

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Business and Labor Committee February 13, 2023

\*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

**RIEPE:** [RECORDER MALFUNCTION] being here. Today is Monday again, it's the 13th of February, and I'm Merv Riepe. I happen to be the Chairman of the Business and Labor Committee and my district is District 12, which is southwest Omaha and the good folks at Ralston. I'm going to ask the committee members to introduce themselves. I will start to my extreme right over here with Senator Blood.

**BLOOD:** Good afternoon. My name is Senator Carol Blood, and I represent District 3, which is parts of Bellevue and Papillion, Nebraska.

**HALLORAN:** Good afternoon. Steve Halloran, District 33, which is Adams, Kearney, and Phelps County.

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

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

**HUNT:** I'm Megan Hunt and I represent District 8, which includes the neighborhoods in northern midtown Omaha.

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

**RIEPE:** I'd like to come back to our legal counsel.

**MICAH CHAFFEE:** My name is Micah Chaffee. I'm research analyst for Business and Labor Committee.

**RIEPE:** And our committee clerk for today.

**COLE LUMSDEN:** Cole Lumsden from Omaha.

**RIEPE:** And also, we have two pages back here, which thank you very much. And could you share your names, please? I don't have them.

**ETHAN DUNN:** Hi, I'm, I'm Ethan.

**MIA DUNKER:** I'm Mia.

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**RIEPE:** Thank you. Thank you for your help and support. My first request would be that all phones and beepers be silenced so that we don't have distractions during the hearing. Today and before each hearing, all bills will be-- that will be heard will be posted outside the hearing room and heard in the order posted. On each of the tables near the doors coming in, you will find green testifier sheets. If you intend to testify today, please fill one out, legibly print all information and hand it to Cole when you come to testify. This will help us keep the accurate records of the hearing. If you're not testifying at the microphone but want to go on record as having a position on a bill being heard, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. I might also add that if you find that the testimony you intended to give is redundant and you wish to just comment in that regard rather than coming to the table, we would encourage that as well. The legislative policy is that all letters for the record must be received by the committee by noon of the day prior to the hearing. The senator introducing the proposed legislation today, which we have a number as you can tell by the agenda, will first present and will be given the time needed. For purposes of the recorded record, we ask for each presenter to state one's name, spell it, and state who you represent, please. Senators who serve on the committee are encouraged to ask questions for clarification. That said, the presenter and those testifying are not allowed to ask questions of the senators serving on this committee. Senators may have computers, laptops or other-- or they may at times have to leave this meeting because they have other bills that they have to attend to or maybe open at other committees. So please understand that they are paying attention and are here to hear your comments to make a significant judgment. In the Business and Labor Committee, we will use the light system to promote maximum engagement of those wishing to express positions as proponents, opponents, and those in the neutral position. Each testifier today, given the size of our agenda, will have three minutes to testify. When you begin, the light will be green. When the light turns yellow, that will mean you have one minute of the three minutes remaining. When the light turns red, it is time to end your testimony and I will ask you to wrap it up on your final thoughts. Not with the intention of being rude, but simply trying to get as many people testifying as we possibly can and to be fair. The three-minute rule may change based on the number of people wanting to speak. I hope we don't have to go down

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to a two-minute thing, but we do have work to do. As Chairman, I will seek to hear citizens who have traveled from some distance to each hearing and we will acknowledge letters received from all concerned parties and along with the letters and emails that we have. We also have in the committee have a strict no-prop policy and we will adhere to that. Should you have handouts you wish to share, please share ten copies or ask our pages to make copies. Please be aware that any handouts submitted by testifiers will be included as part of the record as exhibits. The pages will then distribute any and all handouts to committee senators. Following all proponent and opponent and neutral testimony, the bill presenter will be afforded the opportunity to close with final remarks. As a committee, we will work diligently to provide a fair and full hearing and we will make every effort to accommodate special needs. Short of an emergency, this committee will not take action on a bill the day of the hearing. At this hearing, we ask you to respect the process and one another. We will likely intend to take a break sometime because we will be running late, but we'll probably take a 10 or 15 minute break. I can't tell you right now exactly when that will be because-- OK, I'm sorry-- that I don't know exactly when that will come, but obviously, if you, if you look droopy out there, then we'll probably try to take a break or if we see somebody that looks like they desperately need to maybe use one of the facilities, we'll try to be as accommodating as we can. With that, we will begin today's hearings with LB639. Senator Blood. Senator Blood, please, if you will, we know you, but some people don't so if you'd please. You know the rules.

**BLOOD:** Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Senator Carol Blood, spelled C-a-r-o-l B-l-o-o-d, and I represent, represent District 3, which is the western half of Bellevue and eastern Papillion, Nebraska. Thank you for the opportunity to bring forward LB639 which updates the workmen's compensation statutes. LB639 seeks to amend the statutes of existing workmen's compensation law, specifically a revision to Section 48-164 that requires a hearing when a petition is filed within 60 days. This legislation would extend this timeline as it has been deemed not nearly enough for the litigation process. In 1992, changes to statute changed litigation process for those filing workmen's comp claims and eliminating rehearings. This in turn ended litigants' ability to get a second shot at getting their claims defunded or proven-- defended, not

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defunded, or proven. The day-- 60-day window, especially without rehearings, is too limited in scope for litigants to have their cases properly reviewed. The process currently is as follows. First, when a petition for workmen's compensation is filed, a summons needs to be issued to the employer and they have 14 days to respond to a petition. If a written discovery is served, the litigate-- the litigant has 30 days to respond. This includes issuing subpoenas to people or parties with relevant information, including medical records or bills. Experts are then needed to be gathered to refute or back up the claims made by a litigant as a medical-- as medical opinions are needed to substantiate workmen's compensation claims. The depositions of these experts, witnesses, and other parties takes time after written discovery. It is clear the 60-day window isn't enough for these processes to take place for a legitimate case. Workmen's Compensation Court is requesting this change, noting when the rehearings four cases were eliminated in 1992 that the time frame for the initial hearing should have been adjusted but was not. To give proper justice to litigants in these hearings, there must be an appropriate time for evidence and expert testimonies to be gathered to legitimately hear workmen's compensation cases. I thank you for your time and consideration. We're hoping to get this on a consent agenda. I'm happy to answer any of your questions, but because we have such a full schedule, I encourage you to ask those questions from whoever comes to testify in favor of this bill.

**RIEPE:** Well put. Are there questions from the committee? Seeing none, and we will make your wishes come true. We're now going to address proponents so please. If you'd be kind enough to state your name, spell it for us, please, for the record.

**JILL SCHROEDER:** Yes. I'm Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r, and I'm the administrator of the Nebraska Workers' Compensation Court. Senator Blood has given you an overview of this. This bill actually includes four changes. The Workers' Compensation Court has requested these changes and are fully in support of them because they would help our operations. The first one is that we are asking to have the time frame for notice of our public hearings reduced from 30 days to 14 days. We hold a public hearing once each year, usually in December, to update our rules, including a medical fee schedule applicable to workers' compensation cases. That fee schedule is based in part on data from the Centers for Medicare and Medicaid Services. They've been

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releasing that data later and later each year, which has made it difficult for us to get the data, do what we need to do, publish the draft of the fee schedule prior to our public hearing, and have that fee schedule be applicable as of the first of the year. So that's the first change. The second one, as Senator Blood has talked about, is to reduce or to eliminate the time frame of 60 days from when a petition is claimed for filing for trial. That also would eliminate a requirement that our judges decide decisions within 30 days after the case has been tried, because that doesn't provide sufficient time for briefing by the litigants. And there are other case progression standards that are in place. The third thing that LB639 seeks to do is to increase the summons return date from 7 to 14 days. This request is being made because the clerk serves summons and the petition via certified mail and given delays in U.S. postal mail seven days is too long for us to mail and get a return date. And finally, we are asking that we no longer have to receive hard copies of the Legislative Journal or the session laws. We use your website for those purposes. We're regular users of the website and no longer wish to receive hard copies. Those are the four things this bill would do. Does anybody have any questions?

**RIEPE:** Thank you. Do committee members have any questions?

**JILL SCHROEDER:** All right. Thank you very--

**RIEPE:** I have--

**JILL SCHROEDER:** Yes.

**RIEPE:** --one question if I may. So how long has this been an issue or problem, if you will, that-- is this-- it's just recently evolved or has this been an ongoing issue?

**JILL SCHROEDER:** With respect to receiving the Medicare data?

**RIEPE:** Yes.

**JILL SCHROEDER:** It has--

**RIEPE:** From the, what, 30 days down to the 14.

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**JILL SCHROEDER:** Correct. So I've been with the court for four and a half years. And over the course of those four years, it's gotten tighter and tighter. We get the data later and later, have to return it-- turn it around more quickly. And actually, this year, we had to move our public hearing to right before the first of the year to ensure that we had the data in time. So it has gotten worse in the last couple of years.

**RIEPE:** So it's cumulatively built up and now is the time. You have-- have you introduced this before?

**JILL SCHROEDER:** We have not introduced this bill before.

**RIEPE:** OK.

**JILL SCHROEDER:** Well, we introduced a version of it last year. It had other provisions that concerning publication in a newspaper. And the newspaper issue is what then took this, I believe, off the consent calendar.

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

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

**RIEPE:** Thank you very much for being here. More proponents? Any more speaking in favor of LB639? Any in opposition? Seeing none, are there any wishing to testify in a neutral position? Seeing none, Senator, would you like to close?

**BLOOD:** I waive. I waive closing.

**RIEPE:** Oh, OK. Oh, you're waiving. OK, I thought he was getting up to testify in opposition.

**BLOOD:** No, I, I, waive closing.

**RIEPE:** He's your staff isn't he?

**BLOOD:** It's my staff getting ready for the next bill which I'm presenting.

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**RIEPE:** In hopes that he wasn't going to testify in opposition. So thank you. OK, so you're waiving.

**BLOOD:** I'm an equal opportunity employer, he can do whatever he wants.

**RIEPE:** So are you, are-- you intend to close here?

**BLOOD:** I'm waiving closing.

**RIEPE:** Oh, OK.

**BLOOD:** But I'm the next--

**RIEPE:** OK.

**BLOOD:** --bill on the agenda so I'm getting ready.

**RIEPE:** Yes.

**BLOOD:** All right.

**RIEPE:** On our next bill up for hearing is LB-- with that, I consider LB639 to be closed. And we have some-- let me see what we have in the way of-- it appears we have no-- I don't think we have any-- we have no letters opposing or supporting or neutral. So thank you very much. I consider that closed. Thank you. Now we'd like, we'd ask you to order-- open on LB5.

**BLOOD:** And thank you, Chairman Riepe and members of the Business and Labor Committee. My name is Senator Carol Blood, spelled C-a-r-o-l B-l-o-o-d, and I represent District 3, which is the western half of Bellevue and eastern Papillion, Nebraska. Thank you for yet another opportunity to now bring forward LB5 for the workmen's compensation bill for PTSD. I'm bringing this bill forward in response to the Sonic massacre that happened November 21, 2020. You may remember Roberto Silva threw an incendiary device, ignited materials in a rental truck and opened fire at the Bellevue, Nebraska, fast food restaurant. Nathan Pastrana and Ryan Helbert were murdered. Additionally, two workers were wounded, ages 18 and 25, and three additional workers were able to flee to safety. In a letter to the Sarpy County Attorney's Office, Silva stated that his intention and motive was to kill the witnesses involved in his recent identity theft case to

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conceal the commission of that crime. It was a senseless and selfish act that changed the lives of many. Two of those victims who were not physically injured sought help for their diagnosed PTSD, and they were told that they could not receive support as Nebraska only addresses PTSD when there is physical injury involved. National and local experts will tell you that you don't have to experience a specific trauma to develop PTSD. Many people associate this disorder with military veterans. PTSD is in fact very common in military populations, and many that have been diagnosed were not personally injured but witnessed an incident or multiple incidents. Simply witnessing an event like a car accident that can trigger PTSD symptoms. Imagine witnessing a massacre like the one at Sonic. We are always discussing how easily influenced young Nebraskans can be when we discuss legislation and how it affects them. Now consider that the victims of the Sonic massacre were 25 years of age and younger, yet there's an inference that they weren't injured, so then they should just get over it. Today, you will likely hear people testifying in opposition of this bill as well, but it's unlikely they will bring forward any evidence to support their opposition. Even the minor fiscal note says "could" without any data or research to support the potential for an increase in workplace violence. I encourage you to ask questions from this opposition as to how much do they set aside or calculate now for gun violence or terrorism? What are the number of claims they are citing today and are they expecting more? If so, how is that being addressed? Workmen's compensation insurance helps businesses avoid the real cost of an employee's medical expenses and lost wages following a workplace injury or illness. Without workers' compensation coverage, the medical expenses associated with even one major workers' compensation claim could cause irreparable financial harm. Although organizations are coming out against this bill, it is ultimately better for them to get in front of these mental health issues before it not only affects their bottom line, but can also affect employee morale, attendance, and turnover. LB5 will update the current statute pertaining to workmen's comp. Currently, you must also have physical harm or injury to be covered by workmen's compensation, even when diagnosed by a medical professional. Symptoms of PTSD typically manifest six months after a traumatic event and can result in productivity loss and more frequent absences. It is long overdue that Nebraska become one of the nine states that includes mental injury or PTSD as part of workers' compensation. And that is indeed

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the intent of our bill today and today's hearing. We are also very clear and defined in our language. This bill establishes through a mental health professional that the medical causation between the mental illness or injury and the workplace violence. We were very careful also to clearly define the type of violence we're looking to address. You'll note that it says it is a shooting, hostage situation, terrorism, or a similar act of violence in the workplace. I do hope you save your questions for those testifying today and give your full attention to those who may be here to share their personal stories. I thank you for your time today, and I will be here to close and answer any additional questions you may have.

**RIEPE:** Thank you very much. Does committee members have any questions? Apparently not. Do we have-- we may have-- we have some-- we're looking for proponents. Do we have-- I know we have one, I think, that maybe was involved in the Sonic shooting, too. We want to make sure to give the person any special accommodations that may be required. We don't know what those are, but I assume that-- OK. Yes, sir. Would you please give us your name?

**TODD BENNETT:** Yep, Todd Bennett.

**RIEPE:** Spell it, please.

**TODD BENNETT:** T-o-d-d B-e-n-n-e-t-t on behalf of the Nebraska Association of Trial Attorneys. I've testified on several of these mental bills over the years. This will be my first with bifocals. So if I don't hit you in my sweet spot, I'm not looking at your cross-eyed. But the bottom line is, with these bills, if you don't have a physical injury, nothing is covered for a mental injury or illness. I think it's important to know what gave birth to the new statute 48-101.01. That was the Norfolk bank shootings in 2002. We just had the anniversary, 20 years. We had the Von Maur shooting in 2007. We just had the 15th anniversary. Before that, 2012, where this statute gave birth, nobody was covered, not even first responders and correctional officers. Then come along the prison riots in 2015 and '16 in Tecumseh. And, Senator Blood, I thank you for bringing in this bill. There's been plenty of cases that we've lost because the statute wasn't in place. The bottom line is we have a Bellevue shooting in November of '20, and if it's not fresh in our minds what happened at Target just a few weeks ago, that's got to be on our mind first and

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foremost. What this generally does is when you see a bill, you're looking for a need and you're also looking for that problem to be fixed. LB5 fixes this problem because even today, the bank tellers that saw what happened at the shooting in Norfolk 20 years ago, heard it, experienced it, felt it, affected them, they're still not covered. Von Maur, Bellevue, you can go down the list. The bottom line is our businesses, our schools, our courts, and God forbid, even this Legislature, if a gunman came in today and you're sitting physically, you're not covered, all Nebraskans should be covered. I will point out the fiscal note, I'm kind of shocked by, hey, it's too speculative. We can't predict it. We may have to reassess. I think that's pretty ingenuous, in my opinion, because the bottom line is, if we're going to wait another 20 years to bring up another bill and have a shooting and so forth, when's, when's the next one? I represent several people that, yes, they thought they had a physical injury, but the court deemed otherwise. This bill is limited in scope and, frankly, it's the next legal expansion. But it's also the most compassionate because you're going to hear stories today of why this bill is needed. The bottom line it's just the life we live in and when you consider the violence epidemic, someone seeing blood or a coworker or holding them, but no physical injury or death, that should never be normal, but it should be covered. I'll be happy to answer any questions that you may have.

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

**TODD BENNETT:** Thank you very much.

**RIEPE:** We'll take the next proponent, if you will, for the legislation. As testifiers, if you would, too, to help us to make sure that we're expedient in our process here if you can move up towards the front, that way we can keep going and get as many people in to, to testify as possible. Thank you. Yes, would you tell us your name and spell it and then tell us who you represent, please?

**HAYLEY HIRACHETA:** My name is Hayley Hiracheta, H-a-y-l-e-y H-i-r-a-c-h-e-t-a, and I'm representing the LB5 bill. The issue that brings me here today is seeing how many people are left struggling with mental health after something tragic takes place in their workplace. You're looked at as a true victim if you're physically hurt

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and not seen as one mentally. The mental burden that is carried with you after something tragic not only affects you outside of work, but could carry on for the rest of your life. It can also become a financial burden. My story dates back to November 21, 2020, when tragedy struck for me at my workplace. A man came in, opened fire while I was working, killing two of not only my-- sorry, not only my coworkers but my friends and leaving two in critical condition. Having to witness that not only has limited me on things I'm able to do and enjoy, it also affects me mentally to this day. For the first few months, I was not able to eat and sleep. It has also left me with nightmares and makes me, makes me feel as if it were happening all over again. This had made me feel like I was such a mental burden and felt-- and I felt I would be better off dead than alive most days. Having to deal with many thoughts like that makes me wonder how many people suffer with them but don't have a structure like I did to build them up. I felt the need to come in here and share my story here today so no one has to struggle with caring if they're going to go into debt due to workmen's comp not seeing them as a victim. No one should have to fight to get help due to something that has happened out of their control, especially in the workplace. There are examples today that show workmen's comp needs to be there for people not just physically but mentally. These type of incidents are becoming more and more common all over our country. For example, a man in Omaha last week walked into a Target with a loaded AR-15 with what many people thought the intention was to harm them. Many of those workers are going to struggle bringing themselves back to work, thinking that it could happen again, even though they weren't physically harmed, they will have the mental burden that will carry on with them. Just these two incidents alone happened at jobs that are not high paying and have younger workforce that are more likely can't afford insurance. And that's why it is crucial that we take care of this much needed now before it is too late for someone who can't get help they need when dealing with a tragic event. We can fix this by pushing mental health into workmen's comp and trying to see eye to eye with the victims, not only making them feel heard, but showing that there are people that care for them mentally and that help is there for them.

**RIEPE:** Well done. Thank you. Do-- Senator Hunt.

**HUNT:** Thank you, Chairman Riepe. Hayley, thank you for coming here today. And I, I don't have any questions for you, but I want to thank

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you for your strength in getting through that event and continuing to take care of yourself, even when it feels impossible and difficult. I don't think these things happen for a reason. I don't think it's to make us stronger or anything like that. I think it's senseless, selfish violence and it destroys lives and it leaves marks on people like you who are left affected. So thank you for coming all the way to Lincoln to share that experience with us. And you're, you're very brave and strong for doing that. Thank you.

**HAYLEY HIRACHETA:** Thank you.

**RIEPE:** OK. Thank you. Are there other questions? Thank you very much for being here. More proponents, please. If you'd be kind enough, sir, to give us and spell your name and then share with us who you represent.

**TREVOR TOWEY:** Yes, sir. Thank you, Mr. Chairman, members of the committee. My name is Trevor Towey, T-r-e-v-o-r T-o-w-e-y. I'm the president of the Omaha Professional Firefighters Local 385. And I'm here as proponent of LB5. As a firefighter and a paramedic for 25 years, we see traumatic events, horrific events regularly as part of our job. For many of us, you can ask my colleagues, they can name addresses all over Omaha, where it brings back memories of bad events that they attended to. For me personally, excuse me, West Dodge 168th Street. I can't drive across that without thinking about the Seward bus tragedy that killed kids and injured very many on a fall 2001. So I know how, how it affects people. We're used to seeing those types of things. We just come to deal with it. But what you shouldn't deal with is violence in the workplace, and no one should be used to seeing those types of things. Unfortunately, events like Von Maur, events like the shooting of Kerrie Orozco affect our members. And some have had to leave the job because of it. They're unable to function in their capacity and provide for their workforce anymore. Fortunately, this Legislature in 2010 instituted some workplace protections that allow for those types of injuries, those mental injuries to be treated as workplace injuries, as if I broke my arm. Those are protections that we have that the general public and other industries do not. It's my opinion that every worker, if they sustained an injury, whether it be a mental injury from workplace violence or a regular injury, should be compensated and should be afforded the rights and the protections that the work comp court allows. So I thank Senator Blood for bringing

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this legislation. I thank you for allowing me to speak here today and I ask for your favorable consideration.

**RIEPE:** Thank you for being here. Let's see if we have any questions before you leave. Are there any questions from the committee? Hearing none, thank you very much--

**TREVOR TOWEY:** Thank you.

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

**KEN CLARY:** Thank you. Good morning, Chairman Riepe, members of the committee. My name is Ken Clary, K-e-n C-l-a-r-y, testifying today on behalf of the city of Bellevue and their police department, where I have the privilege to serve as the police chief in support of LB5. As you know, it's a bill relating to the Workers' Comp Act, specifically dealing with mental illness or injury resulting in workplace violence-- or as a result of workplace violence defined as shootings, hostage situations, acts of terrorism, and similar occurrences. I appreciate the opportunity to appear before you this morning or this afternoon, I guess, it is now. As you're likely aware, the city of Bellevue was ground zero to active killer event that occurred the evening of November 21 at our Sonic restaurant. This violent, targeted, intentional attack tragically resulted in the death of two employees and the serious injury of others. Those injuries were of multiple types, several of which were easily identifiable-- identifiable, excuse me, as they were severe and physical in nature. Others were significant, but were not so noticeable as they left behind lasting, dramatic, and debilitating effects on the mental health of some of the survivors. Like the resulting physical injuries, these injuries can be life altering. Unfortunately, Nebraska law does not currently recognize those injuries in a way that would allow for resulting workers' comp benefits in the way that physical injuries would. In my opinion, this should be changed. Survivors who face these injuries and are unable to return to work should be-- not be abandoned by the system that is set up to protect injured workers, especially as a result of some of the most traumatic events that could possibly occur in the workplace. Although there have been an increase in these types of incidents nationally over the last few years, fortunately, they're still rare. In my opinion, these-- the changes recommended in this bill are reasonable as they are clearly defined the situations that

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could lead to the expansion of services, which would have limited impact on the system overall while taking care of those survivors of some of the most traumatic events. For those reasons, I support the bill and respectfully request your support as well. Thank you for your time and consideration regarding the bill.

**RIEPE:** Thank you. Very good. Let me see if there are questions from the committee. Senator Hansen, please.

**HANSEN:** Thank you. Thank you, Chairman Riepe. I probably should have asked these questions of the, of the lawyer when he was first up here, but I'm going to assume maybe somebody--

**KEN CLARY:** Probably.

**HANSEN:** --can answer them later, but. So does the police department currently already have a work-- workers' comp coverage, for instance, such as this? They probably do, I'm assuming.

**KEN CLARY:** You should have asked the attorney. We do have workers' comp. I don't know if this is covered under that. I'm not speaking on behalf of the department for our employees. The employees of the Sonic restaurant is who--

**HANSEN:** OK.

**KEN CLARY:** --I'm referring to, the target of the attack, the survivors of those incidents is who I personally am in support of for this bill, not the police department that's responding. So to be clear.

**HANSEN:** And that's good. I just thought with your, with your knowledge base, you might be able to answer some of these.

**KEN CLARY:** I don't know that. I would have to look into that.

**HANSEN:** Yeah, and that's fine or I was wondering maybe if, if it, if it's not included, if it would conflict with some already existing workers' comp law that these might be covered under. That was one of my first questions. And the other one, I'll wait to see if maybe another lawyer shows up, so.

**RIEPE:** Any other questions?

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**HANSEN:** Might be a few in the room, so. All right. Thank you.

**RIEPE:** I do have a question, and this gets down to a more of a medical clinical side as I'm trying to sort out, I know in the bill it said mental injuries or mental illness, and I'm trying to say one seems to be chronic to me and the other one seems to be episodic [INAUDIBLE]. You may or may not--

**KEN CLARY:** Yeah.

**RIEPE:** --maybe you're a clinician at heart.

**KEN CLARY:** I'm not. I can speak to the fact that, you know, the chronic versus the long-term exposure to, to smaller events. This type of event may not lead to-- it may lead to mental illness, in my opinion, over time, if it's not treated. You know, the immediacy of the chronic exposure is the problem, I believe, this bill is attempting to take care of. The immediacy of the needs of someone who is working to put food on the table but can no longer go to work. I think it's a different-- completely different problem when you're talking about the long-term physical effects on that person and their emotional wellness moving forward. I think this bill really is intended to ensure that their immediate needs are taken care of directly after the fact in the workers' compensation that would allow them to, to put food on the table, put a roof over their head as they're trying to deal with everything else that comes along with it.

**RIEPE:** I know in many of our schools after a school shooting, you know, they bring in a litany of counselors in to talk with parents and to talk primarily with the children. And it would seem to me that that's good business as an employer to try to, again, accommodate your staff--

**KEN CLARY:** Yeah.

**RIEPE:** --that you're trying to do-- the place where I'm going with that a little bit, there was an article in the paper just this last week about in Virginia, parents-- Virginia not Nebraska, parents are suing over the teacher shooting there. And my question gets to be is-- and maybe the actuarial scientists can figure it out-- but what are

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the-- how-- it's a little bit more vague than a broken arm where you figure it can heal normally within X weeks.

**KEN CLARY:** Yeah.

**RIEPE:** So this gets a little bit more complicated. I'm not saying it, I'm not saying it can't be figured out by somebody that's smarter than I.

**KEN CLARY:** Sure.

**RIEPE:** I'm just trying to figure out what, what kind of exposure are we agreeing to and, and we need to know a little bit where we're at before we jump is my sort of cautious nature.

**KEN CLARY:** And to that effect, the police departments, the fire departments, we have the ability. We do take care of ourselves, our employees through critical incident stress debriefings and things like that. Ongoing help to those people. However, you know, we're not even legislating that the businesses do that like Sonic. What we're trying to do is get those people the ability to take care of themselves in the immediacy of the, the lowest level functions: housing, food, things like that with workers' compensation, so. Yeah.

**RIEPE:** Does Bellevue police have a program, formal program, like many employers do? I know the hospitals do, or most of them, where an employee can go to and get counseling X number of-- do you have that kind of a PTO, I think we called it or--

**KEN CLARY:** Yeah, we, we actually do through EAP,--

**RIEPE:** Yeah.

**KEN CLARY:** --but we also have a counselor on staff--

**RIEPE:** OK.

**KEN CLARY:** --that we pay and people can anonymously go. There are a number of things we've, we've implemented to guard against the, the chronic exposure as well as those long-term effects that can weigh on people. But again, just trying to look out for the people that the

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Work-- Workers' Compensation Act was intended to take care of in the first place is the first-line worker.

**RIEPE:** OK. You've been very helpful. Thank you very much. Are there any other questions? Seeing none, thank you.

**KEN CLARY:** Thank you.

**RIEPE:** Thank you for being here. More proponents? Have we had addressed the one that we were going to make special accommodations for?

\_\_\_\_\_ : [INAUDIBLE]

**MICAH CHAFFEE:** She said yes.

**RIEPE:** Yes. I guess the answer is yes. Thank you. I want to make sure we get to that. Welcome. If you would state your name and spell it, please, and tell us who you represent.

**MIKE DOWD:** Good afternoon. Mike Dowd, D-o-w-d, M-i-k-e. I'm an attorney. I have the pleasure of representing the AFL-CIO and also Dan Martin back here with the Omaha Police Officers Association. I have a very close and intimate, I guess, experience and relationship with the implementation of the changes in the law that recognize coverage for first responders. The natural extension of this to other employees experiencing a similar traumatic impact is logical. From my experience over the course of the last 33 years doing this, you saw this transformation that existed in terms of mental health. There was such a resistance initially to even recognize the existence of post-traumatic stress disorder. As time has gone on, I think society is recognizing the real impact of this that extends to the shooter themselves and the, the impact upon the victims. When we look at the implementation of the changes in the law, initially, there was such a concern that this would open the floodgates for cases. As you probably understand, that has not been the case. There are still burdens that exist in terms of the establishment of a relationship between the mental health condition and the exposure within one's employment. I think the question that was posed earlier, is this simply a mental illness or is this some form of injury? Just as you would have a low back injury that may be preexisting in nature, most of us have

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degenerative disc disease once we pass the age of 19. The question is, was that particular condition substantially worsened as a result of some event that happened in, in the course of one's employment? You know, that's for the medical experts to go ahead and determine and to share with us. Time goes quickly up here. But the point is that when we look at the application of this particular law to first responders, there has not been an abuse. It has been an absolute necessity. Unfortunately, we see officers that have taken their lives even when exposed to depression and anxiety that have arisen as a result of post-traumatic stress disorder. Help needs to be given to these individuals, whether they are in law enforcement or outside law enforcement exposed to the same trauma. If that is the intent of this bill, it's absolutely necessary. Oh, Senator, the question was, does this particular work comp law currently exist with first responders? The answer is yes, if you meet the criteria. And that is, was there a exposure within one's employment that has led to this post-traumatic stress disorder's existence? If it's an officer that is with the child victims unit and they come to the house and see the dead child and they cannot get that recurrent nightmare out of their brain, those are the type of events that lead to a qualified medical provider to consider their background, whether they had a military background or some of maybe, let's say, that they were exposed to childhood violence or abuse. It is for those experts to go ahead and say, is this some form of ongoing mental illness or was this really a substantial aggravation of something that has created an injury that is now debilitating and requires medical assistance and care? Those safeguards are always there within the, the law. There won't be abuse because there's going to be a judge that's going to decide the application of this. So once again, wonderful bill if it's an expansion, absolutely necessary.

**RIEPE:** Thank you. Just a second, let's see if anybody on the committee-- Senator Hansen, please.

**HANSEN:** Thank you, Chair. So would this-- so you won't expect this to conflict with any existing, like, policy or procedures that you have in place or--

**MIKE DOWD:** No.

**HANSEN:** --that's in statute and now they're the first--

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**MIKE DOWD:** No.

**HANSEN:** --responders? I wouldn't think so, just--

**MIKE DOWD:** Yeah. It, it really is a logical expansion. And I think, again, the resistance was, oh, now we're just-- we're talking about something that can't be seen in an X-ray, and I understand that. But to deny the reality of mental health issues in, in the U.S. with everything we see on a daily basis, we're, we're just fooling ourselves. It has to be addressed and it has to be addressed before that person harms themselves or is in a-- has an inability to go ahead and, and provide for their own care.

**HANSEN:** OK. And maybe one more quick question.

**MIKE DOWD:** Sure.

**HANSEN:** Just like an idea, what, what's the average length or cost of somebody, like, for instance, who's involved in a workers' comp case that this bill would cover? Do you know on average? I know that was, that was variable.

**MIKE DOWD:** That would be difficult for me. We, we had Jill Schroeder, who was here earlier, that keep more of the statistics on that. I can tell you that from a post-traumatic stress disorder standpoint, it's not necessarily a condition that's cured. But what you would see is that the person is taken outside of the triggering scenario that they find themselves in. If it's an officer, they can't be an officer anymore. They're probably going to be doing better in a different occupational base. So how much of that then necessitates in terms of ongoing care is really going to be case dependent based upon that individual.

**HANSEN:** OK. Thank you.

**RIEPE:** I have a question.

**MIKE DOWD:** Yes.

**RIEPE:** Have you ever sought to negotiate this into your healthcare benefits package with your third-party payer as opposed to appealing

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to the workers' comp court? I mean, do they have a mental health benefit within your health plan for the AFL-CIO?

**MIKE DOWD:** Well, I think the-- and actually Dan can probably speak to this if there's a mental health component within our existing agreement. We-- I help with the negotiations in terms of the collective bargaining agreements that exist. You're not going to see a collective bargaining agreement with someone at Sonic. It doesn't exist. So are we going to simply look at the benefit of the, the larger employers of the first responders, or are we really talking about the application of this to the men and women of our society that may not have the benefit of a collective bargaining representative such as the Omaha Police Officers Association.

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

**MIKE DOWD:** Thank you.

**RIEPE:** More proponents, please. Thank you, sir. We've seen you before, I know you know how to do it.

**JUSTIN HUBLY:** I know, I'm like the bad penny that keeps turning up. My name is Justin Hubly, J-u-s-t-i-n H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees/AFSCME Local 61. Our union represents over 8,000 public servants who work for more than 40 different code and noncode agencies in all 93 counties in Nebraska. I'm here to tell you today that everybody deserves to be able to go to work every day and feel safe, full stop. But unfortunately, our public servants sometimes find themselves in situations they didn't ask to be put into. You've heard of some of the more high-profile hostage situations that our members have dealt with such as in Tecumseh in 2015 and 2016. But more recently just this fall two economic assistance workers at the Gering local DHHS Office, which is a former U.S. bank building, were cornered by an angry member of the public. They were shoved into an old bank vault and they were held there until the Scottsbluff County Sheriff responded quickly. And thankfully, the sheriff's deputies were across the street and responded. Luckily, our members haven't needed to miss more work than their sick leave allowed for and their benefits that we've negotiated, including an employee assistance program that offered counseling. But

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had they been in a situation where they weren't able to return to work, they would not have money to put food on their table. And we just don't think that that's appropriate given that they went to work that day to assist the public and ended up in a situation they didn't ask to be put into. I worry every day about our DMV examiners. I worry about our fraud investigators. I worry about our child family service specialists. I worry about some of our Game of Parks officers. They work in dangerous jobs. They show up every day to help the public. And unfortunately, I don't have an answer about workplace violence. I don't have it. All I know is that it continues to happen and I want to make sure our members and members of the public are protected and have recourse in the courts should they suffer a mental illness or injury that-- as a result of that direct workplace action. I thank Senator Blood for bringing this bill.

**RIEPE:** OK. Thank you very much. Are there questions from the committee? I, I have a question that first of all, what about the employees that are not covered by workers' compensation? Is that a whole new--

**JUSTIN HUBLY:** I'm not sure I understand the question.

**RIEPE:** Lots of time some employers who have fewer than 15 employees may not be required to participate in workers' comp.

**JUSTIN HUBLY:** I don't know that I'm the right person because I represent state employees. All of the, the state of Nebraska employs more than 15 people we qualify for all of it.

**RIEPE:** Second question I would have would be is may the employees bring suit against their employer for not providing a safe work environment?

**JUSTIN HUBLY:** There are provisions, even in our contract, where they could, could file a grievance. We, we chose initially not to go through that process. I don't think DHHS was necessarily at fault here. This was a unique situation, but we have done that in the past where the employer has been negligent. For example, in the Box Butte County office building up in Alliance, Nebraska, we had some members who are forced into an office and held by a member of the public. There was no other point of egress in that building and we did file a

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safety grievance and DHHS did, along with Box Butte County, change the configuration of the office so there's an emergency exit so that workers can no longer be cornered by a member of the public in a room.

**RIEPE:** I would think that would be a fire code regulation as well, but [INAUDIBLE].

**JUSTIN HUBLY:** I saw it, too, and I thought the same thing but I'm not a firefighter.

**RIEPE:** Well, neither am I. OK. Are there other questions from the committee? Seeing none, thank you for being here today. More proponents, please.

**DAN MARTIN:** Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Dan Martin, M-a-r-t-i-n, and I'm here representing as the vice president of the Omaha Police Officers Association. And I will keep my testimony very short, as most everybody that's already spoken in front of me has laid out everything that I was prepared to state today. I can speak on my experience as a member of the Omaha Police Department's peer support team. And I'm also trained in critical incident stress debriefings after critical events. Thankfully, the first responders are afforded this benefit of PTSD and, and workmen's comp as a result of that. I can tell you that in my experience as a peer support officer and dealing with officers that do suffer from PTSD and the disastrous effects that it can have on their lives, somebody that's trained in these types of situations and, and respond to calls every single day that it can lead to effects such as reckless, aggressive, and destructive behaviors. And as we've seen in Omaha recently, too, even death and suicide. So this benefit we already receive, but I think as a community and the incidents that everybody up here has discussed, it can benefit society and our community as a whole and should be offered to everyone, which I think is the, the intent of this bill. And I thank Senator Blood for, for bringing this to, to the, to the, to this committee. So I will take any questions. Like I said, I had a speech, but everybody-- I don't want to reiterate what everybody already said.

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

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**DAN MARTIN:** Thank you for your time.

**RIEPE:** --for being here. Again, more proponents. Thank you, sir, if you would be kind enough to state your name and spell it and who you represent.

**BRYCE HIRACHETA:** Bryce Hiracheta, B-r-y-c-e H-i-r-a-c-h-e-t-a. I am Hayley's father. I'm hear-- I was listening to you guys, I'm hearing more and more questions about the longevity of this as living with her and having to deal with the financial burden of all this and seeing how it's changed her. She was 16 years old when this has happened and you want it-- we can't really put a date on how long, you know, she-- it would continue. She was 16 years old and mind is still developing. For the first year, it was-- we went through three, four different counselors for her to actually adapt to a counselor that she was comfortable with, telling her story over and over to different counselors till she finally found one. At one year the anniversary, she ended up having to be committed. There was a \$12,000 bill right there for one night just to go over there to say she didn't want to hurt herself, but she didn't want to be alive. So it's like survivor's guilt. So this is a longevity process. It's not something that's going to be able to be cured with grief counselor showing up for a week at the work site. It's going to have to build her-- they got to build a trust with the counselor, build a relationship. They got to constantly go through different programs on how to teach themselves to be into different environments. Her high school graduation she was scared so bad she was staring everywhere but walking to her seat. She was just watching everything in the crowd. Didn't know what was going to happen, someone was going to shoot. What? Large events terrify her, loud noises. You know, when it first happened, even we were learning, the kids running around the house, stomping on the floor with loud-- the vacuum cleaner scared her, put her in-- underneath blankets hiding because she was terrified. So there's no way to say how long it's going to take to affect these people and how until they could recover. Everyone's going to be different no matter what. Something's going to trigger it, a year later, two years later, we don't know. And to put a time frame on this is, we're going to give you six months to get better, one year to get better. It's going to have to be a longevity thing and it's going to have to be up to the counselor to say you're ready and the patient. And that's all I got.

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Business and Labor Committee February 13, 2023

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**RIEPE:** OK. Thank you very much for being here. Are there committee members? Thank you--

**BRYCE HIRACHETA:** All right.

**RIEPE:** --so much. You can be the good dad of the day, so.

**BRYCE HIRACHETA:** Thank you.

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

**JADEN PERKINS:** Awesome. Just a second while this loads. OK. Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Jaden Perkins, J-a-d-e-n P-e-r-k-i-n-s, and I am the north Omaha community organizer for the Heartland Workers Center. I am here today in support of LB5 because workers shouldn't have to worry about where their next check is coming from when an unexpected traumatic event happens at their place of employment. Workplace violence is more common than many realize. Individuals who experience emotional, physical or sexual assault or any violent action are at an increased risk of developing a wide range of mental health problems, including PTSD, anxiety, depression, and dangerous coping mechanisms. Every year, thousands of American workers report having been victims of workplace violence. Certain industries, including healthcare, service providers, and education are more prone to violence than others. But make no mistake, workplace violence can happen anywhere, and it has a real, lasting impact on the mental health of those that have experienced this type of trauma. And the law must be updated to ensure that workers receive equitably and effective compensation during these difficult times. I urge you all to move this bill from committee and onto General File. Thank you.

