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COMMITTEE ON JUDICIARY
February 23, 2005
LB 621, 43, 510, 464, 759, 592

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 23, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 621, LB 43, LB 510, LB 464, LB 759, and LB 592. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Other Legislators will come but maybe I can get the general rules out of the way before they attend. This is what I call legislative time. It's 1:30 and we're not ready to begin yet. Welcome to the Judiciary Committee. This is the 14th day of committee hearings. We'll be hearing six bills today. I am Pat Bourne. I'm from Omaha. I will introduce the other members as they arrive. Please keep in mind that senators have other duties and hearings in other committees so they will come and go during the testimony. If a senator leaves while you're testifying please don't take offense to that. They're simply conducting business elsewhere in the capitol. If you plan on testifying on a bill we're going to ask that you sign in advance and we're going to make use of these two on-deck chairs up in the front. Please print your information so it's easily readable, can be entered accurately into the permanent record. Following the introduction of each bill I'll ask for a show of hands to see how many people plan to testify on a particular bill. We'll first hear the introducer, then we will hear proponent testimony followed by opponent testimony. And then if there's anyone wishing to speak in a neutral capacity they'll be taken last. When you come forward to testify please clearly state and spell your name for the record. All of our hearings are transcribed so your spelling of your last name will help the transcribers immensely. Due to the large number of bills that we hear here in the Judiciary Committee we're using the timing lights, what I refer to as the Kermit Brashear Memorial Lighting System (laughter). Senators introducing bills get five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes to testify exclusive of any questions the committee might ask. The blue light goes on at three minutes. The yellow light comes on as a one-minute warning, and then when

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the light turns red we ask you to conclude your testimony. The rules of the Legislature state that cell phones are not allowed in hearing rooms so if you have a cellular phone please disable it so that the ringer doesn't work. Reading someone else's testimony is not allowed. We will allow you to submit testimony from someone else but we will not allow you to read it into the record. With that, we've been joined by Senator Flood from Norfolk, Senator Chambers from Omaha, and Senator Foley from Lincoln. Senator Redfield to open on LB 621. Can I have a showing of hands of those here testifying in support of this bill? I see one. And again, I'm going to ask you to make your way forward to the on...okay, I see none. Are there any opponents? Are there opponents to the bill? I see one. Are there any neutral testifiers? I see none. Senator Redfield to open. Welcome.

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SENATOR REDFIELD: (Exhibits 1, 2) Thank you, Chairman Bourne and members of the Judiciary Committee. For the record, my name is Pam Redfield, R-e-d-f-i-e-l-d. I'm the state senator from District 12 and I'm here to introduce right now LB 621. LB 621 is a very short bill. We very seldom see one that's only one page long. It creates a rebuttable presumption in the event that you are using a cell phone at the time of an accident. This actually was introduced by Senator Landis in 2001 as LB 42. Senator Landis is carrying my Spam bill this year; I'm carrying his rebuttable presumption bill. We're hoping for better results this way. I have distributed to you a couple of articles that have quoted studies that have been done since you first saw this bill showing that, in fact, there is a reduced breaking time when people are distracted by the use of a cell phone. I know that we have looked at bans in many states, in fact, they have adopted bans in the state of New York and I believe one other state. I don't support a ban on cell phones but I do believe in taking personal responsibility when, in fact, you are a cause of any accident because it could affect your insurance rates, the other person's insurance rates and it certainly could make it easier to settle that repair and making the person whole in the event of an accident. Drivers talking on a cell phone they have found in the studies have an 18 percent

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slower reaction to brakes. They have found that there as many as 2,600 deaths a year. There are thousands of injuries as a result and certainly a lot of property damage. And we have also found that 46 percent of cell phone users have a tendency to swerve into another lane; 23 percent tailgated another vehicle; 18 percent almost hit another vehicle and 10 percent ran a red light. Many people say that there are a number of things that can distract you when you drive and that's true. They talk about women who are putting makeup on when they drive. Or I'll tell you as a female that's a stoplight activity (laughter). And, in fact, if that were to occur the evidence would be there because the lipstick would be on your face, on your clothes, and on the upholstery. But a cell phone drops to the floor and we have a record that tells us whether in fact you were talking on the cell phone at the time. Another distraction people talk about is children. I will tell you as a mother of six that we have an amazing capacity to tune out that which we don't need to do at the particular moment in time. And so when you drive down the street you know what's a hurt cry and you know what is just a bothersome cry and you can tune it out and drive without distraction. I can tell you I drive about 30,000 miles a year and I have never found that my concentration could be distracted from that because we have an innate ability to tune that out when in fact we need to. Music...music is a distraction. I will tell you that probably at least once a week during the summer you will see teenagers that will have their windows down and the whole car is vibrating and you see that their body is rocking. And they probably are not concentrating on the road. But in all the years that I've driven I've only seen two women who were actually putting on makeup and it was at a stoplight and I have only seen a weekly event of somebody with music. And I can tell you that daily I see car after car after car with people with a cell phone to their ear. It is becoming an American way of life and it is certainly not enhancing the safety of our streets. Again, I don't support a ban. I don't think it's wise. But at the same time I think that we should take responsibility when it does contribute to an accident. So with that, I will close and address any questions you might have.

SENATOR BOURNE: Thank you. We've been joined by Senator Aguilar from Grand Island. And I neglected to introduce Laurie Vollertsen, our committee clerk and Jeff Beaty, our

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legal counsel. Are there questions for Senator Redfield? Seeing none, thank you. I'm going to check again. Are there any testifiers in support? Testifiers in opposition?

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association as well as Cingular Wireless in opposition to LB 621. As Senator Redfield has described for you, this bill would create a rebuttable presumption of negligence if the operator of a motor vehicle was involved in a traffic accident during such use. We oppose the bill. I think that what it does and I don't know of another situation where in the tort area we have a rebuttable presumption of negligence that...as an example, if you're driving down the street and someone runs a stoplight, if you are on a cellular telephone there would be a rebuttable presumption that you, the one on the cellular telephone was guilty of negligence. There is no presumption that the other person who ran the red light is guilty of negligence. You would have to prove that factually. We believe that the way to connect the use of a cellular telephone with negligence is through evidence as in any other kind of tort case. And we think that once we start down this line it does change our whole system of tort liability. We oppose the bill.

SENATOR BOURNE: Thank you. Other questions for Mr. Mueller? Senator Chambers.

SENATOR CHAMBERS: I'm not going to ask you an amount. Which pays you more, the bar association or Cingular? You don't have to answer...oh.

BILL MUELLER: Bar association.

SENATOR CHAMBERS: Okay.

BILL MUELLER: It's a matter of public record, Senator (laugh).

SENATOR CHAMBERS: I know (laugh).

BILL MUELLER: Okay.

SENATOR BOURNE: Further questions for Mr. Mueller? Seeing

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none, thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in opposition?

JUSTIN BRADY: Senator Bourne and members of the committee, my name is Justin Brady. I'm appearing today as the registered lobbyist on behalf of Alltel, the Nebraska State Home Builders, and the Nebraska Realtors Association in opposition to this bill. And we feel that, first of all, there's as Senator Redfield pointed out, there are many distractions that can come with driving. I mean, whether it's makeup, changing the radio, eating, drinking. If this committee and the Legislature wanted to create a distracted driving law that would be one thing but to single out one of those distractions and say, you'll be presumed to be negligent we feel is unfair. And I just thought I'd point out a couple of times where the level of rebuttal or presumption is used in statute. It's not used that often. One example is if you're 99 percent or more accurate on a paternity test there's a rebuttable presumption you're the father. Well, I don't know that because you're in an accident and on a cell phone you can be 99 percent or more accurate you were the cause of...you were negligent in that accident. So with that we would ask that you...or we oppose the bill. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Brady? Seeing none, thank you.

JUSTIN BRADY: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Are there neutral testifiers? Senator Redfield to close? Senator Redfield waives closing. That will conclude the hearing on LB 621. Senator Redfield to open on LB 43. As Senator Redfield makes her way forward, could I have a showing of hands of those here to support this bill? I see four. Those in opposition? I see three. Those neutral? I see none. So would the proponents for this measure make their way forward and make use of the on-deck area and sign in so we don't have a delay between speakers? Senator Redfield to open.

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SENATOR REDFIELD: Senator Bourne, members of the committee, for the record my name is Pam Redfield, R-e-d-f-i-e-l-d. I'm the state senator from District 12 and I am now going to introduce to you LB 43. LB 43 deals with the liability that any employee who works in the human resources department of a company in Nebraska risks if in fact they give out any more information to a prospective employee than a confirmation that that person did in fact work for them within a certain time frame. Now, I will tell you that this is a safety issue because our employers are hiring people who take care of our children in day-cares; they are hiring people who teach our children in schools; they are hiring people who take care of very vulnerable people in our nursing homes, disabled people, people in hospitals. And yet we give our employers no opportunity to verify in fact whether that potential employee had been fired or had quit in lieu of firing or in fact had in their performance file a record of some kind of neglect of duties that had endangered the people in their care, that had endangered other employees. And I believe that we are here to address a safety issue. I've been before you several times this year, more than I usually like to be, and we've usually talked about money. And that can be very painful to someone who doesn't have enough of the currency of the day. But we're talking about something more precious than money in this bill. We're talking about safety. I meant to bring to you a book called Blind Eye. It's a true story. It's about a doctor that went from one medical school to another, from one hospital to another throughout the United States. And at the end of his time there were at least 90 people dead. And yet no one within those systems would risk the liability of revealing to a prospective hospital or medical school what they had, in fact, witnessed and suspected that someone's life had been taken or certainly endangered in many instances. So I ask you to look at the bill very carefully. We're looking at what is in your file, a written performance evaluation that has to be requested in writing, has to be delivered in writing. This is not about personalities, someone chatting on the phone and bad-mouthing an employee. This is about official personnel notices that verify why in fact they left your employment,

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whether they quit, whether there was a reason that they needed to leave and about their job performance. I think it's important that we match good employees with good employment situations. It saves everyone a lot of time and effort. It makes for happier employees. It makes for happier customers. It makes for happier employers because in fact we're not wasting anyone's time or money or effort in training employees that aren't good fits. So it goes beyond the safety issue but I would tell you that I am here primarily because of my concern for the children and the feeble in this state and that, in fact, there is information out there available in personnel files that people feel very reluctant at great risk to share. So I ask you to look very carefully at this. I would draw your attention on page 2 in line 15, there are a couple of words, we lifted this from statute from another state. And I did think very carefully about whether to include the words attitude on line 15 and effort in line 16 because, in fact, those could be subjective. But I decided to include them in the bill because, in fact, an attitude of uncaring can affect the response time to someone as they respond to someone pushing the light in a hospital and that could mean a matter of life and death. Belligerence is an attitude and yet it could mean that coworkers will feel threatened. Prejudice is an attitude long before it becomes an action. And crassness can create a hostile environment long before we can identify a sexual harassment suit. And with that, I would be happy to address any questions.

SENATOR BOURNE: Thank you. Are there questions for Senator Redfield? Seeing none, thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: First testifier in support? We've been joined by Senator Pedersen from Elkhorn.

SENATOR CHAMBERS: Soon to be west Omaha (laughter).

SENATOR DW. PEDERSEN: We'll see about that (laughter).

SENATOR BOURNE: Aren't you glad you came today, Senator? (laugh) Welcome. (See also exhibits 3, 4)

JOHN BONAIUTO: Thank you. Senator Bourne, members of the

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committee, John Bonaiuto, B-o-n-a-i-u-t-o, executive director, Nebraska Association of School Boards. And our organization through its legislative process and our delegate assembly that met last November has a resolution. It supports providing school districts and educational service units and their representatives more protection when providing candid appraisals concerning a former employee's job performance without threat of litigation. Whether that is through releasing records on file or using those records to fill out a form truthfully and objectively, I think the desire here is to provide more than just the dates of employment with the idea that if there is a problem you're passing that problem on to somebody else, it really isn't a good practice. And I think it does bother districts when they can't share that information. With that, I would conclude my testimony and be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Bonaiuto? Senator Chambers.

SENATOR CHAMBERS: When I was a small boy and a young one, on the report cards they had a little segment that said, works and plays well with others, whatever that meant. How would you construe the word, attitude in terms of what all would be encompassed in that as far as giving one of these reports on a former employee?

JOHN BONAIUTO: And, Senator, I think that may be one of the areas that is gray here, and I don't know how objective. It is going to be someone's opinion of how...

SENATOR CHAMBERS: If that were taken out of the bill, would you still think the bill was worth having?

JOHN BONAIUTO: Yes.

SENATOR CHAMBERS: What about the word, effort?

JOHN BONAIUTO: Again, I think effort, depending on how a person is fulfilling the requirements of their job description and if there is a standard for performance, can be measured. Easier...

SENATOR CHAMBERS: But we wouldn't need the...oh, go ahead.

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JOHN BONAIUTO: ...I was just going to say more easily than attitude.

SENATOR CHAMBERS: So you'd want to leave effort in there. Or you don't think it's essential. Could whatever might be encompassed, under the word, effort, be covered adequately by talking about these other things? For example, an evaluation. That exists.

JOHN BONAIUTO: Yes. And so...

SENATOR CHAMBERS: If you can make use of the evaluation there might be something on there and you at least have an objective document in terms of what really is a matter of the record prior to you filling out this report that you're doing. And a person wouldn't necessarily be able to come back and say, they made that up just for this thing to sabotage me? They would have seen an evaluation, wouldn't they...?

JOHN BONAIUTO: Yes, Senator.

SENATOR CHAMBERS: ...if it was former employees? Okay.

JOHN BONAIUTO: And I would agree with that. That, I think in that...the way you've described it, the bill would still work removing both.

SENATOR CHAMBERS: And I'm just exploring.

JOHN BONAIUTO: Exactly, and I think that without question that having those types of explorations can improve this process.

SENATOR CHAMBERS: Okay, thanks. And that's all that I have.

JOHN BONAIUTO: Thank you.

SENATOR BOURNE: Thank you. Further questions for Mr. Bonaiuto? Seeing none, thank you.

JOHN BONAIUTO: Thank you.

BRUCE STEC: (Exhibit 5) Mr. Chairman, committee members, my

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name is Bruce Stec, S-t-e-c. I'm here today on behalf of the Society for Human Resource Managers, Nebraska State Council, and the Nebraska Chamber of Commerce. Thank you for allowing me to address this committee and as we've been talking I'd like to address issues surrounding reference checking. Management of the employment process for an organization is critical to that business's success. Individuals hired must meet the demands and goals of an organization and as an HR professional it is my job to assess applicants. We use various tools to assist us in the process such as resumes, applications, skills testing, and interviews. Candidates for employment sign an acknowledgement stating that the information they've provided is true and accurate. We use this information to further evaluate the applicant for open positions that we may have within our organization as well as assessing salary when it comes time for an offer. As it stands now, Nebraska employers have no protection when completing a reference check on prospective employees to verify the information that these employees have provided. As Senator Redfield indicated, most employers in the state of Nebraska have nondisclosure policies within their organization and release no information regarding past employees. My organization that I work for has the same type of policy. Policies such as this protect the bad and penalize the good. There is no opportunity to verify the critical information candidates share during an interview. This is, again, information that we base placement and salary decisions on within our organizations. The increasing inability to obtain accurate and reliable job reference information from previous employers makes the goal to hire most qualified workers very difficult. The need for employers to have access to relevant job information is further underscored by the growth in resume fraud. It is estimated that 20 to 25 percent of all resumes and employment applications contain at least one fabrication. Legislation like LB 43 provides employers needed legislation to provide job references on past employers. It's a needed safeguard to ensure that hiring decisions can be made in a more informed manner. The inability to obtain reliable and accurate job performance information has a direct impact on a critical business concerns such as quality, safety, and customer service. The lack of legislation hinders the employment process, one of the most important decisions made by an organization. Thirty-three states have now enacted some

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sort of reference checking legislation. The Society for Human Resource Managers, Nebraska State Council, and the Nebraska Chamber of Commerce urges the Nebraska Legislature to recognize the issue facing employers and the inability to attain employment references. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Stec? Senator Chambers.

SENATOR CHAMBERS: If you operated a fine china shop you would not hire a bull to work in there. If you had an employee who negligently broke a pitcher, not picture, a pitcher...

BRUCE STEC: Sure.

SENATOR CHAMBERS: ...and while trying to gather these pieces negligently broke an entire set of fine china and did it negligently. Would that be a basis for firing that employee?

BRUCE STEC: My personal opinion of that and if I was in that organization there would be a counseling session with that individual that would become part of their personnel record and we'd move forward from there. If it became a repeated issue, yes, I believe it would be.

SENATOR CHAMBERS: How much care do you think a former employer ought to exercise in complying with a law such as this when information is being provided on a former employee?

BRUCE STEC: I'd say extreme care.

SENATOR CHAMBERS: So if on page 3 and line 13, we would strike recklessly and insert negligently, would you still want the bill?

BRUCE STEC: Yes, I think I would.

SENATOR CHAMBERS: Okay. That's all I have. Thank you.

BRUCE STEC: Thank you, Senator.

SENATOR BOURNE: Thank you. Further questions for Mr. Stec?

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I have a couple of quick ones. What is the status of the law today? If, say I'm a prospective employee, you're my former employer. Say you fabricate a reference. You know, somebody calls you and you fabricate, you just don't like me. What is my remedy?

BRUCE STEC: I think you can successfully sue your employer if the evidence clearly demonstrates that the information I provided was malicious, that it was false, and that I knew that.

SENATOR BOURNE: So is the remedy, is it slander?

BRUCE STEC: Yeah, I would say so.

SENATOR BOURNE: What if what you said is absolutely true? Say I, whatever it may be but it's absolutely accurate.

BRUCE STEC: Because we have no legislation, they would have recourse to go through the legal process and it'd be a litigation that my employer would have to uphold and attend to but yes, they'd go through the same process.

SENATOR BOURNE: Okay. Is truth a defense?

BRUCE STEC: I'm sorry?

SENATOR BOURNE: Is truth a defense today the current status of the law?

BRUCE STEC: Yes, I believe so.

SENATOR BOURNE: Okay, but you still would have to litigate.

BRUCE STEC: Yes.

SENATOR BOURNE: Okay. Further questions? Senator Chambers.

SENATOR CHAMBERS: Not to belabor the point but even if you pass this bill in its present form, that would not prohibit a person from litigating, would it?

BRUCE STEC: No, but it clearly states, you know, the guidelines of what we can release and provides us a

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guideline of what we can legally release without recourse.

SENATOR CHAMBERS: But the only point I'm making so that nobody will be under misapprehension, if this bill passes it will not end litigation. It cannot and the Legislature cannot close the doors to the courthouse if a person feels he or she has been aggrieved.

BRUCE STEC: That is correct.

SENATOR CHAMBERS: And I'm in agreement with what you're saying basically but I just want it clear that this bill even if it becomes law would not end litigation or the possibility of it.

BRUCE STEC: Absolutely not. And I think another important point to make is this bill does not require an employer to give references. You know, it is still the employer's choice but I would tell you that I would recommend to the firm I work for which is a law firm that if this bill was enacted that we would start providing references on our employees.

SENATOR BOURNE: You would?

BRUCE STEC: Yes, we would.

SENATOR BOURNE: Okay. Further questions? Seeing...

SENATOR FLOOD: Briefly.

SENATOR BOURNE: ...oh, Senator Flood.

SENATOR FLOOD: Do you think this bill...first of all, thank you for your testimony.

BRUCE STEC: Absolutely.

SENATOR FLOOD: Do you think this bill will have an effect on the types of written evaluations that are performed in the course of employment for an employee?

BRUCE STEC: I think it will further demonstrate to employers the importance of written evaluations. Practitioners, HR practitioners firmly believe in written

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evaluations and it's part of our code of ethics that we, you know, work with employees and handle this issue. But, yes, I really do think it would strengthen the need for that. As an HR practitioner, I would certainly look closer at a performance appraisal that came across my desk with this legislation in place.

SENATOR FLOOD: If Senator Chambers or this committee was to strike attitude from page 2 of the bill and possibly another one of the more subjective evaluative areas, would you black that out? You know, because a lot of evaluations would say attitude, job performance, preparedness, ability skills, ding, ding, ding. If attitude was taken out of this bill and it was on the evaluation, wouldn't you be a little concerned about providing that evaluation with attitude on there and not blacked out?

BRUCE STEC: I think as the bill is written and I guess I will answer this for myself as an HR practitioner. I don't think I would provide the full evaluation to anyone calling me. A, I don't have the time to do it and B, I don't think it's all relevant. Those performance evaluations are for my organization. They're to evaluate the job within my organization. Anything relevant to the position that this individual is applying for, I would feel free to provide to that individual.

SENATOR FLOOD: And if an employee disagrees with an evaluation as conducted by an employer, A, they have the opportunity to review the evaluation,...

BRUCE STEC: Um-hum.

SENATOR FLOOD: ...does the evaluation make a notation as to something that they disagree with from the employer's comments or perspective?

BRUCE STEC: Good practices always allow an employee to provide comments on their evaluations so, for example, in our firm an employee has every right to create a written rebuttal to their performance appraisal and that's in the file with the performance appraisal as well.

SENATOR FLOOD: Thank you.

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BRUCE STEC: Um-hum.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next...

BRUCE STEC: The information that I had handed out was testimony to be put into record...

SENATOR BOURNE: You bet.

