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Health and Human Services Committee
February 27, 2008

[LB742 LB1120 LB1163 LB1173]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, February 27, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1163, LB1173, LB742, and LB1120. Senators present: Joel Johnson, Chairperson; Tim Gay, Vice Chairperson; Philip Erdman; Tom Hansen; Gwen Howard; Dave Pankonin; and Arnie Stuthman. Senators absent: None.

SENATOR JOHNSON: Have a seat and let's go ahead and get started this afternoon. Well, good afternoon, everyone. I'm Senator Joel Johnson, and this is the Health and Human Services Committee. We don't have all of our senators with us, and you will notice that people do come and go because they have duties at other hearings that are going on at the same time. But let me introduce people that we do have around the table here today. First of all, to my right is Tim Gay, who is our Vice Chair; Jeff Santema is our legal counsel for the committee; Erin Mack is our clerk; just beyond her with the short haircut is Senator Stuthman; Senator Hansen next; and to my far left is Senator Gwen Howard. Now one of the things, for some of you people that are new here, these hearings are transcribed and so we do ask that you turn off your cell phones, that type of thing, now. There's been a few people that haven't done that in the past, and they haven't been seen since. (Laughter) And then one other just little thing that you might not think of is, the table here has a glass top, and if you're one of these people that has a nervous habit of tapping your pen, that gets us in trouble with the person that types up the minutes of the hearing, as well. Now, what we do is we have a senator that presents the bill, then we'll have proponent testimony, opponent testimony, and then neutral, in that order. One of the things that I would like you to do is this, is that at several of the committee hearings, they actually have a light system where a red light goes on at five minutes and you're done. We haven't done that, because in this type of committee, there are times when it is reasonable that one of the people may take a longer period of time and so on. But if we have lots of proponents and so on, say, for the first bill or two, lots of opponents and so on, and you do use a lot of time, what we end up then is late in the afternoon a tired committee, people may have come several hundred miles for their bill, and just because it's last it shouldn't be treated least. So really, what we're asking for you to do is be kind to the people that follow you, be succinct, and I will tell you this: If you get up and start reading a statement and it goes much beyond one page, you will not be well received. Now with that, Jeff, anything I've forgotten?

JEFF SANTEMA: No, sir.

SENATOR JOHNSON: I can't think of anything, either. Let's go ahead and start with the first bill. Senator Lautenbaugh, welcome, and this is LB1163. [LB1163]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, members of the committee.

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LB1163...oh, sorry. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h, very first witness and I break the rule. LB1163 is a very simple bill. It would require businesses providing tanning booth services to provide warnings to customers about the dangers of tanning. The bill would require the presence of a mandated warning in every tanning booth operation stating the following: Danger--ultraviolet radiation. Frequent use or overexposure leads to accumulation of ultraviolet radiation which may cause skin cancers such as malignant melanoma, squamous cell carcinoma or basal cell carcinoma, eye injury or other skin damage or injury, including premature aging of the skin or allergic reactions. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using a sun lamp or tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight. Additionally, LB1163 would require consumers engaging in tanning to sign a copy of a mandated warning, acknowledging they have read it and have complete knowledge of what they are exposing themselves to. It would lay out a penalty of a Class III misdemeanor should a business be found to be in violation of the law. I'd be happy to answer any questions you might have regarding the bill. I know a witness following me is much more up to speed and much more informed on the issue than I am, but I'd be happy to take any questions the committee might have. [LB1163]

SENATOR JOHNSON: Okay. Have any...yes, Senator Gay. [LB1163]

SENATOR GAY: Class III misdemeanor, what is that penalty? [LB1163]

SENATOR LAUTENBAUGH: A Class III misdemeanor--as I sit here, I can't recall the specific penalty for that. [LB1163]

SENATOR JOHNSON: It's the lower level, is it not? [LB1163]

SENATOR LAUTENBAUGH: Yes, exactly. [LB1163]

SENATOR GAY: Is it fines? [LB1163]

SENATOR LAUTENBAUGH: Yes. I do civil law, so. (Laugh) From my own knowledge, I'm drawing a blank on the specific penalty. [LB1163]

SENATOR JOHNSON: Senator, it's sure a lot easier sitting on this side of the table than it is out there. (Laughter) [LB1163]

SENATOR LAUTENBAUGH: You know, I've noticed that a time or two, Senator. Thank you. Is there a question I can answer? [LB1163]

SENATOR JOHNSON: I think Senator Howard has got one over there or she's at least waving hello, so. [LB1163]

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SENATOR HOWARD: Thank you, Chairman Johnson. That could be, too. Senator Lautenbaugh, yesterday I was in your committee actually and had a bill in...they had a constant question, and that is how do we enforce it? So I thought I'd give the same question to you, and give you the opportunity to explain enforcement. I continually learn more about that area, so what would be the plan for enforcement on this particular bill? [LB1163]

SENATOR LAUTENBAUGH: Well, we could do a variety of approaches. We could go from inspections to customer complaints. I mean, I recall the bill you're speaking of, and we did have the concern as to how would anyone ever get caught, basically. [LB1163]

SENATOR HOWARD: Right. [LB1163]

SENATOR LAUTENBAUGH: That is a concern here, and honestly, there are different routes we could go with the actual enforcement mechanism, as far as what costs...what would be cost effective and what wouldn't. So we'd surely be happy to work with any suggestions anyone of the committee might have regarding what would be the best avenue to go about that. [LB1163]

SENATOR HOWARD: That's a good answer. I have to remember that. Thank you. [LB1163]

SENATOR JOHNSON: Okay. All right. Any other questions? Senator, thank you. [LB1163]

SENATOR LAUTENBAUGH: Thank you, and I will waive closing. [LB1163]

SENATOR JOHNSON: Okay, great. We have had Senator Pankonin and Senator Phil Erdman join us, as well. All right, how many proponents do we have? One, two. Opponents? One, two, three, four. Okay. Neutral? Okay. Sir, come on up. [LB1163]

SCOTT YAHNKE: Senator Johnson, members of the Health and Human Services Committee, I heard your admonishment about trying to be brief. What I'll try to do is read faster, okay? [LB1163]

SENATOR JOHNSON: Actually, sir, if you're the only one or two... [LB1163]

SCOTT YAHNKE: I don't think I...I'm going to... [LB1163]

SENATOR JOHNSON: ...you actually get a little bit longer. [LB1163]

SCOTT YAHNKE: Okay. Well then, I'll pace myself... [LB1163]

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SENATOR JOHNSON: What we don't want is ten people saying the same thing.
[LB1163]

SCOTT YAHNKE: ...and try to sound a little friendlier in my tone. I'm not a physician. I'm a retired Omaha Public School teacher of 33 years. I taught at Beveridge Magnet Middle School all my career, down the hill from Omaha Burke, and...yes, sir? [LB1163]

SENATOR JOHNSON: Our committee clerk said that you've got to give us your name. You cannot remain incognito. (Laughter) [LB1163]

SCOTT YAHNKE: Oh, Scott Yahnke. I'm just following Senator Lautenbaugh's example. (Laughter) I'm sorry. I'm also a Scott--Scott Yahnke, Y-a-h-n-k-e. [LB1163]

SENATOR JOHNSON: Thank you. [LB1163]

SCOTT YAHNKE: You betcha. [LB1163]

SENATOR JOHNSON: Go ahead, excuse me. [LB1163]

SCOTT YAHNKE: (Exhibit 1) All right. And I currently do real estate work, CBSHOME Real Estate in Omaha. I have four sons; my wife LeAnn (phonetic), my youngest son Alex (phonetic) is here. This is a civics lesson for him. I taught American History and the Constitution for a third of a century, so can't be his eighth grade teacher this year, having retired from OPS, but I think a young man's experience in things like this should be something of value to him. I'm sure it will be, if not now, then maybe later. The Nebraska Dermatology Society, as I understand it, about 20 physicians. I know Senator Johnson or should I say Dr. Johnson as a retired surgeon, I know that you're probably well aware of the existence of the dermatology society. David Watts is president currently of that society, and he and Dr. Anthony Griess are partners in their practice in treating patients for issues with skin cancer, and that's basically how I met Dr. Watts, and I now am being treated by Dr. Griess, as needed. And I am not a physician, but since those doctors are busy treating people and their schedules were crammed...and I apologize, because this hearing actually was supposed to occur, I think, a week ago, and at Dr. Watts's request, Senator Lautenbaugh asked that it be changed, and here you were gracious enough to change it, and Dr. Watts couldn't get away from his practice. They're that busy with patients. It doesn't mean that they're not passionately interested in seeing this bill advanced. So I'll go to my scripted remarks now, if I may. Senator Johnson and your colleagues on the Health and Human Services Committee, thank you for the opportunity to speak to you today in support of LB1163. I'm offering my testimony today in honor of my father, who died of cancer, and also on behalf of the several thousand eighth graders I was privileged to work with in my 33-year teaching career with the Omaha Public Schools. This bill is the result of the sincere intentions

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and honorable efforts of numerous parties. First I want to acknowledge Senator Scott Lautenbaugh for his sponsorship of this bill. I also want to point out that this bill has the full support of the Nebraska Dermatology Society. Its current president, Dr. David Watts, could not be here today because he's performing his higher calling of treating patients who have skin cancer. In fact, Dr. Watts is one of the physicians whose diligence and skills have literally saved my life up to this point in time. This is because I'm a cancer survivor. I did not get skin cancer from using tanning facilities. My skin cancers have been the result of the accumulation of ultraviolet radiation over the course of my lifetime. I wish to make this point in order to ask you to focus your collective thinking on putting into place a simple yet effective means of causing Nebraskans, particularly minor females, to perhaps reconsider their desire to use tanning facilities in order to get what the tanning facility proprietors like to call a "base tan" that allegedly will protect a person from getting a sunburn while later on a trip or to use a tanning device to get Vitamin D during the winter or lastly, to use tanning devices in order to "keep that healthy glow." As the dermatologists like to say, there is no such thing as a healthy tan. Senators, there is no healthy glow in the doctor's office when a person has to have skin tissue excised, inspected microscopically, and perhaps further excised in order to deal with the damage caused by the accumulation of UV radiation. In addition, the costs of time, money, and suffering from the accumulation of UV radiation--if a person could only realize this at a young age--are such that I truly believe that if folks knew what the future held for them as a result of UV accumulation, they would most likely not add to Mother Nature's UV radiation by using tanning facilities. To borrow from Dr. Watts's January 7, 2008, letter to Senator Johnson in support of LB1163, most skin damage from UV radiation occurs prior to age 18, and melanoma, the most serious form of skin cancer, has increased at an alarming rate. Further, Dr. Watts points out that the Skin Cancer Foundation has survey information that shows that adolescent girls are increasingly using tanning equipment. As Dr. Watts's letter also states, childhood UV radiation exposure is so strongly linked to melanoma, the honorable members of the Health and Human Services Committee have an opportunity to address a clear and present danger to the health and safety of Nebraska citizens, especially those citizens who have not yet lived long enough to have, like perhaps many of us mature adults, come to regret numerous choices we made or perhaps were not truly aware that we were making when we were quite young. The wording of the warning sign specified in LB1163, which I am now displaying to you, is what I believe will itself cause potential users of tanning equipment to reconsider. This is supposed to be placed within three feet of any tanning equipment. One of the chief aims of this bill is to cause parents or guardians of minors to stop to consider the specific ways in which tanning equipment can lead to serious health issues way beyond premature skin aging. If you at the distance from which I am exhibiting this warning sign facsimile can quite easily take note of its urgent intent, then I hope you will agree with me that this sign is essential to LB1163's potential for deterring the use of tanning equipment. Requiring tanning facilities' proprietors to acquire signed consent forms for the use of tanning equipment and maintain copies of these forms for ten years is what I feel is another essential component of LB1163. In addition, users of

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tanning equipment shall receive a copy of this consent form so that they may keep it in their personal records in order to allow them to retrieve it, should they wish to for any purpose. When I ran for the Legislature in 2006, I had to undergo surgery and follow-up treatment for melanoma on the left side of my face. While I had previously had to endure treatment for several basal cell carcinomas on my face as well as other precancerous and benign skin conditions as a result of UV radiation accumulation, nothing gets one's attention like hearing from one's physician that he has melanoma. As I was seeking the District 18 seat in the Legislature during the primary season in 2006, my face, while undergoing follow-up immunotherapeutic treatment, became excessively scabbed and obviously not as attractive as perhaps you see me today. (Laugh) Joke. I decided to forego door-to-door campaigning and received 30 percent of the primary vote. I did, however, earn 45 percent of the November vote, including winning Douglas County. I mention this experience for two reasons. One is that my experience with melanoma caused me to lose an opportunity I was pursuing with passion--a life opportunity. Another reason is that had I been elected to the Legislature in 2006, I would have introduced this bill as my first one and as a priority bill. Again, I have Senator Lautenbaugh to thank for doing this on my behalf, and I congratulate him on being named to the District 18 vacancy created by the resignation of Senator Mines, one year following Senator Mines's reelection upon defeating me. While I was dealing with melanoma and follow-up treatment, I happened to stop for lunch next door to a salon that had tanning equipment. It being spring and prom season, I watched in ever-growing alarm as minor females, one after the other, visited the salon and came out a short while later. I could easily see that their skin color had reddened. I began to formulate what I could do to contribute to the health and safety of Nebraska's citizens and particularly its young ones. LB1163 is the direct result of those efforts. Members of the Health and Human Services Committee, I humbly ask you to approve LB1163 in the form you see it today and send it to the floor of the Legislature where it can have its real "Day in the Sun"--pun intended. My father spent 35 years as a life and health insurance salesman. His personal philosophy was that he would not sell something to someone who didn't need it. People just do not need the UV radiation sold by tanning equipment and facilities. Tanning facilities in Nebraska currently are unregulated and pose a clear and avoidable risk to users, many of them minors. I hope that it will be relatively easy for you to decide to do something that will work in the interests of the health and safety of Nebraska's citizens. Thank you. I'll be happy to answer any questions to the best of my ability. [LB1163]

SENATOR JOHNSON: Well, thank you. Any questions? Senator Stuthman. [LB1163]

SENATOR STUTHMAN: Thank you, Senator Johnson. Scott, thank you for your testimony. One thing I would like to have some clarification or some information on, you stated when you held up your warning sign that it had to be placed within three feet of a tanning booth or three feet of a tanning... [LB1163]

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SCOTT YAHNKE: The bill, I believe, as it is specifies within three feet of any tanning equipment. [LB1163]

SENATOR STUTHMAN: Is that going to be possible? [LB1163]

SCOTT YAHNKE: To have this posted? [LB1163]

SENATOR STUTHMAN: No, to be within that three feet. [LB1163]

SCOTT YAHNKE: To be within three feet? It's going to be a requirement of the bill; therefore, if it becomes the law, Senator, I would assume that proprietors of tanning salons would have to find a way to make that happen. [LB1163]

SENATOR JOHNSON: Senator, are you kind of asking is it a practical place to put it? Would that be more... [LB1163]

SENATOR STUTHMAN: Yes, yes. I mean...and I've never been in one of these tanning salons. [LB1163]

SCOTT YAHNKE: I haven't, either. [LB1163]

SENATOR STUTHMAN: And I just don't know, where there's tanning equipment and a wall...is that right against a wall where you could put it on a wall or does it have to hang there free by itself? [LB1163]

SCOTT YAHNKE: I would suppose it could be put up on a display so it would be, you know, within that zone or it could be put up...this is the actual sign. This is actually what will be required in its size font, wording, and so on, and this could be placed on a piece of tanning equipment. It could be put up on a wall. As long as it's within three feet, I'm assuming it could be done. And I also wanted to say, Senator, you remind me of something that Dr. Watts and Dr. Griess wanted to make a point about the dermatology society. They see this LB1163...they're advocating it more as an educational device than a punitive one. [LB1163]

SENATOR STUTHMAN: Okay, thank you. [LB1163]

SCOTT YAHNKE: Thank you. [LB1163]

SENATOR JOHNSON: Other questions? Tom. [LB1163]

SENATOR HANSEN: Thank you, Senator Johnson. Scott, scientifically can you define any difference between sun rays and ultraviolet tanning rays? [LB1163]

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SCOTT YAHNKE: I'm not an expert and I want to make that clear, but from what...the extensive bibliography of information and Dr. Watts's letter to Senator Johnson, January 7, 2008, brought out the ultraviolet radiation from either tanning equipment or the sun, makes no difference in terms of the damage it can cause to a human being. [LB1163]

SENATOR HANSEN: Same amount of time, too, then? [LB1163]

SCOTT YAHNKE: I can't... [LB1163]

SENATOR HANSEN: Timewise? [LB1163]

SCOTT YAHNKE: ...specifically tell you that, but any...it's the accumulation of UV radiation and not probably so much the time, but the accumulation. So the more time you spend getting UV radiation from any or all sources, natural or artificial, would be the tripping point to, as I understand it in layman's terms, redirect or rewire your DNA to start mutating cells that lead to problems with skin. [LB1163]

SENATOR HANSEN: Okay, thank you. [LB1163]

SENATOR JOHNSON: Okay. Thank you, sir. [LB1163]

SCOTT YAHNKE: Thank you very much. [LB1163]

SENATOR JOHNSON: We have one other proponent. Did I see that correctly? Is there another proponent? Okay. I guess I was mistaken. We do have letters here from the representative of the American Cancer Society of Nebraska with an enclosure about this subject from the American Cancer Society. So we'll put that in the record, as well. (See Exhibit 2) Being no further proponents, let's get to opponents. How many do we have? Four or five? Okay, let's go to work. [LB1163]

JOSEPH LEVY: (Exhibit 3) Thank you very much. Good afternoon, Mr. Chairman and members of the committee. My name is Joseph Levy, that's L-e-v-y, and I'm vice president of International Smart Tan Network. This is the educational institute serving the North American professional indoor tanning community. I'm here today from Denver. Thank you very much again for the opportunity to share my experience with you. Sixteen years ago, I entered into what was supposed to be a six-month research project to investigate skin cancer research as it pertains to UV light and was given this charge: Find out what is really going on and don't "blue-sky" your report. And that was in the days before the Internet existed, so this research was difficult to find. I spent most of my time in the public health library at the University of Michigan where I lived at the time, interviewing researchers, talking with advocacy groups of the day, and sharing data with independent sources who could analyze its veracity. What we learned from this...there are some very important nuances in here that you need to understand, that there is no

research showing that UV exposure in a nonburning fashion, whether from the sun or from a tanning unit, is significant as a risk factor for permanent skin damage, and that continues to be the case today. In the past 12 years, I've been active in attending and participating in most of the major academic and government conferences on this topic. We are witnessing right now at this point in history a very defining moment in the field of Vitamin D research that has been referred to, so I'd like to put that in its proper context. No doubt you've seen this in the press in the last 18 months. One of the leaders in Vitamin D in this field, in fact, is just down the road in Omaha, Dr. Robert Heaney. His group published a study recently that received a great deal of attention, because it was the first random clinical-controlled trial to show that people with healthy doses of Vitamin D reduce their overall risk of cancer by up to 77 percent, and there are two dozen cancers that are related to Vitamin D deficiency. We know that the population in North America right now is Vitamin D deficient. More than half of Americans are deficient, 97 percent of Canadians in the winter are Vitamin D deficient. Again, about two dozen cancers are linked to this deficiency. So what has happened in the last ten years...we've known for a long time that there are many forms of cancer that are much more common in parts of the world that are sun deprived. In the last ten years, we've begun to understand the mechanism by which Vitamin D, which we used to think was only necessary for proper bone health, for processing calcium, we now know that Vitamin D plays a role in cell growth regulation in virtually every system of the body. They've unlocked that mechanism and it explains the reason that people with high levels of Vitamin D are less likely to have advanced forms of cancer. In that context, my point: Vitamin D is very rare in food. It does not occur anywhere in diet, unless you eat a tremendous amount of fatty fish--salmon or cod liver oil. It's supplemented into milk, into levels that we know do not actually fight Vitamin D deficiency. The only way to get Vitamin D naturally is through regular exposure to UVB, in either sunlight or from a tanning unit. Sunlight is free; there's no public advocate of sunlight. I'll tell you this, that if Johnson & Johnson...they don't sell sunlight, but if they did, I assure you the message we receive, as public right now, would be much different about sunlight and its value in getting it in proper moderation. So in terms of why we're here today, the message about UV exposure is changing, and it has got to reflect a balance of what we now know exists. Otherwise, the public is going to look at these warning statements with the same disconnect that they look at warning labels on, say, exercise equipment. I just purchased something called the Perfect Pushup that's supposed to help me ergonomically deal with my wrists while I do push-ups, and the warning statement on the Perfect Pushup says that this device, if not used properly, could be fatal. That type of context is what we don't need warning statements in a tanning facility. The warning language, as outlined in this bill, is not accurate. There is no data to suggest that cumulative UV is a risk factor for melanoma--skin cancer. In fact, melanoma is more common in people who work indoors than in those who work outdoors. It occurs most often on parts of the body that do not receive regular exposure to UV light, and 19 of 23 studies that have looked at melanoma and indoor tanning show no statistically significant association between the two. The four older studies that have suggested a

link all have very obvious confounding variables. That's part of the nuance of this message, is that there is a difference between intermittent burns as it relates to melanoma, and there's no data to suggest that cumulative exposure is a risk factor for melanoma. I brought this essay that I think you all should read. It's from a dermatologist in Chicago who was in the Mayo Clinic proceedings--Dr. Arthur Rhodes is his name--called "Melanoma's Public Message." Dr. Rhodes was a physician who--part of what's in this piece, and it's an excellent piece, by the way; puts this in great perspective--who had a friend who was a physician whose wife was also a physician. And his friend got melanoma and died of melanoma. The physician and his wife did not know they were at risk factors, because they thought that only people who tanned got melanomas. What you're going to find if you look at the National Institutes of Health data from a program they have called Surveillance Epidemiology and End Results, that looks at data and incidents of mortality of cancers in the United States, that melanoma is much more common in men than it is in women, that its incidence is increasing rapidly in men over the age of 50, but is actually decreasing in women under the age of 50, and the mortality for this disease is also decreasing for women under the age of 50. And yet, as Rhodes points out here and many other people have, the public message about melanoma is not directed at men. It's directed at young women who are not seeing an advance in cases of this disease and mortality from this disease. Now on top of that, like I said, there's some very difficult nuances in the UV discussion today that need to be acknowledged. There are studies today suggesting that people who get regular sunlight are less likely to get advanced melanoma, probably because of higher Vitamin D levels in people who receive regular sunlight, just as Vitamin D seems to inhibit many other forms of cancer. Dr. Marianne Berwick in New Mexico and Dr. Bruce Armstrong in Australia have led groups that have looked at that relationship. And what is perhaps most difficult of the nuances to suggest, we've also seen a Harvard Medical School paper in the past year that shows that the gene that triggers the tanning process may actually deter the development of melanoma. I've touched the surface here of what could be presented, so where does that leave us? The professional indoor tanning community is a constructive force today in teaching a properly balanced message about UV and in teaching sunburn prevention. We teach sunburn prevention in facilities I believe more effectively than people who just tell you to abstain from any and all sun. These people are more likely to sunburn when they do go outdoors. The concept of a base tan is very simple--it does work. There are millions of people who could come and testify to you today that a base tan works. Essentially a tan is your body's natural protection against sunburn. Cell by cell, a tan literally enshrouds the inner cellular material of a skin cell and protects it from sunburn. A person who tans in a salon, after they've gradually worked up exposure schedules--and there are exposure schedules that are set forth by federal rules, so this is not a random process--will...an initial session may be, we'll say, five minutes. They may work their way up to, say, 20 minutes. I'm doing this for the sake of math--that's four times more than five minutes. Essentially, in working up through the schedule, their skin is four times more resilient to sunburn. Now, when you go on a vacation after having obtained a base tan, you're able

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to use sunscreen in combination with that base tan, and you are able to prevent sunburn in a way that...myself, as someone who is fair-skinned--I'm what is called skin type two--if I were to go play golf in the Bahamas right now, even wearing a sunscreen I would sunburn. Obtaining a base tan in proper combination with that sunscreen, I would not sunburn. This is the type of message we're teaching in facilities today. So the warning statements in this bill, as written, will not help the consumer and will actually add to the confusion, I fear. I fear it will be dismissed by consumers by irrelevant, overprotective warning label language. Thank you for the privilege of participating in this hearing today. I'm happy to take any questions. [LB1163]

