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Business and Labor Committee  
February 01, 2016

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[LB830 LB850 LB896 LB928 LB1089]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 1, 2016, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB928, LB1089, LB896, LB850, and LB830. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Ernie Chambers; Sue Crawford; Laura Ebke; Sara Howard; and Jerry Johnson. Senators absent: None.

SENATOR HARR: I think we are ready to begin. I appreciate the patience. Welcome to your Business and Labor Committee. Just going to run through some quick check-the-box items for the record. If you are coming up, please fill out a sheet when you come up. Green sheets are available and you can hand them to a page. When you are on the record, please state your name clearly, spelling your last name. Make sure you speak clearly into the microphone so we all can hear you and, more importantly, it can be made part of the record. We do have new microphones I believe in here which are a little more sensitive. That being said, members, if you have a member of the staff come and speak with you, I'd ask that you stand and walk away from the mike so that you do not become part of the record. We have a pretty full day ahead of us, so if you are coming to testify, before you come up, you can just take a seat in the front row so we can save a couple minutes there, remembering that you are all that stand between me and 36 hours with my children (laughter), so very excited.

SENATOR BLOOMFIELD: Is that good or bad?

SENATOR HARR: We'll find out (laughter). Let's see, do I have anything else for the record? Some senators will be leaving. They are in other committees. It is not a statement or an indictment on your bill if they get up and leave. It is merely that we are...have bills in other committees. So don't take it personally. That being said, we have...well, I'll let the senators introduce themselves starting, as I always do, to the left.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford from District 45 which is eastern Sarpy County, Bellevue, and Offutt.

SENATOR JOHNSON: Jerry Johnson, District 23, Saunders, Butler, and most of Colfax Counties.

SENATOR HOWARD: Senator Sara Howard, I represent District 9 in midtown Omaha.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, northeast corner of the state.

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SENATOR HARR: And I am Burke Harr, for the record, and my staff is...I have Lauren Williams is the committee clerk to my left and to my right is Meghan Chaffee. Chafee (phonetically)? And we have...is it Chayfee (phonetically) or Chafee (phonetically)?

MEGHAN CHAFFEE: Chayfee (phonetically).

SENATOR HARR: Chayfee (phonetically). And we have page Jordan and...Brenda is making copies right now but she will be back. I think that ends the introductions other than...

SENATOR BLOOMFIELD: Cell phones.

SENATOR HARR: What's that?

SENATOR BLOOMFIELD: Cell phones.

SENATOR HARR: Cell phones, if you have them, please turn them to vibrate. And I think that's it. We have the distinct honor of having the Chair of Appropriations. So if you would, Senator Mello, please approach. Thank you. And he is here on LB928. [LB928]

SENATOR MELLO: Good afternoon, Chairman Harr, members of the Business and Labor Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB928 would change provisions relating to discriminatory wage practices based on sex. Nebraska can take steps to close the wage gap between men and women in a way that supports strong families and respects our business community. LB928 proposes three main changes including harmonizing revisions, language to improve enforcement and, most notably, it would require provisions relating to wage discrimination based on sex apply to all sizes of employers in the state of Nebraska. LB928 seeks to both strengthen workplace protections for both men and women in Nebraska while establishing public policy that can address the existing wage gap. On average, women in Nebraska make 78.8 cents for every dollar a man makes. Digging deeper into Nebraska data, compared to every dollar a white, non-Hispanic man makes, African-American women make 61.8 cents; Latina women make 54 cents; and Asian-American women make 65.9 cents with, lastly, Native American women making 56.6 cents. Information from Pew Research Center, neighboring Midwestern states, and our Legislative Research Office was used to identify gaps in Nebraska's equal pay law and develop LB928 as part of the solution. Compared to other states, there is one major gap that stands out in Nebraska's policy in this area. The first improvement proposed in LB928 seeks to address that gap. It would eliminate the provision that limits Nebraska's discriminatory wage protections to those employers who...employees, I'm sorry, who work for an employer with 15 or more

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employees. Forty-five states have some type of protection in place for wage discrimination based on sex. Of those states, six states, including Nebraska, exempt certain employers based on the number of employees that they have. Out of that six states that make a distinction for employer size, Nebraska is the only state--I repeat, Nebraska is the only state--that puts that mark at 15 or more employees. All other states have a lower threshold for when the law applies. Requiring Nebraska's wage discrimination protections based on sex to apply to businesses of all sizes would not go beyond our existing federal law. Rather, eliminating the 15 or more threshold would bring Nebraska in line with 39 other states that do not have an employee size threshold in place. The second change proposed in LB928 would harmonize provisions to provide clarification in accordance with current public policy and existing statutory definitions. The improvement found on page 3, line 6, of the bill would harmonize this section with Chapter 48-1219(1) which codified state policy on discriminatory wage practices based on sex back in 1969. This existing section outlines that "comparable work on jobs which have comparable requirements" is a standard to consider when defining wage discrimination based on sex. This harmonizing change proposed in LB928 would bring the language in line with the intent of state policy already in place. The other harmonizing change proposed in LB928 would clarify that the term "Occupation shall include any industry, trade, business or branch thereof, or any employment or class of employment, but shall not include domestic employment in private homes." The term "occupation" can be found throughout Nebraska's labor laws. Using the term "occupation" rather than "industry" reflects the reality of today's modern work force. The final proposed change would improve enforcement by updating the definition of unlawful employment practice. Those testifying after me will detail the legal and technical aspects of these last changes in the context of a national effort. I recognize that clarifying and harmonizing changes may see more contention or discussion in today's hearing, and it should be noted that this proposal is in no way intended to impede Nebraska businesses that are making every effort to model equitable employment practices. The primary goal of LB928 is to ensure that Nebraska's policy regarding wage discrimination is based...that based on sex is applied fairly and to all sizes of workplaces. As mentioned in a letter of support committee members received from the National Women's Law Center, strengthening the law's protections also enhances incentives for companies to adopt practices to ensure that they are paying employees fairly. Stronger legal protections encourage companies to proactively identify, investigate, and remedy disparities within their work forces, reducing that need for litigation. Again, I believe Nebraska can take steps today to close the wage gap in a way that supports strong families and respects the business community's needs and modernizing our labor laws in this way can be part of preparing Nebraska to compete in our future economy. As always, I look forward to working with the committee and others, other stakeholders, to ensure the language is best for the state of Nebraska. On a personal note, as a parent, obviously I want my daughter to have that same opportunity to grow up in a state that recognizes that no woman of any age should experience wage discrimination no matter what size her workplace is. As I mentioned earlier in my opening,

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there will be several business owners and several experts testifying this afternoon, but I would be happy to entertain any questions the committee may have. [LB928]

SENATOR HARR: Questions for Senator Mello? Senator Crawford. [LB928]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you, Senator Mello. I just wondered if you would repeat...you talked about the fact that the comparable language is really harmonizing and making it consistent with other policy intent. I wondered if you would explain that or reiterate that point, please, again. [LB928]

SENATOR MELLO: Well, I think to some extent I think you will hear likely today some opposition to the bill based on that language, concerns brought forward that that language change under our current law opens the state up possibly to more litigation in the process in regards to employees and employers. In drafting it and discussing with stakeholders on this bill, we feel that it's...essentially it's already in place now throughout our labor law statutes. So it's not new language. I think that obviously we're making the argument that this is simply harmonizing existing language in different sections of existing labor law. But the reality is there is a reality that to some extent there are sometimes minor differences in men and women doing the same work that is, quote unquote, comparable, but yet their job title may be slightly different or their job description may be slightly different but the reality is the man is making roughly 22.2 cents more, an hour every dollar on the hour more than their female counterpart, and so the thought being is that this language provides a way to harmonize existing law. I do understand that there will probably be concerns raised that this is...the belief that this is not harmonizing existing law and that it's actually expanding the definition. But that, no doubt, is a discussion that we can have with the committee moving forward. [LB928]

SENATOR CRAWFORD: Thanks. Thank you. [LB928]

SENATOR HARR: Thank you. Any other questions? I'm still confused. What is the difference between equal and comparable? [LB928]

SENATOR MELLO: I think the difference is in regards to comparable being recognized...I think comparable is giving the ability to recognize in scenarios that the work is comparable in nature, that it is essentially similar work without the word, quote unquote, equal work in the sense of the exact same job title, the exact same job description. But the reality is that they're comparable in nature and yet one individual is making less than the other purely based on sex. [LB928]

SENATOR HARR: Can you give an example? [LB928]

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SENATOR MELLO: There are going to be plenty of people who testify after me who will walk you through extensive examples. I'd prefer not to steal...in drafting testimony today we've tried to keep things as 30,000 foot as we can knowing that we've got a lot of testifiers who will walk through details. [LB928]

SENATOR HARR: Thank you. Questions? Seeing none, are you planning to stick around for close? [LB928]

SENATOR MELLO: Mr. Chairman, this is a unique request and I had to explain to some of my testifiers I'm actually up right now in Appropriations to open up on a bill as well, so I'm going to leave the committee, testify on my bill in front of Appropriations Committee, and will come back and make the determination whether or not to close afterwards. [LB928]

SENATOR HARR: You should talk to the Chair of Appropriations so that doesn't happen (laughter). Thank you. [LB928]

SENATOR MELLO: Thank you, Mr. Chairman. [LB928]

SENATOR HARR: Anyone here as proponents of LB928? [LB928]

MICHELLE ZYCH: (Exhibit 1) Hello. Good afternoon. Chairman Harr and members of the Business and Labor Committee, my name is Michelle Zych, M-i-c-h-e-l-l-e Z-y-c-h, and I'm the executive director of the Women's Fund of Omaha. We are an organization dedicated to improving the lives of women and girls in the Omaha community. To do this, we identify critical issues through research, fund innovative solutions through grants, and influence dynamic change through advocacy to ensure that every woman and girl has the opportunity and ability to reach her full potential. As an organization that is driven by research, we conduct ongoing studies to take the pulse of our community. When we ask which issues are the most pressing for women, our community consistently points to poverty and the ability of women to become self-sufficient and economically secure to support their families. With these community voices in mind, I'm here today to testify in support of LB928, a bill that we believe will help improve the economic security of women and their families by expanding equal pay for equal work for employees at companies and organizations of all sizes in Nebraska. Both national and Nebraska-based research has shown us that unequal pay, the resultant wage gap, and their impact on women's lives is substantial. In 2015, women in the U.S. who worked full time, year round were only paid 78 cents for every dollar paid to their male counterparts. In Nebraska, the disparity is larger and has been increasing in recent years. Here, white women are paid 75 cents for every dollar paid to their male counterparts. African-American women are paid only 54 cents and Latinas only 59 cents for every dollar paid to their white male counterparts. With these numbers, Nebraska ranks

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29th in the U.S. in pay equity, putting us in the bottom half of the nation in regards to securing equal pay for women. As an organization concerned with ensuring economic security and "the good life" for women throughout Omaha, this is an issue of concern. We know that when women receive unequal pay for work, families and communities bear the burden. Closing the wage gap by ensuring equal pay would significantly improve families' finances, both nationally and in Nebraska. In Nebraska, a woman who holds a full-time job is paid around \$35,000 per year while a man who holds a comparable full-time job is paid around \$44,500 per year. This amounts to a yearly wage gap of more than \$9,400 between men and women who work full time in the state. If women were guaranteed equal pay, the additional \$9,400 of income for Nebraska's women would pay for 71 more weeks of food for her family, 7 more months of mortgage and utility payments, 13 more months of rent, or nearly 3,900 gallons of gas. Ensuring equal pay for all women in all work environments also means drastically reducing our rates of poverty. If women received pay equal to that of comparable men, the poverty rate of all working women and their families would fall from 8.1 percent to 3.9 percent--more than half. This would have a significant impact on our state, where more than 78,000 family households are headed by women and where about 30 percent of those families live in poverty. This means that women's wages are key to their families' abilities to make ends meet. Making sure women get paid fairly and eliminating the wage gap would provide all families with the necessary income to attain economic security. However, if current trends continue, Nebraska's women will not see equal pay until the year 2066. That means that a woman in her 20s starting her career today would not likely see pay equity in her working life. Moreover, she will lose around \$435,000 in a 40-year period due to unequal pay. This means that a woman entering the work force today would have to work more than 11 additional years to compensate for the gap caused by unequal pay like the kind currently permitted in law in Nebraska. Therefore, guided by research, the Women's Fund of Omaha supports LB928 and its intent to expand equal pay for equal work for Nebraska's working women. We feel that by making sure that women in all work environments are entitled to this comparable and equal pay, we will be able to help them on a path of achieving economic self-sufficiency and security. This investment will be one that will make it possible for women to support their families and their communities. Thank you for your time and I would be happy to answer any questions. [LB928]

SENATOR HARR: Thank you. Senator Johnson. [LB928]

SENATOR JOHNSON: Thank you, Senator Harr. Several times in your testimony you refer to equal pay, equal work. The bill changes it to comparable. [LB928]

MICHELLE ZYCH: Yeah. [LB928]

SENATOR JOHNSON: What's your feelings towards the change in the wording? [LB928]

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MICHELLE ZYCH: I think that the change to comparable makes sense. I would say from our perspective also we kind of see it as one and the same. We want the opportunity to have the ability to make what a position is supposed to make. So whether it's...if it's comparable work, if it's a similar job description, then the amounts paid, the amounts budgeted for that position to make should be comparable and based on what the job description says. [LB928]

SENATOR JOHNSON: I guess my...being in business, to me equal pay is equal; comparable is a judgment as to what's comparable. That's where I struggle with that change in wording. [LB928]

MICHELLE ZYCH: Yeah. [LB928]

SENATOR JOHNSON: Thank you. [LB928]

SENATOR HARR: Any other questions? Can you give me an example of what is comparable versus equal? [LB928]

MICHELLE ZYCH: I don't have one off the top of my head, but I know that there is a lot of folks here who will be able to provide some. And I'm also happy to go back and dig into it a little bit more... [LB928]

SENATOR HARR: Okay. [LB928]

MICHELLE ZYCH: ...and provide more information about the differences for the committee. Again, being an organization rooted in research, we can absolutely dig into that a little bit more and I'm happy to follow up with the committee about that. [LB928]

SENATOR HARR: Great. Thank you very much. Any other questions? Senator Chambers. [LB928]

SENATOR CHAMBERS: Not having come here and being totally ignorant might be of value to me in this regard. To me, as my colleague was saying, equal means same. Comparable obviously doesn't mean the same as equal. It allows for play... [LB928]

MICHELLE ZYCH: Yeah. [LB928]

SENATOR CHAMBERS: ...and a judgment to be made because even if the work is the same, the pay only has to be comparable. And if the person making the decision says, well, you did the

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same work but I don't really think you need as much money to live as somebody else so based on your circumstances this comparable pay will give you what a woman would get in a situation. So are you in favor of the comparable over equal? [LB928]

MICHELLE ZYCH: I guess I would say that based on what we know, having consistency is important, so have it being able to say that here's what the budget is for whatever position, what the educational experience is, the pay should be comparable from male to female, from any ethnicity, from...as long as the experience and the education is similar. [LB928]

SENATOR CHAMBERS: But why can't you say "same"? Because the only consistency in this regard is that women don't make as much as men make. And I know from experience, not that I experienced, but I was familiar with situations where like at Bell Telephone Company--this was a long time ago when Bell was still a part of AT&T--but there were black women who had worked for an eternity there and they would train white guys and the white guys would become supervisors over them and the black women were not even making as much as white women in the company. So there was a double whammy. I am in favor when we're trying to eliminate discrimination to leave no wiggle room. We say what we mean and mean what we say. So the judgment call will be made by me as a policy maker and I don't think there would be a court that would have difficulty understanding the meaning of the word "equal." [LB928]

MICHELLE ZYCH: Versus comparable. [LB928]

SENATOR CHAMBERS: But when you say "comparable," it does offer an opportunity for this kind of "shenaniganing" that has been going on, just so you know why I'm saying that I think "equal" would be a better word. [LB928]

MICHELLE ZYCH: Completely fair, thank you. [LB928]

SENATOR CHAMBERS: That's all that I have. [LB928]

SENATOR HARR: Any other questions? I should clarify the record. Senator Chambers has joined us, as has Senator Ebke. Thank you very much for your testimony. [LB928]

MICHELLE ZYCH: Thank you. [LB928]

SENATOR HARR: Proponents on LB928. [LB928]



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DANIELLE CONRAD: (Exhibit 2) Good afternoon, Chairman Harr, members of the committee. My name is Danielle Conrad; that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I am here today as a registered lobbyist representing the ACLU of Nebraska. The ACLU of Nebraska serves over 2,000 members statewide and 500,000 nationally. Last biennium our organization took a position on over 100 pieces of unique legislation and our position prevailed an impressive 68 percent of the time. Since 1972, the ACLU's women's rights program has been working to secure gender equality. From a general perspective, it's important to remember that gender discrimination is not only wrong, it's suspect from both a legal and constitutional perspective. Additionally, since 1969 Nebraska law has recognized gender-based pay discrimination in the workplace is bad from a public policy perspective. You can see in the testimony that I've passed around today the very first intent language in 48-1219(1) of Nebraska Revised Statutes, the very first section talks about comparable work on jobs for comparable requirements. That's something that I know has already been in question today in this legislation and that I want to redirect the committee's attention to in terms of the harmonizing position that Senator Mello noted in his introduction. Additionally, we thank Senator Mello for his leadership in introducing this important legislation because the fact of the matter is, even though we've had laws on the books since the late '60s, Nebraska has a persistent and real wage gap problem. I won't go through the statistics again, but the bottom line is we can and we must do better to address this. And there's two solutions pending before this body. I'll take a moment to remind you that Senator Cook introduced legislation last session to ensure that we have better disclosure requirements so that employees can better enforce the spirit and intent of equal pay laws that are already on the books. That's currently pending before this committee carried over from last year. That is a no-cost, commonsense solution to addressing this issue. The second solution that we have before us in this great state is LB928 that Senator Mello brought forth today, also a commonsense, no-cost solution to addressing this issue. I'll direct your attention to the fiscal note. What's important to remember is that we continue to see a wage gap in Nebraska that hurts women, that hurts families, that hurts our economy and that is wrong. We must look to the experience of other states to modernize and evolve our equal pay provisions to ensure that we eliminate technicalities and loopholes, that we provide real teeth to enforcement so that the spirit and intent of our laws can be fully realized and that equal pay, comparable pay becomes the reality that it was intended to be decades ago. As a previous testifier noted, if we take no action, we won't see the pay gap resolve itself until 2066. I think about my toddler at home, my Caroline, and that's not acceptable to think about this issue resolving itself not in her working lifetime. And it's not acceptable for the women workers in Nebraska today. Nebraska consistently ranks as one of the top states for working mothers outside of the household. The Bureau of Labor Statistics show us that over half of all employees in Nebraska work for small businesses. That's why we have to cast the net wider. That's why we have to remove these arbitrary caps at 15 employees and bring it down so that we can ensure equitability and fairness and accountability for all employees and all employers. So we are pleased that Senator Mello brought this forth. We are more than happy to engage in a dialogue with all stakeholders on this issue. We look forward

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to dialogue with the committee. But the key piece here is that this is an appropriate evolution based on best practices from other states about how we can ensure the promise of equal pay finally becomes a reality. And with that, I'm happy to take questions. Senator Harr, I do have some examples of what a difference in terms of comparable and equal might be that I know that you've posed to other testifiers. [LB928]

SENATOR HARR: Great. Thank you. Any questions for Ms. Conrad? Senator Johnson. [LB928]

SENATOR JOHNSON: Thank you again. Does your organization have any data of, by changing the number down to one or more employees, how many employees will be affected by this by the number of employees or number of businesses in the state? [LB928]

DANIELLE CONRAD: Yes, Senator Johnson. It's not a perfect illustration. But if, for example, you look in my testimony and see footnote 9, the "Small Business Administration, Small Business State Profile of Nebraska," and we can pull up and provide you all of the charts that go along with that citation, demonstrates that about 50 percent of all employers in the private sector in Nebraska work for small businesses. Now their definition is not exactly set at 15. I think it's a tiny bit higher than that. But that gives you kind of a general sense about including more people in the application of equal pay laws. [LB928]

SENATOR JOHNSON: Thank you. [LB928]

SENATOR CONRAD: Yep. [LB928]

SENATOR HARR: Senator Chambers. [LB928]

SENATOR CHAMBERS: When I was speaking, I was speaking of the pay aspect. But even when it comes to comparable as opposed to equal work, could you enlighten me? [LB928]

DANIELLE CONRAD: Yes, I'd appreciate... [LB928]

SENATOR CHAMBERS: I know it's difficult, but try. [LB928]

DANIELLE CONRAD: (Laughter) Now I appreciate the opportunity to clarify that point because I think in many ways we've heard some rumblings prehearing today that there's this big issue with the difference between equal pay or comparable pay and in essence it's a nonissue.

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Again, Nebraska has a clear public policy that compares comparable work and comparable requirements. It requires equal pay for those. So I think that this legislation harmonizes the existing statutory framework. Additionally, it is based on best practices. As we've seen problems with enforcement over decades in trying to bring the reality of equal pay to fruition, we've seen people get off the hook on some loopholes and technicalities. For example, take for a realistic example in a hotel situation where you might advertise for a janitor or a housekeeper. Now there could be some differences to that work. It may not necessarily be comparable. But it might be and it's a better, more appropriate inquiry to look at the comparable nature of the work and the compensation instead of just a straight requirement for janitor to janitor or housekeeper to housekeeper. In the professional environment, an example would be a difference between a secretary and an administrative assistant. The job titles might be different. They're unequal. But the work is comparable and, thus, the compensation should be comparable. [LB928]

SENATOR CHAMBERS: I can understand labeling things differently, but you said these labelings do carry weight the way things are right now. And a woman called a secretary doing one, two, three, a man called an administrative assistant doing the same one, two, three would be paid differently on the basis of the title. [LB928]

DANIELLE CONRAD: They could be under current law. There are some discrepancies from the intent language in the act and in the comparative provisions that come after that. So we'd like to see the language harmonized and follow best practices that allows for a more robust and appropriate inquiry in line of what...ensuring we're getting a good look at apples to apples. [LB928]

SENATOR CHAMBERS: And you know what... [LB928]

DANIELLE CONRAD: Nobody is interested in comparing apples to oranges here, but we just want to make sure that at least the McIntoshes and the Red Delicious are on the same table. [LB928]

SENATOR CHAMBERS: Semislavery, which is embalmed in the law where they're talking about "Occupation," and they always do this, "shall include any industry, trade, business or branch thereof, or any employment or class of employment, but shall not include domestic employment in private homes." White people hire black women. I watched this all time I was growing up. I'd see old black women with these paper shopping bags standing on the street corner in all kind of weather going out to what they called the place. And some of them would go to the end of the line and these white people wouldn't even drive from the place to pick them up at the bus stop. And this is 2016. And why, I'd like to know, is domestic employment not considered a part of any employment or class of employment? If it says domestic employment,

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that puts it in employment. So they're going to tell me as a black man that when it comes to white people the word "employment" means something if it's any employment, the term "class of employment" means something if it's white people, but when you say domestic employment that's not employment. And they work harder. It's semislavery. It's demeaning. So why don't we strike that? Because that's underlined language. [LB928]

DANIELLE CONRAD: That is proposed as new language, that's right, in this legislation, Senator Chambers. And I think again our position is we'd be willing to work with the committee if they'd like to see that exclusion removed. But I think that in drafting it the legislation that's before you today looks to other areas of Nebraska's employment law and statutory framework. For example, on the employment discrimination act that I worked on many years ago with you, for example, we have an exemption for in-home employment in the application of that piece. I think it was meant to model kind of the private affairs within a business to a certain extent that have been exempted in other aspects of our law. But we would be wide open to casting the net more widely to ensure uniformity if that was something that the committee was interested in discussing. [LB928]

SENATOR CHAMBERS: When a white man is "buttling," is that considered domestic employment? Some people call...he's a butler, but a butler does something, so a butler must be one who "battles." So when he's "buttling," in fact, they have schools for them. [LB928]

DANIELLE CONRAD: Right, right. [LB928]

SENATOR CHAMBERS: They get a lot of money. So if this bill comes out, I'm going to try to strike that language. I just wanted the body to know. [LB928]

DANIELLE CONRAD: Very good. I appreciate that. [LB928]

SENATOR CHAMBERS: I have to speak for my people. I speak for other people's people, but they don't speak for mine. I've got to do it. And from now on, if mine go down, the ship goes down also. [LB928]

DANIELLE CONRAD: Senator Chambers, we appreciate your robust and consistent advocacy to lift more workers up and out of poverty... [LB928]

SENATOR CHAMBERS: But I've got to start... [LB928]

DANIELLE CONRAD: ...and give them meaningful participation in the economy, so. [LB928]

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SENATOR CHAMBERS: I've got to start narrowing my scope now because I've been too nice. And, see, there are gay and lesbian people whom I've worked with down through the years on issues that I have...I never see it. I've fought for women, mainly white women, and I've said it on the floor there's equality in treatment when it comes to the state's pension program because of me and that white women were the ones who were being cheated. I don't see white women saying, let's strike that language. And if they say, well, then we won't hire them in our house, well, fine, that's all right with me, because they were saying in slavery times, well, if you're not a slave here, you're not going to work anywhere. But the times have to change. And after this I'm not going to say anything more on this bill. But I want it in the record while we're discussing wage disparities, discrimination, this is built for white women primarily. This is a white women's bill and that's why it's before us. I read. I watch the news. I hear a lot of criticism of how women are deprived of rights in the Middle East--school, this, that, and the other. But when I see democracy in action, democracy brings discrimination to black people, denial of the right to vote. And then they go to other countries. They carry that same racist attitude toward the people who live in that country. And a point is reached where a line has to be drawn and at my age I'm not going to be around a lot longer, not just in the Legislature but on this earth. And I wait and I watch and I see how sensitive people are when they talk about these issues until it comes to us. So now there's got to be a change. And all those who want this bill, if the only way they can keep this bill alive is to keep semislavery for black women, then the bill goes and they come where we are, because I'll watch all these people they call angry white men. You know why they're angry? Because they don't get favored treatment anymore. They say, I can't get a job. Yeah, they can get a job but they don't want to take the jobs that are out there. When the thing, meaning the economy, was going real smooth, everything was all right with them. They didn't have to worry about a job. Now they have to scramble like we always have. And when we talked about the unfairness, well, you want something for nothing, you just don't want to work. What about them? They're the ones now. I'm told that these white men are in favor of Trump because they're angry. Angry at what? They still get favored treatment. They're still coddled. They're still like spoiled brats. And then with all of this going for them, they're the ones who come running in here saying, let us have guns and let us have them everywhere. And I watch...listen to public radio. You all may as well listen, because after I say this I'm getting out of here. This white man in Iowa was talking about Muslims and whether he thought all Muslims should be kept out of the country or all stereotypes. He said, well, no, I don't think so. He said, but you know, even in this country, if a lot of people were killed by blonde-haired people I'd kind of wonder about them. Well, when you look at the vast majority of these mass killings in America, they're not by Muslims. They're not by black people. They're by white people. And until some of them commit the crime with a gun, they were so-called law-abiding white people. The only place there's been an occupation with...under arms is by white men. And right now these criminals are telling the federal government, we're not coming out until you tell us we're not going to go to jail. That's these angry white men looking for special treatment again. Then they have the nerve to talk about these law violators, the ones who...well, this is Senator Mello's bill. This is you all's affair. So I'm

