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Business and Labor Committee  
February 11, 2008

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[LB948 LB1016 LB1082]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 11, 2008, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1082, LB948, and LB1016. Senator present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Ernie Chambers; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: None. []

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 after that, I will briefly explain the procedures we'll be following this afternoon. First, from my far right, is Senator Wallman from Cortland; and Senator McGill, or pardon me, Senator Lathrop is just joining us, he'll be next to Senator Wallman, and he's from Omaha; and Senator Rogert, Vice Chair, is from Tekamah; I'd like to also introduce my legal counsel, Lori Thomas; to my far left...to my left is Andrew Zimmerman, committee clerk; and then Senator Tom White is on the far left; and next to Tom is Senator Amanda McGill from Lincoln; and Senator Chambers has said that he will be joining us today. The proceedings that are about to take place will be recorded. So at this time I need you to turn off any cell phones or turn them to vibrate if you have any. The committee will first hear testimony in favor of the bill being proposed. After the...pardon me. After that then we will hear opposition testimony and then neutral testimony. Testifier sheets are available at the table. Please fill them out before you testify. When you get up to testify, please spell your name for the record; we have to have that for the transcriptionist. Again, make sure the sheets are filled out before you testify and leave them in the box right next to the chair. If you are not testifying but wish to record your support or opposition to a bill, there is a separate sheet that you can sign and then drop in the box. If you have any printed materials to hand out to the committee, you have to have a copy for each of the committee members and staff. If you do not have those copies, the page can make them for you. I'd like to introduce our page, Kristen, and she's from Ainsworth. And with that, we'll open the hearing. []

SENATOR CORNETT: (Exhibits 1 and 2) Good afternoon, members of the Business and Labor Committee. My name is Abbie Cornett. I represent the 45th Legislative District. I introduce LB1082 to address the on the job injuries suffered by first responders and by persons who are witness to or victims of violent criminal acts. Before I explain what the bill does, I believe I must give you a brief overview of the existing law in Nebraska. The Nebraska Supreme Court, in Zach v. Nebraska State Patrol, determined that a compensable injury caused by occupational disease must involve some physical stimulus constituting violence to the physical structure of the body. Injuries to the psyche, which did not involve physical trauma, were held to be noncompensable. So let me give you an example. If you experience a physical trauma which results in a physical injury, the injury is compensable. If you experience a mental

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trauma which results in physical injury, the injury is compensable. If you experience a mental trauma which results in a mental injury, the injury is not compensable. It is the intent of LB1082 to create a limited exception to the ruling in the Zach case to allow these mental injuries, in the absence of physical trauma, to be compensated when such injuries are suffered by first responders and persons who, in the scope and course of their employment, are witness or victims of a violent criminal act. The basic premise of my bill is that mental injuries are real. They can be every bit as painful and debilitating as physical injuries. They can cause loss of work just as easily as a physical injury. And like physical injuries, they may be treated. With treatment, injured workers with mental injuries can heal and return to work. Police, firefighters, crime lab techs, EMTs, as a society we expect them to handle the tough situations for us. They know what their jobs are and go into it with open eyes, but sometimes it's extraordinary, even for these highly trained individuals. Just to give you an example of my personal experience as a police officer, when I was a police officer, on more than one occasion, I had to work the scene of a person struck by a train. In one particular instance, myself and a crime lab technician walked over a quarter of mile of train track collecting body parts. Recent events in the Omaha area include the Westroads shooting at Von Maur, the quadruple murder-suicide, and the recent case where the mother died and the baby starved to death before either were found. Von Maur customer service workers went to work on December 5, expecting to assist Christmas customers. They did not expect to spend their afternoon hiding from a gunman, watching their coworkers die in front of them. LB1082 creates a narrow exception to the rule in the Zach v. State Patrol case. It will not apply in a large number of cases, but in those cases where it will apply it could literally be a lifesaver. I have two letters of support of LB1082; one from Ms. Ellie Fields, who is a certified national counselor, and one from John Francavilla, president of the Fraternal Order of Police. Thank you for your time and consideration on this bill.  
[LB1082]

SENATOR ROBERT: Thank you, Senator Cornett. Are there any questions from the committee? Seeing none, thank you. First proponent of the bill, will you please forward.  
[LB1082]

JOHN CORRIGAN: Good afternoon, members of the committee. My name is John Corrigan and I'm an attorney in Omaha, and I'm here on behalf of the Nebraska State AFL-CIO. [LB1082]

SENATOR ROBERT: John, can you spell your name for us, please? [LB1082]

JOHN CORRIGAN: C-o-r-r-i-g-a-n, and we're here to indicate the state AFL-CIO's support for LB1082. I do want to mention that also today I was in contact with the Nebraska State Professional Firefighters Association as well as the International Association of Police Local 101, who have asked me to indicate that they are also in support of this bill. The bill addresses a loophole in the Nebraska Workers'

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Compensation Act that is, as we are learning, as we are developing in medical science, is a type of injury that is something that can be treated and should be paid for and should be compensable. Now the Zach case, that Senator Cornett cited, is one that went up to the Nebraska Supreme Court. We handled a similar case that was an unreported case, called Rue (phonetic) v. Douglas County, dealt with a corrections officer who was responding to a code blue in the facility. The officer...there was an inmate that was needing to be restrained, and the inmate had a sharp object and basically sliced open the face of this inmate...or one correction officer who was responding. The blood squirted all over and landed on the other corrections officer, our client, and that person developed, by all accounts, post traumatic stress disorder. And the Workers' Compensation Court approved that; he won his case. The county appealed it to the three judge review panel, which again agreed that that was...that blood coming into contact with his body constituted that physical injury to the physical structure of the body, and the Nebraska court of Appeals, in an unreported decision, concluded that that did not suffice under the Workers' Compensation Act. And this bill will enable first responders and other employees in those types of incidents to be compensated not only for the disability, but for those medical bills. And if you're familiar with some of the separate pension systems for first responders, they actually do compensate when you're totally disabled as a result of these type of injuries. They don't make a distinction. However, they don't require you to pay your medical bills and they don't give you treatment which may enable you to return to employment. It's only once you're totally disabled, there's not treatment that's paid for under the Workers' Compensation Act for these types of injuries prior to separation from employment. So with that, I ask that you support this bill and entertain any questions. [LB1082]

SENATOR ROBERT: Are there any questions from the committee? Seeing none, thank you. Next proponent. Welcome. [LB1082]

DANIELLE SCHNERSAL: Good afternoon, members of the Business and Labor Committee. My name is Danielle Schnersal, that is D-a-n-i-e-l-l-e S-c-h-n-e-r-s-a-l. On behalf of the National Association of Social Workers, Nebraska Chapter, we would like to express our support of LB1082. Social workers regularly provide mental health services for individuals who suffer mental injuries in the course of their employment and we witness the profound impact these injuries have on the individuals, their families, and society. We also see the tremendous strain placed on families with the loss of employment and income due to the injury. In addition, a 2002 study, a nationwide study, revealed that 19 percent of social worker respondents were victims of violence, revealing that they are also at a high risk for such injuries. By providing compensation, LB1082 would help to relieve the financial stress for many of these families and would allow for many to obtain necessary treatment and counseling who might otherwise lack the resources. The NASW, NE appreciates your support in advancing this bill from committee to the floor as soon as possible. Thank you. [LB1082]

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SENATOR ROBERT: Thank you. Are there any questions from the committee? Seeing none, thank you. Next proponent. Is there anyone here as an opponent? Good afternoon. [LB1082]

KORBY GILBERTSON: Good afternoon, members of the committee. For the record, my name is Korby Gilbertson, it's 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 Property Casualty Insurers Association of America. PCI has attempted to get some pricing information on LB1082 at the request of the committee and we've been working on submitting some questions. The issue with the bill at this point is because of the way it's drafted it's very hard to get an idea of what types of activities would actually be covered or not. And because of that, the pricing information is very hard to get. So we will continue to try to work with the committee on getting some further pricing information. The concern is, however, that obviously this could have an impact on rates for workers' compensation insurance and that, of course, is a concern with the insurers. I'd be happy to answer any questions. [LB1082]

SENATOR ROBERT: Are there any questions from the committee? Seeing none, thank you. [LB1082]

KORBY GILBERTSON: Thank you. [LB1082]

SENATOR ROBERT: Next opponent. Welcome. [LB1082]

DAN FRIDRICH: (Exhibit 3) Thank you. My name is Dan Fridrich, F-r-i-d-r-i-c-h, speaking today on behalf of the State Chamber, and FNIB, and Nebraskans for Workers' Compensation Equity and Fairness. I'm here to speak in opposition to LB1082. Let me start by saying I don't speak in opposition to the spirit of the bill in terms of trying to help people who are victims of such acts that do involve random acts of violence or just witnessing terrible events. But I speak in opposition to the bill because I don't think that it goes about trying to do it in the right way. What...you have a situation here, if LB1082 were to pass, is you'd have a situation where certain people would be compensated for witnessing an act and others wouldn't. If we take, for instance, the Von Maur incident or any similar situation you would have employees who witness the act, be entitled some type of compensation through the Workers' Compensation Act, yet equally injured or mentally scared people such as shoppers who saw the same act, who might suffer the same type of effects would not receive any type of compensation. You would have employees who arrived on the scene after the act but didn't witness the act, who saw the aftermath of the act, who suffered similar effects, be denied compensation under this bill, whereas those who happened to unfortunately be a witness to the act be eligible for compensation. And we look at how we should deal with this type of problem. A situation such as Von Maur happens because of something happened to an individual who decided to take out his actions at a public place. We don't know why, but it's a social problem. And that burden of that social problem shouldn't be borne by the

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individual employer who was unlucky enough to have this gentleman walk into his store. It should be borne by society as a whole. So maybe a better solution would be to set up some type of fund through the state where people could petition through the state to apply for some type of benefit, you were an injured worker, a shopper, or something of that nature. Specifically with regard to the bill, the bill allows recovery of benefits for something that is unexpected, unforeseen, extraordinary, or unusual. As it applies to first responders, police officers, people in those lines of business it's hard to necessarily imagine where one of those four factors wouldn't be met or where one of them might not, you say, responding to the scene of a crime isn't uncommon or unusual. I mean, that's the type of business they're in. So there's...I think there's definitional problems, there's scope problems, there's breadth problems where you could see this spill over into other areas. And for those reasons I stand in opposition to the bill. And I'd welcome any questions the senators might have. [LB1082]

SENATOR ROBERT: Are there any questions from the committee? Senator Lathrop. [LB1082]

SENATOR LATHROP: Sure. Your...one of your concerns is you see something wrong with the idea that some employee who has witnessed one of these terrible violent crimes would be compensated, but a shopper wouldn't. And so you think that's a reason we shouldn't help the employee with a mental injury that follows witnessing such an event? [LB1082]

DAN FRIDRICH: Well, I think it calls into question as to why you do it through the workers' compensation system. [LB1082]

SENATOR LATHROP: But let me ask you this, if a board drops from the ceiling and lands on a customer and an employee, you got the same problem with a physical injury, don't you? [LB1082]

DAN FRIDRICH: And it lands on the employee? [LB1082]

SENATOR LATHROP: Employee...one end lands on the employee and one end lands on a customer. It's the same problem, isn't it? [LB1082]

DAN FRIDRICH: Well, I don't think so because the employee or the shopper may have a personal injury claim. [LB1082]

SENATOR LATHROP: What if they don't? What if it's not because of someone's negligence? So we have the same problem and it comes by virtue of the fact that this is a workers' comp bill, which is going to necessarily cover workers and not other people. [LB1082]

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DAN FRIDRICH: Well, there is that issue of it. But, of course, the larger issue that I'm getting at is how do we deal with this problem of you have a random act of violence and how do you help people? I mean, do you go about it through the workers' compensation system? [LB1082]

SENATOR LATHROP: All right. But you would agree with me that the law as it is right now is that if a person is working at the fast food mart and somebody comes in and shoots them, they're covered by work comp, right? [LB1082]

DAN FRIDRICH: For a physical injury? [LB1082]

SENATOR LATHROP: For a physical injury. [LB1082]

DAN FRIDRICH: Yes, well I think you might some arising out of problems because you'd have to... [LB1082]

SENATOR LATHROP: Well, let's say it's a robbery and he wants the money that's in the cash register, so it's very clearly arising out of the scope and course. Somebody puts a gun to his head and pulls the trigger and shoots him, that's covered would you agree? [LB1082]

DAN FRIDRICH: I think you got a better argument than if it's a mental injury. [LB1082]

SENATOR LATHROP: Okay. Well, I'm going to suggest to you that it is covered. [LB1082]

DAN FRIDRICH: Yeah. And I'll go with you on that. [LB1082]

SENATOR LATHROP: And the present...the problem with where we're at today with the law is that they put a gun to his forehead, threaten him to get the cash out of the register, and the person has post traumatic stress disorder, doesn't have a peaceful night's sleep, loses their mind, that presently isn't covered, but would be under this bill. [LB1082]

DAN FRIDRICH: Yes. [LB1082]

SENATOR LATHROP: Okay, that's all I have. [LB1082]

SENATOR ROBERT: Yes. Any others? Senator White. [LB1082]

SENATOR WHITE: Have you considered the cost of not treating those traumatic stress? Loss of productivity, secondary social problems, abuse of families, broken up marriages, problems with...subsequent problems with alcoholism, drug abuse or

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delinquency and the cost to the economy of that? [LB1082]

DAN FRIDRICH: I think it's an issue, but I think the issue is, how do you go about doing it and where should that cost lie? [LB1082]

SENATOR WHITE: Well, it's kind of like, how do you eat a cow? One bite at a time. Isn't it? [LB1082]

DAN FRIDRICH: Sure. [LB1082]

SENATOR WHITE: Okay. Well, we'll take a bite here. Let's talk about...do you agree that post traumatic stress, if promptly diagnosed and treated, is very treatable? Are you aware of that? [LB1082]

DAN FRIDRICH: I see cases with post traumatic stress disorder. I'm not a doctor. I would probably agree with the statement, though. [LB1082]

SENATOR WHITE: I have done a fair amount of research, I've talked to a number of psychiatrists treating people coming back from Iraq, coming back from Afghanistan. They tell me that if you can get there early and you treat them, they can have a marked improvement. Do you agree that, if I don't have work comp coverage, it may be impossible for me to get the treatment that would keep me on the workforce? [LB1082]

DAN FRIDRICH: Maybe possible? Sure. [LB1082]

SENATOR WHITE: First rule of work comp, isn't it, to return people to productive employment? [LB1082]

DAN FRIDRICH: That's the goal. [LB1082]

SENATOR WHITE: Thank you. [LB1082]

SENATOR ROBERT: Any other questions? Senator Chambers. [LB1082]

SENATOR CHAMBERS: I haven't studied this bill. Where in the bill does it say it's limited to first responders? [LB1082]

DAN FRIDRICH: Well, it doesn't limit it to first responders. It's first responders and employees who witness a violent act. [LB1082]

SENATOR CHAMBERS: So it could be an employee in any line of work who witnesses a violent act. [LB1082]

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DAN FRIDRICH: Yes. As I read it, yes, yes, Senator. [LB1082]

SENATOR CHAMBERS: So it would be misleading to say that this refers to first responders? [LB1082]

DAN FRIDRICH: If I said that, I... [LB1082]

SENATOR CHAMBERS: No, you didn't say it. [LB1082]

DAN FRIDRICH: Okay. [LB1082]

SENATOR CHAMBERS: I think that's the way the bill has been presented. But it's much broader than that. It would be any...it would be an employee of the Legislature... [LB1082]

DAN FRIDRICH: Sure. [LB1082]

SENATOR CHAMBERS: ...or a hospital? [LB1082]

DAN FRIDRICH: Sure, if he witnessed a violent act. And it creates... [LB1082]

SENATOR CHAMBERS: Or was a victim. [LB1082]

DAN FRIDRICH: Or is a victim, correct. And so you got...it's...well, you could be a witness to it, you could be a victim whatever that is defined as. And I don't think victim is defined specifically. [LB1082]

SENATOR CHAMBERS: Is there any concern that leads to the position you're taking arising out of the difficulty that might exist in establishing the existence of this condition or that's not a consideration? [LB1082]

