeat, not allowed to ask questions of the senators and if they sense that you have some very pertinent thing, they may ask you to go ahead and expand on that particular thought so you might get a little bit more time than normally you would. Senators may have computers that are serving on this committee or laptops at their disposal during the hearing and so please understand that they may be following the hearing along. You'll also find that at times some of them may have to leave, this is a time when various senators are presenting at other committees so we have a little bit of time to come, to come and go. In the Business and Labor Committee, we will use the light system to promote maximum engagement of those wishing to

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express positions as proponents, opponents, and neutral. Each testifier will have three minutes to testify. When you begin, the light will be green. When the light turns yellow, that means you will have one minute left of the three minutes remaining. When the light turns red, it is time to enjoy your testimony and I will ask you to wrap up your final thoughts. I will do that as courteously as I can. The three-minute rule may change based on the number of people wanting to speak. As Chairman, I will seek to hear citizens who have traveled some distance to each hearing, but we will also acknowledge letters received from all concerned parties. I would like to add we have a no strict prop policy in this committee. Should you have handouts you wish to share, please share the ten copies or ask our pages to make copies. Please be aware that any handouts submitted by testifiers will be included as part of the record as exhibits. The pages will then distribute any and all handouts to committee senators. Following proponent, opponent, and neutral testimony, the bill presenter is offered the opportunity to close with any final remarks he or she might wish to make. As a committee, we will work diligently to provide a fair and full hearing. We will make every effort to accommodate special needs. Short of an emergency, this committee will not take action on a bill the day of the hearing. At this hearing, we ask you to be respectful of the process and to one another. I would like to now go back and I would like to have the self-introduction of the senators and also the committee staff and I would like to start with Senator Blood.

**BLOOD:** Good afternoon. Senator Carol Blood and I represent District 3, which is western Bellevue and eastern Papillion.

**HALLORAN:** Good afternoon. Steve Halloran representing, representing Adams, Kearney, and Phelps County.

**McKINNEY:** Good afternoon. Terrell McKinney representing District 11, north Omaha.

**MICAH CHAFFEE:** I'm Micah Chaffee, research analyst.

**IBACH:** Good afternoon, I'm Senator Teresa Ibach from District 44, which is eight counties in southwest Nebraska.

**RIEPE:** And our committee clerk.

**PAYTON COULTER:** Hi, I'm Payton Coulter, and I'm committee clerk.

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**RIEPE:** And tell me, Payton, do you know who our pages are because I don't, I apologize?

**PAYTON COULTER:** Yep, these are our pages, Mia and Landon.

**RIEPE:** Great and they're a great help to us and we appreciate it very much. Thank you. We will have probably two more senators that will be joining us and it can work in the process. I will introduce them as they are able to make it here. They're probably tied up in other meetings. So with that, I would like to begin today's hearing with LB489. Senator von Gillern. I think you've probably introduced some other bills so you know the process.

**von GILLERN:** A couple.

**RIEPE:** You're welcome to go ahead, sir.

**von GILLERN:** Thank you. Thanks for allowing me to be here today. Good afternoon, Chairman Riepe and members of the Business and Labor Committee. I'm Senator Brad von Gillern, B-r-a-d v-o-n G-i-l-l-e-r-n. I represent District 4 in west Omaha and Elkhorn. LB489 defines independent contractor status of individuals engaged in the marketplace network platform. These are people engaged in services utilizing tech applications such as Uber and Lyft. The bill specifies the nature of their employment as independent contractors. Twenty-one states have passed this legislation, including neighboring states of Iowa, South Dakota, and Wyoming. Drivers on rideshare platforms are independent. They choose if, when, where, and for how long they work. There is no exclusivity, there is no exclusivity so many workers use multiple apps. Anyone who passes a background check and meets the regulatory requirements can use the app. There's no minimum commitment or obligation to work. Drivers decide when, when they want to turn on the app and when they want to turn it off. For example, 80 percent of drivers on the Uber app work fewer than 20 hours a week. The term "flexible work" is often used to describe a diverse range of working models. However, even in the most informal flexible engagements, employers may establish rosters dictating when, where, and for how long someone must work. Rideshare drivers have nothing like that and their work is critical. Studies have demonstrated that ridesharing can significantly reduce DUIs and drunk driving deaths, which has been on the rise across the U.S. According to the National Bureau of Economic Research, ridesharing has reduced drunk driving deaths by 6 percent. And in a Houston study of Uber's impact, rideshare volume was associated with a 67 percent reduction in vehicle collisions. Many

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bars and restaurants are among the most popular destinations in Nebraska but Nebraskans also rely on rideshare for everyday needs. Unfortunately, the current administration and a handful of special interests in D.C. continue to pursue policies that could limit drivers' flexibility and risk the future of rideshare in our state. While the recently proposed rule by the Department of Labor may not directly change Nebraska state law, it could serve as a guide for our state courts if there is uncertainty in the law. LB489 removes the uncertainty and ensures workers on rideshare platforms in Nebraska remain independent contractors. I'd like to make a note about the fiscal note. There's been an amendment already filed on the bill. I introduce AM236-- introduced AM236 on February 28. The amendment ensures that the bill is in compliance with federal law. John Albin, the Department of Labor Commissioner, submitted online comments in support of the bill and AM236 which I have in hand here is the pages would, would pass out, please. And AM236 was put in place under the advice of the Department of Labor and addresses the issue in the fiscal note. I've included his letter. It's being handed out now. LB489 is a narrow bill that only impacts transportation network companies. It does not change any other industries or how any other employer operates. It solves an immediate and a critical need. With that, I'd be happy to address any questions.

**RIEPE:** Great. Thank you very much. Do members of the committee have questions? Senator Blood.

**BLOOD:** So I'm still reading through all of this. You've already said that it, it excludes TNCs. Who does it exclude as far as the amendment goes?

**von GILLERN:** The amendment only addresses the, the rideshare drivers. So it's Uber, it's Lyft, it's Grubhub, those kind-- those types of drivers that are working on an app basis.

**BLOOD:** So what about, like, freight transportation or political subdivisions? The way this is written, I'm a little worried about how this could affect even our, our Native American tribes. So can you kind of explain to me, like, what the process was for the amendment and what the, the purpose is it for to do--is it just to make sure that we don't miss out on our federal funds?

**von GILLERN:** The, the amendment was to make sure that we were dovetailed with federal regulations. Yes. Yeah. And there's some--

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there's-- the speaker behind me, a proponent behind me, that could fill in a little bit of blanks on the amendment.

**BLOOD:** OK. Yeah, I think it, it might need some more work.

**von GILLERN:** OK.

**BLOOD:** Thank you.

**von GILLERN:** Happy to consider that if that's the case. Thank you.

**RIEPE:** OK. Thank you, Senator Blood. Are there other questions? Seeing none, you'll be staying around will you?

**von GILLERN:** Yes.

**RIEPE:** Are you able to do that?

**von GILLERN:** I'll stay for the close. Thank you.

**RIEPE:** Thank you, sir. Are there proponents? Welcome and if you'd be kind enough to state your name and spell it, please, and then who you represent.

**FREDDI GOLDSTEIN:** Of course. Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Freddi Goldstein, F-r-e-d-d-i G-o-l-d-s-t-e-i-n, and I am testifying on behalf of Uber today in support of LB489. Uber has been connecting riders and drivers in Nebraska since 2015. Every week, thousands of people in Nebraska use the Uber app to earn income on their own schedule and tens of thousands of Nebraskans rely on Uber to get to doctors appointments, visit loved ones, and get home safely after a night out. Traditional employment simply doesn't work for everyone. The app-based work available through the Uber platform is critical for those who want to work, but might not have the ability to handle a traditional 9 to 5. Workers on Uber's platform care for a family member have to be on call to handle-- and have to be on call to handle their needs. Others are retirees on a fixed income who want to make extra money. Others are students who support themselves through school. At the core of these are people who want to work but need to do it on their own schedule. That flexibility is even more important as record inflation pushes Americans to look for ways to supplement their income. Uber has seen a 30 percent increase in drivers joining the platform since this time last year. LB489 enshrines rideshare drivers the ability to work when, where, and on any rideshare platform

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they want. In doing so, it ensures that Nebraskans who want to work still have access to flexible work opportunities on platforms like Uber. It mirrors language already in place in South Dakota, Missouri, Texas, Florida, and more than 20 states across the country. It also reflects the unique nature of app-based driving and only covers transportation network companies like Uber and Lyft. It does not change how other businesses operate in the state. Virtually every poll, survey, and election has shown that this is what the overwhelming majority of drivers on the Uber platform want. An independent survey from the rideshare guy found that 79 percent of respondents want to remain independent contractors. A recent Pew poll found Americans agree with 62 percent and a majority across every political party saying that drivers are independent contractors. Even voters in California rejected the state's attempt to try and force drivers into traditional employment opportunities. Flexibility doesn't just benefit workers. It's a big part of the reason Uber is able to serve rural, suburban, and urban communities across the state. If Uber were forced to switch to an employment model, less densely populated areas of the state would likely no longer benefit from on-demand rideshare. Nebraska has a critical opportunity to protect flexible work for thousands of app-based drivers and a critical service for tens of thousands of passengers. I urge you to support LB489 and look forward to answering any questions you may have.

**RIEPE:** Thank you very much. Senator Blood.

**BLOOD:** Thank you, Chairman Riepe. Thank you for coming in and testifying. I want to-- before I ask you this question, I want you to know, and you probably already know this, but during the floods, when the, the World Series was going on, I actually worked with the Governor's Office to make sure that their fees weren't punished because they-- yeah. So I've worked with Uber, the drivers themselves, a lot to help them during times when it's been tough for them.

**FREDDI GOLDSTEIN:** Thank you for that.

**BLOOD:** But with that said, how will this LB489 change what they do every day?

**FREDDI GOLDSTEIN:** So it doesn't. The goal of LB489 is to ensure that what drivers do every day can stay that way.

**BLOOD:** Is there-- and I'm sorry to interrupt you. I apologize. What is the threat? That's what I'm not hearing. What is the threat that

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that's going to change because all Uber drivers I know have never said this to me?

**FREDDI GOLDSTEIN:** Yeah, so we are seeing increasingly across the country a concerted effort to make drivers employees in statehouses and now at the federal level, at the Department of Labor, we're seeing this push. So what we are doing is working in states across the country just to enshrine the independent contractor status so that it's protected from any future threats.

**BLOOD:** OK. I appreciate that. Thank you.

**RIEPE:** Thank you, Senator Blood. Are there other questions? Senator McKinney, please.

**McKINNEY:** Thank you. Do you fear that the employees will unionize themselves?

**FREDDI GOLDSTEIN:** So right now, drivers are not employees. And no, I don't think this is about a fear of unionization. This is actually about what drivers say they want. To get here today, I had an Uber driver and as soon as he found out I worked for Uber, it started with I don't want to be an employee and you don't want me to be your employee. So this is pretty consistently what we hear from drivers on the platform.

**McKINNEY:** Are there efforts across the country that where employees are trying to unionize?

**FREDDI GOLDSTEIN:** Not in the strict union sense but in some places across the country like in New York and a few other places, we do see organizing among the drivers and they're usually like driver associations and we work with the associations to ensure that we understand and represent their needs.

**McKINNEY:** OK.

**RIEPE:** Are there other questions? As an aside, Senator Megan Hunt has joined us and we welcome her. Thank you very much. A question that I have, everything that I've heard that it was very difficult, specifically here in Lincoln, to get a taxi and yet Uber drivers are readily available, and maybe your competition but we won't talk about them. My follow-up question, I guess with that is, does Uber services extend beyond urban areas, like I'll say Lincoln and Omaha, out to more rural areas?

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**FREDDI GOLDSTEIN:** Yeah, so the way our platform works is anyone who passes a background check can get online and start driving on the platform so it really depends on the availability of drivers throughout the state. But we, we make every effort to extend our services as far as, you know, our platform can reach, which is the entire state. And I know that drivers who do not directly live in those areas or service those areas often will drive out if we get calls to those areas to pick passengers up and get them where they need to go.

**RIEPE:** OK. So you can live in a little village and still take someone to get a haircut or whatever.

**FREDDI GOLDSTEIN:** It's not a hard and fast rule, but that's the idea. Yeah.

**RIEPE:** OK. Are there other questions from the committee? Seeing none, thank you very much for being with us today.

**FREDDI GOLDSTEIN:** Thank you for your time.

**RIEPE:** Thank you. Next proponent. Any more speaking in favor? If not, let's move on to any opponents? If you'd be kind enough, sir, welcome, to state your name and spell it and then share with us who you represent.

**JOHN CORRIGAN:** Thank you. Good afternoon, Business Committee. My name is John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, and I'm here on behalf of the Nebraska AFL-CIO testifying in opposition to LB-- was it 589-- LB489. I'm sorry. Thank you.

**RIEPE:** You were close.

**JOHN CORRIGAN:** And I don't think there is anybody on the committee, maybe Senator Halloran was, the last time this or a similar bill came up with Uber and, and Lyft and that whole concept that basically you have an industry that got created because of changes in technology. And then they decided we're also going to not have the, the law apply to us as it has in time immemorial in this, in this state and in other states. And the suggestion was, well, there's been a push to classify these people as workers. The truth is, they, they are workers. They have been workers. The push has been by the industry itself and Uber and Lyft to misclassify these workers so that they lose the protections of traditional employment. You know, the, the employment law-- my father was a young lawyer, they teach that in, in law school



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but it wasn't called employment law, it was called master servant law at that time. And we have evolved to understand that the fundamental concept of employment is that if I'm going to give you my, my time and my efforts and my risk away from my family in exchange for money, there are certain things employers are obligated to do, and one of them is to provide-- you, you should be eligible for employment security, that is unemployment benefits if for some reason you are-- you might wind up being unemployed. And that's what this bill is, is geared towards. But eight years ago, we were in front of this committee, maybe six or seven years ago, and they, they wanted to just have you pass a law saying that their folks were independent contractors and the committee chose not to do that. The bill did not go out, out of the committee. But the fact is, you have employers that are doing it the right way by employing people and paying benefits, treating people as employees, and why we would want to disadvantage those traditional employers because somebody from California came and said, oh, hey, we, we, we give-- our people give their assignments from work on an app and so we're different. They're not. And if you follow the Proposition 22 litigation in California, that was legislative efforts to overcome judicial determinations that their people were, in fact, employees under California law. They now have-- that litiga-- that, that matter is still under litigation. But that was a promise that, well, we'll pay you some benefits if you let us pass this-- change the law for our people. They're not proposing to do that in Nebraska. So I, I see my time is up. I did give you an article about the exploitation of, of flexible work from the Economic Policy Institute, ask you to read that and ask you to vote no on this legislation. Thank you.

**RIEPE:** Thank you. If you'll hold on just a second, we're going to see-- you may get a chance to extrapolate a little bit more. Is there any-- Senator Blood.

**BLOOD:** Thank you, Senator Riepe. I'm sorry, I'm asking a lot of questions on this particular bill, but I have a disconnect and I need some help and I-- you're an attorney?

**JOHN CORRIGAN:** I am.

**BLOOD:** OK. Yeah, I usually can't throw a rock in this building without hitting an attorney so I assumed one would be. So how would you define, like, a real marketplace platform? Because I keep saying these words and this type of legislation and I feel almost like someone's trying to sell me something that that's not what the definition means.

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**JOHN CORRIGAN:** Well, I'm not sure what it means in the sense of this is a term that's been created by the industry to differentiate themselves from traditional concepts of employer or company or entity and--

**BLOOD:** If it was a true marketplace platform, wouldn't it be like the Yellow Pages or like electronic message boards where it's about information not necessarily about a connection?

**JOHN CORRIGAN:** Well, I suppose it would, but if--

**BLOOD:** I'm sorry. I'm trying to be really specific--

**JOHN CORRIGAN:** Yeah, I mean--

**BLOOD:** to get-- make sure we get a good definition on record.

**JOHN CORRIGAN:** What I think-- my understanding of the term is that it has evolved because they want to identify that a, a platform-- marketplace platform is an entity that facilitates the buying and selling of goods and services between buyers and sellers. Now if that's what all they were doing, then, then that probably be an accurate description. But when you're sending human beings to perform that task for you out on the roads, now you're doing more than just putting people together, buyers and sellers. And this legislation and the general push across the country is designed to eliminate the, the ability of those folks to have the protections of the traditional employment that is workers' compensation, the Fair Labor Standards Act, you know, overtime, all of those things that we would consider as applying in employment don't apply to them because they don't want them to apply. Now if we have people, like, that are running a, a legitimate cab company, we're going to disadvantage them because we're giving them breaks out of legal obligations that other companies simply don't get.

**BLOOD:** And, and with the marketplace platform, though, like if I'm an Uber driver, doesn't Uber unilaterally set my fees? I don't get to set my fees as independent-- if I were a truly independent contractor. Right?

**JOHN CORRIGAN:** Not only that, there--

**BLOOD:** Someone has to do something about that door.

**JOHN CORRIGAN:** --the-- if you have employees or persons that are independent contractors, they would have an opportunity to, to bid on what-- how much they wanted to charge. This isn't-- that doesn't take place in this transaction. And, you know, if I'm, if I'm deciding how much I'm going to charge to mow your lawn and I use my lawn mower to go over there and do that, I'm probably going to be an independent contractor. But if I don't get to do that and I'm sent to your house to mow the lawn, might more likely be a, a-- an employee. And it's that distinction that changes the nature of the transaction.

**BLOOD:** Aren't organ-- and I don't know if they're still around, there's used to be like an organization called Handy, like, you'd get handymen. I mean, that'd be the same kind of thing, right? They don't set their fees and--

**JOHN CORRIGAN:** I'm not sure. I'm not sure of that particular entity. But with this group, it's just an evolution of a very lucrative business that wants to carve itself out of the traditional employment law. And as the representative of, of working people in the state of Nebraska, the Nebraska AFL-CIO is saying, hey, why are we giving them a break when everybody else is playing by the rules? It's just, it's just not good policy.

**BLOOD:** And I love the gig economy, but I also want to make sure that those workers are protected like all workers. And, and I am concerned in the stuff I'm reading so hopefully in the closing we'll learn more.

**JOHN CORRIGAN:** Well, in California, they offered Prop 22, which at least did provide some mandatory insurance benefits to the, the gig workers. But we-- from the labor standpoint, we think they're employees and they should be treated as such until proven otherwise. And what you're being asked to do, and this, this committee was asked to do many years ago and decided not to do, was to carve people out of the traditional employment law because there was an industry that wanted you to do that.

**BLOOD:** Fair enough. Thank you.

**RIEPE:** Are there other questions from the committee? Senator Halloran.

**HALLORAN:** Thank you, Mr. Chairman. Thanks for your testimony today. So-- and I'm going to have to show my naivete here a little bit, but Uber, Uber drivers are required to start at a specified time or quit at a specified time. Are they or do you--

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**JOHN CORRIGAN:** I don't believe so. I'm not sure, but I don't believe they are.

**HALLORAN:** Are they required to have a specified minimum number of rides that they accommodate during a 24-hour period of time?

**JOHN CORRIGAN:** Not, not to my knowledge.

**HALLORAN:** OK. So the only thing that you're-- the thing that you're showing a distinction on is, is that a platform sets the rate and so that eliminates these drivers from being contracted.

**JOHN CORRIGAN:** Well, not only does the platform set the rate, but they also have standards that the, the drivers have to meet.

**HALLORAN:** Such as?

**JOHN CORRIGAN:** The vehicle standards and, you know, being able to be qualified to do the work. So those are things that are in the employer's control as opposed to, you know, if I wanted to get into the vehicle, the transporting people around town vehicle, and I wanted to do it with my tow truck, I don't know that I could pass their requirements or their expectations. But I, I would be truly an independent contractor when I enter into an agreement where I'm telling them I'll agree to whatever price you set for the work and your requirements for my eligibility to have your participation in your app. They're becoming an employee. And that's, that's been the fight throughout the United States over these issues where the courts have determined you're an independent contractor so they go to the-- outside the courts to determine they're employees so they go to the legislature and try to get a different result.

**HALLORAN:** If they are independent in the sense that they don't have to meet a certain minimum requirement for [INAUDIBLE].

**JOHN CORRIGAN:** There's aspects to the work, like many types of different work, where there are factors in the analysis that would weigh towards independent contractor versus factors that would weigh towards to an employee. I, I certainly agree with that.

**HALLORAN:** OK. Thank you.

**RIEPE:** Any other, any other questions from the committee? Seeing none, thank you for being here.

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**JOHN CORRIGAN:** Thanks very much.

**RIEPE:** Before we have our next opponent come forward, we got to recognize we have a squeaky door. And if there's anyone in the audience that has some WD-40 in their pocket, please stand up now. Evidently not. OK. Well, we'll ask you to bear with us on the squeaky door. Any other opponents that would like to come forward? Seeing no opponents, is there anyone here that wants to speak in a neutral capacity? OK. Senator, we will ask you to come back if you wish to close. While you're doing that, I would say LB489 in correspondence, both emails and letters, we had zero opponents, zero proponents, and one in a neutral capacity. So pretty, pretty light.

**von GILLERN:** Thank you, Chairman Riepe and the committee. Senator Blood, feel free to throw a rock this way. I'm not an attorney, so--

**BLOOD:** I might do that.

**von GILLERN:** --so I'll couch my, my comments with that. A number of years ago-- many of you know, that I was in the construction industry for, for most of my life, probably ten years ago there was a concerted effort by the Department of Labor and the state to, to clean up an issue that truly did need to be cleaned up. And it was with contract workers to, quote unquote, contract workers in the construction industry. And there were many, many workers that were being used, particularly in the drywall trade, the roofing trade, painting, some of the, some of the easily quantifiable trades that were being paid by in piecemeal or being paid by the square foot or the number of roofing squares, whatever. So Department of Labor made a concerted effort around that. And, and I remember at that time in my industry, we, we landed on a couple of definitions that were pretty easy for a nonattorney to remember and that was, you're an employee if you're told what to do, how to do it, and when to do it. And those were kind of the three, the real easy ways to remember what, what makes an employee versus a contract worker. And I've always remembered that as we were hiring subcontractors and trade workers in different, different, different trades to do work. A couple of things I just want to remind of, the, you know, the service Uber, Lyft, whatever it happens to be, those, those companies, all they do is make a connection between the consumer and the provider. And, and they, they make that connection via the Internet, via our phones, or whatever tool that we happen to use, but they make that connection. They're, they're not, they're not responsible in many ways for the final outcome of that. They have guidelines and so on to vet their workers,

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but really all they do is they make a connection. The scenario that was, that was used by Mr. Connelly-- or excuse me, Mr. Corrigan regarding lawn mowing, I actually think is a pretty good example to make my point, and that is if, if you hire me to mow your grass, I'm, I'm bringing myself plus I'm bringing my lawn mower. In this case, the, the rideshare provider is bringing themselves plus they're bringing the vehicle. So it's clearly not an employer/employee scenario. Another comment and, and with, with, with all due respect, I would challenge you to, to call a taxi through the Yellow Pages because really neither one are easily found anymore. And the taxi services have really declined, again, because in the marketplace a better option has been found. And, and I want to remind all of us that we are the beneficiaries of the better option. I believe as consumers it's a better option, for the workers it's a better option, and, and for all Nebraskans it's a better option. It's obviously new industry and regulations are trying to catch up. And we've seen that a lot in a number of the different committees and the different hearings that I have sat in, so. With that, I will end my comments and happy to take any further questions here.