**RIEPE:** Thank you. Do you want to hold on just a second, let's see if we have any questions from the committee. Apparently, you did a good job--

**JADEN PERKINS:** Thank you.

**RIEPE:** --so thank you very much, sir. Next proponent. Any more speaking in favor or support of LB5? Any opponents? Thank you, sir, for being here, if you will as you know the rules.

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**DALLAS JONES:** I do. Senator Riepe, members of the Business and Labor Committee, my name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I'm appearing in opposition to LB5 on behalf of Nebraskans for Workers' Compensation Equity and Fairness, APCIA, the Nebraska State Chamber of Commerce, and the National Federation of Independent Businesses [SIC]. LB5 is a good illustration that nothing is ever as simple and straightforward as it seems. Nebraska's workers' compensation law has always had a protection for private employers, as well as public employers, which requires that there is the ability to distinguish between that which is from a mental health standpoint, chronic as opposed to that which is traumatic and related to something that happened at work. And that protection is a physical injury which then precipitates the mental condition. This bill is an unprecedented expansion of private employers I want to focus on in the limited amount of time that I have of workers' compensation liability in Nebraska. Nothing I say here today should be interpreted as minimizing the experiences of those who have encountered the scourge of our common society now of workplace shootings and violence, etcetera. But the first question you have to ask is if you think as a matter of policy, that the right thing to do is to compensate someone who has experienced that. What's the right way to do that? Should that burden lie on the private employer who had absolutely nothing to do with it and would have done everything it could to prevent it if it knew it was coming or should all of us share in that risk? I would submit that it's the latter if you think you need to go there as a matter of public policy. I am a lawyer also. I practice in workers' compensation and let me say just a few comments about the language of the bill that nobody has addressed so far. It is not simple and it is not narrow. It is everything but that. I can assure you that the definition of workplace violence is going to be expanded well beyond what the comments today have been. It does not require that somebody be on premises. It does not require that somebody be a victim. It does not require that the employee even witness it. The language is open to anybody who is off premises, not at work, who heard about it and had a mental reaction to it. Lastly, tell me what similar acts of violence means and I will assure you then whether or not there will be claims that are going to be litigated in our system over and over and over again debating that. The reality is you cannot. I would be happy to take questions.

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**RIEPE:** Are there questions from the committee? Senator Hansen, please.

**HANSEN:** Do you think you can answer, like, one of the questions I had? Would this, would this conflict with any other kind of workers' comp law that you know of right now?

**DALLAS JONES:** I wouldn't say that it conflicts with it, Senator. It adds to it is what it does. There were a number of witnesses who have spoken about firefighters, various first responders, etcetera. There are provisions that the Legislature in recent history has expanded to provide protections to those people, those public employees who did not otherwise have that. Now the protections for the employer on that side for those claims do not exist in this bill, such as for first responders for them to be entitled to the, the benefits under previous provisions, they have to demonstrate that what they experienced is unusual and extraordinary compared to what they normally see in the conditions of their employment. For firefighters, for example, there's a separate exception that was made to the long-standing rule of physical, mental where it's resilience training and they have to have an examination before they then have the resilience training. And then if they have experiences that have caused them to develop some type of mental condition, then they meet that requirement and they're entitled to the benefits. This has none of that.

**HANSEN:** OK, and Senator Riepe-- Chairman Riepe also asked a question about if there already is-- like, is, is there already existing coverage for this under insurance? Like, if I owned a, if I owned a gun store, I might have, you know, more insurance for certain kinds of, you know, a different kind of policy than maybe somebody might have at a fast food restaurant, but do certain, like, workers' comp insurance already cover stuff like this at all or are they moving in that direction?

**DALLAS JONES:** Workers' compensation insurance is going to cover individuals who fall within those exceptions. Actually, those are public employees. It will cover the employees if there is a physical injury. And I acknowledge there is not going to be workers' compensation coverage for the mental injury that was caused by a mental stimulus.

**HANSEN:** OK. All right. Thank you.

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**DALLAS JONES:** There may be health insurance, and I'm not a health insurance expert.

**HANSEN:** Thank you.

**RIEPE:** Senator McKinney, please.

**McKINNEY:** Thank you. And thank you for your testimony. Are you saying that workplace violence cannot-- can only happen on the premises of the headquarters or location of the business?

**DALLAS JONES:** No, I'm not saying that's where it can happen. We all know it can happen anywhere. The way the bill is written, Senator, is the bill is very broad in terms of where the workplace violence occurs, as well as where the employee seeking the benefits is at the time when that workplace violence occurred. And it doesn't require that the employee actually be a witness as some of the testifiers here today were. It doesn't require them to be on the same premises where it occurred. In fact, it is written so broadly that the employee can be aware of after the fact something that happened at work, have a mental reaction to it, and if the requisite medical evidence is there, which, by the way, this bill doesn't require, like all other workers' compensation claims that you normally hear about where there is a doctor who says cause and effect, this allows it to go down to the counselor level. If you injure your back at work, physical therapist cannot provide the requisite testimony, nurse practitioner cannot provide that, it has to be a medical doctor.

**McKINNEY:** So if I'm working for Pepsi and I'm dropping off a load at Target and somebody walks in and starts shooting, would that be fair to file [INAUDIBLE]? If, if it covers mental health, do you think that should be covered? If I'm, if I'm working for Pepsi and I'm going to drop off a load and somebody comes in and shoot up a Target, for example, and I try to file a claim for work-- workmen's comp-- compensation for mental health, would you be against that?

**DALLAS JONES:** As the bill is written, I think the bill covers that--

**McKINNEY:** OK.

**DALLAS JONES:** --because I said, it's very broad. As a matter of policy, and if the question is, do I think that that is a good policy,

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that's going to require a lot more debate than I have time today. And my primary concern, Senator, is what I spend my time on and the other lawyers in the room who oppose me spend their time on is not talking about the narrow class of claims that you mentioned and other have mentioned today. Most of the claims don't come from there, they come from, from the periphery where the debate is what's a similar act of violence and so on. The reality is when good intentions cause bills to be passed into law that allow for substantially greater claims than were intended. That's where there is a problem, from my perspective.

**McKINNEY:** OK. Thank you.

**RIEPE:** I have a question.

**DALLAS JONES:** Yes, Senator.

**RIEPE:** If you have a store owner that happens to have workers' compensation and you have an individual that walks in, shoots up the place, not an employee, obviously, of the store, then the store would be-- would the store be liable for the shooter as well if he gets shot back? [INAUDIBLE]

**DALLAS JONES:** Is the, is the store liable for the shooter who was killed because somebody--

**RIEPE:** Someone in the store might be concealed carry or constitutional carriers we would say.

**DALLAS JONES:** On those facts, I, I, I could tell you that there would be subject to a claim but it wouldn't have anything to do with workers' compensation, it's whether or not there was civil liability for the shooting of the shooter. Would doubt it, but--

**RIEPE:** The thing that I'm-- the needle I'm trying to thread here is between the valid concerns of the employees and those that might be, as you described it, they heard it down the street and maybe in their past somewhere they have something. How do you differentiate from those that were directly traumatized and those who were, if I may, indirectly traumatized?

**DALLAS JONES:** I don't know.

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**RIEPE:** I'm not a physician so I don't know how to-- I'm trying to figure out-- that could include a lot of people that were indirectly traumatized.

**DALLAS JONES:** That-- you're putting your finger on one of my primary points is I don't know. I don't know. I don't know how--

**RIEPE:** But you're a lawyer.

**DALLAS JONES:** --you do that. We have protections in the system that exist. And what I am suggesting to you is that if you want to thread that needle and go that far where you are deciding as a matter of policy this class of employees who are at the wrong place at the wrong time, why do, why do we determine that the employer who is the innocent employer simply trying to do business and hiring people so they have a job, why is it that we would say that employer shall now be responsible as opposed to spreading that burden to society where the risk is endemic?

**RIEPE:** Well done. Does anyone else have any further questions? Seeing none, thank you, Mr. Jones.

**DALLAS JONES:** Thank you.

**RIEPE:** Are there more opponents, if you will? Seeing none, is there anyone that wants to speak in neutral capacity? Yes, we have one at least.

**DAN WURM:** [INAUDIBLE]

**RIEPE:** Welcome, sir, if you would, please state your name, spell it, and then share with us who you represent.

**DAN WURM:** Thank you, Chair Riepe, members of the Business and Labor Committee. My name is Dan Wurm, D-a-n W-u-r-m. I'm an account executive at UNICO Group and a member of the Association for Independent Insurance Agents, commonly known as the Big "I". Our organization represents over 550 independent insurance agencies and over 2,000 employees across the state of Nebraska. We, too, are in opposition of this bill, not because there's a problem that doesn't need to be addressed, I think the problem is evident and obvious that we don't believe that this bill does address that problem. I won't go

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into all the details, but simply stated, we, we also agree that the way the bill is written, the language is very, very broad, opens a floodgate to way more than what the problem is trying to solve. The burden on the employer also, work comp insurance is a little different than most insurances the way the premium-- trying to avoid getting into the weeds here-- but the way the premium is, is calculated is based on prior losses. A loss of this nature would be a significant financial impact on the work comp premiums that an employer would have to pay. And then just one last little fun fact that I got off Google so it's worth what I paid for it. There's currently nine states that have a similar law and I don't know what the language to that, to that, to that law in those states are but there's nine states that have something similar to what's being proposed, there's 13 states that don't even have a law for first responders, and then there's 28 states in the United States that have laws similar to what we currently have for, for work comp for first responders.

**RIEPE:** Are there questions? I would like to clarify. I believe your testimony, instead of being neutral, would have been in opposition. I think--

**DAN WURM:** Oh, oh, I'm sorry.

**RIEPE:** You are in opposition, though. I want to get that straight for the record.

**DAN WURM:** Yes.

**RIEPE:** OK. That's fair. I just wanted-- for the record, we need to get clarification. Are there any other questions of the committee?

**DAN WURM:** Well,--

**RIEPE:** Yes, sir.

**DAN WURM:** --I, I apologize. Given the fact that I do identify the problem and it's a legitimate problem, I guess neutral would be appropriate.

**RIEPE:** OK. Senator McKinney, you seem to have a question.

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**McKINNEY:** Thank you. Kind of curious. We hear a lot of times in committees during testimony, people say the floodgates are going to open on multiple topics. And my question is, how often does workplace violence happen that it, that it's being addressed in this bill? And what facts do you have to back up your, your claim that the floodgates were-- aren't going to open?

**DAN WURM:** Well, the-- it's figurative language.

**McKINNEY:** But it's important because--

**DAN WURM:** You're, you're, you're, you're right that workplace violence is still real rare overall. Even though we hear about it every day, it's not in this city every day, right, so. But the floodgates, I guess a better way would, a better way to put it would be that with the language as broad as it is now, we would see a lot more claims being claimed than possibly for just work-- workplace violence. I mean, I-- we could get in the weeds, but that was kind of my reference. It, it opens--

**McKINNEY:** I think that's, that's important, though, instead of saying the flood-- floodgates are going to get open, say that the language is broad, that it might encompass more things that is not workplace violence. Because when you say floodgates, that means that the "spidey-senses" start going and red--

**DAN WURM:** Yeah.

**McKINNEY:** --flags are raised and--

**DAN WURM:** That's fair.

**McKINNEY:** --a bunch of claims are going to be made and--

**DAN WURM:** That's fair.

**McKINNEY:** --that's probably not the case.

**DAN WURM:** Yeah.

**McKINNEY:** Thank you.

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**RIEPE:** Senator, you OK?

**McKINNEY:** I'm done.

**RIEPE:** Any other questions?

**DAN WURM:** And if I, if I could, you had asked a question about what other insurance--

**RIEPE:** OK.

**DAN WURM:** --might cover, cover a loss like this. Oddly enough, there is a new liability coverage of insurance that's just recent over the last probably five years that's called active assailant coverage. It's a shame, it's awful that we even have to think about this. But there is an active assailant coverage that employers can purchase and it's really broad coverage. It would cover a, a situation, an active shooter where someone had a mental response of some kind to a, to a event like that. It would treat it like a bodily injury claim. It'd be a one-time settlement type of thing, but it would be something that would cover that type of loss.

**RIEPE:** Is that a, is that a separate policy or is it--

**DAN WURM:** It's a stand-alone policy, not unlike maybe cyber coverage where you buy a separate policy for that.

**RIEPE:** OK. Any other questions? Thank you very much for testifying. Are there any that under the term of neutral testifiers, is there anyone else? Seeing none, Senator Blood, you're welcome to close. But as we approach that we have correspondence, we have six proponents, zero opponents, and five-- or zero neutral, so. You're welcome to close.

**BLOOD:** So as many of you know, I don't write my closing. I always listen to what was said before I speak. Sometimes I waive it based on that. Sometimes I choose to talk. Today, I choose to talk. So I want to thank the, the second testifier just now who was in-- speaking neutral, he said, for reinforcing what I said in my introduction that indeed nine states do offer language like this when it comes to workmen's comp so I thank him for that. But I want to talk about the sky-is-falling language. So I got a text message at 6 a.m. from people

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representing the first group saying that they're coming in opposition to this bill. Now I'm going on my seventh year in the Legislature and any of the lobbyists that have ever worked with me know that if they oppose a bill, they need to come and see me and we'll fix the language so we can accommodate them. But that didn't happen. And it doesn't happen because they don't want to give this benefit to employees. They're going to be some of the first people that say there's horrible violence going on but it's not about the guns, it's about the mental health issues. But when it comes to mental health issues, the response is we don't want to do this. So we're going to have to eventually figure out what team we're on because this is a vicious cycle that we can't seem to, to quit. To say that the language is broad, this is where the lawyer speak comes in, and I talk about this on the floor a lot. You can take an incident where one lawyer will, lawyer will say this is very broad and the other lawyer will say this is very narrow. We could take out one word out of the sentence that has to do with terrorism and gun violence and that would be the last word, because apparently it's so confusing to talk about what a similar crime would be. I mean, apparently, if you were to throw a water balloon, that might be considered the same type of violence. Right? That's similar. You know, we talk about how smart people are sometimes, but then when they come and testify and they say things like that, it makes you wonder, are they trying to influence you or are they being legit? What's similar to terrorism? What's similar to gun violence? What's similar to being held a hostage. It's not being hit with a wet chicken. So to say that that language is broad is ridiculous. But here's what I offer and what nobody offered when they came and talked in opposition to this. Let's amend that one word that makes it so broad. Let's change that, because then it'll be very narrow. Acts of terrorism, we know what that is. Gun violence, we know what that is, we're not talking about a water gun, being held hostage. Can you think of anything that can be defined differently than being held hostage? How broad is that? It's ridiculous. We did this for our first responders for a reason. We did this because mental health issues are real. And the reason we use the two terms for mental illness is because, as you heard, one of our first responders say is that when you are affected, it may be long term. And by the way, I again would like to thank our brave testifier from the Sonic massacre, because being in enclosed rooms and not knowing your exits and being around people that you don't know is very troubling when you're dealing with

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PTSD. And they're the reason that I'm here. I prefer legislation that solves problems for real people. To say that it's going to be a big burden on our businesses, Senator McKinney brought it up, where's the data? How much money are they putting aside right now for gun violence? Do we have that data? Do we know what that data is and why the sky is going to fall if, God forbid, we pass this bill? That's their job. And I don't fault the lobbyists who have to come up in a room like this and say, I'm against this bill. I don't fault them because that's their job, but it's also their job to make you scared to pass a bill like this. Don't talk on the floor about needing mental health services if you're not willing to provide those mental health services. They were flipping burgers and serving root beer. They were children. You know, we see these bills right now where they're like, oh, this person's brain isn't developed yet so we can't expose them to certain things, but apparently we can expose them to gun violence and explosives because that's different. Just use common sense. I would like to make this my priority bill. Do I think it'll be an easy bill to get through? No, but I think it is a just bill. I think it is a bill that affects everyday people. And I always like to end with stories, especially when I can come up with one that pertains to my personal life. For a short period of time my husband and I lived in Lincoln, Nebraska. That was when I first started working for the prison system. At that time, he had transferred from Z92 to I believe it's called the Fox here in Lincoln. He helped start that station. It was a classic rock station. There was a domestic violence situation where the wife was leaving the husband and the husband decided to come with multiple weapons to find the wife in the building where my husband was working for the radio station. He and a pregnant woman were held hostage and it ended in gunfire. Now we never really thought to file a claim or anything, but I can tell you that my husband did have nightmares and did have issues with being in an enclosed environment. He'd never admit it, but I saw it. And I can tell you that when that person was incarcerated, he happened to come to my housing unit and the first words out of his mouth were, gosh, I should have killed them all. Because had I done that, nobody would be suing me. We weren't suing him, by the way. But he came from a family of wealth and he got very little time and he could do it standing on his head. But meanwhile, my husband, the very pregnant secretary that was with my husband and others in the building had to live through that. And it may not be a big deal to you, but it was a big deal to some

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those people in that office. And it's easy to say, well, you just need to get over it. Talk to our folks that serve as first responders. Talk to our first who serve in the military. Tell them when they experience PTSD and mental health issues, you guys just need to get over it. It doesn't work that way. Eventually, you have to decide what's most important, and in this case, what's most important are the victims. It's not going to create a big financial burden for the businesses. If you're worried about that, we'll narrow the language more that can be fixed with an amendment. But it's poppycock what was said. There's no facts. There's no data. They have nothing to show you except that the sky is falling. And I'm usually not that assertive when it comes to opposition but today I want to be very clear, this is a very important bill for me. So with that, it sounds like the vast majority of your questions were already answered by experts, but I would be happy to answer any additional questions you may have.

**RIEPE:** Thank you. Are there questions from the committee? Seeing none, thank you again. Thanks for presenting and with that the hearing is closed. Thank you.

**BLOOD:** Thank you.

**RIEPE:** We'll now move on to LB101. Senator Erdman, you're welcome to open.

**ERDMAN:** Thank you, Senator Riepe. Appreciate the opportunity to be here, never been in front of Business and Labor before. My name is Steve Erdman. I represent District 47, which is ten counties in the Panhandle in Nebraska. I need to spell my name, S-t-e-v-e E-r-d-m-a-n. I'm here today to present to you LB101. LB101 is a bill that I've been working on for almost a year to solve a problem and I would hope that today-- earlier today, we had emailed to you each individual committee person, as well as the, the research analyst, an amendment and that amendment was just passed out there. What we've done recently, the commissioner of the insurance came into my office late last week as well as the Department of Labor was gracious enough to send a couple lawyers over to talk to us about what it is we're trying to accomplish. And we concluded from those conversations that what we had drafted was perhaps not a solution to the problem that we're trying to solve. And if, if I could have them pass this document out. So each one of the bills that I introduce, I try to be a, a, a person who

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introduces a bill that's a solution to a problem. And so what I want to share with you is a couple of examples to why we're introducing this bill. And the document we're handing out now came from one of the real estate agents, or excuse me, one of the insurance agents that has an office in Bridgeport, Nebraska, several offices, but we've been working on this idea for several years because of the workmen's comp situation and I'll describe that to you and what he wrote. He has a couple of examples and the first one, he says a local real estate office, it has a workmen's comp-- he has workmen's comp for three employees who are W-2 employees, and it has several 1099 agents that buy and sell on a commission only through the broker. They are not employees. The broker has no control over them. They are self-employed people, no workmen's comp on themselves per our current sales-- our state laws. These 1099 people are getting drug into the real estate brokers workmen's comp and can't do a thing to make it, can't do a thing to make it go away. This real estate company was-- in their audit was fined \$7,000 for not having workmen's comp on those people who were not employees. Now, this example strikes very close to home. And the reason it is, one of those 1099 people is me. And so the real estate company that I work with that sell real estate had to pay an extra \$7,000 for the, for the four or five of us that sell real estate there. We are not employees. And so consequently they had to pay \$7,000 when they had the workmen's comp audit. The second example is a local farmer hires several truck companies and a fencing company, pivot repair people, people to cut his wheat, bale his hay and so on, and they work for many other people besides this, this farmer. And so all these trucking people and the people that repair his fences and do all those things for him are also considered part of his workforce when, in fact, they just-- they are just people that he hires to do certain jobs, haul corn, bale hay or whatever it is he asks them to do. So the state's current laws prohibit-- protect self-employed owners from having to purchase workmen's comp on themselves. And then he asks this-- he says this, how can the insurance company go and drag the same person in another person's audit and the law con-- and then the law contradicts itself. It is happening to most all these audits that are going on currently. And so he asked me to figure out a way to try to solve this issue. So what we have done, if you look at the amendment that I have submitted to you after visiting with the people from the Department of Labor, there is a provision to register as a contractor, a registered contractor. So what we're doing in the

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amendment, it's on the first page on the front, we are including agriculture and real estate independent contractor, which means an individual who performs a service in real estate or agricultural labor and who meets the criteria found in subsection (5) of Section 48-604. And so what we're going to ask the Department of Labor to do is set up a provision for people to register as the, as the independent contractors do now, and then they will be eligible to be exempt from the workmen's comp. So that is our solution to the situation that we find ourselves in. I did not have time to get this done significantly long enough for the, the Department of Labor to work up a fiscal note for this. They'll have to do that later. But this is the issue that we're trying to solve. This is the problem that we have. It's difficult for those local people to hire independents like myself and maybe a one person mom-and-pop operation to fix their pivot or do electrical work for them. And if they know that they're going to be drug into the workmen's comp claim, they're going to hire people who have workmen's comp. And so in my area, a lot of the people work for small businesses, maybe one or two people in the shop, and this is prohibiting them from being hired because they don't have workmen's comp. So we're trying to solve the situation that prevents these people from being fined when they do the audit. And so this is our attempt at making this a provision that will give them an exemption so they won't have to go through those audits and find that they owe a significant amount of penalties. So with that, I will, I will stop with that and see if I can answer any questions. There will be people testifying behind me that understand this issue far better than I do. But what I do understand is it is a significant surprise and a, a drag on them financially to find out that you thought you were OK with workmen's comp and you get a notice you owe, you owe another \$7,000. So if there's any questions, I'll try to answer those.

**RIEPE:** Thank you, Senator, for being here. As Chairman, I would comment as a committee we're disadvantaged by not having the significant amendment or fiscal note prior to this moment. That, that puts us at a situation of maybe not having the questions that we might have off of what the document actually says. And I would also, the second one that I have is I'm trying to figure out why it would be limited simply to agricultural or real estate independent contractors, I'm, I'm sure there are literally hundreds of other businesses that might want to get in on the deal.

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**ERDMAN:** So there, there very well could be, Senator Riepe. We limited it to that to see what the scope of that change would be to see what-- how many people that would bring in. There are currently about 20,000 registered contractors now. And so we thought we would start with a base that wasn't quite all encompassing to see what the, what the broad base would be so that we could understand what the costs were going to be.

**RIEPE:** OK. So it's, in essence, kind of a pilot project?

**ERDMAN:** Perhaps. That's what the one was, and they did this in '19. We passed this bill back in '19 that changed and set up that registry. And so that was the intent is to see what it was and then we'd move on from there.

**RIEPE:** I'm concerned that all of us would have some challenge, if you will, to try to sell to our constituents, fellow taxpayers just the way it's such a narrow agricultural real estate-- independent real estate folks, if you will, that might be advantaged by this. That's just my--

**ERDMAN:** OK.

**RIEPE:** --that's just a statement, I guess. Are there other committee members that have questions, concerns?

**ERDMAN:** I would respond to that, your last statement there.

**RIEPE:** OK.

**ERDMAN:** I would assume that was the same comments that were made in '19 when they just had registered contractors. I would assume they had that same thought that why are you restricting to just registered contractors? So I, I would think that was something that happened before. But it's, it's an opportunity for us to fix the problem. We have-- it's a serious problem for those mom-and-pop operations because they're not being included to do the work because they don't have workmen's comp. Because I tell you one time when you have a \$7,000 fine, you're going to start thinking about who you hire and who you do business with. And that's, that's a difficult thing for us in rural Nebraska.

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**RIEPE:** But those are mom-and-pop operations that are agriculture or independent real estate, end, end of the line, so. OK. Thank you. We appreciate it. You'll be staying around for close?

**ERDMAN:** I will because I'm up right after this one, the second most important bill today.

**RIEPE:** OK. We'd ask any proponents? Are there anyone speaking in favor of LB101? If not and, I guess, AM359, again, any proponents? Seeing none, are there any opponents?

**BRODY OCKANDER:** Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Brody, B-r-o-d-y, Ockander, O-c-k-a-n-d-e-r. I'm a lawyer in Lincoln. I'm here on behalf of Nebraska Association of Trial Attorneys. Unfortunately, I did not also receive the, the substantial amendment, which would be very important. But I'm going to talk about some of the points brought up by Senator Erdman here. The first thing is a little background. Everyone has to have work comp insurance, every employer. It's like car insurance. Every employer that's-- and there's a reason for that because we want to protect injured workers, whether you have one, two, three employees you have to have it. Now there is an exception that we have in Nebraska, and that only exception is babysitters. I, I should say there are two exceptions, babysitters and nannies, but more importantly, farm workers. And that's the, the statute that we're looking at right now. I don't know why we have that exception, I guess, for the mom and pop, the small ag operations, and for that to meet that exception you have to have fewer than ten employee-- nonrelated employees to say we don't have to have workers' comp insurance-- workers' compensation insurance. Now the problem was that I understood was, hey, it's difficult to hire people. These people are getting fined for not having work comp insurance. The solution to that is have work comp insurance. That's the simple solution. It's just like auto insurance. You can't complain about getting a ticket for not having auto insurance when that's the law. And to try and change the law to say we need an exception, for me, I shouldn't have auto insurance, everyone has to cover it because the injured workers, what's even going to be harder to sell to your constituents is going back to the workers that are hurt to say, well, we-- well, you're not covered because we cut out an exemption for people that are contractors or whatever it may be. So the bill, as I read it, there

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are two main, main problems that I have. Number one, the notice to the injured worker. And number two, it only protects from what I saw was the large-scale ag operations. So the first concern, again, is the purpose of that ag exception or, or to meet that ag exception, the farmer, Farmer Brown or whatever, he's going to have to tell his workers, hey, he has to give them written notice in the statute that we do not have workers' compensation insurance coverage. And the quote is: In this employment, you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease, you should plan accordingly. They have to give that written notice to the workers so they can plan accordingly. Well, this exemption doesn't even tell the, the workers that they can be able to plan accordingly so they can, you know, maybe make sure that they have their own insurance coverage if they're hurt, accident insurance coverage or something. Now the second thing is, again, if we look at subsection (4)(c), and again, it may have changed, so maybe this is moot, but it, it basically protects the large-scale operations from contracting out to Farmer Brown's employee. Well, we don't have to pay-- if he gets hurt on the job, this large-scale operation doesn't have to pay. Farmer Brown's stuck with it and he doesn't have work comp insurance, so good luck. So I see my time is out. I'm sorry.

**RIEPE:** Well, maybe you'll get a chance. Are there questions from the committee? Yes, Senator Hunt.

**HUNT:** Thank you, Chairman Riepe. Did you want a couple of minutes to wrap up your thoughts?

**BRODY OCKANDER:** That-- those are basically my thoughts. Thank you. I appreciate it, Senator Hunt.

**HUNT:** Thank you.

**BRODY OCKANDER:** That's fair.

**RIEPE:** OK. Any other questions? Seeing none, thank you very much.

**BRODY OCKANDER:** Thank you.

**RIEPE:** Are there other opponents?

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**NICK GRANDGENETT:** Good afternoon. My name is Nick Grandgenett. It's spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleaseed and we are testifying in opposition to LB101. I also have not seen the amendment. I've only seen the version of the bill that was introduced by Senator Erdman. I just wanted to talk about ambiguity that we noticed in the language of the bill as it was introduced. So primarily, if you look at the ambiguous phrase is an employer who meets the requirements of subdivision (2)(d) which appears on page 3, lines 1 and 5. And it's not clear whether or not this phrase means an agricultural operation employing more than ten unrelated employees for long periods of time or an ag operation that employs less than ten unrelated employees for a short amount of time. But if you look at page 3, line 1, which states that the Workers' Compensation Act, not just the insurance requirements, it does apply to employers who meet the requirements of subdivision (2)(d). So it seems like that ambiguous phrase really means a large agricultural operation employing more than ten people for long periods of time. So the proposed waiver program then would effectively require workers to file lawsuits against their employers if they are injured on the job. So we are really concerned about this because particularly for immigrant communities, it would require them to rely on SSDI, private health insurance policies and things like that. Whereas, workers' compensation for a lot of employees is much more accessible. I'll limit at my comments to that and I'm happy to answer any questions if people have them.

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

**NICK GRANDGENETT:** Thank you.

**RIEPE:** Additional opponents? Welcome back, counselor.

**MIKE DOWD:** Good afternoon. Mike Dowd, M-i-k-e D-o-w-d. Again, appearing on behalf of the AFL-CIO. We, again, have not received the amendment that's been referenced, but I'd like to go ahead and further expand upon at least some of the suggestions as to whether this is a solution or a problem of what's being proposed. We see it as a problem, and that is because if we were to go ahead and strip away these one to nine employees as a way that this bill is written from coverage under workers' compensation, what you have then is an

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employee that has to now apply towards a negligence standard in a civil court setting. And that means that they are now exposed to contributory negligence standards, which means that if I am more than 50 percent responsible for the occurrence of the accident through my neglect, I'm going to not receive any form of coverage. Does this somehow protect the employer? Well, if the employer is exposed to that same application of negligence, they may well in fact have a judgment that far exceeds any available coverage that they would have. So is this really creating a solution or is it creating a problem? I would say that it's creating a problem for the employees because at the time of injury, their immediate needs are not going to be met. The immediate coverage for medical, the immediate coverage for some limited form of compensation to help pay for their, their household expenses will not be there. They have the increased costs of going ahead and obtaining medical testimony to support a claim of negligence within a civil court setting. You would take a report in a work comp case that may cost you \$500 and you just put times ten to get that doctor to come in and testify live at time of trial in a negligence setting. You have an increase in time where that person would have to then expose themselves to a jury verdict. And that means that they would have to go ahead and have the time and expense associated with going through that process much longer than that afforded through the workers' compensation system. We see this as a problem and not a solution. Thank you.

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

**McKINNEY:** Thank you. And thank you. Currently, if somebody is working as a-- like on contracting, a 1099 employee, and they get hurt, how does, how does that work currently?

**MIKE DOWD:** Well, let's assume that that is the issue. The workers' compensation court will look and determine whether or not that person is truly an independent contractor. And that means that they will apply a long-standing body of law that's been determined over years and years and years with a look at the amount of control that the employer has over the employee. It's not simply a piece of paper. Hey, you're an independent contractor, you're not entitled to coverage. The court will look at were you're providing with the tools, were you're providing them with instruction, were you telling them when they could

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appear in the morning, go to lunch, when the work is done in the evening? All of those factors are considered by an independent determining, determining body, that being the judge, to decide whether or not coverage exists. So we have a structure. We have an ability to make these determinations without trying to morph it more.

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

**RIEPE:** Thank you, Senator. Any other questions? Seeing none, thank you very much.

**MIKE DOWD:** Thank you.

**RIEPE:** Next opponent, please.

**BRUCE RIEKER:** Chairman Riepe, members of the committee, my name is Bruce Rieker. It's B-r-u-c-e R-i-e-k-e-r. I'm here on behalf of Nebraska Farm Bureau. And knowing Senator Erdman's frustration with somebody that would testify in neutral, I'm here in opposition probably mostly along the lines of the previous testifier because we believe due to some of the construction, the wording, in a section of this that it creates ambiguity and could, in fact, create strict liability on the part of the employer because-- I'll just jump down to the, the fourth paragraph, second one to the end that I have here, it states: An employer who is exempt from the act under subdivision (4) (b) of this section shall be deemed liable for any, and we emphasize the word any, injury occurring to an employee as a direct result of performing the duties associated with the job. The gentleman preceding me talked thoroughly and, and knowledgeably about potential for opening up the negligence issue either on the part of the employer or the employee. And for that reason, we're opposed to this because it, it creates more exposure or it, it opens the door for more exposure. With that, I'll conclude my testimony.

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

**BRUCE RIEKER:** You're welcome. Thank you.

**RIEPE:** Additional opponents? Are there any others speaking against this legislation? If not, are there any who wish to testify in the neutral capacity?

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**DAN WURM:** Good afternoon, my name is Dan Wurm, D-a-n W-u-r-m, account executive at UNICO Group and member of Association for Independent Insurance Agencies, commonly known as Big "I". Our organization represents over 550 independent insurance agencies and over 2,000 employees across the state of Nebraska here to testify in neutral on this bill. Senator Erdman was gracious enough to talk with us last Friday. And we had, we had the opportunity to actually get down to the root of what he was trying to accomplish in this bill. We don't believe that this bill solves his problem, but we do believe that the problem is legitimate. And I don't think you, you've been-- I don't think the problem has been explained here as well as it might have been. And I'm not sure I can do it, it'll take me a minute to get into the weeds on this, but with work comp insurance, I've said previously it's not like other insurance, it's based on occurrences that actually happened. And at the end of the year, an insurance company can come in and audit your, your books for what were comp exposures. If you've had ten injuries that year, they look at your injuries you've had. They also look at the number of employers you have. If you have hired-- if your, your employees have gone up 50 percent in the year, you're going to pay at the end of the year a surcharge. The word's been used fine earlier. It's not a fine. It's a surcharge. They're not, they're not fining you for doing something wrong. They're just taking premium and charging-- surcharging you for having 100 employees instead of 50 employees, for example. And, and the, the, the real problem here that, that Senator Erdman is trying to address is that when those insurance companies do their audit, they can actually see what receipts you paid for 1099 employees. Work comp courts have traditionally extended work comp benefits to 1099 employees on occasion. And because of that, the insurance companies see those 1099 employees and they take a surcharge. They say, you know, we've had work comp cases where we shouldn't have covered these, but the work comp court says that we have to and because of that we're going to take a premium on 1099 employees on private contractors. All right? That's the problem, the problem is not whether farmers should have work comp insurance or not. I mean, that's, that's a whole nother issue and it's maybe worth debating. But, but Senator, Senator Erdman's issue is trying to alleviate that problem of getting a surcharge at the end of, end of your fiscal year of, of sometimes tens of thousands of dollars. We've had companies grow enormously in a year and they get really penalized,

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penalized in that way for 1099 employees when, when they really shouldn't. So--

**RIEPE:** I'm sorry, we do have a red light so if you can wrap up.

**DAN WURM:** Yeah, sorry. We-- oh, Senator Erdman mentioned in 2019 the state passed LB139, is that right, which addressed contractors and the reason-- you'd, you'd asked the question why just this one group of, of employees? It's because they were really the ones that had it. Contractors-- general contractors would hire sole proprietor subcontractors and those subcontractors in the state of Nebraska, if you're a sole proprietor, you don't have to have work comp insurance on yourself. And so what would happen is these insurance companies would audit at the end of the year, these sole proprietors, and then surcharge the companies for that. And so what we did to alleviate that is through the Department of Labor, the bill says, the Department of Labor has a website, that 1099 employees are required by law now to, to get on that website and to say whether they have insurance or not, knowing that they don't have insurance, knowing that they're forewarned that they don't have work comp, they're responsible for it.

**RIEPE:** OK. I need, I need to really cut you off in fairness to everyone else.

**DAN WURM:** Sure.

**RIEPE:** It seems, though, that it went from, one, the agricultural group on up to the real estate not having some challenge trying [INAUDIBLE].

**DAN WURM:** OK, so--

**RIEPE:** That's a statement-- I'm not really asking for a question [INAUDIBLE].

**DAN WURM:** I have a really quick answer for you.

**RIEPE:** Pardon?

**DAN WURM:** I have a really quick answer for you.

**RIEPE:** OK.

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**DAN WURM:** Agriculture in the bill isn't defined. Agricultural groups that are exempt for ten employees or less, that, that word is not defined. So a real estate company that does pretty much nothing but agriculture can be an agricultural group, so.

**RIEPE:** OK, well, I don't want to-- any other questions from the committee? Seeing none, thank you very much.

**DAN WURM:** Sure.

**RIEPE:** Are there are any others who wish to testify in the neutral capacity? Senator Erdman, you're welcome to close. And as he comes forward, there were-- in correspondence coming in, there were zero proponents, one opponent, and one neutral. Thank you, Senator.

**ERDMAN:** Thank you, Senator Riepe. And I, and I apologize for not having that amendment out sooner. But that issue that was brought up by Mr. Rieker about strict liability, I understand that's why we drew up the amendment as we did. So as I was sitting here thinking if we had no lawyers, would we need any? I don't know why that always comes to mind when we get to talking about these things, but the issue is we need to solve this problem. And so when those who seen this bill that said they had issues with this, they don't come and sit here and say, this is not written correctly, let me help you solve that. They just come in and whine about about being right. And I don't know why that happens like that all the time. They knew this bill was introduced 20, 30 days ago. This is day 27. So it had to be 20 days ago. No one reaches out to me, Farm Bureau or anybody, that say, hey, we've got an issue with this, here may be a solution. We just wait till the day of the hearing, come in and testify against it. So I don't mind people testifying against it, but what's your solution? Well, I don't have one, but I hate the one you have. We got to solve this problem. This is a serious issue. And I thought the last testifier did a fine job of explaining what I didn't explain. You call it what you want. You call it a surcharge. You call what you like to call it. I call it a fine. That company I worked for, they had workmen's comp on those other people that were regular employees. They didn't know that they had to have workmen's comp on the 1099 employees. They didn't know that. So when they came in and did the audit, they said you didn't pay enough premium because you had these other employees. That's the issue. They didn't know that, 7,000 bucks. So we currently have a program where

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registered contractors can go on and register and be exempt. That's exactly the same thing we're doing here with independent contractors. So if they had a problem with all the liability issues that I'm creating and I know they didn't see the amendment, then why didn't they come in and whine about that in '19 when we passed the one on registered contractors? That's all we're doing. We're giving the independent contractor that works for agriculture or any of those other businesses the same opportunity that the registered contractors have. But that's an issue. And I said earlier, and I'll say it again, I apologize I didn't get the amendment to you sooner. I just got it. I got it this morning. And when I got it-- the minute I got it I emailed it to you. And so I'll try to answer any questions. And I don't understand the subject as well as the neutral testifier. He understands it because that's what he does. But I can understand this, when I went in the real estate office and they said we had to pay another \$7,000 for workmen's comp on those of you who work here that aren't employees, I was shocked. So that's the issue we're trying to solve.

**RIEPE:** OK. Thank you very much. Let's see, are there any questions from the committee? Seeing none, thank you, sir.

**ERDMAN:** Thank you.

**RIEPE:** And we'll-- you can just stay in your seat if you would like to because now the hearing is closed on LB101. Thank you all for being here. We're going to move on and open on LB393, which is also Senator Steven Erdman.

**ERDMAN:** Thank you, Senator Riepe. My name is Steve Erdman. I represent District 47, ten counties in the panhandle of Nebraska. My name is spelled S-t-e-v-e E-r-d-m-a-n. I'm here today to present to you LB393, which is a bill that deals with detasseling. And as I said in my last opening, I have tried to introduce bills that are a, a solution to a problem. And so I want to describe to you kind of where we're at and how we got here and why this is important. So this bill deals with detasseling and roguing, and those two processes are described in the bill so here's what I'm trying to do. So working conditions for migrant workers doing detasseling work has become hazardous due to the long working hours in the hot summer sun and a few water or shade breaks. And I see some people in the room that used to do detasseling.