DAN FRIDRICH: Well, it's...I didn't voice it, but it's obviously a consideration. And I think that's part of the reason why the emotional or mental claims are not part of the...or haven't been established or accepted under the law as is, is that it's sometimes hard to diagnose these things and it's sometimes hard to know what's causing them always. [LB1082]

SENATOR CHAMBERS: I am going to move, just for the sake of discussion, in a direction opposite from that which people have discussing. Police officers should know that there is a possibility that any kind of criminal act can occur and that any kind of injury may result therefrom: a decapitation, a dismemberment, so they shouldn't be included in this at all it seems to me, or firefighters. [LB1082]

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DAN FRIDRICH: Well, that's what I was trying to say, and I didn't say it as eloquently as you, about the fact that the standard is unexpected, unforeseen, extraordinary, or unusual. And for a firefighter or police officer, and I don't do any of those jobs and I respect the job that they do, but with that training they are trained, I think, to expect the unexpected. [LB1082]

SENATOR CHAMBERS: That's all that I would have. Thank you. [LB1082]

SENATOR ROBERT: Any other questions? Seeing none, thank you. [LB1082]

DAN FRIDRICH: Thank you. [LB1082]

SENATOR ROBERT: Further opponents? [LB1082]

JACK CHELOHA: Good afternoon, senators. My name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify on the record in opposition to LB1082. I apologize that our workers' comp specialist was unavailable to be here today to testify. I think part of our arguments, I don't want to be repetitive, but we have concerns regarding the first responders. As you know, the city of Omaha has a police force and firefighter force with EMTs, etcetera. And we try to provide benefits for them in terms of collective bargaining where we include provisions for mental health coverage, as well as disability, if you will, both for physical ailments and for mental capacity. And so with that, we're not sure if workers' comp law is the appropriate forum, at least in terms of what we're doing in the city of Omaha right now. And for those reasons we wanted to say we were opposed to LB1082. I'll try and answer any questions. [LB1082]

SENATOR ROBERT: Senator Lathrop. [LB1082]

SENATOR LATHROP: Mr. Cheloha, I do have a question about this. [LB1082]

JACK CHELOHA: Yes. [LB1082]

SENATOR LATHROP: Last week there was a gunman that went into a city council meeting, in Missouri, and shot the mayor, several city council members. And if that happened in Omaha, it would happen in front of the clerk, it would happen in front of a number of people that might not be shot at or hit with a bullet. If they cannot work, they have lost their ability, through post traumatic stress disorder, through depression that follows, through the injury to the psyche that follows observing that kind of an incident they can longer come into work, they can't be productive anymore, they need medical care. Do you have a problem with those folks being covered by this bill? [LB1082]

JACK CHELOHA: I don't believe we would unless, of course, you know, this is...unless

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we think we are providing for treatment and if it's a...I don't know what's sufficient, but we do provide, you know, mental health coverage within the general civilian population as well. So I suppose I better not be too definitive in my answer. But I understand the point you're making. I mean, I...I mean, it could be me. I've attended city council meetings as well, I mean... [LB1082]

SENATOR LATHROP: Right, (laughter) and whether you get hit...now I got close to home. But whether you get hit in the arm with a bullet or your mind can't put itself around what it just witnessed and you go off the deep end, to use a laymen's phrase, the disability, the injury is just as real. [LB1082]

JACK CHELOHA: I can understand that. Yes, I see your point. [LB1082]

SENATOR LATHROP: And whether you are the lobbyist for the city of Omaha or a police officer who's providing security, it's still the same trauma to the mind and the brain and the psyche. Would you agree with that? [LB1082]

JACK CHELOHA: Well, I think it is. So then you get into a question of training and what expectations you have in your job. So that's why we tried to differentiate and only address first responders. [LB1082]

SENATOR LATHROP: No question, first responders...trained, they may have an expectation they're going to see these things. But can you agree that there may be some things that are so, so terrible that even someone with the training of an officer or a firefighter that they just simply can't comprehend and they suffer these injuries to the mind that keep them from working again? [LB1082]

JACK CHELOHA: I think that's...I think it is a possibility. And I can give you an example of a trained officer where this person wasn't physically injured, but they ultimately had to shoot and kill a suspect, if you will, and because of that they weren't able to continue and perform their job after that. [LB1082]

SENATOR LATHROP: There are...so you would agree that there are some things that law enforcement and firefighters have to do and see in the course and scope of their employment that are too much for a human being to take in? [LB1082]

JACK CHELOHA: Well, each person, if you will, responds differently. [LB1082]

SENATOR LATHROP: No question about it. [LB1082]

JACK CHELOHA: And so it's just...it's going to be hard to determine are you to the point of a disability or not? But, I guess, that's something we have to try and figure out. [LB1082]

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SENATOR LATHROP: But that's true in every work comp case. That's unique to mental injuries. Would you agree with that? [LB1082]

JACK CHELOHA: I think that's correct, yes. [LB1082]

SENATOR LATHROP: Okay, that's all I have. Thanks. [LB1082]

JACK CHELOHA: All right. [LB1082]

SENATOR ROBERT: Senator White. [LB1082]

SENATOR WHITE: I know several of those situations of officers who have had to retire, at enormous cost to the city. Don't you agree it would be prudent instead to have a system in place where such situations were immediately diagnosed and they were treated? It doesn't cost the city any more. You get credit for work comp on the retirement benefit. You know how that works. [LB1082]

JACK CHELOHA: Right. [LB1082]

SENATOR WHITE: So basically the only thing the city would have lost in that situation is the opportunity to give that officer treatment to see if their career can be saved. [LB1082]

JACK CHELOHA: But, Senator, I think we already have a program in place where we do offer that,... [LB1082]

SENATOR WHITE: No, you don't. [LB1082]

JACK CHELOHA: ...but it's not within the workers' comp system. [LB1082]

SENATOR WHITE: Well, I know, and you don't. I mean, you have counseling,... [LB1082]

JACK CHELOHA: Right. [LB1082]

SENATOR WHITE: ...but what happens is you have an officer that is either 100 percent disabled and they got to quit or not. And comp allows a whole lot of different things and methods of treatment. I mean, the point is the expense is there anyway. [LB1082]

JACK CHELOHA: Right. [LB1082]

SENATOR WHITE: I mean we're dealing with the expense, we're just not dealing with

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the fact that mental injuries occur. [LB1082]

JACK CHELOHA: Right. Well, and if you will, as we looked at the fiscal note on this bill we weren't quite sure if this would be an added expense or how we could, you know, differentiate that with our costs that we have now already? But... [LB1082]

SENATOR ROBERT: Any other questions? Thanks, Mr. Cheloha. [LB1082]

JACK CHELOHA: Thank you. [LB1082]

SENATOR ROBERT: Any further opposition to the bill? Anyone here wishing to testify in a neutral capacity? Good afternoon. [LB1082]

MARY CAMPBELL: Thank you, Senator Robert, members of the committee. Mary Campbell, C-a-m-p-b-e-l-l, testifying on behalf of the Nebraska Association of Marriage and Family Therapy. Their neutrality, I think, is based on a rather tight reading of definitions in the bill which define physician only. They would suggest that the intent of the measure could be strengthened with an addition of the...a definition for licensed mental health practitioner, and that this would also aid, hopefully, in the logistics in certain parts of the state where psychiatrists and other medical doctors may not be in...as appropriate or as available. And so for that reason, we leave that suggestion with you by way of an amendment. [LB1082]

SENATOR ROBERT: Any questions from the committee? Seeing none, thank you. [LB1082]

MARY CAMPBELL: Thank you. [LB1082]

SENATOR ROBERT: Any other neutral testimony? [LB1082]

GLENN MORTON: (Exhibit 4) Members of the committee, my name is Glenn Morton, that's M-o-r-t-o-n. I'm administrator of the Workers' Compensation Court testifying neutrally today on basically two points that I'd like to raise on behalf of the court. We...our staff has looked at the bill. And I do have some written testimony where I've noted some questions of interpretation or what's intended, not from a policy perspective, but just how the bill would be applied. I won't get into those, unless you have questions on that. We certainly take no position on the policy matter. That's not for us to decide. The two things I did want to specifically mention, though, were the requirement that there be a violent criminal act in the bill. Questions we would have is, what would constitute a criminal act? And would our judges be expected to determine what's a criminal act? Of course, the Workers' Compensation Court is a civil court. So would it be intended that there would have to be a criminal charge or prosecution for it to be a criminal act under this bill? If not, again, would our judges have to make that sort of

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decision based on criminal law? And we would have a concern about them doing that or being required to do that. The second relates to the fiscal note and the question of the fiscal impact on the court. We submitted a fiscal note where we said it's really impossible to determine what impact, if any, substantial impact that would have...this would have on the court. Because it's a new class of injuries, we simply have no basis to make that estimate. We do have a voc rehab program and there are funds expended from the vocational...for voc rehab benefits from our Workers' Compensation Trust Fund. And any increase in caseload or any increase in vocational rehabilitation plans, because of a new class of injury, would have some fiscal impact. And there, of course, would be some increase in workload for the judges of the court in trying additional cases that aren't compensable at the present time. We...in our fiscal note we said we really didn't expect at this time to be a substantial impact to...and would rise to the level of requiring judges or staff. Of course, I have read the state of Nebraska's, the DAS, Department of Administrative Services fiscal note. And if they're correct and that there would be, just from my understanding, they refer to a New York State study which showed that about 55 percent of the cases, mental-mental cases are litigated. I'm not testifying for DAS, I'm just trying to make a point for our fiscal note. If that's true, and if the DAS state of Nebraska's fiscal note is correct as far as the number of increased litigation cases, then I have to say that we would have to come back at some point probably for more judges and staff. At this point, we don't anticipate that. And again, I'm not trying to advocate that there would be a large number of cases, I'm just cautioning that we don't project any fiscal impact right now. But depending on the number of cases, we may have to come back to the Appropriations Committee in the future. That's all I would have. [LB1082]

SENATOR ROBERT: Are there any questions for Mr. Morton? [LB1082]

SENATOR CHAMBERS: Mr. Morton, you might can help me in understanding the bill, even though you didn't draft it. Would you look at page 3. As you pointed out, in the first few lines it mentions that in the scope and course of employment the individual involved would be a victim or witness to a violent criminal act. Then it goes on, injury and personal injuries shall also mean mental conditions. And as you read down, it talks about stemming from accidents. So is that disjunctive meaning that the top part deals only with a criminal act, and everything after that involves a mental condition or illness that can stem from an injury...I meant an accident also? [LB1082]

GLENN MORTON: I don't know, Senator. (Laugh) I've read that through several times, and I'm not sure how I would answer your question. [LB1082]

SENATOR CHAMBERS: But if you read this part that comes afterward, it does indicate that there could be a mental condition or illness stemming from accident alone. [LB1082]

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GLENN MORTON: Um-hum, exactly, as well as other conditions. Exactly. Right. [LB1082]

SENATOR CHAMBERS: So these people would not have to witness the criminal act or been the victim of a criminal act. The person could have witnessed an accident or been the...been involved in an accident if it produced the mental condition or illness. Is that the way you read the language? [LB1082]

GLENN MORTON: Right. Yes. I understand that the witness would not have had to have been in an accident. [LB1082]

SENATOR CHAMBERS: So we have two classifications here--those who have witnessed or been a victim of a criminal act, and then this other category where there could be an accident or accidents which don't involve crime, because if it's an accident it's not a crime. [LB1082]

GLENN MORTON: I'm not exactly sure I follow exactly. But I think...my understanding, and as you say, I didn't introduce this and I'm feeling a little bit uneasy responding to questions about what's intended, since that's many of our questions. But I do believe that...the way I understand it, it would extend the victim of an accident to people who witnesses it. So that they would say a person who has a mental condition for witnessing an injury would have suffered an accident. [LB1082]

SENATOR CHAMBERS: Okay. So in your statement where...and in your discussion where you mention determining what constitutes a criminal act, that's the only part you are unsure about, but the accident part, you were aware of that. But that wouldn't pose any problem for the court? [LB1082]

GLENN MORTON: Nothing that particularly occurred to me in terms of legal interpretation at that step. [LB1082]

SENATOR CHAMBERS: Okay. [LB1082]

GLENN MORTON: But again, you know, we'd have to look at it much closer with that in mind. [LB1082]

SENATOR CHAMBERS: That's all I have. Thank you. [LB1082]

GLENN MORTON: Thank you, sir. [LB1082]

SENATOR ROBERT: Senator Lathrop. [LB1082]

SENATOR LATHROP: Mr. Morton, I do. In response to the questions by Senator

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Chambers, maybe you and I can talk a little bit about work comp and some of the philosophy. But when work comp uses the term "accident", it's not like a car accident or a slip and fall, although they might come within the purview of how we define an accident in work comp. But an accident, work comp, is an unforeseen event. Right? [LB1082]

GLENN MORTON: Right, unexpected or unforeseen event. [LB1082]

SENATOR LATHROP: So the definition of accident in the context of work comp can be broad enough to include observing something that is so horrendous that you suffer a mental injury? [LB1082]

GLENN MORTON: I think that's correct. I did look at the other definitions in Section 48-151, one of which is accident and how that means. And I didn't see a disjunction there entirely the way it was written. [LB1082]

SENATOR LATHROP: Okay. So the use of the term accident, below, is just...it's the work comp shorthand for an unforeseen event happening in the scope and course of one's employment that results in an injury. [LB1082]

GLENN MORTON: Exactly, yes. [LB1082]

SENATOR LATHROP: And what we would do with this bill is simply expand that to include a mental injury brought on by mental stimulus in certain circumstance. [LB1082]

GLENN MORTON: That's my understanding, yes. [LB1082]

SENATOR LATHROP: I also wanted to ask you this question and that is, the idea of covering mental-mental injuries, that's in keeping with the spirit of the work comp laws, the reasons behind work comp, but it's a policy question about expanding it? [LB1082]

GLENN MORTON: That's correct. [LB1082]

SENATOR LATHROP: So there's nothing inconsistent about the philosophy of work comp to cover injuries in the scope and course of employment that runs against the ideas in this bill? [LB1082]

GLENN MORTON: I can agree with that, yes. [LB1082]

SENATOR LATHROP: Okay. That's all I have. [LB1082]

SENATOR ROBERT: Any other questions? Senator Chambers. [LB1082]

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SENATOR CHAMBERS: Just so that it won't seem that I can't read or understand English, it does define accident. But the accident, in this definition, does not include a criminal act, because this accident can be with or without any human agency whatsoever in the definition of accident. Okay. [LB1082]

GLENN MORTON: Okay, yes. [LB1082]

SENATOR CHAMBERS: Now where there's a crime, there must be a human agent. So this bill is not limited only to criminal acts, whether as a victim or a witness. But the discussion had been as though there were a criminal act witnessed or the employee had suffered as a victim. That is not all that the bill deals with. It would deal with this definition of accident found on page 2, which means an unexpected or unforeseen injury happening suddenly and violently with or without human fault and producing at the time objective symptoms of an injury. Now they get away from that in the bill by saying that it can be strictly mental. There does not have to be this physical manifestation or accompanying injury, but it might. What I'm getting to or trying to get to is exactly what it is this bill is covering, because the emphasis has been on first responders. But in line 2, on page 3, immediately after "first responders" is the language "and persons who in the scope and course of their employment", which would then cover everybody who's working for anybody in any capacity as an employee. [LB1082]

GLENN MORTON: Right. That's exactly...I do read it that way as well, yes. [LB1082]

SENATOR CHAMBERS: Okay. So I'm trying to make it clear on the record that the bill covers more than first responders, and that more is involved here than criminal actions. Accidents are also covered. And that accident can produce strictly and only a mental condition or illness, and that would be covered also. The reason I'm doing it, when people mention Von Maur as in the Judiciary Committee they were talking about some things, and they wanted to talk about how terrible the shooting was. But what happened in north Omaha, where I live, never was put at that level, even though far more people died from guns, guns in the hands of subteens. So when certain communities are involved, different considerations come into play and we change the law. So Von Maur has become the lead-in to a lot of things, but this bill is not limited to that by a long shot. Okay. That's all I would have. Thank you. [LB1082]

SENATOR ROBERT: Thanks, Senator Chambers. Senator White. [LB1082]

