

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

BOSN: We will go ahead and get started. Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln, representing the 25th Legislative District, and I serve as chair of this committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name to ensure we get an accurate record. We will begin each hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone wishing to speak in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We will be using a three-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you will have one minute remaining, and the lead-- the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing, but this has nothing to do with the importance of the bills being heard; it is just part of the process, as senators may have bills to introduce in other committees. A few final items. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior will be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. on the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. Also, you may submit a position comment for the record or testify in person, but you may not do both. I will

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

now have the committee members with us today introduce themselves, starting with my far left.

HALLSTROM: Bob Hallstrom, Legislative District 1, representing Otoe, Johnson, Richardson, Nemaha and Pawnee Counties in southeast Nebraska. Welcome all.

STORM: Good afternoon. Jared Storm, District 23. Saunders, Butler, Colfax County.

DeBOER: [MALFUNCTION] to me. Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10 in beautiful northwest Omaha.

ROUNTREE: Good afternoon, everyone. I'm Senator Victor Rountree. I represent District 3, over in Bellevue and Papillion.

BOSN: Thank you. Also assisting the committee today, to my left is our legal counsel, Denny Vaggalis, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for today are Ruby Kinzie, Alberto Donis, and Ayden Topping. With that, we will begin today's hearings with gubernatorial appointments, starting with Mr. Shawn Eatherton. Welcome.

SHAWN EATHERTON: Welcome. Good afternoon.

BOSN: Thank you. All right, if you want to just tell us a little bit about yourself, and what your hopes are for the committee.

SHAWN EATHERTON: Thank you. I'm Sean Eatherton. My day job is I'm the Buffalo County Attorney. I'm actually in my sixth term. Prior to that, I, I worked for legal services here in, in Lincoln, and I was also a deputy county attorney in Dawson and Buffalo County. So-- but that was quite some time ago. I've been-- I've had-- I've been fortunate enough to be on the CVR since 2018, and I've seen quite a few changes, both legislatively and then in, in just the, the general tenor of, of victims in-- during my career, but certainly the last few years. And I know that as a person who's been involved with the CVR, we've definitely appreciated the, the efforts of the Legislature. So, we can give some of our-- we can give the, the, the, the victims who had nothing to do-- anything to do with their-- the, the crim-- the crimes they were involved in some recourse, and make them whole in some way. And so, we've made some, some excellent strides recently and, and it's been, been much appreciated. And I would just like to have the opportunity to continue to work with the committee. It's been a, a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

good six years; it's, it's gone fast, but I would, I would appreciate the confirmation and would like to continue doing so.

BOSN: Awesome. Let's see if there's any questions from the committee members. Senator DeBoer.

DeBOER: Thank you. So, since you're here and since you've been there, and since you brought up the changes that we've made-- a lot of those have been mine, bills that I brought. So, can you tell me how is the process for appeals now working, in terms of allowing for, you know, a good faith-- or a good reason for them to have missed the-- have you had any of those come up yet?

SHAWN EATHERTON: No, well, actually, any, any hiccups that, that we used to have where people would miss their times, that's been taken care of now. And it's been, like, I-- well, I should say we haven't had any, any major issues that we haven't been able to get them in. So, it's, it's definitely much smoother, it's much more streamlined, and-- I mean, so far, it's been-- the process is working well. Now, I realize that there is still-- there's always going to be somewhat of a bottleneck. I mean, we all, we all work under constraints of manpower and stuff. But, but it's, it's, it's been much better, and certainly the people we have dealt with have been happier with the process.

DeBOER: And how-- in terms of funds, how much of the funding has gone out, would you say? Is it a bigger percentage? Because that was one of my concerns, is that we were saving all this money and not actually getting it out.

SHAWN EATHERTON: It is a bigger percentage, and I, I don't-- I-- sorry, I don't have the numbers in front of me.

DeBOER: No, that's all right.

SHAWN EATHERTON: But it's a bigger percentage for a couple reasons. One, we have, we have the opportunity and we're able to get the, the, the victims through the, through the process faster. But secondarily, just realizing that if, if, if we, we are able to give victims some help, we will also get additional federal funding, and so we're, we're, we're kind of working both ends there. And we want to be responsible with the monies, but certainly get it to the people who need it, and who are, who are due-- who, who it's due.

DeBOER: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

BOSN: Thank you. Any other questions for this testifier? I'm sorry, for this appointee. All right, well, I appreciate the work that you've done. I think Senator DeBoer has made some positive progress with the committee. But to the extent that there's feedback that you think we could help you guys with, please keep those lines of communication open.

SHAWN EATHERTON: Well, I appreciate, appreciate that. And like I said, thank you very much. It's, it's been, it's been much, much more fulfilling to be on the, the committee recently that early on. We were just running into-- and we just frankly, either didn't have the funds, or, or--

BOSN: Right.

SHAWN EATHERTON: --people weren't, weren't able to get through the system.

BOSN: Well, that's good to hear. Thank you.

SHAWN EATHERTON: Thank you.

BOSN: Thanks for your work.

SHAWN EATHERTON: Thank you.

BOSN: All right. That will conclude-- oh. That will conclude your portion. Are there any individuals here wishing to testify in support of Mr. Eatherton? Anyone wishing to oppose Mr. Eatherton? Or in the neutral capacity? Seeing none, that will conclude our gubernatorial appointment hearing for Sean Eatherton, and next, we'll take up David Nelson. Welcome.

DAVID NELSON: Thank you. Good afternoon, Chairperson Bosn, and menner-- members of the Judiciary Committee. My name is David Nelson, D-a-v-i-d N-e-l-s-o-n. I'm here today for my reappointment to the Crime Victim's Reparation Committee. I've been in at-large member-- at-large member of the CVR Committee for just one term. The CVR Committee is now more engaged than ever, as I think Mr. Eatherton discussed. We review unique claims on a case-by-case basis. The committee has recently engaged in some trauma-informed training sessions and is operating at full capacity and meeting quorum. I have a spotless attendance record for the CVR quarterly meetings. I take great pride in the work the committee does. With the education we've received on trauma and its impacts, we make more informed decisions

and are able to direct services and connect claimants better with local resources. CVR is re-engaging on many levels with their stakeholders. For example, they're now providing regular training, and distributes a newsletter quarterly. And on a more personal note, I'm a native Nebraskan, an alumnus of UNL, I-- and I've been very fortunate to have had a successful career here in Nebraska that's allowed me to raise my family here, teaching them the values of hard work and helping others. But here, in the blink of an eye, my kids were raised and the focus of my volunteering time availability changed, which allowed me the capacity to volunteer for this committee. I also sit on the [INAUDIBLE] Crime Commission board. Being, being part of the CVR committee has been very fulfilling to me, and knowing that we are helping offset the harm, harm that others have caused. So with that, I'm available to answer any questions.

BOSN: Thank you very much. Any questions from the committee? Senator DeBoer.

DeBOER: Not surprising I, I would be the one. So, one of the other things this year I'm working on is a change in kind of the make-up, to add some new members that would have some experience as victims of crimes. How do you think that would work with you guys? Do you think that would be something that would-- I'm-- I don't want to put you on the spot to have a position on the bill,--

DAVID NELSON: Sure, sure.

DeBOER: --but just how do you feel that that would work with-- within the makeup of who's on the committee now?

DAVID NELSON: I guess I don't-- I-- I'm on the spot, here. I'm kind of neutral on that. I, I don't, I don't see any harm off the top of my head, to be fair. You know what I mean?

OK. I, I didn't mean to put you on the spot. Sorry about that.

DAVID NELSON: Anyone who's been a victim of a crime-- I don't know if any of us on the committee or not; that hasn't come up. But certainly there's a perspective that someone who has not been wouldn't have, so.

DeBOER: I really appreciate the trauma-informed training and some of those things, and how you all are responding to all of this and [INAUDIBLE]

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

DAVID NELSON: The training has given us, you know, as a committee, a perspective to look through the eyes of a victim and make those considerations.

DeBOER: Yeah. Great. Well, I think that you guys are doing a great job. So, thank you very much over there.

DAVID NELSON: Thank you.

BOSN: Thank you. Any other questions for Mr. Nelson? Nope? Thank you very much for being here.

DAVID NELSON: Thank you for your time.

BOSN: Any proponents for Mr. Nelson's gubernatorial appointment to the Crime Victim's Reparation(s) Committee? Any opposition? Neutral? Seeing none. That will conclude our gubernatorial appointments portion, and that will lead us to my bill, LB513. You're it.

DeBOER: Welcome, Senator Bosn.

BOSN: Thank you. Thank you, Vice Chair DeBoer. LB513 would allow for a 4% increase for judges' salaries for the biennium. This bill is part of the state budgeting process, and the chair of the Judiciary Committee usually introduces this bill unless they have a conflict of interest, or are stuck due to weather, in which case the vice chair brings the bill. Therefore, I brought the bill this year. Let me begin by noting a couple of things to provide some context. First, the bill focuses on the chief's salary, but as a result of the structure of our statutes relating to salaries for judges, a change in the chief's salary will result in a change for the judges of other state courts; their salaries are set based as a percentage of the chief's salary. With that procedural foundation laid, I'll turn to how we got to the number that is in the bill, which is the 4% increase for judges during each year of the biennium. The proposed percentage increase is designed with consideration for inflation over the last few years, and with an eye toward where negotiations with other state employees have settled. As has been reported, the negotiations between the administration and the Nebraska Association of Public Employees resulted in salary increases that ranged from 6.5% to 19% over the biennium, depending on job classification and performance. Although that range covers a number of different positions and jobs, it's also important to acknowledge that the agreement between the state and NAPE includes other adjustments to benefits of employment;

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

things like maternal and sick leave adjustments, and premium pay for certain positions that mere salary adjustments do not include. Thank you for your time and attention, and I will be happy to answer any questions. There will also be others behind me that may be more in tune with the specifics.

DeBOER: Are there any questions for Senator Bosn? I don't see any. We'll take our first proponent. Welcome, Mr. Chief.

