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Business and Labor Committee
January 27, 2014

[LB820 LB824 LB895 LB932]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 27, 2014, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB932, LB895, LB820, and LB824. Senators present: Steve Lathrop, Chairperson; Vice Chairperson; Brad Ashford; Ernie Chambers; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: Burke Harr.

SENATOR LATHROP: Welcome to the Business and Labor Committee. My name is Steve Lathrop. I represent District 12 and I chair this committee. I guess, the first thing, turn your phone off or put it on silence. You will notice that...it looks like most of you are regulars. I'll go through a few of the ground rules though, and maybe I'll start by introducing my colleagues, those that have made it so far. And understand that some of the senators when you see empty seats it's not a lack of interest but rather they have to introduce bills in other committees, and so we do have people that will be moving in and out from time to time. So just to do some introductions: Senator Wallman is to my right, and to my left we have Senator McGill and Senator Hansen. I have a new committee counsel...or pardon me, a new committee clerk Dan Jenkins. You'll remember Paige Hutchinson; she's left to go do other work. Anyway, we're glad to have Dan here. If you have any jokes about Maine, this is the guy to talk to. (Laughter) He's from Maine. No, he actually comes to us by way of the United States Senate. So we're pretty happy to have Dan with us. And then, of course, Molly Burton. Senator Ashford is here now and we have Kent who is our page. Generally speaking, we will...the way this works, for those of you who have not testified before, we will call the bills up in the order listed outside. The bill will be introduced by the senator, followed by proponents. Each proponent will have...how much time do we permit? Three minutes. You'll get two minutes on a green light. We use the light system. You'll get two minutes with the green light. You'll have the yellow light for one minute, which should be your indication that you need to start wrapping up if you wouldn't mind. Because we have such a large volume and there are so many people here to testify, we'll ask you to observe that light system. And if I stop you when it's red, please don't interpret that as me being rude, but just trying to keep things moving along so we can get to all the bills before it gets too late. Our first bill today, and actually the first bill of the year, is going to be LB932, and that will bring up Senator Bill Avery from Lincoln.

SENATOR AVERY: (Exhibit 1) Thank you, Mr. Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. Before I start on LB932, I have a letter to submit for the record from Professor Tietjen from St. Ambrose University in Davenport, Iowa, who is a professor of criminal justice. It is a letter of support. [LB932]

SENATOR LATHROP: Okay, we'll have the page pass that around. Thanks, Bill.
[LB932]

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SENATOR AVERY: This bill LB932 is what is known as "ban the box" legislation that would prohibit public employers from asking applicants to disclose any criminal history until the employer determines that the applicant meets some minimal employment requirements: education, for example; work history; technical skills. Employers may then conduct a criminal background check on a potential employee following submission of an initial application. The intent of this legislation is to allow a prospective applicant the opportunity to explain to an employer the circumstances surrounding perhaps a misdemeanor or even a felony prior to immediate elimination from the applicant pool. There are some jobs, however, that deal with public safety or vulnerable populations; so the bill provides exceptions for law enforcement as defined under Section 81-1401, any position that requires state or federal background checks or any position that specifically disqualifies candidates with criminal backgrounds. Jobs that have mandatory background checks or occupations dealing with children, the elderly, or disabled persons would be exempted. There is a history to this legislation in this body. In 2010, Senator Brenda Council carried a bill that did not advance very far, but it was a very extensive bill, much more than this one that I'm bringing to you. It was very complex, a 50-page bill, specifically listing certifications, board and trade licensing, and was a bit too overreaching at this point in this legislation. Also this past year Senator Mello had an interim study on ban the box. And in some sense this is an outcome or an outgrowth of that. LB932 largely follows what might be called the California model, which was signed by Governor Brown last fall. The law removes questions about convictions from both state and local job agency applications, and postpones such inquiries until later in the hiring process. That's what this bill does as well. California also exempts law enforcement from the law and it was endorsed by over 100 private organizations, also The New York Times, the L.A. Times, and The Sacramento Bee. They have not contacted me, however, about this bill. California joins nine other states, including Colorado, Minnesota, Maryland, and 50 cities and counties, for example, Boston, Memphis, Baltimore, that have enacted ban the box laws to remove unfair barriers to employment for government and contract jobs. Some municipalities, like Philadelphia, and Newark, New Jersey, have expanded to include private sector jobs. This is not in this legislation. This is for public employers only. The typical...the way this would work is that you make an initial application and generally there is a kind of a prescreening that includes a questionnaire. And in that questionnaire is a box to check, yes, I do have a criminal background. Usually that is where the application ends, because once you check the box you don't make it to the next stage. The next stage is typically a more comprehensive application that would establish your credentials, your work history, whether or not you are, in fact, qualified to do the job. What we want to do is to get people who may have a criminal background--it might be a young person who had a minor in possession charge in college--and let them get past the first prescreening so that they can establish whether or not they qualify for the job. And then perhaps they have a better chance of making it all the way through the process. This is important as we contemplate prison reform here in this Legislature. The Pew Center on

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the States report that Nebraska has about 9,000 people confined to prison, and they also report that about 21,000 Nebraskans are either on probation or parole. That's a total of about 30,000 Nebraskans who fall potentially into the category of ex-offender. So that could be an important part of the effort on the part of former offenders to rehabilitate themselves. A job is a huge factor in whether or not a prisoner or a former prisoner is rehabilitated. It would also help our young people who have made a mistake in their youth and could become very productive citizens in our state. We all are aware that Nebraska's prisons have maxed out. We are at 151 percent of capacity now, and this would help us in some legislation that Senator Ashford is presenting, and that is that we have programmed release. And a part of that programmed release is to get them employment, gainful employment. This would help advance that objective. We teach technical skills to inmates, but if they get out and they are going to be eliminated at the first stage of the hiring process by an arbitrary check in the box, then it seems to me that this legislation ought to be given serious consideration in that context. The stigma attached to minor criminal convictions, the stigma attached to young people who get crossways with the law, that could perhaps be minimized if we advanced this legislation. I am pleased to report that Senator...or not Senator, but Mayor Jean Stothert has endorsed this, and her chief of staff is here today to testify in support of this. I'm going to stop there and ask you to direct your questions to me, but if you prefer to talk to the people behind me, that would be fine. [LB932]

SENATOR ASHFORD: Any questions of Senator Avery? Senator Chambers. [LB932]

SENATOR CHAMBERS: How do you feel about hunting mountain lions? (Laughter)
You don't need to answer. [LB932]

SENATOR AVERY: I will vote for your repeal. [LB932]

SENATOR CHAMBERS: Thank you, brother. [LB932]

SENATOR ASHFORD: That should conclude the hearing. [LB932]

SENATOR AVERY: (Laugh) But I have an ulterior motive. [LB932]

SENATOR CHAMBERS: We both have. We...one hand washes the other. [LB932]

SENATOR AVERY: Right. [LB932]

SENATOR CHAMBERS: Okay. [LB932]

SENATOR ASHFORD: Yes, Senator Hansen. [LB932]

SENATOR HANSEN: Thank you. Senator Avery, does this change the E-Verify system

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at all? [LB932]

SENATOR AVERY: No, it does not. [LB932]

SENATOR HANSEN: Thank you. [LB932]

SENATOR ASHFORD: Thanks, Senator Avery. I don't see any other questions, but good introduction. Proponents? Those who are for the bill? [LB932]

ERIK DELANEY: Good afternoon. My name is Erik Delaney, E-r-i-k D-e-l-a-n-e-y, and I'm here in support of LB932. I'm also a convicted felon, ex-offender, whatever words you choose to use for that. And I've got to tell you, I'm kind of apprehensive to say that out loud in a committee in the State Capitol. I don't know, there's a lot of people in this room, but some of them could be an employer of mine somebody; and I'm going to tell you, I'm also a single parent of three children. I've been clean and sober for ten years. I'm a licensed substance abuse counselor in the state of Nebraska, and I started a successful nonprofit here as well--helped start it--that does a lot of really cool work in our high schools in this state. But I have problems finding a job. I went to a major national corporation after I completed my bachelor's degree, finally, after 25 years. And I was sober...yeah, I was 45 years old then. And they hired me based upon my folks that I knew in the organization and on my college degree. And at the end of that interview they asked me if I had a criminal record. And they had...they knew I had some kind of criminal record from the folks that I knew in the organization. I said, what; I thought you had that information. They said, well, I don't know; we'll call you here in a few minutes. I mean, I'm at this campus in Omaha. And when I walked in that interview, they were telling me all about this great job that I just got, you know. And two hours later they called me and rescinded the job offer, and that was that. I asked the gal who was the person that hired me: What should I do in the future, you know; I mean, it's been over seven years now since I was on paper even, you know? She said lie; most of the background check companies aren't going to have anything after seven years anyways. So, you know, I'm trying to represent something to my children, you know. They know their father is a convicted felon. They know he had problems with substances and all these kinds of things, you know; and now I am their example for the world. So I'm here representing guys that are trying to change and make their lives better. I know that we hear all about prison reform and how full our prisons are. My father was a guard at the Nebraska State Penitentiary, so I know about that too. What I'm going to tell you is that what are we going to do with these people when they go back into the world? Do we want to make them into contributing members of society or don't we? This is a place we can start with that. I mean, it's either that or they're just going to stay criminals. We don't want that, do we? I mean, I understand that there's a bit of personal responsibility here. And trust me, I know that so well. As a counselor, I know that; I taught that, you know. But there's also a part of our responsibility as a society, isn't there? You know, don't we want this to work? You know, don't we want them to work? And I'll tell you that a job is

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maybe the most important thing; it may be the tipping point of a guy deciding whether or not he's going to be a contributing member of society or go back to prison and being a criminal, etcetera. And Grant Tietjen, I was part of his research for his doctoral dissertation in criminology. Thank you. [LB932]

SENATOR ASHFORD: Thank you, sir. Do we have any...just hold on a split second. [LB932]

ERIK DELANEY: Oh. [LB932]

SENATOR ASHFORD: Do we have any questions here of this gentleman? Yes, Senator Chambers. [LB932]

SENATOR CHAMBERS: Just a comment. I'm glad you came. I'm glad you said everything that you said. [LB932]

ERIK DELANEY: Thank you. [LB932]

SENATOR ASHFORD: Thank you. Thanks a lot. [LB932]

ERIK DELANEY: No questions? [LB932]

SENATOR ASHFORD: You handled it. [LB932]

SENATOR MCGILL: No, you made your case. [LB932]

SENATOR ASHFORD: You handled it well. [LB932]

ERIK DELANEY: Thank you. [LB932]

SENATOR MCGILL: Thank you for sharing your story. [LB932]

ERIK DELANEY: You're welcome. [LB932]

SENATOR ASHFORD: Next supporter of the bill. [LB932]

ALISA PARMER: Good afternoon. My name is Alisa Parmer and I am here on my personal interests. I am an ex-felon. I have been a returning citizen to the community over ten years. I am also a professional. I work in secondary education as a career counselor, and I am here as a proponent for ban the box. I have individuals that I work with, including myself, that have submitted applications where they have been skilled and qualified for positions, and eliminated for the positions due to the fact that on their applications they've marked the box. However, now that I am in this position I do a lot of

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networking, and I can take a resume and drop it off and the skills and qualifications can get those individuals job interviews. Upon interviewing, they have the opportunity to speak and share why they should be skilled and qualified for those positions that they're wanting. I (inaudible) my applications based off my skills and qualifications in my job that I do everyday. It's provided me the platform to also give back to my community, to groom other ones, individuals to work and maintain employment in our community and be returning citizens, productive, and I think that encourages and helps to decrease the return of citizens to our prison system, knowing that they may have this opportunity. Target removed ban the box back in October 2013. Major corporation. And one thing that they said was that they were missing out on qualified candidates that had the skills and qualifications to perform and fill the positions that they needed. Nebraska is one of our top ranking states that have positions available. Where individuals are needing to be employed, job opportunities are there. And based on their skills and qualifications, we have applicants that are qualified for those positions; however, they're not even getting their foot in the door. We have provided funds and resources to many organizations in our community to assist individuals that are returning to our communities to obtain employment. And unfortunately, those applicants are not getting to be seen due to that box being on there. However, individuals that work in these positions, such as myself, once we get those opportunities to submit those resumes and provide that platform and foundation for these individuals, giving them the opportunity to have that interview can make a world of difference. That's it. Questions? [LB932]

SENATOR ASHFORD: Thank you. Thanks very much. Senator Chambers. [LB932]

SENATOR CHAMBERS: We need to have a line-up, put all kind of people in it, and say: Pick out the ex-felon. There's no way that a person looks...and at some point--and I'm not going to give a lecture--but there has to be a point reached...first of all, let me start at the beginning. The only way something can be a crime is if the Legislature says it's a crime. They always attach a punishment. They call it paying a debt to society. If I owe a debt on my house, when I pay that last dollar the house is mine. My debt is paid. On any other thing except for when it comes to a human being, human capital, and then all of the talk of redemption and second chances go out the window, unless we ourselves get in a bind and need a second chance. So once again I have to say I'm pleased that there are people who will come here and be willing to acknowledge that there have been problems in the past but they have been overcome, and those people don't forget that there are similarly situated people who need somebody to speak for them. So I'm pleased once again that somebody has done it, namely you. And by the way, you don't look like a felon to me, or an ex-felon. (Laughter) [LB932]

ALISA PARMER: Well, thank you very much. (Laugh) [LB932]

SENATOR ASHFORD: Any other...do we any other questions? I don't see any. Now make sure to fill out the... [LB932]

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ALISA PARMER: I did. [LB932]

SENATOR ASHFORD: Okay. [LB932]

SENATOR CHAMBERS: And there's no box. [LB932]

SENATOR ASHFORD: There's no box on there. (Laughter) [LB932]

SENATOR CHAMBERS: Of that kind. Of that kind. [LB932]

ALISA PARMER: I filled it out. Here you go. [LB932]

SENATOR ASHFORD: There is a box but it's not that kind. [LB932]

ALISA PARMER: I just had to hold on to it a moment. I had my notes. [LB932]

SENATOR ASHFORD: Next supporter. [LB932]

KAREN EDWARDS: Good afternoon. I'm Karen Edwards and I'm here representing myself, but let me tell you a little bit about what I do professionally. I am a career counselor for individuals age 18-25 who are seeking employment. Currently, 69 percent of the youth who are in my program have had contact with law enforcement. And of those 69 percent, only 2 percent are anything that would remotely be considered a violent offense; yet we know, statistically speaking, 50 percent of these individuals' applications are going straight to the trash simply because they have indicated that they have been arrested. The biggest problem with the job application is that it eliminates the need for an interview. We have human resources professionals who are trained to interview individuals. Why? Why does that position exist? So that they can determine who is best qualified for the position. So if that is, in fact, the nature of their position is to interview individuals to determine who is the best qualified, that particular question immediately eliminates individuals from being able to sell themselves in an interview. And a human resource professional will tell you, that is the best way to determine who's a good fit for a job. Ban the box also totally slaps in the face that an individual has paid their debt to society. We say you paid your debt to society until it becomes time to get a job. The other problem is, in our particular program we have successfully placed 70 percent of the individuals; however, they are being placed in positions where that question isn't asked and those positions don't what? Well, you already know. They don't pay a living wage to raise families out of poverty. Lastly, ban the box disproportionately affects African-Americans. Those 69 percent of individuals in my program are, the majority, African-Americans. So now it has an impact that is discriminatory. And I'm sure that as a state we don't want to do that. I'm sure we want to do the right thing, give individuals an opportunity to compete for positions; and recognize, too, that every day

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we criminalize more and more behavior. Lots of things that were not crimes when I was a young person are now crimes. As a matter of fact, the last job application that I had an individual bring to me, because I asked my participants: Bring me some of these applications; let me see what some of them look like. I suspect that, number one, a lot of what's on the applications isn't legal. One application, though, had 22 offenses for which, have you ever been arrested, you need not apply. Of those 22 offenses, 18 of them were what I think most people would consider minor traffic violations. And now these individuals who have been arrested are no longer eligible to compete for those positions. So I think ban the box does extreme harm to our state. It keeps people locked into positions that don't lift families out of poverty. It's punitive. It doesn't recognize rehabilitation, and does not give any merit to the value of human resources professionals who are best at actually determining whether an individual is qualified for a position. [LB932]

SENATOR ASHFORD: Very good. Senator Chambers. [LB932]

SENATOR CHAMBERS: Looking at me, you wouldn't know that I have been arrested several times. Always dismissed. I was arrested one time and charged with suspicion of armed robbery. Dismissed. I'm trying to think of another one. (Laughter) [LB932]

SENATOR ASHFORD: That was one of the big ones. [LB932]

KAREN EDWARDS: Disorderly conduct, ever? [LB932]

SENATOR CHAMBERS: But they were the kind of things...oh, carrying a concealed weapon. Dismissed. And what one of the cops did, it was called an Airweight pistol. And I was working at the barbershop. People made threats to us. This was during the '60s. And I carried this weapon to the barbershop but not on me. So when the car was stopped, it was stopped because I had been on a radio program from Council Bluffs. Just to show you how they do, and do things to us. And I was very critical of the Omaha police because they had just killed a young black guy. So when we came across the river, just before we did, the guy at the studio in Council Bluffs, it may have been KSWI then, he said, be careful, because we got a call from the mayor asking us when you're going to leave the studio; and what do you want me to say? I say, say whatever time we leave, tell him. So when we came across the bridge, we had gotten into north Omaha. Then about three cruisers fell in behind us. So the guy driving just kept driving us, and they stopped us. You'll know this street: 30th and Binney. They didn't turn their lights on and we kept going, went down to Sprague, came down to 24th, started coming back south on 24th Street. And when we got to about Emmet, that's when a group of cars surrounded us and made us get out of the car, and they looked in the car and they saw the gun. Who's gun is this? I said, that's mine. So they said, uh-huh; guy got on his radio and he said, we've got the big fish. And I didn't know what he's was talking about...actually, I knew what he was talking about. To make a long story short, I was