SENATOR WHITE: I would like to follow up on what Senator Chambers had and express what I thought it meant and perhaps Senator Chambers or Senator Lathrop could enlighten me. In the case of first responders, they only get this compensation in the event of seeing something horrific that is intentionally and criminal. In all other cases of employees, an accident that is horrific could trigger post traumatic stress, and they would get it. It limits it. It makes the benefit much less available for first responders than

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it would for others. For example, if a car came across the 7-Eleven I was working at, hit a gas pump, people were burned alive in front of me, and it devastated my mind, that would clearly be an accident. And I, as the person working the cash register, might be able to make a claim because of that event. However, the police or the firefighter that responded to that would not have a claim, even though they were just as horrified because it was not a criminal act that precipitated it. So that in fact makes a more restricted class for first responders and a broader class for all other employees. Is that your understanding? [LB1082]

GLENN MORTON: Well, I would again...I'm a little bit hesitant to jump into the middle of this discussion. You've drafted the bill and you know what the bill is supposed to mean and what you intend it to mean. [LB1082]

SENATOR WHITE: I did not draft the bill, but I would gladly claim that it was Senator Lathrop's efforts,... [LB1082]

GLENN MORTON: I might dodge the criminal question a bit by... [LB1082]

SENATOR WHITE: ...and Senator Cornett. [LB1082]

GLENN MORTON: ...by also looking at the language that says that the injury has to be...I'm looking for the language that says extraordinary, unusual, etcetera in comparison to the normal conditions incident to the employment, etcetera. And I might raise that same question with regard to that language. [LB1082]

SENATOR WHITE: Well, I certainly think somebody barreling into a gas pump and lighting it up would be unusual, at my 7-Eleven, I don't know about yours. [LB1082]

GLENN MORTON: It would be. But would that be unusual then for the first responder, for example? [LB1082]

SENATOR WHITE: Well, the first responders is limited to criminal. Is it not? [LB1082]

GLENN MORTON: Well,... [LB1082]

SENATOR WHITE: And with respect to first responders scope, are victims or witnesses to a violent criminal act. [LB1082]

GLENN MORTON: I just...I am looking at the language that says, and with...it said...defines an injury. And you know that. [LB1082]

SENATOR WHITE: No, I see that. But you're reading out are witnesses to a violent criminal act.. [LB1082]

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GLENN MORTON: Yes. [LB1082]

SENATOR WHITE: You're reading that language out. [LB1082]

GLENN MORTON: No, I'm not. I think the violent witnesses...it says, and I'll just read what it says, with respect to first responders and person who in the scope of their employment are witnesses, victims or witnesses to a violent criminal act. The way I read that is that the criminal action would not refer to first responders, but it would refer to the witnesses. [LB1082]

SENATOR WHITE: Well, certainly. [LB1082]

GLENN MORTON: Exactly. Right. [LB1082]

SENATOR WHITE: The normal witnesses, they're in a bigger class than first responders. But first responders are not included in the class where it's just an accident. So absolutely I agree. [LB1082]

GLENN MORTON: They're not included in the class where it's just a criminal act. There would not have to be a criminal act for a first responder. [LB1082]

SENATOR WHITE: Oh, I think we... [LB1082]

GLENN MORTON: That's the way I read the language. [LB1082]

SENATOR WHITE: I think we need to talk about interpretations. [LB1082]

GLENN MORTON: We probably do, yes. A lot of the points I raised in my testimony were exactly that, what is intended? And that's what we need to understand for purposes of interpreting the bill. [LB1082]

SENATOR ROBERT: Any other questions? Seeing none, thank you. [LB1082]

GLENN MORTON: Thank you. [LB1082]

SENATOR ROBERT: Any further neutral testimony? Senator Cornett, to close. [LB1082]

SENATOR CORNETT: Let me clarify, first of all, what the intent of the bill is. It has been brought up that police officers, firefighters, EMTs, first responders have a higher standard, basically, because they should expect these things in the course of their job. That is what we have tried to define inside the bill, that first responders are held to a

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higher standard under this bill than individuals that don't expect this type of occurrence to happen in the normal scope of their employment. There are a couple other little points I want...in that regard I want to clear up. The police and fire are a lot of times treated that they should be able to handle anything and do anything. And they go into these situations and they do handle them 99.9 percent of the time. But if you look at...it does have its toll. If you look at the statistics for police officers, we have one of the highest suicide rates in the country. You look the rate of heart disease, cancer, strokes among police officers, firefighters, and EMTs, and they're not even comparable to the rest of society. A lot of times because help is not available, and I know that Mr. Cheloha testified that the city does offer help, yes, we do have health benefits under our insurance policy. But you have to pay a copay. They offer critical incident stress debriefing. If you read current studies, they found out that critical incident stress debriefings probably do more harm than good in regards to recovery. We are currently still working with the language in the bill to more clearly define it to alleviate the concerns of businesses. And Korby has been working very closely with us, with legal counsel on this, trying to get a definition. And as we define it further down and get a more concise definition, I believe that the fiscal note will go down. In regards to Mary Campbell's concerns, I would be happy to address those in the bill. And then if anyone has any questions, I would be happy to help them. [LB1082]

SENATOR ROBERT: Any follow-up questions for Senator Cornett? Seeing none, thank you. That closes the hearing on LB1082. Is Senator Karpisek hiding out in the hallway? [LB1082]

SENATOR ROBERT: We'll now open the hearing on LB948. Senator Karpisek. [LB948]

SENATOR KARPISEK: (Exhibit 5) Thank you, Senator Robert, members of the Business and Labor Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. I'm here today to introduce LB948 which proposes to create the Voluntary Emergency Responders Job Protection Act. The idea behind this bill was brought to me by a constituent and who will be testifying today. LB948 would protect an employee, who is a volunteer emergency responder, that is absent or reports late to their place of work because of an emergency. The employer would be able to subtract wages for time not worked by the employee volunteer. This bill is not intended to let an employee leave work once they have arrived at work and I have an amendment that takes the word "during or" out, two words. An employee shall make a reasonable effort to notify their employer that they may be absent or late to work in order to respond to an emergency. An employer may request within seven days after the missed work, a written statement from the individual in charge of the volunteer department or an authorized representative of the department. The written request would include that the employee did respond to an emergency, the date and time that the employee was at the emergency, and the date and time the employee completed the emergency activities. An employee who is

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terminated or action taken against them, which is in violation of the Volunteer Emergency Responders Job Protection Act, shall immediately be reinstated to their former position without reduction of wages, seniority or other benefits, and shall receive any lost wages or other benefits during any period for which such termination or disciplinary action was in effect. So the reason I brought this, the main reason is that all volunteer departments, especially departments in the rural areas are having a hard time getting people to volunteer and I'm hoping that with this sort of legislation, where if they go out on a call at 5 in the morning and they don't get back until 9, they were to be to work at 8, that they wouldn't be able to be penalized other than just their wage. And again, we don't have enough people the way it is so we don't want people who have to worry about losing their job because of going on a call and especially with shift work, which was something I didn't even think of at the time, we have a few factories in my district so they're coming in at all different times. So if they go out on a call even at 3 in the afternoon, they may be late for work. Again, it does not include once you're at work. You stay at work, it's only if you come in late. And with that, I'd be happy to take any questions. [LB948]

SENATOR ROBERT: Senator Cornett. [LB948]

SENATOR CORNETT: Senator Karpisek, I think you and I have discussed this before and it was, when you came to ask me to cosponsor the bill because I do have a large volunteer fire department in my city, and I think you recognize this could be a problem also. A lot of people that are both, that are volunteer firefighters are also paid firefighters and/or on the police or sheriff's department in those counties. And it is a concern that I have that if, and I'll just use Bellevue as an example where I'm from, that if an Omaha firefighter is a volunteer in Bellevue, and they miss their engine or their late for work in Omaha because they're on a fire in Bellevue, then they're shorting the public safety in Omaha. And that has happened. If we gave them this protection under that, even though they have in their rules that they shall not be late for work, this would supersede that and I can't see shorting one department or one emergency for another, and would you be willing to discuss an amendment after? [LB948]

SENATOR KARPISEK: I would be willing to and we, I did talk about it with the people that I brought the bill for and maybe you can ask some of the people that come behind me. Part of the feeling was, well, that goes for any other work too, that why single them out? But I would be willing to work with the committee. [LB948]

SENATOR CORNETT: But, I was going to say, there's a big difference between being late for a job in a factory and being late for a job where people's lives depend on it. And in the rural communities, the problem is probably not as concentrated as it is in more the metro area with the volunteer fire firefighters and, you know, Papillion's partially volunteer, Ralston is volunteer, LaVista is partial. [LB948]

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SENATOR KARPISEK: I definitely can see that, what you're talking about. If half of the one truck is out on a volunteer call but I did not bring an amendment as such and I thought that the committee could talk about that or take it up with any of the fire department lobby to see where we can. So I thought instead of putting something down and kind of painting us in a corner, that maybe we could work through it together. [LB948]

SENATOR CORNETT: Thank you. [LB948]

SENATOR KARPISEK: Thank you. [LB948]

SENATOR ROBERT: Senator Chambers. [LB948]

SENATOR CHAMBERS: Who is and what is an emergency, a volunteer emergency responder? [LB948]

SENATOR KARPISEK: I think in Section 8 it talks about for purposes of volunteering, volunteer emergency responder. Volunteer emergency responder means a person who has been approved by a governing body in Nebraska to serve any volunteer fire department, volunteer first aid, rescue ambulance or emergency squad or volunteer fire department, oh, sorry, fire company, association, or organization serving any city, village or rural or suburban fire protection district. [LB948]

SENATOR CHAMBERS: And nobody who is not connected to one of these operations can be a volunteer emergency responder? Only... [LB948]

SENATOR KARPISEK: Correct. [LB948]

SENATOR CHAMBERS: Okay. So if you don't work for one of these you cannot be a volunteer emergency responder? [LB948]

SENATOR KARPISEK: Correct, if you're not... [LB948]

SENATOR CHAMBERS: Okay. Now, what constitutes an emergency for the purposes of this bill and who would make that determination that an emergency exists? [LB948]

SENATOR KARPISEK: It would be the fire chief or the...whoever is in charge of that organization. [LB948]

SENATOR CHAMBERS: But that's not in the bill, a definition of emergency, correct? [LB948]

SENATOR KARPISEK: Okay. [LB948]

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SENATOR CHAMBERS: I mean is it, because I mean... [LB948]

SENATOR KARPISEK: No, it probably is not, Senator. [LB948]

SENATOR CHAMBERS: Okay. [LB948]

SENATOR KARPISEK: We probably need to put in there what state's an emergency which I think it would be easy enough to say when responders are called, paged. [LB948]

SENATOR CHAMBERS: And how long can this emergency...the emergency could last the entire day. [LB948]

SENATOR KARPISEK: Yes, sir. [LB948]

SENATOR CHAMBERS: So the person might not report for work at his or her assigned job at all that day. [LB948]

SENATOR KARPISEK: At all, correct. And in part of it, it does say that they may be absent or report late. [LB948]

SENATOR CHAMBERS: Okay, that's all I would ask of you. Thank you, Senator Karpisek. [LB948]

SENATOR KARPISEK: Thank you, Senator. [LB948]

SENATOR ROBERT: Any further questions? Senator White. [LB948]

SENATOR WHITE: Senator Karpisek, I like this bill. I know that all you're doing with regard to volunteers, emergency responders is the same thing that the federal government requires with National Guard and I believe we also require with jury duty, and if it works for those two essential matters, I cannot see why it shouldn't...the same protection should not be afforded. I do wonder if your bill doesn't, isn't, doesn't go...I would like to see it go farther. For example, why not, departure from work if its bona fide, and why not cover wages up to a certain number of hours a year? [LB948]

SENATOR KARPISEK: The certain number of hours a year, I guess, is fine. I guess, looking at this as a small business person, I try to let my people go at any time but I can see in a factory or a bigger setting if they leave once the call goes off, Petersen's as I refer to it, Vise Grip, a lot of their people are on the volunteer squad and if they all leave during work, although they are very good about letting them do it, they may be running half staff. So I do empathize, sympathize with the volunteers and their communities but I

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also sympathize with the employers too. Let them have their job, you know, so they get their work done while they're at work. [LB948]

SENATOR WHITE: Nothing in this would require any volunteer to respond to a given page, correct? [LB948]

SENATOR KARPISEK: Correct. [LB948]

SENATOR WHITE: So all it'd say is in that case the employees could say, look, we won't let more than one at a time come off the shift or two, whatever they can live with. I mean it doesn't force them to make those kind of agreements. [LB948]

SENATOR KARPISEK: No, no it does not and, I guess, again, I would be willing to work with the committee. That part of it may change some testimony behind me though, Senator, if we did that. [LB948]

SENATOR WHITE: All right. Well, and you have to make the compromises necessary to get anything and that's your call. I just agree it's getting to be a real crisis especially rural areas. [LB948]

SENATOR KARPISEK: It is, and I think that this would maybe be a good first step especially for people who work outside of Lincoln, live in a small town an hour away, and then they have to make the decision, do I go on this call or do I not? And sometimes we only have two, three people that can go so it could be life or death who goes. [LB948]

SENATOR ROBERT: Senator Chambers. [LB948]

SENATOR CHAMBERS: To whom is the person's first loyalty owed? Often a conflict may come into existence in a person's life and the person cannot do two things at the same time. Is the first loyalty to the person's job or to that entity for which he or she is a volunteer? [LB948]

SENATOR KARPISEK: I would say before work, it is the volunteer organization. And again, I have some firefighters and rescue behind me that have taken the oath and they could tell you better what their oath is but I think when you're off the clock and that pager goes, most people feel they need to go. [LB948]

SENATOR CHAMBERS: Well, why should an employer subsidize these volunteer operations by crippling his or her operation? If a person chooses to do something on his or her own time, it should be that person willing to make whatever sacrifice and absorb the consequences of what he or she volunteers to do. Just like I'm almost a volunteer in the Legislature. (Laughter) And I solve the problems you're having but I chose to be

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here so I can't hold the job and I know that. The point I'm trying to get to, and I may not be stating it clearly, is that grown people are involved in what we're talking about not children. They make choices and if they choose to do two things, as long as they don't conflict, but they're aware that a conflict may occur at some point, they have to be prepared to make the choice as to which is going to have priority. And if the volunteer work has the priority, then the other person for whom they work who did not force them to make that choice, who did not make it a condition of employment, why should that person have to step back and subsidize what this person has chosen voluntarily to do? [LB948]

SENATOR KARPISEK: And in the bill, they would take the wages that they didn't earn... [LB948]

SENATOR CHAMBERS: But suppose that's not good enough. Suppose it's not a matter of wages but the job has to shut down. [LB948]

SENATOR KARPISEK: I think that the public safety has to come first because especially in our small communities, the people, same people are everything. You're the volunteer responders, you're the bank loan officer... [LB948]

SENATOR CHAMBERS: How many emergencies can they go to in a week? There's no limit, is that true? [LB948]

SENATOR KARPISEK: No limit. That is true. [LB948]

SENATOR CHAMBERS: So that person could be off a part of every day in a week or more. If there's a fire, for example, a range fire or something of that kind that could be ongoing, it could seem to be suppressed, then it could pop up again, the employer is the one who's going to have to put everything on hold for this volunteer person. [LB948]

SENATOR KARPISEK: Correct. [LB948]

SENATOR CHAMBERS: And you think that's fair? [LB948]

SENATOR KARPISEK: I've done it as a business owner. I guess that's as fair as I can say. I let my guys go and it's been a week at a time, some times. [LB948]

SENATOR CHAMBERS: But that doesn't answer the question. [LB948]

SENATOR KARPISEK: Do I think it's fair. Yes, I do. [LB948]

SENATOR CHAMBER: You might be very noble. [LB948]

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SENATOR KARPISEK: Well, I try to be, Senator. [LB948]

SENATOR CHAMBER: Must everybody be as noble as you are in order to have a business? [LB948]

SENATOR KARPISEK: No, but I think the public safety is the issue here because we have had some calls that haven't been answered early morning hours because people don't know if they can get back to work. [LB948]

SENATOR CHAMBERS: Then, if the public safety is that important, why not make the public stand for it instead of the employer? If an activity is essential to the welfare of the public at large, then the public at large or society ought to bear the cost, not one individual. [LB948]