SENATOR JOHNSON: Okay. Any questions? Senator Hansen. [LB1163]

SENATOR HANSEN: Thank you, Senator Johnson. Mr. Levy, does the age of the person in the tanning or the age of the person with exposure to sun rays, is that a problem? Is that a legitimate question? [LB1163]

JOSEPH LEVY: There really is no data. It's a legitimate question to ask, and it's something we should look at. But there really is no data to suggest that tanning is a risk factor for any certain age group. We believe that intermittent burns at an early age are a risk factor for skin damage later in life. We believe that, but we don't know that for certain. Now, we're in the business, obviously, of helping people to prevent burning. One thing I know and that we've studied is that if teenagers are denied access to tanning facilities, they may purchase cost effectively home tanning units, which we then can't regulate. We have no way of regulating their exposure schedules in a home tanning unit, and 72 percent of them have told us they would just simply tan more aggressively outdoors, which we know is more likely to induce sunburns and intermittent burns. It's, you know, again, getting people out of facilities is missing the point. The point is that we need to help eradicate sunburn and intermittent burns, not eliminate all exposure. [LB1163]

SENATOR HANSEN: Thank you. [LB1163]

JOSEPH LEVY: Thank you. [LB1163]

SENATOR JOHNSON: Okay, any other questions? Oh, Senator Howard. [LB1163]

SENATOR HOWARD: Thank you, Chairman Johnson. I'm just wondering, do you see this notice...you've seen the sign that is proposed? [LB1163]

JOSEPH LEVY: Yes. [LB1163]

SENATOR HOWARD: Do you see that more as an information piece? [LB1163]

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JOSEPH LEVY: Well, something that...I believe there are some other speakers that are going to touch on here, but I'll answer your question. It actually conflicts with the existing warning signs and warning language and informed consent forms that we use in facilities already today. The language conflicts with that, and that language is fairly standard. It's based on federal guidelines, the warning language that is on the equipment already. This language, as I said, mentions cumulative exposure increases risk of basal cell, squamous cell, and melanoma skin cancers, and that just isn't accurate. Cumulative exposure is not linked to melanoma development. [LB1163]

SENATOR HOWARD: Thank you. [LB1163]

SENATOR JOHNSON: Okay. Oh, Senator Stuthman. [LB1163]

SENATOR STUTHMAN: Thank you, Senator Johnson. Mr. Levy, would you say that an individual that is exposed to the sun a lot and goes to a tanning facility throughout the winter months like that, and be continually exposed to the rays of the tanning booth and of the sun, would their skin show signs of aging prematurely? [LB1163]

JOSEPH LEVY: Aging prematurely is...there are many factors involved in skin aging. I am fortunate to know George Hamilton, who has very beautiful skin at, I believe he's 70. There are hereditary factors in wrinkles. There's dietary factors involved in wrinkles, and we believe that intermittent burns are a risk factor for wrinkles. But you have to understand that wrinkles--and I've read essays from dermatologists on this; there's a Dr. Ellen Ringle (phonetic) in Maine, I think is one who has written on this--wrinkles are not a medical condition. Wrinkled skin performs every function of nonwrinkled skin, and we don't believe that tanning in a nonburning fashion, if you don't smoke and you have good diet, is a significant risk factor. [LB1163]

SENATOR STUTHMAN: Okay. Thank you. [LB1163]

SENATOR JOHNSON: Okay. I see no others. Thank you, sir. [LB1163]

JOSEPH LEVY: Thank you very much. [LB1163]

SENATOR JOHNSON: You bet. Now, one of the things that I do do is tend to let the first people particularly representing one side when they come from a distance, to have a little more time than we ordinarily do. So I would like the other people on the opponent side here to cut your time down a little bit, if you can. Thank you for coming, sir. [LB1163]

JOSEPH LEVY: Thank you. [LB1163]

SENATOR JOHNSON: Next, please. [LB1163]

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TRACIE CUNNINGHAM: Hi. Hello, there. Thank you for taking the time for us today. My name is Tracie Cunningham, C-u-n-n-i-n-g-h-a-m, and I work at Ashley Lynn's, and I've actually seen most of you here recently. I just want to say really quick, in respect to your time, that the facilities, like Joe mentioned, we do already post warnings. And I do want to just kind of pass...you wouldn't mind passing this around. These are actually displayed prominently on each piece of tanning equipment, and the FDA already regulates that, so we're already doing that. And we also already have consent forms in the salons that post those same types of warnings, so we are already, you know, in effect doing our part to make sure that we're, you know, being careful. So I just want to bring that to light, and I know I want to respect your time here, so. [LB1163]

SENATOR JOHNSON: Oh, no. You're fine. Very good, though. Thank you for doing that. [LB1163]

TRACIE CUNNINGHAM: Thank you. [LB1163]

SENATOR JOHNSON: And thank you for coming. Any questions before you leave? Hang on. They're going to let you off scot-free. How about that? (Laughter) Okay. Thank you. [LB1163]

TRACIE CUNNINGHAM: Thanks, guys. [LB1163]

SENATOR JOHNSON: Next, please. Those that do intend to, why don't you just come up in the front row rather than look at each other for five minutes. (Laughter) Okay, welcome. [LB1163]

DANA MORINELLI: Good afternoon, Mr. Chairman and members of the committee. My name is Dana Morinelli, it's M-o-r-i-n-e-l-l-i. Just briefly, I'm 28 years old and have been a responsible indoor tanning customer for more than 10 years, and I'm proud to work with Barton and Tracie at Ashley Lynn's and appreciate the chance to speak today. As an indoor tanning client, I'm someone who has signed the consent forms and seen all of the warnings that are currently posted into the salons, and so I hope that my insight will be helpful to you. If you're going to set out to join tanning facilities and help them in their efforts to properly educate clients about safety, it doesn't make sense to do so with language that is so one-sided and doesn't accurately reflect the fact that there are both benefits and risks associated with UV light, and those risks can be minimized if you avoid sunburn. The language in the warning statement in this bill leaves one with the impression that the government is saying that any exposure to UV light is risky and that there are only risks and no benefits. That message is going to fall on deaf ears to the very people that we are trying to reach. In terms of my reasons for tanning, I'm a typical (inaudible) tanning client like many tanners. Aside from the cosmetic benefit, I enjoy tanning for other reasons. I enjoy tanning because it's my time, a way to have a mental

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recharge for the day. I know that regular UV exposure from sun and/or from indoor tanning unit is the most natural way to develop my Vitamin D, and in order to not be Vitamin D deficient, that's important to me. Also like many tanners, I know that a tan is the body's natural first line of defense against a sunburn, so having a base tan in combination with sunscreen use makes me less likely to sunburn in the summer or on any sunny vacations. So there are many reasons beyond the cosmetic tan that attract indoor tanning clients to tanning facilities. In that light, I would urge you to consider the fact that overstated warnings and restrictions turn consumers off, and it won't help our efforts to teach the sunburn avoidance to our community. Thank you. [LB1163]

SENATOR JOHNSON: Okay. Thank you. Any questions? Senator Stuthman. [LB1163]

SENATOR STUTHMAN: Thank you, Senator Johnson. [LB1163]

SENATOR JOHNSON: And Senator Stuthman, I don't think any of these people are going to help you with your wrinkles, by the way, so. (Laughter) [LB1163]

SENATOR STUTHMAN: I lost my train of thought. (Laughter) But you did answer a lot of the questions. I was going to ask the question, what is the value of tanning? And you had that in your testimony. The question that I have is, people that see the sign or read, you know, the material, does it turn many of them away from getting the service of the tanning booth or tanning salon? [LB1163]

DANA MORINELLI: You know, currently with the way that it is and the warnings that we have currently, with the way that the wording is, you know, I can't say necessarily for certain, in each individual instance. But no, probably not. But if we go to an instance of more harsh or one-sided wording, then you know, we may have people who are...may have been concerned in the past have a little bit more awareness or increased concern. [LB1163]

SENATOR STUTHMAN: Okay. Thank you. [LB1163]

SENATOR JOHNSON: Don't see any other questions. Thank you very much. Next, please. Welcome. [LB1163]

MICHELLE GRUBBS: Thank you. My name is Michelle Grubbs, G-r-u-b-b-s. I own Max Tan tanning salons in Lincoln. We've been in business since 1993, and I guess I wanted to give you a little bit of an owner's perspective. As has been stated earlier, I believe that we follow federal guidelines, and I think that the addition of these regulations is a little overboard. We already state the warning that you've just been passed on each piece of equipment. We do all have consent forms. The thing...having been in business for 15 years, the industry has changed a lot, and we do have staff training. We do try to educate our clients. And I urge you to consider the undue hardship that these...you

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know, the implications of these warnings would do on us as a business. I think that we, as responsible tanning salon owners, do go above and beyond. We have not had any regulations, and yet we already take it upon ourselves to...you know, I get parental consent for anyone under 16. So I think that we're doing the things that this bill would propose, as responsibly as we can. Thank you for your time. [LB1163]

SENATOR JOHNSON: Okay. Hang on one second. Senator Hansen has got a question. [LB1163]

SENATOR HANSEN: Thank you. Thank you for coming today. Explain a little bit what is on your consent form. And the second question would be the consent form for people under 16. Is it the same form or are there two forms? [LB1163]

MICHELLE GRUBBS: It is the same form, but we need to have a parent's signature, and we also explain to the parent that we decide the exposure time for the minor, that they can't just come in. It pops up on our computer that they are a minor, that they just can't come in and go, okay, I'm going to go full time today. [LB1163]

SENATOR HANSEN: A minor or under 16? [LB1163]

MICHELLE GRUBBS: Under 16. [LB1163]

SENATOR HANSEN: Okay. Do you have a consent form for anyone that comes in off the street? [LB1163]

MICHELLE GRUBBS: For everyone that comes in. [LB1163]

SENATOR HANSEN: If Senator Stuthman comes in, he'll have to sign a consent form. [LB1163]

MICHELLE GRUBBS: Absolutely. And what we would also...part of our consent form is, have you ever been advised by a physician to stay out...and if you have, you don't tan with us. [LB1163]

SENATOR HANSEN: Great. Thank you. [LB1163]

MICHELLE GRUBBS: As well as, you know, the protective eye wear. We require everyone to have it when they go into the tanning room, so. [LB1163]

SENATOR JOHNSON: I see no other questions. Thank you very much. [LB1163]

MICHELLE GRUBBS: Thank you. [LB1163]

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SENATOR JOHNSON: Next, please. [LB1163]

MONICA PARRIS: Hello. Good afternoon. [LB1163]

SENATOR JOHNSON: You bet. [LB1163]

MONICA PARRIS: (Exhibit 4) I'm Monica Parris, P-a-r-r-i-s. I am president and CEO of Alternative Tan in Lincoln. Sixteen years I've been in the industry, since 1985. I wanted to come up and give you a brief viewing of our client release so that you can see that it is with child, with parent, and we must see that parent. As what with Michelle said, we do have those stickers on our equipment. The age sign is in our computers. In a sense we all are on the same team, and I think that's what...mainly speaking from the heart, knowledge is power. If we are all not speaking the same thing, which is tan in moderation, do not sunburn, how are they going to learn? I mean, we can't stop spring break, we can't stop going on vacation in Florida, we can't stop Laundry Land. A lot of things we can't stop, but if we can educate so that...I have children, you have children. When they do travel--not just children, but grownups--that they are tanning smart and tanning responsible, that they have the knowledge. I think that that is what is key. It's not yanking it away from them and saying, no, it's bad. It's giving them the knowledge of everything that goes with it, and we all will agree that we are not in business to make you red. That's not what we're here for. [LB1163]

SENATOR JOHNSON: Uh-oh. Senator Stuthman. [LB1163]

SENATOR STUTHMAN: Thank you, Senator Johnson. Monica, since you've been in business for quite a number of years, have you seen a trend going more to a younger child wanting to receive services or is it going the other way? [LB1163]

MONICA PARRIS: No. What I have increasingly probably seen is men, more men coming in. I've also seen parents bring their children in before a family vacation, mother and daughter at hand. But I also want you to know--something was said. If a client comes in and fills out that questionnaire honestly and properly, if there is skin cancer that runs in their family history and they're honest, will I turn them away? Absolutely. And I will say that I will trust every salon owner that I've gotten to know behind me, that they will do the same, because we are taking money out of what we make to educate ourselves, in turn to educate our staff, and in turn to educate those that are walking in the door. But then I think we're taking it one step further, and we're also trying to take that same funding and educate you, the public. That's why you see it in our ads, you hear it on our radio. We're all trying to say the same thing, which is we will teach you how to tan in moderation and tan slowly. Our job is to help you make a good decision and not an irresponsible one. [LB1163]

SENATOR STUTHMAN: Thank you, Monica, for that information. [LB1163]

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MONICA PARRIS: You're welcome. [LB1163]

SENATOR JOHNSON: Okay. I see no others. Thank you very much. [LB1163]

MONICA PARRIS: You're welcome. [LB1163]

SENATOR JOHNSON: Sir? Are you the cleanup batter? [LB1163]

BART BONN: (Laugh) I don't know. I don't know who else is out there. [LB1163]

SENATOR JOHNSON: Okay. Welcome, sir. [LB1163]

BART BONN: Hi. My name is Bart Bonn, that's B-o-n-n, and I own a chain called Ashley Lynn's. We're in several states, but mainly here in Nebraska. And we employ a few hundred people, and so, you know, this concerns me a great deal. I've been at this business for, like many of them that have just testified, about 18 years or so. And we've considered this topic in great detail. We're in the cosmetic industry. That's why people tan. But over the years, we've become quite familiar with the medical aspects of it. It's of great concern for us, and we do want a very informed public, and we think that that message is something that needs to be joined together with our industry as well as the dermatologists. And so far right now, the political situation is that it's more adversarial, and it shouldn't ought to be that way. The people ought to get the straight information. And Mr. Levy was up here earlier talking about the breakthroughs of research that has to do with how much Vitamin D humans get. People forget in this whole argument that one of the primary purposes of your skin is to process UV light to produce Vitamin D. And that's having a great, we believe, a great adverse effect within our population, and that's recent information that has come out. It's things that were identified nearly four decades ago, even prior to that, going back to rickets, which is why these devices were first made in the first place. They were a medical device put together to take care of rickets, a childhood bone disease. So I think as time goes on, we're not afraid of the research. We embrace the research, and we're not afraid of the competition. I'll have to say that the one thing that concerns me most about running my business is a poorly considered legislative act that would put us out of business. And like I said, I thought for quite a long time about what to say in front of this committee, and I think the main thing is, is that we have thought about this and considered it and learned what we've learned over a course of years. And whatever message does wind up coming out of this committee ought to be considered on both sides to reflect a fair and balanced discussion for the benefit of the public--not for the benefit of my business nor for the benefit of other people's businesses as dermatologists or whatever. So I think that would conclude what I have to say. [LB1163]

SENATOR JOHNSON: Thank you very much. Any questions? [LB1163]

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SENATOR HANSEN: I have one very...real quick one. If this came to pass, would it be practical to put that on your exit sign? [LB1163]

BART BONN: On my exit sign? [LB1163]

SENATOR HANSEN: So we'd watch out for sunlight rather than the (inaudible) light? (Laughter) You don't have to answer that. [LB1163]

BART BONN: Well, I do kind of wonder. If the purpose is to educate the general public about it, then yeah, it ought to be out there in many other places other than just where we're at. But I do believe it ought to be a balanced message, and I think that this is...it causes fear unnecessarily. I mean, humans are built to be in the sunshine, so. [LB1163]

SENATOR JOHNSON: You've got Senator Pankonin over here, too. [LB1163]

SENATOR PANKONIN: Thank you, Senator Johnson. Thanks for your testimony. You mentioned you're in several other states. Can you mention what states your Ashley Lynn's company is in? [LB1163]

BART BONN: Yeah, Iowa, Missouri, and Florida, besides Nebraska. [LB1163]

SENATOR PANKONIN: Okay. Any other states have any existing legislation like we're looking at? [LB1163]

BART BONN: Well, every state tackles it differently, and I'd say about...I think in Joe Levy you'd have a better answer on this. But I think about two-thirds of the states have some level of regulation, but it's spotty. And that's one of the concerns that I have, because in some cases it's not even so much the legislation that was written, but it was the regulative interpretation. In the state of South Carolina, for instance, nearly half the tanning facilities went out of business because of overzealous interpretation of the legislation in that state. I do think, though, that most of...and this is also a political campaign that is waged. Right now there are eight states, I believe, that are facing different types of regulation that are before legislatures right now. And, well...I think that's about all I got, less my other thought there. [LB1163]

SENATOR PANKONIN: Thank you. [LB1163]

SENATOR JOHNSON: I guess I can't go any longer without asking the question of one of your group. Senator Stuthman really wanted to know, do you have wide-angled machines for these tans? (Laughter) Thank you for coming. [LB1163]

BART BONN: Yeah, as a matter of fact. Thank you. [LB1163]

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SENATOR JOHNSON: Do we have any other opponents? Neutrals? [LB1163]

SENATOR ERDMAN: It's not bad enough you were born at home, Senator Stuthman. They pick on you for being (inaudible). [LB1163]

SENATOR STUTHMAN: I was born at home. [LB1163]

SENATOR JOHNSON: I think we've had testimony on all sides. Thank you all very much for coming. That ends the discussion on LB1163. Thank you very much. Senator Dierks, I think we've got a fair number of people who want you to move slowly into position, and we'll let these people take leave of us. "Cap," I think we're in good shape. Senator Dierks, LB1173. [LB1163 LB1173]

SENATOR DIERKS: (Exhibit 1) Chairman Johnson, members of the Health and Human Services Committee, my name is Senator "Cap" Dierks, spelled C-a-p D-i-e-r-k-s, and I represent District 40. I'm here today to introduce LB1173. This bill was brought to me by the Board of Veterinary Medicine and Surgery. It makes changes to the practice act by including animal therapy and certified animal therapist. This bill originated several years ago and Senator Chris Langemeier was asked to introduce legislation allowing chiropractors to adjust animals. Changing medical practice acts is a long and strenuous process. I do want to acknowledge and to thank Senator Langemeier and his staff for the time and effort they have contributed to this bill. I do have amendments to the bill which make many changes to the original green copy. I'll try to quickly summarize the green copy of the bill and then explain the proposed amendments. LB1173 defines animal therapy and certified animal therapists. It details the licensing provisions and the three conditions under which a certified animal therapist may practice under the Veterinary and Medical Practice Act. Those conditions are as follows, and they stay the same under the proposed amendments. Number one, therapy must be consistent with the therapist training required for credentialing. Two, the owner of the animal must present to the animal therapist a letter of referral from a licensed veterinarian detailing the diagnosis and evaluation that's taken place within 90 days of initiation of therapy. And three, the animal therapist must provide treatment reports to the referring veterinarian. The referring veterinarian is not liable for any damages caused to the animal as a result of the therapy performed by the certified animal therapist. Only certified animal therapists can advertise their services and lead others to believe that they can legally practice animal therapy. AM2091 includes the following changes to the green copy of the bill: There's a new definition of "animal therapy" in Section 3, page 1; in Section 4, the definition of "certified animal therapist" is changed to "licensed animal therapist". Section 5 includes the definition of "immediate supervision," which is not in the green copy, and includes the following words: "person performing the animal healthcare task." Section 10 includes similar penalties to the overall Veterinary and Medical Practice Act. With these amendments, it is a violation of the practice act if a

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person engages in performing animal therapy or animal healthcare tasks without a license or other authorization. The civil penalty for the first offense will not...will be not less than \$1,000 and not more than \$5,000. Second offense and subsequent offenses can amount in penalties of not less than \$5,000 and not more than \$10,000. If a violation continues after notification, this constitutes a separate offense. A person may also be charged with a Class III felony for violations of the Veterinary Medicine and Surgery Practice Act, in addition to these new proposed civil penalties. Section 11 of the amendment outlines actions not prohibited by the Veterinary Medicine and Surgery Practice Act. An important change goes on in page 6, subsection 13. This section allows medical professionals with a valid healthcare license to consult with a licensed veterinarian or perform collaborative animal therapy on an animal under the care of such veterinarian if all collaborative animal therapy is performed under the immediate supervision of the veterinarian. You will be hearing more about this section later this afternoon from Dr. Lee Simmons from the Henry Doorly Zoo. This is a major change to the Veterinary Practice Act and a change, I think, is very important for the zoos in this state. With that, I want to thank the Health Committee for their time today, and to hear from veterinarians and other medical professionals in the public regarding these changes. Senator Langemeier, I think, wants to testify after I do, Senator Johnson, but I'll be glad to answer any questions the committee might have at this time. [LB1173]

SENATOR JOHNSON: Okay. Thank you. Any questions of Senator Dierks? I see none, Cap. Thank you very much. Senator Langemeier, let's have you go next. And then if you need to leave, why, we'll be in good shape. [LB1173]

SENATOR LANGEMEIER: Do you get back-to-back senators very often on a bill?
(Laughter) [LB1173]

SENATOR JOHNSON: No, I can't remember a time when we have. [LB1173]

SENATOR LANGEMEIER: (Exhibits 2, 3) I'm demonstrating the importance. Members of the committee, Chairman Johnson, my name is Chris Langemeier, it's spelled L-a-n-g-e-m-e-i-e-r. I represent the 23rd Legislative District. I'm going to give you a little history to this bill. I was approached by a chiropractor that had done some involvement with some animals as far as adjusting a horse and was approached by the Attorney General's Office and asked them to cease and desist that activity. And if they consensually signed on to a cease and desist, they would no longer prosecute the case. They were being charged with doing veterinary medicine without a license. So I brought a bill, I drafted a bill in 2006. And as you all know in the healthcare industry, it's very complex, extremely complex as you deal with a scope of practice that everyone has, including veterinarians. And so I introduced that bill knowing it was hastily drawn, noticed it wasn't very good. The chiropractors didn't like it, everybody didn't like it. I understood that. So I went to the Attorney General. So as my brain, as you all know, I think about things quite intensively. I went to the Attorney General's Office and said,

hey, in the veterinary statutes it says that you can work as an unlicensed assistant. So I could hire on to go work at a veterinary clinic in there, scoop stalls, and work as an unlicensed veterinary assistant. So I said, why couldn't these licensed professionals--dentists, doctors, physical therapists, chiropractors--why couldn't they work as an unlicensed person to help a vet, work under the supervision of a vet? So I asked the Attorney General that question and you're getting an Attorney General's Opinion back. And if you notice, there's two spots in there that are highlighted; one being, I put a little Q by it for my question, and then one with the circled A with the answer. And I briefly narrowed that down. My question was, is there a violation with the scope of practice with the four healthcare professionals that are duly licensed under our licensing system, being dentists, doctors, physical therapists, and chiropractors? And what they told me is, is in this Attorney General's, if you flip to the next page, is the Legislature does not allow an exemption from your scope of work to do this. So what are our options? My bill would have opened up the chiropractors' scope of work and allowed them to work on animals under the supervision of a veterinarian. However, as we all know, chiropractors were nervous if we opened their scope then the physical therapists would want their scope opened, and if they got theirs opened, then they would want to do chiropractic care and the chiropractors want to do the physical therapists'. And the next thing you know, the chiropractors want to do dentistry, and we've all been through that battle. So how do we address this with not addressing everybody's scope of work? The veterinarians have come with a very nice plan. I want to thank Senator Dierks. To back up a little bit in its history is, I opted not to introduce my bill in 2006. I asked the Vet Board to work on it. So they have been working on it ever since. I thank them for that. Now we have a piece of legislation that Senator Dierks has worked hard on. He asked you to take it, which is an amendment--I don't even know what the current version is, but the one you have dated 2-27-2008 I believe was handed out to you, which is very detailed and very well thought out to come up with this title for these people to work under a veterinarian. Well, now back to my Attorney General's Opinion. What happened with this Attorney General's Opinion is we had some people going to zoos and working on animals in zoos. You have tumors in chimps, you have a number of things we need to take care of, and we all can understand that. Well, it put that practice into question. So what I bring you today is AM, which is another amendment, which basically takes this whole bill and guts it all. And let me explain why. And when you have it--I'm going to talk about that a little bit. We've talked about, in the previous amendment you got, talked about a classification, talked of fines and penalties for practicing veterinary medicine. That's all in statute already. There are already fines, penalties, and everything is in statute already for someone practicing as a vet, medicine not being a veterinarian. It's all in there. It's recapped in there and I don't know how they line up, whether they're stronger or not. But the amendment you're getting before you today, AM2095, I have handed out to you, LB1173, has two sections. If you go to page 3--and I have more copies of these if people in the crowd would like them, I guess. If there's anybody...if you want to raise your hand, they could hand them out to the crowd. I don't know who would like them. The first one is Section 2: Any person who maintains

