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Business and Labor Committee
January 22, 2018

[LB712 LB784 LB806 LB858]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 22, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB858, LB784, LB806 and LB712. Senators present: Joni Albrecht, Chairperson; Sue Crawford, Vice Chairperson; Steve Halloran; Matt Hansen; and John Lowe. Senators absent: Ernie Chambers and Sara Howard.

SENATOR ALBRECHT: Good afternoon. It's 1:30 here in the Business and Labor Committee, in case you're in the wrong room. Welcome. My name is Joni Albrecht, I'm the Chair of the committee. And I'd like to introduce the committee...or ask you to introduce yourselves starting with Senator Crawford who is our Vice Chair of the committee.

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

SENATOR ALBRECHT: Senator Lowe.

SENATOR LOWE: John Lowe, District 37, basically the south half of Buffalo County.

SENATOR ALBRECHT: And Senator Hansen.

SENATOR HANSEN: Matt Hansen, District 26 in northeast Lincoln.

SENATOR ALBRECHT: And we have Senator Halloran, where are you parked at, over here? You got the...

SENATOR HALLORAN: Yeah, Senator Halloran, District 33, Adams County and part of Hall County.

SENATOR ALBRECHT: And again, I'm from northeast Nebraska; Thurston, Wayne and Dakota Counties, and my husband is buried right now in lots of snow up there; 60-mile-an-hour winds. So glad to have everybody here. I want to start with introducing the committee staff. We have committee counsel next to me, and Amara Meyer. And then we are lucky enough today to have Mandy Mizerski from Natural Resources as our clerk. Beverly is out with a little bit of surgery. So hopefully she'll be back in a couple of weeks. And we have a page that's with us, Cassy Ross from Denver, Colorado; a junior at UNL studying the global studies and political science. And a

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few housekeeping...obviously turn off all electronic devices. Senators, just remember the microphones are very sensitive and are able to pick up side conversations. Testifiers should have the appropriate number of copies and handouts or exhibits ready for distribution, and the Business and Labor Committee requires 12 copies. Each witness appearing before the committee must sign in using the forms provided in the entrance of the hearing room. They are yellow forms. Sign in only if you're going to testify. Your form must be given to the page before you begin presenting your testimony. Each testifier today will be allowed five minutes before the committee. We'll use the light system. Green indicates that you may begin; yellow indicates that you're nearing the end of your time; red indicates the time is to end your testimony. Please begin your testimony by stating your name clearly into the microphone and then please spell your first and last name to ensure accuracy for the record. Note that the committee members may need to leave in the middle of the hearing as they may have a bill to introduce in another committee so don't be offended if a senator is coming and going. Okay, today's agendas include LB858 by Senator Hansen; LB784 by Senator Vargas; LB806 will be Jessica Shelburn from Senator Kuehn's office, because he too is home attending to the animals; and LB712 will be introduced by myself. Okay, and then we'll have the introducers make the initial statements followed by proponents, opponents, and those providing neutral testimony. Closing remarks may be presented by the introducing senators. And the first item on the agenda will be Senator Hansen, LB858. Good afternoon.

SENATOR HANSEN: Good afternoon. [LB858]

SENATOR ALBRECHT: Go ahead. [LB858]

SENATOR HANSEN: Thank you. Good afternoon, Chair Albrecht and members of the Business and Labor Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. Today I'm here to introduce LB858. As we know, when a worker is injured on the job, he or she has only one way to recover for his or her injuries and that is through the workers' compensation system. The system has developed over time in Nebraska with adjustments being made that's deemed necessary by the Legislature. One of the changes the Legislature adopted in 1993 was to adjust the disability payment to a maximum of two-thirds of the state's average monthly wage rather than basing the disability payment on a schedule set forth in statute that was rarely updated. So under current law, individual disability payments reflect the current average weekly wage. The problem is, that once disability payment is set, a worker, because he or she is totally disabled, can never increase his or her income to maintain pace with inflation. This bill would address this problem by increasing disability payments by the same percentage that the average weekly wage is adjusted each year. The bill would only apply to those who are injured on the job and whose injuries were determined by the Workers Compensation Court to have resulted in total disability. Because we're not increasing benefits by the cost of living each year, one that is already being calculated anyway for new claims, what

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we're doing is hurting those employees who are injured earlier in their careers because once the benefit calculation is set, it's set. So people making two-thirds of what they made when they were injured, even though had they been able to keep working, they likely would be making more over time. Almost every other benefit, including Social Security, makes these adjustments so they sensed that workers' compensation work the same way. To give you an example, a man who was injured in 1995 might draw \$200 a week of workers' compensation based on the average weekly wage of \$300. That individual is catastrophically injured and can never return to work, they will still be making that same \$200 per week today, even though if they were injured today, they would receive much more. There's been 16 percent inflation between 1995 and now. So it would take over \$320 to buy what they could have bought with \$200 in 1995. Over many years, their weekly workers' compensation benefit becomes much less than it previously was. I would also like to clarify, the cost of living adjustment would be made to benefits from this point forward and we are working to help individuals from this point on. With that I thank the committee for its time. I'd be happy to answer any questions on LB858. [LB858]

SENATOR ALBRECHT: Thank you very much. Do we have any questions of Senator Hansen? Senator Lowe. [LB858]

SENATOR LOWE: Thank you, Chairman. Senator Hansen, you said that that person might have been making \$295 from workers' comp. What would he be making today with the adjustments off of that, do you know, if we would compound everything? [LB858]

SENATOR HANSEN: You know, I have...I could get that number for you. I didn't calculate it. [LB858]

SENATOR LOWE: That would be great. [LB858]

SENATOR HANSEN: Perfect. [LB858]

SENATOR LOWE: I don't want to put you on the spot, I just would like to know. [LB858]

SENATOR ALBRECHT: So he can get to you later. Any other questions? Senator Halloran. [LB858]

SENATOR HALLORAN: Thank you, Chairperson Albrecht. So most of these are...most of these accidents be they loss of fingers, hands, arm, or leg, eye, ear, it narrowly defines how many days...or weeks I should say, that they're subject to workers' comp, correct? [LB858]

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SENATOR HANSEN: Um-hum. [LB858]

SENATOR HALLORAN: And I'm not arguing that they shouldn't be adjusted for inflation, but in 1995, I think the highest figure of number of weeks would be for something like the loss of an arm or leg and we're looking at 215 days, so not quite four years, but it's not to say they shouldn't be adjusted from the start of that injury to the end of their four-year...am I looking at that correctly? [LB858]

SENATOR HANSEN: So my bill is focused on total disability payments which are outside the schedule. [LB858]

SENATOR HALLORAN: I see. [LB858]

SENATOR HANSEN: So a total disability payment is two-thirds of the employee's average weekly wage set at a cap of the state's two-thirds of the average state wage and is separate than all of the other workers' compensation schedule. [LB858]

SENATOR HALLORAN: Okay. Thanks for clarifying. [LB858]

SENATOR HANSEN: Absolutely. [LB858]

SENATOR ALBRECHT: Any other questions? Seeing none, I'll let you close at the end of...after proponents of the bill. [LB858]

SENATOR HANSEN: Thank you, Chair. [LB858]

SENATOR ALBRECHT: Thank you. Okay, again you'll have five minutes. And do we have any proponents wishing to speak? [LB858]

ROBERT R. MOODIE: Chairman Albrecht, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm a lawyer practicing here in Lincoln. I'm testifying on behalf of Nebraska Association of Trial Attorneys. Since this may be the first workers' compensation bill the committee has received testimony on this year, I'd like to use some of my time to remind the committee of the big picture of workers' compensation and point out how this bill fits into that big picture. Workers' compensation is not a welfare program. Workers' compensation is not a social entitlement program. Workers' compensation is the method by which prior policymakers in Nebraska, and every other state, have decided how we will handle the problems of how to take

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care of workers who have been injured while performing the work that benefits their employers and serves the economic engine of our economy. Prior to the passage of workers' compensation, an employee who was injured on the job could only receive compensation for his or her injuries by pursuing a claim in common law. They had to prove that the injury happened due to the employer's negligence. This was hard to do and expensive. However if successful, it could also be quite a hit to the employer since the employee could then recover the full extent of damages allowed by common law, including full wages, general damages for pain, suffering, as well as disability. The grand bargain that was struck with the implementation of workers' compensation law was that we would make it easier for employees to be compensated for their injuries by eliminating the requirement that the employee prove that the employer was negligent. In return, the type and amount of compensation received would be limited. In order to be compensated for work-related injuries, the employee now only needs to show that he was injured in an accident at work. And in return, the employer is protected against the large claim for common law damages. Under workers' compensation law, the employees cannot collect any money for pain and suffering, there is no money for emotional stress and strain that's caused on their families or themselves by these injuries, there's no money to compensate for the fact that they may not be able to care for themselves or their families anymore. There's no money for the fact that they now may have a hard time hunting, fishing, bowling, gardening, or doing other things that they like to do. And this is true even if the injury was in fact caused by the negligence of the employer. And this is the way that we as a state have decided to care for injured employees. We do not leave them to defend for themselves. Neither do we rely on public assistance. Employers are charged with the responsibility of paying these benefits for the injuries of their workers. All employers bear this responsibility. So it's built into the cost of doing business; it's a part of what we all pay for in the process of acquiring goods and services. Workers' compensation benefits are essentially limited to three types. There are medical benefits, temporary disability benefits, and permanent disability benefits. Both temporary and permanent disability benefits can either be total or partial, depending on the extent and the duration of the injury. It is the calculation of total disability benefits that is dealt with in LB858. The calculation for total disability benefits always starts with the calculation of the employee's average weekly wage. That's the average weekly wage at the time of their injury. This is a fixed calculation and does not change. Once we determine the average weekly wage at the time of injury, total disability benefits are determined by multiplying that amount by two-thirds. So total disability benefits equal two-thirds of the average weekly wage. In most cases, total disability benefits do not get paid for a long period of time. They're usually only paid during the period of time that the employees' injuries are keeping them from going back to work. You fall off the ladder; break your leg; doctor tells you to be off work for eight weeks. That's when the total disability benefits are paid. However, in some rare instances, total disability can go on for a much longer period of time. For example, if the employee's injuries are so severe that she could not return to work in any capacity, then total payments may continue for many years. I had a client who was awarded total and permanent disability by the Workers' Compensation Court for an injury in 1994 and those benefits

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continued until her death last year. The calculation of those benefits never changed in 23 years. They were always calculated on two-thirds of the average weekly wage in 1994 and therefore the real value of those benefits was reduced every year. LB858 allows for total disability to receive what would essentially be a cost of living adjustment on an annual basis. We already do that with medical benefits, so this is not something unusual. I would encourage that the committee pass on and advance the bill. [LB858]

SENATOR ALBRECHT: Okay, thank you. Any questions of Mr. Moodie? Thank you for your testimony. Any other proponents wishing to speak? Good afternoon. [LB858]

STEVE HOWARD: Good afternoon, Chair. I am Steve Howard, S-t-e-v-e H-o-w-a-r-d, and I have the honor of representing the Nebraska State AFL-CIO. I come before you in support of LB858. Just to follow up on Mr. Moodie's comments about the nature of these injuries. You'll see in the statute what are called "scheduled members." Scheduled member injuries are arms, and legs, and toes, and feet, and fingers, and so if your nose is cut off, you get 50 weeks; or if your ear is cut off, you get 25 weeks. Those are scheduled members. Body as a whole is the head, the spine, the trunk, the torso, the rest of the body. Those benefits are paid over 300 weeks. And the percentage in one applies to the number of weeks, it applies to the dollars and the body as a whole, but then there's that other category of permanent and total disability when the injury is so severe that the worker can never return back to work. And that is when the individual for the remainder of their state of total disability, which is usually the rest of their life, is stuck with that calculation. So similar to Mr. Moodie had a case for an injury in 1993, it was decided in 1995 at \$133.33 a week. And that was paid out for the remainder of the disability. So this is a bill that will allow for the cost of living increase. I would remind the committee, you know, the person starts off with only two-thirds of their average weekly wage. Overtime doesn't count; it counts as straight time, so if you're getting time and a half or double time for overtime, those hours count, but the dollars, the time and a half doesn't count. And so this is not some generous system that's a windfall for injured workers. I would also remind the committee that if you look on the Nebraska Work Comp Court's Web site, I'm sure you have this data available, that if we go back over ten years, rates are on a downward trajectory; injuries are on a downward trajectory. They've leveled off last year, but there certainly is no crisis in workers' compensation for employers, it remains a healthy environment for agents of the selling work comp insurance and insurance carriers to continue to sell those lines. And so we encourage you to pass on LB858. And thank you very much for your time this afternoon. [LB858]

SENATOR ALBRECHT: Thank you. Do we have any questions? [LB858]

STEVE HOWARD: Thank you. [LB858]

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SENATOR ALBRECHT: (Exhibit 1) Thank you. Any other proponents that wish to speak to LB858? Any other proponents? Seeing none, we'll move on to...oops, I'm sorry, we do have Susan Martin, president of the Nebraska State AFL-CIO, also sent a letter in, so thank you. Moving on to opponents; are there any opponents wishing to speak to LB858? [LB858]

ROBERT J. HALLSTROM: (Exhibit 2) Chairman Albrecht, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m; I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB858. I've also been authorized to appear today on behalf of the Nebraska Trucking Association; and I'm also registered as a lobbyist for the National Federation of Independent Business, all of those groups being in opposition to the bill before you. With respect to the provisions of LB858, we believe that those will increase premiums and costs for employers, both those that pay premiums directly to insurance companies for their required and mandated workers' compensation insurance coverage and for those who are self-insured employers. I want to thank Mr. Moodie for the tutorial on workers' compensation 101; he did a very nice job of spelling out for the committee some of the issues surrounding workers' compensation benefits. But he mentioned the grand bargain or the compromise that was put into place initially to remove the civil law provisions that applied to workers' compensation many, many years ago and was replaced by the system that we currently have. We believe that to place a COLA, an automatic adjustment or increase for all purposes for the total disability benefits would not be appropriate. One of the things that was not mentioned with regard to total disability benefits, they gave examples of cases that injuries and awards that were entered back in 1993 and 1995, I believe respectively, those may also have gone by the retirement date for that individual, but there's no adjustment to those permanent disability benefits once the person would otherwise have removed themselves from the marketplace and from the workplace. There are other states that do have provisions that will make an adjustment and terminate those awards so that they don't go beyond the date of retirement or some set date about the date of retirement. So with that I would just indicate that we're opposed to COLAs. We think this will increase cost for employers and would urge the committee to oppose LB858. I'd be happy to address any questions that the committee might have. [LB858]

SENATOR ALBRECHT: Thank you, Mr. Hallstrom. Any questions? Senator Crawford. [LB858]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you, Mr. Hallstrom. Do you have any information on what percentage or how many of the workers' comp cases would be the total disability cases? [LB858]

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ROBERT HALLSTROM: I don't, Senator. I know there may be a witness that comes up after me that might have some potential to get information from the NCCI, National Council on (Compensation) Insurance, and perhaps will have some figures with regard to the cost at that point, but I don't have any statistics regarding percentage or proportion of cases that involve permanency or total disability. [LB858]

SENATOR CRAWFORD: Thank you. [LB858]

SENATOR ALBRECHT: Anything else? Any other questions? Seeing none, thank you for coming. [LB858]

ROBERT HALLSTROM: Thank you. [LB858]

SENATOR ALBRECHT: Any other opponents wishing to speak? [LB858]

KORBY GILBERTSON: Good afternoon, Chairman Albrecht, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n appearing today as registered lobbyist on behalf of Tyson Foods and the Property Casualty Insurance Association of America in opposition to LB858. I want to repeat a lot of what Mr. Hallstrom said, I wanted to add a few things that we discussed about both of the groups that I'm representing, both Tyson is one of what you would call self-insured companies. So they're paying these claims straight out from their own money, they don't have to purchase the insurance outside. PCI represents about 40 percent of the workers' compensation writers in the state. And although we don't know exactly what the cost will be on this, we know that it will go up. And as the proponents did talk about NCCI, which is another client of mine, but they do not take positions on bills, I have asked them for an actuarial report on this. I have not received it yet. I talked to them this morning; they're still working on it. So I will get that to you as soon as I have it. But NCCI does the ratings for Nebraska and they have been reporting every year for the last several years we've had decreases in our rates in Nebraska. And that's because the number of injuries, the severity of injuries, and the overall cost of providing payments to injured workers has declined. The only thing in Nebraska that has continued to increase is medical costs. Fortunately for us, the severity and the number of injuries has gone down enough so that we have continued to see decreases in rates. However, if you institute something like an automatic increase into awards, that will add costs to the system and definitely for those that are self-insured, most likely for those that buy insurance. So with that I'd be happy to try to answer any questions. [LB858]

SENATOR ALBRECHT: Very good. Any questions for Ms. Gilbertson? Senator Crawford.
[LB858]

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SENATOR CRAWFORD: Thank you, (inaudible). And thank you for being here today to testify. So, just to clarify from your testimony is the case that we have reduced the cost of workers' comp rates in our state and injuries are going down as well. So we're in a situation where we have controlled many of those costs. [LB858]

KORBY GILBERTSON: Yes. [LB858]

SENATOR CRAWFORD: Right. So would it be the case that if someone is employed, there would be an understanding of negotiation or recognition of a need for cost of living increases, as cost of living does increase? [LB858]

KORBY GILBERTSON: I think there are two ways you can argue it. One way is your argument that there should be an automatic increase. The second argument is that just because there is a cost of living...or a cost of living increase overall in the state, doesn't necessarily mean those wages by that employer are going up at the same tick. So you could actually be giving someone an increase they wouldn't already get. I do realize it's two-thirds, so...but that is part of what Mr. Moodie talked about as being the grand bargain. I think one part of the grand bargain he kind of left out in his argument is the employee gets to recover regardless of their negligence or activity that they were doing. They recover regardless of what they were doing. So we (inaudible). [LB858]

SENATOR CRAWFORD: Aren't there protections against extreme negligence? [LB858]

KORBY GILBERTSON: Yes, extreme, yes. [LB858]

SENATOR CRAWFORD: So I'll stop there, thank you. [LB858]

SENATOR ALBRECHT: Thank you. Other questions? Do you think you have something else? No. Okay, thank you very much for your testimony. [LB858]

KORBY GILBERTSON: Thank you. [LB858]

SENATOR ALBRECHT: Okay, do we have any other opponents wishing to speak to LB858? [LB858]

RON SEDLACEK: Good afternoon, Madam Chairman, members of the Business and Labor Committee. For the record my name is Ron Sedlacek, it's R-o-n S-e-d-l-a-c-e-k. I'm here on

