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Business and Labor Committee
March 05, 2007

[LB31 LB175 LB432 LB609]

The Committee on Business and Labor met at 1:30 p.m., on Monday, March 5, 2007, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB31, LB175, LB432, and LB609. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Ernie Chambers; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: None. [LB31]

SENATOR CORNETT: Good afternoon, and welcome to the public hearing of the Business and Labor Committee. I would like to introduce you to members of the committee and committee staff and will briefly explain the procedures we will be following this afternoon. On my far right is Senator Wallman from Cortland, and just being seated is Senator Lathrop from Omaha; Senator Kent Rogert from Tekamah; legal counsel is Lori Thomas. And to my far left is Senator Tom White from Omaha; and Senator Amanda McGill from Lincoln; and Senator Chambers has not joined us yet; and then Tessa Warner is the committee clerk and she's to my immediate left. Our page this afternoon is Matt from Falls City. The proceedings are going to be recorded so at this time I request that you turn any cells phones you have to silent or off, please. The committee will first hear testimony in favor of the bill that is being heard and then in opposition and then in neutral. Please listen to the comments of people preceding you so we don't have repetitive testimony. Testifiers' sheets are available near the back doors right on the corner of the table and on the testifier table. Please fill those out and place them in the box before you testify. At the beginning of your testimony, please state your full name and spell it for the recording. And that should take care of everything and we'll start the hearing with LB31. Senator Nantkes. [LB31]

SENATOR NANTKES: Good afternoon, Chairwoman Cornett, members of the committee, my name is Danielle Nantkes, spelled N-a-n-t-k-e-s. I represent Legislative District 46, "The Fighting 46th" as I like to call it. And I'm here to introduce LB31, a bill to raise the minimum wage. LB31 proposes to amend the Wage and Hour Act as follows: it would raise the minimum wage for those employees over the age of 17 from \$5.15 per hour to \$6.26 per hour over a three-year period. Each year the wage will be increased by 37 cents. The Department of Labor will set the rate thereafter based on inflation. It would also raise the minimum tipping wage for those employees over the age of 17 from \$2.13 per hour to 50 percent of the minimum wage set forth above. Additionally, it would provide that student learners' wage will apply to those employees 17 years and older. It would also raise the training wage for those employees between the ages of 17 and 20 from \$4.25 per hour to \$5.15 per hour over a three-year period. Each year the wage will be increased by 30 cents per hour. The Department of Labor will set the rate thereafter based on inflation. The bill would also change the act's penalty provision. Also I wanted to point out for the committee's reference that on page 4 of your copy there is a typo and the year should be changed from 2008 to 2010. As many of you know, there have been developments on the federal level in relation to this issue. It's our understanding

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

that both houses of Congress have debated and voted upon an increase in the federal minimum wage that equates to approximately \$7.25 per hour implemented over a two-year period. It is our understanding at this time that that issue is still being debated in conference committee on the federal level. The best reports indicate that Congress will, in fact, vote on that issue sometime this year. When that may be, I cannot tell you, and if anyone has a better answer to that, they may want to go to another line of work where they can make good money on those kinds of predictions. Nonetheless, this issue is of critical importance to working Nebraska families. If enacted, it has the potential to affect up to 60,000 working Nebraska families in its first years. As many of you know, the minimum wage was historically set to ensure that a family working full-time would not be regulated to poverty. We have not seen an increase in the minimum wage in Nebraska or on the federal level for quite some time. This is an idea whose time has come. The federal government has taken decisive action on this issue and hopefully we'll have some results on that in the near future. As such, we'd be willing to work with the committee and committee counsel to draft language that would amend my moderate proposal in this regard and instead coincide and create permissive legislation that would mirror the federal law once enacted. With that I'm happy to answer any questions, and I know that there's many interested parties behind me today to share their thoughts on the minimum wage as well. [LB31]

SENATOR CORNETT: Any questions from the committee? Thank you, Senator Nantkes. Will you be staying? [LB31]

SENATOR NANTKES: I'll be waiving my close. [LB31]

SENATOR CORNETT: Okay. [LB31]

SENATOR NANTKES: Thanks. [LB31]

SENATOR CORNETT: First proponent. [LB31]

JENNIFER HERNANDEZ: (Exhibit 1) Good afternoon, Senators. My name is Jen Hernandez, H-e-r-n-a-n-d-e-z. I am the community educator and registered lobbyist for Nebraska Appleseed. I am here today to thank Senator Nantkes for introducing this important piece of legislation and to urge you to act quickly to send this bill to the floor. As Senator Nantkes mentioned, no one who works full time should live in poverty. And as you know, the federal minimum wage has been frozen at \$5.15 an hour since 1997. Its real buying power is at the lowest point in more than 50 years and it brings the full-time minimum wage worker in at just \$206 a week or \$10,400 a year, far below the poverty line for even a small family. Across Nebraska, research shows that a typical family of four, of two parents and two children, need more than \$9 an hour per worker with both parents working to meet their basic needs without public or private assistance. It is unacceptable to allow Nebraskans to work so hard and watch them flounder in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

poverty. Raising the minimum wage shows that we value hard work over welfare and it will save taxpayers money. In addition, raising the floor for our lowest-paid workers, in the end, helps everyone--certainly the people in poverty, even though they're working full time. It helps the middle class and it even helps the wealthy. There are a couple of worn-out arguments that are made with every proposed minimum wage increase: primarily that it hurts small businesses; it'll cause layoffs; and it will hurt low-wage workers. The evidence suggests otherwise. States that have raised their minimum wages above the inadequate federal level have had better employment and small business trends than the other states who have left it at the \$5.15. Studies by the Fiscal Policy Institute and others show that states with minimum wages above \$5.15 have the number of small businesses and the number of small business employees grew in those states, contrary to what critics predicted. Likewise, after the last federal minimum wage increases in '96 and '97, the nation experienced lower unemployment, low inflation, robust growth, and declining poverty rates. Twenty-eight states and the District of Columbia have a minimum wage above the federal minimum wage acknowledging that they, and not the federal government, know what their state and workers need. I urge you to protect the purchasing power of our minimum wage workers and advance this bill out of committee. I'd be happy to take any questions that you have. [LB31]

SENATOR CORNETT: Seeing no questions, thank you very much. [LB31]

JENNIFER HERNANDEZ: Thank you. [LB31]

SENATOR CORNETT: Next proponent. And I'll apologize for the fuss. We seem to be having some problems broadcasting this, so. It's recording; it's just not broadcasting. [LB31]

KEN MASS: Senator Cornett, members of the committee, my name is Ken Mass, representing Nebraska AFL-CIO. I'm here today in support of LB31 to raise the minimum wage. [LB31]

SENATOR CORNETT: Ken, I'm sorry, but could you spell your name? [LB31]

KEN MASS: M-a-s-s. [LB31]

SENATOR CORNETT: Thank you, just for the record. [LB31]

KEN MASS: I thought it wasn't working. [LB31]

SENATOR CORNETT: No, that's working. We're not broadcasting. [LB31]

KEN MASS: Oh, all right. Okay. Oh, darn it. [LB31]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CORNETT: Nice try though. (Laughter) [LB31]

KEN MASS: Are we ready? Do you want to wait? [L31]

SENATOR CORNETT: No, go ahead. [LB31]

KEN MASS: Today, more than 80 percent of Americans believe it's time to give workers a raise and back the drive to boost the minimum wage and even some business owners have said raising the minimum wage is the right thing to do. There's a study that shows the minimum does not cause job loss as business and extremist critics claim. State minimum wages: A policy that works, by Paul Wolfson of Strategic Research, an associate of the Tuck School of Business at Dartmouth College, finds that wages are higher and employment is no lower in states with a higher minimum wage than those without. He goes on to show that the minimum wage was \$1.40, more than 25 percent higher than the federal level in states that have raised the minimum wage. The study finds that contrary to opponents' dire predictions, there was very little on either employment of labor supply in states with higher minimum wage, including teenagers and those employed in the restaurant industry. Raising a minimum wage increases wages without reducing employment for teenagers. Minimum wage increases led to the higher wages without reducing employment or discouraging labor supplies for young adults or adults with no college education. During the past year, there has been...last month, six states voted to raise the minimum wage--last fall I should say, bringing the number to 29 states and the District of Columbia unwilling to wait for Congress' minimum wage increase which has not been approved at the federal level in more than a decade. Corporations routinely provide their top executives with huge pay and bonuses, increases, that far exceed the inflation rate, even years when these companies' own profits and stock value decline. In one year alone, for example, the median pay for a CEO of America's 100 largest companies increased 25 percent to \$17.9 million in 2002. What about the working poor? And this comes from Jim Sinegal who founded the discount stores, Costco Wholesale Corporation, said it makes good economic sense to raise the minimum wage. The more people make, the better lives you are going to have and the better consumers they're going to be. It's going to provide better jobs and better wages. He says he certainly knows what he's talking about. His successful venture launched in 1983 now has over 130,000 workers and operates 504 stores where the average worker makes \$17 an hour and the lowest paid earn \$11 an hour. It's good business sense. In his view, some of these industries may pay minimum wage, are constantly turning people over. They spend more on turnover than they would paying the additional wages. Basically that's all I have to say. We are here in support and we ask the committee to support the minimum wage (inaudible). I would answer any questions. [LB31]

SENATOR CORNETT: Seeing none, thank you, Ken. Next proponent. [LB31]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

JIM CUNNINGHAM: (Exhibit 2) Senator Cornett and members of the committee, good afternoon. For the record, my name is Jim Cunningham and that's spelled C-u-n-n-i-n-g-h-a-m. I'm appearing in my capacity as executive director of the Nebraska Catholic Conference which represents the mutual interests and concerns of the Roman Catholic Archdiocese of Omaha, and the diocese of Lincoln and Grand Island, primarily with regard to matters involving public policy. One of the opponents of this bill asked me if I would pick up a couple of introductory statements and bring back to him, and I thought, well, maybe if I don't do that, maybe that would deter him from testimony, but I guess I'll do it anyway. The Nebraska Catholic Conference supports LB31. As a matter of public policy, we view this as a matter of two key principles of social justice: first, showing a preferential option for the poor; and secondly, upholding the dignity, not only of individual workers, but also of human work in and of itself and its undeniable contribution to the common good. Work is the ordinary way in which people meet their material needs and community obligations. Increasing the minimum wage would help restore its purchasing power, not only for the goods and services of an individual or family, but also for the self-esteem and self-worth that it affords the low income worker. Consistent with its position over many years, the United States Conference of Catholic Bishops is actively supporting federal legislation to increase the minimum wage. Here in Nebraska we recognize and endorse the reasons behind such efforts and leadership prompting our support for raising the state minimum wage in a timely and meaningful fashion as proposed by LB31. Thank you for your attention. We urge that this bill be advanced to General File for consideration by the full body. Thank you. [LB31]

SENATOR CORNETT: Thank you very much. Questions from the committee? Seeing none, thank you very much. Next proponent. Are there any remaining proponents? We'll move to opponents. First opponent. [LB31]

RON SEDLACEK: Good afternoon, Senator Cornett and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, I'm here today...and that's spelled R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and the Greater Omaha Chamber of Commerce. We'd like to register opposition to LB31 as written. However, in light of Senator Nantkes' opening remarks, our basis of opposition has always been in regard to consistency between state and federal law. Should federal law be changed and that is reflected in legislation, we would be happy to drop this opposition--be sure to communicate that with the Senators--and therefore would no longer be opposed so long as we find that consistency in place. And that would be the end of my testimony. I'd be happy to entertain questions. [LB31]

SENATOR CORNETT: Senator Lathrop. [LB31]

SENATOR LATHROP: I'm just wondering if your opposition today is because of the inconsistency between federal and state law? [LB31]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

RON SEDLACEK: That's always been our policy, Senator. [LB31]

SENATOR LATHROP: And so, with respect to minimum wage, or all issues? Did you understand that question? [LB31]

RON SEDLACEK: I don't know... [LB31]

SENATOR LATHROP: I said, your opposition is because there is an inconsistency between the state and the federal... [LB31]

RON SEDLACEK: The dollar amount I should say, that's correct. [LB31]

SENATOR LATHROP: And my question is, is your opposition because it's we're dealing with the minimum wage or can we count on the Chamber of Commerce to always want to defer to the federal government? [LB31]