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taken downtown. I was allowed to sign out on my own. When we went to trial, there was a judge named Leahy. He became the mayor; then they named the mall after him. He was aware of things that I had did...had done in the community. He dismissed it. So my gun was given back to me and I showed him where the cop had taken some kind of implement and gouged his initials in as deeply as he could. And Leahy said: Give me that gun. And I gave it to him. He ordered the city to have that smoothed out, replated, and given back to me. That's the things they do. Now if they listed those crimes, have you ever been arrested for armed robbery or suspicion? Yes. Carrying a concealed weapon? Yes. No explanation. And the other alternative would be like the gentleman said: Tell a lie. So then if they find out I lied, they'd fire me. So they get you in a set of circumstances where it's impossible for you to do what it is that you want to do. Fortunately, for me, I was a barber. I didn't have to ask anybody to give me a job. But when I see how many people that I know personally who have actually committed crimes but have a tremendous amount of ability, they've straightened their life out, and some of them are afraid to go back to prison again, and they can't get a job. So they come running. They say, Ernie, man, what can I do? And jokingly, I say, what got you in prison? He say: I robbed somebody. I said: I guess you've got to go back to your old work again. But he knows that I'm kidding. I'm not going to extend this part of it. But again, I'm glad that somebody here is speaking and who has experience not only from what you've heard, but you've looked at the kind of documents that people are made to fill out; you know the capability of the people who are being turned away; and you know that a lot of them have the door slammed before they can even have a chance to be seen. And I want this all as a matter of record. And for those who come here, everything that we say in a committee hearing is recorded, is transcribed, and if some of you want to try...you know, get a copy of the transcript when it's over--by that I meant transcribed and made available--let me know. And some of it might be on the Web, whatever that is. I'm not high-tech. But if you can't get it that way, let me know. And maybe you can show some of this proceeding to people so they can read it, see the kind of things we're doing. And if any of you have contact with business people, maybe you can let them see the effort that is being put forth to make gainfully employed, law-abiding people, out of formerly not gainfully employed, antisocial people. And we want to correct the conduct and not make it worse than what it was. Pardon me for preaching, but you're my sounding board and I had to take the opportunity. [LB932]

KAREN EDWARDS: I appreciate it. [LB932]

SENATOR CHAMBERS: Oh, bless you my child. [LB932]

SENATOR ASHFORD: Thank you very much. [LB932]

KAREN EDWARDS: Thank you. [LB932]

SENATOR ASHFORD: The next supporter. [LB932]

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TOMMIE WILSON: You know, I waited intentionally till everybody said what they were going to say. But I'm Tommie Wilson, and I'm representing Metro Community College for the reentry of ex-offenders and returning citizens. Everything that everybody has said is the message that we want to get across: that we have people and returning citizens, we have veterans who are coming out needing opportunities to work, but because of that stigma of banning the box...that checking that box, it keeps them from employment. And we have people who are actually capable of doing the job, who have excellent skills. And I have to say a personal respect to this: I had a grandson who at 19 and a half went to a federal prison. Served ten years on an indictment charge. Has come out and he's had to start his own business. He put ten years in but he could not get a job. And he can get a job because he's very capable. Fortunately, he was in a federal prison where he was able to get schooling, and he applied to that. He got three degrees. They have not been, you know, certified yet, but if he were to go to a community college or a regular college, a university, he might be able to get them certified. But he came out working with a straight A student and got involved with that. Then they'll ask, as the young lady said before me: Have you ever been arrested? Well, when they look at that, that file...application goes into File 13. Then some will say: Have you been arrested within the past seven years? No. And they'll say no, they haven't. They've been in prison 15 years, because the basic charge was 10-15 years. And as a (inaudible), he had to do that 10-15 years, you know, without getting out. So he didn't lie. But once they get that job and they go back over it, they start looking at it and then they lose their job. We've got to change that. We've got to also encourage our employers. We've got to appreciate those who have actually given jobs. You've got construction companies in north Omaha that have actually given jobs to these young men--they're not looking at that offense--who are hard workers and they know that they'll work. We've got to appreciate them. We've got to give them an award so they can see that we appreciate that you are reaching out to our community; and we don't do that enough. So that's what I try to do. At Metro, we have a table talk, a monthly table talk. And we don't call them ex-offenders. We call them returning citizens, because there is no ex-offenders. He's already served his time, so how does he have to be an ex-offender? You know, he wanted to get a job and he's wanting to have a sustainable life. And we want to find where the resources are. Many of them have no idea of where the resources are. And that's the one thing that Metro has done is it's been able to put resources into the community, find what's available so that the families can get into these positions and find things that's going to give them a livable skill for a lifetime. That's what I want you to know. We've got to stop that whatever move we are doing. And I walked into Senator Avery's office today, driving...I'm 80 years old, and you know, I couldn't hardly wait to get to a toilet, so I had to go in there, and I've got on...(laughter); he said it's down the hall. But anyway, somebody sent me an e-mail today and said this bill was going to be. I have on my great-grandchild's reindeer socks. I put on my boots and came on, because I didn't have time to really prepare; and I have my hat on because my head is probably still in rollers, you know, left in there. But anyway, this is

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something that we've got to look at; we've got to change the things and we've got make it workable for our people, because our young people need jobs and they don't need to check that box. Any questions for me? [LB932]

SENATOR ASHFORD: Ms. Wilson, that's the most fabulous unprepared testimony I think (laughter) I've ever heard from anybody in my 16 years here. Thank you for what you do at Metro and for all those kids and everybody. [LB932]

TOMMIE WILSON: Thank you. [LB932]

SENATOR ASHFORD: Now make sure to sign that form. [LB932]

TOMMIE WILSON: Yeah, I have one and I forgot... [LB932]

SENATOR ASHFORD: Do you have one to sign? [LB932]

TOMMIE WILSON: Yes. I even drew a hat on it. I didn't realize what I was doing because I'm a scribbler. So you can see. (Laugh) [LB932]

SENATOR ASHFORD: Okay. I know...I hate to direct you to do anything, but I... [LB932]

TOMMIE WILSON: Thank you so much. [LB932]

SENATOR CHAMBERS: Just a comment. Sister Wilson, I'm so glad to see you again. [LB932]

TOMMIE WILSON: You know I love you. You know I love you. [LB932]

SENATOR CHAMBERS: And if it wasn't for these young people not understanding, I'd come over there...wait a minute. [LB932]

TOMMIE WILSON: I'm going to do it anyway. (Laugh) [LB932]

SENATOR CHAMBERS: This is what's being grown means. Come here. (Hug) [LB932]

SENATOR ASHFORD: All right. [LB932]

SENATOR CHAMBERS: That's why you all ought to try to live as long as both of us have lived, and there are things you can do and people will understand. [LB932]

SENATOR ASHFORD: Well, let's push on. Next supporter, please, for the bill. Who's next? Marty is here. [LB932]

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MARTY BILEK: (Exhibit 2) My name is Marty Bilek, M-a-r-t-y B-i-l-e-k. And primarily I'm here today representing Mayor Jean Stothert of Omaha. However, I'm also here to represent myself, because I have somewhat strong feelings on this bill as well, and it's primarily because as a person who grew up in the inner city of Omaha myself, I can understand how easy it is for young people to get into trouble. They call it youthful indiscretion these days. But it's true, it's a reality. And I don't believe that a person should be stigmatized for the rest of their life just because they made a mistake when they were kids. Now it also so happens that I'm a 38-year veteran of the Douglas County Sheriff's Office. Recently I moved over to the Mayor's Office. But while I was at the Sheriff's Office, I've interviewed countless numbers of people for jobs related to law enforcement--deputy sheriffs, to be exact. And I can tell you that over time we would have probably been remiss if we would have had a strict ban the box policy. And by that, I mean...well, basically what I'm going to do is I'm going to tell you a story. I'm going to tell you a story about one person who we considered for hire. It was a young man and when we looked at his employment application he had been convicted of theft. And I said at the time, well, it was quite a while ago, let's see what he has to say for himself. So he came in and it was true, it was when he was a late teen and he had stolen a CD, a compact disc of music. And basically he just explained that "I was a kid back then, I'm not a kid anymore, I'm a mature man, I've accomplished a great deal since that time; I'm married and I'd like to work in law enforcement." So we hired him. I liked what he had to say, I liked how he handled himself. I liked how he changed his life around. We sent him to the police academy in Grand Island; they turned him down. They said we can't accept a person with a criminal history like that. And we were a little bit disappointed because we liked the guy by now. So what we did is we exercised our options, traveled to Grand Island to make our case for this person. And we met before the advisory council, and I was all ready to stand up and give a big dissertation on how this young person is different now and needs to start a career in law enforcement; we like him. I was there with another person, a member of the management team. And before we could say anything, this person stood up and spoke for himself and was so very eloquent and so very well-versed about his past; in other words, he knew he did something wrong, he knew it was a mistake at the time, he felt like he's overcome it and now he needs to take the next step. And by the time he was done talking, we didn't need to say anything. It was a unanimous vote, they decided to accept him. And he's working with the Douglas County Sheriff's Office. To this day he's a valuable employee. We would have made a mistake if we would have dismissed that person, right off the bat, simply by looking at his application and throwing it in the trash. Now if that was just an anomaly, a once-in-a-lifetime situation, I probably wouldn't have shared it with you. But it's not. That happens more often than you would think. That's why myself and Mayor Stothert are proponents of this bill. Thank you. Are there any questions? [LB932]

SENATOR ASHFORD: Senator. [LB932]

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SENATOR CHAMBERS: Mr. Bilek, the last time I saw you, we were on different sides. This shows that in politics, if you hang around long enough, things will kind of smooth out. So I say it's probably a push for us at this point. [LB932]

MARTY BILEK: Fifty-fifty. [LB932]

SENATOR CHAMBERS: Yes. [LB932]

MARTY BILEK: All right, I'll take that. All right. [LB932]

SENATOR CHAMBERS: Okay. [LB932]

MARTY BILEK: Anyone else? [LB932]

SENATOR ASHFORD: Yes. Senator Hansen. [LB932]

SENATOR HANSEN: What was the board or whatever it was in Grand Island that you went and talked to again? I missed it. [LB932]

MARTY BILEK: I believe it's called the Police Standards Advisory Counsel. [LB932]

SENATOR HANSEN: Only held in Grand Island? [LB932]

MARTY BILEK: Yes. At least at the time. This was 15 years ago. [LB932]

SENATOR CHAMBERS: It's part of the Crime Commission. [LB932]

SENATOR HANSEN: Okay. Okay, thank you. [LB932]

MARTY BILEK: I mean, and...and the board is in place just for that purpose, to second-guess the wisdom of the written law, which probably isn't very flexible. And it worked. [LB932]

SENATOR HANSEN: Good. [LB932]

MARTY BILEK: Thank you. [LB932]

SENATOR ASHFORD: Thank Mayor Stothert for her support, Marty. [LB932]

MARTY BILEK: I will. Thank you. [LB932]

SENATOR ASHFORD: Thank you. Okay. Next supporter. [LB932]

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STEVE HOWARD: I'm Steve Howard, H-o-w-a-r-d, and I appear on behalf of the Nebraska State AFL-CIO in support of LB932. You've heard a lot about the merits. We want to simply voice our public support. And, you know, our public sector employees want good coworkers. It seems that there may be good candidates that are being passed by and this seems like a good way to codify the process and make sure that the best candidates are there at the end for consideration. Nebraska should be a forgiving state and should be an open-minded state, and so we support LB932. It seems that employment is one of the biggest deterrents to recidivism. So that's the only comments we have. [LB932]

SENATOR ASHFORD: Thank you. Thank you, sir. [LB932]

STEVE HOWARD: Thank you. [LB932]

SENATOR ASHFORD: Thanks. Next supporter. Willie, are you next? Yes, this gentleman here? No? Mr. Davenport (sic), are you ready to go? All right. [LB932]

WILLIE HAMILTON: Hello. How's everybody doing? My name is Willie Hamilton... [LB932]

SENATOR ASHFORD: Hamilton. I'm sorry. [LB932]

WILLIE HAMILTON: ...H-a-m-i-l-t-o-n. [LB932]

SENATOR CHAMBERS: Just give me one second. Davenport isn't too far from Hamilton, as we know, so. A little inside. [LB932]

WILLIE HAMILTON: Again, my name is Willie Hamilton and I am the father of two sons, Damien Hamilton, who is serving in the United States Army and completed a tour of duty in Afghanistan; Jamel Hamilton, a junior at the University of Nebraska at Omaha; and a daughter Alexia Hamilton, a sophomore at Omaha Central High School. Go Eagles. I am the executive director of Black Men United. In part our mission statement is the purpose of Black Men United is to foster black male achievement by enhancing the economic, social, educational, and political inclusion in the United States. To accomplish this it will focus on providing services in the three critical areas of education, work, and family, while promoting positive images and messages about black boys and men. Our people are swept into the criminal justice system, including my five brothers, other relatives, and friends. My five brothers were all incarcerated and I've been affected by their criminal history preventing them from gainful employment. This is why I'm compelled to speak and for support of LB932, not only for the effect upon my family but on the effect of my race and my community. One out of every three African-Americans is affected by mass incarceration. Many of youth are getting into the system at an earlier age for much longer sentences for fairly minor nonviolent crimes,

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particularly in the poorer communities of color. They are stripped of their very rights supposedly won in the Civil Rights Movement, like the right to vote, the right to serve on a jury, the right to be free of legal discrimination and unemployment, not to mention the access to education and public benefit. Many of the old forms of discrimination that we supposedly left behind during the Jim Crow era are suddenly legal again. With the Nebraska truancy and absenteeism law, these numbers are increasing. We are the only industrialized country in the world that gives someone who has committed a crime a life sentence. They serve their time, get released, and then are unable to find a job to take care of themselves or their families; and they have great difficulty finding housing. There is a growing movement across the country. Currently, cities in 23 states and at least six states have banned the box. They are willing to give a person a foot in the door of the application process before their criminal history becomes a part of the discussion. This movement has been energized by recent federal warnings that using criminal background checks to screen initial applications is discriminatory. President Obama's administration has sued companies over their criminal conviction and screening policies, arguing they are discriminating against ethnic groups disproportionate of the convicted crime, such as Latinos and African-Americans. And in 35 years, leading up to the 1960s, the number of Americans incarcerated in federal and state prisons had increased by 52,249 people. In previous years, 35 years, the number increased 1,266,000 people. Their mistakes should not cost a person the rest of their life, as men and women are being denied employment for mistakes they made 20, 30, 40 years ago. How are they supposed to support their families? Our system needs reform. I urge you to vote yes in support of LB932. Let's make Nebraska the good life for everyone. [LB932]

SENATOR CHAMBERS: Brother Hamilton, in case people in the audience didn't know what I was referring to... [LB932]

SENATOR ASHFORD: I understand. Senator, I made a very (inaudible). [LB932]

SENATOR CHAMBERS: Davenport Street is just a few blocks from Hamilton Street. [LB932]

SENATOR ASHFORD: Hamilton Street. [LB932]

SENATOR CHAMBERS: So when he said Davenport, he meant to say Hamilton. [LB932]

SENATOR ASHFORD: Well, what I meant was Hamilton... [LB932]

WILLIE HAMILTON: Yes, sir. [LB932]

SENATOR ASHFORD: ...and I said Davenport, just to see if you were listening.