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So on July 11, Cruz Urias-Beltran, 52-year-old migrant worker from San Luis, Arizona, was detasseling in Rivera Ag-- for Rivera Ag Inc. in a field located near Grand Island when he went missing. A search party found him dead lying in the cornfield the next day about 12:30 p.m. They were fined \$11,000 for their misconduct of how they handled their employee. Similar things have happened to other people working in the detasseling industry. And so what I'm trying to accomplish here today is to make sure that we understand that the local people, the local contractors, the local people who work detasseling and roguing get an opportunity to do that. And so the U.S. code says it allows for H-2A workers when there are not sufficient workers who are able, willing, or qualified and who are available at the time and place needed to perform the labor services involved in the petition. So what is happening is the contract-- contractors who hire-- who employ people to do detasseling are telling the government we don't have the employees locally, and so we have to hire these migrant workers to come and do the detasseling. When, in fact, that's not exactly the case. And you'll hear from people that are testifying behind me about exactly how many people are available. So since '19, since '19, the Nebraska detasseling companies that have gone out of business because of the H-2A workers, there are nine of them, nine of them going out of business. And there was plenty of work for those if they hadn't brought the migrant workers in. So in '19, the detasseling companies had 710 local employees. They had 710 local employees on a wait-list while certifications were granted to hire H-2A workers to perform the detasseling work. And these 710 local young people, most of them being, were not able to work because they hired people-- migrant people to do the job. So this was an issue that was brought to the attention of the Governor at that time, Governor Ricketts, and I'll hand out this letter to you. And the most important part of that letter, when you get that, I want to tell you about is, is on the second page. And Governor Ricketts had sent a letter to the federal government asking them to make sure that we hire local people first. And you'll see on the back side of the letter where the Governor had reached out to them and told them, he said on the back side of the second paragraph on the bottom, he said this requirement-- so he's talking about the H-2A workers, this requirement would ensure that hiring the American workers is prioritized to prevent seed companies from manipulating the system by indirectly employing H-2A workers through the utilization of third-party harvest companies when there

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are more than adequate numbers of American workers who are willing to perform the needed service. That is what the Governor wrote to the Department of Labor trying to get them to understand the significance of hiring migrant people when, in fact, the local people are available to do the job. And so as this happens and we begin to lose these young people from having an opportunity to work, we find that they're working these migrant workers long hours, more hours than they should, not giving the breaks they're supposed to have. And consequently, it's not a good situation for those people that work in the field. And you'll notice in the bill it talks about how long they can work and the bill rectifies several problems. First of all, the seed companies would have to report the number of acres they plant to detassel by February 1 of each year to the Nebraska Department of Agriculture and who would post that-- those numbers on the department's website. The H-2A workers would be treated with dignity and respect by limiting the hours of their detasseling work, because currently they work them as long as they want. And it's not, it's not a good situation. H-2A workers would then be subject to the same work hours as local workers, thereby revolve--removing the incentive to hire more migrant workers. LB393 does three things. Here's the three things it does. It clarifies that the stipulations of the bill include detasseling companies which only hire migrant workers. It removes the section, the section that requires detasseling companies to report the number of acres that are available to detassel and that is not needed. And then the limits, it limits the working hours, both migrant and local workers, from 5 a.m., or excuse me, 6 a.m. to 5 p.m. So why the 5 p.m. cut off? It's because many farmers want the workers off their fields by 5 p.m. because they generally apply herbicides or fungicides. Whatever they apply is generally done after 5 p.m. in the evening, and if the workers are still present they can't do that. At 5 p.m. is the hottest part of the day, the workers have been detasseling all day long and worn out by 5 p.m., and so working past 5 p.m. is not good working conditions; 5 p.m. is when detasseling companies will hire local workers to put the teenagers off the fields. The local-- they, they said the seed companies and detasseling companies which hire only migrant workers need to play by the same responsible rules and the detasseling-- that the detasseling companies who hire local workers do. So LB393 would bring Nebraska into a better compliance with the U.S. federal code. It would help prevent future heat strokes and deaths in the field. It would create better working conditions for both migrant and local

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workers, and it would ensure that those detasseling businesses will hire workers and can get their fair share of the workload. So we're having an issue where we're putting those, those companies out of business and young people won't have an opportunity to work in the fields. So that in a nutshell is what we're trying to accomplish with this bill. And I would try to answer any questions. There will be people coming behind me that understand detasseling far better than I, because in my location we don't do detasseling. So I'll, I'll, I'll stop there and answer any questions you may have or try to.

**RIEPE:** Thank you, Senator Erdman. Are there questions? Senator Ibach.

**IBACH:** Thank you, Mr. Chairman. Thank you for bringing this bill. I just, I just as a former detasseler myself, hardest work I probably ever did, but most rewarding, too. Seed corn companies, it's my understanding anyway, that they contract those acres, they aren't really responsible for, for registering those acres or documenting because they contract with the farmer to do that. Does that makes sense?

**ERDMAN:** Well, when they contract with those farmers, they know how many acres they're putting out there. The, the seed companies know how many acres they're going to distribute to the farmers.

**IBACH:** But what is the advantage of having those acres recorded?

**ERDMAN:** So, so we'll know how many acres need to be detasseled because we have no idea how many there is and they're hiring migrant workers to do the job. If we [RECORDER MALFUNCTION] how many of workforce we need to put in place.

**IBACH:** OK, So second question, our local sixth-grade teacher has his own detasseling crew all summer long, takes a little bus every morning at 5:30. My understanding from him is that when the kids go back to school, they start sports activities or they have camps all summer. When they do those activities, he doesn't have enough workforce to get the acres done. So then contracted migrant workers come in and they're more of a-- I use that loosely as a cleanup crew, but they come in after the kids either go back to school or start their fall sports activities. And so wouldn't, wouldn't that be a good use of migrant

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work to be able to use those once the kids start their activities or go back to school?

**ERDMAN:** Senator, that's a great question and I never have been involved in detasseling, but I know there are people coming--

**IBACH:** OK.

**ERDMAN:** --to talk about that. But here, here's my, my thought on that is this: I would, I would assume-- you know better than I if you've done it. I would assume that detasseling probably happens long before school starts. I would assume that it would happen the first part of July. Most of those I would assume that it's earlier-- that early because by us, corn starts tasseling about the mid part of July and I would assume it's faster or sooner than that in the eastern part of the state where the detasseling is, is necessary. But I think those questions will be answered by those following me.

**IBACH:** All right. Thank you.

**ERDMAN:** I would hope. Yeah.

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

**RIEPE:** Senator McKinney.

**McKINNEY:** Thank you and thank you. Am I missing something? Are we having kids that are in the sixth grade working in a field? OK.

**ERDMAN:** No.

**McKINNEY:** I'm just--

**ERDMAN:** I believe--

**IBACH:** I wish.

**ERDMAN:** Senator, Senator McKinney. I think what she said is sixth-grade teacher.

**McKINNEY:** Oh, OK.

**IBACH:** Sixth-grade teacher.

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**McKINNEY:** Teacher? OK.

**IBACH:** Yes.

**ERDMAN:** I think that's what she said. Because I thought when she said that first, I thought, wait a minute, they can't be 16 years old, but you never know.

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

**RIEPE:** One of the questions I was seeking clarification is because quickly reading through the stuff here, I saw-- there's one place it said 6 a.m. to 5 p.m.. Another place, I've seen 6 a.m. to 10 p.m. And I know you said the farmer is the one--

**ERDMAN:** And--

**RIEPE:** --out of the field, but in the amendment, it looks like a child shall-- I'm picking out just in the middle here mainly-- a child shall only be permitted to work after the hours of 10 p.m.

**ERDMAN:** Yeah, there was a-- there's a-- the amendment strikes those if you look on page, page 3 of the amendment, it's now real clear that it strikes wherever, wherever it says. And then the bottom of page-- at the bottom of page 2, it talks about striking eight and putting in five.

**RIEPE:** OK.

**ERDMAN:** And striking ten and putting in five. It was supposed to be 5 p.m., no later than 5:00. It's 6 a.m. to 5 p.m.

**RIEPE:** OK.

**ERDMAN:** If it's not clear on that, I'll try to help you understand--

**RIEPE:** All right. I just-- I haven't had a chance--

**ERDMAN:** It was supposed to be 5:00.

**RIEPE:** --yet really look at it, so. OK, thank you.

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**ERDMAN:** That was my, that was my understanding when I talked to the detasseling people, why 5 p.m. And they said that generally that's when they put the fungicides and those things on the, on the crop and they want the people out of the field by then.

**RIEPE:** OK.

**ERDMAN:** Those of you who live in the east will know more about that than I.

**RIEPE:** OK. Any other questions? Seeing none, thank you very much.

**ERDMAN:** Thank you.

**RIEPE:** You'll stay around for closing?

**ERDMAN:** Yes, sir.

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

**MATT SCHULTE:** Absolutely. Good afternoon, Senators. My name is Matt Schulte, S-c-h-u-l-t-e. I am a Lancaster County Commissioner as well as run a youth organization here in town, but I am not here to testify on behalf of them. I'm here to testify on behalf of the Schulte family. There's four kids in the Schulte family and myself. And in-- to be a Schulte, you must detassel. We require all of our kids to spend one year detasseling. We live right here in Lincoln, but we want them to learn two things. Number one, we want them to learn the value of hard work. And number two, we want them to experience the largest driver of the economy in the state of Nebraska, which is agriculture. For these city slickers, the chance to get out in the field and learn what it's like to work hard is very good and exposes them to the greatest agriculture. As a student in middle-- in junior high at the time-- they didn't call the middle school-- I detasseled three years in a row and have come out a better person for it. I learned these lessons ourself. Our oldest son has learned the value of hard work and he loves it. He is signed up for his fourth year. He will be 16 this summer, could drive himself somewhere else and said he will willingly jump on a yellow bus and drive out into a field. I think that this job is also a unique job that bridges the rural and urban gap, the rural-urban divide that happens in Nebraska by taking people from the

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city and putting them out in the field. This gap-- this job, rather, is being threatened by big ag who is choosing to hire easier-- and I would be glad to address part of your question in a second, Senator, as well-- by taking advantage of migrant workers and usurping local kids, local employees, and with migrant workers. Unfortunately, Senator McKinney, to use your phrase earlier, the floodgates have opened. Twenty-three percent of detasseling companies have shut down in Nebraska because of these acres being assigned to migrant worker groups rather than local detasseling companies. Premier Detasseling, Shamrock Detasseling, Mitch Sanny Detasseling, Jay's Detasseling, Buresh Detasseling have all become casualties of this trend. And this trend is not unique to Nebraska. It is happening throughout the Midwest. As a matter of fact, recent reports say that there are no longer any local detasseling companies that operate in the state of Illinois because of this. Big ag has found a loophole to use guest workers and use them instead of hiring local teens. Local detasseling companies have found that they cannot compete with out-of-state contractor who doesn't have to pay FICA or some of the other taxes related to this. This bill will, I believe, help by providing safer environments for migrant workers, but also encourage the use of local workers. And I would, I would encourage you to support this bill and I would also gladly take any questions.

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

**HANSEN:** Thank you, Chairman. So just to clarify, I think maybe Senator Erdman was discussing this with the letter from previous Governor Ricketts. Is-- are these detasseling companies closing down because of a lack of interest from teenagers?

**MATT SCHULTE:** No. So the way it is-- it works is that larger big ag companies con-- choose who they're going to assign their acres to and they can assign them to a local company or they can assign them to an out-of-state company that brings migrant workers in. And so they're-- as the, the big ag companies are choosing who they're going to assign acres to, they are choosing to assign them to migrant worker companies for a couple of different reasons. One of the reasons is, is that it's cheaper. And the second one is, is they can work their employees longer hours. As it-- as the senator previously indicated, they will work at times till 10 p.m. My son, a 17-year-old, should not be working from 7 a.m. until 10 p.m., 6 a.m. till 10 p.m. So local

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companies have-- care about the local kids and the interest and so therefore will work shorter days, which is a little bit of an issue. I mean, I think you could see how that can be a little bit more inefficient for big companies. And so they choose to, to use migrant workers and assign those acres to bigger migrant companies rather than local companies.

**HANSEN:** OK. So one more question, if I may, Chair-- Chairman.

**RIEPE:** Yes, of course.

**HANSEN:** Do you see any way that our local or state government can maybe cut some red tape or rules and regulations to make it easier for the local detassellers to become more competitive? Not putting more rules and regulations on any, you know, businesses, but a way to cut some red tape to make the local detasseling companies easier to hire.

**MATT SCHULTE:** Address some of those competitive disadvantages, for example, or something like that? I, I don't know, honestly, other than this bill, because I could see how-- so I guess I sense that you're, you're feeling like this is creating red tape and you would rather not create red tape?

**HANSEN:** Well, I was going to see if there is, if, if-- in your opinion and with your experience, you're like, oh, geez, if only we got rid of this one thing, this one law or-- you know, that we have on detasseling, you know, for local detassellers, it might make it easier to hire those, right?

**MATT SCHULTE:** Yeah.

**HANSEN:** So we're going to try to keep state people-- you know, our state dollars here and have our kids invest in hard work. I just don't know if there's anything in your, you know, experience or opinions that, you know, there's some red tape we can try to get rid of that might make it easier for local detasseling companies to flourish.

**MATT SCHULTE:** I'm not afraid-- I'm not aware of anything specific other than what is currently proposed. I will, though, address one thing, which I think will answer a little bit of your question you asked a little bit earlier, Senator, as well is that-- so one of the ways that they're making a case for hiring migrant workers is that

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these migrant worker companies will say, we can't find anybody in Nebraska. And the way they do that is that they take a job and they posted it on the NEworks website and then they say, look, nobody's applying for our detasseling job. For me as a parent, I am not going to go to neworks.com and hope to find a job for my 15-year-old kid, right? The way I would hope to find a job for my 15-year-old kid is going to a local company that has come to my school, made a presentation, developed a relationships with some of the other kids in our school and that's how I will entrust my 14-year-old kid to go out and work in a field for a local company. I won't go to neworks.com and sign up for a job for them. And that's the primary way that migrant companies are making a case for not being able to find local employee, employees is that they're saying no one's applying for the jobs. And the reality is there are-- I mean, I-- of my son's friends, I had-- I know of three of them that were turned down last year by a local company because that local company didn't have enough acres to get out and get kids to the rows and detassel. Not because they weren't needed or wanted, but-- so there are local kids looking for jobs in this area.

**HANSEN:** Thank you.

**RIEPE:** Thank you very much. Are there other, other members that have questions? Seeing none, thank you for sharing your story.

**MATT SCHULTE:** Thank you.

**RIEPE:** Other proponents.

**JOHN HANSEN:** Mr. Chairman, members of the community, good afternoon. For the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. The article that I'm distributing to the committee has a fair amount of pictures and it is 12 pages long. But as I did research on this issue, this was the best backgrounder that I could find that actually describes what is going on and kind of what is the driver behind, I think, Senator Erdman's bill. The headline pretty much says it all, "As teens wait for work, ag firms turn to guest workers to tend to Midwest cornfields." The seed corn companies are the drivers here and I don't think it's the local seed corn company managers. I think this is corporate headquarters. I think promises have been made, gifts are being

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exchanged. I think this is the way they want to go. So I think that they're-- as you look at the letter of the law and the intent of the law, I don't think that they're doing a very good job of following the intent of the law, which is to find out whether or not there are, in fact, enough local workers in order to do these tasks and the critical task of detasseling. And so if you do a poor job of trying to find out whether or not, then you can justify why it is that you would go with an out-of-state provider who brings in migrant workers. So from my perspective, I look at this several-- through several different lenses. One is this is, as we talk about all of the need to develop our workforce, this is workforce development. These folks who are young folks who go out and learn to work, this is a valuable thing to learn. And, you know, I don't care how smart you are. If you don't work, you know, so what? You're not going to go far in life. So this is training young folks on how to do work and it's also an economic development issue. All of these local companies, our teachers, our coaches, our independent businesspeople in the community, they work with their friends and neighbors and folks they know's kids. They take good care of them. And at the end of the day, all of those businesses, all of that money goes through our local economy, as does all the workers' money because they're all local workers and all that money is going to go through the local economy. And so we're trading in a system that has worked really well for our state for a system that has nothing but a problematic track record. And the way that migrant workers get treated comes to my attention. We have members who, who know about these things, who complain about it, who say that they're not being healthy. Five o'clock, if you've ever put in the hours that I put in, if you get up and you're in the field by 6:30 or 7:00 in the morning, you shouldn't be working until 10:00 at night. Your body just simply can't recharge and with that, I'd end my remarks and be glad to answer any questions in the off chance that I was able to do it.

**RIEPE:** Thank you, Mr. Hansen. Senator McKinney.

**McKINNEY:** Thank you. Quick question. I know everyone is-- keep mentioning migrant workers. What percentage of those that are migrant workers stay in a state after the season is up? Do you know?

**JOHN HANSEN:** I have no idea. Most of the stuff that I have seen is that these, these companies are companies who specialize in being able to take migrant workers from site to site to site from state to state

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to state. And so they're, they're bringing them in, they're taking them out and then they, you know, they let them crash wherever they can find a place for them to live. And a lot of those kinds of places aren't really very good from what-- from the research that I've done.

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

**RIEPE:** Are there other questions? Senator Ibach.

**IBACH:** I would just follow up with my question that I gave before in that because high school students go back to school or back to athletic activities earlier in the season, would it not be-- I hate to use the word easier because I don't think it's easier, but is it not easier to just say I will contract with a migrant company because I know they will stay the entire length of the season instead of break it up between two different companies? Would that not be logical? Not that I'm supporting it because I'm not.

**JOHN HANSEN:** Right.

**IBACH:** But to me, logic would play there in that I can hire one company and they will get me through the whole season. If I hire-- because we start later, after Fourth of July, if we hire a high school team, it could be that they can only go for two weeks and then they're, they're back to school in rural areas. I know that some urban kids that, that detassel wouldn't have those issues maybe. But to me, if I'm applying logic, I think it's logical to, to hire one team that can get through the whole season rather than hire a team that can get me through part of the season and be faced with hiring another team.

**JOHN HANSEN:** My, my thought is-- and I always allow for the opportunity that I could be wrong in everything I do. But my thought is that if you, if you look at August 10, which is my Grandpa Carl's birthday, you should have sweetcorn by then. And so you should also have field corn that's already, that's already pollinated. So in order to do the detasseling, my understanding is that it's done in-- mostly in July and it's, it's all over by the-- by the first or second week in August at which point then, you know, folks start having to report back in for fall sports. And so we have been able to do this job successfully for many, many years with local workers. And so if, you know, it's probably-- it's a problem for me when I look at the number

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of independent companies that are going out of business because I don't think that they're just going out of business because we weren't getting the job done. I think they're going out of business because the seed corn companies are taking shortcuts on whether or not they're actually finding out whether or not there's local workers in the first place. And from what I can tell, what, what is driving this is decisions made at corporate headquarters. And I, I admit to having a fair amount of experience-- years of experience in the seed corn business and also the ag chemical business so I come to the motives of some of those companies with a little suspicion.

**IBACH:** I, I will follow up with that because I would be interested also in knowing how involved they are with those decisions. Because in, in my opinion, because seed corn companies contract the seed corn, they really don't have any input in the development of the, of the crop. So I, I will do some homework too because I, I'm interested in knowing that so thank you.

**JOHN HANSEN:** Well, I think the seed corn companies that the-- the farmer does what it is that the seed corn company tells them to do. And they set up the, they set up the protocol, they set up the regime, they set up all of the, the compliance things. And so, you know, the good growers do what they're supposed to do when they're supposed to do it. But I think this is an issue that's driven by seed corn companies, in my understanding.

**IBACH:** All right, thank you. Thank you, Mr. Chairman.

**RIEPE:** Thank you. Thank you, Mr. Hansen. Additional questions? Senator Blood.

**BLOOD:** Thank you, Chair Riepe. How are you today, John?

**JOHN HANSEN:** Oh, I just couldn't be better.

**BLOOD:** All right. Hey, I got a couple questions. So I was actually reading through that article before you gave that to us. So one of the things the article said that there's new advances in herbicides and plant breeding and that means that there's actually less call for people to detassel. How come we're not addressing that? I mean, we haven't heard anybody say that here, detassellers are needed. We're

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saying-- hearing the opposite. Is that not true in the article, that they don't need as many people to detassel because of the way that they're utilizing the breeding within these plants?

**JOHN HANSEN:** Well, however-- and my understanding is-- and now we're getting kind of thin here, but my understanding is that, that however you change the genetics and however you do that, you still have to take ten tassels out of ten corn plants. And so, you know, the, the thought that I-- when I read that was that, well, maybe we're doing a better job of coming up with more uniform emergence or something like that so that when the-- a lot of the, the total amount of work that the detassellers have to do is, is, is related to how good of a job the cutters did going through and taking the tops out. So, you know, the irregulars are the ones-- or the greensnap plants are the ones that are going to cause the most work. So if you have good uniform plants and you're-- got a good uniform cutter and you're, you're taking those out, then most of the detassellers would get-- I would guess, are taking out about one out of ten plants. You're having to do a pull. But if you have greensnap or if you have irregular plants where the cutter is going over the top, then you're going to be doing more, pulling more.

**BLOOD:** OK. And then it's an article that Mr. Albin and another individual whose name I can't remember right now had noted that there had been some deceptive postings in reference to jobs. Do we know if-- and I'm asking you only because you gave us the article. Do we know if Mr. Albin actually followed up on the fraudulent-- on these fraudulent postings, but he just let him be and noted to everybody that they were fraudulent?

**JOHN HANSEN:** You know, I don't, I don't personally know that.

**BLOOD:** OK.

**JOHN HANSEN:** There may be others that, that, that do know that, but I, I do not. Most of the, most of the stuff that I've gotten from my office come from either kids or independent providers. And, and, you know, I think that a lot of the independent providers that are the small business folks are probably rightfully afraid to be here today because of the incredible stranglehold that, that the company has over them. And I, I suspect that-- I was a little more willing to come

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forward today because I suspect that based on the calls I got from my office, that folks thought there was-- that this bill was a positive bill, but they were afraid to show up and testify.

**BLOOD:** Fair enough. And I just want to go on record as saying that I did detassel and I didn't think it was great fun. I would have rather laid irrigation pipes, which is what I usually opted to do instead of detasseling. But I've never been bitten by more mosquitoes in a small window of time than when detasseled.

**JOHN HANSEN:** And I am of an age, Senator, where it was long before we had the kind of herbicides and bean bars and those things. And so we had a lot of soybeans and we, we walked a lot of soybean acres and we only did the worst of the corn draws where we had neighbors who didn't take good care of their weeds.

**RIEPE:** Thank you.

**JOHN HANSEN:** So thank you.

**RIEPE:** Are there any other questions? Seeing none, are there more proponents? If you would state your name, spell it, please, and then continue--

**CATHERINE BABCOCK:** Yes. Good afternoon. My name is Catherine Babcock, C-a-t-h-e-r-i-n-e B-a-b-c-o-c-k. I'm here this afternoon, a personal mission to let you know about our family's experience with detasseling. My son will graduate this spring after having five years of detasseling under his belt. Because of his work in detasseling, he has a large amount of money saved for college, specifically for that purpose. In those five years, he's also been a two-season lacrosse player, robotics team-- competitive robotics team member and he also participates in 4H. He leads workshops, leaderships and goes to church camp and a venture camp with his venture crew troop every summer. All of that is possible because he has been able to spend his summers detasseling. He also does not have to worry about taking time off from his studies in order to do these activities. He can focus on activities during the evenings, studies during the day, does not have to take off time for a part-time job. He doesn't have to choose between having money to go to school or going to school on the government or having to pay for it and borrow his way through it. What

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he does is he chooses to set aside four weeks in the summer. He is being asked to set aside July 10 through August 10 for detasseling. In our experience in our five years of detasseling, that timeframe has only been larger one time. It went a little bit later. It started later, went a little bit later, He is a fall sports player, as is my younger son. There was one time where it conflicted with sports. His coach was more than happy to have him detassel because the coaches know these kids come and they are already in shape because they have been walking miles and miles in the fields and they understand that these kids are learning the value of hard work and they're happy to have them do that. My younger son is hoping to also pay for his college through his years of detasseling. He has two years under his belt and hoping to have more. I think it's only fair that we do whatever we can to assure that the job of detasseling stays with the families here in Nebraska. I know there are, there are kids in this room this afternoon who are happy to have that job and proud to be able to say that they are detassellers. Thank you.

**RIEPE:** Thank you. Are there questions? Senator Blood.

**BLOOD:** Thank you, Senator Riepe. Can you tell me real quickly what the hourly wage is right now for detassellers.

**CATHERINE BABCOCK:** It would depend. You start, I believe-- and I haven't seen the numbers for this year-- at \$9 an hour. Every, every year of experience you have with the company, I believe is 50 cents more. They also earn bonuses for perfect attendance, which most of the kids strive to do. They will pick up extra hours on days that their bus is not scheduled because they enjoy it and they enjoy making the money. Not-- maybe not enjoy the work, but they do enjoy the camaraderie of being with their friends, being on the busses and working hard together. They understand the value of that.

**BLOOD:** And how many hours a week would you say they are working at \$9 an hour?

**CATHERINE BABCOCK:** I am-- I would have to add it up. They're usually-- I know they go out on an average of five days a week, not always in a row. And they are out and I believe they get-- start paid when they get in the fields about 7:00 and they're usually home by 1:00 or 2:00 in the afternoon.

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**BLOOD:** Thank you.

**RIEPE:** Senator Ibach.

**IBACH:** Thank you, Mr. Chairman. Thank you for telling the perfect scenario of a detasseling job. Do you feel like there's any threat of any migrant working crews coming in to take over or have the acres that your son's boss has right now?

**CATHERINE BABCOCK:** I'm not familiar with how everyone works. I'm not-- I don't own the companies. I do know that there are companies who live-- who are close to us-- we do not live in Lincoln-- who have gone out of business. And so we've had to travel a little bit more to catch a bus to be able to have them go out into the fields.

**IBACH:** How many-- one more question?

**RIEPE:** Oh, yes, of course.

**IBACH:** How many students are on this detasseling crew that your son is on?

**CATHERINE BABCOCK:** That I don't know. A bus, I would guess, is about 30 kids.

**IBACH:** OK.

**CATHERINE BABCOCK:** That's just my guess.

**IBACH:** Very good. Keep up the good work, Mom.

**CATHERINE BABCOCK:** Thank you.

**RIEPE:** Thank you. Are there other questions from the committee? Seeing none, thank you for being here. Thank you for sharing your story. More opponents-- or proponents, I'm sorry.

**BILL SLOUP:** Thank you, Senators, for your service. I, I kind of see both sides of the company--

**RIEPE:** Would you begin--

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**BILL SLOUP:** Yeah, I'd-- sorry-- start by saying I'm Bill Sloup, B-i-l-l S-l-o-u-p. I would like to come forward seeing both sides, the corn company side and the contractor side. And I wanted to make myself available because this will be my 45th year of being a contractor. So I could answer a lot of questions about detasseling. We've hired, in those 45 years, hundreds of thousands of kids. And so if you have any questions about how it's changed and-- because it has changed, I'd be available for that. My connection to you as legislators is a retired teacher. I taught Senator Conrad and Senator Hughes. So by my count, that's about 5 percent of the legislators.

**RIEPE:** OK. Thank you very much. Let me see if we have any questions.

**BILL SLOUP:** I would make a couple of statements if I could.

**RIEPE:** Oh, OK.

**BILL SLOUP:** The-- it's changed. You had some good points, Senator. The technology, when I started in 1978, a young person had to go out and pull every single tassel, 100 percent, incredibly laborious. Over the years now, there's some cutting machines and they pull it and so that you're not pulling every single one and the strain isn't nearly as intense. And the other big change in the last 10 or 15 years, this technology has created sterile seed corn. So you do need to understand that where we used to detassel every acre that-- when you asked for how many acres we're planting, we used the detassel every single acre. We probably don't do less than 50 percent now. It doesn't need detassel. So there is less need for workers. I mean, I'm a contractor and I do want to be neutral. I have never detasseled an acre of land that a seed corn company hasn't contracted to me. So I see their side too. Having said that, I also am very interested in giving these kids work. We primarily know who is here. We've hired from Seward County, York County, Lancaster County. We get teachers. And everybody's mentioned the kids today, but we've been able to give hundreds of teachers summer income and help support their family. And the way our model works is it's the greatest thing. We get paid, experienced professionals dealing with kids who are free in the summer, who know the kids. They sign the kids up and so it's been a wonderful model for our company.

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**RIEPE:** OK. Let's see, I ask if there are any committee members that have questions? Sister--

**IBACH:** Sister Ibach.

**RIEPE:** Used to working with the Catholic nuns, but Senator Ibach.

**IBACH:** You can call me Mother Teresa. Thank you, Mr. Chairman. So tell us about your relationship, then, with the seed corn company as far as contracting the work. Do they have any impact or influence on how you hire the detasseling crews?

**BILL SLOUP:** Clearly, we do because they let us know how much they need us for. And in my situation-- and I've said this all these years, there's a balancing act. If we have not enough kids to do the acres they'd like us to do, the seed corn companies are going to be angry at us because we didn't get it covered. If we hire too many kids and there's not enough acres, our workers aren't going to be happy because they're not going to have made enough money. So in all the years I've been involved, we're trying to hit that balance. Now I'm for this bill. I came up here as a proponent because as the humanitarian effort, I don't like to see these migrants out there, those-- that kind of ours. And they do compete with us. Selfishly, I can say that. And I think just from that standpoint, this is a good bill. But I also understand, in answer to your question, I respect the seed corn companies. I have never detasseled one acre that they haven't contracted to me. So without them, we wouldn't have had a business.

**RIEPE:** OK.

**BILL SLOUP:** In answer to your question earlier, Senator, one of the contractors is here today, can go longer and that's, that's an important factor. Our company doesn't because they hire mainly homeschool kids and we, kind of about the 5th of August, have to start shutting down because our kids go back to school. So there are different contractors. And I just want to give the clearest picture today if I can.

**IBACH:** Thank you. Appreciate that very much.

**RIEPE:** Thank you. Are there-- Senator McKinney.

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**McKINNEY:** Thank you. Quick question: how often does the Department of Labor come out to make sure that the kids are being treated properly?

**BILL SLOUP:** Well, not very, not very, but again, supporting the corn companies, they've been great over all these years of helping us with safety training and giving us materials for that. And I've always said the number-one thing, I would never take the crew out if I couldn't get good leaders. If I can't get the right teachers that are experienced in working with kids, that care about the kids-- I've seen contractors who are no longer in business because they didn't have good leadership. And the most safest thing we can do is have good leaders leading these kids. That's the number-one safety issue. And I think that-- I, I'll be honest, I think the contractors that are left have done the best job over the years.

**McKINNEY:** Because that's my concern the more I hear testimony and think about this bill is making sure that our teens and our, and our youth are not being exploited and are being put in the best of situations.

**BILL SLOUP:** The best of the best contractors are still doing it because it's like any other business.

**McKINNEY:** I know, but you just said the Department of Labor rarely comes out to check.

**BILL SLOUP:** Well, I don't-- that's not, I don't think, because they're not checking on this. I think the seed corn companies have systems in place. You know, they, they don't want to see anybody--

**McKINNEY:** No, no, I understand that they're trying-- hopefully, they're working to make sure that nothing occurs. It just raises--

**BILL SLOUP:** Our seed--

**McKINNEY:** --a little red flag.

**BILL SLOUP:** --corn companies check in and the seed corn companies have safety officials that are checking all the time.

**McKINNEY:** OK.

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**BILL SLOUP:** So there's a lot of--

**McKINNEY:** Do they report out any-- like, any incident reports or anything?

**BILL SLOUP:** Yes. Yeah, we have audits a lot.

**McKINNEY:** Where can we find that?

**BILL SLOUP:** I would think the seed corn companies would be able to provide that. That's a good question.

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

**BILL SLOUP:** But, my main concern, I wouldn't have done it all these years if we couldn't keep these kids safe.

**McKINNEY:** All right, thanks.

**RIEPE:** Thank you, Senator. Are there other questions from the committee? Hearing none, thank you very much for being here. Next opponent-- or proponent, I'm sorry. I'm trying to get ahead.

**ALEX ROUSSEAU:** Chairperson Riepe--

**RIEPE:** Yes, sir. No, go ahead, please.

**ALEX ROUSSEAU:** OK, yeah. Thank you for the opportunity. My name is Alex Rousseau. It's A-l-e-x R-o-u-s-s-e-a-u and I am here as a proponent of LB393 and I'd be representing myself. I have detasseled for the last 15 years, started as a teenager and I have not stopped since. If you ask anyone, they'll tell you, what is my favorite time of the year? They will say it is July because of the detasseling. Every job I've ever had, I have straight up said and requested a month unpaid off in the summer during July for the detasseling season. I have been really grateful that I've always been given that opportunity because I believe in detasseling. I love detasseling. I have seen the way it has transformed my life through paying for my first car, my second car after the first one broke down, paying for college, helping with college expenses, paying for a motorcycle, paying for an engagement ring, putting a down payment on a house and now paying for my-- both my children's birth expenses because that's not cheap. So I

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have seen over and over and over-- the reason I come back is not just for the money. I come back because I see young people being developed in a really inspiring, beautiful way, seeing 13, 14, 15-year-olds who don't normally get an opportunity to do a really hard thing to carry the weight of, like, our, our food industry-- part of-- like, there's corn in everything. Cornmeal is in everything. So to get the opportunity for them to carry that weight is, is really incredible. And they step up every time. Every teenager I've ever worked with, hundreds of hundreds and hundreds of teenagers, they always step up to do the job. So I believe in detasseling and I also, through all my experiences, have seen the way that, as has been said before and as the Nebraska Public Media article that you were given earlier talks about, is the way that seed corn companies have begun to favor migrant crews over local crews. And from my experience, the reason for that is due largely to the way that they can be exploited. This-- the deceptive sort of hiring practices of the job description. I've read that job description on NEworks' website. It does not describe detasseling. It's describing something much harder, much more difficult. To the Senator's question earlier, the piece about can we-- oh, yeah, like, you know, teenagers have to go back to school. In my experience, every season that has ever gone longer, the season was not closed up by migrant crews. They left. Last, last summer being an example that they left and our, our crew, our workers continued in their-- stayed and finished off the season, closed out the season. So I have a lot of other examples as well if you are interested about why-- ways that this is-- I've seen these crews exploited, but truly for me, this is a humanitarian justice issue where people are being brought over and not being cared for. They're being exploited by the large companies to in an attempt to take advantage of them for their own personal gain and people are being--

**RIEPE:** OK.

**ALEX ROUSSEAU:** --damaged because of that.

**RIEPE:** Thank you. Senator Halloran.

**HALLORAN:** Thank you, Chairman Riepe. I have never, ever met a more positive detasseler in my life. Just amazing. So, Alex, let me-- I'm going to ask you a rhetorical question. It's kind of a loaded question.

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**ALEX ROUSSEAU:** Yeah.

**HALLORAN:** Just for the record, I want your perspective on it. I, I understand the answer to it, but why would anyone want to quit at 5:00 in the afternoon when everybody knows in Nebraska, it gets cooler? It goes, like, from 101 to 100 at 5:00.

**ALEX ROUSSEAU:** Yeah, I think-- I forget-- my testimony earlier sort of addressed some of those pieces about being able to accurately sort of clarify when people are going to be on and off the field, for example, because of crop dusting and especially with pesticide applications that happen in the field, usually that happens later in the day. And so when we have those days that are later, we're usually in communication. Like, there's, like, all these different phone calls happening between, you know, the seed company, us, the farmer, the grower, you know, all these individuals trying to figure out who-- you know, when are we going to be off the field; when are we not. Having a clear cutoff actually, (1) makes that an easier clean break-off, (2) the truth of what's happening-- I mean, this goes back to the justice issue from my perspective, is that these people are being brought over unnecessarily because there are people doing the job. We turn away people every year and-- our company, we turn them away every year that we would love to hire if we had the acres because the acres don't exist. But it's a-- so these migrants are being brought here unnecessarily and then be worked all day long. And that has been spoken about in testimonies and again, I won't repeat that testimony, but they are worked all day long. And so trying to create some sort of boundaries around safety, this bill, I think, does a really good job. You know, maybe it's not the best job, but it is a good job. It's a step in the right direction of creating more safety for workers who are being taken or being exploited. And they're just showing up to work and work hard. And they do work hard, but to Senator Erdman's point earlier, he brought up the name Cruz-- Cruz Urias-Beltran earlier. That, that was a man who died and nobody knows Cruz Beltran's name.

**RIEPE:** OK.

**ALEX ROUSSEAU:** And so-- yeah.

**RIEPE:** Thank you. Senator Halloran.

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**HALLORAN:** I was going to ask you one more question, but since I'm Chairman of the Ag Committee, I wouldn't want people to misunderstand that I don't know the answer to this. I was going to ask for the sake of anyone here that didn't know, what is a tassel?

**ALEX ROUSSEAU:** A tassel-- yeah, on the top of the corn plant, there is a pollen piece that sort of begins to fan out and it spreads the pollen of the plant and what we remove-- that's what we remove. And so some of Senator Blood's question earlier about, about, you know, some of this technology, this new technology, is that decreasing detasseling jobs, there are-- there is technology of sort of being able to-- this company that is developing it, it's is really cool-- that won't require the need detassellers someday. But that-- from my perspective, you know, so we have to go around and we have to pop off this thing. Well, these technologies they're producing are making it so that the whole plant is resistant to Roundup pesticide except the tassel. The tassel dies itself, falls off. When that day comes, if that works, detasseling will go away. And it would be heartbreaking for me and my two children that I want to someday detassel with. But until then, I think this bill does a good job of protecting the workers who still have to go and we still have to go in and do it by hand right now. And so it's--

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

**HUNT:** Thank you. I just want to let you know that I hope I find something someday that brings me as much joy as detasseling brings you.

**ALEX ROUSSEAU:** Yeah.

**HUNT:** Thank you.

**ALEX ROUSSEAU:** Yeah, it's awesome. I love it.

**RIEPE:** OK. Any other questions or comments from the committee? Thank you very much. Thank you for being here.

**ALEX ROUSSEAU:** Thank you.

**RIEPE:** More opponent-- or proponents?

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**JILL GREFF:** Good afternoon. My name is Jill Greff, J-i-l-l G-r-e-f-f. I am a fourth-generation farm girl. I was educated at UNL and El Instituto Tecnológico y de Estudios Superiores de Monterrey, Mexico, in northern Mexico, through an exchange program that I participated while I was at UNL. I hold two BAs in Spanish and Latin American studies with a minor in Latino history, and my master's degree is in Mexican literature. So on a variety of fronts, I have a lot of interest in this bill because I am passionate about watching out for my community and my neighbors, both here and in Mexico. And in 2015, I started taking groups of Nebraskans to Reynosa, Mexico, to work with the marginalized at a school for the deaf on the border between the U.S. and Mexico. Recently, as many of you have seen the article published by Nebraska Public Media, which highlights the tactics of large seed corn companies and their quest to take away Nebraskans' jobs and replace them with vulnerable farm workers. Many of them are also teenagers. These are people who in many respects cannot or won't defend themselves because of language barriers, fear of retaliation and desperation to provide for their families. These people are being brought by third-party entities through a federal program called the H-2A program. And according to the Economic Policy Institute's chart outlining the top ten U.S. employment law violations by farm labor contractors, one of them, T. Bell Detasseling, LLC, which has contracts in Nebraska, had 1,413 violations. This is a problem and that's why I'm here defending this bill today. It's an issue of justice. This high number of violations earn this particular contractor third on a ranking of this very notorious list. Another H-2A contractor in Nebraska that works with the seed corn companies, Gulf Citrus Harvesting and Handling Inc. [SIC] was being sued in 2020 for alleged violations in the Kearney area in 2017. And on top of this, I looked at the H-2A paperwork that has to be reported by these third-party companies who are contracting with the seed corn companies.

