

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

[LB45 LB46 LB68 LB180]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, January 20, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB180, LB45, LB46, and LB68. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; and Norm Wallman. Senators absent: Bob Krist.

SENATOR CAMPBELL: Good afternoon. We are at the appointed hour. I am Senator Kathy Campbell from District 25 and serve as the Chair for the Health and Human Services Committee and want to welcome you all to this afternoon's hearings. I'm going to go through some housekeeping reminders to everybody in the room. So if you are planning to testify and you've not filled out a testifier sheet, this might be a good time to pick one up while I'm talking and then you can get them filled out. Before we start, however, on the reminders, I'd like my colleagues to introduce themselves. So we'll start on my far right, Senator.

SENATOR BLOOMFIELD: Dave Bloomfield, District 17, it's up in the northeast corner of the state.

SENATOR COOK: I'm Tanya Cook. I'm the senator from Legislative District 13 which is the northeast corner of Omaha and Douglas County.

SENATOR WALLMAN: Senator Wallman, I represent from here to the gates to Kansas.

SENATOR CAMPBELL: We have several other senators who will be joining us this afternoon. If they are not here, they may be introducing bills in other committees. And senators sort of come and go. So we will make sure that they are introduced as they come in. The reminders for everyone today is to please turn off your cell phones. The noise that a cell phone does sometimes get picked up by the recording and it also can be bothersome to people who sit around you. The testifiers, we are asking you to have 12 copies of whatever you plan to give. We do not make the copies for you. So if you only have one copy, why that's fine, we'll...you can turn the rest in later. And a reminder that if you plan to testify (and only people who plan to testify need to fill out the form), please print, make sure you have that ready when you come forward, provide all the information requested for the clerk. And the form must be given to the committee clerk. Diane Johnson is the committee clerk. And to my left is Michelle Chaffee who is legal counsel to the Health and Human Services Committee. We do use a light system here and you have five minutes. And Diane will put on the green. And then when it gets to four it goes to yellow. And when it goes to red you'll see my face get a little bit more nervous and tense, so we're going to say that's your time. I would encourage you, sometimes people feel like they need to read their testimony here. You certainly can if that makes you feel more comfortable, but you don't need to. We certainly can read it.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

And just to say I want to highlight some of the major points in my testimony, that's also fine too. The most important thing when you come to the table and sit down and as we start, to give us your full name and to spell the last name. So I think I have introduced everyone but Ayisha, if you'll wave, and Crystal are the pages for the committee and help the senators stay organized through the afternoon. So with all of that behind us, we will open the public hearing on LB180. And, Senator Fischer, pleased to have you before the Health and Human Services Committee.

SENATOR FISCHER: (Exhibit 1) Thank you very much, Madam Chair and members of the committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District here in the Nebraska Unicameral. I come before you today to introduce LB180. This bill transfers the appointment of the Veterinary Medicine and Surgery Practice Board from the State Board of Health to the Governor's Office. The bill does not change the makeup of the board in any way nor does it change their function. My reasoning behind this change is very, very simple. I believe the bill will make the process of appointing the board more transparent. Until recently, I didn't know who appointed this board. Additionally, I never knew when a new member was placed on the board. That could be my fault. But I do believe that this information is important for citizens to know. It's been my experience that the Governor's process is very public. His office also often releases statements to the press that advertises vacancies and sometimes even the names of those who have applied for various boards. When a press release comes from the office on boards or possible vacancies, I usually forward those to the media that is in my district so my constituents are aware of the various appointments and if they have an interest in any of those board positions they can then apply for those. Also, the Governor's appointment requires legislative approval. Appointees to these boards have to come before committees. We all, depending on the committee of jurisdiction, we then interview the candidate for that position and there is a public vote on the floor of the Legislature on the candidate and appointee to those boards. I believe that only adds to the openness of that process. The Veterinary Medicine and Surgery Practice Board caught my attention simply because my constituency deals with vets in our business practices. I would add that I think at this point in time that we are at here in the Legislature and with the economic situation we're in, the various budget cuts we're looking at, the reinventing government structure that we have been talking about for the last six or seven months, this is a very, very small part of that. It's not a big deal, I'm the first to admit that. It's not a big deal. But I do believe it's a step in the process. And I hope that we will continue to look at these different steps as we move forward in examining what the government of Nebraska should be, even in these tiny matters because to some people they're not tiny. Before I came up here to testify, I was handed a letter by the Nebraska Medical Association, which I'm sure you have or will have. I will let them state their own position on the bill, but it reminded me when we were doing research, looking into this situation, we found out that there are currently two boards that aren't appointed by the State Board of Health. And I thought it was interesting which two boards they are. One is the Board of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

Emergency Medical Examiners, which I can remember from my first year or second year in the Legislature that became quite an issue between the EMTs and first responders. Senator Flood and I had a bill on that. And you get into turf battles as especially you folks here on this committee are well aware of. And so that board is not appointed by the State Board of Health. Also, the Water Well Drillers Board is not appointed by the State Board of Health. I would...I'm curious as to why those two boards aren't. My office received some information, comments on why they weren't. But it will be interesting to hear possibly why they aren't. With that, again I say this is a small matter in looking at all the issues we're going to be dealing with this session, but I do believe it is important. Thank you, Madam Chair. [LB180]

SENATOR CAMPBELL: Thank you, Senator Fischer. Are there any questions from the senators for Senator Fischer? Thank you. Will you be here for closing, Senator Fischer? [LB180]

SENATOR FISCHER: I think so, yes. Thank you. [LB180]

SENATOR CAMPBELL: Okay, that would be great. While the proponents are getting ready to come forward, want to introduce, to my left, Senator Howard has joined us. And to my right Senator Gloor has joined us. So we are almost at full capacity. Senator Krist will not be here this afternoon. All right. Would the proponents of the bill please come forward. Good afternoon. [LB180]

PETE McClymont: Good afternoon. Madam Chair, members of the committee, for the record, my name is Pete McClymont, M-c-C-l-y-m-o-n-t. I'm a registered lobbyist for the membership of the Nebraska Cattlemen. We're here today in support of LB180 for the reasons that Senator Fischer stated to you. And I would like to give further comments about that. The biggest thing is obviously the transparency. I would say agriculture is the biggest industry in the state of Nebraska. And professionals like veterinarians that take care of the animals for our owners and our members is critical. So in no way do we want to jeopardize what their role is. In fact, I think it's our belief that we want to elevate their role to have a public hearing for people that are appointed or recommended for appointment. We like the process as we're more involved in the Natural Resources Committee and I'm not here too often before you. But when somebody comes before the Natural Resources Committee for the Game and Parks Commission it gives the public the opportunity to weigh in on that person's candidacy and their abilities. That person gets to testify and receive questions from the Natural Resources Committee. So in our opinion to allow that same process to happen for veterinarians and the role they serve in agriculture is huge. In doing the research for this bill we found on the State Board of Health, of the boards and the committees that they appoint the only...it's obviously based as we most...would first come to realize is humans. And so veterinarians are professionals. They go to school. They become doctors and their clients are obviously humans, but who they deal with are animals. And so for that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

reason, we think it's important that the owners of the animals have the opportunity to weigh in on the candidacy. Obviously, it's a five-person board. There are four of those individuals on the board that are vet related, there are three veterinarians, there is one vet tech, and then there is one person from the public that is on the board and serves...they serve...they can serve up to two consecutive five-year terms. So they have continuity; we like that a lot. So we believe that it's, in our opinion, it's putting a higher value on the services and the role that veterinarians play to come before this committee and then ultimately before the Legislature. With that, Madam Chair, I'd conclude my comments and be happy to answer any questions. [LB180]

SENATOR CAMPBELL: Thank you, Mr. McClymont. Questions from the senators? This is a quiet group today. Mr. McClymont, I have a question. In your research of this, in my memory of being on this committee I think we have had some scope of practice, and I'm not trying to get into all this language that may not be familiar with you, but a change in the scope of practice of what a veterinarian could do or people who did not have that degree could do. And at times they've had to go through what's the 407 process, which is to look at what the scope of practice ought to be. Do you think that this board still ought to go through that type of system or something different for the criteria...whether veterinarians or someone who is not a veterinarian could do? And for the new colleagues, there was a...you know, the veterinarians were very concerned that people were working on animals and they didn't have the same credentials to carry out that. Do you have any opinions or did your research give you any background on that? [LB180]

PETE McClymont: It's our opinion that the same role, the same responsibilities of the State Vet Board should not change. So clearly, we're not here to change any role that they have in their service to the public nor to the Board of Health and their role there. [LB180]

SENATOR CAMPBELL: Okay. Senator Bloomfield. [LB180]

SENATOR BLOOMFIELD: This is a question I really should have asked Senator Fischer, but beings I was negligent in doing that I'll try you. Would the Governor appoint a new board currently or will he simply replace them as they go off of the board? [LB180]

PETE McClymont: It would be my understanding that after the...if this bill were to come out of the committee and were to be passed by the full body I would assume there is an implementation date. So I would assume that those that are currently serving their term would then fill it out. And any possible ones that would come forward for the openings, Senator Bloomfield, would then come up. But I don't know that for a fact, I'm giving you an assumption there. [LB180]

SENATOR BLOOMFIELD: Okay, thank you. [LB180]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR CAMPBELL: Any other questions? Thank you, Mr. McClymont. [LB180]

PETE McCLYMONT: Thanks. [LB180]

SENATOR CAMPBELL: Other proponents for the bill. Good afternoon. [LB180]