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(Laughter) [LB932]

WILLIE HAMILTON: Yeah, (inaudible) knew that. [LB932]

SENATOR ASHFORD: But I will say one thing. I had an opportunity to visit with you at your facility. And the vision that you have for that is phenomenal for...and then, secondarily, with...because of your persuasive power, we have changes to the absenteeism law that we're going to go in this year to address the concerns you've raised to me, and to Senator Chambers to me. So with that, thank you. [LB932]

WILLIE HAMILTON: Thank you. [LB932]

SENATOR ASHFORD: The next supporter. [LB932]

DEIDRA ANDREWS: Good afternoon. My name is Deidra Andrews and I'm here both personally and professionally. My colleague, Karen Edwards, we both work in a nonprofit organization where we help with employment and career services for individuals in the community. First, personally, some ten years ago I was arrested under a domestic situation. I found myself having to defend myself against my then-husband, and as a result, when the police officer showed up--I was the one that called 911--and because he had more visible scratches and marks on him, they detained me, because Nebraska is a...not...no domestic...a domestic abuse state. So as a result, and looking for employment, I was offered a position at a nonprofit organization and working with children; and six or seven months after working hard, getting settled into the position, the offer was rescinded. The state of Nebraska I guess dug deep in my background and deemed me unfit to work with children. I am a 40-plus-year-old woman with a master's degree, completely qualified to do the job. I was hired because I was qualified to do the job. And because of that situation, where I found myself having to protect myself, I found myself without a job. And it took me 11 months to find gainful employment to take care of my family. Again, professionally I don't want to, you know, reiterate what Karen and Ms. Parmer have already stated, but we work on a daily basis, we see individuals who are wanting to do better. They strive to do better. We are providing them with the tools and the resources to sell themselves, to build their self-confidence and esteem so that they could be able to present themselves and sell themselves to potential employers. And when they're not given the opportunity to even have that opportunity, we're doing a disservice to those individuals. And quite honestly, you know, in my opinion, employers are missing out on these viable candidates. You know, there are folks out here that are wanting to change their lives, but by virtue of having to mark this box it is creating even further impediments for individuals to be able to become self-sufficient and self-sustaining managers of their own lives. So that's pretty much it. [LB932]

SENATOR ASHFORD: Very good. Thank you. [LB932]

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DEIDRA ANDREWS: Thank you. [LB932]

SENATOR ASHFORD: Next supporter. [LB932]

REBECCA GONZALES: (Exhibit 3) Good afternoon. My name is Rebecca Gonzales and I'm with Nebraska Appleseed Center for Law in the Public Interest, and we'd like to testify today in support of LB932. As you've heard over and over, we also believe it is an important first step in curbing the high incidence of unemployment among Nebraska's returning citizens. It is also, I think, a good complement to some of the work this Legislature is doing to reduce prison overcrowding, and it is an important factor that affects the successful integration of those returning to our communities. Their ability to find and maintain gainful employment is one of the biggest problems we have. As you heard earlier, more than 30,000 Nebraskans are either current or ex-offenders that would be affected by this law. And that's significant, because again research has shown that more than 50 percent of employers will automatically reject someone who checks the box "yes" that they have been convicted of a crime. And as you've heard earlier, too, I think it's not just convicted of a crime but if they've either been arrested for a crime. Finding a job allows a person to establish a positive role in the community, develop a healthy self-image, support their children and themselves, and keep a distance from negative influences and opportunities for illegal behavior. And we all believe that LB932 is a good first step in giving formerly incarcerated Nebraskans a realistic second chance. So we thank you for considering this bill. [LB932]

SENATOR ASHFORD: Thank you very much. I don't...is there a question? No, no questions. Next supporter. [LB932]

SYMONE SANDERS: Do I need to give my sheet? [LB932]

SENATOR ASHFORD: And we've got to keep those sheets in order. That's my only job, so. (Laughter) [LB932]

SYMONE SANDERS: My name is Symone Sanders. I'm here in a couple different capacities, but I currently serve as the chair of the Coalition for Juvenile Justice's National Youth Committee. The Coalition for Juvenile Justice works on behalf and with young people. And as the National Youth Committee, we work to advocate for youth engagement, youth voice, and the rights of young people. And I am aware that Nebraska has extremely progressive laws for juveniles. Nebraska is one of the many states where young people can have their records sealed. But in counties across the state, that is not an automatic process. So banning the box would be extremely helpful to young people, especially those juveniles that many people have alluded to. So I just wanted to go on the record and state that fact. Thank you. Questions? [LB932]

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SENATOR ASHFORD: Thank you very much. Thanks for your comments. Thanks for coming down. Thanks for your good work. Next supporter of the bill, Mr. Barney.
[LB932]

WILLIE BARNEY: Good afternoon. Willie Barney, Omaha, Nebraska. I'm president and facilitator of the Empowerment Network. I want to speak personally and professionally on this particular issue. Over the last seven years, we have worked with many of the people in this room to improve education, employment, housing, support services, and improving access to health for our community. Since that time, we have worked with over 3,000 people, a thousand of them youth and young adults, many of them facing the barriers that have been discussed today. We have worked with over 2,400 young men, primarily, that had not been given a chance to gain employment. We put them to work in different types of programs, and because of that, we see many of them now, once they were given the opportunity, have taken advantage of that; and finally, companies are beginning to hire them. But it was only through us having to work through other means. But I wanted to say typically I don't speak from prepared comments, but I wanted to make sure I said some specific things. When individuals in our society are sentenced, they are essentially being told to serve their debt to society. After serving their time, they return to our community, preparing for a fresh start. But current practices in our state do not allow that fresh start. As a matter of fact, even if they have served their time and completed what was expected of them, they are systematically excluded from most employment opportunities and simply cannot, in some cases, even find a home. So if we are expecting for them to have a fresh start but they cannot gain employment, cannot gain access even to public housing, what is it that we expect of our returning citizens? What level of success would any of us have without the ability to gain sustainable living wage income for ourselves and for our families? One of the most fundamental pieces of our society is the ability to work and to provide for our families. A few years ago, the Gallup Organization surveyed citizens from across the world. What they found is that the top answer and most important solution that people had was to work, to have a job. This is across the world. The legislation that you have before you is a starting point. It allows public entities to lead by example. And I believe as we move forward, you leading by example will open the doors to cities, counties, and other businesses across this state to provide those employment opportunities for not only these young people that we work with but grown adults that are now looking for an opportunity to take care of their families. As Dr. King said, this is about life, liberty, and the pursuit of happiness. Without the opportunity to provide for your family, it's very difficult to achieve any three of those goals. What we're asking you to do is to pass this legislation that has been proven in more and more cities, more and more states across our country, to be very effective in this effort to make sure that every single one of our citizens...we live in a state that has a less than 4 percent unemployment rate. However, we represent people that have sometimes a 20-25 percent unemployment rate, one of the biggest barriers that they are all facing is exactly this. By you moving forward to finally move this legislation forward and ban the box, we know that we'll be even more

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successful at placing even more of our young people and our adults in fully sustainable, living-wage employment opportunities, so that they can also pursue life, liberty, and the pursuit of happiness. Thank you for your time. [LB932]

SENATOR ASHFORD: Thanks, Mr. Barney. Thank you. Good comments. Any questions of...? Any other supporters? Yes, sir. Come on up. [LB932]

DAN CLINCHARD: I am late to work. Oh, my name is Dan Clinchard, Daniel Clinchard, C-l-i-n-c-h-a-r-d. I'm an ex-felon, ex-felon, ex-con, whatever; anyway, since '73. I got a pardon in '84, but I can say I've been pardoned but I still have to say I was convicted. And I don't know if there's a way to get it expunged, in which case I could say I was never convicted. Is that the way expunged works? If it's expunged does that mean I can say I was never convicted? [LB932]

SENATOR ASHFORD: Well, expunge is one of those big words. I'm not... [LB932]

DAN CLINCHARD: Okay. Anyway, so for the rest of my adult life...I got a B.S. in biology. Actually I got out on an education release back when the penitentiary system used to have education. And I started my college career in, and in the few months I was in got out on an education release through vocational rehabilitation, whatever. Did all of that. But I still have to say I was convicted. I was...yeah, so. So obviously I'm in favor of the ban the box. But there's all sorts of other things that should be going on too. And I think I'm late for work. Now I'm self-underemployed. (Laughter) And I'm late. [LB932]

_____: (Inaudible.) [LB932]

DAN CLINCHARD: So I'm going to let it go at that. Thanks for doing what you're doing here. [LB932]

SENATOR ASHFORD: Thank you. [LB932]

SENATOR CHAMBERS: Thanks for coming by. [LB932]

SENATOR ASHFORD: Do we have any other supporters? Thank you. Any other supporters of the bill? [LB932]

KAREN EDWARDS: Can I add some additional comments? Can I do that? [LB932]

SENATOR ASHFORD: Additional comments? [LB932]

KAREN EDWARDS: Please. [LB932]

SENATOR ASHFORD: It's totally out of order, but do we have any other supporters?

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Okay, you... [LB932]

KAREN EDWARDS: Thank you. [LB932]

SENATOR ASHFORD: This is a first. We've never done additional comments before. [LB932]

KAREN EDWARDS: Well, he brought up a couple of things that are also problematic in our state. A lot of confusion around the expungement process and a lot of confusion around the application process, what's legal, what isn't, how do I answer this question. And I thought he was actually...when he said there's a lot of other things to look at, that is definitely a problem when you have one employer that has 22 offenses; and many of them are not things that you can go to jail for, it's just things you can even be ticketed for. So our problem is more than just this ban the box. And I know that's where we're going to start today, but our problem is also that there isn't any consistency among our employers large and small. For the most part, only the smallest employers who it's my experience they just don't have the resources to do the background checks; and that's where I've been able to place a lot of my individuals successfully. But that's, like I said, because they don't have the resources to do the background checks. And as I mentioned earlier, typically those positions don't pay enough to lift you out of poverty. But again, the other problem: no consistency. One employer says, have you ever been arrested? One employer says, have you ever been convicted? One employer says misdemeanors. One employer says felons. And then there's also, as I think a lot of people in here know, there's also the problem of youth who have been tried in adult court whose records don't get sealed. So I think all of those things really contribute more and more to...without any consistency we definitely need to ban the box so that things are at least more consistent. Thank you for allowing me that opportunity. [LB932]

SENATOR ASHFORD: Sure. [LB932]

SENATOR LATHROP: Ma'am, could we have you state your name for us one more time. [LB932]

KAREN EDWARDS: Again, yes. [LB932]

SENATOR LATHROP: Just to make sure we got it in the record. [LB932]

SENATOR ASHFORD: She was up before, but I allowed her to testify again. [LB932]

SENATOR LATHROP: Oh. Okay. [LB932]

SENATOR ASHFORD: Hopefully, that's okay. [LB932]

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SENATOR MCGILL: Say your name again. The people on the recording may not know. [LB932]

KAREN EDWARDS: I don't have a problem saying my name again. It's Karen Edwards. [LB932]

SENATOR LATHROP: Okay. Good. Thank you. [LB932]

KAREN EDWARDS: Um-hum. [LB932]

SENATOR LATHROP: All right, I just rolled... [LB932]

SENATOR ASHFORD: I think we're through. I think the supporters...we've done the supporters, and now we're to the opposition. [LB932]

SENATOR LATHROP: (Exhibits 4 and 5) Okay. Is there anyone here in opposition to LB932? Anyone here in a neutral capacity? Seeing none, Senator Avery to close. Oh, and before or as you're sitting down I'll read into the record, we have a letter from the mayor of the city of Omaha, Jean Stothert, who is in support, which will be made part of the record. We have a letter from Grant Tietjen, Ph.D. professor of criminal justice that Senator Avery mentioned, in support, and that will be made part of the record. The ACLU is here in support with a letter dated January 27, 2014. And the National Association of Social Workers have likewise sent a letter in support. Senator Avery to close. [LB932]

SENATOR AVERY: Thank you, Senator. Let the record show that this is probably the first hearing I have ever had a bill up that did not have opposition. [LB932]

SENATOR LATHROP: We are all surprised. (Laughter) [LB932]

SENATOR ASHFORD: It is amazing, Senator Lathrop. [LB932]

SENATOR AVERY: I just...I want to say that I am moved by the testimony. I did not anticipate these many people coming to support this bill. The only person that I talked to about it was the first testifier, Mr. Delaney, who had been an intern of mine. And I have watched his career go from pretty well beaten down by the system to where he is now applying for law school here at UNL. And so he is a success story. Takes his kids to church and his kid just got confirmed yesterday at First Plymouth. So he is a good citizen. And that's the kind of person that we really ought to encourage, and this legislation does that. [LB932]

SENATOR LATHROP: Thanks, Bill. [LB932]

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SENATOR ASHFORD: I just kind of have one comment. [LB932]

SENATOR LATHROP: Yes, certainly. [LB932]

SENATOR ASHFORD: And I...first of all, this is incredibly important legislation, and obviously it does fit into LB907 and LB999 and all the efforts that we're undertaking on prison reform. But I was so struck by the comment that was made about returning persons from the...as the term that we should be using rather than ex-offenders. And I know in our two bills, you know, we're going to go to that terminology and just throw out the ex-offender thing, because the idea that we come back to, over and over again as we've studied this issue over the summer, is just the whole concept that--and Senator Chambers mentioned--of paying one's debt and then moving forward and being productive citizens. I think this bill is an incredibly important bill and I'm very appreciative that you brought it, so. [LB932]

SENATOR AVERY: Thank you. [LB932]

SENATOR LATHROP: I think that's it. Thanks, Bill. Good to have you here. [LB932]

SENATOR AVERY: Thank you. It's my first time. [LB932]

SENATOR ASHFORD: First time for what? (Laugh) [LB932]

SENATOR MCGILL: Oh, wow. In eight years? [LB932]

SENATOR AVERY: Yeah, in eight years before this one. [LB932]

SENATOR LATHROP: Okay. There's always a lot of movement after bills... [LB895]

SENATOR SCHEER: Well, I'm just assuming... [LB895]

SENATOR LATHROP: ...and it's a small room. [LB895]

SENATOR SCHEER: ...that they must have, you know, I... [LB895]

SENATOR LATHROP: Yeah. [LB895]

SENATOR MCGILL: (Laugh) Take it personally. [LB895]

SENATOR SCHEER: There...yeah, well...thick skin, so... [LB895]

SENATOR LATHROP: Thanks. We'll next take up LB895, and that brings us to Senator Jim Scheer. Welcome to the Business and Labor Committee. [LB895]

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SENATOR SCHEER: (Exhibit 1) Thank you, Senator Lathrop and the committee members. My name is Jim Scheer, S-c-h-e-e-r, and I represent the 19th District in the Nebraska Legislature. I'm here to introduce LB895, which protects volunteer firefighters and volunteer emergency medical service workers by specifying that such persons will receive a maximum allowable rate of workers' compensation if injured while in the performance of his or her duties as a volunteer. It further clarifies that a volunteer will not lose their status as a volunteer if paid a nonsignificant amount of money for his job or her service, such as reasonable benefits or a nominal per-call fee. I'm also introducing an amendment, AM689 that I brought with me today, to define the nominal fee as one not to exceed 20 percent of what would be expected to hire a permanent employee for those same services. And I believe your clerk has a copy of such. The bill...actually, as a result of conversations that I had with Norfolk and surrounding volunteer firefighting organizations...the concern was that there was no agreement on what compensation would be based if a volunteer were injured in the course of his duties. So as we looked, trying to define how to go about that best, I just came up with the idea of providing the highest level, one, as recognition of those folks taking themselves and their bodies into harm's way to protect society, and, secondly, to protect their families if something did happen to them. The concern, as they were looking at the reimbursement...or the compensation base, is that, especially in rural areas, folks may not have...their incomes can vary greatly from year to year, especially rural people. So that if you had someone that was involved in agriculture, like this year way out west where they've lost all their cattle, if we were saying, well, they just have to produce their tax statement and we can compensate based on the last year's taxes; they may be in the hole. So based on that, they would receive no compensation or very little. As well, in some districts it's becoming harder and harder to recruit new members. These people put a lot of time in their training so that they can respond in emergency situations. And because of that, we have fewer and fewer numbers, especially in the rural areas, and so the pool is not as large to be able to recruit from. And it seems to me that this may be the least that we as a state can do to provide those volunteers that put themselves in harm's way, in order to provide them and their family the security that if something were to happen, that they'd be taken care of to at least the maximum that is allowable by law. There will be, I'm assuming, others that might testify after me. But that's really the sum and substance of the history of the bill. I'd be happy to answer any questions now, or if you'd like to wait for closing, I'd be glad to do that as well. [LB895]

SENATOR LATHROP: Okay. Any questions for Senator Scheer? I see none. Thanks, I appreciate it, Jim. We will take proponents of LB895. [LB895]

SCOTT CORDES: Good afternoon, Senator Lathrop and committee. My name is Scott Cordes, C-o-r-d-e-s. I'm the fire chief in Norfolk, here today to testify on behalf of LB895 and the recent amendment that Senator Scheer spoke of. This issue became prevalent in Norfolk here recently, in the past year. We are a combination fire department, with

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primarily paid staff buttressed by a group of reserve volunteers. Those are folks that have another job, that come in on large fires and support us on shift absences and so forth, critical to our mission. In one of the injuries related to one of those, the question became...and we pay them...had previously paid them an hourly wage as an incentive for them to come in from their other jobs to perform those duties for us, for training and for fire responses. There became a question as to what rate of compensation they would be paid should they be injured in the line of duty and were off work for an extended period of time, and would it be based on that nominal wage that we were paying them to come in and serve in that reserve capacity or from their regular employment? And because of that uncertainty, we stopped paying them, either to seek some gap insurance to provide absolute assurance they were covered or to seek a legislative fix, which is why I'm here today. So it's pretty critical to me and the operation for my fire department to have clarity in that. I don't ever want to have to look in the eye of any family member and explain to them why they're going to get \$42 a week to support their family, in giving of their time and talents for my community, it can't be done. So I want clarity in that as a manager so that I know that they're going to be taken care of in a manner that they should be. So I respectfully ask for your support and consideration of this bill. [LB895]

SENATOR LATHROP: Very good. Thank you, Chief. Any questions for the witness. I see none. Thank you. Next proponent. [LB895]

BRUCE BEINS: Good afternoon, Senators. My name is Bruce Beins; it's B-e-i-n-s. And I'm here representing the Nebraska Emergency Medical Services Association. I'm also the advocate for the National Association of EMTs for the state of Nebraska. This is my 30th year providing service to the people of the state of Nebraska and, more importantly, the people in my area. Unfortunately, it's also the 20th year since I suffered an on-the-job injury while I was carrying a patient out of a trailer house. Being young and indestructible at the time, younger, I guess I should say, at the time didn't really realize the implications. I knew I had workmen's comp, but since I was a young, tough, macho EMT, I waited several weeks before I actually sought any medical treatment for a lower-back injury. And that started nine months of wrangling with an insurance company because they thought maybe in that three-week period of time I had hurt myself somewhere else. One year after the injury I went in for surgery on my lower back. It was the day I went in for surgery that the insurance company finally said, well, I guess we'll pay for the surgery and your medical bills. So that was a big relief to me until I realized, again, being young and maybe somewhat naive, that a week in the hospital and six weeks off work afterwards. And you know what compensation I got for that time that I was off my regular job? Zero. Zero. And as a young father with two young kids, six weeks off work is devastating, devastating. Thankfully to my employer at the time and my family, I was able to get through it. Twenty years down the road, I've suffered because of that injury. Now, I don't begrudge my service at all. But you have a hard time looking at new recruits and so forth. Every time somebody gets ready to lift something,

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I'm coaching them and telling them how to be careful, because even though they have workmen's comp, you're not necessarily going to get compensated for time you lose, because we're not paid anything as a volunteer. So I want to thank Senator Scheer for bringing this bill forward. And I hope that you consider it and move it on. Thank you. [LB895]