**RIEPE:** We have hit our red light--

**JILL GREFF:** OK.

**RIEPE:** --so if you can kind of conclude?

**JILL GREFF:** I'm happy to answer any more questions. I have plenty of information--

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

**JILL GREFF:** --and lots of experience.

**RIEPE:** Members from the committee that have questions? Seeing none, thank you very much for being here. Again, proponents, please. How many more are testifying as proponents do we have? Was that a two over there? If you'd be kind of enough to state your name and spell it, please?

**KATE STRATMAN:** Yes. Hi.

**RIEPE:** And thanks for turning off the phone. Not yours, the other one.

**KATE STRATMAN:** Oh. My name is Kate Stratman, K-a-t-e S-t-r-a-t-m-a-n. I'm a freshman at UNL and I want to testify today as a proponent for LB393. Before I turned 13, I would hear stories from teenagers older than me about how they had so much fun while they were detasseling. However, I knew that with my allergies, I wouldn't be able to participate in it. Even more disappointing was the fact that my younger brother got to go out and ride the bus, hang out with his friends, detassel. And so I come to a surprise-- it might surprise you to hear that I actually did work for a detasseling company for two years. This is possible because besides the teams just going out and pulling tassels off of plants, there's also a ton of work that has to be done to get ready for the season and that work creates more jobs for locals. There are social media accounts to be managed, applications to be sorted through, phones to be answered, posters to be designed and made and delivered to schools and paperwork. So much paperwork: I-9s, W-4s, all the parental permission forms. There are orientation meetings in the spring that have to be set up and organized and then right before the season, they have to stop the busses full of gear, wash out the giant ten-gallon igloo jugs. During the season, there are thousands of hours to log, payroll to run, checks to mail and emails to respond to. And after the season, so much mud to clean out of the busses and get them ready to be returned. It's really eye opening to get a glimpse of what has to go on behind the scenes and the number of employees that it takes to get the job of detasseling done. What was also eye opening was to read the recent article, Teens Wait for Work, and to read the sad story of the 2017 H-2A crew that had a worker experience an asthma attack and not

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receive any medical care. For my generation, social justice is a very important issue. I'm asking that the committee would vote for LB393, which will help protect these vulnerable migrant workers, as well as require transparency from the big seed corn companies.

**RIEPE:** OK. Thank you. You did a nice job.

**KATE STRATMAN:** Yeah, thank you for your time.

**RIEPE:** Do we have questions from the committee? Apparently not, thank you very much for being here.

**KATE STRATMAN:** Thank you.

**RIEPE:** More proponents, please. Are there any more speaking in favor of LB393? Are there anyone speaking in opposition? If you would, sir, state your name and then spell it, who you represent and off you go.

**SCOTT NELSON:** Good afternoon, Senator Riepe and members of the Business and Labor Committee. My name is Scott Nelson, S-c-o-t-t N-e-l-s-o-n. I'm a farmer at Axtell and I'm here today on behalf of Nebraska Farm Bureau to testify in opposition of LB393. We thank Senator Erdman for bringing the bill forward, as a goal to prioritize local crews for detasseling is an issue worth tackling. Local detasseling crews employ teenagers and give a positive experience in agriculture, but LB393 comes with too many red flags and unintended consequences so we must oppose the bill. As a farmer, about one-third of my acres are used to produce seed corn and I can attest that there's a small window for getting corn detasseled. That window may be even fewer days-- or maybe a few days or even hours. Placing limitation on the morning and evening hours available to detassel would constrict the valuable time available to get the job accomplished. A lot can go wrong in farming, cannot be planned for and adding limits to our crews complicates things for producers. With the current workforce issues in our state facing the industry, this bill would only add to the logjam. With the passage of LB393, it's conceivable Nebraska would face-- would force seed corn companies to reduce their total acres of production in Nebraska or move them elsewhere. This would be a negative impact on our economy. I wanted to address, as a grower, some of the questions that you've all brought up that are very good questions. You know, they don't really know

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exactly-- we have our acres. We know which fields they're going to put into production right now. We've signed contracts. We don't know what the varieties are. I don't know that they do. And then when we plant, we plant in May generally, hopefully done in May and at their request. And then, you know, you detassel in July, just like Alex said. And there are technologies. It's called RHS, Roundup hybridization system. In the last year, two out of our five fields employed that so no detassellers ever have to enter that field because they spray Roundup on it. And just like Alex said, the tassel is, is eradicated essentially. And then on the three fields that didn't have that, there's a significant number of sterile acres. And the way that works, they mix it at the end when they harvest it. A sterile plant can be fertilized then next year by a fertile plant. And really you only need about 10 percent fertile in a bag of seed corn for that to pollinate all of the sterile-- they have a sterile tassel. The plant itself isn't sterile. So the male part of that plant produces seed corn either way. And all of these things have been in an effort to lessen the need to detassel. And that's not-- I don't-- I think the kids and everyone that we've ever seen in our farms done a-- great people, as far as we can see, and I do-- not here to speak on that necessarily, but I think that a lot of the-- I think that this makes things harder and I don't think that we need to make things. Make things easier, like Senator Hansen mentioned, make it easier for kids to detassel.

**RIEPE:** Let's see if-- thank you for being here. Let's see if the committee has any questions. Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony. I have a couple questions. What's the average amount of hours that teens work during the summ-- during the day?

**SCOTT NELSON:** Well, I'm, I'm a grower so they come to our fields and they're-- you know, the powers that be tell me when they're going to be there. But they-- essentially probably they're about as early as the sun's up. So they probably stage at their community and get on the bus at whatever point they need to be there, around 6:00, you know, when it starts to get light in July, so that they can get as much accomplished before it gets too hot as possible. And I think the goal-- migrants have only been on our farm that I've noticed, you know, for the past four or five years, give or take. And normally the goal is to have the work done by middle of the afternoon. You know,

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you put in your full kind of an eight-hour work day, but then you're ready to go for the heat of the day.

**McKINNEY:** OK. And how many incidents-- I can't think of the words. How many negative incidents involving teens happen per year?

**SCOTT NELSON:** Well, from what I've seen, like a lot of the proponents for this were saying, I mean, the camaraderie built-- I mean, there might be negative things that happen, but they're probably learning experiences. I don't think there's anything negative that happens that-- very often that would be a detriment to health. I mean, I think that it's all a good working experience, like being on any sort of a team.

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

**RIEPE:** Any other questions? Seeing none, thank you.

**\*LACY NADEAU:** Rouging is a much more physical task and much harder on the body than detasseling. Both jobs are not easy and it's hard to imagine that they are still reserved for children.

**RIEPE:** Others testifying in opposition. Opponents? Seeing none, are there anyone-- is there anyone here to testify in the neutral position? Looks like we have one. Well, Katie, you've been here before. You can state your name, please, and--

**KATIE THURBER:** Yes. Good afternoon. My name is Katie Thurber, K-a-t-i-e T-h-u-r-b-e-r, general counsel for the Nebraska Department of Labor, and I'm here testifying on behalf of the department in neutral capacity. We were going to stay away from this bill, but after listening to some of the questions, I wanted to address how the process works from the department's perspective. So we have the foreign labor certification program that is a federal program that we administer on behalf of the U.S. Department of Labor. It is them who sets the rules for H-2A workers. With that, one of the requirements is to solicit applications for jobs and that determines whether or not there's eligibility for bringing in H-2A workers in the state. One of the things that I believe you have, now Senator, former Governor Ricketts' letter. He tried to address that issue is it's not the seed company that's doing that bidding and seeing if there are local

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detassellers that can fill the work. It is the out-of-state company that does that solicitation through our NEworks system. And one of the previous testifiers commented, nobody knows those businesses. It comes up as random ABC company, and so they go through their local detassellers. Then what's happening is the local detassellers may or may not get the work from the seed company. And the seed company can use the contractors who can show that they did not have sufficient workers in the state to fill the need and then we approve the H-2A application based off of that. To Senator Blood's question on the article about the job postings, yes, we have been working very diligently on going through those. What's happening is you can use foreign certified workers for several jobs. So you can come in and detassel corn and then you can move on and do fruit in Florida or what-- they go all over the country. And so what we're trying to do is make sure that when they're posting for that work in Nebraska, it is limited to just detasseling and it is clear that detasseling is what is being done. And with that, I'd answer any questions you may have.

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

**BLOOD:** Thank you, Chair Riepe. So how are you doing that? That's what I'm interested in.

**KATIE THURBER:** Yeah, so before the job is actually posted on our system, you have to start with an application that goes through U.S. Department of Labor, but then is channeled through to us. And we review that application, make sure it meets the requirements. And then it specifically provides the language of what you're posting and advertising for and if we don't agree with that, we'll kick it back. They get a chance to amend. If they don't amend properly, then we can deny it. I believe the article cited we had denied four. That's that process. Doesn't mean everyone passed that initial, but it means then they went back and worked with us.

**BLOOD:** Thank you.

**KATIE THURBER:** You're welcome.

**RIEPE:** Senator McKinney.

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**McKINNEY:** Thank you. It was commented earlier that the Department of Labor rarely goes out to monitor the teams working in the fields. I was just wondering, why is that?

**KATIE THURBER:** We don't really have the statutory authority for the investigations of the fields for that. That falls under our farm labor contractors. I don't know how we ended up with two FLC programs, but we have farm labor and foreign labor. And so under the Farm Labor Contractor Act, you do have to let us know that you're doing farm labor work in the state, but you don't tell us where that's occurring. And so we don't know where or when it's happening, which makes it really hard to show up at the right spot.

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

**KATIE THURBER:** Yes.

**RIEPE:** Thank you, Senator. Any other questions? Hearing none, thank you very much.

**KATIE THURBER:** Thank you.

**RIEPE:** Are there any other neutral testifiers? Hearing none, we would invite Senator Erdman to close and while he's coming up here, I will share with you that we had 73 proponents who responded, two that opposed and zero that responded by mail or by email to the neutral capacity.

**ERDMAN:** Thank you, Senator Riepe. I know it's been a long time. I didn't anticipate it to go that long, but I appreciate each one that's come to testify. I listened closely to Mr. Nelson's comments about this being restrictive. I was may-- didn't figure out what he meant. Maybe he can share that with me. But I think one of the significant things, you heard about the inconsistencies, charges that were filed against some of these third-party people. That's the issue we're trying to solve. And the other issue we're trying to solve is to make sure these young people have an opportunity to work. And as Senator Hunt said, I've never seen anybody enthusiastic about a job like that guy was. I appreciated that. But there is a camaraderie of working together and completing a task and I appreciate doing that, but this is important. This is an important bill and I believe that this bill

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deserves your consideration. I would ask you to advance it out to the floor.

**RIEPE:** OK. Are there questions of Senator Erdman? OK. For the record, I need to report that the ADA, the American Disabilities Act, testimony for LB393.

**ERDMAN:** That was a significant number of letters of support.

**RIEPE:** OK. Very good.

**ERDMAN:** And I was surprised. Thank you.

**RIEPE:** Thank you for being here. With that, we conclude the testimony on LB330-- LB393. Thank you and we're moving forward. We'll see how it's-- moving forward to LB327. Thank you for being here. We'll see if we need-- does anyone-- do we need? Well, let's do LB327 and then we'll take a break here for about ten minutes. OK. Welcome, appreciate you being here.

**RAYBOULD:** Good afternoon, everyone. My name is Jane Raybould, J-a-n-e R-a-y-b-o-u-l-d, and I am a senator for Legislative District 28 and I'm here to testify on behalf of LB327. As you are all aware, in November of last year, Nebraskans approved Initiative 433, which will take the minimum wage in our state from \$9 per hour to \$15 per hour by 2026 and increase the minimum wage by the Midwest CPI every year after that. I've introduced LB327 not to undermine these efforts, but to provide certainty to businesses across the state who are required to comply with this mandate. This bill would cap that CPI increase at 1.5 percent. I would suggest to this committee that voters were not aware of the implications of this increase on local employers. I think there are several things this Legislature can do to strike a balance between the increase approved in November and not forcing our small- and medium-sized businesses to shutter or sell out. We all agree that the voters spoke very loudly and clearly in support of a minimum wage increase, but they certainly did not support seeing their local daycare center closed or their dog groomer facility closed. They did not want to put these businesses out of businesses. The beauty of the government systems in the United States is that they were thoughtfully designed with checks and balances in mind. In every other state and at the federal level, there are two houses of government, a bicameral

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system, to ensure individuals and interests are thoughtfully and wholly represented in Nebraska. The people are the second house. It is the role of the Legislature to balance the will of the second house, just like the House and Senate balance each other. It is our job, after ballot initiatives prevail, to do our best to minimize the truly unintended but clearly harmful impacts. Concerns about mandates like this do not mean businesses don't want everyone, their employees and others to be successful. Most employers who are hiring at or just above the minimum wage are in industries that operate on razor-thin profit margins. Increasing their costs forces these businesses to raise prices, reduce job and training opportunities, decrease benefits or cut some of the services that they provide. Nineteen states currently tie their minimum wage to some form of the CPI. Of those 19, Minnesota and California cap the increase, but I think that might be changing. Due to record inflation last year, many states with wages tied to CPI increases had larger than expected increases to their minimum wage rates. For example, Maine went from \$12.15 to \$12.75 per hour, which is a 300 percent larger increase than the previous year. And Ohio went from \$8.80 to \$9.30, a 400 percent larger increase than last year. Why 1.5 percent, as presented in this bill? Because Nebraska is an outlier in the Midwest and in three years, we'll have one of the highest minimum wages in the country as compared to our surrounding states. If this CPI increase is allowed to take effect and inflation in August of 2026 is as high as it was last year, in January 2027, the minimum wage would go up to \$16.20. And what we're seeing, if that happens, is a very vicious cycle of inflation. Businesses will most certainly pass this wage increase on to the cost of goods and the cost of services. So can you imagine-- as, as a business owner myself, we are projecting a certain threshold of-- that we can sustain and maintain before we have to absolutely increase prices. But I can't think of other facilities that are small businesses-- and the majority of the businesses in our state of Nebraska are small businesses-- how they can sustain an increase like this without having to pass that on to the people who buy their goods or need their services. So I talked about a daycare center facility. We already know that we need more daycare facilities. We want to deliver affordable, reliable, accessible childcare. But they are one of the very places that must pass all these increase on to the parents that are already concerned about the cost of daycare for their family. So this is a real concern that this will increase the cost of daycare facilities for those who

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need it the most. And that sort of goes against one of the three tenants that we know that we need to focus on in our state of Nebraska: workforce shortage, affordable housing and providing affordable and accessible daycare facilities. And I don't think you have to be an economist to recognize that businesses cannot afford these increases. Moreover, they cannot hire, increase benefits or plan for the future if they do not know what the next wage increase might be. And you know, what we're seeing is many of these opportunities for employment are entry-level employ-- employment. And we've heard already for those companies that offer a \$15 wage, I know firsthand as a business owner, we've had some of our entry-level people go right over and jump ship and go work for Target. But what they find is that they're getting a decrease in the number of wages at that \$15, \$15 an hour wage. So their hours have been reduced to maybe 12 hours and they can't make ends meet on that. They don't qualify for benefits either. So for that reason, we find a number of those type of associates come back to working for our company. And I think that's another important thing to consider. It's not only the wages but the benefits. You know, you want to make sure that you have paid time off, you have access to healthcare, health insurance benefits that are also affordable for yourself and your family members. So for these and other reasons, that's why I've introduced LB327 and would like the committee to consider moving this bill forward to the full floor for debate. I think it is that impactful to our small businesses in our state and I ask for your consideration and I certainly would be happy to answer any questions.

**RIEPE:** Thank you very much for your presentation. Are there questions from the committee? Senator Hunt.

**RAYBOULD:** Yes.

**HUNT:** Thank you. Thank you, Chairman Riepe. Thank you, Senator Raybould. Because this bill amends a part of statute that was passed by initiative and it needs a supermajority to advance in the Legislature, is this something you're thinking about prioritizing?

**RAYBOULD:** I think, you know, I want to work with the committee on what they think is in the best interest of, of Nebraskans. And, you know, I want to work with you all first before I make it a priority bill. But I know that in many-- with many of the other initiatives that have

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been passed, it's up to the Legislature to craft and fine tune the practicality of that piece of legislation, just like we've done for gambling, just like we have done for Medicaid expansion. And I can honestly say that I do not believe the voters understood what a CPI increase is and what the impact could be on the small businesses that they depend on. So I think, you know, in fairness, I would say maybe one out of five individuals possibly knew with the consumer price index would mean. You know, they don't know that it, it covers-- you know, of course it covers food, it covers clothing, the, the cost of where you live, your healthcare expenses. You know, it's a whole combination of those things that clearly, we have seen are very-- that are also impacted by inflation. So if these cost increase for the cost of services, you're going to have to pass some of that impact on to those who purchase your goods or your services. There's no way businesses can fully sustain this impact of a wage increase like this. And when you look at the other states that surround us, you know, North Dakota, they're projected to go up to \$10.80 and now we're at \$10.50. But Iowa is still at \$7.25. We know that Missouri has bumped up to their last threshold, which is at \$12. So we're going to be significantly higher than all those other states. And the one thing that we have to remember, that 1.5 percent is really tied to the cost of living. You know, we're very fortunate to have a state where our cost of living is considerably lower than some of our surrounding states, but we're going to have a wage that is going to be considerably higher than the surrounding states.

**HUNT:** One difference I would point out between this ballot initiative and some others that you mentioned, like gambling or voter ID or Medicaid expansion, is that in those initiatives, the language of the initiative said something like to be prescribed by the Legislature or-- you know, it basically kicked it to the Legislature to make the, the regulations and rules around that. With the minimum wage increase, that was not the case. And, you know, I think that every wage increase that we've had in Nebraska for the last 20-plus years, the opposition to that initiative made it very clear, spent millions and millions of dollars to make it very clear how this could affect small businesses. So I don't think so little of the voters that they couldn't understand what the language of the initiative meant, but, you know, I look forward to working with you and seeing what we can do with this bill.

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**RAYBOULD:** Well, I do appreciate that and I'm, I'm grateful for that consideration. You know, when we did the first minimum wage increase bill in 2014, I supported that because it had very prescribed increases for businesses. They were reliable. They were predictable. Businesses could plan. And I can tell you, everywhere I have lived, businesses want to know what the taxes are going to be, how much it's going to cost so that they can plan, they can forecast. So they need to know where they need to be with other things. So in the first minimum wage increase, it was very prescribed and then it had a stop-- stopping point which triggered this next minimum wage increase. But what is not a prescribed and predictable element is in the year starting January 1, 2027, where you have the increase that is tied to the CPI increase. And so if we're faced with something that was similar to what we're seeing in the inflationary increases from this past year in 2022, it could be up to 6.5 percent. And the language that I had changed it to slightly gives businesses that reliably, that predictability of-- it says, "lesser of one and one-half percent, rounded to the nearest cent,." But then it says, or "the increase in the cost of living, which shall be measured by the percentage increase." So it gives that or the lesser of, which would mean it would be defaulting to that 1.5 percent, which is predictable. So in the way it's written-- and, and I agree with you, Senator, that I think that part of our, our job as Legislature is to make it clearer and fairer and more discernible for the businesses that it's going to impact, but also for the Nebraskans that are going to face that probably unforeseen consequences. And I do have to disagree with you. I do not feel that the voters understood what a CPI increase and how impactful that will be going forward on an annual basis, that would be compounded on an annual basis. So it will be dramatically impactful to these small businesses. And the unintended consequences are you will get less hours. And I know you-- they've heard you say that before, but that is true. We saw it-- we have seen it play out time and time again to larger supermarkets. Other retailers have done the exact same thing. If they raise it up to the \$15, you're going to get fewer hours. If, if-- and what we're seeing also right now is with the workforce shortage, we're seeing it more dramatically play out. People are more engaged in getting self-checkouts. Why? Because they don't have the reliable labor and the other unintended consequence is you'll have an increase in unemployment because there are businesses that cannot afford to pay that. We're having people that are entry-level

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positions and they don't have the experience needed to be able to, to jump in at that higher wage without the additional training needed to be fully, I guess, to maximize their potential and to be as efficient for that business as they need to be for that wage.

**HUNT:** So I wasn't going to bring this up, but it's clear from your responses to my questions that this is personal for you as a business owner.

**RAYBOULD:** You know, I can, I can tell you that I have worked in a number of businesses throughout my entire life. But most importantly, I care about all the businesses in Nebraska. Yes, I can only tell you exactly what I've seen and heard in the 20 years I've been back in Nebraska working in the grocery industry. But I hear it from other grocers. So I, I know how we can forecast for this and predict it, but I've also heard from other fellow grocers. Small-- might have one or two facilities and the impact for them for this year is it will cost them \$60,000, which means, you know, that's probably their entire profit for the year. So what are they going to be forced to do? I care deeply about my fellow grocers. Please don't get me wrong. I absolutely care for them, but I also care for the other retailers, the smaller retailers, independent retailers. I'm a business owner, businesswoman, so I bring my business brain with me wherever I go no matter what I'm representing in any committee that I go to. And I know for a fact that if it's not reliable and predictable, it will have consequences and it'll get us in that vicious inflationary cycle that there are consequences for doing that. I have a background in economics and so I, I feel that I bring some-- something more than just my business background. I bring my educational background as well and understand some of these impacts that it will have on all businesses.

**HUNT:** OK. Thank you.

**RIEPE:** Thank you. Good questions. Senator Hansen.

**HANSEN:** Thank you. Do you know what the average, over the last 10 or 20 years, the CPI has gone up, the Midwest CPI--

**RAYBOULD:** I can't--

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**HANSEN:** --off the top of your head?

**RAYBOULD:** --say with certainty because I haven't looked at the past few years. I've just looked at the more recent past so I can make comparisons on the impact to this piece of legislation. But I think it has fluctuated. As the price of fuel and gas goes up, so does the CPI in relationship to any inflationary times. So you can assume that when there's inflation, the CPI is going to be higher. All cost and goods and services, your prescription drugs, health care, everything goes up. So it would be naturally higher in inflationary times, your CPI.

**HANSEN:** I figured, yeah, because sometimes it could be a 3 percent sometimes it can be 1.5 percent on average, sometimes it can be negative, I think, right so--

**RAYBOULD:** Yes. It depends.

**HANSEN:** --I didn't know for sure--

**RAYBOULD:** And I can say--

**HANSEN:** --comparatively speaking, like, where you-- like, 1.5 percent as, you know, compared to the average. Is it-- is that about average so that is not too much of a change or is-- we just-- does that make sense?

**RAYBOULD:** I would say you're right in what you're saying, that it depends on the average. More recently, it has been a more moderate, moderate at, you know, 1.7, 2 percent, 3 percent, but that's not certainly in the more recent past.

**HANSEN:** OK. Just curious. Thank you.

**RAYBOULD:** Yeah.

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

**McKINNEY:** Thank you and thank you, Senator Raybould. Considering this just passed in November and the voters voted overwhelmingly to support, you know, the increase in the minimum wage attached to the CPI, do you think it may be-- and I understand your concerns, but

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considering it just passed, is it too soon even just even bring something like this?

**RAYBOULD:** No, I do not think it's too soon. I know that in our businesses, we did some forecasting because we have grocery stores in three states. And so naturally, we compare them to Iowa and Missouri. But you have to keep in mind that we're just talking about the minimum wage. But it's not just the minimum wage, it's the pay scale. That person who might be just a little bit above minimum wage, it could be-- you know, I'll just try to give an example. It could be the deli manager. But if that person with minimum wage gets the increase, it's the pay scale above that person and the pay scale above that person so it has a multiplier effect. It's not just the minimum wage because you're going to have to make adjustments all up and down the pay scale to make sure that people are compensated fairly. And that's part of the multiplier effect that, that I don't think that was taken into full consideration.

**McKINNEY:** But--

**RAYBOULD:** Most businesses understand that if I'm going to give you a raise and you're, you're making minimum wage, as you were in Nebraska, say, \$9, then there would have to be another increase. And then the person that you report to maybe, they're going to have to be given a bump up. So it has a multiplier effect on how much it's going to cost the business.

**McKINNEY:** And I understand that, but for years and decades, the workers weren't taken into consideration as far as getting a adequate wages-- getting adequate wages because up until this passed and recently the other one, there wasn't a strong push to pay workers what they deserve. Because if, if we would have adjusted our minimum wage a long time ago, even back to the '80s, honestly speaking, the minimum wage would be over \$20, but it's not. And, and I understand that you're saying we need to take into account the multiplier effect. But I think also employers need to take into account that for years and years and years, workers weren't paid adequately and were being paid struggle wages and working countless hours and being underpaid and unappreciated.

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**RAYBOULD:** Well, with all due respect, Senator, I think it's not only wages that you have to take into consideration. It's the benefits that you receive and the total compensation package that you receive that is really vitally important. And I know that-- and I can just only speak from my experience. You know, we have carry-outs and grocery clerks that, that bring in the carts after all the customers have, have used it. So the skill set required to do a task like that is not significant, so-- and so what is the adequate compensation for that? I can't argue with you--

**McKINNEY:** But--

**RAYBOULD:** --that \$15 is certainly--

**McKINNEY:** But those--

**RAYBOULD:** --not a livable wage and I think--

**McKINNEY:** But those people pushing carts and doing those type of things during the pandemic-- you say that job, that skill isn't significant. But during the height of the pandemic, those jobs and those skills were considered essential and vital for our society to even function and get back on track. So I do think whatever amount of skill it takes, I think it is significant because without those people, who knows where we would be as a society.

**RAYBOULD:** Well, Senator McKinney, I agree with you 100 percent on that. I couldn't have been prouder to be in an industry where our workforce was considered essential workers. And what we did, unlike some other organizations, we gave benefits every single month to all our workforce, all up and down the task and the pay scale, because we wanted them to know that we valued everything that they were doing and the work that allowed them and us to continue to feed Nebraska families. So-- and when I say it's not just the wages, it's how you're compensated. It's your healthcare, your dental care, your short-term disability, your long-term disability. And you know, that makes a company a respected corporate citizen when they consider and acknowledge. I say it every time we have orientation for a new workforce and I say it's a cliché, but the only reason why our company has been in business for as long is because of the amazing people that work for our company. And we feel like we do everything that we can to

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compensate them fairly and generously for the essential work that they do for the people in Nebraska, particularly during the pandemic.

**McKINNEY:** And I think that's admirable that your company is attempting to take care of your workers, especially with the benefits. But we have a lot of employers that haven't paid individuals what they deserve. And those individuals are being forced to even-- not, not forced, but they're not even taking pay increases because they'll lose the benefits from, you know, childcare, food stamps and those type of things. And our employers aren't providing those type of benefits to individuals like your company might be and that's another piece to think about as well.

**RAYBOULD:** Well, thank you. I, I do appreciate that.

**McKINNEY:** Thank you.

**RAYBOULD:** But I, I do know there are some other smaller retailers out there that really can't offer their employees health insurance. There are some smaller retailers out there that can't give them any more hours because they can't make their-- the ends meet for their business to stay in business.

**McKINNEY:** Thank you.

**RIEPE:** Senator, I have a question. In our last big hearing that we held, our all-day one, Senator Briese had a proposal that was somewhat similar, but I think maybe he had a \$10.50 minimum. Have you had an opportunity, your-- maybe your staff to talk with Briese's staff to see if there's-- what the commonality is and if there's an opportunity to join up in terms of what the bill might look like?

**RAYBOULD:** Certainly, I have talked to Senator Briese about trying to make sure that the youth and training wage for those individual-- or those young people that might be living independent, an emancipated young adult, so that we can carve out to make sure that they, that they don't have to qualify for the lower wage for youth and training for the age of 14 to 17. So we are-- you know, we've been in discussions and certainly, I would love to continue to work with Senator Briese on this and, and certainly work with you because I do

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think there is value in getting both of these pieces passed out, passed through and onto General File.

**RIEPE:** OK. OK. I have-- are there other questions? Senator Hunt.

**HUNT:** Thank you. What kind of benefits package do you offer an entry-level employee at B&R?

**RAYBOULD:** OK. So depending upon the tasks that they're assigned and where they're at at the pay scale, if they have any experience for each category of thing, we have a category of work force task. There's a pay scale and it depends on if you have worked in a grocery store before, you can be hired at a different wage. So when you start, you get short-term disability, which is-- I think everybody knows what short-term disability is. And then if you want long-term disability, it's a small deduction. You qualify for dental insurance and eye insurance that is taken out of your paycheck. It's a small deduction for that. And then, of course, health insurance. We offer a plan that has a higher deductible rate of, of \$5,000, but I think it's, it's only \$50 or maybe \$100 for that entire month for that type of healthcare coverage. We used to be an employee-owned employee-- an ESOP. And we-- and you immediately can-- well, you don't immediately qualify for 401k benefits, but after you've worked a certain period of time, you would start to qualify for a 401k contribution that we match. And then also if you're a student, we give tuition reimbursement. So if, if you go to Southeast Community College or UNL or Wesleyan or Doane or any one of those, we give tuition reimbursements. But you have to work-- and I don't-- I'm not an H.R. person. I deal with construction and investments. But if you work a certain, certain number of hours, you qualify for the tuition reimbursement, so.

**HUNT:** That's great. Thank you.

**RAYBOULD:** You're welcome.

**RIEPE:** Thank you. That's probably it.

**RAYBOULD:** OK.

**RIEPE:** I'll inform you it's probably one of the longest introductions, but, but beneficial.

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**RAYBOULD:** Well--

**RIEPE:** I've heard-- but it was, it was positive.

**RAYBOULD:** And thank you.

**RIEPE:** It was a lot of information.

**RAYBOULD:** Thank you. I, I feel it's important that you hear from businesses on how impactful it is and I feel like I fit that bill.

**RIEPE:** OK. We-- will yes--

**HUNT:** No question.

**RIEPE:** We would now go to the proponents. If you'd be kind enough, sir, to state your name and spell it and then--

**BRENT LINDNER:** Yes.

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

**BRENT LINDNER:** Good afternoon. My name is Brent Lindner, B-r-e-n-t L-i-n-d-n-e-r. I represent the Ohana Hospitality Group, a small group of restaurants and cantinas in central Nebraska, and I'm also a proud member of the Nebraska Hospitality Association, of which I'll not be speaking on their behalf. But some of the mantra, I'm sure you will understand. Just in respect to the food and beverage industry, which I've been involved in for 37 years in Southern California in Laguna Beach/Newport Beach area, Sydney, New South Wales, Australia, and then for the last 29 years in-- on the island in Grand Island in central Nebraska. I'm sure you all know some local restaurateurs. You probably have a favorite watering hole or a dining establishment that you would go after a long session like this. I know I would, so. And I would ask that we look at this bill to, to pass because we need some sort of functionality in future forecasting. And I know we can't forecast the future because right now-- and I know you know as well as I do, the food and beverage industry has been assaulted on all sides and we're not through this yet. The COVID part was easy. Now we have rampant food inflation, labor shortages, supply chain issues, without boring you with those details. I am concerned as a service industry and I know there's-- is a time when you want-- I want speed, I want to get

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my sandwich and my soda and head out there. But I know after something like this, like I stated, listening to 40, 50, 100 people, I would like to retreat to a place where I'm taken care of. They know who I am. They know my drink of choice, my food, and I'm taken care of. You know, there's a time when speed is of the essence, but at the end of the day, we would like to relax a little bit, contemplate our, our daily situations and go from there. And I've always been about the service.

**RIEPE:** OK.

**BRENT LINDNER:** Excuse me, sorry.

**RIEPE:** Should we shift over and ask if people have questions? Are you comfortable with that?

**BRENT LINDNER:** Yeah, I am. I just. I believe the service industry and I, I believe in it deeply--

**RIEPE:** OK.

**BRENT LINDNER:** --so.

**RIEPE:** If you-- well, let's see if someone has some questions.

**BRENT LINDNER:** Yes, if I can answer any questions.

**RIEPE:** And if you're comfortable, you can respond to them.

**BRENT LINDNER:** OK, all right. Thank you.

**RIEPE:** Seeing none, thank you.

**BRENT LINDNER:** OK. Well, thank you for your time.

**RIEPE:** Thank you for being here from the island.

**BRENT LINDNER:** Godspeed.

**RIEPE:** Are there more proponents, please?

**RONI BRANTING:** Hello.

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**RIEPE:** Hello.

**RONI BRANTING:** I'm Roni Branting, R-o-n-i B-r-a-n-t-i-n-g. Thank you, Senator Riepe and members of the Business and Labor Committee. And this is a long day, I'm sure, for you. My husband and I own and operate Economy Hometown Market in Stromsburg, Nebraska. And I am here testifying in support of Senator, Senator Raybould's LB327, which I believe is an important step in providing businesses like mine some stability in light of Nebraska's minimum wage increase. In her opening statement, Senator Raybould discussed the specifics of LB327. In the interest of time, I am happy to reiterate these details if you have questions, but I would like to tell the committee my story. So my husband and I, we currently have 19 employees in addition to ourselves. Nine of these are high school students and are entry-level employees. The minimum-wage increase for these employees based on the total number of hours that they worked in 2022, which would be just my high school kids, would cost-- will cost us approximately \$9,500 in additional wages in 2023, with the same increase occurring 2024, 2025, 2026 until the minimum wage will increase annually based on the consumer price index for the Midwest region. We have always told our new high school employees that we are training them for their next job. If they can handle the duties expected of them at the store, it will increase their chances of being successful at their next place of employment. Arriving to work on time, managing their time well, problem solving and learning to work with other employees to accomplish tasks are just some of the soft skills they acquire while working at our store. These are skills employers are looking for and we feel we are giving them a head start on their future employment as they work at our store during their high school years. Adjusting the minimum wage every year according to the CPI with no regard for our ability to pay will make it harder for us to hire young people. We strive to serve our small community of 1,170 people-- and then Stromsburg is actually 15 miles north of York-- by keeping this store open and viable. But we are very concerned that no one will be able to afford to purchase the business when we are ready to retire. The grocery industry is competitive and we operate on slim margins. Our hope is that someone will want to move to Stromsburg and own and operate the store, but servicing debt could be much more difficult without having some certainty regarding the minimum wage. We support LB327 because although it does not eliminate the automatic increase,

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it will at least give us the ability to plan. Nebraska is a wonderful place to live and raise a family and there are great small towns just like ours all across the state. The local grocery store is a vital business in a small town. Please help all of us continue to serve our rural communities by supporting LB327 and I thank you for your time and I would be happy to answer any questions.

**RIEPE:** Thank you. Well done. Are there questions from committee members?

**RONI BRANTING:** Any questions?

**RIEPE:** Seeing none, I have a couple here. One of them is what would be the upward wage pressure? I think this was talked about. If you have-- \$9,000 was your cost for those nine, is that correct?

**RONI BRANTING:** That's correct and that's based--

**RIEPE:** So if you could go up to--

**RONI BRANTING:** --on hours. That's not include-- you know, Senator Raybould commented, you know, there's the tier.

**RIEPE:** Happens in every business.

**RONI BRANTING:** Most-- excuse-- yes, exactly. And we do have the other employees and even-- we have four other part time and then six other full time and they have been there for a while. And, you know, we're happy to pay them. That, that's not the issue here. But the starting wage, the minimum wage for an entry-level employee-- and they're all-- someone who comes in who's not a high school student has experience. I'm not going to start them at minimum wage.

**RIEPE:** I assume in this upward push, you're not going to give your husband a salary increase.

**RONI BRANTING:** That is correct.

**RIEPE:** Yeah, that's what I figured. The other question that I have is last year, in the year 2022, how many students resigned out of dissatisfaction?

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**RONI BRANTING:** None.

**RIEPE:** OK. So they, they embraced the opportunity--

**RONI BRANTING:** I actually have--

**RIEPE:** --regardless of what the money was.

**RONI BRANTING:** I have five or six applications in my file that-- kids who want to work, but I work with-- about eight to ten at a time is about all I can manage, so.

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

**RONI BRANTING:** Thank you for your time.

**RIEPE:** Thank you. Thanks for venturing and coming in and spending the day with us.

**RONI BRANTING:** Yes.

**RIEPE:** OK, do we have other proponents?

**TOM TEMME:** Good afternoon.

**RIEPE:** Thank you, sir. If you would be kind enough to give us your name, spell it, and--

**TOM TEMME:** Sure.

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

**TOM TEMME:** My name is Tom Temme. It's T-o-m T-e-m-m-e. Thank you, Senator Riepe and the members of the Business and Labor Committee. My name is Tom Temme. I own Shell Creek Market in Newman Grove, Nebraska. I'm here to testify in support of LB327 minimum wage increase. My community has a population of 721 people. We are 40 minutes from Norfolk, we're 40 minutes from Columbus and we're a little more than an hour from Grand Island. I am, however, surrounded by Dollar Generals in Battle Creek, Albion, Neligh, Stanton, Madison and Humphrey and I know they have plans to continue building. I'm telling you this because although I believe I have a better business model, better products and better care about my community, I have to compete

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with large corporations who can comply with government mandates and absorb the costs of tighter margins, at least until their competition is driven out of business. I employ ten individuals and the minimum-wage increase is going to cost us roughly \$60,000, a little over \$60,000 at a minimum of over-- over the next four years. While LB327 does not undo the increases or entirely reduce this burden, but I do think it will give businesses like mine some certainty that we will be able to comply. I understand why voters thought a minimum-wage increase was necessary, I do. Inflation continues to be hard on everyone, but the ballot initiative does not account for cost of living differences between Lincoln and Newman Grove, Nebraska. If I am forced to close, my community and the people in the small towns around me are going to have to drive further for fresh food. There's no local SNAP retailer, there's one less contributor to our local backpack program and ten people will be looking for other work, probably in another community. Thank you, Senator Raybould, for introducing LB327. I would ask that the committee advance this bill. Thank you for your time and I'd be happy to answer any questions.

**RIEPE:** Thank you for being here. Are there questions from the committee? No? I see none, thank you very much.

**TOM TEMME:** Thank you.

**RIEPE:** Additional proponents.

**KATIE BOHLMeyer:** Thank you, Chairman Riepe and members of the Business and Labor Committee. My name is Katie Bohlmeier, K-a-t-i-e B-o-h-l-m-e-y-e-r, and I am the policy and research coordinator at the Lincoln Independent Business Association. LIBA represents over 1,000 small businesses, primarily located in Lincoln and Lancaster County, and a significant part of our mission is to communicate the concerns of the business community to elected and appointed officials at all levels of government. Our organization was founded to give small businesses a voice with local government, a mission which we still serve today. Thank you for the opportunity to be here and speak for our members in the small business community. This past fall, LIBA was the opposing organization on the minimum-wage ballot initiative. Our argument mainly consisted of the effect that a rapid increase in the minimum wage would have on small businesses. Currently, the language set in the newly established standards began January 1, 2023, and the

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minimum wage has been increased to \$10.50 an hour, which is a 16.7 percent increase. On January 1, 2024, it will go up to \$12 an hour, which is another 14.3 percent increase. Then again, January 1, 2025, to \$13.50 or a 12.5 percent increase. And finally to January 1, 2026, which will increase to \$15 an hour with a totality of 66.7 percent increase over the last three years. Then again, as you know, it will change to the CPI. LB327 offers another option to consider rather than the CPI. One important argument as to why not follow the CPI is because it could cause a wage price spiral, which happens when wage increases triggers inflation, which further triggers wage price increases, creating a never-ending cycle. The problem with increasing the minimum wage with the inflation rate is people can pay more for goods doing-- good, good-- excuse me, pay more for goods due to having more money. So demand increases, but businesses have higher input costs so they charge more. Imports will become more expensive and live-- living standards will fall. They will do this because the value of the dollar declines, making imports more expensive. This reduces productivity and lowers people's standards of living. Failing to reduce inflation can trigger hyper inflationary issues. It is also important to note that we are not saying these rates should be what is required to pay employees. This is just the floor, not the ceiling. Thank you and I will answer any questions that you may have.

