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Business and Labor Committee
January 26, 2009

[LB107 LB158 CONFIRMATION]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 26, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB158, LB107 and gubernatorial appointments. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz, Norman Wallman; and Tom White. Senators absent: None. []

SENATOR LATHROP: Good afternoon. Good afternoon. Welcome to the Business and Labor Committee. My name is Steve Lathrop, I'm a state senator from District 12 and I'm Chairman on the committee this year. It's good to have you here. I am joined today...let me introduce the committee since this is our first occasion to get together and have hearings: on my right is Senator Tom Carlson; also Senator Brenda Council; Senator Amanda McGill; and to my immediate right is our legal counsel, Molly Burton; and to my left is Chris Chapek, who is our committee clerk; and then we have Senators Schilz, pardon me, Ken, I drew a blank. I should have had it written out--he's one of the new guys--in my own defense, (laughter) he's one of the new guys so we need to have all those nametags facing me and not you; and Norm Wallman; and, of course, Tom White. We are going to take up LB158, then LB107, and then the gubernatorial appointments for the Boiler Safety Advisory Board. And with that, we'll start with LB158 and Senator Tom White. [LB158]

SENATOR WHITE: Thank you, Mr. Chairman, members of the committee. LB158 is a bill that is designed to provide to police officers the formal protections afforded most folks when they're being...have an inquiry made. Essentially, what it does in civil settings is provide the police officers with a set of rights that they can rely on when there is an inquiry made regarding events that happen on the job. The main thrust of this bill is that if, for example, there were a shooting or a chase and there was an inquiry as to their behavior they would have a right to a representative there, they would have a right to be paid during the time that they're being questioned, they'd have a reasonable right to get rest and to seek counsel and advice should they need it. Most of the police departments in our state have these rights, at least the larger ones. Omaha has it through collective bargaining. Lincoln has it through collective bargaining. As a result, there is an amendment that I'm going to ask the committee to consider to clean up an aspect of the bill. And that amendment would change following page 2, line 17, after Patrol, it would say: or agencies accredited through the Commission on Accreditation for Law Enforcement Agencies. These rights are so well respected and so well-known throughout most of the country, that the agencies that accredit police forces that hold them to higher professional standards help train them really require that a police force that wishes to be accredited have similar rights. So this law would exempt those agencies because they're already given to them. That is the main thrust of the bill. I would be happy to try to answer any questions that the committee may have. [LB158]

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SENATOR LATHROP: Senator Carlson. [LB158]

SENATOR CARLSON: Senator Lathrop. Senator White, go over the three things that are on the front page here that you just...you mentioned three things that it would allow an officer to do. [LB158]

SENATOR WHITE: Well, I mean, inside of provisions what it really does is it provides a structure for civil disciplinary hearings for officers, Senator. Among the highlights would be: they would have a right to have a representative present when they're being questioned; they would have a right to be paid for the time if it was a day off, when they're being questioned; they would have a right to take reasonable breaks, bathroom breaks, things like that in the course of it. Just what you would consider normal civil rights of Americans it would afford to police officers. [LB158]

SENATOR CARLSON: Okay. I didn't get all three of them, thank you. [LB158]

SENATOR WHITE: But there are others in there, but those would be three of the main. [LB158]

SENATOR CARLSON: Okay. [LB158]

SENATOR LATHROP: Any other questions of Senator White? [LB158]

SENATOR WHITE: May I hand this to the clerk, Mr. Chairman? [LB158]

SENATOR LATHROP: Certainly. [LB158]

SENATOR WHITE: This is the proposed amendment. [LB158]

SENATOR LATHROP: I think we have a page here, Senator, that can hand those out. And you want to close? [LB158]

SENATOR WHITE: Yes, please. [LB158]

SENATOR LATHROP: With that opening, you know, I should have...I got so flustered in not remembering Senator Schilz's name that I forgot to give you a few of the ground rules that we'll ask you to observe. We'll call folks up that are proponents of a bill, those that are opponents, and then those that want to testify in a neutral capacity. And while we don't have the light system in place which we are accustomed to in the Judiciary Committee--and that seems to be a growing practice, and will make its way here to Business and Labor--we'll ask you to confine your remarks to somewhere in the three or four minutes. If it goes much past that, then Mr. Chapek's going to kick me under the table and I'm going to ask you to wrap it up. Just so that we have...afford everyone an

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opportunity to be heard and so that we have time to go back to our offices and read bills for tomorrow. And so, with that, we will take up the proponents of LB158, and those wishing to testify. [LB158]

JOHN FRANCAVILLA: (Exhibit 1) Good afternoon, Senator Lathrop and members of the committee. My name is John Francavilla, that's spelled F-r-a-n-c-a-v-i-l-l-a. I'm the president of the Nebraska Fraternal Order of Police and I'm here to speak in favor of LB158. The page, right now, is handing out my testimony so to keep it brief because it would probably take me longer than the three minutes to read it. The reasons we are here to speak in favor of this piece of legislation that LB158 gives officers under administrative investigation due process procedures and protections that would ensure the integrity, not only of the officer, the department, but the investigation itself. For officers that are not protected with due process procedures and rights, the investigation could go any way that the commanding officer or the investigating party would look at the investigation. This way, with LB158, the officer is being aware of the charges brought against him which are noncriminal, these are procedural violations. They have the right to have a representative appointed by their organization, not the department, so it's at the officer's cost to represent them and be in the hearing with them. And they also know that there's a lot of factors that come into play when they're in front of the investigating officer. They have to cooperate with the investigation, they have to appear for the investigation. LB158 is a bill that is somewhat watered down from the current bill-of-right procedures that are in place by many of the agencies. The CALEA organization, they have procedures and policies that they have to follow and I'm a police officer with the city of Omaha and we are a CALEA accredited agency. Our bill of rights have a lot more requirements within them, but this would be a boiler plate, a minimum standard that would be followed across the state of Nebraska for law enforcement agencies that do not have these procedures in place either through the CALEA accreditation or the current collective bargaining agreements. With that said, you do have my letter and again, I understand that you have a time line and other issues there, but I would stand for any questions that might come up that I could better serve the board by answering them. [LB158]

SENATOR LATHROP: Thank you, Mr. Francavilla. Anyone have any questions? Seeing none, thanks for your testimony. [LB158]

JOHN FRANCAVILLA: Thank you. [LB158]

STEVE GRABOWSKI: (Exhibit 2) Good afternoon, Senator Lathrop. My name is Steve Grabowski and I'm the past president of the Nebraska Fraternal Order of Police. That's G-r-a-b-o-w-s-k-i. I'm the current trustee from Nebraska to the Grand Lodge Fraternal Order of Police. Just some information, the Nebraska Fraternal Order of Police represents over 2,700 police officers, deputy sheriffs, corrections officers, and probation officers from Sydney to Dakota City and from Omaha to Scottsbluff. I am also a

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lieutenant with the Sarpy County Sheriff's Department, and I've been in law enforcement in Nebraska for over 34 years. Senator Lathrop and committee members, disciplinary and administrative actions are part of the job. Peace officers accept the fact and recognize that management has a compelling duty to discipline its officers. The responsibilities of a peace officer are not taken lightly. A peace officer may not like being written up any more than a citizen likes getting a speeding ticket. Nevertheless, since the rules are fairly applied to everyone, the desired effect occurs and the error or mistake in judgment has been corrected. Discipline is something police officers can and do accept. Still, when police management attempts to strip officers of their rights or fire them for asserting those rights, these attempts do create a hostile atmosphere in the workplace. This hostility can affect morale and performance. This type of hostile work environment we and the opponents of LB...or is not the type of work environment we, and the opponents of LB158...we want to avoid these, I'm sorry. The adoption of LB158 will prevent and not create an adversarial atmosphere in police and sheriffs' departments. As I said earlier, Senators, we the officers do not object to discipline. We are used to discipline in our jobs. Without that discipline, we would not be effective on the job. We will always accept the fair and equitable discipline, but we will always object to the abrogation of our rights. Some would have you believe that there already exists an avenue for appeal in the form of the Civil Service or a Merit Commission of some sort. In some instances the case is appealed back to a city council or a mayor. And that's the same city council or the mayor who has, in fact, probably fired them. The answer to this is they are avenues of appeal, the Merit Commission and the Civil Service Commission and they do not, and will not, direct administrative investigatory procedures. Both of those processes have a definite and separate place in our system. Some administrators, chiefs, and sheriffs say that LB158 is passed, it would keep bad law enforcement officers. This simply isn't true. If the language in LB158 is followed, it leaves little or no loophole for the bad officer, but it does afford the innocent officer the basic rights all people deserve. Senators, I urge you to read LB158 closely, imagine yourselves as police officer, and then think, are any of these requests out of line? LB158 in the past was introduced as the Peace Officer Employer-Employee Relations Act. That is exactly what it should be, a law that evens the playing field for all involved in this type of administrative investigation. Nebraska's law enforcement officers should have only one concern, and that is keeping the citizens of Nebraska safe. Law enforcement officers should not have to worry about being unjustly and unfairly investigated. Mr. Chairman, members of the committee, Nebraska's law enforcement officers put their line on the line, or their life on the line everyday when they go on duty. Law enforcement officers are unique people, they put their lives on the line for the welfare of Nebraska's citizens. Law enforcement officers do not have the opportunity to pick who to serve and when to protect, it is simply to serve and protect. I urge you to please pass this bill from the committee and onto the floor for further discussion. Thank you, Senator and members of the committee. [LB158]

SENATOR LATHROP: Thank you for your testimony, Mr. Grabowski. Any questions

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from members of the committee? Senator Carlson. [LB158]

SENATOR CARLSON: Senator Lathrop, Mr. Grabowski, in here you indicated five states currently have a collective bargaining law that addresses these rights. Is that similar, then, to LB158, those five? [LB158]

STEVE GRABOWSKI: We kind of based LB158 on Minnesota. They have a state law that is similar to this. [LB158]

SENATOR CARLSON: Okay, and they're listed in the other 18 there? [LB158]

STEVE GRABOWSKI: They're listed in the other 18, yes sir. [LB158]

SENATOR CARLSON: That have some level of due process. [LB158]

STEVE GRABOWSKI: Yes. [LB158]

SENATOR CARLSON: Okay. So really there's 23 states that have, at least, some level of due process. [LB158]

STEVE GRABOWSKI: That's correct, sir. [LB158]