SENATOR LATHROP: Can I ask you, it's not generally...volunteer firemen generally is not an issue that we take up a lot in the Business and Labor Committee. Can you tell us the difficulties that they're experiencing in rural parts of the state recruiting and retaining volunteers? [LB895]

BRUCE BEINS: Yeah. [LB895]

SENATOR LATHROP: Just give us a flavor for it; we don't need... [LB895]

BRUCE BEINS: Yeah. I mean, you have fire and EMS. There's a lot of services that provide both services, some services that provide one or the other, depending on where you're at in the state. A lot of it's a societal shift. We don't have in my area--I'm the super rule, so to speak--we don't have the kids that are coming back to the farms. The small farms have gone away, and we have bigger and bigger farms who have a smaller and smaller pool of people, potentially, to draw from. A lot of our towns have become bedroom communities, where people leave the town during the day and drive 30 to 60 miles to work in another community. And so those people aren't available during the daytime, and some of them aren't available in the evenings either because of their commute and other family issues. People are just busier than they used to be. It's not just fire and EMS. I mean, to find volunteers for churches, schools, any other civic organizations is just getting tougher and tougher, and it's especially... [LB895]

SENATOR LATHROP: To what extent do you think this bill will help in your efforts to recruit and retain? [LB895]

BRUCE BEINS: To me personally, I think in the recruitment and retention side. When we're trying to recruit young men and women to be on our services, they need to understand that we're going to take care of them; that if you get hurt, we're going to take care of you. Some of the biggest questions we're asked is about health or injury and liability. So we need to be able to give them the reassurance that if you get hurt on the job, workmen's comp is going to take care of you; and if you're off, like I was, for a period of time, workmen's comp is there and it's available for you. [LB895]

SENATOR LATHROP: Okay. [LB895]

BRUCE BEINS: So if they knew that it wasn't going to be there...most of them don't realize that. If they knew that it wasn't going to be there for them, it would be a big

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barrier to recruitment and retention. [LB895]

SENATOR LATHROP: Okay. Very good. I see no other questions. Thank you for your testimony... [LB895]

BRUCE BEINS: Thank you. [LB895]

SENATOR LATHROP: ...for coming in today. [LB895]

JERRY STILMOCK: Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of LB895. The issue first was brought up in discussions with me in Senator Scheer's office. How do we make sure that a volunteer that receives some type of remuneration, some type of stipend, some type of expense reimbursement, how do we make sure that if that person is injured, that the workers' comp coverage would still look at those people as volunteers? And it occurred to me, the more and more I looked, I looked at several other states, Nebraska has a pretty good thing going in its definition in this section that Senator Scheer's bill would seek to amend, 48-126.01. But, yet, others were bringing some questions of uncertainty. It occurred to me to look at another area of the law where volunteers are also questioned and reviewed, and that's under the Fair Labor Standards Act...was when, at what point in time, does somebody that's labeled as a volunteer step over the threshold? And it occurred to suggest this language, that reasonable expenses, reasonable benefits, and some type of nominal fee, or a combination of those three, be used. And that's what turned into the first component of LB895 through Senator Scheer's good thought. Let's also use this opportunity as a tool to make sure that an injured worker, injured volunteer firefighter...let's say that injured volunteer firefighter...let's say they're a 28-year-old male/female working at a grocery store in the local community, town. As a service to their community, let's make sure that if that person is injured while serving as a volunteer fire or rescue personnel, let's make sure that the state of Nebraska recognizes their service, let's elevate them to the highest level of compensation for injury that they might be able to get. And as you know, with this committee, that that elevation of the state's average weekly wage and the maximum income benefit that an injured worker, not just a volunteer but any worker, might receive under the statute is a ever-increasing on a annual basis. So there was an attempt to incorporate that language into the language in LB895. One of the items that has been made...has been brought forward was, maybe there's an unintended consequence of using a maximum amount of income benefit. When it's a scheduled injury, that's fine; but when it's a loss of earning capacity, a different set of rules comes into play. And then, you know, then that...that person's income at their regular employment may very well entitle them to more benefits than what is brought here. My point being is the senator has brought you one additional amendment, and it's possible, then, that we...we would ask the committee to distinguish that if a volunteer firefighter,

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volunteer emergency worker was injured, that they receive the greater of what they would be entitled to under the law, either the maximum compensation benefit amount or what their regular employment would bring them, so we have a complete and actual setting for those volunteers. Thank you. [LB895]

SENATOR LATHROP: Very good. Any questions for Jerry? You're really trying to fix two problems: One is set the rate of pay for a volunteer at the maximum amount allowable; and the second issue is what if a person is nominally paid? So they may change the oil and get compensated for doing some mechanical work on a fire truck, but that shouldn't be the basis for the determination of their average weekly wage. [LB895]

JERRY STILMOCK: You're exactly right. [LB895]

SENATOR LATHROP: Okay. [LB895]

JERRY STILMOCK: Yes, sir. [LB895]

SENATOR LATHROP: I think I got it. [LB895]

JERRY STILMOCK: Yes, sir. [LB895]

SENATOR LATHROP: Thanks, Jerry. I appreciate it. [LB895]

JERRY STILMOCK: Thank you, Senators; I appreciate it. [LB895]

SENATOR LATHROP: Anyone else here to testify in favor of LB895? [LB895]

STEVE HOWARD: Good afternoon. Steve Howard, H-o-w-a-r-d, appearing on behalf of the state AFL-CIO. We come before you in support of volunteerism. Volunteerism is good public policy, and, based upon the testifiers before you, this would seem to encourage volunteerism of the highest order. You know, when the fire bell rings and the men and women respond, they don't worry about whose house it is or what the circumstances are, they risk their lives. And that's true whether it is in the cities or in a volunteer setting or wherever. I think...I would suggest that there are, sort of, maybe, folks that don't know about this, the public; there may be some measure of expectation. If you volunteer, you might think, well, if I got hurt, you know, you mean they're not going to take care of me? And I think the same is true with the townsfolk. I think if you took a poll and said: What's right? The owners of the building who had those volunteer firefighters come, the neighbors, the people would say, well, that's just the right thing to do, to take care of volunteers. And so...so we support LB895. And thank you for consideration of these comments. [LB895]

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SENATOR LATHROP: Thanks, Steve. I see no questions. Anyone else here in support? [LB895]

JON REHM: Jon Rehm, on behalf of the Nebraska Association of Trial Attorneys, in support of LB820 (sic). The only thing that I would add to this is, workers' compensation is the exclusive remedy for a work injury. So, basically, people...the part of the bargain for workers' comp is, an injured worker gives up...generally gives up their right for a tort suit in exchange for, you know, and employers get, you know, a cap and limit on compensation, especially for a catastrophic injury, like a death or, you know, a permanent total disability. Putting somebody at the max rate is...is...is fair and more equitable to the families as well as to the communities in which they live in. Furthermore...or secondly, the importance of volunteer firefighters is why there should sort of be a second...sort of a second-job exception for volunteer firefighters, just because of the importance of what they do in the community. Again, as a compromise in the work comp system, people who work part-time jobs are only compensated, you know, especially for temporary disability, based off their part-time wages, as well as for their permanent disability. So...and that's...you know, and so people who have second jobs, who get injured at those second jobs are put in...or kind of put in a tough situation. But again, that's part of the compromise of work comp, because you give up liability there. And, you know, the Nebraska Association of Trial Attorneys thinks that...or anybody thinks that...agree with the firefighters. And everybody else has testified that volunteer firefighters are such an important...important for public safety that there should be an exception for them in the work comp statute. [LB895]

SENATOR LATHROP: Very good. Thanks, Jon. Any questions for Mr. Rehm? Seeing none, anyone else here in support? Is there anyone here to testify in opposition to LB895? Anyone here in a neutral capacity? [LB895]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here in neutral today just because we do think that this bill certainly addresses an important issue and a concern that does need to be addressed, and, hopefully, this session. We would like an opportunity to run the amendment by our members. And also I think the concern that has been expressed to us by some cities is just simply: it certainly needs to be tied to what the person, at a minimum, what they would get if they were working their full-time job. I think the only question that has been brought to our attention is if it's at the absolute maximum rate of workers' comp. And so we're going to have a conference call later this week with our members and try to resolve that and then get back to you, Senator Lathrop, on that, and also to Senator Scheer. [LB895]

SENATOR LATHROP: So what you're expressing is the point that somebody else made, which is, the way it's written right now, this can actually be not a good thing for the high earner. And you would support giving them the better of the two circumstances.

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[LB895]

LYNN REX: Clearly, they ought...for example, let's assume that you have someone that is a teacher, for example. That person, their workers' comp ought to be based on the salary that they have as a teacher, not on a \$10-a-month call or a \$10-per-month, you know, per-call basis, because these volunteer firefighters are extraordinary people in our communities that volunteer a great deal of time and effort. And so you don't want to punish these folks by virtue of the fact that their workers' comp, if they're injured by assisting people, will be some nominal amount. And so we absolutely support making sure that they get a great benefit based on at least...it may not be a great benefit but certainly whatever they would be entitled to if they were injured on their job. And so this bill goes a little bit beyond that. And we've had a few cities expressing concerns, so we wanted to have that discussion with them and then also run the amendment by them. We think the amendment certainly is of benefit, because it does indicate what constitutes a nominal wage, because most of these firefighters across the state, both the men and women, are just getting paid almost nothing, frankly, for some outstanding service. So with that, we'll get back to you and, hopefully, maybe come up with a recommendation to you and Senator Scheer and this committee. [LB895]

SENATOR LATHROP: Very good, we'll look forward to hearing from you, Lynn. Any questions for Lynn Rex? Seeing none, thank you. [LB895]

LYNN REX: Thank you. [LB895]

SENATOR LATHROP: Anyone else here in a neutral capacity on LB895? Seeing none, Senator Scheer, to close. Do we have any (inaudible)? [LB895]

SENATOR SCHEER: Thank you, Senator Lathrop. In response to the league, I understand their concern and their point; however, as I mentioned earlier, I believe this is as a recruitment...and in response to the dangers that one puts themselves in based on this profession, they should be awarded the maximum. Having said that, something I didn't mention earlier in relationship to the work comp, it's work comp policy. And there will be an economic impact, perhaps, on some districts but not all districts because there are minimum premiums that are based on those policies. A lot of those districts, the smaller districts, are far below the minimum premium. So even though there will be an adjustment by an insurance company because those benefits will be increased, and rightfully so, the value will not exceed that minimum premium. So even though we will be increasing the benefit in a lot of the cases, there will not be an additional dollar charge to those local districts. [LB895]

SENATOR LATHROP: Great point. [LB895]

SENATOR SCHEER: So I want to make sure that both of those...and I probably...I

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should have said the minimum premium, as far as the policies, earlier, but better late than never. Having said that, you know, you know, this...there are a lot of feel-good legislation that we can introduce; and this may make you feel good, but this is really necessary. This is something that we need to respond to. And, you know, those communities that we live in that rely on paid providers, we're very fortunate. And some have a combination of the two, as I do in Norfolk. But there's a lot that depends solely, exclusively, on volunteers. And if we can't provide them with at least the security that their family will be taken care of if they're injured or if something worse happens to them, then I don't know that we're really taking care of our own responsibilities as a society or as a Legislature. So I would urge you to take a look at the legislation. My effort added in an amendment certainly can be changed however you feel appropriate. This is, again, like Senator Avery, my first time in front of you folks; I will trust that you'll do what is appropriate in relationship to that. And if there aren't other questions, I'll let this be the close. [LB895]

SENATOR LATHROP: (See also Exhibit 2) Very good. I appreciate it. The record should reflect we do have a letter of support from Bill Lundy, who is the secretary/treasurer of the Nebraska State Volunteer Firefighters Association. That will likewise be made a part of the record. And with that, we'll close the hearing on LB895. Thanks, Jim. [LB895]

SENATOR SCHEER: Thank you very much. [LB895]

SENATOR LATHROP: That brings us to Senator Davis and LB820. [LB820]

SENATOR DAVIS: (Exhibits 1 and 2) Good afternoon, Senator Lathrop and members of the Business and Labor Committee. I am Al Davis, D-a-v-i-s, and I represent the 43rd Legislative District. Today I'm introducing LB820. The bill would authorize Nebraska to join the Great Plains Interstate Fire Compact. Nebraska would join Colorado, North Dakota, South Dakota, Wyoming, and Saskatchewan, all of which are current members of the Great Plains Interstate Fire Compact. Last year I introduced the Wildfire Suppression Act, LB634, to address fire needs which were brought forth after the 2012 fire season, which was so devastating to western and north-central Nebraska. During that discussion I learned of the Great Plains Interstate Fire Compact and the resources the compact brings to the table. By pooling the available resources of the member states, we could have shortened the response time and brought in additional resources at a much-reduced cost to the state. For several days, Nebraska relied strictly on volunteer firefighters to handle the problems we were experiencing in the canyons and buttes of northwest Nebraska and north-central Nebraska. Frankly, most of our departments do not have the manpower or resources to fight sustained multi-week fires; men and equipment were exhausted while the fires burned on. Joining the Great Plains Compact will increase response time, reduce long-term suppression costs, and save property and possibly lives. The loss of 19 firemen in Arizona last year should stimulate

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the desire of Nebraska to protect the lives of and property of its residents by participating with the many other states who see that mutual aid must cross state lines. Over the interim I introduced a study to address the compact and other issues. Testimony provided at the hearing convinced me that now is the time for Nebraska to join the Great Plains Compact, and we can provide that testimony to you at a later time. The Great Plains Interstate Fire Compact was passed by Congress in 2007. It is one of several similar interstate compacts currently located in the United States along the eastern coast and the Great Lakes area and in the Pacific Northwest. The language in Section 1 of LB820 comes directly from the federal law. It is used in keeping with Article I, Section 10, of the United States Constitution that authorizes states to enter into agreements or compacts with other states. The intent of the compact is to promote cooperative efforts among the member states to prevent and fight forest fires and range fires. These efforts include exchange of personnel, equipment, and supplies. The compact provides for reimbursement of expenses to be paid by a state receiving assistance from another state. Nebraska would have an administrator in charge of the efforts in the state and would also have membership on a Great Plains Interstate Fire Compact board. This board creates and implements an operating plan among the compact states. Membership in the compact would be voluntary and could be withdrawn following a six-month notice given to the other member states. The advantage to Nebraska of joining the compact would result from the planning and preparation for dealing with fire events and the opportunity to call upon resources in the compact's member states. Through compact membership, Nebraska could better protect its citizens and property from destructive wildland fires. Compact membership would, of course, also allow Nebraska to assist our neighboring states in a more orderly fashion because of the organization and planning that the compact members each pledge to use. Section 2 on page 6 of LB820 is not part of the required language. I would suggest to this committee that Section 2 as introduced be stricken and replaced with AM1731. AM1731 would still protect volunteer firefighters when they participate through the compact in firefighting efforts in other states, but it would do so without redefining their employment status. Jerry Stilmock, representing the Nebraska State Volunteer Firefighters Association, is here today to explain more fully the importance of Nebraska's membership in the Great Plains Interstate Fire Compact. Jerry can also shed light on the issues of workers' compensation for volunteer firefighters in Nebraska. I have a letter to offer in support of LB820, this from David Kadlecek, a landowner in the Pine Ridge who was impacted by the wildland fires in 2012. I would be happy to answer any questions if I can, and I might defer those to closing, after you've had a chance to talk with Jerry. [LB820]

SENATOR LATHROP: Sure. Any questions for Senator Davis? Senator Hansen.
[LB820]

SENATOR HANSEN: I have a question. Senator Davis, in your very first part of your opening, did you mention the province of Saskatchewan? [LB820]

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SENATOR DAVIS: Yes. [LB820]

SENATOR HANSEN: Can we do that? Across the... [LB820]

SENATOR DAVIS: I can only assume so. [LB820]

SENATOR HANSEN: I mean, across state lines... [LB820]

SENATOR DAVIS: Senator Hansen, I can only assume so. And this is testimony that came out of my interim study this summer, that Saskatchewan had asked to petition to join the compact. So with the other states--North and South Dakota, Colorado, Wyoming, New Mexico--it would seem to me that it must not be a problem for us. [LB820]

SENATOR HANSEN: Is our mutual aid going to go...ever go to Saskatchewan from Nebraska? [LB820]

SENATOR DAVIS: I would have a hard time believing that. [LB820]

SENATOR HANSEN: Or New Mexico? Either one is about the same difference. [LB820]

SENATOR DAVIS: I would say probably it's not going to be a lot of our volunteers that go, but they may call for equipment that we might have here. They might call for the SEAT and say, can you send the SEAT down? So, you know, there's a possibility that that could certainly happen, but, realistically, I would say probably the members that are closest to us would be the places where we might be called, and vice versa. I mean, for somebody to come from Saskatchewan to Nebraska would be, you know, a 1,000-mile trip. [LB820]

SENATOR HANSEN: Yeah. Thank you. [LB820]

SENATOR LATHROP: I have a question about this, and it's not about the work comp part necessarily. But this puts us in a...this bill would be passed so that we could participate in a compact regarding fighting range fires and forest fires. [LB820]

SENATOR DAVIS: Right. [LB820]

SENATOR LATHROP: Do the states that participate in the compact, Senator Davis, if you know, do they have similar legislation on the books so that if we went to Wyoming we would be treated the same as they'd be treated coming here? [LB820]

SENATOR DAVIS: The contract is the same for all the member...the associated

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members. So everybody will sign this same contract. And I'll let Jerry talk a little bit more about that. But it's a reciprocal arrangement. And so we had some...we had some discussion with some of our volunteer firemen; they were concerned that the language specifically called for the Forest Service. That's sort of open-ended. But the law...that's what the contract calls for as to who's the administrator. In reality in Nebraska, we think that will be Nebraska Emergency Management. [LB820]