RON SEDLACEK: What has been articulated to me by our labor relations council which recommends that policy position to our board of directors is, the desire for the dollar amount of the minimum wage rate in Nebraska, which would be consistent with the dollar amount that is provided in federal law. From that point, yes, it's correct. [LB31]

SENATOR LATHROP: But my question is, is that your position on all the issues? [LB31]

RON SEDLACEK: Not all the issues, no. There are exceptions. [LB31]

SENATOR LATHROP: So what you are saying is, is that we want to keep the consistency, in other words not going higher than the federal government proposes for the minimum wage. [LB31]

RON SEDLACEK: That's correct, Senator. [LB31]

SENATOR LATHROP: But you might be back for a different benefit if the federal government gets higher than what the state would be? [LB31]

RON SEDLACEK: If the minimum, you mean the minimum wage rate, Senator? [LB31]

SENATOR LATHROP: No, I'm just trying...you come in here today, the fact is, is that your trouble with the inconsistency is with the minimum wage. You don't want it to be higher than the federal government's. Is that the case? [LB31]

RON SEDLACEK: We'd like it to be consistent, actually not lower nor higher, but identical to. [LB31]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR LATHROP: Okay. Does the Chamber have a policy of maintaining consistency with the federal government when it comes to employee benefits in every occasion? [LB31]

RON SEDLACEK: No, not necessarily. [LB31]

SENATOR LATHROP: Just in this then. Just in this. [LB31]

RON SEDLACEK: In this one, yes. There probably are others we would like, just to try to give you a little bit of an answer that might be consistent. When we have tried to fashion our own equal employment opportunity laws, again the idea that we've always had policywise, and we've embraced, is to try to be as consistent as possible with federal legislation; that we not have nonconforming provisions. That's not always the case. There are nonconforming provisions in state law and we live with that. However, it is just ease of administration, the uniformity, that we are in line with federal policy. [LB31]

SENATOR LATHROP: That's what I was looking for. Okay. [LB31]

RON SEDLACEK: Other questions? [LB31]

SENATOR CORNETT: Seeing none, thank you, Ron. [LB31]

RON SEDLACEK: Okay, thank you, Senator. [LB31]

SENATOR CORNETT: Next opponent. [LB31]

KATHY SIEFKEN: Senator Cornett and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n. I'm here representing the members of the Nebraska Grocery Industry Association. And I find myself in a really strange position here because in the past we've always opposed an increase in minimum wage because we believe that the market should set the minimum wage or the wages in the communities and right now there are very few of our members in the larger cities that are paying a minimum wage. The only people that are paying a minimum wage are the very small stores out in rural Nebraska. Starting wages in Lincoln even for people that are minors, the 16-year-olds, is well above minimum wage. We do believe that this is one of those issues though that should be set on a federal level. This is not something that we think should be set statewide. We think it is a national issue as are other issues--it just kind of depends upon what the issue is. One of our main concerns with an increase in minimum wage is the ripple effect. However, again, in this instance, since we are already paying more than minimum wage in Lincoln and Omaha, it may not affect those stores, but in rural Nebraska it would. But again, once the feds raise the minimum wage, just the consistency within the state because there are some of our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

stores that would not come under the federal minimum wage. Therefore, when the feds pass a minimum wage increase, it's easier for everybody to go to the same level rather than trying to figure out if you come under the threshold that is under the federal minimum wage. If the state minimum wage, I'm reading you an expression, if the state doesn't increase the minimum wage and it's lower, we have some businesses that will continue to pay a state minimum wage. So it's just less confusing if we are just in lockstep with the feds. In addition to that, in the history of minimum wage, Nebraska has never jumped out in front of the feds, and it's been a consistent way to do things and that's what our members would support. With the amendment that Senator Nantkes talked about, if the feds increase minimum wage and if we reflect what the feds do, then our opposition goes away completely. So if you have any questions, I'd be happy to try to answer them. [LB31]

SENATOR CORNETT: Go ahead, Senator Lathrop. [LB31]

SENATOR LATHROP: What if the federal government doesn't do anything? I mean, isn't the minimum wage bill now tied to a small business... [LB31]

KATHY SIEFKEN: Small business tax incentives... [LB31]

SENATOR LATHROP: Tax incentives? [LB31]

KATHY SIEFKEN: Yes, it is. [LB31]

SENATOR LATHROP: Okay. So what if that doesn't happen? [LB31]

KATHY SIEFKEN: I think that's unlikely. [LB31]

SENATOR LATHROP: Do you think \$5.15 cents an hour is enough for somebody's labor? [LB31]

KATHY SIEFKEN: As I said, most of our members, and we have entry level jobs in the grocery industry, most of our members are not paying minimum wage. They are starting people out at \$6.50 to \$7.50 an hour. [LB31]

SENATOR LATHROP: I know, but you're here in opposition, so you must have some concern about it going higher than \$5.15 an hour. I mean...well, let me ask you this. If it goes to \$6.26 an hour which is apparently the first jump this would take, or be where this goes to, most of your members pay more than \$6.26 an hour at this point in time, right? [LB31]

KATHY SIEFKEN: Except for the very small stores in rural Nebraska. [LB31]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR LATHROP: A few small stores in rural Nebraska. [LB31]

KATHY SIEFKEN: Yes, yes. [LB31]

SENATOR LATHROP: Okay. Do you think \$5.15 an hour is enough to pay somebody for their time? [LB31]

KATHY SIEFKEN: Those people who are making minimum wage in rural Nebraska, the bulk of those people, are teenagers that are not supporting a household. They are not supporting other people. They're kids going to high school. [LB31]

SENATOR LATHROP: Would you be okay if we just kept, if we increased the minimum wage for adults higher than that? Would you drop your opposition at that point? [LB31]

KATHY SIEFKEN: I would have to talk... [LB31]

SENATOR LATHROP: Probably not? [LB31]

KATHY SIEFKEN: ...I don't know. I'm not saying probably not. I'm saying is I get marching orders from my members and that's not something we've talked about, but I would be happy to go back and talk to them and see if they would be interested in something like that. [LB31]

SENATOR LATHROP: I think the bill provides for kids that are under 17, doesn't it? [LB31]

KATHY SIEFKEN: But I think the bill is going to go away according to what I've heard? So, it depends upon what we are talking about here. [LB31]

SENATOR LATHROP: I'm trying to find out why you are opposed to it? [LB31]

KATHY SIEFKEN: Because it doesn't reflect, it doesn't mirror the federal minimum wage, so when the feds go up, we think we should go up also. [LB31]

SENATOR LATHROP: Even for the little markets out in western Nebraska? [LB31]

KATHY SIEFKEN: Even for the little guys, yes, absolutely, absolutely, yes. Because as I said before, there are some stores that are going to, and there aren't many of them, but there are some stores that are going to come in under the threshold so they will not be required to pay the federal minimum wage because they are under that threshold. So they'll still pay the state minimum wage. [LB31]

SENATOR LATHROP: Is that what they're doing right now--paying the state's minimum

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

wage? [LB31]

KATHY SIEFKEN: They're the same. The state and the feds are the same, and so what I'm saying is if the state doesn't pass a minimum wage increase that reflects or mirrors the feds, there's going to be confusion. [LB31]

SENATOR LATHROP: Okay. I think I understand your testimony. [LB31]

KATHY SIEFKEN: Do you understand what I'm saying? [LB31]

SENATOR LATHROP: I'm understanding exactly what you're saying. [LB31]

KATHY SIEFKEN: Because there are people that are under the federal threshold and they would only be required to pay the state minimum wage. And if the state minimum wage doesn't go up, then it's, okay, where do I fall? Simplicity is easier, that's all I'm saying. [LB31]

SENATOR LATHROP: Okay, thank you. [LB31]

SENATOR CORNETT: Kathy, what are the threshold numbers? [LB31]

KATHY SIEFKEN: I think it's \$500,000 a year. [LB31]

SENATOR CORNETT: In business, it's not based on the number of employees? [LB31]

KATHY SIEFKEN: There's a monetary amount in there. And frankly, a business that's doing under \$500,000 gross a year is pretty darn small. [LB31]

SENATOR CORNETT: But it's not tied to the number of employees that you have, it's just on the... [LB31]

KATHY SIEFKEN: It might be. It's just the really small, small businesses. [LB31]

SENATOR CORNETT: And you're saying that the businesses that are tied...that are under that threshold, so they don't have to follow the federal... [LB31]

KATHY SIEFKEN: Yes. [LB31]

SENATOR CORNETT: Will follow the state instead of going with the federal. [LB31]

KATHY SIEFKEN: Right. So if you don't increase it when the feds do, then you've got a division of, okay do you come under the federal or do you come under the state? [LB31]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CORNETT: How many businesses do...could you just give me a rough estimate of how many businesses we are talking about? [LB31]

KATHY SIEFKEN: For my members, it's probably a handful. But my members are a little bit different because their margins are so slim that their numbers are pretty high. [LB31]

SENATOR CORNETT: How many members do you have? [LB31]

KATHY SIEFKEN: I've got about 400 grocery stores across the state. [LB31]

SENATOR CORNETT: And when you say a handful, four or five? [LB31]

KATHY SIEFKEN: Under 20. [LB31]

SENATOR CORNETT: Under 20. [LB31]

KATHY SIEFKEN: Under 20. Yeah, probably. But again, we don't have many that fall into that category. There would be a lot of other businesses that would. [LB31]

SENATOR CORNETT: Thank you very much. Any further questions from the committee? Seeing none, thank you, Kathy. [LB31]

KATHY SIEFKEN: Thanks. [LB31]

SENATOR CORNETT: Next opponent. [LB31]

ROBERT HALLSTROM: (Exhibit 3) Chairman Cornett, members of the Business and Labor Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business to express our opposition to LB31. I have put together some extended written remarks. I won't belabor the committee. I think that we could get into dueling studies and industry studies as Mr. Mass had referred to. I don't know that that's the issue that is before us today, from at least our perspective. Like many of the other witnesses, our interest is in maintaining conformity with the federal standard for minimum wage. I was not here when Senator Nantkes made her opening so I am not exactly sure what she said. But it indicated that there was the pending action in Congress and perhaps if we can await that action and then conform the state minimum wage to the federal minimum wage, we would be acceptable and satisfied with that type of action by the Legislature. [LB31]

SENATOR CORNETT: Senator White. [LB31]

SENATOR WHITE: Mr. Hallstrom, taking a page from Senator Lathrop's bill, or book, if the feds raised the price to \$10 an hour minimum, but allow us for businesses under

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

500 employees, will you and your organization be back here saying please drop it out of conformity with the feds? [LB31]

ROBERT HALLSTROM: I don't believe so, Senator. [LB31]

SENATOR WHITE: So if they rose it to \$20, you'd live with it? No matter what the number is? As long as we lockstep with the feds, you're not going to be coming back here asking us for lower wages. [LB31]

ROBERT HALLSTROM: I don't foresee coming back here on that basis. [LB31]

SENATOR WHITE: Thank you. [LB31]

SENATOR CORNETT: Senator Lathrop. [LB31]

SENATOR LATHROP: I do have a question. I notice in your remarks that the argument that you were, you printed, but didn't make today's, that will affect small firms, but the fact of the matter is, whatever the federal government does, small firms will live with. [LB31]

ROBERT HALLSTROM: That has traditionally been the position of the membership, Senator. I think that a prior witness talked about the \$500,000 gross sales threshold, that obviously does have a little bit greater impact on the smaller businesses in terms of the federal minimum wage would not impact them. We follow in lockstep and those small businesses with gross sales of less than \$500,000 who arguably and legally don't have to follow the federal limit, I suppose you could make some type of argument that you ought to provide a similar type of exemption on the state level. But we have not made that argument before this committee or this Legislature. [LB31]

SENATOR LATHROP: Okay, thanks, Bob. [LB31]

BOB HALLSTROM: Thank you. [LB31]

SENATOR CORNETT: Seeing no further questions, thank you, Bob. Next opponent. [LB31]

JIM OTTO: Senator Cornett, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association, and I am here representing both organizations in opposition to LB31. I need to say right off that in light of what Senator Nantkes introduced as far as how she wants to amend the bill, also in light of what's going on at the federal level, and we think that we are going to get a federal minimum wage, I was in a quandary as far as should I be...exactly how should I testify? Should I testify neutral? Obviously we are kind