SENATOR CARLSON: Okay. Thank you. [LB158]

STEVE GRABOWSKI: You're welcome. [LB158]

SENATOR LATHROP: Thank you. Any other questions? Seeing none, thank you Mr. Grabowski. [LB158]

STEVE GRABOWSKI: Thank you, sir. [LB158]

SENATOR LATHROP: Any other proponents wish to speak? [LB158]

CHRIS ABOUD: Chairman Lathrop, members of Business and Labor Committee, my name is Chris Abboud. I'm a registered lobbyist for the Omaha Police Officers Association and I'm here to testify in support of LB158. We've been through this issue a number of years and this has taken a lot of winding past to get to this point, but I feel that we have a really good piece of legislation this year. And we wanted to come in and support the bill here in the hearing. I'd be happy to answer any questions. [LB158]

SENATOR LATHROP: Thank you. Are there an questions for Mr. Abboud? Seeing none, thanks for coming down. [LB158]

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CHRIS ABOUD: Thanks. [LB158]

SENATOR LATHROP: I appreciate hearing from you. Any other proponents? All right, how about any opponents to LB158? Anyone here in opposition? I thought for a second you were going to miss. [LB158]

LYNN REX: No. (Laughter) Senator Lathrop, members of the committee my name is Lynn Rex, representing the League of Nebraska Municipalities. We are here this afternoon to indicate that we are opposed to the bill as drafted. And the reason for our opposition is because there are already statutes on the books relating to first-class cities, second-class cities, and villages that we think do accord due process rights. Chapter 19, Article XVIII applies to cities of the first-class and has a full Civil Service Commission and procedures therein. Obviously, with due process, notice, a hearing, right to counsel. Second-class cities and villages in 17-108 and 17-208 also have provisions in there. One of the concerns that we have is that this bill is drafted in the context, I think, of a larger agency. And how would this work, for example, when you have one police officer? We have many of our smaller entities that have literally one police officer. And right now, under Chapter 17, that appeal is to...they've got a right to notice and hearing and, obviously, always have a right to counsel. So, under that procedure...I mean, the appeal is to the village board, if it's a village. It is to the city of the second class, if it's a city of the second class. They do not have a separate civil rights...Civil Service Commission, as it were. But in terms of how this would work, we think that it is not applicable as it's written...and workable, frankly, for the smaller entities. Another thing that...just as an example, if you look on page 5 of the bill it talks about...page 1, pardon me, page 5, line 1, on page 5, line 1, it talks about the fact that governmental entity shall not publicly release a photograph of the officer without written permission. Well, many municipalities not only in Nebraska but across the country, will actually have on their Web sites pictures of their employees. A member of the news agency can simply go and take it off the Web site. And I don't know whether or not that's a sort of thing that we need to be aware of. I'm guessing the intent here was that you not have a picture of a police officer as though they have been convicted of something. I think that's what this is about. In the same light, almost every police department that I've been in--and I've been in a number of them--they've got the entire picture of the police department. Obviously, many of them have that accessible and how would you protect that? And should that be something protected? I understand if the purpose is, that they're not going to take a picture of a police officer, again, as though he or she has been convicted of something. But I think it's different when you've got pictures of all your employees and they're on your Web site or something of that nature. Bottom line is, Senator White, I think it's...I appreciate the fact that you did exempt those agencies which are accredited. And if I understand from your testimony, the only two agencies that would be the Omaha Police Department and the Lincoln Police Department? [LB158]

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SENATOR WHITE: At least two. [LB158]

LYNN REX: At least two. And we know that there's another type of accreditation that's done by the Police Chiefs's Association of Nebraska. Does this involve their accreditation process or does this only involve the national accreditation process? [LB158]

SENATOR WHITE: The amendment would read "Commission on Accreditation for Law Enforcement Agencies." [LB158]

LYNN REX: Okay. [LB158]

SENATOR WHITE: So it's a specific restricted one that has specific standards. [LB158]

LYNN REX: Okay, and that is the national one. So...and I guess my point again is whereas that has applicability to larger agencies, I don't clearly see how this could be operational for the smaller entities. Should an officer have due process rights, absolutely--a notice, a hearing, right to counsel, absolutely. Those are fundamental. But I think it's different when you're dealing with a village. It's different when you're dealing with a city of the second class. And again, I would reference you to Chapter 19, Article XVIII, 17-108 and 17-208. I'd be happy to respond to any questions that you might have. [LB158]

SENATOR LATHROP: Okay, Lynn, let's see if anybody has any questions for Ms. Rex. Seeing none, thank you for your testimony today. [LB158]

LYNN REX: Okay. Thank you, and I would indicate that those provisions in Chapter 17 were worked out with various committees over the years to accommodate this very issue, that's why those provisions were put in place. Thank you very much. [LB158]

JACK CHELOHA: Good afternoon, Senator Lathrop, members of the Business and Labor Committee. My name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I'm testifying to make the record in opposition to LB158 today. I guess I'm encouraged by the amendment that Senator White proposes. I haven't seen a copy of it yet, I'll be happy to take it back to the Omaha Police Department and the mayor and city council. And hopefully it will be what we've strived for for the past decade or so on this bill. In Omaha, as an officer testified from the union before, we do offer a very similar program within our collective bargaining agreement. And obviously, as management and the union have negotiated through the years they thought that this was an important issue and they've wanted to include it in that contract between the city and our law enforcement agency. And so, we always felt that it was an issue that should be resolved by contract. And we always, basically because of the fact that we were covered by contract, sought an exemption

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from these types of bills in the past. And so, like I said, I'll be happy to look at that amendment and hopefully it satisfies our concerns but for now, I just wanted to make the record in opposition. Thank you. [LB158]

SENATOR LATHROP: Thanks, Mr. Cheloha. Does anybody have any questions for Jack? I do have a question in view of your testimony. Senator White's proposed amendment relates to excepting out from the coverage of this bill those agencies that are accredited through the Commission of Accreditation for Law Enforcement Agencies, is that been the city of Omaha's concern with this kind of language? [LB158]

JACK CHELOHA: Whether or not we were accredited or... [LB158]

SENATOR LATHROP: No, whether or not we except out those agencies that are accredited by this organization? [LB158]

JACK CHELOHA: Well, we haven't looked at an exemption and that specific language, I mean, in the past we've offered amendments that just said metropolitan class cities were exempt from the provisions thereof. Similar to, you know, existing language in the green copy said the State Patrol was exempt. But we don't have a concern with that, I just have to make sure that's the agency we are accredited under because I'm fairly certain that's what it is. But I didn't have time to check it prior to this hearing. [LB158]

SENATOR LATHROP: And I see people behind you nodding assuming that this... [LB158]

JACK CHELOHA: They know more than I do then, that's good. [LB158]

SENATOR LATHROP: ...assuming that the city of Omaha. Okay. [LB158]

JACK CHELOHA: All right, thank you. [LB158]

SENATOR LATHROP: Wait, I was agreeing with you. [LB158]

JACK CHELOHA: Okay. [LB158]

SENATOR LATHROP: You said the people behind you knew more about it. [LB158]

JACK CHELOHA: Exactly. (Laughter) [LB158]

SENATOR LATHROP: Assuming that the city of Omaha is, and their police force is an accredited by this particular commission then you don't have any trouble with the bill is that the case? [LB158]

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JACK CHELOHA: We should not. [LB158]

SENATOR LATHROP: Okay. Thank you. [LB158]

JACK CHELOHA: Thank you. [LB158]

SENATOR LATHROP: We appreciate your testimony today. [LB158]

JACK CHELOHA: Thank you. [LB158]

SENATOR LATHROP: Are there any other persons here to testify in opposition? Anyone here in a neutral capacity? Seeing none, Senator White, you may close. [LB158]

SENATOR WHITE: Thank you, Senator Lathrop, members of the committee. I would make a couple of observations. First of all, whether one has civil rights should not depend on the size of the town you live in. I mean, what we are and what our rights are, are something that we respect about all persons wherever they are. Second, if you look at this bill, there's nothing in it that makes it difficult or impossible for a smaller town to abide by this. If there is any kind of administrative investigation into your only officer, the person who is making that investigation simply has to tell the officer, look, there's been a complaint, here's the complaint. Do you want to have a union representative or a lawyer or a member of the FOP who is familiar with this sit in with you? They have a right to look at the complaint, they have a right to do it on their normal working hours or to be paid. There is nothing in this that's inherently difficult nor does it have anything to do with appeals. If you only have one officer, if it's the mayor that's doing the investigation, he simply calls them. As far as the rights in the other areas, I've practiced in this area, I've represented a lot of police officers on a lot of appeals and there are huge gaps in essential decent coverage. There are two things I'd like to point out. When we have bad officers, and sometimes that happens, we want to make sure the investigations are done properly. That we really do understand what happened, that we have good evidence that it's gathered in a careful manner and that it's answered properly. And that is what these procedures do. They're nothing more than good, solid investigative procedures that any police department would want to follow. In terms of how much rights they gather, in fact, they're substantially less than the city of Omaha and the city of Lincoln give to their officers under contract. This is a minimum standard, not the maximum. It allows us to attract and hold good people to small towns and if you know anything about law enforcement, holding young officers in small towns is a real problem. It's very expensive, they're training them and they're leaving. And they're leaving because they have better working conditions and this addresses part of that, ensures to them that they will be treated fairly. The last thing I'd urge to do is think about this, I've always believed that the first job of a police officer is to protect our civil rights. It is to catch bad guys, but only because they abuse our rights. But you're never going to

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get good police officers if the first thing you tell them....yes, you must protect all of my rights, but you lose a bunch of yours just by taking on the job. That is not a good recipe for getting the right kind of people in that job. All this will do is ensure police officers are treated reasonably and fairly in their employment. Thank you for your attention. [LB158]

SENATOR LATHROP: Thank you, Senator White, and with that we will close the hearing on LB158 (See also Exhibit 3) and move to LB107, which is to be introduced by Senator Haar. [LB158]

SENATOR HAAR: Chairman, ready? [LB107]

SENATOR LATHROP: We're ready. Welcome. [LB107]