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going to let you all talk about your issues today. It won't be like this all the time. But a point is reached when a man, who is rational and can think, has studied history as I've studied, who pays attention to current events, who watches the legislation that comes through this Legislature will say, enough. But, see, unlike white people, I'm not going to go get a gun and come back here and kill up everybody who is in here or go someplace else where I see people who look like them and kill all of them. I will go. I will simmer down and realize that, as unfair as it is, those of us of my complexion, who are the most despised people all over the world, who are owned as property, who can read the existing constitution, the provisions that recognize slavery, that allowed the slaveholders to count us, and three-fifths of us who were enslaved would be counted to give them representation in the U.S. government when we weren't even recognized as human beings. We got no rights as people. And Roger B. Taney, Chief Justice of the U.S. Supreme Court, a Roman Catholic, said black men have no rights which a white man is bound to respect. Now you let these white men face something like that and see how they do it. They'd be carrying pistols. They'd run and hide. I come here every day. I don't run. I don't hide. When they ganged up on me because I said my ISIS is the police, I didn't run and hide. I stayed there. I came every day and I gave as good as I got. And they bailed out first. But today I can sympathize with people who have problems and white people, women who have problems similar to ours because they have to deal with white men. So I'm going to let you all help those who need help today. But I'm getting out of here. [LB928]

DANIELLE CONRAD: Thank you, Senator. It's always nice to see you. [LB928]

SENATOR CHAMBERS: You say that. [LB928]

DANIELLE CONRAD: I mean that. [LB928]

SENATOR CHAMBERS: No, I know you do (laughter). And you all can...you all don't have to wait until I get too far away to hear the cheering and the applause for my leaving. I've been going through it all my life and I'm older than everybody in here. [LB928]

SENATOR HARR: Thank you, Senator Chambers. Any other questions for Ms. Conrad? Seeing none, thank you. [LB928]

DANIELLE CONRAD: Okay, thank you so much. [LB928]

SENATOR HARR: Any other proponents on LB928? [LB928]

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SUE MARTIN: (Exhibit 3) Good afternoon, Senator Harr and members of the Business and Labor Committee. My name is Sue Martin, S-u-e M-a-r-t-i-n. I am the president of the Nebraska State AFL-CIO. Today I am testifying in support of LB928. Women have made huge strides toward workplace equality in the past half century. It was only in 1944 that the first equal pay bill was introduced into Congress, and the Equal Pay Act, outlawing pay discrimination based on sex, became law in 1963. Since then, women have made incredible advances in the work force, joining virtually every profession and establishing themselves as leaders in every industry. By ending pay discrimination, we could provide a major boost to working families and the economy at large. Pay equity would mean a raise of \$10,876 for working families--real money to help struggling middle class pay rent, afford gas, buy groceries, and provide childcare for America's next generation of workers. Equal pay would mean the poverty rate for working women would be cut in half, lifting almost 3 million women out of poverty. The increased wages would mean \$447.6 billion in additional income circulating in the US economy. Women are often the victims of title discrimination, where they may be paid less based on their job title, not based upon the work they actually do. Such practices make it difficult for women to prove wage discrimination as, on paper, their title and work may be classified differently, though they are providing the same value to the company as men in doing similar work. In many states, this hurdle has been overcome by creating "comparable worth" programs which evaluate a worker based upon their skill, their effort, responsibility, and working conditions. Workers of comparable worth to the company must be paid the same salary. Comparable worth presents the unique opportunity for states to expand their equal pay laws to ensure that women are not paid based on their job title, but upon their actual worth to the company. For these reasons, it is important that equal pay for comparable work extends to all workers and that there is no exemption when it comes to employer size. I ask that you support this bill on behalf of all working men and women in the state of Nebraska. [LB928]

SENATOR HARR: Great. Thank you, Ms. Martin. Any questions? Seeing none, thank you very much for your testimony. [LB928]

SUE MARTIN: Okay, thank you. [LB928]

MIKE MARVIN: (Exhibit 4) Good afternoon, Senator Harr and members of the Business and Labor Committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees. We are the union representing the vast majority of state employees. I have already submitted my written testimony on this bill and I wasn't going to testify, but I am here because I heard a couple things that I've...and I may have some answers for you or at least a way to point you in those directions. We talk about equal pay for comparable work. Everybody seemed to be confused about how to do that. Right now when we have to negotiate a contract for the state of Nebraska, not every job title is the same from state to state to state. So already existing in state statute is a way to determine a comparable job. If 70 percent of

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the job duties are the same, that is a comparable job for our match when we do our job searches and job matches during negotiations. I don't know if that's helpful or harmful to the bill, but I just saw the confusion on that issue and I thought maybe that might help give you some guidance or clarifications. The other issue that I wanted to touch on is Senator Chambers is exactly right. I drove a bus in Omaha for 26 years. I hauled many black women out to affluent white neighborhoods, dropped them off so they could go clean homes. Some people did pick them up but often those women were left to walk to wherever the home is that they had to take care of. So, you know, I know that many people oftentimes think Senator exaggerates the situation, but I am telling you he does not. I saw it for 26 years with my own eyes. And with that, I'd end my testimony and hopefully it was helpful to you. You have any questions? [LB928]

SENATOR HARR: Thank you. Any questions for Mr. Marvin? [LB928]

MIKE MARVIN: Thank you. [LB928]

SENATOR HARR: Seeing none, thank you for your brevity. [LB928]

IAN FALLON: (Exhibit 5) Good afternoon, Senator Harr, members of the Business and Labor Committee. My name is Ian Fallon; that's I-a-n F-a-l-l-o-n. I'm a community organizer with the Heartland Workers Center in south Omaha in District 7 and I come before you today to testify in support of LB928. The Heartland Workers Center exists to build up the Latino community in south Omaha. At the core of our mission is a fierce dedication to empower our community through workers' rights education, leadership development, and civic engagement training. Workers from many industries, such as meat packing, construction, sanitation services, etcetera, come to us when they feel an employer has wronged them. After they share their story with us we inform them of their fundamental rights as workers in the state of Nebraska and direct them to the appropriate state agencies or attorneys to seek a remedy for their complaints. The existing gender wage gap is a concern for the Heartland Workers Center because of the recent increase in households headed by single mothers in our community of south Omaha. According to an Omaha World-Herald article from January of 2015, women are increasingly responsible for supporting their families with a single income. In a state where women make less for doing similar or equal work than men, the Legislature should take every step possible to combat wage discrimination. If we do not address this disparity, children in our community will continue to grow up in poverty because their mothers are not paid enough to meet their basic needs. A current employee of ours came to us this summer after leaving the banking industry to work in south Omaha through community organizing. She has shared with us on many occasions how she was often made to sign a contract of not only nondisclosure of wages in regards to discussing compensation with her employees, but she did as a matter of fact have those conversations in secret with her employees. While she had been with the bank for several years and was



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compensated more than many of her colleagues, she often heard stories of gender wage discrimination from her female coworkers. In many businesses men make more than women for similar or equal work and LB928 would help to combat this injustice. We hope that this testimony convinces the committee to support LB928 and at this time I'd love to take any questions if there are any. [LB928]

SENATOR HARR: Any questions for Mr. Fallon? Seeing none, thank you and thank you for the work you do. [LB928]

IAN FALLON: Thank you, Senator. [LB928]

SUSAN ANN KOENIG: Chairman Harr, members of the committee, my name is Susan Ann Koenig, K-o-e-n-i-g. I live and work in Legislative District 7 and am the founding partner of Koenig/Dunne Divorce Law. I've been an employer in Nebraska for more than 30 years. And this might be a white women's bill, but I'll venture that it's also maybe an old white women's bill, so I'll get to that in a moment because I don't think anyone has spoken yet to the impact on aging women as we look at what happens when they work for a lifetime and their Social Security is impacted by decades of being paid an unfair wage. I want to tell you a little bit more about my firm and myself because I believe this bill is based on two shared values that our business has and that this committee has, one of being promoting the success in business in Nebraska and the other: doing the right thing. Our law firm is the 2015 recipient of the Better Business Bureau integrity award. I am the 2015 recipient of the excellence award from the Omaha Chamber which promotes business. And I'm a trustee of the Business Ethics Alliance which promotes ethics in business. Now but be clear, I'm here only on behalf of myself and my law firm. Why is this right? The time is right. You've heard that waiting for the existing law as written to get it done is not getting the job done. And I think a half of a century is plenty long to have waited. Congress had hoped, like in so many pieces of federal legislation, that time would get the job done. It hasn't. Senator Johnson, you had a granddaughter who graduated from high school last year. This bill will matter in her world. Senator Bloomfield is facing term limits and this...and, Chairman Harr, for you in your role here, these are opportunities for you to impact these young women on your staff and have some legacy legislation to be proud of. It's an incredible opportunity. It's also right for business. Today's young employees are increasingly interested in workplaces that operate in keeping with their values. They're constantly on the lookout for the next great opportunity and equal treatment increases morale, thus productivity, thus profitability, longevity, and of course reduces the costs of rehiring, retraining, and all of that lost institutional knowledge. Our law firm has become a talent magnet because we believe in equity in the workplace and this bill can do this for more employers. It's right for Nebraska families. You've heard the statistics but I want you to picture what this feels like in the day-to-day life of...we can talk percentages. We can talk about big numbers. But I'm talking about at the end of the month when you've just had 20 percent less to feed, clothe, and shelter your family. And most, you know, most of us are

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living paycheck to paycheck, so we're not just talking about, gosh, should someone like me...and I'm an executive coach as an encore career. I coach CEOs and businesspeople all across the country. It's not...people like me don't need this bill. The people who need it are those who...I mean we need it, yes, it's fairness for all. But who most suffers because of the inequity? As you've heard the statistics, but it's women of color who are suffering the most. And that's why we have an opportunity to here to do, not just because the status quo isn't right, it's wrong, it's very wrong. And this is an opportunity for this committee to maybe not do everything that Senator Chambers wants, but can we please take a small step after 50 years? I think folks have been patient. And so a word about aging women: Social Security is based on your earnings. We have...I'm sorry, I did not anticipate speaking on this issue. I didn't come with statistics on women and aging, but you know how many are living in poverty and this is a very real concern for Nebraska women. So, you know, equality before the law--I love our state motto--this bill creates an opportunity for this. Please, don't miss this opportunity. Happy to answer any questions. [LB928]

SENATOR HARR: Great. Thank you, Ms. Koenig. Any questions? Seeing none, thank you for your testimony. [LB928]

SUSAN ANN KOENIG: Thank you. [LB928]

SENATOR HARR: Thanks for coming down to your Nebraska Legislature. [LB928]

MEGAN HUNT: Hello. Chairman Harr, esteemed members of the Business and Labor Committee, my name is Megan Hunt, M-e-g-a-n H-u-n-t. I'm also away from my child today but I am very grateful for the opportunity to address the committee. It's a great honor. I also agreed with what Senator Chambers said and I'm glad that somebody said it. I agree also that this bill maybe doesn't go far enough but it's time to take a small step in the right direction. I'm a single mother, an engaged community member, president of the nonprofit Safe Space Nebraska, a trustee of the Business Ethics Alliance, an employer in Nebraska for seven years, and the owner of an Omaha-based start-up that employs nine women total, not counting our women contract employees. One of my greatest advantages as a young single mother is that I own my business and I work for myself because, in our broken system that pays lip service to parenting and family values while putting up endless obstacles to contraception, equal pay, medical insurance coverage for mothers, and parental leave, my situation as a woman is not the norm, not even close. I'm encouraged that the Nebraska Legislature has the opportunity this session to diminish one of the greatest barriers to economic progress for women by passing LB928, introduced by Senator Mello, to strengthen our equal pay laws. Equal pay is a woman's right and a worker's right. To not extend equal pay laws to all businesses reinforces a culture where underpaid women are more likely to take extra jobs or leave the work force altogether, where they are more likely

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to remain, and reaffirms the stereotype of professional life as the domain of men. It has been over 50 years since the passage of the Equal Pay Act in 1963, but women in Nebraska still make 78.8 cents for every dollar a man makes. And those earnings are far lower when you drill down into racial disparities in earnings by gender with black women making 61.8 cents and Latina women making only 54 cents. The reasons for these pay disparities are a veritable kaleidoscope of social and economic inequality issues but the Nebraska Legislature has an opportunity now to address one of these factors by adopting a more consistent and effective equal pay law. In addition, I encourage committee members to support LB83, proposed by Senator Cook, to increase transparency and disclosure provisions for employers so that the strides taken forward with this equal pay law in Nebraska can be enforced. When passed, these new standards for equal pay in Nebraska will reflect our values as a state that values its women workers and does not tolerate discriminatory pay practices. In other words, if we are for equal pay, we must also be for ending discriminatory practices that keep workers from knowing when they are being paid less. In addition, we also know that when women make more money, men do better. For couples, when the woman is underpaid, that means less money for the entire household because 60 percent of married couples with children are two-income families. When those women make less, the entire family's standard of living goes down, which ultimately affects children and men just as much as it does women. It's time for progress on this issue in Nebraska to catch up with other states who have already adopted this simple commonsense policy. I own a very small company and the nine women who work for me do not experience a pay gap under my leadership. Please make equal pay the law of the land in Nebraska and ensure that all women, not just the ones with feminist, activist bosses like me, never fall victim to this workplace pay discrimination under this Senate's leadership. Thank you. [LB928]

SENATOR HARR: Great. Thank you, Ms. Hunt. Any questions? Yes, Senator Howard. [LB928]

SENATOR HOWARD: Thank you, Senator Harr. Nice to see you again, Ms. Hunt. [LB928]

MEGAN HUNT: Thank you. [LB928]

SENATOR HOWARD: Thank you for your testimony today. You mentioned that you have nine workers at Hello Holiday now. [LB928]

MEGAN HUNT: That's right. [LB928]

SENATOR HOWARD: Okay. And you currently are exempt from this statute, is that correct? [LB928]

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MEGAN HUNT: That's right. [LB928]

SENATOR HOWARD: And do you feel as though it wouldn't have any impact on your economic productivity in the future? [LB928]

MEGAN HUNT: No, certainly not. I mean we...as a business owner, I mean, I think it's good business to pay people what they deserve to make. And I don't think that it's holding business owners to too high of a standard to make that a consistent standard across all sizes of businesses. If you can't afford to hire someone and pay them what they're worth, you need to look at your own business and look at yourself and not blame the worker by docking them pay. [LB928]

SENATOR HOWARD: Thank you. [LB928]

SENATOR HARR: Any other questions? Thank you. [LB928]

MEGAN HUNT: Thank you. [LB928]

SENATOR HARR: I just wanted to state you left out an important part of your resume: that you are a constituent of Legislative District 8. [LB928]

MEGAN HUNT: District 8, the best district, yes. [LB928]

SENATOR HARR: So, yes, thank you for making the trip down here. [LB928]

MEGAN HUNT: Thank you, sir. [LB928]

SENATOR HARR: I appreciate your time. Any other proponents, proponents? Is there anyone here to testify against Chairman Mello's LB928? See... [LB928]

RICHARD REISER: Good afternoon, Chairman Harr, members of the committee, and staff. My name is Richard Reiser, R-i-c-h-a-r-d R-e-i-s-e-r, appearing today on behalf of the Nebraska Trucking Association in opposition to the bill. Our opposition mainly comes in the form of drafting of the bill and questions starting with the definition of employer. I think that--which is on page 2 of the bill--I think that employer is a term which has a pretty common understanding in the law what we mean by employer. This definition, however, says, "Employer shall mean any person"--new language--"acting directly or indirectly in the interest of an employer," so it's a circular definition. Employer means person acting directly or indirectly in the interest of a person

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acting directly or indirectly in the interest of a person and so on. I don't know what the intent of that is. Are we trying to...one way of reading that says that the employer, actual person who hires and pays the person, no longer has responsibility under this act, only the person acting on behalf of that person does. Is the intent to make the HR director or other person responsible for this and not the employer? Secondly, we do have issue with the comparable work requirement, looking at what's changed in the federal law, which this somewhat follows, which would be substantially similar or substantially equal work. But it talks about then with substantially equal skill, effort, responsibility under similar working conditions. For some reason, the language "under similar working conditions" is being stricken from the existing statute here so that would no longer be something that would be considered in determining whether this is really equal work or equal pay. I think that the concept of comparable as opposed to equal, I find no definition of comparable work. There's some testimony that somewhere in the statutes there must be a definition of what comparable means. I haven't found that. It could be there. I just haven't found it. But what we're...with substantially equal work, following again the federal drafting, considering skill, effort, responsibility under similar working conditions would at least offer more, then, to the court in deciding is this really comparable. Equal is something that would be easier to work with than comparable; at least it would give us some more definition. Thank you. [LB928]

SENATOR HARR: Thank you. Any questions for Mr. Reiser? I guess I have a question. You are correct. I was always taught a definition of a word should not be in the definition and yet that seems to have happened with employer. Do you have a recommendation for a better definition of employer? [LB928]

RICHARD REISER: No. [LB928]

SENATOR HARR: Okay. [LB928]

RICHARD REISER: I think that the...you know, I would say with pretty good confidence that the term "employer" is defined in Nebraska statute more than in one place, and I'm sure there would be a definition there that would be acceptable. But in common parlance it's somebody who hires and employs another person for their services. [LB928]

SENATOR HARR: Thank you for pointing that out. I appreciate that. Any other questions? Senator Howard. [LB928]

SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today, Mr. Reiser. I'm curious, can you tell me a little bit about your professional organization? Do you represent trucking companies or truckers individually? [LB928]

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RICHARD REISER: Both. [LB928]

SENATOR HOWARD: Okay. [LB928]

RICHARD REISER: Trucking companies are the members; however, we have a lot of small members who are really one person with a truck. [LB928]

SENATOR HOWARD: And so would one person with a truck be impacted by the removal of the 15...by the number 15 for employment? [LB928]

RICHARD REISER: Given...no, because you can't compare. [LB928]

SENATOR HOWARD: Right. [LB928]

RICHARD REISER: One person you can't compare to anybody else. [LB928]

SENATOR HOWARD: There's no comparable, correct. [LB928]

RICHARD REISER: There's nobody comparable to one person. [LB928]

SENATOR HOWARD: So are most of your trucking organizations that are members of yours 15 or more? Are they currently impacted by statute? [LB928]

RICHARD REISER: I would say that most of our members are 15 or less employees who would not be impacted by the current statute. [LB928]

SENATOR HOWARD: And so is the issue more with that they're going to fall under the statute rather than with the language? [LB928]

RICHARD REISER: Actually, I think it's hard to argue against making it apply to all employers. [LB928]

SENATOR HOWARD: Right. [LB928]

RICHARD REISER: The one argument that makes some sense is, and I've had experience with litigating, litigation is horrendously expensive. And you get in a situation where a person can go

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in to the NEOC and say, I've been discriminated against. They sign a piece of paper and walk out and that's the end of it. Then it's investigated and the company is hiring somebody to respond to that. And for a small company, many of our members who are very small trucking companies, that cost is horrendous. And, you know, it is just a fertile field for litigation when you start talking about is this job comparable to this other job. If it's the same job, they're both clerk typists that have the same duties and the same hours, it's pretty clear. But when you start trying to compare a rate analyst to a secretary, is that the same job? Is that a comparable job? And sometimes...the only way we're going to get an answer under this is at the end of the litigation when a judge decides if it was, so it can be a real burden on the small employer. [LB928]

SENATOR HOWARD: And have you spoken with Senator Mello about your concerns? Have you started to work with him for some language that would work best for your professional organization? [LB928]

RICHARD REISER: No. [LB928]

SENATOR HOWARD: Okay, thank you. [LB928]

RICHARD REISER: Think I should do that? [LB928]

SENATOR HOWARD: I do. I recommend it. [LB928]

SENATOR HARR: Any other questions? Senator Crawford. [LB928]

SENATOR CRAWFORD: Thank you. Thank you, Chairman Harr. And thank you for your testimony. Are there any particular gender patterns in the trucking industry that you would think might be a particular risk? Like the example that was given before was the janitors versus housekeepers. I mean, is there any kind of gender pattern in the trucking industry where you think there are different genders that hold different kinds of jobs that may create a liability risk in that industry? [LB928]

RICHARD REISER: Off the top of my head, Senator, I can't think of that. I mean obviously the biggest occupation is truck driver. [LB928]

SENATOR CRAWFORD: Right. [LB928]

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RICHARD REISER: And companies I'm familiar with pay all truck drivers the same. They start at the same and there are differences of pay for experience. But there's...I don't see much room for discrimination there. Now when you get into other jobs in the office and in the bigger company, you get into the areas of this person is an accountant I. Does that compare to a dispatcher or a rate analyst? So I don't know. [LB928]

SENATOR CRAWFORD: Thank you. [LB928]

SENATOR HARR: Senator Howard. [LB928]

SENATOR HOWARD: May I ask one? Thank you. You mentioned that there would be an increase in lawsuits because of this bill. Is that your sense of it? [LB928]

RICHARD REISER: I guess I wouldn't want to say there would be an increase. I'm saying that there would be...I think there would be more litigation coming out of the term "comparable" than out of the term "equal." [LB928]

SENATOR HOWARD: Well, would you want to respond to the fiscal note that indicates that there would be no increase? [LB928]

RICHARD REISER: I haven't seen the fiscal note. [LB928]

SENATOR HOWARD: Do you want a copy of it? [LB928]

RICHARD REISER: I'd be glad to read it. [LB928]

SENATOR HOWARD: The fiscal note states that, "The number of additional cases that would be filed...is difficult to determine," but cases have ranged from 1 percent and 3 percent of the total cases filed with the EEOC. An investigator handles about 80 cases per year; and with the broadening of scope the same trend continues, the agency sees no need for additional resources. [LB928]

RICHARD REISER: I guess it says what it says, Senator. If that's the case, you could argue that's not very many cases. [LB928]

SENATOR HOWARD: Certainly. [LB928]



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RICHARD REISER: But I think changing the terminology from equal to comparable is something that would encourage more litigation because it's a much more gray area trying to determine what is a comparable job, comparable work, as opposed to what is equal work. [LB928]

SENATOR HOWARD: Certainly. Thank you. [LB928]

SENATOR HARR: Senator Ebke. [LB928]

SENATOR EBKE: Thank you. I'm wondering when we start talking about fiscal notes on things like this, and of course the fiscal notes reflect what we think it will cost the state, so do you have any sense of what kind of added cost litigation might impose upon businesses? I mean that's part of the equation, isn't it? [LB928]

RICHARD REISER: It is and I don't have a sense. When you say businesses, the business community, would it be a 2 percent increase or not? I don't know. I do think that the potential impact on a very small business that has to defend a claim that, gee, I'm not getting...my job is comparable and I'm not getting the same wages, I think the cost for a small business of doing that is significant. [LB928]

SENATOR EBKE: I imagine there will be other people testifying behind you that might have an idea about some of this sort of thing and I'd love to hear from anybody if they've got ideas about it. Thank you. [LB928]

SENATOR HARR: Any other questions? I guess I would just comment, you know, on this fiscal note. It says, "If with the broadening of scope the same trend continues," so there's somewhat of an assumption that there wouldn't be more litigation. But that's, as we say in the business, what happens when you assume. So I appreciate your time. Thanks. [LB928]

RICHARD REISER: Thank you. [LB928]

SENATOR HARR: Anyone else here to testify in the negative against LB928? [LB928]

ROBERT EVNEN: Mr. Chairman, members of the committee, my name is Bob Evnen, B-o-b E-v-n-e-n. I'm here today on behalf of the Lincoln Independent Business Association and the Nebraska Chamber of Commerce and Industry. By way of brief background, I am a labor and employment lawyer in Lincoln. I have been practicing labor and employment law for 38 years. And it is apparent that this bill springs from a good heart, and you've heard the testimony today

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that demonstrates that. But unfortunately, and meaning no disrespect to Senator Mello, it is...it springs from a good heart but it is not a very good bill. First, Senator Ebke asked about costs. This bill would be incredibly costly for small business in Nebraska. We have a very large number of small businesses in Nebraska that would be impacted by this. Surely the filing of charges at the NEOC would increase. That's a large part of the purpose. And there has been a...there is a reason why current legislation has a 15 employee threshold. The reason is that it was thought that was a threshold at which employers could absorb the cost of responding to charges such as this. If we...I can tell you that employers who have to respond to NEOC charges are going to spend \$5,000 to do it. They're going to spend \$5,000--that's just an average number that I'm giving you based on my own experience over time. That's going to be cost that will be out-of-pocket cost in addition to costs that they incur in having to respond to the charge--management costs, internal costs, costs within the business to collect the information that's required in order to respond. And I would also tell you that based on the NEOC's annual reports, if you average it out, 4.6 percent of the charges that are filed with them result in a reasonable cause finding. These are charges that are taken all the way through investigation to a determination of whether reasonable cause to believe that discrimination occurred does or does not exist. Four-point-six percent of those cases result in findings, a determination that reasonable cause exists, in other words, that for every case of reasonable cause that doesn't mean that an employer has discriminated. What that means is that there is enough information present to push the case forward for a further determination. That means that for every reasonable cause, if you just apply those averages, it's going to be \$95,000 for every reasonable cause finding that comes through. That's a couple of jobs. You want to translate this into what this means? This means jobs. This means a loss of jobs. But that doesn't mean that employees are without a remedy because, as we sit here today, employees with Equal Pay Act claims can bring them, as Senator Mello pointed out, under the Fair Labor Standards Act, which is our federal wage and hour law. That's where the Equal Pay Act appears. Everybody who is entitled to be paid minimum wage or overtime--not everyone, there are exemptions--but the vast majority of employees who are entitled to minimum wage and overtime are also entitled to file Equal Pay Act claims with the federal government, with the NEOC, or directly in court. People who suffer wage discrimination today are not without a remedy. So this isn't a question of remedy or no remedy for someone who has suffered discrimination. There is a remedy in existence today. The NEOC statute today is patterned after the federal Equal Pay Act. It mirrors the federal Equal Pay Act. We have 50 years' worth of decisional law so we can understand how that works, how to apply it. But this bill changes to the concept of comparable worth. And if you'll allow me, I'm going to explain that; and I don't know if I can do it before it turns red but I'll come close. Comparable worth means equal pay for work of equal value. It doesn't mean if you look at the statute today, there are comparators in here in the statute today: skill, effort, responsibility, a seniority system, a merit increase system, a system that measures earning by quantity or quality of production or any other factor other than sex. May I continue? [LB928]

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SENATOR HARR: Just a second. I think Senator Ebke will have a question. [LB928]