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

of in a position, I think, Kathy Siefken mentioned that, that if we want the federal who are actually supporting a greater minimum wage increase than Senator Nantkes' bill, so why would we be in opposition to this? The bottom line and when I want to be, and I want to be honest, and blatantly honest, but being honest on the record sometimes isn't the greatest thing if your members read it (laughter). But the truth is that I can't justify to my membership supporting an increase in the minimum wage. And as a result, I'm here testifying against it. In other words, in answer to your question, Senator Lathrop, they don't want to pay more. They don't want to be forced to pay more; they want the market to determine it. And for me to say that, gee, we'll always be here supporting the federal level no matter what it is, wouldn't be honest. But our members feel that the market determines that and most of them don't pay minimum wages, they pay higher. When you increase the minimum wage, many things kind of stairstep up and they're all concerned about that. So what it really comes down to is if the feds pass it, we'll be supportive of that and we'll be supportive of Senator Nantkes putting numbers in her bill that are greater than the numbers she has right now. But with that, we oppose the bill. [LB31]

SENATOR CORNETT: (Exhibits 4, 5, 7) Any questions? Seeing none...further opponents? Neutral testimony? Seeing none, that closes the hearing on LB31. I'm sorry, I've got three letters, two in support of LB31 and one in opposition that I will have the page pass around and to be entered into the record. That concludes the hearing on LB31 and we'll move to LB432. Senator Friend is unable to join us today so his LA will be introducing the bill. [LB31 LB432]

ROD KROGH: (Exhibit 6) Thank you, Chairman Cornett, members of the Business and Labor Committee, for the record, my name is Rodney Krogh, R-o-d-n-e-y, last name is spelled K-r-o-g-h. I serve as the legislative aide for Senator Mike Friend who represents the 10th Legislative District in northwest Omaha. Senator Friend regrets that he is unable to appear here today. Senator Friend introduced LB432 at the request of the Nebraska Equal Opportunity Commission. And to preface my remarks, Senator Friend and the NEOC appreciate the committee considering the cleanup amendment I believe Matt is distributing to you, AM28, when you are considering this legislation. LB432 amends language in the current act prohibiting unjust discrimination in employment because of age, to have it more closely reflect other laws governing discrimination in employment. To this end, the definition of employer is revised as has the statute of limitations for filing. In addition, some of the intent of the law is not effectuated by statute as it stands. Clearly the legislative intent was, and continues to be, to protect our state's most important resource of experienced employees. But as it currently stands, the law only applies to individuals less than 70 years of age. LB432 revises the law to allow for protections for any individual who is at least 40 years of age. I understand the director of the NEOC, Anne Hobbs, who traveled a great distance to be here today, is here to testify and I will defer questions to her. Senator Friend thanks the committee for its consideration of LB432. [LB432]

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Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CORNETT: Thank you, Rodney. Any questions from the committee? Seeing none, thank you very much. First proponent. [LB432]

ANNE HOBBS: Good afternoon, my name is Anne Hobbs, I'm the executive director of the Nebraska Equal Opportunity Commission. And it's A-n-n-e H-o-b-b-s. I am going to say thanks, Senator Friend, for introducing LB432. It's a fairly straightforward bill that relates to labor and employment. The major purpose of LB432 is to have the Nebraska state law mirror the federal age law. Important revisions to the law under this bill would include: first, a reduction in the length of time a person has to file a charge of discrimination. Currently law states that an individual has four years from the date of harm to file under the age law. The amended law would make the time consistent with the Fair Employment Practice Act which is 300 days. A second important revision that this bill addresses is jurisdiction over individuals age 70 and older. The law currently covers only individuals between ages 40 and 69 years of age. LB432 broadens the language to include individuals 40 and over, so with no ceiling in the age. Thirdly, LB432 also changes the numerical jurisdiction from 25 employees to 20 employees within 20 weeks' time. Again, this is an effort to mirror the federal age law more closely. And finally, the bill renames the act prohibiting unjust employment because of age, to the Age Discrimination in Employment Act simply because the prior title was cumbersome. So thank you and if you have any questions? [LB432]

SENATOR CORNETT: Seeing none, thank you very much. [LB432]

ANNE HOBBS: Thank you. [LB432]

SENATOR CORNETT: Further proponents? Opponents? Are you a proponent? [LB432]

RON SEDLACEK: Madam Chair and members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I am representing today the Nebraska Chamber of Commerce and we would be supportive of LB432. Our labor relations council met and felt that the harmonization of this law with other Nebraska law, as well as being closer to federal law, is meritorious and would like to just be on record in support. [LB432]

SENATOR CORNETT: Thank you. Seeing no questions, thanks, Ron. [LB432]

SENATOR LATHROP: We want that consistency. [LB432]

RON SEDLACEK: Yes, we want that...I was going to say (laughter) here's the situation again. That's right. Thank you. I was waiting for that. [LB432]

SENATOR CORNETT: Are there further proponents? We'll move to opponents. Seeing

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

none, neutral testimony? That closes the hearing on LB432. Oh, I'm sorry, did you wish to close? [LB432]

RODNEY KROGH: (Inaudible). [LB432]

SENATOR CORNETT: That closes the hearing on LB432. [LB432]

SENATOR ROBERT: We will now begin the hearing on LB175, Senator Cornett to open. [LB175]

SENATOR CORNETT: Good afternoon, members of the Business and Labor Committee. For the record, my name is Abbie Cornett, C-o-r-n-e-t-t, and I'm here to introduce LB175. LB175 is intended to provide employees, both in the public sector and the private sector, minimal procedural due process before they can be terminated from their employment. It does not pertain to persons who are exempt from the Fair Labor Standards Act, 29 U.S.C. 213, nor does it pertain to employees whose employment rights are governed by other statutes or collective bargaining agreements. Generally, it will pertain to those employees who are at or near the bottom of the socioeconomic ladder. Before such persons can be terminated, they are entitled to be told the reason of the termination and then be given a meaningful opportunity to respond. Thank you very much and I will waive closing. There will be testifiers after me. If anyone has any questions? [LB175]

SENATOR ROBERT: Thank you, Senator Cornett. Any questions from the committee? Seeing none, we'll move to any proponents to this bill. [LB175]

KEN MASS: Senator, members of the committee, my name is Ken Mass, M-a-s-s. I represent the Nebraska AFL-CIO. I'm here today in support of LB175. As Senator Cornett stated, basically, this bill does not pertain to anybody that has a collective bargaining agreement but I think it is a shame when somebody works for--and it doesn't affect organized labor, because we do have collective bargaining rights and we are notified when the purpose of why the employee has been terminated from their work force, and that is something that we negotiate, and its part of our collective bargaining agreement--but I think it's a shame, an individual works for an employer and the employer will not even stand up and be a right-time employer to tell the employee why they are getting fired. And of course, that's the disadvantage of being an at-will employee; that can happen. But we stand in support of the bill. All employees should be notified of why they have been terminated, so. Any questions? [LB175]

SENATOR ROBERT: Any questions of the committee? Seeing none, thanks, Ken. Next proponent? [LB175]

MARK MCGUIRE: Chairman, members of the committee, my name is Mark McGuire,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

M-a-r-k, McGuire, M-c-G-u-i-r-e. I'm legal counsel for and lobbyist for the Nebraska State Education Association. We appreciate Senator Cornett introducing LB175 which, in our view, provides the lowest level minimal due process to employees to simply require the employer to tell them why their employment is being terminated. It's hard to imagine a fair-minded person who had somebody working for him or her for a number of years, would want to be able to simply fire them without telling them why. We're having a cutback because our sales are down. Now that's hardly a difficult thing to do. It's a very clear reason and conveys to the now terminated employee what the reasons were..., was it something he was doing wrong or was it just a downscaling of the market or whatever? A constituent of this body submitted some questions and I helped prepare a response, and if we could review some of those questions, they are very good and they go right to the heart of the matter. First question is, what impact would this legislation have on Nebraska's at-will employer status? My answer is there would be no effect. Employment at will means the employee serves at the will of the employer. He or she can be terminated for any reason or no reason at all so long as the termination is not for constitutionally impermissible reasons or for discriminatory purposes. All LB175 mandates is that the employee is told the reason and there's always a reason he or she is being fired--and that individual is provided a meaningful opportunity to tell his or her side of the story, and there is always two sides to every story. The next question was asked, what state entity will be responsible for enforcing this legislation? The answer is none. It will simply be a piece of law that will be applicable to the groups of people that are identified in the bill. The next question is, what would occur if a company or organization failed to meet the intent of this legislation? What would be the consequences to them? Basically, the question is, what is the effect of noncompliance with LB175? The result of noncompliance with LB175, in my view, is that the termination of the employee would be invalid. The discharged employee who is not given a reason for his or her termination and/or not being given a meaningful opportunity to present his position on the matter could institute litigation alleging he was not lawfully terminated. The damage would be lost wages, less mitigation from the day of discharge to a court decision. Because they were not lawfully terminated, their employment would be deemed to continue until it was properly terminated. We are talking about people here who are really at the bottom of the employment ladder. They're some of the lowest-level jobs--types of people who are in reality going to be affected here and their damages, in fact, aren't much because they are going to wind up having to get another job to eat. I have another observation: we're talking about public policy. And I came to these thoughts because I realize in a few minutes a number of people will be testifying here in opposition to LB175. And their arguments are going to be that this bill is an encroachment upon Nebraska's longstanding policy of quote, employment at will. They will want to focus on that one little piece of social policy, if you will. What they don't want to focus on today is their plea that this body provide them and their clients all sorts of tax breaks and tax credits and subsidies and grants and other forms of economic assistance designed to create jobs. That's all fine and good and no one's contesting that. There will be those who will argue about stopping the brain drain of our young

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

people leaving the state. Again, that's fine. But every time a company moves to Nebraska or a new gasohol plant is built or something else, the announcement identifies proudly the number of new jobs that will be created. I just find it a little bit inconsistent that the same groups which actively seek access to the state's treasury to create jobs, will nevertheless seek protection, if you will, from having to tell those very employees why it is their employment is being terminated, and giving them a chance to tell their side of the story. I think when you look at the broader picture of social policy, jobs development, business and so forth, is all fine in its place, but someone has to do all of that work. And we're talking about telling those folks who are having to do that sort of work, because they are not in a union, they are not covered by a collective bargaining agreement, they're not an executive, they're not a professional, they're not a variety of other things that are excluded. We're simply saying those folks need to be told why their employment is being terminated. LB175, in my view, simply levels the playing field, and employers are required to do nothing more than to treat their employees with the most minimal-based level of due process. As a federal judge, Robert Van Pelt once wrote an opinion very simply: due process means basic fairness. That's what this bill seeks. I would be pleased to respond to any questions that you might have. [LB175]

SENATOR ROBERT: Any questions from the committee? Senator Lathrop. [LB175]

SENATOR LATHROP: Thank you. Right now, Nebraska is an employment at will, so the boss can come in and fire somebody for any reason they want, a preposterous reason, as long as it's not a discriminatory reason, right? [LB175]

MARK McGUIRE: That's right. You are doing the greatest job in the world and by the way, you're fired, and that's kind of my standard. [LB175]

SENATOR LATHROP: Well, that's exactly right, and I've talked to a lot of these people that call me in my job, too, and they ask these questions. I don't have any idea why I got fired? If we give them this and you say that we are creating a cause of action if you don't tell them--if you just say you're fired and they go, well, tell me why? The guy turns his back and doesn't answer. If we are creating a cause of action, then you're saying they're effectively not fired if they haven't been given a reason? [LB175]

MARK McGUIRE: They are not appropriately terminated if they are not given a reason or a meaningful opportunity to respond. [LB175]

SENATOR LATHROP: What happens when the boss says, gives them a reason that is obviously nonsense? And he says, well, you know, sales were down and everybody in the company knows that sales are going up. I like doing stuff for the working guy as much as anybody does, but I'm wondering what we are accomplishing with this one? [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

MARK McGUIRE: Well, the...I thought you were going to come out with an example that's even more ludicrous than that, but then I think they haven't complied because the law contemplates good faith and that people will follow the statutes and so forth. And if they don't, and your hypothetical...you say sales are down but in reality they're going through the roof. That is not good faith compliance. I would say it's the same as if the reason is a discriminatory or constitutionally impermissible reason. The consequence of that is that the act of termination is invalid. There has to be some teeth to it or else it does become meaningless. And I think that's the teeth that are going to have to be there. [LB175]

SENATOR LATHROP: Then are we going to end up litigating whether or not the reason was true or not or a valid reason or simply a pretext? The guy that's going to be arbitrary enough not to give him in answer probably isn't going to give him the true one to start with, is he? [LB175]