SENATOR HAAR: Okay, thank you. Chairman Lathrop and members of the committee, my name is Senator Ken Haar, District 21. And I'm here to introduce LB107, the Fair Dismissal Act, or as the newspapers, I guess, have called it the pink slip act. Very simply, LB107 requires an employer to give a reason to anyone that they fire, and to give that employee who has been fired a meaningful opportunity to respond. It's a very short bill, and that's really all there is to it. It leaves Nebraska as a right to work state, in which employees can be terminated for any reason, that stays intact. Now, I asked the Attorney General for an opinion and I don't have this in writing yet, I'll get it later in the week, but he has said that the bill does not create a cause of action under which an employee can be sued. To bring suit an employee would have to look at whatever rights they have under common law or contract. So again, we'll get that in writing a little bit later in the week. The question, I guess, would be, well, why do we need a law like this? It's a matter of basic decency and fairness that a person should be able to know why they got fired and to be able to tell their side to the employer. Again, that's all this bill does and it seems a fair way to do things. Some reasons, for example, if somebody is fired from a job and they have no idea why or they're not sure why they're being fired, it may indeed be something if they knew the reason they could correct their job skills when they go to a next job, that sort of thing. And actually if someone were fired without a reason they go to their next job and, you know, they don't know what they're facing in terms of their next employer if their employer has checked up with the previous employer. And, in fact, this we believe could actually prevent a lawsuit in some cases if an employee is given the reason--and it's a good reason--they may just accept that and not even consider a lawsuit. And I guess I would simply venture to say that there are not any of us here today in the room, who would not want to know why they're being fired if they got fired from a job. And it's really that simple. You're going to hear testimony from Mark McGuire on the technical information about the bill and we're going to hear from at least one person who has had some experience who can talk about this area of being fired without a reason and what it means to working men and women. So, with that, I will end my testimony. [LB158]

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SENATOR LATHROP: We'll see if there's any questions, Senator. Any questions for Senator Haar? Seeing none, you want to stick around to close? [LB107]

SENATOR HAAR: Oh, yes. Thanks. [LB107]

SENATOR LATHROP: Okay, thank you. Proponents of LB107? [LB107]

MARK McGUIRE: Chairman Lathrop, members of the committee, my name is Mark McGuire, M-c-G-u-i-r-e. I'm general counsel for and lobbyist for the Nebraska State Education Association. This bill has been here before. We are pleased now that it's been introduced early and that this hearing on it is early and so, hopefully, it can be advanced so the body will have ample time to fully consider it during the session. As the senator indicated, LB107 is very simple. If you're going to fire somebody and--they're that group who it applies to is carefully defined--you have to tell them a reason, and give them a meaningful opportunity to respond. LB107 does not apply to people that have job security rights through either statutes, individual contracts, or collective bargaining agreements. The reality here, and what we're really talking about, is this gives some low level of due process to those who have really the lower end of jobs, the types of jobs. As I indicated, I represent the Nebraska State Education Association. We're primarily a teacher's organization and teachers have statutory rights--wouldn't be affected by this in terms of their job security--but we also organize and represent what's known in the trade as ESPs, or educational support personnel. Those folks are the bus drivers, the janitors, the secretaries, the paraprofessionals, and all the rest of those folks who really make schools run. And they are truly at will, they're subject to being terminated rather casually without a meaningful right to have a conversation with their supervisor or boss or whomever is terminating them. I've said that this bill has been here before, well, it has. I think it's even more significant now that it's before you given the economy and the rates of unemployment. And somebody who is holding a low level job to begin with, and faces losing that job to become part of the ranks of the unemployed, that's a serious situation. Part of due process is not just to allow somebody to vent, but if there's a mistake as to why the person is being terminated, you know, Fred, we're doing this because you don't show up on time. You're late every day. We expect you here at 8:00. Well, my superintendant said I was supposed to be here at 8:30. There's a dispute, and those kinds of things, in fact, go on. Due process, I think it's important to remember and was described once by a very eminent and federal judge in Lincoln by the name of Robert Van Pelt, described due process as "basic fairness." And this bill is intended to deliver basic fairness. And I think that those people who are doing those low level jobs...I think of the person who is mopping up, cleaning up the junior high cafeteria at the end of each day for \$8 an hour. If that individual is going to get terminated, they ought to at least have a right to the reasons why. And at least have the right to give their version of whatever the events might be. We appreciate very much, Senator Haar bringing this bill before you. I'd be more than pleased to respond to any questions that you might have. [LB107]

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SENATOR LATHROP: Very good. Any questions for Mr. McGuire? Senator Wallman. [LB107]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, Mr. McGuire, at one time maybe I was called the terminator, (laughter) but it is...what is my liabilities if I, say I terminate you for a good reason but you don't think it's a good reason? So, as an employer, whether it be a school bus person or whatever, I'm for, you know, I'm for the teachers. I'm for the, basically the workers, but what am I when I'm an employer, what are the ramifications if I lay you off for a good reason and you say it's not a good reason? You get what I'm saying? [LB107]

MARK MCGUIRE: Well, absolutely, and I think that Senator Haar alluded to that the Attorney General is going to be rendering an opinion. This does not give, what we call in the trade, a cause of action standing alone in terms of the reasons, if they're good reasons, bad reasons, invalid reasons, or whatever, those rights, the substantive rights to employment are out there because of contracts or because of school district policies or because of statutory prohibitions or because of constitutional...they can't, you know, obviously fire someone based upon an unconstitutional reason such as their age or gender, race or whatever. So this standing alone doesn't affect or create a cause of action. I would echo another thing that he said, and I think that the attorneys who are members of the committee who represent employees from time to time have had lots of situations where the person seeking out the lawyer...and fairly early on the conversation is going to be, well, okay, tell me what happened. How, why are you here, what happened? Well, I don't know, they didn't tell me. Not being told leads the person to the lawyer's office to see if something can be done about this situation. In contrast, it's incredibly simple, you know, you didn't show up on time or you didn't do this or you didn't do that. Ah, okay, well I've learned the reasons and the error of my ways. Thank you. [LB107]

SENATOR WALLMAN: Yeah. And picking up on that, quite honestly, I like this bill but it scares me also. Me, I've already recommended termination of a person who has embezzled property, you know, monies. And so to protect that good family name, I kept my mouth shut, but he was terminated. Now, if he'd have took me to court without this reasoning, well, how would I handle that? [LB107]

MARK MCGUIRE: Did he not know that the reason he was fired was because he was embezzling? [LB107]

SENATOR WALLMAN: Sure, sure. [LB107]

MARK MCGUIRE: Well, he had the information, then. I think he would recognize that he was... [LB107]

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SENATOR WALLMAN: Yeah, okay. Thank you. Thank you, Chairman. [LB107]

SENATOR LATHROP: Senator Council. [LB107]

SENATOR COUNCIL: Yes, Mr. McGuire, a number of states have what are called service letter laws. And that's essentially what you have here. And to kind of address Senator Wallman's concern, would there be any objection to an amendment of the bill to bring it into consistency with some of the surrounding states? Which is, you provide the service letter upon request. You're not required to give it unless the employee asks to be provided with one. That's the way the law is written in Kansas, and in fact, after receiving a copy of Senator Haar's proposal I did a little research and we already have a service letter law in Nebraska. It applies to only the employees of public service corporations. And it provides almost exactly the same rights as are set forth in this bill, but it's upon the request of the employee, the employer has to provide. Would there be any objection to amending it to place the onus on the employee to ask for? [LB107]

MARK MCGUIRE: No, and we've considered that before. And one of the things that I find about the service letter request thing is that it's for some reason, and I can't answer this, not used. I know with interest that the last version of those statutes was 1929. Which also tells me that there's been nothing in the intervening years, there must be some kind of issue with it. My only other, my practical side is, how long does all of that take, you know, in the process? I would have no problem with a confidentiality sort of provision that the reasons can't be disclosed, but that they will be disclosed to a prospective employer or the nature of the job the person held and it's length and so forth, you know...I don't have a problem, per se, with what you're suggesting. And we looked at some of those, and I think the one in Georgia that really kind of amazed me about its amount of detail and specificity. But perhaps a more limited version, but conceptually somewhat the same through confidentiality and then a letter upon request, you know, sure we'd look at that because I think it's a good goal, I agree with you. [LB107]

SENATOR COUNCIL: Because the current statute is three paragraphs. Now, apparently it only applies to employees of a public service corporation and that term is defined, but you know, it's a three paragraph statute. It basically provides the same protection that it places the obligation on the employee to request the service letter and then requires the employer to provide it. I didn't...I was late coming up to the hearing so I didn't get a chance to pick it up, but it's 48-2109. [LB107]

MARK MCGUIRE: I'll call your office and let you know. [LB107]

SENATOR COUNCIL: So we could call, I think it's...I mean, the current statute is 48-2109...I'm fairly...2109 or 2010 or something, but I mean, it's essentially...you're

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achieving the same objective and rather than put in a position where you just summarily have to provide a letter setting forth the reason for termination. You're required to provide it if you're requested to provide a letter of termination. And that, Senator Wallman, I think provides employers with some degree of comfort and protection because we all know that under the current status of the law that--in terms of letters of reference--all you can do is say that the person was employed, they worked from this date to this date, and this is the job they held. [LB107]

MARK McGUIRE: Because it has a little different focus, I'd still want to have a core piece that the individual is told at the time of their termination the reasons for it and have a meaningful chance to respond because that really lies at the heart of it. And if you wanted to go further along the lines you're suggesting, I have no problem with that. Part of it was a pragmatic decision of, would that addition to that language make it more or less difficult to obtain passage? [LB107]

SENATOR COUNCIL: And I understand that, you know, the point you're making about a meaningful chance to respond. But, I mean, quite frankly, if I've decided to terminate you, you know, the likelihood that...whether I talk to you the day I terminate you or I talk to you two days later is going to make that big a difference in the decision to terminate...whether it's going to alter that termination decision or not. But yeah, I would really, and for those of you who are proponents I would really like to hear your thoughts about making this more comparable to the current service letter law that applies to employees of public service corporations. [LB107]

SENATOR LATHROP: Very good. Senator White. [LB107]

SENATOR WHITE: Mr. McGuire, is it your position then that an amendment that would make the exchange information between the employer and the employee confidential unless one party chose to waive it and with the exceptions of giving state agency and federal agency, law enforcement the information should they be asked. That would be acceptable? [LB107]

MARK McGUIRE: Completely acceptable, yes. [LB107]