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a valid license in the state of Nebraska in the health profession or occupation regulated under the Uniform Credentialing Act may consult with a licensed veterinarian. In other words, they're going to work under a licensed veterinarian. So if you have your horse, your dog, your cat, you're going to take it to your veterinarian and that's where this should start. These people shouldn't be able to have their shingle hung out that says I'm going to do chiropractic care to animals. We don't want to get there. But if you have one of those four credentialed licenses and you would like to do this, you take your horse--your dog, your cat, chicken, llama, they're all out there--take it to your veterinarian. Your veterinarian determines that there's no medical we can't give it, a number of things. So you're to a point where chiropractic care may be helpful. Your dog chips his tooth. This would allow those people to come in and work under the veterinarian's care in the veterinarian's office. Now back to my words that I brought up earlier: scope of work. We have to address scope of work. So you'll see in the last, line 10, it says "engaging in such conduct is hereby authorized in addition to and shall not be considered a violation of an individual's scope of practice." So we're going to give all the individuals--the doctors, the chiropractors, the physical therapists, and the dentists--an out from their scope of work if they're working under the care of a veterinarian to help these animals. We looked to the downside of scope of work in healthcare, because Senator Gay, I don't want to, if I was a physical therapist and I did something wrong and I put you in a wheelchair, there's a downside. If these animals can't walk and a chiropractor can maybe aid them through hip dysplasia or through some manipulation that would allow them to walk again, the downside is euthanizing the animal. If this doesn't work, the downside is still euthanizing the animal. So if you flip to page 5, which is subsection 13 of Section 3. That restates, any person who maintains a valid license in the state of Nebraska in the healthcare profession can...that is licensed, currently licensed, would allow them to work under the supervision of a veterinarian to handle these situations. Now where are we at? We don't have priority status with this bill, we don't have anything. What I would ask the committee to do is take this amendment...and granted, the amendment you got previously has a lot more details in it about fines and penalties and stuff like that, which I would argue most of that's in state statute now. However, if you were to advance this amendment, AM2095, I would ask that it be amended into a very similar bill which is a Speaker priority bill Senator Dierks has already introduced, LB1172, with this component. And with that, I would open it up for questions. [LB1173]

SENATOR JOHNSON: Okay. Thank you very much. Looks like we got a few questions. Let's start at the end with Senator Pankonin. [LB1173]

SENATOR PANKONIN: Thank you, Senator Johnson. Senator Langemeier, thanks for your work on this very interesting topic. But...so just from the standpoint of you and Senator Dierks, you've consulted with him, and I guess I'm asking you whether he agrees with this work or where are we at on the status of this whole issue? [LB1173]

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SENATOR LANGEMEIER: And Senator Dierks can hit me if I'm wrong, (laughter) but I think Senator Dierks has made a pledge to work with the veterinary association--the Veterinary Board, excuse me, they're two different groups--the Vet Board to do what they have asked. And what they have asked is that full amendment that he offered. Would that be a fair statement? And I think he's going to pledge allegiance to where he is duly licensed and duly has represented. And my case would be on the floor that this does it. I don't want to overthink a situation that needs to be done. [LB1173]

SENATOR PANKONIN: Has the Veterinary Board, (inaudible) of the Veterinary Board had a chance to look at yours very long or... [LB1173]

SENATOR LANGEMEIER: No. [LB1173]

SENATOR PANKONIN: This is fairly new. [LB1173]

SENATOR LANGEMEIER: Fairly new. Matter of fact, it's new to me. We've been thinking for months on end how we could deal with the scope of practice. And I brought up the idea that we have to exempt them from their scope of practice to make this work. Even if you take the amendment, which I'm not arguing, you can't take, Senator Dierks's amendment, you still have to use the wording to alleviate the scope of work on those four credentialed individuals through our health act. You still have to exempt them from their scope. You can change the Vet Board's scope from here to China. But until those people that come in...you can say the Vet Board can allow these people to come in and give them permission to come in, but they physically can't come in because they're violating their license and their scope of what they're doing over here. So until you exempt them from their scope to act in this manner, they can't do it. They're putting their own credentialing at stake. [LB1173]

SENATOR JOHNSON: Senator Hansen. [LB1173]

SENATOR HANSEN: Thanks, Senator Johnson. Senator Langemeier, you just said that we have to exempt their scope of practice. Why not extend their scope of practice to include animal therapy? A dentist probably not, but... [LB1173]

SENATOR LANGEMEIER: Dentists...let's put it this way. There is an extremely growing demand for this type of work. Matter of fact, I did meet several dentists and I have met many, many chiropractors and many, many physical therapists that are already doing this. And now that they found out they can't, they stopped because they didn't exactly know that it was illegal. And so...now back to your scope. When you have an industry where you have--and I'm going to make up some numbers, keep in mind these are strictly made up. If you have 100,000 dentists in Nebraska, there's only going to be 2 or 3 of them want to do this. So you have 100,000 dentists saying don't mess with our scope of practice, because when you open ours, somebody else wants to do dental

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work because they'll want it in their scope. And you've seen that many, many occasions when you talk about physical therapists and chiropractors. So my argument is, let's exempt those that want to do this. It's an occasional activity. I think you're going to see, testifying from the vets, a veterinarian from the Henry Doorly Zoo that would say, hey, they get a tumor in a chimpanzee once in maybe a lifetime. So...but you need somebody that is specialized in tumor surgery from the University Med Center or Creighton Med Center to come to the Vet Board without having to go through and provide credentialing. How would you like to be Dr. Simmons and say, okay, we need somebody to come in, a neurologist, to work on a brain tumor, but now with this amendment we got to go to the...keep in mind they have vets there. But we need this specialist to come in, but now we have to take his credentialing. He's already licensed. You know, if you needed to go get knee surgery or Doctor...Senator Johnson needed back surgery, how would you like to say, okay, we can't refer you until the doctor you're going to go refiles that he's credentialed and gets approved by a board to do his surgery? We don't do that in a human case. [LB1173]

SENATOR HANSEN: I think that's what's happening now, my knee. [LB1173]

SENATOR LANGEMEIER: Why do we want to make a credentialed individual go back to the Vet Board to get approved to work under a vet--key word here is working under the veterinary care--when we duly have them licensed in the health to work on you? So back to your scope of work--I've danced all around here--back to your scope of work, there's such a few group that are going to meet this need. I've heard the need is growing. And I think 38 states allow this now. We don't want to upset the apple cart for every chiropractor, every dentist, every doctor. [LB1173]

SENATOR HANSEN: Thank you. [LB1173]

SENATOR JOHNSON: Yes, Senator Gay. [LB1173]

SENATOR GAY: Senator Langemeier, you touched on it a little bit with Senator Hansen's question, but I guess I'm a little bit confused. You're saying there's more and more needed, but then not that many? I guess in this...is it mainly chiropractic services? You had mentioned a lot of things going on here, but I guess is it growing or is it not, is the first question. [LB1173]

SENATOR LANGEMEIER: It's growing. We could have had jillions of people here that, yes, they love their dogs and cats. We see high-dollar bulls and bull studs that something will happen. They'll get hit in the chute or something and they'll throw their hip out. And so you take a \$300,000 bull and you're taking him to Kentucky to have a chiropractor get him to stand again and put him back into livelihood. You're seeing dogs and cats with hip dysplasia. You know, an animal has a hung system, hung skeletal system, which is much, much simpler than our stack system. [LB1173]

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SENATOR GAY: All right. Well, the second one, it says twice in here you can get...under direct supervision, it talks about...when you talk about direct supervision, explain that. I mean, does that mean direct, me watching you do it or gee, they're under my license? Direct supervision means direct supervision? I got to be there on site watching this or you're in my veterinary practice doing this? [LB1173]

SENATOR LANGEMEIER: It's already defined with the current vet act with these unsupervised employees that already work in a vet clinic. They're considered under direct supervision; however, they're giving cats baths and maybe even giving them shots within a vet clinic. [LB1173]

SENATOR GAY: On site. [LB1173]

SENATOR LANGEMEIER: So they're getting on-site care. [LB1173]

SENATOR GAY: So this isn't just like oh, you're working for me, go do whatever you want today and let me know what you did; this is direct supervision is the way you... [LB1173]

SENATOR LANGEMEIER: We would want...yes, yes. And you'll see these people will start to work with veterinarians. [LB1173]

SENATOR GAY: All right. Thank you. [LB1173]

SENATOR JOHNSON: Yeah, Senator Erdman. [LB1173]

SENATOR ERDMAN: It's a good thing you're not licensed as a chiropractor because I would accuse you of practicing that medicine here before us. But it seems you have at least done your homework. It's just the difference is, is that your skeletal system is stacked a little higher than mine. (Laughter) [LB1173]

SENATOR LANGEMEIER: I'm proud of that. [LB1173]

SENATOR ERDMAN: I have my relatives to thank for that and you do as well. [LB1173]

SENATOR LANGEMEIER: Thanks. [LB1173]

SENATOR JOHNSON: Any other questions? Thank you very much, both of you, for coming. Are you going to stick around, either of you, for closure? Okay. And how many proponents do we have? One, two, three, four, and we got five right there. Okay. Again, I'd ask you to be brief. Otherwise we will be going quite a while. And we also have a letter here in support of LB1173 from the Nebraska Veterinary Medical Association.

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Welcome, sir. [LB1173]

LEE SIMMONS: (Exhibit 4) Good afternoon, Mr. Chairman and members of the committee. My name is Dr. Lee Simmons, spelled S-i-m-m-o-n-s, and I'm the director of the Henry Doorly Zoo and a licensed veterinarian in Nebraska. And I came here to testify in support of an amendment to LB1173 which would address a significant concern that has arisen from this bill, which I think was an unintended consequence because I think when the bill was originally drafted, nobody thought about the zoo and the effect it would have on the zoo. But I would, at the same time, having listened to Senator Langemeier's amendment, like to go on record as being in support of Senator Langemeier's amendment. Zoos occasionally--sometimes frequently, but mostly occasionally--need to call in specialized medical care above and beyond our capabilities. We've got four full-time clinical veterinarians on staff. We've got two others of us that are also licensed veterinarians. And there are times when we have problems that are above and beyond our scope. And when it comes to caring for some of these really critically endangered species of animals, such as lower primates and great apes and gorillas and such, and these specialized needs also extend to equipment and the technicians needed to run them. If you're going to do something specialized, such as have an echocardiogram done or magnetic resonance imaging, you really want somebody running that piece of equipment. Even if you could afford it, you want somebody running that piece of equipment and interpreting that who does it every single day. In the last year we have done echocardiograms because there's a very unusual heart condition that seems to occur only in gorillas and primarily in male gorillas, and perhaps in some human-type folks, in east Africa that we don't see anywhere else. So we've done echocardiograms on 11 gorillas. And to do this we call in the cardiology department from the Creighton Medical Center and they bring out a machine that's a half-million dollar machine, and they know what they're doing and they know how to interpret it. And we probably, you know, between the six of us we probably know more about gorillas than anybody in five states. And that's beyond our scope of expertise and we've got a number more of these to do. You know, I have on occasion, I can remember calling up, you know, a human neonatologist at 2:00 a.m. in the morning when we had a crisis with a baby gorilla and saying I've got a real problem, can you meet me at Children's Hospital. You know, I'll be there with my gorilla (laughter) you know, with a three-month-old gorilla. And they were there and we saved a life that night. And again, this is not something, even though we're pretty well equipped, even though we think we know a lot about animals like that, we probably, you know, unquestionably know more than collectively anybody else around. It is still specialized medicine that you find only in the human field. And historically, all of our human colleagues have been extraordinarily generous. I mean, they have enthusiastically helped us without ever charging us, no profit, no anything. They don't even charge us for the x-ray film. So...and I think it's unrealistic to ask a human physician, as would be required under this legislation, to go back, take additional training, be certified just in order to help us out, particularly since, particularly since we frequently don't even know we're going to need

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their services until 2:00 in the morning when we need them badly. I've included in here an example of such a thing from Seattle, Washington, that is really a prime example of this on some neurosurgery on a baby gorilla in which having the pediatric surgeons from their children's hospital not only saved the animal's life, but the animal is going to be up and around and walking and doing good. And even in human infants that's a better outcome than you can expect in 100 percent of human infants who have the same problem. This is not something that any zoo veterinarian in the country would feel comfortable tackling. An argument that's been put forth is, well, just take the animals to the nearest vet school. We've got vet schools in all of our surrounding states. But number one, if you've got a sick animal, transporting him there may very well risk the animal's life. And in doing so, you may very well risk somebody else's life. And additionally, in talking with the folks in these vet schools, if they need an echocardiologist or a neonatologist or a pediatric neurosurgeon or what have you, they have a simple solution. If you go to Kansas State, if you go to Wisconsin, they simply call in a human specialist because these are the guys that do it every day. These are the guys that do it every day. And to be good at something, you need to do it every day. And so our standpoint is that to write legislation which would deprive a licensed zoo veterinarian or a licensed private veterinary practitioner of access to these valuable medical resources is not only foolish, but it's counterproductive. I mean, we're charged with protecting the animals and doing the best job we can. And sometimes we need to ask for help that's above and beyond our scope. And you know, one easy solution would be to simply write legislation or an amendment that would simply exempt zoos and the allied medical profession that help us. But that's a little bit unfair because there are private practitioners in outstate Nebraska and many places who also have need to occasionally call on their local physician or their local hospital for help. We've been in discussion and we've reached a consensus in discussions with the Nebraska Veterinary Medical Association and the Nebraska Board of Veterinary Medical and Surgery on language for an amendment to Section 8-3322 (sic) of the Nebraska Veterinary Practice Act which would enable the zoo and private practitioners to occasionally call on the expertise of other licensed medical professions in Nebraska to work directly with them under direct supervision to provide the quality of medical care that our patients need. The language in abbreviated form is attached. What I'd like to ask is, if this bill or if Senator Langemeier's amendment cannot be passed this year, that this committee seriously consider addressing the language that clarifies our needs. Because if I've got to call somebody at 2:00 in the morning or if we've got something where we need to call in a cardiologist or a radiologist, one of my biggest donors is a pediatric radiologist. And when we need a pregnancy diagnosis and we want to know how old that fetus is in a gorilla or an orang, we can do this, we can look at this. We call her in and she comes down, and in fact she donated the machine we use. And I'd really hate to make a criminal out of one of my biggest donors (laughter) or have her made a criminal. So thank you for allowing me this opportunity and I'd be happy to answer any questions. [LB1173]

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SENATOR JOHNSON: Great. Thank you, sir. Any questions? Yeah, Senator Gay. [LB1173]

SENATOR GAY: Doctor, that last example probably wasn't an emergency. Are most of these situations that you need an emergency situation that has to be done or just best practice? [LB1173]

LEE SIMMONS: No. Well, some of them are emergencies; some of them are simply things that are beyond our, you know, beyond our scope of expertise. Or in the instance of a...if you're talking about a really sophisticated echocardiogram machine or an MRI, it's something that either we can't afford or you can't justify if you're going to use it four, five or six times a year. You can't justify putting, you know, a half million or a couple million dollars into a machine. And even if you could, even if you could find a donor that would say, okay, we'll ante up and buy you the machine, then to be competent you need to have enough...you need to run that machine every damn day. Excuse me. [LB1173]

SENATOR JOHNSON: Before you go, I've been sitting here thinking in the 60 years I've lived in Nebraska, I was trying to think of people that have given me the most pleasure. And I think you'd come up with Tom Osborne and Bob Devaney, but I think you're in the list and not necessarily third. Thank you for all you've done. [LB1173]

LEE SIMMONS: Thank you very much. [LB1173]

SENATOR JOHNSON: Next, please. [LB1173]

DAVID YLANDER: Senator Johnson, members of the committee, my name is David Ylander, spelled Y-l-a-n-d-e-r. I am a licensed practice veterinarian from Alliance, Nebraska, and I am currently serving as chairman of the Board of Nebraska Veterinary Medicine and Surgery. My testimony for you this afternoon has somewhat changed a little bit. (Laughter) The amendment that Senator Langemeier presented, our board met yesterday here in Lincoln, five minutes ago was the first time we saw this amendment that he presented. So I cannot comment on that. But I'm here representing the board and in support of the amended version that you have from Senator Dierks. If I can relay or relate to you some history, animal therapies are a broad field. It's not just limited to chiropractic or physical therapy or massage. There is the opportunity for a lot of different areas. And this has been a trend, not in Nebraska, but all across the United States for animal owners to seek nontraditional veterinary care, if you will, for their animals. And what we have been seeing is that a number of states have started to provide a type of licensure for certain options. From the board's standpoint and working with Senator Dierks, we would like to take the approach of having a much broader view of the healthcare profession and not limit this to four particular items. Veterinarians may need the services, as Dr. Simmons was sharing, in a variety of fields. And so we are presenting with you, with the amended version of this bill, many opportunities for animal

owners to obtain additional care for their individual animals; be it a pet, a horse, the bull, llamas, whatever would be available. But what we are looking at through the amended version of this bill is that there are actually three options or three opportunities. And one is for the licensed animal therapist as a independent individual, not in the employment of a veterinarian, not in the employment, not in the practice. This would be the opportunity for an animal owner to, on a referral model, obtain care for their animal outside of the veterinary facility. And that's one thing that we definitely want to stress, that that is a portion of this, that the licensed animal therapist is not in the employment of the veterinarian. The second thing that the amendment does is that it does allow for true collaborative practice between licensed healthcare professionals and a licensed veterinarian in the immediate supervision. There is a difference between immediate, direct, and indirect. Immediate is the veterinarian is right there with the animal. Direct, the veterinarian is on the premises. In these cases we are looking at immediate supervision, so the veterinarian is intimately involved with the case. The other portion that we addressed in the bill, and there may be questions on, is the civil penalty issue. Senator Langemeier indicates that that's already available. From the board and department standpoint, we respectfully disagree. Also we have in the unlicensed practices a cease and desist and, if it continues, hope that a county attorney will take the case and pursue it. The ability to have or assess through the department a civil penalty would go a long way to curtailing the unlicensed practice of veterinary medicine in our state. The amended version of the bill does provide for oversight, scrutiny, and public protection. The ability that a veterinarian has to have seen the animal, made a diagnosis, and have the letter of referral also helps us minimize the potential of zoonotic diseases being spread from animals to humans. And also this would allow that there is no primary care for the animal therapist. The animal therapist cannot initiate primary care. The veterinarian has to have made a diagnosis and then we have a referral model for the animal owner to participate in. I think that...we've had numerous stakeholder meetings over the last year and a half that have been open to interested parties and the various healthcare boards. And the amended version of the bill has come out of all of those collaborative meetings. Senator Langemeier, Dr. Simmons have all added to what I was going to say, so I'm not going to reiterate those items except that we did have the Opinion from the Attorney General, thanks to Senator Langemeier, and that changed our whole focus and that's why you see the bill as presented today. [LB1173]

SENATOR JOHNSON: Excuse me. Senator Hansen. [LB1173]

SENATOR HANSEN: Thank you, Senator Johnson. Doctor, is an equine chiropractor a veterinarian or part of a veterinary school or how are those licensed? [LB1173]

DAVID YLANDER: As far as the core program, no, it is not. An equine chiropractor unfortunately can have two terms. One, it may be a licensed veterinarian that has obtained additional training, and we would hope that that's the way it stays in the state. Unfortunately, there are a number of people that call themselves equine chiropractors

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that have been to a weekend or a very short course and then come back and, because they have received a certificate, feel they are certified to provide that treatment. So they are actually two different individuals. [LB1173]

SENATOR HANSEN: Is there anything in bovine? Is there bovine chiropractors in the same situation? I don't know if they do that...or dogs. I mean, sure, these household pets are much more in demand for (inaudible). [LB1173]

DAVID YLANDER: Right. There are no specific courses in the core program, the four years of veterinary school, that would take you into that. That is all postgraduate training. And like I said, there are unfortunately many short courses available that do not have the requirement specifically to be a licensed veterinarian or a licensed veterinary technician to obtain additional training. [LB1173]

SENATOR HANSEN: Okay. My final question would be, is Nebraska so short on veterinarians that we have to start relying on human doctors to do some of these things? [LB1173]

DAVID YLANDER: There is a shortage, but are we specifically short as this? No, sir. But the challenge is that the general practitioner may not have the necessary skills to adequately provide all of these services. And as we look at the variety of practices in the state, be it here in the metropolitan area versus the rural area, it even becomes more of a challenge for that single or even two-person practice to be able to provide what an animal owner may be asking. They may not have the skills and they may not have the ability to have a practice where a veterinarian has received additional training to provide that in the immediate area. [LB1173]

SENATOR HANSEN: Okay. Thank you. [LB1173]

SENATOR JOHNSON: Any other questions? Sir, I see none. Thank you very much. How many other proponents do we have? Two, three? Okay. Welcome, Senator. [LB1173]

LORAN SCHMIT: (Exhibits 5-7) Chairman Johnson, members of the Health and Human Services Committee, my name is Loran Schmit and I am a registered lobbyist for the Nebraska Association of Chiropractic Physicians. I have letters from three chiropractors: Dr. Mark Hanssen, the president of the Nebraska Chiropractic Physicians Association; and another from Dr. Daryl Wills, who is a member of the Board of Health; and another from Dr. G.H. Hanssen, who has been a longtime chiropractor and is interested in this particular item. I must qualify those letters of support because they were drafted to the original bill, LB1173, and the doctors who signed those letters were, of course, not aware of Senator Langemeier's amendment. And we only saw amendment...the most recent one that Senator Langemeier referred to AM1049 (sic) I believe...AM2049 (sic).