MARK McGUIRE: One could speculate: we won't know. There is that opening there, but I keep going back to, and thinking about that and thinking about when I wrote this, that the teeth that have to be there and making those teeth as small as possible to try and get the bill advanced. Because I realize if it became too heavy-duty with too much process, it didn't stand a snowball's chance. So to analogize it to the discrimination case is the best I can come up with. And there the teeth is that a person's entitled to their back wages, reinstatement if that fits, and/or front pay depending upon the circumstances. So they are made whole for the wrongful act of employer in the first instance. [LB175]

SENATOR LATHROP: Okay. So that I understand what your notion is or your idea behind this bill and that would be if they gave them no reason or if they gave them a reason that wasn't true, we would be establishing a cause of action for that employer? [LB175]

MARK McGUIRE: He would be establishing a cause of action, yes. [LB175]

SENATOR LATHROP: Thank you. [LB175]

SENATOR ROBERT: Senator White. [LB175]

SENATOR WHITE: One of the situations that I've seen in my practice which involves a lot of people who have been fired is that they are given one reason or no reason. Then they apply for a job and all of a sudden they are getting bad references and different reasons are being provided than they were given at the time of the termination. Now we can write what we want and as long it's at will, they just could say quite properly, he was a personality conflict. I don't like you. And that's a perfectly legitimate reason to fire anybody. And it's probably true even if there was other underlying factors. But what if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

any, relief...and I don't think there is anything we can do about that, I mean, given the political situation and where we are at. But what, if any, relief does it give to the person who said, you're fired because sales were down or I didn't like your shoelaces or whatever, but then later when they use them as a reference, and they go back and say, well, this guy's lazy or this guy, we thought he was stealing, or something like that? Does this act give any remedy to the next job and to honesty in references? [LB175]

MARK McGUIRE: I think honestly not. I did an honest reference bill a few years ago and that went the way of the proverbial lead balloon. But that's a real problem and we see it in our practice as well. In the deals we make, we try and minimize that perhaps by a settlement agreement. But that's a problem, and I, you know, to be totally honest, I don't think, Senator, that this bill goes to the bad reference. I wish it would, I wish it did, I don't believe it's there. [LB175]

SENATOR WHITE: I think there is more of a public policy interest in helping people be employable again, at least it's more soluble on a public policy level, on their prospects of getting back to the work force than keeping them in a job, do you agree? [LB175]

MARK McGUIRE: Can you say that again? [LB175]

SENATOR WHITE: In other words, I don't think we can stop people from firing folks... [LB175]

MARK McGUIRE: That's true. [LB175]

SENATOR WHITE: ...whether they deserve it or not. But we sure have a vested interest in getting them back on the job somewhere, as a state, don't we? [LB175]

MARK McGUIRE: Certainly because they wish to work or have to work, they want to take care of their families, they should be working. [LB175]

SENATOR WHITE: One other question. There's another exception and that is if you complain of certain things are against public policy, specifically there's a Nebraska Supreme Court case, a gentleman was fired for reporting that his boss was rolling back odometers, as you recall. Would this law allow the employer to take the Fifth Amendment? Because, as you know, if they say, well, I fired you because you reported I was rolling back odometers, that becomes an admission subsequently admissible in a criminal case. Now if he takes the Fifth Amendment, under general law, there is a civil presumption that arises of what he's doing is illegal and therefore an action. Would you agree that an employer could properly take the Fifth Amendment in this situation? [LB175]

MARK McGUIRE: Quite possibly, because that is criminal, I mean... [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR WHITE: In that situation you are making an admission that could be used against you in a court setting. But I just didn't know how that interacted because often whistle-blowers, if you are dealing with whistle-blower litigation, you really do run squarely into that. [LB175]

MARK McGUIRE: Exactly. I don't recall... [LB175]

SENATOR WHITE: So how does this law interact... [LB175]

MARK McGUIRE: ...that's the Meginnis case you're talking about and I don't recall the matter of odometer, ever... [LB175]

SENATOR WHITE: I thought it was a Supreme Court case or maybe they used that as an example in the case? [LB175]

MARK McGUIRE: Maybe so, it's been awhile... [LB175]

SENATOR WHITE: I recall, but I remember that, you know, if you report illegal activity and they fire you, that is prohibited in Nebraska law... [LB175]

MARK McGUIRE: Right. [LB175]

SENATOR WHITE: ...just as a matter of public policy written by the court. [LB175]

MARK McGUIRE: Exactly. [LB175]

SENATOR WHITE: So how does this law interact then, this bill if it's passed into law? [LB175]

MARK McGUIRE: Well, I think they would have to give the true reason and a meaningful opportunity... [LB175]

SENATOR WHITE: And wouldn't that be more of a constitutional issue? [LB175]

MARK McGUIRE: I beg you pardon? [LB175]

SENATOR WHITE: Don't you have a constitutional issue? You're now penalizing them for...you are telling them they have to self-report a crime. Or did you just assume we'd read it in conjunction with the constitution, they could take the Fifth? [LB175]

MARK McGUIRE: I would assume in those kinds of situations where there's a federal law like the odometer case, that they, yes, they could take the Fifth. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR WHITE: They would have the right to say, I'm not giving you a reason because of the Fifth Amendment and that's the end of the inquest? [LB175]

MARK McGUIRE: That might protect them on the criminal end. I'd think they'd still have... [LB175]

SENATOR WHITE: Well, it's still a premise, yeah, the Fifth Amendment does not protect (inaudible), matter of fact, you take the Fifth Amendment and it pretty much cooks your goose (inaudible). [LB175]

MARK McGUIRE: Exactly, yeah. [LB175]

SENATOR ROBERT: Thanks, Senator White. Any other questions? Senator Chambers. [LB175]

SENATOR CHAMBERS: Mr. McGuire, do you remember promising me in another hearing in another committee that you were going to offer me some information relative to how a bill might could be modified? [LB175]

MARK McGUIRE: Yeah, there's three of us that need to talk to you as a result of that... [LB175]

SENATOR CHAMBERS: Okay. [LB175]

MARK McGUIRE ...and it was LB474 I think. [LB175]

SENATOR CHAMBERS: If you would have given the wrong answer, you were going to be grilled like a hamburger here today (laughter) but you gave the right answer, so. [LB175]

MARK McGUIRE: That's the only thing I really looked up (laughter). [LB175]

SENATOR WHITE: Senator Chambers is a vegetarian today; there will be no hamburger grilling. [LB175]

SENATOR ROBERT: Thank you, Mr. McGuire. Any other questions? [LB175]

MARK McGUIRE: Thank you. [LB175]

SENATOR ROBERT: Next proponent. Okay. First opponent. [LB175]

RON SEDLACEK: Senator Robert and members of the Business and Labor Committee,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

for the record, my name is Ronald Sedlacek, Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today representing the Nebraska Chamber of Commerce and also the Omaha Chamber of Commerce. As with the proposed legislation that was introduced in the last legislative session, 2006, which was LB843, the Nebraska Chamber of Commerce and the Omaha Chamber has not changed their positions and would like to continue to register their opposition to LB175. Let me give you the general reason and then go into more specifics. I've got extensive remarks and I'm not going to read to you and I will not cover all of these remarks at this time, so that I can leave enough time for questions. The essential reason is in regard to the employment at-will rule. Now that rule, if you recall, in its original form, when it was first formulated, stated very simply and I'm quoting from some old authority because it starts out with, men must be left without interference to discharge or retain employees at will for good cause or for no cause, or even for bad cause without thereby being guilty of an unlawful act per se. And, of course, this rule grew out of a broad notion of the freedom to contract. But that freedom to contract is no longer a constitutional barrier to most regulation of employment. It remains the crucial background, however, against which all workplace regulation today operates and effectively governs most of what takes place in that employment relationship. And the doctrine is theoretically supposed to be neutral. A person is hired for his or her skills or services or ability to perform the particular work. That person in return is required...has a duty to show up for work, to perform the work, to comply with the employer's policies if they have such policies, the extent to which there are written policies. Perhaps there might be a duty of loyalty owed, perhaps there may be a duty in exercising that employer-employee employment relationship, there may be a fiduciary duty, and that be owed to third parties. We can go on and on and on. Early challenges to at-will employment produced a near consensus, at least in my reading, that the rule was unfair, that it's outmoded, arguing that the prevalence of at-will employment reflects really the inequality of the bargaining power between employers and employees. That it gives too little protection, in particular, to the workers that are addressed by this bill, that they are not exempt, for example, from the Fair Labor Standards Act; therefore they are not managers. They're the line workers, so to speak. That gives protection to those that have that at stake. It countenances a significant number of ill-informed or opportunistic-type of discharges. And the argument is made for the recognition of a kind of property right based on the investment that individuals have made in their jobs, and on the catastrophic consequences those people may face on discharge. I'm giving the arguments essentially that I believe are, that would be made in promotion of the bill. The critics also, to employment at will, would apply an appeal to the basic notions of fairness and to procedural due process norms that are found in the public sector. Now the supporters of the at-will rule are going to respond with a defense of the free market system and the choices it generates. That there is a competitive labor market and that as a result, arbitrary discharges are costly to the employer and therefore rare. After all, employers often invest a considerable amount of time, maybe in training a worker for skills, continuing education, coaching them along, trying to make them fit into the job, and to be a productive worker. And that all of this investment serves no purpose if you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

are going to have people out there just discharging at will for no reason or some arbitrary reason. And if a manager is doing so, that manager himself or herself, who may not be applicable under the act, may in turn be discharged. So we also hear that, but yet when you look at the rule, it does appeal to the notion that there is some unfairness. After all, we're talking about a situation or a case involving complete unjust termination that had been alluded to earlier. And then you take a look at employment-employer investment and where does your heart tug, you know? It's to those people who are perceived to be unjustly terminated. So the question I had is why then, why do the courts and why are the state legislatures loath to further a road in the employment at will rule when it comes to private employers outside of what I call the public policy or the bad mode of exemptions? Why would Nebraska be the only jurisdiction, federal or state, that would have such a law on its books with such broad application? Trying to look at some legal commentators on that subject, and I found a few particular arguments that I think should be considered. And, Senator Lathrop, you identified one of those in regard to the actual implementation of this type of legislation. Probably however, what I found is the most prevailing, the most broad argument against legislative intrusion as well as courts shrinking from intruding in this area particularly for private employers, is that the at-will rule functions largely as a shield against erroneous and costly second-guessing of employer judgments about employees' performances, their conduct, and particularly when that misconduct where the reasons are really difficult to detect. Do we want to be bothered with every one of these situations and continue to legislate and legislate and legislate to address each and every one of those issues? Another reason is that affording this type of due process does provide some constraint. Providing that record for example. Effectively you are making a record if you have no reason or some reason or a vague notion and you are the employee who has been terminated. You are applying for another job and you are talking...they say, why were you terminated or were you terminated? Yes. Why? Well right now, there is maybe a little bit of a fudge factor: I'm not sure, the reasons are vague, they gave me several reasons. Now you have a norm. You are advised of the reason, the law says you are supposed to be advised of the reason, give me that reason and that's all I want. And it can be the right reason as you mentioned, it could be the truthful reason, or it could be a made-up reason but that reason stands at that point. Would that be a question that could be asked would that record be made? So that's of a concern from that point of view. Would I like a reason personally upon termination? Absolutely, would any of you? Absolutely. We all would. I know that just in the past year I was called not to represent, but just to advise a particular person who was terminated. And essentially the reason was, you're irritating. But in talking further I found out that actually the person had some problems with odor and it just got to the point where they..couldn't talk to him, I don't know why they didn't? They didn't give him the right reason. They said just...that was it. And in talking, I found that out. Maybe it was the person, the manager, who just did not want to be insulting or was afraid to confront the facts, didn't want the reaction, I don't know why. But the point of it is the true reason wasn't given. The practicality that legislators find in trying to afford procedure due process leads to substantive due