BRUCE STEC: ...Okay, thank you.

SENATOR BOURNE: Next testifier in support? We do have a record from Ruth Jones, Dana F. Cole and Company. We'll enter that into the record as part of the written testimony. Welcome.

BRENDAN POLT: Good afternoon, Chairman Bourne and members of the committee. My name is Brendan Polt. That's P-o-l-t. I am the assistant director of the Nebraska Healthcare Association or the NHCA. The NHCA represents 421 nursing facilities and assisted living facilities. When I brief the members of our association about the general intentions of LB 43 they overwhelmingly voiced support for the bill and I want to stress what Senator Redfield talked about when we're talking about the healthcare industry. The issue is it's a public safety concern and our members have indicated that upon several occasions they felt that the job performance of a former healthcare employee was reckless or irresponsible but they did not disclose the information to a prospective employer of that employee for fear of civil liability. And the result could have been or in the future would be without this bill that a poorly performing healthcare worker from the opinion of a nursing home administrator or a director of nurses took a job caring for the elderly or disabled patients increasing the risk of harm to them and that could have otherwise been at least prevented to a certain extent. So NHCA sees this as a positive bill generally for the healthcare industry and urges its advancement.

SENATOR BOURNE: Thank you. Are there questions for Mr. Polt? Seeing none, thank you. Next testifier in support?

KATHY SIEFKEN: Senator Bourne and members of the committee,

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my name is Kathy Siefken. Kathy with a K, Siefken is S-i-e-f-k-e-n and I'm here representing members of the Nebraska Grocery Industry Association and we support LB 43 in addition to LB 510. We like both of them. The reason and I'll make this short and sweet. The reason we like this is simply because it would allow our members to hire objectively and it would allow them to make a good match with the different positions that are available. A perfect example is a former employee that I had, someone called and wanted to know if she'd worked for me and et cetera, et cetera. And when it came down to effort and the kind of things that you were talking about, attitude, by the time I got through telling that prospective employer what a good employee this person would make, they didn't hire her for the position for which she applied but they hired her for a project managing position. So I think that those things go both ways. It can also be a benefit to prospective employees. If you have any questions, I'd be happy to try to answer.

SENATOR BOURNE: Thank you. Are there questions for Ms. Siefken? Seeing none, thank you. Next testifier in support. Are there testifiers in opposition? And we're in opposition testimony to LB 43. And again, we're going to make use of the on-deck area so hopefully you've signed in. Welcome.

SCOTT NORBY: Mr. Chairman, members of the committee, my name is Scott Norby, N-o-r-b-y. I appear today on behalf of the Nebraska State Education Association in opposition to LB 43. The law is and in my judgment always will be the truth is a complete defense to any claim of defamation of character. This bill provides immunity to employers who tell the truth. The last provision in the bill provides immunity to employers that knowingly provide accurate information. It is therefore our judgment that this bill really adds nothing to existing law and we therefore oppose it. Moreover, the bill also provides an apparent benefit to an employee to request in writing a copy of the material that a former employer provided a prospective employer. The problem is, there's nothing in the bill whereby the employer that sent out the information has any obligation to notify the employee that any contact or communication has been made. That is therefore an illusory benefit. For these reasons, we oppose the bill.

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SENATOR BOURNE: Thank you. Are there questions for Mr. Norby? Seeing none, thank you. Further testimony in opposition?

KEN MASS: Senator Bourne, members of the committee, my name is Ken Mass, M-a-s-s, representing the Nebraska AFL-CIO, here today in opposition to LB 43. The purposes that the prior testimony laid out is absolutely correct. The employee if he is not notified by his previous employer has no idea that his employee that he's being hired on is subject to requesting that information. Where I come from, I come out of the manufacturing area, have a manufacturer in Omaha, Nebraska. And it's always historical, I think, all employers have two sets of records. They have an employee's record and they have an employer's record. The employer's record gets fatter and fatter and fatter as you go along with your term of employment there. Your employee's record, you have an opportunity to get some of that stuff pulled out every once in awhile. But in the talk about attitude, it could not be the employer's position on my attitude of working there. It may have been my immediate supervisor's attitude toward me. We didn't have a good relationship or whatever. That goes into that record and that may be part of that's what's released to that new employer. So there's a lot of uncertainties there of what could happen and me not knowing about it so, of sending out the written record but my previous employer doesn't know where I'm at so I think it works well the way it is now. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Mass? Seeing none, thank you. The committee has been joined by Senator Friend from Omaha. Next testifier in opposition.

BOB COUSINS: (Exhibit 6) Good afternoon, Senators. My name is Bob Cousins, C-o-u-s-i-n-s. I'm from the Machinist Union Local 1569 from Seward, Nebraska. I represent the workers at Hughes Brothers Incorporated. I'm here in opposition to LB 43 because of a number of reasons. I felt that this legislation would open a Pandora's box of wrongs against workers in this state. The potential of blacklisting would increase if the threat of civil action is removed or reduced for employers. This is especially true for anyone who is active in his or her union. Much of the information that an

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employer can provide under LB 43 is based entirely on the employer's perception of the employee and the employer's personal feelings about the employee and not based on fact and would leave the employee with little or no way to defend themselves in cases of false accusations. I have provided you with a copy of a newspaper article that is about a report done by the Harvard Business School on what is now called the Set-Up-to-Fail Syndrome. There is now a book based on this report called The Set-Up-to-Fail Syndrome: How Good Managers Cause Great People to Fail. In this study it was found that often and with the best intentions managers often accidentally play a significant role in employees' failures. The Set-Up-to-Fail Syndrome occurs when management creates a dynamic that sets up a perceived underperformer to fail. Eventually the employee realizes his boss does not trust him, he begins to doubt his ability to do the job, becomes less motivated and makes fewer contributions. Not surprisingly, the worker's reaction reinforces his manager's initial impressions and concerns. The manager reacts by stepping up supervision. The article goes on to say that perhaps the most daunting aspect of this Set-Up-to-Fail Syndrome is that it is self-fulfilling and self-reinforcing. Manzoni, the author of the book noted that 90 percent of all managers reinforce the syndrome by treating some employees as if they were members of an in group and relegating others to an out group. Regarded as valued collaborators, in-group members receive more praise and have more autonomy. Manzoni goes on to state that the errors made by in-group members are usually attributed to outside factors such as a sick child or a grueling commute. By contrast, the mistakes made by out-group members are attributed to poor judgment or just plain incompetence. LB 43 allows the employer to provide written evaluations. These evaluations more times than not are based on the employer's perception of employee, not on fact. LB 43 does state that an evaluation means a written employee evaluation which is conducted by the employer and signed by the employee. But what if the employee does not agree with the evaluation? If this employee is not protected by union contract the mere act of not signing the evaluation could be grounds for termination. LB 43 allows the employer to give official personal notice as formerly record the reasons for separation. Again, what if the reasons are unfounded or without just cause? There have been a number of times we have had employees fired and after the grievance process the

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employee was found to be wrongfully terminated. Again, what about the nonunion worker who does not have the benefit of union representation in the grievance process? LB 43 states the job performance includes attendance, attitude, awards, demotions, duties, efforts, and evaluations, knowledge, skills, promotion and disciplinary actions. All of these are based on the perception of the employer and not based on tangible facts. Information on attendance can be very misleading. What might look like a poor attendance record might be that an employee was sick or injured or maybe a family member was terminally ill which required a number of work days missed. Job performance...

SENATOR BOURNE: If you could conclude, Mr. Cousins, I'm sorry?

BOB COUSINS: ...okay, I'm sorry. Basically that's all I have then. I'm sorry. If you have any questions.

SENATOR BOURNE: Okay, thank you. I apologize for the...well, I don't really apologize for the timer but (laughter) but we, just trying to be agreeable. Thank you for your...no, no. Wait, wait. Thanks for your testimony. Are there questions for Mr. Cousins? Thank you. We do appreciate your comments. Are there other testifiers in opposition?

KATHLEEN NEARY: Good afternoon, Chairman Bourne, members of the committee, my name is Kathleen Neary. I'm an attorney. I practice with the firm of Vince Powers and Associates here in Lincoln.

SENATOR BOURNE: Could you spell your last name for us?

KATHLEEN NEARY: N-e-a-r-y.

SENATOR BOURNE: Thank you.

KATHLEEN NEARY: And I work primarily in the area of employment discrimination and have for about eight years. And we just represent employees. For the past several years excluding last year, I was out on maternity leave, the bill or similar bills have come up of this nature and each time I've come before the committee. I've opposed the bills and asked for some evidence. Why is this needed? What jury

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verdicts are we seeing in Nebraska that are runaway verdicts? What is the compelling need? Is there? And I've never in all the years that I've come to oppose these bills heard any evidence that would present a justifiable need that a law of this nature should be passed in this state. Specifically, and how do I know there are no verdicts? How do I know that there is not an epidemic? Every week I read the Nebraska Supreme Court opinions. Every week I read the Nebraska Court of Appeals decisions. I file hundreds of lawsuits regarding employment discrimination every year. I talk with other lawyers and I also read the Eighth Circuit Court of Appeals decisions every day. There is not an epidemic; there is not a problem. Now before I did come into the hearing today I did talk to some lawyers that do defense work. And I asked them, are you getting rich off of these lawsuits, defending these kind of lawsuits brought by employees against their employer for making false statements? They're like, we don't see them. We don't do that kind of work. There are not these cases. And four of the lawyers I spoke with were in Omaha, two in Lincoln. Again, I won't belabor the point, but the truth is not actionable. So long as folks are telling the truth it's not actionable. And it is an absolute defense. What the businesses and employers are attempting to do, they're crying wolf, saying they need this. But members of the committee, Chairperson Bourne, I don't think that is the case. There was a gentleman who came up and testified today about that they have a nondisclosure policy. That's voluntary. That's their choice. It doesn't have to be that way. As long as they tell the truth it is a complete defense. There are some...I'm going to just rush through this. There's also a constitutional protection that would protect employers. Specifically, Article 1, Section 5 of the Nebraska State Constitution. And it generally just states that every person may freely speak right or publish on all subjects and when published the truth will be a sufficient defense. So not only are there statutory protections, there's constitutional protections and there's case law protections out there. Some of the specific language of LB 43 are also troubling. For example, when you look at the definition of employer,...I'm sorry.

SENATOR BOURNE: You'll have an opportunity on the next bill. We've been joined by Senator Combs. Are there any questions for Ms. Neary? Seeing none, thank you.

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KATHLEEN NEARY: Thank you.

SENATOR BOURNE: Listen, I apologize if I was flippant earlier regarding my comments as it relates to the lights. But this committee has referred to it about 20 percent of the bills that have been introduced in the Legislature and we often run until 7 or 8 at night and so we do try to expedite it so if I was flippant, I apologize. The next testifier in opposition.

SENATOR CHAMBERS: But he doesn't mean it (laugh).

KATHLEEN NEARY: Thank you.

SENATOR BOURNE: Welcome.

MARY GAINES: Thank you. Members of the committee, my name is Mary Gaines, G-a-i-n-e-s. I, too, am a practicing employment law attorney here in town and have practiced employment law for around ten years I'm going to say as a primary part of my practice. I represented both employers and employees and I reiterate what Ms. Neary said which is that there's no compelling need for this. Defamation actions are very difficult to bring on behalf of an employee. I'm going to estimate that out of perhaps a couple hundred calls I get where someone is saying, I think they're saying something bad about me, most of them do not amount to a lawsuit. The statement must be false; it must be publicized and it must damage a person. By that I mean, it's not just if I say to my best friend I thought that guy was a bad employee. It has to actually damage someone. It has to keep them from getting another job and, again, it has to be false. There was reference made to concerns about dangerous employees or employees who could do harm. First off, anything where you hold a license or a certification, an employer is, in most cases, obligated to report to those governing bodies, those administrative bodies any such problem so if you have someone in nursing or teaching or taking care of children, if you are certified or licensed you have an obligation to report actions or behaviors on the part of an employee that resulted in any sort of danger or risk. There are also registries that are available to people who hold these types of licenses and certifications. So there is...employers do not risk liability by giving job

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references as long as they tell the truth. I've done it many times myself and I've never been afraid of being sued. The language also does provide for too much subjectivity and when it's spoken of that there could be guidelines as to what an employer can give out, please consider the fact that no performance evaluation, I mean there's no consistency among them. Some are just handwritten statements by a supervisor, complete subjectivity. Some are number systems so the information that would be allowed to be given would have a very broad range and therefore isn't necessarily that reliable when it comes to these kinds of information. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Gaines? Seeing none, thank you. Further testimony in opposition? Testimony neutral? Senator Redfield has waived closing. That will conclude the hearing on LB 43. Senator Combs to open on LB 510. As Senator Combs makes her way forward, could I get a showing of hands of those individuals here to testify in support of this next bill? I see five. Those in opposition? I see three. Those neutral? I see none. Senator Combs.

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SENATOR COMBS: Thank you, Senator Bourne. Good afternoon, Chairman Bourne, fellow members of the Judiciary Committee, my name is Jeanne Combs, J-e-a-n-n-e C-o-m-b-s and I represent the 32nd district. Today I'm presenting LB 510 for your consideration. LB 510 would protect an employer from civil liability if the employer disclosed only the dates of employment, pay level, job description or duties and wage history information regarding an employee. The bill would also protect an employer from civil liability for job references given to a prospective employer unless the employer knew or should have known that the information was false. I'm not going to surprise anyone here today by telling you that we live in a litigious society and some of this litigation is having negative consequences. One of these consequences is that it is getting more difficult to get accurate information good or bad about potential employees. Regardless of an employee's record, former employers are adopting a generic approach to reference requests in an effort to avoid possible litigation. There

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is little benefit to a potential employer requesting a reference when he or she is only given the dates of employment and the job title of the applicant and that is what's happening more and more often. Another consequence of this product has been to increase another type of litigation. Now current employers are facing negligent hiring lawsuits because they employed someone who subsequently injured another. Our courts have held that an employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care in selecting an employee. I believe that prospective employers are at a greater risk of negligent hiring lawsuit when they are unable to get the accurate information they need from former employers because these former employers are only supplying generic information for fear of being sued. LB 510 would serve to protect our employers who give references that are truthful. The bill also clarifies that its enactment will not require an employer to disclose information about a current or former employer nor abrogate any common law or statutory privilege, immunity, or defense. With that, I will close and allow others to testify. I simply ask that you advance LB 510 to General File.

SENATOR BOURNE: Thank you. Are there questions for Senator Combs? Seeing none, thank you. First testifier in support of LB 510? (See also Exhibits 7, 8, 9)

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, M-o-y-l-a-n, here representing the Nebraska License Beverage Association which is a state association of liquor retailers. We support LB 510 and the concept of LB 43. However, LB 43 only applies to written disclosures. The organization that I represent, as you know, they deal in a lot of cash. Every establishment deals in cash and they do have a lot of persons that embezzle money from them quite frequently. And generally, as they're called, till tappers, they'll lose their job one place and move down to another place if they've gotten caught, you know. Till tap over there, on down the line. Most of them are afraid when they get a call to say anything about it even if they have the evidence and to tell the employers down the line that the person has embezzled money from them. So naturally, we would like to see the oral disclosure factor also. Now it's two things. It's any type of disclosure in the first paragraph; second paragraph immunity from specified things

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which are their dates of employment, pay level, job description duties, and wage history which are kind of common standard things. So our organization would support the concept of the bill and ask you to advance it to the floor. Any questions I'd be happy to try to answer.

SENATOR BOURNE: Thank you. Are there questions for Mr. Moylan? Senator Chambers.

SENATOR CHAMBERS: Mr. Moylan,...

SENATOR BOURNE: Oh, Jim, we have a question. I didn't want you getting away from us before (laugh)...Senator Chambers.

SENATOR CHAMBERS: In order for a person to have a liquor license, does the statute still require that such a person have good character?

JIM MOYLAN: Yes.

SENATOR CHAMBERS: Maybe you can answer this question because from the first time I read that it was in my mind. What does good character have to do with selling liquor?

JIM MOYLAN: What does good character have to do with selling liquor?

SENATOR CHAMBERS: You don't even have to answer. I got the response I wanted. Thank you (laughter).

JIM MOYLAN: If you got a half hour, I'll give you an answer, all right (laugh).

SENATOR BOURNE: We don't have a half an hour but thanks...thanks for the offer (laughter).

JIM MOYLAN: Thank you.

SENATOR BOURNE: Other questions for Mr. Moylan? Seeing none, thank you. Next testifier in support.

JIM OTTO: Senator Bourne, members of the committee, my name is Jim Otto, O-t-t-o. I am a registered lobbyist for both the Nebraska Retail Federation and the Nebraska Restaurant Association. I'm here to testify in support of LB 510 and

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also we are also in support of LB 43 but to save the committee's time I chose not to testify on that one. Very quickly agree with the things that Mr. Moylan said. And when we talk about some of the previous testimony in opposition to the previous bill talked about the law and the situation in court. And I would just say that it is two different situations what actually in reality occurs in the workplace and then what works in court. And the reality is that employers are afraid of liability and they don't disclose some of these things. I would just submit to you that I was thinking that it was the Lancaster County Sheriffs Office that had money stolen from it by an employee and found out the employee had stolen from the previous employer. And that was just in the news and I guess I would ask if or just throw out the question that if the proper information had been transferred from one employer to the other, if that would have actually occurred. So with that, we just support the bill and would ask you to move it on.

SENATOR BOURNE: Thank you. Are there questions for Mr. Otto? Seeing none, thank you. Next testifier in support?

JOHN BONAIUTO: Senator Bourne, members of the committee, John Bonaiuto, B-o-n-a-i-u-t-o, executive director Nebraska Association of School Boards. And we would support this for the same reasons that we appeared in support of LB 43. Our organization works with school boards on a regular basis. We have the council of school attorneys that works through our office and so we spend a lot of time with our members trying to coach them on what they should and shouldn't do. And sometimes they even listen and so we would hope that there would not be a lot of litigation that shows up on this issue because we coach them to be very cautious. These bills would obviously help. Thank you. I'll end my testimony.

SENATOR BOURNE: Thank you. Are there questions for Mr. Bonaiuto? Seeing none, thank you.

JOHN BONAIUTO: Thank you.

SENATOR BOURNE: Next testifier in support?

BRUCE STEC: Mr. Chairman, members of the committee, my name

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is Bruce Stec, here today on behalf of the Society for Human Resource Managers, Nebraska State Council as well as the Nebraska Chamber, the Nebraska Bankers Association, and the Nebraska Federation of Independent Business. As I testified in LB 43, we are in support of reference checking legislation. I won't go through that whole testimony again but I would also like to point out that as the previous two testifiers had indicated, the fear is there, it is real. Most individuals providing information to businesses on this subject would recommend that you don't give references. That is a very real fear and it's there because we don't have legislation supporting it. We would ask that you look at LB 510 closely. It is our opinion that LB 510 is all encompassing and if given the opportunity between LB 43 and LB 510 we would pick LB 510 because it is all encompassing and not as labor intensive where with LB 43 you're providing information back to the employee and it's in writing and that whole process is there. So we would offer the opportunity to answer any questions but we would ask that you support LB 510.

SENATOR BOURNE: Thank you. Are there questions for Mr. Stec? Senator Chambers.

SENATOR CHAMBERS: Your testimony has been very succinct and straight forward. That's why I saved this question for you.

BRUCE STEC: Thank you (laugh).

SENATOR CHAMBERS: If you will turn to page 2 where they're defining employer, why don't they simply say employer means any individual employing any person within the state as an employee rather than mentioning, for example, the representative of the estate of the deceased individual, receivers, trustees, and all these other categories?

BRUCE STEC: I...

SENATOR CHAMBERS: Because if they give this listing, any person not specifically listed would not be an employer.

BRUCE STEC: Correct.

SENATOR CHAMBERS: So could they eliminate all that other verbiage and just say employer means any individual

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employing any person within the state as an employee?

BRUCE STEC: I...

SENATOR CHAMBERS: What would we lose if that other was taken out, in other words?

BRUCE STEC: Personally, I can't see you would lose anything but not being involved in drafting of the bill I'm not familiar with the reasons behind that. I would feel protected and I would assume my employer would feel protected if it was just stated as employer.

SENATOR CHAMBERS: That's all that I have. Thank you.

BRUCE STEC: Thank you.

SENATOR BOURNE: Thank you. Are there further questions?
Senator Flood.

SENATOR FLOOD: Thanks again for your testimony. What's the burden of proof for a defendant in a liable or slander suit when they assert truth as the defense?

BRUCE STEC: Sorry, ask that question again? The burden of proof for who?

SENATOR FLOOD: The defendant when they use the affirmative defense, you know, truth as a defense to liable or slander. What's the burden of proof? Is it clear and convincing? Is it preponderance of the evidence?

BRUCE STEC: Honestly, I'm not a hundred percent sure. I believe with this bill, the burden of proof would fall on the employee to prove that the information was false.

SENATOR FLOOD: And that's an important distinction from, you know, I think something was said in the last bill about the truth already being a defense in a lawsuit to liable or slander. But this would shift that burden essentially in some respects back to the employee to say, you know, they should have known or they did know that the information they provided was false. And I think that's an important distinction. Wouldn't you suggest the same?

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BRUCE STEC: Yes, and I would also say that, you know, this is all information that the individuals are supplying to us. You know, it should be within our guidelines and legal ramifications to verify that information and that's simply what we're asking to do and like we said, LB 510 is all encompassing and allows us to do that.