SENATOR WHITE: And then just so I'm clear, and this would perhaps help Senator Wallman and others who may not. In Nebraska you can fire someone because you don't like the kind of shoes they wear. I mean, is it absent, you're prohibited by contract. I mean, you can just tell them, I don't like your footwear and fire them and that would still be quite possible under this law. You would just have to tell them, I fired you because I really don't like those red tennis shoes. And there's nothing the employee could do about it in terms of filing a lawsuit or anything, correct? [LB107]

MARK McGUIRE: Correct. [LB107]

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SENATOR WHITE: And this law doesn't change that. [LB107]

MARK McGUIRE: That's correct. [LB107]

SENATOR WHITE: Thank you. [LB107]

SENATOR COUNCIL: I hate to differ with you, Senator White, unless it says that the red tennis shoes are a part of a religious...(Laughter) [LB107]

SENATOR WHITE: Yeah, or, you know, it's Husker day and it's national origin, I don't know. (Laughter) [LB107]

SENATOR COUNCIL: Yes. [LB107]

MARK McGUIRE: I was going to comment, about, you know Big Red... [LB107]

SENATOR COUNCIL: Yes. [LB107]

MARK McGUIRE: ...tennis shoes on a football Saturday, but I thought, oh let's not complicate this. [LB107]

SENATOR LATHROP: Okay. Senator Carlson. [LB107]

SENATOR CARLSON: Senator Lathrop, Mr. McGuire to follow up a little bit on Senator White's question and Senator Wallman. Senator Wallman talked about, I may have a good reason to fire somebody but they don't think it's good. I may have a bad reason to fire you, and I don't care. So what can you do about it and what does this...how does this change that? Because the truth of the matter is, there may be something about the way you conduct yourself--and I'm the employer--and we just don't match. [LB107]

MARK McGUIRE: Uh-huh. [LB107]

SENATOR CARLSON: And I really don't care to have you around. So, I can be honest, which I don't like to be in a case like that or... [LB107]

MARK McGUIRE: Of course not. [LB107]

SENATOR CARLSON: ...I wait until you foul up one little thing, you were two minutes late for work today, you're fired. [LB107]

MARK McGUIRE: Um-hum. [LB107]

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SENATOR CARLSON: And that's my reason for firing you, but that's not really my reason for firing you. [LB107]

MARK McGUIRE: Well, I am not quite sure of the question. You can wait until they're two minutes late, sure, or you can just tell them, look, we just don't get along, you know, this is just not working. I'm sorry, I think you're probably a fine person but not here and therefore you're terminated. Absence that that being raised based upon race or gender or age or any of the other prohibited categories and in the absence of any collective bargaining agreements or contracts, yeah, you can fire them just because you don't like them. [LB107]

SENATOR CARLSON: But this says... [LB107]

MARK McGUIRE: Because you don't like their tennis shoes. [LB107]

SENATOR CARLSON: This says, you know, you and I don't get...really, you and I don't get along very well. I don't want to tell you that, but I don't like you around, so I'm going to let you go and I'm going to look for a reason so that I can let you go. Then I've got to give you an opportunity to come back and respond to that reason. It's all phony. And I think another thing that goes through my mind, this may prevent me from giving people jobs that come in and interview and I'm a little skeptical of them. And I don't want to get in the position that we're talking about right now, I'm not even going to give you a chance. But if I didn't have to worry about that, maybe I'm wrong, I'll give you a chance. [LB107]

MARK McGUIRE: Well, that's a possibility, certainly. And I understand the world is not a perfect place, and this legislation is not going to make it perfect. But we do have a concern with our members who do do the low end sort of jobs, that if they are going to have to be out in the ranks of the unemployed these days--which is a horrible place to be--they ought to at least be informed of the reasons why even if they're phony. But at least give them the reasons and the opportunity to respond and perhaps keep that job that they desperately need. [LB107]

SENATOR CARLSON: Thank you. [LB107]

SENATOR LATHROP: Senator White. [LB107]

SENATOR WHITE: Right now, doesn't an employer have to give the unemployment insurance people a reason when they fire them anyway? [LB107]

MARK McGUIRE: Absolutely. [LB107]

SENATOR WHITE: So the only difference here is the employer would have to tell the

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employee at the time they're terminated, why they're terminated...because if that person goes to the unemployment insurance, that statement the employer may not want to make, they've got to make anyway. [LB107]

MARK McGUIRE: Because they actually have a hearing, the reasons have to be given, the hearing examiner, the hearing judge, and the unemployment hearing will, in fact, ask the hard questions about...why are we here? [LB107]

SENATOR WHITE: Thank you. [LB107]

SENATOR LATHROP: I have a couple of questions for you. Senator Haar said that he had spoken to the Attorney General, and the Attorney General was of the opinion that this, as written, does not give rise to a private cause of action. Do you agree with the judgment--apparently--the judgment of the Attorney General? [LB107]

MARK McGUIRE: When he said that, I was a little surprised. I'm not aware of that, and I'm not trying to dodge it. But I'd be highly curious as to the reasoning behind that conclusion. Not to say that it's not there, that it's not valid, I just... [LB107]

SENATOR LATHROP: It does make me, or lead me to this question, and that is...if this were the law, and it seems to me there's three scenarios where somebody could leave disgruntled. The first would be, that if you didn't give a reason, what's the consequence to the employer if they give no reason? The other is, what if I give a reason and it's not true? And I say, well, I think, you know what? I don't know who is stealing money from the cash register, but I think it's you, so you're gone. And it turns out not to be the case. And then the third one is, you've referred to this as due process, minimal due process. What if we don't give somebody minimum due process. Which, I suppose, would be telling them and then not listening to their reason whatever form that might take. Are we creating a cause of action in any one of those situations? [LB107]

MARK McGUIRE: I think in the embezzlement scenario you may well be, because you've basically alleged a matter of integrity on the person's character. [LB107]

SENATOR LATHROP: Then maybe that is a poor example because I don't mean to draw in slanderous statements or anything of the sort, but if I gave you a reason. And I say, you know what? Somebody, if I'm running a grocery store and I say if somebody allowed that milk to spoil in the back room, I think it was you, you're fired. And it was somebody else and not me. [LB107]

MARK McGUIRE: Well, I don't think that gives rise to a cause of action...so that it's severe enough that it's a mistake about who didn't move the milk cartons around. [LB107]

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SENATOR LATHROP: I don't want to lose the point with the example that I'm trying to make and that is, do you see that this gives rise to a cause of action in any one of those situations where I don't comply with the act, I don't provide any form of due process that's contemplated by this or I give a reason that just is wrong. And you try to explain to me that it isn't, and I say I don't care, I'm not listening to you, you're still done. In any one of those situations is there a private cause of action in your judgment? [LB107]

MARK McGUIRE: I think it would be very challenging, possibility that there is. In Nebraska, it would be a tough initial case and you'd want to look for some really good facts. I mean, just we live in a real world because the defendant is going to be saying well, this is all employment at will so what difference does it make? But the laws have to mean something or why else are we here? And I thought of the example of...no reasons are given and therefore no opportunity to respond comes into being, that I think, would present quite possibly some interesting fact patterns to take to a court. [LB107]

SENATOR LATHROP: Doesn't sound like you necessarily agree with what the Attorney General is going to express as his opinion? [LB107]

MARK McGUIRE: It wouldn't be the first time. (Laughter) [LB107]

SENATOR LATHROP: And he isn't always right. But, as a lawyer, I wanted to get your thoughts on that and I don't know if that's provoked any other questions or not? [LB107]

MARK McGUIRE: I mean, basically, on an intellectual level it would be very interesting and see what he says, and see what's there and see what facts you'd have. Never say never, but on the other hand I don't believe in just running out and filing the first thing that comes along and testing something like this. I think it'd have to be carefully selected. [LB107]

SENATOR LATHROP: Okay. Senator Carlson. [LB107]

SENATOR CARLSON: Senator Lathrop, it does bring another question. Let's go back to the situation, I'm the employer, I don't comply, what's my penalty? Other than you talk about the employee coming back and I don't give him a good reason and I don't give him time, I just don't comply, what's my penalty? [LB107]

MARK McGUIRE: I think the penalty, if there's a penalty, the penalty is the person still continues to be an employee or stated another way, you continue to be obligated to pay that person's salary until they were properly terminated. In the teacher world where you have to prove just cause and you have to go through a whole lot of process, if that individual is not terminated correctly then, and dozens of cases that say this, the employment is deemed to continue, which basically in reality comes down that they're still owed money. Because they weren't properly terminated. It's just...well, that's my

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answer. [LB107]

SENATOR CARLSON: Shouldn't that say that in here so that if we deliberate on this and we know what the consequence would be for someone if they don't comply? [LB107]

SENATOR COUNCIL: It kind of says you can't terminate them until you do. No employee shall be terminated until... [LB107]

SENATOR CARLSON: Well, but I'm just not going to pay, I'm not going to pay him. So, what's my penalty? [LB107]

SENATOR COUNCIL: The Nebraska Wage Payment Act. [LB107]

MARK McGUIRE: Yeah. A district judge under that act that says, thou shall. [LB107]

SENATOR LATHROP: All right. Interesting discussion. Any other questions? Thank you... [LB107]

MARK McGUIRE: Yeah, thank you. [LB107]

SENATOR LATHROP: ...for your testimony and your insight. Any other proponents today? [LB107]

CHRISTY HENJES: (Exhibit 4) Good afternoon. I am Christy Henjes, I work in the South Sioux City school system, I am a special ed paraeducator, or ESP. I've worked at my job for over 20 years, right now I have 21 students that I dearly love. I have, today, three examples and there are many people in South Sioux City who have been let go. The first one is an ESP that worked at the family center. On the last day she was told that she did not have a job, turned in her key to the building. She had done nothing wrong, basically, her position had been eliminated. However, in the fall, in August when we started back up, a person was hired to fill this position. And this was with a lot less qualifications, the person who was let go had a teaching degree in Mexico and she was working as an ESP. And she also was bilingual where the new one was not. My second example is a sign language interpreter was let go after four years. She was given permission to use her personal days for a family trip. Took the family trip, when she came back she was met at the door, asked for her key, had her personal items in the box and was told that she no longer had a position. After being gone over a week, or for a week that someone else had been hired for that position. The last one I have is a para that worked for the district for 12 years. Now this lady was 58-years-old. She had worked in the BD room, which is our behavior disorder room. She was told at the end of May that her services were no longer needed, escorted out of the building...and to her knowledge there was never anything, she had always had good reviews and she