JEFF FUNKE: Thank you. My name is Jeff Funk, J-e-f-f F-u-n-k-e, and I am the Chief Justice of the Nebraska Supreme Court. I thank Senator Bosn and members of the Judiciary Committee for taking attention to this bill today. LB513 currently is scheduled for a 4% raise for judges in fiscal year 2025, and again in 2026. LB513, as mentioned by Senator Bosn, is the statute 24-201.01 which sets forth the chief's budget-- or salary expense, and all other judges are based on a percentage thereafter for the Court of Appeals, the District Court, the County Court, Worker's Compensation Court, and the Juvenile Court. They're set forth in Section 24 and in Section 48 of the statutes. This request is based on the need to attract and retain good lawyers for Nebraska's judiciary. We need to have judicial salaries remain competitive. Not only in comparison to the salaries of other public employees or judges of other states, but also in comparison to private practice incomes, so that we can attract diverse and qualified individuals to serve on Nebraska's bench. Candidates for judicial office typically make career- and life-changing decisions at critical points in their professional lives. If a lawyer chooses to become a judge and is so appointed, he or she, for all practical purposes, forgoes the opportunity to build a lucrative private practice or to resume a leadership career track in another public sector position. Our judges solve legal problems and disputes both large and small, and do so with patience and grace. Every case is important to someone, and every case is important to our judges. There is no better investment you can make in the future of state government than investing in competitive salaries for the judiciary. Our judiciary will likely be in a place long after most of us in this room have left public life. It is key to many critical issues facing Nebraskans. On several occasions in the last decade, not enough qualified lawyers-- that means a minimum of two-- applied for open judgeships for the governor to make an appointment for a judicial vacancy. On numerous occasions, only two qualified lawyers have been passed on to the governor to make his appointment. While several factors have contributed to the previously unheard-of occurrence, the need for competitive salaries is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

definitely one of those factors. I recommend the passage of LB13 [SIC]. I'd be happy to answer any questions that you may have.

DeBOER: Thank you very much. Are there any questions for the Chief Justice? Senator Storm?

STORM: Thank you, Vice Chair. Thank you, Chief Justice. When's the last time judges received a raise?

JEFF FUNKE: The last biennium.

STORM: They did?

JEFF FUNKE: Yes.

STORM: So, is it-- was it 4% then, too?

JEFF FUNKE: That one was 7% and 6%.

STORM: So, how do we rank nationwide with judges? Do you have any kind of ranking on that?

JEFF FUNKE: We do have some rankings. For just the, the, the salaries for the chiefs across the country, Nebraska is-- I didn't bring my glasses-- probably top 20. For the, for the Court of Appeals, close to top 20, and for the District Court, probably top 18. If you adjust that for cost of living, the District Court's about top nine.

STORM: OK. Thank you.

JEFF FUNKE: Across the country.

STORM: Thank you.

DeBOER: Thank you, Senator Storm. Are there other questions? Senator Hallstrom.

HALLSTROM: Mr. Chief Justice, I apologize I don't know this answer. Do you know that this 4% is built into the governor's budget?

JEFF FUNKE: I, I do not know. I think it's a separate, separate adjustment. So I don't know--

HALLSTROM: OK.

JEFF FUNKE: --that it's built into the regular appropriations.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

HALLSTROM: OK. Thank you very much.

DeBOER: Are there other questions? Thank you for coming down.

JEFF FUNKE: All right. Thank you for having me.

DeBOER: Our next proponent, please. Welcome.

HOLLY PARSLEY: Thank you. Good afternoon. Vice Chair DeBoer, members of the Judiciary Committee, my name is Holly Parsley, H-o-l-l-y P-a-r-s-l-e-y. I'm a county court judge in Lancaster County, and I'm also the current president of the Nebraska County Judges Association. First, I want to thank Senator Bosn for introducing LB513, and I would like to thank all of you for the opportunity to appear before this Judiciary Committee today. Former U.S. Supreme Court Justice Stephen Breyer famously said, the integrity, wisdom and independence of judges are the cornerstones of a just society. Without good judges, the rule of law is but an empty promise. This principle emphasizes that public confidence in the judiciary depends not only on actual fairness, but also on judges who execute that fairness. In Nebraska, we are fortunate to have a strong and vibrant judiciary. On the county court level, we are the front door to the judicial system. As county court judges, we primarily handle cases at the trial court level, dealing with a wide range of legal matters, including misdemeanor criminal and traffic cases, preliminary hearings and felony cases, civil cases involving disputes up to \$57,000, small claims court cases involving disputes up to \$7,500 beginning in July. These are for cases with parties representing themselves. We also handle landlord-tenant disputes, probate and guardianship matters, including trusts and estates, and guardianships and conservatorships of both minors and incapacitated persons. We handle adoptions, juvenile court cases in some counties, and protection orders in domestic violence, sexual abuse and harassment cases. There are a number of responsibilities which are fairly unique to the county court bench. Can-- those include review of arrest warrants and search warrants at any time of the day or night. It is not unusual for one of us to get a phone call or a knock on the door in the middle of the night-- maybe even while the SWAT team is surrounding a residence-- so that they can get approval of a search warrant that can't wait until the next judicial day. We are there to serve. All of these come to us as county court judges no matter the level of the crime. We also are responsible for reviewing probable cause affidavits every non-judicial day, which includes every weekend and every holiday. We also exclusively handle the appeals from the denial of handgun certificates. Additionally, county court judges

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

do not have the benefit of law clerks to assist them in researching the law and writing our opinions; that is on us alone. We juggle all these responsibilities while also serving on Supreme Court commissions, participating in training for new judges, handling the responsibility of using state and county dollars wisely, ensuring judicial process, conducting fair hearings, and issuing rulings based on Nebraska law. It's important that we do attract qualified attorneys for this position. And, as the chief said, we understand we are public servants, and we are honored to be entrusted with the awesome responsibilities that we have been given, and we are very grateful for that. And we've also made a conscious choice to commit our careers to an extremely important profession in which we will forfeit the opportunity to make the kind of profit many attorneys of our experience make in the private sector. We do continue to attract the highest quality of judicial candidates, and we must be somewhat competitive. We appreciate the hard decisions that you must make, and on behalf of the county court bench, I respectfully ask you to advance LB513. I'm happy to answer any questions.

DeBOER: Thank you very much. Let's see if there's any questions.

ROUNTREE: I do.

DeBOER: Senator Rountree.

ROUNTREE: Thank you so much, Vice Chair. Thank you, ma'am, for your testimony on today. I know there's-- it's a tremendous amount of work that goes on in the judicial system, and just looking at some of the things you've talked about, we've handled in here, working with-- but I want to draw back attention to one that you have highlighted, the appeals from a denial of a handgun certificate. Could you talk to me about that? Being as the Second Amendment, and something that's very near and dear to the hearts of the people?

HOLLY PARSLEY: Certainly. I will indicate to you that I personally have not handled one of these.

ROUNTREE: OK.

HOLLY PARSLEY: In Lancaster County, I'm the only judge that does the probate docket, so day-in, day-out, I'm doing guardianships, estates, trusts, and I feel like I might not be able to give you the best representation of a handgun permit appeals. But if somebody does request a handgun permit and they are denied, then they can appeal

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

that to the county court. I don't have the specific statute in front of me, but I think the appeal comes-- they have to file the appeal paperwork within ten days, and then we have to hear that case.

ROUNTREE: All right. Thank you so much. It was just-- it was bolded and highlighted, so I just wanted to ask about that.

HOLLY PARSLEY: Yes.

ROUNTREE: All right. Thank you so much. I appreciate it.

HOLLY PARSLEY: Thank you. You're welcome.

DeBOER: Thank you, Senator Rountree. Other questions for the judge? Thank you so much for being here.

HOLLY PARSLEY: Thank you for having me.

DeBOER: Next proponent. Anyone else here? Welcome.

ROB OTTE: Good afternoon. My name is Rob Otte, R-o-b O-t-t-e. I'm a retired district court judge, and I sat in Lancaster County. I'm the past chair of the House of Delegates of the Nebraska State Bar Association, and I'm currently the president of the Nebraska Lawyers Foundation. I come to testify today in favor and support of LB513. You know, you've heard the salaries of the justices, and I won't go into that very much. But I'll also say that from NSBA studies, attorneys who describe themselves as a partner or owner of a law practice generally have salaries of \$260,000 or more. Again, that's by study of the Nebraska Bar Association. Those lawyers also have retirement and health care. Generally, attorneys from the government sector make a little less-- and sometimes, a lot less-- than a, a current judge salary. That makes that very attractive to those in the government sector. Those lawyers generally don't have the breadth of experience that a private practicing lawyer has, and I'ma address that in just a minute, and why that's important. While salary is important, when I made the decision to apply, it was one of the things that I had to look at; I took a pay cut when I became a judge. But there are other factors that you consider, too. There are reports that judges in Nebraska have overall had their salaries keep up with inflation. Generally, that's true. But those salaries have not kept up with the rising salaries of private practicing lawyers, and there are some very disturbing trends that this committee should be aware of. First, lack of candidates. When I retired from the district court bench, I believed that we would have a robust bunch of candidates that applied.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

However, there were only three applicants in a county of 325,000 people. There were no applicants from the private practice. None. Despite my personal calls and having coffee and lunch with more than two dozen private practicing lawyers, I could get not one to, to put their name in the hat to be a district court judge. In the last three years in the district court, there have been eight vacancies; there have been 40 applicants, the applicants from private practice have been eight. Three of the eight districts with a vacancy had no private practice attorney apply, and the number of attorneys appointed from a private practice in these eight vacancies for district court was zero. So, I think, I think that's a, that's a disconcerting trend that we don't get private practicing lawyers to the bench. So, you'll hear that a judge's salary should be compared to others in government. I, I agree, but decouple your thinking, and think about what it is to have the best judge if you, a family member, or your business in litigation. You want the best, not the cheapest. Respectfully, I think the courts could do more to encourage private practicing lawyers to apply. But in sum, judicial salaries should keep track with inflation, but also be competitive with those seasoned lawyers who have a breadth of knowledge over the course of time. On behalf of the legal profession and the Nebraska State Bar Association, I want to encourage you to advance LB513. I'd stand for any questions.

DeBOER: Are there any questions? Senator Hallstrom.

HALLSTROM: Mr. Otte, not a question, just a comment. I want to thank you for your service to the judiciary, your commitment, your contribution to the profession. And as a fellow law school classmate, I'm proud of your accomplishments. So, thank you.

ROB OTTE: Thank you. I was hoping you wouldn't ask any questions.

DeBOER: Are there other questions? I'll say thank you very much for the point about the, the way private practice attorneys are not applying as much. That's a good point that, that--

ROB OTTE: Yeah, thank you.

DeBOER: Thank you. All right. Next proponent.

TIM HRUZA: Good afternoon, Vice Chair Bosn [SIC], members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today in support of the bill on behalf of the Nebraska District Court Judges Association. You-- I'm distributing to

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee February 21, 2025

Rough Draft

the committee a letter from Judge Burns, who serves as the president of that association right now. He was unable to be here today due to court obligations, but circulating that letter and to get us on the record in support of the bill. Thank Senator Bosn for introducing it. Thank the committee, and happy to answer any questions you might have.