SENATOR FLOOD: Thank you.

BRUCE STEC: Thank you.

SENATOR BOURNE: Thank you. Are there further questions? Seeing none, thank you. Next testifier in support?

BRENDA McLEY: Senator Bourne, committee members, my name is Brenda McLEY, M-c-L-e-y. I'm the director of human resources for Nebraska Book Company here in Lincoln. We employ 3,500 employees across the United States, a little over 500 here in Nebraska. Due to the cyclical nature of our industry, we require a large number of seasonal and temporary workers. In fact, we turn over a hundred percent of those temporary positions twice a year. Hiring qualified, productive workers for these positions is always a challenge, a challenge made even more difficult when we're unable to obtain vital information from our applicants' previous employers. While defamation lawsuits stemming from the hiring process are truthfully relatively rare, a handful of high dollar or highly-publicized cases in the country have made many employers come forth with the policy of nondisclosure. Rather than face the possibility of a costly and time-consuming proceeding or lawsuit companies are choosing not to provide any details about a former employee's work history. These policies not only make it difficult for employers to make the right hiring decisions, they also make it difficult for skilled hard-working candidates to land a good job. When prospective employers are given only name, rank, and serial number they may overlook an excellent candidate simply due to lack of information. Many of my company's temporary and seasonal employees are looking to use their experience with us as a steppingstone to bigger and better things in the future. Since we're hesitant to provide any information that might be perceived as negative we've chosen the path of nondisclosure as well. Unfortunately, that means we're also not sharing information on terrific employees with great

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potential. More than 30 states have already passed legislation similar to LB 510 and I urge you to support this measure. The ability for businesses to safely provide clear and complete information to prospective employers will help all Nebraska businesses place quality employees in the right positions. It will help to assure that we can all continue to provide the best possible products, services, and care to the customers we serve while allowing well-qualified workers the chance to seek out even better job opportunities. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. McLey? Seeing none, thank you. Appreciate your testimony. Next testifier in support.

BRENDAN POLT: Good afternoon. Once again, Chairman Bourne and members of the committee, my name is Brendan Polt. For the record that's P-o-l-t. I'm assistant executive director of the Nebraska Healthcare Association and NHCA strongly supports LB 510 as it provides protection to employers for job references made in good faith. And as I indicated in my testimony for LB 43 I want to stress the importance of this bill specifically for the healthcare industry where employee references provide a public safety protection. I want to respond to a comment before about what is the need for this bill because in Nebraska we haven't seen excessive judgments against employers. And what I would suggest from our perspective and the members of our association's perspective is we don't know how many medical errors are caused because of workers who their former employee actually knew that they were prone to steal or to hurt a patient or otherwise cause problems in the medical area. And so we feel that this bill's strength is in preventing accidents and increasing the quality of care. And so I want to make sure I stress that as this issue is not only about judgments, against employees and court. And that's my testimony.

SENATOR BOURNE: Thank you. Are there questions for Mr. Polt? Seeing none, thank you. Other testifiers in support? Testifiers in opposition?

SCOTT NORBY: Mr. Chairman, members of the committee, my name is Scott Norby, N-o-r-b-y. I again appear on behalf of the Nebraska State Education Association in opposition to LB 510. Much testimony has been offered this morning

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regarding the issue of whether truth is a complete defense to an action or claim of defamation. What this bill purports to do is do away with that long-standing proposition of law and effectively shift that burden to the employee to make that element or that former defense now an element of the cause of action that the burden of proof would be on the employee. The bill specifically says the burden of the current or former employer to prove the employer or the employer's designee knew or should have known that the communicated information was false. I ask you, how would any of you prove what I may know right now about any of you? I submit you can't do it because you can't get into my mind. This bill proposes to put a burden on an employee that as a practical matter can't be met because you don't know what an employer or anybody else may have known at any given particular point in time, absent some pretty unusual circumstances. None of you know what I may know about any of you right now, and you would have no practical way of proving that. That's why the law has been forever that it is a defense. The employer is in the position to establish what it knew, not the employee. We therefore believe this is bad policy. It is not thought through and we therefore oppose it.

SENATOR BOURNE: Thank you. Questions for Mr. Norby?
Senator Flood.

SENATOR FLOOD: Thank you for your testimony. Let's assume for a second that I employ you and you...well, or I employ somebody else. I employ Senator Friend, do it that way. And he takes money out of the cash register. I fire him. He goes to work for Senator Aguilar. Senator Aguilar calls me up and I said, well, I fired him because he took money out of the cash register. I didn't report it to the police. I didn't file a civil lawsuit against him. And he says, Senator Friend and he did in fact take the money. He says, no, I'm going to sue you and let's assume LB 510 is in place as the law in the land. Why should the employer have to prove the details of the theft rather than having Senator Friend offer evidence that he didn't do it? I see you turned the tables a little bit and in the context of a theft or employee theft, if I have good reason to think that he did it and depending on where he works it could be wrongful termination lawsuit and all that stuff. I made the decision to terminate his employment. Why should I continue to go

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back to court and try and prove that he is a thief?

SCOTT NORBY: Well, in this particular...if LB 510 is in place I don't think it changes the dynamic because still, you're still not offered immunity as an employer unless the information you've provided to Senator Aguilar is established to be true. I mean, ultimately, that...

SENATOR FLOOD: Well, we're talking about what happens in court.

SCOTT NORBY: Right.

SENATOR FLOOD: Who's the burden on? Why should it be on me if he's a thief?

SCOTT NORBY: Because I still think you're in the best position to know what you saw and the reasons you dismissed that employee. I mean, what he knows is what you told him. What you know is what you know based on your own experience and the decision-making process that you as an employer engaged, evaluated, and executed in order to terminate that employee.

SENATOR FLOOD: Wouldn't he be able to find out what I thought I knew during discovery under Rule 26?

SCOTT NORBY: Why should he have that burden when you have all the information? He has to...

SENATOR FLOOD: He's the...

SCOTT NORBY: ...I mean, I think that...

SENATOR FLOOD: ...He's the one that filed the lawsuit.

SCOTT NORBY: ...I think that's a good...

SENATOR FLOOD: The burden should be on him.

SCOTT NORBY: ...I think your point is well taken. In other words, this bill would put Senator Friend in a position of having to engage discovery, formal, expensive discovery mechanisms, depositions, interrogatories, requests to produce...

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SENATOR FLOOD: Which occur in every lawsuit in every civil litigation lawsuit...

SCOTT NORBY: ...which then puts him in a position to prove his case, find out information that you know. You as the employer are in the best position to know why you did what you did. What this bill wants to do is put on your former employee to find out first why you did what you did and then prove it by a preponderance of the evidence as an essential element of his case.

SENATOR FLOOD: He's the plaintiff. I think the burden should be on him rather than turn to...and you and I are going to disagree on that and I respect that...

SCOTT NORBY: I respect the difference but...

SENATOR FLOOD: Yeah.

SCOTT NORBY: ...I simply...it would be our position that the individual who is in the best position to know is the easiest way to proceed and that is why in my judgment the law has always been that truth is a defense.

SENATOR FLOOD: I guess I look at it, you know, and I know that civil and criminal court are two separate beasts with different burdens of proof, but if he is in fact the thief, the burden is not on him in a criminal case. It's on the state to prove what he did so I look at it a little bit differently. And I'm sure some of my colleagues will disagree with me but I like the discussion. Thank you.

SCOTT NORBY: Thank you.

SENATOR BOURNE: Thank you. Hold on a second. Come back. See if there's further questions for Mr. Norby. I guess Senator Friend didn't want to ask you a question (laughter). Next testifier in opposition.

KEN MASS: Senator Bourne, members of the committee, my name is Ken Mass, M-a-s-s, representing the Nebraska state AFL-CIO. For all the reasons I gave in opposition to LB 43, I'd like to be in line for LB 510 in opposition to the bill and ask you to not...to turn out the bill. Any questions?

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SENATOR BOURNE: Thank you. Questions for Mr. Mass? Seeing none, thank you (See also Exhibit 10).

KEN MASS: Thank you.

SENATOR BOURNE: Next testifier in opposition.

KATHLEEN NEARY: Chairman Bourne, members of the committee, Kathleen Neary with Vince Powers and Associates. I also would like to mention I'm a member of the Nebraska Association of Trial Attorneys. To answer your question and I already know the...you know the answer but the burden of proof, just for the record, for an affirmative defense as truth as a defense to a defamation action is by the greater weight of the evidence. You had asked one of the speakers in support. That brings up an interesting issue and without going over what one of the earlier speakers said, the shift in the burden of proof is troublesome. And when you talk about the thief scenario, as I read LB 510 I don't think that that would be protected. It looks very restrictive to me in terms of dates, pay level, description duties, wage history. And, in fact, one of the defense lawyers that I spoke to this morning about this bill said, well, what if we give out more information than this? What if I counsel my clients to give out whatever they want? Is this going to be a green light for litigation if we decide to give out more? So that's somewhat troublesome. Also, proving a negative is incredibly difficult and I believe that it was Mr. Norby that talked about that but being able to say, if the employer says, he showed up late to work every day it's nearly impossible for the employee without a time clock or cameras or something else, something that he signed to prove that he was at work every day on time. Now, there was something said in earlier testimony about medical errors. I really can't speak strongly enough about that this bill is not designed or is not appropriate vehicle to address these issues. When you're talking about safety issues, abuse, neglect issues for our elderly, for our children, for our people in nursing homes, for medical providers, there are licensing boards that have specialization to deal with these issues that my understanding of the law is that these employers are under a continuing legal obligation under current state law to report these medical errors, to report abuse or neglect. And if they fail to do so and they're in

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the best position to do so, they can be sanctioned under state law currently. This is not a good vehicle to use as to talk about abuse, neglect. There has been some talk also about 30 states, 33 states. Folks, I don't know about what these states have. I don't know about whether they have the same constitutional and statutory protections and I don't know if they have the same case law that protects them so without more information about what these 30 other states are doing, it's mixing apples and oranges. With that, I would stop.

SENATOR BOURNE: Thank you. Questions for Ms. Neary? So if you had a medical client, an employer who was in the medical profession, and they called you and asked your advice on an employee who was dismissed for neglecting a patient. Your advice to that client would be?

KATHLEEN NEARY: Check the registry. Check either the central registry, whatever registries from the medical field. Nurses have their own registry. Check the licensing agencies in Nebraska. Also do a criminal background check. That's absolutely legal. And with that, it was their obligation to report it under the statute. We can't make everything better by this statute, by this law.

SENATOR BOURNE: Further questions?

KATHLEEN NEARY: Thank you.

SENATOR BOURNE: Thank you. Next testifier in opposition. I know there was another hand or two so...no other opposition? Are there any neutral testifiers? Senator Combs to close.

SENATOR COMBS: Thank you very much. In closing, I would like to just tell the committee, perhaps you don't know but I have worked as a director of human resources for two different corporations. And I have hired hundreds of people. I was a director of nursing services for six years, was a former member of SHRM and PIRA-Personnel Industrial Relations Association in California. So I know the frustrations of getting poor quality references on people, particularly nursing assistants. In California, of course, we have the Foley decision which the attorneys are familiar with which is...gets rid of your right to work, essentially

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the...not right to work, but you're liable from day one of any kind of situation that you have with the employee. You have to give them...you cannot just hire and fire at will. They're not employees at will in California and that happened because of case law, the Foley decision. So case law can happen at any time. We don't want case law to happen in Nebraska over employer reference situation and I know there's the legal argument that I'm not an attorney and I don't entirely understand the exchange that took place between Senator Flood and some of the other attorneys that are against the bill. But I do want to say that in Nebraska, I have a bill before the HHS committee now that because there are not proper tracking right now of nursing assistants who have committed abuse and that is in the home health arena where they are going into the home and providing direct care services and also in acute care. They are, by OBRA requires the nursing home facilities to report them but these others don't. So there are not good stopguards in place right now in the healthcare system to prevent an aide who has abused someone from going on within the home healthcare system or the acute healthcare system and taking care of another person. So it is a personal, you know, public safety issue. I can vouch for the fact that there are people that I would call that would give me this information anyway, even in California because they didn't care, they were not afraid to do it. I don't know whatever happened to them but...and I try to make sure that before I hired anyone or decided not to hire anyone that had a problem with a reference that I wanted to know exactly what was in writing, what was this person counseled for? What got signed for and what didn't? I mean, I think that's just prudent in being a director of human resources that you do those things, that you ask the other person giving the information, you know, what kind of documentation is backing this up. Hopefully, anybody prudent would. Our labor market is not such that we're going to just take anything we hear with a grain of salt and not hire somebody because of that. We don't have a labor market in Nebraska where...good workers are at a premium, you know. We don't have the luxury of 10 or 12 people waiting in line for a job. We just hope to God we don't get a negative reference on somebody. But when patient safety or the public safety is implicated it's definitely important that we have something in place to protect the public from people who may cause harm to those who are the least able to care for themselves.

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And that is the situation. So I would ask you to give LB 510 your careful consideration. I would be amenable to amendments that would make sense, of course, and would be in protecting of an unintended adverse impact on employees. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Combs? Seeing none, thank you. That will conclude the hearing on LB 510. Senator Heidemann to open on LB 464. Can I get a showing of hands of those here wanting to testify in support of this next bill? Could you hold your hands up please? I see three. Those in opposition? I see one. Those neutral? I see one.

_____ : Add one more neutral.

SENATOR BOURNE: Okay. Again, okay, if I could get a show of hands of those here to testify in support of this next bill? I see one. Okay, giving a showing of hands of those here to testify in support of this next bill, I see three. Those in opposition? I see two in opposition and those neutral? I see one neutral. Okay, Senator Heidemann to open. Welcome to the committee.

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SENATOR HEIDEMANN: Chairman Bourne and members of the Judiciary Committee, my name is Lavon Heidemann spelled H-e-i-d-e-m-a-n-n. I'm a representative of District 1. I'm here before you today to introduce LB 464, a bill that deals with civil protective custody. I have letters of support from Kit Boesch, human resource administrator for the Lincoln/Lancaster County Human Service Department, and from Dennis Keefe, Lancaster County Defender. Civil protective custody involves a law enforcement officer to determine that an individual is a danger to themselves or others. Currently, the law allows for an individual to be placed in civil protective custody for a period of up to 24 hours. LB 464 would allow but not require for an individual to be kept in civil protective custody for up to 72 hours if they had been in protective custody three or more times in a six-month period. This issue was presented to me by James Baird, executive director of Cornhusker Place in Lincoln, Nebraska. I also want to point out that Omaha's facility,

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Campus of Home, which provides similar service. Cornhusker Place is a substance abuse treatment center that serves 16 counties in southeast Nebraska which includes the five counties in my district, District 1. I have a handout that contains statistical information about the number of clientele last year that received services from Cornhusker Place. There were approximately 5,200 individuals involuntarily admitted to the facility. During the last six months 96 individuals were admitted into Cornhusker Place civil protective custody program three or more times. This group of 96 individuals totaled 660 admissions during that six-month period. Of the 467 admitted into the voluntary detoxification program 52.2 percent were transfers from the civil protective custody. I believe this shows that people do want to change. For the individuals with chronic drinking problems the extra 48 hours may help them reach a point of detox where they want to seek some additional help. With the increasing problems that our society has experienced with the meth use this facility is testing and in-house client treatment has become more critical for the needs of these communities. There are 36 states with civil protective custody type statutes, 15 of which allow for protective detentions of 72 hours or longer. This legislation is a step in the right direction towards stopping the revolving door. It is geared toward the chronic substance abuser. After several meetings it was determined that an amendment to this legislation would better define what we are attempting to change. In line 24, I believe, of page two of the original legislation the word "and" would be stricken and replaced with the word "except". With that, are there any other questions? (See also Exhibits 11, 12, 13, 14, 15)

SENATOR BOURNE: Thank...

SENATOR CHAMBERS: Would you give that again, the location of that amendment?

SENATOR HEIDEMANN: It was either page 2 or 3. I don't remember.

SENATOR BOURNE: The amendment is coming around.

SENATOR HEIDEMANN: Page 2.

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SENATOR BOURNE: We'll figure it out. Are there questions for the senator? Senator Chambers.

SENATOR CHAMBERS: Senator Heidemann, if a place such as Cornhusker Place is not available, where is the person taken?

SENATOR HEIDEMANN: I'm not for sure on that. There's people following me that can answer that better. I would have to think I better defer that question to people that are going to follow me.

SENATOR CHAMBERS: But if the only place you knew of was Cornhusker Place and you knew a person who had been in this situation more than three times, could you say that somebody was trying to hide a man? (laughter) That's all right. My colleagues know...I couldn't miss this (laughter). That's why we run late but that is a question that I will ask of somebody who follows you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR HEIDEMANN: Thank you very much.

SENATOR BOURNE: Next testifier in support or I should say first testifier in support. Welcome.

JAMES BAIRD: (Exhibit 16) Good afternoon, Chairman and members of the Judiciary Committee. My name is James Baird, B-a-i-r-d. I'm the executive director of Cornhusker Place here in Lincoln, Nebraska. We're a healthcare, substance abuse facility that provides detoxification services and treatment. I'm here to testify in support of the bill, LB 464 because I think it does two things. Number one is a provision that adds, or illegal drugs. In 1979 when this bill was first passed, the main emphasis at that time in our society was alcohol and alcohol issues. In 1979 we didn't see as much of...we didn't see crack cocaine, methamphetamine might have been around. Heroin was a little bit but most of the people that we were looking at who were under the influence were having trouble being in control of their own lives, were under the influence of alcohol. This bill brings that civil protective custody up to clearly include those who we see are under the influence of methamphetamine, crack cocaine, heroin, in any combination

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thereof. The second part is the extension of the time from 24 hours to 72 hours. First of all, the advantage of this, it will provide an opportunity for people who are chronic substance abusers to want to be able to detoxify any other substance out of their body. The second issue, it will give them an opportunity to have a time to talk with a counselor or other staff regarding why they were brought into civil protective custody and what their options may be. There are no guarantees that people who would stay 72 hours would move into treatment. But right now what we see with the chronic people is that they come into our facility and a year ago we had one person 144 times. And the other piece of that is the second most highest admission that year was 79 times and that was a lady. The point that we have is the legislative change lets them detox and also then lets us address the issues of withdrawal because that is one of the reasons why many of the chronics, once they leave our facility they go to the nearest place where they can either obtain drugs or alcohol and to keep themselves from going into withdrawal. And if we're able to keep them we can treat them with drugs such as Librium and Ativan. We're aware of a lot of the people that have seizures. We can be aware of treating that at our facility and the whole hope is that with this extra time we can have some level of intervention with this group and stop that revolving door cycle that leads to one thing. It leads to death. I'll stop at that point and perhaps there's some questions that you have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Baird? Senator Chambers.

SENATOR CHAMBERS: The question that I had asked earlier, if there were no place such as Cornhusker Place, where would a person be placed in this protective custody for 72 hours?

JIM BAIRD: Currently, if I understand the latest programs available, Campus Hope in Omaha provides a civil protective custody program. And I believe that out in North Platte there is a better two that's tied in with a hospital or a healthcare facility. There are other voluntary detox programs around the state but there are very few civil protective custody programs. And what happens to carry that along is when law enforcement finds somebody under the influence, there's probably two or three things that can happen. One, they can bring them to a facility like ours

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for detoxification. They can ask them if they want to go to a voluntary detox place. The third issue is, if they've committed some crime they're going to go to jail and the fourth issue is if none of those options are available I believe that they end up on the street. And no one is providing a level of service for them.

SENATOR CHAMBERS: But if nobody...if a person has not committed a crime that person would never be taken to jail for the purpose of civil protective custody, is that what you're saying?

JIM BAIRD: Civil protective custody is not a crime.

SENATOR CHAMBERS: Right. So if a person had not committed a crime that person would never be taken to jail under the guise of civil protective custody. Is that what you're saying?

JIM BAIRD: Absolutely.

SENATOR CHAMBERS: Now if a person were deemed to be in need of staying in one of these places for 72 hours and chose not to, what kind of restraint would be used to compel that person to stay there?

JIM BAIRD: Our civil protective custody is a secure unit. We've just finished some remodeling to make it a better facility and so we have about four beds in each room with the capability of holding about 26 people. So, as I said, it's a secure unit so people are not free to go but the other...

SENATOR CHAMBERS: How would you stop the person from going? That's what I want to know.

JIM BAIRD: Because the door is locked and usually what we find is that with the more chronic population, that's the last thing in the world they want to do right away. They want to stay for up until they have zeroed out.

SENATOR CHAMBERS: This requires only that it be in the judgment of an officer first of all that the person is a danger to enter civil protective custody now. This bill would allow that person be held for up to 72 hours and

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somebody would make that determination without the benefit of a court or this person having anything to say or do about it. A cop could just pick somebody up, bring them to the facility and say, how many times has this person been here? The requisite number of times would be established and then that person could be put there for 72 hours against his or her will. Isn't that correct?

JIM BAIRD: That would be what the statute would allow. The statutes say, may be held up to 72 hours as it's drafted and the other part of that is one of the main goals of this whole process is to try to get people into treatment and try and provide an opportunity for them to make the right decision. So...

SENATOR CHAMBERS: Is it believed that compulsory treat...you're not really treating somebody if you put that person in a confined set of circumstances where he or she is not free to leave. You can compel that person to stay there; you can deprive that person of whatever the substance it is that has him or her hooked. But as soon as you turn them loose you haven't done anything to address what that underlying problem is in three days, have you?