**RIEPE:** Let's see if there are any questions from the committee? Not seeing any, to your description-- oh, I'm sorry, Senator Blood, please.

**von GILLERN:** I saw you.

**RIEPE:** I'll give you a horn.

**BLOOD:** I need to put my arm up higher. Thank you, Senator Riepe. And I really am trying to get my head wrapped around this, I'm not trying to be difficult.

**von GILLERN:** I'm sorry?

**BLOOD:** I really am getting-- trying to get my head wrapped around this, I'm not trying to be difficult.

**von GILLERN:** Yeah, thank you.

**BLOOD:** So I don't know why I have to say that in advance, but it seems lately we have to make sure we explain ourselves. So they don't really-- what they do and how they do and where they do it, they're not being told to do that. Who sets the fees for Uber?

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**von GILLERN:** The-- my understanding is that the, the companies with input from the drivers set the fees and, and that is-- and, and, and--

**BLOOD:** You don't get to decide what your fee is.

**von GILLERN:** Excuse me?

**BLOOD:** You don't get to decide as a driver what your fee is. That, that's decided by Uber.

**von GILLERN:** I believe that they-- do, do they not get input from the drivers when they set their fees?

**BLOOD:** I don't know which drivers they are, but I've never talked to anybody in Nebraska that's had that asked of them.

**von GILLERN:** OK.

**BLOOD:** So here's the concern that I have. What-- how many drivers brought this to you? Who brought this bill to you?

**von GILLERN:** The Uber folks brought it.

**BLOOD:** I'm sorry, who?

**von GILLERN:** The Uber company. Yes.

**BLOOD:** So it was indeed the company that brought it?

**von GILLERN:** Yes. Yes. Yeah.

**BLOOD:** Does it concern you at all that it was brought to you by the company as opposed to the drivers when you yourself said that they don't work for the company,--

**von GILLERN:** Right.

**BLOOD:** --right? Because if they worked for the company, surely you'd want to talk to the workers.

**von GILLERN:** Well, and I have talked to the workers and, and I've traveled quite a bit in, in my life and, and, particularly if my wife's with me, we tend to get in conversations with, with Uber drivers and we learn a lot about where they're from, what their background is, what their history is, and, and they quite often share their experiences and, and how beneficial it's been to them--

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**BLOOD:** Right, I agree, [INAUDIBLE].

**von GILLERN:** --to be able to work on their own schedules. And you're an advocate, I'm not trying to convince you.

**BLOOD:** Yeah.

**von GILLERN:** So I, I, I don't think I've ever had a conversation with any one of them where they, where they indicated anything that, that they were concerned about as far as the company and, and their, their status as a, as an independent contractor. In fact, the past few that I've driven with or ridden with were, were moms that were working off-hours because they, they were able to make arrangements with other folks to help with childcare. So they're working in the evenings or, or late at night or that 4:00 a.m. run you got to make it to the airport to catch the 6:00 flight, those kinds of things. So most of them appreciate the flexibility. And, and to the, to the question about being able to set the fares, regardless of the input that they have on setting the fares, they have the option to, to take that fare or not. They can say, yes, I'll do-- yes, I'll accept that bid or, no, I won't.

**BLOOD:** Well, and that's--

**von GILLERN:** So they, they do have that option.

**BLOOD:** --the gig economy-- I mean--

**von GILLERN:** Yeah. But as an employee they would not have that option, an employer would tell them when to work.

**BLOOD:** Nothing you have said to me just now will change whether this bill-- if this bill passes or doesn't pass. All it does is give more power to Uber, really. Right?

**von GILLERN:** No, I don't think it gives more power to Uber. I think it clarifies what the, what, of course, what we're, what we're trying to do is clarify what the situation is from a tax standpoint--

**BLOOD:** Which--

**von GILLERN:** --from unemployment taxes from, from the-- and right now, again, a, a driver is an independent contractor. They get a 1099. They file their taxes at the end of the year as a 1099 employee versus a W-2 employee. So we don't want to get to the end of the year and have



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lack of clarity on either the, the, the rideshare company or the independent contractor driver's part as to how they, how they determine their income.

**BLOOD:** Nothing really changes if this bill passes with the exception that it gives more power to Uber. Right? Because right now we don't have people calling us or knock-- for instance, every single time we've had a flood and something goes on at the World Series, I get bombarded with emails and phone calls asking for help because we have state statute where the Governor will declare an emergency and they don't want people to be taken advantage of, which I agree with. But what happens is at the World Series of Uber drivers make, like, most of their money for the year. And so we had to make sure that they could still make money during the, the World Series. Right? But I can tell you, not once, not once in the seven years that I've been here, have I had any Uber drivers say that they wanted this to happen. But I have seen this happen across the United States where what I see and then my concern, and I'm hoping we talk about it on the floor tomorrow, is that it's another effort to, to eliminate workers' rights. And I, and I do take issue with that. The great thing about the gig economy, you can do whatever you want to do when you want to do it, but to give big business more power over them, I'm concerned about that. So I'm hoping you can maybe change my mind on the floor tomorrow.

**von GILLERN:** OK. Yeah, I'm not seeing where there's more power granted to the, to the rideshare company over the driver in this situation. Again, I think this is a clarification from a business standpoint more than anything.

**BLOOD:** Fair enough.

**von GILLERN:** Thank you.

**BLOOD:** Thank you.

**RIEPE:** Are there-- Senator Halloran.

**HALLORAN:** Thank you, Mr. Chairman. Thanks again for bringing this bill. So why is it that people who want to be Uber drivers want to be Uber drivers? Is it-- I'm going to presuppose a little bit of it is a certain amount of independence.

**von GILLERN:** That's the word. That is absolutely the word. Again, I can-- back to my definition of an employee: An employee is told what

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to do, when to do it, and how to do it. An Uber driver or Lyft driver, rideshare driver makes all three of those decisions independent of the provider. And again, the firm, the, the service is a connection mechanism. The, the, the driver themselves makes all of those connections. I feel like working today. I don't feel like working today. And I'm not going to lose my job tomorrow if I don't work today. I can go back to work tomorrow.

**HALLORAN:** So would you-- arg, arg-- maybe would you make a, an argument that possibly Uber's setting up a platform for people to have their own business?

**von GILLERN:** Well, yeah, they're independent contractors. That's the way that we see it. Absolutely. Yeah.

**HALLORAN:** OK. Thank you.

**von GILLERN:** Yes.

**RIEPE:** Thank you. Are there other questions? Seeing none, thank you very much--

**von GILLERN:** Very good. Thank you.

**RIEPE:** --for being here, Senator. And that will conclude the hearing on LB489. We're next going to hear two bills, LB665 followed by LB666, and I will be presenting those bills. In that sense, I will be turning over the chairmanship during those two hearings to Vice Chairman Teresa Ibach. So with that, the show is yours. Do something about the door.

**Speaker 9:** We tried it. They couldn't do anything about it. It's not till tomorrow. I can't use them before either.

**Speaker 5:** Reverend Wright, is it your career, your tax money? Thank you for putting an attempt at that.

**IBACH:** Thank you. We'll now open the hearing on LB665. Senator Riepe, you have the mike.

**RIEPE:** Thank you, Chairman Ibach. What I have before us is a shall bill, LB665. Quite frankly, we presented this shall bill with the idea that we might have to add some particular document or some information. We have not. And so we have nothing really to hear on

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other than as a bill it was required to have a hearing as required by the State of Nebraska. So with that, I would close on my presentation.

**IBACH:** OK. Thank you.

**RIEPE:** One of my [INAUDIBLE] ones. Any questions?

**IBACH:** Does anybody have any questions for the senator? Seeing none, we'll ask for proponents. Are there any or opponents? And is there anyone who would testify in the neutral position? Seeing none, we'll ask you to close, Senator Riepe.

**RIEPE:** Thank you. You'll notice I didn't yield the chair here, so thank you very much. Would you like me to go ahead with LB666?

**IBACH:** Are you waiving closing?

**RIEPE:** I'm waiving close. Yes.

**IBACH:** OK. With that, we will close on LB665 and we will open on LB666. Senator Riepe.

**RIEPE:** Thank you, Chairman Ibach, and, and good afternoon, members of the Business and Labor Committee. For the record, my name is Merv Riepe, M-e-r-v R-i-e-p-e, and I represent the 12th District, which consists of southwest Omaha and the good citizens of Ralston. I have introduced LB666 on behalf of the Nebraska Department of Labor, which would allow employers to elect the method of notification of unemployment determinations of liability and combined tax rates received from the department. In December of 2021, the Department of Labor launched its modernized tax system. The department now has increased capability of securing online communication methods. Current law requires the Department of Labor to use the U.S. Postal Service to send determinations of liability and combined tax rates to employers. Under LB666, employers would be able to choose their preferred method of documentation delivery. All employees currently registered in the system will continue to receive these items through the mail service unless, unless they elect electronic delivery. LB666 allows employers to change their election at any time. Additionally, LB666 extends the deadline for employers to make voluntary contributions to the Department of Labor from January 10 to February 28. Thank you for your time and attention. I will take questions. Please note the Department of Labor is here to answer questions as well and are planning to provide further information regarding the extension of time to make

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voluntary contributions to the department. And I will be staying for closing.

**IBACH:** Thank you. Are there questions for the senator from the committee? Seeing none, thank you. We'll ask for proponents.

**RIEPE:** Thank you.

**IBACH:** Welcome.

**JOHN ALBIN:** Good afternoon, Vice Chairwoman Ibach and members of the Business and Labor Committee. My name is John Albin, J-o-h-n A-l-b-i-n, Commissioner of Labor. I appear before you today as the commissioner in support of LB666. I want to thank Senator Riepe for introducing this legislation on behalf of the department. In December 2021, the Department of Labor launched a new unemployment tax system. The 2023 tax rate year was the first year the department issued tax rates out of its new system. As part of that process, the department quickly realized it was not utilizing the system's full functionality. The modernized system allows for secure electronic delivery of all documents. However, Nebraska law requires the department to send unemployment determinations of liability and combined tax rate via regular mail. The department has also experienced a significant increase in mail delays and returned mail. One employer that represents several Nebraska businesses reached out concerned when the tax rate determinations arrived two weeks after they were originally mailed. LB666 allows employers to elect the method they want to receive documents from the department. The department will default to regular mail unless the employer otherwise elects. Further, the employer can change their election at any time. Additionally, LB666 extends the current deadline for employers to make voluntary contributions to the department. Under current law, employers covered by the Nebraska Employment Security Law are assigned a tax rate based on their experience rating. There are 20 different tax rates that may be applied to an employer depending on their experience rating. An employer can pay a voluntary contribution to the department to buy down to the next lowest rating. This payment is due by January 10 each year. LB666 extends this deadline to February 28. This gives employers more time to review their assigned tax rate and make an informed decision to buy down. LB666 provides flexibility to Nebraska employers and reduces costs to the department. This concludes my testimony and I'd be happy to answer any questions you might have.

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

**JOHN ALBIN:** Thank you.

**IBACH:** Other proponents? Welcome.

**RON SEDLACEK:** Good afternoon, members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm the registered lobbyist on behalf of the Nebraska Chamber of Commerce. I'm also here on behalf of the Lincoln Chamber of Commerce, the Greater Omaha Chamber of Commerce, Nebraska Grocery Industry Association, and the Nebraska Retail Federation. You've heard the description of the bill and what it attempts to accomplish twice now and I won't go through it a third time. I kind of wish this was a bill that we would have brought to the Department of Labor because it does identify a compliance issue that would be favorable for employers in the respect that often they don't get notices in time because it might not be routed to the right person or the time in the U.S. mail. So if they truly elect to receive it electronically, it might go to the right place at the right time and they can be in better compliance with the law. Additionally, it allows, as you know, for the, as I mentioned before, buying down a rate. So if you have the means and capability of, of having-- buying down a tax rate, you can do so, so with a little bit more flexibility with the calendar. With that, I'll conclude my testimony but would, would be happy to answer any questions that you might have.

**IBACH:** Great. Thank you very much. Are there questions from the committee? Seeing none, thank you--

**RON SEDLACEK:** Thank you.

**IBACH:** --very much. Other proponents?

**BOB HALLSTROM:** Vice Chair Ibach, members of the committee, my name is Bob 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. I probably should have just given my name to Mr. Sedlacek to save some time. The bill has been described. It gives small businesses greater flexibility and for that reason we support the bill. We also admire Senator Riepe's courage in introducing a bill designated as LB666. So with that, be happy to address any questions.

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**IBACH:** It's doomed. Thank you. Are there questions from the committee?  
No questions.

**BOB HALLSTROM:** Thank you.

**IBACH:** Thanks so much. Other proponents? Seeing none, are there any opponents to LB666? No proponent-- opponents. Are there anyone interested in testifying in the neutral position? Seeing none, would you like to close, Senator Riepe? And do we have any letters, Micah? OK. Waives closing. Thank you. That concludes our hearing on LB666. Were there any letters, Micah? Were there any letters?

**MICAH CHAFFEE:** [INAUDIBLE]

**IBACH:** Thank you.

**RIEPE:** Zero, zero, zero. Thank you. Before we go further, I would like to ask Senator Hansen to introduce himself so that you know who he is.

**HANSEN:** Senator Hansen, District 16. I represent Washington, Burt, Cuming, and parts of Stanton Counties.

**RIEPE:** Thank you. We will now proceed forward with LB618. That is Senator McDonnell. I don't see him. Can we make a quick contact with Senator McDonnell? He may be in another-- presenting in another hearing even, so. Consider this a moment of silent meditation. If it wasn't so close to St Patty's Day, I would think it was Halloween the way the door squawks, but-- and we have checked into. They are unable to repair it, at least at this time. I suppose you could call it somewhat state bureaucracy that, you know, a little WD-40 is not available, so there you go.

**BLOOD:** Why don't we just put a sign on the door that says use the other door?

**HANSEN:** There is one, yeah.

**RIEPE:** We are asking people-- big senator like you, you should be able to lift that door off its hinge out there, Senator McDonnell.

**McDONNELL:** Actually, I was, I was warned and I'm running late so I thought I better--

**RIEPE:** Welcome, Senator, we appreciate you being here.

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**McDONNELL:** Thank you, Chairperson Riepe, members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. The purpose of LB618 is to provide fairness by addressing a gap in access to unemployment benefits currently being denied to otherwise qualified legal present workers. In the state of Nebraska, the bill would ensure that any person who is legally authorized to work in the United States and satisfies all other employment requirements can access their earned unemployment insurance. In Nebraska, employers pay unemployment insurance taxes for all of their employees, including eligible, legally present work authorized individuals. Nebraska employers are required to by law to verify the work authorized status of their employees and the Department of Labor is required by law to verify the work authorized status of every unemployment insurance applicant. Only legally present work authorized employees can qualify for those benefits that employers must pay into the unemployment trust fund on their behalf. The current gap in Nebraska law prevents some work authorized individuals from accessing the unemployment insurance they earned and for which their employer paid. Unlike Nebraska, the vast majority of states follow the long-standing federal guidance that eligible-- eligibility for earned unemployment insurance is based on whether a person is authorized to work in the United States. LB618 proposals to align Nebraska with the current practice followed throughout the country by addressing this unnecessary oversight. I introduce this person-- as a personal priority bill. Similar legislation LB298 in 2021, that was advanced out of this committee with no opposition. The committee amendment, which became the bill as presented today, was adopted on General File and with no opposition. The bill was subsequently advanced to Select File similar to what we as legislators are facing this session, time, we simply ran out of time before we could finish. So talking about this legislation and the reason we became more prevalent was because of COVID. A number of employees, their employer told them to go and apply for unemployment insurance based on the idea that they had to be laid off at that point in time, no, no fault of their own. And based on this coming to, to light after the fact, we are the last state that has not harmonized our language with the federal government to make sure that these work authorized employees get the benefits that their employers are paying for and that they're entitled to. Here to answer any of your questions.

**RIEPE:** Are there questions from the committee? Seeing none right now, thank you very much.

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**McDONNELL:** Thank you.

**RIEPE:** Will you--

**McDONNELL:** I'll be here to close.

**RIEPE:** Tell me you'll be able to stay for the close that way you can do the follow-up bill.

**McDONNELL:** I will-- I'll use the other door when I leave, but I'll be here to close.

**RIEPE:** OK. Any proponents, if you will?

**NICK GRANDGENETT:** Good afternoon, my name is Nick Grandgenett, spelled N-i-c-k G-r-a-n-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed, testifying in support of LB618. So LB618 corrects a gap in state law that prevents some work authorized immigrant Nebraskans from accessing the unemployment they have earned and that their employers have already paid for. This gap makes Nebraska's unemployment system among the most restrictive in the United States. Unemployment is designed to write people, who lose their job through a new fault-- through no fault of their own, insurance payments for a limited period of time while they search for a new job. Under current law, Nebraska collects from employers a FUTA tax on wages earned by all immigrants. Most states then follow the long-standing federal guidance that eligibility for claim payment hinges on whether an immigrant is work authorized. Nebraska law deviates from this practice and restricts eligibility to the narrower term qualified noncitizen. This excludes many work authorized Nebraskans, particularly those work authorized through DACA and TPS, even though their wages contribute to the state's unemployment insurance trust fund. The FUTA tax is essentially an insurance premium. All states collect FUTA taxes on working immigrants. As such, they generally allow all immigrant community members to access unemployment so long as they were work authorized. They don't make that determination based on whether a person is a qualified noncitizen. This rule recognizes a principle of fairness, which should be at the core of all of our insurance systems that if a premium is collected then payment should be paid if a loss event takes place. Most states would-- or most people would balk at the idea if an auto insurance policy that collects an insurance premium on all cars, but then only pays claims on Fords and Hondas, but not Chevys and Toyotas. Paying claims for some work authorized immigrants but not DACA and TPS similarly deviates from that core principle of fairness.



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For all of us, life is often unpredictable. Job loss is often unexpected and not the employee's fault. Unemployment acts as a small financial bridge to help families make ends meet during a job search. Unemployment law reflects this and is structured so people cannot simply quit a job because they want unemployment. The law requires, for example, an applicant to be searching for a new job and available or authorized to take a subsequent job. Additionally, if an applicant has not earned sufficient wages to create that premium of my contribution to the state, then they are ineligible for unemployment. Immigrant Nebraskans with DACA and TPS are valued members of our families, our communities, and our state. State law should be structured so they can be protected by the same employment supports they and other Nebraskans have earned. Again, as Senator McDonnell said, last year-- or last session when this bill was brought it made it all the way to Select File. We just simply ran out of time. So we just urge the committee to again pass it, to advance it to General File so we can kind of finish that legislative journey. Thank you and I'm happy to answer any questions.

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

**NICK GRANDGENETT:** Thank you.

**RIEPE:** Thank you for being here.

**NICK GRANDGENETT:** Sure.

**RIEPE:** Additional proponents? Welcome back. You know the rules.

**RON SEDLACEK:** Thank you, Mr. Chairman and members of the Business and Labor Committee. Again, for the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, registered lobbyist here today on behalf of the Nebraska Chamber of Commerce. However, I'm also authorized to testify on behalf of the Lincoln Chamber of Commerce, the Greater Omaha Chamber of Commerce, the Nebraska Hospitality Association, and the Nebraska Retail Federation. Save the committee a little bit of time for not having as much repetitive testimony I hope. For clarification only, the question comes up quite often who pays for unemployment insurance program and its benefits? And sometimes the misunderstanding is that it's an employee contribution, but it's not. It's 100 percent funded by employers. The employer community pays those taxes. I refer to them in the law quite often as contributions as opposed to taxes, but benefits are paid then from the Nebraska State Unemployment

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Insurance Trust Fund. And again, that's a-- that is supported solely by taxes on employers. No deductions whatsoever are taken from an employee's paychecks for unemployment insurance. The unemployment insurance program should really not be categorized then as a public benefit provided by the state or by taxpayers in general of the state. Again, it's the employer community who supports that program and the benefits that are paid. Since we're taxed on each employee and when an employee is separated from work through no fault of their own, benefits should be paid accordingly to fulfill the purpose of the program, which is a temporary stopgap measure, hopefully to get the person back to work or back to work when, when employment is available to do so. And so for these reasons, we would support the bill.

**RIEPE:** OK. Are there questions from the committee? I see none. Thank you very much. Our next proponent, please. If you would be kind enough to state your name and spell it.

**SUSAN MARTIN:** Good afternoon, Chair Riepe 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 in support of LB618. Immigrants and refugees have always played a vital role in building our country and our labor movement. Cities and states around the country are taking steps to ensure that they continue to welcome, protect, and support the immigrants and refugees who make such vital economic and cultural contributions to their communities and, and Nebraska has the opportunity to change an antiquated law and align with other neighboring states who have rectified this situation with LB6-- which LB618 addresses. All work authorized immigrants contribute to the economic growth of our local communities paying their fair share of taxes. They put money back into the community by purchasing cars, homes, and can contribute to the overall stimulus of the areas they live in. A loss of job has tremendous impacts on not only their family, but their community. These are individuals who are legally authorized to work in the United States and the proposed legislation clarified-- clarifies this eligibility in order to collect unemployment benefits. We're not asking for special treatment for these workers, we're just asking for fair and equal treatment. This bill, when introduced in 2021, was passed out of committee but unfortunately ran out of time while being debated during that session. We once again encourage you to move this commonsense bill to the full floor of the Legislature to begin the process of making Nebraska a truly welcoming place for all people.

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**RIEPE:** OK. Are there questions from the committee? I think I heard you say in your testimony that these are legally authorized.