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needed the health insurance. Her and her husband being that age, she definitely needed it. She worked well with the students, as many of the people who have been there for a number of years do work well with the students. And they hired somebody fresh out of high school that was not experienced at all and started for a lot less, of course. I would like to have you really consider this. I could give you many more examples, but it would end up the same. I mean, they're all end up the same. They're given leave without really, a reason. [LB107]

SENATOR LATHROP: Very good, thank you. Senator Wallman. [LB107]

SENATOR WALLMAN: Thank you, Senator Lathrop. God bless you for what you do, thank you for coming. And didn't they have a program at your school where it was three warnings or two warnings and the third warning...three strikes you're out? [LB107]

CHRISTY HENJES: They have it but I...if you aren't given a letter or told, then how do you know? These people were never given anything. I can, and it has nothing to do with being fired, but I could give an example of myself. I worked for the district for probably 15 years, I moved with the principal to a different building because our building was being changed into a different grade level. And I had had excellent recommendations through the years from four or five different principals. I, after I get to this building, my principal was there for two years and then left and I just stayed within this building. A new principal comes in and I don't fit into her jewelry parties, purse parties, entertaining her, and the first year my reviews were not good. I was given a disciplinary program that I needed to follow to learn my job, I didn't change. I still had the same kids I had the year before. In special ed you do from K-5, you have the same kids. I still worked with the same teacher, I didn't change. It was just how she looked at me and me not entertaining her. I could have been fired for no reason. It's not always the person that needs the dollar that's the one that's... [LB107]

SENATOR WALLMAN: I will agree with you...thank you. [LB107]

SENATOR LATHROP: Very good. Any other questions? Senator Carlson. [LB107]

SENATOR CARLSON: Senator Lathrop. Christy, I think in any of these circumstances, they're sobering. But take the third one, the 58-year-old, if the supervisor would simply have said, I'm seeing a little bit of a decline here in dealing with these children and perhaps the discipline and I think it's time we make a change. Now, that's a reason. That doesn't help her, but she'd still lose her job. So what good did that law do? [LB107]

CHRISTY HENJES: It gave her something to go somewhere else. I mean, how would you like to walk out of here today and have somebody hand you your material in a box, your personal material, and say give me the keys to the door, you're out. No reason, you're just out. You would want a reason. You can go to a different employer then, and

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you can say, I was there seven years...I was there 12 years, I was there 14 years...this is what happened. If I don't know and you're three strikes you're out is fine if you know, definitely, then you can try to do something about it. But that's not happening. [LB107]

SENATOR CARLSON: Yeah, and the assumption is that what you would be told is the truth, so that it might help you, and if it isn't, it really doesn't. Thank you. [LB107]

SENATOR LATHROP: Seeing no other questions, thank you. [LB107]

CHRISTY HENJES: Thank you. [LB107]

SENATOR LATHROP: I appreciate you coming all the way down from...you said South Sioux? [LB107]

CHRISTY HENJES: Dakota City, we live in... [LB107]

SENATOR LATHROP: Dakota City. [LB107]

KEN MASS: Senator Lathrop and members of the committee, my name is Ken Mass, and it's M-a-s-s, representing Nebraska State AFL-CIO and here today in support of LB107. As I come from a collective bargaining setting, basically, my whole life, it's hard for me to understand that an employer would not sit down with an employee and give them the actual reason of why they are no longer employed there or the reason for terminating them. In Senator White's comments, yes, when you're not in a collective bargaining setting, you're employees at will. I guess I can take a position here today, Senator Lathrop, that everybody with black shoes can't testify, only with brown shoes and that leaves me the only one in here, I think, can testify. But that's a discretion that is...it's hard for me to understand. And this bill would give that opportunity for that employee regardless of how much time they have working for that employer and what may be the reason. At least an opportunity to have their day in court and to leave there and the employer can look themselves in the face and know that they gave the right reason. I think that comment was made that I can give one reason and maybe it's not the real reason and what can I do as an employee? I guess I can take it up in court and go from there. So having said that, that's about all my comments. They can ask any questions on the issue, so... [LB107]

SENATOR LATHROP: Thank you, any questions for Mr. Mass? Seeing none, thank you for coming all the way from Omaha. [LB107]

KEN MASS: Thank you, sir. [LB107]

SENATOR LATHROP: All the way from the 12th District. [LB107]

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KEN MASS: Yes sir, my favorite senator. (Laughter) [LB107]

SENATOR LATHROP: Any other proponents? Any opposition? Oh, are you? [LB107]

AMANDA HOUCK: Proponent. [LB107]

SENATOR LATHROP: Okay, good, have a seat. [LB107]

AMANDA HOUCK: Okay. Thank you for letting me speak. I'm actually speaking as the position of the low end employee that was terminated without really a reason given. I had worked at the position for six... [LB107]

SENATOR LATHROP: Ma'am, why don't we have you start with your name? [LB107]

AMANDA HOUCK: Okay, sorry. [LB107]

SENATOR LATHROP: And that's my fault, I should have told everybody to do that. Spell your last name, so that my... [LB107]

AMANDA HOUCK: Okay. My name is Amanda Houck, last name is H-o-u-c-k. [LB107]

SENATOR LATHROP: Okay. [LB107]

AMANDA HOUCK: And I'm sorry about that. [LB107]

SENATOR LATHROP: That's all right. [LB107]

AMANDA HOUCK: But I had been working there for six years, was told when I was in a position of cleaning and providing reception work, was told on a Sunday, we don't need you anymore. That was it. And then when questioned, I was told perhaps that I was a little overstressed. At the time, I was moving, had just finished working with the primary campaign and my mother had been diagnosed with the metastasis of her cancer. So perhaps I was stressed, but I was not given any notice ahead of time that perhaps my work was lacking, that perhaps they felt I needed to be doing something more. I had no knowledge, prior knowledge, of having a problem, at that point. So...and it becomes very hard when I then go to my next employer and they go, well, why were you terminated? And I'm going, I have no idea. I have no idea and I know that despite state law I do believe that things were told to an employer on what I had been doing. And it's just very, very hard then, when I'm...because I'm still having to maintain the position of I'm looking for another \$8 hour job. I'm not looking...I'm not an attorney looking for a job, I'm still maintaining the fact that I'm going to be looking at--if I don't get another job--I'm going to be going on unemployment and then we'll be having the hearing about, why were you fired? And I, to this day--almost two years later--I have no idea why I was

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fired. I have my reasons on why I suspect I was fired, I cannot prove them. So I would just like to support this bill in the terms of...from the side of being a low paid employee that is the one...I'm the one cleaning up everyday. [LB107]

SENATOR LATHROP: Okay. Thank you for your testimony. Any questions? Seeing none, thank you for coming down here today. Any other proponents? How about opponents? Anyone here in opposition? [LB107]

MARK McQUEEN: Good afternoon. My name is Mark McQueen, last name spelled M-c-Q-u-e-e-n. I'm from Omaha, Nebraska, I'm an attorney with the law firm of Spencer Fane Britt & Browne. I'm here representing employers in general and I was specifically asked to attend by the Human Resource Association of the Midlands, the legislative committee within that particular organization. What strikes me about the discussion so far in the hearing that is very uncomfortable, is the suggestion that employers have some type of obligation be it moral, ethical, or legal to provide a reason for separating employment. That ignores 125 years of precedent in this state and every other state that suggests that employers have the right for no reason at all, good reason or bad reason to separate employees. That's the employment at-will doctrine. Oftentimes confused with right to work, right to work has nothing to do with employment at will. Right to work being the freedom to join or not join a union as a condition of employment. So the starting point for this discussion is employers don't have to provide a reason and any legislation which suggests that they do have to provide a reason is really legislation disguised to undermine and do away with this employment at-will doctrine, which is gigantic consequences, not only for the state in general, but all the employers as well. This particular legislation also strikes me as a solution in search of a problem. Now, we have all heard the horror stories of employees who are not told the reason for their separation. The overwhelming majority of cases that does not occur. Employers as a matter of good faith, as a matter of legal compliance, as a matter of avoiding disputes are in the habit of informing employees of the reasons for their separation. In fact, if they don't, they oftentimes invite legislation and there's somewhere in the neighborhood of three dozen employment law statutes at the federal and state level which hold employers accountable for making poor employment decisions. And any one of those statutes is available for employees who are somehow mistreated in the workplace or feel as though they are not provided sufficient detail about the reasons for their separation. I think this particular legislation, in fact, I'm certain would be fantastic for lawyers like me who are in the business of representing employers but terrible for employers who are going to be facing all sorts of disputes and disagreements as to whether they, in fact, provided the specific reason that was requested. Employees are going to disagree with that. Employees, sometimes when they're told reasons are going to suggest that the reasons were not given at all or that the reasons were something different than actually explained at the time. And of course, employers who fail to comply with this type of legislation are likely to claim that they did comply with this type of legislation. Bottom line is there is going to be a lot of disputes and it's going to create

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a lot of attorneys fees and a lot of legal uncertainty. And we've heard some of it today, the Attorney General, apparently, is going to offer an opinion that this legislation does not create a cause of action. But those proponents here who have been exposed to similar efforts in the past certainly believe it does. And on the street, the message that this will send is, if you don't comply there are legal consequences. Now, in terms of the exact language being used, a meaningful opportunity to present an employee's point of view, what does that mean? Does that mean in person? Does that mean by telephone? Does that mean in writing? Does that mean by mail? Can an employee argue that they were denied due process by not having access to an employer's records? Do the employees have a right to subpoena to determine whether the reason is, in fact, justified or not as compared to similarly situated past practice? Those are just a few examples of the uncertainty created by this legislation. With the specific language being used, there's also uncertainty as to whether the termination must be delayed until that type of conversation takes place. In many cases, employees stop showing up for work. How then is an employer supposed to proceed with the termination if they're having to wait until they can provide an in person or a meaningful opportunity to agree or disagree with a termination that may involve attendance. And, of course, the remedy for this legislation for violations as we've discovered today, is anything but clear. Is there reinstatement, is there back pay? Is there reimbursement for lost insurance, what insurance coverage that may be lost as a result of the discontinuance of employment? One of the justifications that I heard today was, well, that allows employees to then know what kind of reference they're going to get when they search for a job the next time. In fact, the practical reality is today, employers do not want to provide references. And the very reason they don't want to provide references, they don't want to provide the reason for a termination because they're afraid of getting sued. And they're afraid of getting sued because we've got this tremendous set of statutes and ordinances out there, including defamation, that creates liability for employers who don't do the right thing. So this has nothing to do--and will not solve--the need for references moving forward. Last but not least, I would circulate for your consideration, just a list of the pending or the existing employment law legislation. There's approximately 20 statutes on the book at the federal level, there's another 10 or 12 statutes on the book at the state level governing when and how employers manage their employees. And we're in a circumstance, now, folks--especially in Nebraska--most employers don't have hundreds of employees. Meaning they don't have full-time human resource departments, they don't have in house employment law counsel, they're on their own trying to figure out what they're obligations are under the existing statutes. This type of legislation, with the additional requirements that it brings and the uncertainty that it brings only adds to a burden which is, frankly, from a small business perspective a little bit overwhelming. We don't need another statute on the books to solve a problem that in most cases doesn't exist in the first place. So, with that I'll circulate the list of existing legislation. [LB107]