CRAIG HEAD: Good afternoon, Senator. Good afternoon, Senator Campbell, members of the Health and Human Services Committee. My name is Craig Head, that's C-r-a-i-g, and the last name is H-e-a-d. And I am the state director of Government Relations for the Nebraska Farm Bureau Federation, here today on behalf of the organization in support of LB180. I will keep my comments very brief for many of the reasons that were registered by Senator or Mr. McClymont and Senator Fischer, we have the same interest. Our organization has always been interested in enhancing transparency in government. And I think this bill tries to do that by adding oversight with the Legislature approval of appointments to the committee. It's a process that our members are very familiar with. We deal with appointments by the Governor on a number of different industry-related issues and boards and commissions that we deal with, including the Nebraska Corn Board, the Wheat Board, the Department of Environmental Quality, appointments to the Environmental Quality Council, as well as the Nebraska Game and Parks Commission Environmental Trust. So there are a lot of other agencies that we deal with in agriculture, boards and commissions where they are appointed through this process. It's a process we're really comfortable with, so we think there's value in that. And the last thing I'd just point out is the interest in the vet issues. One of the things that our members...we've seen increasingly over the last several years is more interest in veterinary issues because we are seeing fewer large animal vets out in the countryside. That is a major issue for agriculture and I think for the veterinary profession as we try and work together and move forward. And because of that, I think there is some interest there in terms of looking at this as an opportunity to make sure that, because there's a smaller number of those vets, to have more input in terms of who sits on that veterinary board and one of the reasons of interest there. So with that, I would conclude my comments. Be glad to answer any questions that you might have. [LB180]

SENATOR CAMPBELL: Questions from the senators? Any comments? Thank you, Mr. Head. [LB180]

CRAIG HEAD: Yes, thank you. [LB180]

SENATOR CAMPBELL: Other proponents for LB180. Okay. Those opposing LB180 wishing to testify. Good afternoon. [LB180]

PAUL FOY: Good afternoon, Chairman Campbell, members of the committee. My name is Dr. Paul Foy. The last name is F as in fox, O as in orange, y as in yellow. I'm from

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

Ogallala and I serve on the Veterinary Board of Medicine and Surgery. I'm here today representing that board to voice their opposition to LB180. The purpose of the professional board is to provide for the health, safety, and welfare of the citizens of Nebraska by ensuring that licensees, certificate holders, and registrants are meeting minimum standards of proficiency and competency, as well as to control their profession in the interest of consumer protection. With the members that we have on the board and have had, we have been able to protect the public quite well as far as the veterinary profession is concerned. The members of this board are appointed by the Nebraska State Board of Health. The State Board of Health is made up of 17 individuals who are professionals in various fields of medicine, from dentistry to medicine, and from nursing to administration. These individuals do an extensive application process and interview of candidates who are potential members to the Board of Veterinary Medicine. We feel this appointment process has allowed the most complete selection that has allowed the infusion of knowledge and ideas from all geographic areas in the state of Nebraska. Through this process, we have been able to harmonize provisions with other disciplines of the medical professions by working toward uniform credentialing of the professions. Our concern is that by placing the appointment process in the hands of one lay individual versus the hands of 17 individuals knowledgeable in various fields of medicine that we may lead to a handicap of the process that we have established as successful. In order for the board to function effectively, continuity is necessary among the members. Gubernatorial appointment may cause the loss of this continuity. Presently our work is nonbiased. If the appointment process is changed, this nonbiased approach may change. So we urge the Legislature to leave the selection process up to the several members of the medical profession and not the hands of one individual so that the successful work that we have been doing will continue. The national president of the American Association of Veterinary State Boards has indicated to me that state boards that are gubernatorially appointed have a tendency to operate under a cloud of politics that reduces their ability to be candid. Senator Fischer indicated that there are two boards not appointed by the Board of Health, but there are nearly 30 that are not, that are appointed by the Board of Health and two that are appointed by the Governor. So we ask that you not attempt to fix something that is not broken. With that, I'll entertain any questions that you may have. [LB180]

SENATOR CAMPBELL: Are there questions for Dr. Foy? Dr. Foy, I would have several questions. How many members of the board would now work with large animals? Because part of the concern I think, and legitimately so, is have we got that area covered? [LB180]

PAUL FOY: There's three veterinary members on the board: Dr. Jim Unwin, from Oakland; his practice is probably 85 percent large animal; my practice in Ogallala is probably 50 percent large animal; and Dr. Kohles, from Lincoln, his practice is nearly all small animal. The two lay members, well, the one lay member is from York, and then the other individual is a veterinary technician from Lincoln, small animal practice.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

[LB180]

SENATOR CAMPBELL: Do you review the credentials for the veterinary techs? [LB180]

PAUL FOY: Yes, along with the credentials for chiropractors, acupuncturists, massage therapists, physical therapists, occupational therapists. These are all the credentials that we have been in the process of going over so that we can incorporate those people that may want to do work in veterinary medicine under the auspices of a licensed veterinarian. [LB180]

SENATOR CAMPBELL: And those disciplines and areas are all to aid in the health of the animals, correct? [LB180]

PAUL FOY: Right. [LB180]

SENATOR CAMPBELL: I remember the first time when someone was talking about a chiropractor for an animal and I remember thinking I wasn't quite sure how that would work. But that's a lengthy list. [LB180]

PAUL FOY: It is and that's part of the process of this continuity that I was discussing. We've been going through this for several years, last three or four years. The veterinary profession in Nebraska, we have a unique situation here because we're one of the first states that have opened the doors for other credentialed people to come in to help under the auspices of a veterinarian. If I have a horse that needs chiropractic or acupuncture therapy, I'm not a chiropractor, I'm not an acupuncturist. We do have veterinarians that are trained in those two disciplines and we have humans that are acupuncturists and chiropractors that can take veterinary training to work under the auspices of a veterinarian. And that's what we've been working on. We're just about ready to come with a stack of stuff about this thick to be okayed for the credentialing of these different professions within veterinary medicine. [LB180]

SENATOR CAMPBELL: Dr. Foy, are there other just generalized topics that the board deals with? Some education on your part, I think, is helpful here. You obviously deal with the credentialing, I understand that. But other broad topics... [LB180]

PAUL FOY: We, obviously, we have some litigation cases that come to us that are complaints about people that are working outside their license or not licensed and those issues come up, ethics and so on and so forth. And we do review those. There's investigators within the board that bring us material that we investigate. And we make a decision and we make a recommendation to the Attorney General's Office on how those cases should be handled. [LB180]

SENATOR CAMPBELL: Okay. Senator Gloor. [LB180]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR GLOOR: Thank you, Dr. Foy, for taking the time to provide some testimony. You made a comment about the concern that bias or politics may enter into decisions with a gubernatorial appointee. And although I understand that concern, I think the process, whether it's for this level of appointment or any level of appointment, usually is for a Governor to ask around and get some advice from people within that particular business or industry anyway. And I would wonder if there isn't some of that same bias or politics within the board itself when it makes a decision. Maybe somebody went to KSU as opposed to Iowa State or somebody has a competitive approach towards practice of veterinary medicine and that rankles some folks. If this particular vet gets involved in Internet sales, I mean, I'm just wondering is it as neat and clean as you would present when it comes to making appointment decisions? [LB180]

PAUL FOY: Well, I can say this, that the...when a position is open, okay? The position is advertised through the State Veterinary Association. And if you're not a member of the association, it's advertised through the Web site of the Legislature that has these positions open. And certainly, anybody that wants to apply, you get an application through the Department of Health and Human Services. It's a fairly extensive application. You send it in and it goes to the Board of Health. And the Board of Health...my interview process was a pretty extensive interview process. I believe there was 12 or 15 people there and they were nurses, dentists, optometrists, surgeons, you know, the people that interviewed me, I didn't get a chance to meet them all, but they had some pretty...I mean we're talking trying to protect an industry that's very intimate with people, you know. The human healthcare service is pretty intimate with their patients. And now we're dealing with the animal side of this thing which most people get pretty intimately involved with their pets or their livelihood if it's a large animal type situation. So I would say it's pretty transparent. I mean, I wouldn't think there's any reason to think that it wouldn't be. The application process is available to everybody. And certainly you can take...make recommendations for the board as you see fit. And the association makes recommendations to the board. [LB180]

SENATOR GLOOR: Thank you. [LB180]

SENATOR CAMPBELL: Any other questions from the senators? Thank you, Dr. Foy, for coming today... [LB180]

PAUL FOY: Thank you. [LB180]

SENATOR CAMPBELL: ...and for your service on the state board. Any other testifiers in opposition? [LB180]

RICHARD COCKERILL: Good afternoon, Madam Chairperson and members of the committee. I am Dr. Richard Cockerill. I'm currently president of the Nebraska

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

Veterinary Medical Association and I'm here in opposition of LB180, the bill to provide for gubernatorial appointment of members of the Board of Veterinary Medicine. Dr. Foy covered a lot of the topics I was going to cover, so we're going to kind of gloss through mine. I think he did touch on the fact that board members' duties include, but are not limited to, administration of licensing examinations, recommending the issuance or denial of licenses, and changes in legislation and regulation. The board also addresses complaints making recommendations on disciplinary actions for veterinarians as well as the enforcement of rules on unqualified individuals who are illegally performing acts of veterinary medicine and surgery. Decisions by the board on disciplinary cases are to be unbiased in order to adequately protect the public. As Paul mentioned, the Department of Health and Human Services makes known to the public board openings by press releases, direct mailings to interested organizations across the state, and on their Web site. Also, members of the Nebraska Veterinary Medical Association are notified by the association office when a vacancy will occur and are solicited for volunteers or nominations to apply for those positions. As an association, we were really a little surprised to hear that there was concern about how the process was implemented. Enactment of LB180 would leave candidates out of consideration and create bias on the board. Beginning to treat veterinary medicine differently than other health professions will mean Nebraska will take a step backwards in this arena. The NVMA believes the Uniform Credentialing Act should be just that--uniform. Thank you for allowing me time to speak today. And I'll answer any questions, if you have any. [LB180]

SENATOR CAMPBELL: Questions from the senators? Dr. Cockerill, are you a practicing veterinarian? [LB180]

RICHARD COCKERILL: Yes, I am. [LB180]

SENATOR CAMPBELL: And do you practice with large animals or small? [LB180]

RICHARD COCKERILL: Primarily large animals. [LB180]