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behalf of the Nebraska Chamber of Commerce and we also take a position of opposition on this legislation before you today. Essentially, based on the same rationale that you heard from the previous speakers in regard to longstanding position against the cost of living increases and potential prospects on employers. Also, I'd like to have the committee consider not only workers' compensation benefits, but there are also potentially available Social Security benefits, private employer provided disability benefits, and there could be other combination of other public benefits that are available. Now from what I understand, I have to research this a little bit more because I'm looking...thinking on the top of my head, but Social Security Administration, if I recall, says that they will reduce benefits if the combination of workers' compensation and/or other public benefits would exceed 80 percent of the average compensation that a disabled person receives at the date of injury. So keep in mind that workers' compensation is one pot; there are other pots available. And those are all looked at so that there is not a greater amount of compensation than would otherwise occur. So with that, I conclude my testimony. [LB858]

SENATOR ALBRECHT: Thank you. Any questions? Seeing none, thank you for your testimony. [LB858]

RON SEDLACEK: Thank you. [LB858]

SENATOR ALBRECHT: (Exhibits 3 and 4) Okay, any other opponents wishing to speak? Any other opponents wishing to speak to LB858? Seeing none, we have letters: Jim Otto on behalf of the Nebraska Retail Federation, the Nebraska Restaurant Association, and the Nebraska Grocery Industry Association was an opponent. And Kent Grisham, President of the Nebraska Trucking Association was also opposing LB858. And Senator Hansen, would you like to close? Oh, I'm sorry, sorry, sorry, sorry, anyone in neutral position please come forward. Anyone in neutral position on LB858? [LB858]

TAD FRAIZER: Good afternoon, Senator Albrecht, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty insurers. I was asked to appear in a neutral capacity since basically what insurance ends up doing is passing through whatever costs you impose to the employers, so we're not taking an actual position on the increase of benefits; that's a matter for the committee. But I was asked to point out and emphasize it is important that the bill be prospective in nature; and I believe it is drafted that way. But obviously, worker comp insurance is written and based on kind of an annual basis. You don't buy a 30-year worker comp policy. So you're writing your premiums and assuming your losses on the basis of current wages and such. So any existing claims have not taken into account the possibility that there would have been an increase in the benefits. So those past or already existing claims would not have taken that into account; it would not have been at an appropriate premium. It may be a bit of a challenge even

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going forward for an underwriter who is writing a policy this year or next year to figure out what the average weekly wage may be 5, or 10, or 20 years down the road. But they'll do their best to try to price that in. But again, it is important that it be kept prospective only from our point of view. And I'd try to answer any questions you might have. [LB858]

SENATOR ALBRECHT: All right. Senator Halloran, do you have a question? [LB858]

SENATOR HALLORAN: Thanks, Chairperson Albrecht. It's hard for me to ask questions to someone that's neutral, but...because I've always had problems with that term "neutral," but let me ask you a question, would you be disappointed if this passed? [LB858]

TAD FRAIZER: It would make things more complicated for insurers, I guess. Obviously, you have to attempt to price something coming down the road. [LB858]

SENATOR HALLORAN: Would you be disappointed if it didn't pass? [LB858]

TAD FRAIZER: Probably not. [LB858]

SENATOR HALLORAN: Okay, so you're not neutral. (Laughter) I'm not picking... [LB858]

TAD FRAIZER: No, I understand. I was told our main concern was the prospective nature of it. That's the portion I'm taking a position on. [LB858]

SENATOR HALLORAN: Okay. I'm not picking on you, just (inaudible) this whole concept of neutral. But anyway. [LB858]

SENATOR ALBRECHT: Any other questions for Mr. Fraizer? Senator Crawford. [LB858]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Mr. Fraizer, for being here. I do think neutral testimony is an important part of our process in terms of if the committee wanted to answer questions. And so it sounds like, again, one of your main concerns was that it be prospective, and it is, so that addresses the issue. And it would be the case that you would be calculating this possible increase into rates. Are you familiar with other states that have this kind of a possible increase? [LB858]

TAD FRAIZER: I'm afraid I don't have information on that, Senator. Sorry. [LB858]

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SENATOR CRAWFORD: Okay, (inaudible) to know what possible cost it might be. And any of those costs then would be, again, we've had lower insurance costs recently, can you talk about what you think is part of what's behind that? [LB858]

TAD FRAIZER: I've attended a few seminars that attempted to explain it, some of it has been in terms of just flatter wages, obviously, in the past few years inflation has been fairly flat. Years ago, you could have multi-digit inflation and such. Some of it's been better safety. Sometimes there's...in tougher economic times as there was a few years back, people are somewhat reticent to make claims and that can sometimes affect things. There are a variety of things that go into those effects. [LB858]

SENATOR CRAWFORD: So is it true...and generally your role in insurance is to make sure we are prepared to pay what we think is viable and important. [LB858]

TAD FRAIZER: That's what we try to do, yeah. [LB858]

SENATOR CRAWFORD: And so it's up to us to decide if we think that increasing someone's salary, if they are totally disabled, is viable and important, and your job would be to figure out how to make that happen if we decide to do so. [LB858]

TAD FRAIZER: That's obviously a balancing act between you and those who have to pay the costs of it. We try to appropriately reserve and price for, which under some circumstances is easier than others. [LB858]

SENATOR CRAWFORD: Okay. Thank you so much, I appreciate your testimony. [LB858]

SENATOR ALBRECHT: Very good. Any other questions? Thank you for coming. Okay, anyone else in a neutral position on LB858? Neutral position? Seeing none, Senator Hansen, would you like to close? [LB858]

SENATOR HANSEN: Absolutely, thank you. Thank you, Chair Albrecht, and fellow members of the committee. I just wanted to kind of address a few things in my close. Going to be addressing Mr. Fraizer's neutral concerns, I do agree the bill is intended to be prospective. We're not going to undo or redo all of the past worker compensation claims. And kind of the broader concept of this is we're kind of talking about kind of different pools and different areas of risk. And kind of it's a question we as state policymakers need to decide is where do we want that risk to land? Currently, there's kind of a rather large burden on the injured individual such that, you know, if they're injured, especially if they're injured early in their career, they're locked into

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whatever they had. And obviously if they're totally disabled, that means they cannot work, so they cannot, you know, increase their salary otherwise. So they're kind of at the mercy of what we set. I do agree that introducing this law will change insurance premiums, so that's kind of the intent is to take that risk rather than that one individual is going to be locked into a certain amount that they personally cannot change; have them some flexibility to kind of keep up as inflation keeps up, and then to spread that risk around throughout all the insurance premiums and payers. I know that will affect probably different insurance groups, different premiums, and different employers depending on the different work and the different risks that they go. That's something we could look at as kind of state makers. And then Senator Lowe to your question about numbers; I apologize for using a number in my example and not actually expecting a question on that. I tried to do some of back of the envelope things, but I'm not confident enough in my math to get there. I will say that, you know, for example just using this most recent 2018, their state wage...state average weekly wage is \$831; so two-thirds of that would be \$554 a week, which is just under \$29,000 a year. Now that's a maximum. So if you were a higher earner above that, maybe specialized, you were capped at that lower amount. And alternatively make less than that, you're capped at your actual two-thirds of your actual wages. And so if you think about that, if somebody who is, you know, kind of early in their career, you know, somebody who is 30, you know, they could have 35 years of work and raises and things that they all expected to get and, you know, freak accident, you know, maybe it's negligence on one party or another, maybe it's no negligence and just was kind of, you know, something out of the blue, they're just stuck there. So what can we do as a state to make sure that they're not having to apply on other social safety nets and other programs more heavily because we could have been proactive and had some sort of workers' compensation insurance take care of it. With that I would be happy to work with the committee and see what we can do. [LB858]

SENATOR ALBRECHT: Great. Any questions? Senator Hansen, can I just ask a couple of questions, because I know Senator Chambers isn't here... [LB858]

SENATOR HANSEN: Sure. [LB858]

SENATOR ALBRECHT: ...but what prompted you to get into this particular bill? Is it something that's been going on around the country? Is it something that has been tried here before in this assembly group? Or is it something that just came to you? [LB858]

SENATOR HANSEN: Sure. It's actually...this current issue is a bill I brought during my first two years. And we...you know me, I've worked on...brought many issues in front of the committee working on, kind of, helping employees, making sure they're well protected. And I got prompted to bring it again this year and decided to go there. [LB858]

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SENATOR ALBRECHT: It's always important to me as a newer senator to know where do these bills come from. [LB858]

SENATOR HANSEN: Sure. [LB858]

SENATOR ALBRECHT: But have you thought about the different pools that they're talking about, whether somebody is self-insured or not and other monies that might come into play with Social Security and things like that. Is that something that you took into account when you're considering (inaudible)? [LB858]

SENATOR HANSEN: We took into it...it's kind of...and you heard kind of some of the expert testifiers before me...or between me, talk about it of it's really hard to figure out exactly what the premium would be or what different life or different premiums, in part because I just don't have access to that number. So that was kind of why I was hopeful we would have such good testimony at the hearing and figure out from there what the impact would be. [LB858]

SENATOR ALBRECHT: Well, I certainly like to know, you know, how long do...how many people are really out there with that kind of a risk that they're taking on, too. It would be tough to sit there for how many years, 34 years, and what did he say, 23 years and the person had the exact same amount since 1994. That would be tough to live on too. But I'd like to maybe look at some more numbers. So thank you for bringing the bill. [LB858]

SENATOR HANSEN: Absolutely. [LB858]

SENATOR ALBRECHT: So seeing no other questions, we'll move on to the next one. Thank you. [LB858]

SENATOR HANSEN: Thank you. [LB858]

SENATOR ALBRECHT: Okay, Senator Vargas, is he here? Senator Vargas. We're going on to LB784...LB784 change the Employee Classification Act. Welcome, welcome. [LB784]

SENATOR VARGAS: Thank you very much, Chairwoman; thank you, members of the committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s-, I represent District 7 in the communities of downtown and south Omaha in the Nebraska Legislature. The purpose of LB784 is to strengthen the Employee Classification Act. Current law that imposes penalties on employers who misclassify employees as contractors. The practice allows employers to avoid paying unemployment and other taxes on workers and from covering them on workers'

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compensation and unemployment insurance. Employee misclassification reduces labor costs for the employer, but creates an unlevel playing field when businesses are involved in competitive bidding on projects. Workers who are misclassified as independent contractors work without the legal protections typically afforded to employees such as wage and hour loss, workers' compensation and unemployment benefits. Aside from the worker protection issues, employee misclassification also has negative consequences for our state government because when employees aren't paying taxes, we are shorted in tax revenue. LB784 strengthens existing law by preventing employers or businesses with pending fines for misclassifying workers from contracting on projects with a political subdivision. It is incredibly important for us to take this next step in enforcing the Employee Classification Act. When political subdivisions evaluate bids on projects, it is important to know that all businesses are bidding on a level playing field, where workers are being paid transparently and classified correctly. This is especially important because projects done by political subdivision are paid with public dollars. Tax dollars should never be used to uphold dishonest and deceptive business practices. Now when I served on the Omaha Public School Board, prior to serving here in the Legislature, I happily supported our bond issue on the 2016 elections that would raise necessary funds for capital improvements for existing schools and potentially new schools in high-growth areas across Omaha. I served on the committees that reviewed and evaluated project bids and contract work. And too often some of the local businesses, who play by the rules, paid their employees fairly, and classified them correctly were at a disadvantage. By passing LB784, we will be taking another step towards better supporting our local small businesses and Nebraska workers. With that I'll be happy to answer any questions that the committee might have. [LB784]

SENATOR ALBRECHT: Do we have any questions for Senator Vargas? Senator Halloran.
[LB784]

SENATOR HALLORAN: Thank you, Chairperson Albrecht. Senator Vargas, what are the...just one clarification--what are the numbers? I mean, as far as the contractors that aren't paying their fines. [LB784]

SENATOR VARGAS: This is where it gets a little tricky. I can tell you numbers in terms of this last year, how many open investigations and cases pending and other things. So one thing you should know, the Department of Labor puts out a report every single year that summarizes the number of investigations, closed investigations, how much they've collected in lost revenue as a result of misclassification. And I think we're just...we're just scratching at the surface here. What we've seen right now, at least in 2017, this last year, there are 46 open investigations, including 10 cases pending involving a total of 409 total individuals with about \$152,000 in penalties in which \$20,000 had already been collected. This is just the tip of the iceberg. You will hear from other individuals that are coming and testifying that this is much more prevalent than it is. I'm happy to report that we brought legislation last year and the Department of Labor has started to

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then add more staff, typically bilingual investigators, so that we can continue to enforce in this area. We need more of that staff to do that and they are helping us and continuing to work on that. However, we're just not where we need to be yet because this is an area where...it's hard to really tell how many unclassified workers there are because we're trying to enforce it. So the numbers in these reports are just a snapshot, quite honestly. But what this would do would go a long way to ensuring that those that are doing business know that there are consequences to when you have fines. And you have to pay them if you want to continue doing work on public projects. This is very important, public projects. This is taxpayer funds used for projects that they're potentially not following the law, misclassifying people, and as a result we're losing out on revenue. And then also in noncompliance with our current law. So, long-winded answer. [LB784]

SENATOR HALLORAN: Okay, so we...I mean, I'm just trying to get a scope of how big the problem is. [LB784]

SENATOR VARGAS: Yeah. And you will absolutely hear from a few people testifying on how big the problem is. And, again, because it's something that we're trying to enforce, and it clearly is something that as Nebraska we have put into statute that this not something we want to continue or allow this atmosphere to happen. We have the snapshot of what we've been able to do, but here is still a lot more that goes unchecked which is why we're trying to then have more investigators and increase capacity to be able to investigate in this area because it really is. I can tell you that if you want a snapshot in terms of the audit activity from the Department of Labor who have been doing this, and workers misclassified over the last six years, we've had about 9,000 from our...again, with our limited capacity and there's more to do. And we've collected about \$618,000 in additional taxes collected off of that. [LB784]

SENATOR HALLORAN: So while the cases are pending, it's just after there's been a decision you're talking about. [LB784]

SENATOR VARGAS: Yep. We need to make sure that there's some back-ended enforcement mechanism that ensure that we are doing everything we can to enforce this act. And I'm happy, so. [LB784]

SENATOR HALLORAN: So when you said it's tricky, we don't know what we don't know. [LB784]

SENATOR VARGAS: Yeah. But we do know it exists, which is why we passed the act. And so we just want to enforce something that's on the books; make sure there's a consequence, and the consequence is reasonable. I think it's reasonable that you wouldn't be able to bid on a public

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project if you have outstanding fines. That's not, I think...very...not aligned with other instances we see. [LB784]

SENATOR HALLORAN: Right. I'm just trying to capture the scope of the problem. [LB784]

SENATOR VARGAS: Yeah. You will hear a little bit more about the scope from others. [LB784]

SENATOR HALLORAN: Thank you, Senator. [LB784]

SENATOR ALBRECHT: Other questions at this time? Senator Crawford. [LB784]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Senator Vargas. I appreciate you bringing this bill and just tackling the classification is an issue. So you talked about how many fines we've collected. Do you have any sense of unpaid fines, did I miss that in your presentation? [LB784]

SENATOR VARGAS: From my knowledge, we have...if you're looking at the open investigations and the ten cases that are pending, there are...there is one practice of negotiating on fines; so I think last year we had at least ten that were...we had fines that were closed out and a bunch of them were unpaid. We're not talking about a small number of penalties necessarily, but I think that including the penalties will ensure that less people are even engaging in this act whatsoever. There are pending cases because some of these violations are negotiated. So we don't have the accurate numbers as to how many outstanding violations we have, but we do...there are some outstanding violations. [LB784]

SENATOR CRAWFORD: But while they're pending, would they...they would not necessarily apply to this restriction or... [LB784]

SENATOR VARGAS: No, no, they wouldn't apply the restriction. This is if they have unpaid fines, you know, once the investigation is closed. [LB784]

SENATOR CRAWFORD: Excellent. Thank you. [LB784]

SENATOR ALBRECHT: Okay, just a real quick question before we have other testifiers, when you say these contractors and employers have misclassified employees, what do you mean by that---misclassify. And is that what they're getting penalties for? [LB784]

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SENATOR VARGAS: Yes. So when we're talking about misclassification is that we are misclassifying employees as contractors, as opposed to employees. And as a result of doing that practice, if they're a contractor then you don't have to make sure that you are accounting for workers' compensation, unemployment insurance, and other taxes affiliated with workers. [LB784]

SENATOR ALBRECHT: Okay. [LB784]

SENATOR VARGAS: So if you can imagine if there are two companies that are bidding and they consider a lot of their employees contractors and others are considering them employees, the bids are going to be entirely different because they're not including the withholding of the taxes for workers' comp and unemployment insurance, and other taxes which is really unfortunate for public work. So that's why we're trying to level the playing field and make sure that people are classified correctly under the act as it exists. [LB784]

SENATOR ALBRECHT: Okay, very good. I'll wait for more comment. Do you have another questions, Senator Halloran? [LB784]

SENATOR HALLORAN: Thank you, Chairperson Albrecht. And maybe someone will follow with this, but (inaudible) and answer the question, but what's the definition of independent contractor? [LB784]

SENATOR VARGAS: I might leave that to somebody else for the exact interpretation of that. Yeah. [LB784]

SENATOR HALLORAN: Okay. Because that's the issue we're talking about, right? [LB784]

SENATOR VARGAS: Yes. But I will say that the definition of independent contractor is in the statute, in the act, and that definition is what is used to that audit and then ensure that people are in compliance with this. So they're using the...there is...it's actually in this report the exact language. I just don't want to misstate it by the language that's used. [LB784]

SENATOR HALLORAN: That's fine. Thank you, Senator. [LB784]

SENATOR ALBRECHT: Very good. I'll ask you to...anybody else? Everybody got your questions answered? Okay, will you stick around or do you have to get back to your... [LB784]

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SENATOR VARGAS: I'll stick around. [LB784]

SENATOR ALBRECHT: Okay. Very good. We'll get started here. Okay, I need...any proponents wishing to speak to LB784, please come forward. Proponents wishing to speak? Hi there. [LB784]

MATT SCOTT: Good afternoon. My name is Matt Scott, I'm a carpenter for the North Central States Regional Council of Carpenters. I can try and answer some of those questions Tony was asked earlier a little bit better, if you remember to ask them at the end of this. Due to lack of enforcement on the Employee Classification Act, craftsmen in the construction field are being exploited by their contractors. It is the contractors that are "1099ing" their employees without their knowledge or approval. They're not paid on the workman's' comp, which means that the employee is hurt on the job for breaking his hand or something, he incurs the total cost of that hospital bill because the employer pays nothing, the contractor pays nothing on that. He's considered an independent contractor. He's just let go from the job. There's no unemployment paid on behalf of the employee. So when work gets a little bit slow, often these employees can be...and their families can be forced onto the welfare program because they can't...they don't (inaudible) to fall back on to carry them through the hard times. In the construction field, we work roughly from March to late October, mid-November, and the rest of that is time off. That unemployment is important. There's no Social Security or Medicare taxes paid on our behalf. Those are two pretty underfunded programs. There's no overtime paid for working over 40 hours a week. Often we get Saturdays, Sundays, long hours, 10, 12, 14 hours a day. They're forced to work for cash under the table payments, unsafe, unclean work environments. There really is a bad situation. So we need more enforcement to stop these contractors who owe fines and who use this...it's illegal and immoral business practice. We've got to stop them from bidding on the state and local projects. To what you're asking, I would say there's probably thousands in Omaha, thousands in Lincoln, they may be general contractors or subcontractors themselves and subcontractors of subcontractors. There's thousands and thousands across the state of Nebraska. [LB784]