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We only saw that this morning. So we are really not familiar with that. We have not had a chance to discuss it in detail. But I want to say this: I want to thank, first of all, Senator Langemeier and Senator Dierks for working on this amendment and for also coming to this committee with this problem. Also want to thank the Board of Veterinary Medicine and express the appreciation of the Nebraska chiropractors for their cooperation and their willingness to work and probably try to solve the problem which Senator Langemeier has identified and with which Senator Dierks is familiar. But we recognize the concerns that have been expressed here and the problem of scope of practice. And under no consideration does the Nebraska Chiropractic Physicians Association want to exceed their scope. And so they are totally willing to work under the supervision of a licensed veterinarian in this area. And I have a very brief statement and it says the Nebraska Chiropractic Physicians Association has been working closely with the Nebraska Veterinary Association to draft language that would allow chiropractic physicians to treat animals under the supervision of a licensed veterinarian. We feel there has been much progress and we commend everyone who has been involved in the process. We've only recently seen AM2049 (sic). We understand that another amendment may replace AM249 (sic). We support the concept in the original bill and AM2049 (sic). We believe further discussions might be necessary and we pledge our continued cooperation to agree upon language acceptable to all interested parties. Mr. Chairman, I would be glad to answer any questions. [LB1173]

SENATOR JOHNSON: Do we have any questions? I think we've run out of questions. Thank you very much. [LB1173]

LORAN SCHMIT: Thank you, Senator. Thank you very much. [LB1173]

SENATOR JOHNSON: Next, please. Welcome, sir. [LB1173]

LARRY WILLIAMS: (Exhibit 8) Good afternoon, Senator Johnson and members of the committee. My name is Larry Williams, W-i-l-l-i-a-m-s. I'm a veterinarian, retired, and reside at 7534 Sherman Street in Lincoln. I am currently chair of the Nebraska Veterinary Medical Association's legislative committee, and it's on their behalf that I'm offering testimony in support of LB1173. We appreciate the Health and Human Services and the Board of Veterinary Medicine and Surgery for inviting us to participate in the drafting of this legislation which led to the amendments introduced by Senator Dierks, by the Board of Veterinary Medicine. And of course, we also thank Senator Dierks for introducing this bill and the amendments. And we also were not aware of the additional amendments introduced by Senator Langemeier until this afternoon. And I think you have a copy of my letter there, my written testimony. I will deviate from it somewhat. I just want to reiterate that we think the important...there are three parts, as Dr. Ylander indicated. We think the very most serious important part is the part that provides for the collaboration of veterinarians and other healthcare professionals in working together under the immediate supervision of a veterinarian for the healthcare of an animal. And

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it's been talked about before and that did require a change in the Veterinary Practice Act, which is the subsection 13 which is in your information as well. We also thought it was important to provide for the animal therapist to be licensed and to operate under appropriate rules including penalties and procedures for violations. We think the proposed legislation, as amended, is within the scope of the regulated animal healthcare professions and occupations and will assure that persons who wish to apply their human licensed skills to animals are required to meet certain standards of training in the animal healthcare field. Properly regulated, animal therapists will provide a service beneficial to animals and to animal healthcare professionals as well. Senator Langemeier's amendment prohibits that part and would only allow for healthcare professionals to work in close association with a veterinarian, under immediate supervision. So there would be no...under that amendment there would be no referral to the licensed animal therapist. There would be no licensed animal therapists from the way I understand his amendment. There would not be that provision. In addition, the original bill as amended by Senator Dierks would provide for the civil penalty for persons who practice veterinary medicine or offer diagnostics or treatments of animals without a veterinary license. And that has been a long-term problem within the profession. When there have been violators, it's been difficult to get a cease and desist order that would be effective. So we urge the committee to adopt the amendment as it's submitted by Senator Dierks and the Board of Veterinary Medicine and Surgery and to move the bill forward to General File for action by the committee. And if you have any questions, I'd be happy to address those. [LB1173]

SENATOR JOHNSON: Thank you, sir. Any questions? I see none, sir. Thank you very much. [LB1173]

LARRY WILLIAMS: You're welcome. [LB1173]

SENATOR JOHNSON: Any other proponents? While he's coming forward, how many opponents do we have? About a half a dozen? Okay. [LB1173]

BRUCE CRABTREE: (Exhibit 9) Good afternoon, members of the board. I'm Bruce Crabtree, last name is C-r-a-b-t-r-e-e. I'm a chiropractor and I might be the reason why we're here today. It's interesting, this has been an interesting afternoon as things have changed a little bit here. We've all kind of changed our testimony a little bit. I want to give you a little history on where I'm coming from. I'm a chiropractor. I've been in practice for over 22 years, 19 of them in Columbus, Nebraska. I started out to become a veterinarian at Iowa State University. And as a lot of chiropractors end up, they hurt their back, they get helped by a chiropractor, and as they say, the rest is history. So it's kind of interesting how I've come around back to this because little did I realize that one day I might have the chance to be able to utilize some of those skills and maybe those original aspirations. I learned there were different techniques out there that you could obtain to successfully utilize my chiropractic skills in the animal world. In studying what

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is available, I found there are currently two main organizations, and it's in my notes here, too. And you haven't heard this before. But the main two organizations are VOM, which is veterinary orthopedic manipulation, developed by a veterinarian back in 1986. Currently, there are 7,500 VOM practitioners internationally. There are currently nine certified VOM practitioners in Nebraska. The other organization is the AVCA, which is American Veterinary Chiropractic Association. It was established in 1989 by Dr. Sharon Willoughby, who is a chiropractor and veterinarian. I went to school with her at the time at Palmer Chiropractic College. Currently right now, they have 400 trained technicians, 1 that I know of is certified in Nebraska. So right now you've currently got ten, in a sense, people who have got the training to take care of all of Nebraska's animals, as far as I see it, this way. Even the past president of the Idaho Chiropractic Board, Dr. Shannon Gaertner, feels VOM is probably a little more superior than the AVCA just because it's more effective and more efficacy. It's actually safer; it's not the long-lever actions that some veterinarians are concerned about, working on these animals that could cause damage to the animals, harm to the animals. As has been brought up before, many states have already got these laws on the books... [LB1173]

SENATOR JOHNSON: Sir, could I interrupt you for just a little bit. One of the things we talked about when we started the afternoon is for people not to come and just read their testimony. If you can summarize it, it's very helpful. We're two hours into the afternoon already and I wouldn't want to be the last group testifying at 5:30. So if you could, sir. [LB1173]

BRUCE CRABTREE: Okay. Thank you, Senator. I apologize. [LB1173]

SENATOR JOHNSON: No, you're fine. [LB1173]

BRUCE CRABTREE: The need out there is great. The public knows that there's help out there for animals that are nonsurgical that vets at this point cannot provide. I just went to Tractor Supply Saturday and picked up three magazines off the rack concerning CAM or complementary and alternative medical care. So the people want it and it's not being provided. I want Nebraska to come up to speed with the rest of the country on this, and I applaud the state Vet Board, Senator Dierks, Senator Langemeier for trying to work in this direction. I do have a few concerns. I did pass out an article that you can read later on that covers a lot of the different issues on chiropractic and the vets and chiropractors and how we view these things, and it might be of some interest to you later on because this is a very unique and relatively new field. I understand there's lots of things we're trying to work out here. So my position on this particular bill is a little bit divided. I support the intent of the bill but I think it needs to have some more work done on it. A few things I wanted to bring up was under Section 6(3), additional training approved by the board. I would like to see more wording in the bill that would show more collaboration with the other stakeholders of interest to determine what's appropriate and sufficient additional training, rather than it be controlled by one entity

over the others. Number two, I understand the zoo's concerns with regard to having outside specialists come in to utilize their expertise. I understand they want to have safety, they want to have the best specialists who do this work all the time. But I do want to make sure, as a nonemergency specialist here, that we're on equal footing, that we have equal coverage under the law. And a lot of stuff that I would be doing is non-life-threatening, very low risk, very little danger to the animal. So I understand their unique situation and stuff. Though the other thing, too, is most vets don't have training, specialized training in cardiac surgery or in spinal manipulation, for that matter. So whether the vet is two feet, ten feet, or two miles away, to have him look over my shoulder seems to be...I'm a little concerned that...is there really that much of a need? As long as we can agree on what the educational abilities that person has, I think they should be allowed to step back and do their work, just like right now they're letting the cardiologists say have at it, do what you do best and I'll step back; if you need me, I'm here. The other question I had was concerning the definition of direct supervision or immediate supervision. If there's only a handful of us that are trained or qualified or licensed animal therapists, I've talked to many veterinarians in my area and they say, look, I don't care; as long as you know what you're doing, tell me what you're doing and I'll accept that. I don't have the time to go look over your shoulder all the time. As long as I know you're safe, you know what you're doing, that's fine with me. But to have somebody immediately looking over your shoulder, doing what you're doing, I don't think that's a practical solution. Hopefully we can work more on cleaning up this bill, refining it so that it's a win-win situation for the stakeholders, the vets, and the animals and the owners. It's my professional opinion that the people in Nebraska see this as a legal entity they can go to. They can call upon somebody to do this. I think the cry will be deafening. So thank you for listening to my concerns and I'll entertain any questions. [LB1173]

SENATOR JOHNSON: Any questions? Senator Stuthman. [LB1173]

SENATOR STUTHMAN: Thank you, Senator Johnson. Dr. Crabtree, you have a concern about Senator Langemeier's amendment about the tasks are performed under the immediate supervision of a veterinarian? [LB1173]

BRUCE CRABTREE: Yes. [LB1173]

SENATOR STUTHMAN: That is a concern. That was a concern of mine when I read over this, too. I mean, I would see...I would like to see, you know, in cooperation and communications with the attending veterinarian. [LB1173]

BRUCE CRABTREE: And I agree with that to a point. I do agree with the intent of vet referral. I do not want to walk blindly up to an animal that's not been looked at by a vet and say, you know, I don't want to bypass a veterinarian. I want him to do his thing. And if I can do some good, that's what I want to be called in for. So I don't want to bypass

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the vets. I think it needs to be vet referral. But the contention I have is the immediate supervision, just like the vet techs they talked about in a vet's office. They're not necessarily right over their shoulders. They might be in close proximity or they could be leaving the building and stuff and they still get their job done, and they trust them on that. [LB1173]

SENATOR STUTHMAN: Yeah. Okay, thank you. [LB1173]

SENATOR JOHNSON: All right. Yes, sir. Senator Erdman. [LB1173]

SENATOR ERDMAN: We could address it a different way. We could do what we call a collaborative agreement which, from the committee's testimony previously this year, would mean nothing depending upon where you're at, but it would provide for that same time of oversight, Senator Stuthman, and that might be another mechanism to pursue it. You'd have a collaborative agreement as we do with nurse practitioners and doctors, so that way there's a person that has direct oversight, responsibility, but it's not direct oversight that's required. It's an agreement that's allowing the individual to perform their scope of work under the responsibilities. But I think there's probably ways to do that, as long as the veterinarian isn't extorting the specialist as other medical doctors are doing to nurse practitioners. That was more of a comment, Dr. Crabtree. [LB1173]

SENATOR JOHNSON: Oh, is that right? (Laughter) Any other questions? [LB1173]

SENATOR HANSEN: Senator Johnson. [LB1173]

SENATOR JOHNSON: Sure, Senator Hansen. [LB1173]

SENATOR HANSEN: Thank you. Just to clarify what Senator Erdman said, you still want a veterinarian to see that animal before you work on it. Is that correct? [LB1173]

BRUCE CRABTREE: Absolutely, yes. [LB1173]

SENATOR HANSEN: Don't worry, he has seen it. We care more about our animals than we do some of our two-legged patients, to what Senator Erdman was getting to. [LB1173]

BRUCE CRABTREE: Right, and I agree. I do want to have vet referral. That's why...I became certified in VOM and that's the whole premise, is vet referral. So I do want to work with them on that. [LB1173]

SENATOR ERDMAN: Would we prohibit markups too or...(laughter) [LB1173]

SENATOR JOHNSON: Any other questions? Thank you, sir. [LB1173]

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BRUCE CRABTREE: Thank you. [LB1173]

SENATOR JOHNSON: But I...now any more proponents? Okay. Would the opponents come to the front of the room so that we can expedite things? And again, you know, I am sorry to those of you that...we'll try and give you adequate time. Please be as good in your remarks as you can. But we have given the other side an hour. I'll give you an hour, too, if you require it. And this is the situation we get in, folks, is that when one side talks and talks and talks, we're probably going to get out of here at 6:00 today. So I'm sorry to the last people with the last bill. You can go...welcome. [LB1173]

CHERYL CRADDUCK: (Exhibit 10) Thank you for letting us come and talk to you today. My name is Cheryl Cradduck, C-h-e-r-y-l C-r-a-d-d-u-c-k. I am a massage therapist, I have been for 14 years, and I also am a board member for the state of Nebraska for the Massage Board. So I'm representing the board today in a letter that we put together, and I'm not going to sit and read the letter, but I'll try to just move around and hope that you have time to look at it again later. And we did not see this amendment either, so I guess I can't talk about this amendment yet because we haven't had time to go through it. So what I guess we're concerned is we have some partial support on this, on this bill, LB1173--partial support, but also a lot of questions and oppositions on some of the proposed legislation. The voiced opposition to legislation suggests that developing this new license to be solely regulated by the Board of Veterinary Medicine. Now they're not talking about maybe a license, but maybe just working under a vet. Without coordinating recommendations or opinions by other respective professional boards during creations of rules and regulations. We really would like to be part of putting this together. They have had several meetings and we have been able to participate in a few of them, but they usually give us a week notice and as busy therapists we don't...I can't clear my book in a week to attend a lot of the meetings. So we try to take turns. I tried to introduce myself on an e-mail to Dr. Ylander and hoped to have him respond to me, but I did not hear anything. We wrote a letter, our board did, which I think I sent a copy to you all...see the first letter that we wrote in October to the board giving some ideas of how the Massage Board feels about this and how we'd like to work with them, and we heard no response. So here we are today hoping that we can still be part of this. When I heard Senator Langemeier mention the different boards, he did not mention the Massage Board or massage therapy. So I don't know if he just didn't involve us or...but we had been told... [LB1173]

SENATOR LANGEMEIER: Just summarizing. [LB1173]

CHERYL CRADDUCK: Oh, just summarizing. So anyway, there are a lot of different types of massage and there are a lot of modalities of massage. And I think massage is very misunderstood of all the things that we can do for people. And a lot of massage therapists have worked on animals up until we've been told that we are not supposed to

be doing this from the letter of the Attorney General's Office. So there are different types of massage. There's the relaxation massage, which humans can get or animals can get. It's a relaxation, it's comforting, it's calming. And then there's also another type of massage which would be more the remedial, trying to fix a medical condition of some sort; a bad back, a bad neck, something in that realm. So in this letter that I've given you, it does talk about different scopes of practice...or different scenarios. One scenario would be the relaxation and wellness where a person could bring their animal to, say, a spa or a vet or a kennel inn or a type of...someplace to keep the animal, where they might say, you know, the dog is going to be here for a day or two; would you do their nails, would you groom them, and also give them some massage. That would definitely be wellness relaxation and we question why we would have to have vet referral just to have an animal massaged, if the animal is in good health. People don't have to have a referral to come to us for a massage. So I think...I don't quite understand why we would have to go to a vet and have them do a referral with their client to get to us. Then the other scenario would be a scenario of a medical or remedial massage. Now that's something where the animal could have a bad leg, you know, they see the vet, the vet has said yes, you know, we've got some problems. And then they would refer their animal to a chiropractor or a massage therapist or PT or whoever that is. That we understand and we don't have a problem with. And if the animal therapist does go forward, then hopefully we can help with the education of that. But I really think that the animal massage...I don't see where people are hurting the animals when we're just doing a relaxation massage. I've not heard any complaints. I've been on the board for six years. I've never had anything brought to us about anything like this happening before. So anyway, so there are two scenarios that we just put on this paper: one, the relaxation massage; two, the wellness...the medical massage. I guess what we find...we are attempting to make our point in the first scenario that we recognize medical training and expertise necessary. We also are concerned that the vets do not monopolize the control over the state's animal healthcare rather than a true public health and safety concern. So I think that people should be able to do with their pets what they choose as far as it's a healthy thing. But that being said, we don't see that there's a problem for having special education. One point, a couple...some of the meetings, they have mentioned that they're experiencing a shortage of professionals and growing demand for care in the vet industry. And I don't know if that's to be true or not, but if that's the case, I'm afraid that by opening up this new licensure or certification or whatever they're going to call it, they might end up having a lot more people at their door than they're anticipating. Because if everybody is going to have to call a vet and have their animal checked before they can have a massage on their animal or of any kind--relaxation or medical--it's going to take time and it's going to take a lot more vets because that's going to be a lot more phone calls. And they're going to be seeing a lot more people because there are a lot of people that do this type of work with their animals. People love their animals and they take very good care of them, like their children. So I think that people are going to have to understand that this is a very important thing and that people are going to do this. And I'm afraid if we make too much of a mandate too strong

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in the state, that people will go underground and they will not be getting any kind of a license whatsoever. I mean, there are people that work on equestrian horses, people that work with the horse races that will follow them around and work on their animals. There are people that have, you know, that show dogs and they have their own therapists. And some of these people aren't--so I've been told, I don't know for a fact--but they do not all carry a license. And that will continue, I'm afraid, if we don't try to be really careful on how we work this so that everybody is working together. I think if it's too harsh and if it's too demanding of people to get a permission slip from a vet to have their animal worked on, they won't do it. And there could be more problems down the road, I think. We also compress...we express concern with veterinarians mandating the presence of a letter of referral for any type of care to be performed, which I just mentioned. And then they require...they're going to require session notes, and finally releasing themselves of all responsibility of care that they can only initiate or to recommend, approve, and legalize in the first place. So you know, they're telling us they're going to refer to us if we become an animal therapist. But after they do that, then we will have to write to them and tell them what we've done. And so I think the vets still are, to me, are still going to be in the whole big picture. If they're going to refer their animals to some type of a therapist, the therapists are going to do the work. The therapists are then going to write notes back to the vet to tell them what we've done. So to me, the vet is still being involved in the picture. But then they say...at the very end it says, but they're not going to be responsible for anything. Well, if they make a referral, then I think somehow they hold a little responsibility. And I'm sure that they want to know who they're referring to has the education behind them. And we're all about education. I don't have a problem with that. But I think, to say one thing, to initiate the work and then to say but we don't want any responsibility is kind of passing the buck. And I don't know that that's really what we want to have happen also. So that's basically our concerns. If I can speak just for a minute as a massage therapist and not as a board member, I just think that... [LB1173]

SENATOR JOHNSON: I just would say this: There are a lot of people after you. [LB1173]

CHERYL CRADDUCK: Okay. I just want people to know there are a lot of different types of massage out there. There are a lot of modalities. And being on the state board, I've had to learn about different kinds. So I guess I would like to hear also how the vets are going to learn about the different types of massage so they know what they're going to recommend in the first place. I mean, there are a lot of different things out there. So there's education that's going to be on the therapists' side and there's going to be a lot of education that's going to have to go on the vet side also. Thank you very much. Can I answer any questions for you? [LB1173]

SENATOR JOHNSON: You bet. Senator Stuthman. [LB1173]

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SENATOR STUTHMAN: Thank you, Senator Johnson. Cheryl, as a board member of the massage therapy, and you stated you wasn't involved in any of the discussion or debate as far as meeting with the veterinarians. Are you... [LB1173]

CHERYL CRADDUCK: Well, we tried to send a representative to some of the meetings but, like I said, when we get a week notice, it's hard for us to drop our patients. That's our livelihood. [LB1173]

SENATOR STUTHMAN: Yes. But do you feel that your board will be willing to work and try to come up with some type of solution with the Veterinary Association? [LB1173]

CHERYL CRADDUCK: Oh, definitely, most definitely. I mean like I said, I think...we're not opposed to education at all. And if we're talking about the medical massage of an animal, we don't have a problem trying to work with them on that. But when it comes to just a relaxation massage just to have the puppy feel good while he's at a puppy spa or at a kennel or somewhere like that, I just...we question that that is something that needs to be mandated by the Veterinary Board. [LB1173]

SENATOR STUTHMAN: Okay. Thank you. [LB1173]

CHERYL CRADDUCK: Okay. And then again, if we do something like this, we would also like to see that we work with the massage board, since it's a massage license and they're doing massage, we would like to see the vet have them answer to the Massage Board also, not just to the Vet Board. [LB1173]

SENATOR STUTHMAN: Okay. Thank you. [LB1173]

CHERYL CRADDUCK: Anybody else? [LB1173]

SENATOR JOHNSON: All right. See no other questions. Thank you. Next, please. Welcome. [LB1173]

BARBARA FRANK: Hi. Good afternoon, Senator Johnson. My name is Barbara R. Frank, F-r-a-n-k. I'd like to speak as a pet owner, a pet sitter, and as a licensed massage therapist. First of all, as a pet owner I feel that making me get a vet referral increases my cost and my choices in providing pet care. As a person, I'm entitled to go to a PT without a referral. My insurance company may require one, but I don't have to get a referral to choose to get that treatment for myself. And indeed, I went to a PT because I had epicondylitis and because I'm a massage therapist and they had faith in my ability and my training and scope of practice. I paid for ultrasound while I was there and they had me do my own ice massage while I was there as follow-up treatment each time. So I feel it puts undue hardship on pet owners, especially those who are elderly or who don't have vehicles of their own to have to make a trip to the vet. Also, as a pet

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sitter I am wondering how this affects me because I frequently move into somebody's home and take care of their animals. So because I'm a licensed massage therapist, does that mean that I may not massage the pet that I am currently in charge of taking care of without a vet's referral? Also, it impacts me as a house sitter. I have one dog client whose name is Emily. Emily is a rescue from the Humane Society. So who knows what happened in her life before she lived with her people. She has some behavior issues. If you go to visit them, she barks and growls and carries on to anybody who comes to visit the family. Well, the first time I sat for her, she barked and growled and carried on at me. I'm supposed to care for this animal and we're having some real issues here. We decided then the second time to bring Emily in to my office and have a relaxing massage. Wasn't providing therapeutic for any medical condition. And indeed, by providing this massage to Emily without a vet's referral, the next time that I went to take care of her, yes, she barked and growled when I came in the door, but that was it. We didn't have three days of carrying on where she was uncomfortable with me and stressed out and scared. Also, as a pet owner and pet sitter, Dr. Michael Fox, who is a veterinarian and an author and has written a book about massaging your pets, stated that one of the benefits of massaging your pet is indeed to find anomalies that you do want to consult with the vet. And one of the caregivers is a pet groomer. Took my cat to the pet groomer and she didn't diagnose. She sad, Barb, the lump that Spitfire has, has grown, I think. And I said yes, it has grown and it's scheduled to be removed. But if I hadn't noticed that, that line of defense by my groomer and also by massage therapists who provide relaxing massage and...we see with our fingers. We feel the things on the skin that maybe you don't notice, and so can refer our clients to go have a vet check out something that we think might be suspicious. Also, as a licensed massage therapist--I've been a therapist for 13 years--I'm concerned about someone else regulating my practice. Our scope of practice is to manipulate soft tissue, everyone's soft tissue. And there are lots of modalities out there. I don't know cranial sacral, which is some very effective and gentle work. And if I want my cat to have cranial sacral work, I want to choose to take my cat to Burns Davis, who's a licensed massage therapist who does cranial sacral work and who does work on animals. I certainly, as a massage therapist, if you were to bring an animal to me for a medical condition and I didn't feel that the modalities I utilized were appropriate, I would suggest that they go see another therapist who uses those particular modalities or more effective modalities. I'm also concerned about the vets regulating our work because most vets wouldn't know what TTouch is, which is something that was developed by Linda Tellington-Jones specifically for equestrians, that is now utilized on people and I use it on my practice with people. Most vets are not going to know TTouch, cranial sacral, deep tissue, active movement, passive movement. They're not going to have any idea what these modalities are, so I'm concerned about how they can supervise us and have any idea, if we give them notes, what we're actually doing. I'm also concerned, as Cheryl pointed out, that they're going to oversee us, but then abdicate any responsibility if there's an issue. [LB1173]

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SENATOR JOHNSON: All right. Any questions? Seeing none, thank you. Next, please. Welcome, sir. [LB1173]

MARK ZINK: Good afternoon, Chairman, members of the board. My name is Dr. Mark Zink. I am a veterinarian. I'm also an internationally certified veterinary chiropractor. I feel sorry for your board because it doesn't seem like anybody really knows what they want out of this bill. The opponents definitely don't want it, the proponents can't come to an agreement. I think it's something that needs to be tabled for a while. The veterinary industry has been behind the human industry for quite some time for the very same reason. The American Veterinary...or the Veterinary Medical Association has sat the fence so long on complementary therapies that they weren't willing to endorse them or even acknowledge them that we got behind the ball, leading to the shortage that we have today. I sit here and I see people wanting to be all things to people and animals both. I feel like we're turning the clock back 100 years where the doctor, the veterinarian, the mortician, in some cases the farrier all wore the same hat, lived in the same house, was the same person. I've gone through the four years, eight years to be a veterinarian. I've gone through the coursework to be a veterinary chiropractor. I've gone through the veterinary chiropractic course with people outside of the veterinary profession. And let me tell you, it's very scary. It is very scary. And as veterinarians within the class, we tended to gravitate away from them because massage therapists, chiropractors--sorry--doctors don't have a lot of experience with animal behavior and it becomes an unsafe situation. And unless they're going to spend the time not only to hone their practices as far as a chiropractor or a massage therapist within the animal world, but they're also going to have to go back and learn some behavioral issues. I think Dr. "Cap" Dierks back here can tell you that an animal in pain is one of the most unpredictable modalities in the world. And if you don't have basic animal behavior and the experience to identify it, you're going to put yourself in jeopardy, you're going to put the owner in jeopardy, and you're going to put the animal in jeopardy. Are these professions willing to take on the responsibility that the veterinarians now have, that in a situation dealing with animals that we are the ones sued if somebody is hurt? Not necessarily us, but even the owner. The insurance companies view this as we are the professionals in charge, we are supposed to have control of the situation. Are these professions willing to accept that responsibility? Set that aside. We do have a shortage of veterinarians in the state of Nebraska. I've been trying to hire one for about three years and I've been interviewing several new graduates. And this issue has come up. And I've asked them, what do you think about it? And they said, well, if Nebraska is going to outsource their specialties in veterinary medicine, I might go to another state because if they don't view us as real doctors that's capable of doing this type of work and capable of getting the training, then I'm going to go to a state that will. You know, I've been a practicing veterinarian for 20 years. And I am sorry to say that this is probably the first real time that I've almost been ashamed to be a veterinarian because some very distinguished colleagues have so little faith in us as a profession that we can't go out and obtain the necessary training and knowledge as practitioners and