SENATOR CAMPBELL: And you are located... [LB180]

RICHARD COCKERILL: Albion, Nebraska. [LB180]

SENATOR CAMPBELL: Albion. [LB180]

RICHARD COCKERILL: I don't think I spelled my name either, did I? [LB180]

SENATOR CAMPBELL: You know, now I have to take a fall for that, not you. (Laughter) [LB180]

RICHARD COCKERILL: I'll spell it now, if you want me to. [LB180]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR CAMPBELL: So perhaps if you could save me, would you mind spelling your last name, please? [LB180]

RICHARD COCKERILL: All right, C-o-c-k-e-r-i-l-l. [LB180]

SENATOR CAMPBELL: Thank you. That would just be one less black mark for me at the end of the day. (Laughter) Any other questions for Dr. Cockerill? Thank you for coming today and for your service. [LB180]

RICHARD COCKERILL: You're welcome. [LB180]

SENATOR CAMPBELL: Other opponents to LB180. Those who wish to testify in a neutral position? Seeing none, Senator Fischer, would you like to close? [LB180]

SENATOR FISCHER: Thank you, Senator Campbell and members of the committee. First of all, I, too, would like to thank Dr. Foy for his service on the vet board. I would like to clarify that this bill makes no changes in the duties of the board. It is only making a change in how the members of the board are selected. I would also like to state when the comment was made about possibly politics getting involved in this, I think all of you know me well enough to know that that was not something I thought of when I came up with this idea. It truly is for a more open process, I believe, for more accountability so the Legislature can be involved in this process. And as I said, I don't think it would necessarily stop with this board. I think the people of Nebraska are becoming more and more aware of their political system and of their government and they want to be involved, and this is a way that we can furnish them that opportunity. Thank you. [LB180]

SENATOR CAMPBELL: Any further questions, any comments? Senator Bloomfield. [LB180]

SENATOR BLOOMFIELD: I want to go back to the question I asked earlier. Would he reappoint a new board or would he just appoint a board as they leave? [LB180]

SENATOR FISCHER: As positions open, then they would be filled with a gubernatorial appointment and confirmation by the Legislature. [LB180]

SENATOR BLOOMFIELD: Thank you. [LB180]

SENATOR CAMPBELL: Thank you, Senator Fischer. [LB180]

SENATOR FISCHER: And it might be a she for Governor by then, you never know. (Laughter) [LB180]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR CAMPBELL: Thank you, Senator Fischer, very much. [LB180]

SENATOR FISCHER: Thank you very much. [LB180]

SENATOR CAMPBELL: And with that, we will close the hearing today on LB180. And we will proceed to LB45, Senator Fulton. And I know Senator Fulton is here. And as he is working his way to the front, and he's right there, just want to remind the people who came in, if you...you only have to fill out a testifier sheet if you plan to testify. They are located on the side. And you may want to try to fill that out before you come up. No cell phones, that may be the major announcements. Senator Fulton, we are pleased to have you. And we'll open the hearing on LB45 which is to change the Engineers and Architects Regulation Act. Senator Fulton, before you start, did the...Senator Fischer referred to a letter in the last hearing. Has it been distributed? We have that. Okay. I just want to make sure everybody has their copy. Senator Fulton, welcome to the committee for the first time this year. [LB180 LB45]

SENATOR FULTON: (Exhibit 2) Thank you, Madam Chair. Good afternoon, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent District 29. I bring to you today LB45, the first of three bills I'll introduce to this committee. LB45 would change the Engineers and Architects Regulation Act primarily in two areas--first, it would allow for limited cross-discipline practice by licensed architects and professional engineers between the professions of engineering and architecture on projects of specific occupancies under 6,000 square feet in size. The allowance of this practice was unanimously approved by the Negotiated Rulemaking Committee convened by the Board of Engineers and Architects in the summer of 2010. The main reason for the change is to reduce the number of licensed professionals that are required on each such project, thereby improving access to professional services for the citizens of Nebraska. Secondly, it allows for the 16-hour structural engineering exam beginning in April of 2011. The structural engineering exam is developed by the National Council of Examiners for Engineering and Surveying and is the standard exam for licensure as a professional structural engineer in Nebraska. Previously it was split into two eight-hour exams and the existing act reflects that exam format. There are some other provisions that exist in the green copy of your bill which I will not elucidate here. I have listed these on my statement of intent. I have included an amendment for your review. That amendment is really technical in nature, cleaning up the bill. And there will be people to follow me for testimony. With that, I will close and answer any questions you might have. [LB45]

SENATOR CAMPBELL: Questions? Senator Wallman. [LB45]

SENATOR WALLMAN: Thank you, Senator Campbell. Thank you for being here, Senator Fulton. My regard, I guess, as to the cross-references and also, you know, the occupations. If I'm putting up a large structure and say there's a fault in it, is it the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

engineer or the architect who takes the blame? [LB45]

SENATOR FULTON: Depends which engineer you're talking about, Senator. (Laughter) There is statute in place that provides for a registered professional engineer on buildings that are built over a certain square footage. So that's how I understand it. I could get you a more specific answer if you want later, though. [LB45]

SENATOR WALLMAN: Okay, thank you. [LB45]

SENATOR FULTON: Yep. [LB45]

SENATOR CAMPBELL: Other questions from the senators at this point? Senator Fulton, before we go to the hearing, did we have this bill before us last year or two years ago? [LB45]

SENATOR FULTON: I'm not...it wasn't last year. I don't know that we've had this one specifically before you. [LB45]

SENATOR CAMPBELL: No. Okay, so we've just been working on it to get to this point. [LB45]

SENATOR FULTON: That would be an accurate statement, yes. [LB45]

SENATOR CAMPBELL: Okay. That would be great. Thank you, Senator Fulton. And you will be here for closing? Okay. With that, we will proceed to take the proponents for LB45. So please come forward. While we are getting set up here, how many people wish to testify on LB45? Okay. A few more. Good afternoon. [LB45]

KRISTA KESTER: Good afternoon. I'm at a disadvantage, I hadn't seen how many people you were counting back there. [LB45]

SENATOR CAMPBELL: I think there was four or five. [LB45]

KRISTA KESTER: (Exhibit 3) Okay. My name is Krista Kester, K-e-s-t-e-r. And I want to thank Senator Fulton for introducing the bill initially and thank the committee for, quite honestly, it is a wonderful thing to be part of democracy working. And I know that sounds sort of trite and gushing, but I always get a little overwhelmed in these settings just because of that. I'm here today on behalf of the Nebraska State Board of Engineers and Architects. I am currently the vice chair of the board. I am a gubernatorial appointee. (Laugh) And I have been chairing the legislative committee of the board for the last several years, so I have a real vested interest and a history in working on these issues. I want to make sure that everybody understands though, I'm not an engineer and I'm not an architect. As Michelle will tell you, I'm a lawyer. I can only apologize for

that fact. In fact, Michelle was, I believe, a student of mine some many years ago. Hello. (Laugh) I've enjoyed working with you via the e-mails as we've gotten this draft together. And so my perspective, I'm the public member of the board accordingly. I'm not one of the practicing professions. And so my perspective is maybe a little bit different than you would get from an engineer or an architect on these matters. We do have other members of the board here today. We have the architect members: Mark Champion and Albert Hamersky. I believe Mr. Hamersky is going to testify. We also have the engineer member of the board, Roger Helgoth, who is going to testify as well; our executive director, Jon Wilbeck, is in the audience, but we've not determined that it was necessary for him to testify, so I don't believe that he is going to. The Board of Engineers and Architects is charged with protecting the health, safety, and welfare of the public. And that is our overriding, overarching, and frankly, our sole obligation and our sole charge. And so that has to be addressed by everything that we undertake in the work of the board. One of the things that I believe distinguishes our board from many of the other boards is the fact that we have undertaken on two occasions now what has been statutorily authorized as negotiated rulemaking. And we really found that to be a valuable tool because it brings together a variety of what I refer to as stakeholders, individuals and entities and organizations that have an interest in what the board does. And it certainly goes beyond just engineers and architects, includes, you know, the banking institution, educational institutions. In fact, Helen Meeks of Health and Human Services participated with us last summer in our negotiated rulemaking session. We have builders, we have architects and engineers, we have municipalities, we have building officials. So the list of stakeholders that we typically engage as we try to reach an agreement amongst the board members as to how to pursue a legislative issue I think is pretty extensive and it is my understanding is unique to the other boards within the state. And so it's that sort of history that I'm able to bring you the bill that is before us today. I think that Senator Fulton did a nice job of highlighting the two primary issues that are contained within this bill. And I've had the page distribute a several-page summary of the changes in the bill and also some visuals that I think will help explain what it is we're doing with the cross-discipline practice. Senator Wallman, I appreciated your question. The first sort of significant change that we have is the introduction of the 16-hour structural examination for the licensure of engineers in Nebraska. The current statute, in fact, will be a real problem for us if we don't get this changed because of the way the exam format has been changed with the NCEES. So we really do...we do even need this in order to continue to license our professionals. The housekeeping provisions that are a part of the second page, I don't see any reason to walk through them in any detail. I certainly...we can entertain questions about that as can my colleagues who will testify. The bigger issue deals with the cross-discipline practice. And there's sort of a summary on the third page of this handout that talks about the basis for and what it does. And as was earlier pointed out, what it allows is in a very small sort of fraction or section of practice an engineer to do some architecture or an architect to do some engineering. It's quite a limited sort of space within which that can occur. And if...there are two tables that are included in your materials. Table 1 is a diagram that shows the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

existing law with respect to when you need an architect or an engineer on a project. The hash-marked areas for each of these particular occupancy types shows where you don't need any engineer or architect. I mean, that's the law in Nebraska now which means, Senator Campbell, if you wanted to put up a business category building of 2,900 square feet, you could do it all by yourself. You know,... [LB45]

SENATOR CAMPBELL: Ah, probably not. [LB45]