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

process issues, particularly a private workplace where you have a myriad of policies. What may be a reason for termination in one employment situation may not be a reason in another employment situation. What's policy in one may be different than in another. So was the reason a truthful reason? Must the reason be in writing? Can it be given orally? What about multifaceted reasons the bill says the reason for? Who is to preside over the opportunity to present the employee's position? Is it the same manager that terminated or if it's a one-person shop, is it the same employer, the one employer, the one and only, saying you're fired? Why? Because I said so and then they give, is that the reason? It doesn't say. And who do you appeal to? Or suppose you have a situation where somebody in upper management calls and says, we're getting ready for, well, we may not even say it. But the underlying premise is we're getting ourselves in a position for acquisition and we're going to downsize or we are going to right size, or whatever terminology is of vogue at that time. But you've got five people working down there and get it down to three--putting ourselves in shape for a sale and keep it confidential. And that manager in turn tells another manager who doesn't get those details and that manager is saying why, and gives no reason why, but you are to get rid of two people and they get rid of two people, arbitrarily. I have no reason why, I'm just told to do my job and that's it. There's a problem, there's a problem that we'd have to continually...these problems arise and would have to be addressed. What is a meaningful opportunity to present? Must the employee give that opportunity to present their position in writing? Can it be oral? Is this a process that could be recorded? What is fair due process? How much preparation time should be allowed for each party? May the employee be represented by a third party, or just the employer? Can the employer bring in the lawyer? Can the employee bring in his or her lawyer? Is there an opportunity for appeal? Must the due process rights be consistent? Or can you just kind of wing it from one employee to the next? What about failure to appear? The person doesn't show up for two or three weeks, you assume they've abandoned the position, you'd like to terminate them, you would terminate them, but you got to give a reason? And suppose there's an inability to appear? A case of workplace violence, the person is arrested and is incarcerated. Are you obliged to go down and to allow them to present their case to the employer? And who is present at that? Well, as I said, I've got extensive remarks. Certainly, employment at will is eroded from that earlier case and that's because employers must be conscientious about a myriad of federal and state laws, Family and Medical Leave Act, maternity leave act, the Americans With Disability Act, sexual harassment, the rights of union employees, the Civil Rights Act, and essentially, and it is now also extended to anti-retaliation laws and rightfully so. These particular exceptions say essentially that employers are free to fire employees for good reason or for no reason, as I wrote in my remarks, but not for the many bad reasons that are condemned by law. Or you could say, except for a variety of particular bad cases, too, that are either condemned by law or the courts. With that I'll stop and entertain any questions. [LB175]

SENATOR ROBERT: Senator White. [LB175]

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Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR WHITE: Well, first of all, I read the statute now. It doesn't say anything about having the right to reverse the position, nor do I see anything in it that gives anybody a cause of action... [LB175]

RON SEDLACEK: That's right. [LB175]

SENATOR WHITE: ...nor does it say anything about what any hearing has to be other than the employee has a meaningful opportunity to present the employee's position in response to the reason for the proposed termination. I mean... [LB175]

RON SEDLACEK: That's how I read it too, Senator. [LB175]

SENATOR WHITE: Okay, very limited, correct? [LB175]

RON SEDLACEK: That's right. [LB175]

SENATOR WHITE: So it doesn't in any way erode the right of the employer to fire somebody because he doesn't like their shoelaces, for example, is that correct? [LB175]

RON SEDLACEK: That's right. [LB175]

SENATOR WHITE: Are you a proponent of the freedom of contract theory that is often cited to support the terminable at-will policy? [LB175]

RON SEDLACEK: Well, yes, I am, to the extent that it doesn't violate public policy or other laws. And that is going, and that's recognized, that becomes an exception to the freedom contract. [LB175]

SENATOR WHITE: Two observations on that and I'd like to hear your response. First is we talk regularly of the duty and loyalty that runs from the employee to the employer. How come there is not a duty or loyalty from the employer to the employee, even minimum level? Can you explain that to me? [LB175]

RON SEDLACEK: I can't explain that to you because there really is no duty that necessarily flows unless it's contractual. And which would be an exception to the employment at will. [LB175]

SENATOR WHITE: And now let's talk about the right to contract. We have a company with 500 employees, multimillionaires owning it, controlling it, negotiating with a tenth-grade dropout. Do you really think freedom of contract applies in that situation? Or is it more like, and I think I'm right, I don't know, Anatole France who observed the rich and the poor alike, have equal rights to live under bridges and eat crusts of bread.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

Aren't we kind of dealing with that? Isn't that just kind of a cruel game that we tell each other really exists? There's freedom of contract when in the economic world there is no such freedom. [LB175]

RON SEDLACEK: I hope that Anatole France is not the prevailing notion among employers and I don't believe it is, or nor managers. But nonetheless, to address your question, and to answer that question, I think I said in the beginning of the testimony that the rule, the doctrine presupposes a certain leveling or a certain fairness, but in reality, as I mentioned, there is a difference between the negotiating power of someone, and I'll admit it's nothing, it's not an admission, but it's obvious. That a larger company, let's say for example, has the resources to hire the best people to make sure that everything's boilerplate, that they get all the bases covered, that they understand and know the laws, do they owe a duty for each and every job applicant to educate them in that respect? No, and we know that. [LB175]

SENATOR WHITE: So when we come here and we hear people wrapping themselves in the right of freedom of contract, to defend any kind of encroachment on the terminable at-will policy, really they are wrapping themselves in something that doesn't exist anyway, because there is no freedom of contract. There is freedom for the employers but not for the employees, agreed? [LB175]

RON SEDLACEK: Well, yes and no. There's where I would not, now the distinguishing argument that I would raise is that if there is a workplace that is untenable to that employee, that employee can quit. There is no duty to continue on. Now the question becomes whether economically it's feasible or not. What's out there? What other employment opportunities? But that person does sign up for the job and can sign off the job when they find out this is a bad placement. I don't like this place and I don't care if you say two weeks' notice, I'm out of here today. [LB175]

SENATOR WHITE: Are you aware of the various policy arguments that have been hitched to that wagon in the past such as, eight-year-olds should be free to work in coal mines, after all God gave them a freewill contract? Do you agree that freedom of contract applies equally to child labor? [LB175]

RON SEDLACEK: I think most mainstream defenders of employment at will would not make that argument. There are many areas where I think from the protected classes legislation to employment of children, the working hours and conditions, environmental regulations--that's another area, protection of the work force, all those are legitimate public policy reasons. And the Legislature can make this as a legitimate public policy reason if it so likes. The question becomes how does it work? [LB175]

SENATOR WHITE: Do you think it's reasonable for an employer to tell an employee, you're fired, get out of here, I'm not even talking to you? And when that employee goes

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

out into the work force to try to find another job, starts providing all manner of explanations where the employee's never had a chance to confront or correct the false accusations, aren't we talking something completely different from saying you have a right to stay on the job as opposed to the employer doesn't have the right to cripple my ability to work in this community going forward. Isn't that same set of issues? [LB175]

RON SEDLACEK: And it seems that that person could maintain an action of either libel or slander against that employer... [LB175]

SENATOR WHITE: Only if it meets the statutory criteria and as you well know, that's very difficult. Absence slander per se, accusations of crime or a couple of other things, you can't maintain it unless you can prove specific damages. That's nearly impossible so if it's just, yeah, they're lazy or they're hard to get along with, they're just, you know, they smell bad, all right, that's not maintainable counsel, you know that. [LB175]

RON SEDLACEK: Not as far as a cause of action? Yeah, that's correct. [LB175]

SENATOR WHITE: But that's okay with you? [LB175]

RON SEDLACEK: I think the at-will doctrine allows for it. [LB175]

SENATOR WHITE: Well, how about the employee's at-will right to contract freely in the future without unfair impediments based on contracts in the past? We cut the employer loose from any further obligation then why can't the employee join in the same freedom or is it again, we're living under bridges and eating crusts of bread equally? [LB175]

RON SEDLACEK: I think there are other reasons economically besides performance reasons that people are separated from employment though. There could be economic reasons and the question becomes should economic reasons also? Is there a property right to that job? That's the essential question. [LB175]

SENATOR WHITE: No, but isn't there a property right to your reputation? [LB175]

RON SEDLACEK: Certainly, and that's why we do have slander and libel laws and loss of business reputation and other theories. [LB175]

SENATOR WHITE: A simple more, less Draconian answer...of just why are you firing me? (Inaudible) and what do I just say, no? The gentleman just smells bad? And depending on the medical condition, call us and it may have well been... [LB175]

RON SEDLACEK: It could have been a violation of the Americans with Disabilities Act. You're absolutely right. I thought of that, Senator. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR WHITE: I am concerned about the Fifth Amendment. Can you tell, do you share that concern? [LB175]

RON SEDLACEK: I wasn't able to follow that at the time, could you try again? [LB175]

SENATOR WHITE: Certainly, you're an employer and you're polluting the groundwater and an employee comes up to you says, that's a criminal violation. You're dumping the pollutant into the groundwater, stop it. Next thing, the employee's fired. And you say, well, he was just difficult to get along with (inaudible). So now he says, why did you fire me? And your lawyer is sitting there saying, don't lie to him, just take the Fifth. Do you think this provision should be allowed in this act that an employer can take the Fifth in the discharge of an employee? [LB175]

RON SEDLACEK: It's interesting. I think that allows for it in the bill, does it not? [LB175]

SENATOR WHITE: It doesn't say that, but I was, we might just, the court might construe... [LB175]

RON SEDLACEK: I think, I would, I think it could be construed as such. The employee, in the meantime, has been asked to do an illegal action and it would appear to me that the current law allows for, particularly federal law, allows for that employee to maintain an action in that regard too. And that would be an unjust termination. [LB175]

SENATOR WHITE: I am actually trying to watch out for the employer in this situation. I'm just not familiar with the territory, but. Okay, well, thank you for your courtesy. [LB175]

SENATOR ROBERT: Senator Chambers. [LB175]

SENATOR CHAMBERS: Mr. Sedlacek, if this were the law right now, how would it impact on an employer? [LB175]

RON SEDLACEK: I think that the impact, that would depend on, I think it would depend upon each, every employer somewhat in a different manner. [LB175]

SENATOR CHAMBERS: Exactly, so the thing... [LB175]

RON SEDLACEK: Because how they implement it... [LB175]

SENATOR CHAMBERS: Some it may not bother at all, right? [LB175]

RON SEDLACEK: Sure. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CHAMBERS: Because some may not just whimsically release anybody. If others are doing it, might this make them think twice before they terminate somebody for no reason at all? [LB175]

RON SEDLACEK: I don't think so, Senator. [LB175]

SENATOR CHAMBERS: Then how is it a problem? If it's not going to make them think twice, and they have to give a reason, why is it a problem? [LB175]

RON SEDLACEK: I think that it's a problem for those, I think the problems are the underlying problems as opposed to... [LB175]

SENATOR CHAMBERS: Aren't we just speculating right now, all of us? [LB175]

RON SEDLACEK: Sure. [LB175]

SENATOR CHAMBERS: So it would take a court to look at this and determine that it's too vague if it wanted to? It could say that there should not be a right without a remedy, and where a right is created, but no remedy, the court will fashion a remedy, and the Nebraska Supreme Court has said that specifically in various cases. So I know that they have said the court will fashion a remedy where there is none, so... [LB175]

RON SEDLACEK: I agree, I think it would be an ever-evolving remedy that would be fashioned because--just to go along that thought--let's say inadequate time. You know, you're fired. Will you give me the reason? I'll give you the reason. Right now... [LB175]

SENATOR CHAMBERS: So with this right now... [LB175]

RON SEDLACEK: ...you give me a response right now, and then you're out of...or it could be we'll do it in a week or... [LB175]

SENATOR CHAMBERS: Okay. [LB175]

RON SEDLACEK: ...two weeks, or whatever. [LB175]

SENATOR CHAMBERS: This could be a seminal piece of legislation that is setting the stage for judicial development of a rectification of a bad situation that is judicially created. At-will exists. Why did you acknowledge, why does that exist in Nebraska? Because of a court decision. If we pass this law, then it would give the courts who now live in a, we hope, society that has evolved to a greater level of sensitivity and civilization and fairness, the wherewithal to address that long-existing injustice. So if this were to become the law, a court could operate under it if it chose to, couldn't it? [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

RON SEDLACEK: Yes, and I think more than likely I'd be making more appearances before this committee as time goes on, too, as the law is further developed or reacted to, but that's fine. [LB175]

SENATOR WHITE: Full employment for everyone. [LB175]

RON SEDLACEK: That's right. (Laughter) [LB175]

SENATOR CHAMBERS: And when we are embarking on a subject such as this, it would be difficult to start out at the beginning and try to anticipate every twist and turn and curlicue and produce a finished product at the beginning when we cannot say for sure exactly how we should get from point A to point Z. [LB175]

RON SEDLACEK: And besides that it would be difficult because there are many different types of employers under different types of rules and regulations and... [LB175]