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cultivate that in our new practitioners, that we feel like we have to outsource it to the human side. You know, as veterinarians we fight this all the time. You hear family members say, why don't you be a real doctor. Well, we are real doctors. We have the training, we have the knowledge, we have the specialists within our profession to handle these situations. We have the training set up for massage therapists and for chiropractics and for dentistry. We have advanced courses. Bottom line: As a profession we need to get at it and get after it, but we haven't been helped by our associations very much because they haven't come on board until the last two or three years. And now it's snowballed and their opinion is, we can't control it so we're going to regulate it. Don't make a long-term solution to a short-term problem. The law of supply and demand will govern this. The more services are asked for, the more people will be there within the professions to fill that need. Thank you. [LB1173]

SENATOR JOHNSON: Thank you, sir. I need you to give your name and spell it again, if you would. [LB1173]

MARK ZINK: Excuse me. Dr. Mark Zink, M-a-r-k Z-i-n-k. [LB1173]

SENATOR JOHNSON: Fine, thank you. Senator Hansen. [LB1173]

SENATOR HANSEN: Thank you, Senator Johnson. Doctor, where were you trained? [LB1173]

MARK ZINK: I was trained in Kansas. [LB1173]

SENATOR HANSEN: Kansas State? [LB1173]

MARK ZINK: At Options for Animals. [LB1173]

SENATOR HANSEN: Is there...was that after your veterinary training, you mean? [LB1173]

MARK ZINK: Yes. [LB1173]

SENATOR HANSEN: Okay. What about your pre-vet training? Is that...do you see more and more students going into that now? [LB1173]

MARK ZINK: Yes. [LB1173]

SENATOR HANSEN: And then with the idea of becoming an equine chiropractor or...so the market is taking... [LB1173]

MARK ZINK: They're looking to add it to their practices, yes. [LB1173]

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SENATOR HANSEN: So the market is working? [LB1173]

MARK ZINK: You bet. [LB1173]

SENATOR HANSEN: Okay. Thank you. [LB1173]

MARK ZINK: Granted, we have not filled the need, but don't be in fear of not being able to fill a need. How many humans have to go a distance to find a specialist? You know, O'Neill, Wayne, if we want a specialist we're coming down here to the university, we're coming down to Lincoln, we're going to Mayo Clinic. It's not mandated that we have to have an animal chiropractor in every city. It is a speciality practice at this point and it is an area that practices can build on to recruit new veterinarians. As a veterinary profession, we have held down prices for animal care in the state of Nebraska to where it's been affordable for everybody at the very expense of we are losing our new graduates because we can't pay them and they're going to go to the coasts where they can make twice what they're making. Don't rob us of our profession and a way to pay these graduates and a way to recruit new people. [LB1173]

SENATOR HANSEN: Thank you. [LB1173]

SENATOR JOHNSON: Okay. Thank you, sir. Next, please. Any other opponents? Okay. Welcome, sir. [LB1173]

JOHN WOLCOTT: Thank you, Senator Johnson, members of the committee. My name is John Wolcott, it's W-o-l-c-o-t-t, and I'm speaking on behalf of the Nebraska Chapter of the American Massage Therapy Association. And realizing that this bill is sort of an attempt to resolve a scope of practice issue, it seems to us that a better approach and an approach that would allow the market to grow these modalities and grow these specialists in a useful and organic way as to allow the scope of all these practices to include work on animals. And as the senators have mentioned, that's kind of a can of worms to open. But without that resolution, without that solution, a better thing to do with these bills is to do nothing. Basically it doesn't resolve them in a useful way as far as we're concerned, particularly with both Senator Langemeier's amendment and...but more particularly to the issue of the veterinarian supervision, direct veterinarian supervision. As a massage therapist, very few massage therapists, licensed massage therapists enter into animal massage lightly. They do it with a great sense of passion. They're beholden to the same rules of ethics, hygiene, professionalism that licensed massage therapists around the rest of the state are. So those mechanisms are already in place. In addition, the market itself is a mechanism. If you're not an effective therapist or--though we've never heard of any complaints on this score--you know, possibly guilty of abuse, you wouldn't survive in the market. I mean, no one would ever come to see you. You would be out of business immediately. So with both those bills, that's a main

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point we have, in addition to the fact that humans don't need a medical referral in order to see a massage therapist for either relaxation massage or resolution of other legitimate medical issues, which massage is becoming more and more popular and more and more widely used as a successful modality. Also the issue of direct veterinarian supervision would be unique in Nebraska, to my knowledge. I've looked on a couple of other Web sites just to see how other states resolve this issue of scope, and none that I could find had a requirement that other states or that other veterinarians directly supervise alternative practitioners. It's...I'd like to echo Dr. Zink in that. It's sort of behind the times. And again, a better resolution is to open the scope to these other alternative practitioners. And since neither of these bills nor amendments do that, it's a better strategy, we believe, to table it. And I'd be glad to answer any questions. [LB1173]

SENATOR JOHNSON: Any questions? Sir, I see none. Thank you very much. [LB1173]

JOHN WOLCOTT: Thank you, Senator. [LB1173]

SENATOR JOHNSON: Any other opponents? Welcome. [LB1173]

B.J. DENNIS: (Exhibit 11) I'm another touchy-feely massage therapist here. (Laughter) When I first...my name is B.J. Dennis, D-e-n-n-i-s. I've been a massage therapist for 17 years. I was on the Board of Examiners for five years, and past president of the MTA for four years. And I'm beginning to think I want to be an animal therapist. I did my research based on that determination because I wanted to know what it would take to qualify for this legislation. I am digressing off of my written presentation because of the information that was handed to us today. I do have a copy of all the other states and their legislation regarding massage therapy and bodywork regarding animals. There's only one copy; you're welcome to keep it and copy it. And they are as diverse as there are states in their legislation. I had three concerns when this proposed legislation came before me. One is, what was the purpose of the legislation? And when we hear the word "therapy," us massage therapists always think it's all about us. So I was surprised to hear Dr. Langemeier list four other professions and not massage therapy, so maybe we're not even a part of this issue. But we are licensed professionals within the state, so it will affect us immensely. I did look up yearly animal abuse report on the Internet to find out how many, if any, cases of abuse were caused by massage therapy. And across the entire United States, 133 other categories and 269 unclassified categories and 1 case in Nebraska, not one of them indicated abuse by a massage therapist. So I continued to be concerned as to why this legislation. I looked up animal therapy. And actual animal therapy, according to the Internet, uses animals to treat humans--that's taking the animals into the hospitals, into the nursing homes, and using them for comfort and care. But my contribution to the amendments that are floating around would be, if there's any limitation to massage therapy whatsoever or any other profession in animal treating, is that it just simply include a caveat as to not being a veterinarian. Example: massage is

not intended to nor can it replace the services of a qualified veterinarian. Neither this site nor its owner intend to engage in the practice of veterinary medicine. The owner of this site is not and should not be construed to be a licensed veterinarian. To me, this would cover a multitude of sins. My second concern was why veterinarian over a massage therapist. And you can replace massage therapist with all the other professions here. I'm not...I wasn't sure whether it was strictly financial, because massage therapy is becoming such a popular modality or if it was to expand the scope of those already working within a veterinary practice. So there are four listed professions within the veterinary classification for careers, animal therapy school and careers guide. There is the vet assistant, the vet technician or technologist, and/or the animal care and service worker. I looked up each one of their curriculum and their job descriptions and could not find one word of massage therapy listed in any of those professions. So my assumption is that they want to add massage therapy to those professions. Only groomers and trainers were listed as being able to do rubdowns. The International Association of Animal Massage Therapists state that among the technicians that are their members, there's a confidence that their association stands ready to support and assist them in any situation where a political or veterinarian entity attempts to interfere with their practice by claiming that massage is the practice of veterinary medicine or with other pertinent legal issues. While for the most part the former issue has dissipated over the recent past because of judicial rulings that massage is part of the grooming process, which in turn is considered animal husbandry and therefore not regulated. I'm not sure that I wouldn't want the Attorney General to reassess his opinion on this matter. There are three training facilities that not only do massage therapists go to, but those professions that I listed earlier would have to get their training from: PetMassage, Ltd.; Equissage, the oldest and leading trainer of animal massage therapists in the world; and Annisage Healing Touch for Animals. All of these agencies are approved by the National Certification Board of Therapeutic Massage and Bodywork, the American Massage Therapy Association, the Association of Bodywork and Massage Professionals, and the International Association of Animal Massage and Bodywork. Those employees of a veterinarian's office would have to take exactly the same training that massage therapists are taking in order to be qualified to work on animals. My last concern was the definition of "therapy," which I understand we just got this morning, which I haven't been able to read. But therapy is...there was no mention of massage along with therapy. And when I looked up the Northwest School of Animal Massage, they make reference to animal massage certification for the career-seeker. And under that they're listed animal massage practitioner certification, levels for maintenance massage, performance massage, and rehab massage, as well as a multitude of other modalities. Nowhere was I able to find a Web site that offered animal therapy certification. [LB1173]

SENATOR JOHNSON: Ma'am, I hate to interrupt you, but you know, we have many people after you. And you know, if we take this long on every person, it's just not fair to the last people. So if you could conclude, we'd appreciate it. [LB1173]

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B.J. DENNIS: I'm on my last sentence. In 2002, Nebraska passed an animal cruelty law making it a felony offense punishable by 5 years in jail or a fine of \$10,000. I don't think we need another law. But if they're wanting to do...to extend the veterinarian laws, I would recommend that further clarification and collaboration be assessed. [LB1173]

SENATOR JOHNSON: Thank you. Any questions? I see none. Thank you. [LB1173]

B.J. DENNIS: Thank you. [LB1173]

SENATOR JOHNSON: Anyone else? [LB1173]

KIRK PECK: One neutral guy. [LB1173]

SENATOR JOHNSON: All right. One neutral guy. Come on up. If nothing else, you got a good-looking tie. (Laughter) [LB1173]

KIRK PECK: Thank you, I appreciate that. [LB1173]

SENATOR JOHNSON: Welcome. [LB1173]

KIRK PECK: (Exhibit 12) Thank you, Senator Johnson and the committee. And my name is Kirk Peck. It is K-i-r-k, my last name is P-e-c-k, and you've now shortened a 5-minute reading testimony to about 30 seconds. I am a physical therapist here in Nebraska. I am a stakeholder of interest in this bill. I will tell you, in all honesty, having set through all the other testimonies being spoken today, I have three main points of just concerns and issues that were expressed. I'm testifying neutral because I'm supportive enthusiastically for the door being opened for us to potentially practice with animals in this state. It's something that is occurring by physical therapists in many other states, including private practices where PTs run their own facilities. So we're very excited about this. There's a few concerns I have with some language in here. I'll be honest with you, they've all been expressed already. You've already heard them. I don't need to repeat those because I'm going to respect the fact that you all can read my testimony. (Laugh) And so I'll sit here and actually say, do you have any questions? But I basically want you to know that there is a physical therapist, there's about 30 of us in this state that have an interest in this, and we are more than willing to work with the Veterinary Board. We've been attending almost all the board meets over the last several months with enthusiasm and collaboration. And I'm sure they would be willing to work more on collaboration to fix some of the language we would like to see before we can support the bill. But with that said, I'll just let you know there is a PT that's interested, several are, so we are another interested stakeholder. With that said, any questions? [LB1173]

SENATOR JOHNSON: Okay. Any questions? Sir, I see none. Thank you very much.

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[LB1173]

KIRK PECK: Thank you. [LB1173]

SENATOR JOHNSON: Anyone else? Senator Dierks. [LB1173]

SENATOR DIERKS: Senator Johnson, members of the committee, you've probably learned more than you ever thought you were going to know about (laughter) all sorts of medicine and therapy. I just wanted to take the opportunity to tell you that I think there's an opinion by many longtime Nebraska veterinarians that with this legislation we're opening a crack in the practice act that they don't particularly want to see. Point was when Dr. Zink came up here, Mark Zink and his wife are both veterinarians. They both did their internship in my practice in O'Neill. I've known them for a number of years and I sympathize with their feelings about this. You should know that I brought the legislation for the Veterinary Board of Examiners because I felt that if there was going to be legislation, that I should have my hand on it. And I think we've gone through a tremendous amount of study and...well, you can tell what we've done, as far as amendments are concerned, that we have many difficulties with what should be the import of the legislation. So I guess that without getting into any of the other particulars, the violations, of course, that occur when people do veterinary work and get paid for it if they're not licensed to practice veterinary medicine. That seems to be the big thing we're trying to prevent from happening. And we know that there are people who ask for these other services. As a matter of fact, we know that...Dr. Zink, I think, told you about some veterinarians that take courses in chiropractic. I know a veterinarian who comes from Iowa to give chiropractic treatments to horses and he's had extremely good luck with that. It always seemed impossible to me to be able to lift the horse's leg and do a twist on it or whatever and make it straighten out. But they have a knack of doing that and they're very good at it. There are many small animal practitioners, veterinary medical practitioners that do veterinary chiropractic, and there's courses in that. And some of them are doing animal acupuncture. So...and I think that they're satisfied with their work there. But these are all veterinarians and they're all licensed to do what they do. I think that I just saw Senator Langemeier's amendment just as he handed it out here, so I really can't...I need to have a chance to take a look at that before I offer any suggestions about it. My thought is that, you know, we need to...I'd like to just be able to take a look at that amendment before you make any particular decisions on the legislation and see if we can come up with something that might do at least part of a service. I have great sympathy for the needs of Henry Doorly Zoo and I promised them myself that I would see to it that they would not have any ill effects from our legislation. So that's got to be part of what we do. With that, I'd be able...be glad to answer any questions you might have. [LB1173]

SENATOR JOHNSON: Senator Dierks, I see none. [LB1173]

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SENATOR DIERKS: Thank you very much. [LB1173]

SENATOR JOHNSON: You bet. Thank you, sir. That concludes the hearing on LB1173. Next up is LB742, and I'm the sponsor of that, so we'll let Vice Chair Gay take over at this time. [LB1173]

SENATOR GAY: We'll go ahead and open the public hearing on LB742. Senator Johnson. [LB742]

SENATOR JOHNSON: Fine. Thank you. Senator Gay, members of the committee, I'm Senator Joel Johnson, J-o-e-l J-o-h-n-s-o-n, representing the 37th Legislative District. The Health and Human Services Committee's jurisdiction includes all health and safety issues for Nebraskans. The committee's jurisdiction does, therefore, include the regulation of engineers to protect the safety of the public. That's why we are here today. We do live in an increasingly complex world with, I suspect, increasingly complex engineering problems. The traditional four-year degree is insufficient to provide the necessary educational background for an engineering license. Engineers require a greater body of knowledge in order to address the increasing complexity problems they must solve. LB742 provides that the appropriate qualifications for engineering licensure should include graduation from either: one, a baccalaureate level engineering curriculum with an additional 30 credit hours of upper level undergraduate coursework or graduate level coursework; or two, a master's level engineering curriculum. LB742 would require that on or after January 1, 2015, this additional educational requirement would go into effect. You will see, however, that there is an amendment which will be presented by the person who will follow me that would change this date from 2015 to 2020. There's also obsolete language which would be deleted. I think that this is something for us seriously to consider. I would suspect that the problems are the same with engineering as they have been in my lifetime with medicine. Forty-some years ago, we would have four years of medical school, a year of internship, and then be turned loose on the world. Now, those numbers have been upped to seven years as the minimum. So with that, I'd ask your consideration and listen carefully to the people to follow. [LB742]

SENATOR GAY: Thank you, Senator Johnson. Any questions for Senator Johnson? Senator Erdman has a question. [LB742]

SENATOR ERDMAN: Senator Johnson, I'll be 25 percent older in the year 2020. And I realize that I'm not that old, but that's a long time. Logically we're talking about putting a law in effect for 12 years from now. Are the people behind us going to explain why that's a good idea, because I'm in the appraisal business and they're changing my stuff on a lot quicker basis requiring advanced degrees, requiring training? If we're smart enough to figure out 12 years in advance what the requirements are going to be, then that's phenomenal. [LB742]

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SENATOR JOHNSON: No. You're right, but we put in...there will be people that address this, the original bill that we put in was for the shorter period of time. There were concerns that you will hear from opponents or at least neutral people that will explain why they wanted to delay it. [LB742]

SENATOR ERDMAN: I look forward to it. [LB742]

SENATOR GAY: All right. Any other questions? Don't see any. Thank you, Senator Johnson. Can I just have a show of hands who's going to be proponents that want to testify? And opponents? Okay. Anyone neutral on this? Okay. All right. So you saw them, and I know engineers are fairly brief on the way they...(laughter) [LB742]

DALE JACOBSON: (Exhibit 1, 2) Thank you. I think I got that clue. Senator Gay, members of the committee, thank you for the opportunity to appear before you today. My name is Dale Jacobson, spelled D-a-l-e J-a-c-o-b-s-o-n. I have my testimony in written form along with the handout here which I will distribute. And in the interest of brevity, I will summarize quite rapidly. The afternoon is getting very long. So I'm appearing today on behalf of the American Society of Civil Engineers, ASCE, which is a 140,000-member organization of civil engineers from both the United States and in international locations. I appear in support of LB742. In my day job I am the president of Jacobson Satchell Consultants, a consulting engineering company from Omaha. I'm a registered professional engineer in Nebraska, and I have 36 years of experience in the practice of civil engineering. I also serve on the Civil Engineering Advisory Board of the University of Nebraska. This is a board consisting of practitioners in the civil engineering field that advises the department on professional and academic matters. The legislation before the committee, LB742, would increase the educational requirements needed in order to be admitted to the examination to become a professional engineer. Specifically, the bill requires that graduates of an accredited engineering program who have four years of experience will need an additional 30 hours of upper level or graduate education before they can be allowed to take the professional engineer exam, after January 1, 2015. And I have an amendment today that proposes to change the implementation date to 2020. I will distribute that at this point in time. It is certainly a good question. Seven years seems to be quite a long time to implement the bill, and going to 2020 is a very long time and that's a good question that's been brought forward. And one of my colleagues that will follow me in testimony I think is prepared to address that. ASCE has been studying the concept of additional education since the mid-1990s, and we believe that requiring education beyond the baccalaureate degree for admission to the examination is essential in today's complex times. The National Academy of Engineering in 2005 prepared a document. It looks like this. It's entitled: Educating the Engineer of 2020. And I quote from that document: It is evident that the exploding body of science and engineering knowledge cannot be accommodated within the traditional four-year degree. So let me move rapidly then to some other information

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about education. The other learned professions have for many years raised the bar for the practice of their profession. You heard Senator Johnson speaking as Dr. Johnson, you know, illuminate that with regard to the medical profession. In your handout, you should have a brochure that says CAPE on it. And on the backside of that brochure is a graph with some colors on it, and I'd just like to spend a couple of minutes with that. The horizontal scale is year. It's going back literally 100 years. The vertical scale is years of formal education and you can see that the medical profession has raised the years of formal education requirement many years ago. The law profession has done that. More recently, the pharmacy profession has done that. And even more recently, the architecture profession and the accounting professions have done that. The horizontal line represents the engineering profession, in this case a civil engineering. And in essence it proves or concludes that the educational requirement has not gone up through the years. Let me be a little more specific with you. I'm a Nebraska boy. I grew up in central Nebraska and I graduated from Kearney High School and came to Nebraska to school in Lincoln in the 1960s. And when I entered the university, it took 142 hours to get a degree in civil engineering. Since that time for a variety of reasons, the requirement to get a civil engineering degree has gone down. There's been market pressures and academic reasons for that from central administration. And now to get a civil engineering degree at Nebraska is 128 hours. And Dr. Dahab who follows me will talk more about that. But nationwide the average engineering degree is between 120 and 132 hours. It's essentially designed to be a four-year degree. And this is all the while, while the practice of engineering has gotten much more complex. The world is a more complicated place than it used to be. So as a result, the baccalaureate degree in engineering is satisfactory for an entry-level position into the profession. But it is not adequate for practice at the professional level. And therefore we support LB742 which adds a requirement for 30 additional hours. In practice of a consulting engineer, in the consulting community as an employer, we are almost always looking for students with either 30 hours, but it maybe even more specifically a master's degree in engineering. We look for master's degree candidates to be our employees because they're more productive and they have more technical knowledge of the type we need. If we do have employees that don't have a master's degree or we should hire employees without a master's degree, the private sector has an extensive tuition reimbursement program because we consciously push our employees that don't have master's degrees to go to night school to get those. So in practice, this requirement is sort of in effect already, but it's informal. Well, let me summarize them in closing. It is evident that the requirement for licensure as an engineer must be increased for the protection of the public health, safety, and welfare. As a longtime practitioner in Nebraska, I believe that passage of LB742 with an implementation date of 2020 will give the Board of Engineers and Architects, the University of Nebraska, the profession, and others adequate time to prepare for new educational requirements designed to protect the public health and welfare. Mr. Chairman, that concludes my formal testimony, and I would be pleased to respond to questions. [LB742]

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SENATOR GAY: Thank you. Are there any questions from the committee? Senator Erdman. [LB742]

SENATOR ERDMAN: Dale. [LB742]

DALE JACOBSON: Dale. [LB742]

SENATOR ERDMAN: Dale, your testimony refers to LB742 following the recently adopted model law for licensure of the National Council of Examiners in the Engineering and Surveying. Okay. That's it. We also have a letter from the American Council of Engineering Company saying that 27 state boards voted against that model. How was that adopted if...is it not based on the majority of the states? Is it based on the number of engineers? Is that not an accurate statement? Help me understand where the discrepancy is because you probably can't adopt a model law unless the people that are part of the group vote for it. [LB742]

DALE JACOBSON: The National Council of Examiners for Engineers and Surveyors is an umbrella organization that is belonged to by the state boards of engineers. And Mr. Conzett, who will be testifying following me, is the chair of the Nebraska board, and I believe he will be able to give you a response to that question much better than I can. [LB742]

SENATOR ERDMAN: Fair enough. [LB742]

SENATOR GAY: And then also I've got a question also that I hope he'll follow up on. It says here the status...you're looking at this in 56 different states and other regions. But the status of where that whole effort is because it sounds like there's not one united group here that's seeking this. You know, it's what Senator Erdman is saying I think is you're seeking this, but other groups aren't. Is there one united group for engineers or is it just... [LB742]

DALE JACOBSON: Well, no. I mean, I'm representing the civil engineers. You know, there's the National Society of Professional Engineers, which is generally a broader organization. And most other types of engineering disciplines have their own society also. [LB742]

SENATOR GAY: But there's not one over each... [LB742]

DALE JACOBSON: It's a very large profession and as I said, our society alone is 140,000 members. So you kind of get the picture. [LB742]

SENATOR GAY: Yeah, very big. [LB742]

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DALE JACOBSON: And the president of the Nebraska section will testify regarding the membership in Nebraska. [LB742]

SENATOR GAY: Okay. All right. Thank you. Any other questions? I don't see any. Thank you. [LB742]