**SUSAN MARTIN:** Work authorized. Right.

**RIEPE:** OK. Any other questions? Seeing none, thank you for being here.

**SUSAN MARTIN:** You're welcome.

**RIEPE:** Next proponent.

**JODI GARRELTS:** Good afternoon, my name is Jodi Garrelts, J-o-d-i G-a-r-r-e-l-t-s, and I am here on behalf of the Immigrant Legal Center and the Refugee Empowerment Center to convey our support for LB618. Our organization serves low-income immigrants and refugees by providing free legal representation, resettlement services, and case management to these vulnerable populations. We represent noncitizens seeking humanitarian forms of relief, including asylum, Temporary Protected Status, TPS, and Deferred Action for Childhood Arrivals, DACA. Many clients endure a lengthy, arduous process to ensure their safety and continued residence here in Nebraska. The asylum process commonly takes three to five years or more to receive a final, a final adjudication. But fortunately, most asylum applicants qualify for employment authorization while, while their claim is pending. Immigrants provide vital services and products in Nebraska's meatpacking plants, food production, and manufacturing industry, and in the construction and maintenance of our roads, buildings, and homes, among other industries. Under current Nebraska law, only lawful permanent residents, refugees, approved asylees, and a few other very narrow noncitizen categories can access the benefits their unemployment insurance, UI, taxes fund. Asylum applicants, beneficiaries of TPS and DACA, and other immigrants with work authorization are excluded from receiving unemployment benefits. Although, the taxes paid on their wages contribute to the UI system like everyone else. Current Nebraska law restricts UI access to those who meet a narrow federal definition of qualified noncitizen, a classification designed to limit access to federal public benefits like supplemental Social Security income. While such safety net benefits are paid for in the aggregate by the income taxes of all taxpayers, unemployment insurance is different in that benefits are funded directly by taxes paid on the employee's labor. No other state income taxes, sales taxes, or property taxes are used to fund the Nebraska Unemployment Insurance Trust Fund. Each employee in the state has these taxes deducted directly from their paycheck, and in the

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unfortunate event that they lose their employment through no fault of their own, they can access the money paid into the program in order to supplement their income while they seek other work. Denying this benefit to noncitizen workers who are lawfully present and employment authorized effectively allows the state to collect an insurance premium on their labor and then refuse to make insurance payments if they lose their job. It is important to emphasize that this bill would not permit immigrants without work authorization, such as the undocumented members of our community to receive unemployment insurance.

**RIEPE:** We do have a red light. We-- did you conclude there?

**JODI GARRELTS:** I did not.

**RIEPE:** Well, let's see if we have any questions and see if that might afford you an opportunity to continue. Are there questions from the committee? I see none at this time.

**JODI GARRELTS:** OK. Thank you.

**RIEPE:** Thank you for the testimony you gave. We do have the written document when we'll have the opportunity to review. Additional proponents? If you'd be kind enough, welcome for being here, if you'd state your name, spell it, please, and then share with us who you represent.

**MARIA ARRIAGA:** Good afternoon, my name is Maria Arriaga, spelled M-a-r-i-a A-r-r-i-a-g-a, and I am the executive director of the Nebraska Latino-American Commission, testifying in favor of LB618. I want to thank Senator McDonnell for introducing this important legislation. Previous to this job and during the time of the pandemic, I had the opportunity to work in the state of Iowa in the Department of Labor. There, I learned about labor and unemployment law, which helped me to understand the application process as well the approval or denial of these benefits. Surprisingly, contrary to what is believed by many people, these benefits are not given to everyone and for the simple fact to apply. I also learned that whoever receives these benefits is because that individual has earned them with their respective hard work, therefore they earn wages for at least a year and a half previously to apply. That is, the monetary calculation of the benefits will be based on the wages they have been previously earned and, of course, it has a cap, which needless to say is not very high, regardless of how much your wages, your wages are. These wages

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are reported and accumulated through your Social Security number. That is only people, that is only people with a valid Social Security number can be entitled to those benefits. Why it is important to mention this? Because only people who have been-- who have some type of permanent or temporary legal status, some type of visa that provides them with temporary protection either to resolve their immigration process or fix their immigration status from temporary to permanent receive a Social Security number that is valid to work. For example, we can mention people who have DACA, TPS, asylum, U-Visa, etcetera. So these people, who although they don't have a definitive or permanent immigration status yet, do they-- do have a valid Social Security number that allows them to work, therefore accumulate wages and in case of need collect unemployment benefits. I think it is not necessary to explain that just as they earn wages, they also pay taxes like any other individual with a Social Security number. Therefore, if a person with a Social Security number valid to work can pay taxes and acquire all the responsibilities of an employee, they should also be entitled to unemployment benefits, obviously as long as they meet all the stipulated requirements in the labor and unemployment law including the wages. Respectful committee, I stress the preponderance of reviewing this part of the legislation that at the moment has these gaps that leave helpless many employees with a valid Social Security number who work honestly and legally in this country and I urge you to advance the bill to General File.

**RIEPE:** Your timing is very good.

**MARIA ARRIAGA:** Thank you and I'm happy to answer any questions.

**RIEPE:** Are there questions from the committee? Seeing none, thank you very much for being with us this afternoon.

**MARIA ARRIAGA:** Thank you.

**RIEPE:** Additional proponents? Good, sir, welcome.

**TOM VENZOR:** Good afternoon, Chairman Riepe and members of Business and Labor Committee. My name is Tom Venzor. I'm the executive director of the Nebraska Catholic Conference. That's T-o-m V-e-n-z-o-r. The Catholic Church has had a long history of caring for the immigrant. This is because the Church is fundamentally impaired-- impelled by the witness of Jesus Christ, who as we hear toward the end of the Gospel of Matthew, urges believers to welcome the stranger. At the beginning of that same gospel, we read that Jesus himself experienced a need to

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migrate and to flee persecution. To use modern immigration legal terms, we would say that Jesus, Mary, and Joseph were like refugees and asylum seekers in their flight to Egypt as they escaped the wrath of Herod. In addition to the life of Christ, the Church is impelled by the long-held experience teaching and practices of God's chosen people, the Israelites, who themselves experienced the plight of the immigrant. Through their experience of being strangers in a strange land they learned about God's fidelity and love for them, as well as the moral obligations to meet the needs of the migrants they encountered. These biblical and ethical principles have long led the Catholic Church in Nebraska and indeed throughout the world to involve itself in the development of public policy and work toward justice for immigrants. When thinking about immigration policy, the Church is guided by and proposes for consideration three basic principles. First, people have the right to migrate to sustain their lives and the lives of their families. Second, a country has the right to regulate its borders and control for immigration. And third, a country must regulate its borders with justice and mercy. Currently, Nebraska's unemployment insurance benefits law contains a basic injustice that can be resolved by this Legislature. Work authorized migrants are unable to access unemployment insurance benefits, which their employers have already paid into on their behalf. Our state laws governing public benefits are only available to, quote unquote, qualifying aliens, which is a term that does not adequately accommodate those who have been provided work authorization by the federal government. This legal structure places a hardship on asylum seekers, DACA recipients, and persons with Temporary Protected Status, and like their fellow Nebraskans with whom they legally work alongside of asylum seekers, DACA recipients and persons with TPS cannot otherwise obtain unemployment insurance benefits that their employers contribute. And this creates a basic unfairness and injustice for those who work hard to support their families, contribute to local communities, and to grow our state economy. And just to finish off, we would request, request that you advance this to LB618, and like we said earlier, to allow this to continue its path through the legislative process. Thank you.

**RIEPE:** Thank you very much. Questions from the committee? Seeing none, we appreciate you being with us today.

**TOM VENZOR:** Thank you.

**RIEPE:** Additional proponents? Hello. Greetings.

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**CINDY MAXWELL-OSTDIEK:** Thank you. Good afternoon, Chairperson Riepe and members of the Business and Labor Committee. My name is Cindy Maxwell-Ostdiek. That's C-i-n-d-y M-a-x-w-e-l-l-O-s-t-d-i-e-k, and I thank you for holding this hearing open for all who may come to testify today. Unfortunately, that's not been the case in all committee hearings this session, and we believe it's important to call attention to the privilege and responsibility of the Unicameral second house. I'm a mom and a small business owner and a volunteer and cofounder of a Nebraska legislative study group. And I testify today on behalf of our members in support of LB618 to redefine public benefits and change provisions of the employment security law relating to the disqualification of certain aliens. And I just wanted to say, I remember being surprised back in the fall of 2020 to learn that some of our Nebraska neighbors were denied unemployment insurance that they were due. I was on a Zoom session with the west Omaha core team for the Heartland Workers Center, and there was a person who shared with us about their experience, and Senators Day and Lathrop were on the call as well. And the instance surprised me that they were being denied because of my background in human resources and executive search. I'm aware that the employers would be paying into those funds and that that would be a very frustrating experience for them and the employees. I wanted to draw attention to this gap that most of us believe this technical detail should be resolved as quickly as possible. It's already been discussed that LB298 did not reach the final stage and we're wondering how many work authorized neighbors may not have received their unemployment these last two years in case they were in that situation. I thank Senator McDonnell for bringing this important legislation again. I know that there's been an amendment, the process has been improved, and we ask you to please forward this from your committee as soon as possible and close this gap for all of our neighbors.

**RIEPE:** Thank you for being here. Are there questions from the committee? OK. Seeing none,--

**CINDY MAXWELL-OSTDIEK:** Thank you.

**RIEPE:** --thank you very much. Next proponent, please. Welcome. If you would be kind enough to state and spell your name, please, and then who you represent.

**ENEDINA MANRIQUEZ CAMARENA:** Hello, my name is Enedina Manriquez Camarena, E-n-e-d-i-n-a M-a-n-r-i-q-u-e-z C-a-m-a-r-e-n-a, and I live in Omaha, Nebraska. I'm here to express my support for LB618. I have

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had my DACA status since 2013. I am currently employed as a high school counselor for Omaha Public Schools. I have worked hard to earn my bachelor's and master's degree in order to ensure that I have a stable future. Part of this entails me working a job that allows me to contribute to my pension, life insurance, and unemployment. However, in the state of Nebraska neglects to look at who I am as an individual and focuses on my legal studies to determine if I am deserving of unemployment should I ever need it. With the salary of an educator, it is almost impossible to save enough money to cover the loss of, of employment. I fear that if I were ever to need unemployment, I would have absolutely no other option. This means I would have to take out loans to relieve some financial stress, sell all my assets, and move back home with my parents. I constantly ponder alternatives in case of any emergency, only to come up empty-handed and defeated. Not only am I affected, but this especially took a toll on our community during the COVID shutdown. DACA recipients were being denied their hard earned unemployment. Unemployment that any other documented individual in this state could access without restraint. Nebraska is one of the only states that denies DACA recipients access to their unemployment insurance. Why is a state that is benefiting over \$14 million in state and local taxes from DACA recipients not allowing us access to those funds? We should be entitled to unemployment in case of any unforeseen emergency or circumstance. The contribution of DACA recipients in many work fields is substantial, but the care and respect is minimal. To my fellow DACA recipients, I see you, I hear you, and I thank you for all you do. I hope the state of Nebraska can do the same by granting us access to unemployment insurance. I ask that you advance LB618 to General File. Thank you.

**RIEPE:** Thank you. You did a very solid delivery. Have you done this before?

**ENEDINA MANRIQUEZ CAMARENA:** I have not, but I liked it.

**RIEPE:** Well, you're doing a good job. Congratulations. Are there questions from the committee? Seeing none, thank you. We look forward to seeing in the future. The next proponent, please. Again, if you would be kind enough to state your name and spell it and then who you represent, please.

**MEYLIN ESPINOZA:** Good afternoon, members of the committee. My name is Meylin Espinoza, M-e-y-l-i-n E-s-p-i-n-o-z-a, and I'm here in support of LB618. I grew up in Crete, Nebraska, and I'm currently a senior at UNL. Excuse me. I remember getting my first job at Walmart when I



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first received DACA, also known as Deferred Action for Childhood Arrivals. I'm very grateful for the opportunities that DACA has given me, but with that does come the burdens. We can't vote in elections, can't do the FAFSA to obtain student loans or Pell Grants, and currently we have no way to apply for residency or citizenship. What DACA does do is grant you work authorization and not fear deportation. The day I received my confirmation letter saying that I had DACA status was the happiest day of my life because I was so excited knowing that I could finally work to attend college and obtain a degree. In 2021, the pandemic happened. I abruptly learned that I cannot access unemployment insurance. I had been working full time at a local hotel for about two years, and one day in March 2020, I no longer had a job. I realized it was not the employer's fault nor mine, but I did have to figure out how I was going to pay for the next semester at school. It not only took a huge toll on me, but my parents, because I realized that they were not going to be able to help me out because the priority was to keep food on the table. I think that it is very important for everyone to hear about DACA experiences because we are longtime Nebraskans. Not only that, but with renewing DACA every two years, I must go to Omaha to do my fingerprints and pay a \$495 renewal fee to submit my new application request. Not to mention I have to be really careful to not get in legal trouble because to obtain DACA you have to maintain a clean record or you risk getting the application denied. One day in 2005, I arrived to the United States at only four years old. As much as I would love to remember my home country, I really don't. Nebraska is my home. It is really all I have ever known. I cannot speak for all dreamers, but I know most of us are trying to work hard to obtain a degree to be able to help our families and obtain a stable future for us. I love my community. I love giving back to the schools that I once attended, like volunteering and helping out by translating at conferences. I also have built relationships with many community members because it is my home. I never think of myself as different from my peers until old laws that don't understand me end up excluding me from some basic commonsense resources. When a Nebraskan loses their job due to know for their own, they should be able to access unemployment until they get back on their feet. That is why I believe that we should update our state laws to be able to include all work authorized Nebraskans to be eligible for unemployment insurance. Thank you.

**RIEPE:** Thank you very much. Any questions from the committee? I hear none,--

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**MEYLIN ESPINOZA:** Thank you.

**RIEPE:** --thank you very much for being with us. Additional proponents? Welcome. If you'd please state your name, spell it, and then who you represent, please.

**SONIA LEYVA:** Good afternoon, my name is Sonia Leyva, S-o-n-i-a L-e-y-v-a, and I live in Crete, Nebraska. I'm here to express my support for LB618. I have had DACA status since 2012. I was working with a manufacturing company in Seward, Nebraska, but due to the COVID-19 pandemic the company was forced to shut down. The supervisor told us that the plant will close for a couple weeks or perhaps for months and encouraged us to apply for unemployment. And we did. Many of my colleagues applied and qualified for unemployment, but the money never came to me. Six weeks later, I received a letter informing me that because I had the DACA status I did not qualify, that only those with resident or citizen status qualify for unemployment. At that time, I was pregnant and caring for three siblings and only my husband was working. It was difficult for us to pay our bills. Thank God my family helped us so we were able to pay those bills we had pending. I know a few DACA families that they had the same problems as I did and they lost their jobs during COVID-19 and with no family to help them. Also, I have met citizen families who lost their jobs during COVID-19 and they relied on unemployment. What I don't understand is that if we pay our taxes, have valid Social Security numbers and work authorization, our employers pay insurance taxes, and in other states DACA recipients have no problem receiving unemployment when needed, why is Nebraska denying DACA workers that insurance? Unemployment insurance support is important for all Nebraska workers and their families. I ask you to advance LB618 to General File. Thank you.

**RIEPE:** OK. Thank you very much. Let's see if we have any questions from the committee. Seeing none, we appreciate you being here. Thank you. Additional proponents? Welcome.

**JANE SEU:** Good afternoon.

**RIEPE:** If you'd be kind enough to state your name and spell it, please, and who you represent.

**JANE SEU:** Sure. My name is Jane Seu, J-a-n-e S-e-u, and I'm testifying on behalf of the ACLU of Nebraska in support of LB618.

**RIEPE:** OK.

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**JANE SEU:** In Nebraska, employees-- employers already pay unemployment insurance taxes for all their employees, and yet not every employee has equal access to those benefits. This bill closes this unemployment insurance gap by clarifying that all immigrant workers with [INAUDIBLE] status and work authorization are eligible and able to access this earned benefit. As you heard, this will include those with DACA, individuals with Temporary Protected Status, and asylum seekers who already have that work authorization. As you've also heard, work-- or life is often unpredictable. That's a lesson I think we've learned in the last few years. Unemployment insurance provides, you know, this limited financial security, but important and significant to those who need it. And again, this bill brings us in line with every other state. We are the only state that does not include these workers in having them access to these benefits. They're work authorized here, they pay taxes here so they should have access to this earned benefit. We urge your support of LB618 and I'm happy to answer any questions.

**RIEPE:** OK. Thank you. Are there any questions from the committee? Seeing none, thank you for being with us. Additional proponents? Anyone wishing to speak in favor of the-- not seeing anymore. Any opponents? Seeing none, is there anyone wishing to speak in a neutral capacity? Seeing none, Senator McDonnell, you're welcome to close. While he's doing that or getting ready, there were 14 proponents, zero opponents, and one neutral on LB618. Senator.

**McDONNELL:** Thank you, Chairperson Riepe, members of committee. Tiny recap. First of all, thank everyone that came to testify. I appreciate you driving here and sharing your, your stories. So there, there is a fairness issue here. And the idea if you put yourself in the employee's position and the employer's position, everyone was doing what they felt was the, the right thing and the legal thing. So you have the employer paying in, you have the employee coming to work, they're work authorized, they're doing their job, unfortunately, a pandemic hits and a number of them are, are being laid off and employer is telling them, go, go collect your unemployment insurance. I paid in that individual. We want to get you back to work as soon as possible. They go and they're, they're denied because we haven't harmonized our language like 49 other states have throughout the, the country. So, again, if you put yourself in either position of fairness situation, then you look at the state of Nebraska, yet the state of Nebraska knows this and continues to collect that-- those dollars from the employer and knowingly that they have to correct this language and have that money sitting there and they're going to continue to deny these people, then that's called a scam. And for us, I think we have

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to correct that. I believe we're all now when I, when I say that, the, the people throughout the state don't want that to happen. But again, it's up to us to make sure we correct the language, to harmonize the-- with the federal government to make sure these people that have, no fault of their own, they were laid off and these employers that have paid in make sure these, these individuals get unemployment insurance. Here to answer any questions.

**RIEPE:** Are there any questions? Senator Hunt.

**HUNT:** Thank you, Chairman Riepe. Do you think this bill will get a priority?

**McDONNELL:** No.

**HUNT:** OK. Thanks.

**RIEPE:** OK. Any other questions?

**McDONNELL:** Well, I should, I should say I don't know if this committee has picked their priority bill, so I don't want to be-- but again, no.

**HUNT:** Have you selected a priority yet?

**McDONNELL:** Yes.

**HUNT:** What is it?

**McDONNELL:** It's the chip's bill, semiconductors.

**HUNT:** OK. Thank you.

**McDONNELL:** It could potentially bring 17,000 jobs to the state of Nebraska, up to \$2 billion GDP. I just-- I'm not trying to take time.

**HUNT:** No, that's fine. I mean, it is what it is. No, I--

**McDONNELL:** I had, I had prioritized this in the past. And again, I believe this body would, would approve this, this language if we had that, that opportunity.

**HUNT:** Has anybody asked for a Speaker priority on this?

**McDONNELL:** No, as far as I know, I don't-- those haven't been put out yet. So no.

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**HUNT:** But, but you didn't ask?

**McDONNELL:** I did not ask.

**HUNT:** OK. Thank you.

**McDONNELL:** Now consent calendar, this could be a consent calendar, I believe, based on the idea and up to this committee if you decide to support it. And right now, at least in the past, it was, I believe it's consent calendar-worthy.

**RIEPE:** OK.

**HALLORAN:** No pressure.

**RIEPE:** No pressure.

**McDONNELL:** I'm not.

**RIEPE:** Are there any other questions? Hearing none, thank you, Senator McDonnell. And that concludes our hearing for LB618 and we'll now open on LB459, which is also Senator McDonnell and you're welcome to open at any time.

**McDONNELL:** Thank you.

**RIEPE:** Well, let's-- we'll get some crowd cleared out of here, I guess.

**McDONNELL:** Thank you, Chairperson Riepe, members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. LB459 which would appropriate General Funds to reimburse rural or suburban fire protection districts, airport authorities, cities, villages, and nonprofit corporations which provide and maintain enhanced cancer benefits pursuant to the Firefighter Cancer Benefits Act. When I introduced this legislation to create the act in 2020, which was amended into LB532 [SIC--LB432], passed and signed by the Governor, I shared with you that this has been showing that cancer among firefighters has increased significantly. In responding to interior fires, there are often carcinogens burning in the fire. The toxic substances come from the burning in everyday products that are engulfed in flames. The fire service has worked very hard on improving firefighters' training and making all firefighters aware of the high risk of cancer, yet there is still a higher rate of cancer among firefighters. Research conducted

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by the National Institute of Occupational Safety and Health found that the firefighters have 14 percent increased risk of dying from cancer as compared to the general public. In this legislation, I seek to direct the General Funds to be used to reimburse the political subdivisions providing cancer insurance benefits for the annual cost of premiums paid for the coverage. The reimbursement would flow through the State Fire Marshal's Office to qualify for reimbursement. The political subdivision would be required to submit information regarding the total annual costs of the premiums in a manner prescribed by the fire-- State Fire Marshal. It is estimated that the annual cost of insurance benefits per firefighter is \$190 annually. If 3,000 firefighters are enrolled in the first year, that would be just over \$570,000. Of course, the goal would be to increase the number of firefighters covered, which, which add even 9,000 firefighters would be an annual appropriation of \$1.7 million. Experience shows that it, it will take time to build the number of enrollees, but the associations for both the volunteer and career firefighters are working hard to encourage fire districts, cities, and villages to enroll under the Firefighter Cancer Benefits Act. The Nebraska State Volunteer Firefighters Association has already undertaken action to bring in MetLife to assist in implementation of the Firefighter Cancer Benefits Act. There are other testifiers here that follow me with additional insight and personal experiences about this legislation. I'm here to try to answer any of your questions.

**RIEPE:** Are there questions from the committee?

**McDONNELL:** And I will be here to close.

**RIEPE:** We appreciate it. Thank you very much. We'd like to start with proponents. Can I call you General or Admiral? You have a lot of gold on you.

**JOHN BOMAR:** Thank you.

**RIEPE:** Welcome. If you've been kind enough, sir, to state your name and spell it for us, please, for the record.

**JOHN BOMAR:** My name is John Bomar, J-o-h-n B-o-m-a-r. I have been a volunteer first responder for over 46 years at this time. I serve on the Battle Creek Volunteer Fire and Rescue. I also serve on the Nebraska State Volunteer Firefighters Association Board, the past president of the Nebraska State Volunteer Firefighters Association, the Nebraska Fire Chiefs Association, and I've also-- and I was also a

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director of the National Volunteer Fire Council for over 30 years. According to the-- a 2013 National Institute for Occupational Safety and Health study, firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general public. Some departments are tracking even higher rates among their members. In 2018, federal legislation was enacted requiring the Centers for Disease Control and Prevention to set up a voluntary registration of firefighters to track and analyze cancer trends and risk factors among the United States Fire Service. The National Firefighter Registry is enrolling both active and retired fire service members as of late of 2022. The National Volunteer Fire Council, the International Association of Firefighters, the volunteer and combination office section, and other groups came together and did a study and came up with the best 11 practices for preventing firefighter cancer. The report was called the Lavender Ribbon Report. I have attached a list, a list of the 11 practices for you to look at. And if you'd like a copy of the report, I would get one for you. My information is attached to my handout. Out of the report, I have included a few of the things that the report has. One, is wearing full protective gear; two, make sure members have two hoods; and, three, take a shower and put clean clothes on after returning from a fire. I know that when I was the director of the National Volunteer Fire Council, I handed out many of these reports across the state to first responders and I know the new directors get more also. The director of the National Volunteer Fire Council, the Nebraska State Volunteer Firefighters Association, hands out this type of information at fire school and the association conference. I am not sure how many responders have cancer across the state, but I know it is out there. I do know two firefighters for sure that have cancer at this time who are out of our Elkhorn Valley Mutual Aid Association in northeast Nebraska and there are many other firefighters across Nebraska. I'll close now, but we are asking that you please move this bill forward. Thank you.