**RIEPE:** Senator McKinney.

**McKINNEY:** Thank you and thank you for your testimony. So our current floor, not-- well, before the change, was \$9. And with that floor, you couldn't afford to even pay rent and if you--

**KATIE BOHLMAYER:** Correct.

**McKINNEY:** And, and that's the problem. We, we talk about entry-level positions and it is not just teens and people in high school working these positions. And I'm just curious, have the businesses realized that because you, for whatever reason, were not paying Nebraskans a livable wage to survive and not just struggle, that they went to the polls and voted to increase this? And that's why it happened. It didn't happen because of somebody had a wild idea about, hey, let's pay people more money. People went out and voted because they weren't surviving.

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**KATIE BOHLMeyer:** Right.

**McKINNEY:** Getting paid \$9 an hour and still not, not being able to pay your rent is a problem.

**KATIE BOHLMeyer:** Correct.

**McKINNEY:** And I just think that's kind of being lost in the conversation of people voted for this because for years and years and years, employers refused to do the right thing and pay people what they deserved.

**KATIE BOHLMeyer:** Correct. And I, I don't know if you're inviting me to, to rebutt--

**McKINNEY:** You can respond, sure.

**KATIE BOHLMeyer:** OK. Thank you. And I will say that going-- it was a difficult decision to determine if our organization wanted to take the opposing force in the minimum wage this last year. So I sent out a survey to kind of garner some more interest. I had kind of done my own research. I'm from rural Nebraska so I hit some of the small-town businesses that I learned the retirement home, a meatpacking plant and the school and kind of wanted to understand their point of view a little bit more. From the people that I had spoken to-- and I'm not saying that this doesn't happen, but from everyone that I've spoken to, they're already paying at least \$15. The lowest I had heard was \$13.50 for a CNA at the retirement home. But a majority of even those CNAs, they couldn't fill the position so they had to open it up to travel nursing and travel CNAs. And, and that's not the point that we-- we don't want to encourage people to pay a non-living wage to their employees. And part of the issue is-- and I don't know if you remember in my Omaha testimony, I had spoken to an Omaha business owner who has a burrito shop and he-- I believe his starting pay was \$10 an hour, which again, is not much more than the minimum wage. But the reason that he was able to do that is because already with inflation, he was eating all the profits and if having to account for the \$15 minimum wage, that was an extra \$140,000 in payroll taxes. So it's, it's not that businesses want to pay people the lowest amount. They really do. And I know that Senator Raybould kind of made a comment to she had lost some employees to them going to Target because

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it looks like it's a better salary. But then what they're doing-- and I had some business owners say that that's what they're going to have to do in the future-- is they're going to have to cut back hours because they can't afford to keep paying. They're not trying to become this power-hungry organization and take as much as they want. They want to have good employees. You get what you pay for in any aspect of life. And I, and I understand your argument completely. It shouldn't be what people are forced to have.

**McKINNEY:** And I guess my follow-up question is, a lot of times when we talk about increasing the minimum wage and things like that, people say businesses are going to close.

**KATIE BOHLMAYER:** Right.

**McKINNEY:** And across the country, there have been other states and municipalities that have increased the minimum wage.

**KATIE BOHLMAYER:** Right.

**McKINNEY:** Is there any real evidence that a huge portion of small businesses closed due to the minimum wage increasing in any of those places?

**KATIE BOHLMAYER:** As far as research goes. I don't have any on hand, but I'd be more than happy to find some and send some to your office. But speaking with business owners in my job, I don't really have-- I can't really bring them in and say we had to close our businesses. But, but what's happening is large corporations like we'll say Walmart and for Senator Reynolds excuse, they're able to kind of they push these mandates because we have so much money and they have this large profit margin to beat out the smaller businesses who don't have the supply and the demand. They don't have the lower prices that they're able to afford to push on to their consumers. And so that's why that-- they're not able to perform. And, and like that burrito shop, he said that if the mandate passed, which it did-- and that's great. I'm glad that the voters were able to get out and make a change for themselves-- but he's already making plans of trying to sell his business or sell parts from what he had used. I had a business owner today who wanted to come speak, but unfortunately he had an employee call out sick with kidney stones, that he's already having to start to

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reduce hours because he's eating so much of his profit that it's just cheaper for him to do all the work and lay people off.

**RIEPE:** OK.

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

**KATIE BOHLMeyer:** Thank you, Senator McKinney.

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

**KATIE BOHLMeyer:** Thank you, Chairman Riepe.

**RIEPE:** Do we have additional proponents? Thank you for being with us. If you would give your name, spell it and then who you represent.

**ALEX REUSS:** Sure. Good afternoon, Chairman, members of the committee. My name is Alex Reuss, not to be confused with Alex Rousseau, who I need to introduce myself to after today. That's A-l-e-x R-e-u-s-s. I'm the executive vice president of legislation and policy for the Nebraska, Nebraska Chamber of Commerce, at least I have been for a month so take it easy on me during the Q&A. And I've also been authorized to speak on behalf of and sign in and for NFIB Nebraska. Together, we represent small and independent businesses throughout the state and that's really who I am here on behalf of today. I'm not going to go over the coverage of this bill. You guys are well familiar with it after Senator Raybould's coverage. But I will say that we believe her bill will help ensure our small businesses can accommodate the changes passed in the ballot initiative without incurring undue financial hardship if inflation is high. I want to underscore that we know that Nebraskans made their voice heard at the ballot box by raising our state's minimum wage. And I want to point out that even prior to the introduction of the ballot initiative, many of our businesses across the state that we represent, large and small, urban and rural, offered wages above that minimum of \$15 an hour. After all, when you're competing for a small pool of workers to join your operations, market forces require that you offer competitive wages. While we prefer the free market be allowed to work with minimal government intervention to establish fair, competitive wages, we do respect the intent of the ballot initiative to help secure even more high-quality jobs across the state. Which is why we remain laser

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focused on making sure this change is manageable, tenable and structured in a way that does not place undue pressure on small businesses, inadvertently harm our workforce growth or transfer costs to consumers already feeling the squeeze of inflation. And that is why we are coming in support of LB324 [SIC, LB327] and the approach that it takes in relation to the CPI increase. And we thank Senator Raybould for introducing this legislation. Thank you. I look forward to any questions.

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

**ALEX REUSS:** Thank you.

**RIEPE:** Other proponents? Thank you.

**ANSLEY FELLERS:** Hello, Chairman. Thank you, Chairman Riepe and members of the committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association, the Nebraska Hospitality Association, the Nebraska Petroleum Marketers and Convenience Store Association and the Nebraska Retail Federation testifying in support of LB327. We understand-- the folks we represent understand why supporters of the minimum wage and CPI increases think these proposals make sense. Unfortunately, this increase doesn't necessarily hurt businesses we generally considered to be bad actors: businesses who exploit labor, who short benefits or cut hours despite record profits. Those businesses will automate. They'll absorb the high-- tighter margins and wait for their small- and medium-sized competition to go out of business. And in some cases, the businesses themselves will shudder. But maybe just as importantly, the valuable entry-level jobs, the fun jobs, the one where you work for really caring, creative and flexible people, are going to go away. The businesses we represent, I just want to reiterate, in many cases, operate on really tight margins and they're investing in their employees in a lot of different ways. And I just want to mention really quickly because it came up, our employers aren't denying their employees promotions. In a lot of cases, employees are denying their promotions because they lose benefits. That's an issue that we agree needs to be addressed. It can be addressed at the state level and it really needs to be addressed at the federal level. The cliff effect is real and it's impacting employers and employees themselves. There's

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actually a bill in the Legislature this year that we support related to SNAP. Thank you to Senator Raybould for bringing LB327 and I'd be happy to answer any questions.

**RIEPE:** Thank you for being here. Are there questions from the committee? Seeing none, thank you very much. Additional proponents? Anyone speaking in favor? If not, is there anyone in opposition? And we, we have a couple. If-- the rest of you, if you're speaking, would you come up front so that we can move along if you're going to be in opposition?

**SPIKE EICKHOLT:** Good evening, Chair Riepe and members of the Business and Labor Committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska in opposition to LB327. The ACLU of Nebraska is one of the partner organizations that was behind the ballot initiative and supported the collection of signatures and supported the issue that was on the ballot and supported and encouraged voters to vote for it. And they did. I want to take one issue and deviate from my prepared script just real quick and summarize. Respectfully, I think Senator Raybould is mischaracterizing what the voters did. The voters, when they approved the minimum wage, did not ask the Legislature to do anything. They wrote the law themselves. I have attached to my written comments the voter ID 430-- proposed measure 432. And I also actually on the second-- next couple of pages, I actually sort of attached the actual measure that described the minimum wage increase. If you look at the voter ID, in that instance, the voters amended the constitution and directed the Legislature to specify the manner in which voter ID would be implemented. That's why when you have that bill before you, you can debate things like a notary requirement, what kind of valid ID or what kind of forms of ID are valid and so forth. That can be done by the Legislature. But if you look at the actual text of the minimum wage, it amends the very same statute that LB327 amended. In other words, the voters wrote the law. They can do that by the constitution. That's preserved to the second house. Senator Hunt asked about this earlier. That doesn't mean the Legislature cannot amend what the voters do. If you look in the very last page of the handout that I have circulated, that's the actual provision of Article III, Section 2 of our state constitution that says the voters have the power to enact laws independent of the Legislature. And the Legislature if they want to amend, modify, alter-- which is exactly what this bill does--

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different what the voters did, you need a supermajority. You need 33 votes. And I don't mean 33 for cloture. I mean you need 33 to pass. And I would submit arguably 33 for every stage of the voting that you do on this body, on this, on this measure. I don't think it's fair and I don't think it's appropriate for the Legislature to assume that the voters didn't know what they were doing, that they're too stupid to understand what the language says; 150,000 people signed this petition effort with this language on there and almost 60 percent of the voters approved it. And I don't think, respectfully, it's fair for this body to assume that they meant anything otherwise or somehow think that they didn't understand what they're doing. That's not appropriate and that's disrespectful to the second house. I want to elevate that point and I'll answer any questions that you have.

**RIEPE:** OK. Thank you very much. Are there questions? Senator Hunt.

**HUNT:** Thank you. Mr. Eickholt. I want to ask you because you're an attorney and you are familiar with ballot initiatives and you heard the question I asked in Senator Raybould's opening. Can you in a not rushed way, just in, like, really plain English, explain what's different about the ballot initiative for minimum wage increase versus, say, voter ID?

**SPIKE EICKHOLT:** Thank you. If you look at the voter ID, this is the actual text of the measure, 432, and it amended the constitution. That's what the voters did when they did the ballot signature and when they voted on it. They amend the constitution and part of the thing they amended, it actually says, quote, before casting a ballot in any election, a qualified voters shall present ballot photographic identification in a manner specified by the Legislature to ensure preservation of the individual's rights. That's a general delegation, a general direction from the second house to the first house, from the people to the Legislature. We want voter ID. You need to figure out the manner in which it's done.

**HUNT:** And for the minimum wage, it doesn't say in a manner specified by the Legislature.

**SPIKE EICKHOLT:** That's right. If you look at the text, it actually says be it enacted by the people, Section 48-1203 shall be amended as provide. And if you look at what the voter saw in the booth and what

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people sign, it's got the stricken language and the underlying language, just like a bill does when it's before you. In other words, they didn't tell the Legislature to do anything. They did it themselves. They wrote it their own way. And if the Legislature has an ability to amend or alter or modify that, which is exactly what this bill does-- there's no other way to characterize this bill. You heard the introducer. It was directly in reaction to what the voters just approved. If you want to do that, Article III, Section 2 says you need two-thirds, which is 33 votes.

**HUNT:** So hypothetically, any ballot initiative that ever gets passed by the voters, the Legislature could introduce a law and then, by two-thirds of the Legislature, could just basically undo what the voters have passed.

**SPIKE EICKHOLT:** I would, I would submit that's why this constitutional provision is there; to prevent just a simple majority from undoing what the second house did the following year.

**HUNT:** It's kind of a check, I guess.

**SPIKE EICKHOLT:** It's a check. It's a balance. And that's why it's there. You know, the ACLU has been on the other side of this. This is what was done with the death penalty, the reinstate of the death penalty. And I would submit that if the Legislature wanted to repeal that and do it again, they would need 33 and not simply-- not simple majority.

**HUNT:** OK. Thank you, Mr. Eickholt.

**RIEPE:** OK. Are there any other questions? Thank you very much. Appreciate it. Are there additional opponents? I would encourage you, if you've heard what's been stated and you can tailor your comments to that just so that we can get through. We got a number more bills yet to go. OK. Welcome. Thank you. If you'd be kind enough to state your name and spell it please and who you represent.

**JOSELINE REYNA:** Yes. Yeah. Good afternoon, Senator and members of the Business and Labor Committee. My name is Joseline Reyna, J-o-s-e-l-i-n-e R-e-y-n-a, and I'm from Grand Island. I am here today representing YWCA Grand Island, which serves the counties of Hall,

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Hamilton, Howard and Merrick. As an organization that believes in empowering others and promoting justice and dignity for all people, we oppose. LB327. LB327 seeks to severely weaken the part of raising the wage that would automatically keep up with the cost of living. When the YWCA was collecting signatures to pass [RECORDER MALFUNCTION], many community members were so surprised that Nebraska had not raised their minimum wage since 2016. Another concern the voters expressed was the amount of time it would take to increase the minimum wage in the future. This is why people were supportive of the initiative because of the clause that the minimum wage would then be increased based on living expenses. As we know, living expenses are increasing every year, but the minimum wage is not keeping up with these costs. These, this bill would cause harm to many Nebraskans, many who are essential workers and contributing to the community. Many who before the pandemic and even during the pandemic were working hard to sustain themselves and their families while contributing to our community's economy. During the months of September and October, the YWCA of Grand Island, also knocked on doors in Grand Island to talk to voters about the elections. This majority, the majority of voters were in full support of this initiative and they question why Nebraska is always so behind in efforts like these. In Grand Island, for example, our economy relies heavily on hospitality, specifically food service, an industry that typically pays just minimum wage. If this bill were to be passed, this would greatly impact our communities. We cannot contribute to harm the most vulnerable people in our state. This is including the 12.7 percent of the Grand Island population who are currently living in poverty. Community members are always questioning why young people are leaving our state and the opportunities that Nebraska has to offer. We are not expanding opportunities for Nebraskans but providing barriers to a livable wage. It is for these reasons, YWCA Grand Island opposes LB327 and urges the committee to not advance this bill. Thank you.

**RIEPE:** Thank you very much. Are there questions from the committee? Seeing none, thank you again for traveling and being with us. Welcome.

**MAGHIE MILLER-JENKINS:** Hello.

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

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**MAGHIE MILLER-JENKINS:** I'm representing myself. My name is Maghie Miller-Jenkins, M-a-g-h-i-e M-i-l-l-e-r-J-e-n-k-i-n-s. I wanted to pop in today because I wanted to address each of you and tell you that I sent you all an email requesting accountability. Because this bill supports oligarchies, not democracies, I think it is a complete unethical and immoral representation of "generator"-- of Senator Raybould's position that she would bring forth, forth a bill that would directly benefit herself and directly disenfranchise the young adults that work for her. It is unacceptable, in my opinion, to have a senator who makes her living off of this, ask to have to pay her employees less. I think that it is deplorable and abhorrent that we allow senators to be able to bring bills that dehumanize and disenfranchise people in 2023. I also think it's horrible that you guys don't have an ethics board to be able to answer to when you guys do not uphold your positions effectively. So one of the things that I'm going to be working on, I sent all 49 of you an email. I have gotten four responses back, and none of them are from any of you that are sitting here or over there. So at the end of my message, I said, I'll be watching. I'm popping into as many of these as possible to let you know the community sees what you're doing. We already voted to raise our minimum wage. We already voted to be paid what we're worth. And the fact that I have to sit here and argue this in 2023 is asinine. We need to promote the people, not the businesses. Your businesses are built on the back of people. Every product that you have, every piece that you get in your store comes from a person. And to try to argue, to devalue the people in your care in order for more profit is deplorable and abhorrent. That's my testimony. And I really hope that everybody does better. I don't really want.

**RIEPE:** Hold on for a second.

**MAGHIE MILLER-JENKINS:** I don't want questions.

**RIEPE:** OK. So be it. Any more proponents? Thank you for being with us. Please state your name and spell it, if you would, please, for the record.

**MORGAN SPIEHS:** Yes. My name is Morgan Spiehs, spelled M-o-r-g-a-n S-p-i-e-h-s. I'm here representing myself. I collected signatures to get Initiative 433 on the ballot in November because I was affected by the low wages that plague my field of early childhood education and

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caregiving as a whole. As I gathered signatures last year, people would remark, I can't believe anyone makes unless, makes less than \$15 an hour these days. I would tell them that I, in fact, was making \$12.50 an hour as a preschool teacher, a wage that amounts to less than 40 percent of the area median income for Lancaster County. When I told people how much I made and that I worked for the city of Lincoln, everyone was shocked and offended on my behalf. They often said, I had no idea. And I'd like to add, I did not get benefits or anything of that nature because my parents, because my parents financially supported my early adulthood, I was able to become a homeowner, but I needed a second job to pay my mortgage. Considering the salary outlook of my profession, homeownership remains one of the only avenues I have to build wealth and give me a sense of security that I won't be priced out of Lincoln's rental market. While teaching, I also worked at a local farm for \$12 an hour. In addition, I also rented out the second room in my house. These three hustles covered my basic needs, but every additional expenditure caused great stress. I needed a new retaining wall. My furnace is nearly 20 years old. These two projects alone could cost me \$30,000. I obsessed over how I could life-hack my way into a comfortable existence. I was extremely lucky and found my current job as a teacher and as, as early childhood at an early childhood education center that is likely the highest paying in Lincoln. Still, I fear that my salary will not keep up with the cost of living. The support staff at my center, most of which are full-time undergraduate students, are paid under \$15 an hour. Many of these students are accruing thousands of dollars in debt. If the state wishes to say, retain these gifted caregivers, they need to guarantee their wages will not only help them pay their student debt, but enough money to invest in their futures. Initiative R33 doesn't increase the minimum wage to \$15 until 2026. Stalling full cost of living increases until 2027 already means the minimum wage will be lower than the cost of living. Capping these increases will diminish the impact of the minimum wage more than already was done by the gradual increase. Raising the minimum wage with, with proportional cost of living increases is exactly what is needed to ensure childcare workers can meet their needs and invest not only in their futures but the futures of the children we care for. Increasing childcare subsidies, tax credits and addressing the rising cost of utilities, food and insurance are all pieces of the puzzle to honor the value of early childcare workers in Nebraska. Scapegoating the lowest paid workers

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will further harm our ability to invest in ourselves and the families we serve. For these reasons, I urge you not to advance LB327. Thank you for your time.

**RIEPE:** Thank you for your presentation. Are there questions from the committee? Senator Hunt, please.

**HUNT:** Thank you, Mr. Chair. Thanks for being here. I would encourage you and any other testifiers to email us your testimony so that if this comes to the floor, if we continue to debate this issue as a larger body, that we have your viewpoints that we can refer back to. Thank you.

**MORGAN SPIEHS:** Can I submit? I can submit this--

**HUNT:** Sure.

**MORGAN SPIEHS:** --if that helps.

**HUNT:** Yeah. The pages can help you make a copy. But, you can always email that too.

**MORGAN SPIEHS:** Oh I'll do that.

**HUNT:** Yes. Thank you.

**RIEPE:** Are there other questions from the committee? Seeing none, thank you very much for being here. Other opponents? Thank you for being here. If you'd be kind enough to state your name, spell it and who you represent, please.

**ANAHI SALAZAR:** Yes, thank you, Chairperson Riepe and members of the Business and Labor Committee. My name is Anahi Salazar, A-n-a-h-i S-a-l-a-z-a-r, and I am representing Voices for Children in Nebraska. Nebraskans value hard work and the opportunity to build a better future for our next generation. Our state policies should be structured to ensure that hard work is enough to support families needs and keep children from going hungry or facing homelessness. Nebraska parents are working hard, but hard work isn't enough to make ends meet. Inflation has raised the cost of food and goods, while housing remains expensive. The majority of children in Nebraska, about 77 percent, have all available parents in the workforce. Nebraska

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still has almost 60,000 children living in poverty. Nebraska voters went to the polls last November and they voted for Initiative 433, which gradually raises the minimum wage starting this year to \$15 an hour by 2026, and to continue-- and to continue adjusting each year after for inflation. Choices for Children was a partner in advocating in the advancement of this initiative. And because we believe in the power of Nebraskans' votes and the need for adjustment to accounting for cost of living, we oppose LB327 and the changes it would make to provisions of the Wage and Hour Act. Wages need to sustain the cost of living. Increasing the minimum wage and adjusting after for inflation will allow parents to meet their children's basic needs year after year regardless of market fluctuation. For example, almost 100,000 renters spent more than 30 percent of their income on housing in 2021. That year also saw Nebraska's median home value passed 20 \$200,000 for the first time, marking an increase of 26 percent from the beginning of 2020. Child, child care costs for an infant in center-based care in 2020 were about \$12,000. That cost is almost doubled to \$19,224 in 2021. Last year, food prices increased 11.4 percent. According to the USDA, the national average retail price for a gallon of whole milk rose from 3.-- \$3.66 in 2021 to \$4.43 in January of 2023. Under the law, as passed by Nebraska voters, these direct, drastic increases in cost would be taken into consideration after 2026, when the Wage and Hour Act would implement the yearly adjustment based on median, median cost of living. Our children, communities and state are stronger when all Nebraska families are able to participate fully in the workforce and establish financial security. Everyone deserves to thrive in Nebraska. By keeping the Wage and Hour Act as is, it ensures Nebraska, families with minimum wage workers are able to better keep up with cost of living and maintain adequate purchasing power. For all these reasons, we would respectfully submit our opposition to LB327. Thank you for your time and attention and I'm available to try to answer any questions.

**RIEPE:** Thank you for being with us. Let's see if we have any questions. Committee members, any questions? I see none. Thank you very much.

**ANAHI SALAZAR:** Thank you.

**RIEPE:** Next opponent. Are there any more opponents?

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**SUSAN MARTIN:** I guess it's good evening, Chair Riepe, and members of the Business and Labor Committee. My name is Susan Martin. S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO, and also as one of the organizations that supported the Raise the Wage campaign in opposition to LB327. According to the Economic Policy Institute, 13 states, the District of Columbia and now Nebraska have policies that increase or index their state's minimum wage based on inflation. Most increase are based on changes in the consumer price index. When inflation increases in these states, they help reduce the burden of rising prices for low wage workers and their families. The federal minimum wage has remained at \$7.25 per hour for the past 15 years. Since then, its purchasing power or real value has dropped by 27 percent because of increases in the cost of living. As a result, the value of the minimum wage is the lowest since 1956. In response, 30 states, Washington, D.C., and dozens of local governments have introduced their own minimum wage laws that are higher wages, than they're higher than the federal minimum wage as we've seen voters in Nebraska do this past November. The Nebraska Raise the Wage ballot initiative had the forethought to include an inflationary measure so that when inflation rises, the state's minimum wage values do not decline. In a world with higher prices, low wage workers desperately need stronger labor standards in order to make ends meet. According to the EPI's family budget calculator, there is nowhere in the country where a worker making \$15 an hour earns enough to meet the requirements of a local family budget. Increasing the minimum wage is sound policy that supports working families. Indexing the minimum wage to keep pace with inflation should and must be a priority to protect workers from rising prices. Capping the minimum wage increase to one and a half percent or lower is a regressive move that eventually will lead to much higher minimum wage legislation in the future. The voters of Nebraska's second house spoke. The ballot initiative bill in specifically how the increases will be implemented so that Nebraskans don't have to revisit this issue year after year. We respectfully ask that you take these into consideration when discussing this bill and that you not change the intent of Nebraska voters.

**RIEPE:** Thank you for your presentation. Are there questions from the committee members? Seeing none. Thank you very much for being here. Do we have additional opponents? If you would, please, give us your name, spell it, just like you did earlier.

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**JADEN PERKINS:** Awesome. Good evening, Chairman Riepe, and members of the Business and Labor Committee. My name is Jaden Perkins, J-a-d-e-n P-e-r-k-i-n-s, and I am here representing Heartland Worker Center in opposition to LB327. At Heartland Worker Center, we're about promoting socioeconomic justice, empowering our communities to practice civic engagement and respecting the democratic will of the voters. Last year, our organization, along with the many organizations and businesses involved with the Raise the Wage coalition, helped to collect signatures and knock doors to educate the people on the benefits of AM433 if it were to pass. On November 6, 2022, or November 8, 2022, the people spoke and spoke loudly. Amid rising costs at the grocery store and gas pump, an overwhelming majority of the state voted to give working class Nebraskans a common sense raise to \$15 an hour by 2026, with a cost of living adjustment included. The passage of an increase in the minimum wage means that many more Nebraska voters and people in general will be able to be lifted out of poverty, keep more money in their pockets, and better deal with the lasting impacts of record inflation and supply chain disruptions. LB327 disrespects democracy, hurts the competitive labor market, and will stifle equitable wage growth among the working class, which in turn hurts our economy at large. We strongly import, implore each of you to put aside oppressive corporate politics to respect the will of the voters and stop this unconstitutional bill from becoming a reality. Thank you.

**RIEPE:** Thank you for being here. Let's see if we have any questions, any members, any questions? I see none, thank you very much.

**JADEN PERKINS:** Thank you.

**RIEPE:** Welcome, sir. You know the routine. I think you've been with us before.

**KEN SMITH:** Yes, Chairman Riepe, thank you. Thank you, Chairman Riepe, and thank you, members of the Business and Labor Committee. My name is Ken Smith. For the record, that spelled K-e-n S-m-i-t-h, and I'm the director of the Economic Justice Program at Nebraska Applesseed. Applesseed is a nonprofit law and policy organization that works for justice and opportunity for all Nebraskans. And I'll try to keep my remarks here brief. Just want to address a few points. Senator Hansen, you had asked what the average year over year increase in the Consumer

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Price Index is. We've looked at the last 55 years in which there is data available and the average year over year change in the CPI is, was about 3.9 percent. So if we kind of play this out, if, you know, the voters just enacted an initiative that would mean that the cost of living adjustments kick in starting in 2027, at that point, our minimum wage will be \$15 per hour. If the CPI increased around what it does on average, that would result in about a 4 percent increase in our state minimum wage, which would translate to a minimum, or to a wage floor of about. \$15.60 per hour. LB327 would repeal the indexing language that voters just installed and replace it with a 1.5 percent cap on the annual adjustment. Under that same scenario, this would lead to only a wage increase of 23 cents per hour starting in 2027. And then each year thereafter our wages would be outpaced by cost of living increases, since one and a half percent is far lower than the average year over year increase in consumer prices. So our wages would once again, excuse me, would once again fall further and further behind the cost of living. And that scenario is exactly what Nebraska voters just voted to avoid. I think we also just have to strongly disagree with the notion that Nebraska voters didn't know what they were voting on. We collected over 150,000 signatures in every corner of the state. A lot of conversations were had with voters. A lot of conversations were had with petition signers. I don't think we encountered a single person who did not understand the concept of a cost of living adjustment. I also want to note that, you know, there were some business voices here in support of this bill. There are also over 300 businesses, most of whom were small businesses, who supported the initiative and who supported the cost of living adjustments that will take place in the future. Many states, including some of our Midwest states, including Ohio, Montana, Missouri and others, have adopted very similar wage laws. Lastly, I would just say I think we talked about the role of the Legislature in the introduction. It was suggested that the role of the Legislature is to balance the will of the people. I think we would respectfully disagree and suggest the role of the Legislature is to represent the will of the people and the will of the people on this issue is very, very clear. With that, I will conclude and I'm available to answer any questions you might have.

**RIEPE:** Thank you very much. Are there questions from the committee? Seeing none. Oh, yes, Senator Hansen, please.

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**HANSEN:** Well, you went 50 years. OK. I just went 20 years. I had 2.3 percent. But if you're about 50 years, you're at 3.9 percent. I was trying to figure out like, how that like the compounding effect it has on the minimum wage after ten years. And so it's at 2.3 percent, you start at \$15 an hour, after ten years, it's \$18.41 an hour. At 3.9 percent, I'm assuming it could be somewhere about \$20 an hour. So after about ten years, it'll be about \$20 an hour for minimum wage?

**KEN SMITH:** I think that that, I think, I mean, I'd have to, I'd have to double check your math. I had to double check mine about five times. But, but, yes, this would, I think that the Consumer Price Index and specifically the CPI yearly index that this is based upon is a, is on average a 3.9 percent growth. So whatever wage projections you want to do, that's, that's the, that's the number that I have for you.

**HANSEN:** I'm just going to hang out here for the next couple of minutes so I can figure it out now.

**KEN SMITH:** Fair enough.

**HANSEN:** Thanks.

**KEN SMITH:** You bet.

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

**KEN SMITH:** Thank you.

**RIEPE:** Any other opponents? OK, if you'd be kind enough to state your name, spell it, and who you represent and then we'll go.

**NATALIA TU:** OK. Good evening, Chairman Riepe, and members of the Business and Labor Committee. My name is Natalia Tu, that's N-a-t-a-l-i-a T-u, and I am the research and policy associate at the Women's Fund of Omaha. The Women's Fund believes economic security is foundational to achieving gender equity in this state. For this reason, we supported the Raise the Wage ballot initiative passed by nearly 60 percent of Nebraska voters in 2022, and it's why we now oppose LB327 The need to grow Nebraska's workforce and reverse the persistent negative-trend of brain drain are both problems facing this

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committee and this Legislature. We know that 43 percent of Nebraskans are working age, and more of those workers are in low wage than high wage jobs. Failing to provide for a living wage is not going to bring back the 25 percent of Nebraskans who stated that they moved out of state for a job. We also know that women are disproportionately impacted by both low wages and cost of living increases. Women still make less than men for the same jobs. In 2020, 94 percent of occupations paid women 83 cents on the dollar. Women with children made even less at 74 cents on the dollar. And that disparity grows for black mothers, Native American mothers and Latina mothers. COVID-19 and the subsequent cost of living increase made that disparity even worse, since women are overrepresented in the low wage jobs in those industries hit the hardest, like retail and hospitality. In Nebraska, 33.2 percent of women currently work in low wage positions and rely on them to support their families. Nebraska voters want to adjust the minimum wage to cost of living, in large part because we have so recently experienced what it means for Nebraska families to experience a cost of living increase. Low income families, particularly those headed by single mothers as well as black and Latino families, are negatively impacted by economic crises and inflation. The negative effects of the disparity between wages and cost of living in a low income household's budget is especially acute for children who, as a result experience worse educational and health outcomes, as well as reduced future earning potential. Without adjusting wages for the cost of living, we will continue contributing to the economic instability of women and their families and harm to the next generation of Nebraskans. We would respectfully urge this committee to vote no on LB327 and help ensure the economic security of Nebraska women and their families. Thank you.

**RIEPE:** Thank you for testifying. Let's see if anyone has questions. I don't see any, so thank you for being here.

**NATALIA TU:** Thank you.

**RIEPE:** Additional opponents?

**HANNAH ROBINSON:** Hello, Business and Labor Committee Chairperson and members. I'm Hannah Robinson, that's spelled H-a-n-n-a-h R-o-b-i-n-s-o-n. I'm representing myself and I'm here today to urge you to oppose LB327. I believe everyone deserves a minimum wage that

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allows people to live comfortably. Unfortunately, the best we can do at this moment is raise the minimum wage to allocate for the most basic of needs. Alarming, isn't it? I could sit here for hours and address the many ways this could negatively affect us in the working class if we pass this bill. What, with the cost of living already so high, many people would face hunger, overwork, burnout, and I dare say, you would see a spike in suicide rates. I have already experienced a majority of these situations. When I graduated high school, I was forced to move out with barely any money to support myself. I worked two minimum wage jobs constantly, with no time in-between for anything else. I worked from the moment I got up to the moment I went to bed, sometimes foregoing supper. I was in fast-paced, high stress environments for both jobs and was physically demolished. I gained a pretty severe limp and difficulties driving as my feet were so sore that when I pressed on the gas pedal, it caused me pain. I would have an hour in-between jobs where I could eat, and I remember during the summer I would lie down in the grass, look up at the sky and wonder if this was what life was going to be like, if this was all life ever was or had to offer. During this time I also had mid to severe anxiety and I never felt comfortable calling into work, even if I had perfectly good reasons. The way the jobs weaponized guilt is incredible. I felt restless in the rare moments I had free time. I always felt like I had to be doing something, even though I had absolutely no energy left and felt bad when I couldn't. When I was ill and called in, I would sit in bed and cry, terrified I was going to be harshly admonished and reprimanded. My mental illness grew worse during this time, and I had to struggle with those on top of everything else. I still only barely had enough money during this time to scrape by. So I asked my mom for advice, and my mom suggested in turn that I get yet another job even though she was already aware of what I was going through. Members, I am not a robot, and I know that you guys aren't mechanical either. So let's come together as human beings and acknowledge that the quality of human lives are at stake in this pol, policy decision. Let's stand together to oppose LB327, which benefits no one. I know I can't stand idly by and allow people to starve and to suffer, especially the people leading the future, our children. We passed Initiative 433 to close the enormous gap between our minimum wage and the cost of living so that people can meet their basic needs, their basic needs. This bill destroys that entirely. Do not allow LB327 to widen this gap. Do not be the person to stand idly

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by while our people are hungry, suffering and struggling. Thank you for your time today. Respectfully, I will not be taking questions from you.

**RIEPE:** Thank you. OK. Are there any questions? Evidently not. OK, do we have any more opponents? Anyone testifying in a neutral capacity? Seeing none, we will invite Senator back up to close if she chooses. And I would say there were a total of zero proponents on the correspondence and letters and emails, and 77 opponents and none in the neutral capacity. Welcome back.

**RAYBOULD:** Thank you very much. I want to really thank all of the folks that came out to testify on this piece of legislation. It's clear that we dealt with the minimum wage increases that have, are predictable will go into effect. That is not what this bill is opposing and it's not what this bill is addressing. What I wanted to say is, you know, I recognize that there is, that conflict of interest. And so I did something that probably I was told that many senators have not done in a number of years. I filed with the Nebraska Accountability and Disclosure Commission the conflict that I have and they said this is highly unusual because most senators don't do that. You know, we have a number of, of bankers that are on banking and finance and so I think it's important that we all recognize that we represent a lot of business interests all across the state of Nebraska, no matter what business I do. But I did want to point out that I did take that step. The one thing I think we're forgetting to look at is, well, is in the public sector as well as the private sector, you can see an annual increase in their wages that are either prescribed by labor agreements that are always in the either 2 percent to 3 percent annual, and certainly in the private sector, it's, it's typically more because why you want to reward your workers. And number two, you want to be competitive. The markets really drive the rates. How do I know that? I've been traveling across our state for a number of years, either through campaigns or I'm, I'm an avid cyclist. And when I go out to these communities, we know and they share with me that they are not paying the minimum wage for anything, for at a restaurant or even in the grocery store, because it's, there's such a tremendous difficulty in finding workers in smaller communities in the center part or the western part of, of our state. And so you have to be competitive and you have to pay to attract and retain your workers and you want to pay them, and not only in wages but in increases to keep them and retain

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them. The other thing I wanted to talk just a little bit about Medicaid expansion. I know and I certainly appreciate all the things that Mr. Eickholt had said from the ACLU and the language that was clearly described in this minimum wage increase. But I just wanted to jump back to Medicaid expansion. It's basically a yes vote supported the initiative to require the state to provide Medicaid and a no vote opposed that initiative. It didn't prescribe any way, shape or form on how to implement that. The other thing that I want to say is, last year, if you looked at the CPI increase from January through December of 2022, it was 6.5 percent. But if you just focused on the month of December of 2022, it was a negative amount based on the fluctuations. And so the whole purpose of LB327 was to put in that predictability, knowing all of the other factors that are swirling out there with the public sector, increases that are already prescribed as well as the market factors. Certainly I can speak for my business that every year there's an increase based on your evaluation, your annual evaluation, you get a 2 to 3 percent increase anyway. So this is on top of that, but you're also looking at the impact it has on everybody's wages. So I know, Senator Hansen, you mentioned the compounding effect, and I think some people need to also consider that. The last thing I want to say, the people that came to testify, they're so spot on by child tax credit. We have to be better as a state on implementing a greater amount for that, increasing the earned income tax credit. These are all great ideas, but these are the ones that don't have much of a downside. They are a credit. Implementing an annual increase of the CP, tying it into the CPI for the Midwest region does have a more profound impact on businesses all across the board. So I just wanted to just say thank you all for your consideration. Thank you so much for your testimony. I truly appreciate that very much. And having said that, I'm, I'm happy to answer any other questions.

**RIEPE:** Are there any other questions? Senator McKinney.

**RAYBOULD:** Yes.

**McKINNEY:** Thank you, Senator Riepe. Thank you, Senator Raybould. Do you think your bill is a significant change to what the voters voted for?

**RAYBOULD:** I think it is a more predictable and reliable metrics on increases that the, that businesses need, just as when the bill was

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presented, it has those annual increases very clearly called out. Without a very clear CPI index, there's not that predictability. Based on the way the bill is worded, if it were the CPI index, you'll be noti-- they work in August of the numbers through August, and then businesses have to scramble based on the following months and be prepared for either layoffs or reducing people's hours or they're not going to be able to do capital investments. Particularly for these smaller businesses that want to stay competitive with all the national brands, like the dollar stores that are coming into all of our rural communities, you know, they, they don't have the luxury. I can tell you honestly, if a piece of equipment conks out on a smaller operator, it's very expensive to get it fixed. So you're looking at a prescribed adjustments every year that's in this piece of legislation, but when it came to the CPI that could be wildly fluctuating, depend on inflation and what's going on in that state. Or it could be, it could be on average at 3.9 percent, but I'm saying the lesser of--

**McKINNEY:** Do--

**RAYBOULD:** --that's predictable.

**McKINNEY:** Do businesses speak for the people because the people voted for, for the CPI to be in there. And I'm just curious, do businesses consider the compound and effect of not being paid a livable wage and what that does to a person's ability to even just manage themselves day to day?

**RAYBOULD:** I think good corporate citizens are very mindful of the wages they have and the impact they have on their, on their workers' lives.

**McKINNEY:** I guess my, my follow up to that is you say good corporate citizens, but if we had real good corporate citizens, the voters wouldn't have had to vote for a ballot initiative to get paid a wage that is livable.