SENATOR ALBRECHT: Are you finished with your testimony? [LB784]

MATT SCOTT: Yes, I'm sorry. [LB784]

SENATOR ALBRECHT: That's okay, just wanted to know because I'm sure we'll have some questions for you. Questions for Mr. Scott? Senator Lowe. [LB784]

SENATOR LOWE: Thank you, Chairman. Mr. Scott, you said you were from North Central... [LB784]

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MATT SCOTT: State Regional Council of Carpenters, yes. [LB784]

SENATOR LOWE: Where are you based out of yourself? [LB784]

MATT SCOTT: Here in Lincoln. [LB784]

SENATOR LOWE: Here in Lincoln, okay. And is this a major problem? [LB784]

MATT SCOTT: In the construction field it is rampant. It has become the standard practice to misclassify employees. [LB784]

SENATOR ALBRECHT: Questions? Others? Senator Halloran. [LB784]

SENATOR HALLORAN: Thank you, Chairperson Albrecht. So generally speaking, not getting too deep in the woods, the difference between an employee and a...what's the term I'm looking for...subcontract labor is that the employee is more directly under the day-to-day supervision of the employer? [LB784]

MATT SCOTT: Correct. [LB784]

SENATOR HALLORAN: And the independent contractor once hired for that specific job, subjob, whatever it might be, is left pretty much on their own to supervise themselves on the day-to-day activity of that job? [LB784]

MATT SCOTT: Correct. A contractor, a subcontractor, when he is awarded a bid for a project, he goes in there to do the work, he has his own tools, he has his own materials, he decides when he starts and stops for that day, when his lunch is, when his break is, as long the work performed is done by the set date, he is self-employed. And an employee is told, of course, when to take break, what time to be there; they use the contractor's tools, they use the contractor's safety. [LB784]

SENATOR HALLORAN: Okay. So you're saying that that's where the problem lies is where some people are hired or employed, but they're titled as an independent contractor. [LB784]

MATT SCOTT: Correct. [LB784]

SENATOR HALLORAN: And they are supervised daily? [LB784]

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MATT SCOTT: Yes. Supervised...yes, supervised daily by the contractor that has hired them. Yeah. [LB784]

SENATOR HALLORAN: I mean there's interaction between the contractor and the subcontractor and the contractor on, say, the quality of the work or the speed of the job being done, things like this, but (inaudible) that's natural, right. [LB784]

MATT SCOTT: Right. And the employee will go where he's told to go, when he's told to go there, do what he's told to do, and how he's told to do it. Then the contractor just performs his... [LB784]

SENATOR HALLORAN: So what you're saying is some employees are treated like subcontractors or independent contractors. [LB784]

MATT SCOTT: Yes. The employees...I would say in the...in...I would almost be shooting from the hip here, but I would say in Nebraska construction industry when you're talking about concrete, drywall, residential framing, roofing, 80 to 90 percent of the employees, I would say, are misclassified. [LB784]

SENATOR HALLORAN: So do some of those people that are classified as independent contractors, can they be working simultaneously on different jobs, different contractors? [LB784]

MATT SCOTT: Yes. Not when they're misclassified they can't. They're told when to be there and what time to be there, but when they're at the end of the year, they receive a 1099 form and had no...they could be expecting a refund for their taxes and end up having to pay in thousands and thousands. They might not know their 1099. [LB784]

SENATOR HALLORAN: Okay, again I'm trying to capture the scope of the problem size-wise. And I hear things like it's a big problem or there's a large number of these, but I'm having trouble wrapping my hands around how many or what are we looking at? I mean its... [LB784]

MATT SCOTT: Oh yeah, like I said, I would say 80 to 90 percent of the construction field uses this business model. Again, I don't have any numbers to support that, I'm going off the top of my head, but just thinking about how many legitimate contractors I know that have to compete with the contractors that use this business model. [LB784]

SENATOR HALLORAN: Okay, thank you. [LB784]

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MATT SCOTT: It's bad. [LB784]

SENATOR ALBRECHT: Okay, I guess I have some quick questions here. [LB784]

MATT SCOTT: Sure. [LB784]

SENATOR ALBRECHT: So you represent the carpenters...who did you say you represent?
[LB784]

MATT SCOTT: The North Central State Regional Council of Carpenters. [LB784]

SENATOR ALBRECHT: Council of Carpenters, which encompasses what? The whole state of
Nebraska? [LB784]

MATT SCOTT: Yeah, Nebraska, Iowa, South Dakota, North Dakota. [LB784]

SENATOR ALBRECHT: Contractors meaning...so if I'm a general contractor and I'm looking
for roofers, I need 20 of them to go to a particular neighborhood and you would find those
people...your group would say, yeah, I've got 20 people I can send out to you? [LB784]

MATT SCOTT: Yes. [LB784]

SENATOR ALBRECHT: Okay at that point, do you let that general contractor know that these
folks are independent, or you're hiring them and you've got to take out all their Social Security
and Medicare, you didn't... [LB784]

MATT SCOTT: Our contractors know when they call us for guys that they become an employee
of that contractor. [LB784]

SENATOR ALBRECHT: So they know that. [LB784]

MATT SCOTT: Yes. [LB784]

SENATOR ALBRECHT: So at what point does somebody end up...do they have to work a
certain number of hours to be under that umbrella, if you will, that that general employs those
people? [LB784]

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MATT SCOTT: No, it's not a temporary service. [LB784]

SENATOR ALBRECHT: Okay, so it's not a temporary service. [LB784]

MATT SCOTT: No. [LB784]

SENATOR ALBRECHT: So how do they get fined? How do they get fined and... [LB784]

MATT SCOTT: I believe it's through the department...through the DOL... [LB784]

SENATOR ALBRECHT: For doing what? [LB784]

MATT SCOTT: DOL finds misclassified employees on job sites. [LB784]

SENATOR ALBRECHT: So they...so of those 20 people they've misclassified all 20 of them because they're not actually employing them? Is that what you're saying? Is that what this is about? [LB784]

MATT SCOTT: Of those 20 people that are misclassified, they are not actually...they say that they're not actually employing them. They say that, you know, if we go on the job site and say, okay, how many guys do you have out here and he says I'm a company of three people. So who do all these guys work for then? There's 50 guys out here. Well those 50 guys are all subcontractors. Okay, well who is running those subcontractors? I am. So, you know, the contractor... [LB784]

SENATOR ALBRECHT: So the general says to the guy that says I'm running those 50, who is responsible for those 50 to pay those 50? Is it the general that called them out? Or is it the subcontractor that brought them all in? [LB784]

MATT SCOTT: Oftentimes it would be a subcontractor who has hired a labor broker to supply the manpower. [LB784]

SENATOR ALBRECHT: Okay. So this to me becomes very complicated. So at what point does the Nebraska Department of Labor get involved? [LB784]

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MATT SCOTT: Boy, I would think it would have to...when they hear a report, when we give them a report on a job we might think has misclassified employees, they would hopefully go in and get involved in it or they... [LB784]

SENATOR ALBRECHT: So if a gentleman or a woman worked for this contractor for 30 days; who is that person getting a check from? [LB784]

MATT SCOTT: If they worked for the contractor, they're receiving a check from that contractor. [LB784]

SENATOR ALBRECHT: The guy that brought in the 50 people, not the general. [LB784]

MATT SCOTT: Well...correct. If he works for the guy that brought him 50 people, he would be getting a check from him. [LB784]

SENATOR ALBRECHT: Okay. So... [LB784]

MATT SCOTT: So if I'm working for a subcontractor and they ask me to bring 50 guys in, I can bring 50 guys to this project; I know that I'm going to pay them all cash under the table and they're not going to be able... [LB784]

SENATOR ALBRECHT: So the subcontractor is going to pay the guy cash under the table is the one that should be being fined, not the general. Yes? [LB784]

MATT SCOTT: Yeah, unless he got a general contractor that continually uses subcontractors that utilize this model. [LB784]

SENATOR ALBRECHT: Okay. Just scratching my head over this one. Other questions? Go ahead, Senator Crawford. [LB784]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for being here to testify. [LB784]

MATT SCOTT: Sure. [LB784]

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SENATOR CRAWFORD: So just to clarify, we have...regardless of the size of the challenge of misclassified workers, the issue here is someone who is clearly been caught violating the law of misclassification. [LB784]

MATT SCOTT: Correct. [LB784]

SENATOR CRAWFORD: And this is a pretty small first step to say if we've caught you and fine you and you haven't paid, then we're not going to...we as public entity, representing taxpayers, public interest are not going to contract with you. [LB784]

MATT SCOTT: Correct. That's what we're asking. [LB784]

SENATOR CRAWFORD: Right. And so, really, it's like the most flagrant cases that we're ruling out in this case, people that have not paid their fines. [LB784]

MATT SCOTT: Right. And those contractors who owe their fines and have not paid them, we just ask that they be stopped from bidding on local or state projects. [LB784]

SENATOR CRAWFORD: Right. Right. Could be other steps we could take in the future that would bring... [LB784]

MATT SCOTT: There's a big rabbit hole you can go down with that one. [LB784]

SENATOR CRAWFORD: Right. Right. Thank you. [LB784]

SENATOR ALBRECHT: Any other questions? Senator Lowe. [LB784]

SENATOR LOWE: I'd like to further continue on with your thoughts, Chairman. Say I'm a big contractor, I build high-rise buildings. I, myself, we have a staff of office people and we contract all labor out from underneath there. And one building is under one other general contractor; another building is under another general contractor, and they subcontract to their subcontractors, those subcontractors contract to other drywallers, finishers, framers. I as the general would not have knowledge truly of the drywallers or the framers or the finishers. The subcontractor I contract out for that building may not have knowledge of whether or not those are employees or not. Me, as the main general...who gets fined in that situation when they come in? Would it be the person who hired him? Those framers? Would it be the...how far up the rank because they (inaudible)? [LB784]

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MATT SCOTT: I don't know how far up the hill that actually goes, to tell you the absolute truth. I'm not sure if the employees get...if the employees get fined for not being LLC or registered with the state of Nebraska as a subcontractor or does the guy who hired him get fined for not paying all the taxes on his guys? I don't know how far up the chain that would go. What if the guy gets hurt, is it ultimately the subcontractors problem because it's his project, he takes over ownership while it's going on? [LB784]

SENATOR ALBRECHT: Very good. No other questions? Thank you for your testimony. [LB784]

MATT SCOTT: Thank you. [LB784]

SENATOR ALBRECHT: All right. Again, do we have any other proponents wishing to speak to LB784? Hello. [LB784]

FELICIA HILTON: Hi. Good morning, my name is Felicia Hilton, H-i-l-t-o-n, I work for the North Central States Regional Council of Carpenters and we are in favor of LB784. One of the reasons why we are in favor of this is because, for one, as workers in construction, seeing how misclassification is rampant in the construction field because of the very things you guys are describing: the subcontractor, the subcontractor, and the subcontractor and who is responsible for the subcontractor and the subcontractor. That alone is the actual answer to this problem that this is what we are trying to address. That these are employees; they're not subcontractors. So you cannot build this building or any other building of a public nature that's multi-year on everybody being subcontractors, showing up whenever they want to, getting done whatever they want to, drywallers coming in whenever they want to, finishing something, how does it get complete? These people are workers. They were told when to go to work, how long they have to work, when they go to break, when they get to go home. So that's one thing that we're trying to actually address is saying through this subcontracting and subcontracting and subcontracting, somebody is the employee. We as carpenters know who the employees are. They are the people that are showing up to put in drywall in a very large structure; they were told when to show up, how much they have to get done. Sometimes they're paid by the foot, 5 cents a foot in a lot of cases when they are being exploited. And then it's converted into hourly pay which could also cut their wages. They're being paid cash under the table. So not only are they being paid cash under the table, it's as if they don't even exist as employees, so they're untraceable. So that's part of the problem that we're trying to address as well that the more the folks...the more people are working on these large projects and the more that they're classified correctly, we're able to also know who is actually building the projects, who is working on these projects. It's an invisible work force in a lot of cases because of this underground market, specifically in construction. And so we've been trying to address it ourselves by talking with workers, getting information from workers,

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finding out how they were paid, if they were paid, because that's also another big piece of this misclassification is a lot of times they aren't paid. Especially if they're undocumented or in the country through other means then they're exploited in that way where they're told over and over and over and over again they're going to get paid, just finish the work. They finish the work, they're never paid. They come to us to try and help them figure out how they get paid. So I just...I typically don't testify when we come up, I let a lot of the guys that are in the field do this stuff, but to hear you guys ask the question of if there's a subcontractor and they subcontract and who is responsible for, that's the question we're trying to basically address with this bill is that somebody is responsible for exploiting these workers in a very dangerous job. Our guys work in freezing cold weather, maybe not today, but they work when it's really hot, they work in very dangerous conditions. They're propelled and on scaffolding that's 40 feet or more in the air. I mean, this is something where folks that are independent contractors have their own tools. They have the ability to do this stuff. Our folks that go out on job sites, when they call and ask us to send 40 carpenters, 200 carpenters somewhere, the contractor that's asking us already has them listed properly as employees. The contractor that does the work properly, they're bid is never going to be 30 percent lower than the lowest bid out there because they are paying their state and federal taxes; they are paying workers' comp; they are paying into unemployment insurance. So their bids are higher. So not only are the contractors that do the work right being underbid by the contractor that do the work unscrupulously, we are in a very tough situation when it comes to construction in the construction industry with trying to manage fair contracting and keeping our workers from being exploited. That's what we're trying to address with this bill. [LB784]

SENATOR ALBRECHT: Very good. Thank you. Questions? I guess I'm going to ask the same thing. So you have a significant number of contractors of whatever type. They call your office, ask for a cement layer or a brick layer, and you're going to send a team of guys out there. [LB784]

FELICIA HILTON: If they're calling for the carpenters, we will send them carpenters, drywallers, concrete. [LB784]

SENATOR ALBRECHT: Okay. So if they tell you that they need ten people. [LB784]

FELICIA HILTON: Ten people. [LB784]

SENATOR ALBRECHT: Who is going to pay those ten people? [LB784]

FELICIA HILTON: The contractor...the general contractor that calls. [LB784]

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SENATOR ALBRECHT: Your company or just the general that calls... [LB784]

FELICIA HILTON: They are employees of the general contractor. So they would be employees of Kiewit while they are on that job. They would be employees of, you know... [LB784]

SENATOR ALBRECHT: Vertical or Horizontal Construction, it doesn't matter, you will get them the employees. [LB784]

FELICIA HILTON: Right. And they are legitimate employees. [LB784]

SENATOR ALBRECHT: But that general should be the one cutting a check to that person once a week. [LB784]

FELICIA HILTON: That's how it is supposed to work. [LB784]

SENATOR ALBRECHT: But that's the way it is supposed to work. [LB784]

FELICIA HILTON: Absolutely. [LB784]

SENATOR ALBRECHT: But when it doesn't work that way, what do you all do? Do you say, well, we're not sending them this week because they didn't get paid for last week. [LB784]

FELICIA HILTON: Yeah, we do not send our...we do not send our carpenters to contractors that we know don't pay their employees in the proper classification. All of our contractors are credible contractors who...obviously we wouldn't even risk it if we send our contractors. [LB784]

SENATOR ALBRECHT: Okay, so you do have a little list over here of we're not going here unless we know... [LB784]

FELICIA HILTON: Yeah, we know who the... [LB784]

SENATOR ALBRECHT: Okay. [LB784]

FELICIA HILTON: Yeah, we know who the bad actors are, but we definitely...and I'm not going to call out anybody, I'm just saying... [LB784]

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SENATOR ALBRECHT: No, no, I wouldn't ask you to do that. But you know we do have another bill, I know Senator Lowe does, about, you know, like insurance on these people, because it would be cost prohibited to just say I'm going to have 50 guys on a job, hoping you get that job, might not get that job, but if you do get that job, you have to pay on 50 employees that you have to cover. So I can see, and I've been in government long enough to know that whoever is accepting those bids ought to be looking at those lists as well. Because you have to, I mean, the monkey, if you will, is on somebody's else's back to pay if somebody falls off that ladder or whatever they're on. So to me, and asking to make sure that these people are doing what they're supposed to do or they get fined; well, the fine is one thing, but you still need to make sure that these people are being paid and that they don't work a 40-hour work week or overtime and be ignored. So I suppose this is probably going to become much deeper. Senator Vargas, just what we're talking about because fair is fair and we want to protect the employees that are out there and want to make sure that they have the compensation coming to them. But I just can't imagine it...and I suppose for that...maybe the person that doesn't work for you, but just as an independent contractor and is waiting for the job to be done before he's paid, I think that's a long time to wait. I mean, people need to have their incomes, you know, kind of understood. [LB784]

FELICIA HILTON: And that's the thing, if you're an employee, you're in that situation. But if you're a credible contractor, which is something that a lot of people don't know, but the contractors do put up a lot of the cost to begin work. So before they get reimbursed any of their expenses, whether it's labor, material, whatever, they are up-fronting the cost. And so when you have a contractor who is cheating the system, to use that word, that's the...that's what's hurting the contractors that are credible, that are doing the job well, that have been family businesses for four and five years, or 40 and 50 years being a family business and now you're up against contractors who are completely cheating and misclassifying workers, not putting up any of the costs up front because they don't have to pay anybody if they don't want to. They can put it off. Where if you were doing it right, you're not doing those things; you're paying your employees, you're classifying them properly, you're paying into workers' comp, paying unemployment insurance, and you're getting a check with all those deductions taken out. And they're not getting 1099ed. And they're paying into the state and local tax systems. [LB784]

SENATOR ALBRECHT: So do you feel that the only time that the Department of Labor gets called in is when somebody feels like I might not see a check? I mean, is that when the investigation probably occurs? [LB784]

FELICIA HILTON: I'm sure that those things have triggered investigations. But I guess they would have to tell you if they're here today what actually triggers an investigation. I know people have called and made complaints that they haven't gotten paid or, you know, we've probably called a couple of times and said, hey, there's workers on the job site that have come to us

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because they weren't being paid. There's probably other nonprofit groups that work with folks that are being exploited in this way that have maybe had them call or complain to the DOL or file a complaint with the DOL. But I'm sure they would be able to tell you what triggers their own investigations. I don't really know that. I just know that we're trying to work as many angles as possible to make a fair system for the contractors that legitimately do this work and that understand the dangerous nature of the work and respect the workers that actually put their lives on the line doing the great work of building Nebraska on a daily basis. [LB784]

SENATOR ALBRECHT: Very good. I appreciate your comments. Any other questions for Ms. Hilton? Go ahead, Senator Halloran. [LB784]

SENATOR HALLORAN: Thank you, Chairman Albrecht. Thank you, Ms... [LB784]

FELICIA HILTON: Hilton. [LB784]