SENATOR KARPISEK: And that would be wonderful to try to get some paid positions but I don't think in our small communities that's ever going to happen. [LB948]

SENATOR CHAMBERS: Well, why can't they say that churches and others will raise money since these people are protecting the community. So if they should have to take time off work, that community is going to foot the bill for them being off work instead of somebody with a corner grocery store footing the bill for everybody who may be benefited. Their emergency could involve other commercial establishments, couldn't it? [LB948]

SENATOR KARPISEK: Yes. [LB948]

SENATOR CHAMBERS: And those commercial establishments which might be rescued as a result of this volunteer work are not going to have to compensate or take any...will not have to modify what they do for the benefit of these volunteers who are helping them. Let me do it in A's and B's. B is the store that is suffering the emergency. A is the place where the volunteer works. The volunteer goes to take care of B. A suffers as a result by not having the necessary work done by this individual. B, although it is a commercial establishment, does not have to step in and make up for anything that the volunteer lost and by that I mean, if the volunteer was away and the job, the business had to shut down for that day, establishment B doesn't have to compensate establishment A for the use of establishment A's employee. Isn't that true? [LB948]

SENATOR KARPISEK: That is true. [LB948]

SENATOR CHAMBERS: Okay. And I'm just trying to make clear what I'm saying. Okay. [LB948]

SENATOR KARPISEK: And I understand, Senator Chambers, and I follow you, and I do

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understand your point. I guess, that's just part of life, isn't fair always, I guess. I don't know. [LB948]

SENATOR CHAMBERS: Well, those who follow you will understand what is on my mind and they might can address the things that I'm saying. [LB948]

SENATOR KARPISEK: Better than I can, I am sure, Senator. [LB948]

SENATOR CHAMBERS: Okay. That's all I would have. [LB948]

SENATOR KARPISEK: Thank you. [LB948]

SENATOR ROBERT: (Exhibit 6) Any other questions for Senator Karpisek? Thank you. Now, I'll read into the record right now a letter of support from the Nebraska Hospital Association. [LB948]

SENATOR CORNETT: First testifier in support. [LB948]

TERRY EDWARDS: My name is Terry Edwards, T-e-r-r-y E-d-w-a-r-d-s. I'm a volunteer firefighter EMT for the Palmyra, Nebraska. I'm here with a personal interest, I'm not a paid lobbyist. The way it sits right now is like this Senator stated, if I come in late to work after coming off a rescue call, then I can be docked for hours. With the accumulation of x amount of hours, I can be disciplined and even possibly terminated, hopefully not. Nebraska is lucky enough to have EMTs that are willing to go ahead and sacrifice their lives and their time and please don't penalize us for what we're doing, just let us do our job, and all we're asking is just the time not held against us. That's really all I have to say. Kind of simple and to the point. Any questions? [LB948]

SENATOR CORNETT: Senator Chambers. [LB948]

SENATOR CHAMBERS: At the risk of sounding like Simon Legree because that's my job, I'm paid to do what I'm doing. I'm paid to ask these questions, not paid well, but I'm paid. So in doing my job, why should the employer be penalized for what you have chosen to do? [LB948]

TERRY EDWARDS: How are they being penalized, Senator? [LB948]

SENATOR CHAMBERS: Your work might be...you might be needed at that job and if you're not there, the job perhaps cannot go forward. [LB948]

TERRY EDWARDS: Granted, however, Senator, let's say that the person running my establishment is the person that doesn't make the curb in Highway 66A in Palmyra, Nebraska, and they're the ones that are pinned underneath the vehicle, they're going to

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wish that I had shown up. [LB948]

SENATOR CHAMBERS: And if you do, I am sure that person would understand that you couldn't be at work while taking care of that person. (Laughter) There was a philosopher and he was asked, what is the greatest good? And he said, the greatest good is that good which benefits the greatest number. So they asked him what is the greatest number? He said number one. So for number one, people will make concessions because you are doing something that benefits your employer. So the employer is not going to do anything against you for having done that. We move the employer out of it and you are essential to the employer's operation and you're not there. [LB948]

TERRY EDWARDS: Correct [LB948]

SENATOR CHAMBERS: And this may happen sporadically, infrequently or for a regular period of time if the emergency is of the kind that I've discussed earlier. Since you are essential but you can't be there, why should the employer have to keep your job open for you when you're not there to work it? [LB948]

TERRY EDWARDS: For the betterment of the community. [LB948]

SENATOR CHAMBERS: Okay. That's all I will ask you. Thank you. [LB948]

SENATOR ROBERT: Any other questions? [LB948]

SENATOR WHITE: I have a question. [LB948]

SENATOR CORNETT: Senator White. [LB948]

SENATOR WHITE: As far as your employer knows, it may be his business that catches fire and he may need people from other businesses to come and save his business, isn't that true? [LB948]

TERRY EDWARDS: That could be easily true, yes sir. [LB948]

SENATOR WHITE: And it's cheaper for your employer to have you miss a few hours of work than it is to pay the taxes necessary to have full-time professional people, isn't that true. [LB948]

TERRY EDWARDS: I would assume so, providing they could even get professional people. [LB948]

SENATOR WHITE: So he gets a benefit, direct benefit back for playing nice. Thank you.

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[LB948]

SENATOR CORNETT: Senator White.(sic) [LB948]

SENATOR CHAMBERS: (Laughter) When these lawyers ask these leading questions to which there's only one possible answer, (laughter) to make you sound reasonable, I have to get into it also. There is not a direct benefit to the employer, there's a potential benefit if that employer should suffer the same emergency as the one you are attending to, correct? [LB948]

TERRY EDWARDS: Well, I think there's a benefit to everyone if I show up at the scene of the accident. [LB948]

SENATOR CHAMBERS: How is that a benefit to your employer? [LB948]

TERRY EDWARDS: Well, because again, if it was my employer that was physically underneath that car... [LB948]

SENATOR CHAMBERS: But it wasn't. [LB948]

TERRY EDWARDS: But if it wasn't? [LB948]

SENATOR CHAMBERS: If it wasn't your employer. Here's what I'm getting to. In this society people do not get involved in a lot of things that relate to the welfare of society because they don't anticipate it will happen to them. When it happens to them or their child, they think everybody should become alarmed. I deal with these issues all the time and I explain that in the same way that when it happened to others and their children, you didn't feel the need to get involved. Other people feel that same way about your situation now and they're not going to get involved but to you it's a world shattering event as far as your world. So I'm not going to keep you here and interrogate you or get you in a middle of an argument but it is not a satisfactory answer to me in the role that I play as a policy maker to say that all of society is benefiting, when in reality that can be true only in a vague abstract academic way. Every call that you answer to my way of seeing it, does not necessarily benefit all of society except in that altruistic way that, what benefits my brother or sister, benefits me. But we're talking about dollars and cents here but that's all that I would ask even if you're asked leading questions about my lawyer colleague, Senator White. (Laughter) [LB948]

SENATOR CORNETT: Mr. Edwards, I was going to leave you alone but since you've responded so well to these two, (laughter) the point that I brought up earlier, do you see the point that I was trying to make and do you think that that's fair? With the short staffing, particularly in this...and I'll just use the city of Omaha as an example, if you leave a crew for a fire truck short, you know from being a volunteer firefighter, they can't

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get that truck out without a certain number of men on it. Is it fair to rob Peter to pay Paul, so to speak? [LB948]

TERRY EDWARDS: Not in that instance, I don't believe so. You know, you have a charity begins at home sort of thing. You've got to watch what you're doing there but I honestly never, being in a volunteer atmosphere, I really hadn't thought of that, and being a volunteer firefighter, volunteering for another firefighter entity. [LB948]

SENATOR CORNETT: I was going to say, it's just in the metro area we have a lot of volunteer and partial volunteer fire departments and a lot of those people are made up of police, fire, jail technicians and things like that who have to be at another location for public safety also and that's... [LB948]

TERRY EDWARDS: Yes. That makes sense. [LB948]

SENATOR CORNETT: Okay. Thank you. [LB948]

ROCKY MAAS: Thank you, committee, for hearing me, my name is Rocky Maas, R-o-c-k-y M-a-a-s. I am a volunteer with Wilber Fire and Rescue. I'm also an EMT. In talking with other people around the state, the question was brought to me, is this really happening? And the answer is, yes. I've got...I'll take you back to May 22, 2004, the night southeast Nebraska was hit by the deadly tornadoes. Myself and other firemen were out at fire school at Grand Island. We came back immediately and we searched the Wilber area, surrounding community, until about 2:00 in the morning. Checked everything. We were called to Hallam. We got back...we searched rural areas. We were side by side with National Guard that had been dispatched or called up or whatever for the emergency. Monday morning...and we got back at 6:00 Sunday morning. I contacted my employer requesting an emergency leave because I knew this wasn't going to be an overnight deal. We continued on the next morning clearing trees, opening streets just so we can get in and out of our town of Wilber, going door to door, unloading trucks of emergency aid, all this stuff. All the same time...well, back to the company, informed me that I couldn't do it because my house was not hit by the tornado. I had to take vacation time to serve my community. Moving on, it has happened...another incident happened July 3. Five o'clock in the morning I'm sitting having my coffee, getting ready to go to work, my pager goes off. The address, I knew exactly who it was. It was a friend of mine, I've known for 15 years, fighting cancer. I waited until the second page, which means there hasn't been enough people to answer the call, and this happens more and more in the smaller communities, they're turning into bedroom communities. I live in Wilber, I work in Lincoln. I travel 40 miles one way every day. I went on the call. Returned from the call, went straight to work, I called my boss after we got done. They charged it against my attendance, which adds up to where discipline can happen. Later on I was informed that I wouldn't be paid for the July 4th holiday because I was 32 minutes late showing up for work and I did not work the full

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qualifying day. I don't think it's right. I don't think anybody should be penalized to that extreme. I could actually be fired because of going out to save somebody. It's voluntary, that's true. I volunteered. I took this upon myself to do it. We go on a call, you don't know what it's going to turn into or what it could turn into. We've been on calls, simple garage fire, called out 11:00 at night. We finally got done on the scene at 6:00 in the morning because somebody was burned severely and fire marshals were called in and all that. You don't know. I mean, I guess, the question is, are we to stop CPR at 5:30 so I could be at work by 7:00? And with that, that's about all I have to say. Any questions, please? [LB948]

SENATOR CORNETT: Any questions from the committee? Senator Chamber. [LB948]

SENATOR CHAMBERS: I hear everything you say. If a person is willing to sacrifice his livelihood to help his brother or sister, that's noble. I don't question that. Who feeds your family? Your employer or the volunteer work? [LB948]

ROCKY MAAS: I do. [LB948]

SENATOR CHAMBERS: But you get it by working your job, is that correct? [LB948]

ROCKY MAAS: I understand, for that 32 minutes I was not there at work or the hour, I don't want paid for that. [LB948]

SENATOR CHAMBERS: I'm not talking about that one incident. I mean the broad scope because there are a number of things can happen which I think would be grossly unfair and unjust but I'm looking at the approach that the bill is taking where the volunteer work takes priority over employment. [LB948]

ROCKY MAAS: I don't think that it does. For the fact is, my employer could benefit from the training and expertise that I've gained through my volunteer services and many of your volunteer firemen and EMTs are on your ERT teams that your factories and stuff like that. [LB948]

SENATOR CHAMBERS: But the employer determines that rather than employee, isn't that true? [LB948]

ROCKY MAAS: No, it's a voluntary thing for the employer too. [LB948]

SENATOR CHAMBERS: Now, here's what I mean, whether or not the employer sees it as a benefit. See I can draw pictures. Maybe I would tell somebody who wants to hire me that because I draw pictures, I'm very nuanced in my view of life. I can see gradations, shadings, I'm very detailed and I could do much better any job I'm hired to do than anybody else and the person who wants to employ me might say, well, this is

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not going to be graphic artist or illustration work or anything like that. We need you to do whatever it is. I'm having to give these examples to try to make myself clear. You are saying that whatever, not every single thing, but whatever you do as a volunteer is going to make you a better employee where you work, if I understood you correctly. And that's how you benefit your employer. [LB948]

ROCKY MAAS: No, I would benefit my employer for being on their emergency response team. [LB948]

SENATOR CHAMBERS: And how does that benefit the employer? [LB948]

ROCKY MAAS: Because if they have an accident there, I'm a trained medical technician, could help the person that has been injured in their factory or help put out the fire that started back in an oven somewhere. [LB948]

SENATOR CHAMBERS: But that's not what you were hired to do and that's not why you were hired, was it? [LB948]

ROCKY MAAS: Correct. It's a benefit for me being a volunteer fire and rescue for the company to utilize that to which I was trained and paid for by the volunteer organization. [LB948]

SENATOR CHAMBERS: Suppose this bill would say either that a person who works as a firefighter or a law enforcement officer cannot be one of these volunteer persons for the purpose of this bill or say that they cannot volunteer period or that the bill applies only to small communities. What about something like that? [LB948]

ROCKY MAAS: I don't think I could agree with that, sir. Just for the fact, if the professional firefighter is a volunteer, EMT for a small town, because is it expected of him to stop CPR on a person so he's not late for work? [LB948]

SENATOR CHAMBERS: But when you heard Senator Cornett's example, I don't think we're dealing with the administering of CPR but this person... [LB948]

ROCKY MASS: That is part of the realm. [LB948]

SENATOR CHAMBERS: Right. Well, I'm not talking about in my example, CPR on this person, the fighting of fire some place else for a period of time when you're hired as a firefighter some place else. Your volunteer work supersedes or takes priority over the paid position as a firefighter. That's your view, correct? [LB948]

ROCKY MAAS: No, I wouldn't say that. I'm just saying....I think we are looking at different...this in a 12-month period, I have had 5 instances where I've been late for

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work because of a call and that is both combination rescue and fire. [LB948]

SENATOR CHAMBERS: Well, I'm away from that. I'm looking at what Senator Cornett pointed out. The reason I said make it apply to smaller communities, in Omaha you, if you are a paid firefighter and you're also volunteer in some other location, and you're called to go to some volunteer work somewhere else so you don't show up for work where you're paid to be a firefighter, then you think that where you're paid to be a firefighter should I accept that and not take any action against you and say, you cannot do that work whenever it conflicts with your job here. Should that fire department where you work and are paid be able to tell you, you cannot have a conflict with your work here in this volunteer capacity without suffering the consequences, is that what you're saying? [LB948]

ROCKY MAAS: I guess on this I would like to...a fireman, I believe they had...and I'm not sure because I do not deal with the paid department, they have to be relieved. But it's still a voluntary thing. My pager goes off, I don't have to go. And like I said, I wait for the second page. To me that's a signal to me that there isn't enough manpower there to go on that call. [LB948]

SENATOR CHAMBERS: But let's put you on that call so that we can get to this example to see how you think it should be handled. You're a paid firefighter in Omaha, you're volunteering someplace else. Are you saying, that where you work should be shorthanded until you finish this volunteer work or hadn't you thought of that example? [LB948]

ROCKY MAAS: I really hadn't thought about it. [LB948]

SENATOR CHAMBERS: And I'm not going to press you on it. [LB948]

ROCKY MAAS: But is it fair to the volunteers community to take care of them for the guy to go over to here? [LB948]

SENATOR CHAMBERS: Well as the bible says, choose you this day who you will serve. Choices have to be made. [LB948]

ROCKY MAAS: That's exactly it. [LB948]

SENATOR CORNETT: Mr. Maas, and I'm not trying to put words in Senator Chambers mouth but the point I was trying to make earlier is, in the metropolitan area, not so much in the rural areas, you cannot get an engine company out unless you have the prescribed number of people on that engine company. You cannot get a cruiser out to cover a district if that person doesn't show up for work. If you were on a rescue call, they sent out the second page, my husband was a volunteer firefighter for 17 years, I know

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the routine. You go to an accident and it's a minor PI, personal injury collision, you're 45 minutes late for work and in that time they couldn't get an engine company out in Omaha and someone dies. Is that fair? [LB948]

ROCKY MAAS: And again, I would say would it be fair to the person that...do you know if this is going to be a slight injury the first time? [LB948]

SENATOR CORNETT: You know, I think, we're...at least you and I are probably going to have to disagree on that but I think Senator White had a question. [LB948]

SENATOR WHITE: No, we'll take it up in Exec, thank you. You don't need to be used for that. Thank you. [LB948]