**RAYBOULD:** And you, and I agree, Senator McKinney. But what we see right now, if you're not being a good business person and compensating your workers fairly with benefits, etcetera, guess what? That worker walks and that is their right and they should walk to go and work for a business. I had mentioned before, when I do orientation and greet

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people and I say thank you very much for wanting to work for our company, why? Because you have so many choices right now as, as a person. You could work for any one of these retailers, but I can honestly tell you my job, our job as a company is to convince you why we are a better retailer to work for because we care about you and our HR team is going to explain our benefits and our compensation, our promotions and so on. And that's why we want to retain you. That's what businesses have to do if they want to be competitive and keep their workers. They can't just pay them a minimum wage. And when we have our, you know, the folks that bring in the grocery carts, they're not getting minimum wage. They're getting slightly above minimum wage based on the tasks that is before them. But if you're not a good business and if you're not proactive on providing great benefits, wages, compensation, the whole package, your workers have a clear choice and they will go to another employer.

**McKINNEY:** I guess my, my last question. Sorry to cut you off.

**RAYBOULD:** No, that's OK.

**McKINNEY:** Looking at the online written comments, there's one proponent and there's 82 oppositions. And I'm just wondering, have you or the business community did a poll asking the voters whether they prefer the CPI or which your proposing in LB327 since the voters were the individuals that voted for the initiative to pass. I'm just curious, did the business community think it was a good idea to go to the voters, the people, and poll them, ask them, what did they prefer?

**RAYBOULD:** I want to ask, I want to answer that very clearly. If I had more time, I certainly would do that. But right now I've reached out to a number of businesses to ask them how it will impact their ability to keep their workforce gainfully employed. But I would love to say, as you know, any new, new senator coming in, you don't have a moment to even catch your breath starting in this new position. But I agree it's a great idea, it's a great idea.

**McKINNEY:** I understand that but it's not totally, and I understand the impact on businesses, but we also got to think about the impact on people and voters when they vote for something and believe something is going to change. I think it would have been a good practice to poll

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the people of Nebraska to ask them whether what they voted for in November was what they wanted to continue with going forward.

**RAYBOULD:** And I think the voters spoke loudly and clearly, clearly about the minimum wage increase. And what I'm saying, respectfully, is that they were not, I still believe this, that people don't know what a CPI increases in the impact it has on the small businesses in their town, their rural community. They don't, they don't know the impact and I knew the young woman--

**McKINNEY:** Do they know the impact of the cap also?

**RAYBOULD:** The, that the cap is predictable and businesses can look at that and project where they need to be to be able to keep and retain and provide for their employees, but allow their business to succeed and not.

**McKINNEY:** I guess my, my last thing and I'll stop. You keep saying businesses, but you said people, from what I got from it, I don't know if you fully believe that the voters understand the CPI. And my question is, do you, do you even think the voters understand this? Not businesses. Do the voters understand what the cap would be?

**RAYBOULD:** Well, that wasn't taken up before them, like the CPI. So if they didn't, I certainly believe people do not know and did not know what the, the CPI is for the last 20 years when they were given the petition to sign. I really don't believe that because there was such little time for them to be read the conditions and terms. What they hit on and people latch on is the predictable increases year after year after year. And they said yes to that and I support that. They said yes to that. I don't believe and in all fairness, if you turned around and asked, you know, your staff today, do you know what the CPI increase is for 2022?

**McKINNEY:** But I'd like to ask them, do you know the cap is.

**RAYBOULD:** The cap is.

**McKINNEY:** No, what I'm saying, what I'm trying to say is, on one hand, you're saying they don't understand the CPI, but you haven't outright said that they understand what the cap is.

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**RAYBOULD:** The cap, the cap was not presented to them. But if the cap is very--

**McKINNEY:** But I think it should be if it become, it should have been a poll or something.

**RAYBOULD:** I agree. I mean, that's a great idea. I mean, it's a great idea, but that's not what was presented to the voters. The voters are presented the, you know, the predictable increases year after year. And then in that final year, a CPI increase. That is, they were presented that to that, but to be honest, that is not what they latched on to. They latched onto the predictable step of increases every year. And then the CPI was just like, you know, falling off a cliff or whatever. But it's not something that I still believe that voters did not understand thoroughly what that meant.

**McKINNEY:** Thank you.

**RAYBOULD:** Thank you.

**RIEPE:** Thanks very much. Are there other questions? Oh, Senator Hansen, I thought you were pointing, sir.

**HANSEN:** Now, is Ken still here? Hey, I figured it out. So we were talking about the compounding effect of this, you know, the CPI wanted to be a little bit careful of it. If we're, if we do go by the average the last 50 years, if it's \$15 an hour now and ten years it's going to be, if my numbers are right, I'm sure somebody will correct me or email me that I'm wrong, \$15 an hour, in ten years, it's going to be \$21.19, a 70 percent increase in ten years. And within 20 years, I mean it was just like 2003, 20 years ago, it'll be up to \$30.29. So minimum wage will be \$30.29 in 20 years if we go by the average last 50 years. But pretty sure I'm not wrong, but somebody can correct me if I am, that's just going up 3.9 percent. That compounding effect every year it goes up. So that's my concern with going by CPI is it, we're going to have benefits, it can definitely do a lot of harm. And I don't think you're being too disingenuous when you say you're thinking about the people, because I think you are. When you see me talk about things about businesses, if the businesses don't do well, the people don't do well. And that's my biggest concern. We're starting to, already seeing that in bigger industries who can afford

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certain things where you're starting to see automation and they're laying off workers left and right, right now, currently, actually right now. And they can replace them easily where small businesses such as mine, such as yours, can offer benefits, I think to make up sometimes for not paying as much. So sometimes we just strictly think of minimum wage and that's it, but we kind of forget about all the other benefits or tangible benefits that small businesses can do and provide, just as giving free services for what they have, such as, you know, 401Ks such as health care in someone aspect or another, such as, you know, partnering up with other small businesses to get certain deals with them to help out their employees. And one of my concerns is the higher up we go, it is, has this compounding effect, you're going to see a lot of those benefits go away because business is going to try to save as much money as they can. So I see your point. I see, I see Senator McKinney's point as well. But when I kind of start thinking about if we stick to the CPI as much as we, we say we're going to, that's, if those numbers are correct, I don't know if that's, didn't sound very good.

**RAYBOULD:** Well, I think your, your problem, your numbers are probably pretty good as you compute them. And I think it's really important that when I say businesses, I mean the goal is to keep people gainfully employed so that they can provide for their families. And I think businesses need predictability. They need that flexibility. They need to be able to forecast for where they need to be, to be, to continue to be viable and to be an employer, so.

**HANSEN:** My numbers might be wrong but if Ken's back there I'd like to know.

**RAYBOULD:** We can talk more. OK. Thank you all very much. Thank you for all the great testimony.

**RIEPE:** OK. Thank you.

**RAYBOULD:** You bet.

**RIEPE:** That, that concludes the hearing on LB327. We're going to take a break here until half past the hour, which is about 10 minutes. I'd like to give you more but we have a big agenda. Thank you. See you here in a few minutes.

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[BREAK]

**RIEPE:** And so we're going to go get started here with LB678. You're presenting for Senator Day?

**SAM HUPPERT:** Yep.

**RIEPE:** OK. If you'd be kind enough to state your name and spell it and share with the audience, or all the excited people hear exactly what your role is with Senator Day.

**SAM HUPPERT:** Good evening, Chairman Riepe, and members of the Business and Labor Committee, excuse me, Committee. My name is Sam Huppert. That's S-a-m H-u-p-p-e-r-t, and I'm Senator Day's legislative aide, and I'm gonna be reading her testimony into the record. I'm here this afternoon to introduce LB678, which rely on the Nebraska Fair Employment Practice Act for the changes in the 2008 Americans with Disabilities Amendments Act, also known as the ADAA. This act was a series of amendments to the original ADA, which are spurred by a Supreme Court decision that suggested to Congress that a broadening of the original 1990 ADA was necessary to fulfill the original purpose of the law. The ADAA was passed by a wide bipartisan vote and signed by President Bush and was a response to the narrowing of the disabilities that qualified under the original ADA, significantly increasing the requirements to prove a disability. Congress found that persons with many types of impairments, including epilepsy, diabetes and multiple sclerosis, had been unable to bring ADA claims because they were found not to meet the ADA strict definition of disability. The ADAA put the focus back on the original intent of the ADA by broadening the definition of disability. The method for doing this was retaining the ADA's basic definition of disability as an impairment that substantially limits one or more major life activities. It also retained the need for a record of such impairment or being regarded as having such an impairment. This in turn increased the number and types of persons protected under the ADA and other federal nondiscrimination laws. The ADAA was designed to strike a balance between employer and employee interest, and so it was felt that employer interests have been favored beyond the intent of the original ADA. Specifically in Sutton v. United Airlines in 1999, the Supreme Court stated that under the text of the original ADA, a company could terminate an employee because of a physical or mental condition and then argue that this

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condition was not serious enough to constitute a disability. Obviously, this is against the spirit of the original Americans with Disabilities Act, and the ADAA was meant to clarify statutory intent to the original purpose of the bill. Put differently, the ADAA reframed employment disability cases back to the experiences of the individuals involved. In practice, both federally and in LB678, the ADAA defines a disability using a three-pronged approach. First, a physical or mental impairment that substantially limits one or more major life activities referred to as an actual disability, or a record of physical or mental impairment that substantially limited a major life activity referred to as a record of disability, or when a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor referred to as a, regarded as disability. This method, which is already used federally, takes away the focus from the costly and technical method of establishing a disability while still providing a firm standard that protects employers. While the ADAA affects the definition of disability, it also leaves a number of original provisions intact. For example, the scope of what businesses fall under the act stays the same and does not apply to employers less than 15 people, religious organizations or private clubs. Additionally, the same exclusions from accommodation for alcohol and drug-related disabilities are present in the ADA and ADAA. So LB678 maintains a balance between protecting employers and employees. The reason for state implementation of the ADAA lies within difference in the statutory definitions that complicate the administrative process as well as litigation. In Nebraska, it is possible to file a discrimination claim either with the state administrative agency, the Nebraska Equal Opportunity Commission, or the Federal administrative agency, the Equal Employment Opportunity Commission. The two agencies have a work-sharing agreement so the agencies cooperate to process claims. Although the claim across the two agencies is consistent, currently, the state definitions surrounding disability are misaligned from the federal definitions that were changed by the ADAA. Not only does this restrict Nebraskans from more broad state protections and leave them vulnerable to the same issues I mentioned in Sutton v. United Airlines, it complicates issues for Nebraskans when attempting to pursue their state and federal claims with inconsistent statutory language. As such, a number of states have implemented the ADAA standard starting with Texas in 2009. Where possible, and especially where these processes explicitly

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overlap, we should be striving to harmonize our state and federal statutes. For the vast majority of claims which are settled out of court, a single standard can provide consistency with the NELC, who currently has to consider both sets of regulations when investigating and evaluating employment discrimination claims. By enacting LB678 we can ensure legal protection for all Nebraskans with disabilities, including conditions such as diabetes, epilepsy and multiple sclerosis. We can stop situations of injustice where discrimination was proven, but where the case was dismissed because of an unintentionally strict definition of disability that allowed courtroom technicalities to win out. We can make the process more straightforward for everyone involved and align our state with a federal standard that's been in use for over a decade. LB678 is not a radical change, but is one that is still overdue and harmonizes Nebraska's employment law in a way that truly extends equal protection to those experiencing disabilities.

**RIEPE:** OK, thank you. Are there questions from the committee? Seeing none. We'll ask for additional proponents.

**KELLY BRANDON:** Good evening.

**RIEPE:** If you would be kind enough, welcome, and state your name and spell it, please.

**KELLY BRANDON:** Kelly.

**RIEPE:** And who you represent.

**KELLY BRANDON:** OK. Kelly Brandon, K-e-l-l-y, Brandon, B-r-a-n-d-o-n, and I represent myself. I'm an attorney in Omaha and I live in Gretna. Thank you, Senator Riepe and the committee for your time this evening. And thank you to Mr. Huppert and Senator Day for introducing this important legislation for Nebraskans. LB678 is designed to get people to work and to keep them working. That's what we need for all Nebraskans to drive Nebraska's economy. The more people that are employed, the more money they have to spend at local businesses and communities, in communities across this great state, and the less likely they are to require public assistance. Being employed can be so vital for all who choose to seek employment. It provides meaning and purpose in life. LB678 supports that goal of employment by harmonizing

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our state law with the Americans with Disabilities Act that was amended in 2008, quite some time ago. The ADA Amendments Act was passed with strong bipartisan support to reflect the original purpose of the ADA, which is similar to Nebraska acts original purpose that all people in Nebraska, both with and without disabilities, shall have the right and opportunity to enjoy the benefits of living, working and recreating within the state. The Unicameral's original intent in passing the people's disability protections was to ensure that the entities that were covered and the people with disabilities understand the rights and responsibilities under the law and to prevent discrimination based on disability. This law provides a much clearer picture of those rights and responsibilities. As you can see, it's a very detailed recitation of different definitions, but it streamlines those definitions and educates all. We all have someone in our lives, whether that be a family member, friend or colleague, that is affected by a mental or physical disability. This legislation provides the same definitions of disability for those individuals that the federal act does. People are required to either have an actual disability, a record of disability, or to be regarded as disabled even when they are not because of unlawful stereotypes. This legislation doesn't provide any requirements for businesses that are not already contemplated by the federal law. So businesses that employ 15 or more employees are already taking efforts to comply with the federal law. So this bill won't add to those efforts. There are carve outs for what is not covered as a disability and clearly delineate, delineated physical and mental impairments that do qualify. The law gives deference to a business owners determination of what the essential functions of a job are. It also does not require an employer to grant a requested accommodation if it is an undue burden to implement or causes a safety threat to the employee or other employees. The principles contained within LB678 are intended to provide for a more predictable, consistent and workable framework for all individuals and entities with rights and responsibilities under the law. This provides administrative agencies, judges and juries with that framework. So I urge you to advance LB678.

**RIEPE:** Thank you very much. Are there questions from the committee? I think the thing that I would say is, I'm a bit overwhelmed by the length of the amendment. The amendment is actually almost larger than the bill originally, so.

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**KELLY BRANDON:** I can tell you.

**RIEPE:** Some we've experienced on other situations today that it's like getting a bill and trying to read the bill, then getting the amendment, trying to read the amendment and then little time given everything else to really dig in and understand it well-enough to conduct a hearing.

**KELLY BRANDON:** The original bill is, it really makes up just the Federal Amendments Act and the regulations that support it, so.

**RIEPE:** Are there any other questions? I had, I'm not sure whether I'm taking this out of context, but it was in page 6, line 27 and 28 and I quote: The known disability of another person with whom the individual is known to have a relationship or association. It seemed incredibly vague to me and open to, you know, I, I'm kind of trying to, what is that, what does that, known to have a relationship or association? I mean, that could be my best friend.

**KELLY BRANDON:** There is a recognized cause of action for association or disability, and I know that another speaker is going to speak to that in detail.

**RIEPE:** Good.

**KELLY BRANDON:** So it's essentially meant to be anyone that you have a significant familiar, familial relationship with and you're, you know, your daughter has some sort of disability and your employer ends up terminating you because they don't want to, you know, either pay those high health insurance premiums or because of that child or you might require some time off so that.

**RIEPE:** We understand direct family, it's just that this looks like it could be your neighbor. So, I don't know, I don't, I look forward to finding out. Are there other people that have questions? Seeing none, thank you. We appreciate your staying this late and helping us out.

**KELLY BRANDON:** Thank you for your time.

**RIEPE:** Thank you. Additional proponents?

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**BRAD MEURRENS:** Good evening, Senator Riepe, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director with Disability Rights Nebraska. We are the designated protection and advocacy organization for persons with disabilities in Nebraska, and I am here today in strong support of LB678. People with disabilities comprise almost 13 percent of our state's population, just shy of a quarter million people. And there are Nebraskans with disabilities in every single county. When compared to their peers without disabilities, they experienced significant gaps across a spectrum of metrics, including employment. For example, data from the American Community Survey reports that in 2021, 56.2 percent of working age Nebraskans with disabilities were employed, whereas 84.8 percent of working age Nebraskans without disabilities were employed. Employment continues to be a priority policy issue for many Nebraskans with disabilities. They want to work and the ability to enjoy the independence, dignity and income that comes with employment, as well as the ability to access the same luxuries, lifestyle choices and social/community opportunities as their peers without disabilities. Then President George H.W., sorry for the typo, bush describes this as a central thrust of the American Disabilities Act and a reason he signed the legislation into law in 1990. As the designated protection advocacy organization, Disability Rights Nebraska has consistently supported attempts by this Legislature and others to increase competitive, integrated employment opportunities for Nebraskans with disabilities, harmonizing existing state and federal definitions so that all parties are using the same vocabulary and have a clear mutual understanding of the current law will benefit not only employers but also potential and existing employees with disabilities. As such, we recommend this committee advance LB678. I'd be happy to answer any questions.

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

**BRAD MEURRENS:** Thank you.

**RIEPE:** Other proponents, please.

**KATHLEEN NEARY:** Chairman Riepe, members of the committee, my name is Kathleen Neary. First name, K-a-t-h-l-e-e-n, Neary, N-e-a-r-y. I'm here to testify in support of LB678, and Chairman, I hope I can answer

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your questions about the association by the disability by association concerns that you have. OK. So I'm going to go off script because I want to get you an answer for your question. In most of our, and by the way, I am a lawyer. I am a mother. I am a taxpayer. I have lived in Lincoln for decades. And I spend about half of my practice representing people who have been discriminated against because of age or race or pregnancy or disability, those protected classes. So, Chairman, I want to just get right to your concerns. The way that is set up, because the Nebraska Fair Employment Practices Act is patterned after Title VII of the Civil Rights Act, Nebraska looks to federal law in interpreting our statute. So I am actually working on our brief talking about that disability by association. The Eighth Circuit Court of Appeals, where Nebraska lies, the courts restrict the interpretation of that very, very narrowly. An example that would be, would be, and these are real life scenarios of Nebraskans that I have represented. I didn't just make these up. For example, a husband and wife. This would be a scenario, received news that their six-year-old daughter has been diagnosed with lymphoma. The family's health insurance is provided by the husband or the dad's employer. The employer learns of the child's lymphoma, lymphoma diagnosis and terminates the husband under what we call a pretext or a pretend reason, because the employer believed that the child's medical condition will distract the husband, the dad from work, or that it will increase the cost of the employer's health insurance coverage. There's another one that I've represented. A wife is diagnosed with breast cancer. The employer assumes that the husband will take time off to work to care for his sick wife, or that he'll be unable to perform his job because he's distracted. The employer, employer comes up with the pretend or pretext reason to fire the husband who, who carries the health insurance coverage. Those are examples of disability by discrimination. It's not your next door neighbor. It may be a stepchild who lives with you. One, I have represented, a wife who contracted HIV through a blood transfusion. The employer fired the husband who carried the health insurance because they believe that he will infect HIV from his wife and then transmit it to others at his place of employment. Those are examples. I'm sorry. Disability by discrimination, disability by association discrimination.

**RIEPE:** Thank you. In the, the one case, the case of clear discrimination, so that there's other things that cover this?

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**KATHLEEN NEARY:** No, actually, state law does not have that provision, the disability by association coverage right now. And what's really important that hasn't been mentioned is if you bring an ADA amendments case, the federal law, you have to file it in federal court. There's only two federal courthouses in our state, Lincoln and Omaha. Our federal judges are amazing, but we have one of the highest dockets of busiest dockets in the United States of America. We have four federal judges. If we would adopt this, if you would move forward, then state court judges and we have 58 state court judges, district judges in Nebraska, they would be able to hear these cases. And the persons who are the parties to this litigation would actually have a trial in front of a jury of their peers so we don't have some plaintiff in Red Willow County having their trial in Omaha. It would be a Red Willow jury hearing a Red Willow case. It wouldn't be a Douglas County jury hearing the case originating, originating out of Brown County.

**RIEPE:** You gave two examples.

**KATHLEEN NEARY:** Yep.

**RIEPE:** You know, I was in the hospital business for almost 40 years.

**KATHLEEN NEARY:** Yep.

**RIEPE:** Dealt with a lot of these. I've never, these in my opinion, these are potentially outliers and you're never going to solve every problem in the whole world everywhere. It's never going to be perfect. And so I have seen a lot of cases, I've seen a lot of employees, I've seen a lot of situations.

**KATHLEEN NEARY:** Yeah.

**RIEPE:** Just from life's journey.

**KATHLEEN NEARY:** May I.

**RIEPE:** But I've never, I've never, I've never seen, I've never personally seen an employer that terminated somebody because their child had leukemia. Now--

**KATHLEEN NEARY:** They don't say that.

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**RIEPE:** --that may be, that, that goes to the character of that individual as far as I'm concerned.

**KATHLEEN NEARY:** And of course, the employer is never going to say that, Chairman. Let me, if I may add just one very short.

**RIEPE:** Well, you're not supposed to ask questions, but maybe I can bait you into what you have to say.

**KATHLEEN NEARY:** So part of the reason, I didn't know you were going to have this particular question when I came in today.

**RIEPE:** I didn't either until I looked at this.

**KATHLEEN NEARY:** I know and I thought, what was on my brain. I represent a young couple, a man who is this rock star, he's in the sales business, right, and he's, he won all these national awards. Young wife, young husband. They had their first baby. I represent them. The wife has their first baby girl, and the wife suffers severe postpartum depression. The young man decides to take some time off work, and yes, it's a combination of paid time off and family medical leave, right, which we know probably gets him paid. And, but his supervisor pay is tied to my client's sales. Supervisor, get a portion of my client sales and my client is a rock star.

**RIEPE:** OK.

**KATHLEEN NEARY:** Supervisor thinks that he's distracted, that he's, he's not going to be at work. He's distracted. He won't produce. So he makes the working conditions so intolerable that my client has to resign. Those are the kind of examples, that's a disability by association.

**RIEPE:** OK. And I would probably push back and say, it sounds to me like a case for wrongful discharge, but I don't want to go into that because I'm not a lawyer either, but we need to move along because it's now 7:00.

**KATHLEEN NEARY:** Appreciate it.

**RIEPE:** Are there other questions? Thank you.

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**HUNT:** You're an attorney, correct?

**KATHLEEN NEARY:** I am.

**HUNT:** Thank you. That's all.

**KATHLEEN NEARY:** OK. Thank you.

**HUNT:** Thank you.

**RIEPE:** Are there any other proponents? Are there any opponents? Are there any in the neutral capacity? Are you now a neutral or an opponent?

**PAULA GARDNER:** I'm neutral.

**RIEPE:** OK.

**PAULA GARDNER:** So, good evening. I am Paula Gardner. I'm the executive director of the Nebraska Equal Opportunity Commission. So I can certainly answer any questions that you have about the statute. And I just want to say that we're a small state agency. We have 26 employees. We have three locations in Nebraska and our mission is to eliminate unlawful discrimination in Nebraska through effective case processing and public education activities. The NEOC plays an active role in protecting equal rights for Nebraskans. Our dedicated staff investigates discrimination claims throughout Nebraska within the context of employment, housing and public accommodations. My agency would have direct oversight in carrying out the provisions of this bill. Given our mission, we value legislative efforts to ensure that all Nebraskan, all Nebraska's workers go to work each day in an environment that is free from discrimination. This bill clarifies for Nebraskans what is covered regarding disability discrimination. With this bill, Nebraska will be providing clarity in the law, ensuring that disabled individuals receive the same protections at the state level that they receive at the federal level.

**RIEPE:** OK. Thank you. Are there questions? Are you a lawyer?

**PAULA GARDNER:** I'm not.

**RIEPE:** OK.

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**PAULA GARDNER:** I'm a 25-year state employee.

**RIEPE:** Thank you. Are there other questions?

**PAULA GARDNER:** I would like to provide a little bit of clarification on this disability by association issue. Under state.

**RIEPE:** You have one minute.

**PAULA GARDNER:** I can do it fast. Under state law, the way it's written, if a person's protected as an association because I'm associated with a disability, they themselves have to have a disability because of how the statute is written. What is in front of you mirrors exactly what federal law is. What federal law was around 1890 and what it was in the Amendments Act in 2008. So it's not a, it's not branching off and adding something into state law. It's trying to mirror federal law.

**RIEPE:** OK. Thank you very much. That's helpful. Are there any questions, whoops, from, whoa, whoa, whoa, whoa, whoa, whoa, whoa. Thank you.

**PAULA GARDNER:** Been a long afternoon, hasn't it?

**RIEPE:** You have a good sprint. Are there any, Senator Halloran.

**HALLORAN:** Thank you, Chairman. Again, who are you with?

**PAULA GARDNER:** Nebraska Opportunity Commission. So this is an amendment to the Nebraska Fair Point Practice Act.

**HALLORAN:** OK. Thanks.

**RIEPE:** OK. Are there any other questions from the committee? Seeing none, thank you for being here. Are there any other neut, individuals that wish to testify in neutral? OK. We would invite you to close if you choose. And there were, of letters and emails, there were two proponents, zero opponents and zero in neutral. So, low response, but you're welcome to close, sir. OK, great. Thank you. OK. That concludes the hearing on LB678. And we will now move on to LB671. That will be Senator Hansen. Welcome, Senator Hansen.

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**HANSEN:** Thank you.

**RIEPE:** You're welcome to start at any time you choose.

**HANSEN:** Well, let me cross off, afternoon. OK. Good evening, Chairman Riepe and members of the Business and Labor Committee. My name is Ben Hansen. That's B-e-n H-a-n-s-e-n. LB671 is an update to the purposes allowed for by Nebraska's Training and Support Cash Fund. Currently, this fund is used for the administrative costs for state employment insurance, tax liability and payments, along with administrative costs for both the State Unemployment Insurance Trust Fund and Nebraska Training and Support Cash Fund. It also supports job training programs, recruitment efforts, a common web portal, studies on Nebraska's workforce and the payment of unemployment insurance benefits. As a state, we want to back employers in their efforts to train employees, expand business and attract workforce to our state. In 2022, the Nebraska Department of Labor received \$10 million in ARPA funds through LB1014. With this funding, the department created programs aimed towards the workforce issues Nebraska faced because of the impact caused by COVID. These funds were distributed through the Nebraska Worker Training Board. According to the guidelines laid out, part of the funding could be used to provide worker retention incentives that were designed to persuade employees to remain with their employer. With over 500 applications from employers totaling, totaling in over 6, \$60 million of awarded grants, the Department of Labor recognized the need to expand the uses for the Nebraska Training and Support Cash Fund. While ARPA clearly allowed expenditures for the retention of employees, the existing state funded worker training statutes were silent on this topic. This is where LB671 comes in. The Governor has proposed an additional \$10 million to the Nebraska Department of Labor in the budget for workforce development. This funding is intended to be focused on job retention and will be awarded to the Worker Training Board separately from the existing funds in the Nebraska Training Support Cash Fund. It's a lot of funds, I'm labeling, listing out right now, so hope none is falling, probably not. The changes by LB671 would help accomplish the purposes of this appropriation. It would clarify that the existing Nebraska Worker Training Board program can be utilized not only for the recruitment and training of workers, but also for the retention of workers. If passed, the Nebraska Worker Training Board would review the current guidelines that apply to grant applicants. This is already a part of

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the existing process. It would not cost the department anything to implement. The specific rules for what factors should be included in job retention programs would be addressed with guidelines the board adopts. They would control who meets eligibility requirements with the intention to encourage the creativity of employers. Please consider supporting LB671 in job retention across Nebraska, both for profit and nonprofit businesses. I appreciate your time and consideration today. A representative from the Department of Labor will be speaking after me and will be able to provide further information.

**RIEPE:** Thank you, Senator Hansen. Are there questions from the committee? Could you tell me again what was the ten million?

**HANSEN:** Ten million.

**RIEPE:** Was that the number?

**HANSEN:** Yeah.

**RIEPE:** OK. OK. Thank you. I know you'll be staying around for closing.

**HANSEN:** Yes.

**RIEPE:** Proponents, please.

**KATIE THURBER:** Good evening, Chairman Riepe and members of the Business and Labor Committee. For the record, my name is Katie Thurber, K-a-t-i-e T-h-u-r-b-e-r, general counsel for the Nebraska Department of Labor. I'm appearing here today on behalf of the department in support of LB671. I'd like to thank Senator Hansen for introducing this on behalf of the Governor. LB671 expands the use of funds in the Nebraska Training and Support Cash Fund to specifically allow funds to be utilized for the retention of existing workers. The Nebraska Training and Support Cash Fund is already used to fund the Nebraska Worker Training Board grants. As drafted, LB671 would allow grants to be awarded not only for training and recruiting employees, but also retaining employees. In 2022, the Nebraska Department of Labor was awarded \$10 million in ARPA funds to be distributed through the Nebraska Worker Training Board. An area of an allowable expenditures under ARPA was retention incentives. The department created three ARPA grant programs. The department's first two programs were focused on the retention of workers in the health care, teaching

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and daycare industries. Under these two programs, eligible employers could apply for retention bonuses above to \$2,500 for all eligible workers. The third program gave employers flexibility to request funds for programs as they best saw fit. I have included with my testimony a copy of the Guidelines for Use of the American Rescue Plan Act of 2021 funds that were allocated to the Nebraska Department of Labor under LB1014. The programs were well-received by the business community. The department received over 500 employer applications for over \$60 million. The applications covered over 27,000 employees. The department allotted \$4 million for both the nursing recruitment and retention grant and the teacher and child care recruitment and retention grant. Two million (dollars) was allotted for the more flexible Workforce Development Grant program. All of the grants are fully award, awarded. The department only had sufficient funds to award 102 of the 500 employers that applied for the grant programs. In total, the Worker Training Board approved 80 applications for teachers and daycare workers, covering 1,752 positions. Nine applications for health care workers and 13 applications for workforce development. ARPA grant programs that the department demonstrated the business community has a need not to just train, but also retain workers. While ARPA regulations specifically authorized funds may be used for retention incentives, it is not clearly an authorized use of the Nebraska Training and Support Fund. LB671 gives the Worker Training Board the framework to assist employers with this need. LB671 gives the Department the clear legislative authority to continue this program and pay retention incentives with state funds. That concludes my testimony, and I'd be happy to answer any questions that you may have.

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

**KATIE THURBER:** Thank you.

**RON SEDLACEK:** Good evening.

**RIEPE:** You've been here before, please go forward.

**RON SEDLACEK:** Yes, Chairman Riepe and members of the Business and Labor Committee. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm registered lobbyist and general counsel at the Nebraska Chamber of

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Commerce. I'm also authorized to testify on behalf of the Greater Omaha Chamber of Commerce and the Lincoln Chamber of Commerce, all in support of LB671. It said that rep, repetition is a good teacher, but I don't think you need three times the same material because what was mentioned before is pretty much the gist of my testimony. So I'll spare you that. But I would like to mention, however, is that during the legislative interim, after the ARPA allocations in LB1014, the Chamber did meet with the Department of Labor to discuss workforce needs and workforce development issues in the implementation of the ARPA programs. And we talked about potentially expanding those programs, perhaps looking at if there's any ARPA funds left on the table, if there's any general fund support and so forth. However, they did come up with the possibility of worker retention funding, but that would require statutory change and that's why we have the bill before us, as, as a result. And so, we would support, we do support the legislation. We support continuing, the continual funding of the work, work, Nebraska Worker Training programs and Nebraska Training and Support Cash Fund. We'd also support additional appropriation that would be incorporated within the Governor's budget to implement the expanded program. And that's the end of my testimony. I'd be happy to answer any questions.

**RIEPE:** OK. Thank you very much. Are there questions from the committee members? Seeing none. Thank you very much. Thank you for staying around. Are there are other proponents? Are there any opponents? Is there anyone in the neutral position? Senator Hansen, you are, and Senator Hansen waives so that, of the letters there were no proponents, no opponents and no neutrals, so you get a clean bill of health. That is the close of LB671. Thank you. Now we will open up on Senator Hunt, we'll open up on LB670. Senator, the show is yours.

**HUNT:** Change the slide there. Good evening, Chairman Riepe and my colleagues on the Business and Labor Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I'm very excited to introduce LB670 today and bring this important issue to this committee. This bill would prohibit gender. It would prohibit employment discrimination based on sexual orientation and gender identity. If you've been in the body or followed it in recent years, this concept will definitely not be new to you. Under Nebraska law, employers can legally discriminate against employees or prospective hires on the basis of their gender identity or sexual orientation. This means that LGBTQ Nebraskans can legally be

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denied job opportunities they're otherwise qualified for, passed over for promotions when the most qualified candidate be denied training necessary to do their jobs, endure harassment or retaliation, have their hours cut, be giving, be given less preferred position assignments, or even be fired purely based on who they are and who they love. LB670 is a unique, is a unique bill because this bill would apply to employers of all sizes. I've introduced bills in the past that just applied to businesses of 15 or more employees, but this bill would apply these protections to employers of all sizes. You'll see in the text of the bill that the way we did this is by creating two classes of employers and defining them by Class 1 employers and Class 2 employers. Class 1 employers have more than 15 employees, and Class 2 have fewer. The gender identity and sexual orientation antidiscrimination provisions are then applied to both classes of employers while exempting the smaller employers from other requirements that are included in the Fair Employment Practice Act that might be more difficult for small businesses to implement. It costs absolutely nothing. It costs zero dollars and zero cents for employers to not discriminate against their workers based on their gender identity or sexual orientation. I've gotten a lot of emails, and you probably have too, from people saying this is government overreach or that this will harm small businesses. But I can't think of any circumstance where it would be more difficult or more costly to make an employee feel like they're not being discriminated against because of their sexual orientation or gender identity. If someone is doing a poor job at work, you can still fire them. Nothing in this bill prevents you from firing people with just cause. All companies will still have the right under this bill. It also wouldn't apply to any religious institutions or anything like that. So employers can still deal with their employees as they see fit. It's just that under this bill, if this were to pass, no employer could keep someone in the back room or failed to give them a raise or fire them just because they're gay. One question that I continue to get is regarding the Supreme Court *Bostock v. Clayton County* decision that prohibited discrimination against LGBTQ people in employment and public accommodations and why this bill is necessary. We've talked about this for several years since the *Bostock* decision came down, and I can explain it to you here on the record too. After the *Bostock* decision, the Nebraska Equal Opportunity Commission began processing cases on the basis of sexual orientation and gender identity. I had extensive

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discussions with the Commission in my past efforts on this topic, and they informed me that it would be very helpful for them to more expediently complete their investigatory duties if we had this minimum standard in state law. Without clear coverage in state law, cases had to be taken federally. When the state law doesn't mirror the federal baseline, it creates inconsistency and confusion. The Nebraska Equal Employment Opportunity Commission said that a smaller, said the smaller businesses that don't have legal counsel often don't understand their rights and responsibilities in this area, and the NEOC ends up needing to educate them. Getting this into state law would allow them to fully leverage all federal funds available to help protect Nebraskans from discrimination. They also indicated that clarity in state statute and leveraging funds could also help the NEOC conduct education and outreach efforts for employers about what their rights are and what their responsibilities are to protect themselves and to help them avoid costly litigation. By passing this into state law, we provide an avenue for recourse, a state or local court, instead of a federal court that's more accessible and affordable for parties on each side. Litigating in federal court is costly and time consuming for all stakeholders, and as it stands, we have a patchwork of federal, state and local laws that all have different employment thresholds, creating uncertainty for employees. Business leaders see this as essential to economic growth. The Omaha Chamber has indicated that their membership is considering this a priority this year and is willing to throw more support behind it than ever before as part of their recruitment and retention efforts. Representatives with the Omaha Chamber told me they'd heard about talent recruits not wanting to come here for fear of being unprotected. So this is not just some abstract fear, it's really happening. And it's been happening for decades in Nebraska. Polling from the University of Nebraska at Lincoln shows that 75 percent of Nebraskans support these protections, including 67 percent of those in small towns and 82 percent in medium and large cities, including 78 percent of Catholics. The fact that Nebraska's laws don't reflect the beliefs of our state's citizens make us look close-minded and regressive. I conducted an informal survey on social media to which hundreds of Nebraskans responded. One of the key takeaways of that survey is that young people don't want to live in a place where the culture doesn't reflect their values. Workers are hesitant to stay or come to a state that doesn't offer protections and security to their positions. Creating a home in a community that

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doesn't legally appear to be supportive of who you are is very difficult. We are competing with our neighboring states for top talent, and we can't afford to be a state that tells young people they are not welcome here. I and over 67 other Nebraskans who are LGBTQ would appreciate your support of LB670 and I'd be happy to answer any questions.

**RIEPE:** Thank you very much. Are there questions from the committee? Senator Hansen.

**HANSEN:** Is this similar to Senator Day's bill we just had? I guess, so I can get clarity, is this a federal law now or we're making a state?

**HUNT:** So, at the federal level, when they passed the Bostock decision, it said that, that gender identity and sexual orientation is included in nondiscrimination clauses. But we don't have that in statute in Nebraska and so it's ended up creating more work for the Equal Opportunity Commission, and it just makes us look really bad.

**HANSEN:** OK. So it's not like-- so it's not a federal law yet, it's a court decision.

**HUNT:** Um-hum.

**HANSEN:** OK. That's what I'm trying to get straight. OK. Thank you.

**RIEPE:** I have two questions. I think you commented and said there was no cost and yet there's a fiscal note of \$80,081.

**HUNT:** The fiscal note is a full-time employee for the Equal Opportunity Commission. I think that seems fair. It really highlights the need for this type of of legislation because they would be getting enough cases to hire another worker. What I said was, it was free for employers to not discriminate. And so, I mean, this is an estimate, of course, this fiscal note. If employers don't discriminate and the Equal Employment Commission doesn't have a lot of cases to handle with their caseload, then that cost goes down, but.

**RIEPE:** It's an FTE, the way I read it and so it's five.

**HUNT:** That's right. That's right. That's what I said. That's correct.

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**RIEPE:** The other question that I have is, this looks like it has been introduced something similar. I'm not saying same, in previous years in '13, '15, '17, '19 and '21, is that correct?

**HUNT:** Yes.

**RIEPE:** OK. Is there something that's different this year or is it?

**HUNT:** No. This, this bill would apply to all employers and, yeah.

**RIEPE:** OK. Thank you. Thank you for carrying the bill. Thank you for being here. And now we will open it up and you'll be around, will you?

**HUNT:** Yes.

**RIEPE:** Thank you. We'll open it up to proponents.

**JUSTIN HUBLY:** Good evening, again.

**RIEPE:** I'm not going to tell you the rules of (INAUDIBLE)

**JUSTIN HUBLY:** Senator Riepe, I appreciate it. Justin Hubly, J-u-s-t-i-n H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees, AFSCME Local 61. Our union represents over 8,000 state employees who work for more than 40 different code and noncode agency, is performing public service in all 93 counties in Nebraska. We are strongly in support of this bill. We've actually advocated in the last four rounds of negotiations with the executive branch in our contract to include this very language. And one of the things we've been met with is, well, that's not what the law says, we'd like the contract to mirror the law. And that's a fair, a fair thing, and so I'm here today to advocate for this. State employees, one way they get due process and in a case of discrimination is through the NEOC. And as Senator Hunt rightly pointed out, they have a hard time doing that there. It's on the basis of sexual orientation. It's illegal in Nebraska, for example, Senator Hansen to discriminate against you because you're married, and Senator Ibach, and Senator Halloran because of your poor eyesight like me, Senator McKinley, because he's an African-American, Senator Riepe because of his age, it's all illegal. But we could discriminate against all of you legally because of your sexual orientation. And we just shouldn't discriminate against anybody, that's a position of our state employees. And

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unfortunately, it does happen. It's usually pretty insidious. And most people don't come out and say, I'm discriminating against you because you're gay, but it certainly happens. So we just want to make sure that they have a fair chance at due process. That's why we're in support of this bill. And I appreciate all of your time this afternoon and evening. Thank you.

