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Judiciary Committee
January 31, 2008

[LB787 LB847 LB901 LB952 LB1024]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 31, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB952, LB1024, LB787, LB847, and LB901. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: We have a little schedule change. The Governor, who's an important guy around here (laughter) once in awhile, we don't always do what he says, but he's...this time we will. He's asked that Senator Lathrop's bill be first, and I think it has to do primarily with the State Patrol, needing to go to a graduation. Is that what we've got? Okay. Well, that's a worthy cause. So welcome everyone. I'm sorry we're a little late. Senator Lathrop, would you like to introduce your bill first? Go ahead.

SENATOR LATHROP: (Exhibit 1) Good afternoon, Chairman Ashford and fellow members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 and I'm here today to introduce LB952. LB952 is in response to a June 12, 2007, Attorney General Opinion, the subject matter of which was the authority of the State Patrol to issue an administrative subpoena to secure electronic information, not the content but the electronic information in criminal investigations. The opinion was up-front in that it said they would not, that is the Attorney General, would not address the constitutionality of the process that they were called upon to review. In my judgment, the opinion has resulted in essentially a blessing of an improper practice for a variety of reasons, which are addressed by LB952. First, the process of the State Patrol issuing administrative subpoenas is problematic in that the statute relied upon as the authority for issuing an administrative subpoena does not authorize such a process. The Attorney General's Opinion relies upon 81-119 as the authority for the proposition that agencies in the executive branch are permitted to issue administrative subpoenas. If you review 81-119, it allows an...you'll see that it allows an agency to summon people, not to issue ex parte subpoenas. So the statement in the AG's Opinion that, in essence...and it said in the opinion, in essence, 81-119 allows the departments created by 81-101 to issue what would amount to subpoenas duces tecum to compel testimony and the production of documents. That is simply not true. It also...that statement also provides the foundation for the rest of the opinion, resulting in an opinion which allows for a process which ignores the constitutional safeguards. Which brings me to the second problem with the Attorney General's Opinion. Again, while the AG acknowledged it was not addressing the constitutionality of the process, they have essentially blessed a process which, in my judgment, is unconstitutional. It is unconstitutional because the opinion says, in essence, that the State Patrol can issue an administrative subpoena, and I should tell you what I understand of an administrative subpoena is that they...an agency would send out an order, it's notarized, it looks official, they send it to the cable

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company, they send it to the phone company and it says, give us records on Senator Ashford. You are not notified. The object of the subpoena is not notified that it's been issued. There's no requirement that they have probable cause, even a suspicion in the process that is the subject matter of this Attorney General's Opinion, which is what is problematic constitutionally and just practically. The process would allow and the opinion would allow the State Patrol to secure copies of your phone records. And your phone records and mine have the people you've called and the numbers you've taken calls from. The difficulty is that we have a process in place for pen registers, which is a device that will keep track of who you call and who calls you, and we have a process in the law for securing court orders for those. They require a court order, but if you send out these administrative subpoenas to get someone's phone records you'll get the same information and circumvent the protections found in the Electronic Telecommunications Interception Act. I'm paraphrasing the name of that act. It's very long, but it's the act that controls the interception of electronic communications. So what LB952 does is it clarifies what administrative agencies can do to secure the testimony of witnesses and to secure documents, and that is, instead of simply sending out a subpoena to a business in this state to secure information relative to its citizens, the administrative process is limited to agencies calling before it, summoning before them for a hearing, individuals who are required to bring with them materials instead of using this as a means to secure or to essentially send a subpoena out. It also addresses the fact that administrative subpoenas shall be used for the processes of running the agencies and not for criminal investigations, which I think is the substance and perhaps the most important part of LB952. And the last thing it does is it removes any reference to administrative subpoenas found in the Electronic Surveillance Act because we truly don't have an administrative subpoena process in the state and the reference to it only suggests that we do, and its removal clarifies the fact that we have no such process. And with that, I'd be happy to answer any questions. [LB952]

SENATOR ASHFORD: Thank you, Senator Lathrop. Any questions of Senator Lathrop? Great. Thank you. Before we go any further, I'd like to introduce my colleagues who are here: Senator Pedersen from Elkhorn is here, Senator Pedersen from Elkhorn; Senator Amanda McGill from Lincoln; Senator Ernie Chambers from Omaha; Senator Vickie McDonald from Saint Paul; Senator Pirsch from Omaha; and of course, Senator Schimek from Lincoln; Jono Bradford is the...Jonathan Bradford is the legal...clerk of the committee; and Stacey Trout is legal counsel. Senator Karpisek, you're going to go next, but we're going to have the witnesses on LB952. How many witnesses do we have here for LB952? Okay. Proponents? [LB952]

JAMES MOWBRAY: Senator Ashford, members of the committee, my name is Jim Mowbray. I'm here in my individual capacity as an attorney and a member of the Nebraska State Bar Association, and I am testifying in that capacity as a proponent for LB952 for the Nebraska State Bar Association. Very briefly, a little history about 81-119: That statute was created in 1929, well before telephones, well before Internets, well

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before cell phones. And the purpose was simply that, as I think Senator Lathrop has pointed out, to obtain for the Banking Department, other members of the executive branch, to obtain documents to help them make sure that the...as a regulatory agency, the people they're regulating are doing their jobs. In 19, I believe it was, '96, the State Patrol was added to 81-, I believe, 101, which is...defines the departments that are underneath the Governor's Office, or a part of the executive branch, and the State Patrol was put in there. And by doing that I don't think anyone intended that they would also have the same administrative subpoena power that that of the other agencies that were created back when our constitution was revised in the 1920s. So that's a little history. The bottom line is, is basically the State Patrol through this is being authorized to do what they can't do without a court order, as set forth in the communication act that prohibits a subscriber or provider of electronic communication service to provide the subscriber's name or information regarding that subscriber without a court order. And, in other words, they need probable cause to believe a crime was committed, about to be committed or has been committed to obtain these warrants. Through the administrative subpoena process they don't have to have any probable cause, any suspicion. They can simply go fishing through people's Internet providers' records to see what, if anything, this individual is doing. And so it's circumventing the statute that was passed when electronic communication became something that obviously criminal individuals were using to commit crimes, and that's why the electronic communication act was passed, to take care of that problem, but also to ensure the constitutional rights of the citizens of this state are upheld, and that is that their private information is protected unless and until probable cause is established to issue a warrant to look at that information. The subpoena power through 81-119 does not require any of that. It doesn't require any oversight by any court, doesn't require any oversight by any prosecutor or the Attorney General's Office. It simply gives the Nebraska State Patrol carte blanche to look at whatever information they want to look at on any individual, whether they have a reason to believe they have, will or may commit a crime. And so the Nebraska State Bar Association supports the changes that Senator Lathrop has put in LB952, and I would be happy to answer any questions regarding that. [LB952]

SENATOR ASHFORD: Senator Pirsch. [LB952]

SENATOR PIRSCH: Just a point of clarification, I appreciate your testimony here. Is it your position that the actions in using these administrative subpoenas, that that is actually unlawful, unconstitutional? Or is it perhaps constitutional but just a bad policy for the state and that we should, therefore, outlaw them, outlaw such acts? [LB952]

JAMES MOWBRAY: I think it is unconstitutional in that it doesn't have any...there's nothing that requires the department, i.e., the State Patrol, from having any probable cause to believe any crime was committed, and absolutely no oversight by any court, which would violate an individual's right against search and seizure without a court order. And so I think it's unconstitutional for that reason. It also violates the

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communication statute which requires those things. So not only do I think it violates the constitution, I think it violates the statutes that were passed for the purpose of protecting an individual's private communication records unless and until someone can show probable cause a crime was committed or might be committed. [LB952]

SENATOR PIRSCH: Yeah. Would there exist a remedy now under such unconstitutional acts then such that should anyone be convicted in part by using evidence that was derived as part of this, I guess the evidence that was derived through this, which would that be...wouldn't that be considered fruit of the poisonous tree and be suppressed or, if a conviction was held, wouldn't that be something...grounds for overturning such conviction? [LB952]

JAMES MOWBRAY: I don't think so, because under the subpoena, all they have to do is follow whatever the statute says and simply that is that they can simply submit a subpoena. And if a person responds and sends in that information which is later then used in a criminal prosecution, I don't see how anybody can say that the State Patrol violated a statute. You can again try to argue the constitutionality. That's different than if they go to a court and ask for an order; they, for example, maybe exaggerate or put false information in an affidavit that supports that order. Then an individual could come in and say, hey, they violated my rights, they put in improper information, and then possibly that evidence can be suppressed. But I don't think that you can suppress the information that they're obtaining through the subpoena power as long as they follow what the statute says. [LB952]

SENATOR PIRSCH: Okay. [LB952]

SENATOR ASHFORD: This has been going on since 1966? [LB952]

JAMES MOWBRAY: Nineteen twenty-nine is when this... [LB952]

SENATOR ASHFORD: Well, I know, but as far as the State Patrol. [LB952]

JAMES MOWBRAY: Nineteen eighty-six, I believe. [LB952]

SENATOR ASHFORD: Or '86. [LB952]

JAMES MOWBRAY: I believe that's when they were made a part of the executive branch. And again, that had nothing to do with... [LB952]

SENATOR ASHFORD: The State Patrol. It had to do with... [LB952]

JAMES MOWBRAY: The State Patrol as added to the executive branch and, as I say, that was in no way related to the fact of 81-119. It's just...they were put there, I'm sure,

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for some other reasons other than having to do with...to obtain this type of power.
[LB952]

SENATOR ASHFORD: And the case that Senator Lathrop referred to said what again?
Can you...do you recall or...? [LB952]

JAMES MOWBRAY: The... [LB952]

SENATOR ASHFORD: The case that was referred to by... [LB952]

JAMES MOWBRAY: Oh. Well, there was an Attorney General's Opinion... [LB952]

SENATOR ASHFORD: Or, I'm sorry, Attorney General's Opinion. [LB952]

JAMES MOWBRAY: ...that was sought because some communication provider refused to comply with the subpoena, and so the question of the Attorney General's Office was whether or not this subpoena was lawful and whether or not this provider should comply with it. And so that was the reason that the... [LB952]

SENATOR ASHFORD: And the Attorney General said it was a lawful... [LB952]

JAMES MOWBRAY: Under this statutory scheme but not, again as Senator Lathrop said, didn't pass on the constitutionality of it or anything. It's just simply, hey, they're now part of the executive branch which is authorized to issue these administrative subpoenas that were authorized back in 1929. [LB952]

SENATOR ASHFORD: Thanks, Jim. Thank you. I'm sorry, Senator Pirsch. [LB952]

SENATOR PIRSCH: Oh, I just had...I'm sorry. Just a thought occurred to me, would you...would defendants or defense attorneys even be aware if such administrative subpoenas were used in particular cases that ultimately, you know, facts were derived and ultimately were instrumental in obtaining convictions? I mean, is there...is that...would you have a process in place where you, if you were representing a defendant, be able to know if such administrative subpoenas were actually employed by law enforcement and possibly information derived that way in your case? [LB952]

JAMES MOWBRAY: If they disclosed it, and the only reason they would have to disclose it would be if something that they intended to use at trial as evidence or if in some way exculpatory, they would have to disclose that. Because it's not filed with anybody or anywhere, at least with...when they comply with the communication statutes, intercepted communication statutes, there at least is court records. Generally, they turn that information over after. Because eventually the statute that talks about obtaining communications without the consent of the subscriber, they eventually have to

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be notified that this has occurred. And I think the bottom line, too, is that this makes it obviously very easy for the State Patrol to obtain this information, but by passing LB952, it doesn't prevent them from obtaining this information. It only requires them to follow the statutes that's in place, and that is to obtain a warrant and a court order, and then to have the court oversee that if they need to extend it. For example, under that statute they, for example, don't have to notify people if they can show that it might compromise their investigation, etcetera. They have to go back and ask for a renewal of that time period. But again, that's always being overseen by a court and not a police officer or a city and State Patrol headquarters. So it's not preventing them from getting this information. It just requires them to follow the law that's in place as to how they should obtain it and have some oversight by a court. [LB952]

SENATOR PIRSCH: Thanks for clarifying that. [LB952]

SENATOR ASHFORD: Thanks, Jim. [LB952]

JAMES MOWBRAY: Thank you. [LB952]

SENATOR ASHFORD: Next proponent. Opponent? I know there's a good explanation for this, Colonel. (Laugh) [LB952]

BRYAN TUMA: (Exhibit 2) Yes, there is. Good afternoon, senators. My name is Bryan Tuma, B-r-y-a-n T-u-m-a, superintendent for the State Patrol. First of all, I would like to thank Senator Ashford and Senator Lathrop for adjusting the calendar this afternoon. We do have a graduation ceremony scheduled for 5:00. We need to be there around 4:00 and so this worked out well for us. This ensures the Governor will be there and along with me. So I do thank you for that. My purpose today is to appear in opposition to LB952, to provide information regarding the use of administrative subpoenas in investigations by the Nebraska State Patrol. Administrative subpoenas are used by the Nebraska State Patrol in criminal cases to obtain investigative leads, rather than evidence to be used in trial. Critical evidence for a criminal case is still obtained using a search warrant. Issuing agencies have no enforcement authority for administrative subpoenas. If the recipient of the subpoena does not wish to provide the information requested in the administrative subpoena, the subpoena must be presented to court for enforcement. The Nebraska State Patrol has actively used the authority to issue subpoenas in investigations relating to its administrative and criminal investigations. The authority has been used more actively in the last ten years due to the massive increase in electronic communication and electronic data in today's environment. Without the authority, an investigation requiring the examination of information specific to a person or firm would mean the investigator would have to write a court order, a county attorney would have to review it, a judge would have to sign it, and the court would have to file the order. Only then could the order be served on a recordholder. This process is time-consuming for those involved and can be problematic in emergent criminal

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situations. Events involving electronic communication can occur quickly, sometimes less than one hour from the first electronic communication to consummation of the crime or threatening situation. A victim or a witness may be left in a potentially vulnerable or threatening situation. In one incident, a suicidal subject used a cell phone to contact family and friends, expressing his good-byes while traveling from Kearney to a location near O'Neill, where he intended to end his life. Utilizing an administrative subpoena, GPS information from his cell phone was quickly obtained and law enforcement was able to concentrate their search using triangulation. The suicidal subject was located, placed into emergency protective custody, after a brief standoff, with no harm to the person. Administrative subpoenas are used as an investigatory tool to initiate an investigation if suspicion exists. The State Patrol worked cooperatively with an adult protective caseworker from HHS on a possible theft case involving an elderly woman being victimized by the person who possessed her power of attorney authority. Due to her mental capacity, the victim was unable to assist in the investigation. Financial records were obtained utilizing an administrative subpoena to begin a criminal investigation exposing an approximately \$200,000 criminal offense. Many of our cases are similar to this in that an initial subpoena provides information requiring follow-up subpoenas to acquire the needed data for that case. Our society today is deeply entrenched in the use of the Internet for business, communications, and entertainment. Criminals have for some time been exploiting this vulnerable form of communication and information warehousing. They do so mainly for the anonymity they gain by conducting their criminal enterprise on a computer. The administrative subpoena has been vital in peeling back the layers these criminals have between them and their victims. In 2007, the Nebraska State Patrol issued 344 subpoenas statewide. Most of those cases involved drug dealing and child pornography. Other cases involved fraud, terrorist threats, Internet theft, death investigations, and abuse of a vulnerable adult. The information received from these subpoenas was primarily subscriber and contact information. The proposed amendment to Section 81-119 and the relating statutes would create a significant impact on the efficiency and effectiveness in which these types of cases are investigated. The impact of these investigations would, in many cases, jeopardize public safety. For these reasons, the Nebraska State Patrol opposes LB952. Thank you for allowing me the opportunity to present this information. I'll be happy to answer any questions. [LB952]

SENATOR ASHFORD: Go ahead, Senator Pirsch. [LB952]

SENATOR PIRSCH: I was just going to...and thank you for your testimony here today. I was just going to ask you, with respect to other jurisdictions, do other jurisdictions employ these type of administrative subpoenas? [LB952]

BRYAN TUMA: No, I believe it's reserved only for state agencies listed in the statute. [LB952]

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SENATOR ASHFORD: Senator Chambers. [LB952]

SENATOR CHAMBERS: Colonel, there has always been a tension between...t-e-n-s-i-o-n, between what law enforcement people want to do and the rights of citizens protected by the constitution. The constitution, when it guards and protects against unlawful searches and seizures, will have in mind law enforcement because that is done to bring the power of the state to bear against the citizen, to bring the coercive power of the state against that citizen. Kings could do it; they could do no wrong. So constitutions put up that bulwark to protect the citizens. Now a lot of things would be convenient for law enforcement if they were allowed to do it, for example, no need to have probable cause, just suspicion or just curiosity. You could go in people's pockets, their purses, their homes, their cars, and that is done to some extent now. If you say these subpoenas don't have to be complied with, is that stated boldly and prominently on the face of the document--you need not comply with this document? [LB952]

BRYAN TUMA: I believe I have a copy of that document that we use and, no, it does not say that, sir. [LB952]

SENATOR CHAMBERS: And it's deliberate that that is not on there because if a person does not have to comply and the person is told that, there's no need in sending the document, is there? The person must believe... [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR CHAMBERS: ...that he or she is compelled under the law to comply. Isn't that true? [LB952]

BRYAN TUMA: That would be true, yes. [LB952]

SENATOR CHAMBERS: And they deliberately, in my opinion, left that off so the person would have that misconception. But let's go beyond that. If an emergency situation occurs, couldn't somebody go to a prosecutor and point this out? [LB952]

BRYAN TUMA: A prosecutor or a court. [LB952]

SENATOR CHAMBERS: Uh-huh. [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR CHAMBERS: And the kinds of things that you mentioned, for example, this person taking advantage of an elderly person, is not what I would call an emergency situation that would require a circumventing of the constitution. Now the question: If this bill becomes law, it's not going to really stop the State Patrol from doing its job, is it?