SENATOR HALLORAN: Hilton. Who do you represent, again, I missed...? [LB784]

FELICIA HILTON: North Central States Regional Council of Carpenters. So we're the carpenters. [LB784]

SENATOR HALLORAN: Okay. So most of the problem lies with independent contractors that aren't unionized? [LB784]

FELICIA HILTON: Well, I wouldn't say that it lies with independent contractors that aren't unionized. There are some very good contractors that aren't unionized as well that are also being hurt by this process. Not all of them are unionized. This isn't about us saying we want the union contractors and non-union contractors. The non-union contractors are also dealing with contractors that come in and exploit workers. So if you're a legitimate non-union contractor, you put in a bid; you pay people, you self perform your work. So you're a non-union contractor, you have ten guys on staff. You can self perform whatever you want to get done. But it's hard to compete with another contractor who is coming in...not only is he underbidding you, because he doesn't put any of those other costs in his bid, but then he turns around and doesn't pay his employees a fair wage, or the just wage through a check with the full deductions. He's just 1099ing people. Or he's paying people under the table in cash. And so when you're being paid under the table in cash, that tells us one thing, that you don't have a lot of...in our profession...a voice on the job. So you can't even say I'm short, like \$200 short. That's not something that you're going to even say; you're just going to take the cash and show up at work the next week. Or you will wait until you get paid, and that's been a big issue, is week after week after week

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people not being paid, and then having to come to organizations like ours or other groups to try and get paid. And then we're the groups that help them through the process of filing a complaint; in some cases, coming forward with what has happened. But we don't necessarily...this isn't about...and I just want to clear the air, this really isn't about union contractors versus non-union contractors; there's some legitimate non-union contractors out there that are dealing with this same issue. [LB784]

SENATOR HALLORAN: Okay, thank you. [LB784]

SENATOR ALBRECHT: Other questions? Thank you for your testimony. [LB784]

FELICIA HILTON: Thank you. [LB784]

SENATOR ALBRECHT: Any other proponents wishing to speak to LB784? Proponent?
[LB784]

STEVE HOWARD: Chairman Albrecht, my name is Steve Howard, S-t-e-v-e H-o-w-a-r-d, and I'm here on behalf of the Nebraska State AFL-CIO. And I'll tell you, this is a really big deal. This really is. This thing that's going on in Nebraska where out-of-state companies are able to come in and they're able to underbid Nebraska employers by breaking the rules, by not being required to pay state income tax and not paying federal income tax, not contributing to the Social Security fund, not carrying workers' compensation, not following safety rules because they label these individuals as independents. There is a definition within the statute of independent, Senator Halloran. The Nebraska Work Comp Court in deciding whether a person is independent or not has a ten-part test. And it comes from a case called Hemmerling from the mid-'90s or so, so the question that the judge would look at is--who supplies the tools? Does the person come with their own forklift, their own van, their own lift? Or is that supplied by this company that's either an employer or a contractor that employs...that has independents. Where did the materials come from? If I'm doing the work, am I buying the materials at the lumberyard or is this other entity that's really an employer but pretends that it's just using independents. Is that company in the business of whatever work is being done? If you hire someone to roof your house, that doesn't mean you're in the house roofing business, you're in a different business, but you hire someone. So what's the nature of the business? Pay is one of those whether they're paid by the hour or by 1099. Whether someone can subcontract. You know, I'm a contractor, I get the contract from you. Can I pass it on to someone? If I can't pass it on, if I'm going to that job site and I'm supposed to do the work physically and I can't say, well, I'm going to have someone else do the work, I'm probably an employee. I'm probably not an independent. The biggest test is control. And that is the overriding factor in that the courts looked at is control. But all the time the work comp court is with employers that really truly are employing people and they don't carry work

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comp insurance and someone's bills aren't getting paid and they're being treated as an independent and this is going on a lot and I suggest to you that Nebraska may have a bit of a reputation for just being on the honor system. These contractors are generally from outside of Nebraska and they may come in and for a little investment they can get a 402 or a 308 telephone number. But that doesn't mean they're local. So I'll tell you who ought to be in support of this bill, are the contractors that are truly treating their employees as employees. The hospitals and doctors who are going unpaid because someone gets injured on the job and there's no work comp coverage. They don't supply health insurance. And these things tend to run in the same vein, the same company that's going to cheat and call someone an independent is the same company that's probably not going to worry too much about safety rules and about safety committees and OSHA and fall protection and things like that. So we go back to just the language that's in the bill. All it really says is if a contractor has been fined, and they've been through the process, and they've had due process, they've had an opportunity to have a lawyer come and go before the Department of Labor, all it says is that until you pay that fine, we're not going to take tax dollars out of the pockets of Nebraskans through the state or through a city or county or a utility or a school district and pay them to the contractor to work on the job. All it says is pay your fine and then you're eligible. There's some that would say this should go a lot further. There's some that would say you shouldn't be able to pull a building permit if you've been convicted of misclassification. Some would say there should be a bounty that if you're an electrical contractor and you look over at those drywallers, you get to talking to them and they're...it's a different crew every day and you just know that they're not being treated as employees, that there ought to be some incentive for a fellow contractor to ring the bell and say, hey, I think that other group is not following the rules. So why does the state AFL-CIO want this? Because we want our members to work for employers that can bid competitively and have an even level playing field. But again, all this says is until they pay their fines, they can't do work for the state or for the cities or counties or utilities or school districts. So thank you very much. [LB784]

SENATOR ALBRECHT: Thank you. Do we have any questions for Mr. Howard? [LB784]

STEVE HOWARD: Thank you. [LB784]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak to LB784? Any other proponents? Do we have any opponents? Any opponents wanting to speak to LB784? Anyone in neutral capacity? Hello, Mr. Albin. [LB784]

JOHN ALBIN: Chairwoman Albrecht, members of the committee, for the record my name is John Albin. I'm Commissioner of Labor and I'm speaking here today in a neutral capacity. I really hadn't planned to testify today, but a number of questions came up as to a process, so I thought I would try and just give you a bare outline of our process so you understand the process

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a little better. One, the test that we use under the Employee Classification Act is the ABC test that also applies to the unemployment program, it's 68-604(a)(b) and(c) is where it gets its ABC test name from. Basically, it looks at the issue of the control, both in fact and by terms of a contract, so looking at the issue of employer can say, yeah, you're an independent contractor in a contract with you, but if he's really acting as your employer, we'll ignore the contract. The second test is where the work is performed. Is it performed on the sites of the employer or not. Does it involve a business that the employer is regularly employed at. So if you're a auto dealer and you pull in a plumber to work on some pipes, you know, that's not the business the car dealer is in, so it's an indication, not an absolute guarantee, but pretty strong indication that that's an independent contractor. And then the (c) test is whether or not the alleged contractor is actually in business for themselves and holds themselves out to others. So if you've worked 50 weeks out of the year for one employer and not worked for anyone else, you're probably not holding yourself out to others as a business. So that's an indication that that person is really employer rather than an independent contractor. I'll be honest with you, this has been an area of difficulty for the Department of Labor for many years. I bear my own scars. If you look at Metro Renovation (Inc.) v. State Department of Labor, 249 Nebraska 337, it was a case involving carpenters where the department went all the way to the Supreme Court trying to treat those carpenters as employees rather than independent contractors. And Chief Justice Wright severely dismissed us and our arguments. So it has been a long-term issue within the department. I think it's also been exacerbated by there is a tendency, for lack of a better term, in a big economy world where people do like to be their own boss and to hold themselves out. And so there has been a trend toward more subcontracting. In terms of our internal department process, we've been switching over a little bit. Originally, when the program was passed, we went with, basically, a complaint process where if you complained to us, we responded and otherwise we didn't go out to it, didn't find that very successful, so we've kind of combined it in implementation with our contractor registration program and have been trying to push for more site visits. Now there are roughly 60,000 employers in Nebraska, and we have 10 employees in that department. So are we getting out to every construction site? Absolutely not. We did make 400 on-site visits last year and they go out for a dual purpose. One, to make sure that all the contractors on-site are registered as required under the Contract to Registration Act; and also to check and see if there's evidence of misclassified workers, that is, true employees that are being treated as an independent contractor. We also responded to a little over 600 complaints from individuals. Most of those do, unfortunately, involve cases where the person who was told they were an independent contractor wasn't paid, and then they have second thoughts about whether they really want to be an independent contractor. There are currently only seven outstanding unpaid fines. The rest of them we've been able to get payment. There was some allegation...I shouldn't say allegation, there was some statement that we do negotiate the fines. Yes, we do; because if we can get an employer to pay a thousand dollar fine and get his employees back on the rolls as a...filed with the Department of Labor as an employer and include those people as employees that we're willing to take that smaller fine in return for them coming within the

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requirements of the law in terms of properly classifying that employee. In addition to that, our tax division does about a thousand audits a year, and I think last year they pulled in like 1,400 or 1,500 misclassified employees as a part of that program. And I'm saying statistics off the top of my head because I wasn't prepared to testify today, but it is all out on our report, which we file with the Legislature and on your Web site. So I just wanted to describe the process a little bit, and give you all a little better understanding of it. With that I'd be happy to answer any questions. [LB784]

SENATOR ALBRECHT: Questions? Senator Crawford. [LB784]

SENATOR CRAWFORD: Thank you, Senator Albrecht. And thank you, Commissioner, for being here and answering questions. If someone...you mentioned that sometimes in the negotiation you're getting the workers to be correctly classified as part of that negotiation. So if there's a contractor who just paid the fine, is there any follow-up there or enforcement to make sure that after they pay the fine they are correctly classifying their workers? [LB784]

JOHN ALBIN: Yeah, because as a part of the fine negotiation process, they have to file either an amended report including those employees, if they've already got employees, including those people that have been treated as contractors. Or if they had not been filing as an employer in the past, then they had to file what we call a Form 1 which brings them into the unemployment tax system and then file those reports of those employees. So that's the enforcement...there is that enforcement. We just don't say, okay, give us a thousand dollars and then make sure you file this. There is follow-up to make sure they do get that completed. [LB784]

SENATOR CRAWFORD: And if somebody still hasn't turned those papers in, or hasn't...that would be...would that be an example of a pending case? [LB784]

JOHN ALBIN: Usually that's a pending case. There's also a pending case, some of them...I want to say the largest fine was like \$46,000. And so we've given that employer time to get that paid off. And that's also one of those ten pending cases is the...an employer that had a large fine and he's asking for time to get it paid off. [LB784]

SENATOR CRAWFORD: So I guess I was just...since you mentioned that, I'm just trying to figure out, you know, where the line is to draw the pending...other examples of pending cases where it's still in dispute whether they've violated the misclassification standards. [LB784]

JOHN ALBIN: I'm not...I'm trying to remember exactly the way we filed it on the report. There's a small blue number which is 10, and that's the number who they've agreed, they said you're

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right, we're wrong, we're going to pay. And so the legal end and the payment end of that is getting wrapped up. And then the balance of that group, I want to say it was like 46, those are ones that are still under active investigation and are being disputed. [LB784]

SENATOR CRAWFORD: Okay. Thank you. [LB784]

SENATOR ALBRECHT: Other questions? No? Commissioner Albin, so if we put this--any contractor who has unpaid fines for a violation of the Employee Classification Act shall be barred from contracting with the state or any political subdivision until such fines are paid. So if I'm going to...I'm sitting on a city council and we've decided we're going to build a new police station. I can call the Department of Labor and say these folks have all bid on the job. Are any of them in your list of... [LB784]

JOHN ALBIN: Well, actually we're going to try and make it easier than that. [LB784]

SENATOR ALBRECHT: Okay, how would you do that? [LB784]

JOHN ALBIN: Because it was when we were navigating the fiscal note preparation, I mean, there are a lot of political subdivisions in the state, a few hundred at least, who would be affected by this, and if they were calling...I don't know how many contracts they let, but I would imagine it's a fair number, so every time they called and one of our staff had to pick up the phone, that would burn a lot of staff time. And the number is fairly small. And so what...like I said, there's seven or eight now, so what we came up with, and we'll pay for it from cash funds, is we're just going to put up a list of the bad actors on the Web site. And we'll put the date that it's last updated. And so a political subdivision that wants to figure out if somebody is a bad actor or not can go to the Web site and look at it there, which will keep our costs down; it's something they could print out. And we figured it was the least expensive way to administer it. [LB784]

SENATOR ALBRECHT: Perfect. Thank you. Any other questions? Seeing none, thank you for your testimony. Do we have anyone else that would like to speak in a neutral capacity on LB784? Anyone else wishing to speak in a neutral capacity? Seeing none, I don't have any letters of proponents, opponents, or in a neutral position on LB784, so we'll close that hearing. I'm sorry. I'm sorry, Senator Vargas, has closing comments. Thank you very much. [LB784]

SENATOR VARGAS: Thank you very much. [LB784]

SENATOR ALBRECHT: First meeting, and we're doing okay. [LB784]

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SENATOR VARGAS: I'll try to keep it short. I just want to thank Commissioner Albin; I want to thank the other testifiers, Felicia Hilton and the other carpenter representative. This issue is very clearly...I mean, I know there's a lot of education that's going on with this issue. And I really generally appreciate the questions. It shows how much you care about this issue and that it's clearly something that we have debated in this body. The closing part of this is this is an act that the Legislature has enacted that we believe is not a good practice for the state of Nebraska to encourage or engender, which is why we have the act to enforce it. We have a commissioner who operates staff and specifically to do this work and has been and I'm encouraged that he continues to support, even though it's messy and it's hard, he continues to support efforts to then do this work, which I think is great and a type of relationship we need. We have individuals that are clearly providing, you heard a little bit about there's a hot line, there's tips, they're doing site visits, we're trying to then continue to address this issue as it exists. And there's due process that exists with it. And that exists for the people that are allegedly doing the misclassification. And also making sure that on the back end that we are collecting taxes and building revenue for our state. What we're saying is that if there are bad actors and individuals that are underneath this...that fall within this category, that they should not be able to bid on work that is being paid for by taxpayers funds and that there has to be the buck that stops with us. And to make sure that we have something at the back end to make sure this isn't happening. Something like this goes a tremendously long way to ensuring we're continuing to support working families in our state and continuing to support the act that our Legislature has put forward and also continuing to support our commissioner and the Department of Labor. And I do want to, again, call out that this fiscal note and being able to use Cash Funds instead of General Funds makes this so that the impact would net be zero. And being able to put up a list does offer that level of transparency that we're looking for, while also including the statutes to make sure that we can further enforce this act. [LB784]

SENATOR ALBRECHT: Very good. [LB784]

SENATOR VARGAS: Great. Thank you very much. [LB784]

SENATOR ALBRECHT: Great. Thanks. Other questions? Now we shall close LB784. Thank you, Senator Vargas. Up next we have LB806, a change in the Conveyance Safety Act. Jessica Shelburn will be sitting in for Senator Kuehn who is home watching his livestock in this terrible...I hope he can find them. Okay, go ahead and get started here on LB806. [LB806]

JESSICA SHELburn: Good afternoon, Chair Albrecht, and members of Business and Labor Committee. As Chair Albrecht stated earlier, my name is Jessica Shelburn, J-e-s-s-i-c-a S-h-e-l-b-u-r-n, and I'm here on behalf of Senator Kuehn, who unfortunately was unable to be here today. I intend to keep my remarks very brief allowing more time for the individuals who will

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follow me. Senator Kuehn introduced LB806 at the request of the Department of Labor. Currently, 3 of our 93 counties operate under a special set of rules which require elevator contractors and mechanics to be licensed and that elevators and private residences be inspected. LB806 would remove those requirements bringing uniformity to the rules which govern all counties. And with that I thank you for your time and if you have any questions I'll attempt to answer them, but they may be better answered by those following me. [LB806]

SENATOR ALBRECHT: All right. Any questions? Seeing none, thank you very much. [LB806]

JESSICA SHELBURN: Thank you. [LB806]

SENATOR ALBRECHT: We'll start with proponents of LB806. Proponents. [LB806]

JOHN ALBIN: (Exhibit 1) Chairman Albrecht, members of the Business and Labor Committee, again for the record my name is John Albin, I'm Commissioner of Labor. I'm appearing here today in support in LB806. First I'd like to thank Senator Kuehn for introducing LB806 on behalf of the department. LB806 is a commonsense way to reduce regulatory burden without compromising safety. LB806 would continue to require that elevators and escalators in buildings open to the public must comply with the safety requirements of ASME/ANSI Code A17.1. Elevators and escalators in public buildings would continue to be inspected by qualified elevator inspectors at the time of installation and annually thereafter. LB806 would end the special inspection program for private residence elevators that applies only in three counties. Elevators in private residences are not inspected in 90 of Nebraska's 93 counties. Private residence elevators in Douglas, Sarpy and Lancaster Counties are inspected at the time of installation, but not thereafter. LB806 would end the special inspection program for private residence elevators located in those three counties. The department believes that a private individual should be allowed to make his or her own decision as to who installs and maintains an elevator in their private residence. Currently, 90 of the 93 counties in Nebraska have no licensing requirement for elevator contractors or mechanics. Only in Douglas, Sarpy, and Lancaster Counties is an elevator contractor or mechanic required to be licensed by the department. LB806 would end the special licensing requirement for elevator contractors and mechanics in Douglas, Sarpy, and Lancaster Counties. When the licensing of elevator mechanics and contractors was established, it may have seemed to legislators that licensing elevator mechanics and contractors would improve public safety. However, evidence does not support that assumption. In reviewing the elevator and escalator accident records going back through 2012, there have been 14 elevator accidents reported to Department of Labor. Only one of the reported accidents occurred in the 90 counties where elevator contractors and mechanics are not required to be licensed and that accident occurred as the result of an owner improperly altering the wiring of its own freight elevator. The remaining 13 accidents reported occurred in Douglas, Sarpy, and Lancaster Counties. The

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department believes that its elevator inspection program is the reason that elevators and escalators are just as safe in the unregulated counties as in the three counties requiring licensure of elevator contractors and mechanics. LB806 would not change the requirement that elevators and escalators in public buildings must be inspected for compliance with ASME/ANSI safety requirements prior to being placed in service and annually thereafter. LB806 would allow the elevator owner the option of using a third party ASME certified inspector rather than being inspected by the department, but the safety standards used by the third party inspector would be the same standards used by inspectors employed by the department. The department's inspection program ensures that elevators and escalators are not put into service or allowed to remain in service unless they are safe to operate. The department believes that safety issues are better addressed by a quality inspection program rather than the licensure of elevator contractors and mechanics. I respectfully request that you advance LB806 to General File and I would be happy to answer any questions that you might have. [LB806]

SENATOR ALBRECHT: Very good. Any questions for Commissioner Albin? Seeing none, I'll take some more testimony. We'll take proponents for LB806. Any proponents wishing to speak? [LB806]