**RIEPE:** Thank you. Are there questions from the committee? OK. Thank you, sir, very much.

**JOHN BOMAR:** Thank you.

**RIEPE:** Additional proponents, please. Welcome, sir.

**MICHEAL DWYER:** Welcome.

**RIEPE:** State and spell your name, please.

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**MICHEAL DWYER:** Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I'm here to testify in support of LB459. I'm testifying on behalf of the Nebraska State Volunteer Firefighters Association and we would again like to thank Senator McDonnell for introducing LB459 and the last year's LB1039. The good news and the bad news is that I am your eye candy for this afternoon. I am here to put a face on the debate about the state of Nebraska's support for volunteer fire and EMS providers, particularly in the face of a cancer diagnosis. I'm a 38-year veteran of Arlington Fire and Rescue, responded to over 2,400 calls, and served in every capacity except chief and treasurer. My career was interrupted in 2020 when I was diagnosed with follicular lymphoma. After my first round of chemo, it was clear that I could no longer effectively serve the cause that I had dedicated most of my life to and resigned. However, I was able to return to limited duty this August. Last year's LB1039 was great for three reasons. First, because it encouraged the entities that benefit from volunteer fire and EMS to support those same people like me that get cancer. Second, because it encourages firefighters like me to get regular examinations. Third, it encourages their doctor to look for cancer and note that while they may be a plumber or a lawyer or, God forbid a photographer, they do serve as a firefighter. This year's LB459 would strengthen that program by reimbursing the cost of the premiums. I understand that the state of Nebraska can't give blank checks to everyone who sits in this chair. As a taxpayer, I support that. However, public safety is one of the few truly essential functions of government. The framework of volunteer fire and EMS that protects the people, the land, the communities, the highways, the state parks of 78 percent of Nebraska is precarious, to say the least. Nothing happens in that world without women and men. While call volumes increase, those that are willing to risk their lives to serve others for nothing continues to decline. LB459 won't solve that, but it will provide additional support when one of those critical pieces of the framework falls. I'm asking you to remember my face and the 11,000 men and women who protect your state. We appreciate-- and tell them we appreciate your service. We appreciate you risk your lives to protect others. We appreciate the hell that you go through and we really appreciate the millions and millions and millions of dollars that you save the taxpayers of Nebraska. And if you get cancer, we will have your back. So I would appreciate your support-- excuse me, we would appreciate your support for LB459 and I'd be happy to take any questions.



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**RIEPE:** Let's see if we have any questions. Any questions from the committee? I think the one question I had, did your physician indicate that there's a direct correlation between your lymphoma and some of the exposures that you had as a firefighter?

**MICHEAL DWYER:** No, I want to be clear about that. There's no-- from my travel through the system, both as a firefighter and a cancer survivor, there is no, that I know, a direct correlation based on the evidence that we have now. The only thing I would add is that that evidence, I think everybody knows this continues to change. It's different in the volunteer world in that on one hand, we just don't do-- typically, a volunteer department won't do the volume of interior structure work that a career firefighter might. On the other hand, our world between volunteer fire service and the rest of our lives gets mashed together. Most of the time, as a responder, I just wouldn't have the opportunity to go back to the fire hall, change clothes two or three times, decon, back into clean clothes, and go a lot of times-- I'd run out of the fire hall and go back to work. So from both perspective that occurs, but, but to answer your question directly, no, to my knowledge there is no direct link.

**RIEPE:** Did Arlington have the facilities for you to go back and shower or were they inadequate?

**MICHEAL DWYER:** I can only answer this honestly and it's no.

**RIEPE:** OK. Fair enough. One of the questions, and I'm not saying that you would have it, [INAUDIBLE], the-- I'm trying to figure out because the talk here is not just cancer but it's enhanced cancer. And so I'm trying to say what is in the basic health benefits, volunteers might not have anything but professional firefighters would have probably a fairly good health plan.

**MICHEAL DWYER:** And, and I think there'll be somebody behind me that can speak more specifically that on the career side.

**RIEPE:** So my only caution is, is a-- sort of a recovering hospital administrator is, is that specifically diagnostic, diagnostic specific insurances are probably not your best investment. But that's [INAUDIBLE].

**MICHEAL DWYER:** True, but I will tell you that we're trying to make a lot of progress in the regular visits to a doctor. I saw my doctor last Monday and every time I go in I make sure that my chart notes

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that I'm this A, B, C, and D, but I'm also a firefighter that normally wouldn't appear in your medical record. So that again, God forbid, there is some connection at some point either to my lymphoma or to, God forbid, something else I'd get that at least it shows in the chart that there is that connection.

**RIEPE:** So you're in full disclosure and good photos. OK. Thank you for being here.

**MICHEAL DWYER:** You bet.

**RIEPE:** Are there other proponents, if you will?

**BLOOD:** I had a question.

**RIEPE:** I'm sorry. I'm sorry. Would you come back?

**MICHEAL DWYER:** Oh, oh.

**RIEPE:** I missed that. I'm sorry.

**MICHEAL DWYER:** No, that's all right. I don't mind.

**BLOOD:** Thank you for coming in. Just a quick question that I want to get on record, and if you don't know the answer that's fine. I know what I'm exposed to every year. It's caustic but not caustic chemicals like what you're exposed to. Can you tell me for the record, the types of chemicals that you as a firefighter were exposed to and firefighters are now exposed to that the average citizen is not exposed to?

**MICHEAL DWYER:** So I'll answer the question directly and then try to maybe give a little bit more detail, Senator Blood. I don't know the-- I'm not a chemist, I don't know the specific carcinogens other than a lot of the stuff that's included in the PCBs that good-- is a more significant piece of home construction. But to answer your question directly, do I know exactly what those carcinogens is? No. What I know is that during overhaul, so the fire is out, the people are rescued. We're still walking around that stuff. And that stuff, as I described it, is a pile of stuff and a pile of junk over here. And the steam, most of it's probably from water that's coming off that, at some point, it's-- that's entering not only our bunker gear, but the potential for it entering our skin even if we have masks-- even if we're masked up. Does that help?

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**BLOOD:** I, I--

**MICHEAL DWYER:** I'm sorry, I couldn't give you a more direct--

**BLOOD:** --I'm guessing I know of at least one person that probably knows the answer to that--

**MICHEAL DWYER:** Yeah, think that's probably true.

**BLOOD:** --so I'll wait until he gets up here. All right. Thank you.

**MICHEAL DWYER:** Yes, thank you. Any more?

**RIEPE:** OK. Thank you. Thank you, Senator Blood. Thank you.

**MICHEAL DWYER:** Good?

**RIEPE:** Next proponent, please.

**KENNY KRAUSE:** Good afternoon, Mr. Chairperson.

**RIEPE:** Thank you. Welcome.

**KENNY KRAUSE:** My name is Kenny Krause, K-e-n-n-y K-r-a-u-s-e. I'm here today representing the Fairbury Rural Fire Department, the Nebraska State Volunteer Firefighters Association, and the Nebraska Fire Chiefs Association. I'm-- I would like the support of LB459. I would like to briefly share you my experience with firefighter cancer, which fortunately had the best of outcomes. I didn't understand how real this was until it happened to me. I was born and raised in Fairbury, Nebraska. I joined the Fairbury Rural Fire Department in 1994 and found a passion for a job that I never knew I would love. I have loved the last 28 years of firefighting and continue to do so. Professionally now I'm a truck driver, which requires me to maintain a DOT health card. During my DOT physical in 2014, a melanoma was discovered on the left side of my neck. I was fortunate in the fact that the doctor doing my exam was very serious about having this spot on my neck, removed it and tested it because she had recently lost her sister to a melanoma. She made it very clear that it needed to be taken care of immediately. I followed her instructions and went to my family physician who was fairly certain that it was nothing but said we should biopsy it anyway. To our surprise, the biopsy came back Stage 3 melanoma. I was referred to a surgeon in Lincoln. I came up for outpatient surgery and it was removed. Prior to surgery and outpatient-- prior to surgery, a radioactive dye was introduced into

my lymph nodes to see if any were involved, and thankfully none were. There was an exorbitant amount of fear while waiting for those test results. At this time, I'd made no connection between the fire service and melanoma. In May of 2015, I was asked to speak at a fire school seminar on the impact of a firefighter LODD in our department. We lost a firefighter en route to the station to get a truck in August 2014. I decided to be ahead of the schedule and sit in the back of the classroom while a presenter ahead of me was speaking. They had described my case to a tee. I could hardly believe what I was hearing. What made my melanoma so unique was in the way that it presented itself on my body. It could be described as an ink pen more drawn in the crease of my neck. It was not noticeable most of the time, only when I turned my head could it be seen. What made this unique to firefighting, that this is where the soot and the carcinogens find a spot to rest on the body. The pores were open due to the heat and the sweat allowing the carcinogens to enter your skin. Again, thanks to early detection that's where my cancer story ends. For others, it could only be the beginning. Because of this, we have implemented many changes at Fairbury Rural Fire. We have a hood swap out program where firefighters wear the Nomex hoods only one time, then they get turned and be washed in our extractor. We also have decontamination personnel on scene and we have purchased an extractor washing machine for our turnout gear.

**RIEPE:** We've-- we've hit the time. Can you wrap it up here?

**KENNY KRAUSE:** That pretty well wraps it up. There are some numbers that you've already heard. And in closing, I would just like to say that I would love the support of LB459 for our Nebraska firefighters.

**RIEPE:** Thank you. Thank you. We appreciate it. Any questions from the committee? Seeing none, thank you for being here. Additional proponents? Yes, sir, if you'd be kind enough to state your name and spell it, please, and then--

**DARREN GARREAN:** Chairman Riepe,--

**RIEPE:** --tell us which unit you're with.

**DARREN GARREAN:** --members of the committee, my name is Darren Garrean, D-a-r-r-e-n, last name Garrean, G-a-r-r-e-a-n. I am a full-time firefighter paramedic working 56 hours a week serving the citizens of Nebraska, as do most of my cohorts. In addition, as a career as a firefighter paramedic, I'm also the president of the Nebraska

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Professional Fire Fighters Association, where I'm here today representing over 1,400 career firefighters, paramedics, and emergency medical technicians serving this state. Our profession has changed rapidly over the last few years. The life expectancy of a firefighter is ten years less than that of the average person. We know now more frequently exposed to toxic chemicals than ever before and those are known carcinogens. On June 30, 2022, just last year, an article was published from the International Agency for Research on Cancer, otherwise known as IARC, the cancer agency of the World Health Organization, classifying that firefighter occupational exposures as a Group 1 carcinogen. The IARC working group found that, and I quote, occupational exposure as a firefighter causes cancer, unquote. In summary, that working as a firefighter, you're definitely more susceptible to being riddled with cancer. In addition to this, recent studies have shown that all three layers of firefighter turnout gear contain both Per and Polyfluoroalkyl Substances, otherwise known as PFAS, a class of fluorinated chemicals known as forever chemicals, which have been linked to cancer and other serious health effects. These studies highlight the risk associated with the materials and finishes using turnout gear even before we, we go to the first fire. PFAS is continually-- constitute a large family of fluorinated chemicals and tox-- toxicological studies have raised concerns regarding that these are bioaccumulative in nature and as a result they risk-- and the risk that they pose are rapidly changing. As we're learning, cancer is now spreading more than ever. And, and I bring a couple of those things up just to recognize the importance of cancer as a firefighter. We encourage the passing of LB459. We're here to help with, with anything we can do and thank Senator McDonnell for bringing this forward. Any questions, I'll be happy to answer.

**RIEPE:** Senator Blood.

**BLOOD:** Thank you, Chair Riepe. Do we know it says LB495 up here on the table, first of all?

**DARREN GARREAN:** LB459. I'm sorry.

**BLOOD:** Yeah, I know, I'm just pointing that out to the Chair since people are watching it on TV.

**DARREN GARREAN:** Oh.

**RIEPE:** No, it should be LB459 now.

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**DARREN GARREAN:** LB459. On this side it says LB459.

**BLOOD:** On this side it says LB495.

**DARREN GARREAN:** OK.

**BLOOD:** I was getting a little confused. So the question that I have wasn't for the, for the Chairperson.

**DARREN GARREAN:** I was confused because I saw it was different.

**BLOOD:** Somebody is dyslexic. Because I know you know this answer and I just want make sure we get it on record. Can you kind of walk through-- I mean, the way people build homes now and how they built them 50 years ago, what the chemicals are inside our homes are very, very different and very caustic. Can you just name some of those chemicals for me so we got that on record, please?

**DARREN GARREAN:** There are so many, you know,--

**BLOOD:** There are a lot.

**DARREN GARREAN:** --as far, as far as listing them, I, I would be here forever listing them. But I-- generally there are more plastics involved in, in constructions, glues from, like, oriented strand board. They'll always be a factor of, of putting things as opposed to just hardwood. The glues burn differently.

**BLOOD:** Right.

**DARREN GARREAN:** Anything that has a plastic to it has unknown chemicals in it and, and we're exposed to that. As you know, whether it's career side or volunteer side, it's as things burn nowadays they burn differently. Homes, used to have, like, 20 minutes to get out of a house in a fire. Now you have less than 4 minutes because things burn so fast and it's because of the chemicals and, and the petroleum products or some of those things that are put in to adhere these things together. It's unfortunate that, that some of my predecessors testifying on their cancer, but what, what we're learning is that it's, it's an exposure to these chemicals that we're now absorbing them. It's not just breathing them. It used to be that we were so worried about just breathing these things and that's where we had the SCBAs. We protect ourselves from that. But now it's, it's actual absorption through the skin that we're finding and, and like he said

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in the crease is his, his neck, that is not an uncommon occurrence for firefighters nowadays.

**BLOOD:** And the difference between living in the home and being a first responder is the fact that the chemicals become dangerous upon being ignited. Right?

**DARREN GARREAN:** Once they're packaged up nicely and, and put in-- into a, a new home everything's fresh and new, but things burn and they don't test those things as they burn as far as the exposures to the firefighters or, or how they unfold themselves, if you will. There's so many unknowns. Really, we have no idea what some of those things are.

**BLOOD:** Right. It's a witch's brew.

**DARREN GARREAN:** Yes, completely.

**BLOOD:** Yeah, absolutely. Thank you very much.

**DARREN GARREAN:** Thank you.

**RIEPE:** OK. Thank you. Are there other questions? Seeing none, thank you for being here.

**DARREN GARREAN:** Thank you, Senator.

**RIEPE:** Other proponents? If you'd be kind enough, sir, state your name, spell it, please, and then who you represent.

**CHRIS GABIS:** I'm Chris Gabis, C-h-r-i-s G-a-b-i-s, and I am president of the Scottsbluff Professional Firefighters. I'll be short and sweet. I'm simply here to rise as a proponent of LB4-- LB459, excuse me, and we'd appreciate your support.

**RIEPE:** OK. Thank you.

**CHRIS GABIS:** Thank you.

**RIEPE:** Are there any questions? Evidently not. Thank you. If you've been kind enough, welcome, and please state your name and spell it, please, for us and tell us who you represent.

**MANDY CRAIG:** Sure. Chairperson Riepe, Senator McDonnell, and other committee members, my name is Mandy Craig, M-a-n-d-y C-r-a-i-g. I'm the public entity program manager at Jones Group. We are the insurance

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agency responsible for the administration of the cancer benefits policy for the state of Nebraska. We are also the state director for Continental Western Group's FirePak insurance program. We have a wide footprint in the state with fire and rescue departments of all size tax base. The cost of the cancer benefits policy is \$190 per member per year. For comparison, group life premium is \$39 per member per year for a \$10,000 limit, and departments are required to purchase group life coverage. They're also required to carry liability, property, auto, equipment, and workers' compensation coverage. The costs for the required coverages can be anywhere from \$10,000 to \$50,000-plus annually, depending upon the size of the department. The cancer benefits policy premium is going to be a heavy burden for the vast majority of departments, and as such, we believe not many will be able to purchase this vital coverage. Cancer does not discriminate. It affects volunteers as much as paid staff. Funding this benefit will provide coverage to all eligible firefighters. Roughly 90 percent of the departments in the state are volunteer. These volunteers are often the backbone of their communities, providing critical care and saving lives. They fundraise for new equipment, new vehicles, and updated buildings. They attend weekly meetings and trainings, fire school to further their skills, and mutual aid meetings to help plan the best way to help their neighbors. They truly represent what it means to be a Nebraskan. Funding this bill will level the playing field providing cancer benefits for every firefighter, whether they are a volunteer in a community of 100 people or a paid firefighter in a community of 100,000. Thank you for your time and consideration of this bill and thank you for your service to your constituents.

**RIEPE:** Thank you very much. Are there questions from the committee? Seeing none, my question would be this, does, does any responsibility rests with the villages on the-- I'm talking on the volunteers here as opposed to the professionals, the villages or the townships or the counties or anything like that? Because fundamentally, what you said is we'd be paying \$190 per year, which amounts to \$3 million but the benefits are limited to \$10 million. Is that right?

**MANDY CRAIG:** So the benefits are limited to-- there's \$25,000 that's payable upon the diagnosis of cancer.

**RIEPE:** 25--

**MANDY CRAIG:** \$25,000--

**RIEPE:** OK.



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**MANDY CRAIG:** --is what's payable if it is invasive cancer, if it's noninvasive cancer, it's \$6,250 if it's a noninvasive cancer.

**RIEPE:** But it's not a payout of 200-- or 25, it's up to that.

**MANDY CRAIG:** Correct. It's up to that and then if there is a death from a covered cancer then \$50,000 is paid in, in addition also.

**RIEPE:** What's that, survivors benefit?

**MANDY CRAIG:** No-- well, it would be a survivor's benefit. Yes. So a--

**RIEPE:** So it's partly life insurance and--

**MANDY CRAIG:** It's kind-- it's, it's a mix. So the policy itself is what we consider an accident and health policy, which I know sounds strange, but that's how we term it in the insurance world. But, but yes, but there is, there is a survivor benefit that comes from it should there be a terminal case.

**RIEPE:** We see a lot of interest, and local control I see some need for local responsibilities. I live in a small town that has a volunteer fire department, Ralston, and we should probably be the ones, maybe the first ones to step up to that before we ask the state to do it but that's my conservative nature. But thank you very much for being here.

**MANDY CRAIG:** Yep.

**RIEPE:** Are there other questions? Hearing none, thank you again.

**MANDY CRAIG:** Thank you.

**RIEPE:** Proponents? Ms. Martin, welcome back.

**SUSAN MARTIN:** Good afternoon. For the record, 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 in support of LB459. A cancer diagnosis can, diagnosis can leave you emotionally, physically and financially overwhelmed. While traditional health insurance is valuable coverage, it may not cover all the expenses related to treatment and recovery. Nebraska did a great thing by recognizing the need to support its firefighters and their families by creating a program to provide certain cancer benefits for eligible employed and volunteer firefighters. I believe that this important legislation is not being utilized to the benefit of all firefighters in our state. Our rural or volunteer firefighters

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are not able to benefit because of the cost associated with the premiums. Through law, Nebraska has made this benefit an option and not a mandate; therefore, not everyone is participating and many are not receiving this benefit. Currently, the state of North Carolina felt the same need as Nebraska and has implemented a program that is funded through the North Carolina Legislature. This same program is available to active rostered firefighters, employed and volunteer, at no cost to either firefighters or the fire departments. This change to the current legislation is necessary as a vehicle to appropriately-- appropriate funds to the State Fire Marshal's Office and to enable them to pay for the annual cost of these premiums so that all of our firefighters have access to this benefit. That's my testimony.

**RIEPE:** OK. Any questions from the committee? Seeing none, thank you very much.

**SUSAN MARTIN:** Thank you.

**RIEPE:** Thank you for being here. Next proponent, please. Do we have any additional proponents? If not, do we have any opponents that are here? Seeing none, do we have any neutral testifiers? Seeing none, we welcome Senator McDonnell back for closing. Thank you, Senator.

**McDONNELL:** Thank you, Chairperson Riepe. Follow-up on a couple of questions with Senator Blood, we can get you a list of those that's in a common home, the list of the different-- the chemicals. And then, Senator Riepe, a little bit more detail, and I'll get you a list for the whole committee, but going back to 2021, when we passed the-- the Firefighter Cancer Benefit Act, there was areas where, of course, if you're diagnosed, you receive the \$25,000. Two, the second part, was \$6,250, then a total disability monthly benefits of 36 months for \$1,500 per month and the death benefit of \$50,000. I'll get you-- every member of the-- of the committee a copy of that. We believe it's important legislation, again, to say thank you to those paid and volunteer firefighters throughout the state for what they do. But also, it's not only for them and the risk they take and-- and putting themselves in harm's way. And again, it's always the goal to make a dangerous job and take a dangerous job and try and make it safer. But the idea is it's always going to be-- it's always going to be dangerous. And it's not only for them, but it's-- it's for their families that potentially they will leave behind because of-- of the nature of firefighting and-- and what they're exposed to. I'm here to try to answer any of your questions.

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**RIEPE:** Are there any questions of the good Senator?

**McDONNELL:** Thank you.

**RIEPE:** Seeing none, thank you, sir. For the record, there were three proponents and no opponents and none testifying or written comments, if you will, neutral. So with that, we conclude the hearing on LB459. Thank you very much. We're now going to take a ten-minute little break here, and then we will come back and we will address LB501 and we will have a total of four bills [RECORDER MALFUNCTION]

[BREAK]

**RIEPE:** We're going to reconvene, and we appreciate everybody taking their position. We're now going to move to LB501 and that is Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Well, hello, Chairman Riepe and mem--

**RIEPE:** Welcome, Senator. It's great to have you--

**M. CAVANAUGH:** Thank--

**RIEPE:** --in front of our committee--

**M. CAVANAUGH:** Well, thank--

**RIEPE:** --Business and Labor.

**M. CAVANAUGH:** Thank you.

**RIEPE:** I know it's close to your heart, so thank you.

**M. CAVANAUGH:** It is close to my heart. Chairman Riepe, members of the Business and Labor Committee, my name is Machaela Cavanaugh, M-i-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I represent District 6, west-central Omaha, Douglas County. I'm here today to introduce LB501. There is no denying that the risks undertaken by the firefighters throughout our state are numerous. While we all think of the job as being the most dangerous during those-- during these heroes' response to fire, acc-- or accident, the real danger lies after they have left the scene. Firefighters are developing cancer at an incredibly high rate compared to the general population. In June 2022, the International Agency for Research on Cancer concluded that there is significant evidence that firefighting causes cancer in humans.