DeBOER: Are there any questions? I don't see any.

TIM HRUZA: Thank you.

DeBOER: Next proponent. Fine. It's fine. OK, let's go to opponents. Seeing none. Neutral capacity. Anyone here in the neutral capacity? Seeing none, as Senator Bosn comes up, I will let you know that there was-- there were zero position comments as proponents, 1 as an opponent, and zero neutral. Senator Bosn.

BOSN: Thank you. But for the fiscal note, this sounds like a consent calendar bill. I want to, first of all, thank the individuals who came to testify. Having personally practiced with Judge Parsley in the county attorney's office, who's now a judge, and I've also seen her on the bench, and also certainly former Judge Otte, who I also tried several cases in front of. So, it's interesting to see them in this capacity in my new role, but I'm grateful that they came. I think they both presented a perspective that's important. You know, having come from the county attorney's office, I can tell you it is a significant pay raise to be appointed to the bench. That's the reality. It's a lot of work, so I'm not minimizing it. You're going to work really hard on that bench, and you don't get the break, and you don't have the coverage that if you're in the county attorney's office you get when you have a sick day. So, I think that's to be valued and respected, and I certainly appreciate their time. I'm happy to answer any questions, or with that, I'll submit it.

DeBOER: Are there any questions for Senator Bosn? I think you're going to get off easy today. Thank you, Senator Bosn. That ends our hearing on LB513, and will bring us to LB412. Senator Hallstrom.

Unidentified: Just looking at. You guys. I just want to leave.

BOSN: All right. Senator Hallstrom, you may begin.

HALLSTROM: Thank you. Good afternoon, Chair Bosn, and members of the Judicial [SIC] Committee. My name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, and I serve as, serve as senator for Legislative District number 1. I bring before you today LB412, which is designed

to address a Nebraska Supreme Court decision in the case of Chatterjee v. Chatterjee, found at 113 [SIC] Neb. 710. Under current law, specifically Nebraska Rev. Statute Section 42-377, a presumption of legitimacy of children exist for children born to the parties or to either spouse in a marriage relationship which may be dissolved or annulled pursuant to Nebraska statute. As a result, a child born during a marriage is not considered to be born out of wedlock. In the Chatterjee case, Apurba Chatterjee brought a complaint to establish paternity of twin children, alleged-- alleging that Indraje Chatterjee-- who was married to Indraneel Chatterjee-- was pregnant with twins and that he was the biological father of the children. I will note, since it's a, a little bit odd to have a case "Chatterjee"-- Chatterjee v. Chatterjee-- when you have an alleged father and a married couple that the Chatterjees were not related to one another other than their marital relationship. And notwithstanding the existence of genetic testing, indicating a 99.9% probability that Apurba was the biological father of the twins. The Supreme Court held that Apurba was a stranger to the marriage, and therefore lacked standing to seek a finding of paternity. In the face of a dissenting opinion-- which, by the way, was rendered by now-Chief Justice Funke-- which argued that current law allowed for the statutory presumption of legitimacy to be rebutted by a stranger to the marriage, the majority opinion noted that situations like the one in Chatterjee present difficult policy decisions. The court went on to state that it is a function of the Legislature, through the enactment of statutes, to declare what is the law and public policy of the state. In Chatterjee, the parties were essentially disputing whether biology or marital status was paramount, and the court determined that Nebraska's existing statutes prioritized the marital relationship. The Nebraska Supreme Court has clearly invited the Legislature to act in this area of the law, and I believe that the decision cries out for a solution allowing the alleged father to be granted standing to bring an action to establish paternity. This is an issue that, just when I read the Supreme Court advance sheet-- again, as I stated, I think it cries out for a, for a decision. It defies logic, even under the statute as, as Chief Justice Funke noted in his dissenting opinion; the existing statutes, in his mind, appear to provide the opportunity for the court to have ruled otherwise, but in the face of what was the majority opinion, it's something that I think that we as a Legislature should, should look to, to resolving this unjust-- injustice, as I would call it. And I do know-- I've, I've had conversations with Mr. Hruza from the Bar Association, and I think they believe that there needs to be a solution to this. The language in LB412 may not be the precise

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

language to get it done, but I look forward to working with the bar association and practicing attorneys to find the right fix to this problem. Be happy to address any questions.

BOSN: Thank you. Any questions from the committee? I can tell you that as-- when I had juvenile court cases-- that this does occur, and it does need a solution. So.

HALLSTROM: It does defy logic.

BOSN: And reality, quite frankly.

HALLSTROM: Yes. Thank you.

BOSN: First proponent. Are there any opponents? I appreciate you're still sitting. Anyone here to testify in the neutral capacity?

TIM HRUZA: Good afternoon, Chair Bosn.

BOSN: Welcome.

TIM HRUZA: Members of the Judiciary Committee, my name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in a neutral position on LB412. I appear neutral today after having many discussions with Senator Hallstrom, many discussions with our leadership at the Bar Association. The, the bill as drafted has several concerns that have been expressed by family law and juvenile law attorneys that handle these matters. I think-- Senator Hallstrom and I have had several conversations. The bill-- there is general consensus among the members of the bar that practice in this area that we need to address the Chatterjee decision; it's created an interesting chasm in terms of who has standing to come in and establish their biological parental rights. Failing to address that since the, the opinion was issued has several concerns with attorneys. I think the reason that we're not here in support of the bill as it's currently drafted is that there are concerns of some unintended consequences based on where, where this particular approach to the issue is located in the juvenile statutes. And then maybe, too, striking the balance between allowing a biological father the ability to establish paternity, establish their parental rights, but also making sure that in-- a child born in a marital context isn't subject to repeated-- or situations where it wouldn't be appropriate for a biological parent or an alleged father who may not actually be a biological parent the ability to, to come in and, and file a motion. So, I think it's, it's a, it's a simple-- I say simple. It-- we need

to go through the motions of finding the right language that addresses the standing issue and allows a biological parent to do it without resulting in unintended consequences that might affect or provide instability for a family in these certain instances. So, with that, Senator Hallstrom and I have had-- have a commitment to each other to continue to work on this. I have several lawyers who are working on language and that are, you know, kind of debating among themselves about the best way to approach this. We will continue to work with him and find a way forward on LB412. Thank you.

BOSN: Thank you. Any questions for Mr. Hruza? Seeing none. Thank you for being here. Any other neutral testifiers? All right. While Senator Hallstrom makes his way up, I will note there was 1 proponent, 1 opponent, and 1 neutral comment submitted for the record. Welcome back.

HALLSTROM: Yes. Get ready for the next hearing, since I'm in the hot seat. Just in closing, I appreciate, again, the bar association's willingness to, to work on the right language to fix this problem. I wish they'd work a little faster, but sometimes the wheels of justice turn slowly. So, with that, I would address any questions that you may have.

BOSN: Questions for Senator Hallstrom? Thank you very much. That will conclude LB412. Next, we will take up LB340. Welcome back.

HALLSTROM: Thank you, Chair Bosn, members of the Judiciary Committee. My name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, I serve as state senator for Legislative District 1. I brought before you today LB340, which addresses issues relating to litigation involving exposure to asbestos. There are a number of, of parts to the bill. The first one, the Asbestos Trust Claims Transparency Act-- which is sections 1 through 7-- accelerates the filing of claims that plaintiffs submit to trusts created by former asbestos producers in bankruptcy. The trusts exist to compensate plaintiffs for asbestos-related harms caused by bankrupt companies. Exposure history information provided to the trust will be available to solvent defendants that face personal injury lawsuits brought by the same individuals. So there's a dual track-- track. There's trusts, and then there's the civil litigation opportunity. By removing the disconnect that presently exists between the asbestos trust and civil justice systems, juries will be able to hear about all of a plaintiffs exposures to "exbestos." This will help them decide who is responsible for the plaintiff's harm. Today, evidence of a plaintiff's exposure to asbestos products made by

bankrupt companies is often suppressed by plaintiff attorneys, misleading juries to believe that a defendant at trial was the cause of the plaintiff's harm when the real culprit may be a bankrupt company not in the courtroom. LB340 puts the plaintiff's exposure history in the open for the jury to see; in this manner, wrongdoers remain fully accountable. Further, plaintiffs will obtain compensation for the trusts more quickly. Almost one third of the states have laws similar to that proposed under LB340. The second portion, the Asbestos Claims Priorities and Over-Naming Reform Act, which is found in sections 8 to 18, contains criteria to set aside and preserve claims filed by plaintiffs who claim past exposure to asbestos, but are not presently sick and may never develop an asbestos-related impairment. In the past, lawyers who primarily represent cancer victims have criticized these filings for delaying claims by the truly sick and depleting resources needed to pay deserving future claimants. Claims alleging asbestos-related cancers will require a physician's opinion that the cancer is asbestos-related and not caused by something else, such as smoking. As one commentator explained, across the country, there has been a startling increase in lawsuits where plaintiffs are claiming that their lung cancers are asbestos-related; the only plausible explanation for the increase is that a substantial number of these lung cancer claims are simply not attributable to asbestos exposures. Together, these reforms will filter out premature or baseless claims, speeding plaintiffs' recoveries, and preserving defendants' assets for legitimate asbestos claims. The act also addresses the indiscriminate naming of defendants in asbestos cases without proof of exposure. Many defendants named in asbestos complaints today have no connection to the plaintiffs suing them; they are innocent bystanders swept into the asbestos litigation by lawyers who take a "sue first and figure out the facts later" approach. As one might expect, when companies are named in lawsuits without a connection to the plaintiff, they are typically dismissed at some point, generally without having to pay any money. But these defendants are forced to waste resources in the form of defense costs for each dismissed case. The cost across many cases can be substantial, and has contributed to push some companies into bankruptcy. The act requires asbestos plaintiffs to disclose the factual basis for each claim against each defendant and provide supporting documentation. Eight states have similar laws, with Iowa the first state to pass asbestos over-naming reform in 2020, and Ohio joining the list in the past year. In addition, the act requires parties to consent to multi-plaintiff trials in asbestos cases. Prejudice arises when multiple claims are tried together, particularly cases that involve

different types of injuries or many defendants. I have some witnesses that will be appearing behind me that are probably much more well-versed to address any technical questions, but I'd be happy to address any questions. It's kind of unusual-- this will be the second bill in a row I haven't had anybody contact me to indicate they're going to oppose this bill. So, second bill in a row today with no opposition. So, with that, I'd take any questions you might have.