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[LB952]

BRYAN TUMA: No, it's not, sir. [LB952]

SENATOR CHAMBERS: And you would not have heartburn, your officers will not have heartburn, and they will not have to take posttraumatic stress counseling because they were deprived of this important tool. [LB952]

BRYAN TUMA: They would have to, I guess, take other avenues to get the information. That would be correct. [LB952]

SENATOR CHAMBERS: That's all that I have. Thank you. And, by the way, I'm glad you're going to the graduation and had I been wearing a younger man's clothes and a different point of view, you might be having me as one of your graduates. [LB952]

BRYAN TUMA: (Laugh) Very good. [LB952]

SENATOR ASHFORD: Thank you, Colonel, for your... [LB952]

BRYAN TUMA: Okay. [LB952]

SENATOR ASHFORD: I'm sorry. Senator Pirsch is... [LB952]

SENATOR PIRSCH: That's okay, yeah. I just had a... [LB952]

SENATOR ASHFORD: I've got to be careful before I... [LB952]

SENATOR PIRSCH: And if you don't know the answer, that's great. You had testified 344 subpoenas were issued statewide this past year, correct? [LB952]

BRYAN TUMA: Right. [LB952]

SENATOR PIRSCH: Are you aware of any litigation in which a conviction was sustained using these type of subpoenas in which...I mean, I've to be thinking, if I was a defense attorney and I believed an unconstitutional, unlawful act has been taking place that was routinely as...I would file a motion to suppress based upon the fruit of the poisonous tree. Are any of these...have any of these cases, to your knowledge, undergone such, you know, such litigation? [LB952]

BRYAN TUMA: No, I don't believe there are any cases where we encountered that type of a problem. Typically, if we pursue criminal investigation, the...we are going to have to go in and get a court order to get additional information to back up the evidence required to sustain a conviction. [LB952]

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SENATOR PIRSCH: Would the defendant though, necessarily, or defense attorney be aware that such...you know, at the time that, say, if the fruition of this is criminal charges based upon, in part, information derived from such subpoenas, would the defense attorney or the defendant be aware that they were employed in a given case, that these administrative subpoenas were, or do you know? [LB952]

BRYAN TUMA: Well, I would have to say this. I would assume through the discovery process at some point, if it were to go to trial, that that type of information were available. I'm assuming, I think correctly, that our investigators would indicate in their investigative reports on the issue or on that matter that they did use an administrative subpoena, perhaps to gain some initial information, followed up by other court orders or other investigative techniques to gain additional evidence. [LB952]

SENATOR PIRSCH: Okay. Thank you. [LB952]

SENATOR ASHFORD: Thanks, Colonel. [LB952]

BRYAN TUMA: Okay. [LB952]

SENATOR LATHROP: Brad. [LB952]

SENATOR ASHFORD: Oh, I'm sorry. [LB952]

SENATOR LATHROP: Senator Ashford. [LB952]

SENATOR ASHFORD: Yes. [LB952]

SENATOR LATHROP: I do have a few questions... [LB952]

BRYAN TUMA: Sure. [LB952]

SENATOR LATHROP: ...and maybe to illustrate perhaps the point. The State Patrol could send letters out to different providers, the phone company, the Internet provider, to get this information, and what you found is that doesn't work as well as sending something out that looks like it's an official subpoena. [LB952]

BRYAN TUMA: Typically,... [LB952]

SENATOR LATHROP: Would that be true? [LB952]

BRYAN TUMA: Yes. Typically, the third party holders of that information are very reluctant to give out even subscriber information without some type of a court order.

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[LB952]

SENATOR LATHROP: Okay. And, in fact, this process doesn't involve a court order. What it does is it involves the appearance of the official capacity of the State Patrol to engage in information gathering, something that...I haven't seen your document but it says administrative subpoena... [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR LATHROP: ...and it sounds official and it sounds like something people have to comply with. Is that right? [LB952]

BRYAN TUMA: That would be correct, yes. [LB952]

SENATOR LATHROP: Okay. The authority for issuing these administrative subpoenas is found in 81-119. [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR LATHROP: You're familiar with the statute? [LB952]

BRYAN TUMA: Yes. Yes. [LB952]

SENATOR LATHROP: The statute itself, just as kind of a starting point,... [LB952]

BRYAN TUMA: Right. [LB952]

SENATOR LATHROP: ...the statute itself doesn't say agencies can send out administrative subpoenas, does it? [LB952]

BRYAN TUMA: No. [LB952]

SENATOR LATHROP: What it says is agencies, in the administration of their agency, can conduct hearings at which they can require that people attend and testify under oath. [LB952]

BRYAN TUMA: I believe, yeah. [LB952]

SENATOR LATHROP: I'm paraphrasing the statute. [LB952]

BRYAN TUMA: Yeah, I think that would be correct. Yeah. [LB952]

SENATOR LATHROP: So what's happened is it's become the administrative subpoena

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statute by custom but not necessarily by the terms of the provision. Is that true? [LB952]

BRYAN TUMA: Well, I can tell you in our AG's Opinion that we asked for, they cited some language to the effect that agencies do have the authority under this act to compel people to testify or to provide documentation. [LB952]

SENATOR LATHROP: Okay. And that was their interpretation of the language I just paraphrased. [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR LATHROP: Okay. There is no limitation in what you can send one of these out for, is that true? [LB952]

BRYAN TUMA: That's correct. [LB952]

SENATOR LATHROP: And while you give us some pretty good examples of...and, in fact, some compelling reasons why we'd want to be able to move quickly if we're law enforcement, you could actually get my phone bill, couldn't you? [LB952]

BRYAN TUMA: I think we can get subscriber information. I can't get any content, so I... [LB952]

SENATOR LATHROP: But you could use this process to send out an administrative subpoena to my cell phone provider to get my last four months' worth of bills. Am I right? [LB952]

BRYAN TUMA: Yes, I think so. [LB952]

SENATOR LATHROP: And my last four months of bills will reflect everybody that I've called and everybody who have called me. Wouldn't that be true? [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR LATHROP: And that gives you the very same information that's found in a pen register, am I right? [LB952]

BRYAN TUMA: Yes. Pretty close. [LB952]

SENATOR LATHROP: And we have in statute, in place, a process that requires that if you want to use a pen register you have to go and get a court order for it. Am I right? [LB952]

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BRYAN TUMA: That's correct. [LB952]

SENATOR LATHROP: So, in effect, if we don't...if we don't make some changes to 81-119, you could--I'm not suggesting that you have but it's our job to keep track of what limitations there are--you could effectively get the same information through this administrative subpoena that the law requires you get by the process of securing a prior court order. Is that true? [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR LATHROP: Okay. Thank you for your answers. [LB952]

BRYAN TUMA: Yes. [LB952]

SENATOR ASHFORD: Is that it? [LB952]

SENATOR LATHROP: That's it for me. [LB952]

SENATOR ASHFORD: Colonel, thanks for your candid answers. [LB952]

BRYAN TUMA: Thank you. Thank you. [LB952]

SENATOR ASHFORD: And it's helpful to get straight answers to those questions. [LB952]

BRYAN TUMA: Again, thanks for allowing us to go out of order today. [LB952]

SENATOR ASHFORD: Thank you. Any other opponents? Senator Lathrop, do you wish to close? [LB952]

SENATOR LATHROP: I'll waive. [LB952]

SENATOR ASHFORD: Okay. Senator Karpisek, thank you for waiting. [LB952]

SENATOR KARPISEK: Thank you. And if I'm in trouble in Government, I'll have Senator Aguilar come talk to you. (Laugh)

SENATOR ASHFORD: That would...I don't want that to happen. So, hopefully, hopefully, I'm okay. Thank you.

SENATOR KARPISEK: Senator Ashford and members of the Judiciary Committee, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. I introduced LB1024 as a means of addressing a problem that some claimants

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are encountering in actions against political subdivisions. A lawsuit against a political subdivision must be preceded by the filing of notice, Section 13-920, within one year after the claim has accrued. Failure to file this notice within the year forever bars a lawsuit on this issue. Section 13-905 requires that the notice be filed with the clerk, secretary or other official. In some cases, it is difficult for the public to determine who the proper official is for some lesser-known or smaller political subdivisions. LB1024 would address the issue by requiring political subdivisions to notify the Secretary of State of the name and address of the proper person with whom the notice should be filed and upon whom process should be served. The Secretary of State would maintain a data base that the public could access to acquire the information. I believe this would add more transparency for citizens in dealing with political subdivisions. After introducing the bill, I was contacted by the Secretary of State's Office and by the League of Municipalities. They have raised some legitimate concerns with the mechanics of the bill, although I don't believe with the goal of the bill. I would ask that the committee would hold the bill for awhile, that my office could try to work through those issues with those two interested parties. If you have any questions regarding the goals or the issues, I'd be glad to try to answer them at this time. [LB1024]

SENATOR ASHFORD: Any questions of Senator...yes, Senator Schimek. [LB1024]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Senator Karpisek, it's nice to see you again today. (Laugh) [LB1024]

SENATOR KARPISEK: Well, it's nice to be seen in front of the Judiciary Committee. [LB1024]

SENATOR SCHIMEK: My...the first question that popped into my mind is, why do we need this because it's so easy to get these names and addresses? The League of Municipalities has them for all city officials. The County Officials Association has them for all county officials. Now maybe if you're going down to like the NRDs or something like that, maybe...and that may be more difficult. But I'm thinking that these are pretty much public information to begin with. [LB1024]

SENATOR KARPISEK: They are, Senator, but maybe say a rural fire district, something like that that may not have legal counsel at their meetings or even realize that they have to have something published. Their personnel could change, secretary could change and they don't realize that they even have to make a change. Then if there is a lawsuit sent and it's the wrong one, by the time it gets back it could be too late. [LB1024]

SENATOR SCHIMEK: Okay. I think I see your point. Thank you. [LB1024]

SENATOR ASHFORD: Any other questions? Senator Chambers. [LB1024]

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SENATOR CHAMBERS: And, Senator Karpisek, if it's not too much trouble, I'd like you to keep me advised about what steps are being taken and what conclusions are being drawn, because I don't think government should ever be operated in such a way as to confuse the public, mislead the public or in such a way that a person could lose a right before he or she is aware that it's going to be lost. And here's what I mean, when you're given a deadline such as a year, you may wait, even if you have counsel, until the point of the deadline is almost there. And should you send it to the wrong person, there wouldn't be time to rectify it. And since the year is given, a person should have that entire year for the purpose of complying with the law. So when you mention the mechanics, I can see where there might be some difficulty. But I'm letting you know that I am interested in what you're trying to do. [LB1024]

SENATOR KARPISEK: Well, thank you, Senator. And we certainly will keep you appraised. The biggest issue right now, and I'm sure others behind me will tell you, but who is in charge of collecting the names and who gets the ball rolling. But otherwise, I don't think that we have too much problem with the intent of the bill. Thank you. [LB1024]

SENATOR ASHFORD: Thanks, Senator. I would just encourage you to do this in an expedited manner, as you talk to these various people. So we don't run out of time. [LB1024]

SENATOR KARPISEK: I'm sure that...yes, sir. [LB1024]

SENATOR ASHFORD: Thank you. [LB1024]

SENATOR KARPISEK: Thank you. [LB1024]

SENATOR ASHFORD: Proponents? How many proponents do we have here? Okay, how about opponents? All right. Good afternoon, good to see you. [LB1024]

HERB FRIEDMAN: (Exhibit) Senator Ashford, members of the committee, my name is Herb Friedman. I'm an attorney here in Lincoln. And I suppose I'm partly to blame for having this particular bill brought to the Legislature. We do personal injury work, and we've come across this particular problem on many, many occasions. And the one that brought it to my attention, I suppose, was reviewing the McElwee case, which we're passing along, which was a 19...which is a 2003 case. In that case a suit was filed against the Omaha Transit Authority. And the lawyer provided notice to basically the Claims Department, and the Claims Department just sat on it. They had notice, and then they said, well, you served the wrong person. Ultimately, a judgment was entered for an amount on behalf of the plaintiff and then was reversed by the Supreme Court. We had a case just recently that was somewhat similar to that that ended in a little better way, perhaps, but it was against a political subdivision. And I will say at this time

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that originally this act was passed in 1969, and I suspect that there weren't probably as many political subdivisions then as there are now. But now there...every little nook and cranny has a political division. There is no place where these political subdivisions are listed. And in this particular case we had a case against, I think it was the Blue Valley, one of the Blue Valley entities. And we looked...called the Secretary of State. They're not listed. Called up the Treasurer, they're not listed; the Auditor, they're not listed, they're not listed anyplace. Then we pulled up their Internet and there was an executive director listed, so we served the executive director. And lo and behold, they filed a motion saying, well, wait a minute, you got the wrong person. Well, who do you serve? Well, they really weren't quite sure. We took some depositions and ultimately the matter was resolved and the case was settled. But this is a trap for unwary claimants and for lawyers too. And it's very, very complicated for the average citizen who to serve, particularly if you happen to fall, for example, in the Omaha, Douglas County Courthouse, who do you serve? Well, it turns out that the courthouse is known (sic) by the Douglas County, it's owned by the Douglas County Building Commission, a separate entity. They're not listed anyplace. They're not in the phone book. They're not in the letterhead. Who do you serve? These are problems. And I would assume that the Legislature could cure this matter. I assume that at the time that this act was passed, in 1969, they didn't realize the problems that were going to develop. But it seems to me that you ought to take care of the citizens here. If they make a proper notice, that should be sufficient. At least tell them who to serve. Thank you. Any questions? [LB1024]

SENATOR ASHFORD: Thanks, Herb. Any questions of Herb? Senator Chambers. [LB1024]

SENATOR CHAMBERS: This man has tremendous respect from me, he understood and publicly explained my lawsuit against God. And for that, I'm very appreciative, Mr. Friedman. (Laughter) [LB1024]

HERB FRIEDMAN: Thank you. [LB1024]

SENATOR ASHFORD: I thought the German newspaper had it right, though, Senator Chambers. (Laughter) [LB1024]

SENATOR CHAMBERS: Well, he was first. They probably plagiarized. (Laughter) [LB1024]

SENATOR ASHFORD: Oh, first...Herb was first and then the German newspaper picked it up. [LB1024]

SENATOR CHAMBERS: Yes. [LB1024]

SENATOR ASHFORD: All right. Thanks, Herb, very much. [LB1024]

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HERB FRIEDMAN: Thank you. [LB1024]

SENATOR ASHFORD: I don't speak German, but it seemed like a good explanation. (Laugh) [LB1024]

ROBERT MOODIE: Chairman Ashford, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys. Really at the point, just adding a me too, to what's been testified to before. This is a trap that catches both lawyers and citizens who attempt to make these claims on their own. There are a great many political subdivisions for which finding the appropriate officer is not easy. When you're dealing with Lancaster County or Douglas County it's easy to find out who the clerk is, but when you're dealing with the...obviously, the Omaha Transit Authority, it's not quite so easy or many other of the lesser political subdivisions. To the extent that the mechanics need to be worked out, our organization would be happy to lend its efforts towards working out the mechanics to the satisfaction of the Secretary of State and the League of Municipalities. [LB1024]

SENATOR ASHFORD: Thanks, Bob. Yesterday I was blaming the federal government. I don't think I can do that in this case. This looks like a state issue. Mr. Mueller. [LB1024]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today as a lobbyist from the Nebraska State Bar Association in support of LB1024. The bar association, as you are aware, represents lawyers who both sue people and defend people. Our committee looked at this bill and voted to support it. The problem that both Mr. Friedman and Mr. Moodie have described for you is a real one. And if you serve the wrong party, even if the party who you intended to serve has notice of the lawsuit and they raise it and they win legally and the statute has run, you're out of court. So we're not talking about giving notice. The party who you are suing gets notice, but they raise the fact that instead of serving Senator Schimek, we serve Senator Pirsch. And we support this bill. It is a trap, both for lawyers and for litigants. Be happy to answer questions you may have. [LB1024]

SENATOR ASHFORD: Any questions of Bill? Thanks. Yes, Senator Chambers. [LB1024]

SENATOR CHAMBERS: Mr. Mueller, in that lawsuit I filed, I had a difficulty in locating my defendant. (Laughter) But since that one was supposed to know everything, that defendant had actual notice. But since I couldn't put the paper in the defendant's hand, I'm probably out of luck too. So I'm very sympathetic. (Laughter) [LB1024]

BILL MUELLER: I don't think this bill would help you. (Laughter) [LB1024]

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SENATOR CHAMBERS: I don't think so either. (Laughter) [LB1024]

BILL MUELLER: Thank you. [LB1024]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB1024]

SENATOR LATHROP: Can I ask just a brief couple of questions? Is part of the problem the fact that we have...and does this bill address this problem which is when you have a...some things that sound like public entities or a private entity, actually is a public entity. So the Box Butte Community helped (inaudible)? You can't tell if that's a private corporation or a political subdivision? [LB1024]

BILL MUELLER: Yes, that happens. You cannot tell by the name of the entity what the legal entity is. And in order to bring a lawsuit against them you have to determine what the legal entity is. That's right. Mr. Friedman's example of the courthouse in Omaha, I think, is correct. I don't believe that Douglas County is the owner of the courthouse. I do think that it is the Omaha Building Commission or whatever it is. I don't...it's a different entity. [LB1024]

SENATOR ASHFORD: I think you're right. [LB1024]

SENATOR LATHROP: Okay, thank you. [LB1024]

BILL MUELLER: Thank you. [LB1024]

SENATOR ASHFORD: Senator Chambers. [LB1024]

SENATOR CHAMBERS: Just an observation. Mr. Mueller, if a corporation is going to operate in this state, that corporation must file with the Secretary of State, an agent, or somebody to receive service, if that should be done. [LB1024]

BILL MUELLER: And that's a standard method of affecting service on a foreign corporation. That's right. [LB1024]

SENATOR CHAMBERS: And if we are going to do that with corporations, certainly the citizens of this state should have some way of knowing who the proper official with a political subdivision is who should receive service. Would you agree? [LB1024]

BILL MUELLER: We believe that that's reasonable. Yes. [LB1024]

SENATOR CHAMBERS: Okay. That's all. [LB1024]

SENATOR ASHFORD: Thank you. [LB1024]

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BILL MUELLER: Thank you. [LB1024]

SENATOR ASHFORD: Any other proponents? Yes, sir. [LB1024]