KATHY KAY: (Exhibits 2 and 3) Hello, my name is Kathy Kay, K-a-t-h-y, and last name is K-a-y, and I'm here addressing this committee. I'd like to thank you for allowing me to testify. I represent the League of Human Dignity which is the Center for Independent Living. And for 12 years the league has opposed any changes to the safety conveyance acts. And for the first time we are actually supporting. And the reason we have changed is because the language contained in this proposed bill protects, we feel, people that are vulnerable, that are economically vulnerable, people with physical disabilities that would possibly not be able to remain in their own home if they were not exempted chair lifts and stair lifts. So we operate a barrier removal program and we've been doing this since 1977. And the purpose of the barrier removal program is to provide grants to low and very low income individuals with physical disabilities for the purpose of making their homes wheelchair accessible. One of the frequent modifications made in the homes of people with physical disabilities is the installation of vertical platform and stairway lifts. Previous legislative efforts would have caused considerable financial burdens to individuals with physical disabilities who were of limited resources. In some cases, this could possibly result in these individuals not being able to remain in their own homes and they would have to move to institutions or nursing homes. We wish to thank Senator Kuehn for introducing LB806 and for including the language which would exempt individuals with physical disabilities. Every year for the past 12 years we've been opposed, but this year we are not. The League is supportive of the content of LB806 which proposes changes and additions to the safety conveyance act. I'm here to urge the committee to support this piece of legislation. We support LB806 because we feel it contains wording which essentially exempts stairway and vertical platform lifts from being subject to any regulatory changes. For this reason we do not oppose. We think this legislation

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protects vulnerable and economically at risk individuals who need vertical platform lifts and stair lifts in their own homes. We'd like to submit into the official record our support of LB806 and I'd like to thank you for your time. I'm also submitting into testimony Connie Benjamin, AARP Nebraska, State Director has also written a letter of support for this legislation. Are there any questions? [LB806]

SENATOR ALBRECHT: Great. Thank you for coming. Any questions for Ms. Kay? Seeing none, thank you for your testimony. [LB806]

KATHY KAY: Okay. Thank you very much. [LB806]

SENATOR ALBRECHT: You bet. Any other proponents wishing to speak to LB806? Any other proponents? Seeing none, I do not have any letters for proponents besides what was offered up. So do we have any opponents wishing to speak to LB806? Opponents? Hello. [LB806]

LYLE STECKELBERG: Madam Chair and members of the Business Committee, my name is Lyle Steckelberg, that's L-y-l-e S-t-e-c-k-e-l-b-e-r-g. I'm an elevator constructor with Local 33. I work in Local 28 which is located in northeast Nebraska. And I don't feel this bill should go forward. We need elevator constructors working on these elevators. I was injured in an elevator accident in Dakota City, Nebraska. This was July 24, 2017. Now, out there they tend to take care of their own equipment and they shouldn't. They have in-house electricians that go and work on it. And my company calls me and I'm expected to go. I can't say no. It's just part of our contract. On the 24th of July when I went out there and got in the elevator, I placed a ladder to climb through the escape hatch on the elevator. The electrician that was there talking to me that had been working on this thing for two days, they usually would call you when they can't get it running, when they've tried everything they can. So I'm climbing through the escape hatch to get control of the car on top by putting it on car top inspection. The car top was wet, because in the packinghouse they wash down the floors all the time and it's a real common practice. It's an everyday thing in there. The pit is always full of water that's disgusting and just to give you an idea of what the situation is. Now, when I got on top of the elevator, all of a sudden the elevator took off with the door standing wide open, jumped up seven feet, and it was immediate. It threw me to top of the elevator. If the guardrail had not been on the side of the elevator, I would have went over the side and would have been killed. There's no doubt about it because of the fall I would have taken. I think it's very important that you people know how important it is to have elevator mechanics that are trained. I'm going to give you...on that particular elevator that day, they had jumped out a safety switch that was top of the car. It's the one for the escape hatch. And that's what caused me...when I came through the escape hatch, that elevator should have been dead and it wasn't because they by-passed the switch so they could get on top of the elevator working on it. It puts me in a dangerous situation. And every guy that I know of out there with

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our elevator trade it puts them in a dangerous situation. I'm going to move on to another point. Wayne State College I've maintained for...I should go back just a little bit and give you history. I've been working in the elevator trade for 28 years as a service technician. And at Wayne State College I've taken care of it that whole time and it's probably been...I'm going to say around '96 that I went to Wayne State College, actually I was called at like 3:00 in the morning. They have in-house electricians at Wayne State College that have always taken care of their elevators. And I'm going to tell you honestly, those electricians, the one that I know down there was very experienced, a very good electrician, at the time I had probably been in the trade for ten years. And this electrician had probably been in for 20. And he knew how to run those elevators. This was a traction elevator. That means it has cables going over a driver and machine. Well, this elevator, he knew how to reset it by himself. One time several years ago, it was about 2:00 in the morning a bunch of kids came back from the bar and they were all horsing around and they were at the top floor at Wayne State College, Bowman Hall. They started loading to see how many people they could put in the elevator. They actually got 26 people inside of the elevator and it took off with the doors open because the cables going over the driver slipped traction. That may be hard to understand, but the cables don't...the brake doesn't necessarily stop the elevator; it holds the machine from rolling. But it cannot stop the slippage of traction once you've overdone the weight capacity of the car. Okay. So this elevator took off and went down and the safety set on it because they worked properly, the safeties are a jaw that goes into the rail and locks it there to prevent the car from going further. The people couldn't get out of the elevator because there was only about eight inches of clearance for them to get through the gap, even though the doors were standing wide open they couldn't get out. The hatch is bolted shut on top of the car. We do that, that's per state code that they want it locked shut. The electrician...like I say, I've known him for many years. [LB806]

SENATOR ALBRECHT: You have to wrap it up, sir. [LB806]

LYLE STECKELBERG: Okay. The electrician I've known for many years. And he was trying to release the elevator, he knew how to bring the elevator up. He would hold relays in and, hey, the elevator came up and he could release the safeties. But the problem is, he couldn't get it to do it, it kept slipping traction because it was so overloaded. And I told him, do not try to reset the elevator, get the fire department down there to get those people out of the car and that's the only way you do it. When I got there, which was probably an hour and a half later, they had the people pretty well out the car. And I showed the electrician, I said, obviously it would come up then and be reset. If he had reset that elevator it would have crashed into the pit, which is approximately 90 feet with people packed in that car, it probably would have killed most of them. And that's why I say we can't just have electricians out there that think they know what they're doing. Even though he knew how to reset the safeties on that car, it's important that we have people that know what they're doing. And that's what our trade is. It might cost them some

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extra money, I don't know. But the fact is we need safety in all of our states. Are there any questions? [LB806]

SENATOR ALBRECHT: Okay. Thank you for your testimony. Just stay right there. Any questions? I have a question. [LB806]

LYLE STECKELBERG: Yes. [LB806]

SENATOR ALBRECHT: This first story that you told, does OSHA come in on situations like that? [LB806]

LYLE STECKELBERG: I don't know if OSHA came in or not. The state elevator inspector from Nebraska came and investigated. The next day when he came in to investigate it, I had the elevator shut off, the people from Tyson in there had the power back on; I had the hydraulic valve shut off. They had all that stuff turned back on. This was behind lock and key. They had no business touching that equipment after I left there because they knew I was injured when I left. [LB806]

SENATOR ALBRECHT: And did you report what happened to you? [LB806]

LYLE STECKELBERG: I did. I reported it, they knew it there at Tyson. Lewis, I don't know Lewis' last name, the electrician, knew I was injured, so I was taken off to get out of there. I also called my boss; called the state elevator inspector and they went down and another mechanic from O'Keefe went up and started checking out to see what was wrong. And they took their time out there taking pictures. [LB806]

SENATOR ALBRECHT: So let me ask you another question, if you have certain companies that you service often or do you have a particular company that has six elevators and every one of those are on a... [LB806]

LYLE STECKELBERG: Contract. [LB806]

SENATOR ALBRECHT: ...maintenance contract... [LB806]

LYLE STECKELBERG: We do. I have...I'm just going to guess around 165 elevators on contract that I take care of normally. Places like Tyson and Wayne State College, they do not have contracts with us. They call us in when they can't get it fixed. There's been many accidents out at

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Tyson, and you will never hear about them. In the last two years, I'd say there's been eight incidents of accidents that were over \$50,000 damage, some of them up to \$100,000 damage because their electricians worked on those elevators. And when they can't get it running, they call you in and want you there immediately and get it going. It's a very dangerous situation. In fact, is now I refuse to go there if...I have locks on the cabinets for the elevators. If they cut a lock, they're done, I'm not working. O'Keefe may send somebody else, but I will not work on that elevator. It's a dangerous situation. [LB806]

SENATOR ALBRECHT: Okay. Thank you for your testimony. Any other questions? Thanks for coming down to testify, hope you have a safe trip back home. [LB806]

LYLE STECKELBERG: What's that? [LB806]

SENATOR ALBRECHT: Hope you have a safe trip back home. [LB806]

LYLE STECKELBERG: I'm going to stay in town tonight. (Laughter) [LB806]

SENATOR ALBRECHT: Good. Any other proponents wishing to speak? Oops, I'm sorry, I'm on...sorry, opponents, opponents. Sorry about that, opponents for LB806. [LB806]

MIKE CIMINO: (Exhibit 4) If I didn't work, it would be fun to come down just to listen to this every day. My name is Mike Cimino, M-i-k-e C-i-m-i-n-o, and I'm in opposition to this bill. I was born and raised in Omaha, Nebraska. I'm currently and always have been a resident of Nebraska. I got in the elevator trade in 1982 as an elevator constructor. Elevator constructors go through extensive, on-the-job training and schooling over a five year period so that we can be able to work on elevators without the direct supervision from an elevator journeyman/mechanic. This is important to the industry as the industry wants to make sure that before a person is allowed to work on elevators by themselves that they are as fully qualified and prepared as possible for the safety of themselves and the public. We, and I'm going to refer to we as meaning qualified elevator constructors, work hard every day and throughout the years to ensure that the elevators that we erect, repair, and maintain are done in a safe and professional way so that they will last for many, many years. LB806 now in my opinion wants to take this away. I'm not personally...I don't get involved with a lot of political stuff and these bills can be complicated to understand sometimes and there's all kind of things that get put into a bill, so I'm just picking out what I see as not good. But LB806 now wants to take this away. This bill wants to allow anybody to be able to come into our state, the state I was born and raised in, and the state I am raising my kids in, the state my parents lived in. It wants to allow persons to be able to erect, repair and maintain elevators without having any means in place to ensure that these persons are qualified. I don't think this makes sense. If I'm missing something in this bill, I would ask that somebody

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kind of explain it to me. And again, this isn't a union or nonunion issue, this is an issue that we just want to have qualified people work on these types of conveyances, whether it be chairlifts or elevators in the commercial setting. You talked about regulation. Nobody likes regulation, but I think that certain things do need to have regulation and I think that elevators are one of them. They move people. The safety of the people in this state in regards to elevators...and I'm just referring to elevators, as I personally don't like regulation, doesn't need to have policies and procedures, regulation in place so that we can...it needs to have it in place so that we can ensure the conveyances we ride on, our kids ride on, our parents ride on are safe. We for the most part live in the state of Nebraska, our kids ride the elevators in our schools; our parents ride the elevators in their workplace. When we get old, we rely on elevators and lifts to get us in buildings that we once walked the stairs in. We the people in Nebraska over the years have together agreed to have inspectors and inspection department in place to help us ensure that the elevators that our families ride on and that we as elevator constructors work on every day are installed and maintained in Nebraska in a manner that they will ensure that they are safe and within the codes set forth in our industry. The elevator inspection division in the state of Nebraska is one of the best in the country and it should be something that everyone can be proud of. The majority of the elevator inspectors live in this state. Their parents, their children, and they ride the elevators in this state on a regular basis. These people have a vested interest in Nebraska. They care. LB806 wants to take this away. LB806 wants inspectors or inspection companies from other states to now inspect Nebraskan's elevators. This is appalling to me. They refer to it as third-party inspectors. They have no vested interest in Nebraska. They are businesses that will have a vested interest in coming into this state to make money and to take that money then out of our state and spend it in their state. I don't know about you, but I do not think that makes much sense for the economic growth or the economy in Nebraska. Currently a business owner in the state of Nebraska, no matter where the business is located, will pay a fee of approximately \$120 to have their elevator inspected. If we small business owners...and I say we as I am a small business owner myself, have to now... [LB806]

SENATOR ALBRECHT: I'm going to have to ask you to wrap it up just a bit. [LB806]

MIKE CIMINO: ...hire inspectors to come out state to inspect our elevators, we will now more than likely pay substantially higher for that same inspection. If business owners in rural communities have to hire inspectors to come out into, say, McCook or somewhere like that, it now costs them \$120. That fee will probably be ten times that amount. So far I've just pointed out three things that I think are important. I'm trying to wrap it up. I got a lot more. But I just...I strongly feel that, again, there's a lot of stuff in this bill, the things I'm pointing out to everybody is basically going to...they said it wasn't going to affect public safety, but it is because you're taking away qualifications that elevator people have to have and you're taking...you're putting inspections into...you're taking it away from state elevator inspectors that have a vested interest

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in this community, this state, and you're hiring it out to a business that...it's a business. And so...
[LB806]

SENATOR ALBRECHT: Okay, we'll let a few people ask questions so you can keep talking, how about that? Okay, so, Mr. Cimino, does any of the senators have any questions? Go ahead, Senator Crawford. I'll go last. [LB806]

SENATOR CRAWFORD: No, you ask your question first. [LB806]

SENATOR ALBRECHT: No, you go first. I'm supposed to have you first then me. [LB806]

SENATOR CRAWFORD: So, I'm just to clarify, and part of the controversy has been about private residences. And so part of what the...that's part of the bill that was different in the three counties as in the other counties. But I think you're talking about also just more general inspections and licensure and concerned that those standards be maintained or current standards.
[LB806]

MIKE CIMINO: Yes, ma'am. I am. I understand the residence part of it, I still, in my opinion, even if I built a house, I mean, we'd have to take out an electrical permit because we want to make sure that the electrical is per code. And I don't understand, you know, I understand it is an expense, but it's a small price to pay to make sure that that chairlift or residential elevator is put in right. I agree that we should have the right to say who comes into our homes. I don't agree on anybody making us have an inspection after the house is built. But I think that it is just as important as the plumbing in our house or the electrical in our house. But, yeah, there's a lot of things in this bill, but the main thing that I'm concerned about is, you know, our inspection department is, you know, it's a good one, built it over the last...I've been in this business, this trade for...since 1982. I've watched it. And it's an awesome...our elevators are very safe. We have accidents like everybody else, but not...I don't think near as many. I don't have statistics to back that up, but I'm an elevator contractor and I was an elevator constructor so I hear about this stuff. But the two big things in this that I disagree with is they want to take most of the inspections out of our hands and give it to third parties. It's going to cost the business owners a lot more money. And they want to let anybody to come into this state and install elevators. And they've done it already with the vertical platform lifts and I wish some of the folks from that industry were here to testify, but there's a lot of substandard products being installed out there and not being inspected. And unfortunately it's going to take years for that to surface, but you're going to start probably seeing accidents and faulty equipment and things happen because of it. And now they, in my opinion, they want to try to do it with the elevators. And I just think we're going in the wrong direction. I really do. Our department makes money. I know this isn't a money thing, but..
[LB806]

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SENATOR ALBRECHT: Any other...has he answered your question, Senator Crawford?
[LB806]

SENATOR CRAWFORD: Thank you. [LB806]

SENATOR ALBRECHT: Any other questions? Okay. I just have a couple for you. So you work out of Omaha. Do you travel across our state to maintain different... [LB806]

MIKE CIMINO: Yes, yes, ma'am, yes. [LB806]

SENATOR ALBRECHT: ...different elevators and different companies? [LB806]

MIKE CIMINO: Yes, we work in Omaha and Lincoln. We take care of all the elevators at the University of Nebraska. [LB806]

SENATOR ALBRECHT: Do you find that you do more commercial than you do residential in your company? [LB806]

MIKE CIMINO: A lot more, yes. Absolutely we do. We are one of the few companies that do residential, but we do a lot more commercial, yes. [LB806]

SENATOR ALBRECHT: That was what I was wondering. Okay. Because I wouldn't think that the Department of Labor...their intent would be to get somebody from out of state to come in. I think it's simply saying that it appears that the big three, the big cities that have high rises and have facilities that have an elevator would need to be...to have something in concrete with the Legislature so that the folks at home or in a nursing home or something like that wouldn't have to call on someone or absolutely have to have something maintained by a qualified person. Now if some of these companies, a big one like what was just talked about, because last year when we had Senator Hansen's bill, I don't think I heard anybody come in and say how horrible it is for companies that didn't maintain their elevators. So I was pretty shocked to hear Mr. Steckelberg, his...that's northeast Nebraska, that's where I live, and certainly OSHA should be coming in if something isn't what it should be. But have you ever found that there are companies that just call on you when it's an emergency situation. [LB806]

MIKE CIMINO: Oh, absolutely. There's a lot of them out there. And you see it in a lot of the counties that aren't encompassed in the three big counties. Yeah, we just had a situation just this year where we were called out to a facility similar to that to work on their elevators that they maintain and they had actually...we found out when we got there, our mechanic did, that they

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had actually not even put a jumper, we call it, a wire...they hardwired a circuit in that bypassed the doors on the elevator so that the elevator would run with the doors wide open. And we immediately reported that to the state elevator inspector and then he put them on notice. But things like that happen... [LB806]

SENATOR ALBRECHT: Very often, would you say often? [LB806]

MIKE CIMINO: I don't hear about it often, no. It was unusual in my experience that there were two cases like this really close to each other. [LB806]

SENATOR ALBRECHT: Yeah, I was very taken back myself. [LB806]

MIKE CIMINO: And again, I don't think this is a maintenance, I don't think the state will require...anybody is requiring anybody to maintain their elevators, they're just requiring them to be worked on with qualified people that have went through schooling and on-the-job training. And then just...and then to be inspected accordingly. I know you said that it's not the intent to bring out-of-state people in. [LB806]

SENATOR ALBRECHT: I don't think it's the intent of the state of Nebraska to ask people to come...where are you getting that from? Is there a particular area in the bill that you found that we would want...we wouldn't want somebody to come in from other states. [LB806]

MIKE CIMINO: Well, they're talking third-party inspectors. [LB806]

SENATOR ALBRECHT: Which...which... [LB806]

MIKE CIMINO: From what I'm understanding, they're giving people...they want third-party inspectors to come into the state to do inspections. There is right now. And not have our state elevator inspectors continue to do what they're doing. [LB806]

SENATOR ALBRECHT: Well, I think I would ask Commissioner Albin when he comes back up if he could explain that. I would like to call him maybe back up to ask him about that. [LB806]

MIKE CIMINO: And that would be great if I'm wrong. I... [LB806]

SENATOR ALBRECHT: I hope you are because I can't imagine us wanting somebody to come from out of state to take a look at anything. We've got plenty of workers right here. [LB806]

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MIKE CIMINO: Yeah, well thank you because that was one of the points I was going to make was we got, you know, we've got a very lean set of inspectors right now; we need more. Our hands our kind of tied a little bit because, you know, budget restraints and things. But the last thing we want to do is lose what we have. [LB806]