SENATOR CHAMBERS: Exactly. So sometimes a general law is better... [LB175]

RON SEDLACEK: So this is very broad, this is very broad. [LB175]

SENATOR CHAMBERS: Better than boilerplate where you give a laundry list. [LB175]

RON SEDLACEK: Well, I would be... [LB175]

SENATOR CHAMBERS: All I'm going to say is... [LB175]

RON SEDLACEK: I would be disturbed... [LB175]

SENATOR CHAMBERS: All I'm going to say... [LB175]

RON SEDLACEK: Go ahead, Senator. [LB175]

SENATOR CHAMBERS: As they say on that...I don't remember whether it was Snapple or one of those commercials, but he says, thank you for your help. [LB175]

RON SEDLACEK: Um-hum, thank you, Senator. [LB175]

SENATOR CHAMBERS: So thank you, Mr. Sedlacek. [LB175]

RON SEDLACEK: Thank you, Senator. [LB175]

SENATOR ROBERT: Yes, Senator Lathrop. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR LATHROP: Just briefly, do you agree with Mr. McGuire that if an employer didn't give a reason, that they would then be speaking of fashioning a remedy? Do you expect that there would be a cause of action created for the failure to provide an explanation? [LB175]

RON SEDLACEK: Yes, I heard that, and I'm not sure because what it says is essentially, as I would read it, if you looked at it literally, the...and I wonder how that would proceed, myself, but if you don't give a reason, then you're not terminated. Where does that lead? [LB175]

SENATOR LATHROP: So you go in two weeks later and get your paycheck? [LB175]

RON SEDLACEK: So you go in two years (sic) later to get your paycheck and you get no more paycheck? I'm not sure where that goes? I'm not sure where this leads to? In other words, a person could continue...and say I'm not going to give you a reason, and they say, well, the law says you have to give reason. You are not going to give a reason, and so but you don't show up to work and we're not paying you. But where do you go from there? [LB175]

SENATOR LATHROP: One of the things that might happen with this... [LB175]

RON SEDLACEK: And then you don't even get unemployment comp benefits because technically you're not separated. I guess you could...then maybe it's constructive discharge. I don't know, I haven't figured this out yet. [LB175]

SENATOR LATHROP: One of the things that you suggested in your testimony, I think, was that now if this were the rule, then employers are going to start saying, you know, whatever section this ends up. And the law requires that you get an excuse, tell me what it is. The excuse may be, get out of here, you're lazy. It might be a little easier not to have to give that. [LB175]

RON SEDLACEK: And again, I'm not representing employees, but if they'd take a look at a future job applicant then, what is the reason? The Nebraska law provides what a reason is given. Give me the reason given. Well, this was the reason, but I dispute it. [LB175]

SENATOR LATHROP: Okay. That's all I've got, thanks. [LB175]

SENATOR ROBERT: Senator Chambers. [LB175]

SENATOR CHAMBERS: Mr. Sedlacek, it seems to me that in attempting to give examples of where no reason exists, reasons are given. For example, if, as my colleague, Senator Lathrop, said, you're lazy, well, that has to do with not performing

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

the work required to hold the job. So, just don't say you're lazy, say you failed to perform according to the requirements of the job. And that's a legitimate reason if it can be sustained. So I'm having trouble seeing where this is going to pose that big a problem for employers. I just can't see it, and employers are not like babes in the woods or tyros who are out there just trying to just stumble and fumble their way. They have high-paid lawyers, they have competent lobbyists who are experienced, such as yourself, and the employee is just out there, naked. Like poor Eve in the garden, and here comes the serpent, the most (inaudible) beast in the field and said, bite this fruit, it'll be all right. But she didn't do it, but anyway, I won't go into all of that. If you've given the... [LB175]

RON SEDLACEK: The irony though is that those sophisticated employers are the ones that usually have more due process than those who are just a one-person shop. [LB175]

SENATOR CHAMBERS: So then it's not going to bother them at all. And it'll teach the others that this is a situation where you can't just do anything you want to. Because, see, people like to give the impression that employers are doing so much for society, but they get all kinds of breaks by being employers. And I hear people on the floor talking about the rights of businesspeople as though they just exist in some kind of vacuum. They have all this largess that they are bestowing out of the goodness of their heart on everybody else. But they want to pay minimum wages; they don't want to have good working conditions, they'd like to work somebody for hours and hours, longer than eight in a day, for straight time, if they could. So I haven't heard a compelling argument against the bill yet, but my mind is open and I'm going to keep listening. [LB175]

SENATOR ROBERT: Senator White. [LB175]

SENATOR WHITE: Do you agree, Mr. Sedlacek, that it would be the sufficient answer to say, I don't like the employee and I don't enjoy working around you? [LB175]

RON SEDLACEK: It seems to me that's a reason. [LB175]

SENATOR WHITE: So it could be as simple as that and they've complied. Where they would get in trouble is if they started telling other people a different reason, don't you think? [LB175]

RON SEDLACEK: Well, that certainly becomes an issue then, absolutely. [LB175]

SENATOR WHITE: Thank you. [LB175]

SENATOR ROBERT: Any other questions? Thanks, Ron. [LB175]

RON SEDLACEK: Thank you, Senator. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR ROBERT: Next opponent. [LB175]

ROBERT HALLSTROM: (Exhibit 8) Mr. Vice Chairman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business to express our opposition to LB175. I've also signed in on behalf of the Nebraska Bankers Association. I've provided some brief written comments and Mr. McGuire predicted the opponents to the bill would talk about the employment at-will doctrine. You've already heard ad nauseam, discussion about the employment at-will doctrine. But we also would appear before the committee today to uphold that doctrine. I would take a bit of reason to argue against what Mr. McGuire said in his opening testimony that this would have no visual impact on the employment at-will doctrine. You've heard the employment at-will doctrine generally described as an employer having the freedom to discharge an employee for any reason or no reason at any time without any need to explain the reasons for discharge. Obviously it's a public policy decision as to whether or not the employment at-will doctrine ought to survive. But just basically on that description of the employment at-will doctrine, this bill would change to require reasons for discharge to be given. It would take away the opportunity to discharge for any reason or no reason and, in fact, it would require you, as described by Mr. McGuire, to provide a good reason, and thus a specific reason for the discharge or face some potential ramifications or consequences either because the bill does not provide that and the judiciary will fashion the remedy over time. Or Mr. McGuire suggests that there's already a remedy that will pop up in terms of lost damages and wages and so forth. I think one of the practical considerations, and it's probably not crystal clear in the legislation, in terms of the timing of this minimal due process right that Mr. McGuire has described the bill is providing, and that is the timing of that due process right. It indicates to give specific reasons or the termination is not valid and then give a meaningful opportunity to respond. In a lot of instances, and, Senator Chambers, this might be one of the practical reasons--I don't know that it will change your mind--but I'm going to appreciate that it's open to the argument. In a situation where you either anticipate that you're discharging someone because they have misappropriated funds, done something inappropriate, and there is what some would consider a good valid reason for the discharge. Or you just think the mere fact that they've been discharged might cause them to be vengeful against the employer, are all reasons why I think most employers, when they do discharge someone, they may very well give them the reasons on the spot. There may be an exit interview and those types of things that take place as a practical matter in many shops. But the bottom line is they want that employee out so that they don't do mischief to the computer system or anything of that nature. So there are reasons to be concerned, I think, and valid reasons on what that minimal due process is going to consist of. And what the timing will be to go from start to finish so that you don't have a recalcitrant employee or a vengeful employee that's going to be there looking to potentially do damage to the employment scenario. With that I'd be happy to address any questions. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR ROBERT: Senator Chambers. [LB175]

SENATOR CHAMBERS: Mr. Hallstrom, you are a lawyer, correct? [LB175]

ROBERT HALLSTROM: Yes, sir. [LB175]

SENATOR CHAMBERS: Okay. Because in these series of questions, I don't want anybody to think I'm taking unfair advantage of a layperson. If this were the law, employers are going to have lawyers, either in the form of inhouse counsel or counsel that they can retain if a question arises affecting possible liability. [LB175]

ROBERT HALLSTROM: That would generally be the case. Probably small employers may be less likely to be in that position, but generally, yes. [LB175]

SENATOR CHAMBERS: Now, Chambers of Commerce have put together manuals of various types to help large businesspersons and small businesspersons, isn't that true? [LB175]

ROBERT HALLSTROM: That is probably accurate, Senator. [LB175]

SENATOR CHAMBERS: And if this became the law, I'm sure they would put together a manual advising these employers that if an error is made, err on the side of protecting yourself and might even list some of the things that can be considered valid reasons if it is the Chamber's interpretation of the law, that a reason which might be considered "valid" must be given before termination. Here's what I'm getting to with all of that context: these employers are not going to be just out there with no idea of what could cause them to face liability or repercussions, will they? [LB175]

ROBERT HALLSTROM: Senator, any time the law changes we would do our best to make sure our members are aware of whatever that change in law might be that might impact the employer-employee relationship. [LB175]

SENATOR CHAMBERS: And thus far, no law has been enacted by this Legislature that has been beyond the ability of you or whoever works with the Chamber, to formulate some kind of advice to help their members negotiate the pathway created by that law. [LB175]

ROBERT HALLSTROM: With respect to our members, yes, Senator. [LB175]

SENATOR CHAMBERS: So it can be handled. [LB175]

ROBERT HALLSTROM: Yes, any change in the law could be handled in that fashion.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

[LB175]

SENATOR CHAMBERS: So not only when you're in Allstate's hands are you in good hands, you're in good hands if you are in the hands of the Chamber of Commerce represented by Mr. Hallstrom and Mr. Sedlacek, more or less true? [LB175]

ROBERT HALLSTROM: For the record, I don't represent the Chamber of Commerce, Senator, but my clients... [LB175]

SENATOR CHAMBERS: You never have? [LB175]

ROBERT HALLSTROM: ...no I haven't, Senator. [LB175]

SENATOR CHAMBERS: You never filled in for him on any issues? [LB175]

ROBERT HALLSTROM: I have sat in here and indicated that I've testified on behalf of multiple organizations, one of which might have been the Chamber of Commerce, but didn't represent them formally or as... [LB175]

SENATOR CHAMBERS: Okay, but there are times when you've spoken in behalf of interests that they had which coincided with the interests you were formally representing. [LB175]

ROBERT HALLSTROM: Yes, Senator. [LB175]

SENATOR CHAMBERS: Okay, now I'm going to presume that this bill is in effect. If as you and Mr. Sedlacek suggested, what some of these things would mean and when they would have to be complied with in order to be safe, advice would be provided and determinations could be made. I could even figure that out and I'm not a practicing lawyer, I'm not a businessperson, but I have common sense. And I respect what you and Mr. Sedlacek are doing as lobbyists to present all of the difficulties that could befall your clients if this were the law. But I say to you what I said to your colleague, Mr. Sedlacek, I've heard no compelling reason to be against this or to say that it could not become a law which would have an impact of the kind that has been discussed; namely, to help people be aware of why they're being terminated from their employment. Now I want to get to this at-will proposition. The argument that Mr. Sedlacek gave and that you gave, and yours more straightforward than his, not that he was being dissembling or disingenuous, that this in fact, does undercut the at-will doctrine. Is that more or less what you were saying? [LB175]

ROBERT HALLSTROM: That would be my belief based on my comments, Senator. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CHAMBERS: Okay, and other than the fact such a law, if that's what this would do, alters the status quo, that in itself is not necessarily bad, is it? How long ago was the at-will doctrine put in place? [LB175]

ROBERT HALLSTROM: I don't know specifically, Senator... [LB175]

SENATOR CHAMBERS: A long time ago... [LB175]

ROBERT HALLSTROM: ...I did preface my comments by saying whatever the public policy of the land becomes or is, is a different question than our... [LB175]

SENATOR CHAMBERS: Do you think it predated the Green Mountain Boys and even the Hatfields and the McCoys? Maybe the sales, property, and income tax (laughter)? Maybe the Jukes and the Kallikaks... [LB175]

ROBERT HALLSTROM: I'm sure it got the sales and income and property tax, Senator. [LB175]

SENATOR CHAMBERS: But it's of longstanding? [LB175]

ROBERT HALLSTROM: Yes, sir. [LB175]