MICHAEL JACOBSON: My name is Michael Jacobson, J-a-c-o-b-s-o-n, from Gordon, Nebraska. And I apologize. I wasn't going to testify. I didn't know this was coming up until this morning. I was up at the Law Library. But I am the trustee for my mother's estate. My mother choked to death in our local hospital there in Gordon, Nebraska. I had four attorneys that told me that I had two years to file a wrongful death suit against the two attorneys. When we filed it, they got it dismissed because we did not file the claim as required under the Political Subdivision Act. We appealed it to the Nebraska Supreme Court, and we got it reversed. And it's going to be tried again out in western Nebraska. But the problem that we had was that even though my family has been there since the 1800's, we didn't realize that this was a public entity. And we couldn't go by their name, because they call themselves the Gordon Memorial Hospital Foundation. There are several other cases that were decided. There was one in Valentine called the Keller decision, where it's the same thing where they did not know about the requirement of the claim. But there at least it was called the Cherry County Hospital. And then there was another case in Minden, Nebraska, where a lady died. And they didn't get the claim in, in time, and the doctor escaped prosecution altogether. So there is a tremendous trap there. I had four attorneys that missed it, I missed it, so I support this wholeheartedly. [LB1024]

SENATOR ASHFORD: Thank you, Mr. Jacobson. Any questions of Mr. Jacobson? Thank you, sir. Opponents? How many opponents do we have? Just one. [LB1024]

RON MORAVEC: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Ron Moravec, M-o-r-a-v-e-c. I'm chief deputy Secretary of State. Today I appear before you to give testimony in opposition to the bill as it is currently drafted. With Senator Karpisek being willing to work on this matter, I won't spend much time discussing the concerns with you. But the basic concern is that as the bill is written, the first half of the new statute, new section provides that the Secretary of State shall maintain this list of individuals, their addresses and entities and their addresses with whom a political subdivision tort claim can be filed. And the second half of the section indicates that the governing bodies thereafter shall notify the Secretary of State as to when there might be a change in the name or title of that political subdivision. I find it difficult how the Secretary of State is supposed to find all of these entities that the proponents speaking here can't find. That's our primary concern. And the maintenance of this, what's the duty to maintain this? How current is it supposed to be? The proposed legislation indicates that the Secretary of State shall keep a current list. Well, what is a current list? How do we force, if we have to obtain these names and agencies initially, how do we force them to tell us when the secretary or the clerk or

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somebody else has changed title, or the person responsible under the Tort Claims Act to be the one to receive this? So I...we believe that working with Senator Karpisek, we may be able to come to some resolution of this. But as it stands at this point, we do object to the obligation without authority. [LB1024]

SENATOR ASHFORD: Any questions? Do you know, how many political subdivisions do we have? Maybe if we eliminated half of them, we... [LB1024]

RON MORAVEC: According to the Auditor's Office, and this is a list of those subdivisions that have taxing and expenditure authority, there are some 2,500. [LB1024]

SENATOR ASHFORD: Yeah, that's the number I...and there may be...and there are actually for the purposes that Senator Karpisek is talking about, there may be more, there are more than that. Or maybe...is that the number, is that the same list, probably? [LB1024]

RON MORAVEC: That is the number the Auditor's Office feels is... [LB1024]

SENATOR ASHFORD: Okay. So that would be the list we're talking about, essentially? [LB1024]

RON MORAVEC: Yes, yes, yes. [LB1024]

SENATOR ASHFORD: So there are 2,500 of these and, my gracious. [LB1024]

RON MORAVEC: But another question is, how... [LB1024]

SENATOR ASHFORD: And they're all taxing in some way. [LB1024]

RON MORAVEC: Well, they have the ability. Yes. [LB1024]

SENATOR ASHFORD: To tax. Yes, Senator Schimek. [LB1024]

SENATOR SCHIMEK: Thank you, Mr. Chairman. You just raised a question in my mind by responding that the Auditor has identified that there are about 2,500 of them. Would not then the Auditor be a better place for this requirement to be imposed? [LB1024]

RON MORAVEC: That is an opinion I was going to express, (laughter) also a trip to the county courthouse, a trip to city hall. Again, in a county, if a political subdivision wishes tax revenue they must appear before the county board and be part of the county budget, and the same way with a municipality. [LB1024]

SENATOR ASHFORD: Thanks. Senator Lathrop. [LB1024]

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SENATOR LATHROP: I might just make an observation that the Secretary of State currently keeps track of all corporations authorized to do business in the state of Nebraska? [LB1024]

RON MORAVEC: That's correct. [LB1024]

SENATOR LATHROP: Okay. So I mean, it's not like all we do is keep track of voting and the process of voting, but you keep track of, or that office keeps track of all corporations authorized to conduct business in the state. [LB1024]

RON MORAVEC: Yes, by law, as you know, they are required to file with the Secretary of State as a corporation. [LB1024]

SENATOR LATHROP: So it's not very far away from the function you perform for corporation. It would just be adding political subdivisions and you have an objection with the fact that you'd have to go out and find them. [LB1024]

RON MORAVEC: That and in addition it is really not a primary duty of the Secretary of State's Office to just keep a list. Everything that the secretary's office does, there's something, whether it's the licensing of various entities, or in this purpose the...in records management, the storage and retrieval of state records. This is something that is new and we believe, as proposed, is just not in a working condition that would suffice. [LB1024]

SENATOR LATHROP: All right. Well, I'm sure Senator Karpisek will be able to work through that with you. Thank you. [LB1024]

SENATOR ASHFORD: I certainly invite you to try...I'm sorry, Senator Chambers. [LB1024]

SENATOR CHAMBERS: Mr. Moravec, I am very sympathetic to what you have said. But when it comes to the duties of the Secretary of State, they are what the Legislature says they are. Would you agree with that? [LB1024]

RON MORAVEC: Certainly, without a doubt. [LB1024]

SENATOR CHAMBERS: So as time and circumstances change, we can expand or even contract the duties that that office would be responsible for, correct? [LB1024]

RON MORAVEC: Correct. [LB1024]

SENATOR CHAMBERS: And you're not just trying get out of more work. Your point that

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you made that I pick up is that it's impractical, under the language of the bill, to do what you're being asked to do by the bill, the way the bill is written? [LB1024]

RON MORAVEC: Yes. And I might even use a stronger word than "impractical", almost impossible. [LB1024]

SENATOR CHAMBERS: Well, I'm a statesman. (Laugh) [LB1024]

RON MORAVEC: Thank you. But, yes, you are correct. [LB1024]

SENATOR CHAMBERS: I understand your point though. [LB1024]

SENATOR ASHFORD: Thanks, Ron. [LB1024]

RON MORAVEC: Thank you. [LB1024]

SENATOR ASHFORD: I certainly invite you to work with Senator Karpisek, if you can, because it seems like something we would really need to get to do. So thank you. [LB1024]

RON MORAVEC: Okay, we will. Thank you. [LB1024]

SENATOR ASHFORD: Senator...any neutral testifiers? Sorry, I almost whizzed right over you. [LB1024]

GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. I just wanted to get on the record that when the bill was introduced we did have some questions about some of the mechanics and talked to Senator Karpisek and some of the representatives for the proponents and expressed a willingness to them and to the committee that we would work with them to take care of those kind of issues. So I think we can work something out to get a system in place. [LB1024]

SENATOR ASHFORD: Good. Yes, Senator Schimek. [LB1024]

SENATOR SCHIMEK: Why couldn't...thank you, Mr. Chairman. Why couldn't we put a system together that everything would go through one person in the county and then be funneled out again to the appropriate subdivision? [LB1024]

GARY KRUMLAND: I guess I haven't thought about it. That might be a way to do it. I think the intent of this originally was just to have one place in the state so you can go there, just the one stop. You wouldn't have to go to each county. But that would probably be something more for... [LB1024]

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SENATOR SCHIMEK: The people in the county are going to know when those changes are taking place more likely than somebody sitting in the State Capitol. [LB1024]

GARY KRUMLAND: That may be, yeah. [LB1024]

SENATOR SCHIMEK: Maybe. I would think it would be more likely anyway. Okay, thank you. [LB1024]

SENATOR ASHFORD: Thank you, Senator Schimek. Thanks. [LB1024]

GARY KRUMLAND: Um-hum. [LB1024]

SENATOR ASHFORD: Yes, Russ. [LB1024]

SENATOR KARPISEK: Thank you, Senator Ashford. As you can see, I think we have the problem, we just have to work through it. I am a little (laugh) worried about how we will work through it, but... [LB1024]

SENATOR ASHFORD: No, I'm not. [LB1024]

SENATOR KARPISEK: Really? Good. [LB1024]

SENATOR ASHFORD: We'll see...we'll see our way through this. [LB1024]

SENATOR KARPISEK: I will call...I will call Stacey in the morning and (laughter). [LB1024]

SENATOR ASHFORD: I was going to say, I rarely do this, but this is a problem we need to rectify this year. And I appreciate you bringing the bill to us. And we will help any way we can to... [LB1024]

SENATOR KARPISEK: I agree, and if anyone on the committee has suggestions, Senator Chambers, I would greatly appreciate it. So any other questions? [LB1024]

SENATOR PIRSCH: Just a statement. I think that there is some room for common ground here. [LB1024]

SENATOR KARPISEK: I agree. And I know both parties are willing to work. So I appreciate that. Thank you. [LB1024]

SENATOR ASHFORD: Thank you, Senator Karpisek. Senator. Thank you for your patience. We moved things around just a little bit. Senator Gay. [LB1024]

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SENATOR GAY: Good afternoon, Senator Ashford and members of the Judiciary Committee. For the record, my name is Senator Tim Gay. I represent District 14. I'm here today to introduce LB787. I'll be very brief as there are a number of people behind me who can go more into detail as to why this legislation is needed. LB787 would enhance the penalties for an assault on an emergency service provider or healthcare worker. Healthcare workers and emergency service providers are many times the frontline people in these emergency situations, and are therefore in a vulnerable position as they are doing their duties. They are obviously very engrossed in what they are doing at the time and can't pay attention to their surroundings many times. This was evident in two events late last year. As you may recall, the volunteer fire fighter who was shot at while responding to a fire in Ashland, and then more recently a local psychiatrist who was attacked at the regional center. Unfortunately, the doctor did pass away from his injuries and this bill wouldn't have any effect on that situation. These two high profile incidents illustrate the potential dangers facing these individuals who provide these important services. However, this bill was actually drafted prior to these incidents, and it was brought as the result of an assault on a nurse. I believe she is here today, too, and she can tell you exactly what happened in her case. There are other cases which may not be as news worthy that dramatically effect the lives of individuals and their families. And I'm here to ask the committee to give this bill some serious consideration. And I'll try to answer any questions. Like I say, there will be others behind me. But if you have any questions, I'd be more than happy to try to answer those right now. [LB787]

SENATOR LATHROP: Thanks, Senator Gay. Senator Chambers. [LB787]

SENATOR CHAMBERS: Senator Gay, are you going to prioritize this bill? [LB787]

SENATOR GAY: I don't know, Senator. I have other bills out there and really I can't. [LB787]

SENATOR CHAMBERS: Okay, gotcha. That's all I had. [LB787]

SENATOR LATHROP: Any other questions for Senator Gay? Seeing none, thanks. [LB787]

SENATOR GAY: Thank you. [LB787]

SENATOR LATHROP: Are you going to stick around? I know you got a full day of introducing bills. [LB787]

SENATOR GAY: Senator, yeah, I'm going to try to stay for a little bit. And then I probably will not close. So I'll just waive closing now because I'm probably going to have to leave. [LB787]

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SENATOR LATHROP: Okay, very good. Okay, thank you, Senator Gay. [LB787]

SENATOR GAY: Thank you very much. [LB787]

SENATOR LATHROP: Proponents? Are there proponents? Okay. [LB787]

KEVIN NOKELS: (Exhibit) Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Kevin Nokels, K-e-v-i-n N-o-k-e-l-s, and I am representing Alegent Health. As Senator Gay indicated, you'll be hearing from one of our nurses that was assaulted. You can only imagine the shock and horror of having that call come to you that says one of your nurses was assaulted by a patient or visitor to the hospital. Our frustration with what currently exists is that in this case again the police said, it's hardly worth pressing charges; this is nothing but a misdemeanor assault. In the case of our nurse that's what we heard. Nebraska laws make any assault of a police officer, at a minimum, a low grade felony. Healthcare providers work in an environment where their only purpose is to help others or save someone's life, they are not there to arrest or implicate anyone. Healthcare workers are not armed, nor do they have armed backup sitting in cruisers, waiting to assist. What they have are other providers, primarily other nurses, females. Those nurses are busy taking care of patients. There's also unarmed security officers, unarmed physicians, or we have 911 to call. So as compared to law enforcement, healthcare providers are more vulnerable, less safe, and least able to respond in self-defense. I am here today on behalf of Alegent Health and I would say probably other hospitals in the state to ask for help. We've exhausted our ability in working with the community of how do we address this, how do we hold people accountable for their actions and their assaults on healthcare workers? We are looking for your help. [LB787]

SENATOR LATHROP: Thank you very much, Mr. Nokels. Are there any questions? Senator Chambers. [LB787]

SENATOR CHAMBERS: Your theory is that people who would do something like this know what the law is and that they're going to say, well, I'll do this because the punishment...the penalty is not very high. Is that what you're operating on? [LB787]

KEVIN NOKELS: I think our frustration is that as healthcare providers we are there to help all those in need, and... [LB787]

SENATOR CHAMBERS: I'm not challenging any of that. [LB787]

KEVIN NOKELS: Okay. [LB787]

SENATOR CHAMBERS: I'm questioning why you think that enhancing a penalty is

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going to stop people who are of a frame of mind to do this from doing it? [LB787]

KEVIN NOKELS: I think that awareness that exists, I think, would make a difference. [LB787]

SENATOR CHAMBERS: Do you know what the penalty is for assaulting one of these emergency personnel? [LB787]

KEVIN NOKELS: As I understand it now, that is a misdemeanor. [LB787]

SENATOR CHAMBERS: All emergency personnel? [LB787]

KEVIN NOKELS: That is my understanding, yes. [LB787]

SENATOR CHAMBERS: But you don't know that for sure? [LB787]

KEVIN NOKELS: I do not know that for sure. [LB787]

SENATOR CHAMBERS: And you've been looking at the situation? I mean, you've been... [LB787]

KEVIN NOKELS: Correct. [LB787]

SENATOR CHAMBERS: Okay. So how would a person who hasn't even looked into it as much as you have know what the penalty is? [LB787]

KEVIN NOKELS: It is a misdemeanor, if you assault a healthcare provider today. [LB787]

SENATOR CHAMBERS: But you didn't just...you didn't know that. You became aware of that through study or advice. [LB787]

KEVIN NOKELS: I had to go look that up. Yes, I did, you are correct. [LB787]

SENATOR CHAMBERS: So how is an ordinary person going to know that, especially somebody who might have something going on upstairs other than curiosity about the law? [LB787]

KEVIN NOKELS: That's where we're looking for help. [LB787]

SENATOR CHAMBERS: And the example that was given about the man at the regional center, he had been found to be incompetent to stand trial, prior to that incident. Were you aware of that? [LB787]

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KEVIN NOKELS: Yes. [LB787]

SENATOR CHAMBERS: But you feel that if we had heightened the penalty, he would not have committed that act, because he was afraid of what the punishment might be? [LB787]

KEVIN NOKELS: I think that you may have that, if people are aware of, and liken it to if you're in an airport, if there is threats made against airport security, that certainly is punishable to a great extent of the law. I think...I would believe that people understand that if you assault a police officer, that's a significant penalty. [LB787]

SENATOR CHAMBERS: Do you think embezzlers know what the law might be in terms of a punishment for embezzling? [LB787]

KEVIN NOKELS: I don't know that. [LB787]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB787]

SENATOR LATHROP: Thank you. Are there any other questions? Seeing none, thank you for coming down today. [LB787]

KEVIN NOKELS: Thank you. [LB787]

SENATOR LATHROP: We appreciate your testimony. Other proponents of LB787, please. [LB787]

JAN GINAPP: (Exhibit) Good afternoon, members of the Judiciary Committee. My name is Jan Ginapp, J-a-n G-i-n-a-p-p. I'm a registered nurse and I have worked as a nurse for more than 20 years, the last 13 of that being in critical care. I'd like to share my story in support of passing LB787. Since I was a little girl, I always wanted to be a nurse. I started my career in the health field when I was 15 years old, working in the nearby town nursing home. All I ever wanted to do is care for my patients and help them achieve their wellness. I've always laughed with my patients and their families or cried with them when things were not going well. I absolutely love my patients. On January 5, 2007, my life changed in the matter of seconds. A patient was being loud and obscene; noises that could be heard beyond his room. And as is practice, I knocked on the door, I entered the patient's room and I asked the patient to keep his voice down. The next thing I knew I was on the floor with him pounding on my head. I suffered a severe concussion, whiplash, headaches, and double vision for which I live with every moment. And this is why I must have a patch on my eye, on my glasses. This whole incident has affected my life, my family, and everyone with whom I work. I still suffer headaches and I'm awaiting surgery for my eye, with no guarantee of a full recovery. I never expected to

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be afraid to go to work or to walk in a patient's room. But the worst of it all is will I be able to laugh and cry with my patients again? I will survive the assault that I suffered, but for benefit of all other healthcare providers whose sole purpose is to help others we must send a strong message supported by strict penalties that assaults of healthcare workers will be severely punished. Nebraska needs stronger penalties for people that choose to harm those that care for them or their loved ones. So I beg of you, please advance LB787. [LB787]

SENATOR LATHROP: Thank you, Jan. Senator Chambers. [LB787]

SENATOR CHAMBERS: Where did this occur? What hospital? [LB787]

JAN GINAPP: Midlands Hospital in Papillion, Nebraska, in the Intensive Care, IMCU Step down unit, in Room 5. [LB787]

SENATOR CHAMBERS: Do they have security personnel at that facility? [LB787]

JAN GINAPP: Yes, we do. [LB787]

SENATOR CHAMBERS: Do they have a policy which says if a patient seems to be carrying on in this fashion that security should be summoned? [LB787]

JAN GINAPP: Of course, they were summoned. [LB787]

SENATOR CHAMBERS: But you went in before they arrived? [LB787]

JAN GINAPP: All I did was open the door and step. [LB787]