SENATOR ALBRECHT: Right. [LB806]

MIKE CIMINO: And from what I'm understanding, from what I read from just the few people that I'm talking to, it sounds like they're wanting to do away with our inspection department and they're wanting to have more and more options of other ways of doing it. And as far as people are concerned, or the small business owners, you can't get it done any less expensive than you can right now. [LB806]

SENATOR ALBRECHT: I appreciate your testimony and your questions. [LB806]

MIKE CIMINO: For what it's worth, yeah. [LB806]

SENATOR ALBRECHT: No, I appreciate it. No problem. Okay, we'll take the next opponent. Any other opponents wishing to speak? [LB806]

MIKE CIMINO: Thank you. [LB806]

SENATOR ALBRECHT: You bet. Thanks for coming. Hi. [LB806]

JOSH JOSOFF: Good afternoon, Senator Albrecht, Chair Albrecht and the Business and Labor Committee. My name is Josh Josoff, it's J-o-s-h J-o-s-o-f-f. [LB806]

SENATOR ALBRECHT: Okay. [LB806]

JOSH JOSOFF: (Exhibits 5, 6, and 7) Okay, so my name is Josh Jossof. As of January 1 of this year I was elected as the union business manager that represents the members of the IUEC Local 28 elevator constructors. These elevator constructors install, repair, modernize, and service over 90 percent of all the elevators in the state of Nebraska. Before being elected business manager for Local 28, I spent over 19 years working on elevators. My first 11 years doing construction of new elevators; the past 8 years doing service on elevators. While doing service, you go around and troubleshoot broken elevators and maintain elevators to perform in a safe and reliable way for public and business use. Most of my years in the elevator trade I spent working for O'Keefe

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Elevator, a local small business in the state of Nebraska that has been around for many years and has an excellent reputation in the elevator industry. Starting in the elevator trade as a young man, I quickly realized the dangers that working in the elevator industry posed. Working around extreme heights, heavy machinery, moving parts, and high-voltage electricity to name a few. While starting my apprenticeship, I went to school at night to learn how to work on elevators at the union hall and worked around very skilled journeymen elevator mechanics during the day, many of which had 30, 35, and 40 years of valuable experience that I tried to soak up like a sponge. After a five-year apprenticeship, I took my mechanics test which allowed me to become a licensed journeyman elevator mechanic in the state of Nebraska, something that I was truly proud of. Even though my apprenticeship was over, the learning of the trade hardly was. We were required to do continued education for our state license, along with many classes NEIEP has to offer. NEIEP stands for the National Elevator Industry Education Program. After my time working in new construction, which can be as dangerous of a job as you've ever seen, I switched over service where I found an even greater danger. Aside from working on elevators that are over a hundred years old all the way to present day technology that we were very well trained for, there's one thing that I never was ready for--people not properly trained to work on elevators, working on elevators, bypassing crucial safety circuits and door interlocking circuits which mean that when I would go to fix an elevator, I expected the elevator to work in a logical manner. But the elevator would take off and run with stop switches thrown and elevator doors fully opened which should never happen. This can put us in an awful position as an elevator mechanic because of the position we have to put ourselves while working on elevators. We would get a call to fix elevators at all hours of the day, and worse yet, the middle of the night. The last thing you need when working on an elevator at 2:00 a.m. in the morning is someone that did not know what they were doing working on the elevator and leaving it in a compromised situation before we showed up. Some places we went were so bad, myself and all the other mechanics I worked around actually hated to go work on the elevators. When we'd show up on some of these jobs, the building maintenance engineers would lie right to our face telling us they never touched or worked on the elevators leading us down an extra dangerous path because now we've had to figure out what they had done to try to fix the elevator in the first place. I've seen elevators run past me while the doors were wide open. If someone from the public were there, it would have created a potentially very hazardous situation. The men and women I work around and now represent have families that depend on mom and dad coming home at night. LB806 turns an already dangerous job into an environment that we cannot accept. People that have no training working on elevator equipment that could come back and harm or worse yet kill elevator constructors or someone from the general public have no business working on elevators. That is unacceptable and that is why I'm asking you to vote against LB806. [LB806]

SENATOR ALBRECHT: Thank you for your testimony. Does anyone have any questions for Mr. Josoff? Any questions? Thank you for your testimony. [LB806]

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JOSH JOSOFF: Thank you. [LB806]

SENATOR ALBRECHT: So, did you bring these other letters with you sir? [LB806]

JOSH JOSOFF: I'm sorry. Yes, I brought three letters. All three of them worked in the elevator industry. Two of them just had long-term careers in the elevator industry. And one of them was the past elevator inspector that had worked as a state elevator inspector that the chief inspector for the past 20 years before the current one took over. [LB806]

SENATOR ALBRECHT: Okay, we'll take those in to the record then. Thank you. [LB806]

JOSH JOSOFF: Thank you. [LB806]

SENATOR ALBRECHT: Okay, do we have any other opponents wishing to speak on LB806? Hi there. [LB806]

KEVIN SULLIVAN: (Exhibit 8) Good afternoon. Good afternoon, Chairman Albrecht and members of the committee. My name is Kevin Sullivan. I am a national coordinator with the Elevator Industry Work Preservation Fund. [LB806]

SENATOR ALBRECHT: You want to spell your name for the record? [LB806]

KEVIN SULLIVAN: Oh, I'm sorry. It's K-e-v-i-n S-u-l-l-i-v-a-n. [LB806]

SENATOR ALBRECHT: Thank you. [LB806]

KEVIN SULLIVAN: I've been in the industry for over 20 years. I have been...I'm trained as an elevator mechanic. The EIWPF is an organization that is made up of over 600 elevator companies and over 24,000 employees and we are primarily an elevator safety advocacy organization. [LB806]

SENATOR ALBRECHT: Okay. [LB806]

KEVIN SULLIVAN: Thirty-two states have elevator safety laws similar to the state of Nebraska, including border states Colorado and Missouri. We have elevator safety legislation pending in Kansas, Ohio, Louisiana, Pennsylvania, and New York this year. But I brought along a copy of a report detailing the impact of safety legislation on accidents and injuries. [LB806]

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SENATOR ALBRECHT: All right. Super. [LB806]

KEVIN SULLIVAN: I'd like to pass a copy to each member of the committee. [LB806]

SENATOR ALBRECHT: Thank you. We'll get those handed out. [LB806]

KEVIN SULLIVAN: Thank you. The report shows that having properly trained and educated elevator mechanics will reduce accidents on average by 26 percent. I feel that LB806 would eliminate training and education for elevator mechanics. This would create a danger to the riding public. Currently, Nebraska has an excellent elevator safety program. LB806 would be a step back, a step in the wrong direction. The commissioner mentioned, I think, 14 accidents in the...I didn't catch the time period. I think though if we enact LB806, you'll see a lot more than 14 accidents. And that's my testimony. I'd be happy to take any questions. [LB806]

SENATOR ALBRECHT: Great. Do we have any questions for Mr. Sullivan? Senator Crawford. [LB806]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht; and thank you, Mr. Sullivan, for being here. Just in terms of your research findings, is the training or licensure of the elevator...the person inspecting or working on elevators a key component of the safety legislation? [LB806]

KEVIN SULLIVAN: Yes, the training and education of the mechanics. [LB806]

SENATOR CRAWFORD: So these results we're finding, that's a key element of the policy that's being tested? [LB806]

KEVIN SULLIVAN: Correct. [LB806]

SENATOR CRAWFORD: Are there other key pieces as well? [LB806]

KEVIN SULLIVAN: That is the main one, elevator safety legislation, the study looked at states with elevator safety legislation and that's states that have elevator...that require a high degree of training and education for elevator mechanics. [LB806]

SENATOR CRAWFORD: Okay, that's the main focus? [LB806]

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KEVIN SULLIVAN: Yeah, elevator safety legislation is the main focus. But the main focus of the legislation is training and education. [LB806]

SENATOR CRAWFORD: Excellent. Thank you. [LB806]

SENATOR ALBRECHT: And you say there's 32 states, do you look at all their different programs and what they have, what would you say are the top three things that are most important in those 32 states? [LB806]

KEVIN SULLIVAN: Training and education of elevator mechanics. [LB806]

SENATOR ALBRECHT: Training and education. [LB806]

KEVIN SULLIVAN: Yeah, for elevator mechanics. [LB806]

SENATOR ALBRECHT: But do they limit where these folks can actually go, like in Nebraska if it's... [LB806]

KEVIN SULLIVAN: Most states, most of those 32 states, the program is statewide. [LB806]

SENATOR ALBRECHT: Statewide. [LB806]

KEVIN SULLIVAN: Nebraska is the only program that I know of that is limited to certain counties. And I was here...I testified last year before the committee on that. I think it's LB306. [LB806]

SENATOR ALBRECHT: Okay. Very good. So the...do you have the number of accidents in front...(inaudible) in Nebraska? [LB806]

KEVIN SULLIVAN: It's in the report. Nebraska is not included in the report because the data... [LB806]

SENATOR ALBRECHT: Insufficient data? [LB806]

KEVIN SULLIVAN: Yeah. [LB806]

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SENATOR ALBRECHT: Okay. And how do that they report their data for the accidents?
[LB806]

KEVIN SULLIVAN: They use the Bureau of Labor statistics. That's where the data was
collected. [LB806]

SENATOR ALBRECHT: Okay. [LB806]

KEVIN SULLIVAN: And they based it on the five-year period before the law was enacted and
then the five-year period after the law was enacted. Of the 32 states, we've got good data on 9
different states. [LB806]

SENATOR ALBRECHT: Okay. Very good. Any other questions? Seeing none, thank you for
your testimony, thanks for coming up. And any other opponents wishing to speak? Hello.
[LB806]

STEVE SIMPSON: (Exhibit 9, 10, and 11) Good afternoon, Chairman Albrecht, how are you
today? [LB806]

SENATOR ALBRECHT: Very good. How are you doing? [LB806]

STEVE SIMPSON: Oh, I'm good. It's been a heck of a day. My name is Steve Simpson, S-t-e-v-
e S-i-m-p-s-o-n, I'm with the International Union of Elevator Constructors. A couple of things I
want to come up with. First of all, I wanted to clear up something about the inspections and the
third party. Third-party inspections are already in the bill, it's already allowed. Whatever happens
with that is what's going to happen. If a contractor wishes to reach out to somebody who is
qualified to be a third-party inspector to ask them to come inspect the job, that's allowed already.
The only difference is, is third-party inspectors there are none in the state of Nebraska. So when
Mr. Cimino came up and said that this is keeping things in-house, that's true. One of the things I
want to point out really quick, and I handed these out to everybody, this currently is...the
Hampton Inn located at 507 Talmage Street in Kearney, Nebraska, this is the actual bill that they
received from the state of Nebraska for their elevator inspection...\$240.00. We reached out to a
third-party inspector to look at the Hampton Inn at 507 Talmage Street in Kearney, Nebraska.
His bill, \$1,350, not including mileage that will not exceed \$185.00 and not to include their hotel
costs. That's the increase right there right away. This is a...this is currently a program that makes
money. State of Nebraska, if you look at this handout right here, transfers \$150,000 a year out of
the fund that this program generates and gives it to the General Fund to be able to use for other
reasons. And this still generates money. It still pays all of its employees, it still takes care of all

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its bills, it still turns a profit. I'm a little confused by why we want to bring up a situation where only 14 elevator accidents have been reported in a place that has licensing and say that the only...that we need to get rid of licensing because obviously that's a good number. That's kind of like saying if we get rid of the fire...the smoke heads, then more people are not going to leave the building because we don't need smoke heads anymore because there's no proof that people leave the buildings when they go off. It's not...regulation has to happen in certain situations. The primary job of government is the safety and well being of its citizens. These elevators go 40, 50...40 miles an hour in some cases and have quarter inch clearances. That's this much. We're going to put people in there that don't know what they're doing to install these. State elevator inspectors right now this cuts out the definition of what an elevator mechanic is. So that means not just the person that we talked about the in-house electrician in Dakota City, it could have been the guy who changed your tires in Dakota City could go work on an elevator because we're going to cut out that definition. We're going to cut out the definition of elevator contractors. So the current builders, the current contractors in the state of Nebraska, which we have four independent contractors that are home grown here in the state of Nebraska, and we have three major companies that are world-wide in the state of Nebraska, now we'll have to compete with anybody who thinks they can throw a (inaudible) on and call them self a contractor. It's going to cut back on the Conveyance Safety Board's capacity. We tried to do this a few years back, it was about five years ago we tried to do the same thing. There was a bill introduced and it got rid of the elevator inspectors go third party. I brought in 27 inspections that a third party inspector did in one day. Twenty-seven 60-point inspections on 27 different elevators in one day. What happened there is they're getting paid by the quantity, not by the quality. This is 180 degrees of the same bill that you passed last year. This committee pushed it forward, it's sitting in General File right now. So you're going to...so the opportunity here is to pass a bill that is the exact opposite of what you've already put forward. People will get hurt. The people who work on the elevators will get hurt. There's already instances that have happened. Why are we contracting and getting rid of the bill when we should be expanding it? I'll take any questions. [LB806]

SENATOR ALBRECHT: Thank you for your testimony. Does anyone have any questions for Mr. Simpson? Any questions? Can I just ask, you're with the international union...international, that's like all these other states that the previous Mr. Sullivan was talking about. Right? So you're international. [LB806]

STEVE SIMPSON: Correct. And Canada and Puerto Rico. [LB806]

SENATOR ALBRECHT: Good deal. So who would you consider a third party? [LB806]

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STEVE SIMPSON: A third-party inspector is somebody that comes in that's not a company and not related to the state, that are going to do a state inspection. So they're an independent contractor that does inspections. [LB806]

SENATOR ALBRECHT: An independent contractor. But would they be an independent contractor in just your field, or could it be like you guys all keep talking about electricians, could it be an independent person that may be... [LB806]

STEVE SIMPSON: Well, according to the bill that's been produced is that the Commissioner of Labor wishes to push forward, they would have to have a QEI which is a quality elevator inspection certificate. [LB806]

SENATOR ALBRECHT: Okay, so you have to have that. [LB806]

STEVE SIMPSON: They would have to have that, yes. So they may have other inspection certificates along with that, but they would have to have that in their repertoire as well. [LB806]

SENATOR ALBRECHT: And is there a big difference, you've given us some examples of what they would charge versus what you folks might charge, even if you had to drive across the state if you were... [LB806]

STEVE SIMPSON: We don't charge, it would be the state. But I have a bill here for Kearney. This is the fiscal bill. This is it. [LB806]

SENATOR ALBRECHT: Okay. \$240? [LB806]

STEVE SIMPSON: This is the actual bill for the Hampton Inn in Kearney, Nebraska. And I'm terribly disappointed that Senator Lowe had to leave, because this would have been right up his alley, obviously. And this is in the actual bid for a third-party inspector to come in and take care of the job. [LB806]

SENATOR ALBRECHT: Okay. [LB806]

STEVE SIMPSON: The problem here is this, in my opinion, Chairman, you're going to end up passing off essentially a large...if you're going to push off a situation where these people are going to use third-parties because you're going to scale back the program, which this is going to do, they're going to take a...they're going to take situations away from the Conveyance Safety

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Board, they're going to take away the elevator inspectors, they're removing the fees that the elevator contractors and elevator mechanics have to pay. They're going to remove permit fees. All these things are basically eliminating the program. If you take away the money, what do we have it for? You're going to take away all the power from the Conveyance Safety Board, you're going to take away all the permit fees, you're going to take away all the other fees that are involved and you're going to remove the definition of an elevator contractor which means O'Keefe elevator company is no longer O'Keefe elevator company necessarily according to the state in their eyes. Neither is any other contractor. When you do that, what's the purpose of having the Conveyance Safety Board. Currently, the Conveyance Safety Board is a board that goes to the Commissioner of Labor with suggestions. And they're supposed to be comprised of people that are in the industry and know what they're doing. You've heard from the industry today. We want state licensing. We want elevator inspections by the state. This is what the industry wants. A lot of times when you talk about eliminating regulation, it's because the industry doesn't want the regulation. In this case it's the exact opposite, yet you're not...the commissioner is not listening. He wants to get rid of it in the sake of getting rid of regulation. But the industry wants the regulation because it makes us all safer. These things are dangerous. They haven't even talked about escalators. Escalators are in this too. Escalators are a taffy pull. They will...they will...they have merciless killed somebody without even knowing you're there because they don't know you're there. It just baffles me why we would say, hey this program is working, let's get rid of it. We have 14 injuries in the state of Nebraska. We need to get rid of this. [LB806]

SENATOR ALBRECHT: Thank you. Any other questions? Senator Halloran. [LB806]

SENATOR HALLORAN: Thank you, Chairman Albrecht. Thanks for your testimony. Maybe this would be a question for Commissioner Albin, I should have asked him, but of the...and I understand the 90 counties out in what is commonly referred to as the hinterland, don't have as many elevators in each county, but in aggregate, do you have any idea how many elevators are in those 90 counties? [LB806]

STEVE SIMPSON: In the 90 counties that are not covered? [LB806]

SENATOR HALLORAN: Yes. [LB806]

STEVE SIMPSON: I don't. I don't know for sure. I do know the history behind the 90 counties and why that happened. [LB806]

SENATOR HALLORAN: What I'm interested in is that there's one accident in the 90 counties, the other 13 accidents were in Douglas, Sarpy, and Lancaster... [LB806]

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STEVE SIMPSON: I'd say that 80 percent of the elevators, at least, in the state of Nebraska are in Omaha, Lincoln, and surrounding communities. That would make sense. [LB806]

SENATOR HALLORAN: Well, it might make sense, but I think...yeah, and I don't expect you to know that number in 90 counties, but it's a lot of counties that have some form of elevators in multi-story buildings and there were a few accidents and I was just looking at that relationship of how few there were there in compared to the three other counties, which I understand have many more high rise locations, but I'm just curious of that relationship. But I wouldn't expect you to have that. Thank you. [LB806]

SENATOR ALBRECHT: Okay. Senator Crawford. [LB806]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you for being here. So am I correct in understanding you're on the Conveyance Safety Board? [LB806]

STEVE SIMPSON: I'm not. [LB806]

SENATOR CRAWFORD: You're not. [LB806]

STEVE SIMPSON: I tried to be on it, but I've never been appointed to it, let me just say that. I've tried to get on the Conveyance Safety Board, but I've never been appointed to it. [LB806]

SENATOR CRAWFORD: So you were providing an example of a bill in Kearney, and just wanted to clarify, we're talking about the 90 counties and three counties that have different standards. But obviously Kearney is not in one of those three counties, yet it was able to have an elevator inspection by the Department of Labor. So I was just wanting to clarify the standards that those 90 counties are still required to meet, or is it the case that this is something that the company would have just reached out to do because they knew it was invaluable and important thing to do. [LB806]

STEVE SIMPSON: It isn't the inspections that are...the inspections are a state situation. [LB806]