SENATOR EBKE: Yes. I was going to have some questions about that anyhow, the comparable worth versus the equal pay, so if you would, please, continue. [LB928]

ROBERT EVNEN: Thank you. Comparable worth is different than what is currently in the federal law and currently in the state law that follows the federal law. Comparable worth is the concept of equal pay for work of equal value. So if we have a custodian over here who is a woman and we have an administrative assistant over here who is a man and the woman who is the custodian feels she isn't being paid fairly, then someone has to evaluate the value of her job as a custodian as against the value of his job as administrative assistant and see whether that value to the company is comparable. How do you figure that out? Who is going to figure that out? Comparable worth is not the way we're approaching equal pay today. And one of the daunting problems is, who is supposed to figure out whether work is of equal value? This is much different than the idea of the comparability of the work, the experience, and the talents of the people who hold similar jobs and it is not tied to job titles. So that's in a brief nutshell the concept of comparable worth which is introduced in this statute and that we just...that we do not have today. I have a couple of other points. One had to do with who does this apply to in terms of employees and the other is statute of limitations. So if I'm asked a question, I'll answer that. [LB928]

SENATOR HARR: Any other questions for Mr. Evnen? Senator Johnson. [LB928]

SENATOR JOHNSON: Thank you. I'm going to go back to statements that might have been made earlier where we compared a janitor to a housekeeper. And I'm thinking maybe in the...I'll say the hotel industry, you might have somebody that has the title of a janitor. Housekeepers we probably know pretty much what they do. We know what a janitor does. So if a man was hired as a housekeeper in that situation, is there discrimination there because there they would be working side by side? Do you know of a...I mean... [LB928]

ROBERT EVNEN: Sure. The classic example of an Equal Pay Act case is where you have a man who holds a position and a woman who holds the same position and a man is paid more and a woman is paid less. And the question is, is that for some legitimate reason based on skill, experience, knowledge, responsibility? [LB928]

SENATOR JOHNSON: Have you seen that as...of an instance where there has been claims and... [LB928]

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ROBERT EVNEN: Sure. We take Equal Pay Act claims where that's the issue. They're not simple claims to litigate. They tend to be more expensive claims because these elements are...we know what elements have to be compared but it's not always easy to compare them. But the answer to your question is, yes, we have seen claims... [LB928]

SENATOR JOHNSON: To me that's equal pay. I mean that goes back to that equal pay comparable. [LB928]

ROBERT EVNEN: Right. We have that today. [LB928]

SENATOR JOHNSON: Yeah. [LB928]

ROBERT EVNEN: And then we have it for everybody today because of the wage and hour law, the Fair Labor Standards Act. [LB928]

SENATOR JOHNSON: Thank you. [LB928]

SENATOR HARR: Senator Howard. [LB928]

SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today. Just out of curiosity, because I am still trying to get my arms around this, if I was an administrative assistant and I found out that I was being paid less than a man who was a secretary at an employer that had less than 15 employees, can you tell me a little bit about my redress? [LB928]

ROBERT EVNEN: Your redress is to the NEO...to the, I'm sorry, to the EEOC, the U.S. Equal Employment Opportunity Commission, which enforces the Equal Pay Act. And your redress is also into... [LB928]

SENATOR HOWARD: And so is there anything in state statute that reinforce... [LB928]

ROBERT EVNEN: I'm sorry? [LB928]

SENATOR HOWARD: Is there anything in state statute that would reinforce that? [LB928]

ROBERT EVNEN: There is nothing in state statute for employers who have fewer than 15 employees. If the question is, what redress do I have, the answer is you have redress to the federal agency and you have redress to the federal courts. [LB928]

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SENATOR HOWARD: So in essence this would be reiterating what's already in existence on the federal level? [LB928]

ROBERT EVNEN: This would be...yes, in...you say reiterating. What this does is it opens up another avenue in which employees can now go to the NEOC and file charges and at the NEOC we have these cost structures that are really pretty oppressive for small businesses. It is the reason that...and we've had the Equal Pay Act under federal law, as I've said. But it is a big expense for small businesses to absorb these charges and respond to them. [LB928]

SENATOR HOWARD: And the expense is already there based on federal law. [LB928]

ROBERT EVNEN: The expense would be there if there were filings at the EEOC. If there were federal court filings, yes, there would be expenses. Now the question is, need we open up another avenue and another load of expense for small employers? [LB928]

SENATOR HOWARD: Would... [LB928]

ROBERT EVNEN: I think not and the people who I... [LB928]

SENATOR HOWARD: Would you recommend that maybe the best insurance against a claim of wage discrimination would just be to pay people equally? [LB928]

ROBERT EVNEN: Senator, I...that's a terrific question. We heard testimony from a proponent who has a business and has the pick of the...pick of whoever she wants because of the way that she pays and provides benefits. The way that we can address this without having to have some state agency that decides comparable value, some state agency that weighs this for small employers that have a heavy burden, if small employers want to have top-notch employees, they're going to have to address this because, as this...as the people in this room attest today, women are not going to sit around and go to workplaces where they're abused. So if you have the opportunity to go find a better place to work where you're paid better, you will take it. And that's the market. The discipline of the market is a very powerful thing, particularly today. [LB928]

SENATOR HOWARD: Thank you for your testimony today. [LB928]

ROBERT EVNEN: Thank you. [LB928]

SENATOR HARR: Any other questions? Senator Crawford. [LB928]

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SENATOR CRAWFORD: Yes. Thank you, Chairman Harr. And thank you for your testimony. Just wanted to come back to the point that you were making about the Nebraska...the NEOC cost being greater than the EEOC. Is that true? If an employee goes to the NEOC, is that a more expensive process for an employer than if someone went to the EEOC and why? [LB928]

ROBERT EVNEN: I would say that the costs are probably roughly comparable. [LB928]

SENATOR CRAWFORD: Okay. [LB928]

ROBERT EVNEN: The difficulty is you open up an avenue where you have this percentage and the cost that I just described... [LB928]

SENATOR CRAWFORD: So... [LB928]

ROBERT EVNEN: ...in a circumstance where we already have redress through the federal agency. [LB928]

SENATOR CRAWFORD: And so all employers...employees, excuse me, have the federal redress. [LB928]

ROBERT EVNEN: Any...sorry. [LB928]

SENATOR CRAWFORD: And this bill would provide more employees with the state option. [LB928]

ROBERT EVNEN: No, the employees...the vast majority of employees in this state, regardless of the size of their employer, are covered by the Fair Labor Standards Act, which is the minimum wage and overtime law. And the Equal Pay Act applies to all of those employees who have minimum wage and overtime. There are certain exceptions. [LB928]

SENATOR CRAWFORD: Okay. [LB928]

ROBERT EVNEN: So it doesn't really expand the coverage. What it does is it provides this new avenue. It adds the concept of comparable worth. It also expands the definition of employer to encompass people who we thought were independent contractors. There's no sure...there's no certainty now about who is an employer. It's another difficulty with the bill. And it also

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introduces a concept that really changes the statute of limitations so that it's nearly unlimited.  
[LB928]

SENATOR CRAWFORD: I have one more follow-up. So can an employee who has...thinks that they have been subject to wage discrimination, can they seek redress at the state and federal level both at the same time? [LB928]

ROBERT EVNEN: They can if the employer has 15 or more employees. [LB928]

SENATOR CRAWFORD: Okay, thank you. [LB928]

SENATOR HARR: Thank you. I have a quick question. What would we need to do to harmonize the state language with the federal language? [LB928]

ROBERT EVNEN: We don't need to do anything. We don't need any changes to do that.  
[LB928]

SENATOR HARR: Okay, well,... [LB928]

ROBERT EVNEN: It's currently harmonized and I'm going to say one thing that... [LB928]

SENATOR HARR: Well, they're not harmonized though because the state is 15 or more and the...is the only difference the number of employees? If not,... [LB928]

ROBERT EVNEN: Oh, okay. [LB928]

SENATOR HARR: ...you know, are there other changes so that they cover the same? Because I am sure you agree with me that local control is better and a government closer to the people is better and when you deal with the federal bureaucracy it's easier to get lost. And so I understand your concern about the EEOC versus the NEOC, but I just...if the concept is good, of nondiscrimination, which I don't think anyone in this room is standing up for discrimination, so I guess what I would like to do is find a way to make this closer to the people in a way that's still fair and equitable. So my question is, how do we harmonize this? [LB928]

ROBERT EVNEN: If you want to make it closer to the people in a way that's fair and equitable, then what you would do is you trade a state law for a federal law. You wouldn't add another layer which is the state. That isn't fair and equitable to the people who are trying to provide jobs in this

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state for employees, as imperfectly as they may be doing it. But can I respond to your question about how is it the same and how is it different? [LB928]

SENATOR HARR: Yeah, please. [LB928]

ROBERT EVNEN: From the standpoint of the substantive claim under the Equal Pay Act, the current state law is the same as the federal law, the EPA, the Equal Pay Act. The 15 employee threshold is something that applies to our state statute that does not apply to the federal Equal Pay Act. The federal Equal Pay Act applies to a greater number of employees who are covered by the Fair Labor Standards Act. Sorry to get into all these statutes. There is a change in federal law related to the statute of limitations and that's reflected in Senator Mello's bill that if someone believes that they were treated unfairly 20 years ago and they were given a wage increase, they can bring a claim today. And the question is, is that wise? [LB928]

SENATOR HARR: Is that the... [LB928]

ROBERT EVNEN: The Congress has done that. Is that wise? That's a fair policy question to ask. I would tell you that it runs contrary to the purpose of these employment discrimination statutes when they were first adopted which was to have a speedy, impartial, competent resolution of claims both for the benefit of the employee and the benefit of the employer and that now here's a change which will expand the statute of limitations that permits long past difficulties to sit and simmer for decades before they have to be raised. That's one difference that I would say, Senator, is ill advised. The second is a change in the definition of employer which is confusing and itself will engender lots and lots of disputes, difficulties. [LB928]

SENATOR HARR: Fair. And the statute of limitations change, that's the Lily Ledbetter commonly on the federal level (inaudible)? [LB928]

ROBERT EVNEN: Correct. [LB928]

SENATOR HARR: Okay. And I think we're going to have a claims bill on that later for the whole committee to know on an issue similar to that. Okay, well, hey, thank you for coming to your Nebraska Legislature. [LB928]

ROBERT EVNEN: Thank you, Mr. Chairman. [LB928]

SENATOR HARR: Any other questions based on my questions? [LB928]



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SENATOR HOWARD: Senator. [LB928]

SENATOR HARR: Oh, Senator Howard. [LB928]

SENATOR HOWARD: This is my last one, I promise. I just wanted to clarify a point. You mentioned that employers are really focused on competitive wages and that if a woman didn't want to be paid less she would go somewhere where she could be paid more. And just so I'm sure about your intention, you're not blaming women for accepting less money, right? [LB928]

ROBERT EVNEN: What I'm...no, I'm not. What I am saying is that we...there are historical inequities. This law in 1963 was designed to address them. There are avenues of redress available that are being taken. I can't comment on all the statistics that have been cited to you today. I have not seen them and so I have no comment on them, pro or con. But what I can say is that in the workplace of 2016, that employers are a lot more attuned to their employees, their employees' needs, what it takes to attract and retain good, solid, qualified employees today than they might have been when this law was passed. So it seems to me that there has been a lot of progress made in the marketplace. And I don't mean to suggest that there have not been inequities or that inequities don't exist today. I don't say that. But what I do say is I think employers today are a lot more tuned in than they were a few decades ago. [LB928]

SENATOR HOWARD: That's very reassuring. That gives me the impression that this wouldn't be as much of a burden for businesses. But thank you for your testimony today. [LB928]

ROBERT EVNEN: Thank you all. [LB928]

SENATOR HARR: Thank you, Mr. Evnen. Mr. Hallstrom, welcome back. [LB928]

ROBERT HALLSTROM: (Exhibit 6) Chairman Harr, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business to testify in opposition to LB928. I have also signed in, in opposition, on behalf of Nebraska Bankers Association. While I've gone into more detail in my testimony, you've heard much of what I intend to cover. Obviously the legislation changes the standard from equal pay for equal work to equal pay for comparable work. I think the witnesses before me have already outlined the difficulties in the change of that standard. If you look at the federal Equal Pay Act, equal pay for men and women based on performing substantially equal work, equal work, substantially equal work, comparable, all of those terms clearly have to have different meanings because they're different words. You had asked, Senator Harr, a number of witnesses to give you examples of the difference between comparable and equal and what I took

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away from listening back there is that they had a circular definition of comparable is comparable. And so I think that therein lies the difficulty. The second issue that I was going to touch on, Mr. Evnen talked in the end of his comments about the statute of limitations. The provisions of the last section of the bill that has the new language focuses in on the issue of what I call a continuing violation approach where you can have simmering claims of discrimination that as long as they are receiving either wages or even retirement benefits, perhaps many years after they've left the work force, that they could raise an issue. We've had a lot of discussions with regard to issues of statute of limitations and statute of repose and statute of repose are out there to ensure that you don't have an unlimited time period within which somebody can come back after memories have faded many years hence and bring a claim that...particularly in this area where it could be a he-said-she-said type of situation that you'd prefer to have those, number one, taken care of expeditiously for the benefit of the employee, but also not to put the employer at a disadvantage because of claims brought many, many years after the initial discrimination had occurred. Be happy to address any questions. [LB928]

SENATOR HARR: Thank you, Mr. Hallstrom. Senator Ebke. [LB928]

SENATOR EBKE: Thank you, Chairman Harr. The whole statute of limitations thing has me befuddled a little bit. As one who worked managing a restaurant back in 1985, I sometimes thought that I wasn't getting paid what the guys, the male managers within the group were getting paid. And I had no way of knowing that for sure. But is your understanding of the bill that it would allow me to today go back and raise an issue in that regard? [LB928]

ROBERT HALLSTROM: Well, in the bill, Senator, and from my testimony on page 1, I've kind of touched on the fact that they're touching on the establishment of an unlawful employment practice, and then it goes in and tells you what constitutes an unlawful employment practice. And then at the end it says, "including each time wages, benefits, or other compensation is paid," so those constitute a separate violation each time that wages are paid pursuant to a practice that had originally been discriminatory in nature would be the way I would interpret that. [LB928]

SENATOR EBKE: So how would...if you have an unlimited statute of limitations, I mean, there's a lot of businesses that kind of come and go, appear and disappear. What would be the obligations on employers to maintain some sort of, oh, I don't know, coverage for the long term? Or would there be no...are you following what I'm saying sort of? [LB928]

ROBERT HALLSTROM: Yeah, I'm not sure how your liability coverage might come into play, but certainly in a situation like that, recordkeeping and the ability to document whether there was or was not a discriminatory practice is going to be a key in any litigation. And that's why the passage of many, many years may make that much more unlikely that the employer is going to

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be able to go back and reflect from an evidentiary standpoint what it is that they did or didn't do that may or may not have been discriminatory in nature. [LB928]

SENATOR EBKE: Thank you. [LB928]

SENATOR HARR: At all times though the burden of proof would be on the employee, correct, to prove? [LB928]

ROBERT HALLSTROM: I believe that's correct. [LB928]

SENATOR HARR: Okay, thank you, or, excuse me, the plaintiff, which would generally be the employee. [LB928]

ROBERT HALLSTROM: Yeah, yes. [LB928]

SENATOR HARR: Senator Crawford. [LB928]

SENATOR CRAWFORD: Thank you, Chairman. First I just had a clarifying question. In the testimony it talks about a "pension annuity check rule" as one of your concerns about the bill and I was just trying to find that in the bill. I wondered if you could indicate what your concern is on that. [LB928]

ROBERT HALLSTROM: I think that's just a way of referring to the continuing payment aspect that as long as you're receiving either wages or retirement benefits that it's a continuing pension annuity that there are payments many years after you've even left the work force, for example, where you could still have the underpinnings of raising and bringing a discrimination claim. [LB928]

SENATOR CRAWFORD: And the part of the bill where you see that vulnerability or concern is where? [LB928]

ROBERT HALLSTROM: It's the new language towards the end of the bill, Senator. I apologize, I don't have... [LB928]

SENATOR CRAWFORD: Okay, the benefits, okay. [LB928]

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ROBERT HALLSTROM: It says, "including each time wages, benefits, or other compensation is paid." On page 1 of my testimony I've got in the paragraph at the bottom... [LB928]

SENATOR CRAWFORD: Ah, here we go. I see. [LB928]

ROBERT HALLSTROM: Yeah. [LB928]

SENATOR CRAWFORD: Thank you. [LB928]

ROBERT HALLSTROM: And it's a brand-new paragraph, language towards the back of the bill. I can't tell you what page it's on. [LB928]

SENATOR CRAWFORD: Okay. Thank you. Another question I had, the...in your testimony you talk about the federal Equal Pay Act providing protections in terms of substantially equal work. Is that word "substantially" in the Equal Pay Act or is that your adjective there? [LB928]

ROBERT HALLSTROM: Well, I would defer to Mr. Evnen and his 38 years of practice. [LB928]

SENATOR CRAWFORD: Okay. [LB928]

ROBERT HALLSTROM: I drew that from some materials regarding a description of the Equal Pay Act. I think Mr. Reiser's testimony included that language as well, and some additional descriptive terminology which may have come directly from the act in that case. [LB928]

SENATOR CRAWFORD: Thank you. I just have one final question. I think, you know, a key part of the testimony is that we have many of these protections already, there is redress opportunities already. So, I guess, how would you explain the disconnect between there being ample redress opportunities and the differences in wages that women receive that we've heard about earlier in testimony? [LB928]

ROBERT HALLSTROM: Yeah. And, Senator, again, I'm not going...I'm not here to dispute those statistics. [LB928]

SENATOR CRAWFORD: Okay. [LB928]

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ROBERT HALLSTROM: But obviously I've not seen them. I can't verify one way or the other their accuracy. [LB928]

SENATOR CRAWFORD: Just in principle, not...yeah. [LB928]

ROBERT HALLSTROM: I'm not sure why the disparity would exist. You know, if you go down to a comparability standard, as Mr. Marvin suggested, and I don't know what statute that's in, but for purposes of labor negotiations perhaps a 70 percent comparability standard might be appropriate. I would find it hard to believe that a 70 percent comparability standard would be appropriate in this context where we've traditionally been equal pay for equal work or equal pay for substantially equal work type of concept that I'm not sure 70 percent comparability is probably what rises to the level of the standard that ought to apply. But I can't begin to tell you why that disparity continues to exist. I would agree with Mr. Evnen, you know, and you see examples. I'm certainly not doing a promotion for the business, but traditionally employers have been worried about if you have leave that people might not come back or if you give them unlimited leave they might take unlimited leave. And the company Hudl has shown that there's some innovative things that are being done out in the marketplace. And I think there are a number of small employers, similar to what Mr. Evnen suggested, that are out there realizing what the changing marketplace is and certainly perhaps later than it should have been recognized, but they are making those changes and innovations to adapt to the millennials and the new marketplace and the employees that they're facing. [LB928]

SENATOR CRAWFORD: Thank you. [LB928]

SENATOR HARR: Thank you, Senator Crawford. Any other questions for Mr. Hallstrom? Seeing none, thank you. [LB928]

ROBERT HALLSTROM: Thank you. [LB928]

SENATOR HARR: Anyone else here as an opponent of LB928? Anyone here in the neutral capacity? Seeing none, Mr. Chairman, you are welcome to return to the hot seat. [LB928]

SENATOR MELLO: Thank you, Chairman Harr. Members of the committee, I'm glad I was able to get out of my other hearing to hear a little bit of the end of the supporter testimony but, more importantly, to hear some of the opposition testimony because I think to some extent, if anything you heard, was there's some concern in regards to definitional language which, as always, we can sit down I think collectively and find ways to negotiate sometimes those difficult legal redefinitions of employer amongst many other things. But to some extent it was a bit disturbing

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to not hear someone explain how over 53 years since this Nebraska wage discrimination law has been in place we've been able to solve the wage gap. And to some extent it's a bit disturbing to hear that if...to some extent I think Senator Howard asked a follow-up question that simply a marketplace solution should solve this problem, but it's 53 years later and women are still making 21.8 cents...21.2 cents, I'm sorry, less on the dollar than men in the state of Nebraska. And I didn't hear a market solution to solve that. The reason why is because the crux of this bill, as you heard through I think some very good questions from the committee, simply takes the existing federal law and mirrors it in state law when it comes to business size of discrimination. And the reality is you have a 21.2 percent wage discrimination because it's more difficult to go to the federal level to file a wage discrimination case. Mr. Evnen, while being a good man, readily knows that it's more difficult to go to the EEOC than the Nebraska Equal Opportunity Commission, which is one of the reasons why this committee supported last year and the Legislature passed making sure that when women have pregnancy discrimination cases it's easier for them to go to the NEOC instead of EEOC at the federal level. So what we did last year as a Legislature and what this committee did in regards to pregnancy discrimination we're trying to do right now with wage discrimination, which is mirror the state law to the federal law when it comes to businesses of a certain size. I think we could all agree that a lot has changed in our economy since 1963, not simply the issue of the size of an employer in regards to number of employees of whether or not a company should pay a woman less than a man right now in 2016. To some extent, my hope would be that we could work through...I know, I completely understand some of the definitional concerns and changes regarding comparable versus equal. I think that is a best practice. I think you will see over time that is where the law will take us. I think to some extent the definitional argument you've heard in regards to the definition of employer, for us to change the state law to mirror the federal law in regards to eliminating the restriction of 15 or fewer employees don't apply to equal pay will have to come with a definition that works in regards to employer. But I think the thing that troubled me probably the most is some belief that this issue is simply...can just be solved if people go to the federal level. And I don't think this is an indictment of one level of government over the other. My concern is that to some extent, if that simply was the case, we wouldn't have LB928 today. If there was simply redress at the federal level, it solved this problem for women across Nebraska, we wouldn't be here. There would be no need because they would have their...they would have all of their wage discrimination cases solved at the federal level. But the reality is we know it's more expensive, it's more tedious, and, as I think Senator Harr mentioned, a government that's closer to people to be able to address issues closer to home is much easier to deal with than obviously the federal government. So with that being said, there's a number of other items I could go into. I can appreciate the testifiers today in support of the bill raising this issue that the issue has obviously not gone away over a number of years. Will LB928 solve the problem? No, I would never tell you it would solve the problem. There's a number of issues that I think we need to consider collaboratively in a comprehensive way to address equal pay and wage discrimination in this state. But to give women, particularly women, another course to seek redress in regards to wage

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discrimination does not impact small businesses any more than them going to the federal level. And I would make an argument, dealing with the NEOC through the appropriations process, learning about their case filings--and, yes, I've gone through their annual reports as well--overwhelmingly businesses in Nebraska prefer to deal with the NEOC instead of the EEOC. We heard that last year in regards to the pregnancy discrimination bill as well that going through the state route instead of the federal route is preferred for employers because it's easier to work with instead of the federal government. With that I look forward to working with the committee and other stakeholders to try to find a compromise on our ability to move forward with LB928. Thank you, Mr. Chairman. [LB928]

SENATOR HARR: Thank you, Senator Mello. Any questions? Senator Crawford. [LB928]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you, Senator Mello. I just wanted to come back to the comparable issue just for a moment. Your bill talks about comparable work clear and I think there was some discussion about comparable worth where someone would have to, like, assess a value of a job to a company. But my understanding from your bill is that it's clearly comparable work so it would be more along the lines of the discussion of tasks as opposed to value. Is that correct? Or what do you intend with the language? [LB928]

SENATOR MELLO: Nope, Senator Crawford, I think the bill is very clear. I heard that opposition testimony as well and it kind of caught me off guard as well because I don't see the word "worth" anywhere in legislative statute and I think, if anything, that may be an argument against wanting to see the bill move forward. But I think the bill is fairly clear in regards to comparable work, specific tasks that are required due to a specific job or job requirements. So I think the bill was fairly clear in regards to that very distinct definitional change of work versus worth. [LB928]

SENATOR CRAWFORD: Thank you. [LB928]

SENATOR HARR: (Exhibits 7-11) Thank you, Senator Mello. Thank you. And if I could read into the record, we have letters of support from the Nebraska Equal Opportunity Commission; the National Women's Law Center; the NAPE from Mike Marvin; Kim Quick of the Teamsters; and Tessa Foreman from Nebraskans for Peace; and we have one letter of opposition from Mr. Robert Andersen of the Nebraska Cooperative Council. With that, we will end the hearing on LB928 and we will move on to LB1089 with Senator Hansen who is making his way to the front right now. Welcome, Senator Hansen, to your Business and Labor Committee. [LB928]

SENATOR HANSEN: Thank you. Good afternoon, Chairman Harr and members of the Business and Labor Committee. My name is Senator Matt Hansen, for the record, M-a-t-t H-a-n-s-e-n,

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representing District 26 in northeast Lincoln. I'm here today to introduce LB1089 which would increase the minimum wage by persons compensated by way of gratuities, commonly referred to as tipped minimum wage. Our state's tipped minimum wage, which is currently \$2.13 an hour, has not changed since 1991 when the federal tipped minimum wage was uncoupled from the standard minimum wage. At that point in 1991, the federal minimum wage was \$4.25 with the tipped minimum wage being 50 percent of that wage. This bill would increase the tipped minimum wage from the current \$2.13 per hour to an index rate of the standard minimum wage. This would 40 percent or \$3.60 of the current \$9 minimum wage starting on August 1 of this year, and 50 percent, or \$4.50, of the current \$9 rate starting on January 1, 2017. Indexing the tipped minimum wage to 50 percent of the standard minimum wage would put it back to where it has historically been. I believe this is good public policy and will put us in line with some of the states that surround Nebraska. Iowa currently pays tipped employees \$4.35 an hour; Colorado, \$4.98; and Missouri, \$3.67. Overall, 31 states have higher tipped minimum wages than Nebraska. Further, as I'm sure you all might have noticed, the voters of Nebraska overwhelmingly supported a traditional minimum wage increase on the ballot in 2014. I believe the majority of Nebraskans would support a tipped minimum wage increase as well. In closing, I would ask the committee to advance LB1089 to General File and to support hardworking Nebraskans. Thank you. [LB1089]

SENATOR HARR: Thank you, Senator Hansen, for your testimony. Any questions for Senator Hansen? I have one quick question. So currently a tipped employee makes \$2.13 an hour. [LB1089]

SENATOR HANSEN: Yes. [LB1089]

SENATOR HARR: However, if their tips do not equal the minimum wage, their employer is required to pay that difference, is that correct? [LB1089]

SENATOR HANSEN: That's my understanding, yes. [LB1089]

SENATOR HARR: Okay. I have no further questions. Any other questions based on mine? Seeing none, thank you. Will you be sticking around for closing and opening on LB896? [LB1089]

SENATOR HANSEN: I plan on it, yes. [LB1089]

SENATOR HARR: Great. Thank you. Anyone here a proponent of LB1089? Welcome. [LB1089]