SENATOR LATHROP: You can give it to the page, and the page will move it around.
[LB107]

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MARK McQUEEN: And I'd be happy to... [LB107]

SENATOR LATHROP: And before you get away from us, we'll see if there's any questions. [LB107]

MARK McQUEEN: Yes, sir. [LB107]

SENATOR LATHROP: For Mr. McQueen. Oh, Senator Wallman. [LB107]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, would you agree with changing administration there is going to be a lot of termination now with not any reason? [LB107]

MARK McQUEEN: Well, clearly with the economy that we're facing now, we're already seeing a lot of layoffs, a lot of reductions in force. And clearly, that's going to be a tremendous burden. But also just as clearly, if I lost my job in this day and age and I needed to explain it, there's no better explanation than we're in a poor economy and I'm a victim of the economy, without any specific explanation from an employer. [LB107]

SENATOR WALLMAN: And also the issue of age discrimination, you know, with the insurance issues and public entities are under pressure to get their median age down for insurance purposes, cost wise. Don't you think you can make up ideas pretty easy too? [LB107]

MARK McQUEEN: If the suggestion is that employers can concoct a reason to justify a termination based on a protected class... [LB107]

SENATOR WALLMAN: Yeah. [LB107]

MARK McQUEEN: ...such as age, the answer is yes, they can and in fact, they do. There are bad employers out there that do those sorts of things, but the laws are on the books to protect against that very type of behavior. And in fact, one of the surest ways to generate a lawsuit is to refuse to disclose the reason for a termination. When that happens, people get suspicious and oftentimes when they get that suspicious they go down to these equal employment opportunity agencies that exist for very good reasons and they file a charge of discrimination because they're suspicious about the lack of an explanation. The remedy already exists for those types of problems. [LB107]

SENATOR WALLMAN: Thank you. [LB107]

SENATOR LATHROP: Senator White. [LB107]

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SENATOR WHITE: Yes sir, I understand you don't like this bill but I do have a number of questions on some of your statements. Do you really take the position that as an employer, if I fire a single mother of two from an \$11 an hour cleaning job I have no moral or ethical responsibility to say, look, I'm sorry I had to fire you just for doing a lousy job? Is that your position, there's no morality, not law, morality, no ethics? [LB107]

MARK McQUEEN: No sir, that is not my position. [LB107]

SENATOR WHITE: It is what you testified to. [LB107]

MARK McQUEEN: No, what I testified to...well, let me answer your question this way. I spend about 12 public speaking engagements per year advising employers on exactly what you've just described. The importance of fairness in the workplace, the importance of providing due process, the importance of justifying any termination. From a personal perspective, I believe that is an employer's moral and ethical obligation. As an employer's counsel I spend my career preaching that. On the other hand, the law of the land as it has existed for 125 years is employment at will. Employment at will states that you can separate an employee for any reason, or no reason at all so long as it doesn't violate an applicable contract, and applicable statute. [LB107]

SENATOR WHITE: We are agreed on that, I was just confused by your statement there's no ethical or moral reason. But also... [LB107]

MARK McQUEEN: What I was referencing was the employment at-will doctrine. [LB107]

SENATOR WHITE: I'm also then, as an attorney in this area, you would agree the best legal advice you'd give your clients is, give them a reason. [LB107]

MARK McQUEEN: Absolutely. [LB107]

SENATOR WHITE: Okay, so we have a law you don't like, but it makes the best legal sense, and it's moral and ethical. [LB107]

MARK McQUEEN: My objection to this legislation is that it's going to create legal disputes that are fantastic for attorneys and lousy for employers and businesses in general. [LB107]

SENATOR WHITE: Doesn't that seem inconsistent with what you just said, which is, the best way to get a lawsuit is to not tell somebody why you're firing them? [LB107]

MARK McQUEEN: It is inconsistent in the fact that I believe the good practice is to have a good basis for discharge and to provide somebody with a opportunity to correct their performance and to fully explain it. That doesn't mean that I would be supportive nor do

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I think it's a good idea or my client's or the Human Resources Association of the Midlands think it's a good idea to create another legal avenue by which we can burden the courts, the Department of Labor or any other available agency that exist already to protect employee rights. [LB107]

SENATOR WHITE: Well, let's just clear one thing, lawyer up to lawyer. This statute may not create the cause of action, but it does provide termination shall not occur until the lawyer has been advised of the reason. Now, you can have that and in fact the termination hasn't occurred even without a private cause of action under this statute, but it still allows you, for example, still under the Nebraska Wage Payment Act, correct? [LB107]

MARK McQUEEN: Well, I'm confused as to why to write a statute if there's no remedy? [LB107]

SENATOR WHITE: Well, in fact there is remedy, though, it just hasn't been found here. It says, the remedy is you're not fired until...you're not terminated until then. Then you can look at any other law that you might have which might be the right to recover payment until this act is confined to, but not by virtue of this act by virtue of the Wage Payment Act. [LB107]

MARK McQUEEN: Then what is the consequence of a violation of this act? [LB107]

SENATOR WHITE: You don't fire them. [LB107]

MARK McQUEEN: Okay, then what is the consequence of not firing? [LB107]

SENATOR WHITE: You get to continue to pay them. [LB107]

MARK McQUEEN: There you have it. There you have it. Now you have an incentive to create a lawsuit. [LB107]

SENATOR WHITE: But now you have... [LB107]

MARK McQUEEN: That may have no legitimate basis for existing, that may be unnecessary given the other legislative scheme that we're currently operating under. [LB107]

SENATOR WHITE: And yet you maintain that position in the face of what you said is your best legal advice to your clients, which I agree with counsellor, tell them. Tell them why you're firing them, you'll stop lawsuits. And doesn't this law just embody the best legal practice anyway? [LB107]

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MARK McQUEEN: Well, this law, it seems to me, implies that employers no longer have the right to terminate at will. I can't understand why it would be passed... [LB107]

SENATOR WHITE: Well, we could make that implication flat clear. So would you be okay with this law that said nothing in this law shall stop an employer's right to terminate at will, but before they can terminate they must advise the person of the reason. And by the way, I thought your argument about the person who just doesn't show up was well taken and I think we could draft around that. But really, if we're serious about preventing litigation, do you stand by your position that the best advice that you can tell any employer is tell them why, make it nondiscriminatory and tell them why. [LB107]

MARK McQUEEN: I think it's a good idea, that's exactly right, I made that clear. But I don't think it's a good idea to create another avenue by which employers can sue and to your point, is it a good idea if this becomes a law to make clear that this does not, in any way, undermine the employment at-will doctrine in the state of Nebraska, yes, I believe that would be essential. I also believe it would be essential to clarify that this law creates no cause of action, no opportunity to collect any damages if an employer does not comply. [LB107]

SENATOR WHITE: Oh, that is not what we said, though. This law doesn't but it may, in fact, if you're not terminated you still have rights under the Wage Payment Act. [LB107]

MARK McQUEEN: Then that begs the question...the only reason you would have rights under the Wage payment and Collection Act is if there is unpaid compensation due. There shouldn't be any... [LB107]

SENATOR WHITE: Right, and there's no terminations effective until you can tell the person why. [LB107]

MARK McQUEEN: Now you have introduced a gigantic black hole of questions created by this type of legislation. [LB107]

SENATOR WHITE: We have also ended a lot of litigation that rises out of race, age, national origin, religion because we've told people that a legitimate nondiscriminatory reasons...and you do, ultimately, if they apply for unemployment insurance they've got to tell them anyway. [LB107]

MARK McQUEEN: No, they don't. They can... [LB107]

SENATOR WHITE: So you can just say, we just fired them and we took him...we just fired him for no cause. [LB107]

MARK McQUEEN: The only reason an employer has to respond to an inquiry from the

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unemployment compensation people is if they oppose somebody's application for unemployment compensation. And in many cases they don't get into that opposition or to those disclosures because they don't want to create lawsuits. They would just as soon that the employee be allowed to collect their unemployment compensation. And, in fact, there are many circumstances where an employee may be terminated but doesn't necessarily disqualify them from unemployment compensation so there's no reason to respond in the first place. [LB107]

SENATOR WHITE: Thank you. [LB107]

MARK McQUEEN: Thank you. [LB107]

SENATOR LATHROP: Seeing no other questions, thank you. [LB107]

MARK McQUEEN: Thank you very much, appreciate it. [LB107]

SENATOR LATHROP: Appreciate your testimony, Mr. McQueen. [LB107]

PEGGY NOLL: (Exhibit 6) Good afternoon, Senators. I have a lot of points that are...I'm sorry, Peggy Noll, Noll Human Resource Services, Omaha, Nebraska. And I'm really representing myself and my company. I'm also on the governmental affairs committee of the Human Resource Association of the Midlands. This bill to allow employees to know specifically why they're being terminated sounds very reasonable when merely stated. In fact, regular communication with employees regarding their performance and their potential for ongoing employment as well as being very clear when an employee's job is in jeopardy is a good management practice. Giving an employee an accurate reason for termination can aid them in improving skills or attitude for future employment and a host of other benefits including less grief over termination, which I think we've head here today, because they know the truth. All of these practices are good management practices. However, questions for this committee are, should good management practices be turned into laws? It's a good management practice to touch base with my employees in the morning, it's a good management practice to have weekly department meetings, it's a good management practice to have regular performance reviews, it's a good management practice to recognize extra effort. Can I expect these good management practices to turn into law in the future? Consider the consequences of this proposed law in some of the following situations, these are some that have been given to me by other VPs of Human Resources. Noll is a staffing executive search and human resources consulting company, so we can have between 150 and 300 temporary employees, so I've thrown in an example from there and believe me, there will be numerous examples. For example, I think this has already been brought up, someone wants to not vilify someone in any documented way and wants to allow them the freedom to leave without something being documented that would hurt them in the future, such as a theft, even though both know it to be true. An employee worked a