JIM BAIRD: In 30 days?

SENATOR CHAMBERS: Three.

JIM BAIRD: Oh, three days. I think that you would make progress on that. You would be providing some opportunities. You would provide an interaction for the professional staff to interact with that person. You would provide an opportunity for that person to be not under the influence, to have some proper food, clothing, shelter, and put a greater chance for them to have an opportunity to make a decision. That is, yes, it's the individual's ultimate decision. With the chronic population, you know, I'm not a medical person but there will be people tell you that there's issues of short-term memory loss and there's other issues of seizures that go along with that and other health issues and other health conditions of high blood pressure, et cetera. What you're really doing is, hopefully, that you're putting the people in a safe place and providing a level of care that will address those issues and that through that time of providing that level of care that

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people will want to take the next step.

SENATOR CHAMBERS: Well, to lock people up and treat them as though they committed a crime when they haven't is what is troubling to me. There is no court involvement, nobody to make a determination except a cop. And I'm going to listen to the testimony that comes but personally I don't believe that if somebody's been locked up for three days when they get out they're going to be any closer to kicking that habit because I know people who have gone to jail for more time than that and when they come out it hasn't done anything. But anyway, that's all I will ask you. Thank you.

SENATOR BOURNE: Thank you. Are there further questions for Mr. Baird? Senator Foley.

SENATOR FOLEY: I don't know a lot about this topic but if a person is addicted to a certain type of drug and they're placed under this locked, secure situation for three days, could there be some adverse medical consequences to that person for because they wouldn't have access to the drug that they're addicted to?

JIM BAIRD: The issue of withdrawal is always an issue and with our facility we have nurses on duty 24 hours a day. We have a contract physician and we have standing orders and a physician that can come to our facility. This issue of withdrawal, whether that would be as simple as the shakes or just something that's more serious as the DTs require an appropriate medical response for that person so...

SENATOR FOLEY: But they wouldn't necessarily know what the person was even addicted to.

JIM BAIRD: Oh, I would say yes because of a couple of things. Number one is we found that most people readily in our facility admit what they've been using whether it's alcohol or drugs. And we ask that. We ask them if they have any health issues. We ask them if they have a case manager or people that we would want to talk to or they would want to talk to. We ask them a whole series of questions, trying to develop their profile so we can provide the right level of care. The issue of withdrawal and being able to treat that with such drugs as Ativan or Librium is very critical to this whole process to work. The issue of

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the old drunk tank is a thing of the past especially in today's age where they're mixing alcohol with methamphetamine and cocaine and heroin. And so the other option is that we do is we can do a urine test cup if the person is cooperative which will identify which drugs they're on or the main five sources of drugs. We also monitor them very closely and by having a nurse on duty, if we see any signs or symptoms that would put them at risk the next step would be they would be sent to the hospital.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Aguilar.

SENATOR AGUILAR: In your expert opinion, would a person just released from a facility be more apt not to use right away again at the end of 72 hours than he would be at 24 hours?

JIM BAIRD: I think the answer is that there would be...there would be a greater chance for a longer period of sobriety at the end of 72 hours than 24 hours. And the reason I say that with the chronic population that is there, they're facing the issues of withdrawal, the shakes or DTs or other issues that happen. And so the issue of self medication happens and so they go out and consume again to keep the withdrawals away. And then what happens with that group is they're then brought back to us and the cycle continues. Within the 72 hours, while that won't catch all of them it's going to allow us an opportunity to address some of those issues and having a break in that cycle. Again, there's no absolute guarantees because we're dealing with people and individuals is that the fact that that person could go out and drink right away. But I think once we address some of these real basic issues for them we have a greater chance of lengthening that cycle for a period of time for some sobriety.

SENATOR BOURNE: Thank you. Further questions? Mr. Baird, in two areas of the bill we've deleted a reference to intoxication or intoxicated. In line 6 we add...so that the statute is changed so that it would read, a person who is under the influence of alcohol or drugs. Down below on lines 19 and 20, again, intoxicated person is deleted and

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we've added language, the person who is under the influence of alcohol or illegal drugs. One section says drugs; one section says illegal drugs. Why is the inconsistency? Is that an oversight or?

JIM BAIRD: I can't answer that. Senator Heidemann might be able to answer that. That may just be an oversight. My understanding was, is we normally deal with people who are using drugs that are...that carry a label of being illegal whether that's marijuana, methamphetamine, et cetera, and that's the clientele that we are seeing is that they're coming in either under alcohol or use of one of those illegal drugs. And so that's probably the largest target group. I think agencies are seeing more and more of some of the other misuse of prescription drugs combined in with that. And I think from my point of view is that we're really targeting that group that are using those other level of illegal drugs.

SENATOR BOURNE: Thank you. Further questions for Mr. Baird? Seeing none, thank you. Next testifier in support?

SIMERA REYNOLDS: (Exhibit 17) Good afternoon, Chairman, members of the committee. My name is Simera Reynolds, S-i-m-e-r-a, Reynolds, R-e-y-n-o-l-d-s and I'm executive director for Mothers Against Drunk Driving. MADD is here today to support LB 464. The extra 72 hours that is placed into the bill is a provision that will properly address the concerns of repeat admissions. This legislation addresses the issue of ensuring that individuals who are impaired are not only medically detoxed but also have the sound ability to seriously consider treatment as an option for the situation. This bill through treatment and, hopefully, being able to consider treatment as an alternative, MADD would hope would inevitably save lives not only of the person at the center but maybe the people on the roadways. MADD supports this bill because it has the potential to address the behavior impairment which puts others in the community at risk as well as the individual who's utilizing the drugs or alcohol or the combination and lowers the risk of being involved in an alcohol-related crash. And that is, you know, of course, our mission to stop drunk driving. On page 2, line 24 through 26, that basically outlines the parameters in which a person may be subject to the 72-hour

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holding period which is a little bit longer than some but it's what was presented in the bill. MADD would ask that you would vote for this legislation and provide it to the floor for a full debate. And we'd like to thank Senator Heidemann and the sponsors for bringing this bill forward to the committee's attention.

SENATOR BOURNE: Thank you. Are there questions for Ms. Reynolds? Seeing none, thank you. Next testifier in support.

LORI SEIBEL: Good afternoon, committee. My name is Lori Seibel. I am the executive director of the Community Health Endowment in Lincoln. And for those of you who don't know, the Community Health Endowment is essentially a foundation that was created by the sale of Lincoln General Hospital in 1997.

SENATOR BOURNE: Could you spell your last name for the record please?

LORI SEIBEL: I sure would. S-e-i-b-e-l. Our purpose is to make Lincoln a healthier place to live but we really have a focus on serving individuals who are at high risk for the poorest outcomes. And so I come here with a little bit of a different point of view. I am not a consumer of these services nor a provider of them. I'm not an advocacy organization but I'm here much like you are in some respects as a funder of these kind of services. And as we look back and we look at the use of our funding we believe that we can probably do better in terms of using our funding to affect this population. In 2000 we funded the Cornhusker Place for a project that would serve primarily individuals who were chronic substance abusers. And the reason we funded this project was because we heard over and over again that folks were coming repeated times back into Cornhusker Place and this was happening for a lot of reasons but key among them was the fact, the rising availability and use of illegal drugs. It wasn't just alcohol anymore. It was meth; it was cocaine, and it was often a mixture of those. So what we did was provide a three-year grant to Cornhusker Place in order for them to do case management of these individuals. When they came into Cornhusker Place, they had a chance then to work with a case manager who would help them to get into the other appropriate services and, of course, one of our

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goals in all of this too was to decrease an escalating amount of emergency services that were being provided to these folks especially police, rescue, fire, ambulance and the emergency departments at our hospitals. From the very beginning of this grant, we began to hear that one of the real impediments to them and one of the frustrating elements for them was the fact that these folks would be there, from all accounts would be ready for this kind of service, this service or would be interested in this kind of service but when they reached that point of detoxification suddenly they were no longer in many respects able to make that kind of a decision. And they were, in fact, ready to leave and to continue seeking drugs and alcohol because of the physical and mental effects that they were undergoing. So we heard this over and over again and that was when we became interested in looking at what could be done to provide a situation where these folks could be treated for a longer period of time, given more options and therefore could perhaps have a longer and better chance for sobriety. And so our immediate question was, of course, as a funder if we do this, is it going to cost more to leave people in treatment or perhaps to have more people in treatment longer? But when you looked at their statistics, when you saw that folks were coming back within weeks, within days and some cases within hours of being released from Cornhusker Place and many times it was 129 times a year or more then you began to think, perhaps there is a change that needs to be made. Perhaps there is a tweak in the system that we can accomplish not only the benefit of the system but certainly the benefit of these individuals. So what I would close with is just to say, this is difficult work. These folks, their care needs to be addressed and we believe that this bill is a step towards doing that.

SENATOR BOURNE: Thank you. Are there questions for Ms. Seibel? Seeing none, thank you. Next testifier in support. First testifier in opposition?

TIM BUTZ: (Exhibit 18) Senator Bourne, members of the committee, my name is Tim Butz, B-u-t-z, executive director ACLU Nebraska. And I hope it wouldn't be a surprise that we'd be appearing in opposition to this bill. In my written statement you'll see a line of cases footnoted that speak to the unconstitutional nature of this bill. You cannot hold people in custody for 72 hours without guaranteeing some

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kind of due process. I'm sure that Senator Heidemann and the other cosponsors, I know there's four cosponsors who sit on this committee. All have good intentions with this bill but the good practice of social work can't vitiate liberty interests that are secured by the Constitution. We think this thing is fatally flawed. It deserves to be indefinitely postponed. You cannot lock someone away for 72 hours and not have them given access to a judge or an independent fact finder who is going to determine the legality of that detention. We decriminalize public intoxication in this state decades ago. If you want to recriminalize public intoxication and move forward from there, that's a different matter but this is civil commitment. If there's repeat offenders that are dangerous to themselves and others, there's a process available through the county boards of mental health that deal with those people. That process should be used. This provision for a 72-hour custodial detention is wrong. It won't pass muster in court and it might as well die here in committee rather than have courts taking the state's money telling the state what it should already know. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Butz? Senator Foley.

SENATOR FOLEY: If 72 hours is unconstitutional, isn't 24 hours also unconstitutional?

TIM BUTZ: The...24 hours is, the Supreme Court said there's a very limited, narrow window that you can have protective custody. And they seem to approve of 24. In cases where that kind of protective custody is extended beyond 24 hours the courts have held that there has to be some procedural due process. There has to be a meaningful process to evaluate the thing. This bill has no meaningful process. There's no requirement in here that even a medical doctor look at the person 72 hours to determine whether they're really in need of further detention. You cannot hold people in civil protective custody past the point of need. And the court has said, 24 hours is it.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

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TIM BUTZ: Thank you.

SENATOR BOURNE: Next testifier in opposition. First testifier neutral.

A'JAMAL BYNDON: (Exhibit 19) Thank you. My name is A'Jamal Byndon. It's A--'J-a-m-a-l. Last name is Byndon, B-y-n-d-o-n. Senator Pat Bourne and Judiciary Committee and Senator Chambers, it's a pleasure to be here today. It's the first time I've ever testified, I think, in front of this committee. I've been with Catholic Charities for 21 years; 19 years I worked out at St. Martin dePorres Center. And we're testifying in neutral today for a number of reasons, a number of questions out there and I'm going to be real brief in terms of these questions and also I'm looking at these lights here. Number one, the bill basically...the question raises, who keeps track of those times? Is it the law enforcement person or the provider? Does placement in civil protective custody count if occurred in different facilities such as different counties, states, or cities? And those questions are not answered in terms of this bill. We're concerned that civil liberties are being threatened by this bill and that safeguards are not adequately addressed or dealt with an appropriate manner. For example, holding someone up to 72 hours even though he may not be a danger to society, who's going to address that issue? There is no provision in this bill for evaluation within the 36 hours of placement by the physician or the psychologist as required in the case of emergency protective custody legislation. Thus, this legislation does not make it equivalent to emergency protective custody. The other issues of concern to us is alcohol dissipates in the body within a number of hours, 24 hours and can be tested in a reliable fashion. In the case of illegal drugs this is not the case and it's less predictable. And so our concern is, how should the entity make that determination when that person is no longer under the influence? What entity will pay for this additional cost of drug measurement? We're concerned about a liability to our agency, without present or clear criteria provided to many of these questions. For instance, Catholic Charities might be found liable for restraining someone against his or her will when they are no longer dangerous. Conversely, if we choose to release someone early, who will be...in a situation like this, who

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will address that issue? Again, we are concerned about potential lawsuit if we keep the person too long or too less in this sense. And then the last point that I really want to make is probably the key point. There's a document being circulated with our name on it, the Campus for Hope, which could be misunderstood or understood that we're in favor of this bill. We did not give consent to supporting this bill nor that document. Again, we're supportive of the efforts to look at this issue in terms of treatment for the chronically addicted person but we're neutral in regard to this bill. And we very much would like to see many of these questions answered before this bill is brought forth. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Byndon? Seeing none, thank you.

A'JAMAL BYNDON: Thank you.

SENATOR BOURNE: Appreciate your testimony. Other testifiers in a neutral capacity? Senator Heidemann to close.

SENATOR HEIDEMANN: In closing, I just would like to point out that there are 36 states with civil protective custody statutes. Fifteen of these states allow for protective detention of 72 hours or longer. This is happening out there. It's met court challenges. We believe we're all right underneath the 72 hours. A little bit more information. The 72-hour period was chosen as this was the maximum time people can be held without the filing of an emergency mental health hearing and is currently being used in as many of the 31 states including California, Washington, and Wisconsin that have civil protective custody. There was also a question on whether three or more times in different facilities. The facilities do not share information under HIPAA restrictions. The legislation deals with chronic repeat clients, those individuals who enter a facility such as Cornhusker Place three or more times within six months. If an individual was in Omaha and has been in the facility two times, moves to Lincoln and is put in the Lincoln facility they are not covered under this legislation. Each facility keeps tracks of their own data and the legislation covers three or more times within six months in that facility. I want to point out that we here

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in Nebraska already have the ability to hold these people 24 hours and we just want to take it up to the point of 72 hours. And this is not to punish these people by any means. We're set out in this bill to help these chronic abusers and this is what they're targeted for. It's not targeted to all these people that are put in civil protective custody, just a certain limited population that we feel that can really benefit from this 72 hours. And just from what I know personally, I really believe if you dry somebody out for 72 hours it gives them a clearer mind to maybe think and get a help process started and I would appreciate looking at this bill and looking on it favorable. Thank you very much.

SENATOR BOURNE: Thank you. Are there questions for Senator Heidemann? Senator Foley.

SENATOR FOLEY: Thank you. I'm sure you heard the testimony of Mr. Butz. He hinted rather strongly that if this bill passes it's going to be subject to a court challenge immediately. In your research on this, have you found other examples where a 72-hour holding period was struck down in some other jurisdictions?

SENATOR HEIDEMANN: Not that we're aware of. We're under the understanding that this has happened in 15 other states and we really believe if it held up there that we see no reason that it can't be held up in Nebraska.

SENATOR FOLEY: There's nothing unique about our Constitution that would...?

SENATOR HEIDEMANN: Not that we're aware of, no.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Chambers.

SENATOR CHAMBERS: Senator Heidemann, I'm going to pose the question a little differently. In these 15 states, have there been legal challenges to it?

SENATOR HEIDEMANN: I cannot...I cannot answer that question. I don't know that.

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SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Further questions? Seeing none, that will conclude the hearing on LB 464. The committee will stand at ease for ten minutes... (See also Exhibit 42)

SENATOR CHAMBERS: May we sit at ease?

RECESS

SENATOR BOURNE: (inaudible) started again, to open on LB 759 with Senator Chambers but before Senator Chambers goes, could I get a showing of hands of those here wanting to testify in support of LB 759? I see six. Those in opposition? I see eight. Are there neutral testifiers? I see none. Senator Chambers to open on LB 759.

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SENATOR CHAMBERS: Thank you. Mr. Chairman, members of the committee, I'm Ernie Chambers representing the 11th Legislative District in Omaha. The following, as you all know, constitutes the reasons for this bill and since I want this in the record I'm going to go through it. As set forth in Section 48-1101 "It is the policy of this state to foster the employment of all employable persons on the basis of merit and to safeguard their right to obtain and hold employment. Denying equal opportunity for employment is contrary to the principles of freedom and is a burden on the objectives of the public policy of this state. That is existing law. Currently, the law prohibits employment discrimination based on race, color, religion, sex, disability, or national origin. You notice that one of these items, religion, is a matter of choice. It is not a condition. It's a chosen activity. LB 759 would add sexual orientation and provide legal redress should discrimination occur. There is a definition of sexual orientation but I don't believe a definition is necessary. However, because it is in the bill and I didn't have it drafted this time. It was presented to me because nobody else would offer the bill. Sexual orientation is defined in lines 18 through 22 on page 27 and lines 4 through 8 on page 55 as "A state of being heterosexual, homosexual, or bisexual, having a

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history of such orientation or being identified with such orientation. Sexual orientation shall not be construed to protect conduct otherwise prohibited by law." It is worthy of note that sexual orientation is found in Section 28-112 which is the hate crimes law with no definition attached. The term is found in the Nebraska Code of Judicial Conduct where judges are prohibited from manifesting by word or conduct bias or prejudice based on sexual orientation and are required to prevent court personnel and lawyers from manifesting such bias or prejudice. That would be in canon 3(b) subsection 5 and 6. The law applies to employers having 15 or more employees, any party or business financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees, the state governmental agencies and political subdivisions. That is found on page 23, lines 5 through 12. Exempted from the provisions of this bill are religious organizations, associations, or societies or any nonprofit operation connected with them. That is found at page 52, lines 10 through 17. Specifically banned are numerical quotas or goals or other types of affirmative action programs with respect to sexual orientation and the administration or enforcement of the law, page 52 lines 18 through 22. Affirmation action is defined beginning in line 11 on page 54 and there is a specific exclusion of sexual orientation in lines 16 through 17 as this bill is drafted. The bill is borne out of the state's public policy that every employable person should be guaranteed the "right to obtain and hold employment" in order to earn a living accompanied by human dignity and protected from unjust discrimination. Finally, and this doesn't have to be done. LB 759 renames the Nebraska Fair Employment Practice Act as the Employment Nondiscrimination Act. That is what I would present by way of direct testimony and if you have any questions I am prepared to answer them.

SENATOR BOURNE: Thank you. Are there questions for Senator Chambers? Senator Aguilar.

SENATOR AGUILAR: Senator Chambers, can you think of any occupation in the state of Nebraska where there is not possibly a homosexual employee right now?

SENATOR CHAMBERS: No, I don't know of anyplace or any area of activity in Nebraska or anywhere else where some people

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who are homosexual would not be found.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: I'm going to try to speak up because one of my colleagues told me that I was too soft-spoken so I (laugh)...

SENATOR CHAMBERS: Huh? (laughter)

SENATOR FOLEY: I know of a company in Nebraska that has 15 or more employees and they could potentially be impacted by the bill. This company very deliberately orients their business activities and markets to a Catholic audience. They try to sell books, supplies, and so forth to Catholics. Now, obviously, a nonCatholic can go into their stores and could buy materials if they wanted to but they deliberately market themselves to a Catholic audience and they try to hire people who would be conversant with Catholic teachings and Catholic materials and so forth. Would they fall within the parameters of the religious exclusion in your bill?

SENATOR CHAMBERS: No, if...they would have to be within the language of the bill and from your description I cannot say that they would.

SENATOR FOLEY: Because there's no linkage...

SENATOR CHAMBERS: If there's no linkage and they just happen to deal in religious items, that wouldn't be enough. I who am not a Catholic and have no religion whatsoever could set up a religious bookstore but that would not be sufficient to take me from under the requirements of the bill if I had 15 or more employees.

SENATOR FOLEY: Thank you. This bill differs from an earlier version, another version of the bill offered by you a couple of years ago, I believe, LB 19 two or three years ago...

SENATOR CHAMBERS: Whatever the number was, um-hum.

SENATOR FOLEY: ...whatever the number, yeah. Didn't that

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bill have an exclusion for employers who care for children in an overnight residential setting?

SENATOR CHAMBERS: I think that may have...yeah, that...I don't know which version it was in but it was in a version of the bill that I had offered.

SENATOR FOLEY: But it's not in this version. Was that...

SENATOR CHAMBERS: No.

SENATOR FOLEY: I don't know how carefully you studied the bill when it was presented to you for introduction if you deliberately excluded that language or if you knew about that exclusion or was there some discussion or can you (inaudible)...?

SENATOR CHAMBERS: I never liked that provision in the first place. I never liked the provision that allows these religious associated operations to be excluded. We are in a political setting and people who were very nervous about supporting the bill wanted those provisions in. But for my part, I did not want any exclusions because if a person cannot be discriminated against based on religion then there shouldn't, and these other factors there shouldn't be discrimination when it comes to employment based on sexual orientation and if a person misbehaves, when it comes to being around children whether homosexual or not the law takes care of that. I'm not aware that the priests who have been shown to be pedophiles were also shown to be homosexuals so there are people who are not of the homosexual orientation who are pedophiles. So to be a pedophile does not necessarily mean to be homosexual. Homosexual does not necessarily mean to be pedophile so there's conduct which is prohibited by law. And if anybody engages in that whether heterosexual, homosexual, bisexual or whatever that person will be punished under the law. When we're talking about employment there should not be any discrimination which would prohibit a person from having the same opportunity to be employed as anybody else.