BOSN: Thank you, Senator Hallstrom. Starting with Senator DeBoer, and then we'll go to Senator Rountree.

DeBOER: Just-- I will ask it in the form of a question. Were you aware of the fact that I have been against this bill throughout my tenure here?

HALLSTROM: Well, I've, I've had some indications, and I know that you have an open mind and you're well-versed in the area, so you understand the problems that need to be addressed in this arena.

DeBOER: I asked it in the form of a question so that you did not feel that you had no objection.

HALLSTROM: I meant from the, from the testifiers.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chair. Senator Hallstrom, as I said, do we-- how many of these cases have we had? Are we preventing something before it happens, or have we had these type of cases in Nebraska? And then who's bringing the-- bringing this?

HALLSTROM: A, a little, a little combination of both. The witness who follows me maybe can give you more specifics. I think there was an advanced auto case or, or defendant here in Nebraska, and there were numerous defendants in that particular case. And, you know, what, what we look at, Senator, is you have situations where someone has had exposure, and in a lot of these cases, quite frankly, when you look at when the, the discovery of asbestos-related cancer claims were first brought to the forefront, many of those companies fairly quickly were faced with the prospect of-- they, they had no choice but they were going out of, out of business. They were going to be bankrupt. They were able to put monies into this trust, which provides a fairly easy and sensible path for them to get some money from those businesses that are out of, out of business. But the, the key is when I talked about the dual track-- track. When we come back into the civil justice

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

system, it's important for the juries to know that someone that may have been a naval serviceman and worked on many different ships where there were asbestos-related issues and problems may have had situations where multiple bankrupt companies had been in part responsible for the ultimate cancer claim. But if the jury doesn't know about them, they may end up taking the Advance Auto in Lincoln, Nebraska as the only defendant before them as 100% liable for any asbestos-related cancer. And so, that's the issue that I think in fairness needs to be brought to the front, here. I had one example that was given to me where the, the plaintiff was less than forthright when asked in discovery whether or not there were any known claims that could go through the trust process and claim process, and just had, had developed, I guess, like, what I'd call temporary amnesia; wasn't aware of any, but as soon as the jury verdict was handed down, within 24 hours made multiple claims on the trust. And so, that doesn't seem fair to the system, to allow the, the system to be gamed in that, in that particular manner.

ROUNTREE: All right. Thank you, Senator.

BOSN: Senator DeBoer.

DeBOER: Sorry. Now I have real questions for you.

HALLSTROM: Certainly.

DeBOER: Who brought this bill to you?

HALLSTROM: Nationwide Indemnity, I believe, is one of the companies that has been involved in, in the, in the national effort, effort in other states and in Nebraska.

DeBOER: OK. And is there an offsetting process for civil liabilities and the trusts? So, in other words, if someone makes a recovery in-- under a civil liability against a solvent company, are they, when they make claims to the trust, offset on their civil liability?

HALLSTROM: I would, I would have someone behind me answer that question rather than speculating a guess. Or I can call a friend or do something like that to--

DeBOER: This is maybe not a phone-a-friend situation. Maybe we'll just wait till the next testifier. OK.

HALLSTROM: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

BOSN: Any other questions? Thank you. First proponent. Welcome.

MARY MARGARET GAY: Thank you. Good afternoon, Chairman Bosn, members of the Judiciary Committee. My name is Mary Margaret Gay, M-a-r-y M-a-r-g-a-r-e-t G-a-y, and I'm an attorney at Gay Jones & Kuhn, and I'm here today on behalf of the U.S. Chamber of Commerce Institute for Legal Reform to offer testimony to support this bill. Over the past 20 years, I've defended some of the 12,000 companies who've been named in asbestos litigation after the large manufacturers of asbestos insulation known as the "Big Dusties" filed for bankruptcy protection. It's estimated that as many as 25 new businesses each year are named in their first asbestos case as plaintiffs' attorneys search for a solvent defendant. This legislation does not prevent the filing of any litigation or preclude any plaintiff from filing a lawsuit against a company who caused their injury. The Asbestos Trust Claims Transparency Act is disclosure litigation. It's necessary to promote integrity and justice in the asbestos judicial proceedings in Nebraska by reducing the opportunity for suppression of critical evidence in asbestos actions, enhancing the ability of courts to oversee asbestos cases and ensuring juries have complete information needed to make fully-informed decisions. More than 100 companies have been forced into bankruptcy due to asbestos-related liabilities. As a result of the bankruptcy reorganization, these companies have funded trusts that collectively hold \$36.8 billion to pay claimants. The reorganized companies themselves are now immune from asbestos lawsuits, and plaintiffs can file claims with the asbestos trusts to recover for their insulation-related exposures, and also bring personal injury claims in Nebraska against still-solvent but increasingly remote defendants. Nearly every future Nebraska plaintiff in asbestos litigation will file a claim for compensation with at least some of the more than 70 bankrupt trust-- bankruptcy trusts; most of the plaintiffs will see litigation. Through the country, we see 18 to 20 claims filed. Plaintiffs in asbestos litigation have the unique ability to file a claim with the asbestos trusts to recover for those exposures, and also bring the personal injury case in the tort system. This unique compensation model was created by something called 524(g), which is part of the bankruptcy code. It's unique to asbestos, and it allows you to put money in a trust for people who in the future will get sick. It's like no other system in the tort system, which is why this law is necessary, as it only relates to asbestos litigation. Without this legislation, plaintiffs have been able to recover money from the trust while simultaneously filing claims seeking relief in the tort system. They do not have to disclose the amount of recovery

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

already received and available to receive through the trust. The lack of transparency has led to efforts by plaintiffs and plaintiffs' counsel to double-dip and ultimately deplete resources held in trust for future claimants who may be sick. The Asbestos Claims Priorities and Over-Naming Reform Act aims to curb the practice of over-naming, a new type--

BOSN: You, you can finish. Go ahead.

MARY MARGARET GAY: Finish? OK. A new type of abuse that's occurring in lawsuits. I only have a couple of more sentences. Keep it short. The legislation will promote fairness in these lawsuits by helping to ensure the right defendants are being sued. There's a disconnect between the personal injury and the trust compensation systems, and there is a disconnect in defendants who are properly being sued in the litigation. I'm happy to answer questions.

BOSN: Thank you. Any questions from the committee? Senator DeBoer.

DeBOER: Hello again.

MARY MARGARET GAY: Hello again.

DeBOER: So, are they still making asbestos?

MARY MARGARET GAY: Asbestos is a mineral.

DeBOER: Well,--

MARY MARGARET GAY: It's in the ground, so.

DeBOER: Using it in manufacturing. Sorry, I should say it that way.

MARY MARGARET GAY: There are asbestos-- there is asbestos that is used that is approved and overseen very strictly by the EPA in very specific situations. I don't know that I can get into all that; it's changed quite a bit over the past several years. But yes, asbestos is still in the earth and is still, as I understand it, mined for specific certified type uses.

DeBOER: So, it is still being used in some ways?

MARY MARGARET GAY: It's really good-- it's, it's-- yes, it is used for some uses. I can't tell you exactly what.

DeBOER: Yeah. No, no, no, that's fine.

MARY MARGARET GAY: OK.

DeBOER: And I believe, and this is--

MARY MARGARET GAY: And it's in the air, too, to be clear. We're all exposed to it every day in the air, because it's a mineral in the earth.

DeBOER: Sure, though there were not a lot of mesothelioma cases in the 17th century, I would guess.

MARY MARGARET GAY: I can't answer that question.

DeBOER: I can't either, but I would guess.

MARY MARGARET GAY: I bet it'd be really hard to diagnose in the 17th century, because it is something that is in your lung.

DeBOER: Yes.

MARY MARGARET GAY: Without going in and taking out a piece of tissue, it'd be hard to know that.

DeBOER: I-- it would have been impossible.

MARY MARGARET GAY: Yeah.

DeBOER: But I'm guessing, so we're just playing speculation for a second. So, there is still human use of asbestos right now. Or, I-- my understanding is actually there was an, an extreme decrease in '24. There was some kind of change in how that happened. So, the idea that there are new plaintiffs-- I mean, there are still asbestos uses, so it's not entirely outside of the realm of possibility that there could be new cases of asbestosis occurring because of negligence, right?

MARY MARGARET GAY: That's correct. There's a latency period that goes with asbestos exposure, where a person does not see the effects of an asbestos exposure for a very long time. So, what we're seeing now in asbestos lawsuits is generally people who were exposed 30 to 40 years ago. That now the use of asbestos is under such protected circumstances, but yeah, it's not unseen that, that could be.

DeBOER: OK. So, it's not like this is when Johns Manville went belly up that that was the end of asbestos, and nobody got asbestosis or mesothelioma ever again.

MARY MARGARET GAY: No, but you have a dose situation. I mean, just because you drink one glass of water and it doesn't make you sick, you drink 100 glasses of water-- and those who have served in the military know quite well the exposure level to asbestos on a carrier ship. When you're laying in a bed, an entire ceiling is covered with insulation, and they talk about it snowing on them. That is much different than being out in the ambient air, walking around and breathing in--

DeBOER: Sure, sure. Let's talk about the asbestos trusts.

MARY MARGARET GAY: Sure.

DeBOER: Do they pay dollar-for-dollar for a plaintiff's injuries?

MARY MARGARET GAY: So, some do, some don't; most of them are based on a percentage payment system that is based on financial tables, based on the available money and the prediction of the litigation. Some pay percentage-- payment percentages that are based on, you know, \$0.50 on a dollar, \$0.25 on a dollar. Each trust is different, and those are constantly changing based on economy and inflation. It's part of the bankruptcy trust model that those are evaluated.

DeBOER: If I'm a plaintiff, though, I can't expect that if I'm going to apply to trust, I'm automatically going to know I'm going to get all of my recovery for my damages.

MARY MARGARET GAY: I think it's impossible to ever know what all of your recovery-- how to answer that question.

DeBOER: OK. Well, you would agree that they pay pennies on the dollar, portion of the dollar, whatever you would want to call it in most instances; there are very few that pay the dollar-for-dollar.