SENATOR CRAWFORD: Okay. [LB806]

STEVE SIMPSON: The mechanics...or the licensed mechanics are the ones that are not in the 90 counties. The inspection is still statewide. [LB806]

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SENATOR CRAWFORD: Okay. [LB806]

STEVE SIMPSON: Although the Commissioner of Labor requires any turnovers in any inspections that be done must be done by a licensed elevator mechanic currently in the entire state. That's currently... [LB806]

SENATOR CRAWFORD: Can you say that again one more time. [LB806]

STEVE SIMPSON: Currently, the state requires that any turnover which would be a brand new elevator being sold and any inspection being done...annual inspection being done on an elevator must be done by a licensed elevator mechanic. In fact, on the top of the form, the first thing you put on is your license number. It's a requirement. So technically we are statewide. We're just not statewide for the whole situation when it covers maintenance. Maintenance would be what Mr. Steckelberg came up and Mr. Josoff came up and spoke about. This was tagged onto the contractor registration law from ten years ago that had three counties that you had to pay for and this got tagged into it, so we got tagged into the same thing. Those three counties and everything else. That's why we have the three counties. When they expanded the contractor registration law statewide, they did not expand the Conveyance Safety Act. Simple as that. [LB806]

SENATOR CRAWFORD: Okay. So the current inspections are required to be done by the licensed... [LB806]

STEVE SIMPSON: Current turnovers and current...yes, every elevator gets a test done on it every year to see if it's safe. And every five years on elevators that are traction or cable, like Mr. Steckelberg talked about, get a full load safety test where they actually crash the elevator at full speed, because the idea is to make sure it works and does what it's supposed to do. [LB806]

SENATOR CRAWFORD: Great. Thank you. [LB806]

SENATOR ALBRECHT: Thank you. Anyone else? Thank you for your testimony, appreciate you being here. [LB806]

STEVE SIMPSON: Thank you. [LB806]

SENATOR ALBRECHT: (Exhibits 12, 13, 14, and 15) Okay, do we have any other opponents wishing to speak to LB806? Any other opponents? Seeing none, is there any...oops, we have some letters. Okay, Amy Blankenbiller, vice president of Government Affairs for the National Elevator Industry, Inc.; Matthew Murphy, branch manager from Omaha KONE, K-O-N-E, Inc.;

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Fred Christensen; and Susan Martin, president of the Nebraska State AFL-CIO have all sent letters of opposition. Okay. And would you...Senator Albin...oops neutral position. I always miss that. Anyone in a neutral position for LB806? Do we have anyone in neutral position who would like to speak? He's not in a neutral position. Okay, so if we have no one in neutral position, I would like to call Commissioner Albin up to answer a few questions, if that's okay with everyone. Can you help me understand, in the beginning of your testimony for LB806, the second paragraph, you say that LB806 would continue to require that elevators and escalators in buildings open to the public must comply with the safety requirements...if I'm saying that right, ASME, A-S-M-E and A-N-S-I, Code A71-1, the elevators and escalators in the public buildings would continue to be inspected by qualified elevator inspectors at the time of installation and annually thereafter. So that is still in the bill. [LB806]

JOHN ALBIN: That's still in the bill. All 93 counties now require inspection of by our staff at the time of initial installation and annually thereafter. And that will not change if LB806 passes, that will continue. [LB806]

SENATOR ALBRECHT: Okay, so you said when they install them and every year after they're supposed to be inspected. [LB806]

JOHN ALBIN: Yes. So before it's initially placed in service, an inspector has to go out and certify that that elevator complies with A17.1. And then we go out annually thereafter, inspect them to be sure that they are...continue to be inspected. There are certain tests that we don't do. We check to make sure that...I think a load test is one of them. We check to be sure that the records indicate that those load tests were done in accordance with A17.1 standards. None of that changes under LB806. [LB806]

SENATOR ALBRECHT: Okay, so the gentleman that came up in opposition, Mr. Lyle Steckelberg, told us of two incidents in my area. So would you as the Department of Labor want to find out why those two elevators would not have been...if they're maintained by their own mechanics, if you will, their own folks in their own businesses, how do you handle that at the Department of Labor? [LB806]

JOHN ALBIN: Okay, well, to begin with, I'm not aware of the one at Wayne State. I can imagine college students of my vintage having done something like that to an elevator just to see what would happen. I am familiar with the one at Dakota City. The one at Dakota City had been inspected by the Department of Labor the previous year. It was due up for an inspection again in about, I believe, a month or two months after this particular incident occurred with Mr. Steckelberg. And, yes, we would have noticed that it had been rewired improperly and would require it to be brought back into ASME A17.1 standards. [LB806]

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SENATOR ALBRECHT: Very good. Okay, did you have...I have one more. Okay, then, let's see, 1, 2, 3, 4, 5, 6 paragraphs down, same thing, is the...yep, yep, so we're not taking that out in any way, shape or form? [LB806]

JOHN ALBIN: Nope. [LB806]

SENATOR ALBRECHT: Senator Halloran, do you have any questions? [LB806]

SENATOR HALLORAN: Thank you, Chairman Albrecht. Commissioner Albin, are these visits by the state, are they given notice that you're coming? [LB806]

JOHN ALBIN: Usually we don't. There are some where it's necessary because there's a locked down mechanics room. You don't want just anybody being able to wander in the mechanics room, so we have to call ahead to make sure that somebody is there to unlock the mechanics room so that we get in. So some of that way...most of them are not given notice of the schedule. [LB806]

SENATOR ALBRECHT: Senator Crawford. [LB806]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you, Commissioner. So, just to clarify, you were saying that if LB806 passed, it would not stop the annual inspections by Department of Labor. But it looks like in LB806 you can get out of having the inspection if you have a third-party inspection instead. So isn't it correct that it would be the case that the current inspections would occur, but now there would be a way for someone to have a third-party inspection instead. [LB806]

JOHN ALBIN: The bill provides that you can be excepted out of a state inspection if you have an inspection performed by a QEI certified inspector which is the same...and I think all of our inspectors right now are QEI certified. We're in the process of trying to upgrade them so they will become QEI certified. So you've got the same level of professional expertise under the bill that you currently have. And quite honestly because of the shortage of elevator inspectors, we currently contract out about 20 percent of our inspections, I can't remember where the company ATIS is located. They bring in inspectors from out of state. We're required by contract they be QEI certified. We have not had any instances of accidents that resulted because the QEI guy from ATIS missed something that one of our guys would have got. I mean, they are professionals. Their company has invested interest in getting the inspections done properly because, oh by the way, if they miss it, they're legally liable. And so there's no incentive for anyone to do slipshod. We have had instances where we weren't satisfied with the level of service

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and they promptly replaced that person with someone of better...a better inspector. So the main reason that we have that provision in there, it's kind of getting to be the inside baseball, but if you're at a place like a Oakview Mall or a Gateway Mall, part of your insurance coverage is going to require you to have...or your ownership group is going to have you...require you to have an ASME A17.1 QEI elevator inspector come in there and inspect all of your elevators and escalators; but because the way Nebraska law is, even though the other escalator...or the insurance company inspector was there an hour ago, it's still no good. We have to come back in and reinspect it again and run through the same whole process. So it seems like there was a bit of a redundancy and an extra cost that didn't add anything to safety. We've never had a problem going behind the insurance company hired inspector and finding that they just slipshod through stuff. Because, obviously again, the owner of that facility wants them to give it a rigorous inspection; the insurance company wants them to do a rigorous inspection. There's just no reason to think that those inspections are any less than the inspections that we're performing on our staff. I mean, they're quality inspections and so are ours. [LB806]

SENATOR CRAWFORD: Thank you. [LB806]

SENATOR ALBRECHT: Thank you. Any other questions? Thank you. [LB806]

JOHN ALBIN: Senator Albrecht, can I ask one point of personal privilege and that is there's been a misunderstanding and it originated with our staff, which is really unfortunate, but if you look in the Department of Labor's regulations, the statute is kind of...48-2512 is kind of fuzzy about exactly who can install an elevator and who can work on an elevator. And so the statute is fuzzy and one of our staff wrote an opinion letter without bothering to read the regulations which I happen to personally draft, and it's clear in the regulations that licensed mechanics and licensed contractors are only required in the three-county area. I know there's an opinion letter that went out. I think it went out in regard to Dakota City. I apologize for that error, but it's simply, legally incorrect. Licensed mechanics and contractors are required in the three counties, not in the other 90. [LB806]

SENATOR ALBRECHT: Um-hum. Thank you. Okay, if it's okay, I'd like to take a quick break before... [LB806]

SENATOR HALLORAN: She closed. [LB806]

SENATOR ALBRECHT: ...oh sorry, I'm sorry. You get to close. Thank you. She's still here. She waives closing. [LB806]

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SENATOR HALLORAN: Madam Chairman, may I ask her a question, please? [LB806]

SENATOR ALBRECHT: Sure. Ms. Shelburn, could you please come forward. Senator Halloran. [LB806]

JESSICA SHELburn: Yes, Senator. [LB806]

SENATOR HALLORAN: This is a serious question. Ms. Shelburn, I admire Senator Kuehn's desire to be a good herdsman and steward of his livestock, and under the duress of a storm such as this, that's an important thing for him to do. I'm just curious, did he offer you the option to go take care of his cattle or (inaudible)? (Laughter) [LB806]

JESSICA SHELburn: No, he did not. But I still think I probably would have decided to stay here. [LB806]

SENATOR HALLORAN: He owes you. Okay. [LB806]

JESSICA SHELburn: I would agree with that. Thank you. [LB806]

SENATOR ALBRECHT: Okay, thank you for being here in place of him. I would like to take a quick five-minute break and resume. [LB806]

BREAK

SENATOR CRAWFORD: Okay, welcome back. We will be opening our public hearing now on LB712, Senator Albrecht. And we'll begin with Senator Albrecht's testimony. Thank you. [LB712]

SENATOR ALBRECHT: Thank you, Madam Chair and colleagues. For the record, my name is Joni Albrecht, J-o-n-i, Albrecht, A-l-b-r-e-c-h-t. This is a bill related to the Employment Security Law. The Nebraska Revised Statute 48-628 provides that an individual shall be disqualified from benefits for any week of unemployment in which the commissioner finds that he or she has failed, without good cause, to apply for an available, suitable work when so directed by the employment office or the commissioner to accept suitable work offered to him or her under, or to return to his or her customary self employment if any, and for the 12 weeks immediately thereafter. The total benefit amount to which he or she is (inaudible) entitled shall be reduced by the amount equal to the number of weeks for which he or she has been disqualified by the

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commissioner. So in other words, the current Nebraska law prohibits an employee from receiving unemployment benefits for the claimed week and the next week, immediate 12 weeks if the Commissioner of Labor finds that the employee without good cause, number one, failed to apply for available, suitable work when directed by the employment office or the commissioner; or, number two, failed to accept the suitable work offered to him or her; or, number three, failed to return to his or her customary self employment if applicable. If the commissioner finds one of these circumstances, current law also reduces their benefit amount once they requalify for unemployment benefits. Specifically, their amount is reduced by the number of weeks that they are disqualified for. So LB712 on page 2 beginning on line 12 inserts the provision that an individual shall be considered to have refused to accept suitable work if he or she fails a pre-employment drug screening test required by an employer as a condition of employment. This language amends the statute so that if a person failed a pre-employment drug test, which was required by the potential employer as a condition of employment, that failure would be considered as a failure to accept suitable work. This would mean that if an individual failed an employer-requested required drug test, the individual would face the same consequences as if they had refused suitable work. LB712 also creates a new statute regarding unemployment compensation. This new provision is found in Section 4 of the bill which begins on line 10 of page 4. It reads: (1) The commissioner may, by rule and regulation, provide for drug testing of individuals applying for or receiving unemployment benefits as provided in this section at the sole cost of the commissioner. The commissioner may require drug testing as an individual...if the individual who was terminated from employment with the individual's most recent employer because of the unlawful use of a controlled substance as defined in Section 102 of the federal Controlled Substances Act, 21 United States Code 802. An individual who tests positive for a controlled substance as defined in Section 102 of the federal Controlled Substances Act, 21 United States Code 802, when tested for the presence of drugs pursuant to this section or who fails to take a drug test when directed by the commissioner shall be ineligible for benefits for the week in which he or she fails the drug test or fails to take a drug test and any intervening weeks until such week that he or she successfully passes the drug test. Now what this provision does is allows the Commissioner of Labor to provide for drug testing of unemployment compensation applicants in a very limited and specific scenario which is when the applicant was terminated from employment from their most recent employer due to the applicant's illegal use of drugs. The consequence for failing a drug test is a disqualification for the week that they failed the drug test and all weeks afterwards until they pass the drug test. It would be possible for the applicant to take another drug test one week after they failed the first one and receive unemployment benefits again if they otherwise qualify. I believe this bill will not only take...only make our unemployment system better, but will also help bolster our available work force and encourage Nebraskans to be ready and able to work. I'd be happy to answer any questions that I can. And I believe there are people from the Department of Labor behind me that might be available to answer some questions as well. Thank you. [LB712]

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SENATOR CRAWFORD: Thank you, Senator Albrecht. Questions? Questions? I have a couple of questions. [LB712]

SENATOR ALBRECHT: Sure. [LB712]

SENATOR CRAWFORD: So this would require, I guess, the employer...an employer to report back to the Department of Labor if someone failed a drug test. [LB712]

SENATOR ALBRECHT: They would have to approve it, I would think. I'm quite certain the commissioner would have an answer, but I'm quite certain they would have to know how do they determine that the person was under illegal substance abuse to be fired. [LB712]

SENATOR CRAWFORD: And so...and then on page 3, we're talking about controlled substance and switching to a federal definition of controlled substance instead of the state definition, is there a reason for that switch? [LB712]

SENATOR ALBRECHT: Um-hum. It's my understanding they want to comply with the federal laws. [LB712]

SENATOR CRAWFORD: And we may need to add--as defined on date, that's something we often need to do when we have a federal reference, we often have to tie it to a date, but we can work on that, that's not... [LB712]

SENATOR ALBRECHT: Okay. [LB712]

SENATOR CRAWFORD: So I guess in another question when we...it talks about the sole cost of the commissioner. So is that going to be the case that the commissioner would not be, excuse me, let me back up, would that be the case then that this would not be something the commissioner could have access to the unemployment insurance fund for, or is it something that this would really come out of the cost of the unemployment insurance? [LB712]

SENATOR ALBRECHT: I'll ask him to answer that because I don't know exactly where he wants to get that money. [LB712]

SENATOR CRAWFORD: Okay. [LB712]

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SENATOR ALBRECHT: But you need a date specific, you said, on tying into the federal into this...is that right? [LB712]

SENATOR CRAWFORD: Right. Okay. And I guess part of this also, as we think about the unemployment insurance and our other programs that the state as well, so if someone is needing substance abuse help, and then they're not getting...and they're getting kicked off of unemployment insurance, would it be the case that they might end up requiring other state assistance? It might end up costing us in other ways. [LB712]

SENATOR ALBRECHT: Quite possibly. But I hope too that this helps them understand that, you know, to be a good employee and to their employer and their fellow employees that they work with it would be best to try to do the right thing. And I understand what you're saying, because I don't also want to make someone think that, you know, even if they have abused that they're still...I don't want to be supporting something that is illegal either in their plight to get help is one thing. Hopefully there's plenty of things that they can do to that, as well as I'm sure the employers have different programs that they could attend if they have a problem with that. But this is all unemployment benefits. [LB712]

SENATOR CRAWFORD: Right. Definitely want people to be able to get assistance. It's always one of our challenges is to make access to programs to get the help people need. [LB712]

SENATOR ALBRECHT: Absolutely. Absolutely. [LB712]

SENATOR CRAWFORD: So we want to make sure they're not...they're able to get that help if they would like to get that help. Thank you. Other questions? Thank you. We'll now move to proponents. [LB712]

JOHN ALBIN: (Exhibit 1) Senator Crawford, members of the Business and Labor Committee, for the record, again, my name is John Albin and I'm the Commissioner of Labor appearing here today in Support of LB712. I would like to thank Senator Albrecht for introducing LB712 on behalf of the department. LB712 would provide for a 12-week disqualification from unemployment benefits if an individual claiming benefits fails a pre-employment drug test and would allow the department to require individuals who are terminated from their employment due to failing a drug test at work, to submit to and pass drug tests as a condition of eligibility for benefits. Since the inception of the Nebraska unemployment program in 1937, the Employment Security Law has provided that in order to be eligible for the receipt of unemployment benefits, an individual must be available to work in the job market to which the individual is attached. It is the position of the department that individuals who fail a pre-employment drug test have effectively removed themselves from that job market. Many industries, such as the transportation

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industry and federal contractors are required to drug test or maintain drug-free workplaces under federal law. Many other employers require pre-employment and/or post-workplace accident drug testing as a way of reducing workers compensation insurance costs. Even many fast food establishments require prospective workers to pass a pre-employment drug test. A common complaint by employers to the department is that a significant portion of their applicant pool cannot pass a pre-employment drug test. I don't have statistics for Nebraska, but in a 2014 survey of the manufacturing sector in Pennsylvania, the Pennsylvania Manufacturer's Association found that 16 percent of all individuals tested failed their pre-employment drug screening test. The survey further found that an additional 19 percent of job applicants either refused to take a drug test or failed to show up for a scheduled drug test. The primary purpose of the unemployment program is to provide benefits to those individuals who are unemployed through no fault of their own. Individuals who voluntarily use an illegal substance and lose their jobs are unemployed as a result of their own voluntary decision. Individuals who erect barriers to their re-employment because of their drug usage have effectively removed themselves from the job market to which they are attached and their unemployment has become a matter of personal choice. That concludes my testimony and I will be happy to try and answer any questions you might have. [LB712]

SENATOR CRAWFORD: Thank you. Questions? Senator Hansen. [LB712]

SENATOR HANSEN: Thank you, Senator Crawford; and thank you, Commissioner. I guess I have a...one of my questions is so this bill would enable you to drug test individuals who were fired from their previous job for failing the drug test? [LB712]

JOHN ALBIN: Yes. [LB712]

SENATOR HANSEN: Okay. And how do you...from a practical matter, how do you envision that? [LB712]

JOHN ALBIN: How do I envision that? I think our thoughts are probably that we would test at the time of initial application and we would contract out for the test and it would be paid for from the administrative grant, not from the trust fund. And then we would do random testing thereafter. I think we figured an average of three, I think is in our fiscal note of three tests in the entire claim. Average claim right now runs a little over 12 weeks, so probably once a month during the period of the claim at most. And again, it doesn't mandate that we go forward with it, but we think it's something that we need to take a look at. [LB712]

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SENATOR HANSEN: Okay. And so I guess...so are you envisioning that people who are collecting unemployment would have to come to a central facility, would they have to come to Lincoln, would you (inaudible) communities? (Inaudible.) [LB712]

JOHN ALBIN: We would contract with some entity in their community. I mean, we're not going to put people on the road to Lincoln to take a urine test; that would be kind of silly. [LB712]