SENATOR CHAMBERS: Well, have they changed their policy now to make it clear that a nurse or any other person, when there is this kind of situation, ought not be the first one to enter the room, but that security personnel should be the first? [LB787]

JAN GINAPP: Senator Chambers, that would be idealistic, however, it's not realistic. When someone is...how do I know that he was screaming because of...that he wasn't in pain or... [LB787]

SENATOR CHAMBERS: But that's not the... [LB787]

JAN GINAPP: ...if he was, you know,... [LB787]

SENATOR CHAMBERS: That's not the question that I'm asking, not to be rude. When there are steps, precautions which can be taken by a facility, that facility has the responsibility to deal with the problems that can be anticipated to arise. And it's not for

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the state to impose a harsher punishment because a facility failed to put in place precautions which can be taken. Now you, obviously, are not in charge of security at the hospital. So I'm not suggesting that at all. But it seems to me that that facility ought to have put in place, if it didn't have in place, some kind of procedure whereby if it seems that a patient may harm anybody that security should be the first one there. That's my reaction. And I'm not in any way supporting or excusing what happened to you. My view, by the way for what it's worth, is that whenever...was this a male patient? [LB787]

JAN GINAPP: Yes, he was. [LB787]

SENATOR CHAMBERS: Whenever a man puts his hands on a woman, I don't think that's...look, if a woman slapped me, I wouldn't punch her, I wouldn't throw her down, I wouldn't beat her, but I would restrain her. So I don't want anybody to get the impression that I think women should be treated in the way you obviously were mistreated. [LB787]

JAN GINAPP: I don't believe any person should be treated that way, regardless of their gender. And I understand that...and security was...I mean, they came as quickly as they could. But when you have an out of control patient, that your other patients and the visitors were literally terrified, it's just a reaction. It's something that you have to...you've got to step up and do. [LB787]

SENATOR CHAMBERS: But also at that hospital they should know that you wouldn't be a person capable of restraining such a person or quelling that situation. But that's all that I have. [LB787]

JAN GINAPP: Okay, thank you. [LB787]

SENATOR LATHROP: Senator Pedersen. [LB787]

JAN GINAPP: Yes. [LB787]

SENATOR PEDERSEN: Thank you, Senator. Ms. Ginapp, what was the diagnosis of this patient? [LB787]

JAN GINAPP: He actually was admitted for homicidal ideations. [LB787]

SENATOR PEDERSEN: So he was a psych patient. [LB787]

JAN GINAPP: He was admitted with homicidal ideation, so... [LB787]

SENATOR PEDERSEN: Is that not a psych diagnosis? [LB787]

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JAN GINAPP: It is a psychological diagnosis or a... [LB787]

SENATOR PEDERSEN: Thank you. [LB787]

SENATOR LATHROP: Oh I'm sorry. Senator Schimek. [LB787]

SENATOR SCHIMEK: No, I just want her to speak into the microphone so that we...so that everybody can hear you. [LB787]

JAN GINAPP: Oh, I'm sorry. [LB787]

SENATOR SCHIMEK: ...so that everybody can hear you. Thank you. [LB787]

JAN GINAPP: Sorry. [LB787]

SENATOR SCHIMEK: That's okay. [LB787]

SENATOR PEDERSEN: Thank you. [LB787]

JAN GINAPP: You're welcome. [LB787]

SENATOR LATHROP: Are there any...Senator McDonald. [LB787]

SENATOR McDONALD: When you walked into that room did you have any belief that he might...that you might be in danger? [LB787]

JAN GINAPP: I did not think that he would assault me like that, or come after me like that. I just thought that if I asked him, you know, you need to be quiet at this time, you need to get back into your bed, that he wouldn't harm me. So and it was...I mean, it's a little difficult to explain to you how...it just happened so quickly. It wasn't expected at all, no. [LB787]

SENATOR McDONALD: And every time that you enter a patient that is loud, do you have to call security prior to that? I mean, I'm sure it happens more than once in a day in those situations that the patient is being loud. And is it true that you can't call security every time somebody is being loud? [LB787]

JAN GINAPP: Absolutely. Patients can be loud for many different reasons. Maybe they can't hear you and they're speaking loudly, maybe they're a little delirious from medication, but no, we can't call security every time someone screams. They'd be up there all the time. They would be in nursing outfits instead of us. [LB787]

SENATOR McDONALD: Okay. [LB787]

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SENATOR LATHROP: Thank you. We have more questions. Senator Pedersen, I believe, had the next one. [LB787]

JAN GINAPP: Okay. [LB787]

SENATOR PEDERSEN: Ms. Ginapp, just a couple more question. When you came up and said delirious, are you...not knowing this patient, are you allowed to tell us what kind of medication this patient was on or do you remember what it was? [LB787]

JAN GINAPP: Actually, he was not my patient. I was the charge nurse that day. And I do not...I cannot recall what type of medication he was on. I would just be guessing. [LB787]

SENATOR PEDERSEN: But being an RN, you're an RN or above that or... [LB787]

JAN GINAPP: I am an RN, yes. [LB787]

SENATOR PEDERSEN: ...whatever it is. Some of the medications that they use for psych disorders and stuff like that, psychotropic meds, can have some reverse of affect and things that people do. Is that not right? [LB787]

JAN GINAPP: Honestly, I want to say not in this case. And now I do remember, he was not taking any medications at this time. He had been on a medication before, but there was no medications at this time. [LB787]

SENATOR PEDERSEN: But he was brought into an intensive care unit, a medical intensive care unit with a psych diagnosis. [LB787]

JAN GINAPP: Exactly. [LB787]

SENATOR PEDERSEN: Shouldn't the hospital be somewhat aware of that also? I mean, be responsible not for the...you are a medical nurse; you're trained in the medical floor, not in the psychiatric floors. [LB787]

JAN GINAPP: Exactly. [LB787]

SENATOR PEDERSEN: And there would be some recourse, I would think, for you to the hospital, too, as being a med nurse and not on a...and bringing a psychiatric patient into a medical intensive care unit. They also have intensive care units, as you know, in psychiatric units. [LB787]

JAN GINAPP: Unfortunately, in those cases, and there were no psych beds available

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through the city, and the patient is brought into the emergency room, what do you do?
[LB787]

SENATOR PEDERSEN: I'm sorry for what happened to you. I wish...I hope the hospital has changed some policies to take care of that kind of thing, too, for you. That's not right. [LB787]

JAN GINAPP: The hospital has been very accommodating and I appreciate that.
[LB787]

SENATOR PEDERSEN: It's not right. Okay, thank you. [LB787]

SENATOR LATHROP: Thank you. Senator Chambers. [LB787]

SENATOR CHAMBERS: My comments are being made because people from the hospital or representing hospitals is here. [LB787]

JAN GINAPP: Correct. [LB787]

SENATOR CHAMBERS: If this man was admitted...first of all, was his mental health admission by petition or just how was he brought, if you know, what were the circumstances of his coming to the hospital? [LB787]

JAN GINAPP: The circumstances to what I can recall are that he was brought into the hospital in police protection. He was placed in handcuffs in the emergency room and then he... [LB787]

SENATOR CHAMBERS: Okay. There was plenty evidence to hospital administrators that this man is being brought in, in constraints. He was admitted for homicidal ideation, which would indicate he's not the run-of-the-mill person who might have something not quite right in his mind. That incident occurred when he was being loud and obscene. He was being so loud that he could be heard outside of that room. Security persons are paid to respond to those situations. And if ten situations arise, the security person is to be called ten times and the security person is to be there. A security person's job is not for his or her convenience, they are to respond. And if that hospital does not have security personnel available in a circumstance of the kind you described to us, that's on the hospital. And I'm not going to say that we should fill in the gaps where hospital negligence exists by simply increasing the penalty. Why would you not think, because you'd been a nurse for 20 years, this is the first incident of this kind that had befallen you in that time. Why...go ahead, what were you going to say? [LB787]

JAN GINAPP: Well, I was going to say, of course, you know, you have dementia people. You expect little things. [LB787]

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SENATOR CHAMBERS: But dementia isn't the same as this. [LB787]

JAN GINAPP: No, exactly. But you expect little things. You don't expect to get beaten. [LB787]

SENATOR CHAMBERS: But when you have somebody brought in, in handcuffs, by the police with the diagnosis that you told us had been made, and this person is being loud and obscene, it seems to me prudence would have dictated that security be called to handle that situation. And I'm not chastising you, I'm getting a message to those people who run that hospital. I think they were negligent. I think they behaved incompetently and they need to have security persons who understand that that job is one where certain duties are to be carried out and they're expected to do it. And in these situations the staff, the nurses, orderlies, anybody need not feel hesitant to summon security if somebody admitted under these circumstances is raising a ruckus. It wasn't medication that caused this. It wasn't that he was in pain. He didn't come there with injuries. So the hospital people need to do a better job. [LB787]

JAN GINAPP: Well, I also would like for you to understand that this was like his third day in the hospital, and that we...security was called. I can't...I...they did do everything they could to get up there as quickly as they can. Security is on first floor, we're on the fifth floor. [LB787]

SENATOR CHAMBERS: Except they didn't enter the room before you did, so they didn't do their job. [LB787]

JAN GINAPP: But it wasn't expected that he was going to hurt...you know. [LB787]

SENATOR CHAMBERS: They did not do their job. They should have entered the room first. And if the hospital administrators were not aware of it at that time, they should be aware of it now. I'm saying you're in the chair, but those other people are in the audience, and they know to whom I'm speaking. That's all I would have, though. [LB787]

SENATOR LATHROP: Thank you, Senator Chambers. Are there any other questions? Okay. [LB787]

SENATOR LATHROP: Jan, thanks for coming down today. [LB787]

JAN GINAPP: Thanks. [LB787]

SENATOR LATHROP: We appreciate your testimony. Other proponents? [LB787]

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KAREN WILEY: (Exhibit) Senator and members of the Judiciary council, I would like to speak in support of LB787. I...my name is Karen Wiley. I'm a registered nurse in the state of Nebraska. I am speaking on behalf of Nebraska Nurses Association and as a member of Emergency Nurses Association, here. [LB787]

SENATOR LATHROP: Ms. Wiley, can you spell your last name for us? [LB787]

KAREN WILEY: It is W-i-l-e-y. [LB787]

SENATOR LATHROP: Terrific, thank you. [LB787]

KAREN WILEY: You're welcome. The American Nurses Association reports that half a million nurses were victims of violence in the workplace. This violence impacts the physical, mental, and emotional wellbeing of nurses. Nurses face an increased risk of violence because of emotional interactions with patients and their families in times of crisis. The patient was reported to be the frequent...the most frequent perpetrator of violence and abuse. In a recent Nebraska study, 30 percent of nurses have reported verbal abuse, 11 percent reported physical violence. The most frequent weapon that was used was furniture, 3 percent was use of a gun. In Nebraska other forms of violence against nurses were: 12 reported being strangled, 8 reported being beaten, 21 were sexually harassed, and 2 were sexually assaulted. Effects of workplace violence include psychological responses such as difficulty concentrating, and fear, physical problems such as headaches, and 9 percent has left the work site, 17 percent of nurses did not report instances of violence to management, 19 percent reported only some of those acts of violence that they experienced. Nationally, the cost of workplace violence is \$4.2 billion. Workplace...violence in the healthcare threatens the delivery of quality care and violates individuals rights to personal dignity and integrity. Do you have any questions? [LB787]

SENATOR LATHROP: Very good, thank you, Ms. Wiley. Let's see if there's any questions? Senator Chambers. [LB787]

SENATOR CHAMBERS: Just one. Ms. Wiley, was there a discussion by your organization when they decided to support this bill? [LB787]

KAREN WILEY: Yes, Senator. [LB787]

SENATOR CHAMBERS: How did they think that a bill like this, which increases punishments, would stop any of the things that are listed here? And I don't think any of these things ought to be done, by the way. How did they think that enacting a bill like this is going to stop these things from happening? [LB787]

KAREN WILEY: Senator, I think increasing the penalties...I don't think any nurse or any

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individual should be subjected to being beaten in the workplace. [LB787]

SENATOR CHAMBERS: I agree. I'm not quarreling with any of what you said here. People should not be subjected to that. But as a policymaker, I cannot just extend sympathy or empathy. We are being asked to take a course of action which the proponents say will address a problem. So I'm asking those who support our taking that course of action, respectfully asking that we be informed of how this course of action is going to prevent the problems from continuing to occur? Do you think that if somebody is going to do one of these things he or she would stop to say, I wonder what the penalty is and would have no way of knowing what the penalty is, whether we pass this bill or not? [LB787]

KAREN WILEY: Senator, does any person that commits a crime, do they think first as to what the penalty is? [LB787]

SENATOR CHAMBERS: I don't think so. [LB787]

KAREN WILEY: Okay. [LB787]

SENATOR CHAMBERS: Now if you're a professional criminal, or a white collar criminal you might. But in these kind of situations I don't think anybody...any of them would even know what the penalty is. They'd know that it's wrong, because we're not talking about people who are mentally not responsible for what they're doing. But people who know what they're doing, those are the kind I'm discussing. [LB787]

KAREN WILEY: Okay. [LB787]

SENATOR CHAMBERS: Because if they don't know what they're doing, then a penalty of any kind won't matter because they're not going to be punished, they'll be found not responsible by reason of insanity or mental incompetency and not punished, they'll be treated. We're talking about imposing punishments on people who know what they're doing. [LB787]

KAREN WILEY: Senator, the people that become violent aren't necessarily mental health patients, there are also individuals that are drunk, intoxicated that swing out. They are brought in by the police, sometimes in handcuffs. If they come through a cruiser they are handcuffed, they are brought in because maybe they were found down, had a cut on the head, and we have to evaluate them to make sure that there are no psychological effects from the fall. [LB787]

SENATOR CHAMBERS: I understand. That's an even stronger argument for what I'm saying. They're not thinking about a penalty. But let me put it a different way. If there are dangers to hospital personnel, hospitals can put security measures in place. [LB787]

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KAREN WILEY: Senator, we do have security. We have security 24/7. I work in emergency room and we do call security. In fact, we have had people brought in by the police department in handcuffs, and maybe have not been searched thoroughly enough, remain in the handcuffs, in fact have attempted to pull out a gun that they had stashed on their person. In some areas across the country patients are completely stripped and put into paper gowns so that there is no hidden weapons on their personal body. [LB787]

SENATOR CHAMBERS: You're convinced that, and your organization, that if this bill were passed these, I don't mean every one of them, but these kind of attacks will not occur. Is that their belief? [LB787]

KAREN WILEY: I think that would be like saying...that would be like saying no one would ever commit a crime again. [LB787]

SENATOR CHAMBERS: No, that's not what I'm asking. [LB787]

KAREN WILEY: And we both know that that wouldn't happen. [LB787]

SENATOR CHAMBERS: That's...I'm asking, does your group believe that if this bill were put in effect that it would stop these kinds of events or are they in the position of a lot of people who feel frustration because something is happening, nobody seems to have an answer, so do something, which is to go to the Legislature and say, impose a harsher punishment. [LB787]

KAREN WILEY: I don't think this...Nebraska is one of the states across the country that does not have a bill that has...that makes it a felony assault to assault healthcare worker. Pennsylvania has this in their legislation as well as, I believe, Kentucky, Massachusetts, California, Missouri. [LB787]

SENATOR CHAMBERS: Without intending to be argumentative, but it's going to seem that way because I'm in disagreement with what you're saying, I don't think you can show me that in any of those states that kind of legislation has prevented these kind of attacks from happening. And when I look at some of the statistics that have been given to us, for example, a half million nurses were victims. We know that that half million were not located in a single state. [LB787]

KAREN WILEY: No. [LB787]

SENATOR CHAMBERS: This is spread around the country. [LB787]

KAREN WILEY: That's correct. [LB787]

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SENATOR CHAMBERS: If in one year a half million nurses are victims, and these states have laws making such an attack a felony, it's clear that that provision on the books is not solving the problem. You know why I'm speaking like I am? Not to say I'm unsympathetic, but administrators are going to sit back and say all that they want is to get a harsher punishment. These people can address the problem to a greater extent than they are. I don't believe all these attacks can be prevented by any measures, but I think they should do something before they say simply increase the punishment, because I don't think that's going to do anything, in my view. And that's all that I would have. [LB787]

SENATOR LATHROP: Thank you, Senator Chambers. Are there any other questions? Okay. Thank you, Ms. Wiley. [LB787]

KAREN WILEY: Thank you. [LB787]

SENATOR LATHROP: Appreciate you coming down today. [LB787]

KAREN WILEY: Thank you. [LB787]

SENATOR LATHROP: Looks like the fire department is going to weigh in. [LB787]

BILL BOWES: Yes. [LB787]

SENATOR LATHROP: Good. Glad to have you here today. [LB787]

BILL BOWES: Senator Lathrop, members of the community, thank you for being me this opportunity to speak with you. I'd also like to take this opportunity...I don't get a chance very often to converse with state senators. I'd like to thank you for the work that you do in trying to make our lives and livelihoods in the state of Nebraska better. I appreciate all of that. I am here...my name is Bill Bowes, B-o-w-e-s. I am the chief of the Papillion Fire Department and am here representing the Nebraska State Volunteer Firefighters Association. I thank you for the opportunity to speak in favor of this bill. I appreciate Senator Gay introducing it. I'd like to address...partly what I'd like to address is Senator Chambers' excellent points that he's made thus far in the discussion. If society has determined that it is illegal or against the law to assault a person and there is a penalty associated with that assault, I believe our stance is that it is reasonable then to protect those who are called into dangerous scenes to offer them a higher level of protection. And I believe, Senator Chambers, if I'm correct in my assumption here, that in your discussions thus far the discussion is centered around basically one's philosophy on the purpose of establishing a law and setting a penalty associated with violating that law. Each of you individually has a personal philosophy with which you collectively come together in the state Legislature to develop laws and everything regarding that. Senator

