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Business and Labor Committee
February 06, 2012

[LB959 LB997 LB1005 LB1058 LB1152]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 6, 2012, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB959, LB997, LB1005, LB1058, and LB1152. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Tom Carlson; Burke Harr; Jim Smith; and Norm Wallman. Senators absent: Brad Ashford.

SENATOR LATHROP: For those of you that haven't testified before, and I see some unfamiliar faces, I will tell you that the process here is the senator will introduce the bill and we'll go in the order on the agenda as best we can today, which means we'll start with Senator Janssen in just a minute. The senator will introduce the bill, followed by proponents, so if you favor the bill then you would be up next, then opponents, and then those who want to testify in a neutral capacity will be given the opportunity last. Then the senator will close and we'll go on to the next bill. For those of you who have not testified in front of the Business and Labor Committee, we do use the light system. We have five bills today and in order to get through those bills we're going to use the light system, which means each person, other than the senators that testify or introduce bills, will have three minutes to testify. That means that they'll have two minutes with a green light. When you see the yellow light come on, that's your indication that you have one minute. And when the red light comes on we'd ask you just to finish your thought. The reason we do that is to afford everyone here an opportunity so that we don't have somebody sitting at the table testifying for a very, very long period of time and then people who want to testify on the last bill can't wait around long enough to be heard. So just to keep things moving that's what we do. Before we start, I'll introduce my colleagues. Senator Tom Carlson is to my right. Next to him is Senator Burke Harr; then my committee counsel, Molly Burton. Sean Schmeits is our clerk, I guess that's what we call him, the committee clerk, he's going to keep track of the testimony today; Senator Cook; and then Senator Wallman is here today. It's his 74th birthday, so that's special in Business and Labor Committee when somebody has a birthday.

SENATOR COOK: Um-hum.

SENATOR LATHROP: And then Senator Smith, it's not his birthday but he's here today.

SENATOR SMITH: Well, Thursday is.

SENATOR COOK: Thursday, wow.

SENATOR HARR: Close. And he's 78?

SENATOR LATHROP: Very close though, his birthday is on Thursday, and he and Senator Norman were...Senator Wallman were born close in time on the calendar. All

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right. So we've had a little fun. We better start with our hearings and that brings us to the first bill and, Senator Janssen, you may come forward. Welcome to the Business and Labor Committee.

SENATOR JANSSEN: (Exhibit 1) Thank you, Senator Lathrop and members of the Business and Labor Committee. This is my first time actually testifying in front of this committee. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15. I appear before you to introduce LB959. LB959 is a proposal to provide immunity for employers who give truthful employment information to prospective employers. This is commonly known as the job reference immunity. Since the language of the bill is relatively brief, I will offer it here for your full consideration. Unless otherwise provided by law, an employer who discloses factual information about a current or former employee to a prospective employer of the employee shall have absolute immunity from civil liability. Absolute immunity applies to the disclosure of factual information, including dates of employment, pay level at the time of termination, job description, duties, and wage history. Any employer who in good faith provides information about the job performance, conduct, or evaluation of a current or former employee to a prospective employer of the employee, at the request of a prospective employer or at the request of the current or former employee, shall not be held civilly liable for the disclosure or the consequences of disclosure. There shall be a presumption of good faith on the part of the employer, and such presumption shall be rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead. For purposes of this section, actual malice means that the information was given knowing it to be false, with reckless disregard of whether it was true or false. I bring this bill for your consideration because I think information is critical to a good work force and full disclosure of an employees' skills and abilities is important. Many companies are reluctant to offer prospective employers any information about current or former employees beyond what is sometimes termed as NRS, or name, rank, and serial number. Good employees are held back by these policies. Pertinent and important information is withheld because employers have decided that any information beyond the name, rank and serial number is not worth the potential for an expensive and time-consuming lawsuit. As most of you know, I own a medical staffing company in Fremont. In this field of business, you want to know as much about the individual as you possibly can before you put them into a hospital setting. Without job reference protections, employers rarely provide information beyond dates of hire and termination. Job reference immunity can provide important public policy protections for employers to offer a complete picture of their current and former employee. Nebraska is one of few remaining states without a job reference immunity statute. All of our border states have them in place. I don't want to take up an excessive amount of your time. There are several proponent testifiers with us today who can offer their human resources expertise, as well as legal expertise on this topic. I thank you and I also, Mr. Chairman, do have a letter from the Omaha Chamber of support that I'd like to enter in as well. And

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also I am a big fan of your three-minute light so I'm going to have to look at potentially getting on this committee and have you talk with Senator Fischer. (Laughter) [LB959]

SENATOR LATHROP: All right. Every two years we open it up. Any questions for Senator Janssen? Senator Smith. [LB959]

SENATOR SMITH: Thank you, Mr. Chair. Senator Janssen, I'm just trying to understand some of the intent of the language. When you're dealing with a...let's say an employee has a performance review in their records with a prior employer, sometimes those performance reviews can be somewhat subjective and I think we've all had bad bosses in the past, maybe not you but I have. [LB959]

SENATOR JANSSEN: Oh yeah, trust me. [LB959]

SENATOR SMITH: But you know, and we have...and there's some type of a subjective review is given and it's in your records and so, you know, years down the road you go to this next employer, you're not dismissed, it was not any reason to dismiss someone from employment or terminate them, but you're down the road and you apply for this job and they call and get a reference and then they hear this subjective review, which could bring about something other than what was intended in terms of, you know, a reference. How do you see that fitting into this bill? [LB959]

SENATOR JANSSEN: In the first part, and thank you for the question, I tried to take that out with, you know, by putting basically just the very factual information in there that takes away the subjectivity of it. When you're talking about pay rate there's really no...that's not subjective. That is...it's a matter of fact. And also the dates, the dates of employment is also factual information. And job description, with my company I have a job description written out for every position and that would be the description that I would give if I were giving a reference. And I've given many of them and I also fall under the name, rank, serial number many times in my organization, and I think that it would be nice to have this immunity. [LB959]

SENATOR SMITH: So again it's not intended to include subjective performance reviews. [LB959]

SENATOR JANSSEN: That's not the intent of the...no, that's not the intention. [LB959]

SENATOR SMITH: All right. Thank you. [LB959]

SENATOR LATHROP: Senator Janssen, I don't want to quarrel with you about that, but it looks to me like the first section provides absolute immunity, unqualified absolute immunity for things that I think employers are already doing now, which is they worked here, this is the period of time they worked here, this is what they did, and this is what

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we paid them. The second section looks like it provides for immunity if you give your judgment about someone's job performance and you're immunized unless you do it with actual malice or knowing it to be false or with reckless disregard. So in answer to Senator Smith's question, it does immunize somebody's opinion about job performance, which may come out of the very subjective assessments that Senator Smith asked about. [LB959]

SENATOR JANSSEN: You're correct, Senator Lathrop. I was, I guess, pointing my remarks at the first section when I... [LB959]

SENATOR LATHROP: Okay. Okay. [LB959]

SENATOR JANSSEN: ...was answering Senator Smith. [LB959]

SENATOR LATHROP: Very good. Any other questions for Senator Janssen? Okay. Are you going to stay to close, Charlie? [LB959]

SENATOR JANSSEN: Yeah, I'd like to hear some of the testimony. [LB959]

SENATOR LATHROP: Okay. Good. Thank you. Any proponents? How many people are here to testify in favor? Oh, boy, okay. Two things: If you hear somebody...you're all welcome to be here and that's why we have a public hearing. I don't want to discourage anybody from testifying. But if somebody has already made your point, you can indicate your support briefly. If you are going to testify, and I neglected to say this earlier, fill out a sheet so that we get your name spelled right and the record properly reflects who the proponents and the opponents were. Okay. With that, we'll take the first proponent. [LB959]

STEVE SEXTON: That is testimony. [LB959]

SENATOR LATHROP: Good afternoon. [LB959]

STEVE SEXTON: (Exhibit 2) Good afternoon. My name is Steve Sexton, S-t-e-v-e S-e-x-t-o-n. I'm from Fremont. I've been superintendent of schools of Fremont for the past 14 years and prior to that I was superintendent of Chadron for 13. I'm not representing the school districts; rather, a viewpoint of an individual who's been involved in recruiting and screening employees in the educational field for over four decades. Senator Lathrop, members of the committee, I sincerely thank you for the opportunity to support and urge you to favorably look at LB959, introduced by Senator Janssen. I think most folks would agree that recruiting in the employment process has become more complex, especially from the employers' point of view, over the years. I think it's become complex for employees and prospective employees as well, and I'll make a comment or two hopefully about that. In the pursuit of the best fit among candidates, it's a firmly held

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belief of myself and others with whom I've had a lot of contact that accurate data points are essential. And in that regard, while recommendations of current and former employees are not a single criterion, I think they are certainly valuable. The value I think of a reference lies squarely and solidly on the degree to which employers can be candid in their remarks concerning the individual in question without the added concern of legal action on the part of the candidate. I think it's the threat of legal action that has caused a shift in what has taken place insofar as recommendations over the years. As I indicated, I've been involved in screening and recruitment for over four decades and during that time I've noticed to myself a definite shift in the manner in which many if not most employers respond to questions regarding their present or former employees who may be applying for a position with the school districts I've represented. That shift has been largely away from, I think, a frank and open discussion of the areas in which a candidate may be strong or not so strong to the more limited information or biographical information, such as when an employee came to your firm, when that employee ceased service with your firm, the length of time of employment, the duties of that particular assignment, and any other jobs the individual may have held with your firm. I think having some assurance that information can be candidly provided in good faith and when it's substantiated can be an immense help to the process. Further, I believe that a majority of employers would not abuse the alternative and would act with integrity. The assurance would have...of this legislation would be received by employers as a positive change, I think or I believe, in an area that can be thorny at best. I spoke of the complexity for employees as well. If it becomes business policy to provide bland biographical information, I think that can be a disservice to prospective employees in an environment or an atmosphere where competition is extremely tough. I'd like to thank you this afternoon for the opportunity to testify, wish you the best in your deliberations, and I would ask you to look favorably on LB959. Thank you. [LB959]

SENATOR LATHROP: Very good. Thank you. It's Dr. Sexton, right? [LB959]

STEVE SEXTON: Yes, sir. [LB959]

SENATOR LATHROP: All right. Thank you, Doctor. Are there any questions? Senator Wallman. [LB959]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, welcome, Dr. Sexton. And I've looked over a lot of resumes myself. You know what to look for basically on some issues, like you said. Have you ever known of anybody that's ever got sued for liability on this issue? [LB959]

STEVE SEXTON: I have. I can tell you directly I have not been. I can tell you that I have been directly advised by representatives of two law firms not to provide information that can end up in court. And the reason for that has been I don't think any employer wants to face a situation where they have to engage in a costly defense over something that

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they can, in fact, in their minds at any rate, document. [LB959]

SENATOR WALLMAN: Thank you. [LB959]

SENATOR LATHROP: Senator Harr has a question for you too. [LB959]

SENATOR HARR: Thank you, Senator Lathrop. And thank you, Dr. Sexton, for coming to testify here today. I guess my question is: Currently, if you tell the truth, that's an absolute defense, isn't it? [LB959]

STEVE SEXTON: You would be better, sir, to make that judgment than would I, but I would think it...I would hope it would be, yes. [LB959]

SENATOR HARR: Okay. Well, so what does this bill do that if the truth is an absolute defense, it would seem it would I guess shift the burden. Is that what you think this bill does then in situations where you give an opinion, we'll say nicely, a frank opinion? Is that what you think this bill does then, it shifts the burden from the employer to the employee having to prove? [LB959]

STEVE SEXTON: I think what this bill does, it allows you to provide information that you can document. And you indicate, I think, opinion. I think that most references are based on what observable performance, at least in the years I've been involved in this, and you can document it. But I don't think I know of anyone that wants to provide that information if they know it's going to land them or can land them in court, defending what is the truth. You know, it's nice to, I think, to defend principle and I've done it on a lot of occasions, but I also know that if you're a custodian of taxpayers' resources you want to be careful about what you do and how you may end up in a position that you didn't really want to by virtue of the fact that you did provide frank, candid, and truthful comments. I don't think it shifts the burden of proof at all. [LB959]

SENATOR HARR: You don't think this bill shifts the burden of proof. [LB959]

STEVE SEXTON: I don't think it shifts it to the employee, no. [LB959]

SENATOR HARR: Very interesting. Thank you. [LB959]

SENATOR LATHROP: Senator Carlson. [LB959]

SENATOR CARLSON: Thank you, Senator Lathrop. I think I understand the intent of the bill and don't have any problems with the intent. I'm going to ask you a question that we talk about always tell the truth. I'm going to ask if there are certain situations that you may have been in where you wanted to shade the truth. Have you had situations in your past where you've had a current employee pursue a position someplace else and you

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get a request for a recommendation on a current employee? [LB959]

STEVE SEXTON: Typically, in those kinds of situations you are advised by attorneys to provide, as Senator Janssen said, name, rank, serial number, and little else. And I can give you some examples of what I know other employers have done insofar as simply not answering the question. When I've been asked information regarding an individual's background, I provide...I don't try to shade anything, you know, and I will admit that I've taken some risks. But I don't think that taking risks to tell the truth is something that an employer ought to have to do. [LB959]

SENATOR CARLSON: You know, I'm thinking of...I can imagine some situations where a current employee has applied for another position. You're asked for a recommendation and in your mind this current employee is not up to the task of...is woefully inadequate. So you got a tough choice. Do you help them get a job someplace else or do you tell the truth? [LB959]

STEVE SEXTON: It depends on the question. I always tell the truth, but if I'm asked the question, will I employ...hire that individual again, the answer is no. And typically that's a question that's asked. [LB959]

SENATOR CARLSON: Okay. All right. Tough spot to be in. [LB959]

STEVE SEXTON: Yes, it is, but then it's not anything that I haven't seen over the last 44 years. [LB959]

SENATOR CARLSON: Okay. Thank you. [LB959]

SENATOR LATHROP: Very good. Oh, Senator Smith has a question too. [LB959]

SENATOR SMITH: Thank you, Mr. Chair. Thank you for being here and testifying today. I continue to have some concerns with this because I respect and sympathize with businesses being able to ask questions of a prior employer and get the best information possible to make their decision, but there's still a little bit of something here nagging at me about how do you protect employees from hard feelings left behind at a prior employer. And I'm not seeing anywhere in here where it talks about documented information on performance. It just states, you know, information about the performance, so that could be based on an employer's recollection that could be several years old. And things fade as we get older, Senator Norman, but we...you know, what are we to do here? I mean how do we protect those employees from that? Could it be documented performance information, which typically has to be signed off by an employee and any kind of rebuttal that they may have to that performance review so that they have all that information to make that decision? Because it could be, rather than just being subjective, you know, just off the top of their prior employer's head.