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SONIA BENTLEY: Thank you for having me. My name is Sonia Bentley. I have come here today to ask this committee to support this bill for many reasons, not the least of which being that I am a waitress and have been my entire life. This is not the first time myself and others have come to this Legislature to ask you to support hardworking, blue-collar Nebraska families, to protect us from billion dollar out-of-state corporate entities and their lobbyists. We have been here before many, many times begging you to do right by us and our families. I say to you again, no employer should be able to pay any employee \$2 an hour, not in America. But every year here in Nebraska, our lawmakers give a windfall of cheap labor to special interest groups and turn their backs on us. As a waitress, I am truly grateful for the generosity of my customers. I know that they also work extremely hard for their money. There should not be an expectation by lawmakers that consumers will pay the majority of the salary of the employees of a private corporation. I understand there are federal laws intended to protect servers. The problem with that being that there is no one, no one in Nebraska that is either able or willing to enforce these laws. What good does it do to have a labor law that is completely ignored by an entire industry and broken at will with no regard and no consequences. When it comes time for opponents to speak on killing this bill, I predict that we will see all of the usual suspects with all of the usual excuses. Lobbyists will stand and do their best to put us in our proper place. They will call us lazy and stupid and tell us that our jobs are intended for children. I have heard these degrading comments before, sometimes from members of this Legislature. But I am here to tell you these are not just jobs for children; these jobs are how we feed our children. Opponents of raising wages will tell us that we just do not understand the way that the economy works and that by advocating for a decent living wage for ourselves, we are digging our own graves. As a blue-collar worker in Nebraska, I say that we've got one foot in that grave already. We're half starved to death and we have nothing to lose. Lobbyists try very hard to tie job loss and high consumer prices to rising minimum wage. But that argument just does not hold under scrutiny. Jobs are outsourced and lost to technology and prices rise steadily every year without fail. It is not about supply and demand or labor or anything except corporate greed and political corruption. When other tactics fail, lobbyists will try and convince us that it is small business owners that they represent. But ask yourselves, who is it that pays these lobbyists salaries and who stands to gain the most by their efforts? It is certainly not main street Nebraska. These lobbyists work for the interest of the same corporate giants that starved out the mom-and-pop storefronts in the first place. What small business owner in their right mind would align themselves with these carpetbaggers? Please consider voting in favor of LB1089 today because these hardworking blue-collar Nebraska families, your neighbors, desperately need this raise because they deserve it and because it is two and a half decades overdue. Thank you for your time. [LB1089]

SENATOR HARR: Thank you, Ms. Bentley. Can you, for the record, please spell your last name. [LB1089]

SONIA BENTLEY: B-e-n-t-l-e-y. [LB1089]

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SENATOR HARR: Great. Thank you. Any questions for Ms. Bentley? Senator Johnson.  
[LB1089]

SENATOR JOHNSON: Thank you, Senator Harr. Can...do you feel that you're getting a fair share based on Senator Harr's question earlier where the employer is to make up the difference in order for you to get a \$9 minimum wage? [LB1089]

SONIA BENTLEY: Absolutely not because if anyone here has ever been a server they know that if you bring to your employer the fact that you have not made minimum wage in that day or in that week, the response is always to you, then you must not be doing your job right. Perhaps you should look for another. They will tell us sometimes that we're independent contractors, which is a lie, all sorts of tactics that they use. And because in...to bodies like this, people can come and say, there's already laws that protect these people. They spoke earlier of the federal Fair Labor Standards Act. There's a portion of that that is called the dual jobs portion of that law. And what that is intended to do is to regulate the sort of duties or the amount of duties other than directly waiting on tables that a subminimum wage employee, because that's what they call us, subminimum wage employees, what they can do for that \$2 an hour. Those laws are routinely broken. I would be surprised if anyone here had even heard of that portion of that law. Or most employers certainly do not. There's no one there to educate them. That's not part of what they are taught when they open a business. So, no, I'm not satisfied and I doubt that anyone who works for \$2.13 an hour at the, you know, discretion of an employer that is not held to a law that's already on the books. That's a pretense of the law. It's not even a real law, unfortunately.  
[LB1089]

SENATOR JOHNSON: Thank you. [LB1089]

SENATOR HARR: Any other questions? Let me just state that we have a great committee here and I don't think anyone would take your work or you personally as lazy or stupid. We greatly honor what you do do. [LB1089]

SONIA BENTLEY: Thank you, Senator Harr. [LB1089]

SENATOR HARR: Especially when you deal with my family. So I want to thank you. But you know, it is a profession, what you do, and hopefully we can look for ways to treat it accordingly.  
[LB1089]

SONIA BENTLEY: Thank you. Very often they don't say it directly, but it is implied, you know, every time that...and sometimes they do say it directly, sadly. [LB1089]

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SENATOR HARR: Thank you very much. [LB1089]

SONIA BENTLEY: Thank you for your time. [LB1089]

SENATOR HARR: Any other proponents? LB1089. [LB1089]

THOMAS BRODER: Thomas Broder, B-r-o-d-e-r. Good afternoon to the honored members of the committee. I currently reside in Omaha. I started waiting tables in that city over 25 years ago and we still make the same hourly wage, \$2.13 an hour. There are currently 19 states that have laws that exceed the federal minimums. In Arizona where I've also recently lived and worked, the server minimum wage has seen an increase from \$3.60 an hour to \$5.05 an hour in the last three years alone. Since 1991, there have been 14 raises in the House of Representatives and 15 in the Senate. These have been to reflect rising costs and were granted to politicians by themselves, yet minimum wage themselves have only seen 7 increases. While this doesn't apply to the Nebraska legislation--I understand you're not paid that much by comparison--I'd like to point out that the last raise that was passed for you folks was done in the first round. Two thirteen an hour does not even cover the taxes and quite often working a second job, if it's in the service industry, doesn't help that situation. You have to get another job, say, working in a convenience store where you're actually getting an hourly wage which quite generally is a minimum wage to make up for that lack of taxes. So the money that you're taking there is less than your usual, whatever, 30 percent bracket that you may be included in. And even as I was in Arizona at \$5 an hour working a 40 hour week, the checks were generally zero or less than \$10 in my particular instance. Additional wages being given at this point can help people decrease use on food stamps and other forms of assistance. Tips are not always guaranteed. An individual leaving 10 percent when the industry normal is 15 percent to 20 percent, when someone leaves me a 10 percent tip I'm forced to actually pay Uncle Sam to have waited on that person by the time I tip out a busser, a food runner, any other people that are required by the employers. Employers require extra duties to be performed: grinding coffee, filling ice bins, sweeping and mopping the floor, removing trash, cleaning bathrooms, refilling condiments. While this is supposedly covered by Fair Labor Standards Act that more 20 percent of your time on the clock shall be allowed to do these extra duties, once again as you've recently heard, there are no one who enforces these laws or bringing it to your employer's attention that they are abusing that law generally will wind up in termination. The said increase in the wages in Arizona hasn't seemed to hurt the businesses. They currently are one of the top ten cities in which to open up a restaurant. I implore you to do the correct thing. People are tired of politicians being directed by lobbyists and special interest groups. Please look after your constituents. [LB1089]

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SENATOR HARR: Thank you, Mr. Broder. Any questions? Seeing none, thank you for taking the time to come down and testify. We appreciate and always like to hear from individuals. [LB1089]

THOMAS BRODER: Thank you. Have a nice day. [LB1089]

DREW SCHENDT: (Exhibit 1) Good afternoon, Chairman Harr and members of the Business and Labor Committee. My name is Drew Schendt, S-c-h-e-n-d-t, and I'm here today supporting LB1089. I work part time at Lazlo's in the Haymarket, so I would be directly be impacted by this legislation. I've heard representatives from the restaurant industry argue, as they likely will today, that servers make too much money and don't need a raise. Keep in mind this bill would mean a raise for most servers because \$2.13 is not only the minimum wage, it's the industry standard. The reality is many tipped workers live in poverty. I've distributed a fact sheet produced by the Restaurant Opportunity Centers United that highlights some statistics relating to tipped workers. But with limited time today, I would like to instead focus my statements on the power and balances that are at play. Being paid such a low base rate puts servers on the losing end of power dynamics both with customers and with their employers. The current base wage literally amounts to zero dollar paychecks and often a tax bill come April. So servers rely entirely on tips for take-home pay. This means that customers have complete control over tipped workers' pay. And for many women, this means tolerating sexual harassment to avoid losing their income. And of course, there is no requirement for customers that their tip reflect the quality of their service. With regard to employers, our time costs them next to nothing, therefore, they have no incentive to respect it. From the restaurant's perspective, you might as well staff the front of the house as if it's going to be very busy because if it is busy then you're prepared. And if it's not busy you're only out \$2.13 an hour per person and the servers take the brunt of that financial hit. Raising the tipped minimum wage would reduce this incentive to gamble with our time at our expense. The fight over the tipped minimum wage unfortunately has been completely one-sided because of the power of the restaurant lobby and the susceptibility of servers to retaliation. Management has the ability to manipulate a server's income through the shifts and sections they are given so it isn't worth the risk for most servers to speak out on these issues or even to make sure that they are compensated when their tips and base pay don't amount to minimum wage. I know at least one restaurant downtown only recently changed a tip-out policy that violated the Fair Labor Standards Act. And there are others I believe to be currently in violation, yet ignorance of the law and fear of retaliation has kept anyone from challenging them. Meanwhile, the Nebraska Restaurant Association caters dinners for late-night legislative sessions and we know that they don't even have to ask anyone to get someone to filibuster this bill. All of the chips are stacked against us in this fight, so please keep in mind as you hear from restaurant owners claiming that they can't afford the increase, that there are so many single mothers raising children on tips that don't have the luxury to engage you in the same way. It has been 25 years since the last time the tipped minimum wage was raised, so this increase is long overdue. And the bill would re-tailor

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the tipped minimum wage to the regular minimum wage so we hopefully wouldn't have to wait another 25 years for the next one. I'd ask that you please advance LB1089 out of committee to General File. And with that, I'd be happy to take any questions. [LB1089]

SENATOR HARR: Any questions for Mr. Schendt? Seeing none...Senator Crawford. [LB1089]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for your testimony and talking about your personal experience. You briefly mentioned that you felt there weren't enforcements of tip-out policy. I wonder if you wouldn't mind explaining what that means. [LB1089]

DREW SCHENDT: So what I was directly referencing there is there is a provision in the Fair Labor Standards Act that prohibits employers from forcing tipped employees to share their tips with employees that are generally not tipped. It is commonplace in certain restaurants to make the servers tip out the kitchen, for instance. In these instance, basically they're using the custom of tipping to subsidize their obligation to pay a fair wage to their kitchen. Some restaurants, when they're called out on this like if you press the issue, they might change the policy. But I know there's others where people still have to tip that out. But as far as making up the difference when you don't actually reach minimum wage, that's calculated over a two-week pay period. So if one day, for instance, on an 11:00 game day, Husker game day, we opened early and we were required to be there at I want to say 9:00. And I'm sure you all know it's not cheap or easy to get to the Haymarket on a Husker game day. But we don't serve breakfast. We didn't really get any business and prior games would tell you that. But we didn't have any choice in the matter. So basically our other days that we did make enough completely counteracted all of that. So you actually don't get anything made up because your other day made up for that. So your protection in theory only covers you for minimum wage for the pay period, but then also there's no enforcement of that. A lot of businesses are...will compensate accordingly if they're good actors. But if you didn't reach minimum wage for that pay period, you basically are left with a choice to fight for that. It might come down to like \$20, \$30, \$40 which is going to be eaten up by taxes anyway where then your employer has complete control over your schedule and the sections that you work. So it is not worth it for most people to speak out. [LB1089]

SENATOR CRAWFORD: Thank you. [LB1089]

SENATOR HARR: Excellent. Any other questions? It's nice to see there's life after being a page. (Laughter) Anyone else here proponents of LB1089? [LB1089]

IAN FALLON: (Exhibit 2) Members of the committee, once again, good afternoon. Before I start in on my written testimony, I'd just like to take a moment to recognize the bravery of the

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workers that have testified already today. There's a lot of fear in the restaurant industry and the people that work the low wages at these restaurants and it's immensely brave the things that they've said in speaking out. What you might see in my testimony is I've actually changed the names of our clients who come to us for assistance out of respect for their privacy and to protect their identity. So I just think it's important that the committee recognizes the bravery of these workers. But with that, I'll start in on my testimony. One of our clients...once again, for the record, my name is Ian Fallon, I-a-n F-a-l-l-o-n, I'm community organizer with the Heartland Workers Center in south Omaha in District 7. One of our clients Julie, works at a Mexican restaurant in west Omaha and she and her coworkers are paid via gratuities for their work as waiters and waitresses. At this restaurant she makes a generous \$2.50 an hour which is, to be fair, \$0.37 more than her employers are required to pay her. Tipped employees at this restaurant put all tips earned over the course of a day's work into a pot to be divided evenly amongst them, so many times they do not even get to take home the hard-earned wages that they have earned. On days where workers do not make enough in tips to meet the current minimum wage of \$9 an hour where an employer is required to meet that minimum wage, oftentimes as has been stated before me, employers do not meet that minimum wage, unfortunately. Obviously the minimum wage for employees compensated by gratuities is too low. At the Heartland Workers Center we've heard dozens if not hundreds of stories similar to Maria's, where workers are not fully compensated for their labor. Increasing the cash minimum wage for tipped employees would help to assure that these workers are compensated fairly for the work they do and would help our state lead in defending the dignity of workers. That concludes my testimony and I'd love to take any questions if there are any. [LB1089]

SENATOR HARR: Thank you, Mr. Fallon. Any questions for Mr. Fallon? Seeing none, thank you again for coming to testify. [LB1089]

IAN FALLON: Thank you. [LB1089]

SENATOR HARR: Any other proponents? [LB1089]

KEN SMITH: (Exhibit 3) Chairman Harr, members of the Business and Labor committee, my name is Ken Smith; it's K-e-n S-m-i-t-h. I'm a staff attorney in the economic justice program at Nebraska Appleseed. I appreciate the opportunity today to testify in support of LB1089. Just a side note, you'll note the testimony I'm passing around bears the name of James Goddard from our office. I am here on his behalf and on behalf of Appleseed. Recently, Nebraskans went to the ballot box and voted to raise the minimum wage affirming that in this state hard work should pay. However, the tipped minimum wage was not included in this standard and it should be increased to ensure that tipped workers are also making a reasonable wage. As lawmakers, it may be infrequent that you can be sure that you are working in lockstep with the public opinion

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of Nebraskans. Passing LB1089 would be doing exactly that. Nebraska's current tipped minimum wage, as Senator Hansen and many others before me have said, is \$2.13 an hour and has remained unchanged for two and a half decades. Although the law requires employers to ensure that a worker's wages plus tips amounts to minimum wage, as you have heard, this does not always happen, it is incredibly hard to enforce this, and many workers may be unaware of this requirement. We have seen that tipped workers in this state earn a median wage of \$8 an hour, but this does not tell the whole story in Nebraska. There are some tipped workers that are in high-end industries that may make more gratuities. And within the restaurant industry, there may be a disparity between higher end restaurants, as opposed to maybe a Village Inn in terms of what a worker may take home. Moreover, in Nebraska, tipped restaurant workers are living in poverty at four times the rate of the rest of the Nebraskan work force. The majority of these workers are women and many of them are parents. So because LB1089 would bring tipped wages into line with recent wage increases that are already in place, because it would affirm the dignity of work and support hardworking Nebraskans and their families, we thank Senator Hansen for bringing this legislation and would urge the committee to consider it favorably. With that, I'd answer any questions. [LB1089]

SENATOR HARR: Thank you, Mr. Smith. Senator Johnson. [LB1089]

SENATOR JOHNSON: Thank you. The more I become involved in this committee and look at this system or this bill and the way we pay, the more discomfort I have with it. Back when 10 percent was a good tip for good service, it now appears to me, because I'm learning more about it, but I think most people think, boy, you know, now they're...we're having a gratuity because it's either added on the ticket or it's there. It's forced on us. Some businesses had a--I don't know what they call it, a corporate cost or something like that--automatic and then it says does not include gratuity. How effective is that part of...where does that money go that's in that category where they might add a corporate fee to the bill? Does that go toward the wage or does that cover corporate? [LB1089]

KEN SMITH: I would have to look at that specifically and get back to you. I would certainly be willing and able to do that. I can tell you that in spite of the protections that may be in place, we still see the numbers that I just spoke to in terms of the level of poverty and the difficulty that people in this industry consistently have. With that, I would like the opportunity, if you'd allow, to look into that and I can get back to you. [LB1089]

SENATOR JOHNSON: Okay. Thank you. [LB1089]

SENATOR HARR: Any other questions? I guess I have a question for you. So I see occasionally, it'll say parties of six or more, we add automatically a gratuity of 18 percent. Can you tell me

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how those treated differently for tax purposes, if you know, than if I give 18 percent voluntarily? [LB1089]

KEN SMITH: And again, I am...for tax purposes, I am unaware of how that's treated. [LB1089]

SENATOR HARR: Okay. [LB1089]

KEN SMITH: If you...I could...I would not want to misstate so I would like to, again, if I could have the opportunity to get back to you. [LB1089]

SENATOR HARR: Great. Thank you very much. Senator Crawford. [LB1089]

SENATOR CRAWFORD: Thank you, Chairman Harr. See, that made me think of another question. So I think one of the other issues with the tipped wage and making up the tipped wage is the tax treatment of the wages. And I just wondered if you had any research or evidence that that creates challenges in terms of bankruptcy or payday loans when people get to that point where they have to pay those taxes because they haven't been withheld because it's tipped instead of the other wages. I didn't know if that was any part of this issue in your...to your knowledge or not. [LB1089]

KEN SMITH: That is not, in our viewing of the bill, I guess that's not something that we've really looked at in terms of again the tax treatment of this and the implications that would have. I...there is certainly a rational basis for that question and I could look into it. [LB1089]

SENATOR CRAWFORD: Thank you. [LB1089]

KEN SMITH: And I think we should. [LB1089]

SENATOR CRAWFORD: Thank you. [LB1089]

SENATOR HARR: Great. Thank you very much. Appreciate you time. [LB1089]

KEN SMITH: Thank you. [LB1089]

SENATOR HARR: Proponents. [LB1089]



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SUE MARTIN: (Exhibit 4) Good afternoon again. My name is Susan Martin with the...S-u-s-a-n M-a-r-t-i-n, with the Nebraska State AFL-CIO. I am testifying today in support of LB1089. While some tipped workers may earn enough in tips to bring their hourly earnings well above the minimum wage, the vast majority of tipped workers earn low wages just above the minimum wage. Tipped workers are more than twice as likely to fall under the federal poverty line and nearly three times as likely to rely on food stamps as the average worker according to a 2011 study by the Economic Policy Institute. Tips are notoriously erratic, varying from shift to shift and from season to season. Tipped workers are hit especially hard during economic downturns as financially squeezed consumers often have no choice but to leave smaller tips or cut back on spending at diners and salons altogether. A higher tipped minimum wage would help cushion the impact of these fluctuations and ensure a guaranteed basic income for tipped workers. A 2013 study from the University of California-Berkeley examines each instance of an increase in the tipped minimum wage on the state level since 1990 and finds that each 10 percent increase boosts earnings for tipped workers by .45 percent. This model policy has proven effective in reducing poverty among tipped workers in the seven states involved in the study. Tipped workers were 25 percent less likely to fall under the federal poverty line compared to states with lower tipped minimum wages. A 2013 analysis from the from the University of California-Berkeley examines every increase in the tipped minimum wage on the state...sorry...yeah--and concludes that the evidence does not indicate that there are significant negative effects on tipped wages or regular minimum wages at the levels experienced in the U.S. since 1990 in full-service establishments. For example, in Washington, Oregon, Nevada, and Alaska, the tipped minimum wage ranges from \$7.75 per hour up to \$9.19 per hour and over 360 percent higher than the current \$2.13 federal tipped minimum wage, yet restaurant industry job growth in all of these states is projected to significantly exceed the national average. Providing tipped workers a stable base income paid directly by their employers is a key step for improving the economic security and working conditions of low-paid tipped workers. I ask you...that you support LB1089. [LB1089]

SENATOR HARR: Thank you, Ms. Martin. Any questions? Seeing none, thank you for your time. Any other proponents on LB1089? Seeing none, opponents. [LB1089]

JIM PARTINGTON: (Exhibit 5) Senator Harr, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I appreciate the opportunity to represent the Nebraska Restaurant Association and testify in opposition to LB1089 and the very large increase proposed for the Nebraska tipped wage. The American practice of tipping was introduced after the Civil War by Americans returning from European tours and has been controversial since that time. Some opponents of tipping believe that it creates or exacerbates the class divide between tipper and tippee. Others are concerned that it allows the employer to shift part of the wage burden to customers and that it hides the real cost of dining. Tipped employees in the restaurant industry generally like tipping as part of their compensation because it allows them to earn more based on

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the quality of the service they provide. At the present tip credit wage, a server in a small restaurant in Norfolk, Nebraska, can earn over \$15 an hour and in the larger cities that can be up to \$25 an hour. In those rare instances when the tip wage and tip income don't equal the minimum wage, the restaurant makes up the difference so no restaurant employee earns less than minimum wage. Tipped employees are some of the most highly compensated employees in the restaurant industry. The point is often made that the minimum tipped wage has remained static for years while the minimum wage has increased. Two points regarding this: The basic minimum wage has risen significantly in Nebraska and all restaurant employees earn at least the minimum wage; and menu prices have also increased over the years and since tips are calculated as a percent of the total tab, tip income has kept pace with inflation. Restaurant owners like tipping because it ensures excellent service and a good customer experience. It provides a direct link between the customer, performance of the server, and server compensation. Acknowledging the validity of an earlier concern about tipping that I mentioned, that it reduces the cost of labor to the employer by transferring it to the customer, it's important to note that in all businesses, the cost of goods and services is transferred to the customer in some way. Tipping is one of several traditional ways of transferring these costs that has the additional benefit of encouraging excellent service. Cost of labor ranks with cost of goods as one of two major expenses for the restaurant industry. LB1089 would increase hourly pay for tipped employees by \$2.30 an hour. Depending on how many tips they collected, that could be an hourly pay increase of between 10 percent and 15 percent for some of the most highly compensated employees in the industry. Given the low profit margins in the industry, this would almost certainly limit options for increasing compensation for other groups of employees equally deserving. Options available for accommodating a wage increase of this magnitude include increasing menu prices resulting in reduced patronage, hiring fewer employees resulting in reduced customer service, less compensation for nontipped restaurant staff, or imposing service charges and eliminating tipping is another proposal. None of these options are attractive, but the one having the least negative impact on the bottom line would be the last one and this would result in less income for tipped employees. I'll conclude my testimony with the following thoughts. No restaurant employee earn less than the minimum wage. Menu prices rise over time with inflation and since tips are a percent of the total tab, tip income automatically increases with inflation. And increasing the minimum tip wage limits wage options for other restaurant staff. I appreciate the opportunity to testify in opposition to this legislation and look forward to answering any questions you may have. [LB1089]

SENATOR HARR: Thank you, Mr. Partington. Senator Johnson. [LB1089]

SENATOR JOHNSON: Thank you. My question earlier was this additional fee, and I know one restaurant in Lincoln that I go to once a year for a Christmas party. We pay our own ticket and there's a fee added on right before the gratuity. What does that fee go for? [LB1089]

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JIM PARTINGTON: That fee is a service charge that the restaurants impose because sometimes customers come in and if they're a large party, they sometimes don't even tip. So in those situations, the restaurant imposes a tip fee, a 20 percent service fee on the tab which is distributed back to the restaurant, the tipped employees. So the...(inaudible). [LB1089]

SENATOR JOHNSON: So they select when they're putting it on, or is that automatic and on every ticket that goes out? [LB1089]

JIM PARTINGTON: That's only...well, it depends on...it could be however the restaurant wants to do it, how they decide to do it. But it could be one parties of six or more, ten or more, just to make sure that there is some service compensation for the wait staff. And you have a party of 12 doesn't come in and just walk out without, you know, taking up hours of time and walks with no...leaving no compensation at all. Now if you impose a service charge, that service charge is revenue for the restaurant and they distribute it back to the employees and it then is part of their wage and it's taxed. The tax is deducted before it comes back. [LB1089]

SENATOR JOHNSON: Okay. Thank you. [LB1089]

SENATOR HARR: So I just want to clarify that for the record. So if a restaurant hypothetically puts a, for simplicity's sake, a \$25 service fee on versus a \$25 tip, can you explain how that's handled differently as far as by what's the ultimate result to the waiter or waitress? [LB1089]

JIM PARTINGTON: The \$25 tip goes directly to the employee. The employee is required to report that tip income to the restaurant owner so that the proper taxes can be deducted from it. The \$25 service charge is revenue that goes back to the restaurant but then is redistributed by the restaurant. [LB1089]

SENATOR HARR: Okay. So they may not pay the whole \$25. They may only pay \$10 of that, \$5 of it, is that correct? [LB1089]

JIM PARTINGTON: That... [LB1089]

SENATOR HARR: It would be up to the discretion of that restaurant. [LB1089]

JIM PARTINGTON: It's up to the discretion of the restaurant. In most cases, I would think the purpose was to put...to make sure that a tip was provided and they would distribute it back to the restaurant. But it does...the revenue goes to the restaurant. [LB1089]

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SENATOR HARR: Okay. [LB1089]

JIM PARTINGTON: And it's distributed by them. [LB1089]

SENATOR HARR: Senator Crawford. [LB1089]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for coming to testify. Could you explain the standard practice and rules about having a tipped worker share their tips with other employees in the restaurant. [LB1089]

JIM PARTINGTON: There's a tip pool option that you can employ which you can then take tips and share them with other staff other than the wait staff, but it has to be someone in the direct line of service. You can't share them with chefs. You can't share them with, you know...so there has to be a connection with the direct service. And it can get a little confusing to try to verify that. But tip pooling, the tip pool of wages all still belong to the employees, but they're distributed across a broader spectrum of employees, all of which have to be in the line of direct service to the customer. [LB1089]

SENATOR CRAWFORD: So then when you're determining whether or not an employee has made the minimum wage, is it the...is the...are the tips that they've had to share, is it after the sharing for each employee? So you're looking to see whether or not they meet minimum wage after they've shared the tips and the net tips that they receive in that period. [LB1089]

JIM PARTINGTON: I think, as I understand the question, that the answer is yes. The...whatever share of the tips they got plus the tip wage, if it doesn't come up to the minimum wage then the restaurant has to make up the difference. [LB1089]

SENATOR CRAWFORD: Are there any...would you say there are any standard sort of set practices that you often see in terms of how much of those wages get shared to other service employees? [LB1089]

JIM PARTINGTON: I can't give you a standard answer for that. [LB1089]

SENATOR CRAWFORD: Okay. Thank you. [LB1089]

JIM PARTINGTON: Yeah. [LB1089]

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SENATOR HARR: No other questions. Thank you very much for your time. [LB1089]

JIM PARTINGTON: Thank you very much. [LB1089]