SENATOR FOLEY: I take it from your response then that you would be opposed, maybe strongly opposed to an amendment that would bring back that old language, that old exclusion...

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SENATOR CHAMBERS: Senator Foley,...

SENATOR FOLEY: ...as an element of this bill?

SENATOR CHAMBERS: ...I want to take steps toward remedying what I consider to be a great wrong so if there are efforts made to facilitate movement toward that goal I'm willing to listen. There was a time, as you pointed out, when that was actually in a bill that I presented. So it was not so repugnant to me that I would refuse to offer the bill if that happened to be a part of it. We start out this time with a bill where it is not there. If people would be willing to support the bill with that language in it, I would consider it. I'm not binding myself to it but it would be a discussion point.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Thank you. Further questions for Senator Chambers? Seeing none, thank you. First testifier in support.

MICHAEL GORDON: (Exhibit 20) I have some Bibles here for you. Good afternoon, Senators. I am Michael Gordon. That is spelled G-o-r-d-o-n. I'm the executive director of Citizens for Equal Protection. CFEP is a nonprofit organization that advocates equity for the gay, lesbian, bisexual, and transgender families of Nebraska. Obviously, I'm here today to ask you to advance LB 759 out of the Judiciary Committee. Not only is there a need for this legislation but also there's an overwhelming support from constituents in all 49 legislative districts. CFEP has hired the Nebraska Association of Sociological Behavior through the University of Lincoln to conduct a statewide polling that would be the Nebraska Assessment of Sociological Indicators Survey. Don't make me say it again (laugh). This survey which (inaudible) about 1,800 people includes contacts in all legislative districts. At this time, the polling is about 50 percent complete. I will have a more formal presentation to the committee sometime in early March around the time of the LB 50 hearing regarding housing nondiscrimination. In my handout I have listed the legislative districts from the members of the committee. As you can see, the results range from 60 percent in Senator

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Flood's district, 19 to a high of 83.1 percent in Senator Foley's district, 29. As a matter of fact, I have not seen any of the districts that have a rating of under 50 percent. I have also included interim resolution study document prepared by Senator Landis' office, the ACLU, and CFEP that indicates that there are no barriers in passing this legislation. Also in your packet are a list of states that have adopted this legislation and the number of documented cases that have discriminated after passage. Our opposition always contends there is no need for this legislation. There are cases of discrimination in Nebraska, just no avenues for reporting them. Over half the Fortune 500 companies have adopted these protections. Also many of our larger corporations in Nebraska have a similar policy and many small companies in Nebraska. Both Omaha and Lincoln now have a policy that protects city employees. As I said at a later time, I will deliver to all senators' offices a final version of our polling. Please consider advancing this needed legislation out of the Judiciary Committee. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Gordon? Senator Combs.

SENATOR COMBS: Mr. Gordon, do you have a copy of the survey questions that were asked and posed that we could get a copy of? I'd be very interested to see that.

MICHAEL GORDON: Yeah, I will. And I'd really like to wait till they're done but...

SENATOR COMBS: Oh, this is a preliminary. You do not finish...

MICHAEL GORDON: That's preliminary. They're only about 50 percent done with it right now.

SENATOR COMBS: Okay, thank you.

MICHAEL GORDON: But I will give you the questions and all that, that. Yeah, because you're the one we did that for because you requested that last time.

SENATOR COMBS: Thank you.

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SENATOR BOURNE: Thank you. Are there further questions? Seeing none, thank you. Next testifier in support.

RYAN FETTE: Hello, Senators. My name is Ryan Fette, F-e-t-t-e, and I have come here today to testify in support of LB 759. I'm a native Nebraskan. I was born in Seward, Nebraska, and raised in Beaver Crossing, Nebraska, and it has been my experience that Nebraskans are very fair-minded people. And as I talk to my peers, I'm 22, a lot of my peers just sort of assume that protective language is already in Nebraska Statutes and many of them are very upset to find out that it is not. And that's just sort of experiential evidence to underscore what Mr. Gordon said earlier. And so looking at this, when we look at some of the opposition to bills like this, many people who oppose them say that they want to get the word all or on the basis of all characteristics into the wording and remove specific classes that have been mentioned. And I have to disagree with this because when we look at the classes who are in these bills and laws, we look at people who have been discriminated against on the basis of their race, people who have been discriminated against on the basis of their gender, and people who have been discriminated against on the basis of their religion, and people who are gay, lesbian, or bisexual are also discriminated against. And I think that it's important to keep that sort of laundry list in the law because these people have been categorically denied access to many things including employment. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Fette? Senator Foley.

SENATOR FOLEY: I didn't catch your introduction. Did you say that you're with a group of some kind?

RYAN FETTE: No, no, I'm just here by myself.

SENATOR FOLEY: I see. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support?

STEPHEN GRIFFITH: (Exhibit 21) Senator Bourne, members of the committee, my name is Stephen Griffith, S-t-e-p-h-e-n

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G-r-i-f-f-i-t-h. I live here in Lincoln, Nebraska. I'm here as a citizen and as a Christian minister to testify in support of LB 759. We've heard much rhetoric over the recent months about moral values. They've been an issue in previous legislative sessions here in Nebraska and in many other states and they are said to have played a deciding role in our recent national election. Some who declare a commitment to moral values apply them to deny basic rights to gays and lesbians but for many Christians equal justice and respect for the rights of all citizens are themselves moral values. And that is true for me. My brother is gay and so I'm personally aware of the fear and uncertainty that's part of the fabric of life for gays and lesbians in the workplace. My brother has been fortunate to work in another state for a corporation that does not discriminate on the basis of sexual orientation, indeed, protects gays and lesbians. But many are not so lucky. You've heard at least one story; you'll hear others. We need to give our protection. These citizens, these fellow citizens, deserve our protection. I speak not only from my own conviction but also from my church's teaching. The United Methodist Church in which I'm a minister, an ordained minister, is on the record. I quote from The Book of Discipline, 2004 "Certain basic human rights and civil liberties are due to all persons. We are committed to supporting those rights and liberties for homosexual persons. We see a clear issue of simple justice in protecting their rightful claims..." As Senator Chambers noted earlier, Section 48-1101 declares denying equal opportunity for employment is contrary to the principles of freedom. These are powerful words, inspiring words and they beg to be applied to all our citizens, our neighbors, our coworkers, our friends, our brothers and sisters who are gay and lesbian. I thank Senator Chambers for introducing the bill and I urge you to send LB 759 to the floor and work for its passage. Thank you for your time.

SENATOR BOURNE: Thank you, Pastor. It's nice seeing you again.

STEPHEN GRIFFITH: Good to see you.

SENATOR BOURNE: Are there questions? Seeing none, thank you. Next testifier in support.

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TIM BUTZ: (Exhibit 22) Good afternoon, Senator Bourne, members of the committee. My name is Tim Butz, B-u-t-z, executive director ACLU Nebraska. I want to take the discussion down a slightly different path. On page 4 of my handout you'll see a chart. I read the fiscal note on this yesterday. Actually, I had to call Liz Hruska to get the fiscal note information first because it was not published when I went to look at it. And I saw that the fiscal note would provide an excuse for people to kill this bill and I want to explain to you why this fiscal note is all wrong. The NEOC estimates approximately 150 cases a year will be generated by expanding the scope of protection to include sexual orientation. I don't know where they got that number from. I gave them a copy of this testimony yesterday and I'm not sure if they're here to respond to it or not but it appears to me that they made this number up. The U.S. Government Accounting Office, their general accounting office, did a study in 2002 of the states that have similar protections incorporated into their law. The states are listed on the chart and the range of years that were studied by the GAO is also shown. And the percentage of complaints based on sexual orientation for their intake is in the third column. And in the fourth column what I've done is take NEOC's intake from last year and multiplied it by the individual states' sexual orientation complaint intake rate to give an equivalent on what would be generated in the way of NEOC cases. As you go down the list, you'll see the highest number would be 50 and the lowest number would be 18. As shown in the fiscal note, the NEOC tasked their investigators with conducting 80 investigations a year so this is somewhere that, if you look at the average number of cases it would be 32 cases for the NEOC in any given year. That is less than a half-time investigative position. So everyone else has spoken about the legal and moral reasons for this bill. I'm not going to go into that. I think you know why I'm here. I've been here every year since I've been director of the ACLU, testifying in favor of this bill. And if it doesn't pass this time, we'll be back again. But I just didn't want this fiscal note to go unaddressed. I think if you use the fiscal note as an excuse for not supporting the bill you're basing your judgment on an error and the facts just don't support the numbers.

SENATOR BOURNE: Thank you. Are there questions for Mr. Butz? Senator Chambers.

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SENATOR CHAMBERS: Just a comment. I had gotten that fiscal note just before I came over and I was...I forgot to mention it. I was not going to allow this bill to be used to pad the employment roll for NEOC because I thought the number was excessively high also.

TIM BUTZ: Yeah, I'm not sure, Senator, how they arrived at that number. I faxed this over. I didn't get a call back or any response to the information I gave them. I talked to Liz Hruska about it yesterday morning and asked her, and she simply said that was the number that the NEOC came up with. She didn't know how they arrived at the number either.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support.

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I'm for LB 759. There was a bill heard recently about school bullies. Most testified to being teased about homosexuals. I have been 'hinking of when I was in school. There were bullies and teasing. These people have grown up to be talk shows hosts. They haven't grown up. I don't believe we knew the name faggot when we were in school let alone what they are alleged to do. When I was in the Army there were two in our company who spent all their time together. Everyone thought this was funny. No one bothered them. I do not know when I realized these people were sinners and that they should be persecuted. Of course, we did not have the advantage of having the conservative right and the Christian right, yelling from the housetops that these homos are sinners and should be punished. If anyone did not know what some people were doing against everything holy, they were told about the sinners of the liberal Clinton. No sins on the right, of course. If these holier than thou are going to heaven I'm not going to heaven. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. Next testifier in support.

BOB WOLFSON: Hello, Senator Bourne, committee, my name is Bob Wolfson. I'm the executive director of the

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Anti-Defamation League. I cover a three-state region. I served a three-year term as a commissioner on the Equal Opportunity Commission and ten years as an administrative law judge for that institution. I also have been in my job for 17 years and have paid close attention, particularly to the hate crimes law which you, of course, know from Senator Chambers' statements is the only place in the Nebraska legislation that currently that uses the words sexual orientation. I want to take a slightly different tact as well and mention that the area that I'm most concerned with is the area of hate crimes. We have in this state a hate crime law. We also have some reporting mechanisms and we know not only from anecdotal evidence but from real interviews that people who are attacked, physically harmed because of either being gay or being perceived to be gay simply are chilled in their reporting to law enforcement and to others their experiences. Why? Because we have an open public law that requires all police reports be open to the media. The media then reports so-and-so was attacked last night walking out of a particular bar. The inference is that the person is gay and as it currently stands, that person can be terminated from their employment regardless of whether the facts are true or not. In fact, we had a case where a young man worked at Boys Town and was dancing at a bar on a Friday night, was reported by a coworker and was terminated from his employment because he was perceived to be gay. There was no allegation ever made that he was in fact. So it's really quite confusing to businesses who are trying to attract people to move to Nebraska, to employees who may or may not have sexual orientation that is not with the sort of heterosexual standard. And I think we have an obligation in our state to protect, as Senator Chambers wisely pointed out, all of our citizens. It is already the policy of the state and there is tremendous impact on our business environment. We have many companies that already have these kinds of policies. We're trying to attract new businesses and I must tell you, businesses look at these kinds of laws when they decide where to locate their businesses, what kind of an environment do we have? And, finally, I'm sure in the opposition, you're going to hear issues about choice and reality versus perception, and I think it's very important to understand that there is a difference between our personal lives and our public lives. If we start asking everyone at the gate of the business what their personal sexual predilections are, their personal

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moral behavior, their personal code is, then I think we should be able to continue this kind of, without this kind of legislation. But we don't do that. What people do in their private lives especially in a conservative state like Nebraska, we should leave people's personal lives in their personal lives and as long as they are conducting themselves well in the public sphere, they're taking care of their business, they're coming to work on time, they're doing their work. It's clearly not the kind of policy we should have in our state to support discrimination against those kinds of people. Thank you. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Wolfson? Seeing none, thank you. Next testifier in support. First testifier in opposition. And again, we're going to make use of the on-deck area so those opposed to the bill, please make your way forward and sign in and then move up to the testifier's chair. Welcome to the committee.

AL RISKOWSKI: (Exhibit 23) Thank you. Al Riskowski, executive director of Nebraska Family Council. Riskowski is R-i-s-k-o-w-s-k-i. And I appreciate, Senator Bourne and Judiciary Committee for carefully considering LB 759. Just for the record, if I was convinced that there was a widespread problem in regard to employment in one's sexual orientation, truly my conscience would not allow me to testify today. However, obviously, I am here in opposition because I am not convinced that there is the need for creating a protected class. Right now there is existing equal opportunity for all people to be employed. When we created a protected class for race there was not a need for an intense study to be made. There was an obvious problem. Where is the obvious problem here? LB 759 is a complex, far-reaching 55-page bill. If this bill were passed, the Legislature would never need to identify another protected class because on page 27, Section 18, the bill does define sexual orientation as a state of being heterosexual, homosexual, bisexual, having a history of such orientation or being identified with such an orientation. Sexual orientation shall not be construed to protect conduct otherwise prescribed by law. Therefore there are very few individuals who would not be part of this class since it does include heterosexual conduct. The American Psychiatric Association lists 23 sexual orientations. Some of the

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23 orientations are legal and some are not. Since all of the legal orientations are not listed, would all of the unlisted legal orientations be elevated to a protected class status in this bill? That I'm not sure of. If the Legislature really wants to protect the Nebraska public from any discrimination in the workplace then shouldn't we protect a class of Nebraskans that represent over 50 percent of the adult population? About 2 percent of the adult population has a sexual orientation that is not heterosexual. In January, 2004, a nationwide research study of 15,015 Americans revealed alarming statistics on America's growing obesity epidemic. More than half of U.S. adults are overweight 55 percent; 22 percent of U.S. adults are obese and many experience work-related discrimination. Shouldn't we protect this class since it actually comes closer to conforming to the U.S. Supreme Court criteria? And, of course, there are the three criteria. I will just read the bold portion of it to save time. Number one, the Supreme Court determined that an entire class has suffered a history of social oppression evidenced by a lack of ability to obtain economic mean income, education, or cultural opportunity. Two, an entire class must exhibit obvious immutable and changeable or distinguishing characteristics like race, color, gender, et cetera. And thirdly, an entire class clearly demonstrates political powerlessness and that is far from the case with this group. So I thank the Judiciary Committee for their time today and I'm willing to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Riskowski? Senator Chambers.

SENATOR CHAMBERS: Mr. Riskowski, what is the immutable factor with reference to religion?

AL RISKOWSKI: Senator, there are other aspects listed here as well as immutable or distinguishing characteristics like race, color, gender. Certainly with where you...

SENATOR CHAMBERS: Religion doesn't fit in that category that you listed or the categories you named off from the court decision, does it?

AL RISKOWSKI: Well, religion is still a public practice...

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SENATOR CHAMBERS: If you don't want to answer the question I will not pursue you.

AL RISKOWSKI: No, Senator, I'm happy to. I'm trying to...

SENATOR CHAMBERS: It is not an immutable factor in connection with any person, is it?

AL RISKOWSKI: No, but it does list other factors as well.

SENATOR CHAMBERS: When Rush Limbaugh's third marriage ended in divorce, did that happen because of homosexuals trying to be allowed to marry each other? They created such a problem with marriage that Rush Limbaugh had his third divorce?

AL RISKOWSKI: Obviously not, Senator.

SENATOR CHAMBERS: Okay. Thank you.

SENATOR BOURNE: Are there further questions for Mr. Riskowski?

_____ : I'm not understanding how...how can you know that these 23 things from the American Psychiatric Association...

SENATOR BOURNE: Ma'am...ma'am, if you'd like to testify on the bill...

_____ : Can I ask (inaudible) wasn't that...

SENATOR BOURNE: No.

_____ : I can't ask, I thought (inaudible)...

SENATOR BOURNE: No, I'm sorry.

_____ : (inaudible) I'm sorry.

SENATOR BOURNE: No. If you'd like to testify on the bill, you know, you can offer your comments at that time...

_____ : I just wanted (inaudible)...

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SENATOR BOURNE: Maybe you can ask him after the hearing.

_____ : Okay.

SENATOR BOURNE: Thank you. Are there further questions for Mr. Riskowski? Seeing none, thank you. Next testifier in opposition. Welcome.

ERIC BENTS: Good afternoon, I'm Pastor Eric Bents, B-e-n-t-s. I'm one of the pastors at Trinity Church in Omaha, Nebraska. Trinity is presently the largest church in the state of Nebraska with an average weekend attendance of nearly 4,000 Nebraskans. As an Evangelical pastor, I represent a large and growing sector of Nebraskans who believe the truth of God's word, the Bible, and the vital importance of a personal saving relationship with Jesus Christ. I also represent the vast majority of Christian clergy who oppose recognition of same-sex marriage and any laws that would prove to be a steppingstone toward that end. For example, when Jimmy Creech performed a same-sex marriage ceremony in Omaha in 1999, it took us relatively little effort to quickly sign up over 100 metro Evangelical churches representing tens of thousands of individuals to place their name in a full-page ad in the Omaha World-Herald protesting that particular flagrant mischaracterization of the sacred institution of marriage. All that to say, we Evangelicals take a high interest in legislative and judicial attempts to create a legal sub-class for homosexuals as LB 759 would if passed into law. As a community of faith we realize through experience, history, and the Bible that condoning homosexual behavior is contrary to the building of strong marriages and families which are the indispensable foundation of a stable, prosperous, and morally upright society. I represent hundreds of Nebraska pastors who have invested their lives in helping fellow Nebraskans. As a pastor, I've personally ministered to those struggling with homosexual desires and I've ministered with former homosexuals that God has set free. With the sharp rhetoric that often surrounds this issue, I can understand how some may feel that Christians view homosexuality as the unforgivable sin. The truth is, we as pastors view our status as forgiving sinners ourselves and we are immersed in the shattered worlds of many who suffer the results of sinful deviance of all types including homosexuality and even divorce as Senator Chambers

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mentioned. It's our privilege, joy, and challenge to minister in these situations and we'd have a much easier time defying pastors to minister to a homosexual than we would defying someone to testify at a hearing such as this. And we are thankful that many thousands of former homosexuals have discovered true freedom through the power of God and the encouraging compassionate support of others. The militant homosexual movement is obsessed with redefining marriage in the United States and creating laws justifying their lifestyle choices. Although we share a concern that all citizens should be granted equal protection under the law, we realize that political attempts to create a legal sub-class for homosexuals, the potential source of earthquake for a moral tsunami would highly erode the integrity of many of the remaining social institutions in our culture. Thank you for attention and the opportunity to speak on this issue.

SENATOR BOURNE: Thank you. Are there questions for Pastor Bents? Senator Chambers.

SENATOR CHAMBERS: Pastor, what denomination did you say your church is?

ERIC BENTS: We are a nondenominational church.

SENATOR CHAMBERS: Are you a Christian denomination?

ERIC BENTS: Yes, and we could be broadly characterized as Evangelical.

SENATOR CHAMBERS: But Christian is part of it?

ERIC BENTS: Yes.

SENATOR CHAMBERS: Okay. Is it a part of your Christian faith that the rightness or wrongness of an issue is determined by the number of people who either adhere to it or who oppose it?

ERIC BENTS: No, we...

SENATOR CHAMBERS: So it's not a popularity contest.

ERIC BENTS: Not at all. And we wouldn't even want to

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enforce our morality per se on a given society except we feel it's the church's job to inform the morality of the people. And that in turn will inform the moral choices that a Legislature would make so really the only time we step in is when we feel like the government is surpassing even the moral temperature of the people, so to speak.

SENATOR CHAMBERS: I was educated at the undergraduate level at Creighton University which is a Jesuit institution. Jesuits are known as the soldiers of the Pope. Some Christians don't consider Catholics to be Christians. Do you consider them to be Christians?

ERIC BENTS: We believe that in any given denomination, yes, there are Christians.

SENATOR CHAMBERS: So you believe that Creighton is a Catholic and Christian institution.

ERIC BENTS: (laugh) We believe certain aspects, yes.

SENATOR CHAMBERS: Okay. And certain you don't.

ERIC BENTS: I would have to take it case by case.

SENATOR CHAMBERS: Okay. One of the things they spend a lot of time talking about was a principle broadly headline, social justice.

ERIC BENTS: Um-hum.

SENATOR CHAMBERS: One of the tenets was that every person should have a right to earn a living. Another is to have adequate shelter. In those days there was not as much talk about medical or healthcare but that was embraced also. Your Christian faith, based on your being here, is compatible with a person being denied employment because he or she is heterosexual. Is that true?

ERIC BENTS: I would disagree with that, sir.

SENATOR CHAMBERS: Okay. So then you wouldn't want heterosexuals to be denied employment because they're heterosexuals. Is that true?

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ERIC BENTS: We believe that the creation, that sexual orientation should not be a legally protected subclass so we...and so our main opposition here is simply because we recognize the militant homosexual agenda.