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[LB959]

STEVE SEXTON: Okay. Insofar as the bill itself is concerned, I believe it does make some reference...a reference to good faith and I think there's something else in there. I don't have the exact language of it. It doesn't necessarily use the word "documented" but I think it's implied. Insofar as former employers are concerned, I think, you know, an employee that is looking for a job and, based on their past performance, probably has a good idea if they're going to have...if they have a circumstance where they may have a reference that is less than positive, I face that and I think probably everybody around this table has faced that at one point or another. And I think what you do, as a prospective employer, you let it be known that that individual or that other employer has had...may have a different view. Now as an employer, if you have that same view as a pattern or a trend from employer to employer to employer, it seems to me like, and I've done this, it's kind of like the researcher. You throw out the high, you throw out the low, and you look at how the bulk of the recommendations are. [LB959]

SENATOR SMITH: Yeah, and I agree. I think I agree with you on many of the cases. I'm more concerned about those cases where you get ahold of a former employer and the question is something to the effect of, well, how did Mr. Jones perform? And the answer is something to the effect that, well, you know, he could have been a little bit faster, he is probably a little bit on the slow side--very subjective, could do a lot of damage, and Mr. Jones may not have known that that was going to be said about him. As far as he knew, he did a fairly good job when he left that employer. [LB959]

STEVE SEXTON: Again, I think most employers have, I think, a performance evaluation system or some manner in which they go through and judge performance of their employees. If... [LB959]

SENATOR SMITH: And that's what I was saying, that I agree that if that's available that's documented at the very least. [LB959]

STEVE SEXTON: Well, I think most employers have that in place. I know that I haven't worked for a school district, and I've worked for quite a number of them, that had anything less than that. They've all had that, and I'm speaking from one perspective. But I can say that if those kinds of comments I think surface with regularity and become a pattern, that suggests more I think than a high or a low in terms of the array of references that you get. If you have one individual among nine or ten references that says, well, this person, a little slow, could have been faster, the fact is that there are...there can be some personality issues but you throw that one out. You have to do that. You look I think for trends, for tones, for patterns rather than the outliers. [LB959]

SENATOR SMITH: Thank you. [LB959]

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SENATOR LATHROP: Thank you very much for coming down, Doctor. We appreciate your thoughts. [LB959]

STEVE SEXTON: Thank you. [LB959]

SENATOR LATHROP: Next proponent. [LB959]

ANDREW KRESHA: (Exhibit 3) Good afternoon. My name is Andrew Kresha, A-n-d-r-e-w K-r-e-s-h-a. I'm the director of human resources at Fremont Area Medical Center, an acute care hospital, 90-bed hospital with 112-bed long-term care facility. I also represent the Fremont Area Management Association, which is a human resources group of professional small employers in the community of Fremont, as well as Nebraska Hospital Association at least as well. The key reasons this legislation should be supported include enhancing patient safety in organizations like long-term care facilities, hospitals, home care, and physicians' offices. The second reason is it creates a more positive environment and employer friendly place to work in the state and to conduct business. Many, many small businesses are looking for a few good employees and need the very best employees they can on their limited payrolls. And the third reason, I think it's been brought out a little bit already, there's a hesitancy among human resources professionals to give out accurate references, you know, to give out factual references. It's just a lot easier to not give that, other than the basics. Let me give you a scenario here. As a healthcare employer, we conduct background checks. We check as many as 12 different things, and I will leave you a list of those here with my prepared remark, not only job references but employment histories. We do E-Verify. We do the I-9 process. We do criminal background checks. We check the nurse aide registry when appropriate, adult protective services central registry, and the Nebraska State Patrol sex offender registry. Then we look at licensure and certification, credit history, the OIG and GSA Medicaid/Medicare Program registries, Social Security, postsecondary education is verified, and driving record when applicable. Now what's all this have to do with job references? Well, as an employer I've been in healthcare for over 20 years. Let me give you an example or two. As an employer, we hired a licensed nurse. She was failing to clock in and out. She was on the...said she was on the clock but wasn't and she would leave before the end of her shift. And so we used a camera system and we found out that she was falsifying her time. And to have a licensed person doing that was really not very good. In fact, it was an offense that we decided she should be discharged for. Well, we followed the process of notifying the state, but before they could even investigate it she was working somewhere else and that employer didn't contact us. Again, there's something called learned helplessness here, a little psychology thrown in here, but learned helplessness is when you realize you can't get a reference so you don't even try. And so ultimately that can create problems on the other end called negligent hiring. So if a nurse like that was taking care of one of your family members, would you want that nurse working in your...you know, the organization, the hospital that you went to for care? So what I'm saying is there's this damper on not only hospitals but all employers,

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whether transportation or construction. No matter what area of business you're looking in, employers don't think they can get references partly because they don't have at least a basic immunity when they do call and ask for a basic reference. [LB959]

SENATOR LATHROP: Very good. [LB959]

ANDREW KRESHA: I see that I'm over my time and I appreciate your time. [LB959]

SENATOR LATHROP: Yeah. Thank you. We'll see if there's any questions. I don't think so. We might have exhausted most of our questions with the previous testifier. [LB959]

ANDREW KRESHA: Okay. [LB959]

SENATOR LATHROP: But thank you for your thoughts today. Next proponent. [LB959]

LANA BRODERSEN: Thank you very much for this opportunity. My name is Lana Brodersen, that's L-a-n-a B-r-o-d-e-r-s-e-n, and I'm the human resource manager for Fremont Beef Company. We're pretty small. We only have about 300 people, but about 160 of them, they are production employees and they are carrying a scabbard of knives throughout the day. And when we have violent issues where we terminate someone to protect the other employees, I would like to be able to let the next employer know something about that, and we just give dates of hire and position held. And when I call for a reference, I would like them to be able to tell me if they assaulted another employee, because they have weapons with them all day long. And I think this would help in that instance because the meat industry, these employees just go from meat industry...like Hormel, Cargill, Fremont Beef. It's a vicious circle and I think this would help us eliminate the violent ones that none of us want. [LB959]

SENATOR LATHROP: Okay. [LB959]

LANA BRODERSEN: And that's all I have. Thank you. [LB959]

SENATOR LATHROP: Very good. Well, we appreciate you coming all the way to Lincoln to tell us that today. Any questions for this witness? Senator Smith. [LB959]

SENATOR SMITH: Thank you, Mr. Chair. Ms. Brodersen, thanks for coming and testifying. And I'm just curious, whenever there's a violent incident like that, is there...are there any...is law enforcement involved in that at all? Is there any other way of documenting that type of behavior? [LB959]

LANA BRODERSEN: No. We do document the termination. We have all the witnesses submit their statement, but, no, we've never had law enforcement there. [LB959]

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SENATOR SMITH: Okay. Thank you. [LB959]

LANA BRODERSEN: Uh-huh. [LB959]

SENATOR COOK: A question for Ms. Brodersen. [LB959]

SENATOR LATHROP: Yes, Senator Cook. [LB959]

SENATOR COOK: Thank you, Senator. Ms. Brodersen, do the people who work on the line with knives, do they bring them as a construction worker might bring his or her own tools or they belong to the plant? [LB959]

LANA BRODERSEN: Oh, no, they don't bring their equipment as they enter the production floor. [LB959]

SENATOR COOK: All right. [LB959]

LANA BRODERSEN: They're not allowed to bring anything in. [LB959]

SENATOR COOK: Okay. Thank you. [LB959]

SENATOR LATHROP: And do I understand that your concern is that you have people, are they...do you have people that are employees that have actually used the knives on other workers? [LB959]

LANA BRODERSEN: They have stuck other people and claimed... [LB959]

SENATOR LATHROP: Deliberately though, as in an assault? [LB959]

LANA BRODERSEN: Well, we can't...no, no, not as...most of them have been fistfights like in the break room. I am not aware of anyone being stabbed... [LB959]

SENATOR LATHROP: Okay. [LB959]

LANA BRODERSEN: ...deliberately. [LB959]

SENATOR LATHROP: Okay. Very good. Thank you for your testimony today. [LB959]

LANA BRODERSEN: Uh-huh. [LB959]

SENATOR LATHROP: Appreciate it. Next witness in favor of LB959. Good afternoon. [LB959]

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MIKE KUHNS: (Exhibit 4) My name is Michael Kuhns. I'm a safety training and human resources director for Arps Red-E-Mix, which is a ready-mixed concrete aggregate corporation based out of Fremont, Nebraska. I've been an employee with the company for 35 years. In addition, I've also been a certified third-party commercial driver's license examiner for the state of Nebraska for the past 14 years. With my position at Arps, it's my responsibility to recruit, interview, hire, and oversee the training of concrete truck drivers. In the ready-mixed concrete producer industry these specialty drivers are referred to as concrete delivery professionals. And unlike average drivers who's primary function is to safely deliver goods from point A to point B, a concrete delivery professional's specialty skills occur once he delivers the product, the ready-mixed concrete, to the job site. Our drivers must have the ability to safely operate heavily loaded trucks, with a revolving load in mostly off-road conditions, in environments that are less than ideal. In addition, our drivers are also faced with the challenge of safely operating their equipment in the immediate presence of construction personnel who are positioned directly behind, to the sides, and sometimes immediately in front of the loaded truck. Driver skills are critical in ensuring that no mistakes are made that might potentially cause injury or a fatality to the surrounding personnel. Since our primary purpose is supplying a product with commercial vehicles, our industry is regulated by the Federal Motor Carrier's Department of Transportation Safety Regulations. Those regulations state that when hiring commercially licensed drivers, we must do a general background check on a driver applicant for the preceding three years and also petition for all drug and alcohol testing records from the previous two years. This is achieved by sending a basic request form to all previous employers or receiving one for the previous three years. However, even though the standard form for the driver history may be one or two pages in length, the only information that's required by law from previous employers or myself is to supply the driving records and drug/alcohol testing records. A driver who has little or no traffic citations and no positive results from drug or alcohol testing does not necessarily constitute a safe and efficient driver. Any realistic or truly accurate account of the driver's skills would most relevantly be deemed as opinionative and not always reinforced with viable and hard documentation from previous employers. Consequently, the most obvious and usable questions on the form are left blank for fear of liability by the driver applicant. So therefore, myself and my employer feel that an accurate representation of performance skills and levels of employee applicants, and the safety of our customers would be particularly benefited by LB959. [LB959]

SENATOR LATHROP: Very good. Thank you, Mr. Kuhns. Any questions for this witness? I see none. Thank you very much for coming down today. [LB959]

MICHAEL KUHNS: Okay. Thank you. [LB959]

ROBERT HALLSTROM: (Exhibit 5) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist on behalf of the National Federation of Independent Business in support of

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LB959. I've also signed in, in support on behalf of the Nebraska Bankers Association and the Nebraska Pharmacists Association. You've heard most of the arguments in support of this bill and Senator Janssen did a fine job of explaining to the committee exactly what the bill does and what its intent is. LB959, simply put, will encourage a free flow and exchange of information to benefit employers and employees alike. For purposes of an exemplary employee, you have a situation today where legal counsel are informing small businesses not to give anything beyond the name, rank and serial number that you've heard about. That's not good for the exemplary employee. They end up getting the same type of reference as someone who may have been guilty of theft or embezzlement in the workplace and been terminated as a result of that. On the other hand, with regard to employers, those who are looking at prospective employees that don't get the information that they need regarding a potentially dangerous individual that could be hired in a setting such as a childcare or a healthcare profession may hire someone that could lead to a negligent hiring lawsuit, as one of the previous witnesses had attested to. I'd be happy to address any questions that the committee might have. [LB959]

SENATOR LATHROP: Thanks, Bob. I see no questions. [LB959]

ROBERT HALLSTROM: Thank you. [LB959]

SENATOR SMITH: If I may ask a question real quickly,... [LB959]

SENATOR LATHROP: Oh, wait a minute, we do. Senator Smith. [LB959]

SENATOR SMITH: ...thank you, Mr. Chair. And I ought to know this. I don't know this. Is it...can a prior employer state whether that employee was terminated, not getting into the reason, terminated, laid off, or they resigned? Are they able to do that today? [LB959]

ROBERT HALLSTROM: You certainly can, Senator. The issue becomes whether or not it's going to put you at risk of being sued for defamation or some other cause of action, and I think, as many witnesses today have suggested, that that is the basis for limiting the type of information. Generally, you may say, yes, they worked for us, they worked for us at the level of X, Y, or Z when they left our employment, and they left our employment on such and such a date, without giving the reason why they left employment other than that they moved on, not saying whether they were terminated, whether they voluntarily quit for fear of having some type of lawsuit brought against you. [LB959]

SENATOR SMITH: But they're...the means in which they left employment, termination, layoff, whatever, is that litigated today, just someone saying they were, yes, that employee worked for us and we terminated them on such and such a date? [LB959]

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ROBERT HALLSTROM: Well, it generally won't be in an at-will type of situation but you will have, in terms of defamation, if it was not a true statement, that could subject someone to having a lawsuit brought against them. [LB959]

SENATOR SMITH: All right. Thank you. [LB959]

SENATOR LATHROP: Senator Wallman. [LB959]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, thanks for being here, Bob. Just a hypothetical question: I'm driving a concrete truck, it's overweight, and I go through a bridge and break the bridge and the boss fires me. What's my recourse here? He puts it on his thing that I didn't obey the law or... [LB959]

ROBERT HALLSTROM: Well, that would be a step removed. You can be, depending on your contractual status, you could be terminated for that or if you're an at-will employee you might be terminated for any reason or no reason at all. This is a step removed. When that employee goes to find a new place of employment and is looking for a reference from the prior employer, what is the content or the extent of that reference going to be? And in most cases the reason why 40-some states have passed laws is to provide encouragement and incentive for the free exchange of information, good or bad, about that employee, which will assist the good employee in finding employment and may prevent an employer from hiring someone that perhaps they shouldn't, either because of things they've done in the prior employment in terms of being dangerous to third parties or other reasons. [LB959]