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short period of time and then just doesn't show up. Must we pay them until we can find them? An employee is in jail and is terminated, do I go there? They can't come to me, how do we do that? An employee has committed violence in the workplace or is a sexual predator. Must I continue to pay them until this is all resolved? And they decide that it's meaningful enough? And finally, an employee is a temporary employee working on-site at a client company, the client company requests ending the assignment because there is no work. Does the staffing agency have to keep the temporary employee employed while this procedure is followed? We could keep listing situations, and many of my friends in human resources have given me many, I could sit here for the next 24 hours and give you situations like this that are real. As Mark has alluded to, what problem is the law trying to solve? And is this problem already solved in other ways? If an employee has been mistreated under the law, there are plenty of laws to cover mistreatment that can be handled by the EEOC or NEOC and the Department of Labor. Is a new law the only way to solve this assumed problem? As Mark has also alluded the continued erosion of employment at will. Most human resources professionals just laugh when employment at will is even stated anymore. And lastly, the timing of this. Small and large businesses in Nebraska are reasonably anticipating a flood of increased employer responsibilities and restrictions from the federal government in the next four years due to a strongly held employee rights orientation in the legislative and executive branch, at a time when business owners stock and property portfolios have been decimated and expert predictions are for a deep economic recession and possibly a depression. Does this Legislature think that it is a good idea to add another hand-tying burden and open door to lawsuits and the ensuing expense to an already weakened and dispirited business community? You know, and finally, I guess what I am hearing from some members here is, we love jobs but we don't love employers. So I'm asking you to think about how the employers feel right now. My husband and I...our main goal this year is to keep all of our employees employed. Our concern is not for ourselves. I practice all of these good management practices, but these other situations are very real. So please consider these comments and the others from Mark. [LB107]

SENATOR LATHROP: Thank you, Ms. Noll. Are there any questions of this witness? Seeing none, thank you for coming down and for your testimony today. Are there any other opponents who wish to be heard? Come Ron. [LB107]

RON SEDLACEK: Thank you, Chairman Lathrop and members of the Business and Labor Committee. My name is Ron Sedlacek, it's spelled S-e-d-l-a-c-e-k, I'm here today on behalf of the Nebraska Chamber of Commerce. I have with me a couple of letters that parties have asked because of potential hearing conflicts, I'm not sure if they're still around but I would... [LB107]

SENATOR LATHROP: Oh, we appreciate letters in lieu of personal appearances, so we'd be happy to receive those and make them part of the record. [LB107]

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RON SEDLACEK: (Exhibits 7, 8) ...have testimony, okay. And probably to expedite. All right. One from the Lincoln Chamber of Commerce in opposition. Now the second is from the National Federation of Independent Business. And in order not to be redundant and waste the committee's time, there's so many points here in my notes that have been covered already. [LB107]

SENATOR LATHROP: Okay. [LB107]

RON SEDLACEK: So we've talked about the general policy of employment at will. And I think everyone...I know some are very familiar with the policy, some may not as much and of course I don't want to go into it terribly deep at this point, it's been covered. But it does work both ways, it's rising from situations stemming from the old personal covenant feudal contract to indentured servitude through contractual employment through independent contracting through the employment situation today in which both parties--although one has usually greater bargaining power and that's the employer, rarely admitted--have the opportunity to continue to work or to leave that employment for a good reason, a bad reason, or for no reason at all. That was the original doctrine. In other words, an employee could not come to an employer and say I'm quitting for a better job and the employer could not say, no you're not, you're tied to this work, and you've got to give me a good reason and we have to agree before you can leave my employment. It doesn't make sense in today's world but it works both ways as employment at will. Nonetheless, I think that we look at this situation and we say, you know, it smacks of fairness...somebody ought to be...and there is, certainly it seems, that a moral and ethical reason everyone would expect. And if they walk into work some day and they find out they're losing their situation they understand a reason why. Whether it was their conduct or something beyond their conduct. Was it a third party? Is it layoffs? Is it retirement of the boss? Is it bankruptcy, financial problems, you know, you want some...would like to know. It's been talked about already, various situations dealing with workplace violence or problems within the workplace such as sexual harassment and so forth. And that has to be addressed as well as where you draw the line between job abandonment and not showing up to work for a particular period of time. Those are all issues that haven't been addressed in the legislation. Now, my purpose here isn't to sit down and write legislation that we oppose in a better shape, but to merely point out that there are a number of questions that have been brought up to the committee some of which have been addressed, others have not. But certainly, keeping in mind that there are...it can be pretty catastrophic to an employee losing their job, and sensitive to that fact...by the same token, we have to take a look at our particular business members, large and small, trying to comply with myriads of regulations, federal as well as state counterparts...faced with provisions of anti-retaliation or whistle-blower. There is certainly situations in which we're dealing with violations of public policy where there's an employee maybe being asked to violate the law and they refuse to do so; or they see a violation of law and want to report it; or they

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want to avail themselves of some right, let's say, workers' compensation. So employment at will has really eroded to the point where an employer is now free to fire but it has to be for a good reason, or no reason, but it can't be for a bad reason. That is condemned by law, essentially, at this point. So I think that's how we have to contextually recognize it. Probably the first ten days of a legislative session I like to spend most of my time reading legislation as opposed to fielding phone calls on LB107. It seems like I've been getting over and over and over many employers and other groups and associations asking, how about this legislation? And my suggestion is, is don't talk to me, you know, visit with the senators, so we'll see if you do get a response, I don't know. But at any rate, in those jurisdictions that I've looked at, it seems particularly Canadian provinces, Australia, there's some European countries that have a modicum of this reasoning. The problems that they're finding are getting the truthful reason, or getting a subterfuge reason...the...not the primary but a secondary or there are multifaceted reasons and the procedure does not fit the cookie cutter of the procedural due process of appeal rights, of right to representation, waiting periods, statute of limitations, it does not address this in the bill. There is an opportunity to respond, but is that the same day, particularly if there is an emotional termination? The argument, you know, as you remember maybe on your...you know, I quit, no, you can't quit, you're fired. And then you give a reason there orally, is that good enough to comply with the law? I don't know. I don't know the answer these whether it should be written or oral and so forth. What type of documentation and whether they're...if an employee does not avail themselves of the reason, refuses to respond, and then a week later or three months later makes that response. Where are we sitting? What is...how does this bill implement? Those are the most particular areas that I wanted to cover that I don't think had been covered in previous testimony. There's a number of other particular issues that have been raised, in particular, again, where an essential requirement, the job is lost...let's say there is a DWI conviction, person has a CDL, a commercial driver's license that's the obvious reason. Does there need to be that opportunity to...for reasoning and response. Those become questions at that point. Secondly, there may be times when the reason is confidential or should be held confidential, a manager gets instructions from above that there has to be layoffs, now the reason is the layoff, I suppose. That's not the true reason, the true reason may be because this particular branch is not productive and they're closing it down or there is some downsizing of some sort and so forth. So is that the true reason? No, the true reason is economic, nothing to do with the manager's instructions. I'd be happy to entertain any questions though. Yes sir. [LB107]

SENATOR LATHROP: Senator Wallman. [LB107]

SENATOR WALLMAN: Thank you, Senator Lathrop. Thank you for testifying. You know, I am a member of the Chamber would you say there is many laboring people member of the Chamber? [LB107]

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RON SEDLACEK: I'm sorry? [LB107]

SENATOR WALLMAN: Laboring people, members of the Chamber? [LB107]

RON SEDLACEK: Usually our membership are the employer community themselves and not the employee community. [LB107]

SENATOR WALLMAN: So we have a hard time being, I guess, looking at both sides, I do too. But my family, they hire quite a few people in the healthcare field in Iowa and so they deal with this issue, also. But some of this just makes common sense, don't you think we should be doing as employers? [LB107]

RON SEDLACEK: Well, I think so. I think you heard that in previous testimony that's why I didn't really want to be repetitive because what we've been hearing is private...this applies to the private sector, the way the bill is drafted. Now we've been hearing most all the proponent testimony has been actually stemming from public sector employment. Which kind of surprises me because I always thought there was kind of a built-in system for due process particularly for many of the employment base, not all. Not the hourly worker but you would think that would be applied just as in the private sector. Usually most employers are pretty concerned about trying to...and are risk adverse to lawsuits unless, of course, they aren't attending these lectures and courses and they don't have the time or the personnel to do so. One of the things that bothers me a lot in this particular legislation is making a record when maybe a record shouldn't be kept. There is a shrinkage problem, there is tipping, you know drinking the inventory, whatever it might be. The employer and the employee get together and they say, you know, it's not working and we know why. And I'm not going to turn you in to the police but I'm not going to put anything down in writing and, you know, as far as your next job I'm not going to impair that ability. When you have this and you have a reason, and you're probably going to want to document that in writing and get that...are we creating a record that for future employment, that may be adverse to the employee. I'm thinking it, from the other side as you mentioned trying to think of it from the employee's point of view. In the unemployment comp case they may decide not to pursue it, don't give any reason. Now there is a reason that's written, is that available? Probably not available under this bill for that inspection but does that really oblige...is there truthfulness in that situation. Isn't there a moral, in a sense, ethical obligation on the part of the employer to write down the reasons for future employers to look at? So they don't get caught with an employee that again and again and again down the line. So you can look at it in a broad sense and say, you know, it's an ethical duty, really, to disclose this. I don't know, it's difficult and that's why state legislatures and courts are very loathe at this point to eliminate the employer at-will doctrine. There has been erosion over the years and there are many reasons--good reasons--why. If you get fired for doing something you're civil duty, jury duty, for example, there should be a policy. That's against public policy that should not happen. Or for availing yourselves to vote and you get fired for voting

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because the employer has a suspicion of who you're going to vote for or they just don't want you to take the time off or whatever the reason may be. Good public policy reasons. Absolutely. [LB107]

SENATOR WALLMAN: Thank you. [LB107]

SENATOR LATHROP: Very good. Thanks, Ron. [LB107]