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Chambers, I'm getting the impression, if I may, that you look at laws and penalties as a deterrent or possible deterrent to breaking that law. And that is a very valid point and I share that with you, to some extent. On the other side of things, when there is a law and a penalty associated with that, there is a punishment associated with that. And I think that's where it gets down to ones philosophy of this, is a law and the penalty set up to be a deterrent, or a penalty, or both? And I think in this case elevating the assault against an emergency responder, whether it be a law enforcement officer, a firefighter, EMT, or somebody who works in the hospital, are those people, because they are put into...they have the duty to act in more dangerous situations, are the deterrents and/or the penalties associated with violating that law significant enough? And, of course, our stance is that those are. So I appreciate your point of view on that. [LB787]

SENATOR LATHROP: Thank you for your testimony. Any questions? [LB787]

SENATOR CHAMBERS: He can go first. [LB787]

SENATOR LATHROP: Oh. Senator Pedersen. [LB787]

SENATOR PEDERSEN: Thank you, Senator. Chief, the fire departments are down here basically because of the issue of that man who fired a shot at them when they were responding to a call. Is that right? [LB787]

BILL BOWES: I would not say primarily. I believe Senator Gay introduced the act because of what happened at Midlands Hospital. The incident in Ashland was certainly a very extreme and unusual incident that occurred that illustrated the point that times are changing. Prior to going to the city of Papillion, I spent 21 years with the Omaha Fire Department. And I've seen general societal attitudes change. Being in the fire service, we were typically looked at as the good guys coming to a scene to help people. Whereas law enforcement officers, due to the nature of their job, they may not have been looked at in that light in many situations. But over the course of the past 23 years that I've been involved in the fire service, I've seen a change in attitude where we're not necessarily the good guys anymore. We are seen as figures of authority and therefore... [LB787]

(END OF TAPE 1; NO TAPE OVERLAP; SOME RECORDING LOST) [LB787]

SENATOR PEDERSEN: ...we haven't had happen in this state before... [LB787]

BILL BOWES: Correct. [LB787]

SENATOR PEDERSEN: ...where there were volunteers being shot at. [LB787]

BILL BOWES: Right. [LB787]

SENATOR PEDERSEN: So...but you are right, Senator. Thank you. [LB787]

SENATOR LATHROP: Senator Chambers. [LB787]

SENATOR CHAMBERS: Chief, you are partly correct in assessing my view. But the other part, when we had the examples at the hospitals is that precautions can be taken which could mitigate danger and harm. And when those with the responsibility to mitigate that harm and the means to do it don't do it, they are negligent. And I don't think the Legislature should pass harsher laws when some of the responsibility must be assumed by those who can prevent these things from happening. And we know they're not all going to be prevented. I don't believe, before you came here today, you could have told me what the punishment is for a given offense. The reason I don't keep them all in my mind is because I can go to the statute book and look it up. And we're dealing with crimes and punishments all the time. Few senators could tell you, if you said, third degree sexual assault, what's the punishment? What is it even called? They'll say, I'll look it up. And that's what reference books are for. [LB787]

BILL BOWES: Um-hum. [LB787]

SENATOR CHAMBERS: I don't think ordinary citizens have any idea what the name of the crime is or what the punishment would be. Now if fire personnel were placed under regular and increasing attacks and the Legislature decided to address it, there would be publicity, there would be information to let the public know and then there is the notice given, which ought to be given when a law is enacted that if you do A, then the consequences are B, C, D, and E. Now you know what it is, if you want to do it, then that's what's waiting for you. But in law school it's been said over and over, and judges said periodically hard cases make bad law. We have two incidents, each of which is egregious, but they are considered egregious because they are so out of the ordinary. And somebody might say, well, the fact that it happens one time indicates that you need to change the law to keep it from ever happening again. That is not my view. The one thing that everybody can take comfort in I won't be here after this session. And they'll probably be able to criminalize everything they don't like, put as harsh a punishment as they want. And then if it befalls their child or somebody's child they don't know, they'll say, what the devil is wrong with the Legislature putting such a harsh punishment as that? And they forget that that's what they said they wanted. People will ask for things. And if you give them what they ask for, they say, but this is not what I wanted. So as a policymaker I feel my duty is to listen and listen carefully, which I do. But not to have a knee-jerk reaction to prevent people from saying, well, Ernie is soft on criminals because he won't do this or that. If I cannot do this job properly and withstand the criticism that goes with it, my view is I shouldn't be here. I know everybody doesn't share it. I believe I probably get more threats per week, certainly per session, than all my colleagues put together. I get them by phone, I get them in anonymous mail, not to

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my face. There are senators who have, and I didn't know that's what they call panic buttons, so you get scared, you hit a button and security comes running. I've never had anything like that. I never will have anything like that. But I will defend myself. I have never said that, because I'm a legislator and I get these threats, we ought to make it a harsher crime to threaten a legislator or even to attack one. When I see different groups come here because of one incident, I try to be careful so that they understand I'm not excusing the bad incident. But I'm not going to vote to change all of the law because of that one incident, just so that it is clear what my position is. And you were correct in the first instance that I look at the crime or the conduct that we have criminalized and the punishment. And I try to consider what the ordinary person is who's likely to commit that crime instead of the extreme at either end. At the low end somebody might not be a bad fellow or bad woman and they do it. At the extreme end is somebody who's very, very bad. But if they fit within this category, we have a sliding scale, either no jail time or up to. So the judges are given some discretion in that regard. But as policymakers, we set the perimeters. And I may seem like the worst person in the world today, but that is not new for me, it's par for the course. And perhaps if I left the committee room without everybody feeling that way, I hadn't really done my job, because it's left to me to do these things. And because I am the senator who will speak out, who will raise the questions, who will deal with the issues, other senators don't have to. They can be very sympathetic, they can be very understanding, but they thank their lucky stars that I'm here, so that what needs to be said will be said but they don't have to say it. Of course, present company on the Judiciary Committee is excepted. (Laughter) But that's all I would have. [LB787]

SENATOR LATHROP: Thank you. [LB787]

BILL BOWES: May I respond? [LB787]

SENATOR LATHROP: Sure, just briefly, briefly, we got to... [LB787]

BILL BOWES: Just very briefly, yes. Thank you, Senator Chambers, I appreciate that and I appreciate your point of view. And when you said that there may be a point in time where legislation like this, similar to this may be necessary, I would go back to what Senator Pedersen said that, yes, the incident that happened at Midlands was probably the prompter to this legislation, but as someone who's been in the field for the past 23 years, that point in time, if it's not here now, is coming. And do we want to wait until several incidents happen before we say, okay, we've got to do something about this? Or do we try to head it off at the pass a little bit? My preference, as somebody in the field, would be let's try to head it off, whether it's through deterrence or punishment. Let's try to head it off sooner rather than later. And I think that's where now is an appropriate time. [LB787]

SENATOR CHAMBERS: Then why are not you all here when we want to do something

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about restricting the accessibility of assault weapons? And we've seen bad things happen with them, but we never see law enforcement, we never see people who want harsher punishments coming when we have concrete examples of bad things happening, and this is the time and legislators are afraid. But we have one incident affecting one of these groups and they say, pass the law now. But we have these examples of the misuse of these weapons but these responsible people don't come. And in recent days two people were charged when weapons were discharged and a person was injured. Up until that time, they were law-abiding citizens with guns. And the first crime was the misuse of the gun. So guns lead to people become non-law-abiding citizens. But what I was getting at is if we see a number of things that would indicate a trend is developing, then maybe a law would be appropriate. But prior to that, I don't think changing the law is always the way to do it, because we could put all the laws on the books that we want. We have laws that say police officers shouldn't do certain things, but they're not enforced, so cops do these things. We have laws, we have court decisions, we have societal standards that would say, if kids are getting guns, the law enforcement authorities ought to find the sources of the guns, but they won't do it. I've been asked, since I complained, why don't I get another law? Well, if they're not going to follow the law now, I can put 1,000 laws on the books, but they're not going to follow them. So it's a complex issue. But I'll tell you again, I'll be gone. And you all come back next year and you'll get everything you want. (Laughter) That's all I have. [LB787]

SENATOR LATHROP: Okay. We're not going to let you respond this time. (Laughter) But thank you for coming down. [LB787]

BILL BOWES: Thank you very much. [LB787]

SENATOR LATHROP: I appreciate it. [LB787]

MICHAEL SMITH: Good afternoon. My name is Mike Smith. I'm a deputy county attorney in Sarpy County. I'm sorry, S-m-i-t-h, last name. [LB787]

SENATOR LATHROP: All right, thanks, Mike. [LB787]

MICHAEL SMITH: I'm here on behalf of the Sarpy County Attorney's Office in support of this bill. We have examined the bill and believe there will be no problems implementing the bill as it's written. I really just want to address a couple of things that have been raised during the other discussion here. [LB787]

SENATOR LATHROP: Mike, did you say there is problems? I didn't... [LB787]

MICHAEL SMITH: No, there are no problems. [LB787]

SENATOR LATHROP: Oh, okay. Forgive me, I couldn't hear you very well. [LB787]

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MICHAEL SMITH: Sorry, I talk fast sometimes. [LB787]

SENATOR LATHROP: All right. [LB787]

MICHAEL SMITH: A couple of things about this. And, Senator Chambers, I don't dispute anything you said. The only response I could have in regards to this bill and its purpose is that the people involved, the victims of the crimes addressed here are vulnerable and the reason they're vulnerable is because they are offering medical treatment to people. And it seems to me that society could express the fact that when you're picking on somebody who's only vulnerable for the purpose of aiding you, we cannot prevent the crime, we can't put up a shield, but we at least can offer societal expression that that's a more serious crime than otherwise. And I think that would be one of the purposes behind this bill. There's some talk of this particular incident. First of all, I'd like to remind you that this bill covers larger than that, and not just psychiatric patients or patients like those, but anyone being treated by the people described in this bill. But to address that particular incident in particular, and I won't give you a lot of details because there is some confidentiality involved. But in general, someone is present at Midlands ER under emergency protective custody or the Mental Health Commitment Act. That's because law enforcement has been in contact with them and has determined they are dangerous to themselves or others and it's because possibly of a psychiatric condition or an addiction. And so that's why they went there. And they are only at Midlands because there is no other place to put them. There's not an appropriate psychiatric facility. Midlands doesn't do that sort of treatment. And they are there primarily because there is either some obvious medical condition or because there is no place else to put them for the time being. So that's why they would be at that particular facility. And I just state that if that other end, the mental health part was taken care of, they wouldn't have been present. The other thing regarding that is I think if you go to the jail, in general, you'll find that there are numerous people in there that have some sort of personality disorder, some sort of addiction, a depressive disorder. And none of those are seen as affecting mens rea, the mental state needed for a crime. So I don't necessarily believe that even if they're there under an EPC or mental health that we've risen to that level yet. If they do get to the level where that diagnosis becomes effective, then, you know, that becomes a factor. But I don't think that's necessary for the purpose of this bill. And obviously anybody who's in a hospital, because they have to be there, is not having a good day and they're under some sort of stress. But again, all those things are mitigating factors that can be taken into account by a sentencing judge or by a prosecutor deciding what charges to make. And that would be the end of my testimony. [LB787]

SENATOR LATHROP: Thanks, Mike. Any questions? Senator Chambers. [LB787]

SENATOR CHAMBERS: Mr. Smith, I'm sure you're aware, maybe it hasn't reached

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your attention and certainly not the attention of most people in this room that there were two incidents involving accidental discharge of firearms in Sarpy County. One involved a young black man, the other a white man who was older. And heavier charges were brought against the young black man. Are you aware of that? [LB787]

MICHAEL SMITH: I read that in the paper today. [LB787]

SENATOR CHAMBERS: But you didn't know it prior to that? [LB787]

MICHAEL SMITH: I was aware of the incidents. I work in the civil division, I rarely touch the criminal cases. [LB787]

SENATOR CHAMBERS: Okay, but you didn't know that the charges that had been lodged? [LB787]

MICHAEL SMITH: I was aware of the charges. [LB787]

SENATOR CHAMBERS: You were aware that the charges against the young black man were more severe than those lodged against the white man? Were you aware of that? [LB787]

MICHAEL SMITH: I wasn't aware of the race of either individual. [LB787]

SENATOR CHAMBERS: But you were aware that heavier charges were lodged against one? [LB787]

MICHAEL SMITH: Yes. [LB787]

SENATOR CHAMBERS: Was it because one involved an assault weapon and one a pistol? [LB787]

MICHAEL SMITH: I wasn't involved in those charging decisions. I really don't know much more than what was in the paper. [LB787]

SENATOR CHAMBERS: But you can understand that if you were the member of an oppressed group... [LB787]

MICHAEL SMITH: Yes. [LB787]

SENATOR CHAMBERS: ...which had been discriminated against, then you see a prosecutor dealing with two cases, very similar, and harsher charges are brought against a young black person than against a mature white man, you can understand the suspicion that it would raise in the mind of a person such as myself? [LB787]

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MICHAEL SMITH: I can understand it would raise suspicion. I can only tell you that it's my belief that once you dig into it you're going to find there's probably significant factual differences in those two cases. [LB787]

SENATOR CHAMBERS: Have you examined the two cases? [LB787]

MICHAEL SMITH: No. [LB787]

SENATOR CHAMBERS: Then how can you be sure that there is significant factual difference? [LB787]

MICHAEL SMITH: Because they were charged differently and I know the people involved. [LB787]

SENATOR CHAMBERS: So then you go from what has happened, in terms of the charging, backward and say, because these heavier charges were filed, therefore there must have been a factual difference between the two cases? That's the way your reasoning goes, correct? [LB787]

MICHAEL SMITH: Again, with the factor that I know the people involved and the way they operate and believe that that's why it happened that way. [LB787]

SENATOR CHAMBERS: But none of that has a bearing on the facts of either case. Is that correct? [LB787]

MICHAEL SMITH: No, I know that the people involved would be consistent in their charging decisions and that there must have been some significant difference if they charged them differently. [LB787]

SENATOR CHAMBERS: But you don't know that to be a fact from empirical evidence, do you? [LB787]

MICHAEL SMITH: I'm not familiar with the particular fact, no. [LB787]

SENATOR CHAMBERS: And if it turns out that that is not the case, you would have made a mistake in judgment, based...with what you're saying here today, is that correct? [LB787]

MICHAEL SMITH: I would be...yes, I would, yes. [LB787]

SENATOR CHAMBERS: Your view, if I understood you, is that a law should be changed so that a statement is made by society as to the regard it has for certain

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people in certain professions. Is that true? Let me tell you why I say that. You said, if I understood you, and I'm paraphrasing, that these people carry out these duties. And a law like this is a way for society to make a statement that it cares about these people and what they're doing and they should be accorded a higher level of protection, or something to that effect. [LB787]

MICHAEL SMITH: Close. [LB787]

SENATOR CHAMBERS: Okay. [LB787]

MICHAEL SMITH: My big concern was that the victims here were particularly vulnerable because they were engaged in their particular location, which involved the treatment of medical conditions. [LB787]

SENATOR CHAMBERS: Would you say any public official who is dealing with the public in a way where the public may be angry when they come in contact with that official, that that official should be accorded more protection? Let's say the county assessor or anybody in the county assessor's office, should we make it a felony to assault somebody in the county assessor's office? Because people may not like to pay taxes. They may not like the things that the assessor does. Should we make it a felony to assault somebody in the assessor's office? Should we make it a higher...a harsher punishment to assault any public employee or public official? Should we? [LB787]

MICHAEL SMITH: Again, my comment is simply that because in the exercise of this particular vocation they are making themselves particularly vulnerable. And that we can make that expression that we consider that to be a more serious crime because of that vulnerability. [LB787]

SENATOR CHAMBERS: Did the federal government make it a harsher punishment to kill somebody in the Post Office when those incidents occurred to such an extent that the term to "go postal" meant that you were going to do something bad to somebody? Did they change the federal law? [LB787]

MICHAEL SMITH: My recollection is they did for that and a whole variety, including poultry inspectors and things like that. [LB787]

SENATOR CHAMBERS: And do you think that that was a wise move? [LB787]

MICHAEL SMITH: My personal opinion is that some of that seemed to be overreaching. [LB787]

SENATOR CHAMBERS: Okay. But that's all that I'll ask you at this point. Thank you. [LB787]

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SENATOR LATHROP: Thank you, Senator Chambers. Any other questions for Mr. Smith? Okay, thanks for coming down. [LB787]

MICHAEL SMITH: Thank you. [LB787]

SENATOR LATHROP: We appreciate your thoughts today. [LB787]

BRUCE BEINS: Good afternoon, senators. My name is Bruce Beins, it's B-r-u-c-e B-e-i-n-s. I'm a volunteer EMT from the village of Republican City, Nebraska. I also serve as the chair of the Harlan County Health Systems, the hospital in Harlan County, critical access hospital. Interesting discussion on some of this. And, I guess, really my purpose in coming here maybe was just a little bit different. In the rural areas especially most of the fire rescue is done by volunteers, 85 percent to be exact. And for years, a big problem of ours has been recruitment/retention. And we have seen over the years an increase in incidents where people are assaulted. These people are not compensated for the aid that they are trying to give to the public. An unscientific survey of 200 providers, at one of our EMS conferences, found that about 60 percent of them had been assaulted at some point in their career. These assaults aren't always the patient, sometimes they are bystanders, sometimes they are family members. We don't have the luxury either with our ambulance services or in our hospital to have the security or to always have law enforcement directly there. What our concern is, is the pall that this places over the recruitment/retention, not just for your volunteers that are the entry point of a lot of these people into the healthcare system, but from a hospital standpoint, from a hospital board standpoint recruitment and retention of nurses is also very hard for us. And we're always critically on the edge of being short of nurses. Whether or not increasing the penalty would be a deterrent, I think I would have to agree that, no, somebody that is in that frame of mind is probably going to carry out some sort of attack. Having a higher penalty may not do that. But I guess I do agree from my standpoint as a volunteer provider and people that work in rural areas that the public should hold their service to their communities in high regard. I don't want to see anybody attacked for any reason. But I think raising this to the level of a felony is going to be, in my opinion, a deterrent to some, if we could make those people aware. And then it would be up to county attorneys and judges, so forth, to determine whether or not what they did rises to the level of a felony. So I am here representing the Nebraska EMS Association, along with myself as a volunteer provider. [LB787]

SENATOR LATHROP: Very good. Thank you, Bruce. Are there any questions? Seeing none, we appreciate you coming and testifying today. Any other proponents? Can I get a show of hands on how many other proponents there are? Okay. How about opponents? Any opponents? Right. Thank you. [LB787]