SENATOR LATHROP: Bob, just to be clear, maybe I can make this point with you, and that is there's nothing in the law that prohibits someone from being perfectly candid with an employer who calls. [LB959]

ROBERT HALLSTROM: Correct. [LB959]

SENATOR LATHROP: Somebody wants a reference on a paralegal that used to work in my office, I can tell them anything I want. The point of Senator Janssen's bill and the proposition that you endorse is that there are some people who are unwilling to do that because they're afraid they might wind up in a lawsuit from the former employee who said, you lied about me and now I can't get a job. [LB959]

ROBERT HALLSTROM: I believe that would be accurate. [LB959]

SENATOR LATHROP: Okay. Very good. Thanks. [LB959]

ROBERT HALLSTROM: Thank you. [LB959]

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JOHN BONAIUTO: Senator Lathrop, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, a registered lobbyist for school boards. And for employers, I think that they hire good attorneys and the attorneys want to protect the employer, and what we see are policies that are very restrictive of what the employer can give as information. And so whether it's good or bad, and I understand the questions about something being subjective and what have you, but I think those policies that the employers are following are there to protect the employers just in case, and so you're not saying anything good or bad. You're just providing basic information. And as an employee of an organization, I'm going to follow the policy because I'm bound to do that, and even though I'd like to say something nice about this person because I know they would be a great employee so... But with that, I will conclude my testimony even though it's still green. (Laugh) [LB959]

SENATOR LATHROP: Right. I can give you the red if it makes you feel better. (Laughter) [LB959]

JOHN BONAIUTO: And I have had that. [LB959]

SENATOR LATHROP: Or the hook. Or the hook. Any questions for John? Senator Carlson. [LB959]

SENATOR CARLSON: Yeah, thank you, Senator Lathrop. John, in reality, do you think there are very many instances where an employer that really has some good things to say just refuses to say anything? In my case, if I'm asked for a recommendation and I really like the person, I'll be as glowing as you can be. Maybe another individual I don't know very well, and I think you can read into most references whether it's really meant to be complimentary or whether it's meant not to say anything. Do you think there are people that really want to say good things about John but stay away from it because of thinking about some other case? They can't be liable for saying good things about you. [LB959]

JOHN BONAIUTO: It is one of those things that, and I hate to use that unintended consequence thing, but when a district or an association or employer creates a policy and it is very narrow and the employees are told you will, in references, you'll follow this policy and give this, this, this, and this, yeah, it is difficult because you don't want to find yourself in violation of your own policy. I don't think anybody that you say something nice about is going to come back and sue you, but it is a fact that because of the situation and whether it's boards or associations looking at their attorneys' advice, the attorneys are doing what they're hired to do. They want to protect the organization and so these policies have become a lot narrower and so we're giving a lot less information. Now in certified employees or licensed folks, they go out and ask for people to write references and they have them in their file, and so there are different ways to get the

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information. But I think when you call the HR office, many times that's where you're going to get the least amount of information. [LB959]

SENATOR CARLSON: Thank you. [LB959]

SENATOR LATHROP: Okay. Thanks, John. [LB959]

JOHN BONAIUTO: Thank you. [LB959]

CHRIS HEDICAN: Good afternoon. My name is Chris Hedican, last name is spelled H-e-d-i-c-a-n. I am an attorney, an employment attorney, but I am here as a representative of the Society of Human Resource Management, Nebraska Chapter, as the Nebraska Chapter, the largest organization of human resource professionals. Our folks at SHRM support this bill and would ask that you pass this and bring it from committee. I'm not going to reiterate a lot of the points that we've heard that have already been addressed, but I would like to speak to some of the concerns that I've heard raised, if I may, and also point out I think some issues that haven't necessarily been covered yet. Number one, this is about promoting the free flow of information. My colleagues on SHRM, that is their number one concern, is that they cannot share information that might not otherwise show up that would be important for others to know about prospective employees but, more importantly, to get that information themselves. We don't have a situation of a free flow of information right now because there is a concern of liability from speaking on issues, and it benefits all parties concerned if we have that free flow of information. Obviously, we've heard the public safety concerns, but there's also the concerns of the individuals who want to obtain jobs and their references would be the most important way that they could get that. For example, people such as my wife, who stayed at home with our children to raise them, wants to reenter the work force, had great work experience. That reference is going to be critical for persons like my spouse and others who have stayed home with their children to raise them or have been off on military leave and were in a combat role but not in a business role. They're going to need the references when they get back to get employment. You also have to look at the interest and the risks that employers take, particularly small employers, and I think it's timely that Jim Clifton, who wrote his book about The Coming Jobs War and spoke on this last week in Omaha, talked about the reason that the United States is so far ahead of other countries is its entrepreneurs, and we are trying to promote entrepreneurial growth. That is where the majority of new jobs are created. Small businesses take a huge risk, most of them won't have any employees, when they hire that first employee they're undertaking a huge financial risk. One of the best things they can do is to find out are they hiring somebody who is going to be excellent, and that's important for them to find out. You know, there's an issue raised that people say, since there's no lawsuits or there's very few on defamation, that means that there must be any problem. It's just exactly the opposite. What it means is there is no flow of information and, as a consequence, people are not exchanging

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information. Nobody is benefiting in that set of circumstances. But I do tell you, as an employment practitioner, I have seen those claims brought. Those defamation claims are brought, but a big reason why they're not is because the employees we advise or employers we advise simply do not provide the information. Indeed, once you're in litigation, one of the most important things you do is to say, don't begin to share that...any information about the former employee because you don't know in any way how that is going to be taken in terms of the actions that are asserted. I think that the good faith defense in this is very important as opposed to having the...stating that truth is an absolute defense, because this puts the employee and also the individual who works for the company in the position of feeling confident that they are at very little risk of being sued, much less than they are right now. [LB959]

SENATOR LATHROP: Very good. Thanks, Chris. [LB959]

CHRIS HEDICAN: Thank you. [LB959]

SENATOR LATHROP: Any questions for Mr. Hedican? Senator Smith. [LB959]

SENATOR SMITH: Thank you, Mr. Chair. I totally agree with you in terms of, you know, where there's safety involved, even with small businesses, the need for the exchange of information, the flow of information needs to improve, no question about that. But you would have to admit that there's...that this is a bit ambiguous, what kind of reference or source of information that is shared about an employee. Can we get to where you're saying we need to be with this exchange and flow of information without taking such a great risk when it comes to false information being shared about an employee? [LB959]

CHRIS HEDICAN: Uh-huh. And your question earlier about what if somebody gives a verbal opinion about somebody that's not documented, in some states they require that this information have been documented in some format. That's certainly a point that could be considered and could be discussed. And obviously SHRM is interested in getting something that's balanced and is beneficial to the employment and the employee community as possible. That is one approach that some states have taken that may address the concern that you have in that regard, because employers then would be obligated to make sure they are documenting that type of information that they would share. [LB959]

SENATOR SMITH: Or even if an employee were to be afforded the opportunity of knowing in advance what type of information would be shared about them. [LB959]

CHRIS HEDICAN: That's possible. I mean that could be a possibility as well. I mean certainly what this statute does or this bill does is it only allows the release of this information if it's requested by the employee or the employer. It couldn't be volunteered in any circumstance. So presumably that employee would have been authorizing the

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contact with that employer and would have a sense of what was coming. [LB959]

SENATOR SMITH: All right. Thank you. [LB959]

CHRIS HEDICAN: Thank you. [LB959]

SENATOR LATHROP: Senator Harr. [LB959]

SENATOR HARR: Thank you, Senator Lathrop. There's nothing in the statute right now that prevents a free flow of information, is there, as long as it's truthful. [LB959]

CHRIS HEDICAN: There's...as it stands right now people can share whatever information they want to, but the problem is, is that there's a penalty. There's no upside. And that's the real problem with references. I don't know you, you're asking me for information, why should I give it to you? There is no benefit to me in undertaking the risk, and that's why the information isn't shared. [LB959]

SENATOR HARR: And so there wouldn't be a change here. There would still be a risk. [LB959]

CHRIS HEDICAN: No, well, there's always going to be some risk and certainly anybody can file a suit under any circumstances, but we diminish the risk. [LB959]

SENATOR HARR: Well, and I get that and I guess my issue is right now there's nothing that prevents the free flow of information. I keep hearing that as an argument. Nothing prevents it as we have the law right now. It's that we hold the person who tells that accountable for their actions. And what we're doing is taking away some of that accountability because we're giving a larger immunity, and I'm not sure I am, from a public policy point of view, comfortable with that. If a person tells the truth they have a defense. Now just because a lawyer "overlawyers" and says, hey, this is what you can and can't say or don't say anything, I'm not sure that's a reason to...because an employer takes his bat and goes home that we change the rules of the game, is what I would argue. So I guess it's more of a comment than a question, but thank you. [LB959]

CHRIS HEDICAN: Can I rebut it? (Laugh) [LB959]

SENATOR HARR: Sure, go ahead, have at it. No, please do. [LB959]

CHRIS HEDICAN: I mean I got no vote, I know. It's sort of like a... [LB959]

SENATOR HARR: Please go ahead. Yeah, please go ahead. [LB959]

CHRIS HEDICAN: And I appreciate that opportunity to do that. I think what it comes

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down to is I understand the concern you're expressing is that it seems like, I think if I understand your position, you feel uncomfortable that we're shifting too much benefit to the employer. But again, we have to look at the flow of information. The reality is, as it stands right now, the information is not being shared and that's indicated from virtually all the evidence. But when we have tried to promote communication where it's an interest to society, and here it clearly is on all points, we've provided that immunity. And we're not asking for absolute immunity for job performance or anything along those lines, but if somebody has to report suspected child abuse or neglect, either a teacher or a doctor or somebody along those lines, those folks have absolute immunity. I can tell you from my personal experience, I've seen people, clients, take positions where they took risk and they reported...and then they suffer expensive litigation over...of a defamation claim, and this wasn't in an employment context. But it is very troubling and very disturbing and we shouldn't have a system in which people have to exert a great deal of courage in order to do what's in the best interest of all of us, and that's what we're trying to do here, is create a situation in which employers and others feel safe to convey this information. And thank you for the opportunity to comment, Senator. I appreciate it. [LB959]

SENATOR HARR: Yeah. Uh-huh. Thank you. [LB959]

SENATOR LATHROP: Very good. Thanks, Chris. [LB959]

CHRIS HEDICAN: All right. Thanks. [LB959]

SENATOR LATHROP: Next proponent. [LB959]

ANDY POLLOCK: Chairman Lathrop and members of the Business and Labor Committee, my name is Andy Pollock, A-n-d-y, Pollock is P-o-l-l-o-c-k. I'm here as a registered lobbyist on behalf of the Nebraska Transportation Association. It is a group of passenger transportation providers operating across the state, includes the Omaha cab companies, includes operators of various sizes throughout the state. I will simply say that we support Senator Janssen's bill. We thank him for bringing it. And just one quick comment, not to repeat what's said before, but not only is there a risk that creates somewhat of a disincentive to the free flow of information but there's a cost that goes with that risk and actually enhances that risk--the cost of litigation, both emotional cost and the financial cost of course. And that certainly, in our view, does create, while not perhaps, Senator Harr, a legal disincentive, certainly a practical disincentive. [LB959]

SENATOR LATHROP: Good. Thanks, Andy. I see no questions. [LB959]

ANDY POLLOCK: Thank you. [LB959]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business

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and Labor Committee. For the record, my name is Ron Sedlacek and that's spelled S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce in support of LB959. We have...much of our position is based upon what you have already heard and the only new material I can really give to the committee is that this is not new territory. There's about anywhere...I've looked at reports say, looks like 35 states have enacted similar legislation. There's a tension between the former employer and the prospective employer, and that is the former employer is always fearful of potential defamation liability and the prospective employer does not want to find himself or herself subject to litigation for wrongful hiring or for negligent hiring, and so they're looking for background. You know, the prospective employer obviously is looking for background information and it seems that we find, from at least the employer community, is that we can't get the information, particularly from those employers who have these real solid, lawyered policies that essentially say, name, rank and serial number information. You have two candidates for a position and you get no response...and they're equally qualified and you get no response from one employer but you may have another one who may not have that policy or is a little bit more loose in regard to that and they give a good recommendation. You often opt for the one that doesn't have the policy, you know, because you've got at least some additional background. They say that, you know, that's somewhat unfair. What we'd love to do is to see a piece of legislation that would provide essentially what is here but particularly targeted for those areas of most concern, and that's drug and alcohol abuse in the workplace, violence in the workplace, harassment, as well as theft, and some subjective standards let alone, but at least there would be some areas of protection where it really involves workplace safety issues that are integral to get that information that you might not find from the court records, that you might not find in a background check. And even that would be a wonderful first step in this regard. The bill itself does not provide for a duty of good faith but alludes to a duty of good faith essentially for an employer once this is enacted, because you have the requirement of telling the truth. And you're right, telling the truth, being truthful, is an absolute defense in a defamation, only defamation lawsuit. That's the absolute defense. And even in those states, I noticed looking at compliance guides in those states that have this legislation, they still give a lot of advice to employers and that's just the facts, tell the truth, avoid inflammatory terms, and use a written release form from the former employer...employee saying, you've asked for this reference, we're going to give you one, sign this release, please. [LB959]

SENATOR LATHROP: Very good. Thanks, Ron. I will maybe take an opportunity, as I look at this I appreciate what we're trying to get to but the concern I have, just reading Section 2, is it creates a presumption that it's... [LB959]

RON SEDLACEK: It shifts the burden, that's correct. [LB959]

SENATOR LATHROP: It clearly shifts the burden and then requires to overcome a presumption, which generally, as you know, we overcome in civil cases where it's a

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preponderance of the evidence. [LB959]

RON SEDLACEK: Uh-huh. [LB959]

SENATOR LATHROP: You put on evidence to the contrary and you've obviated the presumption. And here you'd have to... [LB959]

RON SEDLACEK: It's clear and convincing evidence too. Yeah. [LB959]

SENATOR LATHROP: ...overcome the presumption by clear and convincing evidence, which really, really makes it impossible to go after an employer that's just plain lying about somebody. [LB959]

RON SEDLACEK: Uh-huh, and that's certainly...and to respond to your question, that's an area of the legitimate concern by this Legislature, absolutely. [LB959]