RON SEDLACEK: Um-hum. [LB107]

SENATOR LATHROP: Any other questions? Seeing none, thank you. [LB107]

RON SEDLACEK: Thank you, Senator. [LB107]

SENATOR LATHROP: Any other opponents who care to offer testimony that's not duplicative? [LB107]

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as registered lobbyist on behalf of the Nebraska Health Care Association. The Nebraska Health Care Association employs approximately 34,000 employees that could be impacted by this legislation. Although a lot of the employers that are covered said that they typically do give notice of termination, there are a number that said that there are reasons why sometimes they don't. I won't try to repeat things that people have said before me, but I think most of those reasons have been explained. They also have some concerns with the overall erosion of at-will employment and furthermore they are very concerned with the cost of potential litigation. I think it's been discussed a number of times by previous opponents about what happens if the employee does not feel that you gave them proper notice, or they don't agree with your notice. Then what happens to that if they find that you didn't give proper notice? The answer is, it goes to litigation. The way the employee would recover under the Wage Payment Act is through litigation. And these employers are very concerned because these are at-will employees and they should be able to terminate them for a reason or no reason. And I'd be happy to try and answer any questions. [LB107]

SENATOR LATHROP: Thank you, Ms. Gilbertson. Any questions? Seeing none, appreciate having you down here today. Any other opponents? [LB107]

MARK PANKOKE: (Exhibit 9) Senator, my name is Mark Pankoke, that's P-a-n-k-o-k-e. I'm here on behalf of the Nebraska State Council and the Lincoln Human Resource Management Association and thousands of HR professionals throughout the state. I would like to state my opposition to this bill. The Lincoln Human Resource Management Association and Nebraska State Council for the Society of Human Resources believe

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that Nebraska's employment at-will status should be preserved. Allowing employers to continue to utilize their best judgment and discretion based upon facts and specific circumstances when issuing termination documents is important for a number of reasons. Most notable among these reasons are safety, security, confidentiality. Passage of this bill would threaten the employment at-will status of the state and could in some cases create unnecessary conflict and safety/security issues for clients, other employees, and those the employer serves. Please vote to keep this bill from becoming law. [LB107]

SENATOR LATHROP: Thank you, Mr. Pankoke. Any questions? Senator White. [LB107]

SENATOR WHITE: Mr. Pankoke, if this law was amended to say that it shall be sufficient if the employer sends to the employee's place of residence a statement stating the reasons for the termination and giving an address that the employee could respond in writing to, would that allay your concerns regarding safety, security, and confidentiality? [LB107]

MARK PANKOKE: I think in most cases it would but perhaps not in all cases. In my experience it's been very infrequent that a reason is not given. But typically when a reason is not given it's because there are concerns about retaliation, those kinds of things. And whether you do that in person or send it to their home, you could risk some of that occurring. [LB107]

SENATOR WHITE: Even if law was...a clear statement in the law was, nothing in this act shall restrict an employees ability to fire an employee for any reason not otherwise prescribed by law, would that address your concerns? [LB107]

MARK PANKOKE: Again, I believe that it would be helpful, but I don't know that it would go far enough. I think as has been stated by others here, this may be a bill that really doesn't have a need out there for it in my estimation. [LB107]

SENATOR WHITE: Do you agree that telling employees the reason for their termination in the vast majority of cases prevents litigation as it has been testified by Mr. McQueen? [LB107]

MARK PANKOKE: I don't know if it prevents litigation, I think that it is commonly done, I think in most cases. I know there were some that were stated earlier that didn't seem to be the case. But in most cases there is due process that leads up to a termination and I've been employed at several different companies and I don't think it's ever been done just one and done type of thing, unless it was extremely serious. [LB107]

SENATOR WHITE: Thank you for your courtesy... [LB107]

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MARK PANKOKE: Thank you. [LB107]

SENATOR WHITE: ...in answering those questions. [LB107]

SENATOR LATHROP: Thank you. Any other questions? Seeing none, thank you, Mr. Pankoke. [LB107]

MARK PANKOKE: Thank you. [LB107]

SENATOR LATHROP: Any other testimony in opposition? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB107. Pardon me, oh, I'm sorry, Senator Haar, would you like to close on your bill? (Laughter) We'd be happy to... [LB107]

SENATOR HAAR: I was just waiting to be asked. [LB107]

SENATOR LATHROP: It's an oversight of a new Chair. [LB107]

SENATOR HAAR: Well, after hearing all the testimony I would still say that--and not being a lawyer but it's--I believe this bill with a few wording changes and you suggested some good changes, is fair, it's right, it's reasonable. And it's not only a good management practice, but I think it's a moral imperative that people need to know why they've been fired. So thank you very much. [LB107]

SENATOR LATHROP: Thank you, Senator Haar. That will close our hearing on LB107. (See also Exhibits 10, 11, 12, and 13). We have a few boilermakers to hear from. [LB107]

BREAK []

SENATOR LATHROP: We are next, pardon me, we are next going to take up the four gubernatorial appointments to the boiler inspection board, I think it's called. Just a second, Boiler Safety Code Advisory Board. We have four gubernatorial appointments, all of which, I believe are reappointments. The first one is Charles Cole who had a conflict today. Are any of you Charles Cole? Okay. He did notify our office that he had a conflict and for that we will waive his appearance. Is there anyone here today who cares to speak in support of his appointment? Anyone here to speak in opposition, or in a neutral capacity? Seeing none, that hearing will be closed on Mr. Cole. We also have Thomas DiMartino, who I believe who is here. You want to...you can have a seat in the chair and maybe tell us a little bit about your... [CONFIRMATION]

THOMAS DiMARTINO: I was hoping you'd go through the whole thing and say do I hear

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anything positive or negative? (Laughter) I've been here awhile, I forgot how...why I was here. [CONFIRMATION]

SENATOR LATHROP: You might wait until the opposition. [CONFIRMATION]

THOMAS DiMARTINO: My name is Thomas DiMartino. It's D-i-M-a-r-t-i-n-o. As you can tell by my accent I'm not from Nebraska, I'm from New Jersey. I've been on the board for three years and I believe I chaired it for three years and would appreciate the reappointment. I work for Hartford Steam Boiler Insurance Company, I represent the insurance industry. [CONFIRMATION]

SENATOR LATHROP: Okay. [CONFIRMATION]

THOMAS DiMARTINO: That's it. [CONFIRMATION]

SENATOR LATHROP: Okay. And you said you've served for four years already? [CONFIRMATION]

THOMAS DiMARTINO: Three. [CONFIRMATION]

SENATOR LATHROP: Three. [CONFIRMATION]

THOMAS DiMARTINO: I think it's three and I also chaired for three years. [CONFIRMATION]

SENATOR LATHROP: All right, very good. Anyone have any questions for Mr... [CONFIRMATION]

THOMAS DiMARTINO: Yes, sir? [CONFIRMATION]

SENATOR LATHROP: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: What do you do? [CONFIRMATION]

THOMAS DEMARTINO: Right now I've been back there trying to...oh, what do I do? [CONFIRMATION]

SENATOR CARLSON: What kind of responsibilities do you... [CONFIRMATION]

THOMAS DiMARTINO: I actually, I monitor fabrication of pressure vessels for the American Society of Mechanical Engineers, they set the codes and rules. I also do National Board Inspections as far as witness and monitor alterations and repairs of boilers and pressure vessels. And make sure everything...we have clients, and make

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sure they repair them according to code which is designed by ASME and the national board. ASME is a fabrication code. The national board takes over when the particular vessel is installed. [CONFIRMATION]

SENATOR CARLSON: I think I know the answer, but what's the worst thing that happens if you don't do your job? [CONFIRMATION]

THOMAS DEMARTINO: We have what they call in the industry a unauthorized relocation of a vessel. (Laughter) [CONFIRMATION]

SENATOR LATHROP: And maybe a carbon monoxide leak. [CONFIRMATION]

THOMAS DiMARTINO: That's very possible. The law is actually the jurisdictional rules thanks to Chris and the other members of the board haven't been watered down and actually, that's kind of my...that's my watchful eye is that they maintain what they have. They actually have some good jurisdictional rules in this state. I have a commission in eight states and I understand each state's commission and jurisdictional rules. I feel we have good, safe laws. I'd also like to advance them a little bit, but as long as we don't water them down I'm very happy about them. [CONFIRMATION]

SENATOR LATHROP: Very good. Any other questions? Seeing none, thank you. Anyone here in opposition or in a neutral capacity? I have to ask. [CONFIRMATION]

THOMAS DiMARTINO: Go ahead. [CONFIRMATION]

SENATOR LATHROP: Okay. That will close the hearing for Mr. DiMartino. Martin Kasl is not here, called my office, indicated he had a conflict and because it was set on short notice so that we could get plenty to do today, his reasons are satisfactory to the committee. Is there anyone here that cares to speak in support, in opposition, or in a neutral capacity on Mr. Kasl's appointment? Seeing none, that will close the hearing on the appointment of Mr. Kasl. And last but not least, is Ken Stewart. [CONFIRMATION]

KENNETH STEWART: That's a hard act to follow there. [CONFIRMATION]

SENATOR LATHROP: It is. [CONFIRMATION]

KENNETH STEWART: Hello, I'm Ken Stewart, S-t-e-w-a-r-t. I know Mr. Lathrop from a prior life, good to see you again. [CONFIRMATION]

SENATOR LATHROP: We do. Good to see you again. I think you've been a client, a juror, and now someone here to be appointed. [CONFIRMATION]

KENNETH STEWART: Correct. I've been a board member for three years, also. As far

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as work experience, my current position is vice president and department head of the steamfitters group for Thermal Services, Incorporated in Omaha. I've got a city of Omaha master steamfitters license and I've been in the boiler industry for 23 years now. [CONFIRMATION]

SENATOR LATHROP: Very good. Any questions for Mr. Stewart. All right, thanks, Ken. Good to see you again. [CONFIRMATION]

KENNETH STEWART: Yep. Thank you. [CONFIRMATION]

SENATOR LATHROP: Anyone here in opposition or in a neutral capacity? Seeing none, that will close the testimony on the appointment of Mr. Stewart and the others to the advisory board, and thank you all for coming. I would like to maybe do a short Exec Session. [CONFIRMATION]

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Disposition of Bills:

LB107 - Placed on General File with amendments.

LB158 - Placed on General File with amendments.

Chairperson

Committee Clerk