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Firefighters work in a dangerous occupation, take on incredible risks on behalf of the public, and deserve to be treated better than they currently are. LB501 offers them a long-overdue expansion of compensation. LB501 would provide for compensation under the Nebraska Workers' Compensation Act for certain types of cancers experienced by firefighters. This change would allow firefighters diagnosed with type-- certain types of cancer to be eligible for workers' compensation benefits, such as temporary disability and medical care, when the employer is unable to establish that the firefighter suffers from such a condition for reasons unrelated to firefighting. LB501 is modeled after existing legislation from the state of Nevada that was implemented all the way back in 1987. This bill would require at least five years of employment as a firefighter to be eligible for the presumption. It would apply to cancer diagnosed within five years after separation from employment. LB501 will bridge the gap and redirect medical costs and lost work time that are currently put on the firefighter. We have a duty as the state government to protect those who protect us. Firefighters risk their lives to serve the public in a wide variety of ways. The least we can do is expand coverage for them for a disease they developed because of exposing-- of-- of exposure during their service to our communities. There are experts and advocates behind me who will share their stories and expertise on this critical issue. I am willing to work with the Business and Labor Committee should they see a need for amending this legislation, and I ask for your support of LB501.

**RIEPE:** Thank you very much. Are there questions from the committee? Obviously, they like you.

**M. CAVANAUGH:** Well, the feeling is mutual.

**RIEPE:** You can un-- you can understand that. And thank you. Will you be staying around-- well, you will. You have two more bills.

**M. CAVANAUGH:** I have two more bills. I will be here all afternoon.

**RIEPE:** So you're taking the show this afternoon?

**M. CAVANAUGH:** Yes.

**RIEPE:** Thank you very much. Are there proponents, please? If you'd be kind enough to state your name and spell it for us, please, and who you represent.

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**TREVOR TOWEY:** Yes, sir. Thank you, Mr. Chairman. Members of the committee, my name is Trevor Towey, T-r-e-v-o-r T-o-w-e-y. I'm the president of the Omaha Professional Firefighters, representing 680 firefighters and paramedics in Omaha. I'm here today as a proponent for LB501. Thank Senator Cavanaugh for introducing it and also for her opening remarks. I've been a firefighter for 25 years. It's a dangerous job. I can attest to that. Despite all the safety and training that's put into place, we're exposed to very difficult conditions. Some of them cause injuries that at some point are even disabling and deadly. As you know, also, when those injuries happen, workers in my profession and in any profession are subject to workers' compensation benefits. In Nebraska, if firefighters become disabled or die, their families receive a benefit for their injuries. What has become most prevalent, what you've heard today, is testimony that cancer is what's really killing firefighters. There's-- there's science that proves that. I have provided you with a packet of information that has the data, scientific research from experts in the field that will verify my testimony and the testimony that you're going to hear today. Also in that packet, on page number 3, to your question on the last bill, there is a list of chemicals that we're exposed to during fires that are known carcinogens. The ones that I can pronounce are benzene, asbestos and arsenic, so the rest are pretty long list. But what's happening today is firefighters get injured. There's-- I got a group of firefighters right now. They have injured shoulders, injured backs that happened while they were doing their job. They all get work comp benefits. They all get provided IOD status. There is no lost wages. There is no lost leave. Work comp benefits help them. Firefighters also are getting cancer. I have some right now. They have kidney cancer. They have leukemia. Those are known cancers that have been proven to be associated with doing the job of firefighting. They get no benefits. They have to make sure they have enough sick leave or enough money to get them through any lost income. And so what we're asking is if this-- this bill advances, this will provide a work comp benefit to help those firefighters in those positions. Dealing with cancer is difficult enough. They shouldn't have to deal with providing, figuring out how they're going to provide for their family while they're going through a cancer diagnosis.

**RIEPE:** OK.

**TREVOR TOWEY:** So I thank you for your time with that, and I'm--

**RIEPE:** OK.

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**TREVOR TOWEY:** --available to answer any questions as well.

**RIEPE:** Thank you very much. Are there questions from the committee? I guess my question, one-- one question that I would have is, you know, to me, it's-- my question would be is you likened it a little bit like a workers' comp for some soldier-- shoulder injuries, etcetera. Should the local, I will say, counties or districts pay into some fund that's like work-- like they pay into workers' compensation?

**TREVOR TOWEY:** Well, absolutely, and-- and what-- what we're asking--

**RIEPE:** But do they or don't they? Do they not do that? I don't think they--

**TREVOR TOWEY:** Yeah, all the municipalities, as far as I understand, pay for some work comp.

**RIEPE:** No, I'm thinking this a different fund, though, if it-- if it doesn't pay out for cancer, then-- then bigger-- it's going to pay out for something other than shoulder injuries, but not necessarily cancer, right?

**TREVOR TOWEY:** That's correct.

**RIEPE:** So to me, that would say it's a different-- it's a different fund. It's just similar to workers' comp.

**TREVOR TOWEY:** I guess I would agree to that. I-- what we're asking is just that cancer be eligible for work comp benefits because--

**RIEPE:** I see. OK.

**TREVOR TOWEY:** --we know that it is the cause of that illness.

**RIEPE:** OK. That's clear in my mind now. Thank you very much. Thank you for being here. Are there other proponents? Is there another question? I'm sorry, I goofed up there. OK. You've been with us before, so.

**JOHN CORRIGAN:** Yes. Good afternoon, members of the committee. John Corrigan, J-o-h-n C-o-r-r-i-g-a-n. I'm here to testify in support of LB501. I'm also here to testify on behalf of Nebraska AFL-CIO and the Nebraska Association for Trial Attorneys in support of LB501, along with the Nebraska Professional Fire Fighters Association. LB501 creates a rebuttable presumption that certain types of cancers are duty related for purposes of workers' compensation benefits. In

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Nebraska right now, and for many years, we-- we have a presumption. If a firefighter who has at least five years of service becomes totally disabled or dies and is entitled to pension benefits, therefore, from certain types of cancers, we presume that that is duty related. We presume that cancer is duty related when they die, but we don't presume it to be duty related when they need medical care and they might try-- they might survive or actually live through that cancer. And the alternative is that firefighters, who I've represented several firefighters in this situation and their spouse or their-- their widows. They have to stay on the job in order to keep health coverage so that they can fight cancer. And the science, and I-- I don't begrudge the employers. I mean, for a long time, people just weren't sure. But the science behind, direct or correlating, the exposure to known carcinogens in the firefighter service and actually developing those conditions is becoming certainly more reliable, between the epidemiologic studies and the-- the previously mentioned International for-- Agency for Research on Cancer. So in our statute, in 35-10--1001, Nebraska Revised Statute today, the state has established that they will look to see what the International Agency for Research on Cancer has established as carcinogens as a baseline to be entitled to that presumption. Now it can be rebutted. So if I come in and say, I did firefighting for 25 years and I had-- I was exposed to these known carcinogens because of the work that I did, and now I developed cancer and the employer can come out and say, well, you smoked cigarettes for 24 of those 25 years, that was probably the-- the-- or more likely the cause of your cancer, that rebuts the presumption. But we have the presumption for purposes of pension. So if somebody dies, we'll-- we'll presume, as long as they meet the-- the prerequisites, that it's duty related. But if they want to get medical care or they want temporary disability while they're alive, we don't presume it to be di-- disability. Now there are cases that we've established that it is work related under existing work comp standards for-- non-Hodgkin's lymphoma is one; mesothelioma is another one that carci-- that firefighters are known to receive in the course of-- of their duties. But in the statute you have 19 different types of cancers, all supported by epidemiologic evidence that are correlated between the work and the firefighting. I see I'm out of time, but I thank you for your time. I'd try to answer any questions.

**RIEPE:** OK, let's see if there are any questions. Are there any questions from the committee? Seeing none, thank you for being here.

**JOHN CORRIGAN:** Thank you.

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**RIEPE:** Next proponent, please.

**CHRIS GABIS:** Mr. Chairman, members of the committee, I'm Chris Gabis, C-h-r-i-s G-a-b-i-s, and I'm president of the Scottsbluff Professional Firefighter's Local 1454. I'm here as a proponent of LB501. The reason I'm here today is to share the story of Captain Ryan Lohr. This past Saturday, Ryan should have been celebrating 20 years of service with the Scottsbluff Fire Department. Instead, today is a seven-month anniversary of his passing. In December of 2021, just days before Christmas, Ryan was diagnosed with Stage IV colon cancer. Not even nine months later, we held Ryan's funeral with full line-of-duty death honors. That space in between is what is relevant to this discussion. Captain Lohr worked all throughout that time. In fact, the only days of work that he missed were so he could receive his chemo treatments or attend his daughter's softball tournaments. Ryan even came to work with his chemo pump on, on several occasions. You see, Ryan felt he had no other choice than to work through his treatment because he was denied coverage by the work comp office. A healthy 47-year-old with no previous health issues was being told that he had to prove his cancer diagnosis was related to his duties as a firefighter. Instead of being able to spend time with his family at home, maybe travel while his-- while he was healthy enough to do so, Ryan spent his last good months jumping through hoops for the state and continuing to serve the public. Ryan's health deteriorated before our eyes. Every morning at shift change, I saw Ryan do everything he could to be ready to do the job. Literally hunched over and in obvious pain, Ryan continued to show up for his family, his brothers and the public and we knew. We knew Ryan felt weak, felt sick. We knew Ryan should be at home with his family. But we also knew just how noble it was to do everything he could to provide for his family. Ryan was working through it all to provide an income and insurance for his family. Had Ryan been deemed qualified for workers' compensation, he wouldn't have to worry about how he could muster the strength to be involved in a structure, fire or injury accident, or even something less strenuous like a lift assist. He would have been able to spend that time with his family, making memories while healthy enough to do so. Ryan worked his last shift on July 22, just 22 days before his passing on August 13. Ryan left behind his wife, Andrea, and four children Rayn, Rawlyn, Allee and Alexee. What we're discussing today does not change Ryan's story, but it could help create his legacy. It can help those firefighters who will face cancer in the years to come. Ryan's not the first firefighter in our state to face cancer, and he will definitely not be the last, but it's time to let those firefighters facing cancer set



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their bunker gear aside and let them focus on being cancer fighters. Along with my statement, I have few other statements from firefighters that worked with Ryan. I would appreciate support on LB501. Thank you.

**RIEPE:** OK. Are there any questions from the committee? Seeing none, thank you very much. Next proponent, please.

**CHRIS GABIS:** Thank you.

**RIEPE:** Next proponent, please. Welcome to you again. State your name--

**DARREN GARREAN:** Good afternoon, Chairman.

**RIEPE:** --and spell it, please.

**DARREN GARREAN:** Yeah. My== my name is Darren Garrean, D-a-r-r-e-n, last name G-a-r-r-e-a-n. I am a full-time career firefighter/paramedic, working 56 hours a week protecting the citizens of Nebraska, in addition to most of my cohorts. I'm also president of the Nebraska Professional Fire Fighters, representing 1,400-plus firefighters, paramedics, and EMTs. We rise in support of LB501. And out of brevity for everybody, I'd like to just reference the previous bill, LB459, Senator McDonnell, and all of the importance of cancer related to firefighters and not-- not rehash everything. We rise in support of this, and I think I'd like to-- the reference of-- of the shoulder injury and the cancers, there are times where the shoulder injury can be rehabbed and that-- that person or that firefighter has value to come back to work. If you think of it that way, where there are some opportunities maybe where somebody is treated, has a cancer that can be treated and has value to come back to work, just keep that in-- in the back of your mind as well. Not-- not everybody is disposable just because of their-- their cancer diagnosis, and this is-- I think we look at this as an injury, similar as we look at more of-- of the data showing that cancer is so prevalent. With that, if there's any questions, I'll be--

**RIEPE:** Are there any questions from the committee? I see none. Thank you very much for being here.

**DARREN GARREAN:** Thank you for your time.

**RIEPE:** Next proponent, please. Are there any additional proponents? Are there any opponents? Any opponents? Is there anyone speaking in a neutral capacity?

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**JERRY STILMOCK:** Thank you.

**RIEPE:** You've been here before, so--

**JERRY STILMOCK:** Chairperson Riepe, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association, the Nebraska Fire Chiefs Association in a neutral capacity. What a-- what a great offering by Senator Cavanaugh to bring this to involve both the paid and the volunteers. I was asked by my clients to come in to testify in a neutral capacity just to explain there was a choice. There was an option. We see other states doing the same thing in terms of a choice. Let me explain my words, please. Choice is, for firefighters, is the state more apt to adopt legislation that would follow the benefits, insurance benefits, the way Senator McDonnell's bill was, would pay for in LB459, or this presumption in workers' compensation benefits? Other states have selected one path or the other and for-- for my two clients, they have-- they have opted and supported the measure to make a cancer benefits package. That doesn't mean by any means opposed to Senator Cavanaugh's bill, LB501, not at all, but placing a presumption of workers' compensation-- in Workers' Compensation Court puts that firefighter in a situation where it's litigious. It's-- you're in court. You file a claim, you-- you file a petition if the claim is not recognized by that workers' compensation carrier, and then you go through a series of trial-like procedures: discovery, depositions, proof. Of course, the proof element comes in LB501, the presumption that cancer was contacted [SIC] in-- in one's workplace during the course and scope of their employment as a firefighter. Our association chose the non-courtroom atmosphere so that it would be-- and you all-- it wasn't our clients-- and you all have-- the Legislature has adopted that measure back in 2021 to go with a slate of benefits for, if you qualify, how do you qualify? You have a clean bill of health that you have to have in order to get-- I'm jumping back to the presu-- back to the cancer benefits package, think Senator McDonnell, two elements have to happen: a clean bill of health, a clean screen of cancer; and number two, you have to be in service for 24 months. Once those two are met and you have cancer, you get cancer benefits. In-- in the Workers' Compensation Court, Senator Cavanaugh's bill, LB501, would place that presumption in favor of the firefighter. But then, as one of the testifiers brought up, the confrontation may develop, is, well, that firefighter, that man or lady, happened to be a smoker. So now I'm-- I'm-- I'm fighting. I'm-- I'm-- I'm fighting. I'm in a-- I have a claim in the Workers' Compensation Court that could end up in litigation. So one is select

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the cancer benefits program. Think Senator McDonnell. The other is workers' compensation and the presumption that presents itself, presumption of-- the rebuttable presumption that it happened within the workplace. Think Senator Cavanaugh. And I've tried to just illustrate by-- by my neutral testimony that both are-- are great avenues. Nebraska has previously chosen the pre-- the benefits package for both paid and volunteers. I'd be happy to answer any questions.

**RIEPE:** Any questions from the committee? Seeing none, thank you--

**JERRY STILMOCK:** Thank you, members.

**RIEPE:** --very much for being here.

**McDONNELL:** Yes.

**RIEPE:** Welcome back, sir.

**BOB HALLSTROM:** Thank you, Chairman Riepe. Members of the committee, my name is Bob 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. We will stay in our own lane today since this applies to firefighters and not to employees of private employers, but we have seen in other states where this concept of a rebuttable presumption relating to cancers has been extended into the private employer arena. So we simply, I guess, wanted to set down a marker and let the committee know that we would have some concerns if the legislation were to be expanded to that extent. We also had a bill a few years ago that would have created a rebuttable presumption related to COVID-related illnesses, which we had opposed. But again, we are here in a neutral capacity, have no concerns about the legislation, and just wanted to make a record with regard to the rebuttable presumption being expanded into the private employer arena. With that, I'd be happy to address any questions the committee may have.

**RIEPE:** Are there questions from the committee? Thank you, sir.

**BOB HALLSTROM:** Thank you, Senator.

**RIEPE:** Is there anyone else testifying in a neutral capacity? Hearing none, we will invite Senator Cavanaugh up to close. And while she's doing that, I would announce that there have been written and emails, letters and emails of six proponents, two opponents, and none in a neutral capacity in writing. Welcome, Senator.

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**M. CAVANAUGH:** Thank you, Chairman. Thank you, members of the committee. Well, I-- I think this is just another great option for the committee to entertain, along with Senator McDonnell's bill that you heard earlier today, and just appreciate the service that our firefighters provide to all of our communities across the state and want to make sure that we are taking care of them the way that they take care of us. So with that, I'll take any questions or move on to the next bill.

**RIEPE:** Are there any questions? Senator Blood.

**BLOOD:** Thank you, Chairman Riepe. You heard the last neutral.

**M. CAVANAUGH:** Yes.

**BLOOD:** Does it concern you all-- at all, as you write legislation like this-- I absolutely, by the way, agree with this legislation-- that there's a concern that we should give a fair and equitable opportunities through workmen's comp for our other employees?

**M. CAVANAUGH:** A concern that we shouldn't do that?

**BLOOD:** That we have consistently heard workmen's comp bills that certain testifiers have come out against--

**M. CAVANAUGH:** Um-hum.

**BLOOD:** --that would help the general public--

**M. CAVANAUGH:** Yes.

**BLOOD:** --outside of our first responders. But when they come and testify in the neutral, what we always hear is that we definitely support our first responders, as you and I do, but God forbid we should give anybody else those benefits. Does that concern you as you bring legislation like this forward in reference to workmen's comp?

**M. CAVANAUGH:** Well, as my next bill is a workplace safety bill, I have concerns over ensuring the safety of all of our workforce, not just our first responders, but so, yeah, I mean, I don't-- I don't think it's a great thing to come in opposition or neutral, but--

**BLOOD:** I was just curious--

**M. CAVANAUGH:** Yeah.

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**BLOOD:** --what your impression was on something like that.

**M. CAVANAUGH:** Thank you.

**RIEPE:** OK. Thank you very much. Are there other questions from the committee? Seeing none, thank you very much, and that will close the hearing on LB501. And now we move on, very smooth, our transition over to LB502.

**M. CAVANAUGH:** Thank you. And--

**RIEPE:** And welcome, Senator Cavanaugh.

**M. CAVANAUGH:** --my-- my-- my favorite constituent's father is just leaving the room now, so tell her good luck tonight.

\_\_\_\_\_ : I will. Thank you

**RIEPE:** You're a good politician. Go ahead, Senator.

**M. CAVANAUGH:** [LAUGH] Good afternoon, Chairman Riepe, members of the Business and Labor Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I represent District 6, west-central Omaha, Douglas County. I am here today to introduce LB502. We're just going to go right in numerical order. The workers in our country's warehouses have long been a key block in the foundation of our nation's economy and supply chain. Currently, however, companies are prioritizing unsustainable speed, and many warehouse workers are being required to meet exorbitant benchmarks and quotas. While some warehouse workers are not even told their expected quotas, workers are often-- are then forced to perform against an invisible clock under the constant threat of discipline or termination, leading to physical injury and extreme mental stress. This differs from union warehouses, where a negotiated contract makes it clear what to expect from both the worker and management. LB502 is a crucial step in helping workers and protecting what has traditionally been a middle-class industry. LB502 is cited as the Warehouse Worker Protection Act due to its implementation of long-overdue protections to a vital vein of the American workforce. The Warehouse Worker Protection Act will require employers to pro-- provide a written description of any quota and any potential adverse employment action upon the employee's hire-- hire date and any time the quota is changed. It will no longer allow adverse action against an employee who has failed to meet a quota that was either not disclosed to the worker or that prevented compliance with meal breaks, rest periods, or

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use of bathroom facilities. Additionally, it will allow workers to request their work speed data, along with aggregated data for similar employees in the facility. LB502 is modeled after legislation that was introduced in 2021 and 20-- 2002 in states across the country, including Minnesota, New Hampshire, Wisconsin-- Washington and four others. These bills have improved the condition and quality of warehouse working environments in these states and Nebraska should follow suit. As-- we as state lawmakers are in a position to lead on this issue and take desperately needed action on behalf of these essential workers throughout our state.

**RIEPE:** OK.

**M. CAVANAUGH:** And with that, I will take any questions.

**RIEPE:** Are there questions from the committee? Seeing none, I would-- could we call this the California and New York Amazon bill?

**M. CAVANAUGH:** I don't know. California and New York were not on my list of states that have adopted this, so maybe Amazon has too big of a presence in those two states to lobby.

**RIEPE:** Well, I don't know. I also, sharing a common interest in fiscal notes--

**M. CAVANAUGH:** Yes.

**RIEPE:** --I noticed that there's a rather healthy one on this.

**M. CAVANAUGH:** I-- there is a healthy one. You know, every once in a while, you-- you don't want to have a emaciated fiscal note. You want to have a healthy fiscal note, right? Yes, there is a fiscal note. I'm not entirely clear, but I know that the department is here. And while I would love to think that they are here to testify in support, I don't think that that will be their role today, and so they might be able to speak a little bit more to why they need the FTEs that they need.

**RIEPE:** OK.

**M. CAVANAUGH:** I look forward to you asking them--

**RIEPE:** Well, thank you.

**M. CAVANAUGH:** --if you so desire.

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**RIEPE:** Are there additional questions from the committee? Non. Thank you very much.

**M. CAVANAUGH:** OK.

**RIEPE:** And I hope-- well, I guess you have another bill, so--

**M. CAVANAUGH:** I do. I will be here.

**RIEPE:** --you're with us for the afternoon.

**M. CAVANAUGH:** I know. I'll be here.

**RIEPE:** OK. Any proponents, please. Yes, sir, if you'd be kind enough to state your name, spell it, please.

**DAVE ZORNES:** Afternoon, Senators. My name is Dave Zornes, D-a-v-e Z-o-r-n-e-s. I represent the Teamsters Local 554.

**RIEPE:** OK.

**DAVE ZORNES:** And I'm a retired Teamster, 41 years down at Roberts Dairy, now Highland Dairy, and I know a lot about quotas, a lot about safety. And anyway, last Thursday, local news, KETV in Omaha, showed film footage and-- and talked to the Amazon warehouse out there. Their highly tech robotic system out there feeding employees packages and stuff to line off and-- and to palletize and everything like that, you know, that's a good thing that Amazon is here and 700 jobs and are looking for more. But the problems exist out there, the problems that Senator Cavanaugh was just talking about. There's no quota stats to the employees. Every day they come in, they're walking on pins and needles. They don't know where they stand as far as if they're going to have a job the next day or not. Their bathroom breaks are counted in as part of their quota. I went through some of this years ago at the dairy. I mean, I went through 12 managements-- general managers and plant managers over the time, and it seemed like every time you got a new one, someone came in with a new plan, was going to upgrade your quota, and it's so nice to have a third party there, and I was so fortunate I had a union there. Highland Dairy, Roberts Dairy has been around now 120 years. They're still going strong. But anyway, the quota stats is something that needs a third party out there to help them out and take care of things. And just like most production warehouses, they usually came with, like I said, a new management. Most of the time, they never reached their quotas on that deal either. Not everyone works at the same speed, and that seems to be what Amazon

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is looking for out there. They want the best workers working at their facility, and not everyone works at the same speed, just like all of you. Probably not every one of you work at the same speed level. I've seen it years and years down at the dairy. You know, to find that perfect employee of quota-speed-attendance, you know, the company, like I said, 700 workers right now, trying to look for more, many of them have been laid off-- or fired, I should say. And the blue-collar workers, you know, they're looking for that good wage, benefits, and safe workplace. And when I watched the news on the Papillion Amazon warehouse, I noticed the robotic lines, you know, once again, feeding the system this and that and stuff, and it almost seemed like some of it was back to the 1950 eras where the company just wants you to go, go, go, and they're not caring about your physical well-being. Lead me to safety. This company has had some of the worst safety records going right now. Fifty-three-- 53 percent-- since-- since COVID settled down, they have raised their quota stats and they are running on-- you can look up OSHA facts. They are running at 53 percent more accidents at this warehouse compared to any of the other accidents you see at the warehouses in Nebraska. Thank you very much. I support Cavanaugh's bill, and let's just try to get it to the floor so all the Unicameral senators can have a vote on it. Thank you.