SENATOR LATHROP: Okay. Thanks, Ron. I appreciate that. Okay, are there any other testifiers in favor? [LB959]

SCOTT MESSERSMITH: (Exhibit 6) My name is Scott Messersmith, that's M-e-s-s-e-r-s-m-i-t-h. I'm the director of human resources at Columbus Community Hospital. I'm here today to state my support for LB959. I'm also stating my support on behalf of my employer, the hospital, my local human resources chapter, CAHRA, in Columbus, and from the Nebraska Hospital Association representing 88 other hospitals and over 43,000 employees across the state. What this bill would allow us to do as employers is gather factual employment-related information from another employer or source both willingly and knowingly, thus, giving us a greater ability to identify and hire the best candidates. Recent examples of what this legislation would do for us as an employer, in the past year alone my hospital terminated two employees for cause after less than six months of employment. One was terminated for attendance. In fact, they left the hospital on at least two occasions, leaving their post and, thus, compromising patient safety. The other was terminated for bullying other employees. In both instances, the previous employer was contacted to provide a reference and chosen to only give us name, rank, serial number, nothing else. As usually happens, we were informed of their prior indiscretions from others in the community after the fact, after we terminated them, and it was in the vein of we can't believe you hired them in the first place as they had been fired from their previous employers for those exact same issues, thus, no free flow of information to and from employers. Using Gallup's figure that a bad hire costs approximately 3.2 times annual salary, these two terminations cost my hospital well over \$250,000, expenses that are ultimately passed along to our patients in the form of higher medical expenses. I would like to point out that these are just two known examples of issues that could have been prevented had we received that information up-front. Who knows how many other bad hires could have been prevented

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had this legislation been in place in the first place? In the end, this legislation will help all employers make better informed hiring decisions. It will also bring accountability to employees knowing full well that their employer could possibly share employment-related information with other potential employers in the future. While this bill may prevent some people from being hired, I readily understand that, in extreme situations, it should be pointed out that the reference check process only supplements the overall preemployment assessment and hiring decision. One or two minor indiscretions, one or two minor deviations probably are not going to be enough to disqualify any particular candidate. However, if the pattern shows consistent negatives, it will absolutely impact that person's ability to be hired, as well it should. Again, this brings about accountability to the workplace. To summarize, whether it's healthcare, law enforcement, my children's teachers, day-care providers, I want to be assured that the people providing these services are qualified, competent, dependable, etcetera. I know that any bad hire decision not only adds more expense to the final product or service being produced, but in these higher-risk professions it could also lead to significant harm or damage to others. [LB959]

SENATOR LATHROP: Okay. Thank you very much for your testimony, Mr. Messersmith. [LB959]

SCOTT MESSERSMITH: Uh-huh. [LB959]

SENATOR LATHROP: Any questions for this witness? Okay. Thanks for coming down... [LB959]

SCOTT MESSERSMITH: Thank you. [LB959]

SENATOR LATHROP: ...and providing your input. Are there any other persons here wishing to testify in support? I'd like to see a show of hands of the number of people who are here in opposition. Two. And I point that out because the next senator wants to know how much time he has. So if you want to come forward, the opponents, we'll take opponent testimony. Welcome. [LB959]

KATHLEEN NEARY: Good afternoon, Chairman Lathrop, members of this committee. I'm Kathleen Neary. I'm a trial lawyer here in Lincoln, Nebraska. I'm here on behalf of the Nebraska Association of Trial Attorneys. And some of the questions certainly that this committee has been asking are the issues that are forefront in my mind. A lot of people are here to scare us today about why we need this bill, about childcare providers not being safe, people who aren't qualified are going to be caring for people in the hospital. But what we really, when we look at what's been presented today, it's really speculative. There's only been one gentleman here today that talked about having to fire two employees and a cost associated with that. But even in that situation with the Columbus Hospital, the fact if this bill would have been passed it doesn't require

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employers to do this. It's still going to be voluntary. But all the other testimony that we've heard today, it's...and in fact Dr. Sexton, I was particularly interested in his. He said he's been 44 years in the education field, and very grateful for his service, but in all those years he's only heard of one case of somebody being sued. That's pretty compelling. There is no onslaught of cases here. There is no need for this legislation. And in fact, not one person here has testified they've been a target of a lawsuit, not one. And I guess...and there's been a lot today about lawyers giving these employers advice about what kind of references they should provide. I'm a lawyer. I see clients every day. And you know what I tell my clients? I tell them to tell the truth. And if these employers will tell the truth, there is going to be no lawsuit, period. I guess there's a couple more things that I am concerned about in this bill. The absolute immunity, that's reserved for lawmakers and the judiciary. Extending that constitutional protection via law to employers is a road that I don't think this state wants to go down. There's also a big fear that I have about if employers think they can disclose anything at the request of a prospective employer, there are potential violations of other state and federal laws. So an employer thinks they have the green light to say whatever they want without being sued. What if an employer discloses confidential health information or mental health information or medical information under the Family Medical Leave Act, under the Americans with Disabilities Act, under the Nebraska Fair Employment Practices Act, under the Age Discrimination in Employment Act? That's only going to lead to more lawsuits. It is going to be a road that will not benefit employers. Now again, however this law is dressed up it does...it simply does give the green light to employers to be reckless because they know in the legal standard our typical burden of proof is beyond...excuse me, is preponderance of the evidence, the greater weight of the evidence. Under this legal standard somebody, an employer...I will stop with my comments. [LB959]

SENATOR LATHROP: All right. We'll see if there's any questions, Ms. Neary. Any questions? Senator Smith. [LB959]

SENATOR SMITH: Yeah, thank you, Mr. Chair. Clarify for me, because I, from what I just heard, you seemed to have contradicted yourself. [LB959]

KATHLEEN NEARY: Okay. [LB959]

SENATOR SMITH: You said, first of all, that when you're asked by a client what can be said, you tell them to tell the truth, it will be okay if they tell the truth. But then you went on to say that you feel like this gives them a green light to say whatever they want to say and that an employer should be selective to prevent litigation. So I mean help reconcile those two for me. [LB959]

KATHLEEN NEARY: Thank you. And sometimes there's so much...I was writing down notes about how in only three minutes. If you tell the truth, you're not going to get into

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trouble. If these lawyers who are representing these employers here, all of them have said, my lawyers, our lawyers have told us not to do this. My advice to those clients would be tell the truth, because if they tell the truth, under our current slander and libel statutes, our collectively defamation statutes, truth is an absolute defense. You know, some employer...and there's so few times, Senator, where I will get a call from a prospective client and the client will say, well, they said I had too many absences. And I'll say, well, did you miss some work? Well, yes. Well, then the former employer was correct, you cannot sue these people. So what I'm trying to say is if this absolute immunity and also this shifting of the burden of proof, making it a rebuttable presumption instead of the typical standard of proof that we have, the greater weight of the evidence without the presumption in favor of the employer, that if that shifts an employer will feel like they are insulated and that they can say whatever they want because it will be nearly impossible for an employee to prove and overcome that presumption set forth in LB959. Did that answer your question? [LB959]

SENATOR SMITH: Not entirely but... [LB959]

KATHLEEN NEARY: I'm sorry. [LB959]

SENATOR SMITH: ...but that's good. Thank you. [LB959]

KATHLEEN NEARY: I'm sorry. I just think when you set up so many roadblocks, shifting the burden of proof and giving the employer a rebuttable presumption, when in fact what you have now is that the plaintiff has to walk into court and show that that statement was made without any basis in fact, and that can be an opinion, that's sufficient now to do it. We don't need the rebuttable presumption. And the absolute immunity is what's really pretty frightening. [LB959]

SENATOR SMITH: Okay. Thank you. [LB959]

KATHLEEN NEARY: And the language here, it says, including but not limited to in that first clause. [LB959]

SENATOR SMITH: Thank you. [LB959]

SENATOR LATHROP: Okay. Senator Carlson. [LB959]

SENATOR CARLSON: Thank you, Senator Lathrop. And I'm going to just follow up a little bit on Senator Smith here because I think I heard you say that employers should tell the truth. No argument with that. But then I did write down your comment about it's a green light for reckless employers. Now that would carry with it kind of a presumption that we have a lot of reckless employers. [LB959]

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KATHLEEN NEARY: I haven't had that situation where we...I think employers in Nebraska are honest and they're truthful. I think we're lucky to work in this state. But what I'm saying is when you move the burden of proof and when you...and say that the employer, the employee...the employer, if this bill is passed, is providing a reference to a prospective employer under the bill, at the request, that knowing that they...that there's a presumption that they're telling the truth and that the employee would have to rebut that presumption by clear and convincing evidence, not just the greater weight of the evidence, I'm not sure certain that employers will take the necessary care to make sure what they are telling to a prospective employer is truthful. [LB959]

SENATOR CARLSON: Then in your reaction here you're saying tell the truth. [LB959]

KATHLEEN NEARY: Uh-huh. [LB959]

SENATOR CARLSON: But the other testifiers have indicated they find it very difficult to tell the truth because of the potential legal action. And I think I understand that. So your thought would be let's just keep things the way they are and stifle the employers so that they can't really step out and tell what they'd like to tell. So there must be a happy medium someplace and we're not...I'm not hearing it. [LB959]

KATHLEEN NEARY: Right. I guess a couple things, Senator, is that what I've heard today in this room has been about potential legal action. There's been no testimony about actual lawsuits. There's been like, oh, our kids aren't going to get cared for, the people in the hospital are going to get sick, oh, there's going to be people brandishing knives at a meat packing plant. Well, good corporate citizens will report knife or fights or assaults to the police in Dodge County so that there can be a public record of that. That's what their legal obligation is. They have an absolute legal right to do that. But...and the thought about day-care providers and nursing staff, there's Health and Human Services that maintains all sorts of records so that the public can access things that threaten our safety. But the threat about the potential legal action is just not here. There's no need or compelling need that I'm aware of, and I read the cases and I handle these kind of cases. And they can tell the truth and legally they have a perfect defense now, an employer who tells the truth. [LB959]

SENATOR CARLSON: Okay. Thank you. [LB959]

KATHLEEN NEARY: I'm sorry. Thank you. [LB959]

SENATOR LATHROP: Senator Smith. [LB959]

SENATOR SMITH: Let me follow up on that again, please. So do you feel that it is crystal-clear for employers today what they can and cannot say in terms of a reference without risk of litigation? [LB959]

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KATHLEEN NEARY: I think the law says that if an employer has a reasonable basis to believe what they...their statement that they've made to a third party is true then that is a complete defense to any defamation action, so yes. [LB959]

SENATOR SMITH: So you think it's crystal-clear what they can provide in a reference. [LB959]

KATHLEEN NEARY: Yeah, I think the law in Nebraska is very clear that as long as the statement is based in truth, a reasonable, truthful statement. [LB959]

SENATOR SMITH: Here's the caveat there, is "reasonable" and it can't... [LB959]

KATHLEEN NEARY: Well, it's a jury, you know? [LB959]

SENATOR SMITH: Yeah. [LB959]

KATHLEEN NEARY: Yeah. [LB959]

SENATOR SMITH: And I think what I'm hearing here is...I'm going both sides of this issue but I think what employers need to have is some level of certainty so that they can conduct business in a good way without the risk of, you know, legal costs for themselves. And I think that's what...there's a lot of fear there by employers. They don't know what they can and cannot say. It's not crystal-clear and I'm going to challenge you on that. I think it is not crystal-clear what they can do. [LB959]

KATHLEEN NEARY: Hmm. I think the employers that we've heard from today, the lawyers, the other employers, they all have very good lawyers. Chris Hedican, he's opposing counsel on a lot of my cases. There are good lawyers here testifying and I have a great deal of respect for him. But there is nothing that's absolutely certain but I think the law is clear, as long as you have a reasonable basis based on a, you know, whoever the trier of fact is, whether it be a judge or a jury, that that employer be entitled to a defense, an absolute defense that they will not be held liable if there's a reasonable basis. And I think that's pretty solid ground for an employer in this state. And I guess what keeps coming back to me, we don't make laws based on, you know, pure speculation, that there's been a little talk but nothing about what this has cost employers, inability to fill jobs, employers suffering burdens because of this. None of that, none of that has come out today. [LB959]

SENATOR SMITH: Thank you. [LB959]

SENATOR LATHROP: Senator Harr. [LB959]

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SENATOR HARR: Thank you, Senator Lathrop. And I hesitate to get involved in this anymore, but I guess my...here's my issue is when you're dealing with a former employer, it's kind of like dealing with a former lover in that there's a reason they're former and not current. If everything were fine and dandy,... [LB959]

KATHLEEN NEARY: Uh-huh. [LB959]

SENATOR HARR: ...you'd probably still be together. [LB959]

KATHLEEN NEARY: Uh-huh. [LB959]

SENATOR HARR: And there is a lot of he said/she said. And right now we have a situation where, because there is a lot of he said/she said, we under the law just say, you know what, to be safe you can tell the truth, you may get sued, and you probably should tell the truth, especially if there's a situation involving abuse in your prior job. I think an employer has a duty to tell the truth. Now whether they choose to take advantage of that duty or not, that's up to them and their lawyer. But with this law, I have a problem with this, the tension, and we move the tension...I mean, well, currently under the law you can't bring a frivolous lawsuit. If you do you also will get sued. So you as a lawyer act as a shield right now for the employer. [LB959]

KATHLEEN NEARY: Absolutely. [LB959]

SENATOR HARR: There's a law currently that says "reasonableness," which acts as a shield. Now we're switching burdens and, let's be honest, if you're an employer and someone says, well, he did XYZ, and the employer didn't feel like they did but they left their previous job, they aren't going to have a chance to defend themselves. That future employer is just not going to hire them. And so there could be a false accusation out there and this employer will never have a chance...or excuse me, employee will never have a chance to defend themselves. They will be continued to be talked about illy, poorly by their former employer. And so I have a little bit of a problem moving that burden and then to making it clear and convincing on top of that. Can you talk and explain what clear and convincing means? [LB959]

KATHLEEN NEARY: Right. There are three burdens of proof in our state. In criminal cases it's beyond a reasonable doubt. The state needs to come in and prove that a criminal act was committed beyond a reasonable doubt. The second is in a typical civil action where it would be, you know, a car accident where the plaintiff has to prove they were hurt because of the negligence of a bad driver by the greater weight of the evidence, and that's just tipping the scales. Clear and convincing is when...like the termination of parental rights and that is a higher legal standard. Can't give you a percentage but it's somewhere between the preponderance or greater weight, and beyond a reasonable doubt. So bringing the burden of proof up here for a past