MICHAEL J. CONZETT: (Exhibit 3) Good afternoon. Thank you, Senator Gay, members of the committee. My name is Michael J. Conzett, last name is spelled C-o-n-z-e-t-t. I am a licensed professional engineer. Today, I am representing the state of Nebraska Board of Engineers and Architects. I currently serve as the chairperson of the organization. I think I can bring some perspective to some of your questions, especially nationally. Our board supports LB742, especially with the amendment of 2020, and I'll get to that in a second. As you know, our whole role of the board is to uphold the rules and regulations that govern the practice of engineering and architecture to safeguard life, health, and property. And in that role, I take off my engineer hat and I have to put on my public citizen hat. Our whole licensure process is a three-legged stool made up of examination, experience, and education. We're here to talk about the education. Each one of these legs is important for the whole, and any one by itself if it isn't there and isn't properly there causes a failure of the stool. We support the bill for the same reasons you just heard from Mr. Jacobson. We're concerned about the loss of credits over the years in a bachelor of engineering degree, and also the changing world which I think puts pressure on engineers. There's a more demanding public and I think there's some real concern that our public isn't well served unless some kind of change is made. This is not something new. I would like to tell you that in March of 2003, our national organization, NCEES, the mother ship of our board put out a report called the engineering licensure qualifications task force which speaks to this very issue that ASCE has brought up. It speaks to the education issue almost five years ago now. And at the table, at the time this report was written, at the table were other engineering organizations which you were asking about, including: the American Council of Engineering Companies; the American Society of Mechanical Engineers; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and the National Society of Professional Engineers all were at the table preparing this task force report. Then in 2006 at an annual meeting of the NCEES, model law was passed for this bill that you see, and it was passed by a majority of the 55 jurisdictions that were there. And it became model law in 2006 in Anchorage. Then last year in 2007, this model law was challenged, it was brought to the floor and challenged, and it again passed. It passed...there was even fewer no votes than there was the year before. So this is two years of national boards that at least in the majority are saying this is a good thing. And then our board in 2004...and that's the second document I gave you, if you look at that second page, our board three and a half years ago brought this out to our members with our newsletter saying things are changing and pay attention. So we've been out there for several years with this issue. Details are not all there. We understand that and progress is being made and here is the reason for 2020. I serve as the chair of a

national task force on this issue with the NCEES. I sit as chair of this so Nebraska is represented in a national way. And we just had meetings in December and in February, and we as a task force are recommending to the national organization that the model law change from 2015 to 2020 for two reasons. One is to allow us to get all the details in place as to who the course providers are, what are the courses. You know, is it professional practice? Is it technical areas? You know, how does that look? We need a national clearinghouse that can take our people that want to be engineers and assess them so that as a board we don't have to work very hard to make sure these people are qualified. That's another very important national issue. And the second reason why we're...that could take a couple of years, three, four years. And then the second reason to make it 2020 is that in fairness to the student who is entering college and would sit for a professional engineer exam, if you say they are in college for four years, and then they must have four years of experience after that before they can sit for their exam, these four years would allow them to get their additional credit hours while they're working or if they want to get a master's degree. So I think in fairness we need eight years for people that are matriculating into the university system to know what they're facing, you know, eight years later. So that's the reason for that. In summary...one other thing too, as I said, I'm on this task force. We also have eight of these engineering societies at the table with us. So we're all representing. We're representing all the engineers as we develop these rules. And now we believe Nebraska can be a leader. We are working with our neighboring border states to develop some coalitions because comity is a very important issue, mobility of engineers is very important. We recognize that. When 2020 comes, any person who is licensed in our state, whether they are resident or nonresident, is grandfathered and they don't need this plus 30. Any engineer in another state who is properly licensed before 2020, but not in our state but then wants to come to our state after 2020 is also grandfathered as long as they would have otherwise be properly qualified. So they don't have to worry about the plus 30. The people this affects are people who are getting their first license after January 1, 2020. We believe there's plenty of time to get all the details in place. Nebraska is a leader and we don't believe that we will be alone in this thing at all. So that concludes my testimony. Are there any questions? [LB742]

SENATOR GAY: All right. Any questions? Senator Erdman. [LB742]

SENATOR ERDMAN: Michael, I had a joke here. It's a little inside politics about adding an E clause to the bill because that would mean that it would become effective as soon as it passed. So obviously it's not necessary because (laughter) it won't become effective until 2020. So the deadline in the model act I think as I picked up from your testimony is currently 2015. [LB742]

MICHAEL J. CONZETT: That's correct. [LB742]

SENATOR ERDMAN: This amendment would actually be out of compliance with the

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model act, but consistent with your efforts to extend it another five years. [LB742]

MICHAEL J. CONZETT: Correct. [LB742]

SENATOR ERDMAN: So technically by adopting LB742 with the proposed amendment, we would not actually be in compliance with the model act? [LB742]

MICHAEL J. CONZETT: That's correct. [LB742]

SENATOR ERDMAN: I mean it's 12 years from now, so does it matter whatever? [LB742]

MICHAEL J. CONZETT: Right. And our state is free to do whatever we want with that anyway. Okay? [LB742]

SENATOR ERDMAN: Okay. 2005 it passed at the... [LB742]

MICHAEL J. CONZETT: 2006. [LB742]

SENATOR ERDMAN: In 2005 the bachelor plus 30 concept was approved by the NCEES. And in 2006 at the annual meeting in Anchorage, it was approved with modifications in the model law. So the concept was approved in '05... [LB742]

MICHAEL J. CONZETT: Correct. [LB742]

SENATOR ERDMAN: ...the model act was approved in '06. [LB742]

MICHAEL J. CONZETT: Correct. [LB742]

SENATOR ERDMAN: And in '07 there was a challenge... [LB742]

MICHAEL J. CONZETT: There was a challenge. [LB742]

SENATOR ERDMAN: ...and it was upheld. Now, there are 55 voting members... [LB742]

MICHAEL J. CONZETT: Jurisdictions, they call them. [LB742]

SENATOR ERDMAN: ...jurisdictions. So when you go to vote, is it one vote for each jurisdiction? [LB742]

MICHAEL J. CONZETT: One vote for each board. So in other words, we have two state boards in the national meeting because our board is the engineers and architects. And

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then there's a surveying board which is also served by the same organization. And some states have three boards because they have specialties for... [LB742]

SENATOR ERDMAN: So we're not talking about 55 voting delegates. We're talking about 100-and-some. [LB742]

MICHAEL J. CONZETT: Actual delegates? [LB742]

SENATOR ERDMAN: Well, if each board has a vote we have two boards so we technically would have two votes. [LB742]

MICHAEL J. CONZETT: Each board has one vote, right. That's why you have more than 50 states. [LB742]

SENATOR ERDMAN: Because I'm trying to do the math because according to the letter we got, it says 27 state boards voted against it and I was assuming erroneously that that meant that 27 out of 55 voted no. And then you said that it passed with less opposition in '06 and I'm thinking it only passed by one vote. How could it have passed by any less of a margin? But as you explain it, you have multiple boards within each state. So when they say 27 state boards, it could be either board or multiple boards or whatever. [LB742]

MICHAEL J. CONZETT: Correct. Right. I don't have the votes with me, you know, the record with me that I could... [LB742]

SENATOR ERDMAN: And it doesn't matter. I'm just trying to make sure that I understand what the issue is. In other professions, we as a state get to dictate. We heard bills today, scope of work, other things. We have that same flexibility here? Is that accurate? There's no federal or other restrictions that we would have to adopt this. This is simply a request from the board and others to expand or increase the requirements. [LB742]

MICHAEL J. CONZETT: Correct. As model law, we as a state can take any part of the model law we want or leave it alone or whatever. You know, as a state we have that sovereignty. So yeah, we can adopt this. I'm sorry. Is that really... [LB742]

SENATOR ERDMAN: Yeah. That's responsive. I'm just trying to... [LB742]

MICHAEL J. CONZETT: Muddle through. [LB742]

SENATOR ERDMAN: ...make sense out of having 8 groups in the state with 2 boards and 55 jurisdictions and some have 3 votes and some have 2 and some have 1 and somehow that all leads to this bill. And I'm just trying to connect the dots. So I think you

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were responsive. I appreciate it. [LB742]

MICHAEL J. CONZETT: Any other questions, I guess? [LB742]

SENATOR GAY: No. No other questions. Thank you. Do you want to add something real quick? [LB742]

MICHAEL J. CONZETT: Could I? One more thing? You know just thinking about who we're supposed to take care of, I would hate to be somebody outside of our hallway, you know, a citizen saying what are they arguing about? Aren't we important enough to protect? Shouldn't we ask, you know, our board to have the highest standards possible? I think that's what we're trying to do. Thank you. [LB742]

SENATOR GAY: I'm sure they want that. Thank you. Other proponents? [LB742]

MOHAMED DAHAB: (Exhibit 4) Senator Gay, members of the committee, my name is Mohamed Dahab, first name is spelled M-o-h-a-m-e-d last name D-a-h-a-b. I am here on behalf of the Department of Civil Engineering at the University of Nebraska in support of LB742. I am professor and chair to the Department of Civil Engineering. I am also a registered professional engineer in Nebraska and Iowa for more than 28 years. The Department of Civil Engineering is the only provider of civil engineering education in Nebraska, with two resident locations here in Lincoln and in Omaha. The Department of Civil Engineering supports LB742 for all the reasons that have been outlined by the previous colleagues. And also because we believe, as was pointed out, that engineers have to be equally credentialled as well as other public health and safety trusted individuals, such as doctors, lawyers, and so forth. We also believe that it has to be a combination of both legal requirements and educational opportunity and the Department of Civil Engineering is poised to provide that opportunity hopefully if this legislation is passed. In my remarks that I included there which I don't propose to go through all of them considering the length of the date, although there's a professor in me trying to come out. (Laughter) If I leave, I'd like to leave you with two important points related to this bill. First of all, when this bill is passed, it will still require four years to obtain a Bachelor of Science in civil engineering or an engineering degree from the University of Nebraska or any other university for that matter. It will not require five years to get a degree in engineering or civil engineering specifically. We have always been an accredited program in civil engineering and our accreditation is defined by the Accreditation Board of Engineering and Technology, we refer to it as ABET. And ABET defines the minimum standards for entry into engineering practice. It does not define the standards for practice of engineering beyond the entry level, and this is why we support this bill. Now, considering the fact that our body of knowledge in engineering and physical sciences have increased, in fact, we estimate that the body of knowledge doubles every five to six years. It has become absolutely impossible for any academic program to package the required amount of knowledge in four years which is required

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by the universities and still meet the challenges of the expanding science and technology. The other point I want to leave with you is that the Department of Civil Engineering, just like other departments in the College of Engineering at UNL, we already provide the opportunity for graduate education. And we are very poised to participate in this process when this legislation is passed. We already provide that opportunity so a significant fraction of our students who elect to go to graduate school immediately after obtaining their Bachelor of Science in civil engineering. With that, I am happy to answer any questions related to many of the argument that people have brought against what we call "raising the bar." That I really would like to commend Senator Johnson on having the vision to be one of the first in the country to bring this issue forward and hopefully provide a very proactive response to it. And we support it wholeheartedly. And with that, I'm happy to answer any questions. [LB742]

SENATOR GAY: Thank you. Any questions? Senator Erdman. [LB742]

SENATOR ERDMAN: Doctor, the enrollment for engineers at the university, what is the status? Are you seeing an incline, decline, stagnant? [LB742]

MOHAMED DAHAB: I'm happy to report that engineering enrollment at the University of Nebraska is perhaps at as high as it has ever been. I can speak directly on the civil engineering program, and it is right now at the highest point that it's ever been in the 25 years that I have been associated with the University of Nebraska. [LB742]

SENATOR ERDMAN: Well, how many institutions in the state provide civil engineering degree? Just the university or... [LB742]

MOHAMED DAHAB: The University of Nebraska-Lincoln is it. [LB742]

SENATOR ERDMAN: Okay. Congratulations on that corner. (Laugh) The next logical question...I mean, I was a student at the university and wasn't smart enough to go into civil engineering, so I sit here (laugh). But it did take me four years to get a four-year degree. Miraculously I actually did nearly 40-some hours my last year to get that done. But what is the average time it takes a student to get through the engineering program? Granted they could do it in four years, but are students able to actually complete the curriculum in four years or is it closer to four and a half or five? [LB742]

MOHAMED DAHAB: As Mr. Jacobson pointed out, we require currently 128 credit hours to obtain a Bachelor's of Science in civil engineering. We package it in a four-year program. So a student that enters the program and stays on schedule is very likely to complete his/her program. If students for some reason opt for internships or perhaps repeat a class for some reason, then they're off the cycle and more likely will take nine semesters. If I were to pick an average or a representative time that it takes our students, I would say probably nine semesters right now. [LB742]

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SENATOR ERDMAN: And you're just talking the traditional semesters. You're not talking summer school or anything like that. Just simply that the two semesters every school year...okay. [LB742]

MOHAMED DAHAB: If I may add, part of the reason a lot of our students take nine semesters is because the opportunity to build a resume and get out of the classroom and get some practice is very, very attractive and a lot of employers encourage that. So many of them instead of say opting for summer school, they opt to do internship with engineering company and it looks very, very nice on the resumes once they graduate. And hence, many of them are not necessarily anxious to graduate in eight semesters. [LB742]

SENATOR ERDMAN: So they're following the same encouragement that I got. I believe Twain originally said it was that they're not letting their classes interrupt their education (laugh). [LB742]

MOHAMED DAHAB: Absolutely. [LB742]

SENATOR ERDMAN: Okay. [LB742]

SENATOR GAY: All right. Any other questions? Don't see any, thank you. [LB742]

MOHAMED DAHAB: Thank you. [LB742]

SENATOR GAY: Other proponents? [LB742]

EDWARD PROST: (Exhibit 5) Senator Gay, members of the committee, appreciate your time here and I'll be brief. I promise. My name is Edward Prost, that's P-r-o-s-t, as in Tom. I'm here today to testify on behalf of the Nebraska section of the American Society of Civil Engineers, that's also known as ASCE, in support of Legislative Bill 742. I'm a principal with the engineering consulting firm of Terracon. We have offices here in Omaha and Lincoln and throughout the country. And I'm a registered professional engineer with 27 years of experience and have lived in Nebraska for the last 15 years. I'm currently the president of Nebraska section of ASCE. And the main points that I want to spell out today is first of all that the Nebraska section of ASCE is in support of this bill. We represent 750 members who practice in various capacities across the state. And the section has been involved in this legislation from the beginning and we fully endorse it. I would also just want to state just briefly that although ASCE doesn't represent all engineers, civil engineers who ASCE does represent does encompass the majority of licensed engineers because having an engineering degree, of course, is different than being licensed to practice civil engineering or in any engineering practice. And this bill, as has been stated, would not change the requirements to graduate with an engineering

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degree. It would only regulate the practice of engineering and responsible charge. The implementation of LB742 will benefit the people of Nebraska by better preserving and protecting their health, safety, and welfare. It is the job of the engineer to design, build, and oversee projects that if they fail can cause significant loss in terms of life, well-being, and property. And engineers must be properly prepared to manage these responsibilities. I can speak from my practice of geotechnical discipline in civil engineering that it's very difficult, if not impossible, to get the level of education that you need in a four-year program for the specialty practice that I do. And I believe that most practices are very similar, that you don't really get a very good background. You get a very general packaged into that four years. And it's good entry point, but it really needs to be I think to be able to be in responsible charge it really needs to be raised. And as we've brought out, you know, in this graph and everything, you can see engineering needs to be brought up to the level of other professions which, you know, I believe it is in equal status with. So...again, I just wanted to tell you that ASCE is here to work with the committee and Legislature in passage of this bill, and I'd be happy to answer any questions that you might have for me. [LB742]

SENATOR GAY: (Exhibit 6) Thank you. Any questions? I don't see any. Thank you. Any other proponents would like to speak on this issue? All right. We'll get to opponents. Opponents, come on up. I do have a letter in opposition from American Council of Engineering Companies. So for the record, we did receive that. [LB742]

DAVID K. MILLER: (Exhibit 7) Senator Gay, good afternoon. My name is David K. Miller. I am the chairman of the Nebraska section of the American Society of Mechanical Engineers. I'm a registered professional engineer here in the state and ASME was founded in 1880. We have about 127,000 members worldwide. The section here in Nebraska has about 365 members total. I'm also representing the ASME Center for Professional Development, Practice and Ethics, and we all feel that LB742 is not really necessary. The opposition to this bill, we're also joined by the American Institute of Chemical Engineers, which is the chemical engineering professional society, as well as the American Society of Heating, Refrigeration and Air-Conditioning Engineers, also known as ASHRAE. The things that...or I guess the reasons behind this opposition was, you know, obviously this will increase the cost of engineering education overall. They are correct. It's, you know, right now as proposed, it will not change the requirements for a bachelor's degree, but to actually be a licensed engineer will significantly change. There's no evidence to suggest really that adding 30 credit hours into this really is in the general interest of public safety. This is kind of something that really has not had a demonstrated need, other than the speculation that, yes, it is going to get more complex and there are ways for that to be addressed under current Nebraska law. To renew your engineering license, you have to actually engage in a fair amount of continuing education throughout your...every year or every two years, I believe, is when the licensure comes up. You also heard some arguments about how the number of credit hours has decreased from 150-ish to 120-ish, give or take a little bit. That also has

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resulted in really no significant change to either of the exams that are required or the results of the exams that are required for an engineering license. There's two exams and I'm not going to get into the details in the interest of brevity of those. Also, within the written statement you'll find that there is some statistics regarding engineering and technical education overall for the last 20 years and how that's in general decline across the nation. ASME believes that this is a misguided effort and putting an extra 30 credit hours into the front end of an engineering career is going to do nothing but decrease the number of available professional engineers in the state. We believe that the reason for engineering licensure is to protect the safety, health, and welfare of the public. Legislation in these matters should be used for that purpose only, not really an attempt to increase the prestige or the status of the profession by raising the bar to access being called an engineer. The valiant effectiveness of the work that we do should be the sole measure of our profession. Professionalism and continuous education across decades of an engineering career is the real foundation for public safety. And my apologies to the clerk. I forgot to spell my name, which is M-i-l-l-e-r. And with that, again, I have a written statement there from ASME that's endorsed by the people I mentioned before. I won't get into the details, but if you have any questions, I'd be happy... [LB742]

SENATOR GAY: Senator Pankonin. [LB742]

SENATOR PANKONIN: Thank you, Senator Gay. Mr. Miller, just a quick question. You mentioned about continuing education of licensure. Just to briefly, and it may vary by discipline, but what are kind of the requirements? How often do you have to renew your license? [LB742]

DAVID K. MILLER: I could be mistaken because I don't have it in front of me, but it's my understanding it's every two years you need to renew your license. And in that time frame, I believe, I could be mistaken again, I believe it's 36 hours of continuing education is what you need to complete in that time frame. [LB742]

SENATOR PANKONIN: Throughout your career then, every two years? [LB742]

DAVID K. MILLER: Throughout...every two years. Yes, sir. [LB742]

SENATOR PANKONIN: Thank you. [LB742]

SENATOR GAY: I've got a follow-up question. Senator Pankonin, continuing ed, does that mean going to...I mean, there's a big variance on the continuing ed. Is there... [LB742]

SENATOR PANKONIN: Because Senator Gay does some too. [LB742]

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SENATOR GAY: Yeah. I mean, some of it is you show up at these things, sign a piece of paper. [LB742]

DAVID K. MILLER: Um-hum. [LB742]

SENATOR GAY: And you...I mean, why don't they look at...is it specialized? If you're a civil engineer, you have different continuing ed, and electrical engineer, and...I mean... [LB742]

DAVID K. MILLER: I can't speak to what the different disciplines do because I'm a mechanical engineer by my training. And I know that the Nebraska section of ASME, we put on classes or these continuing education sessions twice a year for eight hours each time. So if you hit each of our sessions, you'll be up to snuff. And we're the ones that are choosing the topics and choosing the speakers and, no, we don't necessarily have tests per se. But they are issues that we feel are relevant to engineering today. [LB742]

SENATOR GAY: Yeah. I'm sure some are very quality and others maybe not. [LB742]

DAVID K. MILLER: Yes. Most of them are put on by professionals that do that for a living. [LB742]

SENATOR GAY: All right. All right. Thank you. Any other questions? Don't see any. Thank you. Any other opponents? [LB742]

WILLIAM REDINGER: Good evening, Chairman, committee. It's been a long day. My name is William Redinger, R-e-d-i-n-g-e-r. I appear as a registered professional engineer in the state of Nebraska. I am for ASME national, as well as a board member of the Nebraska section of the American Society of Mechanical Engineers. I concur with Mr. Miller's statements that has just previously been stated. I just want to add a couple of extra ones. I do support education. Education is very important, formal and informal. We've discussed somewhat of the informal arrangements. Engineers really do raise to the bar, and it's a very specialized field, mechanical, civil. And even inside the mechanical, there are several fields. Each one, they become very specialized in it, their experience, they develop it. That is what makes an engineer good. I see the engineering practice in this state as being a very competent and very reliable. It has all the safety that we need. It has all the technical and professional interest that is necessary. I see the engineering companies as making that bar, as raising the bar. Okay? So I'm kind of in a quandary of what the 30 extra hours is going to get us. That's kind of the statement that the engineering practice is very professional as is. I don't see a real problem. I don't see a whole lot of need to fix it, other than maybe we need to address ABETs, which is the accreditation. Maybe they need to raise the bar to keep up with the standards of the world. That's my statements. Questions? [LB742]

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SENATOR GAY: All right. Thank you. Any questions? I don't see any. Thank you. Other opponents? No other opponents on this? Did I see a hand that was neutral out there? Okay. [LB742]

RAY HERWEG: (Exhibit 8) And I'll be brief too. And I'm an engineer, so I write big, so...good afternoon, Senator Gay and members of the Health, Human Services. My name is Ray Herweg, H-e-r-w-e-g. I'm a licensed professional engineer and I am vice president with the Nebraska Society of Civil Engineer...or the Nebraska...see, I'm all confused, (laughter) been asleep, too, for a while. The Nebraska Society of Professional Engineers. NSPE in Nebraska is taking a neutral position on LB742. Of our five chapters, state chapters, two of them strongly oppose this bill, one would prefer that you delay your decision on it, and two of our chapters have yet to take a decision on it. As a licensed professional engineer myself in a consulting organization, I work for one of the top ten consulting firms in the world. I travel across the United States quite a bit, and I've had an opportunity to discuss this--which is called BS plus 30--with a number of my colleagues, and they have a lot of positive and negative feelings about this bill. There are certainly some measures that they are concerned with. One would be that such changes to state licensure regulation, that it must be supported by documentation of the public safety is at risk. And that doesn't exist in their opinions right now. So there are a number of key factors, you know, that support and oppose LB742. There's no doubt that legislation like this could improve the long-term image and role of professional engineers. For example, it could decrease the notion that engineers are just a commodity and that the services that we provide are unimportant. Enhancing educational requirements could certainly showcase that our skill level of the newly registered engineers has increased in breadth and width. And I'd like to say that it would include upgrading the poor written and communication skills that are commonly associated with engineers, which I hope I'm not displaying to you right now. (Laugh). There are a number of key factors that would suggest that this initiative be set aside for further information and research. Certainly legislation like this could exacerbate the engineering work force shortage that we're seeing nationally. There does seem to be a decline in educational foundation and students entering the engineering colleges across the country. And we should be encouraging institutions and professional organizations certainly to bring young students into our profession and not run them away by making educational requirements increasing. Plus, our educational system is probably not organized yet to provide all the continuing education for these plus 30 hours. And I've got an example of that. One of our local members here in Nebraska recently graduated from UNL with 144 credit hours. Of that, 124 were what he needed for his degree program. The other 20 hours that he got would not apply to the plus 30 credits that would have been required. So he had an additional 20 credit hours and got no value out of that. And one other quick issue is another vice president in NSPE who works for the local power company. He is a...and I won't go into what his background is, but he has a specialized body of knowledge in the power industry. For him to take courses to enhance his capabilities, he would have had to gone to Moscow, Idaho, to pick up the

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continuing education program because it wasn't available locally. So that's just a few issues, and that's primarily why NSPE wants to take a neutral position right now. We want you folks to certainly sit back and evaluate this a little bit longer. If there's issues here in the state that we are concerned with, and certainly there will be other issues that will come across from across the country. So with that, I'd be happy to answer any questions you might have. [LB742]