COBY MACH: (Exhibit 6) Good afternoon, Mr. Chairman, members of the committee. My name is Coby Mach, C-o-b-y M-a-c-h. I am the president of the Lincoln Independent Business Association, a member organization with about 1,300 businesses in Lincoln, opposing this bill. At the onset, we believe it is important to acknowledge what you have already acknowledged today, and that as of January 1 of this year, the Nebraska minimum wage for all employees is \$9 an hour. So by state law, all tipped workers are receiving the minimum wage approved by the Nebraska voters \$9 per hour. Furthermore, the proposed increase would more than double the hourly wage amount paid by employers to tipped employees. This means that employers will have to do more than double their budget for payroll expenses in less than a year's time. A more than 100 percent increase in direct payroll obligations of these businesses will have a major impact and particularly on those who run smaller operations. LB1089 also increases the burden on the business owner to pay increased payroll taxes. The following restaurants have one thing in common: Big Vinny's Pizza, Teppanyaki Grill, Lee's Taste of China, Pizza Hut at Gateway, Brix and Stone, Godfathers at 10th and South, Sebastian's Table, La Mexicana, Duggan's Pub, and Heidelberg's south. That is just a sample of the restaurants in Lincoln that closed their doors during 2015. In 2014, Lincoln saw a total of thirty six restaurants close. The restaurant business is a tough one in which to find success and this bill, we believe, will make it even more difficult. We visited with a Lincoln restaurant owner who owns six Lincoln locations. He provided us with a spreadsheet that I've distributed for you to reference. Among the six locations this owner has calculated that it will cost his business \$154,590 a year in additional wages if you pass the bill. This \$154,000 will inevitably be passed on to customers through price increases or will result in staff being reduced. The figure also does not include additional costs for payroll taxes to the state or to the federal government. The owner further notes that in 2014, his bartenders and wait staff reported \$1,289,000 in tips earned for the year. Their reported tips averaged just over \$10 per hour. That is the reported tips. Considering the figures provided, the problem, in our opinion, may not be that workers are underpaid by their employer. Instead, it appears if you'll notice on the worksheet that workers may not be fully reporting cash tips earned. Notably, at one location, restaurant staff reported average tips from customers paying with a credit card equaling 22 percent of their total ticket. That's 22 percent being paid with a credit card over the course of a year, their average. Workers at the same location however reported only receiving 2 percent in tips when customers paid in cash. Other locations reported averaged anywhere from 4 percent to 9 percent tip values when paid with cash. It is difficult to believe that customers paying with cash actually provide an average of 2 percent in tips. We suspect that there are other issues with underreporting of cash tips and fear that the increased payroll burden on employers outweighs any purported need for an increase in the tipped minimum wage. By the way, that document provides you several years for you to compare with. And I will tell you that this is, while the

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restaurant owner would certainly brag about their food and it is good food and their bartenders provide a nice service, it is not the higher end restaurant that I think some were referring to earlier. Service workers who rely on tips do deserve sufficient wages. And the tipped employees are guaranteed to receive the minimum wage of \$9 an hour approved by Nebraska voters. But as you can see, certainly in the cases presented today, they're getting more. I'd be happy to try and answer any questions you have. [LB1089]

SENATOR HARR: Any questions for Mr. Mach? Senator Howard. [LB1089]

SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today, Mr. Mach. You have a radio voice. (Laughter) [LB1089]

COBY MACH: I did it once or twice, yes. [LB1089]

SENATOR HOWARD: I wanted to ask you, when somebody pays with a credit card and they tip on the credit card, is there a portion that's removed by the credit card companies? [LB1089]

COBY MACH: There is a portion that is, yes. [LB1089]

SENATOR HOWARD: How much do you think that is? [LB1089]

COBY MACH: Probably anywhere 2.25 percent to 3 percent. [LB1089]

SENATOR HOWARD: Okay. Thank you. [LB1089]

SENATOR HARR: Any other questions? I have a question for you. You talk about the competitive nature of restaurants and that if restaurants were forced to pay minimum wage, they may not be able to compete. However, I did a little study and found out that Runza, Burger King, McDonald's, Amigos, Wendy's, and the list goes on, there are a number of restaurants that already pay minimum wage are not only surviving but thriving. So how do you account for the fact that some restaurants are able to pay minimum wage and others are not? [LB1089]

COBY MACH: Well, when you're in a fast food environment, you're turning over a lot more food and conceivably you're turning over more profit because you're turning it through a drive through with a long line of cars as well as people that come in and sit down. I will also say that even at the sit-down restaurant level, they still are paying minimum wage whether it's through the tip or in a combination of a minimum tipped wage. [LB1089]

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SENATOR HARR: But the...your statement earlier was that the employer would have to double their payroll. [LB1089]

COBY MACH: Correct. [LB1089]

SENATOR HARR: So they aren't paying minimum wage. The employee, I don't doubt receives minimum wage. It's whether the employer pays that minimum wage and there's a difference. And the difference is you and me, the customer, paying that difference. So I guess my question, and I think you answered it, is...and I don't think anyone disputes the fact that fast food restaurants are highly competitive, probably more so than a lot of small restaurants and they're able to find a way to afford to pay that larger labor cost and still survive and expand. [LB1089]

COBY MACH: When they also don't have wait staff. [LB1089]

SENATOR HARR: But they still pay minimum wage and are able to survive. They do pay for...you have...the job of waiter does a lot of what a person behind the counter at a fast food restaurant would do, which is to take the order, which is to clean up, which is to mop the floors, take out the garbage, all the testimony we've heard here that waiters and waitresses are expected to do. [LB1089]

COBY MACH: And addressing the doubling of the salary, every restaurant owner, if this bill passes, would have to double the wages that they're paying within one year's time as a minimum wage, provided that tips aren't making up some of those dollars. [LB1089]

SENATOR HARR: All right. I appreciate your testimony. Thank you. [LB1089]

COBY MACH: Okay. Thank you. [LB1089]

ROBERT HALLSTROM: (Exhibit 7) Chairman Harr, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the National Federation of Independent Business in opposition to LB1089. I've also been asked by the Nebraska Chamber of Commerce and Industry to express their opposition to the bill as well and have signed in on their behalf for that purpose. I don't have too much to add to the record other than we also do not believe that the tipped employee minimum wage should be increased without a similar increase on the federal level. I do want to appreciate Senator Howard for noting Mr. Mach's radio voice. I realize that he and I have a little bit in common. I've frequently been told that I had to face made for radio. (Laughter) So with that, I'll take any questions that you might have. [LB1089]

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SENATOR HARR: Any questions for Mr. Hallstrom? Seeing none, thank you. Anyone here in opposition to LB1089? Seeing none, any in the neutral capacity? Also seeing none, Senator Hansen, would you like to close? [LB1089]

SENATOR HANSEN: Yes, I would. Thank you, Chairman and members of the committee. Let me start off by saying I intentionally kept my introduction short because I knew the testifiers following me would have more powerful stories than I could possibly convey what it's like to currently work as a tipped minimum wage, or in the case of some of the advocacy groups, the clients they worked with. And I'm very thankful to all of those who spoke and testified...spoke in support of the bill today. I think one thing that you could summarize from all of those stories is there's not another group of employees, another clump of employees that are so dependent on their hour-to-hour wages as restaurant employees. Similar to some of the stories I've heard, I knew, certainly had friends who worked in the service industry and would talk about getting a banquet room or several large tables who all kind of cheaped out on the tip and they went from potentially having a great night on a busy night to being below minimum wage that had to catch up with a series of their other attempts over the course of the two-week pay period. And I think that is an important thing that was highlighted in the testimony is for a given shift, you can work essentially below minimum wage as long as you make above minimum wage for other shifts and it all balances out in the end. That being said...so that being said, I think there's several things related to enforcement that both group have--proponents and opponents--have identified. I think that's a separate issue not necessarily related to here as this bill does not increase any enforcement teeth. But I think that might be something that I personally look into or maybe with the committee look into enforcement of some of our minimum wage laws, especially for employees across the state. A couple things, one, Nebraska Appleseed referenced...I believe the testifier referenced that the median wage in Nebraska for tipped minimum wages is \$8. Assuming that data was from last year, that was right at minimum wage which indicates that there are a significant portion, if that's the median, half are less than that. There's a significant portion of minimum wage workers who are working less than minimum wage and are then having to hopefully have their employers catch them up. I have statistics on a national level from a few years ago. There was also...pegged it at about \$8.90...\$8.92 an hour, which if that...it's not necessarily Nebraska specific, but that's also below our minimum wage which would indicate that over half of employees have to be caught up. Finally, if the major concern is time line, we're being too aggressive on the restaurant industry, I would certainly welcome working with the committee on maybe a different rollout plan. But I think ultimately getting back to the 50 percent of minimum wage is where we should go. With that, I'll close. [LB1089]

SENATOR HARR: Thank you, Senator Hansen. Any questions? Seeing none, don't go anywhere. And we do have some letters in support while you're preparing for your next bill. (Exhibits 7-9) We have a letter in support from Voices for Children, and also from Nebraskans for Peace; and in opposition we have a letter from the National Federation of Independent



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Businesses, but we had the pleasure of hearing from Mr. Hallstrom firsthand as well. And at that, that closes LB1089 and we are ready to move on to LB896. Senator Hansen. [LB1089]

SENATOR HANSEN: Thank you, Senator Harr and members of the Business and Labor Committee. Long time, no see. My name for the record is State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, representing northeast Lincoln and District 26. I'm here before you today to introduce LB896. This bill would require longevity pay increases for state employees to recognize their length of service and their commitment to the state of Nebraska. Such pay increases shall be based on the length of service of the state employees. And it was my intent that this bill should cover all employees in addition to any other pay increases provided in state law or in any other collective bargaining agreement. These increases in pay would begin with a pay increase of six and one-quarter cent per hour, or \$.0625 per hour, or its equivalent for a full-time salaried employee, on the fifth anniversary of his or her date of hire. And it would increase from there in five-year increments of the same size until finally a pay increase of \$.50 per hour, or its equivalent for a salaried employee, on the 40th anniversary of his or her date of hire. This bill stemmed from a discussion I had following our first ACCESSNebraska hearing. Throughout that hearing and a previous tour of the Lincoln Call Center, committee members heard about how turnover had been a difficult issue in the center and caused difficulty in keeping staffing levels at an appropriate level. It was after that hearing that longevity pay was suggested as a means to start addressing this employee turnover and then began the process that ultimately led to this bill. Certainly issues related to turnover are not limited to a single department. For example, just this weekend the Lincoln Journal Star ran an article that noticed that a majority of the Corrections Department staff and administrators said, and I quote, the primary change the department could make to keep people from leaving would be a salary advancement each year. Further, there is some precedent for longevity pay except by statute with over a dozen states doing so including our neighbors South Dakota and Wyoming. It was during a comparison of these states that we came up with the amounts proposed in this bill. Finally, several things that should be noted including what is mentioned in the fiscal note. First, that the university and state colleges are excluded from this bill which is both my intent and understanding. Secondly, the fiscal note states that the collective bargaining supersedes state law. I do not argue with that fundamental assumption, but I will note there are testifiers behind me who can speak more specifically on collective bargaining and the issues of collective bargaining and longevity pay including specifically some conversations in the past that relay that legislation was necessary for longevity pay to apply to collective bargaining employees. With that, I'll close my introduction and ask the committee to advance LB896 to General File. [LB896]

SENATOR HARR: Thank you, Senator Hansen. Any questions? Senator Howard. [LB896]

SENATOR HOWARD: Thank you, Senator Harr. Thank you, Senator Hansen, for bringing this bill. I wanted to ask you, one of the pieces that is improving in the ACCESS Call Center system

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is that they're working on creating a career ladder. So how would longevity pay interact with that career ladder that they're trying to create? [LB896]

SENATOR HANSEN: So longevity pay is simply recognizing your length of service with the state. And so if someone is say, moving up a career ladder in the department, they would also be earning the seniority needed for longevity. And so this would provide a pay increase on top of any other pay increases that would change in the career ladder. [LB896]

SENATOR HOWARD: Perfect. Thank you. [LB896]

SENATOR HARR: Any other questions? I have one. Longevity pay seems like a radical idea. Have we ever done this before in the state of Nebraska? [LB896]

SENATOR HANSEN: I mean there's been various concepts including step raises in the past if that's what you're comparing it to. [LB896]

SENATOR HARR: Okay. Can you tell us what the history is on longevity pay if you know. [LB896]

SENATOR HANSEN: I cannot at this moment. [LB896]

SENATOR HARR: Okay. I will ask those after you the same question then. I think they'll know. [LB896]

SENATOR HANSEN: Great. [LB896]

SENATOR HARR: All right. Great. Thank you very much. Anyone here proponents on LB896? [LB896]

MIKE MARVIN: (Exhibits 1-3) Good afternoon, Senator Harr, members of the Business and Labor Committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm here today to testify in support of LB896 as introduced by Senator Hansen and cosponsored by Senator Watermeier. We'll also have others testifying on this bill; NAPE member Jerry Sonnek and the spokesperson at our negotiations with the state of Nebraska will be testifying how we ended up seeking legislation. In essence, the state said if you want longevity, take it to the Legislature. Paul Essman, an expert on compensation in the Commission of Industrial Relations, was scheduled to appear today but he had to be in court so he has submitted his written testimony that

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you should have. I worked with Senator Hansen's Office on this bill for several months. We looked at many states and how they handle compensation. You will see a chart in there that is from the National (Compensation) Association of State Governments. Let me comment on that chart for a minute. This is what happens when you let somebody who doesn't operate office machinery very often operate the office machinery: It's stapled wrong and I apologize for that. It shows you how many states have this as statute and how much is paid. As we worked on the bill, it became clear there was no real standard from state to state on longevity pay. Senator Hansen's staff and I then looked to see how much seemed to be about the prevalent amount. That is how we came up with the \$.0625 per hour figure. Personally wish it was much higher and would be willing to accept any amendment raising the amount. Senators, many of you heard me testify in this committee and in others how employees' years of service are not recognized and rewarded. You have all heard about the inability to retain employees--a common theme that a person hired today makes the same as a person hired in 2002. It does little for retention. It's not only a problem here but throughout the states, at Regional Centers, Department of Roads, ACCESSNebraska, Corrections, almost every agency and almost every division has a problem retaining employees. This bill does not mean a lot of money to employees. It mean something to employees. It will help. This bill has a price tag of under \$2.7 million to implement for the 10,300 employees that fall under our contract. I am confused on the fiscal note. Let me talk to you...put that out there right now. I'm not exactly sure how they came up with their figures and if it included the those under the collective bargaining agreement. I don't have the data to cost it out for the employees outside of the contract, but I've included a chart to show how many NAPE-covered employees this affects upon implementation, the cost for each group. Now I do want to note that in Mr. Essman's submitted testimony, he talks about the differences between a longevity raise and step raises or merit raises. I think that's going to lead to your question, Senator Harr. The longevity raises are not consider wages of the CIR. It is considered a benefit. So that is much different from a step raise or merit raises. And with that, I would be happy to answer any questions. [LB896]

SENATOR HARR: Any questions for Mr. Marvin? Senator Howard. [LB896]

SENATOR HOWARD: Thank you, Senator Harr. Thank you, Mr. Marvin, for your testimony today. If you remember, my mother worked for the state for 34 years. [LB896]

MIKE MARVIN: Yes. [LB896]

SENATOR HOWARD: So she would have missed out on that 35-year mark. But then she transitioned into a role as a state senator. State senators are excluded because they're not part of your bargaining contract, correct? [LB896]

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MIKE MARVIN: This is going to be kind of difficult, I think, for them to figure out. This is to apply to all state employees, not just those represented under the NAPE collective bargaining agreements. This was written and intended for all state employees. [LB896]

SENATOR HOWARD: Does that include state senators then? [LB896]

MIKE MARVIN: I would hope so, but I think you guys are under a different statute. Personally, I wouldn't work for what you guys get paid. [LB896]

SENATOR HOWARD: Thank you, Mr. Marvin. [LB896]

SENATOR HARR: Thank you. Any other questions? Do you know, did the state used to provide longevity pay? [LB896]

MIKE MARVIN: Senator, they did not have longevity pay. What they had was a step raise. [LB896]

SENATOR HARR: Okay. [LB896]

MIKE MARVIN: We had negotiated for our bargaining units under Governor Nelson, we negotiated a way to progress through the pay line. It was not comparable under the CIR. And when Governor Johanns took office, he decided that he wasn't going to do anything that wasn't comparable and so we lost it. Governor Heineman had the same mentality that if it was not comparable, they were not going to pay. And it's...that attitude has really led to a lot of our problems with retention of employees. I think many of you saw in the Lincoln Journal Star, the Inspector General for Corrections' survey that he did and it overwhelmingly talked about employees didn't stay because there was no way to advance through the pay line. We have a minimum wage and a maximum wage. So since 2002, every employee who has been hired at the state of Nebraska stays at the minimum wage. If the minimum wage goes up 2.25 percent, that's what they go up. So there's been no advancement through the pay line since 2002 for state employees. [LB896]

SENATOR HARR: All right. Thank you very much. Any other questions? Seeing none, thank you for your testimony. [LB896]

MIKE MARVIN: Thank you for your time today. I'll be back up later. [LB896]

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SENATOR HARR: Any other proponents? [LB896]

JERRY SONNEK: (Exhibit 4) I have to take off my glasses or I can't see. My name is Jerry Sonnek, J-e-r-r-y S-o-n-n-e-k. I live in York, and I'm a 14-year career state employee of the Department of Corrections. I'm a NAPE union member and the elected cochair of the master contract bargaining team. During negotiations, the union presented various longevity increase proposals to financially reward career employees for their years of service and to create a separation in wages for long-term, more senior employees from the new hires and less senior employees, including temporarily suspending starting wage increases, thus a sense of value to long-term, more senior employees. The initial longevity increase proposals only affected career employees with more than 5 years of state service, thus resulting in a cost savings to the taxpayers because less money is used in the short-term implementation and the long-term continuation of the longevity pay plan. These longevity increase proposals would have an additional long-term impact to the taxpayers and to government services because when career employees are financially rewarded for their years of service, this creates retention, which reduces turnover, which in turn reduces the high cost of hiring and training new employees--a cost savings to the taxpayers. Our employer rejected the union's longevity increase proposals in favor of the standard proposal which cost the taxpayers more money in the short term and long term. The employer's proposal includes financially rewarding future new hires that haven't even been hired yet and provided no retention incentive for career employees. The employer's proposal continues to pay newly hired employees the same wage as career employees no matter how many years of service and experience, creating low morale and turnover among career state employees. During negotiations, the union stated it was prevalent that other states have longevity plans in state statues. The chief negotiator for the Governor told the union to take the longevity increase proposals to the Legislature. And that's why we're here: The Governor told us to bring it here. Your support by financially rewarding career employees that are also citizens and taxpayers of the state of Nebraska is appreciated. And that's all I have to say. I'll answer any questions that you have. [LB896]

SENATOR HARR: Thank you for coming, Mr. Sonnek. Any questions? Senator Crawford. [LB896]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for your testimony and the letter. Did you get any assurance from the Governor that if you took it to the Legislature the Governor would support it? [LB896]

JERRY SONNEK: No. [LB896]

SENATOR CRAWFORD: Thank you. [LB896]

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SENATOR HARR: Any other questions? Well, thank you for taking the challenge of the Governor. Thank you for coming down here today. It's appreciated to hear from citizens. So we appreciate it. That being said, are there any other proponents on LB896? [LB896]

SUE MARTIN: (Exhibit 5) Good afternoon again. I am testifying...I'm testifying today in support of LB896. My name is Sue Martin, S-u-e M-a-r-t-i-n. I am the president of the Nebraska State AFL-CIO. Historically, companies give longevity raises to help attract and retain top talent. It is a way to recognize loyalty and to inspire new or potential employees to show that the company values experience and loyalty. Human resources departments know that the cost of turnover is high. The cost to train employees would be shifted to the longevity increase proposed by this bill. If you have a great culture, longevity helps protect that culture. Institutional knowledge is irreplaceable in this type of environment. The state of Nebraska pay scales are lower than private industry. We must think of ways to attract and retain good employees that will stay and serve the public. It's also a fairness issue. I was a 26-year state of Nebraska employee before taking this position. In order to attract new employees to the state, the department that I worked for started the practice of hiring new employees at the same rate or a higher rate of pay than current employees. One of the reasons for this was because they could not get anyone to fill those positions. In the last two years I was employed, there were at least two new employees hired in my same job classification at the same rate of pay that I was currently making. By passing this bill, it will not only reward long-term employees for their dedication to serve the state of Nebraska, it will also be an incentive to attract new employees to state employment rather than qualified candidates seeking employment elsewhere. I ask that you support the passing of this bill. [LB896]

SENATOR HARR: Thank you. Hold on, let me see if we have any questions. Quick question... [LB896]

SUE MARTIN: Yep. [LB896]

SENATOR HARR: ...the people hired after you for more wages, were they men or women? [LB896]

SUE MARTIN: Well, actually I think there was one of each. [LB896]

SENATOR HARR: Oh. There you go. All right. Well, thank you very much. Any other proponents on LB896? Seeing none, is there any opponents on LB896? [LB896]

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BO BOTELHO: (Exhibit 6) Good afternoon, Senator Harr and members of the committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o, deputy director and general counsel for the Department of Administrative Services. I'm here today to provide testimony in opposition to LB896. LB896 provides for pay increases for state employees based on longevity. These increases are in addition to those set by collective bargaining. This conflicts with portions of the State Employees Collective Bargaining Act. The act was written such that the executive branch was charged with negotiating wages. The Legislature did not attempt to retain a right to approve or an ability to modify the resulting contracts. The Bargaining Act contains a provision that states the DAS Employee Relations Division shall be responsible for negotiating and administering all labor contracts entered into by the state of Nebraska, with the exception of those entered into by the constitutional offices, the State Colleges, and the University of Nebraska. The Chief Negotiator is vested with authority on all mandatory topics of bargaining and may adjust or change rates of pay and other terms and conditions of employment that are mandatory topics. The act also provides that mandatory topics of bargaining shall mean those subjects of negotiation in which employers must negotiate pursuant to the Industrial Relations Act, including terms and conditions of employment which may otherwise be provided by law for state employees--and this was mentioned Senator Hansen--except when specifically prohibited by law from being a subject of bargaining, such as retirement benefits. Thus, in those areas addressed by the contracts, the contracts supersede statutory requirements or could, depending on how they're negotiated. Therefore, it appears that even if the Legislature were to pass LB896, the Employee Relations Division could bargain, with its granted authority, with the bargaining units different terms and conditions of employment even if they are otherwise provided by law, such that the contract would always prevail over this statutory requirement. This bill creates further uncertainty during an impasse where the Commission of Industrial Relations has the authority to establish rates of pay. It's unclear if the commission would even rely upon the statute and determine its decision. What they do is they look at similar states, what they call array states, and look at the comparability, which was discussed earlier, and see what the other states are doing. And they would make a decision as to what the raises would be or what the pay would be. Further, there is constitutional issues as well. The Constitution of the State of Nebraska provides in Article IV, Section 6 that the supreme executive power shall be vested in the Governor. In State v. Board of Equalization, the Nebraska Supreme Court stated that the Legislature cannot, through appropriations, exercise or invade the constitutional rights or power of the executive and that the Legislature cannot administer appropriations once made. Article IV, Section 7, the state constitution provides that no appropriations are to be made in excess of the recommendation contained in the Governor's budget unless approved by a three-fifths vote of the Legislature and that the excess shall be subject to veto by the Governor. Further, in the Board of Regents case, the Legislature passed a bill that contained numerous statements directing the Board of Regents or employees of the university to take certain actions including pay raise. The court held in part, "The determination of salary schedules and the compensation to be paid to the employees of the Board of Regents is an integral part of the general government of the

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University. The judgment should be modified by deleting that portion of the judgment," which allowed those pay raises to go forward. We think the above demonstrates that when the Legislature created the Collective Bargaining Act, it affirmed that the executive had the power to set wages. No attempt was made to retain authority to set wages or approve the wages. In fact, case law indicates that if such were done, it would be constitutionally suspect. I'll now answer any questions you may have, especially regarding the fiscal note as there appears to be some. [LB896]

SENATOR HARR: All right. Thank you. Any questions? Senator Ebke. [LB896]

SENATOR EBKE: Thank you. So would you...am I reading this right and hearing you right in suggesting that it would be the administration's position that the appropriate means for, if we want to call them step raises or whatever, should be written into the collective bargaining agreement? Is that a safe...? [LB896]

BO BOTELHO: Yes, for those positions that are labor covered. [LB896]

SENATOR EBKE: All right. [LB896]

BO BOTELHO: The fiscal note takes all state positions that we cover, not just the labor contract. So that would include the nonlabor employees which would be what we consider to be exempt, the rules-covered individuals. So labor contract controls over those positions that fall into the collective bargaining units. So the contract would...that would be the vehicle to determine what the raises are and what method you would use to create those raises over a period of time for just length of the contract because they're two-year contracts and so they can change every two years. [LB896]

SENATOR EBKE: Right. So you would...but you would suggest that this particular piece of legislation is the Legislature taking on executive function? [LB896]

BO BOTELHO: That's what the case law would seem to indicate. Yes, Senator. [LB896]

SENATOR EBKE: Okay. Thank you. [LB896]

SENATOR HARR: Any other questions? Senator Crawford. [LB896]



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SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for being here. So I'm just trying to understand the testimony. It talks about...on page 1 you're talking about there are mandatory topics of bargaining and then it talks about terms and conditions of employment which may otherwise be provided by law for state employees, except when specifically prohibited by law from being a subject of bargaining. Are there particular parts or particular elements that are currently prohibited by law from being the subject of bargaining? [LB896]

BO BOTELHO: I believe retirement benefits can't be bargained in the labor contracts. [LB896]

SENATOR CRAWFORD: Are there any...so is it retirement benefits only, or is it benefits that can't be negotiated? [LB896]

BO BOTELHO: No, benefits, health benefits are one of the topics that are addressed. [LB896]

SENATOR CRAWFORD: Okay, so it's retirement benefits. [LB896]

BO BOTELHO: Yeah, the one that I'm aware of--hopefully I'm not mistaken--is the retirement benefits. [LB896]

SENATOR CRAWFORD: Okay. So in one of the letters that we have, one of the letters of support talks about longevity pay as a benefit. Does that in any way impact your understanding of its ability to be set by statute as opposed to collective bargaining? [LB896]

BO BOTELHO: No. I mean, we would...it's compensation so it's a wage. I don't see how pull it out of the category of wages or compensation. I mean, I suppose that's an argument if the bill goes forward. The constitutionality of legislation is going to have to be addressed if it moves forward. I don't understand the benefit argument. It's a raise. It's a salary wage. [LB896]

SENATOR CRAWFORD: So would that legal information and that advice on the parts of the benefit and longevity benefit being something that needs to be done by bargaining instead of the state Legislature, would that have been information or advice you would given the Governor before he had this discussion telling the people who are bargaining with him to come to the Legislature for that? [LB896]