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employee who has been harmed by something untruthful will make it incredibly difficult for that harmed employee to be able to right the wrong. And I guess what under...so that's a concern. I guess the other issue in this bill that causes me great concern is that the employee would have to show clear and convincing but also show that the past employer disclosed the information with actual malice or deliberate intent. Those kind of language is what federal law talks about when federal law, not state law, but when we're talking about punitive damages to punish someone. So if an employer allows sexual harassment and hootchy-kootchy and grabbing and kissing and all sorts of bad stuff and they know about it and they let this go on, then under federal law a jury can punish if it's kind of this kind of thing, where it's reckless, where they ignored what was going on. It's kind of the standard for punitive damages or akin to that. And to insert actual malice and deliberate intent for the employee to show by clear and convincing, way up here, would make it impossible for an employee harmed to bring a successful action. [LB959]

SENATOR HARR: Thank you. [LB959]

KATHLEEN NEARY: Um-hum. [LB959]

SENATOR LATHROP: Okay. That's it. No other questions. Thank you for coming. [LB959]

KATHLEEN NEARY: Okay. Thank you. [LB959]

SENATOR LATHROP: Appreciate your expertise and your testimony. [LB959]

STEVE HOWARD: Good afternoon. Steve Howard, H-o-w-a-r-d, on behalf of the State AFL-CIO, and we come before you in opposition to LB959. I join in Kathleen Neary's comments. Just a couple of things we haven't talked about: With the Internet, employers have a whole lot of access to information that they may not have had in years past. You can pay a small sum or you can search for free and find a whole lot out about a person, a potential employee. That wasn't present in the past. As far as it being crystal-clear, I think the law is crystal-clear. I think if you tell the truth you have immunity, and I'm not sure that employers all, you know, may appreciate that distinction. Of course they don't want to get sued, but just because there's a lawsuit filed doesn't mean it's going to be successful nor that it's going to be tried. An employer can seek what's called summary judgment and get out of the case, and lawyers aren't going to file these cases knowing that they're going to be unsuccessful. You know, the employment relationship is unique and it's very personal and when there's a separation that seems to carry on and we just don't think there's a need for the change in the law. So that's all I've got. [LB959]

SENATOR LATHROP: Very good. Thanks, Steve. Senator Smith. [LB959]

SENATOR SMITH: Thank you, Mr. Chair. [LB959]

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SENATOR LATHROP: You're welcome. [LB959]

SENATOR SMITH: Okay. Crystal-clear: So let's say an employer, a former employer says...he's called for a reference and he says, Mr. Jones was untruthful, he was untruthful while he was employed with me and that was the, you know, one of the grounds for termination or whatever. And in that file there is a record of a written warning, you know, that you have to be truthful, blah-blah-blah, and so there's evidence in that file. Now I can understand that if something comes back and there's some type of litigation against the former employer for saying that, there's some type of a record there, there's documentation. But if that employer simply just says and truthfully says, they weren't truthful while they were an employee, but there's no written documentation, is it still crystal-clear that that's fine for a former employer to say that without documentation? [LB959]

STEVE HOWARD: The former employer, there's nothing in the law that distinguishes documented versus not. And I would expect the former employer to fill out an affidavit saying, what I said was accurate, and present that to a judge and a judge would determine whether there was any reason to go to trial. [LB959]

SENATOR SMITH: But now they are already into legal costs to defend themselves. That's, I think,... [LB959]

STEVE HOWARD: That's true. [LB959]

SENATOR SMITH: ...what the supporters of this bill are talking about, is the types of costs that these companies are going to rack up defending themselves. Because I keep hearing it's crystal-clear. Yes, it's crystal-clear, but the burden is, for the employer, they're going to have to spend a whole lot of money defending themselves. [LB959]

STEVE HOWARD: Someone a week ago in this room said a phrase that stuck with me, that it's a little hard to cross-examine that. We don't have a lot of evidence of the number of cases filed. In 19...or, excuse me, in 2009, the Nebraska Supreme Court decided a case, Recio v. Evers, and they cited law from 1979. My law firm has been in business with a collective history of 100 years and we've had...and I went around and asked. We've had one situation that was 12 years ago and it didn't go anywhere. So you have to balance the cost of potential litigation versus the impact of people not getting hired because of, you know, personal relationships. So it's true, when you get sued there's a cost, but we don't have any measure of that. [LB959]

SENATOR SMITH: All right. Thank you. [LB959]

SENATOR LATHROP: Maybe I want to make a point, if I can. Just looking at the bill, it

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starts out by giving an absolute immunity to things that probably would never be the object of a lawsuit, and I can't imagine a conceivable opportunity somebody would take to sue over an employer confirming that I work there. Right? [LB959]

STEVE HOWARD: Right. [LB959]

SENATOR LATHROP: So I suppose just looking at it, the question is whether Section 1 is necessary. But I get what the employers are saying about Section 2, that, you know what, I'm reluctant to be honest with a guy who calls me on the phone, and I get it. Maybe what we're struggling with is whether or not it's a fair approach to the balance because the employers want to be able to talk freely with another person but there still has to be a standard for truthfulness. And when you create a presumption that the person is being honest and then require to overcome that presumption, effectively what we've done is required or would require that you prove that somebody, even if they were...even if you could prove by beyond a reasonable doubt that someone was reckless, you can no longer collect. Right? Because the standard is going to be, going forward, that a person lied or gave bad information with actual malice, which is to suggest that they said, I'm going to get Carlson and I'm going to give him a bad reference because I'm angry with him, or with a deliberate intent to mislead. That then becomes the standard for the employer. If this were to pass, the standard would be you can say anything as long as you don't say it with actual malice or deliberate intent to mislead. And I think what we're struggling with is if there's an accommodation for employers who have expressed a concern today, is this the right accommodation or did it go too far to the other side? [LB959]

STEVE HOWARD: Well, that's right. There's very little in the law that requires a clear and convincing standard. It's juvenile cases and disciplinary cases. But generally the law on civil matters is the preponderance of the evidence, the greater weight, 50 percent...greater than 50 percent. So you could show that the greater weight of the evidence is that that employer was engaging in actual malice, which is defined as hate, spite, or ill will, a desire to harm the plaintiff, and still lose even though the majority of the evidence demonstrates so. And to have a presumption that the employer is...that you take everything that's said as being correct, if there's a lack of cases now, there will be no opportunity for redress under this bill. [LB959]

SENATOR LATHROP: And maybe another way to put it is to illustrate it with this example. If somebody calls me about a paralegal that used to work for me ten years ago, and assume for the hypothetical that I did an evaluation every single year and my paralegal did very good at what she does. But that was ten years ago. It's in a file. I don't feel like getting up. And I pick up the phone and I go, I don't know, you know, not really. I've been reckless with the information, it's clearly going to affect their prospect, but it hasn't been done with actual malice or deliberate intent to mislead. I just don't really mind shooting from the hip. [LB959]

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STEVE HOWARD: Yeah. [LB959]

SENATOR LATHROP: And maybe I don't go get the evaluations that were done for the ten years that person worked for me and that's a recklessness, but it doesn't rise to the level where you can bring an action because the person essentially ruined your chances of getting a job by being careless or reckless with the information. So while I appreciate what Senator Janssen is trying to get to, we might be going too far. And I think that's what we're learning today. Senator Carlson. [LB959]

SENATOR CARLSON: Thank you, Senator Lathrop. I want to give you a situation, then I'm going to say what I would have said and then tell me whether I'm in trouble. [LB959]

STEVE HOWARD: (Laugh) All right. [LB959]

SENATOR CARLSON: I hired you. And now what I'm going to say doesn't fit you so you don't need to take it personally, but I've found over the time that you've been working for me, quite a bit of the time you're tardy. Sometimes you can be rude. You're not well-kept. You don't really follow directions very well, and you don't seem to take a lot of initiative and you lack energy, kind of lazy. Now I've talked to you about a few of these things and I've tried to do it in a kind way and then eventually you found employment elsewhere. And I didn't have to talk you into it; you just did it. But Senator Smith calls me and you applied with him and he starts asking me what I know about Steve Howard, and I really don't want to get into a lot of detail and finally I say, Senator Smith, let me just tell you, if I had it to do over again I probably wouldn't hire Steve Howard. Now where am I in all that? [LB959]

STEVE HOWARD: Is that the truth? It would be the truth, wouldn't it? [LB959]

SENATOR CARLSON: It would be the truth. [LB959]

STEVE HOWARD: Well, if you preface it with "this is my opinion and this is how I feel," I just don't see you getting in trouble over that or getting sued. It couldn't hurt you any worse than... [LB959]

SENATOR CARLSON: But I've sure saved him some time possibly. [LB959]

STEVE HOWARD: You know what the real answer may be? It may be, you know, Senator Smith, I'm only going to tell you what I...he worked here for this long and he doesn't work here anymore and you can read into that what you want. I mean there's a lot of, you know, nonverbal or nondirect communication. That happens. [LB959]

SENATOR CARLSON: That's about the same as saying, I probably wouldn't hire him

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again. [LB959]

STEVE HOWARD: Well, and the message gets through. So I just...go look in the court records. There aren't cases filed, you know, with that scenario, so... [LB959]

SENATOR CARLSON: Okay. All right. Thanks. [LB959]

STEVE HOWARD: Is that all right? Okay. [LB959]

SENATOR CARLSON: Thank you. [LB959]

SENATOR LATHROP: I think Senator Smith wants to defend himself. (Laughter) [LB959]

STEVE HOWARD: My new boss? [LB959]

SENATOR SMITH: No, not at all. Yes, but there's no preventing Senator Carlson from having to rack up quite a bit of legal fees. I mean it could be challenged and he could rack up quite a bit of legal fees in defending himself, which could be a deterrent from him wanting to be truthful like that going forward. Now with all that said, I'm going to go back and say I agree with what Senator Lathrop was saying. I think the problems that we see with this bill here, and I think I'm going to add on to that, my greater concern is not malice but it's, rather, an employer thinking that they're being truthful and they are providing information on some type of a subjective performance review that was conducted that may have talked about the employee, where they were a self-starter, and maybe they were below expectation on being a self-starter, that type of thing preventing future employment. That's where I think greater risk is with this bill. I like the flow of information presented by this bill but it seems as if there's just no guardrails on this to protect the employee. So I'll end with that. Thank you. [LB959]

SENATOR LATHROP: Okay. Thanks, Steve. [LB959]

STEVE HOWARD: Thank you. [LB959]

SENATOR LATHROP: Any other folks here to testify in opposition or in a neutral capacity? Seeing none, Senator Janssen to close. [LB959]

SENATOR JANSSEN: Thank you, Chairman Lathrop, members of the committee. It was a great hearing and thank the proponents and the opponents to the bill. And I was enlightened quite a bit with your questions and some of the answers. And I think it just for me boils down to, to introduce this bill, is I wanted to get a free flow and exchange good for both parties. It appears it's a little too heavy one way, I'd agree, with the burden shift. But also looking at the Business and Labor Committee, if there's a possible way to

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work on this, you've mentioned maybe taking sections out and maybe changing some burdens, I'd be very open to that. And I know of several, from my experience here when it comes out of Business and Labor, usually that's the case. They've gone through and that's actually...and it works very well with the committee amendments. So I was leaning a little bit on that. I didn't talk to you beforehand but I plan to have discussions with you afterwards. [LB959]

SENATOR LATHROP: Very good. I think you've brought us something that is a perennial for the business community and I appreciate the concern. And what you've expressed or your witnesses have expressed is not...I mean we hear it and we appreciate it, and it's just trying to find that balance, I think. So we appreciate you bringing it forward and thanks for coming by today. [LB959]

SENATOR JANSSEN: Thank you. [LB959]

SENATOR LATHROP: (Exhibit 7) We will, before I close the hearing, offer a letter from David G. Brown, president and CEO of the Greater Omaha Chamber of Commerce, dated February 6, 2012, which is offered in support of LB959. (See also Exhibit 14) And with that, we'll close LB959 and go to our second bill, LB997, and that brings us to Senator Wightman, who I saw come in, I thought. Oh, there he is. Perfect. You're up, John. [LB959]

SENATOR WIGHTMAN: We got about 20 testifiers out there, by the way. [LB997]

SENATOR LATHROP: (Laugh) Good. Good. [LB997]

SENATOR WIGHTMAN: Not really. [LB997]

SENATOR LATHROP: Hopefully it will be a three-hour hearing with any kind of luck. Welcome to the Business and Labor Committee. [LB997]

SENATOR WIGHTMAN: There are two, 17 or 18 fewer than that. [LB997]

SENATOR LATHROP: Senator Wightman to open on LB997. Welcome, Senator. [LB997]

SENATOR WIGHTMAN: Thank you, Chairman Lathrop, members of the committee. I'm John Wightman. I represent District 36. I have introduced LB997 at the request of the NREA to address the issue of unauthorized individuals manipulating high-voltage overhead conductors to accommodate oversized loads on state-controlled highways. LB997 amends the high-voltage safety statutes, 48-436 through 48-438, to clarify that only qualified and authorized employees or those designated by the owner of high-voltage conductors and other electric utility infrastructure can manipulate such

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infrastructure. LB997 changes the definition of high-voltage conductor from 720 volts to 600 volts as measured between conductors or from conductor to ground. LB997 is intended to protect workers that are in the process of moving large objects such as a house or a steel grain bin on the state-controlled roads in Nebraska. And unlike the bill I had on the high-tech matter with the personal representative, I am an expert in this area in that I've moved two or three houses (laughter) and... [LB997]

SENATOR LATHROP: We've heard that before, Senator Wightman. [LB997]