**RIEPE:** Thank you. If you'd-- just a second, see if the committee has any questions. I don't see any. Thank you--

**DAVE ZORNES:** Thank you.

**RIEPE:** --very much for being here. Next proponent, please. If you've be kind enough, sir, to state your name, spell it for us, please, and then--

**ADRIAN MACIAS:** Adrian--

**RIEPE:** --tell us who you represent.

**ADRIAN MACIAS:** Adrian Macias, A-d-r-i-a-n, last name M-a-c-i-a-s, represent Teamsters Local 554. I am the organizer there and also a former warehouse worker. There is a problem in our-- problem in our industry. The problem is Amazon. Amazon uses unclear and unsafe quotas that exhaust workers and lead to injuries. In those warehouses, workers don't know how close they are to making rate or how near they are from being terminated. It's like playing a football game without being able to see the scoreboard, how much time is left on the clock. You rush, you cut corners, you get hurt, and you get fired. The



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numbers that Amazon reports to the government show the result. Thanks to an analysis from the National Employment Law Project, Amazon warehouses in Nebraska have doubled in injury rate of other warehouses in the state. Nebras-- Nebraska workers at Amazon warehouses suffer severe injuries, the kind that require time away from work to recover, three times more than often workers in other Nebraska warehouse companies. And Amazon workers were away from work injuries twice as long as workers at the other warehouses in Nebraska. All warehouse workers deserve good jobs. They deserve to be fairly treated with respect and be able to go home safely to their families. That's what teachers are fighting for. We've done everything for over 100 years. Through our collective bargaining and strikes, we have demanded and won high standards for safety and good wages and benefits. Our contracts make sure that quotas are transparent, safe and negotiated. We want all warehouse workers to have what we have. There's a problem in Nebraska. Young workers are leaving to other states for better opportunities. The solution is to raise standards here. We need to guarantee good-paying and safe jobs here in Nebraska. But instead of doing that, our state has been subsidizing bad Amazon jobs to the tune of \$3 million. Amazon jobs aren't good jobs, but we can change that. The Teamsters are calling for the Warehouse Workers Protection Act in statehouses across the country to bring safe baseline standards to this industry to begin protecting workers from unsafe quotas. This legislation will require Amazon and other ware-- large warehouse companies to provide workers with documentation so they understand their quota and any discipline that could result from it. The time to protect Nebraska workers is now. Thank you.

**RIEPE:** OK, let me see if we have any questions. Any questions from the committee? Seeing none--

**ADRIAN MACIAS:** Thank you.

**RIEPE:** --thank you for being here. Next proponent, please. Welcome.

**SUSAN MARTIN:** For the record, my name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the-- of the Nebraska State AFL-CIO in support of LB502. Warehouse workers are the backbone of the modern e-commerce economy, yet regulations protecting workers in communities affected by this new industry have lagged far behind its rapid growth. The AFL-CIO has long prioritized the challenge of protecting warehouse workers from stress-induced injuries and illness from limitless quotas, and that's why we are supporting passage of LB502. The rapid growth of just-in-time logistics in same and next-day

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consumer package delivery and advances in technology used for tracking employee productivity has increased the number of employees subject to work quotas. The term "quota" in this legislation is defined to include any work standard which prescribes a specified productivity speed or number of tasks performed or materials handled within a defined time period or when an employee's actions are categorized between time on task and time off task, and the failure to complete a tasked performance standard or recommendation that may result in adverse employment action. Unsafe work speeds, unreasonable work quotas, dangerous work, and insufficient breaks all contribute to the skyrocketing rate of injuries and sicknesses in the warehouse industry, including meatpacking plants. Regulations protecting workers in the warehouse industry have lagged far behind its rapid growth. We need to prioritize our workers and protect workers from stress-induced injuries and illness from limitless quotas. Warehouse facilities are popping up across Nebraska. At the same time, we've seen increased stress, pain and resulting safety issues for warehouse workers due to increased quotas and speeds. I'm going to use-- and you were talking about New York earlier, so I'm going to use New York State as an example, who, by the way, just passed the Warehouse Worker Protections Act. At the Amazon warehouses in New York State, the injury rate is 54 percent higher than the average rate for the state's warehousing industry, and even that is a staggering misrepresentation of the reality, given how many injuries at Amazon go unreported. We must continue to consider safety a number-one priority for workers, and this legislation will be a good step in protecting workers in this industry. Thank you for your consideration, and we ask that you vote this legislation out of committee.

**RIEPE:** OK, thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent, please. OK. Are there any additional proponents? OK, we'll go with opponents. If you're going to testify, I would ask, if you would, to come up to the front row so we can stay in flow. Thank you. Welcome. And, please, your name and spell it, please, and then who you represent. Thank you.

**ANSLEY FELLERS:** Thank you. Thank you, Chairman Riepe and members of the committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association, Nebraska Retail Federation, Nebraska Hospitality Association, and the Nebraska Chamber of Commerce, testifying in opposition to LB502. Obviously, the employers we represent take very seriously employee safety, expectation management, as well as transparency and accountability. Tracking employee productivity through the use of

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quotas and work speed data is a common practice and this information is often used to promote workers or provide bonuses for meeting certain goals. Establishing unreasonable and unreachable quotas would reduce morale and increase turnover. Moreover, worker safety is highly regulated by countless number-- by countless number of federal and state laws and regulation, namely the Occupational Safety and Health Administration, or OSHA. LB502 backs employers into a corner, mandating broad disclosures and requiring mountains of new paperwork, distribution and recordkeeping requirements. If LB502 were to take effect, employers would have to, for instance, maintain records of every employee's personal work speed data, the aggregated work speed data for similar employees at the same establishment, and the written descriptions of the quota such employee was provided. Employees can then request their information within three years post-employment. Employers must provide quota information within two-- two business days and work speed data within seven business days. They also have to provide aggregated data for simil-- similarly situated employees at the same location. The act goes on to include a rebuttable presumption, something we've heard of a couple of times today, of retaliation should an employer take adverse action within 90 days of an employee engaging or attempting to engage in their rights protected under the Warehouse Worker Protection Act. According to the Department of Labor, approximately 300 work sites in Nebraska would be impacted by LB502. Compared to existing worker protection programs, the Department of Labor estimates an additional 200 complaints per year. These estimates would nec-- would-- would necessitate the hiring of four new labor law specialists. The department also estimates 25 hearings per year, which will take 40 hours of work from a contracted hearing officer at a rate of \$150 per hour. I bring this up to highlight the anticipated workload and cost increase from the regulator side so the committee can see why employers might be concerned about the complicated nature of the bill and amount of unintended consequences on the private sector side. With that, we would reiterate our opposition to LB502 and thank you for your time. I'd be happy to answer any questions.

**RIEPE:** Good timing. Yes, Senator McKinney.

**McKINNEY:** Thank you. So how do we address the ri-- the rise in injuries in-- in these facilities?

**ANSLEY FELLERS:** I, Senator, would be happy to discuss that further. I'm not sure how long you want me to discuss that today. I'm also-- I don't know exactly what those numbers are, and the people that we

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represent, when we talk to folks who are, for instance, members of my association, technology and the ability to-- to help, and I know someone mentioned robotics, all of those things, when folks are trained properly and paying attention, have, it's my understanding, improved worker safety and the ability to help folks if something does go wrong immediately. So I'm just not entirely sure what those numbers look like, but we'd be happy to work with Senator Cavanaugh and you on something. We're just not sure LB502 is it.

**McKINNEY:** All right, 'cause I-- I just think it's super norm-- alarming that there's a 53 percent rise in work-- worker injuries in Amazon facilities in the state and--

**ANSLEY FELLERS:** In New York, yeah.

**McKINNEY:** --I think we've gotta figure out a way to address that issue because it's not right, it's not safe.

**ANSLEY FELLERS:** Absolutely. And I don't know what-- I think probably the warehouse-- the Amazon warehouse in New York is probably situated a little differently than what you'd see in Nebraska, and I know like our-- our-- some-- some of the companies--

**McKINNEY:** No, this says Nebraska.

**ANSLEY FELLERS:** I thought that was in New York.

**McKINNEY:** Uh-uh. It's Nebraska.

**ANSLEY FELLERS:** Oh, OK. Sure. I-- that-- I-- my-- my impression was that that was the facility in New York, but like I said, I'm happy to talk to folks and look into that.

**McKINNEY:** All right. Thank you.

**ANSLEY FELLERS:** Thank you.

**RIEPE:** OK. Any more questions?

**McKINNEY:** No. Thank you.

**RIEPE:** OK. Thank you. Any additional questions from the committee? Seeing none--

**ANSLEY FELLERS:** Thank you.

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**RIEPE:** --thank you for being here. Any other opponents? OK, seeing no additional opponents, we will now go to neutral testifiers. Welcome, sir.

**JOHN ALBIN:** Afternoon, Senator.

**RIEPE:** We know you, but if you'd still state your name and spell it, it-- for the record, it would be helpful.

**JOHN ALBIN:** I will do that. Chairman Riepe 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. Excuse me. I appear before you today as the commissioner in a neutral capacity on LB502. LB502 creates the Warehouse Worker Protection Act, which imposes requirements on businesses that employ workers at warehouse distribution centers in Nebraska and charges the commissioner with enforcement of these new requirements. While the Nebraska Department of Labor is not taking a position on the underlying policy issues related to the bill, I want to address some technical concerns that severely impact the Department's ability to implement and enforce the act as drafted. The department did reach out to Senator Cavanaugh requesting a meeting on our concerns, and we did meet. The definitional section of LB502 creates a-- creates several technical concerns for the department. LB502 uses a definition of employee that differs-- excuse me, I'm really sorry-- the difference in important-- differs in important respects from the definitions used in other provisions of Nebraska law. LB502 defines an employee as a worker who is both nonexempt and nonadministrative; however, neither the department nor the Nebraska Workers' Compensation Court has any database which distinguishes types of workers based on exempt status or administrative versus nonadministrative status. Consequently, the department will not be able to use existing data to enforce the act. LB502 bases coverage of an employer under the act based on the number of employees the employer has at warehouse distribution centers in Nebraska. This presents three issues to the department. First, the definition of the employer is based on definition of employee that, as previously mentioned, does not match up with any other existing statutory definition. Secondly, the definition is based upon location, and there's no existing database reporting workers by location. An employer may have multiple distribution centers in Nebraska. The department would not know how many employees are at each location without creating an entirely new reporting system for employers to comply with. Finally, the definition includes employees employed by a third party. In the existing unemployment system, staffing agencies

report the employee as an employee of the staffing agency, and the department does not know where they work or what company they are assigned to. The department does not have available source-- an available source existing data to identify employers that would be covered by the act. Another definitional issue is the act provides that all employees of a controlled group of corporations should be counted together, and that all members of a controlled group of corporations are joint and severally liable for the violations. The act defines a control group of corporations by reference to 26 U.S.C. § 1563, but with one exception. And I'm out of time. It does use a reduced number, which we would not have any access to under any database for that. And the rest of my testimony is written out to you, and I apologize for this frog in my throat I got this afternoon. I'd be happy to answer any questions.

**RIEPE:** Thank you very much. Were there additional key points to your critical role?

**JOHN ALBIN:** There are a couple. One of them, there's been a lot of reference this afternoon to the injury rates, and the bill ties that to the-- I think it's called the mods rate for employers. The problem is those mod rates are rather stale, like right now the-- the Workers' Comp Court today has reported the mod rates for 2020 and we're in 2023, so you're often looking at historical information rather than anything current in terms of injuries at a workplace, so mod rates presents a problem. The other is warehouses don't have any state statute that provides for meal or restroom break rights, if you will. That's limited to a small number-- the meal breaks are limited to a small number of-- or to-- a small number-- to manufacturing facilities, so these warehousing facilities wouldn't have any state statute that governs breaks and restroom-- whether for meals or restroom breaks in them. And then the other-- the last question that we had at the department level is it defines a warehouse, but a lot of employers or man-- have multiple facilities within their agency; for example, a meatpacking facility would have not only the kill facility where the meat is processed, but it also, in most case-- larger cases, in particular, it also has a warehouse where the meat is stored pending distribution, and then it has a distribution system as well. And so one of our questions is, OK, they've got a warehouse, does that mean that the entire facility then falls under this act in terms of reporting, or is it just limited to the warehouse facility within the operation? So those were some of our concerns.

**RIEPE:** OK. Thank you. I know, Senator McKinney, you had your hand up.

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**McKINNEY:** Thank you. It seemed like your-- your concerns are kind of simple to kind of fix, like the issue around the designation of employees. What language do you use to designate employees?

**JOHN ALBIN:** What language do we use? We don't-- actually, there is not a statutory definition of-- at least for our unemployment program, of an employee. It goes under the ABC test where it's applied on each individual employer. It goes to control, which is the factor that the Supreme Court looks at most often or most closely. It also goes to whether the work is conducted inside the normal course of business of that employer. And then the third test is whether the person has an independent status or has an independent business. Where I think I was talk-- or I was hoping I was talking about there between my trying to get my throat to cooperate--

**McKINNEY:** Because you-- you mentioned that you wouldn't be able to use existing data to enforce the--

**JOHN ALBIN:** Yeah, because I--

**McKINNEY:** But I'm kind of won--

**JOHN ALBIN:** Say Amazon as an employer, that's obviously the focus of this act. I-- Amazon submits its wage records that tells me every employee of Amazon in the state of Nebraska. What Amazon does not do, is not required to do, is they don't break down between the administrative, so the receptionist in the front office isn't broken out differently from the workers that are out on the warehouse, which are the focus of this act.

**McKINNEY:** Why not?

**JOHN ALBIN:** Because for unemployment purposes it has no need-- we have no need for that data because unemployment benefits are based upon the earnings that an individual has during their base period, and the law is absolutely agnostic as to what you were paid for. It's just interested in what amount of wages you earn, and then your benefit is based upon those wages in your base period. So we have no need-- there's no purpose within the unemployment system to distinguish, and you would have to ask within the Workers' Comp Court staff, but I believe the Workers' Comp doesn't have a breakdown for this within its reporting system either that distinguishes between types of work done. I guess that's what I was driving at. We don't distinguish by type of work done.

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**McKINNEY:** Would it be-- also-- also you mentioned that staffing agencies don't report where people are working, they report them as workers. Would it be-- could it be simple to just require them to report where people are working?

**JOHN ALBIN:** I guess you would have to ask them how simple that would become, because there-- we would have-- there would have to be a statute that authorizes us, or either directly does it or authorizes us to create a regulation that would compel those employers to-- that-- we'll call them ABC staffing company-- for ABC staffing company to report where its workers are working. They-- and-- and even within that industry, it's quite different. I mean, you have what we call a match-hire type of staffing agencies where the person goes to work at a facility and for the six month-- first six months or so of their employment, they're considered an employee of the staffing agency. And then if-- if they're a good employee, then they transition over. Then you have the others where they just provide spot workers here and there for three- and six-week durations, so the-- even within the staffing agencies, there's a lot of diversity.

**McKINNEY:** I guess I just see this report and stuff as like simple-- it should've already been happening. And I don't-- I don't know. I just-- I just look at it and just look-- read it and just like, what? This makes no sense that we don't have this data or this information. How outdated is your data system?

**JOHN ALBIN:** I don't think my da-- my data system is up to date. It collects what it's needed for the system that it's designed for.

**McKINNEY:** But do you think it should be designed for the modern work-- work environment too?

**JOHN ALBIN:** Well, obviously, it would-- with some money--

**McKINNEY:** How much would that cost?

**JOHN ALBIN:** --you can change the system and then you can compel the employers to provide a lot more information than they do right now.

**McKINNEY:** How much do you think that would cost?

**JOHN ALBIN:** I think we made our estimate of IT cost at \$133,000 to build the initial.

**McKINNEY:** That's it?



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**JOHN ALBIN:** But that doesn't-- a lot of costs that are associated with programs aren't as much as costs ours. But, you know, the HR departments aren't set up to report their employees out by administrative versus nonadministrative employees, so there's a cost in the private sector that isn't reflected in my fiscal note.

**McKINNEY:** I know it-- it might take some extra up-front work to get this data put into the systems, but I-- I just don't view it as something that's like over-- like burdening of anybody, whether it's you guys or employers, to report this type of data because I think it should be provided and we should know where people are working, regardless if they're at a staffing agency or not. And also-- yeah, I'll just leave it there, but thank you.

**JOHN ALBIN:** All right, thank you.

**RIEPE:** OK. Is there other-- any other questions? Seeing none, thank you for being here.

**JOHN ALBIN:** Thank you.

**RIEPE:** Are there any other testifiers in a neutral capacity? Seeing none, Senator Cavanaugh, you're welcome to come back. And while she's doing that, I would note that written correspondence or emails, we had four proponents and one opponent and zero neutral capacity. So, Senator Cavanaugh, we're pleased to have you back and you're welcome to close.

**M. CAVANAUGH:** Well, thank you. I'm pleased to be back. So, yes, the Department of Labor Director Albin did-- they did reach out, meet with my office, and I do think that a lot of their concerns are things that are-- we can address and are fixable. Just didn't get time to do that, so I'm sure we can work on an amendment to address their concerns forthcoming. I-- I think, Senator McKinney, I think you're-- you got right to the point of it. If people are being injured in the workplace and we have a significant rise in injuries, it is our responsibility to look into the reasoning behind that and to ensure workplace safety. If a data system needs updating, then I think that that's something that we should have a conversation about. This would be spending money for state activity, which, you know, if we're going to spend money, that's where I want to spend it. Sorry. Senator Riepe and I have a long, storied history of-- of fiscal note conversations, so. There are companies currently in Nebraska that do this, that abide by all of these things and report this information out: US Foods in Omaha,

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Associated Wholesale Grocers in Norfolk, UPS. So we know that it is-- it's doable. It's-- it's something that other businesses across the state do. They tell their-- they give their workers expectations up-front, and they work within those guidelines and expectations. That doesn't feel like an unreasonable ask. But if we're not communicating that basic level, then-- and we're seeing an increase in injuries, I think that it is time for us to take some sort of action, so I hope to continue working on this with the committee and see if we can come to some sort of resolution.

**RIEPE:** OK. Any questions from the committee? I see none. Thank you very much

**M. CAVANAUGH:** You're welcome.

**RIEPE:** With that, that concludes our hearing on LB502, and now we will open on LB752. So this is your third time at bat.

**M. CAVANAUGH:** This is it. It's my last time today. This might be my last bill in this committee.

**RIEPE:** Well, lucky you.

**M. CAVANAUGH:** Well, I don't know.

**RIEPE:** You've managed to clear the room out. That's obvious.

**M. CAVANAUGH:** Good-- what time is it, evening or afternoon? Good afternoon.

**RIEPE:** You're not used to getting off this early.

**M. CAVANAUGH:** Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I represent District 6 , west-central Omaha, Douglas County. I'm here today to introduce LB752. Discrimination in the workplace is a longstanding issue that has been present in our country for decades and continues to be an issue today. We have taken steps at the federal, state and local levels to address these problems and implement protections for employees around the country; however, there's still work to be done and LB752 furthers this progress and addresses concerns that are still present today. LB752 pro-- prohibits receivers of state funds from using employment practices that discriminate on the basis of race, color, national origin, sex, disability or age. This bill provides protections at the

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state level that are similarly-- similar to already-implemented federal legislation. LB752 helps ensure that Nebraska can be a fair and equitable state where people are valued. As lawmakers, we must make sure that entities receiving our doll-- taxpayer dollars are displaying fair and equitable practices in their hiring and workplace behaviors. And I would just like to note that this is a very, very slender fiscal note. With that--

**RIEPE:** Do you--

**M. CAVANAUGH:** --I will take any questions.

**RIEPE:** Are there questions from the committee? I see none--

**M. CAVANAUGH:** OK.

**RIEPE:** --so thank you.

**M. CAVANAUGH:** If-- I don't know if there's opposition, but I-- I will waive closing unless opposition--

**RIEPE:** OK.

**M. CAVANAUGH:** --needs a response.

**RIEPE:** Well, this may go quickly. We'll see. Are there proponents that would like to-- to speak at this time? OK. Ms. Martin, welcome back.

**SUSAN MARTIN:** Thank you. I'm here to the bitter end.

**RIEPE:** Oh, we're not done yet.

**SUSAN MARTIN:** [LAUGH] Good afternoon, Chair Riepe and members of 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 in support of LB752. Nebraska State Constitution Article I-30 says the state shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The laws and regulations of Nebraska-- the Ne-- Nebraska Fair Employment Practice Act says discrimination in employment on the basis of race, color, national origin, religion, sex, including pregnancy, disability, or marital status is prohibited in Nebraska, Nebraska Age Discrimination and Employment Act: Discrimination in employment on the basis of age is

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prohibited in Nebraska. Equal Pay Act of Nebraska: It is unlawful to discriminate on the basis of sex by paying wages to one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on the job. Nebraska Fair Housing Act: Discrimination in housing on the basis of race, color, national origin, religion, sex, disability, or family status is prohibited in Nebraska. Act providing equal enjoyment of public accommodations: Discrimination in the enjoyment of places of public accommodations is prohibited in Nebraska on the basis of race, color, national origin, religion, family status, disability or sex. It just makes sense that when Nebraska has these laws and protections, that they should be extended to those entities that are receiving state funding, taxpayer dollars. It is 2023. We are, or we all should be, looking at everything we do through a lens of racial justice and racial equity. We know we have more work to do, but by passing this legislation, it just ensures that the state of Nebraska can continue to be a fair and equitable state where they value the people and the taxpayer. We thank Senator Cavanaugh for introducing this legislation and we hope that you will vote it out of committee.