SENATOR LATHROP: Okay. Maybe I'll ask it differently, if we struck a provision in here, one of these articles, would that keep us out of compliance so that we couldn't get in the compact? Or, maybe, put differently, are each of the provisions in your bill necessary for us to participate in the compact? [LB820]

SENATOR DAVIS: I'm going to defer that to Jerry Stilmock. [LB820]

SENATOR LATHROP: Okay. [LB820]

SENATOR DAVIS: But I do believe that they are all mandatory... [LB820]

SENATOR LATHROP: Okay, good. [LB820]

SENATOR DAVIS: ...Senator Lathrop. [LB820]

SENATOR LATHROP: Any other questions for Senator Davis? I see none. Thanks. Proponents of LB820. [LB820]

JAY TEMPLAR: Good afternoon and thank you for allowing me to come testify today. My name is Jay Templar, J-a-y T-e-m-p-l-a-r. I am the chief of the Gering Volunteer Fire Department and also the president of the Scotts Bluff County Mutual Aid Association, which includes all the fire departments in Scotts Bluff County and Banner County and Torrington, Wyoming. So the compact. I want to thank you guys last year for everything that the senate did in passing the legislation to help with the wildfires. Thankfully, we didn't have to use all that last year, after 2012. If you guys all remember very easily what happened in 2012...I've been around for 33 years; I've been on most of the major fires in the western part of the state in that time frame, so I have seen a lot of things that have taken place. And this compact would be a huge asset to the state of Nebraska. In 2006, fire was beating down on Valentine, Nebraska; the state, through the Governor's emergency fund, chose to bring in some outside resources to help with that. The same thing happened in Chadron and Crawford. The same thing in 2012 in the Niobrara Valley, when everything was going down there and those towns were threatened. The state, through the Governor's emergency fund, requested outside resources; same thing in Chadron and same thing in Crawford. The compact would be a quicker resource for us because it's basically a 48-hour commitment. When you're part of the compact, what they're asking for is those initial resources, and we only have to commit to 48 hours,

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whether we're receiving it or giving that response. So you can get closer resources. The question that came up about Saskatchewan or New Mexico, that would probably be the closer resources that would be used there, not necessarily us going. Doesn't say you can't do that, but all they ask for is that 48 hours. The state of Nebraska has made that decision, to call in those resources, at different times. This tool would be available to the Governor's emergency response. Does not change anything, does not give any fire department any different authority, except for...when we ask for that assistance from the state through emergency management now in any type of natural disaster, it goes through the county, then goes to the state and asks for that declaration. This tool would be used by the State Emergency Fund to bring in those resources quicker, maybe bring in some of their airplanes quicker, some ground resources quicker. But it also, in that other sense, would allow us as fire department members to go across those state lines and be involved with these mega-fires when they have them. The only way our resources are going to get better is for us to be able to go and participate in those same types of fires. The ten days, or whatever, we spent between the Wellnitz fire, the Douthit fire, and the West Ash fire in Crawford and Chadron in 2012 could not be duplicated in a training aspect. It would take many, many years for the type of, you know, experience that we got. Those same types of responses could be help. So I think the compact is...it's no money involved except for some administrative costs, unless you choose to call in those resources. And there's going to be no funds expended or anything else until that time comes. We've already done that. All this does is give another tool to the Governor and to the emergencies that would happen in our state and to allow us to go and participate in those fires elsewhere. So...but thank you for everything you've done so far. We think this is another step and an important part of what we need to do with the fires in the west. [LB820]

SENATOR LATHROP: Very good. Is it getting drier out there? [LB820]

JAY TEMPLAR: Yes. I mean, we've got...had snow early but nothing now at all. In fact, they were saying there was a fire earlier today someplace; I haven't heard all the information. But it was a prairie fire. [LB820]

SENATOR LATHROP: But just in historical terms, it seems like we're... [LB820]

JAY TEMPLAR: We're back where we were, probably, you know, in the early part of 2012 again, maybe not in extreme drought, but we're certainly dry again, so... [LB820]

SENATOR LATHROP: Okay. [LB820]

JAY TEMPLAR: ...yes. [LB820]

SENATOR LATHROP: Thank you for your testimony. [LB820]

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JAY TEMPLAR: Thank you. [LB820]

PARRISH ABEL: Good afternoon, Senators. My name is Parrish Abel. I'm a lieutenant with the Gering Volunteer Fire Department, and I'm also the District 1 director for the Nebraska State Volunteer Firefighters Association. I'm here today to let you know that the Nebraska State Volunteer Firefighters Association supports this bill wholeheartedly. If it wasn't for our volunteer firefighters out there, a lot of communities would be leveled today, especially up in the northwest part of the state. Nebraska is the largest state of volunteers in the United States. We pride ourselves as professional firefighters; we take that term to heart. We...as Chief Templar said, this is another tool in the toolbox. We can get assets on the ground quicker and faster to help keep the fire small. A fire that rages for 30 seconds doubles in size. So every 30 seconds it gets bigger. And with the winds in the state of Nebraska, all bets are off. So with this, we can get the assets on the ground quicker, faster, and hopefully, keep this fire small. So thank you. Any questions? [LB820]

SENATOR LATHROP: I see no questions. Thank you for coming all the way from Gering. [LB820]

JESSICA KOLTERMAN: Senator Lathrop, members of the committee, my name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I'm with the Nebraska Farm Bureau Federation; I come before you today on behalf of the organization. You've heard a little bit about the bill from Senator Davis, and we do want to thank him for LB634 last year. And also thank you for your support of that legislation, which was ultimately passed. When the wildfires happened in 2012, I had the opportunity to drive out and visit with our members across that area and talk to them about, you know, what was your experiences; what could have been done differently; how could we help you, at the state level? And one of the things I heard is, first of all, they were very quick to thank the people here, and they wanted us to pass along their thanks for everything the state of Nebraska did do to help them. But they also expressed some of their frustration with how long some of those responses took, because, as you heard from some of the gentlemen who testified today, every, you know, minute that goes by is more time for that fire to spread. And our understanding of this legislation is this would be another tool in the toolbox, if you will. Whatever we can do to help prevent those fires from getting out of control and spreading, we want to do, because it's a lot of resources that are expended and resources that are lost by members of ours across the state. So just want to put our word in, support for the legislation. And if there's any questions, I'd be happy to answer them. [LB820]

SENATOR LATHROP: I see no questions. [LB820]

JESSICA KOLTERMAN: Thank you. [LB820]

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SENATOR LATHROP: Thanks for coming, though. Appreciate it. [LB820]

JESSICA KOLTERMAN: This is my first time as well before your committee. [LB820]

SENATOR LATHROP: Yeah, I don't...yeah, I was going to say, I don't think we've seen you here before. [LB820]

JESSICA KOLTERMAN: Thank you. [LB820]

JERRY STILMOCK: (Exhibit 3) Thank you, sir. Senators, Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of LB820. Thank you to Senator Davis and the other cosponsors who have signed on to the legislation. I want to try to hit a couple quick points. Let me start with last November, 2013, the Government Committee held an all-afternoon hearing on LR341, which...this issue was a component of that. Without going through three hours of testimony, let me cut right to a gentleman that came in via audio and was able to testify out of Chadron. The gentleman's name was Joe Lowe. And he got things started for the Great Plains Compact in our area, out of South Dakota. And he hit on a couple of important points. One is the rapid and sustained initial attack on fires so they don't turn into the mega-fires, the 40,000- to 50,000-acre fires that we had. He also used the Great Plains Compact and compared it to what other states, particularly Nebraska, uses--and that is under the interstate compact agreement that Emergency Management has--and the steps and the procedures...he outlined five steps that would need to occur in order for an asset to be able to be brought in--hinged primarily on a state of emergency being declared by our Governor--compared that to the Great Plains Compact, that things would happen quicker, to get air support up in the air quicker to keep the fires to be small. Nebraska actually appears to be an island, somewhat, particularly in reference to the other compact states. Now, there's compacts, there's compacts, there's compacts. This afternoon we're talking about forest fire compacts. And in the handout, you have color-coded for you the different states that are members of the multiple compacts throughout the country. Does this mean anything to Ralston, Nebraska, volunteers? No. It means a great deal to the Panhandle and to the north-central portions of Nebraska where these agreements would be critical. My next point is in relation to the language of the compact. I've read through the language in each of the other four states of the Great Plains, of which they are members, and all of the language is the same. And so I ask a pointed question: What happens if one state changes a language of a compact? Well, you think in terms of a contract, and then if a term of the contract/compact were changed, then it would have to be approved by the other states. And I think for that reason, that's why...Senator Lathrop, the light is indicated red; may I conclude? [LB820]

SENATOR LATHROP: Well, I was going to ask you about the language in the bill and whether each of the articles of LB820 are necessary for us to be in compliance and

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participate in the compact. [LB820]

JERRY STILMOCK: I...I...I... [LB820]

SENATOR LATHROP: So if that's where you're going, I think it is... [LB820]

JERRY STILMOCK: Okay, thank you. [LB820]

SENATOR LATHROP: ...you may answer that question. [LB820]

JERRY STILMOCK: It's my...sir, it's my understanding they are. And if Nebraska were to change any of those, then the domino effect would be those other states would have to go back and approve any modifications. So...and I think that's why each of the other four states at this point, they have all agreed and chimed in with that exact same language. [LB820]

SENATOR LATHROP: The exception of that would be...so in terms of...just for my benefit as the Chair of the committee and if this gets on the floor and somebody tries to amend it, is the answer, "You can't amend this without affecting our ability to participate in the compact"? [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR LATHROP: Except for Article IX, Section 2. That, apparently, given Senator Davis' testimony, is something we can work with. [LB820]

JERRY STILMOCK: Yes, sir; very good. Section 1 encompasses the compact; Section 2 is a derivative that I was...I was concerned about. And I was concerned about it for this reason. Under the workers'...and perhaps that's why the bill ended up with you instead of with Government, given that Government had seen the issue previously. If I may? [LB820]

SENATOR LATHROP: Yeah. [LB820]

JERRY STILMOCK: Thank you, sir. Statute 48-115, the Workers' Compensation Act describes when a volunteer can take that person's workers' compensation benefits and move on outside the jurisdiction. The existing law, 48-115, describes that the chief of that particular volunteer department can delegate that volunteer to leave Syracuse and go to another community. Here, it caused me concern because we're not talking about going to another community within the state, we're talking about leaving the state. And that's why, in Senator Davis' amendment this afternoon that he broached with you, in AM1731, where it would require that volunteer to provide a certificate of insurance to show that...if I'm from Gering, I have to present the compact administrator with a

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certificate of insurance showing that I will have that protection even if I respond to the compact outside of the state of Nebraska. [LB820]

SENATOR LATHROP: But isn't the point of this bill...that if somebody comes in here from Wyoming and they're going to pitch in and help out, that if they're in Nebraska they're going to be covered under our Workers' Comp Act... [LB820]

JERRY STILMOCK: They're going to... [LB820]

SENATOR LATHROP: ...and the benefits would be paid from...by Nebraska and not Wyoming? [LB820]

JERRY STILMOCK: Senator, it's my understanding that that Wyoming firefighter would come in and they have to provide protection under Wyoming law. [LB820]

SENATOR LATHROP: Okay. [LB820]

JERRY STILMOCK: And so to reciprocate...and that...they reciprocate. If a Nebraska firefighter was to leave, that Nebraska firefighter, who would they be called by, who would they be directed by? Not by their fire chief but by the state compact administrator. And to have a clear intent, to make sure we had volunteers covered...Nebraska volunteers covered going to Colorado, going to these other compact states, that that Nebraska volunteer firefighter would have to provide that proof of insurance outside of... [LB820]

SENATOR LATHROP: So once the guy from Gering goes to South Dakota to fight a fire and he gets hurt, he comes back to Gering and makes his work comp claim. [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR LATHROP: Okay. I got it. [LB820]

JERRY STILMOCK: Yes, sir. Thank you. [LB820]

SENATOR LATHROP: Senator Hansen. [LB820]

SENATOR HANSEN: I have one question. Thank you. Mr. Stilmock, on page 3, lines 17 through 21... [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR HANSEN: ...this looks like an exclusion. Is this...? It's a part of Article V. So is every one of the...state in this compact binding under that? Any "member state or its

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officers or employees," none of those are "liable on account of any act or omission" to what they do while they're out of state. [LB820]

JERRY STILMOCK: I... [LB820]

SENATOR HANSEN: That seems like a big...big loophole or something. [LB820]

JERRY STILMOCK: Yeah. Let me try to respond... [LB820]

SENATOR HANSEN: Okay. [LB820]

JERRY STILMOCK: ...because I read that with the same, perhaps, concern as you've spoken this afternoon. And to the extent that before I, on behalf of my clients, even submitted it to Senator Davis, I, for what it's worth, Senators, I circulated it throughout the country to see what other states, not just the Great Plains Compact of four but as many responses as I could get. And though the Great Plains member states are all the same language, in the other portions of the country where there are other compacts, there is similar language, very close to being the same language, but all the responses came back the same as...that one should read all three paragraphs together. The first paragraph sets forth that the duties, the responsibilities, the immunities, the privileges are going to be imposed upon those that are coming in to render aid inside this state. So it's unnumbered paragraph...I say paragraph 1, but the first paragraph, lines 10 through 16; and then one gets to lines 17 through 21 that you recited. And, frankly, Senator and all the senators, as I submitted that very question out to others, I had two common responses: it's never been an issue--take that's for what it's worth--it's never been an issue in any of the other states and any of the other compacts; and secondly, as read as a whole, that does not mean that...this language in Article V does not mean that South Dakota, a firefighter could come into Nebraska, run a red light with their fire truck, in response to the compact, and escape liability. That outside state would have the same responsibilities as do Nebraska responders inside the state, sir. So I raised the question up the flagpole, and those were the responses I received, sir. [LB820]

SENATOR HANSEN: Okay. So again, I'll ask the same question that Senator Lathrop did. These articles have to all be passed in order to gain access to the compact... [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR HANSEN: ...that's correct? [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR HANSEN: I imagine at some point we should talk about the fiscal note and

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the university. Is there going to be a university testifier? Okay. He's shaking his head back there. I won't ask you about that. This is a very interesting map you show here. It looks like Nevada, Colorado (sic--California), Arizona, New Mexico, and Utah are just kind of out there by themselves too, and you think of smokejumpers in that area. And then all the blue area has a lot of forested area, where there's going to be smokejumpers involved. I assume that we probably won't have smokejumpers in the state of Nebraska. [LB820]

JERRY STILMOCK: There was a cough; I'm not sure I heard what you said. But I thought you said, we ought to make sure we have some smokejumpers in Nebraska. [LB820]

SENATOR HANSEN: No, we should not have smokejumpers in the state of Nebraska. You know, when we were talking about mostly range fires, unfortunately been to too many of them, but when you include trees in the mix, then we have a real problem, because we can't fight a tree fire with a ground unit. [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR HANSEN: And that's for the plane that Senator Davis came up with last year. Luckily, we didn't have to use it last year... [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR HANSEN: ...but we never know about this year. But the states Colorado, Wyoming, they're all quite forested too. Would we be called up there for...and that's probably a question for Senator Davis. Wouldn't we be called up to those other states to fight forest fires? Because we're not used to that in Nebraska, either, other than we have a plane now. [LB820]

JERRY STILMOCK: Yes, it is possible. And the way I would envision that would happen is that our compact administrator in Nebraska, under the compact, would solicit those that would want to be a part of the roster for Nebraska, in order to leave...and leave the state of Nebraska. Yes. May I respond to...thank you. The other portion, as you referenced the state forester, and if that person was in the room, the language in Article III, it's on page 2, beginning at line 18; it references a "state forester." It's my...that the state forester may be the compact administrator. "May be" is what we all take it to mean at this table and in this room: it's discretionary. I would expect that if...if this bill were to become law, the Governor would appoint whom he wanted to be as compact administrator. And it could be the Nebraska Emergency Management, or it could be the state forester. It doesn't mean it has to be both. And when it becomes one, then maybe the fiscal note on one of those agencies disappears. And the other...and the final thought, if I may, I also asked pointed questions of the four compact administrators in

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the Great Plains; and I said, in anticipation of the fiscal note, I said, "What does it cost to play? What is your state paying, in South Dakota?" And they said, "Look, Jerry, it's about \$3,000." It's about \$3,000 to send somebody to a regional meeting for the Great Plains, to send somebody for a national meeting for all the compacts for forest fighting. And that's the expense. Any funds that would go out for firefighting, for aerial support, those would still come out of the...my understanding, my belief anyway, would they would come out of the Governor's emergency fund. [LB820]

SENATOR HANSEN: Thank you. [LB820]

JERRY STILMOCK: I went on quite long. Thank you, Senator Lathrop... [LB820]

SENATOR LATHROP: That's fine. That's fine... [LB820]

JERRY STILMOCK: ...for this privilege. And thank you, Senators. [LB820]

SENATOR LATHROP: ...we needed a little bit more explanation about this compact. So I appreciate your responses. [LB820]

JERRY STILMOCK: Yes, sir. Thank you. [LB820]

SENATOR LATHROP: I think that's it. [LB820]

JERRY STILMOCK: Yes, sir. [LB820]

SENATOR LATHROP: Any other proponents here to testify in support of LB820? Anyone here in opposition to LB820? [LB820]

SENATOR CHAMBERS: Only an arsonist. (Laughter) [LB820]

SENATOR HANSEN: There's some of those. [LB820]

SENATOR LATHROP: Wait. [LB820]

JON REHM: Not an arsonist. [LB820]