MARY MARGARET GAY: The-- I don't know that I'd agree to pennies on the dollar in most estimates, but yes, there are ones that do not pay the full valued amount. Keep in mind, the valued amount of what an injury is worth was set at the time the bankrupt [SIC] trust was set up. So, that also can change. It can also change on if you ask the trust for special review. Most of the time, what happens-- and I have a claim form here with me. It's a very simple form. Some of them, you can hit a button and submit 17 at one time. I actually have had the opportunity to stand in the shoes of the plaintiff and do that recently. And when you submit that, you have the ability-- if you think your case has additional exposure information-- to fill that in, to not just accept kind of this base level. Most of the time, what we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

see happening when we get discovery in cases in litigation is that the plaintiff chose for an expedited path to get just the basic set amount as quickly as they could.

DeBOER: But the-- there are formulas to try and keep the trust solvent,--

MARY MARGARET GAY: Correct.

DeBOER: --so that they couldn't just pay everyone that was injured. If we had everyone who was injured and we tried to pay them for the entirety of their damages, we wouldn't be able to do that. So, there is a conservativeness to the trust, to make sure that there is more money available for more plaintiffs, correct?

MARY MARGARET GAY: Again, I don't know how you ever compensate someone the entirety of their damages to be able to answer that question. But yes--

DeBOER: There's a formula.

MARY MARGARET GAY: The trust is a formula situation where a judge in the bankruptcy system and committees serve to determine the amount of money that's necessary that can be paid out, the amount of money that is needed to pay future claimants. In the past, there was an issue where-- and it's part of the bill today-- plaintiffs were submitting claims and they weren't injured, and they had no medical diagnosis. And they were really depleting not just the tort system but the bankruptcy system, and after the fact, once they got all those claims out, people got catch-up payments. So, yes, the trust has a model of making sure claimants get paid as much as they can while also protecting a corpus for future claimants.

DeBOER: Mesothelioma is only-- is a cancer that only comes from asbestos exposure. Right?

MARY MARGARET GAY: Yes, that is correct. To my knowledge. I-- I'm not a medi-- I, I--

DeBOER: Sure. OK.

MARY MARGARET GAY: Yes.

DeBOER: To the best of your knowledge.

MARY MARGARET GAY: To the best of my knowledge. That is litigation.

DeBOER: And prior to having mesothelioma, you have something called asbestosis, which is a sort of a precursor to the cancer that develops eventually in the form of mesothelioma.

MARY MARGARET GAY: Yeah. And this gets extremely convoluted, because there's also an argument that there's idiopathic mesothelioma, which relates to the-- and again, I'm not a medical doctor, but the way your cells regenerate and the way things move through on how all that works, whether it's asbestos-related or it's related to just something your body develops, much like cancers.

DeBOER: But it's asbestos that causes it.

MARY MARGARET GAY: Sometimes. Or, I would, I would argue-- in all the cases I've seen, it has been linked to asbestos. We have had cases where someone has had no, no exposure to asbestos, we don't know where the meso came from.

DeBOER: OK. Probably came from asbestos, but you don't--

MARY MARGARET GAY: Well, I think-- it was like a-- maybe a 17- or 18-year-old girl. I mean, it, it really-- I don't--

DeBOER: Yeah.

MARY MARGARET GAY: --have the answer to the science on that.

DeBOER: OK. That's fine. I'll--

MARY MARGARET GAY: I think it is becoming more and more questionable.

DeBOER: OK. That's to do with sort of the transparency side of things, and the trust side of things. Let's talk about my favorite topic, the over-naming piece.

MARY MARGARET GAY: Sure.

DeBOER: Is there any place else-- because I'm really trying to think of this. Is there any other place in the law that you're thinking of-- you, you kind of know I'm going to ask this question, so maybe you've had--

MARY MARGARET GAY: And I've thought about it, and I have an answer. So, go ahead.

DeBOER: OK. Well, I mean, you've had a couple of years to think about it. So, is there any other place in the law where we, in a fact-- or, in a notice pleading state-- would require what is essentially fact pleading in the form of this piece of paper that you have to turn in with your complaint?

MARY MARGARET GAY: So, we have talked about this a few times, and the bill has moved through several different stages as well as discussions. Actually going back and looking at it-- and I dug into the discussion about fact pleading that you and I have had and that's been brought up in the past about a concern. So, to be clear, this is not asking for a fact pleading; what it is asking for is that information be produced 30 days following the complaint that provides information of why a defendant's in a case. And to deal with that, you go to-- if that's not produced, it's not an automatic dismissal; it just doesn't allow additional to discovery to proceed until that's done. So, I think that's very different from a fact pleading filed on the day the complaint is filed, which-- this information, as a lawyer, most of it would be things you knew about your case on the day it was filed. But again, those additional 30 days give you time to pull that together. These plaintiffs are very sick for the most part, and cases need to move very fast, and we need to preserve resources. So, I mean, if there's a question about, well, we need more than 30 days to know exactly what product they were exposed to, you can also add to a complaint after the fact; you need to bring people in later. But this is not changing that fact pleading-- that requirement to a fact-- notice requirement to a fact pleading, because it's saying these are things that need to be filed after the filing of the complaint within a certain time period. And again, you have defendants who are struggling in a case to handle large litigation with multiple parties, and they don't even know why they're in the case, nor-- most of the time we see the dismissal rate, so how should they have ever been in it in the first place? All that this is asking is, prior to the start of discovery, to move forward with your case in that first 30 days, disclose what products you were exposed to, who is the company that manufactured those products, and to show that they're properly in the case. So, I think that changes, changes that question a little bit because it is not changing the pleading, it is requiring that discovery to happen in the first 30 days.

DeBOER: So, it's not-- you're right, then, that it's not changing the pleading, but within 30 days you have to do this before you can do discovery. Is that, is that the way the bill reads now, in your opinion?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

MARY MARGARET GAY: It reads prior to the start of discovery, I believe, yes, which-- again, these people are sick. Most of the time, I have a complaint filed in the first week, and we're setting an emergency deposition in a day or two.

DeBOER: I get that. Because--

MARY MARGARET GAY: They're sick.

DeBOER: --just for everyone else, if you develop mesothelioma, you've got a life expectancy of about 18 months.

MARY MARGARET GAY: That's actually changed a little bit. It's increased--

DeBOER: Well, that's good.

MARY MARGARET GAY: --because now they can actually remove parts of lungs. It is. It's really good. It's been a huge advancement that all of us in the litigation-- but you're right, it--

DeBOER: It's--

MARY MARGARET GAY: --for the most part, it is--

DeBOER: It's not a long life that you expect to live.

MARY MARGARET GAY: It is not a-- and it's not pleasant.

DeBOER: No, it's really unpleasant. So, we were talking about-- OK, so then before the-- when we got off-track. So, before you can start with your discovery, you have to--

MARY MARGARET GAY: Or you can do it at the same time. I mean, you're just not going to be able to proceed with pursuing-- I mean, there's no reason you can't propound your interrogatories with your complaint with this information. It all can be simultaneous.

DeBOER: Sure. But you cannot expect to get answers back until you have filled out this form.

MARY MARGARET GAY: Correct. Yeah. I don't think you could demand answers back from the court, correct. I don't think you could move for some--

DeBOER: Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

MARY MARGARET GAY: --sort of motion to compel.

DeBOER: So, if I'm a plaintiff who doesn't know-- I mean, if I don't know all of the things that exposed me to asbestos, I can't figure that out until I've had some manner of discovery. That's the whole argument behind going to notice pleading.

MARY MARGARET GAY: But how did you name them the-- when you filed your complaint? So, you're suggesting that we-- you just put every name on a complaint you think of-- I mean, at-- that's where the-- that's where the line is, and that's what happens in these cases with 200 defendants.

DeBOER: So, I know what you're saying, but I'm saying you know that you were ex-- your 17-year-old says: I've got mesothelioma. I was exposed, I know I was exposed; the, the medicine says mesothelioma comes from asbestos, and potentially it came from this source, potentially it came from that source; I know I've been there, I know I've been there. And you're trying to figure out where you actually did get exposed to it. So, you would--

MARY MARGARET GAY: Right.

DeBOER: --you would need to have some discovery to figure that out.

MARY MARGARET GAY: Well, but prac-- we're talking about who you name as a defendant in the lawsuit.

DeBOER: Right. I'm saying you might have been exposed over at Senator Rountree's whatever.

ROUNTREE: Gazebo.

BOSN: Brake pads.

DeBOER: Brake pads.

ROUNTREE: Yes.

DeBOER: And you might have been exposed at Senator Hallstrom's, you know--

BOSN: Insulation.

DeBOER: --insulation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

MARY MARGARET GAY: You would disclose that on the information form. You would put those things on the form, and if there are things you don't know about, when you find out about them, you obviously add that defendant to the case and you provide that information.

DeBOER: No. What I'm saying is it-- first of all, if I'm trying to make the statute of limitations, which is where this bill is going, is on the statute of limitations, right? That's the part of the statute that it's in, which is why it would apply to federal court. Right?

MARY MARGARET GAY: I'm not sure I'm following what your question is.

DeBOER: Sorry. The-- this part of the, the bill is, I think, with the statute of limitations, right? Well, regardless, there is a statute of limitations on asbestos claims.

MARY MARGARET GAY: OK. Yes.

DeBOER: Yes. So, if I don't join my defendant in time, can I miss that statute of limitations?

MARY MARGARET GAY: I think you'd have to have a Nebraska practitioner come in here to answer those kind of nuanced questions; I, I don't know that I can. But for the most part, you have-- first of all, the information that you are asking for here, you got to get as a lawyer before you file your complaint. So, if you know-- and I hate to use Mr. Rountree-- Senator Rountree as an example. So, if you know the Kleenex company is someone that potentially you could have a lawsuit against because of the Kleenex box, those are things you would disclose on the form prior to filing. I don't-- I'm not following--

DeBOER: I'm saying how do I know-- if I don't know exactly which things that I could have been exposed to, I'm-- I know that I was over there at Kleenex box, but I don't know if they really had any asbestos that I was around. I know they had asbestos, I know I was there, but I don't know if their asbestos was around me. Then I wouldn't be able to fill out your form, but I probably need discovery to figure out if that's where I got it from.

MARY MARGARET GAY: But your naming them on the complaint, right? So, you're going to--

DeBOER: Yeah.

MARY MARGARET GAY: --name them on the complaint, and you're going to swear on a complaint that these people caused an injury. So, if you're filing a complaint as a lawyer, stating that a defendant was a cause to an injury, I'm not-- then, including on a form within 30 days about what you know and why you think that. Like, I was in this room, and there was a box on the table, and the box was blue and it said "Kleenex" on it is valuable information, because otherwise you say I'm naming Kleenex because one time somebody told me--

DeBOER: I know Kleenex-- well, if I know that Kleenex caused asbestos injuries and I know that I spend a lot of time with Kleenex, and I am reasonably sure that's the only place I could have been that would have done it--

MARY MARGARET GAY: So you put it on the form.