KRISTA KESTER: Probably not (laughter). Well, let's put it this way, the law allows you... [LB45]

SENATOR CAMPBELL: I need a few more skills. And we need to have you...get to the end here. [LB45]

KRISTA KESTER: Yeah, yeah. And so...but if you'll go to the next, if you'll go to the next, the next one, the red marks between the hash marks and the blue is the square footage in which this cross-discipline would be allowed. And that's the sole allowance for this limited cross-discipline practice, 23 other jurisdictions allow it in a less defined manner. No jurisdiction has ever reported that it's created a real problem for enforcement or incompetence or anything of the sort. And so, we certainly support the bill and urge it to come out of committee and be passed. If there are any questions that I can answer, I'd be happy to do so. [LB45]

SENATOR CAMPBELL: Senators, questions? I just think it's great that you've come together and created a cross-reference and agreed-upon area that you can work together. So many times we see where two groups are really at loggerheads before they get here rather than trying to work out what that is. So you are to be commended for the negotiated rulemaking. I think that's really an interesting procedure. [LB45]

KRISTA KESTER: Well, I'd like to say that it's pretty arduous, perhaps more arduous than I had anticipated it being to have that many, I think we had 18 organizations or individuals participate. But it is incredibly useful because you do understand then what the objections are and what the motivations are so. [LB45]

SENATOR CAMPBELL: Right. Having had that explanation, Ms. Kester, I can understand why they needed that attorney. (Laugh) Thank you very much for your testimony today. [LB45]

KRISTA KESTER: Thank you. [LB45]

SENATOR CAMPBELL: The next proponent for the bill. Good afternoon. [LB45]

ALBERT HAMERSKY: How are you? [LB45]

SENATOR CAMPBELL: Very good. [LB45]

ALBERT HAMERSKY: Good. Madam Chair and members of the committee, I am Albert Hamersky and I'm an architect. And I have been an architect, licensed architect since 1956. I don't know if anybody can remember this, but it's been a long time. I've been in practice that many years. And I am here to testify for LB45. And I'll tell you why. There are people out in the state, people in like Surprise, Nebraska, or Deweese, Nebraska, or Wallace, Nebraska, who want to put up a building that might be like 5,000 square feet with an occupancy of 80 or more. And in order to do this under the present law, they have to get an architect, they have to get a mechanical engineer, an electrical engineer, and a structural engineer...all of these people plus the coordinating principle...professional. And this is, I think, a real problem, I mean, for a small businessperson. And you know, it has nothing to do with the...what it does to the profession. This is strictly taking the position of that person out there, the businessman in these small towns and small businesses, that in order to put up this building they have to go through all this...hiring all these people. And so, I'm representing them as well, to tell you the truth. And I think it's up to the profession to make sure that there are people who are qualified to be able to do this cross-discipline practice. Now I have no problem with it. I, you know, being...I took courses at the university, at MIT, and various places which cross-disciplined already. But...and then the practice for 56 years you learn something. And so there needs to be people out there that will do this work and help these people to comply with the law. Otherwise, they...you know, there's a lot of people putting up buildings that evade the law, to tell you the truth, because they can't hire all these people, whether they're available or not. So that's the reason I'm for this. So any questions? [LB45]

SENATOR CAMPBELL: Questions from the senators? Senator Bloomfield and then Senator... [LB45]

SENATOR BLOOMFIELD: Thank you. Under business here, is that where farm buildings would fall in? I'm thinking of a Morton type building. [LB45]

ALBERT HAMERSKY: No, I think farm buildings wouldn't...no, I don't think farm buildings would. This would be like a bar... [LB45]

SENATOR BLOOMFIELD: Okay. [LB45]

ALBERT HAMERSKY: ...or, you know, some business, grocery store, those kind of things. And we've had people who as on the...you know, come to the board and ask these same questions. Where do I fall into this category? But I think it's defined in the law. [LB45]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR BLOOMFIELD: Okay. [LB45]

SENATOR CAMPBELL: Senator. [LB45]

SENATOR WALLMAN: Thank you, Senator Campbell. Yes, thank you for being here, Albert,... [LB45]

ALBERT HAMERSKY: Yeah. [LB45]

SENATOR WALLMAN: ...appreciate what you do. And do you think that zoning regulations, you know, get in the way of small business in rural America, in rural Nebraska because it's so tough sometimes? [LB45]

ALBERT HAMERSKY: Well, yeah. Some of it would depend on the local village or, you know, I mean on how they view this thing. So I would guess in some cases it does. But they need to work it out in the...I don't think state law would...we'd get into that. [LB45]

SENATOR WALLMAN: Thanks. [LB45]

ALBERT HAMERSKY: Yeah, okay. [LB45]

SENATOR CAMPBELL: Okay. Any other questions? Mr. Hamersky, always good to see you. [LB45]

ALBERT HAMERSKY: Okay, nice seeing you. [LB45]

SENATOR CAMPBELL: For my colleagues, he's a very esteemed architect in the city. A great community leader, thank you. Good afternoon. [LB45]

ROGER HELGOTH: Good afternoon, Senator Campbell and other senators. My name is Roger Helgoth, H-e-l-g-o-t-h, kind of an earthy name. Appreciate being here. My...I've been on the board of...Nebraska Board of Engineers and Architects since 2002. And it's an extreme honor to have served with Albert and his many years on the board and be a part of this. Krista Kester outlined, I think, a very succinct presentation on the issues. I'm looking at it, I would be here representing...answering any questions from an engineering perspective. And like Albert Hamersky, I see a great need. My presence on the board for those years, we've seen a real need for this legislative change to really improve the public health and safety aspects by making sure that accessible licensed professionals are available to do the work. And in some cases, as Albert explained, a small building in rural Nebraska, the owner of that building would just give up and say, I can't comply, I can't have an electrical engineer, and a mechanical engineer, etcetera, and a civil engineer to do the site work. So I'm just going to violate the law. Now that's really a sad scenario when you're forced to do that. So I think this offers a very strong

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

position for making sure or at least enabling the fact that a licensed professional will be involved in that project rather than none. And a competent licensed professional, whether they be an architect or an engineer, know the limits of their practice, and from their experience base, etcetera, know how they should conduct themselves on a given project and would recognize if they need some specialized discipline to bring to the table. But if there's no licensed professional involved, you know, you have really no protection for the public health and safety. So it's really a solid move in the right direction. A cross-discipline practice is an important issue. And I would recommend highly that the committee endorse this concept and move forward. So with that, I'll open to any questions that you might have from an engineering perspective. [LB45]

SENATOR CAMPBELL: Any questions from the senators? Thank you, Mr. Helgoth. Thank you for your service on the board too. [LB45]

ROGER HELGOTH: Thank you. [LB45]

SENATOR CAMPBELL: Other proponents. Good afternoon. [LB45]

DAN THIELE: (Exhibit 4) Good afternoon. Senator Campbell, members of the committee, my name is Dan Thiele, it's T-h-i-e-l-e. I'm a licensed professional engineer and the legislative chair for the Nebraska Society of Professional Engineers. I'm here testifying today on behalf of the Professional Engineers Coalition. The coalition is comprised of the Nebraska Society of Professional Engineers, the American Society of Civil Engineers, and the Professional Surveyors Association of Nebraska. The American Society of Mechanical Engineers and the Structural Engineers Association of Nebraska are also associate members of the coalition. We are in support of LB45, a bill to amend the Engineers and Architects Act. The revisions are important to conform, among other things as stated, conform with the new structural engineering examination procedures that go into effect nationally this April. The revisions would also allow for limited cross-discipline practice by licensed engineers and architects. We support this provision and feel that it will improve public health, safety, and welfare in some of the underserved areas of Nebraska. This provision also includes an important requirement that the licensee demonstrate to the Board of Engineers and Architects their qualifications for this cross-discipline practice. I won't repeat all the points that Ms. Kester offered, but we are also supportive of the many clarifications and corrections within the bill. Our constituent organizations participated in the negotiated rulemaking process. We are very supportive of the recommendations of that committee. Some of those recommendations are being implemented in regulation. But the provisions of this bill require legislative authority. For these reasons, the Professional Engineers Coalition supports LB45. And I would be happy to answer any questions that you have. [LB45]

SENATOR CAMPBELL: Thank you, Mr. Thiele. Questions? Senator Wallman. [LB45]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR WALLMAN: Thank you, Senator Campbell. Thank you for being here, Mr. Thiele. Does this make us comply with the neighboring states then pretty well? [LB45]

DAN THIELE: In many respects, yes, this bring some provisions that were in conflict with the model laws that are...the model that most of the state laws are based on, conforms with some of those provisions. So it brings us into closer compliance. Every state has their own unique characteristics. I'm licensed in 26 states and I see a lot of those unique provisions. But more in line, yes, sir. [LB45]

SENATOR WALLMAN: Thank you. [LB45]

SENATOR CAMPBELL: Any other questions? Thank you, Mr. Thiele, very much. [LB45]

DAN THIELE: Thank you. [LB45]

SENATOR CAMPBELL: Other proponents for the bill. [LB45]

JACKIE McCULLOUGH: Good afternoon. [LB45]

SENATOR CAMPBELL: Good afternoon. [LB45]

JACKIE McCULLOUGH: Senator Campbell, members of the committee, my name is Jackie McCullough, M-c-C-u-l-l-o-u-g-h. I'm the executive director for the American Council of Engineering Companies of Nebraska. We represent 44 engineering firms located throughout the state and they employ about 2,500 employees throughout the state and engineering professionals. I'm here on behalf of ACEC Nebraska to testify in support of LB45 and the changes to the Engineers and Architects Regulation Act and specifically the changes that would allow the limited cross-discipline practices. Our organization participated in the negotiated rulemaking over the summer. And our representative at those discussions, as well as our board of directors, are both supportive of the changes. We appreciate the engineers and architects board as well as Senator Fulton's amendment to provide clarity to the language. We did struggle a bit with how it was written and with a few tweaks I think that it will be much clearer. With the adoption of the amended language to clarify that, we would recommend the committee send this bill to the floor. If you have any questions, I'm happy to try to assist. [LB45]