SENATOR LATHROP: Uh-oh, we had somebody stand up. [LB820]

SENATOR CHAMBERS: Oops. [LB820]

SENATOR LATHROP: Or a trial lawyer. (Laughter) [LB820]

JON REHM: I'm a trial lawyer, which is probably worse, for a lot of people. So...Jon

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Rehm, on behalf of the Nebraska Association of Trial Attorneys. And I have been instructed to oppose LB820 as written, not specifically the thrust of the bill, but specifically the immunity provisions, first of all, that are in Article V: just a confusion whereas, you know, if the state's employees are liable for anything a member state's employees have done. So there's some confusion as to liability. Also, for the sake of workers' compensation, you know, which...if we have a Nebraska firefighter who gets hurt in another state, you know, whose compensation is paid on that? So those are the concerns we...the trial attorneys have on this. It's not with the thrust of the bill; it's not with the fire compact. It's just with some of the liability issues. And that's why we're opposing it as written. We hope it could be worked out in committee and with the proponents of it. So that's all. [LB820]

SENATOR LATHROP: Okay. [LB820]

SENATOR CHAMBERS: Just... [LB820]

SENATOR LATHROP: Senator Chambers. [LB820]

JON REHM: Yes. [LB820]

SENATOR CHAMBERS: I didn't know you were coming up when I said, "Only an arsonist." (Laughter) [LB820]

JON REHM: I used to like "Beavis and Butt-Head," and I used to like fireworks when I was a kid, so... [LB820]

SENATOR CHAMBERS: Okay. But here's...here's what I was going to ask: Does the organization have any ideas along the lines as to how to address the issues, or they just thought something definite or more precise ought to be said? [LB820]

JON REHM: Well, I mean, one idea we have on the comp would be, maybe if you're to instruct a...if you're sending somebody out, you know, give them the option to take Nebraska, you know, as to which comp they want to have. And most of the time you probably would want to have Nebraska workers' compensation, you know, so... [LB820]

SENATOR CHAMBERS: The person would be able to do that, or whoever is assigning? Who would make the choice, the individual firefighter or the...whoever is assigning? [LB820]

JON REHM: Well, one thing that...I don't think we've really talked about it. One thing that could...could work...that would work would be, for example, like, with physician choice, under the Rule 50, you know, the firefighter would give...would give out the...the employer would give to the employee a physician choice: now, you can choose, you

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know, your doctor, or you can choose this; and maybe have a form like that, where you could, you know, make sure that you're covered by Nebraska workers' compensation on that. [LB820]

SENATOR CHAMBERS: But it's the person who would be covered who would make the choice. [LB820]

JON REHM: Yeah, ideally. I mean, basically, I mean, again, we're not against the fire compact; we just want to make sure that the liabilities and the people are covered on that. [LB820]

SENATOR CHAMBERS: Sure. [LB820]

SENATOR LATHROP: From the work comp point of view, Section 2, it would be easy enough just to say that if one of...if a state of Nebraska firefighter goes to a requesting state, they remain a volunteer fireman or a fireperson, a firefighter, from the agency in which they left, even though they're working in another state. Then they're covered. [LB820]

JON REHM: Correct. Yeah. [LB820]

SENATOR LATHROP: Which solves the problem. [LB820]

JON REHM: Yeah. That's...and that's the only reason we spoke...only reason we're opposed... [LB820]

SENATOR HANSEN: Section 2. [LB820]

JON REHM: ...opposing it as written. [LB820]

SENATOR LATHROP: Pardon me? [LB820]

SENATOR HANSEN: All those changes would be in Section 2? [LB820]

SENATOR LATHROP: They'd be in Section 2. [LB820]

SENATOR HANSEN: Yeah. Which we can change. [LB820]

SENATOR LATHROP: We can change...the immunity language is a little...kind of hard to understand. And we can talk about that too... [LB820]

JON REHM: Yeah. [LB820]

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SENATOR LATHROP: ...determine how much...if there's any play in that at all, so that we can clarify it. But thank you. Appreciate your testimony. Is there anyone else here in opposition to LB820? Is there anyone here in a neutral capacity to testify on LB820? Good afternoon. [LB820]

SCOTT JOSIAH: (Exhibit 4) Good afternoon. My name is Scott Josiah. I'm the state forester and director of the Nebraska Forest Service, which is part of the University of Nebraska. Senator Lathrop, members of the Business and Labor Committee, Senator Davis, and colleagues, thanks for this opportunity today to testify in a neutral capacity on LB820. I'll repeat much of what you've already heard today, but let me go forward anyway. The catastrophic wildfires of 2012 and the increased frequency of very large and intense wildfires have severely stressed Nebraska's wildland fire suppression system. Unlike most other states, Nebraska does not maintain any state-level wildfire suppression capacity and instead depends wholly on volunteer fire districts for initial and sustained suppression of wildfires. We don't have any state assets, to speak of. Unfortunately, after a few days of suppressing rapidly growing large and intense wildfires, volunteer firefighters are exhausted; the in-state mutual aid system is severely stretched; and capacity to continually, effectively, and safely fight a growing wildfire with existing resources is diminished. Most replacement volunteers or National Guard firefighters come from out of the area where we usually have big forest fires, and they have little to no training or experience in forest fire suppression. Other than calling in expensive outside help such as a federal Type I or Type II incident management team--those cost nearly \$1 million a day--there is no backup capacity within the state to provide additional assets or on-the-ground firefighters for sustained firefighting. To address these critical gaps in forest fire suppression capacity, the Legislature took a really important first step last year in passing the Wildfire Control Act of 2013, which improved initial attack capabilities, with our SEAT and some other actions. Joining the Great Plains Interstate Forest Fire Compact would build on that legislation by, one, enabling rapid sharing of an expanded array of firefighting assets--and that means equipment, engines, airplanes, and people--to and from neighboring states; improving the speed of resource deployment on rapidly intensifying wildfires--where time is absolutely of the essence--helping to reduce fire size and damage; and, three, reducing costs for obtaining suppression assets. The cost of bringing in state assets from other states is much cheaper than federal assets. Nebraska is currently one of the few states in the region that is not participating in the Great Plains Interstate Forest Fire Compact. Should Nebraska join this compact, as I understand it, the Governor will determine whether myself--the state forester--or NEMA will serve as compact administrator. Thank you again for this opportunity to provide testimony. I'd be glad to answer any questions that you might have. [LB820]

SENATOR LATHROP: You're testifying in a neutral capacity, and I'm trying to get a sense of where you're at on this bill. I appreciate you came here to give us information, and that was the nature of your testimony. Is this a good idea or a bad idea, from your

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point of view as the state forest director? [LB820]

SENATOR CHAMBERS: He's neutral. He's neither hot nor cold. [LB820]

SENATOR LATHROP: I'm trying to smoke him out. (Laughter) Is this a good idea for the state? [LB820]

SCOTT JOSIAH: I believe that... [LB820]

SENATOR LATHROP: I mean, it will help us? [LB820]

SCOTT JOSIAH: ...this would be a valuable addition to the state. [LB820]

SENATOR LATHROP: Okay. [LB820]

SENATOR CHAMBERS: So if you could take a position, you would be for it. [LB820]

SCOTT JOSIAH: I'm not sure I can say that. [LB820]

SENATOR LATHROP: If the boss would let you. (Laughter) Okay. [LB820]

SCOTT JOSIAH: Any other questions? [LB820]

SENATOR LATHROP: Senator Hansen. [LB820]

SENATOR HANSEN: Oh. Go ahead. Were you done? [LB820]

SENATOR LATHROP: I was just going to ask you if you have a comment on the fiscal note, then. [LB820]

SENATOR HANSEN: Yeah, that's what I... [LB820]

SCOTT JOSIAH: Oh, okay. The Nebraska Forest Service has very limited capacity in terms of staffing, especially in fire. We don't have...again, we don't have a state fire suppression organization. Normally, the state forestry agency has...operates the state fire suppression organization. We don't have that; we've chosen not to do that. We pour all of our resources, federal and state resources, into building and supporting the volunteers, the volunteer system. As such, we have a very small staff, and we channel almost all of our funds to the volunteer fire departments. So when we saw this and we saw that the state forester would be potentially the compact administrator, we felt like we needed staff to implement it properly. It calls for... [LB820]

SENATOR LATHROP: So you need two whole people? [LB820]

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SCOTT JOSIAH: Yeah. That's what we thought initially, yeah. [LB820]

SENATOR LATHROP: Two whole people? [LB820]

SCOTT JOSIAH: Well, one would be the compact administrator. And it involves developing collaborative agreements and doing inventories across all the states and all the different cooperators, including our own state, figuring out what we could...signing up people ahead of time, signing up volunteers and volunteer fire districts ahead of time so that they would be ready to go and approved to go out of the state. So we'd have all the various aspects worked out. And then whenever there's a fire, there's a lot of financial, bookkeeping type of information that each fire district would have to do, whether they're coming from another state or we're sending them... [LB820]

SENATOR LATHROP: Is there an offsetting benefit? When we look at the fiscal note, it's an administrator and then you have an accountant. [LB820]

SCOTT JOSIAH: Yeah. [LB820]

SENATOR LATHROP: So there's...you...you added stuff to the expense ledger, but is there a savings that offsets that? [LB820]

SCOTT JOSIAH: Well, the savings would be considerable, because after three days of volunteer firefighters attacking a large and growing wildfire, there's really not many options. Right now the option is, well, we call in a Type II team, again, at \$1 million a day. And that takes two days to get here, too, versus calling in resources from South Dakota that takes a couple of hours to get here. Two hours, the fire is not that much bigger. It's just much cheaper to control; it's much smaller; it's much less intense. We can keep it small; we can keep the damage low. And the assets that we're bringing in from other states are much cheaper than they are at the federal level. So it's sort of a time issue; it's also the cost of the assets themselves. [LB820]

SENATOR LATHROP: Okay. Thank you for your testimony. Oh, Senator Hansen. [LB820]

SENATOR HANSEN: I had one quick question. What is the size of the Nebraska forest? [LB820]

SCOTT JOSIAH: We have 1.5 million acres of forest in the state. [LB820]

SENATOR HANSEN: And that includes rivers? River basins? [LB820]

SCOTT JOSIAH: Right. Yeah, that includes our riparian forests, our pine and cedar

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forests. That number is growing by 40,000 acres a year. [LB820]

SENATOR CHAMBERS: Where? Where is it growing? [LB820]

SCOTT JOSIAH: All over the eastern part of the state, central and eastern part of the state. And it's almost entirely eastern red cedar. [LB820]

SENATOR CHAMBERS: Okay. [LB820]

SENATOR LATHROP: Yeah, that's not a desirable forest. I think that was... [LB820]

SCOTT JOSIAH: For most people that's... [LB820]

SENATOR LATHROP: ...part of Senator Davis' bill, was to eradicate... [LB820]

SCOTT JOSIAH: That's... [LB820]

SENATOR LATHROP: ...those things. Right? [LB820]

SCOTT JOSIAH: I'm not sure what he could...we would take an awful lot of money to eradicate 38,000 acres of new forest every year. We have to find other solutions... [LB820]

SENATOR LATHROP: That's just the invasive red cedars growing up... [LB820]

SCOTT JOSIAH: That's right. [LB820]

SENATOR LATHROP: I see them on the ride home from Lincoln. [LB820]

SCOTT JOSIAH: That's right. [LB820]

SENATOR LATHROP: Okay. Any other questions? Senator Wallman. [LB820]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for being here. [LB820]

SCOTT JOSIAH: Sure. [LB820]

SENATOR WALLMAN: In regard to the acres of forest we have as a state, is there any programs that suppress fires so that they're easier to put out? You know, like pathways? [LB820]

SCOTT JOSIAH: We have a very extensive fuels reduction program in the Niobrara

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Valley, the Pine Ridge, the Wildcat Hills, and now growing into some of these cedar...areas that are covered in cedar, so that we go in and we thin, we remove a lot of the trees. We still maintain a forest, but we remove a lot of the trees, pull it off site, and, if we can, utilize that material. Chadron State College is heated and cooled with wood; the Nebraska College of Technical Ag at Curtis is heated and cooled with wood; the Arbor Day Foundation's Lied Lodge is heated and cooled with wood. We're trying to find more opportunities for using that wood that we use to thin out...that comes from thinning forests. [LB820]

SENATOR WALLMAN: Thank you. [LB820]

SCOTT JOSIAH: Sure. [LB820]

SENATOR LATHROP: Senator Chambers. [LB820]

SENATOR CHAMBERS: You're reducing or thinning forests in the Pine Ridge? [LB820]

SCOTT JOSIAH: Um-hum. [LB820]

SENATOR CHAMBERS: Why? [LB820]

SCOTT JOSIAH: Well, because the fuels are historically far too...the trees are far too dense. There's far too much fuel in those forests than there has been historically or, really, there should be. It's a fire-adapted landscape, and we haven't had fires go through, small fires, in a long time. So when we do get a fire, we have far too much fuel, it's been hotter and drier over the last ten years, and we get these mega-fires that we cannot control. So if we reduce the fuels, the fire stays much less intense, it stays on the ground, it's much more easily controlled, and the damage is far less, and the costs are far less. [LB820]

SENATOR CHAMBERS: And if there are no human beings involved, some of those fires would be just a natural occurrence, and they would help do away with a lot that ought to be done away with, and a lot of reforestation would take place naturally. [LB820]

SCOTT JOSIAH: They would. But we're now in a situation, because of nearly a century of fire suppression, of any fire, that the fuels are so high that when we do get a fire in there, it's an incredibly intense fire, it's a crown fire, and it sterilizes the entire system. [LB820]

SENATOR CHAMBERS: Suppose there were no human beings in the area, would you then just let them burn? [LB820]

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SCOTT JOSIAH: Well... [LB820]

SENATOR CHAMBERS: Let nature take its course, in other words? [LB820]

SCOTT JOSIAH: And we would end up with, basically, large mega-fires until all the fuel was consumed. And... [LB820]

SENATOR CHAMBERS: Until all what? [LB820]

SCOTT JOSIAH: All the fuel was consumed. [LB820]

SENATOR CHAMBERS: And how far would that be? [LB820]

SCOTT JOSIAH: Well, we've lost two-thirds of the Pine Ridge in the last 30 years. [LB820]

SENATOR CHAMBERS: Has it started to grow back? [LB820]

SCOTT JOSIAH: Some of it is; much of it is not... [LB820]

SENATOR CHAMBERS: Okay. [LB820]

SCOTT JOSIAH: ...because the fires were far too intense. [LB820]

SENATOR CHAMBERS: Thank you. That's all I have. [LB820]

SCOTT JOSIAH: Sure. [LB820]

SENATOR LATHROP: I think that's it. Thank you for your testimony. Appreciate it. Anyone else here to testify on LB820 in a neutral capacity? Seeing none, we do have letters of support from the State Volunteer Fire Association, again Bill Lundy; from...neutral, from Major General Daryl Bohac on LB820; and a letter of support from Dave Kadlecek, which will all be made part of the record. And with that, we'll have Senator Davis to close. (See also Exhibits 5 and 6) [LB820]

SENATOR DAVIS: Thank you, Senator Lathrop. I just wanted to hit a few of the points that you...you've already heard all this testimony already. But the 2012 fires, the cost to the state and through the NEMA program was around \$12 million. When we had our interim study this year, NEMA came and did testify to the fact that it took half a day, from the time somebody at the local fire site called for response from NEMA, for NEMA to come. So if you figure the fire doubles every 30 seconds and you get these kind of winds, you can see how rapidly this gets out of control. We need to expedite that and make it more...give us more ability to be flexible and bring resources in from other

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states. We have a huge, long, extensive border with South Dakota, Colorado, and Wyoming. And most of those places are much closer to resources than we are. For example, you know, Rapid City is a neighboring city of 50,000 people. Probably more resources there than in the entire Panhandle. These fires in 2012 were extremely scary. And we were just so lucky we didn't lose any lives. And Senator Hansen made a point about folks not really knowing how to deal with forest fires, but, in reality, that's what we were dealing with in 2012, was forest fires in the Pine Ridge and the Niobrara Valley. And those were hot and very destructive, and we were extremely lucky nobody lost their life there. So if we can bring in a SEAT out of South Dakota, if we can expedite this thing and get this down to an hour, we might be able to get these fires put out really quickly and save property and lives. You know, as I said earlier, 19 folks died in Arizona this last year; that's the last thing that we want in this state. A few of the other points I wanted to make. Yesterday we had a fire at Battle Creek which called for evacuation of the community. And I'm not sure exactly...I mean, there was a lot of mutual aid that came in there. But a fire like that, you know, if you need a SEAT and it's somewhere you can call it in...because, as I say, saving time is really all about how you prevent loss. The contract calls for a 48-hour commitment, so we're not going to be there for weeks and weeks; we come in, we deal with what we're dealing with, and we can go out. There is training that is required for the men that are going to go. Mr. Stilmock has told me he thinks that, you know, probably most of the departments will have just a very few people that want to step up and do that, maybe 30 to 40 people in the state. But it's really more the resources that we're going to share that's probably going to be the best part of it. And then I wanted just to readdress this issue of the workers' comp, because it is...the constitution and the language in the statute is sort of vague and kind of confusing. So after looking at this very closely, we decided the best thing that we could do was try to protect the state by having the volunteer and the community that he is living in be the provider of that insurance. And I talked to Mr. Stilmock about how are we going to do that. We decided the best way for us to do that was to have the volunteer provide NEMA or the manager with the document stating that they have been covered by workers' comp. So if there are no other questions, I'll finish my... [LB820]

SENATOR LATHROP: The guy from Wyoming that comes to Nebraska...let's say you've got a fire in the Pine Ridge, for example; somebody from Wyoming jumps across the border to help put it out. Is it your thought that that person would be covered by Wyoming work comp? [LB820]