SENATOR WIGHTMAN: ...two or three houses and a grain bin during my lifetime. Power lines periodically cross over roads and may be an obstacle when moving oversized loads. While the Department of Roads requires that such oversized loads be moved as much as possible off the state-owned road system, there are times when the load must travel these roads. And off the state-owned road system there are times when the load must...and they may need to pass under high-voltage lines. Workers that manipulate these high-voltage lines must be trained to avoid electrocution and injury. The lines are the property of the electric utility and the electric utility must have the ability to determine the qualifications of the personnel that manipulate these lines. That is a matter of worker safety and to protect the electric system from damage. The change in the definition for high-voltage conductors from 720 volts to 600 volts is made to reflect the definition set forth in the National Electric Safety Code. The bill further amends 60-6,299 to require that permits for slow-moving, oversized loads include written proof that the electric utility responsible for any high-voltage conductors, poles, and other electric-related infrastructure along the proposed route has been notified of the move. Department of Roads currently requires permit applicants to notify affected electric utilities as part of their oversized permit process. LB997 will put the current practice into statute expressly granting authority to the Nebraska Department of Roads to establish such a requirement that will help to ensure worker safety and protect the integrity of the electric power grid. I have an amendment to my bill, AM1885, that I would request the committee to adopt. AM1885 makes two changes. One, AM1885 would change the language from requiring written proof to simply require that the permit include language that the permit applicant affirms under oath that they have contacted the affected electric utility or utilities. This was done to avoid overburdening Department of Roads staff as they process permits. The amendment will include a change in Section 60-6,298 to expand a requirement to all oversized loads over 16 feet. The Department of Roads also requires a route survey for loads 16 feet and higher, so it makes sense to include this requirement on all permits. Individuals testifying behind me will explain further why 16 feet is an important height threshold--apparently that's without my realm of expertise--so I have just learned that Department of Roads may have additional language on this subject. I will need to see this language and review it; I have not yet. AM1885 adds language requested by the Nebraska Public Power District that clarifies that electric power districts can address the issues concerning the authority to manipulate lines between districts by contract. As someone who has worked with

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contractors over the years to move several houses, I believe that this bill is in the workers' and the public's best interest. I would request that the Business and Labor Committee advance LB997 with AM1885 as a committee amendment. With that, I will try to answer any questions that you may have. [LB997]

SENATOR LATHROP: Senator Wightman, just to be clear, AM1885 sounds like a start on the amendments but that we can expect to see others? [LB997]

SENATOR WIGHTMAN: I think there will be more... [LB997]

SENATOR LATHROP: Okay. [LB997]

SENATOR WIGHTMAN: ...amendments or more items addressed in the amendment than we now have. [LB997]

SENATOR LATHROP: Okay. Very good. Thanks, John. Any questions for Senator Wightman? I see none. [LB997]

SENATOR WIGHTMAN: Where do we put these sheets? [LB997]

SENATOR LATHROP: Thanks, John. [LB997]

SENATOR WIGHTMAN: Thank you. [LB997]

SENATOR LATHROP: Yeah, you're very welcome. Are you going to stay to close, John? [LB997]

SENATOR WIGHTMAN: I'll stay a little while but I may waive to you. [LB997]

SENATOR LATHROP: Okay. Good. Proponents, please. [LB997]

KRISTEN GOTTSCHALK: (Exhibits 8-11) Chairman Lathrop, members of the committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I am government relations director and registered lobbyist for the Nebraska Rural Electric Association. I'm here to testify on behalf of the Rural Electric Association and all of our 34 rural electric providers, as well as on behalf of the Nebraska Power Association, representing all the electric utilities in the state. My testimony is in support of LB997 and I've also submitted to the page letters of testimony from two of my member systems. We had hoped to have an operations manager or a manager of a system testify, but those that were selected are now busy trying to put back part of their distribution systems because of the recent storm. First of all, I want to thank Senator Wightman for introducing LB997 and recognizing the important safety concerns we have with unauthorized persons manipulating our electric utility infrastructure. The reasons for

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bringing this bill are problems relating to movers transporting oversized loads where they may bring along their own bucket truck or perhaps station an individual on top of the load to lift and move the power lines out of their way. Now we have no way of knowing whether these people are qualified or trained and, quite frankly, we would prefer that no one touch the power lines except electric utility employees or those authorized by contract or other. So the discretion regarding that type of work with high-voltage conductors really should be left to the owners of the utilities. Both of the letters that I submitted have individual instances that it's kind of frightening to think what could have happened and thankfully didn't. LB997 clarifies in the high-voltage statutes only employees are authorized or others that are qualified and authorized, and we did quote the OSHA standards in there. Even though rural electricians aren't under OSHA, we do follow those standards. The second part of the bill addresses notifying the utility of oversized loads that are set to pass under the infrastructure. Department of Roads has their process in place. They have voluntarily put a requirement in place that any structure 18 feet or higher must notify the utility, but that's not in statute and that really doesn't address all of the requirements for lines that may pass over. Those lines may be as low as 15 foot, 6 inches by the standards set under the National Electric Safety Code. DOR has an automated on-line permit system for items 16 feet and smaller or lower. The items above that then are intervened with by a clerk, so it made sense that this also be included so that they can see the affirmation be signed. Now while in the original green copy we did indicate that some form of written communication come back from the utility be included, there were concerns from Department of Roads that that would be overburdening, that if we would be satisfied with an affirmation under oath that the utility has been contacted and arrangements have been made to allow for safe passage that would be sufficient, and we did agree to that. So we do feel very strongly about this. We feel that setting 16 foot as the threshold really does go back to the National Electric Safety Code, knowing that those lines will cross there and they're just as dangerous as the ones that are 18 foot, so... [LB997]

SENATOR LATHROP: Very good. Thanks, Kristen. Any questions for Kristen? Senator Carlson. [LB997]

SENATOR CARLSON: Thank you, Senator Lathrop. Kristen, looking at this, it all makes sense that there should be something. But then in practicality it doesn't always work out very well. In moving a house... [LB997]

KRISTEN GOTTSCHALK: Uh-huh. [LB997]

SENATOR CARLSON: ...in late June and it's 9:00 Saturday night and still another hour of daylight and they want to get the job done, what are they supposed to do? [LB997]

KRISTEN GOTTSCHALK: Well, if it's 9:00 at night, they've already...they should have already contacted the utility, and if they're going to be passing under infrastructure, the

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utility will stay there until such time that that object moves under the lines safely.
[LB997]

SENATOR CARLSON: So a weekend event wouldn't cause a problem with the power company as far as having somebody there to help. [LB997]

KRISTEN GOTTSCHALK: It...weekends could cause an additional cost if lines do have to be raised simply because we may have someone on overtime. But we do typically have employees on staff, on call for those types of circumstances. But usually the planning can be made far enough in advance that we can alleviate some of those concerns. [LB997]

SENATOR CARLSON: But if the height of that structure is under what's specified in the bill, there's no need to notify. [LB997]

KRISTEN GOTTSCHALK: Um-hum. Right. [LB997]

SENATOR CARLSON: Okay. Thank you. [LB997]

KRISTEN GOTTSCHALK: Right, would only be if it was justified. [LB997]

SENATOR LATHROP: Senator Wallman. [LB997]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, Kristen, I was always wondered, I think this is pretty good legislation, but why if I as a farmer knock down one of those poles accidentally? Who pays for that on a transmission line, huh? [LB997]

KRISTEN GOTTSCHALK: You would. [LB997]

SENATOR WALLMAN: I would? [LB997]

KRISTEN GOTTSCHALK: You would, Senator. [LB997]

SENATOR WALLMAN: Thank you. [LB997]

KRISTEN GOTTSCHALK: Absolutely. You might pay for it with your life if you're not careful. [LB997]

SENATOR LATHROP: Okay. I see no other questions. Thank you for your testimony. We appreciate it. [LB997]

KRISTEN GOTTSCHALK: Thank you. [LB997]

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SENATOR LATHROP: Next proponent. [LB997]

KEN MASS: Senator Lathrop, members of the committee, my name is Ken Mass, representing the Nebraska AFL-CIO, last name is Mass, M-a-s-s, and in strong support of LB997. This may be the only bill in Senator Wightman's history that we come in and testify in support of. (Laugh) But this is an important bill. We stress the importance of the bill but also having an authorized and qualified person doing this. I can tell you it wasn't from a line but as I worked at the old Western Electric Plant, I had a good friend, Bob Springer (phonetic) was his name, got tied up in 660. It went in one hand, went through his heart, and come out the end and blew out the end of his fingers. So if people don't understand what electricity can do to you, you better have somebody qualified to know what the hell they're doing. So thank you. [LB997]

SENATOR LATHROP: Okay. I think that was clear. Thanks, Ken. [LB997]

KEN MASS: You got it. [LB997]

SENATOR COOK: Well, I have a question. [LB997]

SENATOR LATHROP: Oh, I'm sorry. I didn't see you. Senator Cook. [LB997]

SENATOR COOK: Thank you. Well, what happened to your friend? Did he live through that experience? [LB997]

KEN MASS: He lived. He lived. And he had another electrician right with him, name of Hank Hendricks (phonetic), that shut down the circuit breaker and saved him. But about ten years later he was in for a heart transplant and it all started from that 660, went right through his system. It weakened his heart and he had to get a heart transplant and he's went on to other green pastures. [LB997]

SENATOR COOK: All right. Thank you. [LB997]

KEN MASS: Yes. [LB997]

SENATOR LATHROP: Okay. Thanks, Ken. []

KEN MASS: Took care of it. [LB997]

SENATOR LATHROP: Next proponent. Anyone here in opposition? Anyone here in a neutral capacity who wishes to testify? Seeing none, Senator Wightman waives closing and we'll just, for the record, place into the record letters from the Wheat Belt PPD in support and that's a letter dated February 3, and Roosevelt Public Power District dated February 6. That will close our hearing on LB997 and bring us to LB1005 and Senator

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Lambert. [LB997]

SENATOR COOK: All right. Senator Lambert, you can come on up and have a seat. I'm duly... [LB1005]

SENATOR LAMBERT: Thank you. I was kind of letting everybody get out and kind of calm down. [LB1005]

SENATOR COOK: Yeah. Sure. [LB1005]

SENATOR LAMBERT: Not you, Ken. (Laughter) [LB1005]

KEN MASS: Are you okay by yourself? [LB1005]

SENATOR LAMBERT: I'll try. [LB1005]

SENATOR COOK: All right. [LB1005]

SENATOR LAMBERT: Good afternoon, Chairman Cook and members of the Business and Labor Committee. I'm Paul Lambert, L-a-m-b-e-r-t. I represent the 2nd District and I'm here today to introduce LB1005. The purpose of LB1005 is to extend the job protection for emergency responders currently found in the Volunteer Emergency Responders Job Protection Act to any member of the state emergency team, pursuant to the Nebraska Emergency Management Act, who is actively deployed as a member of the state emergency response team pursuant to the state Emergency Management Act. The Volunteer Emergency Responders Job Protection Act, enacted in 2008 to give job protection to volunteer emergency responders such as a volunteer firefighter or rescue squad member, the act provides that an employer cannot terminate or discipline an employee who is absent from work or reports late to work because he or she is responding to an emergency. The volunteer responder is required to give notice and provide written statements to the employer prior to seeking this protection. LB1005 extends the same protection to an individual who is a member of the state emergency response team when actively deployed pursuant to the Nebraska Emergency Management Act. I would be happy to answer any questions if I can. However, others with more expertise on the issue are here today and will explain more fully the need for the changes proposed in LB1005. [LB1005]

SENATOR COOK: All right. Thank you very much, Senator Lambert. I see that Senator Harr has a question for you. [LB1005]

SENATOR HARR: Thank you, Senator Cook. And thank you, Senator Lambert, and welcome to the Business and Labor Committee. [LB1005]

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SENATOR LAMBERT: Thank you. [LB1005]

SENATOR HARR: I have a question that is going to show my ignorance. What is a state emergency response team? Who is that specifically? [LB1005]

SENATOR LAMBERT: It is a team put together, of course, to respond to state emergencies and they want to come under the protection, just as your rural volunteer fire or volunteer rescue do. [LB1005]

SENATOR HARR: I guess I've never heard of them before. Are they out of Omaha, Lincoln, Kearney? [LB1005]

SENATOR LAMBERT: I believe they're out of the Governor's Office, I think probably Lieutenant Governor. [LB1005]

SENATOR HARR: Okay. [LB1005]

SENATOR LAMBERT: And that's my understanding of it. I may be totally off-base but... [LB1005]

SENATOR HARR: And they're volunteers? [LB1005]

SENATOR LAMBERT: I don't believe...well, yes, they would be volunteers. I'm sorry. [LB1005]

SENATOR HARR: Okay. All right. Well, thank you. I learned something new today. [LB1005]

SENATOR LAMBERT: That's...as I say, I don't know a lot about it but this is what I can tell you and they deserve the same protection that, as I say, your volunteer firemen or your volunteer rescue squad member has, I believe, and that's the intent of this bill. [LB1005]

SENATOR HARR: Okay. I don't think I disagree with you, so thank you. [LB1005]

SENATOR LAMBERT: Okay. Thank you. [LB1005]

SENATOR COOK: Thank you, Senator Harr. Any other questions from the committee? Seeing none, are you going to stay to close, Senator Lambert? [LB1005]

SENATOR LAMBERT: Yes, I will. [LB1005]

SENATOR COOK: Great. Thank you very much. First testifier in support of this

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proposal, LB1005, please come on up. [LB1005]

PERRY GUIDO: Senator Cook, members of the committee, my name is Perry Guido. I'm the Bellevue fire chief and our department is one of the state...ten state MOUs. They are the teams that the state put together across the state to respond to hazardous incident spills where communities who do not have the resources to mitigate those emergencies, and so the state has provided funding and training for ten different fire departments across the state and provided yearly training and equipment for us to respond for those communities, if need be, in an extreme emergency. So that's the purpose of the state MOUs. I'm here in support of the bill because...I'd like to explain a little bit. First of all, Bellevue was an all-volunteer fire department prior of three years ago, prior to my coming to Bellevue, and at that time they had the Volunteer Protection Act for all the volunteers and they were also a member of the state MOU at that time. We have since gone through a transitional phase. We are not full career at this time but we are fully staffed with paid, part-time individuals who are in charge of their own schedules. And so in a sense I don't have the ability to order anybody. I do have some full-time career people, but I don't have the ability to order anybody to go to a hazardous incident and to leave their employment. In the past it was...when I started looking at the bill, it was unclear whether or not this covered volunteers as well if they were leaving their community. It really doesn't address that in this bill. And so as a member of the state MOU, they would be leaving their community. They would be going to other communities. And I'm not sure that that protection was afforded to them at that time. But it's clearly changed now because I have no volunteers. But in essence, they are volunteers because they work a schedule where they have the ability to set their own schedule, and I don't have the ability to order them back. So we've kind of fallen into this area where we don't have career, full-time, as defined by civil service, and we no longer have volunteer. And we have 22 members that are on that state MOU and this bill would enable us to deploy them with the same immunity that volunteers have within their own community from being terminated from their employment. So I want to thank you and I would be happy to entertain any questions at this time. [LB1005]

SENATOR COOK: Any questions from the committee? Senator Carlson and then Senator Smith. [LB1005]

SENATOR CARLSON: Thank you, Senator Cook. This is really elementary. What's MOU? [LB1005]

PERRY GUIDO: You know, that's a question I can't even answer. [LB1005]

SENATOR CARLSON: Well,... [LB1005]

PERRY GUIDO: That was what they call...maybe it was a memorandum of understanding between the cities and the NEMA, which is out of the Governor's Office.