SENATOR CAMPBELL: Any questions? Ms. McCullough, would you spell your first name just to make sure the clerk has it correctly? [LB45]

JACKIE McCULLOUGH: Um-hum, J-a-c-k-i-e. [LB45]

SENATOR CAMPBELL: Okay, thank you very much for coming. [LB45]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

JACKIE McCULLOUGH: Thank you. [LB45]

SENATOR CAMPBELL: Other proponents for the bill. Those who would like to testify in opposition to the bill. Any neutral testimony for the bill? Good afternoon. [LB45]

RICHARD BURTON: (Exhibit 5) Good afternoon. My name is Richard Burton. Last name spelled B-u-r-t-o-n, a constituent of Senator Kathy Campbell and also a commercial plan reviewer for the city of Lincoln. And I am here today to testify in a neutral capacity on behalf of the Nebraska Chapter of the American Institute of Architects. The Negotiated Rulemaking Committee, I just wanted to make sure that you were aware that this is a relatively new process, I believe. And I believe that the Nebraska Board of Engineers and Architects did a fine job selecting people for that committee that represented kind of a broad spectrum of people that would have a vested interest, you know, in the outcome. And that included two architects, at least four engineers, I think more than that, three building officials, and several building owners, someone from MUD, healthcare. And so we had, you know, a number of issues that we talked about including cross-discipline practice. At the end of those discussions, we took a vote and that vote wasn't binding, although just as Senator Tony Fulton explained earlier, we did discuss the issue of cross-discipline practice and it was voted unanimous, you know, in favor of it with some very strict provisions. And the AIA membership, you know, we're frankly amazed, you know, that on this issue that architects are getting along with engineers. You know, a lot of people think that (laughter) we can't work with each other. But we also have to admit that we depend on each other. You know, when it comes down to money, you know, a lot of architects' work comes from referral from the engineers and vice versa. So whether we like each other or not, we have to learn to get along. And so I'm really encouraged, you know, that the engineers are in support of this. But within the AIA membership, or the American Institute of Architects, you know, we just have a lot of concern. Because as you can...you well know, health, safety, and welfare is a very serious concern. And we just want to make sure that either the cross-discipline language is removed entirely from the bill or we have some confirmation, you know, from the Nebraska Board of Engineers and Architects that they will, you know, go ahead and put those strict provisions in there and more importantly just clear up the general confusion, you know, among the population, you now, what the...how those details of how they're going to enforce this provision. Maybe we'll just have to wait and see how it fleshes out, you know, over time because we anticipate that there will be a few individuals, you know, who maybe from pressure from a building owner, you know, are pushed into something that they feel uncomfortable with, designing something a little bit beyond their capacity. But, you know, speaking on behalf of most design professionals, you know, we take our responsibility very seriously. So I would say that the likelihood of that happening will be very rare. We were uncertain about, you know, why we were doing this. But, you know, as...again, as Senator Tony Fulton explained, you know, we...I guess, we're trying to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

improve access to design professionals out in rural Nebraska. When I personally talked to them, you know, how do you find an architect or engineer, they don't even care if someone down the street is an architect. They have no hesitation of hiring someone from Wyoming, Kansas, Colorado. People that, you know, have that license are willing to travel. So we would try to say that there's very little difficulty for someone who wants to hire the right person of actually finding someone willing to do the work and travel. We do have, you know, concerns about how this would affect our professional liability insurance. Dave Jesse (phonetic) of Perico Insurance, he's the provider for most of the insurance for most architects and engineers. He was on that committee. We all know that he could very easily raise our rates. I mean, he will do that if we get involved in a condominium, if we apply certain building material like stucco. So it's very conceivable that, I mean, even if the cross-discipline goes through, that he has opportunity to say, you're free to do something, you know, that's a little bit outside your designated license up to 6,000 square feet but, oh by the way, I'm going to charge you twice as much for your premium. And that's within his right to do that. So I think that there will be other things that will discourage people from doing this. If you look at that first page, you know, what...that statement of certification, that was proposed during the Negotiated Rulemaking Committee. And that was the element, you know, that seemed to make it okay for civil engineer, Peter Carroll, you know, to kind of say, okay, I can live with this. If someone is really, you know, willing to kind of do a self-assessment, get a gut check, say, am I really capable of doing this, do I have a good relationship with my client? If all the things are going right for them and they have the training and experience, they can go ahead and put a statement like this on the drawings. Now in the legislative bill it doesn't, you know, specifically say how they're going to address these qualifications. And again, that's why we, speaking on behalf of the American Institute of Architects, we have some reservation because we don't know how this is going to be enforced. But I do think it's worth consideration. And again, you know, I just want to conclude by saying we either propose to remove the language concerning cross-discipline entirely or, you know, require a firm commitment by the Nebraska Board of Engineers and Architects to clear up general confusion related to the process of certification. So with that being said, I'd welcome any questions that you might have. [LB45]

SENATOR CAMPBELL: Questions from the senators? Any questions? Thank you very much for your testimony and for the illustrations. [LB45]

RICHARD BURTON: Thank you. [LB45]

SENATOR CAMPBELL: Anyone else who wishes to testify in a neutral position? Senator Fulton, would you like to close on the bill? And as he's coming up, I believe Senator Fulton is our only engineer in the body of the Legislature. Are you the only person who's ever been elected, only engineer? [LB45]

SENATOR FULTON: I think so, that's what the Society of Professional Engineers has

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

said, but have not taken the time to go back and look through all. So I'll just say that in the interest of time, the committee should know I'm willing to cooperate with whomever. I thought we had a deal on this, maybe we don't. If not, then that which will make us go forward, I'm willing to accommodate. And, of course, I'll do that with the committee. So thank you. [LB45]

SENATOR CAMPBELL: Okay. Any other comments? Senator Fulton, just let us know after your conversations and we'll proceed from there. Thank you very much. [LB45]

SENATOR FULTON: Okay. [LB45]

SENATOR CAMPBELL: All right, we will close the hearing on LB45 and open the hearing on LB46, which is also Senator Fulton's. And we'll let our guests quietly exit the hearing room as we start. We obviously have more engineers and architects than we do barbers. (Laughter) We have quite a few midwives, I think. Okay, Senator Fulton, we'll open the hearing and we need to define the term "barber pole." [LB45 LB46]

SENATOR FULTON: Yes. Good afternoon. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent District 29. And I bring to you LB46 on behalf of the Board of Barber Examiners. In the previous Legislature, this committee advanced LB132 that made some regulatory clarifications to the Barber Act on behalf of the Board of Barber Examiners. I'm bringing LB46 today because further clarification appears necessary with regard to the use of barber poles to ensure that only those licensed by the board actually utilize this symbol to market to potential customers. Such legislation is necessary because the board is charged with the responsibility of protecting public health and the barber pole symbol has some correlation in the public mind with reputable barbershops. LB46 then is a small cleanup bill that, according to the Attorney General's Office, should alleviate any lingering issues arising from users of this symbol that are not licensed by the board. I will allow Ron Pella, director of the board, to address any specific questions in his testimony to follow, although I would entertain questions and try to answer them, if you have any. [LB46]

SENATOR CAMPBELL: Any questions? Thank you, Senator Fulton. Mr. Pella, welcome this afternoon. [LB46]

RON PELLA: (Exhibit 6) Senator Campbell and members of the committee, my name is Ron Pella, that's P-e-l-l-a, and I am the director of the Board of Barber Examiners. The testimony that I give today in support of LB46 is given on behalf of the barber board. On January 23, 2009, as Senator Fulton discussed, I testified on LB132, initiated by the Board of Barber Examiners. The new law has benefitted our profession, the licensee, and the public that we serve with one exception and the only reason I'm here today--displaying of the barber pole by individuals who are not licensed by the Barber Act. It is my duty to enforce the standards of barbering. And on behalf of our profession

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

and with the consensus of our legal counsel, the Attorney General, to ensure compliance with the law, an amendment would be necessary for the purpose of providing a definition of the barber pole in descriptive form. We ask for your support of LB46. It is my belief injustice to justice is injustice to all. With that being said, Senator Campbell and committee members, after reviewing over the past several weeks the number of bills I've looked at through the Nebraska BillTracker system and the number of legislative bills before you this session, I apologize for having to bring this bill before you. But I believe it appropriate to say, may God bless and guide you with your work in the days ahead. And that concludes my testimony. And I'd be happy to answer any questions you may have. [LB46]

SENATOR CAMPBELL: Any questions? Yes, Senator Cook. [LB46]

SENATOR COOK: Yes, thank you, Madam Chairman. I'm trying to understand how you might have identified the misuse of it and what risk that might present to a consumer? Since...from...I don't use a barber, but my stylist has to display her license. [LB46]

RON PELLA: Okay. Well, the barber pole, first of all, as Senator Fulton adequately addressed, is a symbol of the barber profession. And what we have is individuals that are not licensed by the Barber Act that use the word "barber," "barbershop," display the barber pole, etcetera. And LB132 was very plain in its language and prohibited the use of those words if not licensed under the Barber Act. And so it's a matter of, if I may, maybe this will help. Let's... [LB46]

SENATOR CAMPBELL: This is interesting, it's the history... [LB46]

SENATOR COOK: Um-hum. [LB46]

RON PELLA: Let me get you these handouts. And there would be the history on the barber pole, the service mark, will be a copy of the service marker, the barber pole that we initiated in 1987 that stands to this day. The description is almost exactly to what we're using here. There is an article in there that shows an individual who is licensed by cosmetology, that is a cosmetologist, and in the ad you'll see she refers to herself as the Corral Barbershop, etcetera, with the display of the barber pole in the back. And we're going to protect our symbol and our industry. [LB46]