SENATOR DAVIS: Yes. [LB820]

SENATOR LATHROP: So all of the states are going to have a similar provision that says, whether they're fighting a fire in Nebraska or in a requesting state, they will be employees of Nebraska, whatever... [LB820]

SENATOR DAVIS: Of the state in which... [LB820]

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SENATOR LATHROP: ...fire district they come from. [LB820]

SENATOR DAVIS: ...from which they come from. I don't know how other states do it. You know, South Dakota has about 30 paid firemen and then 60, I think, 60-some part-time firemen that fight fires. It's a totally different approach to how to deal with fire than we have. And those guys are extremely well trained--our men are extremely well trained too--but it's just different since they're employees. But I believe that we've taken care of the workers' comp issue with the amendment that we have. [LB820]

SENATOR LATHROP: Okay. Very good. I see no other questions. [LB820]

SENATOR DAVIS: Okay. I will provide you with a copy of Joe Lowe's testimony from the interim study. I think that would be valuable for you. [LB820]

SENATOR LATHROP: Good. Good. Appreciate it. Thank you, Senator Davis. That will close our hearing on LB820 and bring us to LB824. Senator Lautenbaugh. Good afternoon. You don't look like Senator Lautenbaugh. [LB820 LB824]

BRENT SMOYER: You know, I'm going to actually take that as a compliment, Senator. (Laughter) [LB824]

_____: Oh. [LB824]

SENATOR LATHROP: He might as... [LB824]

BRENT SMOYER: Oh, hey, hi-oh. It's a little late in the afternoon. (Laugh) [LB824]

SENATOR LATHROP: He might as well too. [LB824]

BRENT SMOYER: No. Mr. Chairman, members of the committee, I am not Senator Lautenbaugh. My name is Brent Smoyer, S-m-o-y-e-r; I work for Senator Lautenbaugh. He extends his regrets he could not be here. He had to be up in Omaha for a hearing, so has, as Elvis has, left the building. So I will be taking the introduction here for LB824, and I'll make her short and sweet and we can move along. Basically, LB824 is designed to answer one of the questions left unanswered by the Nebraska Supreme Court in their cases Manchester and Zwiener, namely, the question is whether an employer should be required to pay temporary total disability to an employee whose misconduct results in separation from employment when the misconduct is unrelated to the work accident and the employer could have accommodated the temporary restrictions. In Manchester, an employee was terminated where the misconduct in question was the same conduct that caused the action. And in the Zwiener case, there was a situation where the employer was accommodating the temporary restrictions and the employee voluntarily left to go

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work elsewhere. In each instance, the court rejected the employer's arguments and required that the employer continue paying the temporary total disability notwithstanding the separation from employment. In a much more recent case, Cargill v. Cooper, the parties stipulated that the termination was for cause, in writing, and was unrelated to the workplace injury. But, notwithstanding the stipulation of the parties, the court ruled that the employee was entitled to continued payment of temporary total disability benefits. So essentially what LB824 would do is take the Cargill decision, where the court clearly indicated employees were entitled to payment of temporary total disability even in the case where there was blatant misconduct resulting in termination that were totally unrelated to workplace injury, and kind of flips it around and says, well, if you were eliminated for something like sexual harassment, just workplace misconduct in general that was unrelated to the injury, there really is no reason to keep paying them, just as they would not continue to pay them a salary because they were separated from termination. I do believe there are experts in workers' compensation who will be following. Clearly I am not such an expert but would be happy to take any questions on the very basic groundwork. Otherwise, I do know Senator Lautenbaugh would probably waive closing, given the fact he's gone. [LB824]

SENATOR LATHROP: Okay. No questions. Thanks. [LB824]

BRENT SMOYER: Thank you. [LB824]

SENATOR LATHROP: Those who care to testify in support of LB824, you may begin coming forward. [LB824]

TIMOTHY CLARKE: Thank you, Senator... [LB824]

SENATOR LATHROP: Welcome. [LB824]

TIMOTHY CLARKE: ...Lathrop. Members of the committee, my name is Timothy Clarke; last name is C-l-a-r-k-e. I am an attorney with Baylor Evnen, and I'm here on behalf of Nebraskans for Workers' Compensation Equity and Fairness in support of LB824. And I think there are three or four reasons that we're in support of LB824. Number one, as was pointed out during the opening, there is a fair amount of uncertainty created by the court's decision in the Zwiener case and the Manchester case, particularly as it relates to terminations for cause that occur post-accident and are unrelated to the work accident and what happens to temporary total disability in that situation. Number two, I think, without some sort of clarification, employers can be put in a difficult situation, especially if the misconduct is egregious, and they may be forced to treat individuals with workers' compensation claims different than they would treat any other employee who engaged in that misconduct. Number three, I think the statute applies to the very limited situation that is left unanswered by the court in Zwiener and Manchester; and, again, that is when the employee misconduct that leads to the termination occurs after

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the accident and is wholly unrelated to the accident and the employer is ready, willing, and able to accommodate the temporary restrictions on an ongoing basis. And, finally, I do think there is a public policy reason for the statute; and the idea is, if an employee is engaging in misconduct totally unrelated to the work injury and...that employee should not be given a windfall and receive workers' compensation disability benefits, because the cause of the total disability is the employee misconduct and not the work injury. As was pointed out, both Manchester and Zwiener address issues of termination or separation from employment, but they don't relate to misconduct that occurs after the work injury that is unrelated to that. And I think, as it relates to the public policy reason, you know, if you take an individual, an employee, who has a work injury, it's compensable, that individual has restrictions, is coming back to work but, let's say, is severely intoxicated and shows up at work. The employer has a policy against that, clearly would have a justifiable grounds for terminating that individual. Without this clarification, the employer is in a tough situation: they either don't terminate the individual and treat this individual differently than they would other individuals or they terminate the individual but have to pay temporary total disability on an ongoing basis. So those would be the reasons that we support... [LB824]

SENATOR LATHROP: Senator Chambers. [LB824]

SENATOR CHAMBERS: You're a practicing lawyer, correct? [LB824]

TIMOTHY CLARKE: That is correct. [LB824]

SENATOR CHAMBERS: Okay. I'm trained in the law in the sense of having a legal education, but I don't belong to the bar association; I'm not a practicing attorney. So I need a little bit of help from you. If the court has ruled in three cases, and if those fact situations arose, you know exactly how the court is going to rule, don't you? [LB824]

TIMOTHY CLARKE: Well, with respect to the Zwiener and Manchester cases, those were decided by the Nebraska Supreme Court and would be considered precedent in the state of Nebraska, and the trial court judges would be bound by those specific fact scenarios. The Cooper v. Cargill case is not a Nebraska Supreme Court case; that was decided at the trial level and would not be considered precedent-setting, if you will. I think that case is on appeal, but the Nebraska Supreme Court has not addressed that case. So the long answer, I guess, would be the particular factual scenario that's addressed by this statute was not addressed by the Supreme Court in either the Zwiener or the Manchester cases. [LB824]

SENATOR CHAMBERS: But in this case that was decided at the trial court level but is now on appeal would result in a decision by the Supreme Court that would bring clarity; is that true or false? [LB824]

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TIMOTHY CLARKE: Well, it may be; it depends on whether the case ultimately is decided by the court. And there are a lot of factors that go into whether or not a case ultimately goes on appeal and then is decided by the court. [LB824]

SENATOR CHAMBERS: Has an appeal been filed, do you know? [LB824]

TIMOTHY CLARKE: I believe it has, but I can't say with certainty. [LB824]

SENATOR CHAMBERS: And you think the court would say, we're not going to accept this appeal? [LB824]

TIMOTHY CLARKE: Well, the case could resolve before briefs are filed, before...it would go to the Court of Appeals first, and then it could potentially go up to the Supreme Court after that. [LB824]

SENATOR CHAMBERS: Then, in the interest of efficiency--and it is a legal question, there is a record that has been established in the trial court, and it's ripe for appeal--why don't we just let the court system run its course? [LB824]

TIMOTHY CLARKE: Well, I guess the short answer is we don't know, ultimately, what's going to happen. [LB824]

SENATOR CHAMBERS: Well, we never do until the court rules. [LB824]

TIMOTHY CLARKE: Sure. [LB824]

SENATOR CHAMBERS: So if there's an issue in a trial court and it's going to go on appeal, should the Legislature step in and take one side or the other because it's being asked to do that and therefore make whatever the Supreme Court does irrelevant or put the court in a position to say, there's no reason for the court to act, because the Legislature has acted. And we can do that in any case that is highly controversial, that is on appeal but hasn't been decided yet, couldn't we? The Legislature could do the court's work for it. [LB824]

TIMOTHY CLARKE: Well, the Nebraska Workers' Compensation Court, as a court, is a court of limited jurisdiction; it's not a court of general jurisdiction. And so it is only...it can only do what the Legislature specifically grants it authority to do. In cases where there is a question as to whether a decision from the Nebraska Supreme Court applies or does not apply, it would certainly be within the province of the Legislature to better define, since that is the purpose of the Nebraska workers' compensation system, is its legislative... [LB824]

SENATOR CHAMBERS: But this particular case has not run the gantlet yet, has it?

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[LB824]

TIMOTHY CLARKE: Yeah, and I can't say with certainty, because I was not involved in that case, whether, in fact, an appeal is on file. And I did not look to see in the Court of Appeals docket if the case was currently on appeal. [LB824]

SENATOR CHAMBERS: Okay, that's all I would ask you. Thank you. [LB824]

TIMOTHY CLARKE: Thank you. [LB824]

SENATOR LATHROP: Tim, I do want to ask you some questions to illustrate a problem that I can foresee. And I'm going to give you a hypothetical. Somebody is working at a manufacturing concern; the boss has taken off the guards; his hand gets smashed, and he has care and some surgery and then goes back to the employer. Right? And the employer fires him for a small infraction, something that some other people get by with. But it might be an infraction in the rule book--may or may not be, but could be. Then the guy needs more surgery. Now we're going to do a below-the-elbow amputation, and he's going to be off work for eight weeks. This bill would say to that guy who was hurt because the employer took the guards off or because a coworker ran him over with a forklift or whatever the reason may be: you're not getting any disability benefits while you're recovering from this surgery that was caused by the work-related accident, because we terminated you for cause. Right? [LB824]

TIMOTHY CLARKE: I don't know that the bill would say that. I am out of time, so can I have... [LB824]

SENATOR LATHROP: No, you're not...no, you've got time when you're... [LB824]

TIMOTHY CLARKE: Okay. [LB824]

SENATOR LATHROP: ...answering my question. [LB824]

TIMOTHY CLARKE: Sure. I think the answer to that is twofold. Number one, under this bill, I think the burden would be on the employer to show that the termination was, in fact, for cause. [LB824]

SENATOR LATHROP: And where would that...let me stop you there... [LB824]

TIMOTHY CLARKE: Sure. [LB824]

SENATOR LATHROP: ...because here's the question. If I'm working for somebody, and I'm a construction worker, I'm working in a manufacturing place, typical places where people get hurt, and the boss comes in and says, Lathrop, I'm firing you for cause;

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you're done. And I go, why? And he says, I don't have to tell you why. That's okay in Nebraska, right? Because he's "at will." [LB824]

TIMOTHY CLARKE: Well... [LB824]

SENATOR LATHROP: He has no place to litigate whether he was fired for cause, or any cause, or a good cause, or no cause at all, because he's "at will." And in Nebraska, once they fire you--because we've had those bills in here--no one even has to tell you why, number one, right? Number two is I can make up what "good cause" is, as an employer, because everybody that works in my office is employed at will and I can make up the rules as I go and fire them for cause. And they have no place to go. There's no standard for what "cause" is and isn't, and they have no place to go litigate. They don't. Right? [LB824]

TIMOTHY CLARKE: Well, in the context of this bill, I think it would be up to the trial judge to determine whether or not... [LB824]

SENATOR LATHROP: That court of limited jurisdiction you called the Work Comp Court. [LB824]

TIMOTHY CLARKE: Correct. [LB824]

SENATOR LATHROP: What standard are they going to use to determine whether, when I was fired from my job, whether that was for cause or because my boss was being arbitrary? [LB824]

TIMOTHY CLARKE: Well, I think it would be a factual decision that's up to the judge. [LB824]

SENATOR LATHROP: What's the standard? What's the standard? [LB824]

TIMOTHY CLARKE: I don't know that that's defined. [LB824]

SENATOR LATHROP: The employer gets to set the standard and then do the firing? [LB824]

TIMOTHY CLARKE: Well, I think those questions come up from time to time presently in workers' compensation cases: whether a termination is for cause or not for cause and whether that entitles an individual to benefits or not. [LB824]

SENATOR LATHROP: Right, but if you're the Work Comp Court, do you use the employee handbook? Is it just the decision, however arbitrary that may be, of the employer because I'm "at will"? He can decide what cause looks like? [LB824]

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TIMOTHY CLARKE: Well, I think the judge is going to have to make that determination. [LB824]

SENATOR LATHROP: Based on whatever the employer says I thought "cause" was? [LB824]

TIMOTHY CLARKE: Well, the employee would have an opportunity to testify as well. [LB824]

SENATOR LATHROP: And what's the employee going to say? I mean, there are practical problems with this, and I'm just trying to illustrate them with my example. But... [LB824]

TIMOTHY CLARKE: Sure. [LB824]

SENATOR LATHROP: ...if I'm fired and I go in and I say, why did you fire me? And the boss says, I'm not telling you; I don't have to tell you. [LB824]

TIMOTHY CLARKE: Right. [LB824]

SENATOR LATHROP: That's the law in Nebraska. You do employment law. The employer doesn't have to tell somebody why they're fired. [LB824]

TIMOTHY CLARKE: Right, I understand that. I...as it exists now... [LB824]

SENATOR LATHROP: Wait a minute. That's true. [LB824]

TIMOTHY CLARKE: Yes. [LB824]

SENATOR LATHROP: You would agree that's the law. [LB824]

TIMOTHY CLARKE: Yes. [LB824]

SENATOR LATHROP: Okay. [LB824]

TIMOTHY CLARKE: Yes. As it exists now, these questions do come up. If an individual is terminated post-accident and they have a work injury, there is a trial that occurs in the Workers' Compensation Court. And one of the issues that the judge has to decide is, does the termination disqualify this individual from workers' compensation benefits? So...and that's been going on for a long time in the Workers' Compensation Court. And I think the judges have made that decision from time to time when called upon to decide that. But... [LB824]

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SENATOR LATHROP: Okay. There is no legal standard for what "cause" is... [LB824]

TIMOTHY CLARKE: I'm not aware of that being defined... [LB824]

SENATOR LATHROP: Okay. [LB824]

TIMOTHY CLARKE: ...in this bill, if... [LB824]

SENATOR LATHROP: Okay. [LB824]

TIMOTHY CLARKE: ...if that's the question. I'm not aware of that. [LB824]

SENATOR LATHROP: Okay. That's all the questions I have for you, Tim. Does anybody else have questions for Mr. Clarke? [LB824]

SENATOR CHAMBERS: Just one. [LB824]

SENATOR LATHROP: Senator Chambers. [LB824]

SENATOR CHAMBERS: If this bill, doesn't pass, so what? [LB824]

TIMOTHY CLARKE: Well, as I mentioned in my remarks, I think there's uncertainty, that it puts employers in a difficult position if they have a situation...for example, the employee that shows up intoxicated. Are they required to treat that individual differently than they would treat any other similarly situated employee? [LB824]

SENATOR CHAMBERS: Well, let's say what Senator Lathrop has laid out is the fact situation. It would probably be in the best interest to treat the employee differently in view of the injury that the employee is getting benefits for. It seems to me discretion on the part of the employer would not fire the person for being intoxicated... [LB824]

TIMOTHY CLARKE: Right. [LB824]

SENATOR CHAMBERS: ...to avoid litigation, the outcome of which the employer does not know. [LB824]

TIMOTHY CLARKE: It can put the employer, though, in a difficult situation. Let's say, as part of the work the employee was doing after the accident, that they have to drive a company vehicle. I mean, I think the employer would have a legitimate reason for not wanting someone who is intoxicated endangering not only himself but the general public. [LB824]

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SENATOR CHAMBERS: Then give... [LB824]

TIMOTHY CLARKE: But even if it's in the context of someone working in a plant environment, if someone... [LB824]

SENATOR CHAMBERS: Give the employee a different job. Don't have the employee driving a truck if he's drunk. [LB824]

TIMOTHY CLARKE: Sure, but even if he's working with other people, he could potentially be endangering his or her co-employees. [LB824]

SENATOR CHAMBERS: Well, you know, lawyers get drunk, but they don't get put out of the bar association for being drunk and driving drunk, do they? [LB824]

TIMOTHY CLARKE: Well, I...that, I guess, would be... [LB824]

SENATOR CHAMBERS: Have you ever heard of Willow Head, a female lawyer named Willow Head? [LB824]

TIMOTHY CLARKE: I have not. [LB824]

SENATOR CHAMBERS: She's had multiple drunk-driving convictions; she's still a lawyer. So lawyers are above the law. [LB824]

TIMOTHY CLARKE: I didn't say that. [LB824]

SENATOR CHAMBERS: I know you didn't. But anyway, that's all I have. [LB824]

TIMOTHY CLARKE: (Laugh) Okay. Thank you. [LB824]

SENATOR CHAMBERS: And you were helpful. [LB824]

TIMOTHY CLARKE: Thank you. Any other questions? [LB824]

SENATOR LATHROP: I see none. Thank you. [LB824]

TIMOTHY CLARKE: Thank you. [LB824]

SENATOR CHAMBERS: This guy is never helpful, coming up here (laughter)... [LB824]

SENATOR LATHROP: No. [LB824]