SENATOR CHAMBERS: Shouldn't we learn something with the passage of decades in a society which is trying to evolve and improve? Is the best argument you and Mr. Sedlacek can come up with is that this should not be done because it will change something that has been in place a long time, and it has been acknowledged to be not completely just because inroads have been made by courts? So if we merely change it and that's the main argument you can give, I don't think that's a good argument. [LB175]

ROBERT HALLSTROM: Well, and that's not the main argument I've used, Senator, it's one of the arguments. I've also suggested that I think there are vagaries inherent in the legislation as drafted that are not going to give the employer or the employee the ability to spell out what... [LB175]

SENATOR CHAMBERS: Well, suppose we spell all of that out, would you still be against it? [LB175]

ROBERT HALLSTROM: Senator, I'd have to see it, but I'm sure that can be taken advantage of by the committee to take a look at that. [LB175]

SENATOR CHAMBERS: Do you think you'd still be against it? Your clients? [LB175]

ROBERT HALLSTROM: I would say my clients without further discussion of the issue,

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Transcriber's Office

Business and Labor Committee
March 05, 2007

would be opposed to it. [LB175]

SENATOR CHAMBERS: Okay, so they want me to put on a top hat; a white shirt with ruffled cuffs and a tall collar; a black necktie; a cutaway coat; long, black, shiny trousers; shoes with spats to come to the ball. And then they tell me, well, you can't come anyway? Would I dress up in that kind of regalia if I'm not going to come to the ball anyway? (Laughter) [LB175]

ROBERT HALLSTROM: Well, that would be puttin' on the Ritz, Senator, but I'm not (laughter)... [LB175]

SENATOR CHAMBERS: Well, okay, that's all I have. Thank you. (Laughter) [LB175]

SENATOR ROBERT: Senator White. [LB175]

SENATOR WHITE: You mentioned the concern of getting employees out of the place of employment so they don't screw up the computer as a direct result. Nothing in this act, for example, would prevent an employer from saying you're fired, here's a letter stating the reason. You can, by mail, respond in seven days why you think this is the wrong thing. There's nothing in it that says, no, it can't be done. [LB175]

ROBERT HALLSTROM: I think...no. And Senator, I would agree there is nothing in there that says one way or the other, that would be the specificity perhaps that would need to be spelled out. [LB175]

SENATOR WHITE: Well, but I mean, as Senator Chambers points out, is it incumbent on us to anticipate all the vagaries in the future before we can pass a statute, or is it enough that we state general levels of response of ensuring your employers--you've got good attorneys, could say, look, you've got a written statement, here's why you're fired, go give them a right to respond in the mail or by writing within seven days. [LB175]

ROBERT HALLSTROM: Senator, you could argue that position but the bill also says that the employee is not terminated. What is the proper response if the employee shows up with their lunch bucket in hand and says, I'm here, I'm ready to work, I've not been terminated. I showed up ready to work. You may not get anything, you may say, don't come back, I don't want you here until you've responded after the seven-day certified mail notice I gave you. [LB175]

SENATOR WHITE: Well, maybe you give them 24 hours before the next shift begins. I mean, certainly those are things that can be worked around and would be solved in the workplace. Would you really rather us fashion the remedy that will become one size fits all or would you rather have practical experience in what is reasonable under the circumstances? [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

ROBERT HALLSTROM: Well, I think in general purposes, Senator, the employers would like the certainty of knowing exactly how the law will apply. I understand the one size fits all doesn't work between large and small employers, but the certainty that comes with having it spelled out in the statute brings some level of comfort as well. [LB175]

SENATOR WHITE: I don't really want to (inaudible) coffee too much on this, but you don't really believe there's freedom of contract, not as a real, practical matter, do you? [LB175]

ROBERT HALLSTROM: Well, Senator, there is probably a lot of different areas, insurance law, other areas where we talk about contracts of adhesion or unconscionability and whether or not there is freedom of contract. In this area, perhaps there isn't. There's not all employees who do have an employer-employee contract relationship. If they did have it, then certain things would be spelled out in that relationship where you would not have these types of issues coming out. It's taken care of in some collective bargaining types of approaches and things of that nature. [LB175]

SENATOR WHITE: Well, what I would like to point out is that really the idea we're invading this great right of freedom of contract, we're invading a myth. It doesn't exist on the street. We describe it intellectually, and gosh knows, men who go to work in dresses may believe it, but reality on the street is in the workplace, it doesn't exist, does it? Thank you. [LB175]

SENATOR ROBERT: Senator Lathrop. [LB175]

SENATOR LATHROP: Mr. Hallstrom, we had a hearing in the...this seems to me to be kind of a cousin to the bill that we saw in Judiciary about giving references when somebody's prospective employer calls. [LB175]

ROBERT HALLSTROM: Yes, Senator. [LB175]

SENATOR LATHROP: And you were at that hearing, were you not? [LB175]

ROBERT HALLSTROM: Yes. [LB175]

SENATOR LATHROP: And I don't know if you proposed this or suggested this to us, it might even have been Mr. McGuire, there was some conversation towards the end of that hearing about two or three states on the East Coast, I'm remembering Maryland, that... [LB175]

ROBERT HALLSTROM: Yes, Mr. Rieker from the Hospital Association made those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

comments. [LB175]

SENATOR LATHROP: Okay, but it was about a form that you filled out and you gave to the employee on the way out, wasn't it, essentially? We grappled with whether there ought to be immunity and then we said, well, why don't we just have a statute similar to the folks in Maryland where they fill a card out and they say--there might be five or six things you check on there about: yes, the person's employed here, yes, he was a grocery clerk, or whatever he did, and this is the reason I let him go. Do you remember that conversation? [LB175]

ROBERT HALLSTROM: Yeah, and that was somewhat in line with what that particular legislation did in providing if you give only limited information, there would be a protective immunity provided to the employer under those circumstances. I think the Maryland and Delaware laws that he might have talked about were a little bit more specific in doing a check-the-box or a fill-in-the-blank type of format, to pretty much get to the same end result. [LB175]

SENATOR LATHROP: If we came up with a solution in Judiciary to that problem, I don't remember it instantly having immunity in it. But if we came up with a solution to that problem which is how do we give a referral to a subsequent or prospective employer without getting sued over it... [LB175]

ROBERT HALLSTROM: Yeah. As Senator White was going through his questions earlier, I was trying to see what the interconnection between those two would be when he was making comments about whether or not you give the right reason or you then change your mind after the fact and you give a third party a different reason. And much of the testimony that we had that day, I think there is at least three of you in here that are on that committee, was centered around the fact that in reality, a lot of employers do not give anything more than rank, name, and serial number. And that's part of the problem that drives the desire to be able to have some protection in giving more meaningful references, if you will, to the good employees so that they are not hampered by a system that pretty much pigeonholes you into not giving references at all other than name, rank, and serial number. So the prospects of changing your mind and giving different information, probably from the discussion that day, would say that really maybe doesn't happen as much as you'd think it does because people get pretty tight-lipped in the course of giving references anymore for fear of potential legal consequences. And I don't particularly want to open up the questioning we had that day again, but... [LB175]

SENATOR LATHROP: No, but going back to that same discussion that we had towards the end of that hearing, the idea that we could have a checklist that the employer and the employee could sit down and fill out at the end of the employment and the employee could take the card and know that that's the same card the employer is going to provide to any prospective employer. That was the essence of that... [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

ROBERT HALLSTROM: Yes, and there is another bill before Judiciary that had to do with filing an affidavit to cut off any collection efforts and we've talked about putting together a form document there as well. And I think that approach probably has more allure than this one in terms of saying we don't have those uncertainties as to when I can terminate him, whether I can say, get off the premises now, and even if I give you time after the fact to respond, you're finished, you are discharged. I may give you the reasons in whatever written format is put together, but it doesn't inhibit my ability to make that decision and to make it take effect immediately. [LB175]

SENATOR LATHROP: If we chose that form which is having a form that the employer and the employee fill out...perhaps the employer fills it out and the employee is given an opportunity to comment, and that's all the former employer can give to the prospective employer, it'll kind of cover this, too, won't it? [LB175]

ROBERT HALLSTROM: I think that it could address both issues. That's where I was trying to make the connection as to whether or not you can get there from both angles, provide that limited immunity protection that was sought in that other bill and perhaps give some reasons that are underlying the discharge without again, making the decision or the ultimate discharge hinge on what they were. [LB175]

SENATOR LATHROP: Okay, thanks. [LB175]

ROBERT HALLSTROM: Certainly. [LB175]

SENATOR ROBERT: Any other questions? Thank you. [LB175]

ROBERT HALLSTROM: Thank you. [LB175]

SENATOR ROBERT: Next opponent. [LB175]

KORBY GILBERTSON: Good afternoon, Senator Rogert, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska State Home Builders Association and the Nebraska Realtors Association in opposition to LB175. When both of these groups were discussing this legislation, their concern was over what a meaningful opportunity to respond would be. And I think Senator Lathrop addressed many of our concerns that we had discussed of, what does this bill actually do--for the employee or the employer? The only thing that we could think of and I think that Mr. McGuire, one of the proponents, testified to this, that if, in fact, this would create a cause of action for an employee if they did not feel that they were given a correct reason or perhaps they feel that they were not given a meaningful opportunity to present their side of the story, then this would, in fact, just do something along the lines

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

of creating more litigation, which if you are not going to change the outcome for the employee, that really doesn't serve a purpose. I think that maybe there's been some discussion with opponents before me that touched maybe more on the issues that are underneath this bill that I think might be being addressed by other committees. And so, with that I'd say our concerns primarily are of whether or not this would create a cause of action for an employee to maybe cause the employer problems that would not, in the end, gain the employee anything. I would be happy to answer any questions. [LB175]

SENATOR ROBERT: Any questions from the committee? Senator Chambers. [LB175]

SENATOR CHAMBERS: Just one. Ms. Gilbertson, if litigation were fomented by this bill, the first lawsuit would do some clarifying, wouldn't it, as to what the law would mean and what its reach is as far as the fact situation presented to the court at that time? [LB175]

KORBY GILBERTSON I think it could, but that would not--I was always taught a long time ago, you still have to defend those lawsuits, so... [LB175]

SENATOR CHAMBERS: I couldn't understand you? [LB175]

KORBY GILBERTSON: I said I was told a long time ago, you still have to defend a lawsuit, so whether or not it would provide clarity, I don't know if that would stop any future lawsuits from coming. [LB175]

SENATOR CHAMBERS: But at least people would have guidance in terms of what a court is likely to say with reference to what the reach of this law might be. [LB175]

KORBY GILBERTSON: I think that's correct. [LB175]

SENATOR CHAMBERS: Thank you, that's all I have. Thank you. [LB175]

SENATOR ROBERT: Thank you, Ms. Gilbertson. Next opponent. [LB175]

KATHY SIEFKEN: Senator Robert and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n. I'm here representing the Nebraska Grocery Industry Association, and my testimony is going to be short and sweet. One of the things that appears if this would pass, is keeping in mind that we have entry level jobs. We hire a lot of people that don't show up and this would affect those folks also. So suddenly we have to track down people and give them notice that they're fired because we've hired them. And we would have to track them down and give them notice when they didn't bother to show up for work anyway. And then we'd have to wait for the response. Just the bookkeeping and keeping track, because it happens more often than you think in entry level jobs. So with that, if you have any questions, I'd be happy to try to answer them. [LB175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR ROBERT: Senator White. [LB175]

SENATOR WHITE: If we took care of that issue, are you okay with it? [LB175]

KATHY SIEFKEN: If...probably not (laugh). [LB175]

SENATOR WHITE: Okay. [LB175]

KATHY SIEFKEN: But it's something that hasn't been, no one's talked about that. [LB175]

SENATOR WHITE: No, I agree, it's a good point. I mean, we've, I've hired that...situation, and I agree. And it would be a nightmare. So if we took care of that, then would you be okay with it? And you answered... [LB175]

KATHY SIEFKEN: Probably not. [LB175]

SENATOR WHITE: Fair enough. But that's a good point. [LB175]

KATHY SIEFKEN: Thank you. [LB175]

SENATOR ROBERT: Any other questions? Thank you, Kathy. [LB175]

KATHY SIEFKEN: Thanks. [LB175]

SENATOR ROBERT: Next opponent? Is there anyone here to testify in a neutral capacity? Seeing none, Senator Cornett has waived closing. That ends the hearing on LB175. And I'll return the chair to Senator Cornett. Oh, my fault. I have a letter of opposition to read in for LB175 from the NREA. [LB175]

SENATOR CORNETT: Senator Carlson, welcome to the Business and Labor Committee. [LB609]