BRUCE RIEKER: (Exhibit) Good afternoon, Chairman Lathrop, members of the

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committee. My name is Bruce Rieker. I represent the Nebraska Hospital Association and we are here in support of this LB787. I have some written testimony that echoes much of what has been said. But what I'd like to do is try and address a few of the issues that have come up and then, obviously, entertain any questions that may come my way and try and answer them. It seems to me that there is a balancing act that society and our hospitals have in this issue. And not for one minute would I believe or do I think that any of our hospitals take lightly or disregard their responsibility to keep their employees safe, and that we do our best to do that in any situation. In an absolute environment there's probably more that anyone could do. But there seems to be somewhat of an indictment of our hospitals and the security that we may provide or not provide. But let me point out a couple of things. Federal law requires all of our nonprofit hospitals to accept or admit anyone who comes through our doors, we can't turn them away, for-profit institutions can. Therefore whomever is presented to our emergency rooms we need to care for. Some of them we do know their medical conditions, some of them we don't. As Mr. Beins pointed out when they pick them up, the EMS providers, they may or may not know to what extent they...bodily threat that particular patient may pose. He also correctly pointed out that this issue is not just patient specific, it may be friends, family members of the patient, it may be enemies of the patient that present themselves to our hospitals and pose a risk. There is also an issue about emergency protective care. And once again in the issue of balancing, in many situations where people are EPCed they are brought to our doors, and sometimes the law enforcement stays, sometimes they leave, sometimes we know the conditions that they've been brought to us, sometimes we don't. And so it's a question as to how much security are we supposed to provide. I have a question, what if our security officer is overpowered and then other people are injured? And to use this as an example, it struck me as...it seemed that the hospitals were being, what shall I say, challenged to provide all the security here. And I have a question. In any extreme, if somebody leaves a bar and they're drunk and they hit somebody, did the state, or the county, or the city drop the ball on that one and not provide enough security to make sure that somebody wasn't driving drunk and then hurt someone? I think that public policy would hold the same standard there. As far as we believe that this would be a deterrent. We also...not too recently the Legislature felt that it was appropriate that handguns were not allowed in our emergency rooms, but as a result of that we had to post notice that they were prohibited and what the penalties were associated with that. If this law is passed, we would also be able to post what those penalties are. Some would be deterred by it, some would not. It's not an absolute standard and it wouldn't be an absolute resolution to the whole issue. But I think that... [LB787]

SENATOR LATHROP: Bruce,... [LB787]

BRUCE RIEKER: Yes, I'm done. [LB787]

SENATOR LATHROP: Yeah. [LB787]

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BRUCE RIEKER: Okay. [LB787]

SENATOR LATHROP: We have a full room and it's getting...the hour is getting late. Are there any questions for Mr. Rieker? Senator Chambers. [LB787]

SENATOR CHAMBERS: Just a couple. Mr. Rieker, I'm sure people wondered what in the world I was talking about when I said some hospital people were here, representatives. You knew I knew you were here, didn't you? [LB787]

BRUCE RIEKER: I saw you look at me. [LB787]

SENATOR CHAMBERS: Okay. [LB787]

BRUCE RIEKER: I knew you couldn't wait to see me up here. [LB787]

SENATOR CHAMBERS: Okay. Okay, so I don't want any of the people who testified before you to think that I mistook them for the ones that I was addressing my comments to. Now I can understand everything that you said. But your example doesn't work because a hospital is a confined, limited area. All the streets and highways cannot possibly be patrolled by the police, and we know that. And I understand you're trying to make a point. But I don't think it was a good example that made it. Hospitals can do a better job of providing security if the situation is as lax as it was in the incident that we had before us today. I don't think it would take too much for them to say to the personnel, you are not to risk yourself; if we have one of these apparently dangerous persons summon security and let security be the one to get there first. Now I think that's reasonable, prudent, and that could be done. You are of the opinion that a strong argument for a law like this can be found in what other states have done in similar situations. Is that true? [LB787]

BRUCE RIEKER: Yes. [LB787]

SENATOR CHAMBERS: Okay. You know that other states have stronger laws that benefit persons who have been victimized by medical malpractice, whether on the part of the hospital or doctors, aren't you? You're aware of that, aren't you? [LB787]

BRUCE RIEKER: Correct. [LB787]

SENATOR CHAMBERS: Okay. But the hospitals have never come in here and said, make the laws on malpractice the same as they are in other states, so that the victims of malpractice have the same remedies that they have in other states. So the hospitals pick the times that they are going to refer to other states, like any interest would do. Do you agree with that? [LB787]

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BRUCE RIEKER: Yes. [LB787]

SENATOR CHAMBERS: Okay. Have you or anybody else that you know of taken or seen any studies that would show prior to the enactment of these enhancement laws there would be a certain number of assaults, after the enactment of such laws the number of assaults went down? Are you aware of any studies that indicate that? [LB787]

BRUCE RIEKER: I am not. [LB787]

SENATOR CHAMBERS: Me either. I just thought maybe there would be somebody in the profession who knew. That's all that I would have, though. [LB787]

SENATOR LATHROP: Thank you, Senator Chambers. Any other questions? Seeing none, thanks for coming down today, Bruce. Any other proponents? Opponents or neutral testifiers? I think Senator Gay waived, so that will close our hearing on LB787. Next up is LB847. Is Senator Erdman around? LB847. Senator Erdman, you are recognized to open on LB847. [LB787]

SENATOR ERDMAN: (Exhibits) Yes, sir. Senator Lathrop, members of the Judiciary Committee, my name is Philip Erdman. I represent the 47th Legislative District, here to introduce LB847. Before I do that, I must admit that there was an error in the drafting of LB847. And you'll be receiving an amendment, AM1745, which reflects the language that was worked on during the last legislative session between my office, the bar association, as well as the comments that we received from the Judiciary Committee after the hearing last year. And AM1745 reflects that language. And the green copy that you see is actually the same language that was found in LB102, from last session. But due to an oversight in drafting which I missed, that will not be the language that I would ask you to consider, AM1745 will be. State Medicaid programs are administered within broad federal guidelines and are financed jointly by the state and the federal government. Federal law has required Medicaid estate recovery since 1993. The state must, at a minimum, seek recovery for services provided to a person of any age in a medical institution or 55 or older that have received certain services. In September of 2005, the U.S. Department of Health and Human Services released a state-by-state analysis of collections from 2002 to 2004. Nebraska had a collection rate of .03 percent of nursing home spending. Nationally, that rate was .08 percent, and South Dakota, which has a similar notice requirement to the one being proposed, has a recovery rate of 1 percent of total nursing home spending. Nebraska currently has a provision where the state may waive its claim based on undue hardship. These guidelines are prepared in conformity with the standards specified by the Secretary of Health and Human Services, and that's the United States Secretary of Health and Human Services, for such a waiver. Nebraska further provides an exemption of property of \$5,000 for adult

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children to ensure that limited assets will be able to be passed on to family members. This bill does not affect the priority of creditors and it is based on the increasing efficiency of a state recovery as mandated by federal law. I handed out three items for the committee's consideration. The first one, obviously, is AM1745. The second one is a bulleted sheet, referred to as "LB847 Information", which walks through the existing process, the responsibilities with the citations of state or federal law that refers to the authority required by the state in complying with Medicaid estate recovery and how the process works. The other item should be a letter that you...that we received in my office from the State Bar Association. They have not taken a position on the bill as to whether or not it should pass or not, but we have worked with them on the process, should it pass, that it would follow the same process that other creditors would receive notice and therefore not creating an undue burden on the personal representatives, which was a concern of the committee members last year during the discussion of LB102. I know there are individuals here from the department who may be able to elaborate more on their current practice, why this is being offered to you. But again, after hearing the bill last year in front of the committee with LB102, we did work very closely with the state bar in addressing some of the concerns or all of the concern that we were aware of from the committee in the drafting of the amendment that you have before you, AM1745. [LB847]

SENATOR LATHROP: Thank you, Senator Erdman. Are there any questions? I do have one. [LB847]

SENATOR ERDMAN: Okay. [LB847]

SENATOR LATHROP: I see that we have a letter from Bill Mueller, representing the interests of the State Bar Association. And he has indicated in his letter, dated January 31 of '08, that the bar association takes no position, but we do believe the language in the bill is workable from an administrative standpoint. Have you...was this...let me try that again. Did Mr. Mueller have a chance to look at your amendment or does your amendment change the position of the state bar at all? [LB847]

SENATOR ERDMAN: That is the question I was hoping you were asking, Senator Lathrop, because that's the one I'm prepared for. In the drafting of LB847, inadvertently, what had happened was we had sent to the Bill Drafters the original copy of LB102. What we intended to do was send up the amendment that we had worked with the State Bar Association during the session last year of AM405. And in visiting with Mr. Mueller and representatives from the bar association, I had explained to them or had assured them that the language was consistent with that amendment. And it wasn't until this afternoon, as I was rereading the legislation to make sure that it was that way, that it was in fact different from AM405. And so what I had shared with Mr. Mueller was that the bill is in the form of the amendment. AM1745 reflects that agreement that we worked on last year. I haven't had a chance yet to explain to Mr. Mueller of the error that

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I made in my drafting of the legislation. But I believe it to be consistent with where we were last year. We have since visited about the process and we agree. So obviously we'd want to have them review the amendment to make sure it is consistent with what we had drafted last year. [LB847]

SENATOR LATHROP: So the short answer is we don't know if Mueller's letter took into account your amendment or if the fact the bar association isn't in favor is related at all to the version that they read? [LB847]

SENATOR ERDMAN: They...that is correct. What I had shared with them is that the amendment...the bill would take the same form as the amendment from last year. I hadn't read the bill that closely and evidently neither had they, otherwise they would have found the same issues that we did. And so it would be beneficial for me to be able to do that. I found it at 2:00 p.m. this afternoon, and so I just haven't had time to ask them to make sure. [LB847]

SENATOR LATHROP: Okay. Is there some mandate from the federal government that we do something? Are we not in compliance if we don't have something on this order? [LB847]

SENATOR ERDMAN: It's...the federal government doesn't dictate, as I understand it, how we recover from estates. They require...they specify what we can and cannot recover, limitations, undue hardships, different things like that. It's really an administrative question. The question before the committee today is, is it appropriate, or do we expect employees of the Department of Health and Human Services to read the public record to determine individual...that they have an obligation under federal law of trying to recover from their estate? That's the question. Is it more effectively administered, even with the safeguards in place to ensure that those who currently have an obligation, just because we're requiring them to have a notice, we're not creating a new obligation. If you're a personal representative of an individual that currently fits under this definition, under the federal law, you have that obligation now. And the department has an obligation to recover from your estate or the estate which you are the representative of under current law. The question is, do we want them to read the newspaper to determine who the personal representatives are,... [LB847]

SENATOR LATHROP: How do they get tipped off? [LB847]

SENATOR ERDMAN: ...or should we treat them as we do every other creditor and provide them the same notice? And it's the same notice that is provided by the clerk of the court, upon appointment, to the newspapers and journal circulation for that personal representative and also notifying the creditors. So simply we're adding the department to the list of creditors who receive the exact same piece of paper. [LB847]

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SENATOR LATHROP: Except that not all of them are necessarily people that have used Health and Human Services or Medicaid to pay for nursing home care. They could just be some guy that's 56 years old and dies, and we're still giving notice in every instance. [LB847]

SENATOR ERDMAN: That is correct. [LB847]

SENATOR LATHROP: Okay. I think I understand it. Senator Chambers. [LB847]

SENATOR CHAMBERS: Senator Erdman, since a bill is before us which might become law that is going to create an Office of Film something or other in the Department of Economic Development, and there will be three employees with nothing to do, can HHS outsource the responsibility of reading the newspaper to them, do you think? (Laughter) Or hadn't you thought of that yet? [LB847]

SENATOR ERDMAN: That is a wonderful opportunity, I think, for as they call cross-training, where we can ensure that there are viable individuals to step in. I would assume, Senator Chambers, if they place the notices in the same section of the newspaper that they place the movie reviews, it would help them in their fiduciary responsibility to ensure that the film has a...I can't remember the exact language in LB235, but has a chance of being successful. So if we could figure out to get the newspapers to place both the notices and that there, I think that may have a chance. But I'm not going to make the assumption that LB235 becomes law. So you may be a little ahead of me on that one. (Laughter) [LB847]

SENATOR CHAMBERS: Touche'. Thank you. [LB847]

SENATOR LATHROP: It's been a long week. [LB847]

SENATOR ERDMAN: Okay. [LB847]

SENATOR LATHROP: Any other questions? And it's not over. Thank you. Do you want to stick around and close? [LB847]

SENATOR ERDMAN: Thank you. We'll see how the debate goes. [LB847]

SENATOR LATHROP: Okay, okay. Chris. [LB847]

CHRIS PETERSON: (Exhibit) Good afternoon, Senator Lathrop and members of the Judiciary Committee. I'm Chris Peterson, P-e-t-e-r-s-o-n, chief executive officer of the Department of Health and Human Services. And I would like to thank Senator Erdman for introducing LB847 on behalf of the Department of Health and Human Services and I am here to testify in support of that. LB847 provides that for all decedents 55 years of

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age or older or who resided in a medical institution, and again this is where the change would be, we would not have the 14 days, other than a special administrator, the personal representative shall give written notice of his or her appointment to the Department of Health and Human Services. The department will compare this information to Medicaid recipient information. The language "for all decedents 55 years of age or older or who resided in a medical institution" was added at the request of Bill Mueller who represented the Nebraska Bar Association last year. And it mimics federal law. Currently, Medicaid is required to file a claim in the estate of any deceased Medicaid recipient if the deceased was 55 years or older or resided in a nursing home. It is the responsibility of the state to recover as much of the Medicaid costs as possible from available resources; however, the department often is not aware that a recipient has died and that resources from an estate may be available. Currently, the department uses a death match report and sometimes learns of estates by reviewing death or probate notices in the newspapers statewide. Also, we have hired a full-time estate recovery person to focus on improving our collections. Even so, this bill will make this process more efficient. Under this bill, notification would be given to the Department of Health and Human Services by the appointment of a personal representative when an estate enters probate. The notification required in this bill would ensure that the department is aware of all possible estates. And if I could answer, respond to some of your questions, Senator. It would be a tool. We are required by federal law to seek repayment if the Medicaid has been given and there is an estate. What we do right now is if the person "themselves" received Medicaid, they're in our N-FOCUS system. And we use that system to match up with Vital Records when a death certificate has been applied. So we always are aware of all of those. But if the spouse is living in the house, under federal law and state law, you do not look at any of those assets until after either the spouse has passed away, and those are the ones that we are not aware of then when that happens, because that recipient is not the Medicaid recipient, it was the spouse. As Senator Erdman said, by federal law you can...the state has the ability only to look at people 55 years or older who received Medicaid. We cannot look at the spouse, we cannot look at a child who is residing in the house or a disabled person. Adult children get \$5,000 out of the estate, and I think we're about sixth in the list of liens. So...and I'd be glad to try to answer any questions I can. [LB847]

SENATOR LATHROP: Are there any questions? Senator Chambers. [LB847]

SENATOR CHAMBERS: I was trying to get your title correct. So I'll just say, Director Peterson, that's...what is the title? [LB847]

CHRIS PETERSON: Okay. Chief executive officer. [LB847]

SENATOR CHAMBERS: Chief executive officer Peterson, I usually call her Senator, because she was in the Legislature. (Laugh) But for the record, okay. Does the federal rule or regulation make just a flat requirement that this be done or do they say that the

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state must exercise due diligence or something like that? [LB847]

CHRIS PETERSON: The specific language, Senator, is 42 USCA 1396p. "No adjustment or recover of any medical assistance correctly paid on behalf of an individual under the state plan may be made, except that the state shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the state plan in the case of the following individuals," and then those are the ones that have correctly... [LB847]

SENATOR CHAMBERS: But it says "shall seek,"... [LB847]

CHRIS PETERSON: Yes, "shall seek." [LB847]

SENATOR CHAMBERS: ...not that it must, subject to some penalty if they don't...seeking can mean different things. [LB847]

CHRIS PETERSON: Certainly. [LB847]

SENATOR CHAMBERS: It can mean prudent action, feasible action, diligent action. But there's no absolute mandate that it be done and every decedent who had received benefits be discovered or unearthed, not exhumed unearthed. [LB847]

CHRIS PETERSON: No. No, as I said, it's another tool that we would have in the arsenal that we use when we look at people that have been correctly covered with a Medicaid payment, if they have an estate that falls within the legal guidelines then we seek recovery from that. [LB847]

SENATOR CHAMBERS: And you may not know the answer, what would the average value, if such a thing can be determined, of the estate of somebody who has been receiving Medicaid? [LB847]

CHRIS PETERSON: Actually, I can. Over the last year, because of estate recovery, we had approximately 331 estates that we recovered from, and there were a total of a little over \$2.4 million. The majority of those fell within...under \$5,000. We had 21 that were between \$5,000 and \$6,000; 13 between \$6,000 and \$7,000; and 6 that were between...greater than \$10,000. But the majority fall between the \$1,000 to \$5,000. [LB847]

SENATOR CHAMBERS: That's not even worth doing much work for, in my opinion. And you don't even have to comment. But I felt that since Medicaid is for people without means, usually, there is not that much involved here in terms of actual... [LB847]

CHRIS PETERSON: Almost always just the house, Senator,... [LB847]

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SENATOR CHAMBERS: The house? [LB847]

CHRIS PETERSON: ...is what it is. Um-hum. [LB847]

SENATOR CHAMBERS: A house that's worth \$5,000? [LB847]

CHRIS PETERSON: The house, actually there is no limit on that in Medicaid. It's the residency of the persons there, their surviving spouse. When the estate is settled then, as I said, all of the other liens come first, and then if there are medical expenses that Medicaid paid for then we're after that. [LB847]

SENATOR CHAMBERS: So everybody else receives what they would have coming... [LB847]

CHRIS PETERSON: Um-hum. And many... [LB847]

SENATOR CHAMBERS: ...by way of a claim against the estate. [LB847]

CHRIS PETERSON: ...times when we found out...find out the estate has been settled and we don't have any ability to go after it. So what this is, is just the notification so that we can, you know, do a formal notice to them, file it in the court. [LB847]