**RIEPE:** Are there questions? Senator Hansen, please.

**HANSEN:** I hope I don't get too many emails for this question.

**JUSTIN HUBLY:** Sure.

**HANSEN:** But feel like I have to ask it, just more for clarification sake. I get the sexual orientation part. You know, I don't mind that one bit in this bill. Has there been any issues with the gender identity definition, like in other states or would the EOC, like because you just mentioned sexual orientation a lot instead of the gender identity. I just know I'm missing something.

**JUSTIN HUBLY:** I don't think so. I can give you an example. We have an employee at one state agency that I'll decline to say which agency today for the purpose of a public testimony, but they are trans and identify as such and have definitely experienced work assignments different than other people in their job classification. And it's pretty obvious to me as the outside observer, and maybe I'm a little biased, but that, that's the reason why they're being discriminated against. They don't really have recourse under Nebraska law. So, it's one example.

**HANSEN:** That sums it up perfect. Thanks.

**RIEPE:** OK. Are there other questions? Thank you for being here.

**JUSTIN HUBLY:** Thank you.

**RIEPE:** Would appreciate it. Additional proponents? I think we have seen you as well before. Please state your name and spell it.

**ABBI SWATSWORTH:** I'd be happy to. Thank you. Chairman Riepe, and members of the Business and Labor Committee, I'm Abbi Swatsworth, A-b-b-i S-w-a-t-s-w-o-r-t-h. I'm the executive director of

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OutNebraska, a statewide nonpartisan nonprofit working to celebrate and empower LGBTQ Nebraskans. OutNebraska speaks today in support of LB670. Nebraska often receives inquiries from LGBTQ-plus people exploring a move to our state. The most common question we receive is about community climate. Are there nondiscrimination policies in place? We must tell the truth. LGBTQ-plus people are not protected from employment discrimination in state statute. While Nebraskans are protected under the recent *Bostock v. Clayton County* Supreme Court decision, state statute protecting LGBTQ employees is still important for a number of reasons. One pressing reason is the reputation of our state as a desirable place for young workers. Millennials make up the largest group of employees currently in the workforce. By 2030, they will be 75 percent of the workforce. Research shows that millennial workers believe in and value inclusive policies like employment nondiscrimination. One concern that is often raised when discussing nondiscrimination is the potential impact on small business. However, studies have shown that the majority of small businesses support passing legislation to protect American workers from discrimination based on their orientation or gender identity. And here in Nebraska, the sentiment is the same. We have a program in OutNebraska called Nebraska Competes. It is a business coalition committed to nondiscrimination policies at the local and state level. Eighty-nine percent of business members are small businesses and 66 percent of them have less than 50 employees. Small businesses are one of the most crucial parts of our economy in our state, and small businesses support nondiscrimination laws. Nebraska's difficulty in passing nondiscrimination legislation has signaled over and over that Nebraska is not welcoming of sexual orientation and gender identity diversity. Updating our law to reflect the law of the land signals to this growing body of workers that Nebraska is for everyone. OutNebraska believes, and a majority of Nebraskans believe, that all hardworking people, including those who are LGBTQ, should be treated fairly and equally by the laws of our state. Updating the law won't end all unfair treatment or reposition our reputation overnight, but it will provide a vital tool to illustrate to all Nebraskans who want to work hard and who do their jobs well that they are welcome and valued in our great state. We believe it is a vital piece of our economic growth. We respectfully ask that you support LB670 by advancing it. We encourage you to consider it a priority of the committee, and I am happy to answer any questions to the best of my ability.

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

**ABBI SWATSWORTH:** Thank you.

**RIEPE:** And thanks for staying around.

**ABBI SWATSWORTH:** Thank you for saying that.

**RIEPE:** We don't have a choice, though. [LAUGHTER]

**ABBI SWATSWORTH:** Well, some committees are going to [INAUDIBLE], but thank you for being here.

**RIEPE:** Thank you. Additional proponents?

**SUSAN MARTIN:** Good evening, again. For the record, my name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO in support of LB670. Everyone, regardless of their sexual orientation or gender identity, should have economic stability and opportunity. But discrimination against LGBTQ people is a significant barrier to their full economic inclusion. Nearly one in three LGBTQ adults reported that discrimination negatively affected their financial well-being to a moderate or significant degree, according to a nationally, a nationally representative 2020 Center for American Progress Survey. Section 1, Section 48-1101 of the Revised Statutes of Nebraska state that it is the policy of this state to foster the employment of all employable persons in the state on the basis of merit. It also goes, goes on to say, and to safeguard their right to obtain and hold employment without discrimination. We have a responsibility to protect all workers in the state and make sure all barriers to employment on the basis of merit and discrimination are removed. It's 2023, no matter what our personal beliefs are, this law was created to protect all workers, no matter how we identify. Gender justice requires bold action to promote equity, safety, security and dignity for all people, regardless of gender identity, sexual orientation, or gender expression. Respecting the self-determination of workers means respecting workers identities and respecting gender pronouns. We commit to building unity and of deepening our community, commitments to gender and social justice throughout the AFL-CIO to make the trade union movement stronger and to take action to address

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gender discrimination. I thank Senator Hunt for introducing this legislation, and hope you will join us in valuing our many, many fellow Nebraskans living, working and contributing to the state and vote to advance this bill out of committee.

**RIEPE:** OK. Do we have questions from the committee? Seeing none. Thank you. Next proponent, please. Welcome.

**LUCAS PETERSON:** Thank you. Distinguished members of the Business and Labor Committee, my name is Lucas Peterson. That's L-u-c-a-s P-e-t-e-r-s-o-n, no relation to the former Attorney General. You can go ahead and call me Luke. As the Chair said recently, I don't have prepared remarks, so I'm doing this off the cuff, so I apologize. But as the Chair earlier said, that this bill has been introduced in some sort of iteration, I've been here to testify for it. I was wrongfully terminated when I was 22 years old. I recently came out at that time and my employer, who happened to be a business owner of a small fast-food restaurant, restaurant, found out and he told me two phrases that I still haven't forgotten. He called me a questionable character, and he said that he did not condone my immoral behavior. After those two statements, he then said, get out. So I've been living with that for about 17 years now, and an injustice to one is an injustice for all. Gay, LGBTQ Nebraskans get fired all day, every day in this state. I know of one person right now who happens to be a high school band teacher in a small school district near Senator Halloran's district, being let go. Her contract was not renewed because she had the temerity and the audacity to share that she's married to a woman, to her children, to the students, and she's being let go for that. So there are instances happening right now, and I'm here to share that you're going to listen to opponents of this bill say everything and anything under the sun to make it sound like this doesn't happen. It does. So, I also want to share that my testimony is my, on my behalf. I'm not here to represent anyone, but I also am an elected official and I represent the Lower Platte South NRD. I'm not here to speak on behalf for them, but we did do something about Bostock when that decision came down. At the time, the NRD did not have any language that permitted or prohibited discrimination based on sexual orientation and gender identity. When Bostock happened, I had the temerity to say, hey, what are we doing? And on a vote to amend the H.R. practices for the NRD, it was successful. It was a vote of 17 to 1, a bipartisan support of changing and reflecting that this is the

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year 2023. I urge you to support this bill and to make it a priority. Thank you.

**RIEPE:** OK. Thank you. Let's see if there are any questions. Seeing none, thank you for being here.

**LUCAS PETERSON:** Thank you.

**RIEPE:** Additional proponents, please. Dr. Irwin.

**JAY IRWIN:** Good evening, Chairperson Riepe.

**RIEPE:** Welcome.

**JAY IRWIN:** Good to see you. My name is Jay Irwin, J-a-y I-r-w-i-n. Chairperson Riepe, and members of the Board of Business and Labor Committee, thank you for your time today. I'm a former Board of Education member from Ralston Public School.

**RIEPE:** Did you spell your name?

**JAY IRWIN:** I did.

**RIEPE:** Oh, I'm sorry. My fault.

**JAY IRWIN:** J-a-y I-r-w-i-n.

**RIEPE:** Thank you.

**JAY IRWIN:** I'm a former Board of Education member for Ralston Public Schools, where I served as the first and only transgender person serving in elected office in the state of Nebraska. It's good to see you, Senator Riepe. If they were just colleagues, just in December. I'm an associate professor of sociology at the University of Nebraska in Omaha, though I speak today as a private citizen and not as a representative for UNO, the NU system or any other organization. I'm here to speak in support of Senator Hunt's LB670 to gender identity and sexual orientation and to our state nondiscrimination statutes. My research involves the physical and mental health of LGBTQ-plus populations, as well as the lived experiences of transgender or nonbinary people, mostly folks based here in Nebraska. I have close to 20 peer-reviewed publications in this area and I've served on local,

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regional and national sexuality and gender organization boards. In the most recent statewide survey conducted by our research team, the Midland Sexual Health Research Collaborative, housed at UNO, LGBTQ-plus Nebraskans report significant experiences of discrimination within the workplace. This survey, conducted in 2019, asked 770 LGBTQ-plus Nebraskans across the state to indicate their health, well-being and their experiences. When asked to report the level of discrimination experienced in employment in the past year, 21.3 percent of respondents indicated that they had been discriminated against at least once due to their sexual orientation or gender identity. Again, in the past year. When asked about discrimination from employers, bosses or supervisors, 29 percent of respondents indicated being discriminated against at least once. And when asked about discrimination from coworkers, 31 percent of LGBTQ-plus Nebraskans reported discrimination by coworkers. More metrics related to the LGBTQ-plus Nebraskans can be found in our community report online, the Midland's LGBTQ-Plus Health Survey Community Report. Discrimination is a considerable predictor for community and group health. Discrimination increases are [RECORDED MALFUNCTION] of the stress hormones that impacts cardiovascular health, neurological health and the ability to fight off infection and our mental health and wellbeing. Simply put, our health is negatively impacted by stress in several well-established pathways. Furthermore, LGBTQ plus individuals experience what's been titled minority stress, a concept coined to refer to the unique form of stress that takes when it's experienced by individuals who are marginalized in society. Minority stress and increases of stress in general is a significant predictor of health outcomes, mostly negative health outcomes in LGBTQ plus communities. In other words, stress kills. This bill would help alleviate some of this life threatening stress for LGBTQ Nebraskans. Nebraska's motto of equality before the law cannot be taken seriously when we know that our state law does not align with this value. LGBTQ plus people are Nebraskans. We also-- and we also deserve protection under the law. We have family, we pay taxes and we deserve equal protection. I urge you to vote LB670 out of committee. I welcome any questions.

**RIEPE:** Thank you for being here. Thanking-- thank you for having the strength to stay around.

**JAY IRWIN:** Yeah, of course.

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**RIEPE:** I'd like to ask are there questions from the committee? Hearing none, thank you very much.

**JAY IRWIN:** Thank you for your time.

**RIEPE:** It's good to see you again. Additional proponents, please.

**SCOUT RICHTERS:** Hi, my name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska in support of LB670. I first want to thank Senator Hunt for bringing this bill and the Business and Labor Committee for its time this evening. The ACLU is committed to the goal of a Nebraska where LGBTQ plus people can live openly, where identities, relationships and families are respected, and a state where fair treatment on the job, in schools, in housing, public places and healthcare does not depend on who you are or whom you love. LB670, as you've heard, is a common sense update to our already well-established and strong civil rights laws. Despite the Bostock opinion, as you've heard, Nebraskans continue to experience discrimination in the workplace based on their gender identity and sexual orientation. We know this based on testimony you've heard today and in years past and also the legal intakes that the ACLU of Nebraska receives. LB670 would ensure that Nebraska laws prohibiting discrimination in the workplace are in line with federal law. Updating our laws provides not only a sense of belonging to more Nebraskans, but it provides clarity to all stakeholders, including business owners here in Nebraska. Passing LB670 would send a strong message that Nebraska is a state that values our neighbors, can attract new businesses, creates jobs and addresses brain drain. So with that, we would urge the committee to advance this bill and I'm happy to answer any questions.

**RIEPE:** Thank you.

**SCOUT RICHTERS:** Thank you.

**RIEPE:** Are there questions from the committee? Seeing none, we appreciate your being here.

**SCOUT RICHTERS:** Thank you.

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**RIEPE:** Additional proponents. We don't want-- any others wanting to speak in behalf? If not, do we have opponents that want to speak? Seeing-- oops. Yes, we do. Welcome to Business and Labor.

**TOM VENZOR:** Good afternoon, Chair Riepe and members of the Business and Labor Committee. My name is Tom Venzor. T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference here to oppose LB670. The Catholic faith recognizes the supreme dignity of every person is made in the image and likeness of God. The only appropriate response to this reality is charity. And for this reason, the Catholic faith also recognizes that nobody, including those who are experiencing same sex attraction and gender identities, should be subject to unjust discrimination. In other words, everyone should be treated with respect and dignity. LB670 unfortunately, goes beyond protecting against unjust discrimination. It uses government coercion and punishment to force individuals, employers, small business owners, nonprofit entities and religious organizations to affirm conduct and messages that conflict with their sincerely held moral or religious beliefs on marriage and human sexuality. Even former Supreme Court Justice Anthony Kennedy recognized that such a view on marriage, this traditional view on marriage, long has been held and continues to be held in good faith by reasonable and sincere people here and throughout the world. LB670 does not treat those with traditional views on marriage and human sexuality as reasonable and sincere people, but in need of corrective government, coercion and punishment. LB670 contains at least several other issues worth briefly noting. First, LB670 undermines the ability of an employer to carry out their business in accord with their missions of, for example, it would prohibit a Christian bookstore owner from being able to hire, conduct their business in accord with their faith-based mission. Second, LB670 makes no attempt at adding religious liberty protections. It leaves in place current law protecting the ability of religious organizations to hire on the basis of religion. Current law also allows for bona fide occupational qualifications on the basis of sex. But LB670, however, fails to address such nuances with respect to the added categories of sexual orientation and gender identity. Third, LB670 undermines concerns for privacy and the LB670's reach extends to the terms, conditions and-- or privileges of employment because of the individual's gender identity. The terms, conditions and privileges of employment include the use of multi-use locker rooms, restrooms,

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showers, among other facilities. LB670 creates legitimate privacy concerns in our public, parochial and private schools, churches, supermarkets and restaurants, just to name a few examples. And for these reasons, we urge your opposition to LB670. Thank you for your time and consideration and would take any questions.

**RIEPE:** Thank you. Thank you for being here. Are there any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony. I'm just-- what I struggle with is I think everyone has a right to their own views and whatever they choose to do. But I think we have to realize that the world isn't a monolith and what you believe isn't what the next person believes. But we all should be able to live and function in society and move around our society without somebody judging you based on your race, your gender identity, identity, religious beliefs and things like that. And for me, it's like on one hand, we get the-- we want to be able to hold up our beliefs. But then on the other hand, it's like-- but it's also we, we want to discriminate, essentially and how are you balancing that?

**TOM VENZOR:** So again, so again, I think with this bill, like we're saying, people ought not to be unjustly discriminated on the basis of any number of categories. But my whole point of my testimony is that this bill, I don't think, balances the fact that you have people-- again, to go back to Justice Anthony Kennedy, this idea that people of good faith on issues of marriage and human sexuality, which get into the issues of same sex issues or issues of gender identity, those people have reasonable-- sorry. Those beliefs are held by reasonable and sincere people. And again, this bill doesn't treat those views of those people as being reasonable and sincere. In other words, if you have a different view on these matters, you know, you're going to be treated with corrective government action and coercion and punishment. And so that's where we don't think the, the bill balances those interests at all and doesn't address those at all, in terms of religious--

**McKINNEY:** But--

**TOM VENZOR:** --liberty protections.

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**McKINNEY:** But you, but you understand that the Supreme Court recently affirmed that unlawful discrimination on the basis of sex includes sexual orientation and gender identity. And why shouldn't I or anybody else be able to apply at a job and be, and be judged based on my, my resumé and my skills? Why, why-- even if it's a Christian bookstore, why should I be judged based on my, my gender identity when-- that's what I don't get, is you can have your beliefs. But why does working next to somebody that identifies as trans or LGBTQ offend you? Like, I don't-- like that's what I don't understand is you can have your beliefs, but what's wrong with working in a store with somebody that has a different belief than you? I work with people every day and we don't share the same beliefs, but I don't sit next to them and say, Senator Halloran, I, I can't sit next to you, you're a Republican. I-- that's what I just struggle with. I, I, I don't understand it.

**TOM VENZOR:** Yeah. Again, our issue isn't with the ability to-- again, I think what you're speaking to, this idea of kind of just co-exist, be around other people, to treat other people with basic dignity and, and charity and, and that kind of thing. And again, that's something we should all be doing every day, no matter what our encounters are. What we've seen with these types of bills, though, around the country, in other areas, is they typically end up being used in a way that's adverse against people who hold different fundamental views on marriage and human sexuality.

**McKINNEY:** But I, but I guess--

**TOM VENZOR:** So the, so the bill, so the bill actually has an inherent judgment toward those people who hold those views and they've been used in a way-- again, you look at-- in the area of public accommodations, right, the baker, the cake maker, the wedding photographer, the videographer, the web designer, go down the list. Those laws end up getting used adversely against those individuals for the beliefs they hold.

**McKINNEY:** So you can't run a Christian bookstore and ask everybody in the Christian bookstore is a Christian or believes in the--

**TOM VENZOR:** No, I didn't, no.

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**McKINNEY:** believes in the-- but in your testimony, it says it undermines the ability of an employer to carry out their business in accord with their mission. For example, prohibit a Christian bookstore owner from being able to hire or conduct their business in accord with their faith-based mission. Have you-- have-- and-- ever considered that maybe your mission is disc-- is discriminatory in nature and that's the problem?

**TOM VENZOR:** I don't think it is discriminatory in nature. Senators, I disagree with you on that premise, on that, on that fundamental fact, so.

**McKINNEY:** But if I can't work in the business because I'm gay, then isn't it?

**TOM VENZOR:** I don't think anybody would-- again, I don't think the point here is just simply because you're gay. I don't-- that's not the, that's not the--

**McKINNEY:** So how would, so how would this bill undermine that then?

**TOM VENZOR:** Because, again, if you're in a-- so let's use the example of the Christian bookstore or something of that nature. Right. You're in a-- let's say they want to have an environment where they're trying to carry out the belief, the traditional view on marriage, that it's, that it's a monogamous relationship between one man and one woman and it's for life and it's for the good of children. And that's, and that's their view on marriage. And they wanted to have employees who help, sort of, pursue and advance that mission and that view on marriage, on other issues like-- such as human sexuality.

**McKINNEY:** But that's discrimination.

**TOM VENZOR:** Well, in what-- I can't ask questions of you--

**McKINNEY:** All right.

**TOM VENZOR:** --so I can't-- I can't ask questions of you so it's kind of hard to have--

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

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**TOM VENZOR:** Yeah. I understand. Yeah. I, I, I think I understand-- so here's what I would ultimately say on bills like this, right. I think we're in a situation, right, where there's a basic, sort of, clash of different world-views. I think there's a clash here on different world-views on the issues of marriage and human sexuality. And I think the way these bills are proposed, typically, don't try to figure out how to deal with those clashes and how to find a middle ground. And I think that's traditionally been the issue on these issues in the past, because they don't, again, they don't, for example, attempt to deal with some of the religious liberty protections or expand them in a way that recognizes that there are different beliefs and different views out there on issues of marriage and human sexuality. So any-- that's why-- yeah. I wanted to add that comment. But I, I understand where you're coming from and that's why I think there's this, again, fundamental kind of world-view differences on some of these issues.

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

**RIEPE:** Thank you. I have a question here.

**TOM VENZOR:** Sure.

**RIEPE:** A number of Catholic hospitals in the state of Nebraska, you know that I had a long stay with the-- at the-- in the administration in CHI. Would they be impacted by this particular piece of legislation?

**TOM VENZOR:** So, you know, we generally don't--

**RIEPE:** Because they're a big employer in Omaha and across the state.

**TOM VENZOR:** Yeah. So we don't generally represent-- the Catholic Conference doesn't represent like the Catholic hospitals and such. But I mean, this legislation would impact every employer. So.

**RIEPE:** You say it would, yeah?

**TOM VENZOR:** Yeah.

**RIEPE:** OK. That's what I assumed. OK.

**TOM VENZOR:** Um-hum.

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

**TOM VENZOR:** But how would it-- would impact them-- that-- I would let them answer that.

**RIEPE:** OK. Seeing no other questions, thank you for being here.

**TOM VENZOR:** Appreciate it. Thank you.

**RIEPE:** Are there other opponents that wish to speak? OK. If you're an opponent or going to testify in the neutral, I would ask you, we have a lot of seats right up front here, so we can keep moving along. Welcome.

**STEVE DAVIES:** Thank you, Senator Riepe and other senators on the committee. My name is Steve Davies, S-t-e-v-e D-a-v-i-e-s, and I testify in opposition to LB670. I do not agree to discrimination on a personal level. We should all be treated as children of God. But there are problems with this bill. The first one is there's so much subjectivity to it and when we're dealing with small businesses, that can be a real problem. We don't always know the person well enough. There could be something inadvertent. And, and small businesses don't have the human resources capability to follow all the, the dots and the Ts to be able to manage all of the regulations that could come about from this. And it can also be a further burden to small businesses because it's, it's, it's a closer run organization. You kind of know each other. And if I worked in a small business and I knew the owner or the manager didn't like fat white boys, maybe I, I wouldn't want to work there. I mean, so maybe it's better not to want to work at a place where you know someone doesn't like something about you. That isn't always easy, but sometimes we have to make those decisions for our own mental health. My minute is coming close. And on a deeper and more fundamental level, is we do these things, we create groups, we create group identity. And from the beginning of when our country was founded, we were a great melting pot up into the mid-1900s. And ever since we started identifying as groups, we become more-- rather than an amalgamation of individuals, we are members of groups and we are fracturing our society apart. We are balkanizing and we are less able to work together as Americans.

**RIEPE:** OK. [INAUDIBLE] time.

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**STEVE DAVIES:** There was-- one quick one. There-- I just read a study that an organization has been doing at a college. They've been doing DEI for 20 years. They studied the general happiness of the student body ongoing every year. It has decreased as the DEI has increased.

**RIEPE:** OK.

**STEVE DAVIES:** Thank you.

**RIEPE:** Thank you for testifying. We appreciate it. Are there any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you. You mentioned when our country was founded, it was a great melting pot. And I'm just curious, was it a great melting pot when it was founded and my ancestors were slaves?

**STEVE DAVIES:** We have had a bad history with slavery. But even the founders--

**McKINNEY:** The founders owned slaves, too.

**STEVE DAVIES:** --but a, a group of them knew that it wasn't sustainable, that it wasn't the Christian thing to do. And they set up the Constitution to enable it to end.

**McKINNEY:** But they used Christianity to enslave my ancestors.

**STEVE DAVIES:** Which was in, in our view, that's an inappropriate use of Christianity. But even Christ said, treat your slave with hu-- with human kindness. He even acknowledged.

**McKINNEY:** I don't know how you could treat a slave with human kindness. There a-- they're enslaved. And I've just-- and we don't got to keep going. I'm just saying.

**STEVE DAVIES:** Right. But it, it took us a long time to put the, the black race into the melting pot, although they did some.

**McKINNEY:** So it wasn't, so it wasn't great [INAUDIBLE].

**STEVE DAVIES:** I mean, you look at you look at, you look at Frederick Douglass. He wasn't anti-America. He wanted to incorporate.

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**McKINNEY:** Have you ever read what he said about America?

**STEVE DAVIES:** Well, we weren't all good. I-- and I agree with that. But we're looking back with, with a different set of glasses than they had at that time. And slavery is not something that we could acknowledge as acceptable now. And there's, there's a lot of slavery in the world today.

**McKINNEY:** And it should be ended, too.

**STEVE DAVIES:** Right.

**McKINNEY:** I'm, I'm just saying like--

**STEVE DAVIES:** Yeah. Yeah. We, we, we did not do it quick enough and fast enough, but if, if you look at what Martin Luther King was, was able to do.

**McKINNEY:** He got killed for speaking out.

**STEVE DAVIES:** He did, because of hate.

**McKINNEY:** Yes. So was that a gr-- that-- what-- and, and we don't get to keep going, I'm just pointing out--

**STEVE DAVIES:** Right.

**McKINNEY:** --that when you say it's a great melting pot at the founding, it's really, to me, offensive, because my ancestors weren't even deemed as humans at that time. But thank you.

**STEVE DAVIES:** But not, but not everyone, not every slave owner was that way. But it, it was--

**McKINNEY:** [INAUDIBLE].

**STEVE DAVIES:** --but, but-- point well taken.

**RIEPE:** OK. Are there any other questions? Thank you. Thank you for testifying. If there are others that are testifying-- were, were we in the neutral?

**PAULA GARDNER:** We're still in opposition here.

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**RIEPE:** I couldn't hear that.

**IBACH:** We're still in opposition.

**RIEPE:** We're still in opp-- opp-- opponents. OK. Thank you. Thank you. Are there other, you know, speaking in opposition? Is there anyone that wants to speak in neutral position? Oh, that's why you knew where we were at. Welcome back.

**PAULA GARDNER:** Thank you. So again, I'm Paula Gardner, P-a-u-l-a G-a-r-d-n-e-r, with the Nebraska Equal Opportunity Commission. So I'm going to speak about the two parts of this bill, because there's two distinct things that a-- affect the Nebraska Equal Opportunity Commission. And I am here in a neutral capacity. And so the first is the adding of sexual orientation and gender identity as protected classes and that's been discussed here already in Bostock. It was determined that sex means because of sex and therefore includes sexual orientation and gender identity. And while it's common for state courts to look towards federal courts in rendering decisions, by explicitly including language in FEPA regarding sexual orientation and gender identity, this addition ensures that Nebraskans and the courts are clear about that coverage because it is clear language in the statute. The bill would not only protect employees, but also public and private employers by enhancing and clarifying existing employment discrimination laws in Nebraska and bridging any gap between state and federal laws. And this change to FEPA does not necessarily impact our current processing of cases, but we do believe that this clarification will assist us in processing our cases. With regard to the second change of this bill, as you noted earlier, there is, we believe, a financial impact. That's why that fine-- fiscal note was included. And we do have a work sharing agreement with the federal EEOC. Based on that work sharing agreement, we're able to investigate claims of discrimination that occur in our state and where there is a federal law filed, as well. However, the law provides that there's a threshold number of employees, which is 15 or more employees. So with this change, that threshold number would change, as it would expand the definition of an employer as somebody who has one or more employees. That then-- our law would then no longer be substantially equivalent to federal discrimination laws. Based on our current data, we believe that we'd be conducting at least 50 or more investigations a year, where we would have no reimbursement from the EEOC. As noted also,

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there are two municipalities in Nebraska where they do have that lower threshold number, including Lincoln and Omaha. I just wanted to provide that additional information. If there's any questions for me?

**RIEPE:** OK. Hearing you, thank you for being here. Are there any questions from the commission? Seeing none, thank you. Now, is there anyone, additionally, that wants to testify in a neutral position? Hearing none, I would invite Senator Hunt back up and I would-- for the record, there were 17 letters or emails, proponents. There were 114 opponents and there were zero in the neutral capacity. So, welcome back. [INAUDIBLE].

**HUNT:** Thank you, colleagues. I don't have a close prepared. I wanted to just hear what some folks said and then sort of respond to that. For religious employers, I'll tell you guys, the act that this bill is amending, the Nebraska Fair Employment Practice Act, it has an exemption for religious companies, Section 48-1103. And this exempts religious corporations, religious associations, they are exempt from this law and they are exempt from these requirements. So this would cover any religious employer, such as Creighton University or the Catholic Conference or the Christian bookstore or whatever. 48-1103 says, the Nebraska Fair Employment Practice Act shall not apply to a religious corporation, association or society with respect to the employment of individuals. You know, Tom Venzor from the Catholic Conference said maybe this bill would be improved with a clause or an amendment or something saying-- that some-- somebody wouldn't have to violate their sincerely held beliefs. But what if someone's sincerely held beliefs is that, you know, not all slave owners were that bad or that, you know, men are horrible. What if I said I hate men and I'm not going to hire any men? What if that was a sincerely held belief? It is so humiliating, year after year after year, to come in here and debate your humanity with a bunch of people who are listening to a church that comes in here and putting that over the experiences of their fellow Nebraskans. We cannot pass laws based on religious morality. You can have these views. That's fine. When the Civil Rights Act passed, it was the, it was the same thing. It was people saying, oh, well, people have sincerely held beliefs. What about this side? What about that side? It's a burden on employers. All of this. There are all kinds of states that have gender identity and sexual orientation in their nondiscrimination statutes. There is no reason that Nebraska can't do this just fine. And in fact, if we passed this,

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I promise you, (a) none of you would ever think about it again because (b) it would never affect you in your life one time. For those who this bill affects, it would mean a great deal to them. For those it doesn't affect, which is all of you, you'll never even know it's there. It's very depressing and very unserious to work so hard to be elected, to do great things for Nebraskans, to come in here and debate if gay people are people. And we're going to be doing that this whole session. That's what happened across the hall today. The Genital Inspection Act from Kathleen Kauth, to look at the kids' privates before they're allowed to play a sport. That's the same thing that happened last week to say, you know, putting the government, you know, between what a parent and a child knows it's best for the mental health of that child. And this is part and parcel to all of that. And all of these attacks on the LGBTQ community, on the queer community, are hurting Nebraska. This is an easy way for us to signal to the greater community in Nebraska and across this nation that we are not as bigoted as we seem. You can personally be bigoted. Nothing that got put in any law, no law that we can ever pass would ever change that. But can we at least act like we're not going to just openly discriminate? Thank you. If you have any questions about the bill--

**RIEPE:** OK.

**HUNT:** --it does not discriminate against religious employers, so put that out of your head. So if you're opposed to the bill, just oppose it. You don't have to make up a reason.

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

**HANSEN:** What made this different than the previous versions? Was-- did the previous versions have a penalty associated with it? Do you remember?

**HUNT:** No. It just adds sexual orientation and gender identity to the existing statute.

**HANSEN:** OK. So that's why I went to Judiciary before asking Business and Labor and that's kind of odd. It's not a big deal.

**HUNT:** I don't know. I can get back to you about why.

**HANSEN:** No, yeah, I'm all right.

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**HUNT:** I'm sure if I thought about it for 30 more seconds, I could come up with the answer.

**HANSEN:** No, that's fine. It's cool. Thanks.

**HUNT:** You know, when you're in the hot seat.

**HANSEN:** Um-hum.

**RIEPE:** OK. Thank you very much for your presentation.

**HUNT:** Thank you.

**RIEPE:** And thanks for all the people that testified. With that, I declare LB670 as completed. And thank you for those of you who attended. We will now move on to LB335. I don't know, buddy. It's getting a little intimate. Yeah, OK. [INAUDIBLE]. Senator Halloran, thank you for being here.

**HALLORAN:** Well, thanks for having me.

**RIEPE:** And we're pleased to have you here and we'd ask you to open on LB335. And you have some real fans, it looks like, that stayed around for this.

**HALLORAN:** Good afternoon, Chairman Riepe and members of Business and Labor Committee. Thank you for your hearing today. For the record, my name is Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, and I represent the 33rd Legislative District. I thought, as my opening, I would just read the bill. It would only take a little bit. I bring for your consideration LB335, to adopt the Health Care Staffing Agency Registration Act. During the COVID-19 pandemic, the prior staffing challenges faced by nursing homes and assisted living communities increased substantially. Prior to the pandemic, these facility-- facilities would utilize a healthcare staffing agency as a temporary option to fill an occasional shift; however, once the COVID pandemic hit in nursing facilities and assisted living providers lost staff, they were forced to utilize these agencies on a much larger scale in order to have enough staff to take care of residents. As a result, they saw dramatic increases in the cost for agency staff from a growing number of healthcare staffing agencies that seemed to emerge in our state almost overnight. I would-- I would liken the staffing

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agency situation to the immediate aftermath of a natural disaster when contractors suddenly appear in Nebraska to offer their services and there is a need to know who they are and how to hold them accountable. The Health Care Staffing Agency Registration Act is designed to work the way the Contractor Registration Act currently operates. There is a need for staffing agencies, no question about that, but we need an established process of transparency and accountability to help ensure Nebraskans are protected. LB335 accomplishes the following. First, it requires healthcare staffing agencies to op-- agencies operating in Nebraska to annually register with the Department of Labor, provide specific information, and remit the \$500 fee. Second, it prohibits the use of noncompete clause and prohibits fees charged to the facility in the event the staff member being placed within the facility is offered a permanent full-time position. Currently, the facility must buy out that contract from the staffing agency. Third, it requires the agency to fully guarantee the staff being placed in a facility has the appropriate education, licensure, and meets the requirements to work in a healthcare facility. Fourth, it provides proof of the agency's work-- workers' compensation insurance. And lastly, it provides oversight for healthcare staffing agencies that fail to comply with the requirements. I would like to add that six other states, including Iowa, have passed similar legislation to provide oversight of healthcare staffing agencies in their own states. I would be happy to answer any questions, however, and this is what everybody says. There will be testimony from those following me who have specific industry experience with this issue, but I would be glad to answer any questions, if I may.

**RIEPE:** Thank you very much. Are there questions from the committee? I have a question. Why wouldn't you, in the interest of fiscal note, charge \$1,000 as opposed to \$500? Closes the gap on your-- I-- I don't see a reason that the state should subsidize this.

**HALLORAN:** We had that little conversation earlier today, you and I did.

**RIEPE:** And I warned you I was going to ask it, right?

**HALLORAN:** Thanks for the heads up, and-- and we would be possibly looking at an amendment to do that.

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**RIEPE:** I appreciate the consideration. That's my thought. I don't know whether the others feel that way or not, but--

**HALLORAN:** Let's say \$2,000 is not out of reach.

**RIEPE:** Sounds like an auction. Thank you for your presentation, and we'll go with proponents since we have a few. Welcome.

**JALENE CARPENTER:** Good evening.

**RIEPE:** You've been in front of the mic here before, so.

**JALENE CARPENTER:** I have, yes. Good evening, Chairman Riepe and members of the Business and Labor Committee. My name is Jalene Carpenter, J-a-l-e-n-e C-a-r-p-e-n-t-e-r. I'm the president and CEO of Nebraska Health Care Association. I'm here on behalf of our 418 nonprofit and proprietary skilled nursing and assisted living community members, and personally, as someone who has spent the last 20 years in long-term care, specifically serving as a nursing home administrator. I'm here today to testify in support of LB335. I sincerely thank Senator Halloran for introducing this legislation. Temporary healthcare staffing agencies are not new to healthcare, and prior to the pandemic, it was not uncommon for a facility to utilize these agencies, typically ones that they had a known and trusted relationship with. Usually it was just a small handful, and they use these to fill limited temporary shifts. According to the Bureau of Labor Statistics, once the pandemic hit, nationally, long-term care sector lost over 200,000 jobs; in Nebraska, nursing facilities and assisted living communities lost 16.6 percent of its workforce, or approximately 2,000 team members. This dramatic loss, as Senator Halloran pointed out, created an acute demand for CNAs, medication aides, and nurses across all facilities across the state. This demand generated an explosion in temporary staffing health-- temporary healthcare staffing agencies. Virtually overnight, every facility in Nebraska needed shifts filled on every shift, days, evenings and overnights. Some of the concerns that were happening was our facilities were not only managing new and changing CMS regulations, but now they were managing 20 to 30 staffing health-- healthcare staffing agency contracts. The concerns that arose was routinely prices would change. Almost overnight, they would rapidly increase or suddenly you were paid-- are being charged hazard pay, COVID pay,

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premium shift pay. In addition, it was not uncommon to have agency workers not arrive for their shift. Specifically, there was concerns when facilities requested vaccination status, background checks, licensure checks, with-- they would be met with resistance or red tape. Most of the-- the temporary staffing agencies utilized in facilities are not traditional travelers. They are typically people who are able to drive to and from that temporary position each day. I again liken the situation to that that happens after a natural disaster where there's a sudden increased need, and we feel that a registry similar to the contractors' is reasonable and just to ensure that temporary staffing agencies are held to the same standard. I am privileged to see that Governor Pillen is in support of this legislation and, again, happy to answer any questions. I'm trying to be very respectful of our three-minute time limit today, so--

**RIEPE:** OK.

**JALENE CARPENTER:** --I will stop there.

**RIEPE:** Thank you. You've done well. Are there questions from the committee? Senator Hansen.

**HANSEN:** So why, in your opinion, did healthcare workers in your industry leave and go to staffing agencies?

**JALENE CARPENTER:** I think that's a complex question. There was a multitude of things. There was ever emergency regulation changes that were happening at the facility level, and I think that they were-- it became incredibly burdensome at times to work at a facility. Not all facility-- team members who left went to go work for an agency. Some of them went to work in other healthcare sectors. Some of them left our industry completely. So it's not a one-for-one ratio of who left, went to go work for staffing agencies.

**HANSEN:** OK.

**JALENE CARPENTER:** Did that answer your question?

**HANSEN:** Sort of, yes.

**JALENE CARPENTER:** OK.

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**HANSEN:** I'll take it. Thanks.

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

**JALENE CARPENTER:** Thank you.

**RIEPE:** Next proponent.

**ANDY HALE:** Good evening. Chairman Riepe, members of the Business and Labor Committee. My name is Andy Hale, A-n-d-y H-a-l-e, and I am vice president of advocacy with the Nebraska Hospital Association, and I'm here in support of LB335. Nebraska hospitals have been under immense pressure to handle the surge of patients requiring medical care, leading to an increase in the need of additional healthcare staff to assist with the patient care and manage the increased workload. This has led to an increased use of staffing agencies to help fill that staffing shortages [SIC] and provide hospitals with the necessary staff to meet the demand. The Nebraska Center for Nursing reports a 34 percent increase in traveler nurses since the pandemic. They've been valuable to us, but the cost of the travelers has been really high. Hospital costs have skyrocketed for fiscal years 2021 and '22. We've seen an increase in labor cost by 19 percent. We just recently surveyed our members and their most concerning issue is workforce and the greatest impact on their fiscal outlook next year is contract labor. Our PPS hospitals, which are our larger hospitals, reported that they spent \$171.8 million on contract labor last year, which is nearly 10 percent of their overall cost, and that cost is expected to increase to \$193.7 million next fiscal year. All of this comes as 54 percent of our hospitals are reporting that they are in financial stress. Many fly-by-night staffing agencies have been created since the pandemic and have flooded the market. This has given many of our members concerns as the quality of care that they provide are-- is at times in question. Not all of these agencies are difficult to work with. Ms. Carpenter before me had mentioned as well that we do have relationships with some, and some are better than others and are always willing to sit down and meet with our concerns. That is not the case with all of them; and with the numbers that you're dealing with, it is virtually impossible. Transparency is the key in this industry. What-- we do want to make sure this legislation would not hinder staffing agencies from remaining in or coming into the marketplace. I

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think you're all aware that we're going to experience at least a shortage of 5,000 nurses by 2025, so we want to make sure that this doesn't have an adverse unintended consequence of policy. We have decided to grow our own. We do have two bills in the Legislature now that incentivize clinical nurses to become clinical facul-- faculty and expand nursing faculty sites and a bill to grow our own with high school students, to get them interested in health sciences and health careers, but we need everyone's help. We want to thank Senator Halloran for introducing this bill. We ask the committee to support LB335. If I could answer maybe Senator Hansen's question in regards to why hospitals--

**RIEPE:** Please do.

**ANDY HALE:** --have left?

**RIEPE:** I have the same question.

**ANDY HALE:** Probably the-- we're in similar boats with our friends in long-term care. The-- we experienced a huge burnout, as you can imagine, especially with our-- our nurses and staff that were on the front lines, respiratory therapists, respir-- carry-- care therapists and specialists, and at times the money was really too much of a calling. I think we saw a lot of people in our rural communities throughout the state move to the bigger cities and individuals in our bigger cities move on to different parts of the country. I think they all just followed the money for the most part. And so that's where we are today, very concerned about our workforce. We need these agencies. You know, in a perfect world, we wouldn't rely on them, but they-- we need them, but we need the costs to come down. We need transparencies. We need those-- those iss-- things that are in this bill to-- to really make it sustainable.