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[LB1005]

SENATOR CARLSON: Okay, because I'm reading in here state emergency response team and I couldn't get MOU out of that, but that... [LB1005]

PERRY GUIDO: Yeah. [LB1005]

SENATOR CARLSON: Okay. [LB1005]

SENATOR COOK: Um-hum. [LB1005]

PERRY GUIDO: And that's what they called us at that time. [LB1005]

SENATOR COOK: Okay. Thank you, Senator. Senator Smith, did you have a question? [LB1005]

SENATOR SMITH: Yes, thank you, Madam Chair. So these nonvolunteer fire personnel that you have, is it part of their job description to participate in activities under this MOU or is it totally outside of this? [LB1005]

PERRY GUIDO: It's outside of that altogether. It requires specified training, as outlined in the Emergency Management Act. And it's a higher level of training. They're hazmat technicians, requires them to follow all of the training guidelines that were recently put into the state hazardous mitigation SERC teams. [LB1005]

SENATOR SMITH: So are they individually participating in this MOU or is it through the Bellevue Fire Department? [LB1005]

PERRY GUIDO: No, it's through the Bellevue Fire Department. I would be contacted and asked to deploy and see if I could actually put together a team. And there are other teams across the state that are also volunteers, so they would still have the same issue in terms of being able to put together a team. But the state wanted to strategically place these teams, and many of those communities are volunteer. And many of them have...some of them have reserve...that are paid have reserve personnel as well, which I think would then categorize them outside of the career. [LB1005]

SENATOR SMITH: Thank you. [LB1005]

SENATOR COOK: Senator Harr. [LB1005]

SENATOR HARR: Thank you, Senator Cook. So I just...I think I have it clear now. I just want to make sure. So the state emergency response team is basically a hazmat response team and you're determined through an MOU between the Governor's Office

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and a local police...or fire department. Is that correct? [LB1005]

PERRY GUIDO: That is correct. [LB1005]

SENATOR HARR: Okay. Did learn something new today. All right, thank you. [LB1005]

PERRY GUIDO: And I might add that to date I have no knowledge of any of those deployments having had taken place, so it's not something that would be an undue burden on any employer at all. [LB1005]

SENATOR HARR: And they would know ahead of time too. [LB1005]

PERRY GUIDO: And they would know ahead of time. And quite honestly, I think they would be grateful to have that protection because the type of incident that we're going to be deployed to is going to be a large-scale incident, more than likely. [LB1005]

SENATOR COOK: Okay. Thank you. I have a question, Mr. Guido, before you leave. You said that the Bellevue Fire Department was one of ten that have memoranda of understanding with the state, but then you said you have 22 members. Do you mean 22 members of your particular team? [LB1005]

PERRY GUIDO: Yes, I'm sorry I wasn't clear on that. We have 22 members on our team in Bellevue. [LB1005]

SENATOR COOK: Okay. Great. Thank you very much. Any other questions before we take the next testifier? Thank you. [LB1005]

PERRY GUIDO: Thank you. [LB1005]

SENATOR COOK: Next testifier in support of LB1005. [LB1005]

GARY KRUMLAND: (Exhibit 12) Senator Cook, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB1005. The bill is brought to us by the Bellevue Fire Department that addresses a particular problem they have, but it does affect other volunteers. We've always kind of assumed that a volunteer firefighter who's also a member of one of these MOU teams was covered by the act, but it's not real clear, and this is an opportunity to make it very clear that these volunteers are also covered when they volunteer for the state emergency response team. What I'm handing out is a copy of the current act, and as Senator Lambert mentioned, it was adopted in 2008. And I'm not going to go in detail, you can read it, but I'd just hit a couple highlights of what one has to do to get protection under the act. First of all, the employee has to notify the employer in writing that they are either a volunteer firefighter or a member of the team

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so that the employer knows that this is the potential. Once a volunteer is called out, they are asked, if reasonably available, to make notice to the employer that they're being late or being called out so that...sometimes a situation just doesn't allow that, but if they can they are required to do that. And then the employer can request a statement from the employee within seven days that would be signed off by the supervisor to show that, yes, there actually was an emergency that they had to respond to. And then also, this is in 35-1404, although it offers protection if they're late or absent, it does not require the employer to pay any wages or anything while they're gone. It just simply says that they cannot be fired if they happen to be absent or late because of the response team. So we do think it addresses a problem with Bellevue but it also clarifies the law for other volunteers across the state. [LB1005]

SENATOR COOK: Okay. Thank you. Any questions for Mr. Krumland? Thank you very much. [LB1005]

GARY KRUMLAND: Uh-huh. [LB1005]

SENATOR COOK: Next testifier in support of LB1005 today. Seeing none, testimony in opposition to LB1005. Anybody want to testify in a neutral capacity today? Seeing none, Senator Lambert, if you'd come on up to close, please. [LB1005]

SENATOR LAMBERT: Thank you, Chairperson. I think you're all aware of the importance of volunteers in our rescue and fire systems in Nebraska. We protect some of them. This bill will protect all of them. I would urge you to advance LB1005, please. [LB1005]

SENATOR COOK: Thank you very much. Seeing no other questions, that will close the hearing on LB1005 and then we'll move to LB1058 with Senator Carlson. My...there weren't any letters for the...okay. [LB1005]

SENATOR CARLSON: Good afternoon, Chairman Cook, members of the Business and Labor Committee. I am Tom Carlson, spelled C-a-r-l-s-o-n, representing District 38, here to introduce LB1058. The bill was brought to me by the Department of Labor and they will follow me with particulars on the bill. There are three elements to this bill. First of all, LB1058 is generally a cleanup bill to adopt necessary changes to the Employment Security Law; secondly, it's to allow Nebraska employers to claim the maximum credit allowed against their federal tax liability under the Federal Unemployment Tax Act when benefits have been paid out that shouldn't have been paid out; third, it would also allow the Department of Labor to recover overpayments and penalties of unemployment benefits resulting from a claimant's failure to report wages earned while claiming benefits by intercepting federal income tax refunds. And as I look at this I would ask myself, why shouldn't the Department of Labor or why should they not be able to recover overpayments? Why should businesses not be able to claim their maximum

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credit allowed against their federal tax liability? And I would ask you to listen carefully to Commissioner Lang as she discusses this bill. With that, I'll try to answer questions you might have and then I'm simply going to...I'm going back to my place but I'm not going to enter the discussion on this bill. [LB1058]

SENATOR COOK: Thank you very much, Senator Carlson. Any questions before Senator Carlson rejoins us from the three of us? Thank you. [LB1058]

SENATOR CARLSON: Okay. [LB1058]

SENATOR COOK: First testifier in support of this bill, LB1058. [LB1058]

CATHERINE LANG: (Exhibit 13) Good day, Chairwoman Cook and members of the Business and Labor Committee. My name is Catherine Lang, Catherine with a C, C-a-t-h-e-r-i-n-e, Lang, L-a-n-g, and I'm the Commissioner of Labor for the state of Nebraska. I appear before you today in support of LB1058 and I want to thank Senator Carlson for introducing this legislation on behalf of the Nebraska Department of Labor. The purpose of LB1058 is to adopt necessary conformity requirement changes to the Employment Security Law; to allow the department to expand its ability to recover unemployment benefit overpayments resulting from a claimant's failure to report wages earned while claiming benefits; and three, to make some minor housekeeping amendments to the Employment Security Law. On October 21, 2011, the President signed into law H.R. 2832, which contains conformity requirements that Nebraska must adopt in order for its employers to continue to be eligible for both the normal and additional credits against taxes owed under the Federal Unemployment Tax Act. Loss of this credit would cost Nebraska employers an estimated \$300 million per year in federal tax credits. The amendments proposed in Sections 2, 6, 7, 11, and 12 of LB1058 make the changes necessary to bring Nebraska law into conformity with the federal requirements contained in H.R. 2832. The statutory changes proposed in Sections 2, 6, and 7 are, by and large, only the codifications of practices already used by the department. There are three points regarding the forfeiture of appeal rights when employers fail to respond to a request for separation information and that are not absolutely required but is consistent with the original intent of the employer...Employment Security Act. More importantly, this change will eliminate a large number of benefit overpayments that occur when an employer provides information at the appeal but did not provide that same information when the original request for separation information was sent to them. As you have probably read in the newspapers recently, Nebraska has a challenge and must reduce the level of benefits erroneously made, and giving employers an incentive to provide this disqualifying information to the department as quickly as possible is an important step in that direction. We do want you to know that third-party processors who process unemployment claims for employers seem to have the highest rate of untimely responses to this request for information. We have consulted with the largest third-party

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processor of unemployment claims. They do not oppose the appeal forfeiture language. They noted that this language is similar to language in other states. We have provided an amendment. When legislation relates to the Employment Security Law, the department provides information to the U.S. Department of Labor for review to assure that it will meet conformity requirements, and the U.S. Department of Labor has expressed a preference that the department propose some minor amendments to LB1058 which do not change the current practices of the department but it does give U.S. DOL greater confidence that our proposals in LB1058 match up with the requirements of H.R. 2832, and that amendment has been handed out. The changes in Section 11 are also mandated by H.R. 2832, and while a majority of states do assess penalties and interest against claimants who receive unemployment benefits as a result of failure to report earnings while they are claiming benefits, Nebraska has never done that. Because of H.R. 2832, Nebraska must now assess a penalty for this failure on the part of claimants and the penalty will be deposited into the federal Unemployment Trust Fund. Section 12 deals with the directory of new hires, which is actually maintained by the Nebraska Department of Health and Human Services. Prior to asking Senator Carlson to introduce this bill on our behalf, we did discuss these amendments with the Department of Health and Human Services and they are in support of those changes. The amendments to Sections 8, 10, and 11 would allow Nebraska to take full advantage of language in federal law authorizing a state to intercept an individual's federal income tax refund if the individual has fraudulently underpaid their unemployment tax liability or obtained unemployment benefits to which they are not entitled because they've failed to report wages earned while claiming unemployment benefits. These changes are an extension of existing policy and we anticipate that this will result in a large recovery of refunds payable to the Unemployment Trust Fund. I do want you to know that we currently have this authority with regard to state income tax refunds and we collect about \$1 million a year in overpayments. The amendments set forth in Sections 1, 3, 4, 5, and 17 are housekeeping amendments to remove unnecessary and outdated language of the Employment Security Law. The type and scope of benefit appeal hearings and the people conducting them will not change, but Nebraska statutes on benefit appeals will more closely correspond with other states. That concludes my testimony and I would be happy to answer any questions. [LB1058]

SENATOR COOK: Thank you, Madam Commissioner. Senator Harr, and then Senator Wallman. [LB1058]

SENATOR HARR: Thank you. And thank you, Senator Cook, and thank you, Commissioner Lang, for coming. I do have a couple of questions. I guess my first question, as you stated, the large third party...the largest third-party carrier in the state didn't object to this bill. Who is that? [LB1058]

CATHERINE LANG: A company named TALX, T-A-L-X. [LB1058]

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SENATOR HARR: Okay. And did they present a letter of support or are they going to, to the best of your knowledge? [LB1058]

CATHERINE LANG: I don't know that we have a letter from them but we have been in correspondence with them. We reviewed this legislation with them last fall to make sure that they didn't have any problems with it, talked through the process with them. They see it as an opportunity to encourage their customers to report information as timely as possible. [LB1058]

SENATOR HARR: Okay. And then you say that there is a large refund, you expect a large refund by passage of this bill. [LB1058]

CATHERINE LANG: With regard to the intercept... [LB1058]

SENATOR HARR: Yes. [LB1058]

CATHERINE LANG: ...for the fed...right now we do have the power to intercept state income tax refunds. This will give us an additional authority to intercept federal income tax refunds which will then go a long way to reducing overpayments because it will allow us to utilize those funds to reduce those overpayments. [LB1058]

SENATOR HARR: So does the state receive those funds or does the feds receive those funds? [LB1058]

CATHERINE LANG: The state will and we will place them in the federal trust fund. [LB1058]

SENATOR HARR: And how much, approximately, do you think, if you know? [LB1058]

CATHERINE LANG: We don't know. I just wanted you to know from a state intercept perspective, we currently collect about \$1 million a year. [LB1058]

SENATOR HARR: Okay. And you have...will the federal be less or more? [LB1058]

CATHERINE LANG: My...I don't know. I would anticipate that it would be larger. [LB1058]

SENATOR HARR: Okay. And then I was looking at the fiscal note on this bill... [LB1058]

CATHERINE LANG: Uh-huh. [LB1058]

SENATOR HARR: ...and it has revenue for the first two years being...well, expenditures being \$391,000, then revenue \$424,000. [LB1058]

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CATHERINE LANG: Uh-huh. [LB1058]

SENATOR HARR: And then 2013 it's \$106,000, basically, but revenue jumps to \$2.4 million. I guess my question is, why are expenditures so much higher the first year and then why are revenues so much higher the second year? [LB1058]

CATHERINE LANG: The expense...okay. Thank you. The expenditures represent the efforts within the Department of Labor to implement these changes. We have programming and IT changes that need to be made to the benefit payment system. And the implementation of these provisions is staged out over two years, so we'll have some provisions going into effect immediately and that represents the changes for the '12-13 year, the expenditures in that year, and then continued modifications into '13-14. And so that's for our staff to be able to do the programming to make these changes. The revenues in the first year I believe represent the penalties that we anticipate to be collected on the fraudulent overpayments, and then the additional amount is a representation of what we believe will come in from the intercept. [LB1058]