SENATOR CAMPBELL: Senator Cook, last year the bill outlined pretty much what you see here. The Attorney General, however, informed Mr. Pella and certainly Senator Fulton and I were aware of this from the letter, that the barber pole needed to be better defined. So we are back this year mainly defining that barber pole. [LB46]

SENATOR COOK: Defining. [LB46]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

RON PELLA: Yeah. [LB46]

SENATOR CAMPBELL: So the act that was last year, the bill protects certainly the licensure of the barbers and the use of this symbol. The Attorney General felt it should be better described. And if I'm wrong, Senator Fulton, I'm sure, will correct this when he comes up. [LB46]

SENATOR COOK: Um-hum. [LB46]

SENATOR CAMPBELL: But does that help? [LB46]

SENATOR COOK: It does help. I have another question after Senator Gloor. [LB46]

SENATOR CAMPBELL: Okay. Senator Gloor. [LB46]

SENATOR GLOOR: Well, just from a continuity standpoint, we have run this by the Attorney General's Office to make sure that the description we're using is one that they find acceptable, so we won't be back here again next year? [LB46]

RON PELLA: Most certainly. In fact, on...I'll give you that information. On September 8, 2010, I met with Attorney General Jon Bruning and his staff. And it was the consensus of the legal counsel to assure total compliance with the law, the board initiate an amendment for the purpose of providing a definition of the barber pole in descriptive form, period. So that's why I'm here on the advice of the Attorney General to get that further defined. And that's what we're hopefully going to do today. [LB46]

SENATOR CAMPBELL: Senator Cook, do you have a follow-up? [LB46]

SENATOR COOK: Thank you. My next question, is what is the penalty for, and now, of course, I'm going to notice much more carefully as I'm driving through my district and up the street all of the display of this. But what is the penalty for the probably dozens and hundreds of places calling themselves barbershops or barbers and utilizing that symbol or a variation on that symbol? And who enforces it? [LB46]

RON PELLA: Who enforces it? [LB46]

SENATOR COOK: What is the penalty and who or what agency is the enforcer? Like you go, knock, knock, knock on Joe's Barber Shop, on 6516 North 30th Street in Omaha, Nebraska,... [LB46]

RON PELLA: I most certainly do, pretty close to that, yes. [LB46]

SENATOR COOK: ...and you're going to do what? [LB46]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

RON PELLA: At this point, the reason we came, we had tried to resolve this issue with the Cosmetology Board. And as you'll see in one of your handouts, and that's why I thought I would not bother you with all of this information, but you'll find there that Michael referred to us and we sent off several complaints and several issues had come before us. And he said, he took it to the Cosmetology Board at their last meeting and the statutes are silent on the use of the word "razor" and the display of the barber pole. And that was his answer. And so there was no enforcement going to come from there. And our statute allows for Class III misdemeanors and, of course, reinspections for those that we have control over as far as licensure. But it will end up being a civil... [LB46]

SENATOR COOK: So they'd be fined some amount, whatever goes with a Class III misdemeanor... [LB46]

RON PELLA: Yeah, that's... [LB46]

SENATOR COOK: ...and you would reinspect them based on the fact that they were displaying the pole? [LB46]

RON PELLA: That's correct. At this point, Senator Cook, what I would say to you is, since we've implemented this, we've had 54 cases that's been brought to us. All of those have been satisfied, they have been taken care of, with the exception of one, the one that I received a response from a law firm and I said, a good place for that to go will be to the Attorney General's Office, which is where it went and where it still remains today. So we've had good compliance with it. The statute defines barber, it defines barbershop, it defines it all. And all we're just saying is, don't misrepresent yourself as to who you are and what you do. [LB46]

SENATOR CAMPBELL: Did that answer your question? [LB46]

SENATOR COOK: Yes. [LB46]

SENATOR CAMPBELL: Okay. Any other questions for Mr. Pella? Thank you very much and thank you for the supplemental information. [LB46]

RON PELLA: Thank you. [LB46]

SENATOR CAMPBELL: Others in the room who would like to testify in favor of this bill, LB46? Anyone here to testify in opposition? Anyone here to testify in a neutral position? Seeing no one, Senator Fulton waives closure of the bill and we will close the public hearing of LB46 and move to our last bill of the day which is also Senator Fulton's, LB68, to permit certified nurse-midwives to have clinical privileges. Thank you, Senator

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

Fulton. Okay, absolutely. [LB46]

SENATOR FULTON: Okay? Thank you, Madam Chair. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent District 29. I'm pleased to introduce LB68 on behalf of the Nebraska Friends of Midwives and all certified nurse-midwives of Nebraska. Nebraska's certified nurse-midwives are advanced-practice registered nurses with specialized education and training in midwifery. Certified nurse-midwives provide all manner of care for women and newborns, including normal obstetrical and gynecological care, prenatal and postpartum care, and childbirth. The Nebraska Certified Nurse Midwifery Act requires that the specific care each certified nurse-midwife provides must be in accord with the practice agreement signed with their respective supervisory physician. This act further stipulates that certified nurse-midwives may only perform these specified duties in the physician's office or in a certified healthcare facility where the certified nurse-midwife has been granted privilege to practice. Thus, when certified nurse-midwives are denied hospital privileges, they are rendered incapable of providing their specialized care for Nebraska families. LB68 is merely intended to prevent healthcare facilities from denying privileges to certified nurse-midwives when the basis for denial is the certified nurse-midwife credential by adding certified nurse-midwives to the list of credential holders that may not be denied hospital privileges based on their credentials. This list has been previously amended to include podiatrists and licensed psychologists. LB68 neither prohibits hospitals from denying privileges for any individual applicant nor requires hospitals to grant privileges to any particular certified nurse-midwife or any other type of credential holder for that matter. Hospitals remain in control for setting standards for credentialing. LB68 simply prevents categorical denial of hospital privileges towards certain groups of credential holders and it appears timely to ensure that certified nurse-midwives are added as one such group given their growing importance toward maternal health in our state. There will be a few to testify, I am aware of, afterward. But if there are any questions now, I can try to answer them. [LB68]

SENATOR CAMPBELL: Any questions for Senator Fulton? Thank you, Senator Fulton. And you are staying. [LB68]

SENATOR FULTON: Yes. [LB68]

SENATOR CAMPBELL: Okay. Those who wish to testify as proponents of the bill. Anyone wishing to testify? Good afternoon. [LB68]

GAIL CONSOLI: Good afternoon. Senator Campbell and members of the committee, my name is Gail Consoli, G-a-i-l C-o-n-s-o-l-i, and I'm here in favor of LB68. I'm a certified nurse-midwife in Norfolk, Nebraska. I've been employed in my practice for 15 years. I was the first nurse-midwife in northeast Nebraska. The hospital, after several months, created a category and we had...and midwives had access to credentialing at

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

the hospital. After approximately five or six years, another nurse-midwife joined my practice. And as soon as she did, the category of nurse-midwives at Faith Regional Health Services in Norfolk, Nebraska, was closed. This was, of course, alarming to her and myself and my employer. But she was told she could be "grandmothered" in. She was then not credentialed by the hospital for reasons unknown. And since that time, the category has remained closed. No effort on my part has made that change. And so this prevents women in the future, because I'm not going to be there forever, having nurse-midwifery care. And I deliver about 19 percent of the women that deliver their babies in Norfolk, Nebraska, at the hospital. [LB68]

SENATOR CAMPBELL: Okay. Questions for Ms...is it Conally? [LB68]

GAIL CONSOLI: Consoli, Gail. [LB68]

SENATOR CAMPBELL: Consoli. [LB68]

GAIL CONSOLI: Yeah. [LB68]

SENATOR CAMPBELL: I'll get that right. Questions? But you are credentialed at the hospital or they removed... [LB68]

GAIL CONSOLI: They've kind of just done away with the category, so I'm just kind of in limbo. But I'm still practicing, yes. [LB68]

SENATOR CAMPBELL: And so you still utilize hospital facilities. [LB68]

GAIL CONSOLI: I do. [LB68]

SENATOR CAMPBELL: Okay. Thank you very much for coming today. [LB68]

GAIL CONSOLI: Thank you. [LB68]

SENATOR CAMPBELL: The next proponent. [LB68]

HEATHER SWANSON: (Exhibits 7 and 8) Hello. My name is Heather Swanson, S-w-a-n-s-o-n. I'm a certified nurse-midwife and family nurse practitioner from Wilcox. I currently serve on the National Board of Directors for the American College of Nurse Midwives as the Region V representative, which covers 15 states. ACNM is in strong support of legislative and regulatory efforts that protect the full-scope practice of certified nurse-midwives and likewise are supportive of efforts that resolve the existing restraint of trade statutes and tactics that still exist on our practice. Thus ACNM supports LB68 and a letter of support from ACNM was faxed to the committee earlier this week. Locally, Nebraska has an affiliate of the ACNM, and I have a letter of support