SENATOR HANSEN: Sure. I guess that's partially why I was clarifying. All right. Okay, thank you. [LB712]

SENATOR CRAWFORD: Other questions? So just in the practical sense of the knowing if someone had failed a drug test when they're out applying, when they're coming to you for unemployment insurance, it's one thing if that's your reasoning that they...of why they're fired that you receive, that someone is fired for that purpose, but this other category of people who may have failed a drug test in front of an employer, do you have a way that you're expecting to get that information? [LB712]

JOHN ALBIN: Yeah, I would imagine we'll...what we do right now when an individual files a weekly certification of eligibility is that they're asked a number of questions. One of those questions right now is have you refused suitable work during this week? Have you been offered similar work and refused to...I don't remember the exact. So they click yes or no and then we move on to the next question. So I would imagine that we would probably make a similar request for information regarding the drug test. I mean, and then we have our auditing crew that goes out and just pulls claims at random and goes through and checks for verification for all the things they've asked, like you know, they all say they've done five work searches during that week and so they go actually audit those work searches to be sure they really did occur and the job applications that are required and that sort of thing. So we do an audit, but the audit is on a random basis rather than every...we couldn't go through every claim. I would imagine the best way would be that we'd go through...we'd ask an additional question regarding the pre-employment drug test. [LB712]

SENATOR CRAWFORD: And is there...are there any particular state models that you're following and pulling this together? [LB712]

JOHN ALBIN: Wisconsin seems to have the most robust process right now for drug testing. They may have actually gone a little further than they're allowed; it's subject to some controversy right now. You had asked earlier, Senator, about the reason that we use the federal standards for drug test; well, there's another set of drug tests that you're allowed under federal law to require, and that's for people who are applying for jobs in certain regulated industries that normally

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require drug testing. And based upon the Obama administration regulation that was then repealed by the Congress, we figure there's about 4,000 of those employers in the state of Nebraska. But the federal law specifically tied to testing that meets those federal standards, and so we're trying to make it uniform so that, you know, the Secretary of Labor, Secretary Acosta, has to pass a new set of regulations before we could even test in those industries under the federal law, so we didn't include anything on that in the bill, but it was kind of...this is kind of precursor to that; it's like, okay, we're going to be counting drugs as a reason for disqualification and we should be consistent so that people know what we're looking at and, two, our adjudicators have one set of standards to go to rather than say, okay, well if it's this type of claim, it's a Nebraska schedule of drugs, and if it's this one, it's a federal schedule of drugs. It's like, okay, one schedule so we can...aren't requiring the adjudicators to jump back and forth. And they're practical identical; I can't even tell you what the difference is between the two drug tests. But since the federal authorization for testing in those regularly tested industries is tied to that federal schedule, then we just said we'll tie everything to that schedule. [LB712]

SENATOR CRAWFORD: Thank you. Other questions? Yes, Senator. [LB712]

SENATOR HALLORAN: Yes, thank you, Co-Chair Crawford. Commissioner Albin, I would assume that...means you're very highly dependent upon the veracity of the applicant to answer that question, whether they failed to submit to a drug test or they failed a drug test, so I'm guessing that most of them are going to have to be caught by an audit. [LB712]

JOHN ALBIN: You'd be surprised. A lot of people are honest...I mean they're not honest to a fault, because they're telling us this true answer, but they definitely make statements against interest, I guess, is the best way to put it. But yeah, it...a lot of it's...it's going to be a combination of self-reporting and the audit. We do get occasional complaints from employers now that says I offered Billy Joe a job and he turned me down and now I find out he's getting unemployment benefits; that's not right. And then we go out...we will audit those sorts of claims at that point. So we do get some reporting from employers. [LB712]

SENATOR HALLORAN: Thank you. [LB712]

SENATOR CRAWFORD: Other questions? Thank you. [LB712]

JOHN ALBIN: Thank you. [LB712]

SENATOR CRAWFORD: Now do we have any other proponents? [LB712]

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ABBY STENEK: Hello, my name is Abby Stenek, A-b-b-y S-t-e-n-e-k. I'm here on behalf of the Lincoln Independent Business Association. The Lincoln Independent Business Association, LIBA, supports LB712 and requests committee support for small businesses across Nebraska. Payment on unemployment benefits is an expense to the business community. On behalf of the 1,300 businesses that LIBA represents, I ask that you help to alleviate the burden of illicit drug use on employers. LIBA supports granting authority to the Commissioner of Labor to drug test people receiving unemployment who are terminated for use of illicit drugs. If employees have a history of using illicit drugs while employed, it is reasonable to expect that such employees will repeat the same mistakes. These mistakes affect business. The new employer invests time and money and to training the new employee. The new employee could burden one employer and move on to the next enabled by unemployment benefits. Employees with a history of illicit drug use may have lower productivity, higher risk for accidents and more missed worked due to continued illicit drug use. LB712 acts as a disincentive to continue illicit drug use which will ultimately build a better pool of applicants for open jobs. Please support LB712 and advance this bill to General File. Thank you. [LB712]

SENATOR CRAWFORD: Thank you. Any questions? Thank you. Thank you for your testimony. Any other proponents for LB712? Any opponents to LB712? [LB712]

STEVE HOWARD: Thank you, Senator Crawford. My name is Steve Howard, S-t-e-v-e H-o-w-a-r-d; counsel for the Nebraska State AFL-CIO. At first glance, seems like opposing drug testing for people that are on unemployment would seem to support a system who lets people stay home and not work and be addicted to drugs and I just don't know that the answer is that simple, that it's so easy to look at it this way as a solution to this problem. Our members are really not the problem; union membership, really this is not going to affect them very much, but we are the voice for working folks across the state of Nebraska. And, you know, our last President declared that we have an opioid crisis; and our current President this fall said we have an opioid crisis, it's a national emergency. And the thought that this may have some sweeping effect on that crisis, I'm just not sure that that is the right way to look at things. This is going across the country, this movement, as I understand it. I think there's going to be litigation; I think there's going to be cost, and maybe a prudent thing to do might be to let some other states serve as testing ground before Nebraska moves on this. I don't understand that there is any hard data or any evidence as to some disincentive or some trajectory downward in the rate of drug abuse, secondary to these types of legislative efforts. And so we would ask that this bill not advance because we're not going to solve the drug problems in Nebraska or beyond with legislation like this. You know, we all know individuals that are success stories that have struggled in their lives with drugs or alcohol and gone on through treatment, through family support, through support in the community, and gone on to live successful and productive lives and it is a community problem. It does involve individual and personal responsibility. It does...but a measure like this, I would suggest the proof is not in that this is going to save more than it's going to cost statewide. So

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those are the only comments that I have. I appreciate you hearing today from me. Thank you. [LB712]

SENATOR CRAWFORD: Thank you. Any questions? I just have one question; when you mentioned a legal challenge, what do you see as the main legal concern that we should know about in these kinds of cases? [LB712]

STEVE HOWARD: Well, I think...there is an incidence of false positives...I think it's fairly low, but that may be one category. There may be employers...excuse me, employees that feel like they're being singled out. I'll tell you, the dollars that one gets on unemployment don't really...those 12 weeks that you're cut out of don't really give rise to a lot of dollars for attorney fees, but there may be challenges that attack the adequacy of the testing, the results, and so that's the category that I think it may come up in. And it may be as a group as opposed to individuals, but any time you have a change in the law, there can be a constitutional challenge to it, things like that, successful or not. [LB712]

SENATOR CRAWFORD: Thank you. Any other opponents to LB712? [LB712]

EDISON McDONALD: Hello, my name is Edison McDonald and I am the executive director for the Arc of Nebraska. We're a nonprofit with nine chapters and 1,500 members covering the state. We're advocates for ensuring the best and most integrated lives for people with intellectual and developmental disabilities. We would like to express our significant concerns with LB712. The bill replicates legislation in other states that have been tremendously unsuccessful. It requires extra resources that could be better used elsewhere. We're concerned the stress and strain that it may put on families. And requiring testing would put another hoop that families may have to jump through. Then there's the concern and nightmare of what if you do get a false positive. Could you imagine the strain placed on a family who has an individual who has a false positive test, whose medication it seems like it may come up as some sort of illicit substance. I have a list of 15 medications down to something as basic as Benadryl or Naproxen that may end up coming up as false positives. We're also concerned that this program has a poor record in other states where we've seen it. In particular, in 2011, Missouri adopted a law to require screening and testing. This is in regards to TANF applicants. But the testing that they did, 446 of the state's 38,970 applicants were tested, and only 48 tested positive. The budget it cost for that year's testing program was \$336,000. I know that the fiscal note attached to this bill is significantly smaller. I looked at 15 other states that had similar sorts of instances and couldn't find anything that was similar or had any sort of budget that had numbers that seemed comparable at all to what the fiscal note suggests. So, yeah, then in terms of some of the concerns that were listed earlier, I think we share some of those. In particular, a clear structure on what warrants suspicion. In particular, Tennessee did a good job looking a little bit more in-depth of how that could be

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done. Number two, another easy step would be to open to applicants who test positive and attend substance abuse treatment, counseling, and a job skills program so that they can continue receiving benefits such as was done in West Virginia. And then number three, clear direction of where to appeal, keeping in mind, especially for my members, even a week or two without those benefits could cause tremendous issues within their lives. Thank you for your time. Again, I hope that you will not pass this bill through committee. However, if you do believe it is necessary, these modifications need to be made to ensure that it is not a significant detriment to people with disabilities. Thank you. [LB712]

SENATOR CRAWFORD: Thank you, Mr. McDonald. Questions for Mr. McDonald? Thank you, appreciate your testimony. Any other opponents to LB712? Welcome. State and spell your name please. Thank you. [LB712]

JOHN K. HANSEN: Vice Chair Crawford, for the record my name is John K. Hansen, J-o-h-n K. and Hansen, H-a-n-s-e-n. I am narrowing down the list of committees that I have not testified in front of. [LB712]

SENATOR CRAWFORD: Well, welcome; we're glad to have you here. We're glad to have you here. [LB712]

JOHN K. HANSEN: (Exhibit 2) So I have one more accomplishment on my bucket list being before you today. National Farmers Union and the American Farm Bureau Federation have been actively involved in a joint campaign to deal with the growing crisis in rural America of opiate addiction. And the press release that I've handed you is...gets into our most recent "Farm Town Strong" campaign where we're really trying to push education, counseling, and information. We're seeing opiate addiction at a substantially higher rate in rural communities than urban, and substantially higher among farmers and farm workers than just rural residents. And so we have a lot of folks that are working wounded and continue to push on and continue to use painkillers to the point they become addicted to them and they develop all kinds of problems. I looked at this bill and thought of at least three different positions we could take on this bill and thought that the most honest was that it was counterproductive to our educational and treatment focus and efforts to try to help get folks who have problems the kind of help that they need. And that a lot of folks who are rural workers live paycheck to paycheck, barely. And so when...if they have a problem and they're not able to work, especially if there's been some kind of an injury, I see this as a, as a problematic area for rural workers in particular. And so I, a bit regretfully, but I think need to at least raise the visibility of this issue and it certainly runs counter to a lot of public perception as to which part of the state has the highest level of drug addiction in this particular area. It clearly is running across the board in the surveys that have been done in rural communities. And so we think at this particular point in time, this particular legislation would not be constructive or

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helpful. And with that I would end my testimony and gladly answer any questions if you have any. [LB712]

SENATOR CRAWFORD: Thank you, Mr. Hansen. Any questions for Mr. Hansen? Yes, Senator Halloran. [LB712]

SENATOR HALLORAN: Thank you, Senator Crawford. Hi. Mr. Hansen, would...is it inappropriate for some jobs, and some of them are mandated federally to have drug testing, jobs that are...put the public at high risk, if an employee is operating a truck, for example, a semi truck, are those a problem? [LB712]

JOHN K. HANSEN: Well, I think in some cases I think that those are appropriate, yes. [LB712]

SENATOR HALLORAN: Okay. That's all I have, thanks. [LB712]

SENATOR CRAWFORD: Thank you. [LB712]

JOHN K. HANSEN: And I would just encourage you to take a look at the statistics and the research, I think, the Morning Consult survey might be helpful to the committee just to see kind of the data that they're dragging out and as to what is the best way to go about this matter is, I think open for discussion, but there certainly is a problem. [LB712]

SENATOR CRAWFORD: Thank you, appreciate your testimony. Any other people who wish to testify in opposition to LB712? Anyone wishing to testify in a neutral capacity? [LB712]

RON SEDLACEK: Vice Chair Crawford and members of the Business and Labor Committee, for the record my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. We didn't want this hearing to pass without at least expressing for the record that the state Chamber of Commerce has reviewed the legislation, but there's no way that I can come forward in support or opposition until our board meets...or I should say our labor relations council meets which will be Wednesday and they're reviewing all legislation. This is a new topic for us and we probably will have some board and they will read the other comments in regard to this legislation, but so at this time I can't represent what our position is going to be. Whether the bill passes that's fine; if it doesn't pass that's fine at this point. So that's why I come in neutral. We may have a position later. But any rate, employers do drug tests; obviously, some do, particularly those involved in particular industries--transportation, construction, you name it. And of course this is to protect the public, to protect property, protect fellow employees, those they deal with, and themselves. And there are employers that do offer employee assistant programs, the ability to go to rehabilitation; not

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all employees do that, but some do. And there are cases where there are problems and there's a reason to be terminated, particularly in a regulated industry when you need to pass that test. That said, the core issue is, is this going to be an incentive to rehabilitate? Because this is going to be a personal decision and not pressure from necessarily outside. Sometimes you have to be in the gutter to look up in order to decide it's time to rehabilitate. So the core issue is what is going to be done to address that issue; that's the dilemma that employers face, because we're looking for work force development. We have unemployment compensation system that's called a re-employment act. What can we do to encourage that development, that re-employment? That's the core issue and it's an individual decision. If money was not a question, it would be great to have a program by which if you did fail that test or you failed a re-employment test that in order to receive benefits you have to enroll in the program and...in that case. But that's an expensive proposition in and of itself. So we'll be discussing this issue and communicate with the committee when we do make a decision. [LB712]

SENATOR CRAWFORD: Thank you; appreciate you laying those concerns on the table. Anyone else wishing to testify in a neutral capacity? Welcome. [LB712]

ROBERT J. HALLSTROM: Chairman Crawford, 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 in a neutral capacity on LB712. I'm doubly apprehensive about appearing in a neutral capacity, one, because I picked the worse day of the year to come in on the last bill of the day and testify neutrally. And secondly to be quizzed by Senator Halloran as to whether or not I'm truly neutral. (Laughter) But for the same reasons that Mr. Sedlacek indicated, NFIB was a relatively new issue with regard to the federal regulations authorizing states to take this action, our organization has not taken official position on this particular issue. We hope to do that relatively soon and we'll naturally provide the committee with any change in our posture. I would note a couple of things for the record. Number one, just a technical question I would raise--if the state is going to adopt the provisions on page 2, lines 12-15, the new language, I would question whether or not you ought to both recognize failure of the test as in addition to refusal to take the test as a condition or a standard upon which the individual would be deemed to have refused to accept suitable work. It would seem to me that in the new Section 4, we have both of those standards applicable so that if it would seem to be consistent to set up both of those standards, maybe others will have a different thought or prevailing view on that. The second thing is, just for the record, I know, obviously, our organizations have been before this committee with regard to the epidemic of opioid abuse and so forth. Just note that portions of this bill relate to the unlawful use of that controlled substance. In many cases we've got problems that result from the lawful use pursuant to over-prescribing and things of those nature. So there is distinction to be made even within the confines of this bill with regard to that issue. So with that I'd be happy to address any questions of the committee. [LB712]

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SENATOR CRAWFORD: Thank you. Any questions? Thank you, Mr. Hallstrom. [LB712]

ROBERT J. HALLSTROM: Thank you. [LB712]

SENATOR CRAWFORD: (Exhibits 3, 4, 5, 6, and 7) And before we move to closing, I just want to enter into the record for LB712 we had one letter, a proponent letter, from Rocky Weber, president of Nebraska Cooperative Council. We had opponent letters from Amy Miller, legal director of Nebraska ACLU; John Antonich, executive director of NAPE/AFSCME--The Nebraska Association of Public Employees of the American Federation of State, County, and Municipal Employees; Susan Martin, president of Nebraska State AFL-CIO; and Greg Lauby, SR et tu, LLC. And with that we will move to closing. Senator Albrecht. [LB712]

SENATOR ALBRECHT: Thank you very much; a lot of good testimony there. Okay, you know, a lot of times people ask why would you take certain bills on? And again, the time that I spent this past interim on work force development in both committees, what I heard loud and clear from business leaders throughout our state is being able to get a work force that can pass a drug test. And it was from the unions to the manufacturing plants. I know John Hansen was talking about farmers, but I don't think they'd be collecting on this because we're our own little entity, but I would definitely say that when it comes to a safe environment, you know, I'm all for rehabilitating people and helping them through it, but they'd have to have worked somewhere for an extended period of time to even be able to collect on this. So if it's a situation where they're having trouble, it would behoove them to help to get help, you know, because if you had to go to a job where you knew that you would have a drug test just to get on and then random drug testing throughout your employment, you know, it just speaks loudly to the people who want to try to be clean so that they can have a productive life, take care of their families, and take care of the employer that hired them, and cared about the people who work next to them. I also got to visit many plants, different...up in Norfolk, the Nucor Steel, I mean, you know, what a huge, great business up in Norfolk, but I mean they're all about everybody taking care of themselves and safety on the job. There's other companies that I visited with that they have a big party at the end of the year that if they went without an incident, you know, for safety. So these are all things that kind of tie in to how important it is for us to make sure that our work force is strong and that they take care of the employer that hired them, take care of their families, and take care of the folks that work with them. So with that I hope it's something that you'd all consider. And that will be my close. [LB712]

SENATOR CRAWFORD: All right, any other questions for Senator Albrecht? One of the issues that was raised was whether or not someone...there might be an exception if someone is getting treatment during that time. Is that something you'd be willing to consider? [LB712]

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

Business and Labor Committee
January 22, 2018

SENATOR ALBRECHT: So if they're getting treatment and still tested positive for being under the influence? [LB712]

SENATOR CRAWFORD: Right. [LB712]

SENATOR ALBRECHT: Do I think that they should still be paid? [LB712]

SENATOR CRAWFORD: Is that something you'd be interested in looking at? [LB712]

SENATOR ALBRECHT: What I'd like to look at is the false positives. I mean, what would the department want to consider for something like that? [LB712]

SENATOR CRAWFORD: Right. [LB712]

SENATOR ALBRECHT: And you know I'm quite certain whoever they have to contract with, they'd probably be aware of situations like that, and I'm sure that there would be some sort of an appeal process. I can certainly...I'd be willing to work with the commissioner on that to make sure that it's what it needs to be, but to have someone who is under the influence and continuing to work for a company that's going to be drug tested positive often, no, I would rather them get help first and then have a clean record and go forward. [LB712]

SENATOR CRAWFORD: Thank you. All right. And with that we will end the public hearing of LB712. Thank you. [LB712]