BO BOTELHO: I'm not sure which Governor they're referring to. I assume since it happened during a previous contract it may have been Governor Heineman. And I have no knowledge of that statement or why that would have been said. If you look at the history of the Collective

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Bargaining Act, wages and salary increases, they're negotiated. So I'm not sure...I can't speak to that statement. [LB896]

SENATOR CRAWFORD: All right. Thank you. [LB896]

SENATOR HARR: Thank you. I have a couple questions. So on the first page you have paragraph two. You state, "The act was written such that the executive branch was charged with negotiating wages." Now I was taught in law school never to use passive sentences. And the reason is and this is it states "the act was written," but we don't know who wrote the act. Who wrote the act? [LB896]

BO BOTELHO: Well, I don't know, Senator. I mean I... [LB896]

SENATOR HARR: Well, was it the legislative branch? Let's start there. [LB896]

BO BOTELHO: Yes. [LB896]

SENATOR HARR: Okay. So we wrote this. And by the way, I'm sure you're aware, I'm not telling you something you don't know, one Legislature cannot bind future Legislatures. So if we chose to change that, it would be within our prerogative assuming it did not conflict with the constitution, is that correct? [LB896]

BO BOTELHO: That's correct, Senator. [LB896]

SENATOR HARR: Okay. And whether it conflicts with the constitution or not is, we'll say, a gray area that we need to work on and maybe we can negotiate on. Would you agree with that, that it's a gray area? [LB896]

BO BOTELHO: The determination whether it conflicts with the constitution...(inaudible)? [LB896]

SENATOR HARR: Whether this is constitutional or not is a gray area, you'd agree with that? [LB896]

BO BOTELHO: It remains to be seen, Senator, yes. [LB896]

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SENATOR HARR: Okay. And that would be as it applies to both people who come under collective bargaining and those outside of collective bargaining. [LB896]

BO BOTELHO: Correct, Senator. [LB896]

SENATOR HARR: Okay. And then we have the additional issue of, hey, those under collective bargain, does this supersede our collective bargaining law or do we need to amend this to make sure that it does or does not apply to those individuals, is that your testimony? [LB896]

BO BOTELHO: That's correct. Yes, Senator. [LB896]

SENATOR HARR: Okay. [LB896]

BO BOTELHO: So there are two distinct issues, really. [LB896]

SENATOR HARR: Yeah, I get it. I get it. I get it. Well, we will be looking to the AG and other labor lawyers to help figure this out because I know I am not a labor lawyer and I don't believe you are either. [LB896]

BO BOTELHO: I am not, Senator. [LB896]

SENATOR HARR: Yeah, that's right. Okay, great. Well, I appreciate your testimony here today. Thank you very much. Anyone else here in opposition to LB896? Anyone here in the neutral? Seeing none, Senator Hansen, would you like to close? [LB896]

SENATOR HANSEN: Yes, I would. [LB896]

SENATOR HARR: Thank you. [LB896]

SENATOR HANSEN: Thank you, Chairman Harr and members of the committee. First, let me address Senator Howard's point. I do think longevity raises would have been prohibited against the other Senator Howard because Nebraska state senator's pay is actually explicit in the constitution. That is my interpretation. Thank you again for hearing this bill which would raise...which would provide state...longevity raises for state employees. I agree with you, Senator Harr, that if it's a legislative prohibition, the Legislature has full authority to change that prohibition. And if we need to work in tightening the language to see exactly how it can apply in this situation I would be happy to work with the committee and the committee legal counsel and

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others. A couple things, just, I made some notes. I believe the opposition testimony referenced-- and I was not privy to the letter he passed out--referenced the case of Board of Regents v. Exon. I'll just note we had looked at that case and that was a very specific constitutional provision related to the university, which is also why when I said in my introduction we do not include the university, that had already been take into account. I would agree with that testifier and Chairman Harr that this is a gray area and we can certainly look at it further. Finally, I will note that in terms of longevity pay, whether that's a wage or benefit, there's been some precedent from the CIR, that they have ruled that that is a benefit and that...during the negotiations. With that, I would be very happy to work with the committee to advance this bill and reward our hardworking state employees. [LB896]

SENATOR HARR: Thank you, Senator Hansen. Senator Crawford. [LB896]

SENATOR CRAWFORD: Thank you, Chairman Harr, and thank you for bringing this bill, Senator Hansen. What is important for us to understand about it being a benefit as opposed to a wage? Why is that an important distinction that was made by one of the supporters and made by you in the closing? [LB896]

SENATOR HANSEN: That is a good point and I can follow up with you... [LB896]

SENATOR CRAWFORD: All right. Okay. Thank you. [LB896]

SENATOR HANSEN: ...on that. That's starting to get into deeper levels of CIR negotiation than I've personally been privy to. [LB896]

SENATOR CRAWFORD: Okay. Thank you. [LB896]

SENATOR HARR: Excellent. Thank you, Senator Hansen. Any other questions? Seeing none, I appreciate your testimony here today. [LB896]

SENATOR HANSEN: Thank you. [LB896]

SENATOR HARR: (Exhibits 7 and 8) We have letters of support as well on LB896 from Adam Johnson from the...an employee with DHHS, and Paul Essman from NAPE. And with that, that closes LB896 and we will move on to LB850 with our own Senator Crawford. Senator Crawford, the floor is yours. [LB896]

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SENATOR CRAWFORD: Good afternoon, Chairman Harr and fellow members of the Business and Labor Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I am honored to bring LB850, the Paid Family Medical Leave Insurance Act, before you today. It's been 21 years since Congress passed the Family Medical Leave Act providing unpaid leave for families. However, federal FMLA requirements apply to far too few families and provide no mechanism for wage replacement for workers that it does cover. A 2012 national work force survey found that almost half, 46 percent, of all workers eligible for the federal FMLA leave and who had unmet needs for family medical leave did not...who had unmet needs for family medical leave did not take the leave they needed because they could not afford it. In short, current policies put too many workers in the untenable position to keep the job they need or care for the families that they love. Currently, less than 12 percent of all workers have access to paid family leave. This overwhelming lack of paid family leave has serious consequences for families' budgets and our economy. In 2001, a quarter of two-income families who filed for bankruptcy did so after missing two or more weeks of work due to their own illness or the illness of a family member. A 2007 American Journal of Medicine study that updated this earlier work found that 40 percent of patients surveyed reported losing two weeks or more income before declaring bankruptcy. In slightly over half of these cases, the job loss was that of a family caregiver. What's more, a recent New York Times/CBS poll found that family responsibilities kept more than half of nonworking Americans out of the work force. A 2013 Pew survey found that 27 percent of women surveyed quit their jobs to care for a child or a family member. In Nebraska, recent data queries of reasons that Nebraskans who apply for unemployment assistance give for leaving a job show that nearly 20 percent of them report health and family issues. With Nebraska's serious work force shortages, we can't afford to have these workers sitting on the sidelines. States can invest in infrastructure to ensure workers can put families first without sacrificing their jobs. Three states--New Jersey, Rhode Island, and California--have made this important investment. While design of these programs vary, each of the states provides financial assistance for a worker who needs to take family or medical leave to care for themselves or a close family member through partial wage replacement. In each state, this assistance is financed by a modest employee contribution to a state-run insurance system. In New Jersey, for example, employees pay a maximum of 46 cents a week, or \$24.24 a year on the first \$30,300 of their earnings. Early statistical models of a paid family leave program in Nebraska show that leave could be available to workers for less than \$2 a week. LB850 establishes a partnership between the state of Nebraska, employers, and employees. The state establishes the infrastructure for the program, employers ensure workers are able to return back to their jobs after leave, and the employees pay a small premium for the insurance that provides a partial wage replacement when they need it. I want to turn for a moment to a discussion of some arguments you may hear against a paid family leave. You may hear concerns about how businesses will manage if a valued employee takes paid family leave. However, this view ignores the reality that when a family crisis hits, a valued employee who cannot take leave may feel the need to quit. In that case, they not only have to

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manage without that valued employee but they have the added cost of recruiting and replacing that employee. A meta-analysis of over 17 case studies regarding the cost to replace an employee shows that employee turnover could cost a business between 10 percent to 30 percent of the employee's annual earnings. In Nebraska, reducing employee turnover through family leave program could save businesses between \$4,000 and \$12,000 per employee per year. If the employee does manage to find a way to come to work at the cost of their own health or at the painful price of leaving a child alone in the hospital, that employee will be back at work distracted and resentful. We know from research that if the employee can take time off in those situations, they will come back more productive and more loyal to the employer instead. For example, in California which has had a paid family leave program for over ten years, over 95 percent of workers return to work following leave. Eighty-seven percent of California employers surveyed reported that the paid family leave program did not increase their costs. In fact, 8 percent of businesses reported cost savings because employers were able to access paid family leave instead of employer-provided benefits such as paid sick leave and vacation days. The fear about how a small business or any business will manage when an employee takes leave also fails to consider the entrepreneurial opportunities that paid family leave will foster. When an employee takes leave, that frees up the money that otherwise would have been going to that employee's wages since the employee will receive benefits from the paid family medical leave insurance fund instead in their absence. This can create a new, vibrant market for firms and self-employed entrepreneurs who provide temporary replacement services. I see this as a particularly valuable market opportunity for women who choose to stay home with their children for longer periods of time. Women who stay out of the work force to be with their children for a few years need pathways back into the work force when they're ready to return. These temporary opportunities could be valuable opportunities to pave the way for these women. Think of how valuable it would be for a woman who stays home until her kids go to school. Once the kids start school she can start taking on some temporary assignments that fit her schedule to gain experience. In this way, paid family leave benefits both those women who choose to return soon after a birth and those women who choose to stay home with their children while they are young. Paid family leave is not just an important benefit for new parents or women, however. Working Nebraskans with aging parents may need time off to help an aging parent or a partner recently diagnosed with Alzheimer's or Parkinson's adjust to new routines or to move them into a new situation. Or a worker might need time to care for themselves after a major illness or car accident. That can happen to anyone at any age regardless of their family situation. LB850 ensures workers put families first without sacrificing their job. You also hear the small businesses are able to work out flexible schedules with their employees right now. I'm sure that many small businesses work hard to meet these needs of their valued employees. Let me conclude with two important realities for smart...small businesses should LB850 pass. First, LB850 offers partial wage replacement. For employees of a smaller business who make over \$27,000 a year, the wage replacement is at 66 percent. Nothing in the bill prevents a small business from working out an arrangement with an employee to offer them a way to continue to earn more. Businesses can

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offer more generous leave to employees. A state paid family leave policy ensures that workers have an option to take the leave covered by the paid Family Medical Leave Insurance Act. Second, I have had a small business owner tell me that a state paid family leave would be beneficial because in a small business where you often are so close with your employees it's very difficult to tell them that you can't afford to help them during a family emergency. And in this case, the employer said sometimes...really not...perhaps to the detriment of the small business. A state paid family leave program allows small businesses and businesses of all sizes to know that there is a way for their employees to afford to take leave when they need to do so. Evidence from other states indicate that businesses will benefit from less turnover and more productive employees. Employees and their families benefit from being able to take the time they need to care for family members and get children off to a good start. Since the insurance provides only partial wage replacement, workers still need to plan and sacrifice and take the choice to ask for leave seriously. The most serious economic development challenge facing our state is work force shortages. We hear this over and over again. It's time to invest in workers and adopt policies to recruit workers to the state. A paid family leave insurance program can help us to do that. And with that, I'm happy to answer any questions now or at closing. I have a few comments in terms of answering questions that have been raised before or points on fiscal note too. [LB850]

SENATOR HARR: Great. Thank you, Senator Crawford. I'm going to ask a question. The fiscal note on this is rather large. [LB850]

SENATOR CRAWFORD: Yes, yes. [LB850]

SENATOR HARR: Could you address that issue? [LB850]

SENATOR CRAWFORD: Absolutely, I would be happy to do so. Thank you for asking. So when we...a couple of things on the fiscal note. The fiscal note...the bill was designed so that the ongoing costs would be paid for by the premiums. The fiscal note indicates that they were not clear about that. And so many of the costs in FY '17-18 are now ongoing administrative costs. So we will work with the committee and Fiscal Office to make sure if there's any other clarifying language we need to add to ensure that those...that it is...that the ongoing cost would be entirely covered by the premiums and there would not be General Funds in that case. So the other thing is that we did notice in comparing this fiscal note to the fiscal note in 2014 for a very similar bill that the hardware and software costs and the FTE costs were dramatically higher than in '14. So we'll be talking to the department about why that would be so much different in '16 than in '14 and what's behind some of those costs. [LB850]

SENATOR HARR: And do you know, how would this interact with employees that currently have a supplemental sick leave policy? [LB850]

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SENATOR CRAWFORD: So this provides the option if you meet their criteria for the paid family leave to take it and have the partial wage replacement. It's still the case that an employer can offer other benefits to their employee above and beyond this. So someone could still have other sick pay that they wanted to provide in addition to this and I expect many will. Someone can still have temporary disability insurance. And we did talk to some individuals in the insurance industry and they said they did not see any market disruption in terms of competition with temporary disability insurance. They didn't see that and they hadn't heard any discussion at any national conferences, that there was any concern that that was...that that would be the case. [LB850]

SENATOR HARR: Okay. And has this been tried in other states? [LB850]

SENATOR CRAWFORD: Yes, so as I mentioned there are three other states that currently have a state family leave insurance program. Now I do want to make one other point about the...what the state part is versus the federal part. So currently employers with 50 or more employees have to provide unpaid leave. And what we've done in crafting the bill is we've tried to make the employer requirements similar, as similar as possible to the FMLA requirements so that HR departments that already follow federal law won't have to learn new restrictions. We're keeping those restrictions similar...the same so that...and we were very careful to do that and want to make sure to do that so that those HR departments that already have forms and processes for federal FMLA will be able to just...will be able to continue using those. And if there are any discrepancies that fall away from that aim, I'd be happy to work on that to make sure we get back to that because that is our intent--to make it so that HR departments that already have to follow federal FMLA will not see additional concerns in terms of meeting these requirements. [LB850]

SENATOR HARR: Great. Thank you very much. Anyone here proponents of LB850? [LB850]

SARAH KOLE: Hi, I'm Sarah Kole, S-a-r-a-h K-o-l-e. I currently reside in Omaha, Nebraska. I am a wife, a mother of two children, a full-time working woman, and as of this semester, a graduate student. I'm very proud of all these identities and I believe each are important contributions to my family and the community that I'm a part of. Seven months ago when our son Ellis was born, our family grew. How excited we were to welcome a sweet, but not little, nine pound, two ounce baby into the world. While we experienced joy, I remember feeling anxious and stressed. I've been with my current employer since April of 2013. At that time, my husband and I did not have plans to have any more kids. I accrued sick time and vacation time in my role and used them as necessary. If I was too sick to work, I stayed home. When my daughter was too sick to go to school, I would use the time to care for her. When I found out I was pregnant and that no paid family leave was available to me, I started saving as much sick and vacation time as I could. Nine months was not long enough to accrue 12 weeks' worth of sick



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and vacation time. Thus, I only took six weeks of leave following the birth of Ellis, some of which I even had to take unpaid. Then I worked two weeks part time from home, two more weeks part time in the office after that. Any hours not worked remained unpaid and it was back to work full time just ten weeks after giving birth. While I desired to take the full 12 weeks of FMLA, I could not afford to do so as most of it would have been unpaid. While insurance covered a great deal of our prenatal and birthing expenses and we experienced no complications, having Ellis was a financial strain. My family simply needed my full-time income. I felt many emotions going back to work full time so soon. As other parents may know from experience, the birth of a child drastically changes day-to-day life. Their first few months are a period of adjustment in trying to identify a new normal. On top of that period of adjustment, I had to figure out pumping at work and bottle feeding before I ever felt fully comfortable with breastfeeding. I love my job. I wanted to be fully present and effective at work, yet I was exhausted both physically and mentally. Leave had wiped out my vacation and sick time. I was afraid of being sick or my loved ones getting sick and not having paid time available. Paid family leave would have allowed me to retain my vacation and sick time while also alleviating financial stress. It also would have provided me my family precious and focused time on being a mother of a newborn and a new mother of two, in addition to a fully present employee upon returning to work. I'm smart, capable, organized, efficient, dedicated, honest, and loyal. I believe education is invaluable. All these qualities better my ability to love my husband, care for my children and be an example for them, and to serve college students in my career. When my needs are met as a mother, I can more fully dedicate myself to my work and improve the lives of those around me. As a wife, as a mother, as a full-time working woman in Nebraska, and as an advocate for full-time working parents in Nebraska, I support paid family leave. Thank you. [LB850]

SENATOR HARR: Great. Thank you for coming down, Ms. Kole. Any questions? Seeing none, I appreciate your testimony. Thank you very much. Thank you for being patient. Any other proponents on LB850? [LB850]

SOFIA JAWED-WESSEL: (Exhibit 1) I've been sitting so long (inaudible). (Laughter) Hello, my name is Dr. Sofia Jawed-Wessel. I reside at 2002 North 53rd Street in Omaha, Nebraska. I'm an assistant professor in public health at the University of Nebraska-Omaha. I also have a joint appointment in women and gender studies. The testimony I give today does not reflect any official position of the University of Nebraska, however. I come before you as an expert in public health, maternal and child health, and social and behavioral research. I am also the mother of two very young children. I firmly support LB850, promoting 12 weeks' paid parental leave. As a faculty member at UNO, I have been fortunate to work for a university and a dean that is very supportive of families. When I gave birth nine months ago, we were able to work together and figure out a maternity leave plan that was mutually beneficial. I was able to care for my child the way that I wanted to, and I was able to stay focused and present in my career as well. This should not be the exception. My situation was well outside the norm of most parents. As a public

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health professional who works with pregnant and postpartum women, I see firsthand the health benefits afforded to parents who are able to take parental leave without worrying about financial repercussions. Paid leave is absolutely a public health issue. The first 12 weeks postpartum are often referred to as the fourth trimester due to the intense amount of holding, nurturing, and constant attention newborns require during this time. You might as well still be pregnant. Interrupting those precious but difficult weeks with the financial need to return to work can be potentially devastating. This is especially true for mothers who are breastfeeding. We've all heard the mantra again and again, breast is best, breast is best, right, for babies repeated again. Most women who take leave return to work six to eight weeks later. And many of them have begun that leave while they're still pregnant, so in reality it's about, you know, five to six weeks after they've given birth. It takes closer to 12 weeks to build an adequate milk supply and sufficiently establish a breastfeeding relationship. Women who take less than six weeks of leave are four times less likely to establish breastfeeding and much more likely to stop after successful establishment. For public health to tell women that breastfeeding provides the best start for their babies, but not push for policies that would give new mothers the time to actually make it a reality is simply unethical. A new mother's mental health is also at risk when she returns to work sooner than she would like. Of course with a new baby comes sleep deprivation, but when a mother returns to work too soon, it is more likely she will slip into chronic sleep deprivation which is associated with cognitive impairment, postpartum depression, and even postpartum psychosis. Both postpartum depression and returning to work too soon can make it very difficult to bond with a new baby. Please do not underestimate the importance of this bond. A secure bond with a baby and its primary caregiver is essential for the physical and psychological health of the baby and the adult will one day become. We all have a vested interest in this outcome because we have to share our planet, if not our neighborhood with them--at least we should. We must stop expecting new mothers to go back to life as usual so soon after meeting their child for the first time. The cost of not doing so could be her mental health and the well-being of her child and that future adult. I'm happy to take any questions about my own personal experiences with parental leave as well as my professional opinions. [LB850]

SENATOR HARR: Excellent. Thank you, Doctor. Any questions? [LB850]

SOFIA JAWED-WESSEL: Thank you. [LB850]

SENATOR HARR: Thank you and thanks for coming all the down from Legislative District 8. (Laughter) Hopefully you'll send your kid to Harrison. [LB850]

IAN FALLON: (Exhibit 2) Hello, once again. Chairman Harr, members of the committee, once again, my name is Ian Fallon, I-a-n F-a-l-l-o-n, a community organizer with the Heartland Workers Center. I am here this evening now to testify in support of LB850. One of our clients,

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Julie, works at a restaurant in west Omaha. She is an hourly compensated waitress who earns wages in part via gratuities. And she's the same waitress who I referenced in support of LB1089. Her son was born prematurely while she was working at this restaurant, and she didn't have paid sick time or family leave. She returned to work soon after her son was born, but complications arose soon after she returned. She took leave from her place of employment to care for her sick child, all the while losing days of desperately needed wages. Soon after the child became ill, Julie's husband also asked for time off to be with his son. He was granted a week of unpaid family sick time, and when he called the following Monday, to inform his employers that his son had still not gotten better and that he needed more time off, he was fired. If LB850 passes, people like Julie and her husband will not be forced to lose their livelihood as a result of taking time off to care for their children. A woman named Maria, another employee that we work with, another worker that we work with in south Omaha, recently called our office looking for help. She told us that her husband worked for one of the meatpacking plants in our community and suffered from a torn rotator cuff as a result of the repetitive motions that meatpackers work with to cut and pack meat. Her husband received the proper worker's compensation for his medical bills and time off work, but after he was permanently injured at work and lost his ability to continue working, he fell into a deep depression. He was placed on suicide watch, so his wife needed to stay at home with him to keep him safe. She eventually had to quit her job because she had asked for time off for so long, so she gave up her income to care for her depressed husband and now they are surviving on only his disability income. We hope that this testimony convinces the committee to support LB850. And at this time, I would like to take any questions if there are any. [LB850]

SENATOR HARR: Great. Thank you very much. Any questions? Seeing none, thank you. [LB850]

IAN FALLON: Thank you, Chairman Harr. Thank you. [LB850]

MICHELLE ZYCH: (Exhibit 3) Good afternoon, Chairman Harr and members of the Business and Labor Committee. Again, my name is Michelle Zych, M-i-c-h-e-l-l-e Z-y-c-h, and I'm the executive director of the Women's Fund of Omaha. Again, we're an organization dedicated to improving the lives of women and girls in the Omaha community. To do this, we identify critical issues through research, fund innovative solutions through grants, and influence dynamic change through advocacy to ensure that every woman and girl has the opportunity and ability to reach her full potential. In order to achieve this, women and their families need economic security and the ability to better manage the dual demands of work and family. They also need access to financial literacy, employment training, and leadership development. The Women's Fund has invested more than \$700,000 into such programs over the last 25 years and we believe that a combination of public and private investments will be required to build economic security for women and their families. We also believe that access to paid family and medical leave is one

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way that women can build and maintain their economic security. Having the ability to address a serious health condition, including pregnancy, care for a family member with a serious health condition and/or for a newborn, newly-adopted child or newly-placed foster child while continuing to earn a portion of their pay is critical to women's ability to provide for their families. Not having access to paid family and medical leave impacts women in particular, especially in Nebraska. While women make up 47 percent of the labor force, in Nebraska, they still only make 75 cents to each dollar that a man makes. For mothers, the pay gap can be even more substantial. Research shows that women experience a 7 percent decrease in pay for each child they have. Much of this, quote, motherhood penalty is a direct consequence of the wages women lose during unpaid leave and the time they lose toward scheduled earnings increases. Having access to paid leave changes this. Paid family leave increases wages for women with children. New mothers who have access to paid leave are more likely to return to the same employer within 9 to 12 months, and 97.6 percent of those who return to the same employer do so at their previous pay level or higher. In fact, women who take paid leaves of 30 or more days are 54 percent more likely to report wage increases in the year following the child's birth. Our research at the Women's Fund supports the need for this kind of flexibility and accelerated on-ramps to help women reactivate who temporarily opt-out to care for family. These avenues for advancement, along with paid and family medical leave, are best practices for improving the representation of women in leadership roles. Moreover, these practices also make sense for Nebraska businesses. Eighty-seven percent of businesses in California with paid family and medical leave saw no increased costs as a result of the program and for 9 percent, the program generated cost savings by reducing employee turnover. Likewise, women who go back to employment after paid leave are more likely stay employed years later, benefiting both their careers and business productivity. Finally, paid leave benefits families from all socioeconomic statuses. Research shows that when paid leave is not available to parents, some may rely on public assistance to supplement the incomes they lost while not at work. However, women who return to work after a paid leave have a 39 percent lower likelihood of receiving public assistance and a 40 percent lower likelihood of food stamp receipt after returning to work. We believe that paid family and medical leave is a policy solution that will help provide long-term economic stability for women and their families. Thank you for your time. I'm happy to answer any questions. [LB850]

SENATOR HARR: Thank you, Ms. Zych. Any questions? Seeing none, thank you. [LB850]

MICHELLE ZYCH: Thank you. [LB850]

SENATOR HARR: Any other proponents on LB850? Welcome back. [LB850]

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KEN SMITH: (Exhibit 4) Thank you, Senator Harr, and thank you again to the members of the committee. Again, my name is Ken Smith, K-e-n S-m-i-t-h, with Nebraska Appleseed's economic justice program. And I'm speaking with you again today in support of LB850. I'm not sure how much the United States has in common with Papua New Guinea, Suriname, and the Kingdom of Tonga which I may not be pronouncing correctly. But one of the things is that we are among the few countries in the world that do not offer paid maternity leave at the federal level. And in fact, the United States is the only country with an advanced economy to make that list. And I think that that is because at some point, and this is a recognition that many other countries have made, but at some point nearly everybody faces the need to take time away from work to take care of a newborn child, or in the case of medical leave, to tend to a medical emergency. As Senator Crawford alluded to, while the federal Family Medical Leave Act can prevent someone in this situation from losing their job, it only covers some of the work force and importantly, does not...it only guarantees unpaid leave, which many people, particularly those with a lower income, simply cannot afford to take. Senators, the working men and women of Nebraska should not have to choose between keeping their jobs and income and taking time off to care for a newborn child or deal with a medical emergency. And I...there was a breadth of testimony before me. I will not recite the facts that Senator Crawford and the other testifiers have already gone into. I want to focus on just one statistic that I don't think has been brought up yet. And that is that nationwide there is a trend of people who are around the age of 50 dropping out of the work force to take care of their parents. And generally, when someone who is 50 years old or older leaves the work force to take care of a parent, they stand to lose more than \$300,000 in wages and retirement income. I think that's again, an average statistic. So we support LB850 because it supports the working men and women of Nebraska, it promotes work force attachment, it eliminates having to choose between income and health. And as the senator alluded to, it fills a void in federal policy that we feel is very, very important to working Nebraskans, particularly those with a low income. With that, I'd thank you for your time and I would answer any questions. [LB850]

SENATOR HARR: Excellent. Any questions for Mr. Smith? Seeing none, thank you very much. [LB850]

KEN SMITH: Thank you. [LB850]

SENATOR HARR: Any other proponents on LB850? [LB850]

AUBREY MANCUSO: (Exhibit 5) Good evening, Senator Harr, members of the Committee. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. A new baby, a family member returning from military service with a critical injury, a parent starting to show signs of Alzheimer's, a child diagnosed with Leukemia--