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

from president Heather Ramsey on behalf of the state organization. She is on-call and unable to come today. With the support these groups recognize...I'll take the remainder of my time to speak on my own behalf as a certified nurse-midwife and consumer of midwifery care. I have worked in a variety of settings in Nebraska and neighboring states for private physician-owned practice in Norfolk, actually with Gail Consoli who just spoke, a critical access hospital in Minden, for the U.S. Department of Health and Human Services Indian Health Service in Pine Ridge, and a federally-qualified health center in Boulder, Colorado. I currently teach for a college of nursing that has a division in Kearney. And I spend a large portion of my nonteaching time at a clinic and freestanding birth center in southern Texas where I'm considered a senior midwife. Nebraska is my home, though, and where I would like to be spending more of my free time. I'm familiar with what Gail Consoli shared with you. I left Nebraska for grad school with plans to return and was hired by the practice Gail is with. That was around the same time the hospital there closed the nurse-midwifery category and I was not extended clinical privileges. So after a year of living and working in Norfolk as well as working at a clinic in Wayne, I reluctantly moved. None of my jobs since have been what I intended to do or where to do it when I pursued midwifery. And I'm still waiting for statute changes that will allow me to practice as I'd like and could do in any of our neighboring states. I have, though, maintained employment and have chosen to stay in Nebraska or relatively close, though many new nurse-midwives relocate to other states due to practice restrictions here. Hospital refusal to allow nurse-midwives to practice in their facilities is not unique. Closing the category, like what happened in Norfolk or not opening it to start with, has been documented as a means to control the number of practicing nurse-midwives and to ensure patient numbers for other types of providers. There are cases across the U.S. like what has happened here and of nurse-midwives showing up for work and being told they've been let go. A 2000 article referenced below documents many of these stories. This bill is needed and is overdue. The 1999 Pew health report titled "The Future of Midwifery" supports it and calls on legislators to ensure that nurse-midwives are not denied the ability to practice in hospitals. The American Nurses Association supports legislative changes that allow advanced practice registered nurses to practice to their full scope and supports the elimination of restrictions on practice and privileges. The Robert Wood Johnson Foundation and the Institute of Medicine's 2010 report supports this point exactly, "ensure that advanced practice registered nurses are eligible for clinical privileges, admitting privileges, and membership on medical staff." The National Council of State Boards of Nursing's Consensus Model for APRN Regulation is also supportive and addresses the change this bill would make. This consensus model is essentially the national standard or model requirement states could use to ensure uniformity in licensure, accreditation, certification, and education to facilitate the regulation of safe and competent advanced practice nurses. When considering the goals and APRN standards set by the Institute of Medicine and the NCSBN that Nebraska has yet to achieve regarding practice restrictions on nurse-midwives and all APRNs, LB68 is a small first step. I do hope you'll support this bill, help to facilitate its passage, and that you will support a model of care

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

and profession that have documented high quality of care outcomes and cost effectiveness. This bill does not mandate that a hospital privilege a nurse-midwife. At least, though, it allows a nurse-midwife the opportunity to get their foot in the door and to be fairly considered, like any other professional currently listed in the statute addressed. Thank you. [LB68]

SENATOR CAMPBELL: Thank you, Ms. Swanson. Questions from the senators? Ms. Swanson, there was a bill introduced, was it two years ago or a year ago, of this same nature? [LB68]

HEATHER SWANSON: Yes. [LB68]

SENATOR CAMPBELL: And I think it was held in committee, we didn't get it out of committee. Was that the... [LB68]

HEATHER SWANSON: Correct...well, I don't...I think you guys actually voted on that and decided not to press with it. And we actually had submitted it the first session. It carried over without action the second session. [LB68]

SENATOR CAMPBELL: That's right, that's right, that's right. And it had, at that point, it had no one...it had no priority listing, did it? [LB68]

HEATHER SWANSON: Correct, correct. [LB68]

SENATOR CAMPBELL: Yeah, okay. Because there were a lot of people who had signed on originally to that bill. [LB68]

HEATHER SWANSON: Yes, we did have several cosponsors. [LB68]

SENATOR CAMPBELL: Because there were three. I'm just trying to recap my memory, make sure I... [LB68]

HEATHER SWANSON: I think there were more cosponsors last session. I want to say there was probably five or six total. [LB68]

SENATOR CAMPBELL: Yeah. [LB68]

HEATHER SWANSON: We had three from the committee, which we were pleased with. [LB68]

SENATOR CAMPBELL: Yeah, exactly. Seeing no other questions, thank you very much for your testimony today. [LB68]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

HEATHER SWANSON: Thank you. [LB68]

SENATOR CAMPBELL: Other proponents. Other proponents. Good afternoon. [LB68]

ELIZABETH CODY: Good afternoon. Senators, committee members, this is my first time sitting up here. [LB68]

SENATOR CAMPBELL: You're doing fine. [LB68]

ELIZABETH CODY: It's a pleasure to meet you all. I am here because I'm... [LB68]

SENATOR CAMPBELL: We just need your name first and last name spelled. [LB68]

ELIZABETH CODY: Sure, okay. My name is Elizabeth Cody, nice and short, C-o-d-y. [LB68]

SENATOR CAMPBELL: Okay, go right ahead. [LB68]

ELIZABETH CODY: I am a young Nebraskan, and I'm looking forward to starting my professional career here in Nebraska. The professional career that I would like to enter is nurse-wifery. I'm attracted to this from the evidence that I have read suggesting it has better outcomes for mothers, offers them more choices, and can reduce costs. It seems like the best fit for what I want to offer to other people and the type of profession that I'm interested in practicing. I'm very concerned that I won't have the opportunity to practice this career in my home state of Nebraska. All of my family is here, and I would like to be able to take advantage of the great resources we have for education and the great health system that we have to practice in. But I'm not sure yet that I'm going to have a place in that health system and I don't want to have to leave my home state. I think that this legislation is important for making sure that that niche is still made available at hospitals across the state. As someone who has family in Norfolk, that would be a very attractive place for me to practice if that were a possibility. I think that this legislation is important because when you have more opportunities for nurse-midwives to practice you're going to have more people entered into the discussion on how to make that practice fit better with the hospital system. I think that by keeping these doors open, by making sure that young people like me have the ability to enter the profession that is going to continue to grow and improve. If you don't support this legislation and more doors are closed, then more people like me are going to have to choose to go elsewhere to practice. So in the interest of hoping to stay in Nebraska and be proud to serve my fellow Nebraskans, I really hope you can support this legislation. Thank you. Any questions? [LB68]

SENATOR CAMPBELL: Any questions from the senators? You did just swell, good job. Thank you. [LB68]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

ELIZABETH CODY: Thank you. [LB68]

SENATOR CAMPBELL: Anyone else testifying in...as a proponent? [LB68]

DON WESELY: Madam Chairman, members of the Health and Human Services Committee, this is not my first time testifying. (Laughter) [LB68]

SENATOR CAMPBELL: We'll hold you to a little higher levity then. [LB68]

DON WESELY: (Exhibit 9) My name is Don Wesely, D-o-n W-e-s-e-l-y. I am here representing the Nebraska Nurses Association. I've got a handout for you, you'll be getting in a minute. But I'm not going to read from it. I'm going to talk to you a little bit about a little background on this issue because I dealt with it back when I was Chair of the Health and Human Services Committee in the 1990s. At that time, the question of nurse-midwives came up. And the issue there, actually, was about nurse-midwives being able to deliver babies in people's homes. In fact, I didn't think that was a good idea. I think delivery in homes, the complications that can occur, and I was opposed to it. I remember there was an article where a midwife talked about...she was going to prove to me that it was safe to deliver babies in homes by delivering one on my front lawn. (Laugh) Well, it made it into the paper and I didn't think anything of it. And then one of my daughters came up to me and said, Dad, is it true somebody is going to deliver a baby on our front yard? (Laugh) No, honey, I think she's just talking about that. But she was very concerned about it. So here before us today is an issue, and it ties back into that that these certified nurse-midwives who are trained and capable want the chance to deliver babies in the hospital. And that's where they should deliver babies, in a hospital. They should have the right to go in there and deliver babies. This makes sense to me, it makes sense to the Nebraska Nurses Association, and I hope it makes sense to you. These individuals should have that opportunity. They shouldn't be denied that privilege just based on the fact that they're certified nurse-midwives. And so I'd ask your support for the bill. [LB68]

SENATOR CAMPBELL: Questions? Senator Gloor. [LB68]

SENATOR GLOOR: Thank you, Madam Chairman. Mr. Wesely, do you think there's a general understanding that what this bill would do is, in fact, only say that a facility can't deny credentialing to a specific category? Were this law to pass, hospitals may well have a variety of caveats that go with that credentialing just as they do for dentists, as an example, that they have to have a physician assigned to provide direct care, that they have to have a physical done before that individual...I mean, there are a lot of... [LB68]

DON WESELY: Yes. [LB68]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR GLOOR: ...must have. And so it could well be that the restrictions a hospital places on providing that credentialing tie the nurse-midwives' hands in a manner that they find unacceptable. I'm just trying to, from the standpoint of expectations, temper what expectations might be if this were to, in fact, be approved by us. [LB68]

DON WESELY: And you're exactly right, Senator Gloor. This just takes away the blanket denial based on the fact that they are nurse-midwives. They still have to meet all the other criteria a hospital would establish to allow credentialing. But this ought to be removed as the initial barrier. You ought to give them the chance to prove themselves to the hospital, and the hospital to decide that they accept...they meet the standards they want established. So you're right, expectations should be this gives them a chance to be considered, but they still have to meet other standards to actually be credentialed. [LB68]

SENATOR GLOOR: Okay. Thank you. [LB68]

SENATOR CAMPBELL: So there are hospitals that now do credential nurse-midwives, don't they? [LB68]

DON WESELY: Yes, I believe that's so. [LB68]

SENATOR CAMPBELL: Okay. Any further questions? [LB68]

DON WESELY: Thank you. [LB68]

SENATOR CAMPBELL: I have to say that it is a pleasure to have you appear before the committee after I changed spots with you (laughter) a number of years ago. [LB68]

DON WESELY: Yes. [LB68]

SENATOR CAMPBELL: I spent a lot of time in front of Senator Wesely. [LB68]

DON WESELY: Yes, you did. It was always a pleasure. [LB68]

SENATOR CAMPBELL: Well, thank you. Other proponents? Good afternoon. [LB68]

AUTUMN COOK: Good afternoon. How are you guys doing? [LB68]

SENATOR CAMPBELL: Fine, we're doing fine. [LB68]

AUTUMN COOK: (Exhibit 10) Good. We're almost done. My name is Autumn Cook, spelled C-o-o-k. And I'm a member of Nebraska Friends of Midwives as well as an