SENATOR GAY: Any questions? I have a question for you. [LB742]

RAY HERWEG: Sure. [LB742]

SENATOR GAY: Since you're neutral. Do most of the companies that they're saying, well, we're requiring more education, we're asking our employees to go get master's or do whatever. Is that at the cost of the employee or is it traditional for the companies to pick up the cost of sending them on to more education? [LB742]

RAY HERWEG: My experience in that is that some companies will assist in a tuition reimbursement program, others...smaller companies, it's a little probably more sticky as to whether or not they'd pay for that. And the larger companies will have a tuition reimbursement program. [LB742]

SENATOR GAY: Okay. Okay. So thank you. Any other questions? I don't see any. Thank you. [LB742]

RAY HERWEG: Very good. Thank you. [LB742]

SENATOR GAY: Thank you. Senator Johnson, you going to close? [LB742]

SENATOR JOHNSON: Well, I'm just going to take just one minute to, Senator Gay. And that's this, is I wish we had had this bill first because I think it's one of the highest level of discussions that we've had in my six years here in the Legislature. And that applies to both the proponents and opponents and the neutral testimony here. I thought it was outstanding and they're to be complimented for the discussion that we've had today. So with that, I will close. [LB742]

SENATOR GAY: Okay. Thank you, Senator Johnson. Any questions for senator as he closes? Senator Erdman has a question for you, Joel. [LB742]

SENATOR ERDMAN: Joel, I'll destroy that high level of debate. Are you planning to pass any bill this legislative session that would actually go into effect this session? (Laughter) So far, the bill before doesn't go into effect until June. This bill wouldn't go into effect until 2020. I'm just wanting to make sure that you're not too much of a visionary and you're living in the now. [LB742]

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SENATOR JOHNSON: That's right. I'm going to have to think that over a little bit. Certainly. [LB742]

SENATOR ERDMAN: Okay. All right. [LB742]

SENATOR GAY: All right. Okay. Thank you all for your patience. And then Senator Johnson, are you going to go ahead and open up LB1120? [LB742 LB1120]

SENATOR JOHNSON: (Exhibit 1) Yes. Senator Gay and members of committee, let me next before we do anything else apologize for the people who are kind enough to stay for this and we appreciate their indulgence. Senator Gay, members of the committee, I'm Senator Joel Johnson, J-o-e-l J-o-h-n-s-o-n, and I appear as the principal introducer of LB1120 on behalf of the Department of Health and Human Services. What we have here very simply put is LB1120. It removes an exemption from the certificate of need requirements for a project of a federally recognized Indian tribe on tribal land. The current exemption, that section that I could quote here: The certificate of need is not required for a project of federally recognized Indian tribe to be located on tribal lands within the exterior boundaries of the state of Nebraska where a determination has been made by the tribe's governing body that the cultural needs of the tribe's members cannot be adequately met by the existing facilities if such project has been approved by the tribe's governing body. Since this bill has been introduced, however, I have been contacted by various parties who have provided additional information indicating that this bill may not be needed to meet the purposes intended by the department. A representative of the department should be here who will follow me to provide more information to the committee. I would also like to distribute to the committee a letter from an attorney who represents the tribe which outlines the reasons for his conclusion that the bill will not be unnecessary. I would look forward to the testimony to follow, and I thank my colleagues for their attention here at this late hour. With that, Senator Gay, I would... [LB1120]

SENATOR GAY: Thank you, Senator Johnson. Any questions? And I would also say in fairness to everybody, we're here for as long as it takes and bear with us, so. All right. I don't see any questions. All right. We'll start with proponents. Proponents, come on up. [LB1120]

VIVIANNE CHAUMONT: (Exhibit 2) Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Vivianne Chaumont, V-i-v-i-a-n-n-e C-h-a-u-m-o-n-t. I'm the director of the Division of Medicaid and Long-Term Care at the Department of Health and Human Services. I would like to thank Senator Johnson for introducing this bill on behalf of the Department of Health and Human Services. I'm here to testify in support of LB1120, which would repeal the existing certificate of need exemption for tribal nursing facilities. The certificate of need or the CON process as it's

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called is a review process to avoid excess capacity of medical facilities. This bill will allow the department to review the need for capacity of nursing facilities on tribal lands. Section 71-5830.01(3) of Nebraska laws as currently written provides an exemption from certificate of need review for a nursing facility project of a federally recognized Indian tribe to be located on tribal lands in Nebraska. Our department has been in discussion with the Oglala Tribe about their plans to construct a combined nursing facility and assisted-living facility located near White Clay, Nebraska. The facility would be sited on Nebraska land, but is expected to primarily serve tribal members who are currently residents of the state of South Dakota. Because of excess nursing bed capacity, the state of South Dakota has instituted a moratorium on the construction of new beds in their state. South Dakota has declined to participate in the costs of a facility built in Nebraska to serve South Dakota residents, and would not be federally obligated to do so once they move to Nebraska. Nebraska also suffers from a surplus of nursing facility beds. Through the Medicaid reform effort, we are encouraging development of home and community-based care as an alternative to more costly facility-based care. Construction of a new facility in the northwest area of the state will negatively impact our Medicaid budget in two ways. If residents of neighboring Nebraska facilities relocate to the proposed facility in White Clay, those facilities will experience lower occupancy and reduced operating efficiencies, leading to higher per person Medicaid expense. If residents of South Dakota relocate to the proposed facility in White Clay, the Nebraska Medicaid program will likely become the payor source for these individuals. Medicaid does not cover the cost of care for individuals who move to Nebraska solely for the purpose of accessing medical care, but does recognize individuals who have connection to the state through family, employment or previous residency. This exemption was created by amendment by Senator Engel to LB594 in 1999. In the 1999 floor debate on LB594, Senator Engel stated: I would like to add that there is no fiscal impact to this. However in 2008, it is quite evident that the increases in Medicaid expenses do show a fiscal impact. In the interest of prudent fiscal management of Nebraska's Medicaid program, we ask the committee's support for LB1120. Removal of the existing certificate of need exemption for tribal facilities will place such facilities on equal footing with other facilities seeking to establish additional long-term care beds. Certificate of need determinations for all facilities will then be based on the adequacy or inadequacy of currently available beds to serve the long-term care needs of the population within a specific healthcare region. I received today a copy of the letter that Senator Johnson references from the attorney for the Oglala Tribe nursing home. And the letter provides that CMS has agreed to pay under a memorandum of agreement dated December 1996, CMS, which is the federal agency that does Medicaid, has agreed to pay 100 percent of the Medicaid expenditures for long-term care facilities...patients in facilities operated by tribes. I'd like to point out that there's no indication that CMS has agreed to pay for this particular facility. And in the last year, we have learned that CMS changes its mind frequently about what is or is not an allowable cost under Medicaid. For instance, a program that you might not be familiar with, but graduate medical education, which is something that's been traditionally reimbursed by

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Medicaid for years and years and years, CMS is now refusing, has adopted a new rule or is in the process of adopting a new rule saying that graduate medical education will no longer be a Medicaid expenditure. That's in a rule, let alone their ability to change their mind in a memorandum of agreement written in 1999. So I don't feel that that provides us with a sufficient safeguard. Additionally, the letter talks about a negotiated self-determination contract approval which is still pending. So that again is not a surefire thing from...according to this letter, approval is pending. We don't know how long it's been pending, and there's absolutely no assurance that that will be funded without absolute assurance that the state of Nebraska will not be found to be responsible for paying for basically South Dakota residents in the state of Nebraska with Medicaid funds funded 40 percent by Nebraska taxpayers. I don't think that we can afford to not have this exemption in the books. So we would urge you to move this bill on and support this. If you have any questions, I'd be happy to answer them. [LB1120]

SENATOR GAY: All right. Senator Stuthman. [LB1120]

SENATOR STUTHMAN: Thank you, Senator Gay. Vivianne, it's so nice to see you on the proponents side this time. (Laughter) [LB1120]

VIVIANNE CHAUMONT: I know. I'm not quite used to it. [LB1120]

SENATOR STUTHMAN: And the other part of my question is this deals only with that tribal thing? [LB1120]

VIVIANNE CHAUMONT: You know, currently that's the only one that we have. The exemption would apply to any federally, you know, tribal tribe, any federal tribe. Currently we only have this one issue to deal with. [LB1120]

SENATOR STUTHMAN: Okay. Thank you very much. [LB1120]

SENATOR GAY: Any other questions? Senator Erdman. [LB1120]

SENATOR ERDMAN: Go ahead. [LB1120]

SENATOR GAY: Oh, sorry. Senator Howard. [LB1120]

SENATOR HOWARD: I knew that Senator Erdman would have a question, but thank you. Thank you, Senator Gay. [LB1120]

SENATOR ERDMAN: Maybe you'll ask it for me. I won't have to ask it. [LB1120]

SENATOR HOWARD: Well, but you're very creative, you'll think of a second. Vivianne, do you have numbers to tell us how many people these...how many residents of South

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Dakota will be coming to Nebraska? I mean, it's never easy for us to work with just vague assumptions. [LB1120]

VIVIANNE CHAUMONT: Well, I don't know that. But in their letter they are talking...page 2, last couple of paragraphs, they say at present, the tribe estimates that 200 tribal members in long-term care facilities outside of the reservations, 200 members. And then that there are 102 additional elders who need long-term care, but cannot access it. Those... [LB1120]

SENATOR HOWARD: They're all in South Dakota? [LB1120]

VIVIANNE CHAUMONT: I don't know where they are. Those are the only numbers that I have ever received. [LB1120]

SENATOR HOWARD: So they could be anywhere in Nebraska as well as South Dakota. [LB1120]

VIVIANNE CHAUMONT: I don't know. [LB1120]

SENATOR HOWARD: Am I correct in thinking that? I mean, these...where are these people located? [LB1120]

VIVIANNE CHAUMONT: I don't know where they're located. [LB1120]

SENATOR HOWARD: How many people do we anticipate from South Dakota? [LB1120]

VIVIANNE CHAUMONT: I don't know how many people we anticipate from South Dakota. I know that this tribe has asked South Dakota repeatedly, worked with South Dakota for years to try to get South Dakota to let them build on their land, and South Dakota refused. There were three years when South Dakota lifted the moratorium. Between 2002 and 2005, South Dakota lifted the moratorium. This tribe could have built on South Dakota during that time and they didn't do so. [LB1120]

SENATOR HOWARD: I appreciate that. I'm just puzzled as to why we're worried about people...I mean, we anticipate an influx of a high number of people from South Dakota, but we don't have any numbers to base that on if I understand you. [LB1120]

VIVIANNE CHAUMONT: My understanding is that this is a large facility and that we have been advised by the tribe that these people will come from South Dakota in years of discussing this issue. So we don't have any reason to believe that these people will not come from South Dakota because that's not what's been represented to us. [LB1120]

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SENATOR HOWARD: And yet we have the figures of those numbers, but we don't know where they're located. [LB1120]

VIVIANNE CHAUMONT: I understand that the letter doesn't say where they're located, but we have been...the department has been discussing this with the tribe for several years and it was always clear in the discussions that a large number of the people would come from South Dakota according to the tribe itself. [LB1120]

SENATOR HOWARD: Well, it'd be helpful to have some actual numbers. [LB1120]

SENATOR GAY: Senator Erdman. [LB1120]

SENATOR ERDMAN: Vivianne, what's traditionally the status? I mean, can we call the Indian Health Service...I guess that's what I...is that what IHS stands for? [LB1120]

VIVIANNE CHAUMONT: Yes. [LB1120]

SENATOR ERDMAN: ...in the Aberdeen office to find out the status? I mean, it's somewhat compelling to say it's unnecessary because of previous agreements that have been entered into. But then I look at the enactment of Senator Engel's amendment and it was three years after the language in the letter that says that CMS agrees to pay for 100 percent of medical expenditures for long-term care patients. And I know that there are representatives here and I'm just trying to connect the dots. I understand the concerns on one side. I understand the need on the other, and I'm wondering where the reality fits in to here. And I think your answer to Senator Howard was regarding the letter I think it would also be beneficial to note from the representatives here if those tribal members in long-term care outside the reservation are within Nebraska or not. But as I read the language, they don't get an outright exemption as an organization from a certificate of need. They have to prove that it's not able to meet the cultural needs. And I understand that there are different cultural needs for different populations, and I'm just trying to connect all of this and... [LB1120]

VIVIANNE CHAUMONT: As far as the assertion that CMS has agreed to pay 100 percent of these costs, this is the first time this afternoon or this morning when we received this, this is the first time we'd ever heard of that. [LB1120]

SENATOR ERDMAN: Are those agreements available? I mean, is that something that we as a state could request copies of or is it something that they're only between the CMS and the entity that's contracting with them? [LB1120]

VIVIANNE CHAUMONT: I would imagine that it would be a public document, but it's referenced in the letter from the attorney and no copy of that memorandum of

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agreement that they referenced is attached to his letter. [LB1120]

SENATOR ERDMAN: Okay. [LB1120]

SENATOR GAY: Any other questions? I don't see any. Thanks, Vivianne. I don't see anymore. Thank you. [LB1120]

VIVIANNE CHAUMONT: Thank you. [LB1120]

SENATOR GAY: Any other proponents? Opponents? Come on up. How many opponents want to speak on this issue? About three or four. All right. Anybody in neutral out there? Okay. [LB1120]

JOHN YELLOW BIRD STEELE: (Exhibit 3) Honorable Senator Gay, honorable senators of the committee, my name is John Yellow Bird Steele. I serve as the elected president of the Oglala Sioux Tribe Pine Ridge Indian Reservation. And I would like to introduce three of my health and human services committee members and that is Mr. Philip Good Crow (phonetic), Mrs. Kathy Janis, and Mr. Johnny Carlo (phonetic). They serve on my health and human services committee at Pine Ridge. I sincerely appreciate your consideration receiving my testimony opposing LB1120, and I did supply you with some written documentation. I'd like to summarize this for the record, please. LB1120 would eliminate the existing exemption in Nebraska law from a certificate of need for healthcare facilities on tribal lands in Nebraska. The way I see it, the bill stems from our misunderstanding of not knowing positively of circumstances and what the tribe has done to date. I would like to guarantee to the committee to supply you, and to tell you what we've done to date on the project to update you and how LB1120 would adversely impact. And it has been to date the cultural significance to elderly people in long-term nursing homes, long-term healthcare. And how LB1120 would...that we would show you that we're going to provide you with documentation to show that the existing Nebraska law is going to fulfill my dream. I would like to say that the Pine Ridge Indian Reservation was established in 1889, and the land we are discussing here was part of the original reservation. They put a state line through our reservation. So it's always existed, the land itself, 600 acres right by White Clay, Nebraska. We also own 400 acres of land north of Gordon, Nebraska. It's a ranch. An elderly lady in her will left it to the tribe saying that this land originally belonged to the Indians and would like to give it back to them. We really appreciate that elderly lady. So I have reservation tribal members who have homes and live in the state of Nebraska. It is our land. We can go ahead and we will assume full fiscal responsibility. The state of Nebraska doesn't have to put up 1 penny. We will construct it. The reason I need the exemption from the state law is that federal law, the way federal law is crafted, Medicare-Medicaid must pass through the states. This is the only reason that we could not do it in South Dakota. The exemption in Nebraska and our ownership of land in Nebraska really fit the bill for us. And so it's just the way federal law...I met with Medicare-Medicaid and, to deal directly

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with us, they said there's 561 federally recognized tribes. We barely deal with 52 states. So please, try to form some sort of relationship and work with the states. So we do get Medicare-Medicaid through the state of South Dakota for the tribal ambulance services, for healthcare needs at the Pine Ridge Hospital, the clinics in Kyle and Wanblee that we do own. These are at 100 percent. Doesn't cost South Dakota 1 penny. There are existing long-term healthcare facilities in Oklahoma. The Cherokees got one that is funded 100 percent by Medicare-Medicaid. There is one in Wisconsin, the Potawatomi Tribes. We can get these for you, please. There's one in Alaska. Asking the state of Nebraska, I did this in this building here quite a number of years back with Governor Johanns. When he held a summit here and says, let's discuss our relationship and how we can help one another. And this was one of the issues that we brought up that Governor Johanns says let's work on this, and that's probably where the amendment came in existing Nebraska law. But the cultural needs...ladies and gentlemen, we have identified over 200 of our people in long-term nursing care facilities in South Dakota and throughout Nebraska. I just had one that his sister, an elderly lady on Pine Ridge, Sarah Ghost Bear (phonetic), came to me and says, James Little Bull (phonetic), we need to get him home. He's got no family, all alone in a nursing home in Nebraska. Can we please get him closer to home? I can't go visit him. Just two weeks ago, she came to me and says, John, we don't need to get him closer to home. He's died. So we buried him here about a week and a half ago. I had another one, my good friend from Wounded Knee. Mr. Charlie Moose (phonetic) up in Redfield, South Dakota, about 300 miles from Pine Ridge. He would call me about every other day and say: John, come get me. John, come get me, please. They're mistreating me there. I didn't believe that, but I knew he was lonely and I couldn't go get him. And he died up there all alone. And so most of our elderly speak the Lakota language and they feel more comfortable. They feel just very lonely dying out there. And so this has been a project and a priority that the tribe has been working on for the last 30 years. This, ladies and gentlemen, has been worked on by my health and human service committee members very...they've got everything lined up. All the financing for the construction of it. The land has been set aside. We're getting the FONSI element, the environmental impact statements on the land itself. The land has been set aside by the tribe. We've got a plan in place to...with the cash flow that it will be self-sustaining. And following up on former Governor Johanns' word that we would work together, we were very optimistic and happy that this would be constructed this year and operational. And our partner, Nebraska, would benefit by having the other businesses in that area supply the ongoing operational needs of that facility. It would not cost South Dakota and I'll guarantee you that you're not going to have to match that Medicare-Medicaid. I will get you the documentation on the other places that did it, and I'll get it from Medicare-Medicaid themselves that this is the law that they do work under. It seems to be I hear a money problem with the state. And so we can take care of that. I can guarantee you. But it will not cost you anything. I ask your compassionate side to try and relate to these elderly that we are trying to address back home. And to either delay LB1120 and see if my testimony, my further documentation to yourselves or if not delayed, to reject the bill with the understanding

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that the Oglala Sioux Tribe will not cost you any monies. And give us, the people who are responsible for these elderly people, make us happy once again so that we can say, hey, yes, we are going to be addressing a very critical need as we see it. And people told me to tell you that there's no...only Indians will be hired. No. This has to be run according to accredited standards also. And so qualified people, whether they be Indian or non-Indian, would have to be hired to be accredited and to be able to get Medicare-Medicaid monies. So, ladies and gentlemen, I thank you very much for your time. Are there any questions I can answer? [LB1120]

SENATOR GAY: Thanks, John. Any questions? Senator Howard. [LB1120]

SENATOR HOWARD: Thank you, Senator Gay. If I understand it correctly, this facility is to care for seniors, for elders and to allow them to live their senior days in dignity and with support of friends and family. [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR HOWARD: Which is the right goal certainly. And then my second part of that question would be employment. This facility would generate employment opportunities. [LB1120]

JOHN YELLOW BIRD STEELE: For the area. [LB1120]

SENATOR HOWARD: For the area where there are not a lot of employment opportunities. I've been to the reservation. I know that the jobs are just not always available up there. And so in that way this is going to actually be making money. It's going to be improving the economy in that area too. [LB1120]

JOHN YELLOW BIRD STEELE: Yes, ma'am. [LB1120]

SENATOR HOWARD: Thank you. [LB1120]

JOHN YELLOW BIRD STEELE: And I don't know if you are aware--this is just a sideline--but our dealing with one another over the White Clay situation, that this is going to be a entity of facilities that is going to legitimize the air here, a long-term nursing care just south of that place, White Clay, in Nebraska territory. [LB1120]

SENATOR HOWARD: It sounds like it's going to offer hope on a lot of levels. [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR HOWARD: Thank you. [LB1120]

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JOHN YELLOW BIRD STEELE: Thank you. [LB1120]

SENATOR GAY: Senator Erdman. [LB1120]

SENATOR ERDMAN: John, thanks for coming down. As I've pointed out to Vivianne with our department, the state's Department of Health and Human Services: the exemption is provided to a federally recognized Indian tribe where a determination has been made by the tribe's governing body that the cultural needs of the tribe's members cannot be adequately met by existing facilities. The issue is generally the cultural differences between the facilities that are currently available, whether they're in South Dakota or Nebraska, and the needs of the residents. [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR ERDMAN: But you also still have 200 members or individuals that you have identified, 200 tribal members that are in long-term facilities outside of the reservation currently. [LB1120]

JOHN YELLOW BIRD STEELE: Yes, Senator. [LB1120]

SENATOR ERDMAN: Is there an issue with their placement that they're not...are there cultural needs not being met as well or is it the 102 that you know of or kind of walk me through that logic because as I understand... [LB1120]

JOHN YELLOW BIRD STEELE: Well, I can't speak for each and every one of the 200. [LB1120]

SENATOR ERDMAN: No, no. I'm not asking you to do that. [LB1120]

JOHN YELLOW BIRD STEELE: But yes, I have identified that they are very lonely out there. I've got Ms. Kate Catches (phonetic), her family come to me. She's in Rapid City nursing home. John, could we please...could you please call the nursing home and get her out of there, and we'll bring her home? I said, no, I can't. I'm worried about the heat. This was last summer. Who's going to keep her warm? Now, who's going to feed her? Who's going to take care of her daily needs? She needs to be in a nursing home. I've got, like I say, Mr. Charlie Moose (phonetic) called me, very lonely out there. He died out there. People...I've got families coming in that want to bring their loved ones closer to home because they can't get over to visit them. Not only their own immediate family, it's the cultural part of it also. And we think and live a little differently than what we call the outside of off-reservation. And there's nothing wrong with that. We done that before you came over. But it's just nothing to be ashamed of or to retain our heritage and culture. And these are elderly who are more cultural than, say, myself. [LB1120]

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SENATOR ERDMAN: I have a pretty good idea of from the state line south, the Nebraska state line south. The testimony that you have provided and I think is also in the attorney's letters, there's about 42,000...the Oglala Sioux Tribe has a population of 42,357. [LB1120]

JOHN YELLOW BIRD STEELE: We've got, with the BIA, I can supply you with that if you want. I've got over 46,000 enrolled tribal members, but that is all over the United States. But they come home too when they have to go to a nursing home. I have...I don't know, it's about 8,000 pending applications for enrollment, may need a marriage license or birth certificate or something supplied. But there's quite a bit. [LB1120]

SENATOR ERDMAN: So the 42,000, are those residents of the... [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR ERDMAN: Okay. So that's the residents. The population base is generally where? Where's the large... [LB1120]

JOHN YELLOW BIRD STEELE: Located around Pine Ridge there. On the reservation? [LB1120]

SENATOR ERDMAN: On the South Dakota side, correct? [LB1120]

JOHN YELLOW BIRD STEELE: Yes. Oh, it's on the South Dakota side. Yes, sir. [LB1120]

SENATOR ERDMAN: How far from the facility...the facility is going to be either near or south of White Clay,... [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR ERDMAN: ...which would be close to the southeastern edge, well, southern edge. [LB1120]

JOHN YELLOW BIRD STEELE: Southwestern. [LB1120]

SENATOR ERDMAN: Southwestern. [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR ERDMAN: How far is the distance from the proposed facility to, say, those major population areas within the reservation? [LB1120]

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JOHN YELLOW BIRD STEELE: The major population area, it's going to be about I'd say 2.5 miles. [LB1120]

SENATOR ERDMAN: Okay. [LB1120]

JOHN YELLOW BIRD STEELE: Pine Ridge is about two miles from the border. [LB1120]

SENATOR ERDMAN: North. [LB1120]

JOHN YELLOW BIRD STEELE: White Clay is right on the border... [LB1120]

SENATOR ERDMAN: Right. [LB1120]