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these are all experiences that families commonly have and significant moments that can create challenges for family well-being. Under our current law, these moments can also be a financial crisis. New data available at the state level reveal that only about half of working parents in Nebraska are ineligible for even unpaid leave under the Family and Medical Leave Act. For the parents who are ineligible, they're not even guaranteed that their job will still be there when they need time off to care for their family. Even when they are entitled to this leave, only 41 percent of Nebraska parents can afford to take it. This leaves the majority, about 60 percent of Nebraska parents unable to afford paid leave. This is especially critical in a state like ours where the vast majority of kids, 77.9 percent have all available parents in the work force. This is a problem that cuts against some of our most fundamental things that we value as Nebraskans: an honest day's work, ensuring the best possible start in life for our kids, and being there to care for a family member when they need us. Paid family leave acknowledges and addresses a reality that directly impacts every business and should be planned for strategically, uniformly, and deliberately. The lack of paid leave comes at a cost to workers, families, and businesses. Workers give up income they need to pay bills, buy groceries, and support their families. Workers, and especially women, lose or leave their jobs and put their long-term economic security at risk and increase their reliance on public assistance programs. Children lose out on better health outcomes right from the start by having their primary caregivers absent during a critical developmental time. Businesses can incur costs to replace talented and experienced employees and have their ability to compete for workers in a low-unemployment state like Nebraska limited. In an ideal world, employers would offer this leave on a voluntary basis, but over 20 years after the passage of the federal Family and Medical Leave Act, this just hasn't happened. As Senator Crawford mentioned, only about 12 percent of employees nationwide have access to paid family leave and this access is disproportionately skewed towards higher income earners. Only 5 percent of workers in the bottom 25 percent of wage earners have access to paid leave compared to the 22 percent of workers in the top 10 percent of earners. Nebraska can do better than this on behalf of our kids and families. A state paid family leave program would level the playing field, provide a way to retain and attract workers, and provide a systemic solution to the current patchwork system that isn't working for families or businesses. We respectfully urge the committee to advance LB850. Thank you for your time and I'm happy to answer any questions. [LB850]

SENATOR HARR: Thank you. Any questions? Seeing none, thank you, Ms. Mancuso. [LB850]

AUBREY MANCUSO: Thank you. [LB850]

SENATOR HARR: Appreciate it. [LB850]

SARAH ANN KOTCHIAN: (Exhibits 6 and 7) Good afternoon, Chairman Harr and members of the Business and Labor Committee. My name is Sarah Ann Kotchian, S-a-r-a-h A-n-n K-o-t-c-h-

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i-a-n, and I am here today and in support of LB850 on behalf of the Holland Children's Movement, a nonpartisan, not-for-profit organization committed to improving public policies essential to providing opportunities for success for children and families living in poverty. I'm also here on behalf of the Nebraska Child Health and Education Alliance, a broad coalition of healthcare providers and advocates for quality education across the state of Nebraska. We would like to thank Senator Crawford for the introduction of this bill to adopt the Paid Family Medical Leave Insurance Act. You have heard some really great and moving testimony about the importance of this bill and we have prepared written statements for you from both organizations. But I would like to add another aspect of this proposal for your consideration that is critical in the lives of newborns and families by sharing a story. In that unbelievable heat of the summer in late July about four years ago--I think there was a heat advisory out at the time--I was expecting and looking and feeling about 11 months pregnant. As I was driving home one day during this time, I saw young woman walking along the sidewalk and she looked unbelievably hot and uncomfortable and just as pregnant as I was at the time. I recognized her as an employee of the neighborhood grocery store, turned around, pulled over, and offered her a ride. I scared her at first obviously, but once she saw the condition I was in, in the condition she in, and that we were both safe, she gladly accepted and we headed off. While we were going to where she was headed, she was more than happy to excitedly share all the information she could about the baby boy she was expecting in just a couple of weeks, right before my little girl was to arrive. And she told me she had his name picked out was gushing about all the hopes and dreams and plans she had for when he arrived. But what she didn't have planned was how she was going to support her new family. She didn't have paid family leave of work. She hardly had any PTO at all and so she was headed into the delivery of her first child expecting to either quit a job she liked or be fired so she could care for her son and herself after the delivery. Moreover, because of childcare licensing rules and regulations in the Nebraska, she was unable to access child care for her son before he was six weeks and could not piece together care for him from family and friends during this time. So here she was, planning on how she was going to welcome a newborn as an unemployed mom and during a critical binding period between a mother and child that we heard about today so eloquently from Dr. Jawed-Wessel. This young mother was going to have to navigate the public benefit system, seek out childcare, and find a new job, all while trying to figure out how to make ends meet. The absence of a paid family leave policy like that proposed in LB850 only exacerbates child poverty and what we often refer to as the academic achievement gap and the opportunity gap. And this is a perfect example. Here I was, luckily employed with 12 paid weeks ahead at home with my newborn and childcare plans for her after I returned to work, while this young mother who was also working and just as excited about becoming a mother was inevitably facing one barrier after another because of the lack of paid leave. And it is very possible that our children, with such different beginnings on a very unlevel playing field, will one day be friends and classmates. LB850 provides a way to strengthen families, businesses, and the economy and provide a strong start for our children. I'd like to sincerely thank you for

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your time this late in the day and for your consideration of this critical proposal before you and would urge you to advance LB850 to General File. [LB850]

SENATOR HARR: Great. Thank you, Ms. Kotchian. Any questions? Seeing none, thank you. [LB850]

SARAH ANN KOTCHIAN: Thank you. [LB850]

SENATOR HARR: Any other proponents on LB850? [LB850]

SUE MARTIN: (Exhibit 8) Good evening. My name is Sue Martin, S-u-e M-a-r-t-i-n, president of the Nebraska State AFL-CIO. Today I'm testifying today in support of LB850. The Paid Family Medical Leave Insurance Act will benefit our Nebraska workers, families, businesses, and our economy. A birth is the most expensive health event for families during childbearing years. Paid leave helps keep families on track to meet new expenses. In the year following a birth, new mothers who take paid leave are more likely than those who take no paid leave to stay in the work force and 54 percent more likely to report wage increases. The Paid Family Medical Leave Act...the Paid Family Leave Act spreads the cost of leave, reducing the burden on individual employers and allowing many more employees access to paid leave. Paid leave contributes to reduced turnover and increased employee engagement and loyalty. Workers in low-wage, high-turnover industries are much more likely to return to their jobs after using the program. A paid leave insurance program would help keep new parents and family caregivers in the work force and boost their earnings and savings over time, all of which would contribute to economic productivity and growth. In contrast, when people have to forgo pay or lose a job when a serious medical or caregiving needs arises, they often jeopardize their ability to afford even the most basic necessities. This hurts workers, their families, and the businesses that depend on revenue from these purchases and it stifles economic growth. Family leave insurance has existed in California since 2004 and New Jersey since 2009 and began in Rhode Island in January 2014. Analyses of California's program show that both employers and employees have benefited. In New Jersey, the program costs are even lower than expected and public attitudes toward the program are favorable. A preliminary analysis of Rhode Island's first year also shows favorable results. It's well past time for an America that meets our nation's needs and truly honors our families. I ask that you support this bill and the state of Nebraska because it's the right thing to do. [LB850]

SENATOR HARR: Great. Thank you very much, Ms. Martin. Any questions? Seeing none, you've worn us down. Appreciate it. [LB850]



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MARK INTERMILL: (Exhibit 9) Good evening, Senator Harr and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP. AARP supports LB850 as a means of supporting the efforts of family caregivers. Last fall, AARP conducted a survey of Nebraskans over the age of 45 to try to gain an understanding of their experiences with family caregiving. We found that one in seven respondents was actively providing care to an adult family member. Works out to an estimate of about 125,000 Nebraskans over the age of 45 and providing care to an adult family member. Based on the demographics of the group, we are able to develop a profile of a family caregiver. That profile is a 58-year-old woman who is married and employed with a household income between \$50,000 and \$60,000. At least half of the caregivers reported providing at least one of the eight services listed there. On average, the caregivers in the survey performed 5.5 of the 8 tasks listed; 52 percent of caregivers were working; 31% were retired; 14% were unemployed. We asked active and former caregivers who were also working about the challenges of being a working caregiver. We found that 73 percent had to go in late or leave early or take time off to provide Care; 29 percent had to take a leave of absence; 18 percent had to go from full-time to part-time; and 15 percent had to give up working entirely to take care of a loved one. We also asked the respondents if they supported requiring employers to provide paid leave to all employees that can be used for family caregiving purposes and 71 percent of respondents supported it, 21 percent opposed it. And for caregivers, the ratio of support to opposition was 74:19. Women were more likely to support paid caregiver leave than men. Lower income respondents were more likely to support paid caregiver leave than higher income respondents. Two of the work force challenges Nebraska faces in the coming years are to have enough workers to maintain and promote economic growth in the state and also to have enough paid and unpaid assistance to meet the increased demand for long-term care. There is a growing need...the growing number of Nebraskans who are reaching the age at which they are more likely need long-term services and supports. They have fewer family members to provide those services. The people we need to meet the first challenge are the ones who will be called upon to meet the second. LB850 offers an option for reconciling the two challenges. It offers workers who may have caregiving responsibilities a means of financial support if they need to take time off from work to attend to those responsibilities. We have just listed some of the things that we've identified that...the benefits that caregivers provide. We estimate that they're probably saving the state about \$60 million a year in reduced nursing home cost. We think that it's important to make sure that we do what we can to support those efforts. And I'd be happy to try to answer questions. [LB850]

SENATOR HARR: All right. Thank you, Mr. Intermill. Any questions? Seeing none, I appreciate the testimony and the information. Any other proponents? Seeing none, any opponents? [LB850]

COBY MACH: Good evening. My name is Coby Mach, C-o-b-y M-a-c-h. I'm the president of the Lincoln Independent Business Association. And I was not supposed to testify tonight. We

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had a labor attorney who understands this a lot more than I do who was going to testify, but due to the late hour, had a client appointment. And so I will attempt to relay our message to you this afternoon. And I'll attempt to be brief. I will tell you that tonight I am recording opposition not only for LIBA, but also for the Lincoln Chamber of Commerce, the Omaha Chamber of Commerce, and the Nebraska Chamber as well. While we understand that Senator Crawford's proposal in its current form does not place direct costs on businesses by way of a monetary contribution to this insurance pool, we offer our opposition in light of the indirect costs and practical burdens this legislation will place on many Nebraska businesses. Specifically we raise concerns about the impact the legislation would have on the ability of small- and mid-size businesses to succeed under this bill. A few of the bullet points that we've identified is that there really is no incentive to work with...between the employer and the employee on the use of flex time. Rather, it gives more of an incentive to actually take advantage of the state-paid leave. The employee can be gone as much as three months every year. We also worry about the sustainability of the program. And if it isn't sustainable, will there be a call upon the business owner to also help fund this program. We're also worried that it takes...taxes our state workers \$74 million per year. That is \$74 million per year out of the pockets of hard-working Nebraskans. Tonight I also will share with you that compliance and the burden and the cost are a big concern. The University of Nebraska has calculated the financial burden of nearly \$350,000 per year to carry out this program for their employees and yet the University of Nebraska already has a very large HR department. Most small businesses do not. The fiscal note also states that the state will have to hire 29 FTE. It's a very complicated bill. If you're a small business, maybe you have two employees, this quite frankly could be very crippling to a small business. It could also lead potentially to a property tax increase. You see, if the university's cost to administer this program every year is \$350,000 other government entities would likely also...to have a fiscal note. The city of Lincoln, for example, the county, Lincoln Public Schools also with thousands of employees will face this new HR burden and they will have to pass those costs on to the property taxpayer. It should be...understand...should be noted that we understand the predicament faced by employees in handling family matters. Many employers currently offer leave programs to their employees and a growing number are adding such programs or are seriously considering them. But the businesses that provide these programs have chosen to do so because they have determined that they have the capacity to handle the temporary loss of an employee. Allowing businesses to make the choice that is best for them and their employees we believe is the best way to protect Nebraska's small businesses and ensure their success. We heard today how this bill will help small business and this bill will help businesses across our state. If it did, the Lincoln Chamber of Commerce, Omaha Chamber of Commerce, State Chamber, and Lincoln Independent Business Association would not be opposed to this bill. I thank you for your time. As I mentioned, our labor lawyer is not able to be here. I'll attempt to answer any questions you might have. [LB850]

SENATOR HARR: Great. Thank you very much. Senator Howard. [LB850]

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SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today, Mr. Mach, and for bringing your lovely voice back up. [LB850]

COBY MACH: Bless your heart. Thank you. [LB850]

SENATOR HOWARD: (Laugh) I wanted to see if you had any response to the testifier from the Women's Fund, Ms. Zych. She noted that in California when they had paid family medical leave, 87 percent of the businesses saw no increased costs and 9 percent of them saw an increased savings from turnover rates. Has your federation considered savings in regards to turnover? [LB850]

COBY MACH: You know, and again, I am not a licensed attorney. [LB850]

SENATOR HOWARD: Sure. [LB850]

COBY MACH: In fact, I'm not an unlicensed attorney. And I have not compiled all the research that he had done on this. But what I do know regarding the California legislation is that this is not California's legislation. In fact it's really not even close. California's legislation, I believe, is capped at six weeks. They're not apples and orange. Beyond that, I have not studied their bill. [LB850]

SENATOR HOWARD: Sure. And if I may, a follow up? Thank you, Senator. Have you taken a little bit of time to speak with Senator Crawford about your concerns and see if there's some type of middle ground between your organization and her drafted bill? [LB850]

COBY MACH: I have not. [LB850]

SENATOR HOWARD: Thank you. [LB850]

COBY MACH: Thank you, Senator Howard. [LB850]

SENATOR HARR: Any other questions? Seeing none, thank you. [LB850]

COBY MACH: Thank you and have a good evening. [LB850]

SENATOR HARR: Good evening. [LB850]

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RICHARD REISER: Good evening, Chairman Harr, members of the committee, and staff. My name is Richard Reiser, R-i-c-h-a-r-d R-e-i-s-e-r, testifying on behalf of the Nebraska Trucking Association. I will try to identify some of what I consider the many technical problems with this bill and leave the social issues to others. It's been pretty thoroughly covered. In the federal law, private employers must have at least 50 employees to be covered. Also, you must have worked for the employer of least 12 months before you're entitled to coverage. And even if you work for an employer with more than 50 employees, they must have 50 employees located within 75 miles of the work site at which the person works before they're eligible to be covered. Obviously the purpose of that is to prevent the small employer from holding a job open for an individual or individuals for a period of 8 to 12 weeks when the individual may or may not come back. Looking at some of the other issues here of the bill, and this is really just kind of giving you a flavor for some of these, but there's a section that says, "A covered individual shall not simultaneously receive family medical leave benefits and unemployment compensation." That's good. It doesn't say anything about workers' compensation coverage. So now we've got an individual who's injured at work and is being paid 66.66 percent of the average weekly wage also getting this payment on top of it. And perhaps the individual's spouse who worked for the same employer decides that it's time to stay home and take care of that person for eight weeks. So they're now getting...the individual injured is receiving more than he would have received had he been working. We're going to have a tough time getting that person back to work for eight weeks. Provides that in no case shall the contribution or the tax on the individual that we're imposing now exceed .5 percent of his or her wages in any 12-month period. It doesn't talk about what wages we're talking about. Is that their gross wages? Is that their wages after deduction for Social Security and other benefits? It just says wages. The part that we probably have the most problem with is the restoration of the employee to the position held by the individual. Keep in mind here that there's no requirement that the individual have worked for the company for any period of time to be eligible. So worst case scenario, individual comes to work today, tomorrow the individual comes in, fills out the form, designates somebody as a person they need to take care of if they have serious problems, tells you they won't be in the next day to work. They get benefits. They get those benefits for eight weeks per year. So if it's...happens to be November and December when they start this, they work for November and December you're over there trying to keep the job open for them with your other one employee doing the work of two, they announce, yeah, they're going to take their next eight weeks beginning January 1 for the next year. So now they've been gone for a total of, what, 32 weeks, something like that, 16 weeks. And you're holding the job open for them. There's a provision that requires the covered employee who acquires knowledge the person may qualify to give them notice of these benefits. They've already had to do it when they were hired and put up posters. But for a large employer who may be somebody down the line hears that this person has a problem, don't report up through the chain of command and all of sudden that notice isn't given because they didn't know they were supposed to tell...they don't know why person is not there. The employer is required to establish a process back to that designated individual. And this is just some person that they want to

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designate as somebody they would like to help if they ever need to. If the employer doesn't see this, it's a real trap because if the employer hasn't put out a program the covered individual may make such determination when filing a claim. So you can come in and say, hey, that person I mentioned to you yesterday is sick now or was sick before--can I stay home? [LB850]

SENATOR HARR: The time is up, however, you're providing good technical advice. If you want to keep going, I would be glad to listen. [LB850]

RICHARD REISER: That's really...I'll wrap it up there, just to say I think this bill is very unfair to employers. And I think the unfair parts specifically are the, no, the person doesn't have to have worked for them for any period of time. And for small employers who may have two, three, four, employees, even ten, holding a critical job open for a period of time for an individual who may or may not come back. You're not sure they're coming back. You hold the job open for eight weeks and they call and say, yeah, well, I got a different job. And you've been trying to get along without them for eight weeks. It's not fair to employers to impose this on them. [LB850]

SENATOR HARR: Great. Thank you. Senator Johnson. [LB850]

SENATOR JOHNSON: Thank you. Would you be supportive of this if it mirrored the federal law? Or what other issues would be out there as far as the 50 employees or more, a waiting period, those types of things? [LB850]

RICHARD REISER: That would make it much more acceptable. I would still say there's a lot of... [LB850]

SENATOR JOHNSON: Still. [LB850]

RICHARD REISER: ...a lot of technical issues in the drafting of this that need to be looked at, things like whether it's gross wages or... [LB850]

SENATOR JOHNSON: Right. [LB850]

RICHARD REISER: ...those kind...a lot of things. For example, it says covered insurance. You have to have...you have to continue their insurance while they're gone. And it says--go to the language here real quick--the covered individual continues to pay the covered individual's share of the cost. Okay, what does that mean? There's a part that you pay sometimes when you're working: the employee's share. But if, for example, you elect COBRA benefits that amount goes

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up considerably because the true employee cost is much higher than the part that most employers charge the employees as a benefit. [LB850]

SENATOR JOHNSON: Thank you. That's all. [LB850]

SENATOR HARR: Great. Thank you for that thorough reading. Senator Howard has a question. [LB850]

SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today, Mr. Reiser. I wanted to check in. These technical concerns are actually very helpful and I think they would strengthen the language of the bill. Have you brought them to Senator Crawford and discussed them with her? [LB850]

RICHARD REISER: No, the only discussion with Senator Howard is when she came to... [LB850]

SENATOR HOWARD: No, I'm Senator Howard. [LB850]

RICHARD REISER: I'm sorry. I'm sorry. Crawford. The only conversation, she came to...got to the committee of the Omaha Chamber of Commerce, public policy committee about the bill. That's the only conversation that I've been part of with Senator Howard (sic). [LB850]

SENATOR HOWARD: If these technical changes were made, would that change your position on the bill? [LB850]

RICHARD REISER: I suppose if it could be cleaned up and we dealt with that provision on... [LB850]

SENATOR HOWARD: The time period... [LB850]

RICHARD REISER: ...how long, they had to work there awhile... [LB850]

SENATOR HOWARD: ...holding it open. [LB850]

RICHARD REISER: ...and not...and have 50 or more employees. [LB850]

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SENATOR HOWARD: Okay. Thank you. [LB850]

SENATOR HARR: Thank you, sir. Appreciate it. Thanks for waiting around. [LB850]

RICHARD REISER: Thank you. [LB850]

SENATOR HARR: Mr. Hallstrom, welcome back to your committee. [LB850]

ROBERT HALLSTROM: (Exhibit 10) Chairman Harr, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business to testify in opposition to LB850. Even though employers are not responsible for funding the leave authorized under LB850 as others have indicated, the legislation will have significantly adverse impact on the productivity of small business operations. I provided in my testimony an example. Most NFIB members have five or fewer employees. So if you do the math, you've got someone that's going to consist or constitute 20 percent of the work force taking medical leave if one person takes leave; 20 percent of the work force is out and depending on the type of leave that they take, they could be gone from 15 percent to 25 percent of the entire year. Obviously hiring temporaries is not always the best solution under those situations. So it does have a disproportionate impact, I think, on smaller businesses. I've indicated in my testimony that this is a government mandate on the employee since the employee has to pay for it. And as in other areas--health insurance is one that comes to mind--some individuals don't want to have to pay for a particular benefit. They might prefer to have a higher salary, or at least not have that taken out of their paycheck. They will all be required to contribute to this program and subsidize those who may be in a position to have more need for family and medical leave. I've indicated towards the end of my testimony the additional cost on employers having to maintain an absent employee's healthcare coverage, hiring temporary placement workers, or having other workers within the work force have to pitch in and do more work, perhaps have to pay them overtime to get the job done, turning down business opportunities because you're short handed and then the possibility of the employee turnover if people don't return to work after taking leave. As others have indicated, I think a major issue, too, when the federal law was enacted some 23 years ago, a lot of discussion over the thresholds, we've had a threshold of 50 or fewer employees in place since that time. And this would clearly put those similar types of burdens and cost on everybody with one or more employee. I'd also note in reviewing the other states that have done something similar, Senator Crawford noted the three states that have an insurance type of program. I think there's about another five or six states that have some form of paid or unpaid leave. Those states, quite frankly, probably look more like California than they do Nebraska and, by my read none of the state had a threshold of less than maybe 15 or 20 employees, even in enacting that type of legislation. So with that, I'd be happy to address any questions. [LB850]

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SENATOR HARR: Any questions for Mr. Hallstrom? Seeing none, thank you. [LB850]

ROBERT HALLSTROM: Thank you. [LB850]

SENATOR HARR: Thanks for sticking around. Commissioner Albin, thank you for waiting patiently today. I hope we kept you entertained. [LB850]

JOHN ALBIN: (Exhibit 11) Thank you, Senator Harr, members of the Business and Labor Committee. For the record, my name is John Albin and I'm Commissioner of Labor. I do apologize for my voice, but the cold that was visiting me last week has decided to stay for additional period of time. First name is spelled J-o-h-n, last name is A-l-b-i-n. I'm appearing here today in opposition to LB850. LB850 creates the Paid Family Medical Leave Act and has me, as the Commissioner of Labor, enforcing the act. The structure of the bill as drafted leaves several questions, which the Department of Labor must consider when building the program. For example, Section 2 defines an employer as being an employer subject to the Employment Security Law. Some employers are specifically exempted from unemployment coverage, but have the option of electing coverage, such as agricultural employers. So I guess the question is, would paid FMLA coverage be limited to employers who are required to pay unemployment taxes? Would an exempt employer opting into unemployment coverage automatically opt into paid FMLA coverage or would the general exemption from unemployment coverage for that employer preclude paid FMLA coverage? Not all employees of a covered employer are eligible for unemployment insurance; for example, commissioned insurance sales representatives. Since the insurance company or agency itself is a covered employer for purposes of paying support staff and other noncommissioned sales staff, it would appear that a commissioned sales representative would be eligible for FMLA, but not unemployment benefits. Section 3 outlines five different scenarios when a person is entitled to take paid family medical leave and the amount of time a person is entitled to be paid FMLA benefits under each scenario. However, it's unclear if a person would be eligible to tack on multiple paid FMLA periods under some scenarios; for example, a serious medical leave, which is 12 week, followed by one of the 8-week periods that are allowed otherwise. Under the federal FMLA law, it's a hard cap at 12 weeks, where under this law it's not clear if there is a cap as long as you meet the conditions. The percentage of earnings replaced benefit calculation in Section 3 is based upon yearly earnings, but it's unclear what date to use to start the yearly calculation. Wages are reported to the department on a quarterly basis and unemployment insurance benefits are based upon four completed calendar quarters. LB850 does not describe the one-year look-back period and administration of the act could be substantially complicated if the look-back period is a rolling calendar year. It is unclear how much enforcement is expected from the agency. Section 4 requires covered individuals to provide information to the commissioner, but there's no requirement for covered employers to provide information. Section 5 requires the employer to be responsible for evaluating and determining on an annual basis, the amount of contributions



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necessary to finance the total amount of FMLA payable under the act, not to exceed .5 percent of an individual's wages in any 12-month period. LB850 only authorizes the commissioner to collect taxes from businesses, not employees. In addition, the bill does not establish penalties or liabilities for an employer who fails to collect or remit the new payroll tax. While the act apparently assumes that the commissioner will set a tax rate each year, it does not specifically authorize the commissioner to tax individuals. Section 8 of the bill makes it unlawful to interfere or retaliate against a covered individual trying to take paid FMLA. It also states individuals have, "The right to inform the commissioner of any alleged violation of the act." However, it's unclear what if any investigatory and enforcement powers the commissioner has or is expected to exercise. LB850 will also have a significant fiscal impact on the agency. Even if the department could use wage records filed under the Employment Security Law to establish FMLA benefit amounts, it would still be required to create a parallel FMLA benefit payment system and, in all likelihood, obtain approval from USDOL for a cost-sharing agreement reflecting the use of UI data for a non-UI purpose. As outlined in our fiscal note, there are anticipated expenditures \$12,498,000 in year one and \$6,794,000 (sic--\$6,794,359) in year two. We will not start bringing in any revenue until after July 1, 2018. Based upon other state models, it is anticipated we would have approximately 16,563 claims per year and pay out approximately \$74 million per year. This is a large program that will require significant staffing and technology increases. And with that, I'd be happy to answer any questions. [LB850]

SENATOR HARR: You timed that well. (Laughter) Any questions for Commissioner Albin? Seeing none, thank you for waiting and being patient. [LB850]

JOHN ALBIN: Thank you. [LB850]

SENATOR HARR: Always a pleasure to have you here. [LB850]

JOHN ALBIN: Always a pleasure to be here. [LB850]

SENATOR HARR: If only you meant that. (Laughter) Any other opponents? Here we go. [LB850]

FRANK VELINSKY: (Exhibit 12) Good afternoon, Senator Harr, members of the committee. My name is Frank Velinsky, F-r-a-n-k V-e-l-i-n-s-k-y, 11904 Arbor Street, Suite 201 in Omaha. I am the CEO and cofounder of Caretech, Incorporated and president of the Nebraska chapter of the Home Care Association of America. I'm going to start very quickly by saying that on Christmas Day, my daughter presented me with a brand new grandson. And I'd like you know that she is a wound care nurse, a very successful WOC--wound, ostomy, and continence--head of wound care at one of the local hospitals. She gets great benefits while she's on maternity leave.