ROCKY MAAS: Anybody else? Thank you. [LB948]

MICHEAL DWYER: Good afternoon. I am Micheal Dwyer, D-w-y-e-r, and I'm here today to testify in support of LB948. I'm a member of the Nebraska State Volunteer Firefighters Association Legislative Committee, a 25-year member of the Arlington Volunteer Firefighter Department and president of MDP, Inc., a Nebraska corporation. Currently 72 percent of Nebraska is covered by volunteer fire and rescue services whether it's a house fire in Bellevue, a car accident near Blair or whether it's a prairie fire in western Nebraska. The goals and the risks are the same. The men and women of Nebraska's firefighter service leave family, leave dinner sitting on the table, and leave the comfortable warm bed in the middle of February to risk lives and property to protect the lives and the property of Nebraskans. LB948 will never make sense to this committee and to the Legislature until you understand the distinct difference between what volunteer firefighters do and what other volunteers do that serve Nebraskans and the rest of the country. LB948 calls for the protection of an individual's job when responding to an emergency. As an employer and a firefighter, I have a unique perspective here. On one hand, the last thing that I want is for the state of Nebraska to dictate how I am to run my business. However, there are currently clear exceptions, I'm responsible for collecting taxes, abiding by wage and hour laws, I cannot discriminate. As Senator White pointed out, we already make exceptions for volunteers to serve in the military and also for jury duty. I believe that LB948 is straightforward legislation that protects the jobs of the men and women that protect Nebraska. The culture in our state, and in our nation, with respect to volunteerism is changing. Young people are no longer willing, as they once were, to sacrifice countless hours with family, with work, to risk lawsuits, injury or worse, to fight fires and save lives. Advancement of LB948 would recognize and support those that protect Nebraska's lives and property by protecting their jobs. I appreciate your time. I'd take any questions. [LB948]

SENATOR CORNETT: Senator Chambers. [LB948]

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SENATOR CHAMBERS: What kind of businesses fire people or threaten to fire people who are doing this work? [LB948]

MICHEAL DWYER: I'm sorry, say that again. [LB948]

SENATOR CHAMBERS: What kind of businesses would discipline or threaten to fire people who are doing this volunteer work? [LB948]

MICHEAL DWYER: I cannot speak outside of my scope of understanding, which in our little corner of the world is Arlington, Nebraska. And most of our employers are various, including the city, and in our particular business, are very supportive of individual fire service. But I think part of the debate this afternoon has been with respect to professional firefighters, manufacturing entities where somebody is needed in that position on that line, and certainly the gentleman before me, spoke to the situation that he had where he was disciplined because of his need to respond to an emergency. I hope that answers your questions. [LB948]

SENATOR CHAMBERS: I should have asked this of somebody who had a problem with it. Are these employers practices made known to the community in which the employer operates? [LB948]

MICHEAL DWYER: I don't know that the negative practices are. I can't speak to that directly. I know that the positive practices are in our community. Once or twice a year we run an ad in the paper that says, these are the businesses that support our local department. To my knowledge, no, the negative practices haven't been addressed. [LB948]

SENATOR CHAMBERS: Okay. That's all I'll ask you. Thank you. [LB948]

MICHEAL DWYER: Thank you. [LB948]

SENATOR ROBERT: Any further questions from the committee? Senator Wallman. [LB948]

SENATOR WALLMAN: Thank you. Yes, I personally want to say thank you for being a firefighter. We lost a very popular firefighter last year in my district and people watched him die because he was pinned underneath and... [LB948]

MICHEAL DWYER: I can't imagine. [LB948]

SENATOR WALLMAN: ...you know, you can't forget that. But I am in support of this. Anything we can do to help you. You know, our community, I go to the pancake feeds or whatever they have, and it's a community thing and the firefighters and the EMTs. One

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of my staff members is an EMT so you see things and...but God bless you. [LB948]

MICHEAL DWYER: Thank you. I don't want to speak out of term but there was two questions that have come up earlier. Your question, Senator Chambers, earlier with respect to what constitutes an emergency is, am I restating your question fairly? My answer would be this thing that all of us wear on our hips. When this goes off, with rare exceptions, and there are some but with rare exceptions, when this things goes off, it's an emergency. Somebody's life or somebody's property and in many cases, the combination of those two, hang in the balance and our ability to respond and to respond quickly is directly driven by the manpower and the expediency of those volunteers and... [LB948]

SENATOR CHAMBERS: I understand what you're saying but if we're going to formulate a policy that applies to every community, every hamlet, every village, every city throughout the state, saying that a beeper going off is an emergency isn't sufficient by way of establishing what an emergency is for the purpose of a bill when it's going to put burdens on one category of citizens to benefit another. So I understand what you're saying about the beeper going off and what it indicates but that wouldn't be sufficient, in my view, for defining it for policy. [LB948]

MICHEAL DWYER: The only thing I would add in rebuttal that these are typically, and I can't speak for every department in the state, but typically these are triggered by a law enforcement agency. So there is a, perhaps arguably, a higher standard but... [LB948]

SENATOR CHAMBERS: You know what I think of law enforcement or you wouldn't (inaudible) (Laughter). [LB948]

MICHEAL DWYER: Do we have time? We have time. (Laughter) [LB948]

SENATOR ROBERT: Any further questions? Thank you, Mr. Dwyer. Oh, wait, just a second. Senator. [LB948]

SENATOR LATHROP: I might have one. The thought occurs to me that if my secretary was an emergency person and I had a brief that was due like at 9:00 and she isn't there, and I'm a one man shop with a secretary, it doesn't get done and now I'm in a jam and I'm missing deadlines. And I'm wondering, is there, if it makes more sense to have this applied to employers with x number of employees, you know? Somebody who can pick up the slack if one guy doesn't show up but if you are a one man shop or this person that's not there is the only employee in a meat market and you're making sausage and you need him...(Laughter) [LB948]

MICHEAL DWYER: Perhaps the general response and then, it did occur to me that that exemption was not in here as it is, of course, in many other bills with respect, of course,

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Nebraska to small business. Again, I can only speak to my little corner of the world. MDP is a photographic corporation and if Senator Lathrop's family is scheduled to come in at 9:00 for family portraits and we're half way through the session and the tones go off, I'm going to have to try to explain to you that, gosh, I know this is the only time your family is together but somebodies lives on the line, I got to go. I can tell you from 25 years that, generally speaking, everybody is okay with that but not 100 percent. [LB948]

SENATOR LATHROP: Don't you think you discourage people from hiring, hiring volunteer firemen or fire emergency responders in the small office or the small one or two man shop setting? If you make up a rule like this, and you go, well, how can I hire you, I just can't have that Tuesday morning where you don't show up until 11:00 and... [LB948]

MICHEAL DWYER: Yeah. I would like...I think my quick easy answer is that if that small business, to use that analogy, probably exists in a small community and there's no small community that's going to support that small business if they know that, you know, I'm restricting, that I won't let this guy go to volunteer stuff. Generally, most small businesses and certainly mine don't exist in that vacuum. We exist in a larger entity and that kind of volunteerism. It is the nature of the beast. [LB948]

SENATOR LATHROP: Okay. [LB948]

MICHEAL DWYER: I hope that answers your question. [LB948]

SENATOR LATHROP: It does, it does. Maybe it was thrown out there just to stimulate a little discussion. [LB948]

SENATOR CORNETT: Any further questions? Ladies and gentlemen, we're going to have to take a ten minute recess. We're having a computer malfunction in regards to recording and have IT on the way. So why don't we reconvene at a quarter after, please, and I apologize for the inconvenience. [LB948]

BREAK []

SENATOR CORNETT: All right, we'll resume the hearing on LB948 and again I apologize, our server went down. Next testifier, proponent, please. [LB948]

BETH BAZYN FERRELL: Good afternoon, Chairman Cornett, members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I'm appearing here in support of this bill because we support the concept of the bill that is encouraging volunteerism in the interest of public safety. That's not to say we didn't have some of the conversations that went on before about what's the role of the employer, because

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counties are employers but in this situation our board voted to support the public safety concept of this. I think that we would be in support probably of some of the amendments maybe that have been talked about limiting this to more sparsely populated areas or something along of that nature. I would be happy to take questions. [LB948]

SENATOR CORNETT: Seeing none, thank you. Next proponent. Are there any more proponents for LB948? Okay. We'll move to opponents. Are there any opponents to LB948? Is there anyone here in a neutral capacity? Okay. That closes the hearing on LB948. I don't see...did Senator Karpisek leave? Okay. Senator Karpisek, you just about missed your own closing. [LB948]

SENATOR KARPISEK: I just about did. (Laughter) Well, I would just like to say that I'd be more than happy to work with the committee if we want to talk about number of employees or a certain number of residents in the community or whatever that we could do. [LB948]

SENATOR CORNETT: And we'll be happy to work with you, Senator Karpisek. Any questions from the committee? Seeing none, thank you. [LB948]

SENATOR CORNETT: Senator Lathrop. [LB1016]

SENATOR LATHROP: Senator Cornett and members of the Business and Labor Committee, my name is Steve Lathrop. That's L-a-t-h-r-o-p. I represent the 12th District in Omaha, and I'm here today to introduce LB1016. LB1016 is offered in response to a growing problem across the country of misclassification of employees as independent contractors. The typical example of a misclassified employees is someone in the trades, for example, roofers, drywallers, block layers, people who serve one person, one company. They are under the control and work at the direction of a single business, but yet instead of being classified as employees, they're classified as independent contractors. This practice of the unscrupulous contractors is done to save the cost of withholding, and consequently cheats the state of Nebraska out of tax revenue and unemployment withholdings. This practice allows the fraudulent contractor to save...pardon me, to have a competitive advantage over the honest counterpart. LB1016 would discourage this practice of misclassification by defining which workers are employees and which are legitimate independent contractors. The criteria found in the bill is tight enough to require classification of those as employees only where appropriate. The enforcement mechanism is a private cause of action which is why there is no fiscal note...or fiscal impact. The private cause of action would permit the employee, the Department of Revenue, or the Department of Labor to bring a cause of action if an employee has been misclassified. The bill also prohibits retaliation against those who take advantage of its provisions. LB1016 addresses a second practice where unscrupulous contractors gain a competitive advantage by hiring undocumented workers. While the problem may be widespread, LB1016 deals with hiring of

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misclassified...or pardon me, of the undocumented worker in a limited setting, and that is the contracts with the state and political subdivisions. LB1016 would require that those who contract with the state and with political subdivisions include or provide the contracting agency with an affidavit, that a I-9 has been secured from each of the employees and that the employers or contractor has no reason to believe that he has in his employ any undocumented workers. LB1016, in short, is a bill to level the playing field for honest contractors. The result will be more revenue for the state of Nebraska, and the rectification of two practices that permit dishonest contractors a competitive advantage. I have had, since I have had this bill drafted, several conversations with some of the people who will be up here shortly. I do want to extend an offer to continue to work on the language. I know that we have cast a broad net in the language, that is the original version of LB1016. My thought is that we can narrow down, perhaps, the scope, and some of the...and be receptive to or amenable to some amendments that make it more workable to those in the business community. But the goal must be achieved after all those accommodations are made, that we stop the practice of misclassification, and require those who contract with the state and with the political subdivisions carry out those contracts with documented workers. And I'd be happy to take any questions. [LB1016]

SENATOR CORNETT: Any questions from the committee? Yes, Senator Wallman. [LB1016]

SENATOR WALLMAN: Thank you, Chairman Cornett. Thank you, Steve. That means, like this pipeline coming through Nebraska. You know, they hire undocumented workers, I think. And would they be under this? [LB1016]

SENATOR LATHROP: If the contract to lay the pipe that you're talking about is with the state or a political subdivision, like a county, city, those kind of people it would. [LB1016]

SENATOR CORNETT: Any other questions? Senator Chambers. [LB1016]

SENATOR CHAMBERS: Just to be sure,... [LB1016]

SENATOR LATHROP: Yes, sir. [LB1016]

SENATOR CHAMBERS: ...the first part addresses what constitutes an employee as opposed to a private contractor, regardless of whether the state is involved or not. That's just general law that would apply, period. [LB1016]

SENATOR LATHROP: That's very true. [LB1016]

SENATOR CHAMBERS: Okay. [LB1016]

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SENATOR LATHROP: That's very true. [LB1016]

SENATOR CHAMBERS: Thank you. [LB1016]

SENATOR LATHROP: And it's only in the latter part that we address the contractual relationship between the state or a political subdivision. [LB1016]

SENATOR CHAMBERS: Thank you. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you. First proponent. [LB1016]

MARTIN WALTER: Good afternoon. Excuse me for my voice. I'm trying to get over a cold. My name is Martin Walter. I'm an attorney. I'm here representing the Carpenters' District Council. I appear in support of the bill before you. The bill before you today addresses worker misclassification, as Senator Lathrop mentioned. Worker misclassification occurs when workers who should be properly be classified as employees, are instead classified as independent contractors. Although it doesn't grab many headlines and will probably not be featured in any investigative report on your local news, worker misclassification is a real problem. To get a feel for how pervasive the problem is, consider a study conducted by the Minnesota Office of Legislative Audit two years ago. The study found that 14 percent of employers subject to unemployment insurance taxes engaged in worker misclassification during 2005. The office determined 14 percent to be a conservative estimate of the number of businesses that actually misclassify workers, as the study did not extend to employers not registered with the unemployment system. Worker misclassification is not unique to Minnesota. Minnesota just serves as one example. Another study conducted at Cornell University estimates that approximately 10 percent of workers reviewed from Department of Labor audits were misclassified, and in the construction industry the number of misclassified employees increased to 15 percent. New York Governor Eliot Spitzer has referred to worker misclassification as a plague that keeps worker wages and benefits artificially low. Why do businesses misclassify workers? The harsh reality is that businesses have an economic incentive to misclassify. Businesses that misclassify employees as independent contractors have significantly lower overhead than law-abiding businesses. If a business employs independent contractors, that business does not have to pay unemployment insurance tax, workers' compensation tax, or Social Security tax, or withhold income tax on the independent contractors. The add-on costs make hiring an employee 26-30 percent more expensive than hiring an independent contractor. Additionally, businesses do not pay any sort of health insurance benefit to independent contractors. According to the Kaiser Family Foundation health benefit survey in 2006, the average annual premium for an employer health plan covering a family of four was \$11,500. Small employers with less than 24 workers saw a 10.5 percent increase in premiums during 2006. These costs are continuing to increase and create a substantial

burden on law-abiding employers who properly classify their employees and provide benefits to their employees. Worker misclassification is not a victimless crime. A myriad of harms stem from this classification. These harms include harm to law-abiding businesses, harm to the misclassified workers themselves, and harm to the state. Solid, law-abiding businesses which properly classify employees and offer health benefits to those employees, are at a competitive disadvantage when competing directly against companies which wrongfully classify their employees as independent contractors. The problem is particularly rampant in industries like the construction industries, industry where companies bid for jobs. There could never be a fair and competitive bid process when companies that misclassify can bid for work without having to account for normal payroll costs. The misclassifying company will always have the lower bid and will be able to take work away from the law-abiding company. The result is that the good companies receive fewer jobs, employ fewer workers, and may eventually be driven out of business. And this bill helps to level the playing field. Not only does misclassification harm law-abiding business. It also harms the misclassified workers themselves when employees are not properly classified, costs that should be borne by the employer, such as unemployment insurance and workers' comp insurance are illegally shifted to the individual worker. If the individual worker pays out of pocket for these costs, the worker has less money available for basic living expenses. As a result, many workers do not make contributions to the unemployment, Social Security, or workers' comp systems, and are left with little to no safety net in the event of a layoff or an on-the-job injury. Employees misclassified as independent contractors also lack the benefit of company-provided benefits such as health insurance or a retirement plan. Many are either unable to qualify for individual health insurance or unable to afford the premium for individual health insurance. And with no health insurance, no retirement savings, these workers are stuck in a grim situation from which there is no escape. They work everyday, praying to avoid injury, and cannot see a time when retirement could be possible. If one of these workers is injured on the job and disabled, the costs for supporting that worker and his family falls back on the state public assistance programs. This is but one impact of worker misclassification borne by the state. State finances regularly fall victim to employee misclassification, as states collect less income tax from independent contractors. Worker misclassification takes a heavy toll on law-abiding companies, misclassified workers, and the state of Nebraska. This bill helps remedy the problem of misclassification by granting any interested party the right to bring an action to recover unpaid taxes and compensation. Interested parties include not only the state departments of labor and revenue, but also misclassified employees themselves. By extending the right to enforce the law to misclassified workers, the bill essentially expands the state's enforcement capabilities by deputizing each misclassified worker. Giving individuals a private right of action is an efficient way to enforce the provisions of the statute, and it represents a cost savings for the state, preserving limited public resources. The bill also requires that employers post a notice informing workers of their right to be properly classified and their right to bring legal action in the event of misclassification. This partnership between state enforcement agencies and workers is