**RIEPE:** Go ahead, Senator Hansen.

**HANSEN:** When I look at the statistics, and this is, I think, a conversation maybe you and I had maybe a couple of years ago when I asked you similar questions about vaccine hesitancy, and according to the most recent statistics, you're looking at about 20 to 23 percent of nurses who were not going to get the vaccine. It's not even hesitancy; they just said they're not going to get it. And so I'm

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wondering if that's also maybe a reason why many nurses, especially they saw unusually high amount, especially in the nursing industry, about leaving the industry because of that specific reason, which then would, in turn, I would think, create burnout for the ones who remained--

**ANDY HALE:** Sure.

**HANSEN:** --and then kind of leading to this spiraling effect of them leaving to go somewhere else probably for pay, maybe also because of that reason. I just-- I'm going have to ask the same question--

**ANDY HALE:** Sure.

**HANSEN:** --to these staffing agencies. If they come up here.

**ANDY HALE:** I would say, with all due respect, I don't believe that's the case because, at least in Nebraska, we-- we've talked to our membership, we-- we've talked to individuals, done exit interviews as to why they're leaving. I think if you looked at Nebraska hospitals overall, our vaccination rate or the exemptions that were given, the bill that-- that you introduced, that just wasn't the case. We didn't have individuals leaving the workforce. Now maybe right at the beginning, when we were still trying to figure all this out, I think some people did walk. You may have had some agencies that maybe didn't understand what was going on. But all of our hospitals really sat down with their leadership team, with their healthcare team, and-- and came up with thoughtful exemptions that were given. And so our compliance rate was very high, as far as those actually vaccinated, and was very low for individuals that had left. But I can only speak to hospitals, and maybe the staffing agencies might have some in-depth, so.

**HANSEN:** [INAUDIBLE] appreciate-- appreciate it. That's-- thank you.

**RIEPE:** If no one else has a question, I have a question. Did you have, and maybe you can just give me a rough estimate, hospitals that just had to hold back capacity because they didn't have the staff? And, you know, there's ratios that--

**ANDY HALE:** Correct, yes.

**RIEPE:** --to good-- give good, safe care, you have to have, so.

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**ANDY HALE:** Correct. And what also really kind of crippled our industry, and I'm sure this was nationwide, was the elective procedures.

**RIEPE:** Yes.

**ANDY HALE:** You know, we-- we had the shutdowns and those sorts of things, but we were-- we were put-- we put on pause or we were ordered by the Governor to go ahead and withhold those elective procedures and-- and that's the lifeblood of many of the hospitals financially, big or small, whether in your Omaha or Benkelman. And so--

**RIEPE:** Yeah.

**ANDY HALE:** --to do that, that that just compounded it. And then when you start it up again and you don't have the workforce, it's-- it's a problem that we're seeing today.

**RIEPE:** Plus, it's a different work crew.

**ANDY HALE:** Correct.

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

**ANDY HALE:** Thank you, Senators.

**RIEPE:** Thank you for the late hour.

**KORBY GILBERTSON:** Good evening, Chairman Riepe, members of the committee. For the record, my name is Korby Gilbertson; that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as registered lobbyist on behalf of the Nebraska Health Care Association in support of LB335. I'd like to start by thanking Senator Halloran for introducing the bill and Senator Ibach for signing on to it. I'm-- my job is not to give you the history of why we need this. I'm going to try to run through really quickly how we got to where LB335 is and then continuing discussions with the Department of Labor, who we reached out to during the drafting of this and at the beginning of session to make sure that we weren't going to create any problems. Senator Riepe, your question about the fiscal note, I believe that, once the amendment is done, the fiscal note will be drastically reduced because what we want to do, and I'm going to go through the

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four things that really are the goals of this legislation, is to have a central location for information, ensure that credentialing and licensure is being done, and that license law or employment laws are being followed. Specifically, what this bill would cover is any person or business that provides one or more temporary staff to a separate third-party healthcare entity would be covered under this legislation. So I was approached by one of the staffing agencies earlier and they said, well, we-- we don't do any of that, we don't hire anybody, we don't have to have worker's compensation. That's the reason why we put that in here. It's just like the contractor registration. If you don't have to provide it, you just say we aren't required to provide it. You better not be [INAUDIBLE] but then that also gives the Department of Labor a chance to go back and make sure that that's correct using the rules of the IRS to look at-- there's 20 different things that IRS looks at to determine whether or not someone's an actual employee or not. So that's where that language comes from. Anoth-- two other big parts would be the prohibition against noncompete clauses, and then we also made sure that in any process there was due process for the agencies if they would have their registration pulled. Again, this is just a registration. It's not a licensure. It would provide information to the public or to any of the facilities that are getting services from this. If some-- if there is a true platform that has no employment relationship with either the facility or the worker, then they wouldn't be covered by this. But if they do have a relationship or they are in charge of the contract, or even if they don't call their people employees and they have a different name for them, if they're an employee, they would be covered by this. With that, I'd be happy to try to answer any questions.

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

**IBACH:** I did. Thank you, Mr. Chairman. I just have one question. How many-- how many agencies do you anticipate will register?

**KORBY GILBERTSON:** That is-- that's the million-dollar question. I know somebody from the Department of Labor is behind me. They can-- are probably better to answer that. But in the original fiscal note, it was estimated that there might be upwards of 800 agencies that would register. In the amendment, we do drastically reduce the amount of records that have to be turned over to the Department of Labor, so

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that will reduce the-- the cost. We also struck some of the employee levels that would need to be covered by this, not intending to grab every kind of staffing agency for janitors, food service workers, things like that. It is intended just to carry the direct healthcare workers, and that will be amended as well, and like I said, we're working with the Department of Labor on that.

**IBACH:** Do you think this will inhibit any agencies from locating here or--

**KORBY GILBERTSON:** It-- honestly, I don't know if-- I know that they have had conversations with some of the staffing agencies that they currently work with and they have no problems with this. I was approached by one tonight that said, we just want to be a minute out because we're just a platform. And I did the-- I worked on Uber 20 years ago and, no, that's precisely why we do legislation like this. It is simply a registry so that people can find out what's going on, make sure that they are actually doing what they're required to under law and not doing employment practices without actually having employees.

**IBACH:** OK. Thank you.

**KORBY GILBERTSON:** Thank you.

**RIEPE:** Thank you. When you say registry, that doesn't necessarily mean they're headquartered or anything else in Nebraska?

**KORBY GILBERTSON:** No.

**RIEPE:** They're just paying a fee to play.

**KORBY GILBERTSON:** Right, and that's precisely one of the reasons, when we originally did the Contractor Registration Act, was to go, try to figure out all of the nonresident contractors that were coming into the state. Typically, roofing companies come into the state after there's a tornado. We had a large problem in the state with somebody, as they always say, a pickup and a hammer show up, take money from people, not do the actual work and leave, so that's how the Contractor Registration Act started. This is just an expansion of that to say, OK, if you're doing business in Nebraska, we're not licensing you, we're not going to regulate you, we just want to make sure that you're

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doing things correctly and have a centralized place for information where the state can figure out, because, let's face it, if the state has-- is paying the Medicaid dollars to take care of these patients in nursing homes, you're the one-- the state is the one that is paying these fees.

**RIEPE:** I think we had a bill, and I think I carried the bill, on the contractors--

**KORBY GILBERTSON:** Yep.

**RIEPE:** --and they found that they couldn't collect it. It costs more to try to collect it than we ever collected, so.

**KORBY GILBERTSON:** That was just-- that was just for the projects of \$10,000 or more-- or \$100,000 or more. I'm sure Katie can correct me on this one.

**RIEPE:** [INAUDIBLE]

**KORBY GILBERTSON:** So it was-- it equalized the fees for in-state and out-of-state contractors, but left everything else the same, so they still pay the fee. It's just you don't have to chase down that contractor.

**RIEPE:** How do you know that they're paying the fee, I mean, other than you-- you receive it? But how many-- how do you know about others that are practicing who are not on the up-and-up, as we would say?

**KORBY GILBERTSON:** We-- yep. We don't, and we won't know if there's bad-actor staffing agencies either--

**RIEPE:** OK.

**KORBY GILBERTSON:** --unless they get reported and someone tries to look at their registry and see if they're registered, which is exactly how we find out if they're bad contractors that aren't registered, because someone will look at that.

**RIEPE:** We would educate the potential contractors, the providers--

**KORBY GILBERTSON:** Yes.

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**RIEPE:** --nurses or physical therapists or whatever.

**KORBY GILBERTSON:** Right.

**RIEPE:** Great. Thank you.

**KORBY GILBERTSON:** Thank you.

**HANSEN:** [INAUDIBLE]

**RIEPE:** Oh, I'm sorry.

**HANSEN:** Yeah, sorry.

**RIEPE:** Yes.

**HANSEN:** "Upon registration renewal, a health care staffing agency must," and it has a whole bunch of things listed here under-- under this.

**KORBY GILBERTSON:** Right.

**HANSEN:** Is that what-- do they already currently do this stuff?

**KORBY GILBERTSON:** So they should, and in the amendment that we're working on, a lot of that will go away. They won't have to transfer all of that to the Department of Labor. They will just have to say, yes, we have the records, we've been-- we've made sure that they are credentialed correctly, we make sure that they have all the background checks, things-- else-- other things that are required for them to be placed in a facility in Nebraska.

**HANSEN:** So the amendment makes it less burdensome.

**KORBY GILBERTSON:** Yes.

**HANSEN:** OK.

**KORBY GILBERTSON:** That's the intent, yeah.

**HANSEN:** And then-- so then what happens then if-- the-- who-- who checks on that then?

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**KORBY GILBERTSON:** So really what can happen is, if you are a facility in Nebraska, any healthcare facility looking to work with one of the staffing agencies, you can get onto the website at DOL, check and see if they are a registered agency with them, and then you know they're registered, they're legit here in Nebraska, and they're going to follow those. They are saying that they're following those rules so that you can trust working with them.

**HANSEN:** OK. OK, thanks.

**KORBY GILBERTSON:** Um-hum.

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

**KORBY GILBERTSON:** Thank you.

**RIEPE:** The next proponent, please. Welcome back.

**KATIE THURBER:** Thank you. Good evening again, Chairman Riepe and members of the Business and Labor Committee. For the record, my name is Katie Thurber, K-a-t-i-e T-h-u-r-b-e-r, general counsel for the Nebraska Department of Labor. I'm appearing here today on behalf of the department in support of LB335 as we are working through the amendment. The original we do have concerns with, but we've had significant progress on an amendment and we support that. As drafted, the Nebraska Department of Labor has several concerns regarding LB335. The department would like to thank the supporters of this bill and Senator Halloran for reaching out to us because they actively reached out to the department for feedback. Together, we are working to draft an amendment that significantly reduces the fiscal impact and the department can support. LB335 creates the Health Care Staffing Agency Registration Act to be administered by the Nebraska Department of Labor. Connecticut, Iowa, Illinois, Louisiana and Oregon have all passed similar pieces of legislation. Nebraska healthcare facilities are facing a critical staffing problem. In response to this problem, healthcare staffing agencies have increased. While healthcare staffing agencies can serve an important purpose, they also have significant power based on the critical need of the healthcare facilities. The Health Care Staffing Agency Act protects both the employee and Nebraska's existing healthcare entities from being taken advantage of

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and helps enable healthcare entities to continue operation throughout the state. Under LB335, healthcare workers will have complete flexibility to choose the employment option that works best for them. As originally drafted, the initial registration requirements are extremely onerous and-- on both employers and the department. This registration requirement would require significant documentation that greatly increases the technology cost and staffing levels required for review. The amendment being drafted for LB335 will require healthcare staffing agencies to still register annually with the Nebraska Department of Labor, but provide less documentation up-front. Once registered, healthcare staffing agencies must file quarterly reports with the department. Healthcare staffing agencies are required to ensure compliance with all applicable health requirements and qualifications of personnel in healthcare entity settings, document that each staff worker meets these requirements, maintain all documents required by external parties or regulators that the healthcare entity is required to maintain for its own employees. Any violation may result in civil penalty-- penalty or revocation for the healthcare staffing agency's registration for one calendar year. The department is responsible for enforcement of this act as drafted. That concludes my testimony and I would be happy to answer any questions you may have.

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

**HANSEN:** I got one.

**RIEPE:** Senator Hansen, please.

**HANSEN:** OK, so I can wrap my head around the amendment--

**KATIE THURBER:** Yes.

**HANSEN:** --the amendment gets rid of a lot of requirements to report stuff, right?

**KATIE THURBER:** Yes.

**HANSEN:** But they still have to do a quarterly report?

**KATIE THURBER:** Yes.

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**HANSEN:** What-- what-- what's that-- what's that entail?

**KATIE THURBER:** So it's very similar to the existing language that's in there.

**HANSEN:** Financial information [INAUDIBLE]

**KATIE THURBER:** Yes, it's the financial information piece.

**HANSEN:** So-- so I'm trying to get the purpose of the bill then. So we're making them register, but we're not going to check on them, so we're trusting they're doing what they're doing, which is probably what we do already, but we're making them report how much money they make?

**KATIE THURBER:** Well, we're making them start with their annual registration and that the annual registration will have some information, such as one of the things that we accidentally deleted that is part of why you don't have an amendment in front of you, and we're working through that, is that they have the work comp insurance, that they have-- meet all the requirements to actually do business in this state. That information is still going to be provided to us up-front. Then the financial piece, quite honestly, I don't have a personal stake in that. The department doesn't have a personal stake in that. The reason we didn't have concern with that was it's not massive documentation that will impact the fiscal note.

**HANSEN:** And maybe somebody else can answer, too. I- I'm just trying to figure out the-- the-- do we do this of other agencies and make them-- make them report financial--

**KATIE THURBER:** Under the Contractor Registration Act, we do not have that piece. That's something that's different than the existing contractor registration piece. I think other people would answer it better and under--

**HANSEN:** OK.

**KATIE THURBER:** --be able to explain the purpose.

**HANSEN:** OK. I'm sure there's some purpose. I'm just kind of curious to know what it is. OK. Thank you.

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**KATIE THURBER:** Yep.

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

**KATIE THURBER:** Yes.

**RIEPE:** Additional proponents? Are there any other proponents wanting to speak in support? If not, are there opponents, if you will? If you'd be kind enough, sir, to give us your name and spell it and--

**JOSHUA NORTON:** Yeah.

**RIEPE:** --share with us your organization you represent.

**JOSHUA NORTON:** Sure. Good evening. Senator Riepe, committee members, Thanks for being here. My name is Joshua Norton, J-o-s-h-u-a N-o-r-t-o-n. I'm with the law firm Koley Jessen. I'm here to talk about some serious unintended consequences that LB335 will have that will severely hurt our state. As way of background, I'm from Sidney, Nebraska, went to school here in Lincoln and went to law school at the University of Nebraska. I'm a private practice attorney at the law firm Koley Jessen, where I-- where I have the distinct pleasure to represent business owners and families from every end of our state. One thing that nearly all of those Nebraska clients have in common is their belief in free enterprise and limited government that serves its people. I believe LB335 will have at least two serious consequences that will hurt the people of our state. Number one, it will-- it will exacerbate the need for temporary healthcare workers, especially those in small-town hospitals where job openings are ver-- already very hard to fill, as we-- as we've heard already here today, and it will disproportionately hurt those staffing businesses that are based in Nebraska, likely pushing them to relocate their headquarters to other, more business-friendly states. So over the past 14 years or so, I've had the opportunity and privilege to work with a number of those healthcare staffing companies here in Nebraska. For those who don't know, Nebraska is one of the national hubs for healthcare staffing companies. To put some perspective on this, just with the businesses I work with, they-- they represent 3,200 jobs here in Nebraska, and those are-- those aren't clinicians placed in hospitals or facilities. Those are workers who operate those companies here in Nebraska.

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Conservatively speaking, I'd estimate that the healthcare staffing companies alone account for 6,000 jobs in Nebraska. At a very simplified level, what do the staffing companies do? They recruit, qualify, and place clinician-- clinicians in-- in facilities all over the country. So that necessitates them dealing with a 50-state patchwork of laws. Some states are easy to deal with, while others, like Illinois, Massachusetts and California, are much harder to deal with. LB335 as drafted is much more onerous and restrictive than those on the books in those three states. How does this impact Nebraska? Simply put, staffing agencies deal with the red tape in states like California or Massachusetts because they have to. Those states, because of their size and their population, businesses have no choice but to do business there. That's not true for Nebraska. Relatively speaking, we have a very small number of-- of temporary jobs to fill in Nebraska at any given time. One staffing company I spoke with gave me this stat. Currently, they have 12,000 jobs to fill in the state of California, and in Nebraska they have 81. So while avoiding our state might not be a big deal for a lot of staffing companies, it's critical to-- to our state, to those healthcare facilities, especially those in small communities where it's already hard to fill those jobs. So the second unintended consequence, LB335 would disproportionately impact those staffing companies headquartered in Nebraska. As drafted, it would-- it would subject their entire business operating in all states, not just the portion that operate in Nebraska facilities, so hamstringing our local businesses like that, it would be untenable for-- for their survival and would likely nec-- necessitate them leaving for states with less red tape and bureaucracy. Nebraska has enough challenges to keep businesses in our state and remain competitive without creating additional burdensome laws like this that would endanger, really, you know, a lot of very good Nebraska jobs. Thank you. I'm happy to answer any questions.

**RIEPE:** Thank you for being here. Are there questions from the committee? Senator Hansen.

**HANSEN:** Thank you. So can you speak to the amendment at all? I know you haven't seen it, but you've heard what they've said about it. Does that alle-- alleviate a lot of concerns, do you think, if it's what they say?

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**JOSHUA NORTON:** So-- so based on what I just heard-- again, I have not seen it. Based on what I've heard, that--that eliminates some of the reporting requirements, which are things that these companies do already. I mean, these are highly-- companies operating in a highly regulated space with an entire teams base-- yet focused on compliance. So beyond that, there's more in this bill besides just a registry. There's Section 6, as an example, that requires 30 days' notice before any fees can change. And what you have to realize is we're dealing with a-- a dynamic market here, a national market for talent, which Nebraska and our facilities have to compete with, and these staffing companies can help facilitate putting people in their facilities. So Section 6, as an example, would be untenable to operate this business. You just couldn't do it, and-- and that alone would be enough to probably keep staffing agencies out of our state.

**HANSEN:** If I can ask another one, please, so how many more people have-- how many more nurses are working for staff-- staffing agencies now in the last like two, three years?

**JOSHUA NORTON:** So, I mean, that's an interesting question. I-- I think the demand is higher. There's always-- this industry has been around for decades. There's always been nurses traveling. What happened in the pandemic was the need was exacerbated incredibly by people who left-- left the-- the profession because it was-- it was hard, it was incredibly stressful, it was a pandemic that we've never seen in our lifetime, so the demand increased. Did that create more travelers? Maybe. But in some ways, the-- it's-- it's still linked. The staffing company has always been around to fill holes. The pandemic, there was just a lot more holes. Need increased and also-- and-- you know, and talent left the market. So I don't know if there's pro-- probably there is more travelers, but that's more because of the incredible demand. I mean, you have-- nurses are, you know, some of the best people in the world, if-- you know, in my opinion. And so you have-- you had retired nurses coming out to fill the need during the pandemic. So if anything, staffing companies facilitated the need of to move clinicians from state to state through their complicated process of getting them qualified and getting them on the front lines to help. So if anything, they brought people out of retirement to help the need that was-- that was very real and ver-- in many of our communities.

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**HANSEN:** OK. And I have to ask the same question I asked the Hospital Association, and I'm assuming it's probably the same answer. Did you-- did you guys have vaccination mandates? Do most staffing agencies require their nurses be vaccinated in order to get employed? Are you--

**JOSHUA NORTON:** I would say what-- what-- what-- and maybe others can speak to that better, but what staffing companies do is they have to comply with the facilities in which they operate, so that's probably the driving force for staffing companies, is, what are the rules of that state, that jurisdiction, that hospital.

**HANSEN:** OK. Thanks.

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

**JOSHUA NORTON:** Thank you.

**RIEPE:** Very informative. Next opponent, please.

**JENNA BERG:** Good evening.

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

**JENNA BERG:** Of course. Good evening, Chairman Riepe, members of the committee. My name is Jenna Berg, J-e-n-n-a B-e-r-g. I grew up in Fremont and I'm now raising my children in Gretna. I obtained my undergraduate degree from the University of Nebraska and my J.D. from Nebraska Law. I've lived in Nebraska my entire life, and I care deeply about the people here and the businesses that call this state home. I've been a lawyer in Nebraska now for more than 15 years, and currently I serve as the vice president and general counsel of Fusion Medical Staffing, which is headquartered here in Nebraska and has been around since 2009. From the outside, staffing appears to be a simple placement of employees and jobs, but trust me, it is not, especially in healthcare. Contracting, placement and employment processes are complex and they are nuanced. Staffing companies must comply with varying laws in each state where they do business. In order for a staffing agency to be joint commission certified, there are numerous obligations around leadership, human resources, and performance management, among many other things. In addition, each healthcare

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facility has specific compliance requirements that a candidate must meet. In fact, Fusion alone employs over 150 people who focus solely on compliance to ensure nurses or other healthcare professionals are qualified to be staffed in healthcare facilities where they are placed. We are here today asking for an opportunity to share more about the nuances of healthcare staffing before we move forward with a law that would make it incredibly difficult for us to do the work that we do. As you have heard today and in written comments, this bill is poised to create havoc in not only the healthcare staffing industry, but also, by extension, the healthcare facilities in Nebraska. In specific part, Section 6 requires a schedule of fees that cannot be adjusted without a 30-day waiting period. This 30-day wait will effectively eliminate our ability to do business in a fast-paced industry. In 2022, Nebraska was one of the top states for medical staffing headquarters in the country. If this bill passes, it's likely that many, if not all, of these medical staffing companies will be forced to stop operating in Nebraska. This will be detrimental to our state's economy and will do nothing to help with the ongoing staffing need in our healthcare facilities across the state. This bill, in its current form, is not the answer. Healthcare staffing laws have been proposed in various forms across the country. In those states that have passed these types of laws, we have worked diligently as a staffing firm to try to meet the obligations imposed upon us, and I'm sure my industry colleagues represented here today have done so as well. What we have seen is there is difficulty complying with laws that are drafted by those outside of our industry. It is our ask here today that we be reasonable and work together. You can see by the number of people who showed up today and stayed for a very long time that we are worried about the effect this law will have on our industry in Nebraska. For all of the aforementioned reasons, we are opposed to LB335 and we urge the comm-- the committee not to advance the bill. Thank you.

**RIEPE:** Thank you. Are there questions from the committee? Is the firm that you're with in Fremont, is that associated with former-Senator Janssen?

**JENNA BERG:** No, the--

**RIEPE:** Is that a different one?

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**JENNA BERG:** I actually work in-- I'm from Fremont originally.

**RIEPE:** Oh.

**JENNA BERG:** I live in Gretna now and Fusion is-- operates out of Omaha.

**RIEPE:** OK. Thank you. Are there any other questions? Seeing none, thank you very much for being here at this late hour. Others testifying? Any opposition?

**STEPHEN PEDERSEN:** Good evening, Committee Chairman Riepe and members of the Business and Labor Committee. My name is Stephen Pedersen, S-t-e-p-h-e-n P-e-d-e-r-s-e-n, and I'm here to testify that LB335 as drafted will work serious harm on Nebraska's clinical staffing agencies, healthcare providers, and the patients we both serve.

**RIEPE:** Can you tell me who you represent?

**STEPHEN PEDERSEN:** I'm just about to get there in the next sentence.

**RIEPE:** Oh, OK. I'm used to having it up front, but go ahead.

**STEPHEN PEDERSEN:** First, I'm going to tell you that I'm a fifth-generation Nebraskan, born and raised, and I'm the chief legal officer of Medical Solutions. We provide clinicians to healthcare providers across all 50 states. We've been in business for over 20 years and are Nebraska's largest clinical staffing company. We are far from the oldest or the only agency that calls Nebraska home; in fact, Nebraska is home to dozens of longstanding clinical staffing agencies. Together, we employ thousands of Nebraskans and generate tens, if not hundreds, of millions in property, sales and income tax revenue for Nebraska. As a member of the American Staffing Association's legislative committee, I spent the past year reviewing dozens of state bills seeking to regulate clinical staffing agencies. Because I only have three minutes here, I will address just a few of the provisions of LB335 that are bad for Nebraska, first and foremost, Section 6. If Section 6 becomes law, then billions of dollars of economic activity and thousands of jobs will leave the great state of Nebraska, and the temporary clinical professionals our healthcare providers rely upon will disappear. If Section 6 becomes law, no staffing agency will want or be able to do business in Nebraska. Section 6 would require

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staffing agencies to wait 30 days before any change to a bill rate could be effective. This is a solution looking to cause problems. Setting aside the fact that bill rates are driven by the free market, not staffing agencies, Section 6 would devastate Nebraska-based agencies' ability to compete in the dynamic market of clinical staffing in Nebraska and beyond. No other state has proposed, let alone passed, a provision so anti-competitive and administratively unworkable. Simply put, Section 6 is bad for Nebraskans and does not align with Nebraska's free-market values. Section 7's operation-- or, excuse me, Section 4's operational requirements pale in comparison to those of the joint commission which regulates our industry and of which nearly all of us are members. Section 5's pay transparency is already the industry standard, where we post the wages and benefits we intend to pay all of our temporary clinicians, including those in Nebraska. Finally, Section 7 prohibits employee noncompetes. Employee noncompetes are already banned in Nebraska, and we see no reason to pass a bill singling out staffing agencies to enforce a rule that is already the law of our great state. We must oppose LB335 in its current form, but we are willing to work collaboratively with the bill's sponsors to avoid the drain of billions of dollars of economic activity and the loss of thousands of good-paying Nebraska jobs. Thank you for your time, and I'm happy to answer any questions you may have.

**RIEPE:** Thank you very much. Thank you for being here. There-- Senator Hansen, please.

**HANSEN:** Thanks. More curiosity's sake, and I maybe should have asked somebody before you, I think. But the fees, fees that are charged, are they comparable, like what hospitals charge, or is it different? Because I could see maybe why they might want to establish a schedule of fees, just so they can kind of be up-front--

**STEPHEN PEDERSEN:** Sure.

**HANSEN:** --how much you're charging, all that kind of stuff. I don't know about the 30 days, now that's-- seems like a major part of contention with you. But the schedule of fees, is it similar to what the hospitals charge or is it more or is it--

**STEPHEN PEDERSEN:** Well, here's what I-- here's what I'll tell you. Every contract that we are into with a hospital client has a bill, a--

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a rate sheet. Those bill rates are set forth in every contract we enter into. In fact, all of the operational requirements, workers' compensation insurance, professional liability insurance, all of those things already exist in the contract, the private contract between the two parties. So in a very real sense, this is quite redundant just from a contract perspective, and the client has full visibility into what we are charging them for their services. But what I will tell you is that those bill rates are not static. If a client calls with an urgent need that they need filled in two days, we cannot wait 30 days to fill that need. The other false assumption here is that the agencies drive the bill rate. We do not drive the bill rate. As many times as we would suggest a bill rate, the client would demand that we increase the bill rate because of the urgency of their need. This is supply and demand, and we saw this very acutely during the pandemic, which is understandable why you see the folks on the other side in favor of this, because '21 and '22 were difficult years for hospitals, no doubt about it, and their need for contingent labor was profound. But it is an anomaly. If you look at the bill rates today, they have dropped significantly since the pandemic and we have data that we can-- we can provide to folks if they'd like to see that. But this is-- this is the market system working, supply and demand.

**HANSEN:** OK. Thank you.

**STEPHEN PEDERSEN:** You bet.

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

**STEPHEN PEDERSEN:** Thank you.

**RIEPE:** Additional opponents? If some of you towards the back intend to testify, I'd ask you to come up to the front so we can move. Thank you.

**JAKE WALKER:** Good evening. Thanks for your patience.

**RIEPE:** If you'd be kind enough to state your name, spell it, and then share us-- share with us who you represent.

**JAKE WALKER:** Definitely. My name is Jake Walker, J-a-k-e W-a-l-k-e-r. I'm an attorney at Koley Jessen, and we're just working through the

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issues of this bill here tonight. As currently written, this bill only duplicates current prohibitions and enforcement mechanisms already in place in this state. To summarize, the purpose behind most of Section 4 is to ensure properly qualified individuals are delivering proper care to healthcare facilities. Nebraska law already places these strong safeguards on businesses that furnish individuals without proper credentials to do so. In addition, the Nebraska Uniform Credentialing Act requires individuals to meet rigorous licensing standards in the state in order to provide the care at issue here. The purpose behind Section 9 is to prohibit any type of anti-competitive behavior in nurse-- in the nurse staffing industry. Nebraska law already prohibits the anti-competitive behavior laid out in Section 7; specifically, as already stated, Nebraska law already flat-out prohibit-- prohibits or places severe restrictions on the type of noncompetes that this bill looks to deem enf-- unenforceable, and Nebraska law already prohibits businesses from engaging in the deceptive trade practices in this section. Specifically, subsections (d) and (e) are already enumerated deceptive trade practices under Nebraska law. The purpose behind Section 11 is to allow the public to report staffing agencies or staff members from violating the provisions of this bill. Nebraska already has this option available to the public through the Attorney General's website. Any person can file a complaint. What the duplicative provisions show-- should show is that there are already alternative channels in place to regulate nurse staffing agencies. In addition, similar channels are already in place to regulate-- regulate the travelers and staff members that furnish this care. These channels would better suit any intent behind this bill to regulate these parties. I thank you for your patience tonight and time this evening. I'll welcome any questions.

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

**HANSEN:** Sorry. A quick one, I'm sorry.

**RIEPE:** That's OK.

**HANSEN:** I'm still-- I'm still curious about the rate. Is it-- is a bill rate different than what you charge to place a nurse in a facility?

**JAKE WALKER:** I honestly cannot speak on that.

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\_\_\_\_\_ : [INAUDIBLE]

**RIEPE:** You can't--

**HANSEN:** I-- I'll ask you afterwards--

**JAKE WALKER:** Yeah.

**HANSEN:** --because I can probably put it out there now, at least.

**JAKE WALKER:** From a billing perspective, I-- I can't answer that question, don't have the knowledge.

**HANSEN:** That's just fine. Just curious. Thank you.

**RIEPE:** OK. Any other questions for this witness? My question would be, is, they're paying two physicians from the same-- or two-- two attorneys from the same firm. That's-- I'm trying-- I'm just-- I'm just kind of surprised at that because your billing rates are probably pretty healthy. And I'm just-- was that accidental or intentional that two of you from the same firm would be here?

**JAKE WALKER:** Intentional. We came together, yes.

**RIEPE:** I see. OK, is what it is. Thank you for being here. We appreciate it.

**JAKE WALKER:** Thank you.

**RIEPE:** Are there additional opponents?

**SETH MOEN:** Good evening, Chairman and members of the committee. Thank you for the time. My name is Seth Moen, S-e-t-h M-o-e-n. I guess I want to start off by saying I-- I think it should be a committee rule that if you're here at 1:30 and stay through the whole thing and be the last person, you should-- more weight to your testimony, I think that's probably a rule that needs to be implemented. In any event, I'm going to reiterate what everybody else said here in opposition of LB335. I second what they say. I want to make a couple points in addition to that. I believe it was Mr. Norton from Koley-- oh, by the-- I should add, I'm an attorney in Omaha, private practice, with Dvorak Law Group. We-- we represent as outside general counsel a

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number of staffing agencies. Like you've heard, Omaha is an absolute Mecca and hub of-- of healthcare staffing companies and it's-- it's only continued to grow and-- and be a great business for the community and the state at-large. What I want to add, and the points I want to add, I don't have prepared statements, but I do, like I said, second what all the testimony in front of me said in opposition. With respect to Section 6 specifically, where you've heard about the rate schedules, and I know, Senator Hansen, you've asked some questions on it, the-- the piece, I think, that needs to be hammered home there a little bit, too, is kind of how that-- the rates come about. And, you know, you heard about how onerous the 30-day period would be. This is-- this is arm's-length negotiations with the healthcare facilities and the staffing companies, and you've heard private contract from Steve Pedersen at Medical Solutions and how quickly those can change, as he mentioned. I mean, I-- I had a client talking before I came down here, say the rates schedules, you can amend the contract, I mean, in a matter of minutes. I mean, this isn't 24 hours even, you know, so to wait 30 days is just onerous. The second piece, I'd like to point out, as well, in kind of preparing for this and looking at some other states, like you've heard, this isn't a unique-- a unique legislation that's come up here. I mean, Iowa, you've heard Iowa passed it here recently last year, you know, somewhat of a similar statute, albeit it didn't have anywhere near the onerous provisions this one does. The states that Josh Norton mentioned--Massachusetts, Illinois, and California-- Massachusetts, and another one I'd add in there is Minnesota, has-- has very onerous statutes on the books and what-- they've done studies on what the impact has been with respect to the healthcare facilities and they've-- the-- the job placements with those facilities in those states has actually increased, meaning they are having a much harder time placing jobs in those healthcare facilities with such onerous--

**RIEPE:** OK, you've got the red light.

**SETH MOEN:** --onerous restrictions. So thank you.

**RIEPE:** Are there questions from the committee? I would say Omaha must be a hub for attorneys as well.

**SETH MOEN:** [LAUGH] Yeah. Yeah, I think you're right. Yeah, so.

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**RIEPE:** OK.

**SETH MOEN:** All right. Thank you for your time.

**RIEPE:** Thank you, sir. Thanks for being here. Additional opponents? I would appeal to testifiers in opposition, or either side, if you're trying to build on what's already been said as opposed to repeating, please--

**MARY VAGGALIS:** Absolutely.

**RIEPE:** --do the best you can. Thank you.

**MARY VAGGALIS:** Chair Riepe and members of the Business and Labor Committee, my name is Mary Vaggalis, M-a-r-y V, as in "Victor," a-g-g-a-l-i-s, and I'm here today in opposition to LB335 as written, as a registered lobbyist for Shift Key. And we are the outlier that Ms. Gilbertson mentioned, so this should be new information from the previous testifiers. And I will preface my testimony by saying that I have not reviewed the proposed amendment language that's being worked on. Shift Key's concerns with LB335 relate to the broad language used to define a healthcare staffing agency and a staff member. We believe Shift Key could be implicated by the language, although it does not act as a staffing agency. Shift Key is a two-sided marketplace technology platform operating in over 30 states where facilities in need of temporary healthcare providers can post open shifts and independent healthcare providers can view and select in their sole discretion convenient shifts while setting their preferred hourly rate. Unlike a staffing agency, Shift Key has set rates with healthcare facilities that are documented in a contract. These fees can only be changed by a contractual amendment. There is no minimum usage and no fees to get set up on the platform. Facilities choose the healthcare providers who they want to come into their facility. Shift Key believes in partnering with healthcare facilities to ensure that they can focus on operating their business and delivering high-quality care to their patients. The Shift Key platform allows independent healthcare professionals to work where they want, when they want, and to set their preferred rate of pay. The healthcare workers can choose to work as much or as little as they choose, giving them the flexibility in their work and life. Because of Shift Key's unique business model, other states have adopted or are considering adoption

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of a narrowly tailored carve-out for a healthcare work platform or healthcare technology platform. I've circulated some sample language for your consideration. In today's economy, we see more workers who want to set their own hours and increase value for a work-life balance. As you all know, Nebraska is facing serious workforce shortages, particularly in healthcare fields and even more so in rural areas. We believe, with a small language change, we could be supportive of LB335, and I'm happy to answer any questions you have.

**RIEPE:** OK. Thank you for your testimony. Are there questions from the committee? Apparently none. Thank you very much.

**MARY VAGGALIS:** Thank you.

**RIEPE:** Do we have additional opponents? No one else wanting to testify in opposition? What about testifying in neutral? Seeing none, Senator, would you like to close? And I-- while you're coming to the table, I would say in letters and e-mail, we had 33 proponents, 1 in opposition, zero in neutral. So thank you, Senator.

**HALLORAN:** Thank you, Mr. Chairman, and thank you, committee. I know it's late. If I hear the word "onerous" one more time, it-- the only-- the only dismay I have is I didn't think of this type of business myself. It's a legitimate business, not suggesting otherwise, but it makes it so in demand, it's like a game of Whac-a-mole. Say the hospital in Hastings, Nebraska, has an opening for a nurse and they hire an agency, and the agency finds a nurse in Omaha and places that nurse in Hastings. Well, now there's an opening in Omaha and they find a nurse in Lincoln to replace that nurse in Omaha. You can't lose with that business model. I was disappointed no one asked what they-- what-- what a nurse's salary is that they negotiate for that moves into one of these positions, compared to the average nurse's salary at that same hospital. OK? Would have been a good question. I-- anecdotally, I've heard it's-- it's as much as a third more, a third more. Now that's anecdotal. I don't have any evidence of that because they're not as transparent as they like to claim they are. But it's-- it's a create your own-- it's a create-your-own-demand model of business, and it's-- it's apparently quite lucrative because they hire a lot of attorneys. And I don't disrespect that field, either, but when two attorneys come to a hearing and testify opposed to the same bill, it's-- it's-- says quite a bit about what they're being paid to

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do. They do not have to-- in-- in-- in this bill, they do-- they don't-- they do not have to report their financials, just, and this is a quote from the bill, "average amount paid by the agency to staff workers," we can add to that "in Nebraska" so they don't have to worry about outstate reporting. Also, "average amount charged to the health care entity for each category of staff worker," we could add "in Nebraska" for that. That takes care of all-- all-- all the complaints that they had about outside of Nebraska. Also, Section 6, if they can't wait 30 days to change fees, then they're kind of admitting they control. Thirty days is not onerous, but I'll leave that up to the committee. We are working on an amendment. I prematurely suggested that we're going to raise it to \$1,000, but we're working with the Department of Labor on an amendment that we'll get to the committee as soon as possible, give you time to adequately Exec on it. But any-- any additional questions, I'd be glad to try to answer.

**RIEPE:** Thank you, Senator Halloran. Are there questions from the committee? I have a question.

**HALLORAN:** Yes.

**RIEPE:** Is this legislation, is this based on an existing state's? This Iowa's legislation or Connecticut's or--

**HALLORAN:** Mr. Chair-- Mr. Chairman, I don't know, but I would-- I would assume that it is.

**RIEPE:** OK.

**HALLORAN:** I was the most recent one, to my knowledge, that passed legislation on this, so.

**RIEPE:** My follow-up question, that is, if we knew which state, then how many-- how long has it been in place and what are the issues that they've experienced that [INAUDIBLE]

**HALLORAN:** That's a good question as well. I know there was comments about there's as many as 6,000 jobs with these-- within these agencies in the state of Nebraska.

**RIEPE:** OK.

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**HALLORAN:** And I don't have-- I don't have a counter-statistics on how many nurses there are.

**RIEPE:** OK.

**HALLORAN:** But there may be more people working for the agencies than there are nurses.

**RIEPE:** OK. I appreciate it. Thank you very much for being here. With that, that con-- concludes the hearing on LB335. We appreciate all your patience and for your being here. And have a happy Valentine's Day. It's almost here.