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In my business in what I do and what...and the clients we care for, we simply can't afford that, granted that the...there's a contribution being made. But the amount of work that it takes, the overhead costs can be very significant to a program such as mine that provides in-home care to the elderly and disabled people who are on Medicaid waiver. Essentially we have poor people caring for poor people throughout the state of the Nebraska, from Henry, Nebraska, near the Wyoming line all the way to the south and northeast corners of Nebraska. We have approximately 210 employees that do this work; half of them are in Nebraska, however. Approximately, they work 20 hours a week; some are more, most of them are less than that. So you don't have to have a large number of employees. I think it's the hours that should be looked at, rather. The work they do is absolutely wonderful. The people that we care for have met nursing home level of care, 90 percent of them. They are saving the state tons of money by not being in the nursing homes. The work that is being done by this program is quite significant, but we are not a huge, lucrative healthcare facility. We have...the money we receive is from you, from the taxpayers of Nebraska. We are limited. And that money often is supporting our scheduling staff, filling in staff, everybody that is working toward making this program work. We do not have a lot of extra funds to go around. And it is the administrative duties that seem to be just piling on more and more apparently as the government programs tighten down or whatever reason it is. In Iowa, in western Iowa we used to have seven competitors. We're down to two and most of that is due to the crushing rules and regulations that came down within the last six to seven years in Iowa. And I would be happy to discuss what...the details of what happened there and why it's taking place. Iowa has emerged as number four in the number of seniors placed in the nursing homes with low care needs. That means they are not going to their own homes. They're having to choose to go to these facilities, to nursing homes. This is not...these are not my statistics. They are in the Iowa state plan, aging plan. The other point I wanted to make also, the program we are administering--and I know most of you know this--the clients we serve have choice as to who they want as a caregiver. If a caregiver leaves on family medical leave, we cannot guarantee that the client is going to take that caregiver back. They may choose to take the replacement caregiver. That puts us in a bind. That choose requirement is both federal and state required. Believe me, we know that. That has been thrown in our face 17 years, you know. So it is very clear to us. What you heard in the testimony here from the suits, if I will, I never thought that I would be lining up with the chamber of commerces as strongly as I am, but they were spot on as well as some of the other testimony. So I hope you listen to what they have to say. And I would be happy to answer any questions. Thank you. [LB850]

SENATOR HARR: Thank you, Mr. Velinsky. Thank you for taking the time to come down here to testify. I know you had to wait a long time. We really appreciate it. I know five minutes may not seem like a lot, but it does to us. [LB850]

FRANK VELINSKY: Thank you. Hopefully I can beat the snow back. [LB850]

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SENATOR HARR: Yeah. You and me both, right? Thanks. Anybody else here in opposition? Anyone in the neutral capacity? Seeing none, Senator Crawford, you are closing. [LB850]

SENATOR CRAWFORD: Thank you. And thank you, everyone, for your patience. I know it's late in the evening and I really appreciate everyone's time here, the committee's time, the testifiers' time, and the evidence and the experiences brought by the proponents and the detailed comments that were brought by the opponents. We've taken very thorough notes on some of the questions that they have about clarifying the law and some of their concerns and we will be following up on those. So I'm not going to respond to all of them. I'm just going to highlight a couple of responses for the record as I close. One of the issues that I wanted to highlight is the question about who is covered and in the interim Senator Johnson had asked about agricultural workers. The law itself indicates those who are covered by the security law are covered. And there are exemptions for many kinds of ag workers in that. Senator Chambers is not here to ask me about domestic workers but I'll answer that question. Domestic workers who make over \$1,000 would be covered. So this, LB850 recognizes that domestic workers have families of their own and may very well need time to take care of those. It is the case that there are temp childcare services and temp cleaning services and other things. So there is already a market out there to help deal with the situations where you...where a domestic worker would need to take time away. There's already markets out there to provide replacement work for that. The point made by NFIB that in some cases it would be 20 percent of their work force, I just want to remind the committee that then they have 20 percent or so wage savings. And so sometimes in a small business and even Creighton when someone has to take a leave sometimes the other employees step up and try to help out, often with no compensation. In this case, because if someone takes leave they aren't getting their wage, that wage is available to compensate other employees to help fill in or again, to provide replacement workers. And that's the important thing to recognize. It does provide incentives for flex time. We didn't really get into it detail. But just as the federal FMLA allows intermittent leave, we copy that in this provision. And again, as I noted in my opening that this is only partial wage replacement. There still...so that provides incentives to work with employees if there's something more generous the employer would like to do to provide leave. I also want to note on sustainability, since I haven't had a chance to comment on that, some of the...I think one of the letters in opposition talks about unemployment insurance as an example and asks...and indicates a challenge in sustainability of unemployment insurance. Just want to note how the cycle for unemployment insurance is very different than paid family leave. In the case of unemployment insurance, your costs get high when the economy is bad. So you know, you need the money the most when your economy is at the worst. Paid family leave is not cyclical in that way. If anything, if the economy gets bad you might have less births, all right. But people getting leukemia, people being in motorcycle accidents, those are not...many of those events are not cyclical. And so it's much easier to predict what money you need for paid family leave coverage as opposed to unemployment coverage. It's different dynamics in that way. And I also want to note as you may have picked up in one of the last

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proponent testimonies, in her story there was a very important fact there. And that is that Nebraska...in Nebraska, we license day cares starting at six weeks old. So what are you supposed to do before six weeks? There's no licensed day care prior to six weeks old in our licenses. So I'm happy to work with others and again, happy to talk with others on the committee or others who have concerns. I'll just close in saying again, the bill envisions a partnership where the state provides infrastructure, the employee provides the contributions, and the employer provides job protections. [LB850]

SENATOR HARR: Great. Thank you. Any questions? Certainly a lot to chew on. [LB850]

SENATOR CRAWFORD: Yes. Absolutely. It's a complex problem. [LB850]

SENATOR HARR: (Exhibits 13-20) Look forward to working with you and seeing what we can do on something like this. So thank you very much. I have some letters of support on LB850 starting with a Kara, K-a-r-a, Schweiss, S-c-h-w-e-i-s-s; Christie Abdul, A-b-d-u-l, from the National Association of Social Workers; Mike Marvin from NAPE-AFSCME Local 61; Kim Quick from the International Brotherhood of Teamsters Local 554. In opposition we have David McBride from the Association of Insurance and Financial Advisors; Robert Andersen from the Nebraska Cooperative Council; Mikki Frost on behalf of the Mayor's Office at the city of Omaha. And in the neutral, Al Riskowski from the Nebraska Family Alliance. With that, we will close LB850 and go to the bill we've all been waiting for. I'm going to go ahead and turn it over to Senator Johnson. [LB850]

SENATOR JOHNSON: Thank you. Senator Harr, while you are moving toward the chair, remind you that your bill is the only thing that stands between you and 30 more hours (laughter) with your children. [LB850]

SENATOR HARR: Is it snowing yet? [LB850]

SENATOR CRAWFORD: I don't think it's supposed to come until late. [LB850]

SENATOR HARR: No snow? [LB850]

SENATOR JOHNSON: No snow. [LB850]

SENATOR HARR: All right. [LB850]

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SENATOR JOHNSON: Senator Harr, your opening on LB830, change provisions relating to vacation leave for state employees. [LB830]

SENATOR HARR: Great. Thank you very much. Senator Johnson, members of the Business and Labor Committee, my name is Burke Harr, H-a-r-r, and I am here to introduce LB830. LB830, as we like to say, is a simple law...bill. It allows state employees the opportunity to use vacation leave before it is forfeited under the current use-it-or-lose-it policy. If a state employee makes a reasonable request to use the vacation leave--that should be "written request" to use vacation leave--and their request is denied, the employing agency must pay the employee the cash equivalent of that forfeited leave that was requested and denied. We're hearing there is a problem that exists in agencies with work force shortages where employees are working overtime. This is especially true within the Veterans' Homes and correctional facilities. There are a number of facilities that are understaffed. Therefore, when current employees request vacation leave, many times they are denied due to staffing shortages. Oftentimes multiple requests are denied within a single year. Employees have earned the vacation time through their service to the state. Their denial is through no fault of their own. This bill is an expenditure already owed the employees. Last weekend, the Journal Star article quoted, stating that 66 percent of Tecumseh Correctional Institute employees said the Legislature doesn't value them. This is a bill to show that in fact we do. There is a fiscal note attached to this bill. What you will see is that, in fact, there is no fiscal cost to the state. However, there is language that comes along this says, hey, here at least within DAS is how much time was forfeited last year. What the key element that is missing is there is no statement as to whether those individuals requested and were denied vacation. So that's what this bill goes after are the ones who requested and were denied and yet the fiscal note, at least the editorial that goes with it, doesn't address that issue as to whether any of these employees were in fact denied. This bill is not setting a salary schedule or compensation for agencies. These hours are already all earned by the employee. What we are saying is this is a way to compensate the employees for what they have already earned when they are denied by the state. I am sure DAS is going to come up and raise some of the same arguments they did earlier. Again, to differentiate, they've already earned it. So there's no additional money. It's, they've earned this vacation and the state has denied them what they have earned. So there's a key differential there. And I think that that's important when we're looking at the constitutionality. That being said, the hour is late and I will wrap it up there. [LB830]

SENATOR JOHNSON: Thank you. Senator Crawford, do you have a question? [LB830]

SENATOR CRAWFORD: Yes. [LB830]

SENATOR JOHNSON: Oh, I didn't mean to lead it into you, but we're the only ones here.  
(Laughter) [LB830]

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SENATOR HARR: Yes, Senator Crawford. [LB830]

SENATOR CRAWFORD: Unless someone else wants to go first. Thank you, Senator Harr. So just what I understand you to say is that we've already budgeted for this time, as well. [LB830]

SENATOR HARR: That is correct. [LB830]

SENATOR CRAWFORD: All right. Great. Do you have any sense of how many employees we're talking about that have been denied vacation? [LB830]

SENATOR HARR: Yes. In 2012, what we've seen are there are 19 employees that I have been made aware of that lost vacation time; 2013, 17 employees lost vacation time; in 2014, 19 employees lost vacation time where they...and this is with the veterans, excuse me, where they had requested vacation time and it was denied and then they lost that time. So it's a real issue. We got to find a way to hold on to the employees that we have. We invest a lot in the state in these employees and we provide training for them. And when we let them leave, we give them a benefit and then we say you can't use it. You know, that is not very welcoming. We lose these employees and they're gone. And all that training we have, all the time walks out the door with them and we bring in a new employee that's going to take time to train and that's additional dollars. So again, this money, as you stated, is already budgeted. It's already been earned. It's just whether the employees, in fact, get to use what they have earned. [LB830]

SENATOR CRAWFORD: Thank you. [LB830]

SENATOR JOHNSON: A question, is there any thought of being able to bank this in a different way for catastrophic illness-type of a thing a carried it over for that so it's specific where somebody...heart attack, something like that and the sick leave isn't going to be enough that it could be used that way? [LB830]

SENATOR HARR: You know, we are the policymaking body. We could do something like that. I just know that there are a lot of employees out there who again...Department of Corrections stated in 2015, 2,000 hours were forgone in vacation by 125 employees. You know, you go down the list, HHS gave us a number, Roads, Revenue. And so you have to ask yourself, what is the best policy to reward our employees so we can hold on to them and to say, hey, we do value you. I mean... [LB830]

SENATOR JOHNSON: Yeah. [LB830]

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SENATOR HARR: ...we've already said we value you by giving you this vacation time saying we think you need this so that...because you've earned it and this is part of what you negotiated with us when we hired you. And then we turn around and say, hey, I know we said we'd give that to you. But we lied. [LB830]

SENATOR JOHNSON: I know some businesses that have done that instead of the lose it, just curious. [LB830]

SENATOR HARR: Yeah, and I'm open to any amendments. I don't think it's an "either/or" but "and" really. [LB830]

SENATOR JOHNSON: Right. Thank you. [LB830]

SENATOR HARR: Thank you. [LB830]

SENATOR JOHNSON: Any other questions? If not, thank you, Senator Harr. Proponents? Welcome back and thank you for staying. [LB830]

MIKE MARVIN: (Exhibits 1-4) Good afternoon. Good evening, members of the committee. Thank you for remaining around this evening. My name is Mike Marvin. I am the executive director of NAPE-AFSCME. My spelling is M-i-k-e M-a-r-v-i-n. I'm here today in support of LB830 introduced by Senator Harr and I want to thank Senator Harr for carrying this bill. Two years ago, I was approached by an employee of the Norfolk Veterans' Home who had been denied the opportunity to take her vacation several times in 2013, and then had to forfeit vacation on December 31 of 2013. Senators, this is wrong to earn and be promised a benefit and then to lose it through no fault of your own. In our negotiations in the fall of 2014, we attempted to address the issue. The state negotiator pointed to statute 81-1328 and basically said their hands were tied on the issue. Now I must tell you, the statute as currently written does allow for vacation to be carried over in certain circumstances. The state has requested from me at times that a person be allowed to carry over excess vacation. The problem is, it doesn't happen in all cases. It depends on who you are and how fair your manager wants to be. This will put the burden on management to allow the employees a reasonable chance at receiving their earned vacation, or pay them for it before it is forfeited. That is fair. I did not bring this to you during the 2015 Session because by the time we were done...negotiation had been completed, there was no time to have a bill drafted and introduced. After not being able to negotiate anything on this issue in the fall of 2014, in the spring of 2015 I asked John Hilgert of Veterans' Affairs for a breakdown of how often this has happened at our Veterans' Homes. I have attached that email and his response to my testimony. You will see it has been happening for years with no request from the agency to be allowed to carry it over. I have also given you another attachment showing

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a recent request from DAS to approve carryover for three employees this year. Included with that are two emails I sent to Kari Foote, the interim HR administrator for HHS. To this date I have not received any response from Ms. Foote and I believe this shows how selectively this vacation carryover is allowed. Sorry. Here I'm getting my papers mixed up. This bill is necessary to ensure that employees who are denied the opportunity to use an earned benefit do not lose the value of that benefit. I would like to point out that this bill only requires the payout when management has denied employees the opportunity to take vacation. It does not allow any employee to use their vacation as a bank to have a big payout at the end of the year. Whether or not there is a payout, however, on any cases is totally in control of the management. I do want to say, I asked the employee who brought this to my attention to come and testify today and she feared retaliation from the agency if she did and declined to come. We have employees who have benefits they have earned denied them and then are fearful of management retaliation if they stand up for their rights. No wonder we have a problem retaining employees. Thank you for your time and attention and I will be happy to answer any questions. And I don't know if I said at the beginning, I submitted testimony for Sue Martin who had to leave. [LB830]

SENATOR JOHNSON: Okay. Thank you. Questions? I have a question. Is vacation on a date-of-employment accrual or... [LB830]

MIKE MARVIN: Yes, it is. [LB830]

SENATOR JOHNSON: It is. So we're not stacked up at the end of a calendar year which would mean... [LB830]

MIKE MARVIN: Right, right. And those people that are early on employees really won't accumulate enough vacation. Basically you have to accumulate about 280 hours. This tends to affect more senior employees. Let's say in 2013 you earned 200 hours but were denied using 160 of it. So you carry that over to the next year and you have 360 hours that you have to have and 80 of that have to be burned or you're going to lose it. But if we're already not excusing people because we're short staffed, well, then that person gets to that point where they're going to be losing. [LB830]

SENATOR JOHNSON: Yeah. Thank you. Any other questions? Thank you, Mr. Marvin. [LB830]

MIKE MARVIN: Thank you for your time. [LB830]

SENATOR JOHNSON: Next proponent. Welcome again. Thanks for staying. [LB830]



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JERRY SONNEK: Welcome. My name is Jerry Sonnek, J-e-r-r-y S-o-n-n-e-k. I live in York, Nebraska. I'm a 14-year career state employee with the Department of Corrections. I'm union member of NAPE and an elected cochair of the master contract bargaining team. I have nothing written on this subject, just to speak exactly the way it is, as I read some stuff, I'll make it quick. Two hundred eighty hours is what the contract says is what I can carry over. The first four years...the first five years you earn 96 hours of vacation, so it takes you time you get to 280. So what did I do and some other responsible people do when I first got hired? I didn't take much vacation. I banked it to get up there. Why? Well, let's say I get sick, I get hurt. I need the time off. It doesn't matter. I want to be responsible so I can take the time off if I need it. Okay? What this means now is, since I maxed out, I am forced to take the vacation that I'm now earning. If I don't take it, I understand I will lose it--pretty simple. But if I now request to take it and I'm denied it and denied it and denied it, that's not my fault. I have never been denied any myself personally--been lucky in that--though I have heard of, there are others that do get it denied and they repeatedly put in for it and they're just told: no staff, tough luck. So it's not right. We're trying to retain people and there are so many things that our employer is doing to not retain people right now. There's things I could tell you, but we're not here on those subjects, to not retain. And this is just another one. We're taking senior people, we've trained, told them benefits, sold them this, and then we're not taken care of them. We're going to take your money from you and give it to somebody...it's just gone. And if you have any questions, I'll answer them.

[LB830]

SENATOR JOHNSON: Are you required to take so much vacation a year? [LB830]

JERRY SONNEK: I am not required actually to take any. That's...I'm not required. But myself right now, if I...any time that I have over 280 hours, on December 31, I donate back to the state.

[LB830]

SENATOR JOHNSON: Yeah. [LB830]

JERRY SONNEK: That's what the contract reads. So I have 280 hours. So I make sure that I'm earning 200 right now, I take all 200. [LB830]

SENATOR JOHNSON: Yeah. [LB830]

JERRY SONNEK: I know if I don't, I lose it. [LB830]

SENATOR JOHNSON: Yes, Senator Crawford. [LB830]

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SENATOR CRAWFORD: Not a question, just a comment. I just wanted to thank you for staying with the state, being a long-term employee and just thank you for bringing that issue to us today and being here to testify. [LB830]

JERRY SONNEK: Thank you very much. I am very proud to be from this state. I'm proud to work for the state. I'm very proud to work for the Department of Corrections. I am a very...I'm a happy...I'm not a disgruntled employee. I'm very happy and thankful I have a job. [LB830]

SENATOR JOHNSON: Thank you, Mr. Sonnek. I appreciate your testimony. Other proponents. Other proponents? Seeing none, opponents. Welcome again. [LB830]

BO BOTELHO: (Exhibit 5) Thank you. Good afternoon, committee, Senator Harr. Again, my name is Bo Botelho, B-o B-o-t-e-l-h-o, deputy director and general counsel for the Department of Administrative Services and we're here to provide testimony in the opposition to LB830. And Senator Harr was correct. Our opposition is essentially the same as LB896. There was a legislative issue in regards to conflict with the Collective Bargaining Act, and there's a separate and distinct constitutional issue of separation of powers between the Legislature and the executive branch. My testimony is in essence almost identical. I handed it out to you. I'm not going to read it into you so we can get Senator Harr home to his children. But the one thing that is unique about this and Senator Harr addressed it regarding the fiscal note so I will address that. In the event this committee would want to support the concepts of LB830, my agency respectfully would request the bill be held for interim study. The state's current payroll system cannot calculate the rollback of vacation and leave hours on a systemwide basis or enterprise wide, which is why what we submitted was just what was rolled over for DAS. And even then, like the senator pointed out, I can't tell you if those hours would be impacted by this bill. The leave would have to be requested and then...it'd have to be reasonable. There's an issue of what is reasonableness. It has to be denied and then the employee then would not have the opportunity to request leave prior to it being forfeited. So there's a lot of variables in there that can be managed. So the fiscal impact of this bill, as expressed in the fiscal, is unclear. And anyway, this would be a large endeavor that would take a long period of time to get good data from fiscal. And I believe more agencies did not file fiscal impact because they were not capable of doing the calculations required to reach a final fiscal determination given a short time between the bill's introduction and this hearing. And part of that is you have to figure out was it requested, was it denied, was it reasonable to see if it would even be impacted by this bill. So I want to caution the fiscal does not present anywhere near potential fiscal impact of this bill. The other thing I want to point out is that agencies do not budget for forfeited vacation. There would be no need to because there's no buy back. So that is not part of our budgeting process. So legislation like this would in essence require some budgeting to compensate for any vacation buy back if it would be forfeited and if it did fall under the bill. So there's a lot of thinking that needs to be done here really to determine what the fiscal impact of this legislation would be. [LB830]

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SENATOR JOHNSON: Okay. Any questions? Yes, Senator Crawford. [LB830]

SENATOR CRAWFORD: Thank you. Do we...do our systems record when vacation is requested? Is that something that agencies have to indicate? So we would have...we could do data pulls on vacation requested and vacation denied, could we do that? [LB830]

BO BOTELHO: Not at an enterprise level. That would be essentially at an agency level. What the state accounting system does is, kind of how a previous testifier said, when you become an employee of the state, you begin accruing vacation at a rate and that rate increases the longer you're with the state. And so the system, the payroll system sort of calculates that. But how it's applied or requested or denied, that's something you probably would have to go on an agency-by-agency basis. [LB830]

SENATOR CRAWFORD: All right. So it would...this bill would no doubt be then implemented agency by agency. We wouldn't need to have a statewide infrastructure for it. It would...each enterprise would be implementing it themselves, would that be true? [LB830]

BO BOTELHO: Yeah, as...currently how HR issues like vacation leave requests are handled now, it would be done by the agency. [LB830]

SENATOR CRAWFORD: Okay. [LB830]

BO BOTELHO: They would make the determination as to whether or not they could grant the leave. You have issues regarding, you know, staff, making sure you have minimum staffing. And if the leave was denied it would then be up to the agency. You still have the reasonableness, but help...to help that employee I think make sure they can get that vacation in, less it be forfeited and less it be paid. So there's management issues here that would need to be addressed and figured into. [LB830]

SENATOR CRAWFORD: Thank you. [LB830]

SENATOR JOHNSON: You mentioned if we, if the committee would move this forward you would ask for an interim study or time. Is it more time to evaluate? Or I didn't catch all of that. [LB830]

BO BOTELHO: Yes. I mean we're requesting because we again, there's some moving parts to this bill. And if it does go forward it is going to require some budgeting. If vacation is forfeited... [LB830]

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SENATOR JOHNSON: Yeah. [LB830]

BO BOTELHO: ...we would need to have the capacity to pay that back. In essence it could be an extra pay period for, you know, employees depending on how many days are forfeited. And that's something that's not currently in our budget. So that would...there would need to be some mechanism to make an employee whole under this legislation. [LB830]

SENATOR JOHNSON: So if we moved it forward, and I don't know if it's going to be prioritized or not, but would a moratorium of the implementation of it for another year which would bring it back again next year for us to discuss on the floor, would that be...so we kind of get a reading from the body as to whether they support it or not? [LB830]

BO BOTELHO: I mean we would have to look at that consider that... [LB830]

SENATOR JOHNSON: I'm just curious how we might try and move it forward with debate and then see how we implement it and there might be a reason next year then that we would not keep the moratorium on for some reason, have to repeal it or something. I was just curious how that might work. So, okay. Thank you. Okay. Thank you for your testimony. Other opponents? Seeing none, anybody in the neutral? [LB830]

ORRON HILL: (Exhibit 6) Good evening, Chairperson Harr and senators of the Labor Committee. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Public Employees Retirement Board, or PERB, and the Nebraska Public Employees Retirement Systems, or NPERS if I use those acronyms. I'm here to testify to LB830 in the neutral capacity. I'm also here offer a little bit of testimony on a potential amendment that we've been working with Senator Harr's Office on to try to help clarify some language. It would help us as the PERB and NPERS in implementing this if that is what the Legislature chooses to do. The PERB and NPERS administer the retirement plans for Nebraska school employees, State Patrol Troopers, judges, state employees, and county employees. The School, Patrol, and Judges Plans are defined benefit plans. The State and County Plans have two aspects: a defined contribution benefit and a cash balance benefit. Unused sick leave and vacation leave converted to cash payments are specifically excluded from the definition of compensation in the defined benefit plans. No such exclusion is found in the definition of compensation for the state or county plans' DC and cash balance benefits. The difference is based upon how the benefits are calculated between the two plans. The DB plans are based upon a formula benefit which is in short: salary times years of service times a formula factor, which varies based upon which plan we're discussing. It is a richer benefit than the retirement plans for the DC and cash balance benefits which are based upon a total account balance. LB830, in essence, creates a new form of unused leave converted to cash payments. However, LB830 as drafted does not provide the PERB or NPERS direction

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on whether these payments should be treated as compensation for retirement purposes. We brought this concern to Kate Allen, the Retirement Systems Committee's legal counsel. We worked with Ms. Allen, Senator Kolterman, the Retirement Systems Committee Chairperson, and Senator Harr, their staff members, and others, to develop the language of what we believe to be AM1956 or the amendment that would go towards this bill. AM1956 treats the forfeited leave converted to cash payments consistently with how other forms of unused leave converted to cash payments are currently treated in the various retirement plans. Specifically, forfeited leave converted to cash payments will not be considered compensation for the defined benefit plans, and will be considered compensation for the DC and cash balance benefits. This provides the clarity necessary for us to consistently administer the plans. This concludes my testimony. I will be happy to answer any questions you may have. [LB830]

SENATOR JOHNSON: I don't have any questions. Thanks for that clarification and that amendment. I assume that's a friendly amendment. (Laugh) [LB830]

SENATOR HARR: Yes. [LB830]

SENATOR JOHNSON: Okay. [LB830]

ORRON HILL: Thank you. [LB830]

SENATOR JOHNSON: Any other in the neutral? Seeing none, Meghan, do we have any letters of support opposition? No? Okay. [LB830]

SENATOR HARR: Just quickly. I have an amendment I forgot on my opening. I've included an amendment that makes three changes to bill. First, in reference to employees...references to employees is amended to state employees for consistency purposes throughout the section. Secondly, the amendment provides that such cash payments must be made within 30 days after the request and denied leave is forfeited. And finally, it includes language in response to a concern raised by the Nebraska Retirement System Committee, which I think has been clarified. So we are the policymaking body. And I've heard some complaints--well, I shouldn't say complaints--some concerns that this may be difficult to do. But it's not impossible. And we have individuals who have worked hard for the state who have given their time and earned vacation. And all we're doing is asking that the time they earned be given to them. There is somewhat of a budget issue but I'll argue that if they had taken vacation before hand, the state would have had to have paid for someone to do their work while they were gone. So I guess it goes back to do we want to...what relationship do we want to have with our employees that we hire? That's really what it comes down to. So with that, I would answer any questions. [LB830]

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SENATOR JOHNSON: Senator Crawford. [LB830]

SENATOR CRAWFORD: Actually, I was just thinking about when you were talking about the budgeting and where the money comes from, I would guess that if vacation is being denied, it's likely to be because there are unfilled positions. And so there's wages not being paid for those unfilled positions and that's where the cash flow would be to provide this pay out for vacation. So you might see if any of those agencies could let you know that wage of those unfilled positions and see if it is an important place that the money could be pulled and whatever we need to do in the bill to make that possible. [LB830]

SENATOR HARR: Very perceptive, thank you very much. I will follow up on that. Thank you for that advice. [LB830]

SENATOR JOHNSON: No other questions, that will close the hearing. [LB830]

SENATOR HARR: And with that, we are done. Thank you. [LB830]