**RIEPE:** OK. Thank you. Are there questions of Ms. Martin? Hearing none, thank you for being here.

**SUSAN MARTIN:** Yep.

**RIEPE:** Additional proponents? Welcome, sir. [INAUDIBLE]

**SPIKE EICKHOLT:** Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-ke; last name is spelled E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska in support of LB752. I don't need to belabor it. You are receiving a copy of my statement. Want to thank Senator Machaela Cavanaugh for introducing the bill. And I think the previous testifier, Ms. Martin, testified and summarized that we've already embodied this statement that's contained, this one-sentence statement that's contained in LB752 simply states that any entity that receives federal or state funding shall not discriminate on the basis of race, color, national origin, sex, disability, or age in employment. We have a number of statutes that already represent this statement, that reflect this statement, both in Chapter 48, in our State Constitution, as well, and I just want to be on-- we just want to be on the record as supporting this. I'll answer any questions, if anyone has any.

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**RIEPE:** OK. Thank you very much, sir. Any questions of the committee? Seeing none, thank you for being here. Additional proponents? Thank you, Senator Cavanaugh. That meets with our commitment to accommodation, so thank you. And welcome, sir.

**JOSEPHINE LITWINOWICZ:** If you could turn off this green light, it's been going for a little bit--

**RIEPE:** OK.

**JOSEPHINE LITWINOWICZ:** --and start it again. Thank you. Appreciate it.

**RIEPE:** Would you be kind enough to state your name and spell it, please.

**JOSEPHINE LITWINOWICZ:** Yes. My name is Josephine, legal name Vincent, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. And I'm gonna demonstrate the need for this bill and I'm in support of it. Also, the-- for the reasons of the example I'm going to give you, we also have to extend it to sexual orientation and gender identity. Last session, the Speaker of the House and the current Attorney General Mike Hilgers discriminated against me based upon my disability. But I was targeted, and I can prove that. You know, winning a court case has nothing to do with being right, but-- in a general case, absolutely nothing. But I think I could and the problem with this is I believe I was tar-- I was discriminated based on my disability because of my gender identity. So we have a problem where this sort of thing could be masked at any state-funded, you know, workplace where you could be discriminated against. Maybe they don't care about your sexual identity, but they don't-- it-- you know, you're disabled and you don't really fit in, even though you might, and so they could target you. And so the head law officer of the state did that to me. And I-- I'm going to bring it up at every anti-LGBTQ bill, I mean, for the next four years. And the Governor said, Ricketts, he said, you know, there-- there's no need to sign such a bill because there's no problem with it, I mean, doesn't-- it's not a worry. Well, you know, in-- and absentee business owners, you know, grab your grip and handle it. You know, we have all these fears of lawsuits? Well, they're probably being discriminated against. I've seen so much stuff, you know, in the last couple years and it would make your head spin. And so-- and-- and Governor Pillen says I don't exist, that I have an agenda, that I recruit, you know, I-- that I represent my community when I say that, whether or not they want me to or not, but that's the way I feel about it. And so I can't-- you know, he tells me I don't exist, and I'm like, f\*\*k you. I mean,

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there's no other words. And I'd say the word, but I'm not. And so I-- I support this bill with the addition, because it's needed, of protection based on gender identity and sexual orientation, period, and I'm furious that we're going to have this. And then, you know, after the last bill, LB169, you know, I was talking to some people and then-- then all I got was crickets, you know, after the bill was over. Well, we're going to be doing this over and over again because it's the only way I can tolerate. There's no other-- aside from, you know, putting my dead body on the northeast lawn of the Capitol, you know, facing the Governor's Office, there's-- there's no other way I can handle it. And so that's it. Any questions?

**RIEPE:** Thank you. Thank you for being with us today. Are there any questions from the committee? OK. Thank you again.

**JOSEPHINE LITWINOWICZ:** Thank you. Sorry I got worked up.

**RIEPE:** That's OK.

**JOSEPHINE LITWINOWICZ:** And Bezos, he actually thought about calling Amazon Relentless.com, which I-- I think is amazing. Thank you.

**RIEPE:** OK. Where were-- where are we at on the-- do we have-- did we hear proponents? Do we have any proponents? Do we have any opponents? Do we have any that want to testify in the neutral capacity? Senator, you're welcome back for your closing remarks, if you like.

**M. CAVANAUGH:** I will have brief closing remarks.

**RIEPE:** Thank you.

**M. CAVANAUGH:** I did not intend to exclude gender identity, so I'll bring an amendment, and I appreciate the previous testifier for bringing that up. And I'll take any questions.

**RIEPE:** OK. Are there other questions? I have a question--

**M. CAVANAUGH:** Yes.

**RIEPE:** --maybe a comment. Why wouldn't you just simply have it read LB752 prohibits receivers of state funds to use employment practices that are discriminatory, period?

**M. CAVANAUGH:** Well--

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**RIEPE:** Covers everyone.

**M. CAVANAUGH:** One would think, but we have learned.

**RIEPE:** But maybe is that too logical?

**M. CAVANAUGH:** I-- you know, I'm not a lawyer, so--

**RIEPE:** But you know a lot of lawyers.

**M. CAVANAUGH:** I do know a lot of lawyers. I think lawyers like to use lots of words. It's like Charles Dickens. They're paid by the word.

**RIEPE:** Oh.

**M. CAVANAUGH:** So I-- I think that that actually isn't clarifying enough as to what dis-- you have to define what discrimination is, so.

**RIEPE:** OK. OK, well, I respect your opinion. Thank you very much. Are there other questions? Seeing none, thank you.

**McDONNELL:** Thank you.

**RIEPE:** That concludes the hearing on LB752. We have received six letters of proponents and none in opposition and one in a neutral capacity. So that concludes LB752 and we are now going to move on to LB367, and that is Senator Conrad. Can we-- somebody's calling?

**HANSEN:** That's probably her right there.

\_\_\_\_\_ : Yeah.

**CONRAD:** Hello.

**RIEPE:** There she is, just in the nick of time. We were about to cancel, but--

**CONRAD:** Oh, goodness. That'd be a travesty. I'd hate missing you today.

**RIEPE:** Welcome and--

**CONRAD:** Thank you so much. Good afternoon, Chair and members of the committee. My name is Danielle Conrad; it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today representing north Lincoln's "Fightin'" 46th Legislative District and to introduce LB367. So for the returning

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members of the co-- this committee, this is a measure that will not be new to you. For the new members of the committee, this is a good opportunity to catch you up on some of the discussions that our state has had in recent years in regards to second-chance employment. So this measure is commonly referred to as "ban the box." You may have heard that in previous legislative debate or in reading your materials in preparation for the hearing today. So during my first stint in the Legislature, there was an effort, a successful effort to, quote unquote, ban the box for public employment that passed. So that policy, that law has been on the books in Nebraska for over a decade and I think provides us kind of a good model to look at to see that it's having its intended purpose and the sky is not falling. The intended purpose is to ensure that people have an opportunity to pursue employment because we know that having a good job is one of the best tools to address recidivism and address our mass incarceration and racial injustice crisis in Nebraska. The other piece that we know from that experience with public employment in Nebraska over the past ten years is that the sky has not fallen in terms of some of the perhaps unintended consequences that opponents of these measures are concerned about. So in addition to that Nebraska experience, I believe that there is today maybe 10 or 11 states and the District of Columbia that have similar ban-the-box laws on the books that we can look at and many, many other cities, counties, other levels of government that have passed similar ban-the-box policies. So the things that I really want you to keep in mind, this measure is a continuation of that ongoing discussion in Nebraska and across the country. Additionally, we-- we have to grapple with the mass incarceration-- incarceration crisis that we have in Nebraska. We're either number one or number two, at the top of one of those lists that you don't want to be on, when it comes to prison overcrowding. And I know there is a lot of overlap on this committee with the Judiciary Committee, so you get to hear about those issues a lot in your-- your other jurisdictional committee. But with one of the most overcrowded prison systems in the country, and when we talk about mass incarceration, we have to equally and voraciously talk about racial injustice when we look at the fact that Nebraska has some of the most significant racial disparities in our mass incarceration system out of any of our sister states, and we have to start to look at all of the different myriad of solutions to address that really muscular problem. Some of it's front end, some of it's investments inside, and some of it's back end. What ban-the-box legislation like this is meant to do is to remove barriers to second-chance employment and address opportunities for people who have served their time to have a chance to pursue a meaningful employment



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opportunity. So you might remember a few years ago Senator Wayne brought forward a measure that's somewhat related to this that passed the Legislature with strong support to provide a tax incentive for employers that hire those with criminal system involvement to incentivize more people pursuing productive employment if they have system involvement. So I really see this measure as part of those broader conversations that we're having, as a continuation of the dialogue that we're looking at in Nebraska, and also attendant to the workforce crisis that we're looking at in Nebraska. So there's a lot to like here, I think, from an intersectional policy perspective. That being said, we would be happy to work with the committee and other stakeholders because I-- I recognize and understand that people may have concerns, either with the policy and substance or with technical aspects thereof. So I'd be happy to answer any questions.

**RIEPE:** OK. Thank you for being with us. Are there questions from the committee? I would only say, are you familiar with Senator McDonnell's work with-- I think, as president of the labor unions--

**CONRAD:** Yes.

**RIEPE:** --and these-- these-- some kind of a program that-- individuals being released?

**CONRAD:** Yes.

**RIEPE:** And I think it also led to more integration, if you will, that was not there before; very discriminatory before, and I think he's made some efforts on that. I--

**CONRAD:** Yes, Senator.

**RIEPE:** I assumed you were--

**CONRAD:** I--

**RIEPE:** --keenly aware of it.

**CONRAD:** Yes. Thank you for connecting the dots there. I am aware of that, that program that Senator McDonnell has worked on through Building/Trades Council, and I know that there are some representatives from the labor movement that are here today to talk about their role in helping to remove barriers to employment, to address recidivism and increase economic opportunity for people. But I think in my previous role, I had an opportunity to testify in support

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of Senator McDonnell's program that they have available to increase employment opportunities for system-impacted folks, so, yes, that's a good connection. Thank you.

**RIEPE:** While you're at the mic, too, I would-- have you seen-- it's because I have known some individuals who were convicted of felonies--

**CONRAD:** Sure.

**RIEPE:** --and that it's extremely difficult for them to find anything. But with the labor market, is THAT changing some now?

**CONRAD:** I-- I think that's a great question. Thank you, Senator. And-- and I think that it is for a lot of different reasons. One, as our workforce crisis becomes more acute, employers across the board are doing kind of a hard scrub on different, say, for example, qualifications that may have been there beforehand to say, is this really related to the job, can we train this, is this something that we can remove to in-- increase the applicant pool? So you're seeing that in public sector. You're seeing that in private sector. So I think this is part of the equation. I think the other part of the equation is just how big our system of mass incarceration has become. When you have almost one in ten kids in Nebraska that will have a parent in the criminal justice system, that's a lot of people that these systems impact. And so I think employers have to evolve and update their policies to take into account those societal factors. I'll tell you this. I think that there are a lot of very thoughtful employers that take great measures to ensure that they're not acting in a discriminatory manner and are trying to provide opportunities to more people. I-- I think that's absolutely true. But we know that this is an ongoing and growing concern. We know from what we hear from folks who are working through re-entry that they still find barriers to ens-- to finding employment. And this doesn't remove all information in regards to system involvement, but it just kind of changes the trajectory. It's meant to change the trajectory a little bit, so it's not an automatic disqualifier, with some exceptions, of course.

**RIEPE:** OK. Yes, Senator McKinney.

**McKINNEY:** Thank you, Senator Riepe. Thank you, Senator Conrad--

**CONRAD:** Yes.

**McKINNEY:** --for bringing this bill. How do you feel about those that are in opposition, but some of them put online comments that didn't

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show up, but those that say we believe in second chances, but we oppose this bill?

**CONRAD:** Yeah, I-- I imagine you might hear some of that testimony today or it might be in your written materials and if that's the case, I'll take them at their word and I'll be interested to know what other second-chance opportunities they are supporting before this Legislature or beyond, whether that be restoration of voting rights, whether that be ban the box for educational opportunities that we advanced from Education on a pretty strong vote this morning across the political spectrum, whether that be issues that you have before you in the Judiciary Committee. If there are other aspects of second-chance employment that opponents see as a better policy solution, I'll look forward to working with tho-- them on those, but I do think that we should have this policy as one piece of the puzzle in terms of re-entry support.

**McKINNEY:** Thank you, because I-- I think people always say like, oh, we support second chances--

**CONRAD:** Yes.

**McKINNEY:** --or we support policies to change our criminal justice system, but when the rubber hits the road, they hide behind some arbitrary issue or-- or things like that--

**CONRAD:** Yeah.

**McKINNEY:** --to not, you know, do what they say with their words. And it's really, you know, sometimes disheartening and it-- and it makes it so difficult to get change because so many people that act as allies don't step up and actually be an ally. They just speak with their words and not with their actions. Thank you.

**CONRAD:** I think that's true, and it is frustrating when there's a disconnect between word and action, which I think is what you're getting at there. And to your point, Senator, this system of mass incarceration and racial injustice has grown so unwieldy that we're going to need a multifaceted approach to addressing it. It will show up a lot of ways, I think, in our deliberations this session, whether it's debate about funding a massive new prison or two, which is the most expensive, least effective way to deal with our problems, sentencing reform, re-entry support, juvenile justice, all of those different pieces. The private sector has a part to play, as well, and

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if we can work together to try and remove barriers to employment, we get better outcomes for our shared public safety goals. When folks are working and have hope and have opportunity, they're less likely to reoffend and go back into that system of mass incarceration. So when we all do better, we all do better.

**McKINNEY:** Thank you.

**CONRAD:** Yes. Thank you.

**RIEPE:** Are there any other questions? OK. Thank you very much.

**CONRAD:** Thank you.

**RIEPE:** Will you be staying?

**CONRAD:** I will most likely not be staying to close, but I will hang out just for a little bit.

**RIEPE:** OK.

**CONRAD:** OK. Thank you. Thank you so much.

**RIEPE:** Do we have proponents that want to speak? Welcome. If you'll be kind enough to share your name and spell it for us, please, and then who you represent.

**JASMINE HARRIS:** Good afternoon, Senator Riepe and members of the Business and Labor Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I am the director of public policy and advocacy at RISE, and I request that this testimony be included as part of the hearing record that shows RISE is in support of LB367. RISE is the largest nonprofit organization in Nebraska focused solely on habilitative programming in prisons and re-entry support, and our overall mission is to break generational cycles of incarceration. I'll give a little personal testimony before I even start. The first time I testified in the Nebraska Legislature was in this committee in 2017 for this exact same bill. So I don't come just as a director. I come as someone who has experienced what this can do to someone. As we look at RISE and what we do in this capacity, working with people who are incarcerated and coming home, we have over 600 individuals that have graduated from our program with approximately 175 of those individuals who are back in the community. What we do know is that employment is one of the biggest challenges that people deal with when coming out of incarceration, and that's why we've dedicated so much of our resources

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to helping people find jobs, be ready for those jobs, and we have a director of employment services who's working to find those connections. At the end of '22, 2022, we have identified over 150 employers in Nebraska open to hiring our graduates. Sounds like a large number, right? According to the Sentencing Project, there are 70 to 100 million Americans who have some type of criminal record. That means we could circle the earth three times with how many people who have been impacted by the legal system. So when we look at those numbers of individuals, we cannot reasonably, logically, morally, or fiscally responsibly write them off and cast their applications aside when they come across the desk or are automatically disqualified by computer software. Many employers will argue that this will strip away their ability to screen potential employees. It will not do that. It allows for an applicant to reveal their record history and give them the time to talk about why they're qualified for that position and to talk about the path they have taken to rehabilitate themselves. I want to draw attention also to the fact that people who are willing to work and are denied, we will have less people in the job market. Sixty percent of people who are formerly incarcerated remain unemployed one year after being released, and they make 40 percent less when-- on take-home. That's a loss of national gross domestic product of about \$78-87 billion per year, so just numbers we talk about when we talk about economy and what-- how that impacts Nebraskans and across the country. I see that I'm about to run out of time. So we ask that you do forward this out of committee onto General File because we know the impact of trying to create workforce here in Nebraska. We have one of the most historically low unemployment rates with tens of thousands of jobs that go unfilled. We have untapped potential and people who are ready to work. We just need the private sector to come on board. As Senator Conrad said earlier, where the public has already gone, if it's good enough for the government of Nebraska to be able to take that app-- question off applications, it should be good enough for private sector employers as well.

**RIEPE:** OK. Thank you very much. There may be some-- Senator.

**McKINNEY:** Thank you. Thank you, Ms. Harris. Can you speak to the import-- importance of this a little further, because it's not just people with felonies.

**JASMINE HARRIS:** It's not.

**McKINNEY:** It's people with misdemeanors that get screened out that probably should never get screened out.

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**JASMINE HARRIS:** Yes, misdemeanor convictions, people with misdemeanor convictions, people who have just been arrested, because sometimes employers go to the Internet and find out about people without using an actual reputable background check system. I'm one of those individuals who had a misdemeanor conviction, who was out of work for almost two years. I couldn't get jobs that I previously had. I couldn't get jobs that I was overqualified for that now you do every day when you walk into the grocery store: self-checkout. So, yes, it really does impact more than just people with felony convictions.

**McKINNEY:** Thank you.

**JASMINE HARRIS:** Yes.

**RIEPE:** Any other questions? I have a question. I'd like to-- I'd ask you to, if you can, to explain. I noticed you said graduates, so--

**JASMINE HARRIS:** Um-hum.

**RIEPE:** --how long is your program, what does it take to qualify, and are you able to-- I assume you're able to help them with placements. I think you said that.

**JASMINE HARRIS:** Yes.

**RIEPE:** I didn't have time to read it all. [INAUDIBLE]

**JASMINE HARRIS:** Yes, so RISE has been around for about six years here in the state of Nebraska. We operate a program in seven of the ten Nebraska state facilities. That program is a six-month program that we offer in those facilities that focuses on employment readiness, character development, and entrepreneurship. As individuals graduate from that program, we have a re-entry team-- so these are people who have-- some have their own lived experience of navigating re-entry-- where we begin working with them 12 to 18 months before release so that we know what their actual needs are when they're coming home. We prepare them for parole hearings, things like that, and walk alongside them. Sometimes we meet them at the gate to take them to their destination when they're released. And so that re-entry specialist really walks it out with them, so we have now an employment area or director of employment services where we are connecting individuals with jobs. What we want to do now is then not just do survival jobs. We want to be able to advance people in careers. And so these things like banning-- taking the question off of applications, things like removing barriers when it comes to licensing that Senator Briese

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introduced with LB16 this session, those are tools that help us begin to advance folks as they do. We've also created a business academy for people who really want to pursue entrepreneurship because sometimes they just cannot get a job and it's easier for them to create their own jobs. And we have our family and youth programs that will work with families of those individuals who are incarcerated, and we've expanded into some research areas with Harvard's Access to Justice Lab at their Law School and University of Zurich and also exploring an opportunity that works with Columbia University on some of the work that we're doing as well.

**RIEPE:** Now are you in Omaha and Lincoln or what--

**JASMINE HARRIS:** Our main office is in Omaha. We do have a sub-office in Lincoln, but we serve across the state. We have individuals who do release to Grand Island area and beyond, so we're working to ensure that we are moving across the state, making ourselves known in those communities, and connecting with resources there for those individuals.

**RIEPE:** Now do you have counselors as well?

**JASMINE HARRIS:** We do not have counselors. We do work closely with therapists. We do have to make sure we are connecting our individuals with the mental health services because that is one of the biggest things, that and substance use, that we see when individuals are coming home.

**RIEPE:** Hmm. OK. Well, very good. Thank you for being here. It's been very informative. Questions? Sister-- Sister--

**IBACH:** You can call me "Sister" or "Mother."

**RIEPE:** I worked for the Catholic-- I worked for the Catholic nuns for so long that--

**IBACH:** Most people call me "Mother Theresa," but--

**RIEPE:** --every woman's a Catholic.

**IBACH:** --you can call me "Sister."

**RIEPE:** Senator--

**IBACH:** Thank you, Mr. Chairman.

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**RIEPE:** Senator Ibach.

**IBACH:** I just-- I would just comment that you've testified a lot in Judiciary--

**JASMINE HARRIS:** Yes.

**IBACH:** --and I've really enjoyed learning about the program. So this is just another extension of that--

**JASMINE HARRIS:** Yes.

**IBACH:** --education of people like me, so thank you very much.

**JASMINE HARRIS:** Oh, thank you, and you're welcome.

**IBACH:** It's been really helpful and-- and informational.

**RIEPE:** Any other questions from the committee? Thank you very much.

**JASMINE HARRIS:** Thank you.

**RIEPE:** You've been very informative. Thank you. Other proponents? If you'd be kind enough, please, to state your name and spell it--

**ALICIA CHRISTENSEN:** Of course.

**RIEPE:** --and then tell us who you represent.

**ALICIA CHRISTENSEN:** My name is Alicia Christensen, A-l-i-c-i-a C-h-r-i-s-t-e-n-s-e-n. Thank you and good afternoon to the committee. I'm the director of policy and advocacy at Together in Omaha, and we're a nonprofit that assists community members facing food and housing insecurity. So in addition to assisting individuals find economic security that can help them from-- keep them from recidivating, it also keeps people out of experiencing homelessness. It's very difficult to find a job when an employer has a blanket policy that they use ba-- background checks indiscriminately and fail to consider an otherwise viable candidate. Senator Conrad and Ms. Harris have touched on a lot of things that I was going to highlight. I did-- I've done a lot of research and work about the collateral consequences of a criminal conviction, so those include both the ones imposed by the state-- so, for instance, currently in Nebraska, you can't get SNAP benefits if you have certain drug felony convictions-- but there's also these like social consequences that are imposed by an



employer or a landlord that will keep you from getting the basic necessities of life. And so these are really important to try and ameliorate situations where unintended prejudice can seep in, where you're not intending to judge someone by this criminal background check. And I think-- the other thing that I think comes up a lot is that digitization has made this information really accessible, and it also spawned this proliferation of the background check industry. And often employers will mistakenly believe it's necessary to review all of these applicants' criminal history reports in order to avoid legal liability for negligent hiring. In fact, the concern, I think, a lot is manufactured by that industry to create their own business. So it's a-- they're manufacturing fear in order to have a perpetual market for their services. And because of the multiple jurisdictions that they're pulling from, their background checks have varying degrees of reliability. And frankly, even the State Patrol can't guarantee that what they produce will be without error as far as background checks that they provide. So I think it's generally an overbroad policy that-- to require criminal history and it often just excludes people that their offense-- criminal offense conviction is for something completely unrelated to the job. And so in that way, it's in the interest of public safety when you're talking about someone with a violent offense not taking care of the elderly populations or schoolchildren, but when there's no connection between the two, it really doesn't make any sense.