SENATOR CHAMBERS: Well, Pastor, in the interest of time if you'd rather not answer the questions let me know but I'm going to ask the questions and ask that you respond to the question.

ERIC BENTS: Okay.

SENATOR CHAMBERS: Your faith is compatible with the idea that somebody who is homosexual is denied employment on the basis alone of being homosexual. You're comfortable with that in your Christian faith, isn't that true?

ERIC BENTS: We believe that a Christian should have the right to turn down a homosexual who is applying for a job in...yes.

SENATOR CHAMBERS: What about a non-Christian?

ERIC BENTS: They should have that right too.

SENATOR CHAMBERS: If a person has worked for a company for five years and then that person was accused of being a homosexual when, in fact, the person wasn't but the accusation was there, do you believe that person should be fired if the head of the company wants to fire that person?

ERIC BENTS: We would believe that person has been wronged and we would certainly in most cases not even believe that the person should necessarily be fired for being a homosexual. I've worked for homosexuals and I've had homosexuals under me when I worked in secular employment.

SENATOR CHAMBERS: Well, under the law, a person can be fired for being...

ERIC BENTS: We understand that.

SENATOR CHAMBERS: ...a homosexual alone.

ERIC BENTS: And if that was a massive problem we'd be

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willing to engage on protecting the rights of those people in the employment sector.

SENATOR CHAMBERS: Okay. You want to make it a massive problem. How many people had to be present based on what Jesus said in order for Him to be in their midst?

ERIC BENTS: Two or three.

SENATOR CHAMBERS: Do you consider that to be a massive number?

ERIC BENTS: Well, no, I do not consider that to be massive.

SENATOR CHAMBERS: Okay. How many people would you say would have to have been saved by Jesus' death in order for Him to be willing to die? Did He total up the number and say, well, if there's only one person I won't die for that one person but if there is a massive number then I will die. Is that the way your faith calculates Jesus' grace?

ERIC BENTS: We believe that you have to calculate a law benefit versus cost. And will I deny that there may be a cost of two or three people and is that a real cost? Yes, we believe that's a real cost. We would be willing to minister to those two or three. We believe in the larger picture, though, that the cost to society as a whole, of giving another plank in Nebraska law of going towards redefining marriage isn't worth that price.

SENATOR CHAMBERS: My final question. It does not trouble your...now we know that uneasy rests the crowned head on the pillow. But your head being that of a Christian pastor rests very comfortably on its pillow knowing that there are people denied the right to earn a living because they're homosexual. That can be a yes or no answer.

ERIC BENTS: My head rests easy because, on one hand, I'm...

SENATOR CHAMBERS: Then you answered it...

ERIC BENTS: But I...

SENATOR CHAMBERS: You answered it.

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ERIC BENTS: ...I work with former homosexuals every week.

SENATOR CHAMBERS: Well, you answered it. Your head rests easy with that. We just differ but thank you for your cooperation.

ERIC BENTS: Thank you for listening.

SENATOR BOURNE: Thank you. Are there further questions for Pastor Bents? Seeing none, thank you. Appreciate your testimony. Next testifier in opposition. Welcome.

RICHARD CLEMENTS: (Exhibit 24) Thank you, Senators. I am Richard Clements, C-l-e-m-e-n-t-s. I'm from Elmwood, Nebraska, and speaking as a private individual. I am an attorney and a banker as well. My comments, I'd like to begin by saying that I would like to advocate respect and compassion to be shown to all persons regardless of their personal views or actions but at the same time I, myself, have an equal desire to express my ideology even it differs with those individuals. I respectfully ask the committee to vote against advancing LB 759 for the following reasons. First of all, the state policy issue is that state government should not grant rights, special rights, to persons based on their attractions or behaviors while forcing employers to abandon their convictions about behavior if they find it morally unacceptable. And my view is that current nondiscrimination classifications are based on morally neutral traits that don't delve into the religious beliefs of employers. These are not dependent upon a person's behavior or psychological tendencies as well, the ones that are in the current statute. Second of all, I think protection is unwarranted like Mr. Riskowski mentioned. The Supreme Court of the United States has issued a three-part test regarding the prior history of the classification persons. If I speak to the issue of religion, obviously Jewish individuals in the 1940s had severe persecution and I believe that the fact that they were born into a family that was Jewish marked them as Jewish whether or not they continued to believe those principles. And I think that's one of the reasons that particular issue is in the classification list. Third, I believe this is a moral debate. It's not a civil rights issue. This bill would establish a policy of intolerance toward the religious views of many Nebraskans. This

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intrusion by the state into a religious arena is admitted by the new Section 36 in the bill which states that provisions of ENDA would prohibit discrimination based on sexual orientation shall not apply to bonified religious organizations. That really shows that there is a conflict here between religious views and the civil rights views. And the sexual orientation exclusion is the only class of persons that is involved in that religious organization exemption obviously because this one issue is bordering on a moral issue rather than civil rights. Fourthly, the social and health concerns of this issue. I would note that the 2002 version of LB 19 did have an exclusion for Boys Town basically and for children in a residential care facility, obviously shows that the bill could mandate employment of individuals which could place adults in inappropriate employment settings. Also as far as adult health, the state should not promote behaviors which can have serious negative health risks for those involved in them. Thank you for your time. I would accept any questions if you have them.

SENATOR BOURNE: Thank you. Are there questions for Mr. Clements? Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Hi, Mr. Clements. A real quick question. You mentioned you were an attorney in Elmwood. You're also a banker.

RICHARD CLEMENTS: Yes.

SENATOR FRIEND: It occurred to me throughout most of the conversation that we've been having here on this bill, let's say...I work at a bank but I work at a bank in Omaha. Let's say that, and I might be putting you on the spot here. But let's say that my employer found out that I was having an extramarital affair. And my employer who's a private employer, I mean it's not a publicly traded company, said I don't approve of that behavior. You're done. And, again, I won't put you on the spot. Do I have any protection? Can the law protect me...

RICHARD CLEMENTS: If you're the employee...

SENATOR FRIEND: ...as an adulter, am I protected by the law of the state of Nebraska to keep my job if my employer says, I don't like that behavior?

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RICHARD CLEMENTS: No, sir, and that's a good point. The sexual orientation definition includes heterosexual behavior...

SENATOR FRIEND: So if this bill passes, if this bill passes I'd be protected but that type of behavior would be...

RICHARD CLEMENTS: Yes, sir, if you...

SENATOR FRIEND: ...defensible for me?

RICHARD CLEMENTS: ...I believe so, um-hum.

SENATOR FRIEND: All right, I...thank you.

SENATOR BOURNE: Thank you. Further questions for Mr...

SENATOR FRIEND: And I'm not plotting or anything by the way. I'm just asking a legitimate question (laughter). Just wanted to get that on the record. Thank you.

RICHARD CLEMENTS: I've had that concern in my own practice as an employer and counseled with the employee, was able to resolve it without terminating her. And I would hope that Christian counsel and principles and respect toward individuals would be the first attempt and not use the law as a hammer or the lack of this law as a hammer against individuals who, in my view, have very much need for respect, very much need for persons to show them kindness and have...

SENATOR BOURNE: Thank...

RICHARD CLEMENTS: Yeah, okay.

SENATOR BOURNE: Thank you. Are there...

RICHARD CLEMENTS: I'll quit. Any other questions?

SENATOR BOURNE: ...Are there further questions for Mr. Clements? Seeing none, thank you. Appreciate your testimony. Next testifier in opposition. And, again, are we making use of the...are we signing in? Okay, thank you. Welcome.

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ROBERT KLOTZ: (Exhibit 25) Robert Klotz from Lincoln here. I'm representing myself.

SENATOR BOURNE: Would you spell your last name for us, sir?

ROBERT KLOTZ: K-l-o-t-z. The main-stated purpose of this bill is to prohibit discriminatory employment based on sexual orientation. Now this seems innocent enough but really it isn't. There is a question that is openly and honestly addressed by the Unicameral, namely, is a chosen lifestyle of homosexuality a lifestyle we in Nebraska can afford to protect? Steve Baldwin is a man who was elected to the California State Assembly in 1994 and he writes a compelling 16-page article relating to association of the homosexual movement and the child molestation. The untold purpose for advancing sexual orientation by the homosexual movement is to get your children basically. NAMBLA is an example of that. At one point, Baldwin writes on one hand homosexuals publicly claim that the molestation of boys is not a part of the homosexual lifestyle. On the other, they are quietly establishing the legal parameters exempting the molestation of boys from prosecution on antidiscrimination grounds. This state has already passed the one on what is it, hate crimes. Now the homosexual movement is trying to convince people that male to male sex is not a homosexual act. This would make it possible to more easily seduce the young and the naive. However, the prefix homo comes from the Greek and means same. The homosexual act involves those of the same sex whether it is male to male or female to female. Therefore, to say that the priests who molested the boys was not a homosexual act is pure deception. The summary fact sheet on AIDS from the White House tells more of the horror stories and can be found on the Internet. For the year 2000 approximately 900,000 people were living with AIDS with an estimated 300,000 who did not know they had AIDS. The federal government did spend \$10.8 billion for HIV care in 2000. So could you please tell me again how what two people do in the privacy of their own home does not affect me and my family? And this bill would like to protect that lifestyle. Government communicable diseases center shows that the year 2000 around 42 percent of the deaths to AIDS were male homosexuals. Now are some of the homosexuals very nice people, gifted individuals who contribute a lot to society? Of course, they are but so are

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alcoholics whose lifestyle we discourage rather than encourage by protecting it and yet these alcoholics have contributed probably more than to our society. I would urge that this bill be voted against and any bill that supports the homosexual lifestyle.

SENATOR BOURNE: Thank you. Are there questions for Mr. Klotz? Seeing none, thank you. Next testifier in opposition? If you just leave them on the edge of the desk and the page will get them. Thank you.

CHESTER THOMAS: (Exhibit 26) My name is Chester Thomas, T-h-o-m-a-s and I've given you a packet of materials that summarizes the reasons why I think this should not be let out of committee. The first page is a statement of why so many in our culture accept the myths about homosexuality about who fosters the myths, the homosexual activists, media, much of academia, liberals and liberal groups? There are statements there on why homosexuality is not normal. Physiological design, that's evident and also the high incidents of hideous injury and diseases within the homosexual community. The state really has no business offering special protection to a special interest group defined by abnormal high-risk behavior. On the second page, it speaks to the myths that homosexuality is genetic, born that way and that homosexuals cannot return to normal lifestyles. The third page speaks to the dangers of our culture when we normalize homosexuality. When we normalize homosexuality through legislation, for example, the subsequent normalizing of all forms of sexuality inevitably follows pedophilia explicitly included. There are excerpts here from Dr. Satinover's book covering intergenerational intimacy and NARTH bulletins are attached. These report on an APA symposium held in 2003, the purpose of which is discussion of considering pedophilia and other paraphilias positively even beneficial. Next page lists the classic criteria used to grant protected class status. Homosexuals definitely don't qualify as has already been testified. On the last page, I'm arguing that this is really a nonissue because the number of cases that would come before the state. It argues that this bill, if passed, would be a can of worms, really underscoring the foolishness of trying to offer protection to a special interest group. And the last paragraph is a plea to not advance LB 759. I made it.

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SENATOR BOURNE: Thank you. Are there questions for Mr. Thomas? Seeing none, thank you. Next testifier in opposition?

EDWARD STRINGHAM: (Exhibit 27) Thank you for the opportunity to speak to the Judiciary Committee today. My name is Edward Stringham, S-t-r-i-n-g-h-a-m. I have come to present testimony opposed to LB 759. I'm a licensed psychologist. I'm a member of the American Psychological Association, the Nebraska Psychological Association, and other professional groups. Because my practice includes a sizeable number of patients who present with issues related to sexual orientation, I am inclined to be sympathetic with lawmakers who seek to alleviate the hostile climate gays sometimes experience. Nevertheless, in defining sexual orientation as a protected class, this bill presents three problems. First, it's based upon false premises. Second, it would fail to accomplish the intended result of improving the social well-being of gay individuals and third, it lacks clarity. Protected class status is generally reserved in the law for groups holding innate characteristics. However, to date there is absolutely no evidence for any genetic link for homosexuality and the studies of the early nineties that heralded such claims have now been completely discredited. Another qualification for protected class status is immutability. There is, however, a large body of evidence reporting that gay individuals have changed orientation through therapy in some cases and spontaneously in others. Dozens of journal articles have published such results and every study conducted to date has identified at least some individuals who have changed. Renowned psychologists who acknowledge that homosexuality is changeable include Dr. Robert Epstein, editor of Psychology Today, Dr. Robert Perlman, past president of the American Psychological Association, and Dr. Robert Spitzer of Columbia University whose 2003 study documented that orientation change involves not behavior but profound shifts in attraction and identity as well. Since sexual orientation has been proven to be neither innate nor immutable it fails the essential tests for protected class status. Furthermore, it's questionable whether this legislation, if passed, would accomplish anything for gays. There is little evidence that gays suffer systematic employment discrimination except in specific domains such as the military and the clergy whose practices would not be affected. Gay activists often

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support antidiscrimination legislation in hopes that passage will diminish social stigma. Research consistently shows that homosexual people are in fact at elevated risk for some forms of emotional problems including suicidality, depression, anxiety and nicotine dependence. Some gays claim that the high rates of such disorders are caused by social alienation and that antidiscrimination laws would reduce such antagonism. However, cross-cultural studies report no differences in the prevalence of any of these disorders in gays when comparing the U.S. with the Netherlands, New Zealand, and Denmark, all nations which allow same-sex civil unions or gay marriage and which are widely recognized for being much more tolerant of homosexuality than our country. Gay rights laws don't appear to help. Lastly, LB 759's definition of sexual orientation is, in effect, anyone who self-identifies with such orientation and it lacks objectivity and is inherently ambiguous. Passage of this bill would, therefore, pose a legal conundrum for the state and invite people to distort facts and abuse the legal process. We have, therefore, no reason, I believe, to contend that justice will be served or that gays will fare anybody if LB 759 becomes law. I urge you, therefore, to reject it.

SENATOR BOURNE: Thank you. Are there questions for Dr. Stringham? Seeing none, thank you. Next testifier in opposition?

DON KOHLS: My name is Don Kohls, K-o-h-l-s and I'm representing my own views. The part of this bill, to treat people fairly and with dignity is not the problem I have with this type of bill because I believe that every one of us has been made in the image of our Creator and His love for us is equal no matter who we are or what we've done. These truths said, does not omit the fact that sexual immorality is a destroyer of that image, thus running contrary to His very best for us. This design is to wreak havoc in our lives, thereby causing dire consequences that bring needless suffering and harm. Sexual intimacy like fire and water are absolutes for our very existence. Each one not only sustains our lives but also brings us wonderful pleasures which we are to enjoy. If, however, the boundaries of these needs are violated they will not only bring us great pain and suffering but death as well. It doesn't matter if we are innocent or guilty, religious or

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non, wise or foolish because nature's law metes out the consequences according to degree of which it is violated. My opposition to this bill has nothing to do with its good intentions but due to the fact of a far greater harm that it leads to. That harm stems from presenting or embracing sexual normality as a class status and I believe there is an ever greater tragedy that results from this embrace and that is to lose the ability to discern right from wrong. It is because of these far greater consequences that I ask this bill not pass from this committee. Thank you for your time.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kohls? Seeing none, thank you. Next testifier in opposition.

PETER SMAGACZ: My name is Peter L. Smagacz, S-m-a-g-a-c-z. I have come today to state that discrimination like many other things can be good. It depends on how and why you use it. As young parents, my wife and I used to discriminate to decide who would we have to baby-sit our children? We were concerned about their safety and well-being. In a like manner, as a business owner I would use the same discrimination or discernment in whom I would hire. I do not want a thief running the cash register. I do not want a pedophile working in my day-care center. I do not want an adulterer working as a counselor and I do not want a practicing alcoholic driving for my cab company. As a Christian business owner, I would hire people that have the same morals and values that I have because I want us to have the same definition of words. There are some groups in our society that are trying to redefine words like marriage and family and I don't want someone working for me that will redefine words like theft and embezzlement and illness. As a Christian businessman I would do what the Nebraska Highway Patrol did. That is, judge character. In 1987 in testing for the patrol, the tester said, we will be taking a break before the test. If you have ever committed adultery or if you are living with a member of the opposite sex in a sexual relationship and not married, please leave during the break. I will give a polygraph test later. I so much respected the patrol for setting these high standards of character. I wanted to work for an organization like that and it reinforced me as a person. It told me that it pays in more ways than one to live the values I've been taught all my life. And the people of this state and this nation have

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clearly stated that we want our government and our laws to reflect our Judaeo Christian values. I don't believe this bill is about jobs primarily. I believe that it's about acceptance and affirmation and no matter what happens here in Lincoln this will not change what God says about the sin of homosexuality. If you affirm this abomination, you are helping pave the road to eternal damnation and that's a blotch you do not want to have on your record especially if you claim the name of Jesus Christ.

SENATOR BOURNE: Thank you. Are there questions for Mr. Smagacz? Seeing none, thank you.

PETER SMAGACZ: Thank you.

SENATOR BOURNE: Next testifier in opposition? Are there neutral testifiers? No neutral testifiers? Senator Chambers to close.

SENATOR CHAMBERS: Mr. Chairman, members of the committee, and to anybody who may be listening, I've been in this Legislature for 35 years and I pride myself on the fact that I have always and will always speak out for any and every group who is treated in a way that I feel is unjust simply because they belong to members of groups. I've come to the aid of small storefront churches which were to be denied the recognition as an established religion because of their size. I spoke against the policy that was to be implemented by the Douglas County Board as far as cremations where they said a person could be exempt if you're an indigent from being cremated instead of getting money for burial if you belong to a recognized religion. I didn't think that you should favor any religion or disfavor people because their religion was not "recognized." All that I need to determine in my mind is whether or not an individual is a human being. Once that has been decided, every right, every privilege that is bestowed by the government that professedly is protected by the government is a right which those people should have. And whether there is everybody on the side of the issue that I'm on or nobody on the side of that issue, I'm going to speak, I'm going to work, and I'm going to do everything I can to ensure that people are accorded the dignity, the respect that I want as a member of a race of people who came into existence in America starting out as chattels. I understand what discrimination is. I'm very

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skeptical of those people who start their statement with I don't think there ought to be discrimination but. I think all people are equal but. You should have a right to earn a living except. Not being a religious man, I don't have those kind of agendas to push. If somebody is oppressed and they are weak and defenseless and have no friend, they will know that as long as I'm here they have one and it is not one who will be a friend in secret or when everybody else is going along. If I'm your friend I'm your friend everywhere. And the stronger the opposition, the harsher and unfairer the circumstances the stronger I will stand by you and I will stand even when you can stand no longer. I'm not swayed at all by these people who come with their religious views. They're entitled to them. These preachers can preach anything they want to in their churches. They can get all the amens they please from the people in their congregations who agree with them. But when it comes to the work of government and protecting the rights of those who need protection which is the reason that government exists I'll be there. If you have any questions I'm prepared to answer them.

SENATOR AGUILAR: Questions for Senator Chambers? Seeing none, thank you.

SENATOR CHAMBERS: Thank you.

SENATOR AGUILAR: That closes the hearing on LB 759. Take a minute for the room to clear and then Senator Kruse will introduce LB 592. If you're leaving, if you could move quickly and quietly so we can get on with the hearings. Can I get a show of hands of how many are going to testify in favor of LB 592. I see four. Opponents? I see six. Neutral? I see one. Senator Kruse to open on LB 592.

LB 592

SENATOR KRUSE: (Exhibits 28, 29, 30, 33) Thank you, Senator Aguilar and members of the committee. My name is Lowen Kruse. I'm number 13 in the Lamb's book of life. LB 592 is commonly called a dramshop bill. Dramshop declares potential liability for a bartender who serves a person who is noticeably intoxicated. Please underline in your mind the word "noticeably," then drives a car and then kills or

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injures someone. The law that we are proposing here, the bill that we're proposing, is one of the least restrictive in the nation and includes social hosts who are serving minors, which is against the law. It excludes social hosts who are serving adults. Forty-one states have a dramshop law. We do not. The serious gap that we have here is that the Supreme Court has...Nebraska Supreme Court has blocked liability claims on bar owners. This is something that comes from before Prohibition. At the time of Prohibition, laws were removed. Following was a very heavy-duty one and I've supplied a copy of that, part of that to you. When Prohibition went out, the Legislature failed to do anything about restoring this part of the law. Therefore, we now have a case like this. We have a situation that I'm aware of where a bartender served a patron who was noticeably intoxicated. I remind you that that's against...that's in violation of the law. The friends of this person recognized that the person couldn't get to their car so they helped the person get out of the room into a car. The person wasn't able to get their car unlocked so they helped put the key in the lock. The person wasn't able to start the car so they put the key in the switch and started the car. The person wasn't able to find out how to drive the car so they put the car in gear. In the next few minutes, that person killed himself and two other people. Now I call that criminal activity. It's like handing a loaded gun to a distraught person. If you or I did it, we'd be considered liable. But under Nebraska law, if that bartender had followed out and done that, that bartender is exempt from liability. And that's the main reason why we are bringing this law. It's time to correct that matter. There's a lot of misperception and a lot of conjecture about what this bill does. It does not cover a patron who's been drinking and comes into a bar and drinks a bit more and appears to be okay and goes out and tests .20. Remember, the word is noticeable. It has to be noticeable not only to the bartender but to the patrons that are there and going to be witnesses in any potential civil trial. It does not call for a breathalyzer. It does not ask for special skills on the part of the bartender. The person has to be noticeably drunk to the person who is serving and to other patrons who will be the witnesses. You will note that it also has reference to alcohol poisoning. The bartender, the server is one who can prevent some of this tragedy that we've read about. A person within a bar drinking at a normal pace would take 25 drinks to approach

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alcoholic poisoning. Before that happens, they're going to pass out. If a bartender knows that they've had that many drinks and sees the person pass out, the next step is to call a paramedic because a bartender who has been trained will know that that alcohol in the gut is going to transfer to the blood and pretty soon that person is going to quit breathing. This leads to the other main point, main point that we have to do something in Nebraska because we don't have anything. The second that we want server training. That's the main thing we're after in this bill. We're not after harming somebody. And if there's ways of preventing harming a dealer, we'll be glad to do that. We want them to train their servers. Trained servers are going to protect more people and protect us from them on the highway than a great number of other persons. There's a fiscal note that I will refer to in closing. I simply ask for your consideration of this matter.