SENATOR CHAMBERS: And my favorite example, we'd have more Little Orphan Annie's than Daddy Warbuck's in this. [LB847]

CHRIS PETERSON: I know, Senator. [LB847]

SENATOR CHAMBERS: Okay. That's all I have, though, thank you. [LB847]

CHRIS PETERSON: Um-hum. [LB847]

SENATOR LATHROP: I do, if I can ask... [LB847]

CHRIS PETERSON: Sure. [LB847]

SENATOR LATHROP: ...just a couple of questions. And as you may know, I have a little experience in dealing with subrogation claims with Medicaid. And I've had a couple of these type dealings on the estates. And I found it to be a little cumbersome getting information out of Medicaid as to what's owed and reconciling that. [LB847]

CHRIS PETERSON: I'm shocked. (Laughter) [LB847]

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SENATOR LATHROP: Of course you are. My question for you is, if we include...pass this bill and now you're getting notice every time somebody older than 55 or someone who has received benefits from Medicaid, these notices now pour into Medicaid and you have staff that goes through them. How long does it take, or do you get a special process for providing a claim against the estate, or do you get in line like every other creditor and have to comply with the time limits and so forth of every other creditor in an estate under the probate code, if this passes? [LB847]

CHRIS PETERSON: Senator, if you would allow me, I can turn and get the answer very quickly, because we have our estate recovery person. [LB847]

SENATOR LATHROP: I'd be happy...I'd rather have the right answer than a fast one. [LB847]

CHRIS PETERSON: Okay, okay. Can we get back to you, because I know that this is kind of cumbersome when we're talking... [LB847]

SENATOR LATHROP: Sure, that's all right. Maybe what you could do is tell me how that process works after you get notice so that...I mean, if we're only talking about \$1,000 here and \$1,000 there,... [LB847]

CHRIS PETERSON: Um-hum. [LB847]

SENATOR LATHROP: ...which believe me, I like to save money for HHS, but if what you do is hold up an estate for a person of very modest means and you hold it up for an extra year while they're waiting for a number or to reconcile this information with Medicaid,... [LB847]

CHRIS PETERSON: I will find out for you. [LB847]

SENATOR LATHROP: ...then I'd...then it's a consideration. [LB847]

CHRIS PETERSON: The other thing that I talked to you also, we have a large web site and we have some interactive applications on that. And I visited with our person this last week. We would possibly be able to do just an electronic filing, too, where the person would just simply be able to submit that on a form. And it goes right to us, which would alleviate some of the work on the part of the personal representative. [LB847]

SENATOR LATHROP: Okay. And if you can get me information... [LB847]

CHRIS PETERSON: I will. [LB847]

SENATOR LATHROP: ...on the other stuff, I'd appreciate that. [LB847]

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CHRIS PETERSON: I will, very much. [LB847]

SENATOR LATHROP: Thank you very much. [LB847]

CHRIS PETERSON: Thank you. [LB847]

SENATOR LATHROP: Any other questions? None? All right. [LB847]

CHRIS PETERSON: Thanks. [LB847]

SENATOR LATHROP: Thanks for coming down. Any other proponents? Are there any opponents? Anyone wishing to testify in a neutral capacity? Seeing none, Senator Erdman, you're free to close or to waive close. (Laugh) [LB847]

SENATOR ERDMAN: I'll wave at you while I close. If you look at the handout, Senator Lathrop, that I distributed to the committee entitled "LB847 Information", there are four...there are five sections, if you will. The fourth one down refers to priority of creditors found in Revised Statutes 30-2487. That gives the specific order of claims to be paid to creditors. And one is the cost expense of administration; two is reasonable funeral expenses; three is debts, taxes with preference under federal law; number four is reasonable and necessary medical expenses of the last illness and claims filed by the Department of Health and Human Services Finance and Support pursuant to Section 68-919; number five is debt and taxes with preference under other laws in the state; and number six is all other claims. And again, those are found in Section 30-2487. So I wanted to provide that clarification to you and remind you that when we're talking about the estates that are being...the attempt to recover from estates, there are safeguards that are also noted in that same handout that limit what the department may recover as well. And whether shall seek or shall receive are two different things. Generally, seek and ye shall find. And we'll see what you find in your discussions here. But we'd be happy to work with you. And we'll visit with Mr. Mueller and the bar association to make sure that we're clear as to the language that's offered to you. And I believe that it's consistent with what the understanding was. But I want to make sure that it's clear and that they can confirm that. [LB847]

SENATOR LATHROP: Good. Thanks, appreciate it. [LB847]

SENATOR ERDMAN: Thank you. [LB847]

SENATOR LATHROP: That will close our hearing on LB847. And we'll move on to LB901. All right, Senator Johnson's standing. [LB847]

ROGER KEETLE: (Exhibits) Good afternoon, Senator Lathrop, members of the

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Judiciary Committee. Senator Johnson, as you know, has had back surgery and is unable to attend. He wishes he could because he believes this is a very important bill, so he sends his apologies that he's not able to be here. And I hope to be...I'm definitely a poor substitute, but I'll do my best. LB901 is intended to create a new type of good Samaritan law for a new type of good Samaritan. The current good Samaritan law in Nebraska only protects an individual who spontaneously assists at the scene of an accident or other emergency, it does not protect trained and organized volunteer or emergency workers in an ongoing public health emergency or disaster. The Emergency Management Act, which I've cited...will cite for you, provides broad immunity for emergency management workers. But that has to be after the Governor has declared an emergency or if there's been a local political subdivision that's declared an emergency. There's been a gap identified by the law that was found by LR452 and that is this absence of declared emergency, what's the liability of emergency management workers while they're being trained or while they're doing mandatory exercises. And there is no protection, that's why we're here. That's the gap that we intend to try to fill with LB901. So we want to be consistent with the Emergency Management Act. And also we want to be consistent with a new national program that's being developed for ensuring homeland security and for providing workers in national emergencies. The Katrina disaster showed that the federal government couldn't do it, in fact the best organized people were the EMT people, the volunteers actually did a much better job than NEMA. And also we learned a lot of lessons on why NEMA didn't work and why the current laws didn't work. There have been changes at the federal level, and there is a Uniform Law Commissioner's Committee that have recommended a law similar to what I present to you today on emergency management workers. We will talk a little bit about the emergency management...Emergency Reserve Corp. I have a handout about that. That is one of the organizations that the federal government has put together to organize local volunteers and health professionals who contribute their skills. Our biggest problem with emergency...with medical workers is they all know their liability and are very concerned about their liability, and we can't assure them and recruit them unless they have some kind of assurance that they will not be sued for their good Samaritan acts. We think it's important for...very important for training to be done, for the drills to be done. That's how we ensure good safety and provide for the greater good. So Nebraska need organized, trained, and prepared emergency workers, that's the goal of this bill. I have a letter from Dr. Bacon, from Kearney, who's been very instrumental with Dr. Johnson in working on EMP matters. He's been involved in recruiting health professionals for emergency management for the years for the EMP system, is working on this area. And we're finding it increasingly hard to get doctors and nurses to volunteer their time unless they have some kind of assurance that they can do this work. I also have, for the record, a letter of support from the Nebraska Medical Association. We're hoping we get extra points by not having extra testifiers up here. So... [LB901]

SENATOR LATHROP: You will. You know what we didn't get from you is your...we got

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to have you put your name... [LB901]

ROGER KEETLE: Oh, gosh, I started right off. [LB901]

SENATOR LATHROP: ...and spell your last name for us. [LB901]

ROGER KEETLE: Yeah, yeah, for the record. [LB901]

SENATOR LATHROP: I'm failing in my duties as the stand-in Chair. [LB901]

ROGER KEETLE: Yes, no problem. For the record, my name is Roger Keetle, K-e-e-t-l-e. And again, I am a poor substitute for Senator Johnson. With that, I would take any questions that you might have about the bill. We have again attempted to work with what I understand is the opposition and narrowed the language. We are more than happy to continue to work on the language. But we do feel there is a real need for this bill. And we do need to have better protection for our emergency management workers and our CERT team members. And people will follow me with more information. [LB901]

SENATOR LATHROP: All right, Roger. Let's see if there's any questions? Senator Chambers. [LB901]

SENATOR CHAMBERS: Mr. Keetle, I won't ask any questions because the senator is the one who ought to answer them. And I know that staff will present a bill, but I don't think it would be appropriate for me to ask you questions about the bill because the senator is the one who should respond to them. So don't think I'm just spacing you off. [LB901]

ROGER KEETLE: Oh, okay. [LB901]

SENATOR CHAMBERS: And did you say your name is spelled K-e-t-t-l-e? [LB901]

ROGER KEETLE: K-e-e-t-l-e, sorry. [LB901]

SENATOR CHAMBERS: Just checking. [LB901]

ROGER KEETLE: Yeah. I've done this enough times that I should...it should be automatic. I apologize. [LB901]

SENATOR CHAMBERS: Okay. [LB901]

SENATOR LATHROP: Okay. Seeing no questions, thanks for introducing the bill. You've done a commendable job in Senator Johnson's absence. [LB901]

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ROGER KEETLE: Oh, thank you. He's hopes to be back as soon as possible. [LB901]

SENATOR LATHROP: How...is he feeling okay? [LB901]

ROGER KEETLE: When he takes his pain pills, yes. [LB901]

SENATOR CHAMBERS: Then I will ask a question. By chance, he wasn't having a backbone implant, was he? (Laugh) Don't answer. Don't answer. [LB901]

ROGER KEETLE: They had to take some out, he had too much. (Laughter) [LB901]

SENATOR CHAMBERS: But tell him...he said what? I didn't hear you. [LB901]

ROGER KEETLE: He had to...they had to take some out, he had too much backbone. (Laughter) [LB901]

SENATOR CHAMBERS: Hey, touche'. You get a raise. (Laughter) [LB901]

SENATOR LATHROP: They wait until his last year, and he's term limited out, and then they start working on his spine. (Laughter) [LB901]

ROGER KEETLE: Yeah, that's it. [LB901]

SENATOR LATHROP: Okay. Okay. Are there proponents of this bill? [LB901]

BRUCE BEINS: Good afternoon again, senators. My name is Bruce Beins, B-r-u-c-e B-e-i-n-s. I'm here representing the Nebraska Emergency Medical Services Association. Of course, the good Samaritan law has been around for a long time. But over the decades some things have changed, emergency management especially. The mutual aid that we share with our other departments in our areas the call to go across what would be our district lines, boundary lines, so forth to help in natural disasters, emergencies, possibly acts of terrorism, have called into question whether or not maybe this shouldn't be expanded somewhat to include the training that we do for those types of actions. And then also, like Roger said, if we are called to other areas, including other states, whether or not we have some liability protection as good Samaritans. A couple parts in this that I think are just as important to note. And one is that this applies to people who are not compensated for this act, a true good Samaritan. The other part I thought was important to point out is the immunity that we're given does not apply to cases of willful misconduct, things that would normally incur a liability. So this is something that it would be good for--volunteer fire, volunteer rescue, and those working in the emergency management field. I encourage you to forward this bill. [LB901]

SENATOR LATHROP: Thank you, Mr...is it Beans? [LB901]

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BRUCE BEINS: It's Beins, actually. [LB901]

SENATOR LATHROP: Beins, forgive me. Are there questions? Senator Chambers. [LB901]

SENATOR CHAMBERS: Just for the record, I will say that we've gone over similar issues on other bills, so I'm not going to put you through the same things on this particular bill. [LB901]

BRUCE BEINS: Thank you, Senator. [LB901]

SENATOR LATHROP: I think he's done that before I got here, so I can't help myself. I do have some questions, if I can. When you are doing the training that you want, you're looking for immunity from civil liability for things that happen during training exercises. Is that your understanding of the bill up here? [LB901]

BRUCE BEINS: Training and then actual response to the emergencies themselves, both, yes. [LB901]

SENATOR LATHROP: Okay. And are you...do you participate in the...you're with the volunteer fire department? [LB901]

BRUCE BEINS: Yes, I am. Um-hum. [LB901]

SENATOR LATHROP: Do you participate in this kind of training? [LB901]

BRUCE BEINS: Yes, I do. [LB901]

SENATOR LATHROP: You're familiar with the training you're talking about? [LB901]

BRUCE BEINS: Yeah, it varies depending on the locale, I mean what type of training we may do is going to vary a lot. In my rural area we concentrate more on our natural type disasters, because that's the types of things that we would probably get called out on, more so than maybe those in the metro areas that also would be looking at other types of disasters, like terrorist events. [LB901]

SENATOR LATHROP: Can I maybe be a little more specific? What are you doing that you think you might hurt somebody that you would need immunity from a civil lawsuit? [LB901]

BRUCE BEINS: I guess in my mind it's not the training so much that I am worried about but the actual response. We have a... [LB901]

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SENATOR LATHROP: Okay. Let's take an actual response. And since you're in the rural area and your concern is more with things like tornados, a tornado hits your hometown, what are you going to do that you think might hurt somebody? Well, you're a fireman, so you're going to respond as a fireman. What is it about the natural disaster that changes your role that might result in an injury for which you're looking for civil immunity or immunity from civil liability? [LB901]

BRUCE BEINS: Yeah. I guess I can't see...I guess I can't answer what is special about the disaster portion of it. Responses are responses to us. [LB901]

SENATOR LATHROP: Okay. That helps me. How is it that you might hurt somebody? I mean the immunity that you're looking for is if you hurt somebody you don't want to be sued for it. You don't want to be accountable for negligent action. Is that right? [LB901]

BRUCE BEINS: Exactly. [LB901]

SENATOR LATHROP: Okay. What opportunity do you have to hurt somebody when you're responding to a tornado? [LB901]

BRUCE BEINS: Anytime you're going to treat a patient you have the potential to do harm, even unintentional, even to the best of your training ability sometimes there are poor outcomes. And in our society people like to look to find somebody to blame for some things. And so... [LB901]

SENATOR LATHROP: Okay. [LB901]

BRUCE BEINS: And so that's kind of what the good Samaritan law takes care of is those that are doing this out of the goodness of their heart, or uncompensated for it, or doing the best of their abilities. As long as it's not willful misconduct,... [LB901]

SENATOR LATHROP: What if you're just careless? Do you think a person that's careless should not be accountable? [LB901]

BRUCE BEINS: I suppose if careless rises to whether or not it was willful. [LB901]

SENATOR LATHROP: I'm not...willful is closer to intentional. I'm just talking about somebody who doesn't behave in a reasonable manner while they're providing care. Do you think it's fair that that person should be immune from responsibility? [LB901]

BRUCE BEINS: I'd say no. No, I would agree that if they're not, you know, operating and holding themselves in the manner that the public would expect and the profession would expect,... [LB901]

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SENATOR LATHROP: They're accountable. [LB901]

BRUCE BEINS: ...then you've deviated from the standard of care, and yeah, you should be accountable for those actions. [LB901]

SENATOR LATHROP: That's all I have. Thank you. Are there any other questions? Seeing none, thank you for your... [LB901]

BRUCE BEINS: Thank you, senators. [LB901]

SENATOR LATHROP: ...sticking around and testifying again. [LB901]

RANDY JONES: Hello. My name is Randy Jones. I'm the director of the American Red Cross located here in Lincoln. I'm a registered lobbyist working solely on behalf of the Red Cross in my position as the director. Last year, the Nebraska volunteers for the Red Cross responded to 464 disasters, ranging from residential fires to larger storms, like ice storms, tornados, and floods. We also taught 21,000 Nebraskans how to prepare for emergencies. I think in response to your question, Senator Lathrop, regarding examples, usually deaths and injuries that are caused by disasters are caused following the disaster, in the response phase, and particularly in tornado examples in the cleanup phase. Not so many are caused by the storms themselves. And I think of a recent example of a few years ago when Hallam and Clatonia were affected by the tornado. There was a mass number of volunteers that volunteered to help with cleanup, which presents...they placed themselves in some hazardous conditions because of the type of debris being removed as well. But potentially they could cause harm on others without intent. What our goal here is to prepare for large emergencies and of particular concern is pandemic flu preparedness. We don't want the concern for liability to inhibit volunteers from stepping forward and volunteering their services to help their neighbors. And so we're supportive of the bill from that standpoint. Be open to any questions. [LB901]

SENATOR LATHROP: Okay. Senator Chambers. [LB901]

SENATOR CHAMBERS: This is a fresh person, a new person [LB901]

RANDY JONES: Yes, sir. [LB901]

SENATOR CHAMBERS: You don't want volunteers to be inhibited by the threat of possible liability attaching to work that they do. I, as a policymaker, do not want people, knowing that they're not liable if they're negligent, to be negligent and feel that they are exempt. [LB901]

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RANDY JONES: Sure. [LB901]

SENATOR CHAMBERS: Negligence is the failure to exercise due care under the circumstances and somebody is hurt as a result. Now when we provide negligent coverage, I mean immunity for negligence,... [LB901]

RANDY JONES: Um-hum. [LB901]

SENATOR CHAMBERS: ...we are telling people, you don't have to exercise due care. If due care is that...well, I'm not going to go through a lot of examples. Why should these people, that you are going to encourage to be volunteers, be told, you don't have to exercise due care because you're not going to be liable if you're negligent? [LB901]

RANDY JONES: I understand your concern and I share that from the standpoint of people who may be acting out of their level of training or beyond their level of expertise or licensure, absolutely. And we need to be able to protect the public. What I'm concerned about is the good Samaritans who are in good faith rendering help that is certainly reasonable to help their neighbors with in terms of, say, cleanup, for example, where it doesn't require a great level of expertise. [LB901]

SENATOR CHAMBERS: Well, if they use reasonable care, if they use proper care they're not going to be considered negligent, even if something happens and a person is hurt. Why do people use the term good Samaritan? Where did that term come from even? [LB901]

RANDY JONES: I believe there are laws. And I don't know that Nebraska uses that term specifically or not. But... [LB901]

SENATOR CHAMBERS: No, I don't mean in the law, because that term is found in laws. Where...what does it even refer to? [LB901]

RANDY JONES: I don't know, Senator. [LB901]

SENATOR CHAMBERS: Oh. [LB901]

RANDY JONES: I mean, from what I understand many other states have what are called good Samaritan laws that protect... [LB901]