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an effective way to fight worker misclassification, and we think it's in the best interests of business, workers and the state to pass this bill and combat employment misclassification. Thank you. [LB1016]

SENATOR CORNETT: Any questions from the committee? Senator Wallman. [LB1016]

SENATOR WALLMAN: Thank you, Senator Cornett. Yes, now, in today's business environment, you know, we hire construction managers, and they hire subcontractors. So how can you, you know, keep track of all that? [LB1016]

MARTIN WALTER: How can keep track of all that? [LB1016]

SENATOR WALLMAN: Yeah. [LB1016]

MARTIN WALTER: Well, the subcontractors themselves would still be responsible for putting the workers on their own payroll, and the construction manager may have no employees of its own but anyone who's performing work on the project would normally be considered an employee of a subcontractor or a contractor on the project. [LB1016]

SENATOR WALLMAN: Thank you. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you very much. [LB1016]

MARTIN WALTER: Thank you. [LB1016]

SENATOR CORNETT: Next proponent? [LB1016]

BRICE NEIMAN: Good afternoon. My name is Brice Neiman, N-e-i-m-a-n. I am president of E&K Drywall of Omaha, and E&K Drywall in Lincoln. I am a proponent of LB1016. I employ approximately between 150-250 employees a year in the Nebraska area; do roughly around \$25 million worth of revenue for the state. Over the past couple of years I've had to go outside the Nebraska borders to obtain that level of revenue to keep our employees busy for these reasons. Independent contractors come in and bid, and make it very difficult to be competitive. It's very, as a company of our size, to be more operationally effective; to be able to make up for the differences in the health insurance we provide, the pension. But when it comes to the issue of taxes, and we get beat 20-30 percent. If you're familiar with construction, those margins don't exist in construction. So either you write a check to do the work or you find some other place to do it. In the last...just this year, we'll still try to do \$25 million out of my operating unit, but over just roughly half of that is going to be done in Nebraska. The other half is going to be done in Iowa and Kansas and the surrounding areas because it's not that the work isn't here, it's you can't be competitive if you're going to provide taxes, benefits, that

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type of source, in the speciality contract area at this time, and it's a difficult situation. Any questions? [LB1016]

SENATOR CORNETT: Senator Chambers. [LB1016]

SENATOR CHAMBERS: Just so that I'm clear, you're saying that competitors may be declaring employees to be subcontractors, then they don't have the expenses that you have by operating above board, and that's what keeps you from being as competitive as you would be otherwise. [LB1016]

BRICE NEIMAN: Very correct. [LB1016]

SENATOR CHAMBERS: Okay. I just wanted it to be clear. Thank you. [LB1016]

SENATOR CORNETT: Senator White. [LB1016]

SENATOR WHITE: I have heard complaints from contractors such as yourself in concrete flat work, roofing, drywalling, and a number of the other trades. Is this something that just your company is experiencing, or have you seen or are you aware of other companies that are having similar problems? [LB1016]

BRICE NEIMAN: No, I'm very aware of many companies, but I'm a drywall contractor, metal stud, acoustical ceilings, kind of what we see in here, but it's in concrete work, it's in carpentry, doors, hardware. It's in all that work. It makes it very difficult to provide that level of service to your employees when others utilize its independent classification and then have that competitive advantage not to include, we consider burden or taxes into your bid. And there's only so far you can reduce the margin before there is none. [LB1016]

SENATOR WHITE: Thank you. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you for your testimony. [LB1016]

BRICE NEIMAN: Thank you. [LB1016]

SENATOR CORNETT: Next proponent. Could I have a show of hands for the number of proponents left? Opponents? [LB1016]

JIM STEELE: (Exhibit 8) Hi, everybody. My name is Jim Steele. I'm the risk manager with Falewitch Construction company. Our company is headquartered in Omaha, Nebraska. We employ about 100 employees. We are in drywall finish, as well; interior systems, acoustical ceilings. I traveled to Lincoln to testify on behalf of our company

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and companies like ours, in favor of LB1016, proper employee classification. As you are aware, the misclassification of workers as independent contractors is a lucrative deception some employers are tempted to cast in order to avoid enormous labor expenses of federal and state taxes, training, unemployment, etcetera. When Falewitch Construction bids a job, about 60 percent our revenue is for labor costs. Obviously, when good corporate citizens, such as Falewitch Construction, compete with others willing to dishonestly misclassify their workers, we are cheated, the state and federal government are cheated, and ultimately the hardworking and honest citizens of our communities are also cheated. I've given you a...and I won't go through the details of it, but I've given you an outline of how those costs kind of break out for a job of ours. It was just over a quarter-million dollars that we estimated. About 25 percent of those costs were directly related to the expenses that misclassifying workers can save. But also in addition to the above costs, Falewitch Construction spends thousands of dollars every year for safety training. Business owners and managers who are willing to misclassify workers spend nothing on training, and they make no effort to enforce safety standards requirements. The more business these company win, the more dangerous the work environment becomes for employees and the general public who must work around them. As the safety director for our company, I see this in many stark and chilling ways every time I visit job sites where these type companies are doing business. It is bad enough that these unscrupulous companies win contracts by cheating, then increase the dangers of everyone working around them, but this problem is compounded by the likelihood that the misclassified workers carry no insurance to cover the costs of the injuries and property damage they cause when their luck runs out. When this happens, the honorable companies and taxpaying citizens are left holding the bag while the dishonest contractor illustrated above laugh all the way to the bank. LB1016 can only help the honest contractors in our state. [LB1016]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you. [LB1016]

SENATOR WHITE: Thanks for coming down, Jim. [LB1016]

JIM STEELE: You bet. [LB1016]

SENATOR CORNETT: Next proponent. [LB1016]

KELLY PINKHAM: (Exhibit 9, 10, and 11) Thank you, Chairwoman Cornett, other senators. Appreciate it. I want to introduce myself briefly just so you know who I am. My name is Kelly Pinkham. I'm a research associate. [LB1016]

SENATOR CORNETT: Sir, could you please spell your last name for the record? [LB1016]

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KELLY PINKHAM: Yes. It's spelled like the color pink, P-i-n-k, and then h-a-m. First name is Kelly. I am a research associate at the Department of Economics at the University of Missouri in Kansas City. I'm assistant director of a research center there called the Center for Full Employment and Price Stability. And the reason why I've been asked to come and speak here is that my colleagues and I have done some research on this topic of misclassification, and I'm here to share the results of that research. We prepared a summary for testimony, and testified in the state of Kansas. One of the handouts you're receiving is a summary of that testimony. We conducted a study on the state of Illinois, which received some attention. A few weeks ago the governor of Illinois, Governor Blagojevich, issued a press release in which our research was referenced, as being instrumental in the new law which took effect in January of this year. Because our research has been cited in front of U.S. congressional committees, I was asked to come testify, and I testified between joint hearings of two subcommittees of the U.S. Ways and Means Committee. That oral testimony is also in the handouts that you have. Our Illinois study is the third item that you're receiving right now. We are currently involved in the state of Iowa, gathering data to do a study on this same subject in Iowa. We have had a chance to speak with other researchers in other states. Harvard has been involved in similar studies on this problem of misclassification in the states of Maine and Massachusetts. We've worked with those researchers also in consultation with their methodologies and other kinds of things. I believe you have a sense of what misclassification is. It's taking a person who should be an employee, and instead classifying them as an independent contractor. It sounds very simple, however the ramifications are very profoundly negative. The overall trend in this practice is that it has been going up over time. A U.S. Department of Labor survey showed that simply between the years 2002-2003, the practice went up by as much as, I believe it was 42 percent in one year. Certain industries have more of a problem with this behavior than others. It's receiving increased national attention. You've heard a study referred to that was conducted recently in Minnesota, of another one in New York State. The study that was conducted in Minnesota was conducted by a state agency itself, the legislative auditor's office. So a lot of attention is being given to this problem of misclassification. It is not a minor issue. It's certainly not minor when the financial ramifications for state taxpayers and citizens are considered. No matter what you are told about the extent of a problem regarding misclassification, it is always going to understate the problem, because our studies are based on data and we can only quantify what we have data on. The practice of paying people in cash is not captured in the data, and exists outside of whatever numbers you hear. So the practice that you're being told about is being...you're hearing a...whatever number you're hearing, is going to be an understatement of the total dimensions of the problem. One of the real striking problems is the effect on what is already a hazardous workplace. Construction as a profession is a very hazardous profession. The laborers, alone, in this country, average more than a person dying every day on a job site in this country, and that's just one of the crafts, so to speak. And when you allow the practice of misclassification to enter into the construction industry, you are destabilizing an already unsafe, I should say hazardous,

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profession. Some of the things that go along with this that have been shown to be at play, a survey by the HUD Inspector General showed that employers who will violate employment law will also violate other laws. And in the case of a contractor who had a prevailing wage job in the University of Northwest Missouri in Maryville, Missouri. He had 150 employees. All 150 were found to be classified as independent contractors. That person also ended up hiring a subcontractor to handle the heating and ventilation system. They were building a dormitory which had a series of fire walls. When you have a fire wall and you run ductwork through that wall, you compromise the wall unless you use something called a fire damper. They found 250-plus fire dampers in the trash dumpster. The entire building had been compromised. Because the kinds of people who come into the playing field when you allow this kind of practice to happen and you allow them to break the rules, they're going to break other rules. And it encourages the unscrupulous competitor because they have an advantage and they're going to exploit that advantage. I have other examples I could give you but we don't have time for that. There are a number of numbers that I could share with you in terms of the extent of the problem. In the state of Illinois where we conducted our study, we found that 18 percent of employers practice misclassification. Now, the problem tends to be concentrated more in some employers than in others. We found that of those 18 percent, 30 percent of the employees were being misclassified by those 18 percent, so that it is not a randomly distributed activity. Those who tend to do it, do it as a...those who do it habitually and intentionally, that is a part of their way of doing business, and they will continue to do it until they are caught. However, the fines and the penalties frequently are not very severe. They're simply a paying of the back taxes once in awhile. Maybe a penalty may or may not be involved, and certainly no loss of license to operate or any other criminal penalties unless the size of the infraction is very severe, you may get something a little more involved. But virtually no criminal penalties exist despite the large numbers that are involved. We estimated that in the state of Illinois alone, in 2005, the loss to state incomes taxes was between \$208 million and \$249 million in state income tax alone, not even mentioning the lost money to the unemployment insurance funds, and also not even dealing with the work comp premiums that are not being paid but are being shifted over onto those employers who do play by the rules. So the ramifications here are multidimensional. You have the safety component that we talked about, deregulating a hazardous workplace. You have the tremendous costs to taxpayers from employers not paying their proper share. Those employers then win bids, get business, bring in unscrupulous other people who cut corners, and then honest business people are driven out of business or, as the testimony you've heard, they're forced to seek work in other places because they've been squeezed out of the market where they are currently operating. This is not a problem that only exists in Nebraska. As I said, we're doing a study in Iowa. A number of other states have done or are currently doing studies, and I am familiar with some of those researchers. We're looking forward to seeing some of their work. Normally I give about a 50-minute presentation on this topic. I've tried to cut this down. I think I've already gone over my five minutes, and I apologize. Should I stop at this point or...? [LB1016]

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SENATOR CORNETT: Yes, I think the committee is ready for you to stop. (Laugh) Are there any questions from the committee? Senator White. [LB1016]

SENATOR WHITE: One of the things you mentioned is unemployment insurance. Has there been any studies of what audits show in terms of what kind of economic impact this has on employers who have unemployment insurance, and does it matter what kind of study they do? [LB1016]

KELLY PINKHAM: The data from...the data we get in order to these studies comes from the United States Department of Labor, mandated 2 percent random audit of all unemployment insurance registered employers. It's a long statement, but every unemployment insurance registered employer is on a roll, and 2 percent of those people get audited every year, randomly. Now, there are...there's a special category for large employers and I'm not going to deal with all the exceptions, but that's the general practice. Each state will conduct random audits. Some states also conduct audits if you were to come in and apply for unemployment benefits but there was no record of your payroll filed with the state, some states then go out and do an audit. Other states simply contact the employer and don't do an audit. But a benefit-related audit always turn up additional people because we know the behavior is clustered; it's not random; so that they find other employees whenever they go out and do a benefit-related audit. Iowa does not do benefit-related audits. They do investigations that do not include an audit. Illinois does audits. They find a higher incidence. States that then take those employers who have violations or other kind of problems with their filings and create a separate category for targeted audits, find much higher levels of misclassification. When California... [LB1016]

SENATOR WHITE: It's like looking for cockroaches. [LB1016]

KELLY PINKHAM: It is. [LB1016]

SENATOR WHITE: If you look in the right place, you are going to... [LB1016]

KELLY PINKHAM: If you look in the right place, you're going to find it. California, when they switched from random to targeted audits, found not only 29 percent in construction were violating, but 65 percent of employers were violating. [LB1016]

SENATOR WHITE: Of employers? [LB1016]

KELLY PINKHAM: Sixty-five percent of the employers were violating... [LB1016]

SENATOR WHITE: In construction in California were violating? [LB1016]

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KELLY PINKHAM: In construction in California. In Massachusetts, the percentage, they found 38 percent of employers in construction were practicing misclassification. [LB1016]

SENATOR WHITE: How big of an economic disadvantage is it for an honest contractor that wants to obey the law, and he's competing against somebody who doesn't care? [LB1016]

KELLY PINKHAM: When you factor in all of the things that go along with employing someone, the employer's share of Social Security, the employer's share of Medicare, the other kinds of maybe voluntary benefits that would have otherwise have been there that they might have paid in order to be competitive to keep good employees, that they no longer pay, you also have the unemployment insurance that are not being paid, the work comp premiums are not being paid, state income taxes are not being paid, it can go anywhere from 15 percent up to over 35 percent, because mainly due to the work comp component. In construction, in particular, in Illinois we found the average work comp rate for all professions in Illinois was around 2...just under \$3. The way that's quote is, \$3 of work comp premium for \$100 of payroll. So for every \$100 of payroll, you pay a \$3 premium for work comp coverage. Some construction specialities such as concrete construction, that rate can go up to as high as over \$28 per \$100. So if you eliminate that \$28 work comp premium per every \$100 of payroll, you've eliminated a huge piece of your expense. And what you also find is, in industries like asbestos removal, there's a case in West Virginia where a company advertised itself as an asbestos removal firm. Well, the work comp rate for asbestos removal there is about \$48 per \$100. It's a huge extra cost. However, when you look at the payroll, they have zero employees. They outsource their asbestos removal to a general contracting firm which pays about \$8 to \$10 per \$100. It's interesting though, because both companies are owned by the same parent corporation, so this is another dodge that's being practiced that's out there. And I have the name of the company and I have the judgment of over \$800,000 that's they've been hit with for trying...for that very...they were caught. But that's just the company that's caught. That doesn't tell you about the ones that aren't caught. [LB1016]

SENATOR WHITE: Last I worked, I think, in a construction case, they said margins run between 5-10 percent on construction, and you're talking about a 38 percent advantage? [LB1016]

KELLY PINKHAM: That would...on the payroll, it would be about 38 percent, easy, particularly on the more hazardous professions of electrical, roofing, concrete, iron working, those kinds of things. [LB1016]

SENATOR WHITE: Thank you. [LB1016]

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KELLY PINKHAM: I hope that answers your question. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB1016]

KELLY PINKHAM: Thank you. [LB1016]

SENATOR CORNETT: Are there any further proponents? We'll move to opponents. [LB1016]