DeBOER: OK. Well, we're going to be here long on a Friday if I keep this up, and I'm not as young as I once was.

MARY MARGARET GAY: But again, I do think it's important: we are not changing the pleading standard. And you and I have discussed that several times, and if the 30-day mark isn't enough, if it's, you know, we need 35 days, or-- but again, most plaintiffs' attorneys in pla-- places where I litigate--

DeBOER: Want to go faster rather than slower.

MARY MARGARET GAY: --they want to move fast, they want to provide the information as quick as they can, and they want it to move through the process of getting the information and moving the case. It keeps the court dockets clear, because-- and actually makes settlement negotiations go faster because you have people in the room who are actually responsible for an injury. You can see the amount of money the plaintiff has received from a bankrupt trust, you have people in the room who know what products are being, being alleged. They can look at those products. Were they shipped to these places? Do we have invoices, things like that? And you can resolve the case or move forward with a trial.

DeBOER: OK. Thank you.

BOSN: Any other questions for this testifier? Did you have your hand up? OK. I have just a couple of questions.

MARY MARGARET GAY: Sure.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

BOSN: So, following up on some of the things Senator DeBoer talked about with the trust. How much money is in this trust?

MARY MARGARET GAY: So, it's multiple trusts. So, there is a system called 524(b) [SIC] trust that was set up following the bankruptcy of Johns Manville. And Johns Manville, when they went into bankruptcy, said, you know-- and again, I'm going to paraphrase here-- we don't want to send the entire company into bankruptcy, what are our other options? And the judge-- the bankruptcy judge in that said, well, here's what we're going to do, we're going to create a channeling provision; it's going to allow you to channel all of your asbestos liabilities over here into this trust, and then the company can just keep operating outside all of those liabilities. But you have to fund this trust. That became known as the 524(g) process that was codified based on the Manville Channeling Act [SIC], and now they're currently-- I'm going to be off today-- they're currently 30-- 70 trusts that are set up, a couple come on online and pay, but those trusts are all set up individually. Some of them are administered together. There's a company called Verus that administers, like, 18 of them. So, you submit one claim, and it goes to all 18 of those trusts, and then each of those trust is governed by a committee in the bankruptcy system that determines how claims are paid, how they're administered. There's a futures claims rep that sits on those committees that helps really guard the trust and make sure that money are paid out. There is a caveat here that's a little odd. So, the people in the bankruptcy trust that are the, the committee are plaintiffs' attorneys, because when the company went into bankruptcy, they were the people who were owed money as a creditor. So, they-- the creditors' committee then becomes the plaintiffs' attorneys who run the bankruptcy trust.

BOSN: OK. Is there an offset?

MARY MARGARET GAY: An offset in the trust? Is that the question, I think, from earlier? So-- yeah. So, the offset that comes-- no. The bankruptcy trust does not take any judicial notice of what's going on in the litigation system, and part of that is because they operate separately as part of the bankruptcy trust system and that is not how they estimate the value of a claim. For the most part, if they, they were to take an offset, they were probably 99% liable because they were the ones with the insulation. I don't think it would ever benefit them. They're also looking at it from a bankruptcy perspective of how can we reduce our overhead costs as much as possible to be able to pay

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

out as much? So, they try to eliminate as much as-- administration on their end as they can.

BOSN: OK. So, thank you for that. Although I don't know that you answered my question, which was how much is in it?

MARY MARGARET GAY: OK. So, they're all set up separately. I'm sorry. Every trust is separate. On-- there's about \$38.6 billion collectively, among all the trust.

BOSN: OK. Do you happen to know about what the average recovery is, for a plaintiff?

MARY MARGARET GAY: Sure. So, instead of giving you my opinion, I'm going to point you to a place that's a-- what would I refer to. So, about eight years ago, a federal judge in North Carolina oversaw a bankruptcy of a company called Garlock. He was a federal bankruptcy judge, and he really took interest in why Garlock was bankrupt, because they had never manufactured or sold an insulation product. And he did discovery in the case, and he wrote a-- I think it's a 384-page opinion that details how the trust system works, how they're paid out. In that, he-- his office took multiple cases and looked at how much people were paid out in those. On average, the plaintiffs that had sued Garlock were making between 16 and 20 bankruptcy trust claims, and were-- depending on their illness. So, you have different levels of illness: asbestosis, lung cancer, mesothelioma. Mesothelioma, plaintiffs can-- depending on their exposure, how many places they were exposed, what products they were exposed to, I think on average it was between \$800 and \$1 million is what our current estimates are. I actually stand in the shoes of some plaintiffs and submit claims; lung cancer is more in the range of 250 to 300. And again, it's an individual, plaintiff-specific-- if you have somebody who had military exposure and was on multiple ships at multiple bases, they're going to qualify for a large number of those trusts, where somebody who maybe just did auto mechanic work in their front yard and worked for their parents' electrical, they may qualify for less. But on average, you know, those are, those are about the amounts. But that Garlock opinion is a great place to get information from a federal judge that is based on the discovery that was taken from a company that went into bankruptcy for this reason.

BOSN: OK. Summer reading, if it's 384 pages.

MARY MARGARET GAY: Yeah. It's actually pretty interesting.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

BOSN: All right. So, of these multiple prep-- trusts, can you receive payments from more than one of them?

MARY MARGARET GAY: Yes. Any one you qualify for, and-- so, for a lot of them, exposure is presumed. If you were at a certain place during certain years, you can get paid. It's as simple as checking a box. And sometimes providing a medical record showing your illness. For other ones, if you worked with certain products during certain years, but nearly all of them have presumed exposure. There are three trusts that operate-- really small trust out of the state of Alabama. They're only open every two years, and they pay everybody that submits \$200. But for most of the others, you qualify based on where you were, and it's a simple-- I have a form here that I printed. I mean, it's as simple as your name, phone number, email. It's a proof of claim form from the trust. Now, most of these-- this is an online submission that's done, but it's as simple as checking a box. I was on this military base or I worked at this warehouse, or I worked at this steel mill, and I was there these years, and you sign it, swearing under oath that you did it, or the attorney signed saying you did it, and you receive your payment. Payment comes pretty quick. Obviously, technology has really helped to increase payments to get them to people. A lot of times, when I depose people, they'll tell me they've already been paid, and that's good.

BOSN: Thank you. That answers my questions, but I think it sparked Senator DeBoer to have more.

DeBOER: So, I wanted to ask the offset question, which I forgot to ask before.

MARY MARGARET GAY: Sure.

DeBOER: And which-- so, the offset I'm talking about is if you're in court against a solvent defendant, and you get a-- you get a, a judgment, can that judgment be offset by the trusts that you recovered from?

MARY MARGARET GAY: I think I would be speaking out-of-turn as I'm not a Nebraska practitioner, and it's different in every state. But what I can tell you is, you-- if you don't know about them, you absolutely can't offset them. Which is part of the problem we've had, is getting the information on the bankruptcy trust claims to know whether you can or can't take an offset. And I don't know-- again, I don't know Nebraska, if that's something y'all do before trial or post-trial, or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

post-trial discovery. Every state's different in doing that. But the-- if you don't know about it, it obviously would not be possible.

DeBOER: OK. And then-- no, that's it.

BOSN: Any other questions for this testifier? Thank you very much for being here.

MARY MARGARET GAY: Thank you.

BOSN: Yes. Next proponent. Welcome. We haven't seen you yet.

ROBERT M. BELL: It's good to be seen. Chairwoman Bosn and members of the Judiciary Committee, my name is Robert M. Bell, last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, and I am appearing today in support of LB340. As a refresher, the Nebraska Insurance Federation is the state trade association of Nebraska insurance companies. Federation members are an active in all lines of insurance, including commercial liability insurance, and who, of course, provide the legal defense of Nebraska businesses. You've already talked to the expert, Miss Gay, but just wanted to go on record in support of this legislation. Thank you.

BOSN: Thank you. Any questions for Mr. Bell? Thank you for being here.

ROBERT M. BELL: You're welcome.

BOSN: Next proponent? Moving to opponents. Anyone here to oppose LB340. Welcome.

ELIZABETH GOVAERTS: Good afternoon, Senator Bosn and the committee. I am Elizabeth Govaerts, G-o-v-a-e-r-t-s. I am proud to be here on behalf of the Nebraska Association for Trial Attorneys. I guess I'm that Nebraska lawyer you guys can ask the procedural questions to. You'll notice that there's not a single defense lawyer here today, because there are none of these cases here. They do not get brought here. There has never been a case tried to verdict in Nebraska involving asbestos. I want to preface my comments by saying that this is the longest continuous toxic tort in history that arose out of the most egregious corporate malfeasance that perhaps the world has ever seen. These manufacturers knew that this product was lethal, and continued for generations to put it into the stream of commerce. So, that's why we have these bankruptcy trusts. Not because these big companies, out of the goodness of their heart, decided to set up a

fund to compensate the people that they were killing slowly; it was because the bankruptcy court forced them to do it, to put all of their assets into this, so that the people who are going to be dying generation after generation after generation could get their money. Now, I am confused. Again, nobody does this. I don't do this. I've never been involved in a case like this, and I will tell you, if we are worried about the auto parts store, the local store, you people have already solved that problem. This statute seeks to amend 25-224, which is our products of-- liability statute of limitations. So, this is a case that's supposed to be involving the time in which you can bring a claim. Most of this stuff has literally nothing to do with that. But in our current statutes, we in Nebraska can't sue sellers of products that contain asbestos. We can't do it. It's already the law. So, that auto parts store, unless they manufacture that product, they can't be sued already in Nebraska. So, I don't know how that over-naming thing could ever possibly come up here, because we don't have any mines, we don't have any manufacturers, so I am confused. And so you might say, well, why do you care, then, that this is even being brought? It's going to be sort of a zero-sum game for everybody. But my concern is-- and I think that this was well--articulated by Senator DeBoer-- my time is up.

BOSN: You, you can finish. You're OK.