JOHN YELLOW BIRD STEELE: ...and it'd be just right south of White Clay there not too far. And Pine Ridge is the major not only populated area, it is the BIA headquarters where people do business. It is the tribal headquarters. It is the Indian Health Service Hospital, inpatient. Everybody goes to Pine Ridge. They've got their business to do there. And so it's ideal being close also to the hospital, we're talking about because we've got a lot of and very fast increasing diabetic population. And we're going to put a renal dialysis unit in this that will service not only the nursing home patients, but others possibly because we've got a renal dialysis unit in Pine Ridge. But that's not big enough to handle all of the people that dialyzes. We've got one 25 miles away in Porcupine and that is full. And so it's...we're going to put one of those in this facility also. [LB1120]

SENATOR ERDMAN: I read that in your testimony. The location of the facility was chosen I'm assuming logically because of the fact that the state doesn't have the same moratorium in Nebraska that South Dakota has. [LB1120]

JOHN YELLOW BIRD STEELE: Yes, sir. You got the exemption. [LB1120]

SENATOR ERDMAN: And so you have the flexibility in Nebraska. South Dakota doesn't want to work with anybody regardless of who you are for new facilities regardless of who pays for it. [LB1120]

JOHN YELLOW BIRD STEELE: Right. [LB1120]

SENATOR ERDMAN: So the logic is...and if you're able to supply the verification that addresses, I think, the department's concerns about who pays for it, that issue can somewhat go away. Is the location chosen...is it as close to the state line? Is there a specific reason why it was chosen? Obviously it's two miles to Pine Ridge. From the other side of the line it's...I'm just trying to think logistics because I can picture the Nebraska side. [LB1120]

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JOHN YELLOW BIRD STEELE: We could put it right on the line, but Johnny and I were out there at the site when we went out... [LB1120]

SENATOR ERDMAN: And some of the area may not be suitable for building. [LB1120]

JOHN YELLOW BIRD STEELE: It's right along the road. It's plenty of space there. But we were out there with other peoples and looked at it and selected that site as the best. [LB1120]

SENATOR ERDMAN: Okay. And just from your offer, I appreciate that, I think it would be beneficial I think for the committee to have a copy of that. I think there's a memorandum from December 19 of '96 with CMS to agree to pay for the long-term services of tribal members, and then also the resolution that was adopted by the tribe. I think it's 07-198, which is the basis of the agreement with IHS. I think that would just be beneficial to have... [LB1120]

JOHN YELLOW BIRD STEELE: Yes. [LB1120]

SENATOR ERDMAN: ...regardless of what happens here because I think from our discussions, whether it was gambling or other issues that we've discussed in the number of committees that I serve on or White Clay issues with alcohol, I'm in favor of more information, at least getting an understanding of what you're doing. [LB1120]

JOHN YELLOW BIRD STEELE: We will supply that, sir, Senator. [LB1120]

SENATOR ERDMAN: We appreciate it. Thank you, sir. It's a long trip over here, isn't it? [LB1120]

JOHN YELLOW BIRD STEELE: Yes it was. We stayed last night. [LB1120]

SENATOR ERDMAN: What's that? [LB1120]

JOHN YELLOW BIRD STEELE: I said, we came down yesterday. [LB1120]

SENATOR ERDMAN: Good. [LB1120]

JOHN YELLOW BIRD STEELE: But I've got to get back tonight because I've got a meeting in Rapid City the following couple of days. [LB1120]

SENATOR ERDMAN: Well, drive safely. [LB1120]

JOHN YELLOW BIRD STEELE: Thank you. [LB1120]

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SENATOR ERDMAN: Thanks for coming down. [LB1120]

SENATOR GAY: Any other questions? [LB1120]

JOHN YELLOW BIRD STEELE: Any other questions, please? [LB1120]

SENATOR GAY: Don't see any now, John, don't see any. Thank you. [LB1120]

JOHN YELLOW BIRD STEELE: Thank you. I would just like to say that I thank you very much and we will be taking care of all fiscal responsibility. We won't put any on the state of Nebraska. [LB1120]

SENATOR GAY: Thank you, John. Other opponents? [LB1120]

PETER CAPOSSELA: Senator Gay and committee members, my name is Peter Capossela. I'm the attorney who provided some information to the committee and I don't have any... [LB1120]

SENATOR GAY: Can you spell that into the record, Peter? [LB1120]

PETER CAPOSSELA: It's Peter Capossela, spelled C-a-p-o-s-s-e-l-a, a tribal attorney for the Oglala Sioux Tribe. I thought it might be helpful to address some of the questions that have arisen and perhaps some of the points that were made by the agency this afternoon. And I think those were legitimate concerns. But I also think that additional dialogue will demonstrate that the tribe can address those concerns, hopefully sufficiently for the agency, but adequately for the committee as well. With respect to Senator Howard's question about the capacity of the facility and then where tribal members will be coming to...where they live now to the facility, as currently planned, the facility provides for 102 beds. Most of the tribal members that would be using the facility will come from South Dakota. Not necessarily all, and in fact there are some tribal members in long-term care in Nebraska right now. And there's also a fair number of tribal members, President Steele mentioned, there's about 42,000 tribal members residing on the reservation; maybe 5,000 or 10,000 additional tribal members, many of them live in Nebraska communities south of the reservation in Rushville, in Gordon, in Alliance. One of the points that were made by the Department of Health and Human Services this afternoon with respect to the cost, is that there may be long-term care patients in other facilities, in other nursing homes, in other facilities in Nebraska that would be moving to the tribe's prospective White Clay facility, and that's a legitimate point. Having said that, the current need on the reservation surpasses two or three times what the number of beds that the tribe is going to develop at its nursing home. So there's no question that the need...even when the nursing home gets developed, it will not take care of 100 percent of the need for tribal members that are in facilities

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off-reservation, and I think most of that would be in South Dakota. There are a couple of reasons that the tract of tribal land near White Clay has been selected for the development. As President Steele had mentioned, some of those reasons are physical. We had the engineers up here earlier, and I think they'd be better able to explain that. But of course South Dakota does have the moratorium. South Dakota did lift the moratorium for a different tribe in South Dakota that wanted to develop a nursing home facility near Pierre, South Dakota, for some reason or another--I don't have the information--that never materialized. So they were a little bit reluctant when the tribe first approached the state of South Dakota to develop a facility, possibly on the reservation proper because of that prior experience that the state had. More importantly perhaps, the tribe had developed over the years a good working relationship with the state of Nebraska, specifically with respect to the issue of alcohol sales at White Clay. And having built a positive working relationship, Governor Johanns held a summit with the Oglala Sioux Tribe in Pine Ridge, South Dakota, several years ago, and the idea of developing a nursing home project on tribal land on the Nebraska side had its genesis in some of those discussions. And so I think that background might be helpful about why when the tribe's reservation proper is in South Dakota, the tribe wants to develop a nursing home on the Nebraska side. There are existing working relationships the tribe have with the state of Nebraska which I think have prompted the planning for the facility that's on the table now. With respect to whether or not the tribe will put the building blocks in place to ensure that the Centers for Medicare and Medicaid Services does in fact pay for 100 percent of the Medicaid for patients in the facility. If the tribe does not succeed in putting those building blocks in place, the financing for the facility won't go through in any event. So one of the concerns that was stated is, well, yeah. Okay, great, there's an interagency agreement between the Indian Health Service and CMS with respect to the feds picking up 100 percent of the cost. But there's no agreement to apply that memorandum to this project. If the tribe does not succeed in getting that far, the private financing for the project will not close; it won't go through. So the tribe has been working with the Indian Health Service and CMS to make that a reality. Now, that agreement as I understand it...and I have asked for a copy of it and we don't have a copy, but we are hoping to get it and will provide it immediately to the committee. That agreement is triggered by a contract between the tribe and the Indian Health Service under the federal Indian Self-Determination and Education Assistance Act. What that act does is provides authority to the U.S. Department of the Interior and the U.S. Department of Health and Human Services to contract with Indian tribes functions that it provides itself for two reasons, I think. Firstly, to kind of break through the paternalism that's existed in the administration of federal programs for Indian tribes over the years, the thinking is the tribes themselves are in a better position to make decisions for the administration of those programs. Secondly, it provides funding to the tribes to operate programs at the tribal level. I work for President Steele and I've been able to hang in there with the tribe over the years by listening to his directives. The main point is unless we get the steps taken to confirm the 100 percent federal funding of the facility, that it won't get built in any event. One other point that was made by the department that I'd

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like to address, the term was used we want to make sure that everybody is on a level playing field. And I have been working for the tribe for 12 years, and I can tell you definitively this evening that the playing field that the tribe plays on is so much worse than the playing field that communities outside of most Indian reservations and the issues they have to address and the socioeconomic situations; the tribe has no benefit. The tribe has no competitive advantage with respect to off-reservation communities. With that, I've just tried to address a couple of the points that came up in the agency's testimony and a couple of the questions that the committee had. [LB1120]

SENATOR GAY: Thanks, Peter. Any questions? [LB1120]

SENATOR ERDMAN: I was going to ask you a question, but I'm not going to now (laughter). [LB1120]

SENATOR GAY: Well, I guess there are none. So... [LB1120]

PETER CAPOSSELA: Thank you very much, committee. [LB1120]

SENATOR GAY: Thanks, Peter. Other opponents? [LB1120]

MARK VASINA: Senators, my name is Mark Vasina, V-a-s-i-n-a. I'm representing Nebraskans for Peace and we've had a nine-year relationship with the Oglala Sioux Tribe with concerns which we've brought to this Legislature many times, primarily regarding alcohol sales in White Clay, but a number of other issues such as this get raised. My involvement has been in the last five years and I've learned a lot about what goes on in that part of the state. I certainly hope that everything can be worked out so that 100 percent financing from the federal government applies to this facility. But I just want to make one point for all of you because some of you may be aware of this, some of you may not. And that is to deflect the idea that even if the state of Nebraska were to have to put up some payment for a facility like this in White Clay, that somehow this is a drain on our resources, that the Oglala Sioux Tribe would be sapping important dollars which we need in the state. If you just think about the sheer numbers of the population when you're looking at over 40,000 people in Pine Ridge and most of those clustered down towards the Nebraska border, and you think about the population of our Nebraska towns out there such as Chadron, Gordon, Rushville, I think not one of them is much over 5,000. I know Rushville is 1,000. Gordon is a little larger than that, maybe up to 2,000. It's really clear, if you talk to people from Sheridan County and Dawes County, how critically important to the economy of that part of the Panhandle of Nebraska Oglala Sioux Tribe Pine Ridge Reservation is. If you think about the reality of what goes on, it's really easy to see this. Most of the money that comes into Pine Ridge, comes in through federal dollars, through some BIA, Indian Health Service, some federal program. And the tribe has done a study that I saw about two years ago, I think, where they found that every dollar that comes into Pine Ridge--and most of these dollars are new money for

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the area all coming from Washington--it's less than a week that this dollar is spent in the border towns. That means that the millions of dollars that come in...and it's not enough to make Pine Ridge a healthy economic community, but those millions of dollars that come in from Washington get divided up within a week between the state of South Dakota and the state of Nebraska. Nebraska, I would bet, gets the lion's share of that because of the proximity to the population center, the geography of Pine Ridge Reservation. I know from a couple of anecdotes that this is profoundly important to that area, and to talk about the impact of returning some of these dollars back to elderly people from the Oglala Sioux Tribe that have a real need for this is not even looking at the economic reality of the situation. Just two quick stories: One, about three years ago I spoke to a friend of mine who's a reporter, a journalist with an Indian newspaper on Pine Ridge. And he told me he spoke with an executive of the Wal-Mart store in Chadron--they built one several years ago--and he was told, I can't remember precisely the number, but their estimate in Chadron Wal-Mart was that 30 to 40 percent of the business that they do there in that store comes from Pine Ridge. The other story that I would tell you is that in 2001 as a result of some of the meetings that President Steele was talking about with Governor Johanns, Governor Johanns gave instructions to the State Patrol to beef up law enforcement in the White Clay area. The result of that was that over the space of two years, I don't think there was any decline in homicides or unsolved murders or these kinds of things, which have always plagued that town. But the State Patrol issued about 1,500 citations to mainly motor vehicle citations, taillights, the lack of insurance, and so on to residents of Pine Ridge who were traveling from Pine Ridge through White Clay 22 miles south then to Rushville where they do a lot of business. And after a month or two of this, the merchants in Rushville told the Governor you've got to stop this because, of course, word spread that if you traveled that road from Pine Ridge, you were going to get ticketed by the State Patrol. And the lack of business going to Rushville was killing the retail establishments in Rushville. So the Governor, I think wisely, called off the State Patrol and things returned to normal. Pine Ridge is...that part of Nebraska is a sponge to the federal dollars that come into Pine Ridge, and it strikes me as being more than petty to be arguing about whether there's some money from the state of Nebraska that might somehow trickle back to benefit the people of Pine Ridge. That's the point I wanted to make. [LB1120]

SENATOR GAY: Thank you, Mark. Any questions? Senator Stuthman. [LB1120]

SENATOR STUTHMAN: Thank you, Senator Gay. Mark, I'm getting a mixed feeling in the opposition. The first testifier said, you know, you had all the money, you could build it, and everything like that. And your testimony is that, you know, it's going to be 100 percent federal money. Is there going to be any investment of the tribe in a facility like this? [LB1120]

MARK VASINA: Oh, I'm not testifying 100 percent federal money. That was President Steele and the attorney that testified that. I don't know anything about the actual

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mechanisms of this program. What I'm saying is that all the new money that comes into Pine Ridge because there's very little economic development there, very little natural business there other than ranching, these dollars come from the federal government through a number of programs for schools, for hospitals, and other healthcare. And those dollars then leave Pine Ridge Reservation and travel south to Nebraska perhaps more than 50 percent, 60 percent of those dollars come to Nebraska into our economy. That's what I'm testifying. I don't have any knowledge about the program that...you know, this particular program. [LB1120]

SENATOR STUTHMAN: Okay. Thank you. [LB1120]

SENATOR GAY: Any other questions? I don't see any. All right. Thanks, Mark. [LB1120]

MARK VASINA: Thank you. [LB1120]

SENATOR GAY: Appreciate it. Other opponents who would like to speak? [LB1120]

JUDI GAIASHKIBOS: Good evening. Thank you, Senator Gay. I'd like to thank Senator Johnson and all of the members here for giving us this time this late in the day. My name is Judi gaiashkibos, and that is spelled g-a-i-a-s-h-k-i-b-o-s, and I am the executive director of the Nebraska Commission on Indian Affairs. The reason I am here today to oppose Legislative Bill 1120 for several reasons, and I think I'd just like to share with you a little bit about the work of the Indian Commission and that we are an advocacy agency that works on behalf of all Indian people in the state of Nebraska. We have four tribes that are headquartered in our state: the Omaha, the Ponca, the Winnebago, and the Santee Sioux. But the 2000 Census reflects that more Indians live off reservation than on. And our mission statement in the statute that formed the Indian Commission has language that says we work on behalf of all Indians. And as you know as you've heard in testimony today, that along the border towns on the border of South Dakota/Nebraska, we have many tribal members that are members of the Oglala Sioux, as well as the Rosebud Sioux Nation. So I am charged and I am honored to have had the pleasure to serve the Indian people of our headquartered tribes in Nebraska the last 12 years. This is my 13th year. And myself, I am a member of the Ponca Tribe and I am also Santee Sioux. So they are my relatives. As we say, we are all related. So I say that because I want to share with you that as an Indian person we have tricitizenship. The Oglala Sioux people that are living in Nebraska, they are citizens of the sovereign state of the Oglala Sioux Nation, which has geographic land in South Dakota and in Nebraska, as do the Omaha and the Winnebago where their land extends into Iowa. So a little bit of that I would like to share. And the state of Nebraska has a responsibility to all citizens in the state, and that includes the citizens that have that tricitizenship as a citizen of the sovereign that you're enrolled in and your state and the United States of America. So for our schools in Nebraska that are on our reservations, those are public schools. They're not BIA schools. So as you all know, the state of Nebraska is given

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that responsibility to educate Indian students as well. When you look at what's before you today, if we had a nursing home over in that location on the tribal land that's in the state of Nebraska, I see this as a win-win, as a good thing for Nebraska and South Dakota. As you've heard the testimony before me, would have the opportunity to afford tribal members that live in Nebraska that are Indian people--Oglala Sioux that perhaps live in Rushville near White Clay, that area--to stay in their final years in a nursing home that's culturally appropriate connected where they can visit more often their family members. The nurses and healthcare providers would be familiar with their traditional customs. So you would have the opportunity to not only have the people coming from South Dakota, but people in Nebraska, as well as members of my tribe and the other tribes in Nebraska could come there because although it's not the Omaha Tribe, they might be more comfortable with other Indian people than in a nursing home that were all non-Indian people. So I think that's a key point that I'd like to stress. Another question that was asked right before was, I think Senator Stuthman asked, if this would be...would the tribe have any ownership? And the attorney tells me that this would be provided for under a tax, a bond, I believe. And then also I'd like to just say for the record that my husband, who was the president of the National Congress for American Indians and serves on the IHS budget formulation team, when he testifies before Congress, he always says--and this really stuck in my mind--that we Indian people, we have a special federal trust relationship and we're not receiving these benefits without a basis. We have a prepaid health plan based on the treaties that we have entered into with the United States government. And so these dollars that are coming to the tribes, they are coming to the Oglala Sioux, I definitely believe, through Indian Health Service, that stream of money. And this would in addition to that would be their ownership, and they would be supporting this effort. So I do think that they are stakeholders; they would be involved. As far as the surrounding communities, I think it would definitely benefit people in Chadron, Gordon. Some might travel further than that to have a job at the facility. It could employ non-Indian people. I know at the Ponca Wellness Center in Omaha, many of the people there are non-Indians that work there. At the Winnebago Hospital they have many non-Indian people that work at that facility. At the gaming facilities that the Omaha and Winnebago have in Iowa where Class III gaming for tribes is allowed, they employ many non-Indian people. So in that sense, it is also going to be a win-win. And lastly, I really don't want to dwell on the negatives of the history. I'd like to focus on some things that were stated earlier. The state of Nebraska going back to Governor Nelson, then Governor Johanns, and now Governor Heineman has a memorandum of government to government. That goes back to President Clinton, and that memorandum of government to government is with the tribes in the state of Nebraska. And it's for the purpose of removing barriers for dialogue and communication between the sovereign nations and the state of Nebraska. Governor Johanns was really quite exemplary in his leadership, I think, during that time and was way out of the box when he went to Pine Ridge for a tribal summit and then he hosted a summit here in the state of Nebraska. That was just kind of really unusual and unheard of throughout Indian country, and I think it's testament to his willingness to engage in a true

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consultation with the tribe, and it reflected what the memorandum of government to government really says. So today I would like to encourage the current administration and the legislative body and committee here to keep those things in mind and to oppose this legislative bill that I think really is detrimental to the promises that our forefathers made to the first peoples of this state and of this country. And as the director of the Indian Commission and on behalf of the tribes of Nebraska and the Indian Commission, I rise in opposition, and I am very honored to be here to speak for those that don't have a voice and for the elderly. I have testified before this committee before and I myself was very blessed to have my Santee Sioux grandmother live in our home and she lived to be 86, and fortunately she didn't have to go to a nursing home. It would have been very hard for her because, as President Steele said, some of us who aren't as traditional, we can assimilate and get along with everyone and it's an easier adjustment. But maybe some of you have elderly relatives that spoke your language that when they first came over here, and they miss being with people or people that share their customs or religious belief system. So I think that if Nebraska can find a way to work with the tribe on this with confirmation that they will have the financial wherewithal so that they can get the financing because if they can't show that to the financiers, they won't be able to move forward, so it'd be a moot issue. But I think in light of the atrocities committed at White Clay, for once in the 12 years I've been here I'd like to see something good happen at White Clay. So with that, I would yield to questions.
[LB1120]

SENATOR GAY: All right. Any questions? Don't see any right now. Thank you. Any other opponents? Anybody neutral? Any Opponents? You want to come on up?
[LB1120]

KATHY JANIS: Good evening. My name is Kathy Janis, K-a-t-h-y J-a-n-i-s, and I've been a tribal council member for five years, going on my sixth year. And Chairman Steele always had us stand when we spoke to people. So I'm not used to sitting. But I am the chairperson of the health and human services committee for our tribal government, and I want to thank you for listening to us today. There was a couple of questions that were asked--I think...somebody asked, but the facility, the nursing home facility has to be within a certain distance from a medical facility. So that's why our parcel of land that we do own, the Oglala Sioux Tribe owns in White Clay, was chosen. And today when we discussed employment opportunities for the entire region, we sat here today and listened to a lengthy discussion on physical therapy. I can't recall everything that was discussed, physical therapy and all this on horses. You know?
[LB1120]

SENATOR ERDMAN: We can't recall it all either (laughter). Don't tell anybody else that.
[LB1120]

KATHY JANIS: And you know there are opportunities there for people with that type of

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education to come in there and do these things, assist us. That's where I wanted to say "assist us" because we all have to work together on this. This is something that has to come from Nebraska and something that has to come from us, the residents of South Dakota. My father, I had to put him in a nursing home, and I put him in Gordon, the Good Samaritan Home in Gordon, Nebraska. They had no qualms about taking my father over there. They didn't question Medicaid-Medicare. They didn't say anything about residency. They took him in. I didn't want to put him in there, but he needed it. He needed to have full-time care. So we took him and put him over there, and I always told him every time I went to see him we'll take you home. Did you come to take me home now? Yes, dad. Now, you know, I'll be back tomorrow to take you home. My father passed away in that nursing home. So here, you know, I couldn't get over there every day to Gordon to see him. We were working and all this good stuff. But there is an instant, because it happened to me, that my father, I had to take him and put him over there in that nursing home. I mean, look at ourselves. You know, one day we might be in that same situation. Take yourself and put yourself in my shoes saying I'm going to put my mother or my father in that nursing home and not be able to see him every day. So we have the nursing facility at south and then we have the residential. We had, two weeks ago, a CHR, community health representative. She was trying to find a place for him, residential, and she asked me to help her. She tied her husband to the chair and left him home so she could come to work. The sole source of income for that family, she tied him to a chair, set him by the table, TV is right there, remote, the whole nine yards. Before she could get anything done, he passed away. I mean, there's all these instances like Chairman Steele did tell you of other people that are out there. I just would really like to request and ask you to look at this bill that you're proposing, take a good look at it. And I want you to put yourself in our shoes, see how we have to respond to people. You know we're getting there. I might be in that...one of the major residents at that nursing home, you know. Who knows, you know. I could be home. But like I said, and I'll say it again, Nebraska didn't have no qualms about taking my dad across the state line. I mean, they were getting paid for it. So they didn't say anything. But today when we brought this issue up, we had some opposition to our nursing home. But with that, I guess I just wanted to put in my 2 cents' worth. And I want to thank you. [LB1120]

SENATOR GAY: Thank you. Any questions for Kathy? No. All right. Thank you. Okay. Any other opponents? Anyone neutral? Okay. With that, Senator Johnson, you want to close? [LB1120]

SENATOR JOHNSON: Senator Gay, let me just take one minute to thank the people behind me. One of the things that is the reason for this bill is it is our fiscal responsibility as well to the state of Nebraska to determine where the outlay of funds will go and whether it's proper. And that's basically what we're trying to do, similar to what your responsibilities are in your community. So as evidenced, there certainly is no malice in this; it's just the fiscal responsibilities that we must honor as well. I guess another thing or two that I want to say is this, is thank you very much for your patience. Again, I wish

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we had had both this hearing and the other one first to show people what to do. Or maybe what we should have done is when those people were here is lock the door and then had them stay until after 6:00 listening to how it should be done. One last thing. If you'll look at this committee up here, I think that this is the best committee that the state of Nebraska has in this Legislature. And you notice that every one of them paid attention to the very end and that's pretty outstanding. So with that, let's call it a night. [LB1120]

SENATOR GAY: All right. Thank you, Joel. That will close the public hearing on LB1120. Thank you. [LB1120]

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Disposition of Bills:

LB742 - Held in committee.

LB1120 - Advanced to General File, as amended.

LB1163 - Indefinitely postponed.

LB1173 - Advanced to General File, as amended.

Chairperson

Committee Clerk