SENATOR CHAMBERS: Where did the term originate, do you know? [LB901]

RANDY JONES: Does it come from the Bible? (Laugh) [LB901]

SENATOR CHAMBERS: Yes. It's because this guy had...somebody had been set upon

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by thieves and was...he'd been messed over and this guy was a Samaritan, those were the people looked down on. And he told this innkeeper, I want you to clean this guy up, tend to his wounds, feed him, take care of him, and when I come back I'll pay you. And he's given a lot of credit, but he had no intention of coming back that way anyway. So they need to get the rest of the story, which they didn't. But now let's take the term to mean what you mean it to mean, that somebody out of the goodness of his or her heart is going to do the best he or she can do to render aid to somebody. You take into consideration the circumstances surrounding that incident. So if there is a very touch-and-go situation, a different standard would be applied from one where you can take your time, you can study the situation and arrive at a plan of action. If you've got to act right now, you may do something which, under other circumstances, would be considered careless. But when you look at all of the totality, that is not careless or negligent under those circumstances. So we would be talking about a situation where a person is not being careful, as he or she should under the circumstances. When the Red Cross seeks volunteers, does the Red Cross ever say, we want people trained in a certain area? Or they just say, whosoever will, come here and let's do what we think needs to be done? [LB901]

RANDY JONES: We try to attract a vast number of volunteers with certain skill levels. But the services we provide, we do provide training for them in how to provide them. [LB901]

SENATOR CHAMBERS: Okay. So your volunteers, before they embark upon activity of the kind the Red Cross is involved in, will be given some kind of at least rudimentary or minimal training? [LB901]

RANDY JONES: Yes, that's correct. Now in a...when we have time to prepare for emergencies, we're able to spend more time in training. When we have a catastrophic event, where it's rather sudden and we need a big burst of volunteers, we'll have to do much more bridge training. [LB901]

SENATOR CHAMBERS: Okay. That's all I had. Thank you. [LB901]

RANDY JONES: Thank you. [LB901]

SENATOR LATHROP: Anyone else? I do have a couple question for you. [LB901]

RANDY JONES: Yes. [LB901]

SENATOR LATHROP: You gave the example of the tornado in Hallam. [LB901]

RANDY JONES: Yes. [LB901]

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SENATOR LATHROP: Did the Red Cross provide volunteers for the...immediately after the tornado? [LB901]

RANDY JONES: Yes. [LB901]

SENATOR LATHROP: There were certain needs, they had to get people into the gym or something, they had to get them to someplace to stay with blankets and food? [LB901]

RANDY JONES: We were...we prepared to receive them in a shelter at Southwest High School. We had feeding units there providing food. We provided financial aid,... [LB901]

SENATOR LATHROP: Okay. [LB901]

RANDY JONES: ...you know, a number of different services. And, you know, I need to say that our concern is not strictly with Red Cross volunteers, but there's a large number of agencies and groups that respond in various ways. [LB901]

SENATOR LATHROP: And they responded to the Hallam... [LB901]

RANDY JONES: Yes, absolutely. [LB901]

SENATOR LATHROP: ...not just the Red Cross, but you were part of the effort and so then you bring people in by bus loads to help clean up? [LB901]

RANDY JONES: Yes. [LB901]

SENATOR LATHROP: I mean you literally have people coming from Omaha by the bus loads, didn't you, to help clean up? [LB901]

RANDY JONES: In the example of the cleanup, we did not...the Red Cross did not coordinate cleanup workers in the Hallam area, another agency did. [LB901]

SENATOR LATHROP: Okay. [LB901]

RANDY JONES: But, yes, volunteers showed up in bus loads to provide that aid. [LB901]

SENATOR LATHROP: All right. And you had enough volunteers? [LB901]

RANDY JONES: We could always use more. [LB901]

SENATOR LATHROP: Of course, but you got the work done,... [LB901]

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RANDY JONES: We got the job done. [LB901]

SENATOR LATHROP: ...the Red Cross did what it needed to do in Hallam. [LB901]

RANDY JONES: Yes, yes. [LB901]

SENATOR LATHROP: Okay. Thank you. Are there any other questions? Okay. Thank you very much for coming down. Other proponents? How many folks still intend to testify on this bill? Okay, all right. Let's...because the hour is getting late, as we say, maybe we can make sure that you limit it to new material and I'll try to ask fewer questions. [LB901]

JON ROSENLUND: Yes. My name is Jon Rosenlund, J-o-n. My last is R-o-s-e-n-l-u-n-d. I'm the emergency management director for Grand Island and Hall County. We've talked a lot about volunteers. I think I would like to discuss a little bit about specifically the issue at hand, the types of volunteers this is intended to cover. Volunteers generally mentioned in the good Samaritan act are, as has been stated, unpracticed, unrehearsed bystanders that happen upon an incident and render aid. This bill is intended to bridge the gap of liability coverage between the traditional good Samaritan volunteer and an active responder with a fire, EMS, or law enforcement agency. These volunteers are members of a CERT team, a Community Emergency Response Team, CERT, C-E-R-T, a Medical Reserve Corp, or any number of groups of volunteers that are specifically trained to respond to their community in a disaster. So they are a bit of a halfway point between the one and the other. And it's been identified that there could be some legal loopholes that could put these individuals at risk for litigation. These programs: CERT, Medical Reserve Corp, other Citizen Corp programs, such as Neighborhood Watch, Fire Corp, and volunteers in police services are all part of a collaborative effort to encourage public involvement, and volunteerism, and public safety. And it's important that we recognize the importance of encouraging public involvement by eliminating barriers such as liability. We always like volunteers. But as an emergency management director, I need more than good Samaritans, I need good, trained, organized, educated, and equipped Samaritans that can do much more than your run-of-the-mill bystander. I've seen CERT members respond to tornados, I've seen CERT team members respond to a number of other local and national disasters; Medical Reserve Corp volunteers do the same. And it's vital that we bridge this gap. That is all. [LB901]

SENATOR LATHROP: Okay. Thank you, Mr. Rosenlund. Any questions? I said I was not going to ask any, but I got a quick one. Did you just say that Community Emergency Response Team, which is the people we're going to immunize if this passes, includes Neighborhood Watch folks? [LB901]

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JON ROSENLUND: No. It may involve people that volunteer for that. The Citizen Corp, are you familiar with that...with the Citizen Corp program? [LB901]

SENATOR LATHROP: No, I just wanted to know if it included people that are out patrolling? [LB901]

JON ROSENLUND: It...no, they are separate, Neighborhood Watch is a separate volunteer program, but it has been brought under a larger umbrella of collaborative efforts. There are five programs within the Citizen Corp program, one is CERT, one is Neighborhood Watch, one is Medical Reserve Corp. They are separate but related. [LB901]

SENATOR LATHROP: All right. Does Community Emergency Response Team or CERT, does that...is there a list of organizations that fall under that umbrella? [LB901]

JON ROSENLUND: No. [LB901]

SENATOR LATHROP: Okay. [LB901]

JON ROSENLUND: No, that is it's own... [LB901]

SENATOR LATHROP: Okay, that's all I had. I don't mean to shut you off, except... [LB901]

JON ROSENLUND: No, no problem. [LB901]

SENATOR LATHROP: ...I didn't mean to make this go any longer than it needs to. [LB901]

JON ROSENLUND: No problem. Thank you. [LB901]

SENATOR LATHROP: Okay. Mr. Rosenlund, thanks for coming down and testifying for us today. [LB901]

WAYNE SVOBODA: Good afternoon. My name is Wayne Svoboda, W-a-y-n-e S-v-o-b-o-d-a. I'm the executive director of Volunteer Partners. We're a small nonprofit here in Lincoln. We're a volunteer center, primarily, so our job is to connect people that want to volunteer with agencies that need volunteers. But we have a few programs, one of which is our emergency volunteer program. And that has three main pieces to it. You've just heard a little bit about them. We oversee a Medical Reserve Corp, which is medical professionals who help in disaster response. We just started that a little over a year ago. We have something called an Emergency Volunteer Center Program, which is designed to deal with the spontaneous volunteers that always come out of the

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woodwork and want to help after a disaster; sometimes they're called the second disaster because they can get in the way. And so this component is designed to help manage those spontaneous unaffiliated volunteers. Then the third part is CERT, Community Emergency Response Teams. And I think this bill would have a positive effect, not being an attorney, not even being an emergency response professional, we are volunteer management professions, I think it would have a very positive effect on recruitment and exercise participation. It was mentioned earlier that medical professionals are very aware of their liability. And I think in recruitment for our Medical Reserve Corp if this bill...if we could mention that this bill exists that would help in recruitment. And in terms of practicing to respond, practices are important, exercises are important, so I think this would help as well if we could tell our volunteers that there is liability coverage in the event something goes awry. And based on some earlier discussion, in the second section, second paragraph it talks about the immunity provided by this section shall not apply to cases of willful misconduct or gross negligence. So hopefully, if that's the case, there won't be an issue since it's not covered by this bill. [LB901]

SENATOR LATHROP: Very good. Thank you, Mr. Svoboda. Any questions? Seeing none, we appreciate your testimony today. [LB901]

ELAINE MENZEL: Vice Chairman Lathrop and members of the Judiciary Committee, hi, my name is Elaine Menzel, M-e-n-z-e-l. And I'm here on behalf of the Nebraska Association of County Officials in support of LB901. I'll refrain from being duplicative, but it is my understanding that one of the emergency managers does intend to testify. Any questions, I'll attempt to answer them. [LB901]

SENATOR LATHROP: Are there any questions? No. And we appreciate your brevity. Thank you. [LB901]

JAMESENA GRIMES MOORE: (Exhibit) Good afternoon, Vice Chair Lathrop and members of the Judiciary Committee. My name is Jamie Moore and I'm vice president of Volunteer and Community Services at United Way of the Midlands in Omaha, Nebraska, a position I've held for nearly 20 years. In this position I am responsible for developing and implementing volunteer programs, among them is the Medical Reserve Corps. One key component to responding and recovering from a disaster is mustering the manpower to get things done. Volunteers provide the majority of the manpower needed to respond and rebuild. The key and crucial response resource needed to be mobilized, trained, and managed regardless of the nature or size of the disaster. Citizen Corps were established after 9-11 to encourage citizens to voluntarily take responsibility and become a part of our community, our country, and their community preparedness response and recovery. MRCs and CERTs, which you've heard about earlier, are part of the Citizen Corps. MRCs enable our medical communities to have the much needed surge capacity during a disaster and CERT teams can provide immediate assistance to

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their neighbors and others while we wait for government assistance to arrive, which we have been told may not come for 48 to 72 hours or longer. Untrained volunteers, as you heard earlier, responding to a situation often creates more chaos, the disaster within a disaster. If Nebraska is going to prepare to respond to disasters in an efficient and effective manner we must have volunteers who have been mobilized and trained. Having responsibility for the oldest MRC in the state, I am aware that a barrier to mobilizing and maintaining a good pool of well-trained volunteers to respond in times of disaster or crisis is liability coverage. Many want to help, but are hesitant because they cannot be assured they will have liability coverage when they are participating in necessary training and exercises, this is about when we have to do training so people are well prepared when it's time to actually do, and to keep their response skills proficient. Practice makes perfect. We need to have skilled volunteers, if you will, that can be used to prime the pump of providing service should we have a disaster. MRC and CERT volunteers can be that pool of volunteers. I urge you to pass LB901 and create the environment that will allow for the mobilization, training, and exercises of volunteers to be ready to respond and Nebraska to be prepared. Thank you. [LB901]

SENATOR LATHROP: Very good. Thank you, Ms. Moore. Are there any questions? Thank you and thank you for what you do too. [LB901]

SENATOR CHAMBERS: For so long. [LB901]

SENATOR LATHROP: For so long. [LB901]

BOB ROSE: My name is Bob Rose, R-o-s-e. I'm Clay County Emergency Manager and I'm here just to give a brief example of where I think this might have been very useful. I'm just new to the system, so I can't answer all the technical questions about...I do know that as we get more and more things, from electricity and other things to make our lives better, when we lose that we lose a lot of comforts that people need. We don't live like we used to where we have food in our house and all those things. So an example that we had in Clay County, occurred about a year ago, when the ice storm hit and knocked the power out. As we know, nursing homes, for the most part, have generators that work. Well, I wouldn't get called for emergencies if they always worked and everything else we have. And it's that...in this particular case the generator in our nursing home went down. They were therefore not only lights, backup, heat, and whatever else, they couldn't cook. Every person in that nursing home was moved to the fire hall, where we have a backup generator with heat, electricity, and they were able to feed them. Yes, staff from the nursing home came with them, but when you move 40 people, it takes more than a few staff members to do that, you use people, sometimes private vehicles and whatever. As we said, this was an ice storm so, definitely, there was ice on the ground. When you take those people out of that place there's a degree of where you're helping them get across the ice. Now if we use firefighters and EMTs, is this covered by their normal job? Probably not, except for the fact that this was an

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emergency and they are becoming that. Luckily, we only had them there for about a day. But as time goes on, we could have needed more and more help, and then this Medical Reserve Corp could step up. And if they're going to step up and help us, we can't have them fear, when somebody is walking on the ice, that somebody might fall or something like that. [LB901]

SENATOR LATHROP: Fair enough. Thanks for your testimony. Are there any questions? Okay. Thank you. [LB901]

LOREN UDEN: (Exhibit) Good afternoon. My name is Loren Uden, L-o-r-e-n U-d-e-n, and I'm an emergency manager director in Adams County, but I also serve currently as the president of the Nebraska Association of Emergency Management. Some of those examples with the CERT team I've been an instructor for the CERT program since 1987. One of the things that we do in that particular program is we try and do an exercise at the end of the 20 hours to allow those folks who have been doing hands on exercises throughout the training to have a drill that we actually smoke up rooms, we put patients...we triage patients and so forth. And sometimes people will slip while they're carrying a patient. We have a safety officer there that helps to catch, but I've never had, you know, a person injured to where...in any form because of the safety officers being there. But accidents will sometimes occur in our training and exercising. I guess the four quick points I want to make, because you said the time is short, is, number one, these community emergency response workers, even though they're trained with 20 hours of training, they are still basically volunteers. Unless we can provide them with continuing training opportunities, and one of the questions that come up during that 20 hours of training for these folks is the liability issue. And I can't say anymore that they are covered by the good Samaritan act of Nebraska because they now have training, they now have a certain amount of training that we expect them to practice within that scope of practice. In dealing with Senator Chambers' comment about carelessness, what training and exercise has allowed me to do, and if this bill helps me to get more people willing to at least come and train because they feel that some of the liability is limited, it gives me the opportunity to actually see more of those volunteers in action post or pre-disaster. So if I feel there is a problem or I see carelessness with a volunteer, it gives me the opportunity at that point then to either help them make corrections or to dismiss that volunteer from our service. I don't see this bill also is not providing or promoting to not provide good due care; I really see it as just the opposite. It really encourages us to make sure that we practice within the scope of our practice, that we don't go beyond, because we do have a bill that helps support us in those accidents and those instances where we do provide proper care within the scope of our practice. Also, as we've talked about the good Samaritan act and this particular act, it doesn't prevent a citizen from still filing a lawsuit. It provides the opportunity of support that if we do our job, we are practicing within our scope of practice, there is something on the books that helps support us and gives us support in that case for us going out and volunteering and trying to do the right thing. [LB901]

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SENATOR LATHROP: I do have a question for you. Do most of these people that are on the emergency response team, the CERT, these are medical doctors or they're...are you just taking a... [LB901]

LOREN UDEN: The medical, the medical...the MRC, the Medical Reserve Corp, can be comprised of citizens that could even help out to set up carpentry and do various things to get a medical center set up. But they can be first responders, EMTs, doctors, nurses, pharmacist, you know, anything in a related medical field. [LB901]

SENATOR LATHROP: So for the most part these people do what they do in their normal life? [LB901]

LOREN UDEN: Right, correct with the MRC. Where the CERT team, the Community Emergency Response Team are basically...the principle of the training is to have citizens that can first treat their family at home in an emergency, then respond to their neighborhood, direct neighborhood, and then respond to the larger disaster from that point. [LB901]

SENATOR LATHROP: Okay. That's fine. Thank you. [LB901]

SENATOR ASHFORD: Any further proponents? Opponents? How many opponents do we have? [LB901]

ROBERT MOODIE: Mr. Chairman, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys. I'd like to start off by thanking Senator Johnson's staff for including us at an early stage in the preparation of this bill. They did come to us and ask our opinion. And in working with them, I think, we have been responsible in getting some of the exceptions, liability exceptions that are in the bill put in there. And so we very much appreciate that opportunity. However it's traditional, and I think for very good reason, that our organization still appears before you every time there is a bill in which we are talking about civil immunity. I think there is a misconception that in this case emergency management workers can be held liable for bad results. It sounds to me like many of the witnesses who have testified in favor of the bill want to avoid a situation in which their emergency management workers are being unjustly or undeservedly sued. However, the effort to protect those who...from being undeservedly sued is also resulting in protecting those who are careless and whose carelessness rises to the level of negligence, which causes injury to others. We don't want people to be undeservedly sued either, but in cases where reasonable people can disagree, we have juries and we have judges who make the decision about how is or who can be held responsible for injuries that are caused. And my experience is that the juries and the judges usually get it right. We have heard that this bill is designed to protect the emergency management

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worker. My question is, protect emergency management worker from what? And the answer is, to protect them from the consequences of carelessness. In closing, I would suggest that if we relieve people from the duty of reasonable care, it's going to lead to situations in which reasonable care is not observed. [LB901]

SENATOR ASHFORD: Thank you, Bob. Any questions of Bob? Seeing none, thank you. Do we have any neutral testimony? That's it. Who is...is someone here for Senator...Roger is here. Roger, do you wish to... [LB901]

ROGER KEETLE: Considering the hour, I think probably prudence would dictate that I waive closing. [LB901]

SENATOR ASHFORD: That was a good closing, Roger. Well done. (Laughter) Thank you. That concludes the hearing. [LB901]

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Disposition of Bills:

LB952 - Advanced to General File.
LB1024 - Held in committee.
LB847 - Advanced to General File, as amended.
LB901 - Held in committee.

Chairperson

Committee Clerk