ELIZABETH GOVAERTS: OK. Thank you. Is that this adds-- and first of all, I'll address that transparency part of this. That, to any plaintiff's lawyer that does litigation, isn't a problem, the transparency part of it. All that would be relevant; all your past exposures, all the job sites you've ever worked on that would, you know, might have exposed you to asbestos, that would already be something that would be discoverable. And I would not-- I couldn't imagine a Nebraska lawyer pulling some sort of shenanigans and telling their client, no, don't, don't tell anybody you were in the Navy, you know? No-- nobody's going to do that. That's all relevant information, and it's discoverable with the process that we already have. Why are you putting up roadblocks? It's the delay-- it's the delay that causes me such concern, because the bill requires transparency. And again, all relevant information has to be shared during this discovery, but it also allows the defendant to hit the stop button whenever they think the plaintiff needs to file another trust claim. And then this case gets delayed; it can't even be set for trial until 90 days after that button has been pushed and they go do their other claim. Then, they apparently can do this numerous times. There's no limit to the amount of times that the defendant can stop the case, and the

defendant doesn't have any of these pre, pre-litigation disclosure requirements at all. Why aren't they going-- have-- having to give plaintiff's counsel a list of all the places their poisonous products were sold? Why aren't they supposed to say, how, how many claims have you had? How many claims have you paid out? If we're being transparent, wouldn't that be the solution? We have a system in place. We have rules of pleadings. We have rules of discovery. P.S., they shouldn't be in the statute of limitations bill. But we have these. This sets up a special hurdle, and I wondered when the judges were sitting in here, I wondered what they would think of the fact that we're going to tell them, hey, in this one particular kind of case-- we don't have them here, but in this one particular kind of case, you have to be a screening for the prima facie case. You have to put yourself in the shoes of a fact-finder first, before we do anything, and determine whether or not this case meets this very strict criteria. I don't know what the burden of proof required for that is. It's not in this bill. But the judge has to sit and sift through the, the-- and determine there's a-- whether there's a prima facie case for every defendant and every exposure. I mean, I have never heard-- I, I don't get it. I told you I don't do asbestos cases, but I certainly have done cases like a medical malpractice case where there are multiple defendants. That occurs many times. Sometimes, in a real catastrophic case, you've got two surgeons, you've got an O.R. staff, you've got a hospital, you know? So-- and you, you don't know before you filed the case exactly what the causal connection is to everyone's actions. And if the defendant that you've named-- and I have done this before, named a defendant, and within 60 days of filing, I've realized via discovery this guy has nothing to do with this. This guy gets dismissed out. That goes all through the case that defendants, via discovery, will get dismissed if there's no liability. So I just-- this-- it's the insurance companies that are here. And with respect, they are not here to protect dying Nebraskans; they're here to maintain their own profits. And not if we have anything to do with it. Not on the backs of our dying people.

BOSN: Thank you. Any questions? Senator DeBoer.

DeBOER: OK. You reminded me-- I didn't do all my homework before this one like I should have. You reminded me of some of the things that I was talking about last time, which is this pause that happens if the trust in here-- if you say, OK, plaintiff-- I'm a solvent defendant-- plaintiff, you need to now go file with Trust A. OK, they do that, they have to wait 90 days. OK, so now they've done that. As a plaintiff, can I now say you must go file with Trust B? I can do that?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

And then-- let the record reflect that you're shaking your head yes. And that-- then, I could say, OK, we've waited our 90 days for that, and now we're going to go to, to Trust C, and you have to file with Trust C. Can that keep going on?

ELIZABETH GOVAERTS: Well, apparently. There's not a-- there-- within this language of this statute, there's not a limit for the number of times the defendant can do that. There's not a limit for the number of extraneous potential payors that can be named, so.

DeBOER: It, it would be limited by the number of trusts there are, which is quite a few.

ELIZABETH GOVAERTS: Right? There is quite a few.

DeBOER: So, what would be the strategy or reason why a company might-- or an insurance company might want you to keep going to all these different trusts and delay?

ELIZABETH GOVAERTS: Well, because you might die. And then you would not be at trial, because you have-- you, you don't know you have mesothelioma until you have it, and then you're on the ticking clock till your death. And so that would be a strategy. And I suppose the other strategy is the offsets. You know, Miss Gay mentioned that she has often stood in the shoes of plaintiffs; when she is making claims to these trusts, she's standing in the shoes of plaintiffs because those claims have been assigned to her clients so that she can go in and get that money to offset the money that she's already paid. So--

DeBOER: So, in Nebraska, we do offset the liability to a solvent client or a solvent defendant with these trusts? Is that--

ELIZABETH GOVAERTS: Well, I-- again, we have not had one of these things go to verdict. I do not know the answer to that. I can tell you-- OK, we have-- we're joint/several liability; we have many, many cases with multiple defendants, and it does depend on the, on the situation. But let me just generally say that if, for instance, a plaintiff may have settled with one of the defendants, and then we're only trying the case against one defendant, the damages may be offset by whatever other defendants have paid. It's-- those are-- it's hard to just give one answer, but we have a mechanism within-- as I think every state does. Miss Gay is right that it's dependent on the law of each state about these particular cases. We, we don't have one of these to, to, to point to.

DeBOER: So, we don't know because we haven't done one of these cases.

ELIZABETH GOVAERTS: Right. But, if-- in other type of multi-defendant cases, we have a way to offset.

DeBOER: OK. Are there other instances where you might name-- you, you, you mentioned medical malpractice. I don't know if you practice much outside of that area. But are there other cases in tort law where you might name a number of defendants and you're not entirely sure which one caused your injury, and you might name them all in the complaint?

ELIZABETH GOVAERTS: Yeah. Products liability cases against other types of product producers would be one. There could be multiple tortfeasors, I can imagine--

DeBOER: What about a warnings case?

ELIZABETH GOVAERTS: A warnings case. Even, even construction cases. I have a construction case now with three defendants in it. So yeah, certainly this is not an uncommon thing that there's multiple defendants in cases.

DeBOER: And what is the process for getting out of the case if you're not the right person to be named?

ELIZABETH GOVAERTS: You file a motion to dismiss or a motion for summary judgment, and a motion to dismiss means that the plaintiff, on the face of the pleadings, has failed to state a claim against that defendant. Summary judgment would be after discovery, when it's clear that the plaintiff can't meet their burden of proof against that defendant, and they get out. And that's a-- again, a routine part of our system that already has a mechanism to address every one of these things. Now, the one thing that we would not be allowed to do that this bill seeks to add, is that the jury would be able to hear not only that they had a possible exposure from another product; if I read this right, it also says the jury should be allowed to know what the claim paid.

DeBOER: So, the collateral source rule.

ELIZABETH GOVAERTS: Yeah. And so, that would be contrary to our evidentiary rules here because it's a collateral source. So, that's not considered relevant evidence in Nebraska under our rules of evidence. But certainly, the exposures would be relevant, and that would come in.

DeBOER: In Nebraska, if there is a statute of limitations and you do not bring a defendant in before the expiration of that statute of limitations, can you bring the defendant in after?

ELIZABETH GOVAERTS: No.

DeBOER: So, if I under-name and I only name a couple of people, and the statute of limitation runs out, and I haven't done enough discovery to figure out that I should have added these defendants, then I'm in trouble.

ELIZABETH GOVAERTS: Correct.

DeBOER: So, it is in my best interest as a plaintiff to name all the possible defendants in order to preserve my claim before the statute of limitation runs out.

ELIZABETH GOVAERTS: That is true. And any attorney-- I mean, it would be making a stupid amount of work for yourself to just, like, pull every name out of the hat. I mean, again, I, I hate to-- this is Nebraska, you know? We-- we're-- the same 20 plaintiff's lawyers see the same 20 defense lawyers all the time, and, and we have very much mutual respect for each other, and we, we tend not to pull crap, you know? Because we're-- our professional reputations are on the line here, so. You do, though-- you, you owe it to your client to be sure that you have named everybody. This is something we run into in medical malpractice cases. It's a 2-year statute of limitations for somebody who's been very sick or somebody who's dead. That's a very quick time to try to bring a case. And sometimes, you don't-- just don't have access to the information. So, we do, we do bring in-- and anybody who we have a good-faith belief might be a party to the--

DeBOER: And the shorter the statute of limitations, the more you're going to defend-- you're going to name everyone right away.

ELIZABETH GOVAERTS: Out of necessity. Yeah.

DeBOER: Yeah. OK. That's my questions. Thank you.

BOSN: Any other questions for this testifier? Thank you for being here.

ELIZABETH GOVAERTS: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

BOSN: Next opponent? Anyone wishing to testify in the neutral capacity? While Senator Hallstrom makes his way up, I will note for the record, there was 1 proponent, no opponent, and no neutral comments sub-- ope, am I on the wrong bill? Nope. I'm not. Thank you. 1 op-- 1 proponent, no opponent, no neutral comments submitted. Welcome back.

HALLSTROM: Thank you, Senator Bosn. Trying to figure out where to start here. Pot, kettle, black. The last witness talked about insurance companies protecting their own profits. I think insurance companies do business on a basis where they protect all of their policyholders. And so, to suggest that the insurance companies protecting only their own profits a little misleading. We all sat through Judiciary Committee hearings earlier this year. I recall a bill in which the trial lawyers came in and indicated that they didn't want information regarding non-use of seat belts to be allowed to be conveyed to the jury. But at the same time, evidence of DUI should be there. One could argue, is that looking out for profits for the trial attorneys? I don't discredit that, but I certainly try to be consistent. Another bill, admission of liability. But yet, we want to bring, after an admission of liability, evidence of negligent hiring or negligent supervision. Does that inflame the jury? Does that bring bigger awards which pad the pockets of trial lawyers? Certainly could be argued. I'm not going to discredit that, but I'm going to try to be consistent. So, don't suggest that insurance companies are just looking to protect their profits. I think also-- and Senator DeBoer, I appreciate the question, and we need to get you an answer on the offset, but I sat here and indicated to you that I didn't know the answer, and what I don't know, I don't know. I'm not going to sit up here and speculate--

DeBOER: Oh, I--

HALLSTROM: No, no. Let me finish. The last witness suggested that Miss Gay steps into the shoes of the plaintiffs so that she can go in and get the funds to offset. We don't know you can offset in Nebraska, so to suggest to the committee is misleading that she steps into the shoes of the plaintiffs for the purpose of getting monies to offset. If they are offset in Nebraska, we'll get that answer to you to the best of our ability. I think the other thing that I would pledge-- this bill has been introduced, I think, in 2019 by Attorney General, former Senator Hilgers; it was introduced in 2023 by Senator Slama, and I think there were good-faith efforts-- and perhaps Senator DeBoer was, was involved in those-- to narrow down some of the issues of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

contention and the items of concern. I stand willing to do so. The fact that the trial lawyers have not contacted me in advance of this hearing perhaps signals that they don't want to talk to me about it. I hope that's not the case. And I would pledge, Senator DeBoer, with you, regardless of who's on the other side, that we'll work together and see if we can get a solution to this. So, I thank you.