SENATOR CARLSON: (Exhibit 9, 10) Good afternoon, Chairman Cornett and members of the Business and Labor Committee. I'm Tom Carlson, spelled C-a-r-l-s-o-n, representing District 38 and it's my pleasure to be before your committee to introduce LB609. This bill is a result of my campaign promise to expand the state's tax base by recruiting new citizens to our less urban communities and asking them to bring their own jobs. I believe there are three populations of people that we, in Nebraska, can actively recruit to come to our state and one of those populations, because of the Internet and technology, are those people that operate out of their homes and bring their jobs with them. And an example is the individual who helped me with my brochure and my campaign. He moved to Holdrege. He works out of his home. He generates a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

good income. We didn't have to have a job for him, he provides a much-needed service, and he pays taxes. And if we have enough people like him moving into our communities, we have expanded the tax base and we didn't have jobs to get them here initially. I think that there is a whole population of people like this that want to move to Nebraska, they just don't know it yet. And so a second population of people would be retired career military who have good pensions, they have money to spend, they're young enough that they probably seek other employment. If they do, they are going to pay taxes on what they earn and that too would be a plus for us in terms of expanding our tax base. And the third population would be the people that are retired or near retired. The state doesn't have to build factories or provide infrastructure for businesses in order to attract these people. But this involves an active change of attitude to a recruiting mode. And I believe the emphasis has to be on people from out of state moving into the state. Tom Osborne didn't have championship football teams at Nebraska by sitting around and waiting to see who came along. He went out and found the best, invited them to come to Nebraska, and the rest is history because he was an expert at it. Nebraska is a sparsely populated state with 1.7 million people. If we double the population, it would still be a sparsely populated state. And in this effort, someone that we recruit to come in to live with us and be a part of us, it doesn't matter where they end up living, it is as beneficial to Holdrege, Nebraska, as it is to Omaha or Lincoln. I think Nebraska offers much to those who might be willing and wishing to escape the traffic and pollution of the cities. To those who wish to let their children walk or bike to school where the teachers are their neighbors, at home and at church. We can't offer trendy restaurants and boutiques in places like Alma, Nebraska, but our sunrises and sunsets are the best in the world. This bill would establish the Nebraska Recruiting Promotion Act through the Department of Economic Development. It would give grants to communities that have not experienced significant positive population growth in the ten years prior to this application. Each grant would be \$10,000 and no more than ten grants would be awarded in the first fiscal year. The grant money would enable a community to create a web site, among other tools, to promote the community. The Fiscal Office provided me the following numbers for a family of four who might bring a portable job grossing \$80,000 a year. And in the case of the individual that helped me, if he generated \$80,000 in Denver and moves to Holdrege, Nebraska, and generates the same \$80,000 because that's what they can do, his standard of living went straight up and our community gained and our state gained. Presuming they own their own home, with an \$80,000 income, the family would pay about \$1,500 in property taxes, about \$1,500 in sales taxes, and about \$3,000 in income taxes for a total of \$6,000. On a \$10,000 grant, two families a year would make this pay for itself and it's every year and every year. This family would also pay utilities, buy groceries, eat out, buy clothing, put gas in their vehicles, have haircuts, need medical care, and participate in the community in numerous ways. I thank the committee for hearing the bill. I ask for your consideration. I'd be happy to address any questions. [LB609]

SENATOR CORNETT: Senator White. [LB609]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR WHITE: Is \$10,000, Senator, enough to effectively reach out across the country to attract new residents? [LB609]

SENATOR CARLSON: I was told that \$20,000 would be an adequate amount to really develop a good web site and this should be done then on a matching basis, \$10,000 of local money and \$10,000 of grant money. [LB609]

SENATOR WHITE: Would you have a problem with me putting in the bill that it should be on a matching basis? [LB609]

SENATOR CARLSON: No. I wouldn't have a problem. [LB609]

SENATOR WHITE: And has this idea been tried in other communities you are aware of and has it worked anywhere? [LB609]

SENATOR CARLSON: I know, and I haven't had an opportunity to study it, that Norfolk is doing something a little bit similar to this. And there are some other communities that are making an attempt but this came about...has evolved over the time of my campaign. And I could see communities in the past, we put forth effort to try and recruit businesses. We try and recruit industry. In rural America, that's a pretty difficult task and you end up fishing for big fish and you don't catch a big fish very often, you're discouraged most of the time. But if you catch enough little fish, pretty soon they create the need for jobs in other areas. And so this is kind of on the edge, I think, of development and I think it offers possibilities. And certainly one of the things that if I could see some progress during the time I'm in the Legislature, that certainly would be one of the things that I would consider my time here well-spent. [LB609]

SENATOR WHITE: Thank you. [LB609]

SENATOR CARLSON: Okay. [LB609]

SENATOR CORNETT: Senator Lathrop. [LB609]

SENATOR LATHROP: Just briefly...Senator Carlson, could...is it your thought that the money would be spent on web sites primarily? Or are there other ways that the money would be spent? If we had a \$10,000...essentially you're asking us to set up sort of a grant process where if a community raises \$10,000, then you'd be able to take \$10,000 out of this fund to promote a community like Holdrege, for example? [LB609]

SENATOR CARLSON: Senator Lathrop, that would be the idea. I don't think we would want to strictly limit it to developing a web site because there could be some other brainstorming out there that there would be good ways in which this money could be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

applied. But certainly for a web site, which in this day and age, is about mandatory, you'd have to hire somebody to do it. I've talked with people in Kearney and they feel like whether it's a community like Kearney and the surrounding areas that together pool the items and effort on a web site, so when somebody finds that one, they can access several others--you want choices, you want choices--that that would be beneficial. But I think the bulk of it would be spent in the area of developing a good, professional web site. [LB609]

SENATOR LATHROP: And you think a good professional web site would lure people from New York City or Chicago or someplace like that? [LB609]

SENATOR CARLSON: I would hope so. And I guess when I look at it realistically, if we tried it for a couple of years because we are looking at a two-year budget here, and it did better than break even, it might merit some continued efforts. I think the longer we do this the better we would get at it. And there are people that in the cities, say a husband and wife and two children, and making \$80,000 a year, they're struggling. But they do not struggle in Holdrege or Blue Hill or Alma or Red Cloud or Franklin, Nebraska. They don't know it and we need to tell our story. And we do a lot of other things pretty well but we've not been in a recruiting mode. That's what I believe we need to do and it takes some leadership to do it. [LB609]

SENATOR LATHROP: Thanks. [LB609]

SENATOR CORNETT: Senator Chambers. [LB609]

SENATOR CHAMBERS: Welcome. Senator, if the people in the state do not want to settle in the communities within that state, why should somebody from another area come there to settle for any reason, other than maybe a Ted Turner to buy up the land and then when he did it, people objected? [LB609]

SENATOR CARLSON: Well, Senator Chambers, I believe that there is a population of people. They are good people. They are family people. They want the best for their children. They want the best for themselves. And if they are made aware of what's available in Nebraska, they would give this consideration and they may come to our state. They're bringing their jobs with them; that's part of the effort--to identify and earmark that population of people that brings their job with them. We have much to offer; I believe we have much to offer. And that it's worth the effort and they would be a good addition to our state. [LB609]

SENATOR CHAMBERS: I hear what you're saying. Thank you. [LB609]

SENATOR WHITE: Senator, would you accept a sunset clause in this? That if you revisited (inaudible)? [LB609]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CARLSON: Senator White, I am always very much interested in evaluating as time goes along on an effort with something. And if it's not working, we don't continue it. So, yes. [LB609]

SENATOR WHITE: Thank you. [LB609]

SENATOR CORNETT: Senator Wallman. [LB609]

SENATOR WALLMAN: Thank you, Senator Cornett. Thank you for being here, Tom. I think, too, it's a good idea. The financial institutions that are all interested in this like, I know southern California, they kind of hook it up with banks and things, and it's been a tremendous success. And of course, that's a nice area to live, too, but it's expensive. And like you say, it's a lot cheaper to live here and I would share...I think this is a good idea. Thank you. [LB609]

SENATOR CARLSON: Senator Wallman, I appreciate your thoughts. [BL609]

SENATOR CORNETT: Senator Chambers. [LB609]

SENATOR CHAMBERS: If you are trying to reach out to some of the bigger cities, some people who have...are you interested in bringing progressive-minded people to Nebraska? Or you want kind of stick-in-the-mud, backward-looking people who are afraid of their shadow? (Inaudible) Nebraska, the sun might shine bright, but it's always over the head so you'll never see your shadow. [LB609]

SENATOR CARLSON: Senator Chambers, I am very interested in bringing in people that are creative, are deep thinkers, that are progressive, that want to improve themselves, people like you. [LB609]

SENATOR CHAMBERS: Well, I'm stuck here for better or for worse, but there are people who because Nebraska amended their constitution in such a way, that it seems like the state is very hostile toward people who are of the homosexual persuasion, and a lot of people, no matter what their sexual orientation, are good when it comes to business acumen, art, business, some are even crooks. But if Nebraska has the image which it does and seems to be doing all it can to advance it, that certain people are not welcome here. There are people leaving Nebraska. They write letters to the editor and give their names and say there is such a hostile, negative, demeaning attitude, that Nebraska is so far behind in everything, they don't want to live here. And they talk to other people and say, don't go to Nebraska, those people hate you. But the thing that is so peculiar to me, Senator Carlson, is that they want to honor Willa Cather and she's a worldwide-known lesbian. So how can they honor a lesbian but be so opposed to women who live today and are lesbians? Do you see any disconnect there? [LB609]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CARLSON: Senator Chambers, I would also argue that Willa Cather contributed much to the state of Nebraska. I've read some of her works, my wife has read most of them. Her memory and her influence in the community of Red Cloud has been monumental. [LB609]

SENATOR CHAMBERS: Yes. [LB609]

SENATOR CARLSON: And very positive in terms of helping economic development for that community. [LB609]

SENATOR CHAMBERS: So in this developmental material, would you object to saying your sexual orientation will not be held against you, do you think the material should say that? Or is that too volatile an issue? Maybe you could cloak it by saying if you were of Willa Cather's persuasion, it would not be held against you. Or something to let people know that Nebraska may not be the homophobic place that it appears to be from what its constitution says and the protection that it's not willing to give to people in its laws. In other words, are there certain things that this promotional material could not contain? [LB609]

SENATOR CARLSON: Senator Chambers, I believe it would be in the hands of the communities that wish to promote their communities and wish to extend an invitation for people to come and take a look at them, examine them, and see whether or not this would be a place that they would like to settle. And I believe the communities developing that material should have the freedom to develop it as they wish. [LB609]

SENATOR CHAMBERS: Well, since this is going to be state money and it's a projection of the state's ethos, could we put in the law if this goes that no promotional material paid for by any of these grants, in whole or in part, could denigrate anybody's race, religion, marital status, sexual orientation, ethnicity, or religion? Could we put that in to give guidelines in terms of what the money could not be used to do? [LB609]

SENATOR CARLSON: Senator Chambers, I believe so. And that's all I can answer that, because I'd have to see what it might look like, you would want to see what it might look like, but I think that we could accomplish that. [LB609]

SENATOR CHAMBERS: If they would do something like that and we could put in the legislation, you might have gotten a strong advocate whom you thought maybe you wouldn't have. But I'll talk to you about that more later. But I didn't want to blindside you. That's all I would have, thank you. [LB609]

SENATOR CARLSON: Thank you. [LB609]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 05, 2007

SENATOR CORNETT: Further questions? Seeing, none, thank you, Senator Carlson.
[LB609]

SENATOR CARLSON: Okay, thank you. [LB609]

SENATOR CHAMBERS: I might even take up residence in Red Cloud (laughter).
[LB609]

SENATOR WHITE: Senator, Willa Cather moved to Pittsburgh, then New York.
(Laughter) [LB609]

SENATOR CORNETT: Proponents? Opponents? Any neutral testimony? Senator, do
you wish to close? [LB609]

SENATOR CARLSON: No, I'll waive closing, thank you. [LB609]

SENATOR CORNETT: Thank you. That ends the hearings for today. [LB609]

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Transcriber's Office

Business and Labor Committee
March 05, 2007

Disposition of Bills:

LB31 - Advanced to General File, as amended.
LB175 - Held in committee.
LB432 - Advanced to General File, as amended.
LB609 - Advanced to General File.

Chairperson

Committee Clerk