SENATOR CHAMBERS: ...unless he's on my side. Then he's wise. [LB824]

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SENATOR LATHROP: We have seen him represent the pharmacists so far this year, with some thoughtful thoughts. [LB824]

ROBERT J. HALLSTROM: (Exhibit 1) And the bankers. But Senator Chambers wasn't there the other day. Senator Lathrop, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the National Federation of Independent Business in support of LB824, also registering, for the record, my support for Nebraskans for Workers' Compensation for Equity and Fairness and the Nebraska Chamber of Commerce and Industry. Most of my testimony has been touched on either by Mr. Smoyer or Mr. Clarke, so I will not repeat that. I would like to suggest that, again, the impetus, though, was the court decisions in Zwiener and Manchester, which had addressed issues that were attempted to be addressed by LB1012 a couple years ago that Senator Lautenbaugh introduced. And at that time, again, the misconduct was related to the injury in one case; the voluntary termination occurred after the fact in the other. And the Supreme Court ruled in both cases that the employer could not avoid paying temporary total disability benefits. We had assumed that in a situation much like the Cooper v. Cargill case, where there was a stipulation by the parties that there was absolutely no connection to the...the misconduct was connected to the accident, that in that case the Workers' Compensation Court and, ultimately, the Supreme Court might rule differently. So far that has not been the case. We do believe, Senator Lathrop, in response to your question, I guess my thought would be, and I don't practice a lot in this realm, but my thought would be, in other contexts we have had bills and determinations by the court that have ruled that employers can get in trouble for terminating someone for retaliating against someone for having filed a workers' compensation... [LB824]

SENATOR LATHROP: Right. [LB824]

ROBERT J. HALLSTROM: ...claim. So I would rather think that that would perhaps be the standard or the defense that would be raised by the employee, was that the termination for cause related to the misconduct was, in actuality, a ruse for retaliation by the employer for having had the claim filed. Again, we felt the difference or the distinction in the Cooper case was in fact that both parties had stipulated that there was no element of retaliation involved, but there was actual misconduct unrelated to the injury or occupational disease that could have given rise to the court coming up with a different decision. [LB824]

SENATOR LATHROP: It's hard for me to imagine anybody is going to stipulate, if this was on the books, right...no one is going to stipulate that the reason for the termination was unrelated to the accident. [LB824]

ROBERT J. HALLSTROM: Well, they did in this case, and the court had... [LB824]

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SENATOR LATHROP: But it wasn't... [LB824]

ROBERT J. HALLSTROM: ...two choices and made one. [LB824]

SENATOR LATHROP: This wasn't the rule, though. And I...just looking at it, it seems like if that were on the books, to be honest with you, Bob, as I look at it, I've got to think it would "incent" employers to find any reason they can, any breach of the rules at the workplace that they can. Maybe you take your hard hat off for two minutes while you're having a cigarette; and you should have it on, but you don't; and he walks through and says, you're the guy with the work comp claim and you need that back surgery in a couple weeks; you're done. And now he's got an OTTD while he's off for the back surgery. [LB824]

ROBERT J. HALLSTROM: That was certainly the argument that was made in advance of the Manchester and the Zwiener cases. But, again, when we saw the factual scenario in this case that said the parties actually said, "We stipulate there's absolutely... [LB824]

SENATOR LATHROP: Um-hum. [LB824]

ROBERT J. HALLSTROM: ...no connection," that the court could have come to a different situation. I would not disagree with you that, probably, if this were the law, that you're not going to have that type of stipulation. But I think that's why Mr. Clarke noted that under this scenario, if the law were to change in this fashion, that the burden would still be on the employer in order to show those. [LB824]

SENATOR LATHROP: But what's misconduct? Anything. Not having your hard hat on. You could be outside in a zone where the rules require you to wear a hard hat, and nothing is above you but blue sky, and you take it off and the guy looks and says, "Well, isn't that the guy with the work comp claim, and isn't he going to need back surgery? He's going to be out six months. Go let him go; he's got his hard hat off." Or whatever the minor infraction is, it now turns into cause, we let him go, and he's got nothing to support his family while he's getting back surgery for an injury he had at work. That's...I think we're creating an incentive for not all of the people that you represent, certainly... [LB824]

ROBERT J. HALLSTROM: I appreciate that. [LB824]

SENATOR LATHROP: ...but...yeah...not all the people you represent. But for the unscrupulous employer, it provides an opportunity to manufacture cause, let somebody go, and leave some poor guy on the street. Senator Chambers. [LB824]

SENATOR CHAMBERS: Mr. Houston...Hallstrom, I'm sorry. [LB824]

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ROBERT J. HALLSTROM: Thank you. [LB824]

SENATOR CHAMBERS: Mr. Houston is going to be with us, and he's...that's a different person. [LB824]

ROBERT J. HALLSTROM: There's a designer by the name of Halston (laughter), but that's a different person too. [LB824]

SENATOR CHAMBERS: If the courts in Nebraska will not render advisory opinions, and if there are multiple parties, and A, B, C, and D are on this side, E, F, G, and H are on that side, and the court looks at what their real interest is, the court can realign the parties; you know that, right? [LB824]

ROBERT J. HALLSTROM: Um-hum. [LB824]

SENATOR CHAMBERS: And they say, "You say you're a defendant, and actually you're not; you belong over here if you're going to be in this case. And you say you're the plaintiff; no, you're not; you come over here." And as we look at it, we don't give advisory opinions; there must be an actual controversy between the parties. There cannot be collusion to bring a lawsuit under the pretext that the parties have interests that are adverse to each other, when in reality they're working together to get a certain decision from the court. And the court won't take it when they analyze it. If you have a guy stipulating to something that's going to hurt him, then there might be something not on the record that he was offered to do that in order to create the situation where the court will give a rendering that goes in favor of this unscrupulous individual whom you don't represent; somebody else represents him, because you wouldn't represent anybody like that. Now, no matter what kind of law you practice or don't practice, you know what an adhesion contract is, don't you? [LB824]

ROBERT J. HALLSTROM: Correct. [LB824]

SENATOR CHAMBERS: What is that? For those of us who don't know. I know the term, but I don't know what it means. [LB824]

ROBERT J. HALLSTROM: Well, that's where one party has undue influence or bargaining power over another one when they're entering into an agreement or a contract to address their rights and responsibilities. [LB824]

SENATOR CHAMBERS: And it's, like, take it or leave it. And the court will not uphold an adhesion contract, will it? [LB824]

ROBERT J. HALLSTROM: Generally not. [LB824]

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SENATOR CHAMBERS: So it would be best for everybody concerned to let matters that had been litigated in court, and a record has been established, find its way to the Supreme Court. There would be some certainty then, wouldn't there? [LB824]

ROBERT J. HALLSTROM: There's certainly merit to that argument. I don't know that it changes where our position would be in terms of coming back to this body with the same type of legislation. But that's certainly one approach. We have another bill pending before this... [LB824]

SENATOR CHAMBERS: Well... [LB824]

ROBERT J. HALLSTROM: ...committee from last year, Senator, where the Supreme Court, after 30 years of upholding a particular element of the law regarding employee misrepresentation and a defense for the employer, out of the clear blue decided that they couldn't or shouldn't have done what they did in the first place. [LB824]

SENATOR CHAMBERS: Well, you can come back. You know, I'm not saying you can't come back or even that you shouldn't, because you've got to work too. [LB824]

ROBERT J. HALLSTROM: That's correct. [LB824]

SENATOR CHAMBERS: And when you say "we," you mean those people you represent or that your interest is so closely aligned to theirs that when you use that pronoun "we" your interests are lockstep with the party that you're representing as a lobbyist? Or when you say "we," you mean similarly thinking people on that particular issue? [LB824]

ROBERT J. HALLSTROM: Well, I hope I'm an advocate for those clients that I represent. [LB824]

SENATOR CHAMBERS: You feel your interests align with theirs. [LB824]

ROBERT J. HALLSTROM: In representing and advocating for them, yes, sir. [LB824]

SENATOR CHAMBERS: A lawyer does not have to agree with what his or her client is doing, has done, or is alleged to have done in a criminal case but may nevertheless represent that person and must do so zealously, isn't that true? [LB824]

ROBERT J. HALLSTROM: That is correct, as long as there are no ethical issues that you would have to bring to the attention of the court. [LB824]

SENATOR CHAMBERS: If you know that somebody committed a crime, you don't have to insist that that person plead guilty. Isn't it your job to see that if that person is

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convicted, all of the t's have to be dotted and the i's crossed by the state, which is trying to convict that person, isn't that what your job is? [LB824]

ROBERT J. HALLSTROM: I don't do criminal representation, Senator, but that's my understanding. [LB824]

SENATOR CHAMBERS: Well, I think that's what you're doing here today. (Laughter) Gotcha. I'm through, but I'm trying to get across, through these questions...so if somebody reads the transcript and they're not trained in the law like you and me, they'll at least understand where I'm coming from, instead of me just making an assertion that I think there was an improper deal struck between this employer and this employee, or the lawyers, to get this person who is entitled to compensation to sign a deal with the devil that would say he or she is not entitled to that. And it seems to me that would be the result of entering such an agreement like that. And maybe the courts saw that and did not accept that piece of paper as being anything other than what it was, words on paper with a signature that means nothing. So we're just keeping you in business; you ought to be glad for that. [LB824]

ROBERT J. HALLSTROM: Thank you, Senator. [LB824]

SENATOR CHAMBERS: You're welcome. (Laughter) That's all that I have. Thank you. [LB824]

SENATOR LATHROP: Bob, we always appreciate having you come here. I mean that sincerely. [LB824]

ROBERT J. HALLSTROM: Thank you. [LB824]

SENATOR LATHROP: We ask a lot of questions here, and we try to get to the bottom of it and come up with good policy, and... [LB824]

ROBERT J. HALLSTROM: You're not the only... [LB824]

SENATOR LATHROP: ...your input is invaluable when it comes to work comp. [LB824]

ROBERT J. HALLSTROM: You're not the only committee. [LB824]

SENATOR CHAMBERS: And I think he knows that I really...don't you...from the way we banter, and sometimes we agree. If I tell you I actually enjoy your appearing, can you take that as being something I really mean? [LB824]

ROBERT J. HALLSTROM: I certainly respect that and appreciate it. [LB824]

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SENATOR CHAMBERS: And I do mean it; I really do. [LB824]

ROBERT J. HALLSTROM: Thank you. [LB824]

SENATOR LATHROP: All right, thanks, Bob. Anyone else here in support of LB824? Anyone here to testify in opposition to LB824? [LB824]

JON REHM: Jon Rehm, on behalf of the Nebraska Association of Trial Attorneys as well as Rehm, Bennett and Moore law firm. And I am in emphatic opposition to LB824, as is the Nebraska Association of Trial Attorneys. Essentially what LB824 does is you turn the Work Comp Court into a court of limited jurisdiction...or basically it turns the Work Comp Court into an employment law court of limited jurisdiction. Basically, one, you know, one drawback is you're denying employees their Seventh Amendment right to a trial by jury to determine the facts of their terminations. Also, in LB824, there are no provisions to protect the employee if they're found not to have been fired for cause. Example: In Wisconsin, there's a liquidated damages penalty of one year of back wages; in Minnesota, there's actually a retaliation statute that's part of the work comp statute. Nothing like that in here. As to the issue of cause, now, if a Work Comp judge finds that the employee was terminated for cause, it's very likely that that's going to have preclusive effect in any fair employment proceeding, whether it's retaliatory discharge, any fair employment in Nebraska...any FPA case, ADA, Americans with Disabilities Act. But on the flip side of it, just because there's no cause for termination doesn't mean the...doesn't...if you go into a fair employment proceeding, that doesn't necessarily mean that there wasn't...that it's going to have the same preclusive effect, because the employer's burden in a fair employment case is legitimate business reason. And usually cause is considered an easier standard than legitimate business reason. Finally, there's no language in here like there is in the unemployment statute, 68-636, that states that the decision of the Work Comp Court has no preclusive effect. I mean, for example, in the unemployment arena, there's no preclusive...it specifically states in the statute, their determinations as to misconduct have no preclusive effect in any other proceedings. Secondly, contrary to what Mr. Smoyer testified to, this case applies to temporary disability, not just temporary total disability but also temporary partial disability. So even if there is a, you know, cause or legitimate reason for termination, loss of earning power and temporary disability is affected by access to the labor market as a whole. So even if somebody has lost access to the labor market or did get fired for cause, legitimate cause, they still have some loss of earning power. And this bill as drafted does, you know, rules that out completely. Secondly, as to the employer, is...it states that they can make an accommodation. Well, what's an accommodation? There's no modifier to "accommodation." And under the Americans with Disabilities Act, the accommodation has to be reasonable. I mean, I have seen clients of mine that have been forced to--with bad arms and bad hands--have been forced to push sides of meat with, like, their...with their hips or with their buttocks. I mean, is that a reasonable accommodation? Is a make-work job a reasonable accommodation? Under the ADA,

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not necessarily. So, I mean, there's a lot of vagueness there. I'm encouraged to hear that Mr. Hallstrom and Mr. Clarke think that they have the burden of proof if this bill were to pass... [LB824]

SENATOR CHAMBERS: May I ask a question? [LB824]

JON REHM: Sure. [LB824]

SENATOR CHAMBERS: Why do you feel that way? [LB824]

JON REHM: Well, why would I feel that way about what? [LB824]

SENATOR CHAMBERS: You were getting ready to make a comment that had been made earlier, and I want to hear your comment. [LB824]

JON REHM: Well, because I don't think there's anything in that bill stating that cause is an affirmative defense. For example, misconduct or intoxication, under workers' comp, is an affirmative defense, and it's explicitly stated as so, as a permanent defense...or willful misconduct is an affirmative defense. That's not stated in here. Mr. Hallstrom brought up, in fact, that, you know, employees can bring retaliatory discharge cases. That may be true, but employers still have the incentive to fire people. Plus, that only encourages more litigation. And also, there are still delays in payment while the comp case proceeds through the judicial process, as well as any fair employment case. The further it can go for penalties now: the Nebraska Work Comp Act has a 50 percent penalty on late payment of benefits, but only if there's no reasonable controversy. And in the case of a disputed termination, oftentimes there is going to be a reasonable controversy. And again, even if you win the penalty, you're still denied...the payment is still delayed. So NATA is absolutely against this, as am I, as is our law firm. So... [LB824]

SENATOR LATHROP: Okay. Any further questions? I see none. Thanks, Jon. [LB824]

STEVE HOWARD: (Exhibit 2) Steve Howard, on behalf of the state AFL-CIO. And I have some cases to hand out. I'm here to tell you that the defense of, "You committed misconduct, and we can therefore terminate your employment and not pay you benefits," is alive and well. That defense is thriving in the Work Comp Court. Tomorrow morning I will try a case up in Wayne County with those very facts. Our client was terminated, and we think it was without cause; they say it was. I'm not here to litigate that, but what I did was spend about ten minutes, literally, looking at the work comp decisions and the case law in Nebraska and putting in search terms like "terminate" and "accommodate" and "light duty" and "cause." Came up with the six cases that you have before you. One is from the Supreme Court; it's right on top. It says, well, if you hadn't committed misconduct we could have accommodated you, so you don't get voc. rehab.

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And you get temporary total during your voc. rehab, but that employee didn't. Next one is Court of Appeals. You know, the court was free to decide whether the human resources manager was more compelling, or the employee. And that's less than a year old. You know, the next one says: terminated for warnings; could have accommodated; no benefits. And so I tried to pick a variety of those and tell you that these defenses are out there. And I congratulate my friend Mr. Clarke for acknowledging that these issues are litigated all the time. You know, the goal, of course, is to strike a balance between what's fair for employers and employees. Judges do that on a case-by-case basis. And we think that should continue. And that's really all I have to say. I don't think the Zwiener and Manchester change anything in these cases. So thank you. [LB824]

SENATOR LATHROP: Thank you very much. Appreciate your testimony. I see no questions. Anyone else here in opposition to the bill? [LB824]

MIKE MARVIN: Here's the sign-in sheet. [LB824]

SENATOR LATHROP: It's been awhile since we've had you here, but I think we know who you are. [LB824]

MIKE MARVIN: Yeah. (Laugh) Well, I'll introduce myself anyway. [LB824]

SENATOR LATHROP: But you can introduce yourself just the same. [LB824]

MIKE MARVIN: My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I am the executive director of the Nebraska Association of Public Employees. We're here in opposition to this bill today for several reasons. You touched on my main concern, Senator, and that was the issue of disciplinary discharge for cause, whether that was an appropriate level of discipline, whether there was "just cause" for discipline, or whether it was just a means to get out of paying the temporary disability payments. My other concern I have not heard anybody state here that I thought about was, also, if I am off on a temporary disability, that I cannot perform my job, and Senator Wallman is my employer, he has a manufacturing plant, and, well, he fires me. Senator Chambers has the same type of manufacturing plant, but my disability payments...or my disability prohibits me from working for Senator Chambers. So I will lose both my ability to work and my ability to collect my workmen's comp. And those are strong concerns for me. [LB824]

SENATOR LATHROP: Very good. Thanks, Mike. I see no... [LB824]

MIKE MARVIN: Thank you. [LB824]

SENATOR LATHROP: Welcome back to Nebraska. [LB824]

MIKE MARVIN: Oh, it's a lot better than Kansas, believe me. (Laughter) [LB824]

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SENATOR LATHROP: All right. Anyone else here to testify in opposition to LB824? Anyone here in a neutral capacity on LB824? Seeing none, do we have any letters? We have letters from Nebraska Appleseed in opposition to LB824, in the form of a letter, which will be made part of the record. (See also Exhibit 3) And that will close our hearing on LB824 and our hearings for the day. Thank you. [LB824]