SENATOR AGUILAR: Questions for Senator Kruse? Senator Foley.

SENATOR FOLEY: I'll toss you a dumb question. How do we come up with the term dramshop? Where does that...

SENATOR KRUSE: The term dramshop comes from I think it's old English. Somebody's been instructing me on this. The dram was the measure that was used in a liquor establishment and just for that purpose. And so it's an old definition.

SENATOR FOLEY: Okay, thank you.

SENATOR KRUSE: Yes.

SENATOR FOLEY: Another question if I might. Bartenders because they serve drinks regularly, frequently would have a little bit of expertise, some expertise in knowing when a person has had too much. But what about the situation where a liquor license could be issued to a group for a one-day event and you may have volunteers serving drinks who normally don't do that?

SENATOR KRUSE: Thank you. Those persons are excluded in this bill. We have social hosts for minors which is against the law anyway. But we do not have in here social hosts for adult situations, that one-day thing.

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SENATOR FOLEY: Thank you.

SENATOR KRUSE: We are focusing on the owner of the establishment and trying to get them to train their servers.

SENATOR FOLEY: Thank you.

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Kruse.

SENATOR KRUSE: Thank you.

SENATOR AGUILAR: First proponent.

DIANE RIIIBE: (Exhibit 39) Hi, Senators. My name is Diane Riibe, R-i-i-b-e, and I'm the executive director for Project Extra Mile, an underage drinking prevention effort across the state. Thank you to Senator Kruse for introducing the legislation. Underage drinking takes a tremendous toll, as you know, in the state. The results are either reported with mind-numbing statistics or they're minimally discussed in communities across the state through the quiet suffering of families unknown. But as we take a closer look at the issue of young people and their access to alcohol, we need to look at the adults around them. Who provided the alcohol to the minor? Was it available through a retail outlet or at a party with the full knowledge and participation of adults? As a state, we have a solid interest in preventing both of the scenarios. We lose too many of our young people, our most precious resource. Interestingly, we study, research, and look for ways to keep these very same young people in our state as productive members and contributors in other policy discussions. We must look for ways to prevent the tragic loss of life and the unwanted loss and drain of our tremendous talent. It's important to note that the language in the bill is taken from a model proposal drafted and refined over a period of months by dozens of experts and contributors nationally, including members of the industry. Nebraska did not attempt to reinvent the wheel on this proposal. We went with what works. The primary author is Dr. Jim Mosher, an attorney and alcohol policy researcher. And Dr. Mosher has provided you with, the committee with written testimony after reviewing LB 592 (Exhibit 31). Senators, Nebraska is one of

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only eight states in the country that do not have a dramshop law allowing for the civil liability for a liquor retailer who sells to a minor or a visibly intoxicated person. We are only one of 18 states that do not have a social host law where that same civil liability is applied to other adults in a social setting. The illegal provision of the alcohol must result in harm to an innocent third party, the individual who would bring the claim. Enactment of dramshop and social host is intended as a preventive action. It would bring a heightened sense of accountability to adults who host parties for minors, and it would encourage retailers to be serious about training their staff. The proposed change would provide the potential for recovery when the elements of a case were sufficiently egregious. This is not carte blanche liability. Some will say the dramshop will hurt small business because of the increasing costs of insurance. We recognize that there will be those additional costs, but they'll be determined at the commercial liability coverage of that business and be based on the amount of profit that that business has from the sale of alcohol. The business owner has the ability to not only recover some of those costs through the profit structure, but he also has the ability to pass those costs on to a consumer as often is the case currently. Courts across the country have held that a business has a responsibility to legally sell its product along with its privilege to profit from that sale. As a state, we do not allow any other business to avoid liability if they ignore the law and their illegal actions cause harm to an innocent third party. And finally, Senators, dramshop and social host liability laws work. They address the worst of the worst violators, both in a social and a retail setting. And your support of LB 592 makes a statement that Nebraska is moving beyond blaming young people alone for the problem of underage drinking and that we recognize the role that adults play in the access and availability of alcohol to our kids. Of course young people are responsible for their actions, but they should not be the only ones held accountable. Thank you very much.

SENATOR AGUILAR: Questions for Mrs. Riibe? Seeing none, thank you.

DIANE RIIBE: Thank you.

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SENATOR AGUILAR: Next proponent.

ROBERT RYAN: (Exhibit 38) My name is Robert W. Ryan, R-y-a-n. I am here today as a proponent for LB 592 to enact the dramshop social host liability law. Good afternoon, distinguished senators. I appreciate the opportunity to address you today regarding this important piece of legislation. This is my very first venture into the democratic process so forgive me if I seem nervous. I am so glad to live in this great country where a simple citizen like me can take part in the very root of this process and address his elected representatives to effect positive change. I am here today as a parent who found out about the lack of this law in our state the hard way. My purpose today is to help save other parents the pain my family has endured and will continue to endure for years to come. This did not have to happen. It could have easily been prevented if irresponsible adults were aware of the possible repercussions of their actions and these keg parties were not so freely thrown. On May 24, 2003, my son Daniel, who was 17 years old at the time, attended a well organized camp over graduation party at a property in Tekamah. The party was hosted by a 17-year-old, a minor. He distributed advertising fliers promoting this party at Millard West High School in Omaha providing directions to the site, et cetera. He charged admission--\$5 gets you a plastic cup. The site was well prepared. A large area was freshly mowed, a huge awning was set up in case of rain, and a large fire pit was dug and filled with wood for a large bonfire. Five, repeat five kegs of beer were placed before these young people. How any responsible adult could not notice all this preparation is beyond me. One must assume that this behavior was condoned. On May 25, 2003, the day my Daniel was to attend graduation ceremonies at the Omaha Civic Center, he crashed at 7:00 a.m. on the westbound Interstate 680 just west of the Missouri River bridge. I was relieved when he rode to this party with his best friend. I told myself, at least he is not driving. It seems his best friend decided to leave the party early with someone else and handed Daniel keys for him to drive home later alone. He knew Dan had been drinking. So much for the friends don't let friends drive drunk rule. My son was ejected from an SUV as it rolled end over end six times. He was thrown 150 feet and sustained life-threatening injuries including severe head trauma, two punctured lungs, a broken

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collarbone, a separated shoulder, a torn diaphragm, a dislocated hip. He was life flighted and we received the phone call that every parent dreads. Your child has been in an accident, come to the hospital now. It is a matter of life and death. I cannot describe my feelings at this call. Words simply cannot express. Dan was on a respirator in a drug-induced coma for several weeks. His recovery has been long and hard, hip surgery, et cetera. He has sustained permanent frontal lobe damage to his brain. He will never be quite the same. He will probably never be able to live alone. He is on medications and constantly sees doctors, psychiatrists, counselors and the like. My concern is that I will not be around forever to care for him. I do not look forward to having the costs of my son's permanent care fall onto the shoulders of the state's taxpayers. Our load is overwhelming already. The lack of the dramshop social host liability law denied me the opportunity to seek civil damages and implement a plan to secure the future of my son. While we can all argue my son made the personal decision to attend this party and consume alcohol, the fact remains that if the parents that are responsible for the behavior of their minor son were held accountable and knew of the possible consequences of giving into their son's request, perhaps this party would never have taken place. Perhaps those five kegs of beer would never have been there. Perhaps my son would be whole, studying architecture as he had planned. I beg you, my state senators, to pass this bill number 592. The carnage that we experience every spring must stop. We all know teenagers do not always make the best decisions. They believe themselves to be indestructible. It is time for us as parents and responsible adults to hold those responsible for providing the alcohol to our children responsible for their actions. We must stop simply trying to blame the kids. Civil liability will act as a great deterrent hopefully keeping many of these parties from ever happening and stopping children from being put into these situations to make these wrong choices. Again, please consider passing this badly needed legislative bill which most other states have seen fit to do. Why must Nebraska lag behind in this cause? What price can we place on the life of even one of our young people? Please give LB 592 the consideration it deserves. As a parent and a concerned resident of Nebraska, I thank you for the opportunity to speak my peace.

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SENATOR AGUILAR: Thank you for sharing. Any questions for Mr. Ryan? Seeing none, thank you, Mr. Ryan.

ROBERT RYAN: Thank you.

SENATOR AGUILAR: Next proponent. I'll turn it back over to Senator Bourne.

BOB SCHMILL: Senator Bourne, members of the...fellow, or not fellow, state senators, my name is Bob Schmill and that's S-c-h-m-i-l-l, and would also like to bring a parent's perspective to LB 592. I'm going to tell Matt's story. Matt was my son. Matt was born on April 24, 1991. He weighed 2 pounds, 11 ounces. Four years later Matt was at a privilege of becoming a big brother. Matt and his sister had a unique relationship loving and caring each other deeply. He loved life; he lived every day to the fullest. I coached his roller hockey team, winning a national championship. I taught him how to play the drums, and he used those talents to form a small band with friends. Friends were an important part of Matt's life and ours. We took family vacations to Colorado hiking, biking, off-roading, fishing, camping, and enjoying being together. Matt had the ability to use his hands and draw and create. He loved taking things, excuse me...he loved taking things apart and putting things back together. These talents made him a very valuable carpenter for the company he worked for. Matt had the ability, excuse me, Matt was a son, brother, grandson, nephew, cousin, and friend to everyone he met. On April 24, 2004, at 12:30 a.m., as he walked home with his friends, he was hit and killed by an underage drunk driver. They were celebrating his birthday. He had turned 23 at midnight. The person had been driving through the Benson area of Omaha at over 60 miles an hour and hit Matt as he stood in the middle of the street. The right side of Matt's head struck the windshield and threw him 38 feet. She drove off leaving him in the street. We understood he was killed immediately. The police found her four hours later. Her blood alcohol at that time, four hours later, was .185. We learned that the 19-year-old young lady had three prior minor in possession violations and was on probation for a DUI. My point is, is that somewhere an adult had to facilitate the access of alcohol for her. Even though it could have been a restaurant, a convenience store, bar, grocery store, et cetera, or a social setting at a private

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home by an adult, many say individuals' responsibility to know that they should not drink and drive is up to them. In her case, she received that message four times, but it didn't seem to make a difference. Someone needs to help us as individuals be responsible. When you hold vendors and vendors of alcoholic beverages and social hosts that provide alcohol to minors and obviously intoxicated adults liable for that person's actions when they leave the facility or party, it will reduce the number of deaths on our highways. At this time we are slowly going through the court system. We will likely never find out where this young lady acquired her alcohol to consume. The night that Matt was in the hospital, the chaplain came to me and handed me this bag. With a tear in his eye he said, I'm sorry for your loss. This is all of your effects of your son. This is all I have of my son. I can't hug him. I can go and touch him. It's a cold marble to where I see him at the cemetery. On the night that he was taken from us, all of his dreams and that of his family and friends were taken from them also. We were blessed with 23 fantastic years. We will never forget Matt in our hearts and those of his friends. I hope that none of you will have the opportunity to be handed this bag as I was handed it and to have your child's effects, that's all that's left of him, in this bag. Don't let this happen to someone else. And we need to keep our dreams alive. I thank you for your time. Is there any questions?

SENATOR BOURNE: Thank you. Are there questions for Mr. Schmill? Seeing none, thank you. Next testifier in support. We're still on support.

JOHN LINDSAY: Senator Bourne, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys in support of this bill. You've heard me testify here on behalf of NATA in the past against immunities from liability because of the policy that NATA supports of holding individuals accountable for their actions. We see this bill as an extension or continuation of that principle. That is that people who know they will be held accountable for their actions are more likely to be careful to exercise due care when taking those actions. You heard Ms. Riibe mention accountability. You heard Mr. Ryan mention deterrence. That I think is the goal of this bill and is the goal of what we think is good public policy of holding licensees

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responsible when they, through their actions, contribute to the death or injury of another person. Sometimes dramshop liability is confused with holding a licensee liable for someone else's actions. That is not what this bill does. It's not holding a licensee responsible for the actions of a drunk driver. It is holding a licensee responsible for, as Senator Kruse mentioned, serving alcohol to someone who is visibly intoxicated. As dramshop laws goes, this one is pretty clear. It sets a pretty good map for what a licensee has to do, and that is basically comply with the law. And that is to not serve someone who is visibly intoxicated. It doesn't require that they administer breath tests. It doesn't require that they go to any extraordinary measures other than to view that person as a reasonable person in their shoes would do. We are in support of the bill, would ask that you advance it. For the record, we have expressed to Senator Kruse's office a concern with Section 8 of the bill, and he's indicated...his office has indicated a willingness to work on that section. But we do support the bill and I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Lindsay? Seeing none, thank you. Next testifier in support.

JOHNNIE McCANN: (Exhibits 34, 35, 36) My name is Johnnie McCann, that's J-o-h-n-n-i-e McCann, M-c-C-a-n-n. Chairman and members of the Judiciary Committee, I'm here today because I'm impacted by an alcohol-related crash while on vacation with my family in Tucson, Arizona. While we were stopped at a four-way stop sign, we were hit by a drunk driver that caused a chain reaction involving all five cars. At a time later, I found out that the driver that impacted our lives forever was well-known as the martini lady. This was a name that was attributed to her by 12 employees who worked for one of the largest family restaurants in the world. Three to four days a week over approximately four years period this individual was at the restaurant for anywhere about 90 minutes over the lunch hour about each day where she would routinely consume at least two to four martinis consisting of two shots of gin each. This would easily represent four to eight drinks in a 90-minute time frame. Any reasonable person, including servers, should know that by counting drinks this person's BAC was well over the legal limit. This crash has so dramatically changed my

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life that I have to convey to you that I feel as though I'm still trapped in a time warp dated May 23, 2001. The first year of recovery for me, I was in a state where the actual events that transpired did not always register since I was in and out of the hospital with five surgeries the first year, a total of seven and was consistently trying to learn how to walk again after each operation. This does not even address the pain and suffering that my family, my wife, children, and my brother experience. My brother and I shared a special relationship. We were world-class athletes and together we played a variety of racquetball sports, wrestling and biking. I am no longer able to play any of these sports. This has changed our relationship dramatically. I can't coach my 7-year-old son wrestling. I can't run with my 9-year-old daughter. I'm here to tell you that if this crash had happened in Nebraska I would not have been afforded the same opportunity that I received in the state of Arizona. The main intent for my civil case in the state of Arizona is not mandatory, rather to bring attention to the fact that the large establishment should be trained and certified at counting drinks. Again, I want to restate the individual hit four cars, had .24 alcohol level five hours after the impact. Through the proposed legislation, a person in Nebraska could find an establishment liable for overservice. Currently, this is not the case. As a Nebraskan, I feel every citizen of our state should have the same opportunity that I was afforded in Arizona. This is why I am asking you as a committee for your utmost consideration in sending this to the floor for full debate. Any questions?

SENATOR BOURNE: Thank you. Are there questions for Mr. McCann? Seeing none, thank you.

JOHNNIE McCANN: Thank you

SENATOR BOURNE: Next testifier in support.

ROMA SMITH: (Exhibit 37) Chairman Bourne and members of the committee, my name is Roma, R-o-m-a, Smith, S-m-i-t-h, and I live in Wahoo, Nebraska. My husband Ken and I were married for 31 years. My husband was a farmer and took an extra job with the city of Lincoln to supplement our farming income. On the evening of May 15, 2001, my husband was struck and killed while working on O Street for the city of Lincoln.

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Heath, our only child, was to graduate from Wesleyan. But instead on May 19 he attended his father's funeral, forever changing the path of his life. I have multiple sclerosis and I had always counted on Kenny to be there to assist me through our life together. However, due to the actions of Robert E. Lee I could no longer count on that commitment. Mr. Lee chose to drive drunk on a suspended license, forever altering the dynamics of our family. Not only was he drunk, but his BAC was .252, three times the legal limit. Mr. Lee left a lounge in east Lincoln where he had been consuming alcohol. With a blood alcohol content of .252, he proceeded down O Street at an excessive speed, ultimately crushing Kenny to death minutes after leaving that east Lincoln lounge. With this legislation, our family would have had some recourse to seek actual damages from the serving establishment. This bill would make a level playing field for victims of alcohol-related crashes. Currently, 41 other states offer some sort of dramshop law. Nebraska offers none. As a member of MADD, I would ask that this committee send this bill to the floor of the Legislature for full debate. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Smith? Seeing none, thank you. Thanks for your testimony.

ROMA SMITH: Thank you.

SENATOR BOURNE: Next testifier in support.

KEITH BECKER: (Exhibit 43) Good afternoon. My name is Keith G. Becker, B-e-c-k-e-r. I'll stand before you here in the next few minutes to attempt to express how my family's life has been devastatingly changed and the emptiness that has ripped our hearts. I really don't believe that you'll ever truly be able to understand and imagine the devastating feelings that have gripped my family, that have ripped apart our home, that have taken the life of an innocent person. I don't believe that I can stand up here and seriously express the pain and suffering at this point. On February 6, just about two weeks ago, I received a call that ultimately stopped my heart. Believing it was not true, I rushed to my parents' house only to find a line of sheriff's cars and vehicles in my parents' driveway. When I walked into that house that I've come to live in about 18 years, I

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encountered the most devastating and most unbelievable life-changing event that I've ever heard. It was the sound of a grown man on his knees screaming and begging, crying, devastated for what he had just heard and begging for these sheriffs to tell him that what he had just heard was just a dream. As these numerous sheriffs offered comfort to my mom and my dad, I watched tears roll down my father's eyes, fall to the ground, and just tear apart our home. Todd was a high school senior, a student that had his sights on college and getting away from mom and dad, no doubt. And Todd was a person that had an absolutely great gift for athletics and a drive that was unstoppable. Todd was a part of the high school, Todd was a part of the Kearney community, and Todd was a part of this state. For two years he was a starter on the football team and just this year he was awarded the all state conference football team. He was a starting center fielder on the Legion baseball team, no doubt looking forward to the upcoming summer's baseball games under the lights. And for the past three years, Todd has played a major role in assisting his school win their ninth, tenth, and eleventh consecutive state track titles. And there's arguably Todd is most likely the best pole vaulter in the state of Nebraska as last year he placed fourth in the state pole vaulting event as a junior. And day after day Todd would receive scholarship offers from one college or another. He was being recruited by many athletic coaches. Todd had a future that was certainly bright. He was an exceptional athlete and exceptional student and an exceptional person. But of all the hundreds of awards, medals and trophies and scholarships for his athletic abilities, nothing compared to the great person that he was to his parents. The heart-touching words of his friend that left a note on his grave described Todd quite well. Todd truly had the most positive outlook on life of anyone I've ever known. He was so happy and lived his life so fearlessly. He was so insightful and he understood the importance of living his life how he wanted and to the fullest every day. The note went on to conclude, my life will be forever positively impacted by Todd. Todd's legacy off the field has truly impacted thousands of people, but the true legacy of Todd will be where we go from here. And the true legacy of Todd will be if we accept the challenge that God has put in our lives to put a stop to this deadly trend. And though the complete details of the night my little brother was taken are not set in stone, we do know

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that alcohol was involved. There appears to be a number of parties that night where minors were drinking. The teenage driver of the vehicle in which my brother was a passenger was speeding recklessly out of control, weaving in and out of parked cars, and had a blood alcohol level of .21. Investigations at this point indicate that the speeds of the vehicle reached up to 75 miles per hour in a residential zone of only 25. Todd was the only occupant of three that had his seat belt on and was in the backseat. Both the driver and the front seat passenger walked away with minor injuries, and now the driver has been faced with the charge of felony motor vehicle homicide and is currently out on bail. But by now, this situation to you all is certainly something that you've all heard. We just had a few come ahead of us and describe a lot of the same situations. Time and time again we hear these incidents and time and time again we tell ourselves, man, this is terrible. Wow, this should never happen. Gosh, we got to do something about this. And I want to ask you, can you imagine losing your son? Can you imagine losing your daughter? Can you imagine losing your one and only? The fact of the matter is that the night Todd died came in three consecutive stages. The first stage began with the availability of alcohol. And Todd himself purchased the alcohol at a retail outlet in Kearney without presenting any ID whatsoever to the store clerk, none at all. He and his friend then traveled to multiple parties where minors were present, as himself, and after consuming the alcohol and becoming intoxicated, stage two began. Stage two, the young man chose to drive while intoxicated and ultimately chose to drive recklessly, out of control and struck a parked car. The final stage of this incident and the end result to that night is my brother Todd is dead. The front seat passenger lost his best friend, and the driver will suffer legal consequences. Most likely those legal consequences will be jail time. The judiciary process is handling the third stage, the legal consequences of the driver, and basically handling only the end result. We cannot examine at all the severity of the third stage and overlook the magnificence and importance that the first stage of this problem had on the end result. So I come to you today with one true purpose. We can day after day mow these weeds. But quickly and for certain these same weeds will grow back time and time again and thicker. No doubt the same weeds we mowed yesterday will be back tomorrow. It is not until we take the initiative to pull these weeds from

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the roots to get down on our knees and eliminate the source. The judicial process upon this problem of underage drinking and driving while intoxicated is simply mowing the weeds. It is the easiest and quickest action that yields little results. It is time for us to take action and find these roots. That is what this alcohol liquor liability act does. It discourages stages two and three from ever taking place. The roots of this problem are found in stage one and not simply stage two or three. The individuals, retailers, or bars that supply this alcohol to minors or knowingly supply more and more suicide to their intoxicated victims now, more than ever, must be held accountable for their role in this devastating problem. Life and morality cannot be determined in terms of economic and monetary gains. These retailers, bars, and suppliers must put aside their perceived role as a business and abide by strict law that demand harsh and severe punishment that reflect their true and unlawful role in these circumstances. To prevent any problem, no matter what the source or what the nature may be, we must take action from the beginning. Because as my family has unfortunately come to understand, by the end it's too little too late. So today after your work is through, you'll probably come home to your heartwarming children, to your loving wife, to the miracles that God has put in front of you. You'll come home to everything that you have come to expect and everything that makes life worth living. But understand today my mother will come home. She'll come home to an empty house. She'll come home to an empty chair. My father will come home only to see pictures. He'll come home to only see memories, have no one to talk to about the baseball today and the politics. He'll have no one to chat about who he's mad at, and all because someone let stage one begin. Someone began the first stage of this problem. So imagine living day to day knowing you're going to come home to that emptiness and knowing that you're going to come home to that miracle that has slipped away. So today, Senators, I ask you and I beg it is time to put on our working clothes. It's time to put on our leather gloves. It's time to get our knees dirty and start pulling some weeds. It is now time to take this problem from a different approach and an approach that starts from the beginning and prevents stage one from beginning at all. Without stage one, I'll remind you, there could not be a stage three. I urge you all, Senators, to consider this. If you knew that this bill could someday eliminate the stage that began the death of

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your wife, or that began the death of your precious child, but you chose today not to step up to the plate and take God's challenge, how will you feel knowing that you could have saved your child's life, that you could have saved your wife's life? But instead you overlooked this bill and chose to stay on the mower. Senators, this bill is a lifesaver. And I beg for your true heart in considering the pain and suffering that this bill can someday prevent. My family and I thank you so much for your time and attention.