Health and Human Services Committee
January 20, 2011

unpaid registered lobbyist for the group. Just to clarify, you guys actually didn't vote on LB406 last year. You voted on LB481 which was the home birth bill (inaudible). It never actually came to a vote, which surprised us because there were many cosponsors. I think we maybe even had as many as 12. But we'd have to check that. And then also, Senator Wesely, I think that it's easy to get confused when you're dealing with these midwife issues because there are two different categories of midwives in the U.S. Unfortunately, that developed over the course of time. And in other countries you just have midwives. Here we have certified nurse-midwives and we have certified professional midwives. I think that Senator Wesely dealt with the direct-entry midwives back in the nineties. And certified nurse-midwives didn't come into that. I think we could talk about that. But, I am here because I'm a member of NFOM, Nebraska Friends of Midwives, and we're a consumer-based organization dedicated to supporting and advocating for the practice of midwifery in Nebraska. We're made up mostly of mothers and fathers who have enjoyed the care of a midwife or who hope to be able to enjoy the care of a midwife. And we want to have better access to midwives in Nebraska. So we're the group that brings you M&Ms and M&M cookies to the Capitol. We support LB68 because we support Nebraskans' access to midwives, and this bill helps further that access. Certified nurse-midwives, or CNMs, are licensed in Nebraska to attend cases of normal childbirth in hospitals. But some women who would like to hire a midwife are unable to do so because of their local hospitals excluding CNMs from even applying for privileges. So those of you who served on the committee last session may remember a woman with a delightful southern accent, long blonde hair, who testified about her concern that she wouldn't be able to hire a midwife in Norfolk once Gail Consoli retires. Gail has delivered three of her babies and should she have another, she'd like to have a midwife as well. But she's concerned that there won't be a midwife once Gail retires because Faith Regional doesn't allow CNMs to apply for privileges there. And it's still a great concern for women in that area. I think this bill would help to remedy the situation, understanding the stipulations as Senator Gloor spelled out. Our group has focused a lot on Norfolk because it's the best example of the injustice that the current situation presents. Here you have a midwife who's fortunate enough to be able to practice because she was there before the hospital shut out other members of her profession. And she has a booming practice, 19 percent of the babies delivered in the hospital, that's huge. And it's obvious that there's a demand for the services of CNMs in Norfolk. But all the families that would like to hire one will be completely out of luck when that one midwife finally decides to retire. While there may be other hospitals that don't allow midwives to apply for privileges, we don't have any other cases in which midwives are actually practicing and effectively demonstrating the demand for the midwife and its juxtaposed then with closing the category and seeing that all these people who want a midwife obviously won't be able to get it. And even now she's delivering 19 percent of the babies. There are a lot of women who want to see her, but they go a little bit too late, three months. Then her practice is already full. So you get an idea of how much the women up there want it and in various other places. So the demand for midwives is continuing to grow all over the U.S. and Nebraska, and this is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

evidenced by the recent addition of several midwives to practices in the eastern part of the state. And midwives provide a unique type of care which more and more families are seeking out. And this law will help Nebraskans access the kind of care they want. I think it's good policy to ensure that healthcare providers who are licensed by the state of Nebraska can actually practice where they're licensed to practice and not be prevented from doing that because hospitals just exclude them from applying at all. So, on behalf of myself and the membership of Nebraska Friends of Midwives, I'll ask for your support for LB68. [LB68]

SENATOR CAMPBELL: Thank you, Ms. Cook. Questions? We don't have any questions. Thank you today for testifying. [LB68]

AUTUMN COOK: Thank you. [LB68]

SENATOR CAMPBELL: (Exhibits 11-15) Other proponents for the bill. Those wishing to testify in opposition to the bill. Those wishing to testify in a neutral position. While Mr. Buntain is coming forward, we do, for the record, have a letter from the Nebraska Hospital Association, which has a neutral position, and a support letter from Monica Greenfield, the department coordinator with the Professional Practice and Health Policy of the American College of Nurse Midwives. Oh, I'm sorry, and another letter from the National Council of State Boards of Nursing. Mr. Buntain. [LB68]

DAVID BUNTAIN: Thank you, Senator Campbell. I am David Buntain, B-u-n-t-a-i-n. I am the registered lobbyist for the Nebraska Medical Association. And I just will be very brief and wanted to provide some additional context for this bill. I think, actually, two years ago this committee had three bills involving nurse-midwives. There was a bill involving a proposal to remove the requirement that they have a practice agreement with a physician. That bill has been reintroduced and will be back before you, I believe it's LB581. There was a bill dealing with removing the restriction in the current practice act on home births and then there was this bill on privileges. And the first two bills actually went through the 407 process. And you'll hear about that in the hearing on LB581. This bill was not, as...There may have been reference to it, but this really wasn't directly involved in the 407 review because it really isn't a scope-of-practice issue. This doesn't affect the scope of practice. It affects the practice side. And the main thing I wanted to say was just to reiterate a point that Senator Gloor made. And that is this bill, the law that you're amending doesn't require hospitals to credential anyone. It doesn't require them to credential physicians or podiatrists or dentists or if you add certified nurse-midwives. It's still up to the hospital to set the rules for credentialing. And basically they are the ones who do the...make the determination whether for...for that particular hospital it makes sense to grant the credential. And so that's always been a misperception of the statute. I, like Senator Wesely, I've been here...around for awhile as well. (Laugh) And we dealt with the podiatrists who were added to the bill at one time. And the psychologists most recently, I think, were added to the bill. So those are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

the main points that I wanted to make. And we do have a lot more concern about LB581 which you'll hear about later. [LB68]

SENATOR CAMPBELL: Okay. Thank you for all those clarifications. Are there any questions for Mr. Buntain? In most cases credentialing goes all the way to the board of trustees or the board of directors of the hospital to determine. [LB68]

DAVID BUNTAIN: Correct. [LB68]

SENATOR CAMPBELL: Exactly. Thank you very much. [LB68]

DAVID BUNTAIN: Thank you. [LB68]

SENATOR CAMPBELL: Anyone else wishing to testify in a neutral position today? Senator Fulton, would you like to close? [LB68]

SENATOR FULTON: Thank you, Madam Chair, members of the committee. You know, I have to admit, there has never been a burning desire for me to bring forward a bill that has anything to do with barber poles. But the reason I did is because it was requested by a constituent and because it exists in our statute. And so regardless of how significant or insignificant we or the public may regard any particular part of the statute, that it is in statute is meaningful. And I say that because we have in our statute a provision for certified nurse-midwives. It is in Nebraska Revised Statute 38-611. So I point that out to you because we operate...when we operate as legislators, we operate within a law which we also have the authority to change. But there ought to be some continuity of logic behind that which we do. So we have in place a provision that certified nurse-midwives can practice and they are regulated such. Indeed, in my opening testimony, I indicated that the Nebraska Certified Nurse Midwifery Act requires that the specific care which each certified nurse-midwife provides must be in accord with the practice agreement signed with their respective supervisory physician. That's from the statute. We are not changing that. So it's important to point out what this bill does do and what it doesn't do. And Mr. Buntain, I think, covered it also from his vantage. We would still, if we pass this bill forward, still have a requirement of that practice agreement. Further, the act further stipulates that the certified nurse-midwives may only perform these specified duties in the physician's office or in a certified healthcare facility where the certified nurse-midwife has been granted privilege to practice. We are not, by passing this forward, forcing a hospital to grant privilege to practice. The language of the bill...we've made it as clear as possible, if it needs to be made more clear, I'd be glad to work with the committee. This says that any hospital licensed in the healthcare...under the Health Care Facility Licensure Act shall not deny clinical privileges solely by reason of the credential held by the practitioner. Okay? So that...this is a modest new forward, and I'll put it a step further, this is logical. Why do we have an act for the certified nurse-midwives if there is a mechanism by which a licensed

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

healthcare facility can disallow their practice? So I ask you to consider that. If you have any questions, I'll be glad to answer them. I'd like to work with you, hopefully, to move this bill forward. It makes a lot of sense for Nebraska. Thank you. [LB68]

SENATOR CAMPBELL: Okay. Any other questions or comments for Senator Fulton? Senator Gloor. [LB68]

SENATOR GLOOR: Thank you, Madam Chairman. Senator Fulton, just to get prepared for what might be a flurry of bills that you would introduce in upcoming years, I think the statutes also speak to nurse practitioners and physicians assistants and a variety of other healthcare providers. Why not tack all of those particular providers onto the bill at this point in time? [LB68]

SENATOR FULTON: Um-hum, right. [LB68]

SENATOR GLOOR: I mean, and I'm not saying this facetiously, it's if in statute we speak to a number of those licensed positions, why not include all of those in the bills? Why just nurse-midwives? [LB68]

SENATOR FULTON: Um-hum. I can answer...I'll answer, number one, from my own vantage and, number two, from the vantage, I think, of public policy. This was brought to me as a problem. Okay? So there is a case which...I don't know that I can get into the particulars of the case, but I can speak from my own vantage in that ostensibly it appears that there has been the disallowance or there could be the disallowance of practice solely because this is a credentialed nurse-midwife. Okay? So that is a particular case which I view as illogical and an injustice. No other cases have been brought to me in the other professions that you brought forward. And I would offer this...I'm going to be gone in...after 2012, so I probably won't be bringing...well, I can tell you for positive, I won't bring any bills that have anything to do with those other professions. But in the event that such a bill gets brought to this committee in future years, I would simply say, look at that which is occurring in our time and in our place. And if it is a requirement to further clarify in the statute, so be it. I'm saying that this has been brought forward as a problem which, to me, speaks of a clear injustice that ought to be remedied. And we can do so rather easily through this change in statute. [LB68]

SENATOR CAMPBELL: What's the number of midwives who are on staffs of hospitals? [LB68]

SENATOR FULTON: I couldn't give you the number. But there are, yes. [LB68]

SENATOR CAMPBELL: Um-hum. Okay. Any other questions or comments? Thank you, Senator Fulton, for clarifying that. [LB68]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 20, 2011

SENATOR FULTON: Thank you. [LB68]

SENATOR CAMPBELL: We will close the hearings for today, LB68, and resume hearings tomorrow. So we are adjourned for the day. Want to thank very much our young guests for their very polite behavior. Thank you, you are always welcome to come. [LB68]