**RIEPE:** OK. Thank you very much.

**ALICIA CHRISTENSEN:** Thank you.

**RIEPE:** You've run out of time. Are there any other questions from the committee? Thank you--

**ALICIA CHRISTENSEN:** Thank you.

**RIEPE:** --so much for being here. Additional proponents?

**SUSAN MARTIN:** For the record, 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 in support of LB367. We believe the-- that labor has a responsibility to help the formerly incarcerated reintegrate into the economy. The thousands of people released from prison each year face huge hurdles to rebuild their lives and livelihoods. Various state and local policies prevent them from voting, obtaining student loans, and receiving public benefits and other services. They have few

opportunities for advanced education, job training, or good jobs. They desperately need labor protections. We know that education, healthcare, and fair pay are the three fundamentals that reduce or prevent individuals from becoming a part of the criminal justice system. The Nebraska State AFL-CIO actively supports criminal justice reforms, including removal of employment obstacles for the formerly incarcerated. With that being said, I'm not going to go duplicate what others have said. You-- I handed out a copy of my testimony, so-- but I will say that this is a great opportunity for Nebraska to implement a fair-chance policy that includes both public and private employers and we thank Senator Conrad for introducing this legislation. One thing I would like to comment on to address your specific question, Senator Riepe, about Senator McDonnell's, it's Nebraska Center for Workforce Development Edu-- and Education, and what that does is provide training and education that will lead to employment and making those connections to employers, so that's what that organization does.

**RIEPE:** OK. Thank you. There any questions from the committee? Seeing none, thank you for being here. Additional proponents? Welcome back.

**SPIKE EICKHOLT:** Thank you. Good afternoon, members of the committee and Chair Riepe. My name is Spike Eickholt, S-p-i-k-e; last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB367. You've got my statement. I'm not going to read from it because many of the other testifiers and the introducer have made the points that I wanted to make. Senator Conrad referred to this as a ban-the-box bill, and I think that phrase means the box or the portion of the written application and asks, yes or no, if you've got a criminal record. It's meant to do away with that. And I think what her bill is-- is proposing to do and what earlier versions of this is-- is proposing is to strike some sort of a balance, if you will, for someone who's got a criminal record to have an opportunity to get back into lawful employment in the community, as well as balancing the rights of the employer, not only for the obligation the employer has to their customers and their other employees to make sure that they hire someone who's not going to be a risk or a danger to them. And what it does is it provides just that there's not an automatic disqualification for someone with a criminal record. It just asks-- it does not let the employer ask that question from the get-go. Senator McKinney asked this earlier. We've been talking in terms of people coming out of prison, the former incarcerated, but really this is addressing those people who simply have criminal records, and you can get a criminal record and receive a fine. And many times the

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collateral or secondary consequences for someone who just pleads the case on a minor charge are much more profound than the initial punishment they got for the first-- in the first place. I'll give you an example. If you get into a bar fight in Lincoln, they'll commonly charge you with a city ordinance assault. And if it's a mutual fight, no one's hurt, that kind of thing, the judge will simply tell somebody, you're just going to be getting a fine, so you plead to it. Now you've got an assault conviction on your record. An employer's not going to want to look in to see what that is about. They're not going to take the chance on whether it's a domestic or not. They're not going to care if someone's really hurt. Someone's got an assault conviction on their record, and this would at least let someone get their foot in the door, if you will, to actually see if they're qualified and meet with the employer. It is consistent with what Senator Briese has with LB16 that was advanced from the Government Committee recently. LB16 is a little bit different because it looks at removing some of the overbroad and arbitrary restrictions on some of the occupational licensing standards, like cosmetology, landscape architecture, and those kind of things that have automatic prohibition on those folks with criminal records. Just one other point I wanted to make. If you are talking about formerly incarcerated, about 50 percent of our people who are in our prison-- who are in our prison system now are going to be being released in the next three years. And as some people have mentioned before, we need to have a system, if you will, or a way for those folks, when they do re-enter our society, they can become gainfully employed so they don't go back into the criminal system. I'll answer any questions if anyone has any, but I encourage--

**RIEPE:** OK, thank you.

**SPIKE EICKHOLT:** --the committee to advance the bill.

**RIEPE:** Are there any questions from the committee?

**HANSEN:** One.

**RIEPE:** Senator Hansen, please.

**HANSEN:** What happens if we just kept the box but mandated they just have a description of what they-- what happened, so it gives the employer actually more information, but more-- like instead of them assuming it's something bad--

**SPIKE EICKHOLT:** Right.

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**HANSEN:** --like a felony, they say it was some of the stuff that you mentioned. So it gives a potential employee a chance to explain so they're not getting kicked out the door right away.

**SPIKE EICKHOLT:** I think that's a good idea. LB367 does have a component of that. It does sort of require the employer to notify the applicant, hey, there's something on your record, and it gives the applicant an opportunity to come-- to come back and explain that, to supplement it, the circumstances and so on. I think that's a good idea because, as somebody mentioned before, if you do a Google search of someone's name, you automatically get those pop-ups, check criminal history. There's an industry out there and it's not always accurate, so there might be stuff swirling around people that's not accurate, if you will, that an employer might rely on. So that-- that'd be a good idea. I can't speak for the introducer, but I think it's a good idea.

**HANSEN:** It seems like a happy medium because then the employer gets more information, the employee is able to give more information, instead of the em-- the employer assuming it's something bad.

**SPIKE EICKHOLT:** That's right.

**HANSEN:** So I just thought--

**SPIKE EICKHOLT:** And if it's a law, then it's uniform for everybody. Right? Because I think, what Senator Riepe asked before, there are some employers who are loosening their prior restrictions just because of the labor market, but having it universal means everyone's sort of on the same page.

**RIEPE:** OK. Any other questions? Seeing none, thank you very much for being with us. Additional proponents? Any opponents? Welcome, sir.

**BOB HALLSTROM:** Chairman Riepe, members of the Business and Labor Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, appearing before you today as registered lobbyist for the National Federation of Independent Business and the Nebraska Bankers Association to testify in opposition to LB367. I've also been authorized to sign in, in opposition, on behalf of the Nebraska Insurance Federation. With regard to the Insurance Federation and the NBA, we have previously worked with Senator McCollister when he introduced a similar version of this legislation to address our concerns and would certainly pledge to work with Senator Conrad in the same vein. Financial institutions under FDIC Section 19 are prohibited from employing persons convicted

of certain crimes involving dishonesty, breach of trust, and money laundering. We think, number one, that the exceptions that are built into the bill do not exactly capture what it is that financial institutions and the insurance industry are subject to, so we would like to fine-tune those. The second issue is this bill is different than earlier iterations in that it only allows the exceptions to apply, even in the financial institution and insurance industry, after you have made a conditional offer of employment. That's the way we read the bill. With regard to small business, NFIB, we have some concerns regarding the delays in hiring process that are inherent in the bill, particularly for small employers who don't have HR divisions. It's best to know of any potential impediments to hiring earlier in the process. We've indicated in our testimony that we feel this might bring an increase in litigation where you come down after making a conditional offer of employment, you check the record if you can, and-- and then you make a decision, and it's inevitable that somebody is going to suggest that you made it solely on the criminal history record. We would also note, for Senator Conrad's consideration, the way we read the bill is that only those ex-- those entities that have the exception are able to ask for a criminal history record check even after the offer of conditional employment. We believe that the pre-adverse action notice will add additional delay. The provisions are that you have to wait ten days after you've denied the employment or the applicant to give them an opportunity, and then you have to review that and can't fill the job until that particular time. So with the job market the way it is, we have concerns there. I also, in my written testimony, as my time is running down, would note that I reference the Title VII of the Civil Rights-- Civil Rights Act, which prohibits employers from applying blanket rules that automatically disqualify applicants with convictions from employment. So I think there are some protections in existing law. And finally, at the end of my testimony, I indicate that the states of Texas and Ohio have provided statutory protection from liability to employers who hire individuals with criminal records. My understanding is that that is where, while you're in-- incarcerated, that if you pass certain milestones, that you get a certification from the state and then, in exchange for hiring those folks that have done good things while they're in prison with regard to being able to go back into the job market, that you get an immunity from liability so that if somebody does reoffend and-- and does something in the workplace that's problematic, that you've got an immunity from liability under those circumstances, so maybe just a little different way to-- to

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approach the issue. Be happy to address any questions of the committee.

**RIEPE:** Any questions of the committee? Senator McKinney.

**McKINNEY:** Thank you. And thank you. So do y'all believe in second chances or not?

**BOB HALLSTROM:** I certainly think so, Senator, and-- and that's, you know, an issue of plenty of-- particularly with the job market today, an earlier witness had indicated that some of the conditions were-- were being loosened. I-- I don't know that that's necessarily been a concern of the financial institutions industry or the small business owners that I represent, but I-- I don't think that there's anyone from the people that I represent that are automatically disqualifying people based on misdemeanors and the like.

**McKINNEY:** And I-- I ask because you-- you argue that this will slow down the process, but I think it [RECORDER MALFUNCTION] slow down the process because it would give those who are qualified a chance at getting, you know, gainful employment. The current system works against those individuals. It doesn't work for them at all, and I think it's-- it's clear that we have to take a new approach at this. At least let's allow them to apply, interview, show who they are, and then if you feel like you would like to hire them, then, yeah, run a background check, see what their record is. But the current system works against those individuals, people who are working day and night to try to show that they're better than what they-- what happened prior in their life. And the current system doesn't allow them to do that, and what it does in practice is cause a lot of those individuals to say, forget it, I'm going back to the streets because no matter what I do, I can't get a job. It's not easy to get a job on a misdemeanor or a felony, or you can even have a college degree and if you got a misdemeanor, it's going to be hard to get a job in the state of Nebraska. So I know you guys say y'all believe in second chances, but the current system doesn't work because it's not providing enough second chances for those who have showcased that they are, you know, improved as individuals and they've changed. And I understand in banks you don't want to hire somebody that has fraud or robbery on their records. That's-- that's understandable. But I just truly believe that we should at least give the people who-- and I would be surprised if somebody had-- I wouldn't be, but I would be, if somebody had fraud or robbery on their record and they applied to work at a bank. But-- and-- and-- and having this blanket, you know, thing, we're basically

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excluding a lot of people who may be a great bank [RECORDER MALFUNCTION] a great teller, a great worker. And I would ask you to talk to your people and get them to understand that slowing down the process isn't to make their jobs harder, but it's to make society better [RECORDER MALFUNCTION]

**BOB HALLSTROM:** [RECORDER MALFUNCTION] up-front and can still analyze it at that stage of the process, it-- it might help in both respects.

**McKINNEY:** But still, even-- I'm young enough and I haven't been in here long enough and me, as myself, I have misdemeanors on my record. I've applied to jobs and said on the application I was arrested for this before and was denied. So we still have a system that allows you to voluntarily report what you-- what's on your record and it doesn't work. I think the problem is that people are being screened out because they-- they're checking that box and it doesn't allow them an opportunity to say, hey, although this is on my record, this is what happened, this is what-- this is how I improved myself, this is how I got better. That's the problem. We're not allowing people to show who they are and how they improve, which is basically checking a box and getting screened out. I know people say it don't happen, but it happens every day.

**BOB HALLSTROM:** I hear you.

**McKINNEY:** Thank you.

**BOB HALLSTROM:** Thank you.

**RIEPE:** OK. Thank you. Other questions?

**McKINNEY:** No.

**RIEPE:** OK. Any other questions from the committee? Thank you very much, sir--

**BOB HALLSTROM:** Thank you, Senator.

**RIEPE:** --for being with us. Additional opponents?

**ANSLEY FELLERS:** All right. Thank you, Chairman Riepe and members of the committee, and I apologize for any redundancy here. I just read the whole thing so I don't ramble. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association, testifying in opposition to LB367. I

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would also like to note for the record that the State Chamber of Commerce opposes LB367 and you should have a letter stating as such. First, we'd like to acknowledge Senator Conrad's efforts. We very much support helping folks transition into employment in an equitable and efficient way. The first state ban-the-box law was passed in 1998, but as recently as 2012, the Equal Opportunity-- Equal Employment Opportunity Commission updated its guidance to clarify that Section VII of the Civil Rights Act prohibits the outright disqualification of applicants with convictions from employment. That's not to say employers can't inquire about, obtain, or review arrest or conviction records. It's designed to ensure such information is not used in a discriminatory way. Our associations encourage employers we represent to do exactly what this bill seeks to mandate, which is give people the benefit of the doubt, so when applicants check the box, they are given the opportunity to explain their situation. Ultimately, the recordkeeping and paperwork requirements under LB367, along with the hammer of financial penalties and possible civil suits, are untenable for businesses of just about every size, but LB367 also applies to businesses with as few as 15 employees. We welcome the opportunity to work with Senator Conrad and other stakeholders to find a solution to help those re-entering the workforce for many reasons. The senator's opening did make me think we should look into how the tax credit passed several years ago is working and what we can do to help employers understand that policy. The grocers did do some outreach to our membership after the tax credit passed and admittedly, we have some work to do with our employers. I also quickly want to note that from the grocer and retailer perspective, we have a really cost-effective and turnkey retail and entrepreneurial-- entrepreneurial credentialing program that we've been working to find a home for, whether that's in corrections or elsewhere, which we think might be an affordable way to help folks learn a variety of skills, pad a resume, and get connected to opportunities. With that, I'd be happy to answer any questions.

**RIEPE:** OK. Thank you very much. Are there-- Senator.

**McKINNEY:** Thank you. Do the grocers and the chamber realize that relying on employers to do the right thing isn't working?

**ANSLEY FELLERS:** Is that rhetorical, Senator, or should I answer?

**McKINNEY:** It-- it kind of is, because al-- although like people say-- like I said earlier, like a lot of people say we believe in second chances and helping people return to society, the current system isn't



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working. So this is why these type of bills come up, because we, Senator Conrad and others, are looking for ways to address that issue. The current system isn't working. Although we believe people are doing the right thing, in reality, if you talk to a lot of individuals returning to society and have records, you would realize it's not working at all. It's horrible.

**ANSLEY FELLERS:** Yeah, we don't disagree, Senator. I think that you won't find someone who disagrees. Won't find-- that's a double negative. There are a lot of people, including the grocers, who think the current system is broken and it doesn't work for a number of reasons. We just don't agree that this is the proper solution.

**McKINNEY:** Have you guys ever thought about, the chamber or the grocers, thought about proposing a bill to address the issue?

**ANSLEY FELLERS:** So we didn't bring a bill, but last year-- so I mentioned the credentialing program we talked about, and actually I see someone back here that I should discuss this with, and I think maybe the retailers already have. We have-- I know it was mentioned that some systems and corrections have opportunities for folks that we know will be or are interested in and will be re-entering the workforce, and I think it's a great idea to-- we-- I don't know how much detail you want to hear, so I'll try to keep this brief. Their-- the National Retail Federation actually has a really cost-effective-- it's \$1,500 per person-- turnkey program. It's got a variety of paths, including entrepreneurship and warehousing and stocking, things like that, where you can teach folks skills to go into various retail opportunities. And we tried for the last year and a half to work that into some sort of, whether it's in education or corrections, system. And I think the liability, the-- the employer liability perspective, that some-- I think the last testifier mentioned, where if folks go through this program and there's employers that hire them, whether that's misconception or not, I-- like I said, we have some work to do with our employers, but providing them some sort of liability protection when they hire folks who've been in some way cr-- credentialed, I think, is a really good idea. We think those are valuable ideas. We just don't necessarily like the hammer of this.

**McKINNEY:** All right. Thank you.

**ANSLEY FELLERS:** Thank you.

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**RIEPE:** OK. Other-- are there other questions? Thank you for being with us.

**ANSLEY FELLERS:** Thank you.

**RIEPE:** Additional opponents? Seeing none, are there-- is there anyone testifying in a neutral capacity? OK. If you would, yeah, we've seen you before, but if you'd give us your name and spell it, please.

**PAULA GARDNER:** This might be the last time you're going to see me. It's my last bill this session. So good early evening. My name is Paula Gardner, P-a-u-l-a G-a-r-d-n-e-r, and I'm the executive director of the Nebraska Equal Opportunity Commission. I'm gonna speak in a neutral capacity on LB367. The bill is somewhat unique in that it gives the NEOC some powers which are not in the statutory section where we previously have powers or jurisdiction. Based on our review, it appears to expand coverage to private employers with 15 or more employees, as well as employment agencies relative to asking about criminal histories at the application stage. It also provides for an enforcement mechanism that the current statute does not have. Per this bill, the NEOC is tasked with taking reports of problems, concerns, or suggestions and keeping a record of those contacts by publishing quarterly reports. The component of taking those reports is an invest-- is investigating complaints, though the standard for those investigations appears to be a little different than the work that we do for other investigations. Namely, here we are to determine if the employer has complied with provisions of the act, and if we determine they have not, we can issue a fine of \$2,000 and provide counseling. The individual making a complaint can also seek relief in court if the entity does not comply with the act. The provisions of the bill related to criminal history are consistent with the guidance from the EEOC. Those provisions include affording the applicant an opportunity to explain the circumstances regarding any conviction, including post-conviction rehabilitation. Inquiries are best limited to convictions for which exclusions would be job related for the position in question and consistent with business necessity. If this limited investigation reporting are all that we're expected to do, we do not anticipate a significant impact, even though this work is outside the work we perform as part of our work-share agreement with the EEOC and as a result, we would not be reimbursed for that work. Issues is not something-- fines are not something that we currently do under our current statutes, and the bill doesn't indicate where the money for the fines will go, but we think that we can figure that out. And if anybody has any questions about Title VII and criminal histories, I'd

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be happy to answer them because I think that there were some things left on the table that weren't very clear. That's all I have to say.

**RIEPE:** Thank you. Are there questions from the committee? Senator McKinney.

**McKINNEY:** Can you clarify that--

**PAULA GARDNER:** Yes, I can.

**McKINNEY:** --what wasn't clear?

**PAULA GARDNER:** So under Title VII, it's== it's not a protected class to have a criminal history. So somebody couldn't come to the EEOC or to our agency and say, I have a criminal history, I wasn't hired, I want to file a charge of discrimination. They would have to relate that to being in a protected class and because of that, there's a disparate impact. So it's a disparate impact theory that the charge would be filed on that we would look at, the idea being is that there are certain classes that, when you use criminal histories, arrest records, it has a disparate impact on those groups. But just having a criminal history in and of itself is not a basis to file a charge. You would have to look at the theory of disparate impact to make a determination whether there's discrimination.

**McKINNEY:** So basically, I'm a black man with a criminal record. I applied for a job and I got discrim-- and I got discriminated against--

**PAULA GARDNER:** So we--

**McKINNEY:** --or something close to that.

**PAULA GARDNER:** So we could look that in two different ways. So there's disparate-- dis-- disparate treatment, so because you're a black male, you're being treated differently than, for instance, a white male with the same criminal history.

**McKINNEY:** Right.

**PAULA GARDNER:** They excluded you, but they hired the white male. That would be different-- disparate treatment, different treatment. Disparate impact is because I'm a black male. By using criminal histories, which on its face it seems to be a neutral policy. That neutral policy has a disparate impact on me as a black individual. And

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so that just requires a different type of investigation, different type of evidence that we would be looking at.

**McKINNEY:** All right. Thank you.

**RIEPE:** OK. Any other questions? OK, hearing none, thank you very much. Is there anyone else testifying in the neutral capacity? Hearing none, we will invite Senator Conrad back. While you're doing that, we had three letters or emails in as proponents, five in opponents, and zero neutral.

**CONRAD:** Very good. Thank you so much, Chairman Riepe. Thank you so much to the members of the committee for your good questions, time and attention. I understand this is your last hearing for this session. Is that right? No? One more?

**RIEPE:** Yes, it is.

**CONRAD:** All right, all right.

**RIEPE:** And we're all going to--

**CONRAD:** Well, congratulations. You've made it. Just a couple of points to clarify for the record. Of course, we'll be happy to work with all stakeholders if the committee sees fit to advancing this measure this year or carrying over into the next. But I did want to specifically lift up, and I'm glad there was additional discussion around the EEOC guidance because, in essence, what it says is, because of our system of mass incarceration being what it is in Nebra-- well, nationally, that criminal history has become basically a proxy for racial discrimination, and that's why we need to update and be thoughtful about how we utilize system impact or system involvement or criminal history when it comes to ensuring the intent of our nondiscrimination laws in employment. I also just, you know, from a flip side of the coin, and it's so fun to spar with other smart lawyers who work on policy issues. But, you know, from Senator-- or from Mr. Hallstrom's perspective, he was saying we already have the EEOC guidance, so that provides enough clarity to employers. On the flip side of that coin, I'd say we have that EEOC guidance, so we should codify it to ensure that we have clarity for all employers. And to note, this measure applies to employers with 15 or more employees, so it exempts out small employers and is consistent with many other aspects of the Fair Employment Practice Act in Nebraska that has that 15-employee threshold. I think gender discrimination is lower and minimum wage is

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a bit lower, at two and four respectively. But 15 is kind of a standard that you'll see across in our employment nondiscrimination laws. The last piece, couple pieces that I just want to leave you with, is I'm a proud sponsor of Senator Briese's bill on occupational licensure reform. I think I was the-- the first in line after he introduced that, and it's also secured co-sponsorships from Senator McDonnell, Murman, Sanders and Brewer, so that's a very eclectic group that is pursuing another policy solution to address second-chance employment and-- and I think hopefully will-- will be before the the body this year. But I think that this is a companion piece to that in many ways as well. And I know RISE and other nonprofit institutions and even the facilities themselves provide some counseling to people that are incarcerated to help them navigate this conversation and this process for re-entry. But, of course, we know that there's not enough programs and services in our systems of incarceration and we need to do more, I think, on the back end to help people succeed. So that being the final point, when you look at the trajectory of our prison budget, our corrections budget in Nebraska, it's ballooning past any of the other core functions of government. And granted, public safety is a core function of government, and so it should have a significant investment. But we're seeing growth that we're not seeing in Human Services, in infrastructure, in Economic Development, in really any other key aspect, key agency budget that we have before the Legislature, and we're set to balloon that budget significantly with the increase of the massive new prison. And the consultants' reports are clear. It's probably not going to be one; it's probably going to be two. If we keep trying to build our way out of this problem, we will bankrupt this state fiscally and morally. So if we're going to move forward with that measure, we have to work together to find other solutions to bring down the prison population, have better outcomes, and to save taxpayer dollars. This is one small piece of the puzzle with a very modest fiscal note to accomplish a lot. Thank you.

**RIEPE:** OK. Thank you. Are there questions from the committee? Seeing none--

**CONRAD:** OK. Thank you.

**RIEPE:** --thank you very much. That concludes the hearing on LB367, and that concludes our hearing for this evening.