SENATOR BOURNE: Thank you. Are there questions for Mr. Becker? Seeing none, thank you, appreciate your testimony. Further testimony in support? Other testifiers in support of this measure? We're going to move to opposition testimony. Would the opponents move forward to the on-deck area and please sign in.

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, M-o-y-l-a-n, attorney from Omaha representing the Nebraska Licensed Beverage Association. First, I think our organization, I think anybody has compassion for anybody who has lost a person or had injuries as a result of any type of an accident and especially if there's alcoholic, you know, liquor involved. Number two, I compliment and have Senator Kruse many times on the bills that he has introduced to curtail drinking by minors, curtail drunk driving and the like. I admire his approach to it, and I have testified on a lot of his bills, but today we part on this particular bill. As you know, there was never a common law of dramshop years ago. In this country, it's all statutory enactments, commonly called third-party actions. There's an element missing in these type of actions and this legislation. It's personal responsibility, the responsibility of the individual for his own actions. These bills shift the responsibility from the person who caused the damage or accident to a third party who probably did not do anything wrong, similar to the two-party actions that we have nowadays against particularly fast food companies by people who claim the fast food company made them obese. Well, another example of personal responsibility, they didn't have to eat at those places all the time. They could push themselves away from the table. It's a matter of personal responsibility. And those are the ones that should be responsible for the many cases we have here before. It's really antitort reform and we see tort reform as kind of

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gaining speed in this country now. A little bit about the bill, the broad definition of retailers and retailers includes all type of retail license issued by the Liquor Control Commission which not only bars and establishments but airplanes, boats, railroads, and special designated licenses which many, many organizations get during the course of the year for their festivals or carnivals or whatever activity they're having in their communities. Intoxication is defined as impairment because of liquor or drugs. Now we don't like to be associated with illegal drugs. We're a legal product. Does it include prescription drugs? Now I can see actions against pharmacists for prescribing drugs to individuals and they happen to cause an accident on account of maybe taking too many or not taking enough. But the pharmacists would be in the same position. It would be a third-party action against the pharmacist because you overprescribed or made a mistake giving a drug to an individual. I think that one is going to have to be looked at too. Social hosts are exempt. Probably of all people, and I think previous testimony pretty well indicated that, if there's anybody that ought to be responsible, it ought to be social hosts, there there ought to be, you know, liability again sometime. Number one, social hosts have not generally had the experience of serving alcoholic beverages. Generally if it's a home party, they're overpouring on drinks and not able to converse with everybody to see if anybody...they just don't have the experience that an ordinary retailer has. A retailer has the experience...excuse me, the light is on.

SENATOR BOURNE: Just if you'd like to conclude your thought, Jim, that'd be...or Mr. Moylan, that'd be great.

JIM MOYLAN: Yeah, I just a couple of words...

SENATOR BOURNE: You can tell he's been in front of the committee before.

JIM MOYLAN: All the retailers in this state are, you know, capable people. They're conscientious, they're hard-working, they don't like intoxicated people and they're minors in their establishment. If there's any questions, I'd be happy to try to answer.

SENATOR BOURNE: Thank you. Are there questions for

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Mr. Moylan? Senator Foley.

SENATOR FOLEY: Mr. Moylan, when Senator Kruse introduced the bill, I asked him what about the organization that just gets a liquor license for a one-day event and had maybe some volunteers serving drinks and so forth? And he indicated that that was clearly outside of what he was trying to accomplish with the bill. Would that be your reading?

JAMES MOYLAN: Well, if you look at the definition of retailer, it includes any license issued by the Nebraska Liquor Control Commission. And a special designated license is one of those licenses. So I would say any organization that did get a license issued by the commission would be included under the bill. Now they might have a different interpretation, but that's the way it looks like to me.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Further questions for Mr. Moylan? Seeing none, thank you. Next testifier in opposition.

JOE KOHOUT: Chairman Bourne, members of the committee, my name is Joe Kohout, K-o-h-o-u-t, appearing today on behalf of the Nebraska, or excuse me, the Responsible Beverage Operators of Nebraska. Obviously Mr. Moylan touched on the broad strokes of why groups like ours would be opposed to dramshop legislation. But I would like to take an opportunity to visit with you just about some concerns we have about drafting and about areas of the bill that don't seem clear to us. First of all, we applaud any effort. Our organization prides itself on its responsibility and many of our members do engage in training of its bartenders to identify, to comply with rules and regulations of the Liquor Control Commission on identifying intoxication, et cetera. A couple of the suggestions we would have is that one of the issues, major issues in the bill is noticeable intoxication. We don't...as we read the bill, there is no definition of noticeable intoxication. At what point or what factor should we take into consideration when an individual is noticeably intoxicated? The second is that with regards to, and this is in Section 7(2)(a) where it discusses active encouragement by a bartender, we would note that it never defines what active encouragement by a bartender to consume alcohol or a substantial amount of alcohol is. Conceivably

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under this the way the section is drafted, it could be as simple as asking a bartender, do you have any drink specials tonight. We just would like some clarification on those sorts of issues. And then we would also note that in the last section of the bill there's a considerable amount of responsibilities granted to the Liquor Control Commission. Among them are issues such as identifying every case that's been filed in the state of Nebraska in every court would have to be disclosed by the or would have to be disclosed by the Liquor Control Commission to the Legislature. Obviously, that's going to take a lot of effort and we would just note that more for the committee's interest. And I guess with that, Mr. Chairman, I would conclude my testimony.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kohout? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Kohout, thank you for your testimony and I will be brief. What is the minimum wage for a food and beverage service worker in this state?

JOE KOHOUT: I believe it's around \$2, \$2.25 an hour, but I don't know that 100 percent, but I'd be happy to get back to you on that.

SENATOR FLOOD: If this bill were enacted, would it be conceivable that food and beverage workers earning \$2.25 an hour would be required or it would be in their best interest to obtain professional liability insurance?

JOE KOHOUT: Well, the bill really strikes a retailer so a retailer in the sense of a licensee...professional liability insurance, I'd be cautious to answer that. But definitely there would be...I mean the bill mandates that the retailer itself would have to acquire minimum coverage. So in that sense the licensee would be the covered body.

SENATOR FLOOD: So in your interpretation of the bill, an individual employee could not be individually sued. It's only a retailer.

JOE KOHOUT: Right, and I think that's a fair interpretation.

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SENATOR FLOOD: Thank you.

SENATOR BOURNE: Any other questions for Mr. Kohout? Seeing none, thank you.

JOE KOHOUT: Thanks.

SENATOR BOURNE: Next testifier in opposition.

TIM KEIGHER: Good afternoon, Chairman Bourne and members of the committee. My name is Tim Keigher, it's K-e-i-g-h-e-r. I appear before you today in opposition to this bill on behalf of the Nebraska Petroleum Marketers and Convenience Stores Association. Knowing that it's been a long day and those ahead of me have made most of the points, I guess the only thing I reflect on is that it seems that those who serve alcoholic beverages for on-premise consumption seem to be the target as well as social liability. And also it was mentioned that the main purpose is training. I guess our members do a lot of training of serving of alcoholic beverages or any product that is specific to age such as tobacco. We use a program that the National Association of Convenience Stores put together called "Techniques of Alcohol Management." Many of my members reward those employees who pass compliance checks, either with \$50 or \$100 to encourage them to, you know, check IDs and that. And we also terminate employees upon their first violation of that. So I guess, you know, we're trying to do our part. You know, there's enough sales of alcoholic beverage to legal people who are not intoxicated that we're not out trying to make those sales to people who should not be buying these beverages. And with that, I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions? Senator Aguilar.

SENATOR AGUILAR: Tim, does that same training include the sale of pseudoephedrine products?

TIM KEIGHER: No, it does not currently.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in opposition.

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KATHY SIEFKEN: Senator Bourne and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n. I'm here representing members of the Nebraska Grocery Industry Association and I would like to go on record as being in opposition to LB 592. Most all of the things that people have said in prior testimony, especially Tim, is just a reflection of what I would say. I just want to make sure that we're on record as being opposed. We also train our people. And, Senator Aguilar, training for pseudoephedrine sales will be part of that training process as we move forward. So if you have any questions.

SENATOR BOURNE: Questions for Ms. Siefken? Seeing none, thank you.

KATHY SIEFKEN: Thank you.

SENATOR BOURNE: Next testifier in opposition.

ALICE LICHT: Good afternoon, Senator Bourne and committee members. My name is Alice Licht, that's A-l-i-c-e L-i-c-h-t, representing the Nebraska Hotel and Motel Association, and we too are on record in opposition to the legislation. We believe that through our hotels and motels we have tried to implement training programs for our people. There are several situations that have happened that have been brought up today that, of course, it would make us all feel very bad. And as an industry, we try and work to stop those things from happening. So if perhaps a training program and other things like that can work would be more liveable as far as we are concerned. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Licht? Seeing none, thank you. Next testifier in opposition.

JIM OTTO: (Exhibit 40) Senator Bourne, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and also the Nebraska Restaurant Association, and I'm testifying in opposition to LB 592 on behalf of both organizations. Having said that in opposition to LB 592 for the reasons that you've already heard from other people that have testified, what I'm passing out there is just a little table of contents of about a 100-page training program that the

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Restaurant Association actually has and would be glad to promote more. I guess what I heard Senator Kruse say as one of his main objectives was to get more people trained, in fact, to get every server trained if possible. I would...I think there's a way for us to craft something other than this bill that would really provide an incentive to getting every server trained, and that would be something that we would truly support. So while we are not in support of this bill, we are in support of the goal. And if that is to get every server trained, then we'd in the future like to work with Senator Kruse on that. With that, I will be quiet.

SENATOR BOURNE: Thank you. Questions for Mr. Otto?
Senator Flood.

SENATOR FLOOD: Mr. Otto, thank you for your testimony. Mr. Kohout and I had a discussion regarding the meaning of a retailer, and his interpretation and mine differ in some regard. On page 2, line 26, subparagraph (3) in Section...subparagraph (7) in Section 3, the bill defines a retailer. "Retailer means a licensee, any agent or employee of the licensee" and goes on to identify a few others. My concern is that in Section 6 on page 3, line 26, (1) it says "A retailer is negligent if the retailer serves alcoholic liquor" and doesn't go in to specify that we're talking about the licensee or the corporation that owns the license or whoever it may be, the individual partners of a limited liability company. Are we subjecting, in your opinion, servers that make \$2.25 an hour to liability under this, not as agents of their employer, but as individuals to lawsuits and...?

JIM OTTO: Senator, I'm not an attorney so I'm not really qualified to answer a question of law. It appears that way to me I would say. I do have to say when we say 2-something an hour to be fair it's plus tips and they're probably, well, depending on where it is, it could be a significant wage. But still to subject someone like that to the liability is a concern. As a matter of practicality, I tend to think people go after deep pockets, and usually that person would not have a deep pocket.

SENATOR FLOOD: True. Thank you.

SENATOR BOURNE: Further questions for Mr. Otto? Seeing

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none, thank you.

JIM OTTO: Thank you.

SENATOR BOURNE: Next testifier in opposition.

DOROTHY BOCKOVEN: Senators, couldn't do what you folks do. I would be sound asleep by now. My name is Dorothy Bockoven, last name is spelled B-o-c-k-o-v-e-n, and I represent Gas & Shop, Incorporated. I'm their general counsel. Before I start my remarks, I just want to say, Senator Chambers, I'm glad to see that you came back into the hearing room. I don't know if you remember me from ten years ago, but Senator Chambers is very sincere when he says that he defends people who probably need it the most. And although you may have forgotten, I never will and I will always be grateful for your support.

SENATOR BOURNE: This is counting against your time I must tell you.

DOROTHY BOCKOVEN: I know it, I know it. (Laughter) I appreciate that. When Senator Kruse made his remarks earlier, I got the impression, as have several others of my colleagues here, that his known issues were the bartenders, servers, on-sale, and also for training, for better ways to get our people trained. As you know, Gas & Shop is a chain of convenience stores. We have 72 of them and we spend a lot of time and effort training our people in sales to intoxicated people and in keeping alcohol out of the hands of minors. It seems to me that if those were his intentions, they could probably be better structured than in this bill. Like someone else has said, I do believe people have a tendency to look towards the deep pockets. And certainly the insurance requirements of this bill would leave us fair game for lawsuits, credible or not, because they know we have insurance coverage that would cover this type of liability. The other thing I wanted to point out is that as a retailer in front of the Liquor Commission if ever we get cited for a sale to an intoxicated person, they have the regulations all spelled out in what a visibly intoxicated person means to someone like our convenience store clerks and that they have to have the red eyes, strong smell of alcohol, stumbling, fumbling with their money, you know, all the signs of visibly intoxicated. However, when

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they leave our establishment, if a police officer is outside, sees him fall down in the parking lot, although he did not do so while he was in our convenience store, and he's just purchased alcohol, and if he's over the .08, he is legally intoxicated and we receive the citation. Now it is our burden to prove that while he was in our store he showed signs of visible intoxication. My main concern with this legislation is if indeed we were to get sued for this dramshop liability, many times, you know, statute of limitations on it would be two years. There's no way that we're going to be able to save video cameras, security cameras for up to two years to be able to prove what a person was on July 3, 1999, and what he appeared to be while he was in our store purchasing alcohol at that time. The practicalities of this are so immense and so incredible that it staggers my memory. But the other thing that I wanted to point out is that a couple of times when we have gotten cited for sales to intoxicated, indeed the person was legally intoxicated. But we were able to go into the Liquor Commission, show the security tape, and show how someone acted while he was in our presence. Even an alcoholic, severe alcoholic can be fine when he needs to be. And with the short amount of time they're in our establishments, we don't see what they did before they got there nor do we see what they did afterwards. I'm done.

SENATOR BOURNE: Thank you. Are there questions? Seeing none, thank you. Next testifier in opposition. Are there any neutral testifiers?

DARWIN BARKER: (Exhibit 41) Mr. Chairman, members of this committee, my name is Darwin Barker, B-a-r-k-e-r. I'm an insurance agent, have been for the last 17 years. I'm here on a neutral side of this today to look at both sides of this bill that's coming before us. Today as a legal responsibility in the insurance industry it's our responsibility to protect our people that we have insured, whether it be personal lines or commercial lines. Some additional information that came about here awhile back was that this was going to put an undue financial burden on the establishment as far as the cost of this liability coverage. Nebraska is one of the few states that does not have this. Farmers Insurance is one of 29 states that we currently do business in. Most of those states do have dramshop liability and we do produce that and have that available for

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them. As you can see on the sheet here that liquor liability is based on the amount of liquor sales of your establishment, whether you be a restaurant or a sports bar or a full-blown bar. In most situations, the preferred business is someone who does approximately 25 to 35 percent of liquor sales. The rest could be in food sales. In that situation, that's a very good rate. As you can see there, for a million dollar liability you're looking at about \$2.51/1,000. That amounts to about six-tenths of a cent on a \$2.50 drink. So the cost of liability is negligible in that situation. As you grow in sales and so forth, if you get up around the 50 percent mark or more, then you become a bar. In that situation, the rate does increase because the exposure is there as well. In the third example I have there and the highest exposure you're looking at \$22.46/1,000. That's about 5.5 cents on a \$2.50 drink. So the legal liability is there for the establishment to take care of whatever liability they may have. It's up to the insurance company, if we have that establishment insured, to protect them and to represent them. And they have to prove that our establishment was negligent. I mean it just doesn't happen overnight. I mean they just can't say, well, he was in a bar so you are negligent. That is not the case. So you have to be diligent about what you do and how you do business. I'm sure as you talk to most business today they have liability to cover just about everything. And this is just another extension of the liability of doing business today. And I think in most situations I think most establishments it's not going to do an undue burden on their establishments. And if you have any questions, I'd be glad to take them.

SENATOR BOURNE: Thank you. Are there questions for Mr. Barker? Seeing none, thank you.

DARWIN BARKER: Thank you.

SENATOR BOURNE: Other testifiers in a neutral capacity?
Senator Kruse, to close.

SENATOR KRUSE: Thank you, Senator Bourne and committee. Respond to some of these things in as quick fashion as I can. First, the liability goes to those who have broken the law. If they haven't broken the law, there is no liability and that law is already spelled out. And visibly

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intoxicated is already spelled out in present legislation as one of the witnesses indicated. The person stepping outside the bar, as was indicated, and then being arrested and suddenly showing evidence would not be visibly intoxicated in the bar to other witnesses, which would be necessary. The burden of proof is on the plaintiff, not on the bar owner. The plaintiff has to show and get witnesses to show that the person was visibly intoxicated. Senator Foley, I need to correct what I said before. I didn't hear the word license. You said it, but I was thinking of a social host for adults, you know, one-day stand--a Lion's Club is serving alcohol at their party and so on. That is excluded and so on. But if they have a license, if they get a license, then they are covered by that. And that same point would apply to your questions, Senator Flood. The bill applies only to those with a license and a server would not have a license as we see it. If there's ways in which that needs to be corrected, appreciate it. I very much appreciated the testimony of several, especially of the opponents to the value of training. Part of our intention, and that's in the report section at the end, is that the Liquor Control Commission will set up more training. There is training now on the web or other sources. This would apply to a situation like Whiteclay where licensed person, if they serve...if they hand a six-pack to somebody who is already intoxicated so it does apply to a troublesome place that we have there. Now the final thing would be the fiscal note. First, we really do not want to hassle any dealers and retailers. And I would respectfully suggest, leave it up to the committee, Mr. Chairman, that you delete Sections 14 and 15 which have the insurance part of it there. That is not necessary to the bill. It has been done in other states. There would be certain value to it, but if that's a hassle to anybody, that can be deleted. And in deleting that, that deletes \$17,000 of the fiscal note which is to kind of monitor that part of it. The rest of the fiscal note I would quarrel with, and it's related to Section 17. And you'll note in the fiscal note it says ongoing costs. Well, Section 17, line 9, page 9 we think is clear that is one report within two years. And we think that would be helpful. We don't...we see absolutely no need to hire additional staff. Most of that information is already available. DMV carries a lot of it, but it would be helpful to kind of know what's happening and what's happening in server training and that's where we're kind of

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putting a little highlight under that. But I don't see the fiscal note applying really at all here. And if it is, certainly we are open to taking that out because this is time when we need that.

SENATOR BOURNE: Thank you. Questions for Senator Kruse? Seeing none, thank you.

SENATOR KRUSE: Thanks to all of you.

SENATOR BOURNE: That will conclude the hearing on LB 592 and will conclude the hearings for today. (See also Exhibit 32) Thank you.