JAMES OVERCASH: Thank you, senators. My name is James Overcash. My last name is spelled O-v-e-r-c-a-s-h. I'm an attorney here today to speak with you on behalf of the Associated General Contractors of America, the Nebraska Building Chapter--those are general contractors that work in the state of Nebraska; on behalf of the National Electrical Contractors Association, the Nebraska Chapter--those are electrical contractors that employ union electricians in the state of Nebraska; the Mechanical Contractors Association of America, which are mechanical contractors that are, again, are union contractors in Nebraska. I'm here to oppose the current version of LB1016. I believe just as a background I want to make I state for the record that I believe all of our members are good businesses and spend significant time complying with laws and regulations. I also don't believe that they engage in miscategorization of independent contractors. I also want to explain what my viewpoints or concerns of the bill are. First of all, we have concerns about the test language in terms of determining who an independent contractor is and who an employee is, and that that language would also hopefully balance or track other tests that are out there with other organizations, for example, the Department of Labor or the Internal Revenue Service. We voice this concern. I believe there are individuals working on making those definitions track each other. Secondly, I'm concerned about the five-year debarment penalty that's contained in the bill. Our groups are supportive of legislation that have clear cause and consequence, but what I think from a debarment penalty in terms of debarment is a term in the industry or not being able to perform work for government organizations. So if there could be a violation of this bill, you're debarred or can't work for a government organization for five years. I do believe that our companies comply with what would be in the bill, but also from the standpoint of with the history of other regulation of any industry, including construction. An example I would use would be when there is sales tax on construction. I dealt with a lot of contractors who I believe spend a lot of time trying to comply, but there were mistakes that were made, and I think from the standpoint of debarment being the penalty that would come out of this bill is inappropriate. I also believe from the standpoint of debarment, if you look at the way it's used in the federal bidding, I think that people that are unscrupulous enough to use independent contractors as employees, will also work themselves around debarment items, either not form a new business when the first business is debarred, they'll go out and engage in other practices that are equally unscrupulous. Additionally, there is an affidavit requirement in the bill, and I think that the penalties associated with an affidavit

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filing that would be untrue would be appropriate in this...for any violation. I also believe...my third concern is I think the bill needs to be clearer in regards to responsibility for subcontractors and sub subcontractors, that the general contractor be responsible for their employees. But it is difficult, I might even argue impossible, for people to gauge as to what the sub subcontractor or the subcontractor is engaging in, in regard to their employment practices. Fourth, I'm concerned about the provisions regarding, I believe in the bill it's referred to as illegal immigrants, but undocumented workers, that having that a part of this undocumented, or in this classification bill. I think that there are already existing laws, including the procedures for I-9. I'm not saying that they're effective, but I also believe that immigration is currently, and immigration reform is currently on the national agenda. I think we can...there will be immigration reform in the...my, well, I guess my personal hope would be in the next year, but that would be more a political concept of myself, but over the next year or 18 months. I am concerned about putting an additional requirement in state law that may be in conflict or may create a procedure that would be different going forward. Lastly, I'm concerned about the remedy enforcement section, and I do believe that a private cause of action makes the remedy enforcement section too broad, and I'd ask that you consider that an agency of the state be responsible for enforcement. Finally, although I am here to testify against the bill or in opposition to the bill, I would like to thank Senator Lathrop in his efforts to have all the employees treated fairly and to level the playing field between businesses that practice sound business principles and those that don't. We, as an industry, appreciate the senator's efforts and will continue to dialogue on the issues I've discussed, as those other things they've discussed before. I want to thank you for the opportunity to testify. Yes, senator. [LB1016]

SENATOR CORNETT: I'm sorry. I couldn't hear you. What was your concerns with the affidavit process? [LB1016]

JAMES OVERCASH: I am concerned with the affidavit process from the standpoint of one of the penalty...the way I interpret the bill now, under the affidavit process, if you filed an affidavit that someone determined to be false, there is a five-year debarment period that would flow from that. [LB1016]

SENATOR CORNETT: Okay. [LB1016]

JAMES OVERCASH: I believe that debarment period and debarment at all is not an appropriate remedy for what may happen if someone would file a false affidavit. [LB1016]

SENATOR CORNETT: So...no, no, no, there's a difference between a false affidavit and a mistake. [LB1016]

JAMES OVERCASH: There is? [LB1016]

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SENATOR CORNETT: When you file an affidavit, it's to the best of your knowledge, am I correct? Which means, if someone...if you have a worker, an illegal worker that comes in and provides you with a fake Social Security card and fake documentation, and you fill out that affidavit, it says to the best of your knowledge you've been...this is a legal worker. So when you talk about a simple mistake, that wouldn't...this wouldn't be covered under a simple mistake. A simple mistake would be, you know, an accident. It's not an affidavit. If you swear an affidavit to the best of your knowledge, and it turns out you're wrong, then that doesn't apply either, and debarment doesn't apply. Am I correct? [LB1016]

JAMES OVERCASH: I believe you are correct. My concern is, is that when you...any time you go down the road of what is and isn't a mistake, whether the person that signed acted reasonably, I don't believe that all the...at least in my experience with dealing with affidavits and affidavits for administrative agencies, it's not always as clear as terms of what I think may be a simple mistake. The investigative officer or person with the administrative agency may not view it as a simple mistake, and... [LB1016]

SENATOR CORNETT: Well, even...oh, I'm sorry, go ahead. [LB1016]

JAMES OVERCASH: So from the standpoint of I don't believe it's as black and white in terms of a yes or no answer in that regard. [LB1016]

SENATOR CORNETT: But again, if an illegal person or undocumented worker provides you with information that turns out to be false, you're still not held responsible, even...in any way, under that, am I correct? If you do the steps that are appropriate to document... [LB1016]

JAMES OVERCASH: I believe that's generally correct, yes. [LB1016]

SENATOR CORNETT: Okay. Any further questions? Senator White. [LB1016]

SENATOR WHITE: Mr. Overcash, I have talked to a number of companies inside of the organizations that you represent, who strongly support this bill, but really don't want to come forward with their peers. How do you justify to the companies that are losing business, and I can tell you I will assure you I have talked to owners of them, against unscrupulous members of your organization. Why did you pick one side over the other, there, sir? [LB1016]

JAMES OVERCASH: Well, I think from the standpoint of, I guess, picking one side from the standpoint of the current version of the way LB1016 is written and the concerns I outlined in terms of we're not advocating that there isn't ever an issue with undocumented...I'm using the term undocumented workers but with misclassified

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workers, excuse me...I think from the standpoint of the public policy issue comes as to whether a procedure being set up for supplying affidavits will ultimately solve the issue. And I say won't address it but will solve it, and then how much from the standpoint of effort there is and potential downside there is to having that procedure fall through with. I'd... [LB1016]

SENATOR WHITE: Well, let's talk about false affidavits. I would suggest to you, sir, false affidavits and being debarred is the least of your problems because if I was a county attorney and I found somebody did a false affidavit, I'd prosecute them for perjury, and that's a felony. [LB1016]

JAMES OVERCASH: I'd agree. [LB1016]

SENATOR WHITE: You can get to be a guest of the state for a number of years. [LB1016]

JAMES OVERCASH: I would agree. [LB1016]

SENATOR WHITE: Okay. So why are we worried about debarment? [LB1016]

JAMES OVERCASH: Because I think from the standpoint of...I think that from the standpoint...you mean, from the debarment of it's such a small penalty compared to the felony, that why does anybody care? [LB1016]

SENATOR WHITE: No. I'm saying debarment, your people shouldn't be worried about debarment, because if they're violating this and filing false affidavits, they're already looking at perjury charges, if they were charged. [LB1016]

JAMES OVERCASH: I agree that it is a perjury charge, and I think that from the standpoint of a penalty attached to a bill, I think that's very significant and appropriate. [LB1016]

SENATOR WHITE: The federal government has used debarment as a civil consequence for this for many years, haven't they? [LB1016]

JAMES OVERCASH: I believe they have, yes. [LB1016]

SENATOR WHITE: Okay. So it's well-accepted, well-enforced, and it's worked. [LB1016]

JAMES OVERCASH: I think it's well-enforced. I think it becomes difficult in terms of debarment if from the standpoint of when you debar someone and an entity of who that entity is or isn't, when the people...and I guess from my standpoint, if I view the people

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that are acting unscrupulously are going to act unscrupulously all up and down the road. And so from the debarment standpoint, we're never actually going to get those people debarred because they're either going to change entity forms, they're going to have their...you know, wife have the entity or their daughter is going to the entity, and I think from the standpoint of they're always going to find another rock to hide under. And so from the standpoint of what I'm concerned about is, is that the debarment penalty and how that affidavit may be interpreted. And it would be only impacted against people who may have made a mistake or may have had not justification of the people who are really unscrupulous. That's my concern, Senator. [LB1016]

SENATOR WHITE: But debarment has been used successfully in gambling casino situations. The federal government has used it in construction situations with bid rigging. And it's...they've overcome those issues. They debar individuals. They debar anybody who's an individual from playing any kind of decision making or ownership role in any construction company. I mean, they've worked this system through, have they not? [LB1016]

JAMES OVERCASH: Well, I wouldn't be able to speak to casino gambling. I'm not familiar with that. From the standpoint of federal regulations, I do believe there are extensive regulations in regards to debarment. I think that has taken a period of time to go forward. The...I'm not saying it's not effective. Again, my concern is, is that when the type of people they're trying to debar and their unscrupulous nature, I probably, from the standpoint of judgment, come out with a standpoint of saying that I don't think that debarment is an appropriate penalty, nor do I think it probably is effective here. But that's just my personal view, Senator. [LB1016]

SENATOR WHITE: Okay. And then we also talked about your groups support laws of consequences, but you oppose independent enforcement. That seems inconsistent. Independent enforcement, private causes of actions, are very effective, historically, at enforcing these kind of laws, are they not? [LB1016]

JAMES OVERCASH: I do not know, your honor, I don't know. [LB1016]

SENATOR WHITE: All right. And then let's look at...you said that the problem is really being dealt with on the federal level through immigration reform. One of the curses is having...of life, is having a memory. I remember in 1980-83 when the Reagan administration was in place, we gave large amnesty, and they were going to control the illegal immigration, and that's how they got it through. And we're still waiting. Maybe it's time we take steps separately. They haven't...I mean, the idea that we're going to find help on the federal level doesn't seem to be borne out by history, does it? [LB1016]

JAMES OVERCASH: Probably in lots of different areas I would assume. [LB1016]

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SENATOR WHITE: But certainly that one. [LB1016]

JAMES OVERCASH: I would believe that it has been a period of years. [LB1016]

SENATOR WHITE: But if we work on definitions and on some of these other matters, you think your people would come around and be all right with this bill? [LB1016]

JAMES OVERCASH: Well, I think from the standpoint of if I...its project in terms of all right with the bill, just if you...and I'd...not that I...I absolutely believe that if I have members that have told they're supportive and they haven't told me, that I believe that to be true. I'm sure I have members that, from the standpoint of having to fill out additional paperwork, are probably never happy with that. So from the standpoint of to pinpoint exact language is or isn't and whether they would be, I'll say happy with it or not, I couldn't answer that. It would depend in terms of the devil is probably in the details in that regard, Senator. [LB1016]

SENATOR WHITE: I appreciate your courtesy. Thank you. [LB1016]

JAMES OVERCASH: Thank you, Senator. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB1016]

JAMES OVERCASH: Thank you. [LB1016]

SENATOR CORNETT: Next opponent. [LB1016]

KORBY GILBERTSON: (Exhibits 12 and 13) Madam Chair, 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. First, before I get into details on that, I also want to say that we received several other inquiries regarding LB1016 as drafted, from a number of other clients that had concerns as to if they hired computer repair people, cleaning staffs, whether or not captive insurance agents would be covered under this legislation. We decided not to testify on their behalf because of the understanding with Senator Lathrop that this bill was going to be limited. So I just wanted to make that part of the record. Let me first start by saying that the State Home Builders are very much in support of an initiative to assure that employees are correctly classified. For those of you who were last year, which is everyone, LB204 was introduced in an effort to assure that employees are correctly classified by contractors. It was the Contractor Registration Act. During the early discussions on that bill, there was a lot of concern among members of the home builders that that act would not be enforced by the Department of Labor. And it is my recollection, and I think...or hopefully most of you remember this same thing, that during those discussions the way that the fee structure was established, how the Department

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of Labor can now access the Attorney General as well as separate outside counsel. Those were all in an effort to make sure that employees are properly classified and that contractors are registered, and sets up a way for the Department of Labor to investigate contractors. They can be on job sites, request information. They have subpoena powers. This, in the eyes of the home builders, is a better way to enforce this type of law. And for that reason we have had conversations with Senator Lathrop about looking further into the Contractor Registration Act. If there are some changes that need to be made to that act, which, by the way, was just signed by the Governor last Thursday, that we would be very much open to doing that if it requires increases in fees, expanding the scope of that legislation, we would be in support of that, because we felt that going into LB204 we would be meeting, I think, what the intent of LB1016 is. And with that I'd be happy to answer any questions. I did bring copies of sections of the Contract Registration Act, and then also LB204 that had language that changed those other sections in the Contract Registration Act. [LB1016]

SENATOR CORNETT: Questions? Seeing none, thank you. [LB1016]

KORBY GILBERTSON: Thank you. [LB1016]

LARRY RUTH: Senator Cornett and members of the committee, my name is Larry Ruth, R-u-t-h. I'm appearing today on behalf of the Eastern Nebraska Development Council, who are home builders and developers in the Omaha area, and also the Associated General Contractors, Nebraska Chapter. Now, this is the AGC chapter that deals with heavy construction. Let me just read to you two comments that I've received from members when we sent this out to be reviewed. The first one is pretty terse. It says, personally, I support the concept of tightening the independent contract abuses. The second one, a little bit more wordy and uses a hackneyed phrase, but it summarizes our position on the goal of this bill. He says, the vast majority of home builders in the ENDC support the concept at the heart of LB1016, i.e., the contractors are obligated to treat, quote, statutory employees using IRS and case law tests as employees, which requires withholding the taxes, payment of employer-owned FICA, FUTA taxes, payment of employment security taxes, and coverage under the workers' compensation law. Law-abiding contractors would be at a competitive disadvantage with contractors which do not abide by the applicable laws, thus in addition to doing the right thing, the concept of the proposed legislation assists in keeping the playing field level. And I think those two organizations that I represent stand on those two positions. So you wonder why I'm appearing in opposition. We do have some problems with the bill as drafted, and I would like to talk with you about those. I would like to first comment on the comments by Korby Gilbertson. We too have been involved with the Contractor Registration Act. We see a lot of features of that act dealing with investigatory powers, other enforcement authority, penalties, definitions, which I think would be very, very helpful to your consideration here, and I would encourage you to look at the handout that she gave to you. And I think I supplied a separate one, Senator Lathrop, to you, last week, of all of the entire

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act. We would be very interested in working with you to see if we can integrate the terms of the Contractor Registration Act to meet the goals that you have. And we suggest that work could take place at your convenience. But here are a couple of problem areas. I think Jim Overcash talked about some of them. First of all, the test that is proposed would be somewhat different from the test from the Internal Revenue Code and from current workers' compensation law, as I understand it. The Internal Revenue Code has 20 factors to consider. And as I understand it, you put them all together for this consideration. Some may have heavier weight than others, but you don't have four or five that are dispositive of the matter; four or five that just plain say, you do this, this, this, and you are an independent contractor or an employee. And I think, Senator, the bill that you have in Section 3 just picks five of them out and selects them and says this disposes of what is really a very thorny issue and that is what is an independent contractor. So we run the risk of having various tests for independent contractor, and one of them would be in this bill, one of them would be in workers' compensation, one would be in the IRC. And that is difficult for an employer to build a business organization around, and to decide how that organization is going to work with its resources. A second concern that we have is that it does begin with the assumption that a person is an employee, and that he must then be proved differently than you are an independent contractor. And as I said, the test, or previous to this point, have been that you look at the factors, you mix them up, you decide which ones to apply, and you come to a conclusion rather than beginning with the notion that someone is an employee. So I suggest a rather neutral position with factors to be considered similar to IRS. Now, this would be difficult because you want a bright-line rule; that's what your bill does. It's a bright-line rule. You meet five things. You are an independent contractor, I believe. And I would suggest that if we want simplicity, that we do go to the Contractor Registration Act, an extremely easy and simply definition of what a contractor is. A contractor is someone who's contracting and is in the business of contracting, and I would suggest to you that the implications of that bill, which is that you then carry workers' compensation coverage, or show good evidence of why you're not carrying workers' compensation coverage, would not be...would be something that would stop the abuses of the misclassification, because someone would not come forward and say they were a contractor unless they were prepared, in fact, to provide workers' compensation. Now, a third comment deals with class actions and private cause of action to enforce. We would suggest the proper vehicle for enforcement is a well-funded Department of Labor, in other words, a state agency given the opportunity to enforce state law. And once again, this would be under the model of the Contractor Registration Act. And under the model of the Contractor Registration Act, the DOL responds to complaints from anybody, as I can best understand it. Complaints of an employee would be appropriate; complaints of a competitor would be appropriate. So we don't really have the problems that you have, I think, in the bill with dealing with who an interested party is. It's already stated in the Contractor Registration Act that anybody basically can bring forth a complaint. Then the complaint is, in fact, investigated by the Department of Labor. And finally, on the question of debarment, and interesting word. I thought at first it was disbarment,