SENATOR HARR: So the federal intercept would probably be \$2 million then, is what you're assuming. [LB1058]

CATHERINE LANG: That's our...I believe that's our estimation. That's our estimate. [LB1058]

SENATOR HARR: So that answers the earlier question then how much. [LB1058]

CATHERINE LANG: That would, yes. [LB1058]

SENATOR HARR: Okay. And I guess my question is, what in the world takes \$200,000 to implement over...since it goes from \$391,000 to \$105,000? Well, I mean I can understand programming, I can understand, but \$200,000 seems like a large fund and in these fiscally restrained times I'm not...I just...I wonder where that comes from. [LB1058]

CATHERINE LANG: Well, the funds to manage the unemployment benefit process are paid for by the federal government through our grants, and so as we have needs in terms of programmatic changes, that would increase the amount of funds that we need to expend from our federal grant. There may be the ability in some of these cases to actually receive supplemental budget requests to pay for the changes to the benefit system, and so what you see here is our best representation of what it does cost to make changes to the benefit payment system so that we can increase our federal appropriations so that we can have enough resources to cover those costs. [LB1058]

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SENATOR HARR: So \$200,000 is literally just for programming and computers?
[LB1058]

CATHERINE LANG: That is correct. [LB1058]

SENATOR HARR: (Whistles) Okay. And then I guess if you could explain a little further, you talked earlier about the potential loss of \$3 million of Nebraska employer tax credits without LB1058. Can you explain what that means or how we would lose that? [LB1058]

CATHERINE LANG: Yes, and it's \$300 million and that is... [LB1058]

SENATOR HARR: Starts adding up. [LB1058]

CATHERINE LANG: It adds up. If a state is not in conformity with federal requirements for the unemployment system, then the employers are not able to take, as a credit against their FUTA tax, Federal Unemployment Tax Act amount, the amount that they pay to Nebraska. And so if you come out of conformity for...out of conformity, then you cannot take credit for the taxes you've paid to Nebraska and, therefore, it increases the liability under the FUTA tax. So staying in conformity is very important for Nebraska employers so that they continue...can continue to take full credit of the amount paid in Nebraska unemployment taxes against their Federal Unemployment Tax Act liability. [LB1058]

SENATOR HARR: All right. I appreciate it. [LB1058]

CATHERINE LANG: You bet. [LB1058]

SENATOR HARR: Okay. Thank you. [LB1058]

CATHERINE LANG: And so that's why every year or every couple years you will see the Department of Labor come forward with these conformity requirements. [LB1058]

SENATOR COOK: Okay. [LB1058]

SENATOR HARR: Okay. Thank you. [LB1058]

CATHERINE LANG: You bet. [LB1058]

SENATOR COOK: Thank you. Senator Wallman. [LB1058]

SENATOR WALLMAN: Thank you, Chairman Cook. Yeah, thank you for being here. [LB1058]

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CATHERINE LANG: Yeah. [LB1058]

SENATOR WALLMAN: How does this transcend between border states like Iowa and Kansas? You know, some contractors work there; they get unemployment here in Nebraska or in Iowa or how does that work? [LB1058]

CATHERINE LANG: Well, we have provisions that assist...are you talking about the employer or the... [LB1058]

SENATOR WALLMAN: Yeah. Yeah. [LB1058]

CATHERINE LANG: The employer is...they pay their taxes to their respective states based on the employees that they have in their respective states. Many...all states attempt to stay in conformity with the federal requirements. There are nuances between states because the federal law does not specifically spell out every detail of the unemployment requirements. [LB1058]

SENATOR WALLMAN: Sure. Okay. [LB1058]

CATHERINE LANG: So employers understand that and know that they may have slight differences from one state to the next, so employers that are dealing with more than one state understand that. But all states are looking at H.R. 2832 and will, you know, to the extent that they can, want to remain in compliance. [LB1058]

SENATOR WALLMAN: So it will be more uniform then, hopefully. [LB1058]

CATHERINE LANG: Well, we would hope so. Yes. [LB1058]

SENATOR WALLMAN: Yeah. Thanks. [LB1058]

SENATOR COOK: Okay. Senator Smith. [LB1058]

SENATOR SMITH: Thank you, Senator Cook. Going back to what Senator Harr was asking, it looks like that ongoing expenditure is based on the addition of 1.26 FTEs. These are full-time equivalent employees that you'll have to bring on to implement this on an ongoing basis. So the difference is about \$240,000 in that initial year and that's programming cost and primarily labor, I'm guessing. So is that going to be an outsourced effort or is that going to be...well, is that going to be an outsource or is there going to be just overtime or what? [LB1058]

CATHERINE LANG: The department utilizes, through our collaborative agreement with the Office of the Chief Information Officer, we utilize contractors, computer program contractors, to assist us with our programming. They are under the management of our

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IT staff at the Department of Labor. And then additionally our subject matter experts of the program itself, from a business perspective, work with these contractors so we assure that we get adequate and effective programming for our system. So, yes, we do utilize contractors for this purpose. [LB1058]

SENATOR SMITH: All right. Thank you. [LB1058]

CATHERINE LANG: You bet. [LB1058]

SENATOR COOK: Any other questions for the commissioner before she gets out of the hot seat, testifier's chair, I should say? Thank you, Madam Commissioner. [LB1058]

CATHERINE LANG: Sure. Thank you. [LB1058]

SENATOR COOK: Next testifier in support, please, of LB1058. I don't see any. Any testifiers in opposition to LB1058 today? Opposition to LB1058? Not seeing anybody moving toward the chair. Neutral capacity today? Here's one. [LB1058]

RON SEDLACEK: Senator Cook and members of the Business and Labor Committee, for the record my name is Ron Sedlacek, spelled S-e-d-l-a-c-e-k. I'm here today representing the Nebraska Chamber of Commerce. We're testifying neutral on the bill. We had met as a labor relations council and had decided to support the legislation, however, we've had a string of e-mails from third-party administrators that had expressed concerns and would ask that we bring forth at least two policy considerations for this committee to consider, and I'll go into that in the remainder of my testimony. While expanding the Department of Labor's ability to collect overpayments from claimants would protect the trust fund and hold down tax rates for employers over time, we don't know if those changes would be enough to offset the direct and immediate impact on an employer's own experience account if denied appeal rights. And what I'm doing essentially in this testimony is reflecting the comments received and asking the committee to consider those as possible and to work with the Department of Labor to perhaps come to a resolution in this regard. Section 2 of the bill proposes the denial of appeal rights to employers who fail to respond to the initial notice of claim within seven calendar days. As written, we believe such a provision would negatively impact all employers, for profit, not for profit, municipalities, and other subdivisions of government. Nebraska's current law already does what the federal Department of Labor requires states to enact. It denies total relief from charging to employers who fail to respond promptly. Current law allows an employer a second chance to secure partial relief from charges if they appeal and win at the unemployment appeal hearing. Taking away that second chance from employers who fail to respond timely goes beyond the measures required by the federal unemployment insurance provisions passed in the fall of 2011. In particular, LB1058 would...could hurt our state's public and private nonprofits who elect reimbursement financing as opposed to contributory or taxpaying employers.

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Under current law, cities, school districts, state agencies, and private nonprofits who elect reimbursement financing who fail to respond to an initial claim notice within the seven-day window can still appeal an unfavorable initial determination. If that employer wins at the hearing level, that employer would benefit from a 13- or 14-week disqualification, which reduces their liability by that amount out of 26 weeks of their benefits. In other words, such employer could reduce their liability by 50 percent if given...or to continue to have the right of appeal. Under the provisions of the bill which would take away that right of appeal, those reimbursable employers would be denied the right and would lose out on that second chance then. The loss of appeal is one portion of the bill that is being questioned. The second, however, is...and then that is consistent with neighboring...some neighboring states, such as Kansas, Colorado, and Iowa, but every one of those states has more than a seven-day time to respond. I believe most of those states have about ten days. And the current seven-day calendar response window would be more difficult to comply with, given the system's use, regular use of U.S. mail. And I see my time is up but I'd like to explain that somehow. [LB1058]

SENATOR LATHROP: Well, we'll see. Anybody have questions? Senator Harr. [LB1058]

SENATOR HARR: And I will let you expand on that, but...and I'm going to hit you a little out of right field on this question. It's about the fiscal note that was presented. It says there's a potential of a loss of \$25.8 million in federal funding to the child support enforcement program if this bill is not passed. Do you know how this relates to the childhood support enforcement program? If not, I can ask Commissioner Lang after... [LB1058]

RON SEDLACEK: You'd probably be best to ask... [LB1058]

SENATOR HARR: Off the record afterwards? [LB1058]

RON SEDLACEK: Yeah, I think so. [LB1058]

SENATOR HARR: And I will. Okay. [LB1058]

RON SEDLACEK: I think so. [LB1058]

SENATOR HARR: If you would like to expand on what you were asking earlier, please feel free with the remainder. [LB1058]

RON SEDLACEK: Very good. Thank you very much. But those states that have taken away appeal rights, and we'd rather have the appeal rights continue on, but if you're...and that's one policy option. The other, however, is we want to keep...if you want to keep the bill as drafted and take away the appeal rights, then we'd ask you to

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consider expanding the 7-day to 10, at least 10 days to maybe 14 days for response, and that's because they're heavily dependent upon the U.S. mail in sending out these claims. And you take a look at seven calendar days. You look at a weekend. Lincoln, if they lose their processing center and have to ship things to Omaha and back, that's going to further delay. As I say, if we're going to do that, at least give some a little bit more ability to respond to these and that's what we would ask, one of the two. [LB1058]

SENATOR HARR: Okay. Thank you. [LB1058]

RON SEDLACEK: Uh-huh. [LB1058]

SENATOR LATHROP: I see no other questions, Ron. [LB1058]

RON SEDLACEK: Thank you. [LB1058]

SENATOR LATHROP: Thank you. Is there anyone else here in a neutral capacity on LB1058? Seeing none, do we have anything to offer to the record? Okay, Senator Carlson to close. [LB1058]

SENATOR CARLSON: Senator Lathrop and members of the committee, appreciate the opportunity for LB1058 to be heard in front of the committee today. And I would simply say that if we're looking at the possibility of \$300 million a year in loss of employer tax credits, this must become a pretty important bill. And I believe it ties to whether or not we're in conformity. I appreciate Ron Sedlacek's testimony and I would ask him to work with the Department of Labor, if an amendment is appropriate. And I know that the Nebraska Chamber of Commerce doesn't want to risk nonconformity and a loss of \$300 million to Nebraska employers. He's concerned about the loss of appeal rights, and so I would ask that he work carefully with Commissioner Lang on that concern, as well as the seven-day limitation. I think that's probably a legitimate concern. Hopefully that can be worked out. I don't know how critical it is for this bill to be passed this session, but I will find that out. And with that, thank you for listening. I'll try to answer questions that you might have. [LB1058]

SENATOR LATHROP: Any...Senator Harr. [LB1058]

SENATOR HARR: Thank you, Senator Lathrop. And do you know how we lose the \$25.8 million in child support enforcement? [LB1058]

SENATOR CARLSON: I don't,... [LB1058]

SENATOR HARR: Okay. [LB1058]

SENATOR CARLSON: ...but I'd like to. [LB1058]

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SENATOR HARR: I will...okay. Thank you. [LB1058]

SENATOR LATHROP: Okay. I see no other questions. Thank you, Senator Carlson. That will close the hearing on LB1058 and open our hearing on LB1152. [LB1058]

SENATOR COOK: All right. Senator Lathrop. [LB1152]

SENATOR LATHROP: Good afternoon, committee members. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 in Douglas County. I'm here to offer or present for your consideration LB1152. This bill allows the Department of Labor to use the Nebraska Training and Support Trust Fund to support on-the-job training programs for those receiving unemployment benefits. Currently, these training funds only support programs designed to increase the skills of existing employees. Training programs offered by the department for unemployment recipients do not allow for on-site training with a prospective employer. The idea for LB1152 stems from a program called Georgia Works. Started in 2003, Georgia Works allows unemployment benefit recipients to train with an approved business up to 24 hours a week for six weeks at no cost to the employer. Employers must certify that they intend to hire for the position and must provide an evaluation of the trainee's performance. This program allows job seekers to learn a new skill and gain some morale while the employers have a six-week opportunity to evaluate the prospective employees and to save on training costs. To date, more than 4,000 Georgians have landed employment through the program in a wide range of fields, including health and business services, construction, manufacturing, and finance. Additionally, Georgia Works has helped lower the average amount of time for unemployed workers to find employment. This, in turn, reduced the draw on its unemployment trust fund by \$6 million. I ask for your support of LB1152, a bill that is beneficial to both workers and employers, and I'd be happy to try to answer any questions you might have. [LB1152]

SENATOR COOK: Any questions from the committee? Seeing none, we'll take the first testifier in support of LB1152. [LB1152]

STEVE HOWARD: Members of the committee, my name is Steve Howard, H-o-w-a-r-d, and I represent the Nebraska State AFL-CIO in support of LB1152. I know this may seem somewhat anecdotal, but in our firm, in our practice, we've had a lot of experience with folks going through on-the-job training. We've had folks that are trained to become copy repair persons and auto mechanics and some sales jobs and some computer jobs and some other things, and it seems to be a good relationship. You have this potential employer that's willing to have the assistance and help from a new potential person and sort of try them out, and you have a person that's lost their job on the other hand that's interested in a new career and working to try and find something different. It just seems to make sense to prioritize those folks receiving unemployment benefits to receive the

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training through the state voc-rehab office because that ultimately would, hopefully, return those people on unemployment back to work sooner and reduce the draw on the accounts that the employer has. And so we think this is a good fit. It's good for employers, good for employees, and it just makes sense. Again, that on-the-job training setting is a good healthy relationship between potential employer and employee, and then you don't need to go ask for a job reference if you've actually tried the person out, so anyway. I'm sorry about that. Nothing more from me except to thank you for consideration of my comments today. [LB1152]

SENATOR COOK: Thank you, Mr. Howard. Are there any questions from the committee members? Thank you. [LB1152]

STEVE HOWARD: Thank you. [LB1152]

SENATOR COOK: Next testifier in support of LB1152 this afternoon? Okay, any testimony in opposition to LB1152? Anything in the neutral testimony? Seeing none, Senator, Senator Lathrop waives closing, and with that I will close the hearing on LB1152 and our hearings for today. [LB1152]