BOSN: Any questions for Senator Hallstrom? Seeing none. Thank you. That will--

HALLSTROM: Thank you.

BOSN: --conclude our hearing on LB340. Last but not least, we will take up LB388 with Senator DeBoer. No notes?

DeBOER: I could.

BOSN: Bold move.

DeBOER: Hello, Chair Bosn, and fellow members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent the beautiful legislative district north-- located in northwest Omaha. I appear today to introduce LB388. LB388 is a bill brought to me by representatives of the Nebraska State Bar Association in conjunction with the Supreme Court. The bill makes a series of adjustments to the statutes that outline how the state's judicial nominating commissions operate. It makes three primary adjustments to the existing statutes to ensure these critical commissions function efficiently and effectively for our judicial selection process. First, the bill adjusts the processes by which the Executive Council of the Nebraska State Bar Association nominates attorneys to serve, to serve on the nominating commissions in the instance of a vacancy on the commission. The bill proposes extending the time limits for such nominations from the existing ten days after the filing deadline to instead allow for a deadline of November 1 of each year. This provides the NSBA a long time-- longer time period to search for eligible candidates to nominate. Second, the bill adjusts the existing term limits for a person serving on a nominating commission to allow for a period of 12 consecutive year-- years, and increase the number of years in which one is eligible for re-election or re-import-- appointment from 6 to 10. This change is proposed to ensure a broader pool of eligible candidates, particularly in light of challenges that can arise in more rural parts of the states when there are fewer attorneys eligible to serve in certain judicial districts. Third, the

bill allows members to serve on more than one judicial nominating commission. Both lay and lawyer members must reside in the judicial district to which the commission covers, but allowing them to serve on more than one will provide a deeper pool of eligible candidates. Finally, the bill adjusts the language on how elections may be conducted to authorize the Clerk of the Supreme Court to utilize electronic voting for lawyer members, if appropriate in the future. So, basically, the problem that this is seeking to solve is that our judicial nominating commissions are running out of people that they can use in parts of the state to serve on these judicial nominating commissions. We've-- as a committee, have heard that there are counties in Nebraska that do not have any lawyers in them. And so, when we get to the situation of having judicial nominating committees, trying to find enough people that have not already served, that have-- that want to serve, that can serve, we're having trouble filling those lawyer positions on our judicial nominating committees. So, what the bar has envisioned here, and what I think is a good idea, is allowing a longer term for those who are serving on them, and also allowing them to serve on more than one. So, for example, you might serve on a local something, some kind of judicial nominating committee for your county, but you may also serve on Supreme Court District 2 or whatever like that. So, you can serve on different levels. So, you'd only have one Supreme Court district that you're in; you couldn't be in Supreme Court District 1 and Supreme Court District 2 because you only live in the one, but you could be on different levels, so you could also serve on the Court of Appeals, or something like that. And those kinds of positions on those judicial nominating committees-- for example, the Supreme Court, or-- sorry, the Court of Appeals-- you're not going to-- that's not going to come up as often as some of the other ones. So, that's the idea for the bill.

BOSN: Thank you. Any questions for Senator DeBoer? Seeing none. First proponent. Anyone here to testify in support? Welcome.

ELIZABETH NEELEY: Thank you. Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association here today in support of LB38-- LB388. So, judicial nominating commissions play an important role in ensuring a high-quality judiciary in Nebraska. And, as Senator DeBoer explained, this helps streamline the process for filling those commissions. So currently in Nebraska, if there are not a number of sufficient candidates that put their name in to serve on a nominating commission, the bar association's executive council is tasked with

finding additional candidates. So, last year in 2024, during the election cycle, we had 16 vacancies to fill. We also fill, in, in the event that due to a conflict, a change in residence or other factors, a nominating commission needs an additional lawyer member. So, somebody has been appointed or elected to serve, but then they can't serve, there's a vacancy; we have to fill that. This happens pretty frequently, particularly in rural areas of the state where, given the smaller lawyer population, it's more likely for members to have conflicts with potential candidates. So, if there's only, you know, 20 lawyers in the area, chances are you practice with some of them or used to practice with some of them, and, and there's just conflicts of interest. Filling these vacancies takes more time than you think, because we are looking for a lawyer with a certain political party who happens to be available on a specific date and time, and who does not have any conflicts with any of the applicants. And so, when I call and talk to lawyers about serving, they commonly respond that they meet the criteria, that they would be willing to serve, but they're either term-limited out or they're already serving on a different nominating commission, and so they're not eligible to serve. So, once the NSBA identifies nominees, the Clerk of the Supreme Court is required to conduct an election by mail and obtain the results prior to the date of the hearing, so this all happens in a very small window of time. And it's not always the best use of resources, and I'll give you an example of that. In 2024, one of our judicial nating-- nominating commissions had a vacancy for two alternate members. So, the bar association's executive council went out and recruited two alternate members, and then we had a paper ballot election where we said pick two, and there were two names on the ballot. So, we already knew the results of the election before it was already sent. Finally, as you've heard in prior testimony today, the number of lawyers applying for judgeships is on the decline. And there has been some confusion about whether serving on a judicial nominating commission makes one ineligible for applying for a judgeship, so it's important to clarify this so that we don't adversely disqualify someone who would be a quality candidate from the judgeship. And it's also important to, to clarify so that we don't deter lawyers from serving if they believe that someday down the road, they'd like to apply for a judgeship. So, in closing, this bill provides a more workable timeline; it increases efficiency with electronic elections; it helps us fill vacancies by keeping more people eligible; and it clarifies the timeline for removing oneself from a nominating commission if you'd like to apply for a judgeship. So, the Bar Association wishes to thank Senator DeBoer. This is a wonderful, wonderful bill. She's done a great job

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

shepherding this through the process, and we encourage your support. I'd be happy to answer any questions you might have.

BOSN: Thank you. Any questions for Miss Neeley? Thank you very much for being here.

ELIZABETH NEELEY: Thank you very much.

BOSN: Yes. Next proponent. Lots of questions coming up. Welcome.

JOSHUA SHASSERRE: Thank you. Good afternoon, Chairwoman Bosn, and members of the Judiciary Committee. For the record, my name is Joshua Shasserre, J-o-s-h-u-a S-h-a-s-s-e-r-r-e, spelled just like it sounds. I serve as the Clerk of the Nebraska Supreme Court, and appear before you today in support of LB388, and I wish to thank Senator, Senator DeBoer for introducing this legislation. As you've heard, it streamlines the designation of over 200-- well, 272 lawyer members and alternate lawyer members to serve on the 34 different judicial nominating commissions across the state. These reforms will help to ensure a strong judicial selection process and continue the high degree of competent intelligent service of our judiciary across the state, as you've heard earlier this afternoon. LB388 creates efficiencies in the administrative role that the clerk plays, along with the executive council of the state bar, and there are three steps or categories which we're, we're discussing. That is the solicitation of JNC lawyer member nominees, then conducting these elections, and then certification of those results. So presently, the clerk must solicit nominations by September 1, and attorneys have to submit their nominations, either themselves or someone else, by October 1. When nominations are insufficient for a JNC, then the executive council has to nominate a lawyer within ten additional days. As Dr. Neeley mentioned, the executive council must routinely submit nominations to ensure the sufficiency of nominees, both in terms of number and political party balancing as required by the constitution. LB388 improves this process first by expressly allowing the court to use its upgraded attorney services system to allow active attorneys to indicate when they register-- which they have to do every year-- whether they're interested in judicial nominating commission, and will tell them exactly which one they are associated with-- because sometimes lawyers don't actually know which judicial district they reside in-- and they could do that all the way through October 1. Then, the bill allows for service on multiple JNCs which will reduce the instances in which JNCs for districts in greater Nebraska will not have sufficient, sufficient numbers of nominees, thus triggering this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

requirement for the bar to step in. When those nominees ins-- the-- are, are insufficient numbers, the bill expands the time for the executive council to nominate lawyer members, as you've heard, from ten days to the entire month of October. Then, moving on to when we're doing the special-- general elections. And I'll proceed more quickly, I see my time is running out. The most recent general election, just to piggyback on what Dr. Neeley said, we had 22 different ballot types to cover at least 34 JNCs mailed out to 5,709 attorneys. We received 720 back in the time frame which the statute requires for mailing, because apparently the one thing that, that has gotten slower since these bills were in-- these statutes were enacted in the '70s is the US mail. LB388 improves this process by allowing up to 30 days for ballots to be returned, thus hopefully allowing ample amount of time for participation. I see my time is up. I'm happy to try to answer any questions you may have, and obviously respectfully request the committee advance to General File.

BOSN: Thank you. Any questions for this testifier? Senator Hallstrom?

HALLSTROM: I, I stepped out, so I may have missed this. Are, you know, there any problems with recruiting folks or getting folks to volunteer based on political party?

JOSHUA SHASSERRE: Yes. Oftentimes, depending upon, again, the current construction of any judicial nominating commission, and thus, in the election cycle, which vacancies you're going to need to fill for the next term, there, there can be difficulties in finding members of the bar of a particular political party, depending upon the geography of that district.

HALLSTROM: Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you, Chairman Bosn. And thank you so much for all you've shared. And it was just really surprising with the low number of returned mailers that were sent out. But was there some more pertinent information you wanted to share with us that might shed some light on things that you didn't get to read?

JOSHUA SHASSERRE: Oh, well, that's OK, I think.

ROUNTREE: OK. All right.

BOSN: He brought a statute book, I noticed.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 21, 2025
Rough Draft

JOSHUA SHASSERRE: It's my security blanket.

BOSN: Any other questions? Thank you for being here.

JOSHUA SHASSERRE: Thank you very much.

DENNY VAGGALIS: Senator Hallstrom--

BOSN: Oh, I didn't see your hand. I'm sorry.

HALLSTROM: I'm glad for the clarification that your name is-- sounds like the way spelled. So, thank you.

JOSHUA SHASSERRE: Thank you, Senator. Good to see you all.

BOSN: Was that a question? Thank you. Next proponent. Now we'll move to opponents. Anyone here to oppose LB388? Neutral? And while Senator DeBoer makes her way up, I will note there were no letters received. Welcome back.

DeBOER: I will make myself available for questions. I think you understand the problem is that we need to have some more flexibility within the system.

BOSN: Any questions for Senator DeBoer? Seeing none. Thank you all for being here. That will conclude both our hearing on LB388 and also our hearings scheduled for today. Have a great weekend.

ROUNTREE: Thank you so much. Testifying here.