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and...but it's "de-barment." We believe in very simply that the penalties should be reasonable with graduated consequences and the degree of violation factored in. And in that particular case, we believe debarment should be reserved only extraordinarily egregious conduct. Now with that much said, we stand ready to participate in this ongoing inquiry, and what is probably appropriate corrective action, but I think the bottom line is we would like to see the Contractor Registration Act given an opportunity to work. And you know of our general support of that because we did not object to that being extended statewide, and we think that that was a good decision in LB204. [LB1016]

SENATOR CORNETT: Any questions from the committee? Senator White. [LB1016]

SENATOR WHITE: Mr. Ruth, if, for example, the law with Senator Lathrop working with it, provided that there was a presumption you're an employee, but if you show up and establish you have a valid in-place workers' compensation policy covering yourself and anybody else working with you, and could show tax ID numbers and you're generally in compliance with those kind of forms, would that...and once you did that you were deemed to have complied, would that help? [LB1016]

LARRY RUTH: Very, very good question. It's precisely the question that I asked my client. [LB1016]

SENATOR WHITE: Any time I can follow your footsteps, I know I'm on solid ground. [LB1016]

LARRY RUTH: Oh, thank you very much, Senator. Very interesting question and it's one that I think would be under active consideration. Certainly, certainly, the presence of workers' compensation coverage should have a major, a major thing to do with whether or not you're an independent contractor or employee, it seems to me. And that's what is accomplished with the Contractor Registration Act. [LB1016]

SENATOR WHITE: Thank you. [LB1016]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB1016]

LARRY RUTH: Thank you very much, Senator Lathrop. (Laughter) [LB1016]

SENATOR LATHROP: I guess...you know what? I guess I do. I had a... [LB1016]

SENATOR CORNETT: Oh, sorry, Senator Lathrop. I didn't think you did. [LB1016]

SENATOR LATHROP: Well, I guess I do, after that statement, because there's more to it than work comp. You can be a Nebraska statutory employer if you're the general

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contractor, and you hire a bunch of subs, and one of them doesn't have coverage, you're on the line as the employer in Nebraska for work comp. So maybe you have work comp coverage just to kind of cover your backside. That doesn't necessarily mean that you're doing withholding for the people that ought to be properly classified as employees. [LB1016]

LARRY RUTH: And that is why I was reluctant and unwilling to say it should be dispositive of the issue. No, I think we need to look at more than that, because with the unemployment...with independent contractor status, you're looking at something a little bit different. You're looking at the direction and control of the employer or the employee, and specifically I think the terms is the reason and means by which you get to the achieved result. It's a different animal, but it's very, very significant. [LB1016]

SENATOR CORNETT: Senator White. [LB1016]

SENATOR WHITE: You could also have taxpayer ID numbers and provide that the contractor wants to be relieved of this obligation, contacts the Department of Revenue, Nebraska Department of Revenue, and establishes this person is paying appropriate taxes or seems to be, in good faith. And if they have a history...or they say we have a history of never receiving payment from, you're not off the hook. [LB1016]

LARRY RUTH: Well, certainly if you're paying...if you're paying that to the Department of Revenue, I think that disposes of the issue, doesn't it? Thank you very much [LB1016]

SENATOR CORNETT: Any further testifiers in opposition? Are there any testifiers in the neutral capacity? [LB1016]

ROBERT J. HALLSTROM: 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 in a neutral capacity. For the record, NFIB ballots its membership each year on various issues, to determine their positions to bring forward in the Legislature, and we just so happened to ask our members this past year whether or not they thought it was appropriate for employers to be fined for misclassifying employees. Interestingly enough, we did not get a majority vote on either side of that question. I think from the comments that we received, although I wouldn't want to speculate as to exactly what they mean, some of them are probably a general aversion to employers being fined for anything, but we also had a quite a few comments on the issues of the uncertainty of the multiplicity of tests that are out there for determining independent contractor status, whether it be through the Internal Revenue Service...or the Internal Revenue Code for unemployment insurance purposes, workers' comp, etcetera, so I would rather imagine that that may have been at the heart of some of those responses. However, I think there's a good number of our people who would

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suggest, as witnesses have today, that the unfair competitive advantages that result from misclassifying employees is something that should be addressed in some reasonable fashion. Some of the issues that I'll raise today I guess we have pushed back from the table but we haven't stepped away and walked away from the discussion. We've been in meetings with Senator Lathrop, we've talked to Senator Lathrop and his staff about some of the issues, the enforcement mechanism that's in the bill currently, particularly as it relates to what we believe is class action authority that we would prefer not be in the bill. And so we would hope that those types of issues will be addressed. I think some clarification on what exactly is the test for misclassifying an employer as an independent contractors, but certainly pledge our position to work with Senator Lathrop and the committee in those regards. [LB1016]

SENATOR CORNETT: Any questions? Seeing none, thank you. [LB1016]

ROBERT J. HALLSTROM: Thank you. [LB1016]

RON SEDLACEK: (Exhibit 16) Good afternoon, Chairman Cornett 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'm here representing today the Nebraska Chamber of Commerce, as well as the Greater Omaha Chamber of Commerce, in a neutral capacity. On the part of the state chamber, I can say that we did review the provisions of LB1016 through our labor relations council, which...the meeting was held as recently as this last Friday. And many of the points that were made, both by proponents as well as opponents, and now by Mr. Hallstrom in a neutral capacity, are very similar to those that were expressed by our membership. I think that they...I know that they are certainly happy to and willing to work with the introducer of the legislation, Senator Lathrop, as well as this committee, in order to formulate a particular consensus. Even though the bill may be narrowed down to a contractor bill only--right now it applies across the board--we would still be interested and would like to participate in that regard. Probably what has been mentioned most is guidelines or IRS regulations in some of the legislation that's been enacted in Minnesota, as well as New Jersey. The confusion seems to be, of course, that we have a federal common law, state common law. We have the Fair Labor Standards Act. They have a seven-point test. We have workers' compensation test, the ABC test. We've got the unemployment compensation test. The Internal Revenue Service has the 20-factor formula, however the IRS is not allowed...they are prohibited, as well as Treasury, from issuing guidelines for employers to implement these tests. They postpone...they had postponed, over the years, trying to get some guidance from Congress. And it wasn't until about ten years ago that it has been made permanent now. So Congress is also struggling with the issue. Then you have the tests under federal ERISA laws for what is an independent contractor or an employee. And I'm not sure if I'm missing any, but I know there are also some Department of Labor rules. I do have one more copy. I wish I would have brought more and I'll be happy to make copies for the committee. But as recently as May 8 of last year, the Subcommittee on Select

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Revenue Measures, as well as the Subcommittee on Income Security and Family Support just issued a legal background paper on the problem of nonuniformity in this particular area. And I think that's one of the areas where our employers are saying, yes, we would love to have something a little bit more bright line, black and white, consistent. For example, we had the professor here and we also had others in the proponent column testify in regard to what happens when you misclassify, and that can affect employee adversely when it comes to pension benefits and so forth. However, by the same token, there are contractors that...there are employees who argue that they are independent contractors so that they can have a self-funded plan and not be limited by the employer plan. So they're in an area where they can contribute, actually under ERISA, up to \$45,000 a year. They can't do that under an employer-provided plan. So it does cut both ways in that particular regard. Nonetheless, I'm not trying to complicate the issues, but rather that I would, on behalf of the state chamber and I'm sure on behalf of the Greater Omaha Chamber of Commerce, offer our assistance and try to formulate legislation that might give us a little bit better guidance in this area. With that I'd be happy to entertain any questions. [LB1016]

SENATOR CORNETT: Senator White. [LB1016]

SENATOR WHITE: Thanks for your testimony. What I really appreciate is, it is complicated. Employers do need to be able to obey the law, those who want to, and it needs to be as simple and easily administered as possible. I also really appreciate your candor that number of employers recognize this as a problem, and see it as an abuse that hurts them, the law-abiding ones. [LB1016]

RON SEDLACEK: And we have heard from those employers too. [LB1016]

SENATOR WHITE: Thank you. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you, Ron. Next testifier in a neutral capacity. [LB1016]

LAURA PETERSON: (Exhibit 17) Senator Cornett, members of the Business and Labor Committee, my name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services and I appear today in a neutral capacity on the bill in order to seek clarification of a number of provisions in the bill. For the sake of time, I'm going to just touch on a few of them, but I've distributed my written testimony that has a list of all of the things that we're seeking clarification on. The first one I just want to highlight is Section 5(1). It provides for a right to recover, with interest, the tax the employer would have paid under the Employment Security Law, based on the employer's combined tax rate. However, most state agencies do not pay such a tax, instead paying only upon an actual loss. So it's unclear for us if this section would require the state to pay if an individual was determined to be misclassified even though

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the state generally does not pay in, and if so, what tax rate then would be used for the state if we had to pay in; whether it would be based on the few state agencies that do pay in now or whether it would be calculated in some other manner such as determining the rate the state would pay if it were paying in. So we're simply seeking clarification of that. The other one I want to highlight for you is, Section 8 requires all government entities, the state, and all political subdivisions to collect affidavits from all contractors and subcontractors relating to classification of individuals to do work under the contract, the collection of I-9 forms, and the opinion of the contractor and subcontractor regarding the legal status of the individuals who will perform the work. In most contracts the state is currently engaged in, we engage directly with the contractor. We may require the contractor to address certain issues with the subcontractor. This affidavit collection requirement would require the state to engage not just with prime contractors but also with the numerous subcontractors working on our contracts. Currently, the department does not work directly with the subcontractors; rather, our work is carried out through communications and requirements on the prime contractor. Those are the two I particularly wanted to highlight, and I'd be happy to answer questions on those or any of the others. [LB1016]

SENATOR CORNETT: Senator White. [LB1016]

SENATOR WHITE: Let's take the last one--and thank you. It's routine that an owner will require contractors to obtain all kinds of documentation before allowing subcontractors on the job site. For example, bonding. That's not unusual. Work comp insurance; not unusual. So this requirement that you would have to deal with all these subcontractors isn't really unusual. I mean, you're doing it now on one level or another, on many different areas. [LB1016]

LAURA PETERSON: Yeah. I think the difference that we see is it appears to us, that under the bill, we would be required to collect the information directly from the subcontractor, and maintain it within, like the state or whoever the contracting agency is. What we're doing now is, we require the information for the contractor, but we require the contractor to retain the information that's collected from the subcontractors. We don't engage directly with the subcontractors. So I think what we would ask is to go back to we maintain the information on the contractor, and we're allowed to require the contractor to obtain the information from the subcontractor and retain it at the contractor level. [LB1016]

SENATOR WHITE: What happens if the contractor isn't doing it? [LB1016]

LAURA PETERSON: Well, presumably there would be an allowance for an audit, and they be failing under their contract if they were doing that. It would be like anything else, for example, insurance. We require a contractor to have a certain level of insurance, and then we would require the contractor to require the subcontractor to have that. And

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usually the provision says, and the state may request copies of the certificate of insurance for the subcontractor whenever we want to. If we requested it and the contractor didn't have it, then presumably there's a contract breach. [LB1016]

SENATOR WHITE: When you really think about it, how onerous is it for the state, which will collect a lot of taxes if this abuse is stopped, simply to ask all subcontractors allowed on the job shall deliver an affidavit to the contractor and the contractor shall certify they've got the affidavit and forward a copy to us? And how tough is that really? [LB1016]

LAURA PETERSON: I don't know that we're saying that it's tough, but certainly is unlike any of the other things that we require of subcontractors. [LB1016]

SENATOR WHITE: Yes, but if the testimony is correct, the revenue this state is losing, because of this abuse, is staggering; and it seems to me to be hardly an undue burden, given what the potential benefits for the state would be. [LB1016]

LAURA PETERSON: But..and I...yeah. I guess I don't know about that. [LB1016]

SENATOR WHITE: Thank you. [LB1016]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB1016]

JIM OTTO: Senator Cornett and members of the committee, my name is Jim Otto; the last name is spelled O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association, and I am here to testify in a neutral capacity on LB1016 for both organizations. I'll be very brief, especially since Senator...the way we understand it, Senator Lathrop has...may be limiting this only to construction. You may wonder why I'm here, but as it's presently written it would affect the Restaurant Association and the Retail Federation. So I guess the first thing I want to say is, we are completely in agreement of proper classification of employees. We have no argument with that. We actually commend Senator Lathrop's efforts here. Our primary or at least major concern is that we think enforcement should be with the Department of Labor. As Senator White just stated, there's going to be significant income to the state if these abuses are stopped, and that significant income should more than justify the money, if it's necessary with the Department of Labor, to enforce it instead of the private cause of action. The biggest concern we have is the private cause of action to enforce the effort. And it seems to us that...I know that this isn't easy to do with the present situation, but it seems like this would be consistent with the Governor's immigration policy, and that maybe he would be receptive to that, but maybe not. With that I'll be quiet. [LB1016]

SENATOR CORNETT: Senator White. [LB1016]

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SENATOR WHITE: Thank you, Jim. I think that's a lovely idea and you should suggest it to the Governor. (Laughter) The other thing I would like to point out is that--and this is something Senator Lathrop, I'm sure, is familiar with--we, for example, have consumer protection acts in this state that frequently don't give individuals the right to get injunctions or take other steps, and they are almost never enforced. And as a result, Nebraskans suffer far more from fraudulent activities than other states do. So I guess I would submit to you, I understand your organizations' concerns and I do appreciate that, but after a quarter century in the law I have seen too many times when good laws are passed but nobody enforces them. And given that, if you can think of some way we can be assured of vigorous enforcement absent a private cause of action, I'd sure listen, personally, though I haven't seen anything in 25 years, but what the heck, maybe you'll find some. [LB1016]

JIM OTTO: I don't have an answer for you, Senator. [LB1016]

SENATOR WHITE: Thank you. [LB1016]

JIM OTTO: Thank you. [LB1016]

SENATOR CORNETT: Further questions? Seeing none, thank you. Is there anyone else left in the neutral capacity? Seeing none, Senator Lathrop. [LB1016]

SENATOR LATHROP: Just briefly. Great hearing. I think we've...I appreciate that our friend came up from Kansas City and gave us some real good evidence on what the problem is, how much it's costing us at the state of Nebraska, the revenue we're losing out on, and how it affects the honest contractor in their attempts to be competitive in the bidding process. It is a growing problem and something that we need to address with this bill. I have made an offer to the folks behind me to work with them on the concerns. I don't want to work my way through their concerns to the point where the bill doesn't do what I've set out to do. Nevertheless, if these groups have concerns, I'd like to try to address them. What I don't want to do is have people not show up and not try to work on it, and then after we've compromised with everybody who has a stake in the matter, have them come in at the last minute and try to kill it. So I won't look kindly on that, as probably none of us would. But I look forward to working with these folks and coming up with something that will stop this practice. [LB1016]

SENATOR CORNETT: Any questions? Seeing none, thank you, Senator Lathrop. [LB1016]

SENATOR LATHROP: Thank you. [LB1016]

SENATOR CORNETT: That closes the hearings for today. Thank you. [LB1016]

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Disposition of Bills:

LB948 - Advanced to General File, as amended.  
LB1016 - Advanced to General File, as amended.  
LB1082 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk