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Business and Labor Committee
February 12, 2018

[LB791 LB843 LB844 LB916 LB1014]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 12, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB844, LB916, LB843, LB1014, and LB791. Senators present: Joni Albrecht, Chairperson; Sue Crawford, Vice Chairperson; Ernie Chambers; Steve Halloran; Matt Hansen; Sara Howard; and John Lowe. Senators absent: None.

SENATOR ALBRECHT: Good afternoon and welcome to the Business and Labor Committee. I am Senator Joni Albrecht, I am from District 17, that's in northeast Nebraska, Thurston, Wayne, and Dakota Counties. And I'd like to have Vice Chair, Senator Crawford, go ahead and start by having an introduction for yourself.

SENATOR CRAWFORD: Thank you. Senator Crawford from District 45.

SENATOR LOWE: John Lowe, District 37.

SENATOR ALBRECHT: Senator Hansen.

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

SENATOR HALLORAN: Steve Halloran, District 33, Adams and Hall County.

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

SENATOR ALBRECHT: Thank you. And for committee staff we have Amara Meyer, who's our legal counsel and Beverly Neel is our committee clerk. And our page today is Kylie Kotouc, she's from Lincoln, Nebraska, a student at UNL studying political science and PR. Okay, a few housekeeping items first. Please turn off all electronic devices. Senators, note that the microphones are very sensitive and are able to pick up side conversations. Testifiers should have the appropriate number of copies and handouts with you ready for distribution. The Business and Labor Committee requires 12 copies. Each witness appearing before the committee must sign in using the forms provided at the entrance of the hearing room; they're 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 will be allotted either five minutes or three minutes. I'll find out how many people are in the room first. And we will use a light system: The green indicates that you may begin; the yellow indicates that you are nearing the end of your time; and the red indicates that it's time to end your testimony. Please begin your testimony stating your name clearly into

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the microphone and then please spell your first and last name to ensure accuracy for the record. Note that committee members may need to leave in the middle of a hearing as they may have a bill to introduce in another committee, so do not be offended if senators come and go. If you are testifying in person on a bill and would like to submit the written position of your letter, you can include that with the official hearing record as an exhibit and the letter must have been...and if you have another one, the letter has to come to our office on Friday since we meet on a Monday. So the end of the day it needs to be in the committee for review and so that they can see it in the book. Now this particular...some of these hearings actually has folks thinking Sunday would be the day, so I've asked all three senators that are going to have a bill before us today to make sure that they talk about your letter and enter it into the record with copies for everyone so that we'll have that today. So again, additionally, the letters must state a position for or against or in neutral on the bill in question and include a request for the letter to be included as a part of the public hearing. So Senator Chambers has just entered the room, so thank you for being here today. So today's agenda will include LB844, LB916, LB843, and LB1014. We're going to combine those two hearings into one, so we'll take proponents and opponents together, so Senator Pansing Brooks has asked us to do that. And then LB791 will be the last bill to be heard. So today in that order we will take LB844. Senator Crawford. And can I have a show of hands who will be testifying on this particular bill, LB844? Okay, we'll go ahead with the five minutes. Thank you. [LB844]

SENATOR CRAWFORD: (Exhibit 1) Good afternoon, Chairman Albrecht and fellow members of the Business and Labor Committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm honored to bring LB844, the Healthy and Safe Families and Workplace Act before you today. As Nebraskans, we value hard work and we value our family responsibilities. Yet, as I have worked on leave issues over the past several years I have heard heart wrenching stories about the difficulties that Nebraskans have faced in balancing work and family responsibilities. This is not surprising considering that an estimated 46.3 percent of the Nebraska work force cannot earn a single paid sick day to use to recover from a common illness or seek medical care. Access to sick and safe leave is even more limited for some of our most vulnerable families with 70 percent of low-wage workers not having access to paid sick days to care for their own health or their children. These statistics indicate that the market is not taking care of this problem. Even in a very tight labor market it is still the case that our low-income families, 70 percent of low-wage workers, do not have access to paid sick days and overall over 40 percent of Nebraska workers do not have access to paid sick days. LB844 creates the Healthy and Safe Families and Workplace Act to ensure that hardworking Nebraskans can earn up to a week of paid leave to care for themselves or a family member without having to worry about losing their jobs. Under the provisions of LB844, employers with four or more employees are required to provide employees with access to sick and safe leave. Employees accrue a minimum of one hour of paid sick and safe leave for every 30 hours that are worked and can start using this leave on their 60th

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day of employment. Although employers must allow employees to accrue up to 40 hours in the calendar year based on the hours worked, nothing in the bill prohibits employers from providing additional paid leave. And I know some of our employers do provide access to leave. It is important to note that employers with paid leave policies that make available an amount of paid leave that it is sufficient to meet their accrual requirements and that it may be used for the same purposes as sick and safe leave under the Healthy and Safe Families and Workplace Act are not required to provide any additional sick and safe leave time. Any employer that already provides this leave is not required to provide any additional leave. Under LB844, leave can be used for an employee's own mental or physical illness, injury, or health condition, to care for a family member, a child, parent, or spouse with a mental or physical illness, injury or health condition or an absence necessary due to domestic assault, sexual assault, or stalking. Being able to stay home when ill or to stay with a sick family member is critical to public health. In fact, according to a study conducted by NPR, each week about 1.5 million Americans without paid sick leave go to work, despite feeling ill. At least half of employees of restaurants and hospitals--two settings where disease is easily spread--go to work when they have a cold or a flu. Safe leave is also a critical tool in ensuring that victims of domestic assault, sexual assault, and stalking have the support and job stability they need to escape and address violence. According to the National Partnership for Women and Families, survivors of domestic violence are at increased risk of harm during and shortly after separating from an abusive partner. It is essential that they're able to find shelter, file restraining orders, attend court dates, or receive counseling to prevent further abuse while also being able to continue working. LB844 does put protections in place for employers. If the use of paid sick and safe time exceeds more than three consecutive work days, an employer may require reasonable documentation that the paid sick and safe time has been used for a permitted purpose. This documentation must be signed by a healthcare professional indicating that sick time is necessary. When utilizing safe leave, one of the following forms of documentation must be provided: a police report; court protection order; or documentation affirming that the individual or the family member is a victim, signed by law enforcement, a health professional, a social worker, or a member of the clergy. LB844 also has provisions indicating how employees must notify employers when they are taking leave when the use of paid sick and safe time is foreseeable. The employee must make a good-faith effort to provide notice of the need for such time to the employer in advance of the use and must make a reasonable effort to schedule the use of paid safe and sick leave in a manner that does not unduly disrupt the operations of the employer. The bill also requires the request to include an expected duration of the absence, if possible. Finally, in terms of employer protection, LB844 explicitly states that paid sick and safe leave benefits for an employee conclude upon the conclusion of the employee's employment with the company. In other words, employers are not required to reimburse employees who quit or are fired for unused leave. Paid sick days actually benefits employers in a number of ways. In fact, studies show that offering sick days save employers money by reducing turnover, increasing productivity, and lowering healthcare costs. According to NCSL, seven states and Washington, D.C., currently require paid sick leave and studies

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conducted in those states are showing that those laws have worked for both employees and employers. In a report by the National Partnership for Children and Families they explained Connecticut was the first state to enact a paid sick days law in 2012. A survey of employers in Connecticut found that the law had had a minimal effect on costs and the vast majority of employers have not reported making changes, such as increasing prices or reducing employee hours because of it. Employers identified several positive effects, including improved employee productivity, morale, and more than three-quarters expressed support for the law. Further, data from the Connecticut Department of Labor showed job growth across industries since the law's implementation, including the most affected industry, leisure and hospitality. The bill does have a fiscal note. LB844 gives the Commission of Labor investigative and enforcement powers. The commission may assess an administrative penalty of \$500 for the first violation of the act by an employer and not more than \$5,000 for a second and subsequent violations. Any person aggrieved by a violation of the act may also bring a civil action against the employer and may recover the full amount of any unpaid, sick, and safe time and attorneys fees and costs. The Department of Labor has estimated they will need four additional FTEs to create a complaint system and process such complaints. Although we are in a budget shortfall, one of our biggest economic challenges right now as a state is recruiting and retaining work force. During my time as Chair of the Economic Development Task Force I have heard over and over again that investing in our people is key to getting them to stay and work in the state. Nebraska needs to think critically about cuts, but also about investments and how investing in ways to grow our work force will be key to economic prosperity. As you'll see from the testifiers behind me, the provisions in LB844 are widely supported by a broad coalition of advocacy groups. Paid sick leave is also widely supported by your constituents and Nebraska residents as a whole. In a survey conducted by Holland Children's Institute, over 75 percent of Nebraskans favor policies that expand paid sick leave. Colleagues, LB844 will ensure that Nebraska workers have the ability to earn a week of sick and safe leave to care for themselves or family members. And employers who already provide these benefits will not have to make changes to their policies if LB844 passes. LB844 is a bill that supports Nebraska workers and families in an initiative that 77 percent of Nebraskans support. With that, I encourage you to think critically about the values we hold as Nebraskans and advance this bill to General File. Thank you for your attention to this matter and I am happy to answer any questions you may have. [LB844]

SENATOR ALBRECHT: Thank you, Senator Crawford. Do we have any questions from the committee? Seeing none. [LB844]

SENATOR CRAWFORD: (Exhibit 2) Thank you. And I have a letter that was received by our office that they would like to have included, so I will pass that...have a page pass that around and give that to you, from AAUW, American Association of University Women. Thank you. [LB844]

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SENATOR ALBRECHT: Thank you. Okay, we're going to start with proponents of LB844. If you'll just give me one minute to get your name in the system here. Okay, go ahead and state your name and spell it, please. [LB844]

DAVID HOLMQUIST: (Exhibit 3) Thank you. Good afternoon, Chairman Albrecht, members of the Business and Labor Committee. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t, I am here today testifying on behalf of AARP Nebraska in support of LB844. I am a retired lobbyist and am lobbying as a volunteer in my role as Nebraska president of AARP Nebraska. AARP is a nonprofit, nonpartisan organization with over 195,000 statewide members. It works across Nebraska to strengthen communities and advocates for the issues that matter most to families of those age 50-plus. It is AARP's policy position that employers should offer a wide range of workplace accommodations and flexible schedules to enable family caregivers to fulfill their caregiving and paid work responsibilities. Many workers are left out of the Family Medical Leave Act which was enacted in 1993 to provide individuals who work for employers with 50 or more employees to take up to 12 weeks of unpaid leave. Many workers are left out of the FMLA's protections. They include those who work for employers with fewer than 50 employees and workers caring for extended family members and others outside of one's immediate family. They also include those who simply cannot afford to take unpaid leave and miss a paycheck. According to AARP's Public Policy Institute and their 2015 report, "Valuing the Invaluable in Nebraska," 195,000 family caregivers provided 182 million--I repeat--million hours of uncompensated care, resulting in an estimated \$2.5 billion of care. This is care to their parents, spouses, partners, and other adult loved ones in 2013. That was a report based on 2013 information. A 2015 AARP caregiving survey of Nebraskans over the age of 45 found that 40 percent of those respondents were either current working caregivers or had been in the past. Of those caregivers, three in five said that they experienced stress in trying to balance the demands of their job with the demands of being a family caregiver for a disabled individual. In addition to the stress of balancing sometimes conflicting responsibility, caregiving exacts a financial toll on caregivers. It's estimated that the out-of-pocket costs of family caregivers, on average, is \$6,954 annually. In addition to out-of-pocket spending, many employed caregivers also face work related strain. This may be in the form of taking additional time off, whether paid or unpaid, reducing their work hours, or leaving the work force altogether to accommodate for the caregiving responsibilities. This can often result in reduced job security, reduced employment benefits, and reduced retirement savings. The financial impact on working caregivers who leave the labor force due to caregiving demands can be severe. Estimates of income-related income losses sustained by family caregivers age 50 and older who leave the work force to care for a parent are \$303,880, on average, in lost income and benefits over a caregiver's lifetime. I think we can all imagine how that might affect our own retirement years. The November 2016 AARP "Family Caregiving and Out-Of-Pocket Costs Report" showed that more than half of employed family caregivers, 56 percent, experience at least one work-related strain and that two in ten or 20 percent experience three or more strains. Caregivers who report three or more work-related

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strains are spending \$14,298 per year on caregiving. This is more than three times the amount of caregivers with no work-related strain at all. The most common types of work-related strain: Having to work different hours, that's 32 percent; having to take paid time, 29 percent; having to take unpaid time off is 22 percent; having to work fewer hours, 20 percent; having to work additional hours, 15 percent; and having to take an additional job, 7 percent. We believe it's time to give working caregivers a break. In the 2015 Nebraska caregiver survey, we asked 800 respondents about different options for making life easier for working caregivers. One of the questions we asked was if they believed that there should be a policy in Nebraska to require employers to provide some paid leave to all employees that can be used for family caregiving. Forty-four percent strongly supported, while 27 percent somewhat supported or 71 percent overall. There will be those who oppose the initiative being presented today and the hardship it imposes on employers. While we certainly understand and don't discount the sense of hardship on behalf of employers, we would ask you to consider and keep in mind that the hardship already exists and is being born for family members and caregivers. It is these caregivers who are taking the responsibility of providing care for a disabled or aging family caregiver and often at an extreme emotional and financial cost. LB844 addresses those persons who are both in the work force and who have family caregiving responsibilities. We urge you to support LB844 and advance it to General File. [LB844]

SENATOR ALBRECHT: Thank you very much, Mr. Holmquist. Do we have any questions? Seeing none, thank you for being here. Next proponent wishing to speak to LB844. Hi there. [LB844]

SARAH ANN KOTCHIAN: (Exhibits 4, 5) Good afternoon, Chair Albrecht and members of the Business and Labor Committee. My name is Sarah Ann Kotchian, S-a-r-a-h A-n-n K-o-t-c-h-i-a-n, and I appear today on behalf of the Holland Children's Movement, a nonpartisan not-for-profit organization founded by Richard Holland that strives to fulfill his vision for Nebraska to become the national beacon in economic security and opportunity for all children and families. As we work to achieve this vision, we tend to hear so much about Nebraska's unemployment rate, which sets at 2.7 percent, fourth in the nation. But when we hear news like this it is rarely followed up by what quality of jobs employ Nebraskans. We know 72 percent of children under the age of six have all available parents in the work force and yet nearly one in six lives in poverty. This begs the question about the quality of available jobs. Do they pay a living wage? Do they offer benefits like healthcare, retirement, and paid family and medical leave? Do they offer an employee the ability to earn paid sick or safe leave? As Senator Crawford mentioned, our sister organization, the Holland Children's Institute, recently released public opinion research where 77 percent of Nebraskans surveyed favor ensuring that employees can earn up to seven paid sick days each year to use if they or a family member has an illness or needs to see a doctor. As far as safe leave, paid leave is essential for survivors of violence to access critical services without risking their financial security. Survivors of violence too often stay in an unsafe situation

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because they know that trying to get out of it will mean missing work and missing work isn't an option from an economic standpoint. In the past seven years, nine other states have enacted laws on paid sick and safe leave and it's time Nebraska does the same. When I think about sick leave though really and the hardworking members of our work force without this benefit, two main industries comes to mind, the restaurant industry and the childcare industry and I have worked in both without paid leave. Is this who we want showing up sick to work so they can be ensured their wages, people preparing our food and caring for our young children? It's the flu season now and young children are especially vulnerable to the spread of disease. On the flip side, as the mother of a young child, I know I have to leave work if I receive a call from school because my daughter is sick. Her teacher may be able to arrive to work not feeling well, but my daughter cannot and, quite frankly, neither of them should. I'll close by saying that I've listened to testifiers in opposition to policies like paid sick and safe leave in the past and I'm hard pressed to believe a single opponent isn't in a position where they can't earn a paid sick day, unlike the 40 percent of Nebraska's private sector mentioned earlier by Senator Crawford. We need to continuously strive to level the playing field for working Nebraskans so that when we hear reports of low unemployment rates we know it isn't at the expense of our community's health and well-being. And with that, I would like to thank you for your time and your service and your consideration of this important proposal. [LB844]

SENATOR ALBRECHT: Thank you very much for your testimony. Any questions? Can I just ask one quick question, because you did hand this particular paper out? Did the Holland, who you represent, did they do the survey? [LB844]

SARAH ANN KOTCHIAN: The Holland Children's Institute did the survey, yes. [LB844]

SENATOR ALBRECHT: Okay. And how many people were surveyed and is there an age group or... [LB844]

SARAH ANN KOTCHIAN: We surveyed 600 adults 18 years or older. [LB844]

SENATOR ALBRECHT: Thank you. [LB844]

SARAH ANN KOTCHIAN: And it was a live, telephone interview. [LB844]

SENATOR ALBRECHT: Very good. Thanks a lot. [LB844]

SARAH ANN KOTCHIAN: Thank you. [LB844]

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SENATOR ALBRECHT: Do we have any other proponents wishing to speak to LB844?
[LB844]

SUSAN MARTIN: (Exhibit 6) Good afternoon, Senator Albrecht and the members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n. I'm testifying today on behalf of the Nebraska State AFL-CIO and all working families in the state of Nebraska in support of LB844. LB844 proposes a simple but effective policy measure to ensure that workers in Nebraska have a base level of paid leave for sickness or other time off. The paid leave provided is earned by the employee based on how much they work and is a fair means to help rectify an otherwise unfair circumstance we currently have in Nebraska and the United States. One hundred sixty-three other countries have laws that guarantee paid sick leave, but in the U.S. an employer can dock pay or fire a sick worker for staying home to recover. Nearly 42 percent of all U.S. workers do not earn any paid sick leave and 80 percent of the lowest paid workers don't get a single paid sick day. Workers without paid sick days handle our food at restaurants, drive our buses, bag our groceries, care for our kids at daycare centers, and nurse the sick and the elderly. Forcing workers to work sick poses a public health risk and lack of earned paid sick leave threatens the economic security of working families. A minimum standard for earned paid sick days will increase protection for our families and communities and strengthen our economy. Needed sick time deprives workers of pay or pushes them to show up on the job while sick and delay seeking treatment for themselves or their dependents. While the United States continues to be behind its international peers in providing this basic protection, many state and local policymakers understand both the public health risk of leaving workers little choice but to show up to work sick and the reality that lack of paid sick time imposes a disproportionate burden on lower-wage workers. Over the last several years seven states, the District Columbia, and 31 other localities have passed laws to grant workers this right. Earned sick time is a wise investment for employers, workers, and the general public. The many employers who already provide paid sick days would have a more level playing field with their competitors if more workers were given the opportunity to earn paid sick time. Additionally, businesses would be able to more easily maintain a healthy workplace. There are also implications for worker productivity. A 2003 study by Stewart, et al., (phonetic) found that in 2003 productive time lost due to health conditions cost employers \$1,685 per employee per year. We again want to thank Senator Crawford for introducing this important legislation and thank you for considering our views. There are very real and important reasons to support the paid time off components contained in LB844. The benefits would convey themselves to all Nebraskans, workers and businesses alike, through increased security and flexibility for workers alongside increased productivity in the workplace. We ask that you support LB844 and advance it from committee for consideration by the full Legislature. I'd be happy to answer any questions if you have any.
[LB844]

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SENATOR ALBRECHT: Thank you, Ms. Martin. Any questions? Seeing none, thank you for being here. Any other proponents wishing to speak? [LB844]

KEN SMITH: (Exhibit 7) Good afternoon, Chairperson Albrecht and members of the Business and Labor Committee. My name is Ken Smith, and that's K-e-n S-m-i-t-h, and I am a staff attorney at Nebraska Appleseed, which is a nonprofit, public interest law and policy organization that works for justice and opportunity for all Nebraskans. I appreciate this opportunity to testify in support of LB844. LB844 would strengthen the health and safety of working Nebraskans by enabling workers to take time away from work to address pressing health and safety issues without losing their wages. Many middle- and low-income Nebraskans simply can't afford to take time away from work if they get sick or if somebody in their household gets sick. And this creates the dilemma in which a worker must choose between taking care of themselves or a family member and getting a paycheck. As previous testifiers have said, the federal FMLA is important and does good things, but it doesn't prevent people from losing wages when they have to take time off of work to attend to serious medical and other issues. And moreover, as other testifiers have said, it doesn't cover everybody. Forty percent of the work force is not covered under the federal FMLA. So LB844 would supplement the FMLA by providing up to 40 hours per calendar year of paid sick and safe leave and this would benefit both employers and employees. For employees, as we've heard, it improves overall health outcomes, helps people arrange care for their families and it bolsters labor force participation rates for family caregivers. On the employers' side, paid leave can significantly improve employee retention and help maintain a safe, healthy, and productive workplace. And besides the benefits for employers and employees, it should be noted that this also does a lot of good for the general public. It diminishes the public and private healthcare costs and promotes preventative health services by enabling workers to seek routine medical care for themselves or their family. It also protects public health by reducing the risk and spread of contagious diseases. In addition to providing leave for medical reasons, LB844 provides leave that can be used for absences due to domestic assault, sexual assault, or stalking. LB844 would give victims of those crimes a chance to seek shelter, medical attention, victim services, counseling, and legal services. Unfortunately, thousands of Nebraskans are victims of these crimes every year. I've pulled some data from the Nebraska Commission on Law Enforcement and Criminal Justice with respect to domestic violence and their reporting shows that there were nearly 14,000 domestic violence arrests in the state in 2016 alone. So LB844 would afford victims more time to recover and seek the help they need without having to worry about their job and finances. So because LB844 would allow working Nebraskans to take care of the health and safety of themselves and their families without sacrificing financial stability, we would urge the committee to advance this bill to General File. With that, I'd be happy to take any questions. [LB844]

SENATOR ALBRECHT: Thank you, Mr. Smith. Do we have any questions? Seeing none, thanks for coming. [LB844]

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KEN SMITH: Thank you. [LB844]

SENATOR ALBRECHT: Okay, any other proponents? [LB844]

DANIELLE CONRAD: (Exhibit 8) Hi. Good afternoon. Chairwoman Albrecht, members of the committee, my name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. We've been working for over 50 years here in the Cornhusker State to protect and defend the civil rights and civil liberties of all Nebraskans. I've had a page assist me with passing around some written testimony that details a variety of legal and policy considerations that we'd like to put before you, but I know that you have a really, really busy day today and so I'm going to keep it short and hit the top lines. We thank Senator Crawford for her leadership on this issue. We see this as a critical gender equity issue. Sarah Ann Kotchian brought to your attention the feelings of most Nebraskans in regards to these critical issues like paid leave, family leave, sick leave, safety leave and I just want to make sure to provide some additional context for that information. These emergent issues surrounding workplace equity, whether they're equal pay that you'll hear later, the type of leave policies envisioned in LB844, or the pregnancy accommodations and workplace protections that this Legislature has taken up in recent years and strengthened, are really gaining widespread support across the country, at the ballot box, in legislatures, and amongst public opinion polls because they're good for individuals, they're good for families, they're good for the economy, and they're good for society. So with that, we'd be happy to entertain any additional questions, but we thank you for your time, consideration, and service. [LB844]

SENATOR ALBRECHT: Thank you very much for being here. Any questions? Seeing none, thank you. [LB844]

DANIELLE CONRAD: Thank you. [LB844]

SENATOR ALBRECHT: Proponent, LB844. Hi. [LB844]

JULIA TSE: (Exhibit 9) Hi. Good afternoon, Chair Albrecht and members of the Business and Labor Committee. For the record, my name is Julia Tse, J-u-l-i-a T-s-e, and I'm here today on behalf of Voices for Children in Nebraska. Family and hard work are at the heart of Nebraska values. Parents of young children inevitably are faced with competing demands when a child becomes ill, but not every parent has the ability to do what is best for their child. Voices for Children in Nebraska supports LB844 because it ensures that working parents are able to care for a sick child without sacrificing their family's financial security. Earned sick time ensures that children who are sick can receive a timely doctor's visit. Children, especially infants and toddlers, are particularly susceptible to illness. In just the first two years of life, parents can

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expect children to catch eight to ten colds. It is estimated that over 77 percent of school aged children miss at least one school day per year due to an illness or injury. When parents are unable to take time off to stay at home with their children, they are more likely to send their child to school or to daycare, where they will go on to spread illness. Moreover, being unable to bring their child to a physician's office during business hours, these families are much more likely to seek emergency care, which is costly. Today, seven states, 29 cities, two counties, and the District of Columbia have passed legislation ensuring that more workers have the ability to earn sick time off. Time to care for an ill family member or one's own illness, is good public health policy. The spread of influenza this year has been particularly alarming in Nebraska, which has seen 1,797 influenza-related hospitalizations in just January of this year, and 33 influenza-related deaths, including the death of one child this season. Research shows that a universal sick day policy reduced workplace transmissions by nearly 6 percent and that the provision of "flu days" reduced workplace infections of the flu by as much as 40 percent. The ability to earn paid sick leave varies significantly across industries and income levels, as previous testifiers have spoken to, which necessitates that a practical public policy intervention be made. Only half of workers in the service industry—those who are most frequently in contact with the public—could take time off for an illness without financial consequences last year. Disparity in access is particularly magnified among low-wage workers, who face the most pressure to continue working in spite of their illness or that of a family member. Last year, only 31 percent of workers in the service industry in the lowest decile of wages had access to paid sick leave. Evidence from comprehensive paid sick leave policies passed in jurisdictions across the country sheds some light on the cost of implementing such a policy in Nebraska. The results suggest that the benefits will far outweigh the cost to businesses. When surveyed, the vast majority of employers in these jurisdictions expressed that paid sick laws had a minimal financial impact, alongside positive business and job growth in the local economy. The benefit that paid sick leave provides to us all is far broader. Public dollars are saved in the form of reduced emergency room care and public assistance when a worker loses their job due to taking time off. Employers save in the form of increased productivity, lower turnover, and reduced rates of illness and injury. And, finally and most importantly, families win when children can receive timely and cost-effective medical care for an illness and when parents can take time off without worrying about a loss of income. We thank Senator Crawford for her leadership on this issue and this committee for their time and consideration and would respectfully urge you to advance the bill. Thanks. [LB844]

SENATOR ALBRECHT: Thank you very much. Any questions? Seeing none, thank you. [LB844]

JULIA TSE: Thank you. [LB844]

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SENATOR ALBRECHT: Do we have any other proponents wishing to speak to LB844? Hi. [LB844]

ROBERT SANFORD: (Exhibit 10) Hello. Good afternoon, Senator Albrecht and committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I am the legal director for the Nebraska Coalition to End Sexual and Domestic Violence. The Nebraska Coalition is a membership organization consisting of 20 nonprofit organizations providing support and advocacy services to victims of domestic and sexual violence throughout Nebraska. I am here today to offer the Nebraska Coalition's support for LB844. According to a 2003 CDC report, nearly 32,000 jobs were lost annually to intimate partner violence. When I train other professionals on issues related to domestic and sexual violence, I often hear someone ask a simple and common question, why doesn't the victim just leave? There are many answers to this question, but the underlying issue is that we as a society do not offer the support necessary for many victims to step away from the violence they experience. When I work with victim advocates, I hear the reasons specific to individual cases. For one victim it may be the need for housing that is paid for by an abuser. Another victim may need food for the children. Others remain with an abuser because they need insurance. Again, the underlying issue is often related to a financial situation and resources available. Victims are often encouraged by law enforcement, child protective services, or friends and family to get a protection order. Prosecutors wonder why a victim isn't present for a criminal trial. Time and again the concern of victims is a threat of losing their job, a threat of losing some form of financial stability necessary as the victim works toward a sense of safety. LB844 is a significant step toward providing victims an opportunity to seek help for domestic and sexual violence. By directing employers to provide a small amount of leave time that can be used by victims to seek medical attention, support services, or attend court hearings are providing an opportunity for victims to feel a sense of security in a time of chaos, security that as they process through the effects of the violence they live with they will be able to keep their job and provide for their family. This past week an advocate contacted me. She was working with a victim who lost her job because of a black eye, an injury that the client received from an intimate partner. Rather than having an ability to take time off to heal, her employer told her that she was being fired and that she could come back once she had left the abusive relationship. The response of this employer is not a response that supports victims facing tough decisions, decisions often based in part on a financial need. It is also not an individual employer's response as it is one that I have heard many times in various forms over the years. The Nebraska Coalition supports Senator Crawford's efforts to support victims of domestic and sexual violence through this bill. Why doesn't the victim just leave? Until we as a society finally recognize our role in supporting victims, victims will often feel trapped in the violence and chaos of an abusive relationship. We encourage you to advance LB844 for debate by the full legislature. Thank you. [LB844]

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SENATOR ALBRECHT: Thank you for your testimony. Any questions from the committee? Seeing none, thank you. [LB844]

ROBERT SANFORD: Thank you. [LB844]

SENATOR ALBRECHT: Any other proponents? Hi. Go ahead. [LB844]

ANGIE LAURITSEN: (Exhibit 11) Hello. My name is Angie Lauritsen, A-n-g-i-e L-a-u-r-i-t-s-e-n. Good afternoon Senators, and I thank you for this opportunity today to speak in favor of LB844. I am currently on the board of directors for the Survivors Rising. Survivors Rising is a working group dedicated to advocacy, education, and support for survivors of intimate partner abuse and domestic violence in the Omaha area. Our mission is to ensure the survivors' voice is represented in legislation and holding offenders accountable. My husband and I own and run a small employee engagement consulting business. I serve the people of Ward 2, City of Gretna on the City Council. And I'm also a survivor of intimate partner abuse and I'm here to tell you some of my story. The first 14 years of my life it was about survival, doing my absolute best to make it from one day to the next. My very first memory is seeing the aftermath of my mother being struck by my father. My next memory is of my brother flying through the air across the room, hitting the wall and falling to the floor. My father abused us verbally, physically, and sexually for 14 long years. Whenever my mom was home she tried to deflect his attention away from us, but she was not always at home because she had work to do. I remember being 13 and would wake up each morning and think to myself, I made it through another day. Now I have to make it through this one. After hearing about a particularly egregious abuse I had survived from my father, my mom had finally had enough and mustered the courage to leave. It was one of the hardest things that she'd ever had to do. After my story, my mother told us that we were finally leaving but we were to tell no one because we did not know what my father would do when he learned that we were planning to leave. The plan was to leave while my dad was at work that evening, but he unfortunately got off of work early and was home before we could leave. So after we listened to my father abuse my mother one last time, she finally came to our rooms after he fell asleep to get us out. As the sun was coming up, we got into her car and we drove away that Monday morning. We were absolutely terrified. But my mom didn't have any sick leave at her job, so she dropped us off at school, reminding us not to tell anyone about what had happened, and she went to work. We barely made it through first period before my brother broke down and told his homeroom teacher what had transpired when his class started to sing him "Happy Birthday." On that Monday, I spent most of the day sitting in a room alone between telling my story to strangers from social services, responding to sheriff's deputies, and being quizzed by school counselors. I was all by myself while our school was in lockdown because my mom had to go to work. The next day I had to give my formal statement to a detective on my own because my mom had to go to work. The moral of my story is that we should not have been at school at all that first day. Our mother should have been with us, holding our hand and telling us it was

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going to be okay. We needed as much strength as possible while we provided our statements. My mom wasn't there, not because she didn't want to be there, but because she had no other choice. She had to go to work. At that time there were no protections in place to protect my mother from losing her job during that awful time. A lot of things have changed since then, but not enough. Today, my mom might have had some sick days, but she likely would not have been able to use them for this kind of circumstance. While we would like to think that employers and managers would do the right thing in a situation like this, that's not the reality. Unfortunately, many businesses only provide safeguards for themselves in their policy manuals. They are in the business of risk management from their employees, sometimes at the expense of their employees. Your opportunity here today is to create policy so that no child or spouse has to go through what we did. Fear of losing a job should never be a part of the decision for victims trying to escape the violence of intimate partner abuse. In these situations the primary concern must be for the victim and their safety during the incredibly trying and often terrifying time. When a survivor makes the decision to leave, it is almost always at the very last moment with very little notice. Employers need to provide compassion to any victims and provide them the time to take care of themselves and their job should be waiting for them on the other side. This bill provides protection and support and hopefully a step-up for victims to provide them a way out without the fear of losing pay or worse, their job. Good employers will happily embrace this policy change. But, not all employers are good. That's why this legislation is needed. Please take this simple action to protect and make it a tiny bit easier for victims of abuse in our state to make it to their safety. Thank you. [LB844]

SENATOR ALBRECHT: (Exhibits 13-18) Thank you for your testimony. Appreciate it. Are there any questions? Seeing none, thank you for coming today. Okay. Any other proponents for LB844? Any other proponents wishing to speak? Seeing none, we'll start...do we have any letters? Okay, I'm going to read these proponents into the record: Mary Bahney, NASW-Nebraska Advocacy Chairperson; Karen Bell-Dancy from the YWCA; and John Antonich, Executive Director of NAPE and AFSCME, Local 61; and Tessa Foreman from the Nebraskans for Peace board of directors; Michelle Zych, Executive Director, Women's Fund of Omaha; and Kara Covrig from the Clark Creative Group. Those are all proponents. Okay. Next, we'll take the opponents for LB844. Opponents wishing to speak. [LB844]

SCOTT MOORE: Good afternoon, everyone. My name is Scott Moore, S-c-o-t-t, and I'm the chair of the Labor Relations Council for the Nebraska Chamber of Commerce and I'm also here representing the Greater Omaha Chamber of Commerce. In my spare time when I'm not volunteering for chamber duty, I'm a partner at Baird Holm law firm, where I practice labor and employment law and have done so for 25 years. I'm also the founder of the Best Places to Work in Omaha, which highlights those folks that are great places to work based on high engagement scores. So I'm here to testify in opposition of LB844 and thank you for your time with regard to that. The chambers certainly recognize the needs I think specified by the folks here earlier today

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in support of the bill. I can tell you from my experience with working with employers is we deal with all sorts of issues in today's society, from sick families, we definitely have folks pinched I think at both sides with regard to taking care of parents as well as taking care of their children, as we deal with that issue as well as we have employees who deal with abuse consequences. And so we...I certainly recognize those situations and our employers do as well. And I think we see greater and greater trends with regard to flexibility in both PTO programs that allows for those times off. I think we see greater recognition and from my perspective we tend to see differing workplaces because of technology. We have some folks that don't...you know, when they have a sick child they have technology at their disposal, they can do that work out of their car or in their home, wherever that might be and they have a flexible workplace. That's not true of everybody. Some folks need to clock in and have to have production done at a certain point in time. And so some folks have to show up to work to get it done and I think that's still the majority of the American work force and certainly that in Nebraska. And we believe the current bill would reduce some flexibility in the packages designed by employers currently. In my Best Places context, I really enjoy the competition produced by employers as they go out and try to seek the employment when we have this 2.7 percent unemployment and they're trying to attract people in and get the best talent in their door. They do amazing things to build up their people and to build up their work forces and they're competitive in that way, I do believe. One of the issues...so I think we have that with regard to the folks that are a little larger and folks that have the resources for it and they're working really hard just to find talent. And so I think the economy requires some degree of more of this. Likewise, I think because of the work force that they do have and the pinch I think between having children and parents who might need time off in addition to their own, they acknowledge this flexible type time-off system in order to account for that. The challenge on the economic side I think is for these small employers. If you have folks that have five employees and these businesses--generally we see most of them fail, quite frankly--as they struggle to try to survive economically, placing the burden for this particular challenge in our society on them is a tough one I think. We know that if there's somebody that's out...the challenge would be...in this particular bill, it allows folks to take in small increments and it says in small increments all the way on whatever your payroll system is. Most payroll systems is seven minutes. Even assuming you get to one-hour increments, that would be 40 different times off an employee can take. It allows no verification until they get three days or more, so that means you have roughly three days' worth of one-hour increments where folks can call off and not be at work and not demonstrate why they're absent in any way. The cost to employers can be pretty dramatic, in addition to the cost of just the wages for that particular day on that particular person. If I have to bring in temp labor to replace them, which is currently the state we see for FMLA employers and they typically pay for that, they also cost them the additional time for the replacement worker, which is greater than the original employee because of the temp labor market. So with that, I see I'm at my time. [LB844]

SENATOR ALBRECHT: You have one more minute. [LB844]

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SCOTT MOORE: Oh, thank you so much. So those I think are principal issues with the bill, so we encourage you to oppose LB844 and I thank you for your time. And if you have any questions, I'd be more than happy answer them. [LB844]

SENATOR ALBRECHT: Great. Thank you for your testimony. Any questions, Senators? Thank you for being here. [LB844]

SCOTT MOORE: Thank you all so much. [LB844]

SENATOR ALBRECHT: Next opponent. [LB844]

COBY MACH: Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h, here on behalf of the Lincoln Independent Business Association, LIBA. Small business owners certainly care about their employees and in many cases small business owners may already be providing time off for the reasons that are listed in this bill. But sometimes bills like this can mean the difference between a business staying open or closing their doors, either permanently or for a short time. Paying employees overtime to cover missed shifts and other expenses from the bill could be a big drain on small Nebraska businesses. Any new employee who's been on the job for 60 days would be eligible. The employee is only required to make a good faith effort in providing notice for time off needed. The employer cannot ask the employee to help find someone to cover his shift. The employer can only require documentation if the sick time exceeds more than three consecutive days. And also, employees are allowed to file claims against the employer if the employee feels that they were demoted for the use of the sick time. And if the commission or the courts find in favor of the employee the employer has to pay the associated attorney fees. However, no attorney fees are awarded to the employer if the allegations are proved to be false. We know and recognize it's tough to be an employee today. It's also tough to be an employer. We have approximately 1,400 dues paying members in our organization. Some of them ask us to divide their dues into 12 monthly payments and we deduct it from their checking account every month. Every month the bank sends me a letter that we have one to three businesses that \$23 did not clear their checking account. Just because you're a business owner and you're striving to provide jobs and striving to provide and make a living does not mean that you're sitting there cashing it in every day. It's tough to be a small business owner in our community. So we would ask you to oppose the bill. Thank you. [LB844]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Thank you for coming today. [LB844]

COBY MACH: Thank you. [LB844]

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SENATOR ALBRECHT: Any other opponents wishing to speak? [LB844]

ROBERT J. HALLSTROM: (Exhibit 12) Chairman Albrecht, members of the Business and Labor 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 National Federation of Independent Business to testify in opposition to LB844. NFIB is generally opposed to government mandated benefits, preferring the flexibility to set benefit plans that best suit the needs of the employer and its employees. Small businesses, as has been suggested, are particularly hard pressed to fill in the gap when they have employees that are absent for any particular reason. And as a result they are the most hard hit by this type of a mandated benefit. If they have temporary employees, they end up paying twice for the same work. They may have to pay their employees overtime if they have to fill in the gaps with the existing work force or they may just fall behind in terms of their ability to meet production needs. So as a result, again, this is going to fall most hard on those small businesses. There have been some statistics or studies that have shown that in those cities where the sick leave type of proposal has been adopted, that employers in some cases have responded by reducing benefits, reducing vacation time, and so forth. So, again, for small businesses the flexibility to tailor that package of benefits as they see fit is in their best interest and they believe in the best interest of their employees as well. We would also express our objections to the provisions in the bill that grant a private right of action, which will expose employers to law suits that may or may not have merit and may result in additional legal expenses being incurred. With that, I'd be happy to address any questions of the committee. [LB844]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions of Mr. Hallstrom? Thank you for being here. [LB844]

ROBERT J. HALLSTROM: Thank you. [LB844]

SENATOR ALBRECHT: Any other opponents wishing to speak. [LB844]

RICH OTTO: Good afternoon. Chairwoman Albrecht, members of the committee, my name is Rich Otto, R-i-c-h O-t-t-o. I'm a registered lobbyist for the Nebraska Grocery Industry Association, Nebraska Retail Federation, and the Nebraska Restaurant Association. I'm testifying in opposition to LB844 for all three organizations. Once again, this bill does require mandatory sick or safe leave for any employer with four or more employees. We represent a variety of small businesses from across the state of Nebraska and this requirement would cause a hardship for those business owners who already are having a difficult time. We strongly believe that the benefits offered to employees should be left up to the business owner. This is a business decision and should remain so. Once again, the flexibility in what benefits you offer. We believe that government should not require businesses to force employers, many of those simply can't

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afford to offer these benefits. Once again, the provision that doesn't allow employees to cover the shift is also one that we find not helpful when trying to keep the business going and keeping all of the staff involved. With that, any questions you may have. [LB844]

SENATOR ALBRECHT: (Exhibit 19) Thank you for your testimony. Do we have any questions? Thank you. Okay. The next opponent wishing to speak to LB844. Next opponent. Seeing no other opponents, we have one other letter: The Nebraska Cooperative Council, Rocky Weber, is an opponent. Do we have anyone wishing to speak in neutral capacity? In a neutral capacity, anyone wanting to come forward on LB844? Seeing none, Senator Crawford, would you like to close? [LB844]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht and committee members, for your attention to this bill and I appreciate the testimony of the people who have come to support and concerns raised by those in opposition. And I just want to thank those who have come forward, especially those who've come forward with difficult personal stories to tell that I know can be an intimidating process and I appreciate that time and attention to bring those stories forward to tell...to let us know why this is so important in people's lives and why it's so important to the children as well as the parents in terms of making sure this leave is available. I know that many employers care deeply about their workers and that competition is important in terms of providing opportunities for employers to offer benefits. But, colleagues, I'll remind you that in 2017--so these are 2017 statistics--we still have over 45 percent of Nebraskans with no sick leave and we still have 70 percent of low-wage workers with no sick leave, no safe leave. So I believe in a very tight labor market that's evidence that the market alone or the goodwill of the employers alone is not solving this problem. And there are times when we need to step in to say there's a bare minimum standard that we think is critical to protect the workers in our state. And I do believe that this bill tries to...this bill sets forward a minimum standard in terms of being able to earn a week of paid sick leave and being able to make sure that workers would be able to use that leave when necessary to do the work that's required to get out of an unsafe situation. And so I urge your support of the bill and urge you to recognize that there are some times when the state does have to determine a base, set standard for workers. And that's part of our job as Business and Labor Committee is determine what those base-level requirements are that are critical in terms of protecting the safety and welfare of the workers in our state. So with that I'll conclude and be happy to try to answer any questions. [LB844]

SENATOR ALBRECHT: Great. Do we have any questions for Senator Crawford? Seeing none, thank you for bringing this to our attention. Next we will have Senator Hansen on LB916. Okay. So if anyone is staying for LB916, please stay in your seats. Anyone...we have a small room today so we're kind of bringing folks in and out as we can. We'll give it a few minutes here. Okay. I think we're ready to get started. Okay, this is...Senator Hansen, you can open on LB916. Thank you. [LB844]

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SENATOR HANSEN: (Exhibits 1, 2) Thank you. And thank you and good afternoon, Chairwoman Albrecht and fellow members of the Business and Labor Committee. My name is State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB916, a bill that would help protect employees when an employer fails to pay them owed wages, commonly referred to as wage theft. Specifically, LB916 prohibits retaliation or discrimination by an employer against an employee or an applicant for employment because they filed a complaint or participated in other action concerning a violation of the Wage and Hour Act or the Wage Payment and Collection Act. Just for clarity, the Wage and Hour Act sets and enforces the minimum wage for workers, which is now \$9 per hour, while the Wage and Payment and Collection Act sets certain rules for paying wages to all employees, the main rule being employers must pay wages due on regular paydays. Others include: not deducting or withholding pay unless there was a written agreement with the employee; providing wage statements on each payday showing hours worked; and all deductions and all pay in wages owed upon separation. What this means currently though is an employer can violate one of these two laws under those two acts, such as failing to pay wages owed, and then the employee can file a complaint against the employer for that violation, and then the employer can retaliate against that employee even in the rare occasion that a penalty is actually levied against the employer by the courts or the Department of Labor. That means an employer can fire an employee for filing an accurate complaint for unpaid wages. They can fire an employee if they complain that their tips don't amount to the minimum wage and the difference isn't covered. They can fire an employee for filing a complaint that their paydays were altered without notice and they can legally fire an employee in these circumstances, but they could also retaliate in other ways, such as moving them to less desirable shifts, reducing hours, or other repercussions. According to the National Employment Law Project, retaliation is relatively common, as there are wage violations for which employees file complaints that starts this entire process. A national survey found that 43 percent of workers who complain to their employer about their wages or working conditions experience some form of retaliation. The same survey found that about 20 percent of those surveyed never made complaints in the first place for fear of retaliation. In order to properly enforce these wage laws already on the books we need to create a system where our employees feel safe to come forward if violations occur. So every day thousands of responsible employers comply with our wage laws in Nebraska. When we allow competitors to undercut them by failing to pay employees wages owed to them we start a race to the bottom throughout the entire labor market. Fighting wage theft is not about adding new burdens onto law abiding employers, it is about smarter enforcement of laws that are already on the books, closing clear loopholes, and enacting stronger enforcement tools. Nebraska voters recently voted to increase our state's minimum wage, but that achievement is undermined if we do not instill the proper enforcement mechanisms. This bill is a small measure to attempt to do that. I'll end on this note: Unlike common legislation other states deal with this issue, this bill would not go as far as to add new employer penalties for retaliation but will instead allow those affected to get relief in court, something that from my standpoint was surprising and I was disappointed it was not already in

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current law. I will note that I passed out two additional letters of support that came in over the weekend from: the National Employment Law Project; and the League of Women Voters of Nebraska. With that, I will close my testimony and ask the committee to advance LB916. [LB916]

SENATOR ALBRECHT: Great. Thank you for opening. Questions? Senator Halloran. [LB916]

SENATOR HALLORAN: Thank you, Chair Albrecht. Senator Hansen, would you look back through your testimony and repeat for my benefit one, I think a comment was made about the possibility of it is considered to be retaliation if an employer fires an employee for not accurately (inaudible) their tips? Did I catch that right? [LB916]

SENATOR HANSEN: Oh, no. It's not...it would...I'm sorry. One of the things that's enforced under the act is whether or not if your tips fail to meet minimum wage and you report your tips as less and the employer does not bring it to minimum wage, that's one of the things covered by the Wage and Hour Act. [LB916]

SENATOR HALLORAN: What if an employer finds that they are inaccurately declaring their tips? [LB916]

SENATOR HANSEN: Sure. I don't believe my bill would cover that situation. An employer could fire somebody if they were falsifying their pay stubs. [LB916]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony. [LB916]

SENATOR HANSEN: Thank you. [LB916]

SENATOR ALBRECHT: And I will ask for proponents of LB916. Proponents wishing to speak. Hello. [LB916]

MATT SCOTT: Good afternoon. My name is Matt Scott, M-a-t-t S-c-o-t-t. I'm a carpenter representing Local 427. We're in support of this LB916 because it protects the rights of workers who want an honest day's pay for an honest day's work. If an employee is not paid what he is owed, he should have the right to report his employer without fear of being retaliated against. As carpenters, we have seen this example play out many times. We've seen exploited workers actually choked down on the job site for asking for overtime. We have seen workers fired for asking about unemployment. We've seen people fired for trying to put a lien on a building that

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they weren't received wages for. So we would ask that you support this and thank you for your time. [LB916]

SENATOR ALBRECHT: Great. Thank you for your testimony. Any questions? Seeing none, thank you very much. Do we have any other proponents wishing to speak to LB916? [LB916]

JUAN ALVARADO: Good afternoon, my name is Juan Alvarado, it's A-l-v-a-r-a-d-o, and I'm here to testify on behalf of LB916 as a proponent. I am a carpenter also. I am from Local 1306 Interior Systems. And like my partner has said, we have seen this numerous times. Especially in the Hispanic community we feel intimidated. You know, the language barrier comes into play a lot. And they say...if you say something in regards to overtime that you're owed they've been threatened with ICE, they've been threatened with deportation. Sometimes employers have housing for them. They say, you like where you live? This is the way we're going to treat you. I think my parents left a country a long time ago and I left the state and I'm in Nebraska, my new home. And I believe that Nebraska is a lot better. I believe that Nebraska stands by the working man. I made Nebraska my home and I am very thankful that my parents did that a long time ago and I think I believe in the rights that we have as U.S. citizens here. And I just ask that the senators and everybody who has the opportunity to make this bill just another reinforcement that the working man has the right to be heard and not jeopardized when he tells something. That's all. [LB916]

SENATOR ALBRECHT: Very good. Thank you for your testimony. Any questions? Seeing none, thank you for being here today. [LB916]

JUAN ALVARADO: Thank you. [LB916]

SENATOR ALBRECHT: Okay. Do we have any other proponents wishing to speak to LB916? [LB916]

JIM TEUTSCH: Good afternoon. Senator Albrecht, members of the committee, my name is Jim Teutsch, J-i-m T-e-u-t-s-c-h. I'm a local union steward, Local 293 in Fremont, Hormel. I'm here in support of LB916, which Senator Hansen has proposed. I truly believe this bill is needed. As a steward I have seen firsthand company harassment of employees, company decisions made that to me seem erratical and I could easily see where retaliation would come in. I've also worked in nonunion plants and I've seen firsthand where nonunion employees are constantly put under the gun and constantly mistreated. One section, I represented a gentleman and before I even met the gentleman the company said, this gentleman has a problem with authority. And to me, not even meeting him, that misjudged him. And I could easily see where this could construe against him. On that behalf, I'll take any questions. [LB916]

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SENATOR ALBRECHT: Great. Thank you for your testimony. Senator Crawford. [LB916]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for the testimony. Can you describe what a situation would look like, how that situation would be different if this bill were to pass, the one you were just describing? [LB916]

JIM TEUTSCH: If this bill were passed...I can speak of both. We work under a contract. I help negotiate that contract. So locally I've worked 35 years at Hormel and I could see where Hormel would not force somebody not to get overtime. We work under union rules, so there is seniority and things like that. Under not a contract where I have worked in several packing houses in Omaha, I could see where a supervisor would come to you and say...and I can personally testify that I cut my thumb at one plant and I worked at another plant and they had a recall where they were calling me back. And the current employer said, I'll give you \$2 more an hour if you stay here. You don't want to go work for him. I was insulted, because now I am worth \$2 more an hour? To me, that was terrible. I can see this legislation would come into place to be able to help people who don't have a contract, who don't have that union over their head and to help them with retaliation that would come back to haunt them or overtime or things like that. I could certainly see that. [LB916]

SENATOR CRAWFORD: Thank you. Thank you. [LB916]

SENATOR ALBRECHT: Any questions? I'll have just a quick one. So at this point, with...so you're union. Do you work with union and nonunion in your Hormel plant? [LB916]

JIM TEUTSCH: Yes, we are a right-to-work state so, yes, I do represent both. [LB916]

SENATOR ALBRECHT: Both. So if a union person had a dispute, would he come to you to have...do you help them with it? And would his complaint be public knowledge to the company that he complained? [LB916]

JIM TEUTSCH: Yes, both union and nonunion. I represent both. [LB916]

SENATOR ALBRECHT: Okay. So it would be out in the open who complained about what and was looking for restitution somehow, some way. But you really feel that if they complain the owners have an issue with that person? [LB916]

JIM TEUTSCH: Senator, I know there are restrictions in place where you are not to speak on things that were on their behalf. I'm going to say I live in this world and people will go the extra

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mile to find out who did the restitution or did things like that. And I do think that this legislation does need to protect those people and I think that's what it does. [LB916]

SENATOR ALBRECHT: Okay. I appreciate that. Thank you. [LB916]

JIM TEUTSCH: Thank you. Any more questions? [LB916]

SENATOR ALBRECHT: I think we're all good. Thanks. [LB916]

JIM TEUTSCH: Thank you. [LB916]

SENATOR ALBRECHT: Okay. Do we have any other proponents wishing to speak to LB916? [LB916]

SUSAN MARTIN: (Exhibit 3) Good afternoon again, Senator Albrecht and the members of the Business and Labor Committee. My name is Susan Martin S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska state AFL-CIO and all working families in the state of Nebraska in support of LB916. It is unlawful for an employer to terminate or discriminate against workers for asserting their rights. Protecting workers from retaliation and ensuring that they do not face threats or intimidation for exercising their rights is and should be an important priority against discrimination. Effective laws aid in the prevention of inappropriate manipulation by parties who seek to prevent workers from exercising their rights or retaliating against them when they do. You earn a day's wage, you should get paid that wage. When that doesn't happen, Nebraska provides action through the Nebraska Wage Payment and Collection Act. The law now requires an employer to be accountable, but so many times an employee feels that because of possible retaliation they choose not to seek what is due to them. We need to hold an employer not only accountable for the Nebraska Wage Payment and Collection Act law, but also accountable for not punishing those who file a complaint or participate in an investigation, proceeding, or action concerning a violation of the act. They are exercising their rights. This shouldn't be a detriment when trying to obtain employment or collect what is due. This is an extremely important bill that will ensure worker protections and just makes good sense. I thank Senator Hansen for introducing this bill and ask for your consideration in passing this out of committee. [LB916]

SENATOR ALBRECHT: Thank you. Do we have any questions for Ms. Martin? Senator Crawford. [LB916]

SENATOR CRAWFORD: Thank you. So the bill protects only the person making the complaint, but anyone else who testifies in support and participates in the investigation of the act...so I

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wonder if you could speak to the kinds of people that this might help or protect when they're trying to help other workers. [LB916]

SUSAN MARTIN: Oh, I think anyone that's asked to witness in that violation, it would be probably a group of workers or other workers it probably affects. [LB916]

SENATOR CRAWFORD: Thank you. [LB916]

SENATOR ALBRECHT: (Exhibit 5) Any other questions? Seeing none, thank you for coming today and testifying. Other proponents of LB916 wishing to come forward. Any other proponents? Seeing none, I have a letter from NAPE/AFSCME Local 61, and it's John Antonich, executive director in support of LB916. Okay. We're going to start with opponents of LB916. Do we have any opponents wishing to speak? [LB916]

SCOTT MOORE: Good afternoon again. My name is Scott Moore, S-c-o-t-t M-o-o-r-e, here opposing LB916 on behalf of the Nebraska Chamber of Commerce as well as the Greater Omaha Chamber of Commerce. I thought I'd make a couple of observations about the...and I described earlier my practice of labor and employment law. The Nebraska Wage Payment and Collection Act is probably one of the most used in litigation in Nebraska between employers and employees and that reason is primarily around the dollars. So you can collect double wages, as well as a triple wage, that goes to the Nebraska school fund--I think it was (inaudible) I believe, kind of like a traffic ticket--in addition to attorneys fees. So we often find litigation in other areas and then there's a tack on of a Nebraska Wage Payment Act claim because of the attorneys fees option, which you don't always see in all litigation if it was a typical contract claim or something along those lines. So it's a well-used statute, I would say. It gives employees, I would say, greater rights and greater leverage over employers than you see in most because of that odds of tripling up your dollars. And so if an employer has a...if they have a legitimate dispute about a big bonus or about dollars, that money can increase at a pretty great rate when you go from one times to three times, plus lawyers fees. So with that, I believe it's already a statute that's pretty well used and this would most likely add a component of retaliation. We know that the addition of retaliation in other statutory provisions has now created retaliation is the number one claim filed, because it's encouraged to be filed at the agency levels and so we have that. We also have, in terms of protections, I think maybe this goes beyond what is already used out there. And one is, there's a public policy exception that the courts recognize that if you're defending yourself in terms of another legal right, there's a public policy exception for that. And we've codified some of that under the--which is kind of an odd place to put it, but it works--is in the Nebraska equal opportunity law, which is 48-114(3), which creates an anti-retaliation provision, essentially for any employee who participates in an activity which is considered unlawful by state or federal laws and the employer takes a negative action with regard to that. It allows the employee to use

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that charge filing process, which is something they can do free of charge and the agency will accept those charges and look into those actions currently. So, conceivably, it fits into that realm as well. So with that, I encourage opposition to the bill and would take questions you might have. [LB916]

SENATOR ALBRECHT: Thank you for testifying. Senator Halloran, question? [LB916]

SENATOR HALLORAN: Chairwoman Albrecht. Mr. Moore, so there are numerous complaints filed in regard to the Nebraska Wage Payment and Collection Act? [LB916]

SCOTT MOORE: I deal with them pretty regularly. I don't know that it's always filed in court, but if an employee...it's usually upon departure if there's dollars there and they're disagreeing on. I see it in cases where there are calculations to be made, commissions, bonuses. Did they do what they were supposed to do, did they not do what they were supposed to do to get the dollars and so there's a debate about the amount. That's where I see it most frequently. And so in those scenarios the phone call may come or the letter may come and it may be resolved there, but we see pretty frequent litigation as well. [LB916]

SENATOR HALLORAN: Another question. I assume that not 100 percent of those complaints are concurred with by the court or some other (inaudible). [LB916]

SCOTT MOORE: Oh, yeah. Whether the courts looked at all this? [LB916]

SENATOR HALLORAN: I'm sorry. [LB916]

SCOTT MOORE: Is that what you said, whether they're 100 percent concurred in by the court? [LB916]

SENATOR HALLORAN: Right. [LB916]

SCOTT MOORE: No. I don't know what the percentage are. It seems to me if you're an employer, if you're going to litigation on that topic you know you've got a pretty good risk because of the triple damage and the attorneys fees component. You know that if you're going there you better have a pretty good case. [LB916]

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SENATOR HALLORAN: I guess the point of my question is, and it's not a question for you, I guess I could ask Senator Hansen or some other person testifying maybe after the proponents are done. [LB916]

SCOTT MOORE: Sure. [LB916]

SENATOR HALLORAN: Whether or not...if one of those cases are turned down in the court as being, say, frivolous, would it be fair for that case to be considered retaliation against... [LB916]

SCOTT MOORE: Yeah, so there still could be. So it seems to me if I raise a...similar to the equal opportunity laws, if I raise a concern about discrimination, it turns out that my concerns weren't valid, but yet there's negative consequences to me on my job, then there still could be a retaliation claim and still have success on that retaliation complaint if the employer was retaliating based upon them bringing forth a good faith concern that they've been discriminated against in some way. [LB916]

SENATOR HALLORAN: Even if the case was deemed frivolous? [LB916]

SCOTT MOORE: Even if...if it was deemed frivolous, probably not, if it was not in good faith. The standard used by most courts is if...you know, a good faith concern, then you can still file a retaliation complaint. If it was me just making stuff up and it was frivolous to try to get at my former employer, you know, maybe I was upset about something, they probably wouldn't. [LB916]

SENATOR HALLORAN: Thank you. [LB916]

SENATOR ALBRECHT: Questions? Senator Crawford. [LB916]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you for being here, Mr. Moore. [LB916]

SCOTT MOORE: Thank you, Senator. [LB916]

SENATOR CRAWFORD: So when you were talking about the kinds of cases that you address, you're talking that it's quite often issues of compensation and it sounded more like they might be managerial concerns. So I wondered if you could address the percent of cases where you might

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be addressing someone who has been denied overtime pay or some other hourly worker kind of issue. [LB916]

SCOTT MOORE: Okay. So in that context, number one, the math is usually easier. So if it's an hourly worker, they've worked it or they didn't work it and so there's usually not a lot of dispute under that. And if it's an overtime issue or even a wage issue that connotes overtime, then you have the Federal Department of Labor who has their investigative team who would come and look at that and issue that determination. So usually employees use that route to make their complaint. In addition, the state of Nebraska now allows for Nebraska Wage Payment and Collection Act to be a claim brought to our own Department of Labor, state based. So usually, those calculations I find to be simpler and sometimes less debatable as, like I said, bonus or incentives, things that require someone to make a decision about their performance or production on some of them. But if it's an hourly type person, they worked it or they didn't work it, the employer is required to keep track of all those hours and the wage rate. So the employee's complaint can either be Department of Labor, Nebraska Wage Payment and Collection Act. It's usually the federal and as you get into the court system, the courts typically defer to the federal law on overtime wage payment for those issues as opposed to the Wage Payment and Collection Act and don't let you double, triple those dollars. [LB916]

SENATOR CRAWFORD: The federal law? [LB916]

SCOTT MOORE: The federal law would generally take precedent over that state. So if it was an overtime issue...so like if I said they weren't calculating my time correctly or my dollars correctly and I had overtime I was due, that would typically be processed under the federal Fair Labor Standards Act type of claim on that overtime. [LB916]

SENATOR CRAWFORD: Okay. And in those cases, there does then exist a recourse in terms of the court? [LB916]

SCOTT MOORE: Certainly. Yeah, you can bring it both to the agency who processes it well in this district. I really admire the folks that do that at the Department of Labor in our region. They do a great job and work well with employers to get the word out and communicate to them and make sure...remind them of their obligations. And then...but you can also bring an independent claim. So if you went and talked to a private attorney and you choose to file your overtime claim there, you can file under federal law...by either the federal or state court system. [LB916]

SENATOR CRAWFORD: All right. Thank you. [LB916]

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SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony. [LB916]

SCOTT MOORE: Thank you so much. [LB916]

SENATOR ALBRECHT: Okay. Any other opponents wishing to speak to LB916? [LB916]

ROBERT HALLSTROM: (Exhibit 4) Chairman Albrecht, members of the Business and Labor 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 National Federation of Independent Business to testify in opposition to LB916. LB916 would establish a new cause of action and provide damages or recovery in the form of injunction or general and special damages for those violations. Obviously, small business owners do not condone retaliation or discrimination, but we are concerned with the private cause of action, coupled with the level of damages that are recoverable under LB916, will serve to increase the likelihood that employers will be subject to spurious lawsuits. The scenario will be that if you file the complaint or testified or participated in a proceeding, any potential adverse action whether justified or not could form the basis for a lawsuit and require the employer to incur expenses in connection with defending that particular lawsuit. For those reasons we'd request that the committee indefinitely postpone LB916. I'd be happy to address any questions of the committee. [LB916]

SENATOR ALBRECHT: Any questions for Mr. Hallstrom? Seeing none, thank you being here today. [LB916]

ROBERT HALLSTROM: Thank you. [LB916]

SENATOR ALBRECHT: Any other opponents wishing to speak to LB916. Opponents. Any other opponents? Letters? No letters. Do we have anyone in the neutral position that would like to speak? Anyone in neutral? Seeing none, Senator Hansen, would you like to close? [LB916]

SENATOR HANSEN: Thank you. Thank you, committee members. Thank you, Chairwoman Albrecht, for hearing this bill and for giving me the opportunity to present it. Just kind of a couple of comments, a little stream of consciousness in closing. So listening to some of the...first off, let me say that some of the testifiers in support absolutely show the cause and need for that. I've actually been a victim of wage theft back in my previous career and actually was young enough, didn't have the wherewithal to actually file a wage complaint to get paid. I just went without that paycheck because of that. So it does happen. It's not a case of something that never happens. It certainly does happen. And it happens in varying different industries and different

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avenues at probably different amounts. Listening to the gentleman--I'm sorry I missed his name--from the chamber talk about...he was describing that there are currently causes of actions in order to recover these lost wages. And I absolutely agree. That's the basis of my bill is that this already exists, there's just not a protection from...even if you prevail with a successful claim, coming back and being retaliated against, and that's what I'm trying to stop. So it's kind of that disconnect. I also felt there was a disconnect between the chamber who was acting as if my bill did nothing new and the Federation of Independent Businesses that my bill changed all sorts of things and created all sorts of new causes of actions. I think right there, just hearing those two testifiers testify after each other, there's probably already some different perspectives about what opportunities and what options are available. My intent was not necessarily to turn the labor and employment world and lawsuit world on its head. My opportunity was just to give...my intent was just to give employees some comfort knowing that they could come forward, file a wage complaint with the Department of Labor, do something in that avenue and know they can't be retaliated against, because there's a lot of instances where it's somebody who's maybe they've got a way...if they're arguing about maybe ten hours of overtime and their boss is being really stubborn and not paying it disagree with about that, they might be able to prevail on the ten hours of overtime, but they might not have a job at the end of it. And so that's kind of the calculus they've got to do or those ten hours of that one paycheck, is that worth the risk of the retaliation that might come? So that's the issue I was trying to work on with LB916. I'd be happy to work with the committee on it. [LB916]

SENATOR ALBRECHT: Any questions? Senator Hansen, if somebody did have a dispute over ten hours' worth of overtime and was let go at the end, whether he received the ten hours or didn't, if the Department of Labor...if they said that they let that person go, wouldn't the Department of Labor have a question to the employer and the employee why they released the person from employment? That the employee is going to say one thing, the employer is going to say another. Is there anything that happens at that level for the employee to have any say or be able to tell someone that they have been treated unjustly at that point? [LB916]

SENATOR HANSEN: Currently, I don't think there would necessarily be an avenue to. Under my bill there would. And then if there was an allegation that they'd been retaliated against, the Department of Labor could look at it and decide whether or not they did feel it was a retaliation issue or not. Obviously, there's going to be some circumstances where you might...it might file a wage claim but by the time your company's going to do layoffs and the layoffs are coming no matter what and so you might feel it was retaliatory and it actually isn't. And then I believe the Department of Labor could come in and kind of examine it from there. [LB916]

SENATOR ALBRECHT: It would be interesting to find out if they have any statistics where people get let go for reasons like that and nothing is done and now we're paying unemployment. So it would be a question for the department, if you would. [LB916]

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SENATOR HANSEN: Absolutely. [LB916]

SENATOR ALBRECHT: Any other questions? Seeing none, we'll close this public hearing. [LB916]

SENATOR HANSEN: Thank you. [LB916]

SENATOR ALBRECHT: And thank you for being here and presenting it, Senator Hansen. Senator Pansing Brooks, do we know if she's available or if she's here? Is she there? Oh, she has snuck in, in the back. Okay, perfect. Okay, somebody need a break or are you doing okay? Okay, we'll just be a few minutes. [LB916]

BREAK

SENATOR ALBRECHT: Senator Pansing Brooks, welcome. [LB843 LB1014]

SENATOR PANSING BROOKS: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Now I understand we're going to combine two bills into one, both for the testimony and the proponents, opponents, neutral, and letters, all in one, correct? [LB843 LB1014]

SENATOR PANSING BROOKS: That's correct. Thank you for allowing us to do this. [LB843 LB1014]

SENATOR ALBRECHT: Okay, and also the letters that had...there's none...none of the letters are here in this stack, correct? [LB843 LB1014]

SENATOR PANSING BROOKS: (Exhibit 1, 2, 3, 4, 5, and 6) Yes. I have some letters that I was hoping...I think that some came in this weekend. [LB843 LB1014]

SENATOR ALBRECHT: Just a few came in on Sunday. So what we told everyone in the beginning is that the senators would be providing the letters to us so that we could get those in all of our notebooks and for the record. [LB843 LB1014]

SENATOR PANSING BROOKS: Okay. [LB843 LB1014]

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SENATOR ALBRECHT: So she can go ahead and send those around as well. [LB843 LB1014]

SENATOR PANSING BROOKS: Thank you. And I want to thank Kylie for her kindness in passing all this out. [LB843 LB1014]

SENATOR ALBRECHT: Yes. Good gal. Glad to have her. [LB843 LB1014]

SENATOR PANSING BROOKS: We killed a few trees, I guess, unfortunately. [LB843 LB1014]

SENATOR ALBRECHT: Okay, so we'll let you go ahead and get started with your testimony. [LB843 LB1014]

SENATOR PANSING BROOKS: Okay, thank you, Chair Albrecht and members of the Business and Labor Committee. For the record I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent District 28, right here in the heart of Lincoln. I'm here today to introduce LB843 and LB1014, two bills designed to help close the pay gap between men and women. Both bills protect employees who disclose wages, but one bill offers a more comprehensive approach to the pay gap problem. These bills are important because women continue to earn considerably less than men for doing the same work. According to the U.S. Census Bureau, nationally women earn 80 percent of what their male counterparts make for full-time, year-round work. However, in Nebraska, full-time working women earn 73 cents for every dollar earned by men, according to the Institute for Women's Policy Research, which I've provided to you. While the pay gap has slowly moved in the right direction, it has been far too slow, in my opinion. Projections from the Institute for Women's Policy Research shows that Nebraska will not close its wage gap until 2066 if the earnings of men and women continue to change at the current very slow rate. Women are almost half the work force and receive more college and graduate degrees than men, yet this wage gap persists. The Institute for Women's Policy Research also conducted a study on the gender wage gap by occupation, race, and ethnicity, which I've also provided to you. It shows that women earn less than men in both the most common occupations for women, and the most common occupations for men. For instance, accountants and auditors are among the most common occupations for women, yet they earn 70.6 percent of what their male counterparts do in those occupations. So that's 70 cents on the dollar, basically. Women financial managers earn 69.3 percent of their male colleagues in the same position. As their report shows, the problems exist for women of all races and ethnicities. African-American women face considerable hardship however; their median earnings in all occupations are \$641 compared to \$1,025 for white men in the same position. The bills I bring before you today both seek to help remedy the pay equity problem. LB843 provides that an employer shall not require nondisclosure by an employee of his or her wages; or coerce, intimidate, or threaten an employee to discourage

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disclosure. An employee may also not take any adverse actions against...an employer may not take any adverse actions against an employee or retaliate against them or discharge them if they disclose wages. An employer retains the right to inquire, discuss, or disclose comparative compensation information for the purpose of determining whether the employer is compensating an employee in an amount that provides equal pay for equal work. LB843 also provides that an employee may bring a civil action against an employer for violations of this act. The bill lays out remedies that are available in such a civil action. This will ensure compliance with the law. It is important to note that Senator Tanya Cook brought a similar bill in 2015 and this committee advanced that bill. One thing I did differently in this bill was to include, in LB843, was to include language taken verbatim from a bipartisan wage disclosure bill that Senator Deb Fischer has introduced at the federal level. Subsection (2) in LB843 includes that language. I have provided copies of Senator Fischer's bill to you so you can see the similarities. The other bill I'm introducing today is LB1014. This bill takes the entirety of LB843, including Senator Fischer's language on wage disclosure, that also provides a more comprehensive approach to the pay equity issue. LB1014 addresses the persistent disparity and pay between men and women by broadening the existing standard for equal pay for equal work to require employers to provide for equal pay for comparable work. Comparable work means work that is substantially similar in skill, effort, and responsibility, and is performed under similar working conditions. LB1014 also encourages employers to examine their own pay equity practice by providing them an incentive for them to do so. Specifically, if an employer has completed a self-evaluation of its pay practices in good faith and can demonstrate that reasonable progress has been made toward eliminating any wage differential for comparable work based on sex and in accordance with the evaluation, the employer shall have an affirmative defense to liability for any violation of the pay discrimination. The bill directs the Nebraska Equal Opportunity Commission to develop a standards self-evaluation form or model for self-evaluation of pay practices to assist employers in eliminating wage differential for comparable work based on sex. This is a way to provide clarity to employers and to help them avoid liability. So it's really a business-friendly approach to the problem. It's a way to allow employers to help proactively close the pay gap between men and women and show their own employees that they are committed to doing the right thing. These bills are important because the numbers in lost wages really add up. The National Women's Law Center shows that a woman typically loses \$418,800 over a 40-year career based on today's 80 cents on the dollar wage gap. And again, in Nebraska it's 73. This means that a woman has to work an additional ten years to make what a man makes in 40 years nationally. Clearly, lost wages directly affect the vibrancy of our economy. However, these earning differentials hold an especially significant and immediate impact right now for single women with children struggling to get by. A woman working retail earns 70.4 percent of what her male colleagues earn according to the Institute for Women's Policy Research. When you consider that the cost of child care accounts for a third of the average person's income, according to Child Care Aware, it's not hard to see how much negative impact these pay differentials have on women struggling to provide for our Nebraska children. Women can't wait until 2066. We need

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to address this problem now. With LB843 and LB1014, I hope I have provided the Business and Labor Committee with two effective options for moving forward to address pay equity this year. You'll see a fiscal note of \$2,500 on LB1014, but as the fiscal notes states, that minimal impact can be absorbed by the Nebraska Equal Opportunity Commission with existing resources. So there would be no General Fund impact. In closing, I ask you to advance at least one of these bills so we can help close the wage gap that is holding so many working Nebraska women behind. And with that, I'd be glad to answer any of your questions or refer them to the experts behind me who are going to testify today. Thank you for your time. [LB843 LB1014]

SENATOR ALBRECHT: Okay, do we have any questions on LB843 before we move on? Do you have any questions? Can I just ask real quick... [LB843 LB1014]

SENATOR PANSING BROOKS: Sure. [LB843 LB1014]

SENATOR ALBRECHT: ...you were talking about the fiscal note, I don't see an actual number on a fiscal note. [LB843 LB1014]

SENATOR PANSING BROOKS: On the second or third page. If you look at the fiscal note that was prepared, it says prepared by Liz Hruska, it's the second and it's...it says there will be a minimal one-time cost to the EEOC which can be handled within its existing resources. [LB843 LB1014]

SENATOR ALBRECHT: Okay, but there's not a dollar amount for anything else. [LB843 LB1014]

SENATOR PANSING BROOKS: Oh, sorry. And then on the last page they...because it...it says \$2,500; on that one that is taped together. I can give you a copy of mine. [LB843 LB1014]

SENATOR ALBRECHT: Yeah, because mine shows no (inaudible) amount, so that's why I was asking. [LB843 LB1014]

SENATOR PANSING BROOKS: Yeah. [LB843 LB1014]

SENATOR ALBRECHT: But you're just talking about LB843 at this point, right, not on (inaudible)? [LB843 LB1014]

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SENATOR PANSING BROOKS: This is on LB1014. LB1014. LB843 does not have a fiscal note. LB1014, at the minimal \$2,500... [LB843 LB1014]

SENATOR ALBRECHT: Hold on here...okay, there's that one. I looked at it as LB1014, so I thought you were going to read through LB843 first and then on to... [LB843 LB1014]

SENATOR PANSING BROOKS: No, I read them all in at the same time. They have...I spoke about each one of them separately within my one testimony. I thought it would save time for all of you. [LB843 LB1014]

SENATOR ALBRECHT: Okay, that's very good. Good to know. So when people come up as a proponent or an opponent, it's all in one. [LB843 LB1014]

SENATOR PANSING BROOKS: Yes, and they need to distinguish if they are supporting one versus the other. [LB843 LB1014]

SENATOR ALBRECHT: Okay, very good. [LB843 LB1014]

SENATOR PANSING BROOKS: So, if that's okay. [LB843 LB1014]

SENATOR ALBRECHT: We can do that. Senator Crawford. [LB843 LB1014]

SENATOR CRAWFORD: Yes, thank you. So the...in LB843 those same provisions that are in LB1014, the enforcement is by suit, correct? So we're not putting in a new duty on the Department of Labor? [LB843 LB1014]

SENATOR PANSING BROOKS: No. [LB843 LB1014]

SENATOR CRAWFORD: This is providing...these are the expected behaviors and (inaudible). [LB843 LB1014]

SENATOR PANSING BROOKS: And ways for the businesses to be able to protect their interests. [LB843 LB1014]

SENATOR CRAWFORD: Excellent. Follow-up question. [LB843 LB1014]

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SENATOR ALBRECHT: Another question? [LB843 LB1014]

SENATOR CRAWFORD: Yes. I wonder if you'd just walk us through what that might look like in terms of the affirmative defense piece on LB1014. [LB843 LB1014]

SENATOR PANSING BROOKS: I'm going to let the (inaudible) people behind me do that, if that's okay. [LB843 LB1014]

SENATOR CRAWFORD: (Inaudible). Okay, thanks. [LB843 LB1014]

SENATOR PANSING BROOKS: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: And just getting back to the fiscal note. [LB843 LB1014]

SENATOR PANSING BROOKS: Sure. [LB843 LB1014]

SENATOR ALBRECHT: Who is going to take care of it? [LB843 LB1014]

SENATOR PANSING BROOKS: Oh, the Equal Opportunity Commission. If you look at the note itself...do you want a copy of it? [LB843 LB1014]

SENATOR ALBRECHT: I've got it here now. [LB843 LB1014]

SENATOR PANSING BROOKS: Okay. If you look at... [LB843 LB1014]

SENATOR ALBRECHT: Equal Opportunity Commission. [LB843 LB1014]

SENATOR PANSING BROOKS: Yes. If you look right under the first...do you see right here on the front page? [LB843 LB1014]

SENATOR ALBRECHT: Uh-huh. [LB843 LB1014]

SENATOR PANSING BROOKS: Then it says here--there will be minimal one-time costs to the EEOC which can be handled with existing resources. [LB843 LB1014]

SENATOR ALBRECHT: Okay, very good. [LB843 LB1014]

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SENATOR PANSING BROOKS: So they have the...within the Equal Opportunity Commission they have the ability to handle it. It does not come...will not come out of General Funds. [LB843 LB1014]

SENATOR ALBRECHT: Very good. [LB843 LB1014]

SENATOR PANSING BROOKS: So I just wanted to point that out for you. [LB843 LB1014]

SENATOR ALBRECHT: Very good. Any other questions? Seeing none, we'll start with the proponents first, but thank you for introducing. We will be on our way here. [LB843 LB1014]

SENATOR PANSING BROOKS: Thank you so much. Thanks for your time. [LB843 LB1014]

SENATOR ALBRECHT: Okay, do we have any proponents wishing to speak to LB843 or LB1014? And please when you get started, after your name, let us know if you're here to talk about one or the other or both. Hi. Okay, go ahead and get started and state your name and spell it for the record, please. [LB843 LB1014]

MARY HERRES: Mary Herres, H-e-r-r-e-s. And I'm with the Women's Foundation of Lincoln and Lancaster County. [LB843 LB1014]

SENATOR ALBRECHT: Thank you. [LB843 LB1014]

MARY HERRES: (Exhibit 7) Senator Albrecht and members of the Business and Labor Committee, the Women's Foundation serves women in Lincoln and Lancaster County with education outreach and advocacy programs. Please accept this letter of our support of LB843 because wage disclosure is important to women in the workplace. The gender wage gap has stalled. For over a decade, women have consistently earned approximately 80 cents to every dollar earned by men. Although there are many different reasons for this disparity, the gap has many consequences for women besides current spending power, including the lack of retirement savings and future Social Security benefits. To move forward, bills like LB843 that ensure open and accurate discussion of wages will help put women on a more even footing. Pay secrecy in the workplace contributes to wage disparity in several ways. Lack of information makes it difficult for women to compare their wages to other employees with the same or similar position. Without a clear picture of others' salaries and benefits, they are not able to challenge illegal and unfair processes and practices. Additionally, raises are most often based on performance, but studies have shown that women receive more critical feedback on reviews compared to men, often based on personal traits rather than the actual job performance. And lastly, higher pay and

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raises go to those who are adapt at negotiating. And we find that this is true when they begin their jobs in negotiating their original salary which brings the big discrepancy as they go through the job and their raises. It lasts throughout their career. And lastly, higher pay and raises go to those who are adapt at negotiating. When women enter into negotiations with the information, they have a better chance of succeeding. Although wage disclosure is not the total answer for narrowing the wage gap, transparency in the workplace regarding compensation has led to reduced discrepancies. This is especially true in public entities such as federal agencies and in companies that recognize the problem and make an effort to improve their practices. The Women's Foundation supports LB843 and encourages wage disclosures as a means for narrowing the gender wage gap in Nebraska. Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Thank you for your testimony. We'll just see if there are any questions. [LB843 LB1014]

MARY HERRES: Okay. [LB843 LB1014]

SENATOR ALBRECHT: Do we have any questions for Ms. Herres? Nope. Thank you for your time and your testimony. [LB843 LB1014]

MARY HERRES: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Any other proponents wishing to speak? Any other proponents of LB843 or LB1014? Hi. [LB843 LB1014]

DANIELLE CONRAD: (Exhibits 8 and 9) Again, good afternoon, Chairwoman Albrecht and members of the committee. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d; I'm here today proudly representing the ACLU of Nebraska. We're a civil rights and civil liberties organization that's been operating in the Cornhusker State for over 50 years. And today we are delighted to come in strong support of Senator Pansing Brook's two critical pieces of legislation, LB843 and LB1014, which seek to address gender equity in the workplace. And we see this as a critical gender equity issue. And as the senator so eloquently helped to build the record and to provide some statistics and information for the committee, I won't repeat that, but we did provide some additional information and statistics in our written materials for both pieces of legislation that's being distributed today. And, you know, I look at these bills, not only as a civil rights attorney and as a former state senator, but also as a mom with a 6-year-old at home, a six-year-old little girl and a 2-year-old little guy and I think about, you know, if we allow the status quo to continue and we won't see a market-based, self-correction on this egregious pay disparity until 2066, my little girl, you know, flash forward 50 years into the future will still be fighting a lot of these same battles. And it's not just Caroline, but it's so many of our daughters

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across Nebraska, I think that we're all concerned about, and that are here working on their behalf. So, again, to reiterate and reference my testimony from the earlier legislation today, equal pay laws are part of that emergent set of policy issues that really are gaining strong support across the country, whether that's pregnancy discrimination bills, whether that's family leave or sick leave bills, or whether that's strengthening equal pay bills. These are issues that are enjoying strong bipartisan support at the ballot box, in legislatures, through public opinion polls. We are proud to see our own senator, Deb Fischer, be a champion for these issues on the federal level. And even though the approach sometimes is a little different than the approach that we might take, it goes to show that these issues are important to all Nebraskans and we thank her for her leadership in those regards. So with that, we did want to recognize not only are the existing gender pay inequities persistent and egregious despite having equal pay laws on the books for over 50 years, we know that we have to put some more teeth into that legislation, into those theories to ensure that we can achieve pay equity. And we're particularly concerned at the ACLU about those intersecting instances of discrimination. So when you see that the pay disparities are even more significant for Latino workers and for African-American workers in addition to their gender, that's something that we want to make sure to elevate and highlight in regards to these issues as well. So I think, as it stands today, there's about 17 of our sister states that have adopted strong protections so that employees can compare notes and make sure that they're being treated fairly in the workplace. So we've asked Nebraska to give strong consideration, as did our 17 pledge sister states and counting, so that Nebraska workers know that if they have an issue they can take it up with their employer; and if they're unable to achieve justice in that regard, to have their fair day in court or before the Nebraska Equal Opportunity Commission. As Senator Pansing Brooks appropriately noted, I know from sitting on the Appropriations Committee for eight years and how difficult it is to balance a budget, particularly in a money-short year, look at the fiscal notes for both of these pieces of legislation. They are no-cost, commonsense solutions to address critical public policy dilemmas that face our state and we would want to draw your attention to that regard as well. I know that when I was coming up in the Legislature, some senior members helped to always provide some tips and tricks about strategy. And I think before the term limits dynamic, when people had a little bit more time to breath and get up to speed on everything, you'd see an approach similar to what Senator Pansing Brooks has brought forward today a little bit more frequently. When senators, rather than focusing on one specific bill to address the issue would provide a host of different solutions to allow the committee of jurisdiction to make a policy decision about what is the right fit to move forward. So we really commend Senator Pansing Brooks for providing at least two different solutions to the committee, one a little bit more narrow, one a little bit more broad. And I think that the broader approach in LB1014 is really exciting as well. It's really a first look at this kind of legislation for the state of Nebraska and I think provides some very strong incentives to the business community to do the hard work, to do the homework and have a little safe harbor if they do find some inadequacies or inequities to self correct before all the lawyers get involved. So that's always something I know that maybe some of the lawyers behind me won't like, but we think makes good policy. So with that we'd be

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delighted to answer any of your questions. And thank you so much for your time and really commend Senator Pansing Brooks for her incredible leadership in this regard. She's a very strong champion for Nebraska women. [LB843 LB1014]

SENATOR ALBRECHT: Thank you. Do we have any questions for Ms. Conrad? Senator Crawford. [LB843 LB1014]

SENATOR CRAWFORD: Yeah, thank you, Chairman Albrecht. And thank you, Ms. Conrad, for being here today. [LB843 LB1014]

DANIELLE CONRAD: Yes. [LB843 LB1014]

SENATOR CRAWFORD: I wondered if you would...if you would talk just a little bit more about that safe harbor provision. [LB843 LB1014]

DANIELLE CONRAD: Sure. [LB843 LB1014]

SENATOR CRAWFORD: And what that looks like in terms of a window of time for the affirmative defense piece. [LB843 LB1014]

DANIELLE CONRAD: Sure. So I think that the process envisioned in LB1014 is generally based upon a very comprehensive equal pay bill that enjoyed broad support, including strong business support, that passed in Massachusetts recently and that will take effect, I believe, in July of 2018, I think is when that is set to take effect. But one of the reasons that that bill, and it did many things, but one of the reasons that that bill enjoyed such strong support from the business community, it's my understanding talking to folks on the ground there and reading the media reports, is because it really did provide the business community with an incentive to do that deep dive, to do that hard look proactively and on their own without, perhaps, incurring additional liabilities. And so I think that there's a fair amount of debate about exactly how those provisions would play out in a state like Nebraska and whether or not that incentive should be afforded to punitive damages or just to regular damages, and, of course, many on this committee may be already familiar with the fact that in Nebraska we don't have punitive damages. And so our statutory framework that this model is coming into is a little bit different than some of our sister states. So while I think that it's very closely resembles that legislation, there are some key differences and that's really based upon that the existing law that exists in Nebraska in our constitution and statutorily. So I think that we would be happy to work with this committee or other stakeholders if there needs to be any additional clarity on those provisions or moving forward. But we do think that it is a fresh approach to try and achieve the same objections, which

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is to get everybody pay equity. And I think that sometimes people feel like if they start that internal process, that that might expose them to liability, that they don't want to go looking for that kind of trouble. So this says if you're going to do the hard work and the right thing in your own business and you find some issues, let's give you a little space and some time to correct those with your employees appropriately. And so that's really what that's meant to do. And I'm sure that there might be folks on both sides who have different ideas about that. But I think if there's some consensus on the issue, we can always work out the details. [LB843 LB1014]

SENATOR CRAWFORD: Thank you, Senator Conrad. [LB843 LB1014]

SENATOR ALBRECHT: Any other questions? Senator Halloran. [LB843 LB1014]

SENATOR HALLORAN: Thank you, Chairman Albrecht, Ms. Conrad. In Senator Fischer's amendment to the Fair Labor Standards Act of 1938, she makes comment in the amendment, she says: A number of factors contribute to differences in total compensation including varying issues in occupation, education, hours worked, institutional knowledge...which I hear a lot about in this building...and other business reasons, and personal choices that shape career paths and earning potential. Do you agree with that, generally? [LB843 LB1014]

DANIELLE CONRAD: Well, I think that the senator is correct in noting that there are a variety of factors which contribute to pay inequities. I don't think that we would disagree with that. Our list may look a little bit different in terms of what we elevate or in terms of what she elevates, but I think that that's fair to say that there's broad consensus that there are a variety of different factors that contribute to this. And, you know, one thing that was really striking to me and learning more about the Massachusetts experience and I really think in many ways plays out here in Nebraska would find a lot of...that would really resonate is that I don't think that a lot of employers set out to discriminate. But I think for a variety of different reasons, sometimes that can be the result and that efforts like this just help to reset balance and levels of playing fields. So I think that, you know, there are going to be some differences sometimes. I mean, we're not talking about flat pay for all employees in all instances. But the existing law and this legislation allows people to take into account bona fide reasons for paying people differently, whether that's seniority or the kind of work product that they put out, or a host of other reasons that are already protected in law and that are also protected and preserved in this legislation. But it just says that if it's not based on these bona fide reasons and it is based on a gender difference, that's where it's illegal and that's where we all have a stake in addressing those civil right violations. [LB843 LB1014]

SENATOR HALLORAN: Thank you. I can tell you have senator experience. [LB843 LB1014]

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DANIELLE CONRAD: Sorry, I didn't mean to filibuster. I'm just so passionate about the issue. [LB843 LB1014]

SENATOR HALLORAN: I understand that; I appreciate that. But do you think this bill accounts for those factors very specifically? [LB843 LB1014]

DANIELLE CONRAD: You know, I think that it does. I think that if you...and I'm sorry I don't have a copy in front of me, but I think it does very specifically lay out and reiterate the bona fide reasons why you might see pay differences. I think its based on seniority and perhaps training or the type of outputs or deliverables that an employee would provide to the company. And so I think that those are well delineated in the existing law and preserved in the presented legislation. [LB843 LB1014]

SENATOR HALLORAN: Okay. [LB843 LB1014]

DANIELLE CONRAD: And just one more point, Senator, I know that in years past when we talked about equal pay laws that there has been some concern from the business community that equal pay doesn't...when we say equal pay and equal work that sometimes it's hard to know exactly what we mean there and that additional clarity might be helpful. And I think one thing that's really exciting about Senator Pansing Brooks's approach is that she listens squarely to those concerns that have been presented in the past and does attempt to provide additional definition and clarity on ensuring comparable pay for comparable work and talking exactly about what that means. And it's not just title and it's not just job description, but it really is a broader examination to make sure we're truly putting apples and apples together. [LB843 LB1014]

SENATOR HALLORAN: One last question. [LB843 LB1014]

DANIELLE CONRAD: Sure, yeah. [LB843 LB1014]

SENATOR HALLORAN: I've never heard states referred to in the gender. [LB843 LB1014]

DANIELLE CONRAD: Our sister states? [LB843 LB1014]

SENATOR HALLORAN: Were there any brother states? (Laughter) [LB843 LB1014]

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DANIELLE CONRAD: Well, I think there definitely could be in these great laboratories of democracy, however you wish to refer to them. But I guess maybe I was just thinking of them as our sister states or our brother states or sister cities or whatever it might be. [LB843 LB1014]

SENATOR HALLORAN: Okay. [LB843 LB1014]

SENATOR ALBRECHT: Other questions? [LB843 LB1014]

DANIELLE CONRAD: Point taken, we'll get gender neutral, especially at the ACLU, yes. [LB843 LB1014]

SENATOR ALBRECHT: Any other questions? I have just a few and maybe...you know, how often do employers ask the employees to sign nondisclosures and would that be something within this bill and maybe I can speak to Senator Pansing Brooks too about this. [LB843 LB1014]

DANIELLE CONRAD: Sure. [LB843 LB1014]

SENATOR ALBRECHT: Are there occasions where you found that happening in your career or...? [LB843 LB1014]

DANIELLE CONRAD: Well, you know, Senator Albrecht, thank you so much for the question, and I think when it comes to the issue of nondisclosure agreements, generally, that's much broader than just the issues that are contemplated in LB843 and LB1014 that are before you and have actually seen some really interesting recent academic research and policy research about how nondisclosure agreements are really spreading like wildfire across various industries and the impact that has for employees, employers, business, and the economy. But I think that what the research plays out in Nebraska to demonstrate is that aren't really clear protections right now governing some of these types of issues and you will see nondisclosures from time to time for a variety of different issues. I'm specifically not aware of any solely related to trading notes on pay, but that...I also haven't had a chance to explore the personnel policies for all private sector employees that are out there. [LB843 LB1014]

SENATOR ALBRECHT: I just wanted to (inaudible). [LB843 LB1014]

DANIELLE CONRAD: I think where you normally see them is for highly-compensated individuals and kind of thinking about the business competition issues if they were to leave (inaudible) or trade secrets or business secrets. I think that's the area where they really

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originated and kind of...should reside and have stronger policy basis than in the application to equal pay or in other areas. [LB843 LB1014]

SENATOR ALBRECHT: Okay. Thank you very much. Any other questions? Seeing none, thank you very much for your time. [LB843 LB1014]

DANIELLE CONRAD: Thank you so much for your time. [LB843 LB1014]

SENATOR ALBRECHT: Okay, any other proponents wishing to speak to LB843 or LB1014? [LB843 LB1014]

SARAH ANN KOTCHIAN: (Exhibit 10) Good afternoon, again, Senator Albrecht and members of the Business and Labor Committee. My name is Sarah Ann Kotchian, S-a-r-a-h A-n-n K-o-t-c-h-i-a-n, and I appear today on behalf of the Holland Children's Movement, a nonpartisan, not-for-profit organization founded by Richard Holland that strives to fulfill his vision for Nebraska to become the national (inaudible) in economic security and opportunity for all children and families. We would like to extend our gratitude to Senator Pansing Brooks for her introduction of both LB843 and LB1014. We support the advancement of LB843 and in the event LB1014 does not advance to provide greater and more comprehensive employee protections and further address pay equity practices and equal pay for compatible work. As another mother of a six-year-old daughter and to help build the record here, I'd just like to share a little bit of more information related to Nebraska specifically. According to the National Partnership for Women and Families in Nebraska, median annual pay for a woman who holds a full-time, year-round job is \$36,834, while median annual pay for a man who holds a full-time, year-round job is \$46,763; amounting to an annual wage gap of \$9,929. This wage gap can be even larger for women of color, as has been noted. Among Nebraska women who hold full-time, year-round jobs, black women are paid 63 cents, Latinos are paid 54 cents, and Asian women are paid 68 cents for every dollar paid to white, non-Hispanic men. With respect to the related provisions of wage nondisclosure, the U.S. Department of Labor's Women's Bureau has stated that pay secrecy policies serve to perpetuate these disparities. This is why ten states have enacted pay secrecy laws and we believe it is time for Nebraska to follow suit. To your question about workers reporting, nearly...the same women's bureau, U.S. Department of Labor, reports that nearly half of all workers nationally reported that they were either contractually forbidden or strongly discouraged from discussing their pay with colleagues. On average, Nebraska women who are employed full time is a combined total of nearly \$5 billion every year due to the wage gap. These lost wages mean women and their families have less money to support themselves, save and invest for the future, and spend in their local communities. Nebraska children, families, businesses and the economy suffer as a result. In Nebraska, nearly 71,000 family households are headed by women. About 30 percent of those families, or 21,000 family households have

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incomes that fall below the poverty level. Eliminating the wage gap would provide much-needed income to women whose wages sustain their households. And again, we would like to thank Senator Pansing Brooks for her efforts to address employee protections and the wage gap in Nebraska and urge you to advance LB1014 to General File. And with that I thank you for your time and consideration and your service to our great state of Nebraska. [LB843 LB1014]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Senator Crawford. [LB843 LB1014]

SENATOR CRAWFORD: Thank you, Chairman Albrecht; and thank you for your testimony. I was just wanting to make sure I caught this--I believe you said nearly half of all workers are discouraged or required not to disclose. Can you tell me... [LB843 LB1014]

SARAH ANN KOTCHIAN: Yes. Nationally... [LB843 LB1014]

SENATOR CRAWFORD: Nationally? [LB843 LB1014]

SARAH ANN KOTCHIAN: ...according to the women's bureau, the U.S. Department of Labor. [LB843 LB1014]

SENATOR CRAWFORD: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony. [LB843 LB1014]

SARAH ANN KOTCHIAN: Thank you very much. [LB843 LB1014]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak to LB843 or LB1014? [LB843 LB1014]

SUSAN MARTIN: (Exhibit 11) Good afternoon, again, Senator Albrecht and Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and all working families in the state of Nebraska in support of LB1014 and LB843. Today, more and more women are the primary breadwinners and financial decision makers in their households. Working women embrace these new roles as progress. It's time for our public policies and workplaces to catch up. In the fall, women must have equal pay. Only when women get a raise can working families thrive. In the fall of 2014, the AFL-CIO conducted

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a national survey of working women. The survey was completed by nearly 25,000 respondents from union and non-union women across the country. They conducted the survey as more than just a job assessment. It zeroes in on how working women spend time at home, tackle financial challenges, and engage in our communities. The results paint a clear picture of the economy and society working women are committed to building where equal pay, paid leave, and fair scheduling are the law of the land. According to the survey, women are poised to take action on the core economic issues that impact their lives and the issues that motivates them most across generations and demographics is equal pay for equal work. This should not be surprising since the women in the sample are the financial decision makers and breadwinners of their households. Almost 60 percent report that they earn over half of the income for their entire household and 87 percent said they held primary responsibilities for day-to-day financial decisions in their household or shared the responsibility equal with a spouse or partner. Working women are stretched thin. Over a third of the sample reported working over 40 hours a week and 23 percent reported having to work mandatory overtime. One in five worked two jobs. A quarter said their schedules were unpredictable and almost one in five said they sometime had too few hours. Although unionized working women had significantly better wages and benefits than the nonunion respondents in the survey, women of every age and demographic group reported that equal pay for the work they do would be the change that would improve their lives. Forty-six percent of all respondents reported equal pay for equal work as one of three issues they would take action to change. Forty-six percent of union members and 48 percent of nonunion members respectfully ranked equal pay as a priority. Among young workers ages 18 to 35, 44 percent reported that they would take action for equal pay. Within each racial subgroup in the sample, 43 percent or more identified equal pay as important to them. Notably, 52 percent of black respondents named equal pay as a top issue. This legislation will also allow an employee the freedom to discuss their wages at their choosing with others to further help in determining this wage disparity. We view this as an employee's right and will lead to further close these wage gaps. The results could not be clearer. It is time for us to make changes to equal pay for equal work and we thank Senator Pansing Brooks for introducing this legislation and we ask that you support LB1014 and LB843. [LB843 LB1014]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions, Senators, for Ms. Martin? Nope. Thank you for coming. [LB843 LB1014]

SUSAN MARTIN: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Any other proponents wishing to speak to LB843 or LB1014? Any other proponents? Seeing none, I do have the letter from Senator Pansing Brooks on the National Association of Social Workers, Sarah Hanify, as a proponent supporting LB1014 (Exhibit 6). Okay, we'll go on to opponents; anyone wishing to speak as an opponent on LB843 or LB1014? [LB843 LB1014]

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SCOTT MOORE: Good afternoon. Scott S. Moore with the Nebraska Chamber and the Greater Omaha Chamber of Commerce. Scott, S-c-o-t-t, Moore, M-o-o-r-e; testifying in opposition of both bills to combine the two. Why don't I start with LB843. So LB843 places these nondisclosures of salary prohibitions in which has been interesting; it's been introduced in a number states. Currently, in the National Labor Relations Act which allows for the organization of unions, two or more folks who want to engage in dialogue about work-related matters are allowed to do that. And so compensation questions or their wages are already protected at the federal level under the National Bureau Relations Act. So there's some exceptions to that such as, you know, if you're in the middle of work time and both of you are in the schedule work duties to not have those discussions there. But for the most part, it creates those protections. In addition, Equal Opportunity Commission over the last several years has placed quite a bit of emphasis on confidentiality agreements and is engaged in pretty dramatic litigation on that topic. It's attempting to ensure that employers that engage in confidentiality and nondisclosure agreement, which in today's world is mostly about proprietary issues and technology and that type of thing, that we carve around the wage issue so that we know that it's not protected as well as people who would bring concerns about equal pay issues and their compensation, especially with regard to gender. So it seems to me LB843, I feel like we have substantial protections in that world and though I understand the purposes seems to be covered already. With regard to LB1014, I have pretty dramatic opinions about this. I think it's a pretty big swing in...currently we have protections under the federal law in two statutes; we have our own statute here in Nebraska that provides for equal pay for equal work, or same pay for same work. This creates a new standard which was a California-based statute which creates this comparable work standard where you evaluate whether positions are substantially similar and tries to look across different jobs, but whether they're similar in terms of skills or similar in terms of conditions and creates a new system for that, my concern is that substantially similar is more of a courtroom-type of dialogue. We've had the ADA for some time now, but we're still having litigation over what "reasonable" means because it's not well defined and so it's laid out there. So the comparable worth issue, I think, is something that from my perspective when it seems to be a large opportunity for litigation, it's a pretty big litigation mine field. Other concerns we have with the bill is the damages under it. We discussed earlier the Wage (Payment) and Collection Act which does provide for double damages, provides a penalty damage as well as attorneys' fees. And I note that this does provide for damages using that system. So it inflates the dollars pretty dramatically. It also creates criminal charges. So if there's a violation under a rather vague standard, you also can be charged criminally. So now you have managers who can be charged criminally; and so if I'm an HR person who puts together a compensation system and put that together for equal pay/equal work standards for what the pay raises will be based on years of service or performance or whatever that might be. And now we have a court come in and tell us, well, those...there's other positions that are substantially similar and there's a pay differential, we now also have criminal charges that are potential for that person in addition to the financial component of it. So, we view LB1014 as a standard which is not very workable, probably prone

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for litigation and I would say a major barrier for new businesses that are looking for states that are not at high-risk zone and this is one because of the unknown nature of how to evaluate whether...what's comparable and what is substantially similar. And with that I'd encourage opposition to both LB1014 and LB843. [LB843 LB1014]

SENATOR ALBRECHT: Thank you for your testimony, Mr. Moore. Do we have any questions, Senators? Senator Crawford. [LB843 LB1014]

SENATOR CRAWFORD: Thank you, Chairman Albrecht; and thank you, Mr. Moore. If I understood your opposition to LB843, you're arguing that we already have protections in place for conversations about compensation and nondisclosure of salaries. So if we already have protections in place, then why would there be a concern about putting LB843 in place if we expect the people who are already supposed to be following those provisions then why not have it in statute that they need to protect workers. [LB843 LB1014]

SCOTT MOORE: So I'm trying...I've not figured out what it does. I mean, I see what the attempt is, but...so I'm not sure why we compound one law on top of another. And so from my...from a business perspective, the additional compounding of one legal structure over another legal structure makes life more difficult and makes work more difficult. [LB843 LB1014]

SENATOR CRAWFORD: But we wouldn't be having half of workers say they're being discouraged from disclosing their wages if we had a working system in place preventing this kind of wage disclosure practice. [LB843 LB1014]

SCOTT MOORE: Yeah, I'm not sure what employees' thoughts are with regard to that. But it seems to me those rules are out there as I work with employers, they know those rules are out there; they are familiar with that. It's pretty common knowledge amongst HR people, so they know those rules and generally my understanding is comply with those. [LB843 LB1014]

SENATOR CRAWFORD: Your understanding is that they are already liable. [LB843 LB1014]

SCOTT MOORE: That they're what? [LB843 LB1014]

SENATOR CRAWFORD: That they are already liable if they're trying to prevent disclosure of wages. [LB843 LB1014]

SCOTT MOORE: Certainly. So there's a responsibility under National Labor Relations Act if you do have a disclosure. There's discussion about wages and there's a...either just preventing it,

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even if there's not any damages, you can go to the board to have that issue looked at and if there's financial damages, they will award financial damages as well. [LB843 LB1014]

SENATOR CRAWFORD: Is that limited to a certain size of employer? [LB843 LB1014]

SCOTT MOORE: I don't believe so, but I don't know the answer to that. It would be larger ones, not... [LB843 LB1014]

SENATOR CRAWFORD: Would be larger employers, so they limit it to some... [LB843 LB1014]

SCOTT MOORE: Yeah. But I don't know...I apologize, I don't know the threshold. [LB843 LB1014]

SENATOR CRAWFORD: All right. Could you send us that information about what those protections are. [LB843 LB1014]

SCOTT MOORE: Sure, sure. [LB843 LB1014]

SENATOR CRAWFORD: I think we still have concerns that are raised to us about people not feeling protected. [LB843 LB1014]

SCOTT MOORE: Yeah. I would suspect for the small employer, you know, folks employing four people, they're just struggling to try to get payroll done and so their knowledge of any particular laws is probably a little bit tenuous at best. [LB843 LB1014]

SENATOR CRAWFORD: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony, Mr. Moore. [LB843 LB1014]

SCOTT MOORE: Thank you so much. [LB843 LB1014]

SENATOR ALBRECHT: Okay, do we have any other opponents wishing to speak to LB843 or LB1014? [LB843 LB1014]

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ROBERT J. HALLSTROM: (Exhibit 12) 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 National Federation of Independent Businesses to testify in opposition to both LB843 and LB1014. With regard to the provisions of LB843 and those in LB1014 relating to the prohibition on employers from requiring nondisclosure by the employee of his or her wages as condition of employment, I would simply echo what Mr. Moore has said. With respect to the coverage of the National Labor Relations Act and its implementing regulations, I think perhaps in response to Senator Crawford's question, one of the issues that we might run into that would be troublesome would be the fact that the National Labor Relations Board regulations are replete with all kinds of court precedent and interpretations that employers know or should know in terms of what governs their conduct and their activities and to put something that may be substantially similar and be subject to future legal opinions that may differ from what has happened on the federal level could cause issues in that respect and then have the interpretation or implementation of the law be different for that reason. With regard to the equal pay for comparable work standard, again, I think Mr. Moore has touched on all of the issues. I would put it in a little bit different context in using the terms in the definition of comparable work such as substantially similar, substantially similar skill, and similar working conditions that those create more of a subjective standard for interpretation which will cause the issues in terms of the level or degree of litigation that will be needed. There are significant federal laws, as Mr. Moore indicated also, that cover the equal work for equal pay parameters. I would suggest that using sugar may be better in terms of LB1014 and the approach that's been gathered by Senator Pansing Brooks from Massachusetts. We haven't had a lot of time to take a look at that, but one of the things I would raise is the fact that the evaluation must be conducted in good faith. And if the self evaluation is designed by the employer, it must be reasonable both in detail and scope. Those again are terms that will probably involve some level of litigation to determine how they're carried out and what the parameters are, which might lead to additional litigation as well. With that I'd be happy to address any questions of the committee. [LB843 LB1014]

SENATOR ALBRECHT: Thank you very much. Senator Chambers. [LB843 LB1014]

SENATOR CHAMBERS: Madam Chair, because of the way I carried on this morning, Senator Halloran, I want to bring some happiness this afternoon. Mr. Hallstrom said he'd be happy to answer questions, so I wanted to oblige. (Laughter) [LB843 LB1014]

ROBERT J. HALLSTROM: Please make me happy. [LB843 LB1014]

SENATOR CHAMBERS: Mr. Hallstrom, you mentioned litigation with reference to both bills, the various types of litigation at the federal level, interpretations, and so forth. But if there were litigation on either or both of these bills, either side, whichever one lost would be likely to take it

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to the Nebraska Supreme Court, that would be one case. And once the Nebraska Supreme Court ruled, that would be the law in the state of Nebraska--the statute plus the interpretation by the court. So all that would be necessary is one lawsuit that would go to the Nebraska Supreme Court and that would settle it. [LB843 LB1014]

ROBERT J. HALLSTROM: If you were covering all aspects of the law. Any particular case may not cover the entirety of the statute. [LB843 LB1014]

SENATOR CHAMBERS: But whatever aspect was covered, that would be the law and everybody would know what it is. [LB843 LB1014]

ROBERT J. HALLSTROM: Correct. [LB843 LB1014]

SENATOR CHAMBERS: Okay. And how many aspects do you see in the law that might be separately litigated...or which part can be broken out and litigated by itself without implicating the other parts--just as an example? [LB843 LB1014]

ROBERT J. HALLSTROM: Senator, obviously the definition of comparable work would be one that would be there. I'd have to look back at the legislation... [LB843 LB1014]

SENATOR CHAMBERS: Well, if you haven't got...I don't want to take all that time right now. But that's all that I would have. [LB843 LB1014]

ROBERT J. HALLSTROM: Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Any other questions? Thank you for your testimony. [LB843 LB1014]

ROBERT J. HALLSTROM: Thank you, Senator. [LB843 LB1014]

SENATOR ALBRECHT: Moving on do we have any other opponents wishing to speak? [LB843 LB1014]

RICH OTTO: Good afternoon, Chairwoman Albrecht, members of the committee. My name is Rich Otto, R-i-c-h O-t-t-o; I'm a registered lobbyist for the Nebraska Grocery Industry Association, the Nebraska Retail Federation, and the Nebraska Restaurant Association. I'm testifying in opposition to both LB843 and LB1014 for all three organizations. We represent many small businesses across the state and we do not support discrimination of wages on race or

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gender. As was previously mentioned, there are several federal protections that go into that and feel that they cover it and that this would just be a duplication of that on many aspects. Now, at the heart of the bill is the disclosure of wage information and potentially informing employees that they do have the right to share this information or not share it; it is up to them, it could be an aspect that would help alleviate wage changes. We encourage that employees potentially are educated on this and that they know that they have the right to disclose their wages and feel that that could be a nice component to addressing this. I also want, for the record, I do have a daughter as well and hope that it's not 2066 before this is resolved. But feel that education and letting employees know that they can share this information could be influential in changing it. [LB843 LB1014]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Senator Crawford. [LB843 LB1014]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you for your testimony. So I want to come back to this notion of the federal law already covers all these provisions. Again, we still have the wage gap and I know disclosure is not all of what's required there, but it is also the case we have a federal system, so we have some federal laws and our states then have an ability to decide when it's appropriate for us to step up and have a higher level of standard. And so I guess I would ask, isn't it appropriate for a state to determine if there is some aspect of wages or workers' rights that are appropriate in a state to make different than the federal standards? [LB843 LB1014]

RICH OTTO: Well, absolutely, that's what you have to decide whether or not they're going to do...accomplish anything different than those federal guidelines that are already set is the key question. So if we determine that we need something stronger, by all means. But many of the provisions were similar and we felt that they were already duplicating what is in federal books. [LB843 LB1014]

SENATOR CRAWFORD: But if they're duplicative that should not really create new liability for the businesses, they're supposed to be already following all of these requirements. [LB843 LB1014]

RICH OTTO: Correct. I would agree. [LB843 LB1014]

SENATOR CRAWFORD: Okay, thank you. [LB843 LB1014]

SENATOR ALBRECHT: Senator Chambers. [LB843 LB1014]

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SENATOR CHAMBERS: Mr. Otto, does your father...was your father a lobbyist here before you? [LB843 LB1014]

RICH OTTO: He currently is as well. I work with Jim. [LB843 LB1014]

SENATOR CHAMBERS: He and I used to always do this, so I may as well induct you. When you use all lower case letters, your name is spelled the same forward, backward, upside down. (Laughter) Now, you're officially a member of the club. Here's what I want to ask you. If we're talking about federal rules and regulations, if there were to be litigation of those issues, would they be...would the litigation occur in federal or state court? [LB843 LB1014]

RICH OTTO: With the current laws, I believe federal. [LB843 LB1014]

SENATOR CHAMBERS: And if we did something at the state level, it would be interpreted in the state court. [LB843 LB1014]

RICH OTTO: Correct. [LB843 LB1014]

SENATOR CHAMBERS: Would you rather do something at home in the state court or deal with that overreaching, overregulating federal government? You don't have to answer that. (Inaudible) question. Just to make you feel at ease now. (Inaudible.) [LB843 LB1014]

RICH OTTO: Thank you. I wondered if the name comment may come up. I tried to convince my wife to name our daughter Anna, but it didn't go over so good. (Laughter) [LB843 LB1014]

SENATOR CHAMBERS: She's smart. Okay. [LB843 LB1014]

SENATOR ALBRECHT: (Exhibits 13 and 14) Thank you, Senator Chambers, and thank you, Mr. Otto. Do we have any other opponents wishing to speak to LB843 or LB1014? Any other opponents? Seeing none, do we have any letters? Okay, so we have a letter of support from the Women's Fund of Omaha in support of both LB843 and LB1014 signed by Michelle Z-y-c-h, Zych, Executive Director; and we have one letter in opposition opposing LB843, the Nebraska Cooperative Council, Rocky Weber, President. Okay, so do we have anyone in the neutral capacity that would like to speak? Anyone in neutral? Okay, go right ahead. [LB843 LB1014]

MARNA MUNN: Thank you. Good afternoon, Chairperson Albrecht and the rest of the committee. I'm happy to be here this afternoon. My name is Marna M-a-r-n-a, Munn, M-u-n-n.

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And for the last two and a half months I've been the executive director of the Nebraska Equal Opportunity Commission. I thought I'd come and try to clarify that fiscal note for you all. I'm appearing in a neutral capacity here, we're a neutral administrative agency that investigates charges of discrimination. And I am here just to speak to LB1014. We have no position on the other bill. We're speaking to LB1014 because it involves us and I wanted to come and provide a little bit of information, our thoughts on the bill in the state that it is right now, and be available to answer any questions that you may have regarding the issues that have been raised today. So first of all, I think I'm going to go to what is the heart of the matter for us. We give you a little bit of background; we are, in part, federally funded through contracts with the federal Equal Opportunity Commission. And part of that, at least in application right now, is that they actually pull our equal pay act. We have substantially equivalent laws right now with the Federal Equal Pay Act of 1963 on the federal level, and the Equal Pay Act, as it's come to be known, but would be renamed under this is the Discriminatory Wage Practice Act is considered substantially similar. And because of that, we try and be efficient with our resources and our investigations into the content when a charge of discrimination is brought. Under their contract though, I will tell you the federal...the EEOC actually tries to handle all equal pay acts across the country, not just in Nebraska. So right now they tend to do the bulk of the investigation. When they return their investigative findings to us, we review them and typically we adopt their findings, because again the investigation is done in a way...because the laws are very equivalent. My first concern because our funding is somewhat contingent upon that was to contact the EEOC and talk to them about this bill to see if there's concern that as written it would automatically not (inaudible) of that substantial equivalency regarding the pay act and affect our funds which would have adjusted the fiscal note a bit. And as of right now, there's not a concern, even with the difference in the language for the definition. Equal pay definitely has developed its own law regarding what equal pay is, but the EEOC has other states that work on a slightly and more...on the comparable pay issue, so they didn't see that as a concern right now pending some decision that would make them really not substantially equivalent. For us, the biggest concern...not really a concern, but just the questions that are most raised are on Section 8 of the bill which have to do with the self evaluation piece. And what I would tell you is the practical effect right now is that somebody who is alleging behavior under the Equal Pay Act could still go and address that on the federal level and have the EEOC investigate it. As it plays out right now, what would likely happen is they would do their investigation and issue their findings and instead of the state being able to adopt it wholeheartedly, we'd have some additional work to do under this self evaluation piece. And then potentially down the road under the comparable work, if the definitions or decisions through state courts make those things further apart...pull the equal pay definition further apart from what the Nebraska courts say about comparable work. But as we see it right now, it would be returned to us and then we would do some additional work regarding the self evaluation piece. The reason that's important is because nothing in this bill on the state level has an effect on the equal pay investigation on a federal level. The safe harbor created on a state level will not create a safe harbor on the federal level. They have, of course, no obligation to pay attention to what the

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state is doing, we're providing some greater protections. We're here in a neutral capacity because the bill absolutely aligns with our mission to, hopefully, eventually, eliminate unlawful discrimination. But I just want everyone to be aware and on the same page. I've been in communication with our regional office for the federal...the EEOC, and so this seems to be the greatest effect is that we'd have, essentially, a state-based claim, but it won't protect an employer or respondent on the federal level in terms of liability. But if it's a state-based claim, it absolutely will come into play. So I just wanted to explain that. I think the next most important thing I would say is that our agency probably would have a preference in developing the self-evaluation form and really pushing for the use of that for several reasons. Number one, because it's our hope we would research the law. And I should have mentioned, prior to my last two and a half months at the NEOC, I was with the Attorney General's Office, I'm a lawyer, I was with the Department of Revenue. It is my hope that we would be able to research and create forms that comport with the law. So the areas where litigation could be ripe, to address Senator Chambers' earlier comment, are things like the potential for the definition to depart from the traditional definition, what good faith means, what reasonable progress means, what...and the other issue was what the affirmative defense really means. Is it a total affirmative defense? Does that mean there's no liability on the state claim or does it simply mitigate the liability? These are issues we think would probably be ripe for litigation. That doesn't scare us, we're just pointing that out, and again, in neutral capacity with the recognition these things might have to be played out on a state level. But we're hoping to reduce those things (inaudible) we can because we're aware of them and we'd probably try to take charge. And the other reason, and I know I've got the red light, but because the pay act is any employer with two or more, there are just some people subject to this act who wouldn't have the resources and the sophistication to create a self-evaluation form. And so we would want to give them an equal playing field on that form as you would in an enormous employer who has all the resources in the world to craft one. So that's another reason we would probably want to take charge of that piece if it played out. But with that, I have one more thing, if I could... [LB843 LB1014]

SENATOR ALBRECHT: Okay, go ahead. [LB843 LB1014]

MARNA MUNN: I would just also maybe suggest that the retaliation provision...and earlier there was all the discussion for retaliation, that holds true under the Equal Pay Act as well. For the retaliation provision, we might suggest an exception where the affirmative defense does not apply under 48-1221(4). While we wholeheartedly support trying to close the pay gap, if there are instances of specific retaliation, we might want to except that from the affirmative defense as written right now. Looks like it could apply. So with that I would take any questions. [LB843 LB1014]

SENATOR ALBRECHT: Thank you for your testimony. Questions? Senator Chambers. [LB843 LB1014]

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SENATOR CHAMBERS: I know you're probably aware of the fact that the current Trump administration has changed the way the Justice Department will look at issues. Now where policemen's conduct is alleged, they have been given the order at the federal level to just look at the individual officer and no longer can they investigate a police agency. They have tried to overturn existing consent decrees between the federal government and the locals and there are some cities that had to fight strenuously against the U.S. Justice Department to maintain those consent decrees. And the office of education, they have changed the way they're going to deal with discriminatory...discrimination complaints. They will not look at overall discrimination, but narrow it very much. So I'm not confident that this administration that's in now is going to do what has traditionally been done and the states would be wise, if we're serious about protecting and ensuring certain rights, to get legislation here. And you cannot count on the Justice Department, you cannot count on the U.S. Attorney General, you cannot count on the U.S. Department of Education. And I'm not being critical of you at all, but just indicating that as a policy maker at this level, I don't want to rely on the federal government to do what's necessary to ensure the rights of citizens in Nebraska. But I think it would be good if agencies all over the country, at the state level, would try to ensure to the extent they can, that the traditional approaches that have been taken, even if they're not broadened, at least don't narrow that scope. So I've got to prepare for the worst, hope for the best, but my hope is not high. So don't think anything I say is a criticism of you or the agency here. [LB843 LB1014]

MARNA MUNN: We take the work that's given. We're not going to drum up or deny business. So I appreciate it. (Laughter) [LB843 LB1014]

SENATOR ALBRECHT: Other questions? Senator Crawford. [LB843 LB1014]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you, Ms. Munn, for being here; it's been very helpful. I just want to clarify what I think I heard you say that other...since other states have comparable worth statutes in place from the federal level, they would have those guidelines, as they were moving forward, and so it should not add a lot of ambiguity for either party in terms of looking at how that's been applied at the federal level. Is that correct? [LB843 LB1014]

MARNA MUNN: That's the hope. Like I said, I ran the definition specifically by our regional contact for the EEOC. It didn't...and we had a specific discussion regarding the definition. It didn't cause any problems or heartburn for him. There's always...you never quite know what a court may do or what it might latch onto. I decided to jettison this, but in the '80s there was something called comparable worth that was forwarded as a theory, which is slightly different than equal pay. And it's possible some of that will become...could become convoluted because of the terms. But again, both sides have the opportunity to argue that that's not the appropriate

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definition and the court plays sides. So right now as written, the EEOC is not showing any concern the definition is different enough to create a problem. [LB843 LB1014]

SENATOR CRAWFORD: Thank you. And I appreciate your discussion of how the process would look in your agency as well. Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Any other questions? I have just a quick question. How long did you spend with the EEOC? [LB843 LB1014]

MARNA MUNN: Well, I've been with the Nebraska Equal Opportunity Commission for just two and a half months. But before that I was a practicing attorney with the Attorney General's Office. And I worked with the IBOC in my capacity there. I also worked with a lot of fine folks who are sitting back here waiting for the next set of bills. And then I worked with the Department of Revenue before that. So I've never actually been with the EEOC. [LB843 LB1014]

SENATOR ALBRECHT: So in coming to these two hearings, did you...would you have any idea how many people actually, especially gender, that Senator Pansing Brooks is presenting here, would you have any type of number (inaudible)? [LB843 LB1014]

MARNA MUNN: Sure. What I can tell you, in the last four years the claims that we've investigated or been a part of they range between 18 and 28 which doesn't sound like a lot, but I will tell you our agency has sort of been curtailed in its public outreach for a number of years due to budget issues. I also have a background in public speaking and PR and we're hoping that education will get out there. We expect that we may see a bit more just through some basic outreach that we're going to be able to do now. [LB843 LB1014]

SENATOR ALBRECHT: Great. Thank you very much for your testimony. So, any other questions? Seeing none, thank you very much for coming today. [LB843 LB1014]

MARNA MUNN: And I'm always available if you have additional questions. [LB843 LB1014]

SENATOR ALBRECHT: Great. Thank you. Anyone else wishing to speak in a neutral capacity for either LB843 or LB1014? Anyone else in a neutral position? Seeing none, Senator Pansing Brooks, would you like to close? [LB843 LB1014]

SENATOR PANSING BROOKS: I'd be happy to. Thank you for your good questions. I liken this to the "Chicken Little" syndrome. The sky is falling, the sky is falling, how can we possibly comply with these laws, they're so complicated; what could we do? So I want to ask--what is the

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solution? The answer is always no. The answer is always no. We have to continue to allow businesses to discriminate; we need to continue to allow women to be paid 73 cents to the dollar of a man. So come talk to me. What's the yes in this? Somebody said, you know, the statistics show it's going to be 2066. My 21-year-old daughter will be older than I am right now and so I presume I won't be alive, will I? (Laughter) That's sort of sad. I'm not going to live to see it. So anyway, I wanted to talk about a couple of things. I think the chamber came up and talked about these are new criminal penalties. That is not true. That part of the bill has been moved up. The Revisor decided to go ahead and move that up. Those penalties are misdemeanors, Class III misdemeanor and Class V misdemeanor and they got switched around because the Revisor of Statutes thought it was necessary to do so. Those kind of penalties deal with if somebody gets rid of records and things like that. That's why those are there; not for...they aren't extra penalties for dealing with the employee, unless you commit some sort of fraud, then, yes, there is a penalty and that was set forth...I can't see the year in this section that I have, but. The other thing is that Ms. Munn from the EEOC came and spoke and talked about that in the past four years the cases have been from 18 to 28. Actually, 2013 and '14 was...there were 28; 2014-15 there were 28; 2015-16 there were 18; and 2016-17 there were 18. So the cases are going down. I think that's a really good sign. And I just wanted to say that one of the things that Ms. Munn also said is that the bill aligns with their mission to eliminate unlawful discrimination. She didn't come in here to say, oh no, no discrimination exists, she came in here to say that the bill aligns with their mission to eliminate unlawful discrimination. That should be our goal and mission as well, as members of the Legislature, to eliminate unlawful discrimination. And I'm happy to work with the EEOC. They mentioned helping to craft a form that would be usable. That's a great idea. I love that idea. I'm happy to do that. You know, we had some male testifiers come up and say there's no problem. Well, Senator Fischer and I have said otherwise. There is a problem. There's a problem nationally, there's a problem in Nebraska, and so we need to do something to address it. Also, I just wanted to add that the retaliation provision so that it doesn't apply to an affirmative defense. So again, I think that we can talk about whether or not the wording is correct. If you talk about comparable wages, to say, oh my gosh, there's going to be some lawsuits...well, when you haven't done something for decades and decades and you haven't protected people, then when you create a law that does have protections, there might be a couple of bad actors that get caught up into this. And if there's something we can do, one of the previous gentlemen said, well, we need to inform people. Let's do that. Let's put out some sort of information piece to the state chambers and to the local chambers and make sure that we are...they forgot to mention that the number one issue for the state chamber is work force. So if we're precipitously cutting off work force or we're causing people to be employed at a lower rate and then they have to go ask for benefits from us, how does that weigh out? So I feel really positive about this. I feel like the naysayers were the normal naysayers that, again, it's Henny Penny and the sky is falling. I feel like this is the right time. I appreciate Senator Fischer went forward on this nationally. And I feel really proud to be able to pick that up and work on a bipartisan effort on the same thing for our great state. So thank you so much for your time and your good questions. [LB843 LB1014]

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SENATOR ALBRECHT: Thank you for presenting the bills. Does anyone have any questions before we close? Seeing none, thank you for (inaudible.) [LB843 LB1014]

SENATOR CRAWFORD: Thank you. Thank you. [LB843 LB1014]

SENATOR ALBRECHT: Okay, let's do a five-minute break and we'll be right back.

BREAK

SENATOR ALBRECHT: So we'll just wait a few more minutes until I get my counsel back and two other senators. For those of you who have been here all afternoon, thanks for waiting and being patient. It was actually pretty quick today. I think we can get started. Senator Hansen, I'm sure, will be back in. Senator Ebke, you're welcome to open on LB791. [LB791]

SENATOR EBKE: Thank you, Chair Albrecht and members of the Business and Labor Committee. My name is Senator Laura Ebke, L-a-u-r-a E-b-k-e. I represent Legislative District 32. LB791 is a bill that I introduced at the request of the Governor. This bill, along with LB792, is in conjunction with...in conjunction with LB792, is part of the Governor's initiative to ensure accountability and transparency in the Nebraska State Patrol. The changes in LB791 originated as recommendations resulting from the Governor's 2017 investigation into the State Patrol. The bill makes two substantial changes to the State Employees Collective Bargaining Act regarding State Patrol. First, LB791 would remove State Patrol sergeants from the collective bargaining unit and place them in the supervisors (sic--Supervisory) unit. Second, LB791 would remove disciplinary and investigative procedures from the scope of collective bargaining. Members of the Governor's administration will be following me to testify and provide further information in support of this bill. I would be happy to try to answer any questions. [LB791]

SENATOR ALBRECHT: Okay. Any questions at this time for Senator Ebke from the committee? [LB791]

SENATOR EBKE: Senator Albrecht, I will stick around for a little while but I do have someplace else I need to be, so I may sneak out. And if I do, I will waive closing. [LB791]

SENATOR ALBRECHT: Okay. Very good. [LB791]

SENATOR EBKE: Thank you. [LB791]

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SENATOR ALBRECHT: Senator Chambers, before you go. [LB791]

SENATOR CHAMBERS: Senator Ebke,... [LB791]

SENATOR EBKE: Yes. [LB791]

SENATOR CHAMBERS: ...if you were an amoeba you could be here and there at the same time. [LB791]

SENATOR EBKE: If I was. Unfortunately,... [LB791]

SENATOR CHAMBERS: Me too. [LB791]

SENATOR ALBRECHT: You're not. Thank you for your introduction and we will start with proponents of LB791. And just for a quick show of hands, how many are wanting to testify today? So we'll do the five minutes on each one. Thank you. Okay, Mr. Fisher, do you want to go ahead? [LB791]

DARRELL FISHER: Good afternoon, Chairwoman Albrecht and members of the Business and Labor Committee. My name is Darrell Fischer, spelled D-a-r-r-e-l-l, Fisher is common spelling, like the fish that swims, F-i-s-h-e-r. And I am the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, more commonly referred to as the Crime Commission. I'm also here to testify in support of LB791. Section 3 of LB791 makes disciplinary and investigatory procedures of the Nebraska State Patrol not bargainable, which means they are removed from the employee contract of these officers. This is very important to us at the Crime Commission because of what happens when we get a complaint that initiates the revocation process. Currently, if I received a complaint to start the revocation process on a State Patrol trooper, their contract provides that the internal investigation file is not turned over to me. This makes it impossible for me to take the steps necessary to investigate the complaint made against that officer. I currently have eight pending State Patrol revocation cases that I cannot take action on due to currently existing contract language. Passing this bill will be an important step in protecting the public by assisting the Crime Commission in our ability to obtain the files necessary to investigate complaints made against State Patrol officers. Thank you for your time. Want to thank Senator Ebke for introducing this bill and I encourage this body to pass it on to the body. Thank you and I'd be happy to answer questions. [LB791]

SENATOR ALBRECHT: Thank you for your testimony, Mr. Fisher. Do we have any questions at this time? Senator Crawford. [LB791]

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SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Mr. Fisher. Would you just tell us about a couple of examples of the bargain restrictions that you found problematic in following up with investigations? [LB791]

DARRELL FISHER: Well, there are two. One is being addressed by a separate bill, that is I do not have administrative subpoena power to compel agencies to turn those internal investigation files over to me. The second is the fact that it's in the labor agreement that I cannot get those without an administrative subpoena. And even if I do present an administrative subpoena, that doesn't necessarily end the battle to get those files. So if I get a complaint, I'm somewhat stymied by the fact that I cannot get internal investigation files. [LB791]

SENATOR CRAWFORD: So does LB...the other bill, LB792, address that concern? [LB791]

DARRELL FISHER: Yes, it does. Yes, ma'am. [LB791]

SENATOR CRAWFORD: Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? Senator Chambers. [LB791]

SENATOR CHAMBERS: Mr. Fisher, I've dealt with you before. I'm aware of the work that your agency does. And it's just kind of difficult if you are told to carry out a function which would require you to use both of your hands and then one of them is tied behind your back but they do not change the responsibilities that you have. There are aspects of this bill that I have concerns about but I am even more concerned when the agency such as yours which is to investigate wrongdoing by these officers, to see whether they should retain their certification, cannot be carried out because you cannot get the information that's needed to do the job that needs to be done. Right now there are officers with very bad records who wind up on other police forces in this state. And there was one--this was some years ago--he was sitting in the penitentiary but he still had his law enforcement certification. So that aspect of the bill I am going to support. I think that everybody uses the term "transparency." With the awesome powers that police have, namely, the discretionary power to take a life, even the courts cannot do that. It's not discretionary. There's a long, complicated process that must be taken out...must be followed. An officer can shoot somebody on whim. If other officers see it they will back up what the officer says, even when it's untrue. And now there are videos that have shown that officers have filed false reports. There was an officer who filed a false report when he was involved in some mistreatment of a person. He was on the Lincoln Police Department. He wound up with the State Patrol. I had objected to that. I wrote to the then-head of the State Patrol. I said you are going to encourage a culture of violence by these officers because this guy was being investigated by LPD because of violence. He had pushed this guy at one of the shelters against the wall and he cut his head. He

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had to go to the hospital. Then when he...this guy, this cop wrote an affidavit about the incident, he left out the part about him pushing the man. And to me, that created a false affidavit. None of the people I took it to wanted to do anything about that. So for all you and anybody else would know, he doesn't have that against his record because it doesn't appear anyplace. And if there were something referring to it in an investigative report and you couldn't get that report, if you hadn't read something in the newspaper you might not have what is needed. And I'm telling you why I'm saying this to you. I don't agree with all that's in this bill, but I don't disagree with everything that's in the bill. And I want you to know that anything that I'm able to do to facilitate the work that you are supposed to do and charged with doing, I'm going to do it. I don't want a cop who has fouled up in one location to go to another and do the same thing. It could reflect on you because people might say, well, then why didn't that Crime Commission do something about him. Well, how can you do something when you don't know? And whereas I, as a politician, a member of the Legislature and a policymaker, can speculate, theorize, and draw conclusions by extrapolations from a newspaper article, you have to be precise, more specific, and fact-centered when you are investigating. And I think you would have to view something more than only a newspaper article. It might start the initiation of investigation. And I'm saying a lot now because I don't want to be interrogating everybody who comes up here because I have a question or two I want to ask the new director of the State Patrol and I want to keep my powder dry until that occurs. But that's all that I would say. If you want to respond to anything I've said, then you're free to do so. [LB791]

DARRELL FISHER: Well, I appreciate your kind remarks, sir. We have had instances where we have had...the first indication that we had at the commission was it came out in a newspaper article or we had a reporter that contacted us in advance of a newspaper article and it did prompt revocation complaints. So I appreciate your remarks. We have to do a better job of...law enforcement--I consider myself as one of them--we have to do a better job of policing our own profession. If it's going to be a profession, then we have to police it. Thank you. [LB791]

SENATOR ALBRECHT: Any other questions for Mr. Fisher? I just have a couple quick ones. [LB791]

DARRELL FISHER: Yes, ma'am. [LB791]

SENATOR ALBRECHT: Forgive my ignorance, but I don't really know exactly what you do in the Crime Commission. So we're talking in LB791 about the sergeants. So what is it at your level that you're trying to tell and explain to us what you do and... [LB791]

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DARRELL FISHER: The Crime Commission is the certifying authority for all law enforcement officers across the state. Our primary emphasis is training law enforcement officers. We run the Nebraska Law Enforcement Training Center in Grand Island. [LB791]

SENATOR ALBRECHT: Okay. [LB791]

DARRELL FISHER: And so we are the certifying authority for all law enforcement officers statewide. By that same token, we're also the decertifying authority. If an officer breaks the law or violates their oath of office, is convicted of a felony, commits malfeasance, has an episode of emotional instability, we can decertify an officer if it falls under Title 9...Chapter...Title 79, Chapter 9 of the Nebraska Administrative Code. [LB791]

SENATOR ALBRECHT: Okay. So you were talking about pending...eight pending investigations that have not been turned over to you? [LB791]

DARRELL FISHER: I have eight revocation complaints that have been sent to me. I can do nothing with them because I cannot get the internal affairs files from the State Patrol. [LB791]

SENATOR ALBRECHT: Okay. So would that, to you, have something to do with the sergeants versus a lieutenant versus how they conduct... [LB791]

DARRELL FISHER: No. I'm strictly concerned with Section 3 of LB791... [LB791]

SENATOR ALBRECHT: Okay. Okay. [LB791]

DARRELL FISHER: ...which makes the disciplinary procedure not bargainable. [LB791]

SENATOR ALBRECHT: Okay. Thank you for your time. [LB791]

DARRELL FISHER: Yes, ma'am. [LB791]

SENATOR ALBRECHT: Appreciate you being here. Thanks for your testimony. Okay, we'll have the next proponent come forward, please. [LB791]

JOHN BOLDUC: Good afternoon. [LB791]

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SENATOR ALBRECHT: Go right ahead, uh-huh. [LB791]

JOHN BOLDUC: (Exhibit 1) Chair Albrecht, members of the Business and Labor Committee, I'm Colonel John Bolduc, J-o-h-n B-o-l-d-u-c, superintendent of the Nebraska State Patrol. I'd like to thank you for giving me the opportunity to appear before you today to offer testimony in support of LB791. My testimony will focus on the aspect of the bill that removes internal affairs investigations from collective bargaining. I want to be clear, I fully support our entire team at Nebraska State Patrol. The men and women of our agency risk their lives daily to make Nebraska a safe place to raise a family. They deserve our support and appreciation. Some may feel that LB791 demonstrates the opposite of support and appreciation. I believe that is inaccurate. Change creates uncertainty, especially in a labor context, which in turn can give rise to fear. However, change is sometimes required in order to grow and improve. The internal affairs process, which is the procedure used to police ourselves, should not be subject to influence from the collective bargaining process. To police ourselves in a manner that reflects the high standards of the Nebraska State Patrol and the expectations of the public we serve, the disciplinary process should not be negotiated, should not be a negotiated item during collective bargaining. When I took on the role of superintendent of Law Enforcement and Public Safety, I was ardently aware of the challenges that awaited me and I've had an opportunity to identify opportunities for change. You have been clear with your expectations of me and of the Nebraska State Patrol. Removing the disciplinary procedures from the bargaining process is in the best interest of the state of Nebraska and the citizens we serve. We have a responsibility to provide high-quality and transparent law enforcement with appropriate levels of oversight in the interest of public safety. LB791 will assist me in accomplishing our shared vision for the Nebraska State Patrol. In closing, I would like to express our appreciation for your ongoing support of public safety initiatives. I'd be happy to answer any questions you might have at this time. [LB791]

SENATOR ALBRECHT: Thank you very much. We do have a question from Senator Chambers. [LB791]

SENATOR CHAMBERS: Colonel, in the interest of full disclosure, I did not vote for or against your confirmation. I stated that I didn't have enough information to vote for it but I didn't see anything in anything I've read or heard that would lead me to vote against it; that I wanted you, as far as I'm concerned, to have a clean tablet to do and formulate what would be written on it by what you do rather than what somebody told me. Now your name kind of tells me something. I see a lot of metaphors. Is your name pronounced "bull duck"? [LB791]

JOHN BOLDUC: Yes, sir. [LB791]

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SENATOR CHAMBERS: Now a bull is known to snort and almost blow fire out, eyes get red, paws the ground, and people move out of the way. On the other hand, a duck may be moving serenely over the water and on the surface everything looks calm but under the surface, where nobody sees it, paddling like mad and creating quite a disturbance. So it would not be wise to judge somebody with a combination name like yours by what appears on the surface. We have to go a little deeper. So I know that television interviews don't give an opportunity to say everything that a person might say, but I believe I saw you in an interview and you were saying that in a couple of high-profile incidents, one had to do with a person being struck with the butt of a gun, of a rifle, and the other one with a high-speed chase, and you said you were not looking at the incidents themselves. That's what I think I heard you said. Is that what I heard you say? [LB791]

JOHN BOLDUC: Yes, Senator, in the context, the investigation, the internal investigation that followed those incidents later were to investigate the actions of troopers and their supervisors in the aftermath of those incidents. That investigation resulted in several disciplinary actions, which I explained to the public back in December. [LB791]

SENATOR CHAMBERS: That didn't mean then, when you said...when you made that remark, that you thought there was nothing inappropriate about the underlying incidents. You were not commenting. I'm...let me not ask a leading question. Let me ask it this way. Were you suggesting that there was not anything inappropriate about striking a person with the butt of a rifle or in violating procedures in a high-speed chase that resulted in a death? Were you saying that you didn't find anything inappropriate about the way those two events unfolded? [LB791]

JOHN BOLDUC: No, Senator, I was not alluding to that. The purview of other investigations looked into those matters with respect to were there criminal violations by any members of the State Patrol. That was the grand jury in the one case involving a death, and then of course there is currently another investigation involving the high-speed pursuit... [LB791]

SENATOR CHAMBERS: Okay. [LB791]

JOHN BOLDUC: ...being conducted by a special prosecutor. The purview of our internal investigation, our internal affairs investigation is whether or not our officers violated our internal policies. [LB791]

SENATOR CHAMBERS: Well, I had said when I was interviewed by the media I would wait until I had a chance to talk to you before I drew a conclusion. Why would an underling be fired when the commanding officer was not? [LB791]

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JOHN BOLDUC: Senator, if you're referring to the specific cases at hand,... [LB791]

SENATOR CHAMBERS: Uh-huh. [LB791]

JOHN BOLDUC: ...I'm prohibited by our labor contract from discussing the contents of those internal affairs files, which is the very reason I'm here today. I have been asked by many senators and many folks in the community for transparency and to demand answers: why did this disciplinary action happen; why did that disciplinary action happen; why was this person fired; why was that person not fired? The content of those investigative files I'm prohibited from disclosing because of the confidentiality clause, thus, the reason for my support of this legislation. [LB791]

SENATOR CHAMBERS: Without meaning any disrespect, okay, "Ducky," maybe roiling inside but not able to say much of anything in front of everybody here and the media. I will say that you come across, from what I've seen, as somebody who will be forthright, who will be willing to take whatever action you deem to be necessary and warranted by the circumstances, and that decision will not be based on trying to please the Governor who appointed you or to displease a senator such as myself who is known to have been critical of law enforcement. That's a long way of saying that I think you're going to be your own man. Am I correct in that assessment? [LB791]

JOHN BOLDUC: Well, sir, when I'm done today I'll be able to say I have the talking part done. You're going to have to judge me on my actions. There's about 50 people behind me right now who are very unhappy that I'm sitting here testifying in favor of this bill, but I believe it's the right thing for accountability, not only for our agency but for our profession. We've taken a pretty big hit in the last couple years on trust and accountability, and my inability to discuss what happened and why I took the actions I did doesn't do me any favors with respect to public trust and accountability. [LB791]

SENATOR CHAMBERS: Okay. That's all that I have. Thank you. [LB791]

SENATOR ALBRECHT: Thank you. Any other questions? Senator Halloran. [LB791]

SENATOR HALLORAN: Madam Chair, thank you. Thank you, Colonel Bolduc. So is your primary concern in the...with the issue with the, "Disciplinary and investigatory procedures of the Nebraska State Patrol shall not be bargainable," Section 3? I mean it's part of the bill. [LB791]

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JOHN BOLDUC: Yes, sir. [LB791]

SENATOR HALLORAN: (Inaudible) part of the bill is distinct from that, but... [LB791]

JOHN BOLDUC: Yes. Thank you, Senator. As per my testimony, if I were to prioritize the two parts of the bill, that would be the first priority is the removing of the article in the labor contract that prohibits transparency. [LB791]

SENATOR HALLORAN: Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? Senator Crawford. [LB791]

SENATOR CRAWFORD: Thank you. Thank you, Chairwoman Albrecht. And thank you for being here, Colonel. Since your testimony is mostly focused on the second part, just wondering if you just could answer a few questions for us in terms of implications of the first part,... [LB791]

JOHN BOLDUC: Certainly. [LB791]

SENATOR CRAWFORD: ...removing the sergeants from the bargaining unit. If the sergeants are removed from the bargaining unit, what would be their legal protections and what would be the bargaining process for them in terms of benefits and pay? [LB791]

JOHN BOLDUC: Thank you for the question, Senator. My understanding is the Governor's chief human resources officer is going to follow me and that might be a question that he would be better able to answer with respect to benefits and all of those things. That is not an area that I'm completely up to speed on. [LB791]

SENATOR CRAWFORD: Okay. Great. Thank you. In terms of investigations, could you tell me a little bit about when the sergeants would be assigned to those investigations versus someone else in the command staff? [LB791]

JOHN BOLDUC: Yes. Thank you for the question, Senator. Typically, the investigations that are delegated out to sergeants tend to be of a more routine nature. And I say routine to mean courtesy complaints, vehicle accidents, other symptoms where we have dissatisfied customers who would complain about conduct of an officer. The challenge comes in is sometimes those complaints may seem minor on the surface but when we dig into it and we investigate and we

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talk to people, it becomes perhaps more than that. So you don't ever know once it gets sent out to somebody how far it's going to go. So it's not always limited to just those, what we would call, minor complaints. But if we have on the surface a serious allegation of misconduct, that's handled by a lieutenant. [LB791]

SENATOR CRAWFORD: Okay. Great. And if there were more transparency on those complaints, someone could see something that might be a sergeant level investigation to see if they felt it was handled appropriately. [LB791]

JOHN BOLDUC: Well, yes. In theory, yes. [LB791]

SENATOR CRAWFORD: Right. But the major, the major investigations would go to a lieutenant. [LB791]

JOHN BOLDUC: Yes, ma'am. [LB791]

SENATOR CRAWFORD: Yes. All right. Thank you. [LB791]

SENATOR ALBRECHT: Other questions? Senator Howard. [LB791]

SENATOR HOWARD: Thank you, Senator Albrecht. Thank you for visiting with us today. What does the current labor contract say in regards to this (inaudible) investigate...investigatory procedure? So does it just outright say that no investigations can be discussed? [LB791]

JOHN BOLDUC: It, no, it's actually quite comprehensive. There's an entire...well, there's several pages with respect to that. But basically, the findings of an investigation are considered confidential... [LB791]

SENATOR HOWARD: Okay. [LB791]

JOHN BOLDUC: ...and, in fact, the information that leads to the findings are also confidential. So I would be unable...I can disclose that there is discipline but I can't explain to whom and I can't explain what are the results that led up to that discipline, the investigative findings contained within that file. That's considered... [LB791]

SENATOR HOWARD: And can you tell us what the discipline is? [LB791]

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JOHN BOLDUC: I can tell you what the discipline is but I can't tell you to whom it was imposed. [LB791]

SENATOR HOWARD: And this covers all disciplinary proceedings? [LB791]

JOHN BOLDUC: Yes. [LB791]

SENATOR HOWARD: And what's sort of a range of the type of disciplinary proceeding that might happen? [LB791]

JOHN BOLDUC: So, we could go from a written reprimand, a written warning, all the way up to termination. [LB791]

SENATOR HOWARD: What are some examples of investigations you've had to do in the past few years? [LB791]

JOHN BOLDUC: Well, considering I've only been here for about four months, it...I can tell you in the totality of my career, since I've been a supervisor, which goes back to 1992, I've had everything ranging from unlawful use of force to dishonesty to negligent discharge of a firearm to courtesy complaints, all the way...I've issued warning letters, counseling letters, all the way up to termination, unfortunately, many times in my career. [LB791]

SENATOR HOWARD: Has there ever been an effort to reverse this in the labor contract in your negotiations? [LB791]

JOHN BOLDUC: Well, I haven't been here for a negotiation since I just got here. [LB791]

SENATOR HOWARD: Guess not. [LB791]

JOHN BOLDUC: So the answer to that is no. [LB791]

SENATOR HOWARD: So not during your tenure but prior to your tenure, has there ever been an effort to make this change in the contract before? [LB791]

JOHN BOLDUC: I don't know the answer to that. [LB791]

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SENATOR HOWARD: Will somebody be following you who does? [LB791]

JOHN BOLDUC: I don't like to make promises I can't keep, but somebody is going to follow me who you can ask that question of and perhaps they know the answer to it. [LB791]

SENATOR HOWARD: Okay. And when we're talking about the confidentiality, I just want to make sure, that means that it couldn't go to anybody, not the Legislature, not another department, not another state. There's no way that anybody would be able to find this information even if it was relevant in some other job or something like that? [LB791]

JOHN BOLDUC: Unless they were pursuant to a waiver. Now if somebody was applying for another job, typically we would require them to sign a waiver. Say I was a police chief in another community. Somebody was coming from the State Patrol. I would require them to sign a waiver; therefore, I would get access to those files. [LB791]

SENATOR HOWARD: Okay. Great. Thank you so much. [LB791]

JOHN BOLDUC: Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? Have another one, Senator Crawford? [LB791]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Colonel. Does that waiver process does not work for the Crime Commission for some reason--a question, on to a question--why does that waiver process not work for the Crime Commission? [LB791]

JOHN BOLDUC: Well, it would work if the former employee signed a waiver. They could get that. [LB791]

SENATOR CRAWFORD: I hear you. [LB791]

JOHN BOLDUC: If you're applying for a job, you have great incentive to sign a waiver. If you are not, there is no incentive to sign that waiver, especially if the results of that waiver would be a disqualification of your credentials. [LB791]

SENATOR CRAWFORD: I hear you. Thank you. [LB791]

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SENATOR ALBRECHT: Thank you. Any other questions? Seeing none, thank you for being here. [LB791]

JOHN BOLDUC: Great. Thank you. [LB791]

SENATOR ALBRECHT: And welcome to (inaudible). Any other proponents wishing to speak to LB791? [LB791]

JASON JACKSON: (Exhibit 2) Apologies from the start. Senator Crawford, I'm one of those 70 percent that's coming in to work sick today. [LB791]

SENATOR CRAWFORD: Oh no! (Laughter) [LB791]

JASON JACKSON: So you'll have to forgive me. I will be nursing some cough drops. There's no disrespect intended there. Senator Chambers has told me before that he's a germophobe. I promise to direct my coughing in the direction of Senator Hansen,... [LB791]

SENATOR CHAMBERS: (Laugh) [LB791]

JASON JACKSON: ...Senator. So with that, I'll go ahead and begin. Thank you, Senator Albrecht and members of the committee, for the opportunity to speak with you today. Thank you also to Senator Ebke for sponsoring this bill on behalf of the Governor. My name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n, chief HR officer to the Governor, and I'm here to testify in support of LB791, which is a key pillar of the Governor's State Patrol Transparency and Accountability Initiative. This past summer the Governor asked me to conduct a review into the Nebraska State Patrol following allegations of mismanagement and misconduct. When I began, I presumed I may find process defects and policy violations. What I didn't expect to find was the degree to which state law and the state's labor contract with the State Law Enforcement Bargaining Council operate together to undermine transparency and accountability at the Nebraska State Patrol. Nebraskans have a right to expect that when the State Patrol investigates itself, the people who conduct the investigations are objective, the investigative process gets to the truth, and the results of the investigation are transparently shared with the public. We don't believe the law should allow the Nebraska State Patrol to contract around those expectations. LB791 addresses two significant issues that compromise Nebraskan's rightful expectations of objectivity and transparency in Nebraska State Patrol internal affairs investigations. First, it removes sergeants from the Law Enforcement bargaining unit and places them in their proper place in the Supervisory bargaining unit. Sergeants are front-line supervisors and are frequently employed as investigators into internal affairs complaints at the Nebraska State Patrol. Their

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membership in an organization that defends against supervisory and disciplinary decisions is an inherent conflict of interest. Second, this bill removes internal affairs investigative procedures from the scope of collective bargaining. Our current contract with SLEBC contains numerous terms that compromise our ability to conduct thorough and objective investigations and, most concerning, poses a complete bar on our ability to share with the public investigative findings. These measures are a step forward in reforming the criminal justice system generally and the Nebraska State Patrol specifically. That concludes my prepared remarks but I'll briefly just say, since I do have some additional time, I am just really in awe and moved by the number of State Patrol troopers that we have here to voice their opinion on this bill. Our administration holds these folks in extremely high esteem. Myself, I'm a veteran of Iraqi Freedom and Enduring Freedom. I know what it's like to wear the uniform and to pursue a profession where you're subordinating your own personal safety to those of the community that you're serving. There's a lot of nobility in that and we want to see this organization restored to its proper place of public esteem. We don't want our troopers to have their integrity called into question by the few actions of a couple bad actors or by having conflicts of interest that undermine the public's confidence in the work they do. So that's what's motivated our administration from the start and why I'm here before you today. So with that, that concludes my prepared remarks and I'm happy to take any questions. [LB791]

SENATOR ALBRECHT: Thank you, Mr. Jackson, for your testimony. Do we have any questions? Senator Crawford. [LB791]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you, Mr. Jackson, for being here today. So we had some discussion about the portion about the bargaining unit, excuse me, about the bargaining on the disciplinary procedures before, so I'd like for you to comment on some of the implications of removing the sergeants from the bargaining unit in terms of what that really means for their bargaining and what that means in terms of healthcare costs and some of those other elements. So first I would just ask, what impact...what does the Supervisory unit look like? Is there an existing Supervisory unit that they would become a part of? And how many people are in that unit? [LB791]

JASON JACKSON: (Exhibit 3) Very thoughtful question. Let me attempt to answer that and one of Senator Howard's questions as well, because Senator Howard asked what prior attempts have we made to resolve these issues through bargaining. I'm going to go ahead and share some documents with the committee now. Senator Hansen, if you want to...? One of the disparaging comments that's been directed in my direction has been that I've been naive in how we've approached law enforcement and law enforcement reform, and I'll concede that I was naive in one respect when we began this process and that is I genuinely believed that the administration and the State Troopers Association of Nebraska shared a mutual interest in making sure the State Patrol was above reproach. And I genuinely believed, when we initially published our report in

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August, that we would have a partner at the table that we would be able to collaborate with on some of these reforms. What these documents that I've shared with you now do is document the lengths to which the administration has attempted to work with STAN/SLEBC leadership to resolve these issues. An initial e-mail to Gary Young, representing the troopers on August 7, followed by a formal offer to negotiate on August 22, which was met with a rejection letter sent by Brian Petersen, president of SLEBC, on October 5 rejecting our offer to negotiate these issues. Now I'm going to pause here because that rejection was particularly disappointing to me because contemporaneously with these events I was fielding a number of significant concerns from women in the State Patrol about how we were handling sexual harassment allegations, particularly. When faced with that rejection, I communicated to all our teammates in the State Patrol my disappointment with the fact that we weren't able to strengthen our sexual harassment policy for want of being able to negotiate stronger provisions into our existing labor agreement. That communication to our teammates at State Patrol was met with a, basically, a threatening legal letter from Gary Young calling...it was basically saying that that characterization was libelous. I responded, our administration responded by basically saying, look, if they're sincere in their willingness to negotiate sexual harassment provisions, we need to accept that at face value. The safety of our women in our work force is our priority. And to that end I sent on November 9 this letter in your packet to Mr. Young, representing the State Patrol, and I'll begin reading that into the record, beginning in paragraph three. "The state's priority has always been and remains the safety and well-being of everyone in the State Patrol. To that end, please consider this letter a formal offer to renegotiate Article 29 for the limited purposes of workplace harassment and sexual harassment investigations and adjudication. Specifically, the state seeks the following changes: Clear contractual language that all State Patrol employees are expected to treat each other with dignity and respect and there is zero tolerance for workplace harassment generally or sexual harassment specifically. Removal of the prohibition against considering past offenses greater than 24 months in imposing discipline. Repeat harassers need to be held accountable regardless of how long in the past their prior conduct occurred. Removal of the prohibition against imposing discipline for sexual harassment violations that occurred more than 12 months in the past. Members of the Patrol need to have confidence that whenever they bring forward a complaint it will be investigated appropriately. Adding forced reassignment as a potential disciplinary consequence for violations of workplace harassment or sexual harassment policy. Allowing harassers to continue serving in the same units as their victims creates a poor workplace climate and may chill victims from reporting misconduct." And allowing Patrol to inform victims of the results of the investigation into violations and any discipline that was imposed. The State Troopers didn't even so much as respond to that offer to negotiate sexual harassment, so it was at that point that we knew we had...if you can't agree to protect the women in uniform and negotiate, it was clear to us at that point that we had an adversarial situation. In spite of that, on Monday, January 8, if you'll recall, separately in the month of January we had the good fortune of entering into agreement with NAPE, who is the union that represents the rest of our state work force, to expand maternity benefits to our female employees that are covered

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by that bargaining unit. We wanted to afford that same benefit to our female state troopers. And so to that end, on Monday, January 8, we extended this offer again to Gary Young, representing the State Troopers Association: Gary and Nate, We wanted to reach out to you today to give you a quick heads-up. We've entered into a Letter of Agreement with NAPE/AFSCME to implement a new maternity leave donation. We'd like to make this offer available to SLEBC as well. No response to that either. So what we've had here is a pattern of, basically, obstruction, in terms of reforming the internal affairs process, and deliberate indifference with respect to protecting the women who are serving in the Patrol whom we'd like to expand our protections in terms of our sexual harassment policy. Now just this past Thursday we had an additional meeting with SLEBC representatives. It was our hope that as they're...have the ample notice of the state's position in terms of what we'd like to achieve in the bargaining process, they would come forward with some substantive recommendations about ways in which we could work together. That was not forthcoming. In fact, what was advanced in that meeting is that they regarded the existing internal affairs process as adequate and not in need of change. So that's a, basically, a summary of the length at which the administration has gone to, to try to work with STAN and the State Troopers to try to effect these changes, and the degree to which we've been thwarted by their unwillingness to work. Now what have they done in that same time period? Well, a few things. Repeated assurances that there was no misconduct with respect to Trooper Flick. Let's remember what happened here with Trooper Flick, okay? He reported that he was initiating a TVI, requested permission to conduct a TVI, reported that he was commencing a TVI, reported that he had conducted a TVI, and then 18 minutes later on video on the World-Herald Web site can be seen talking to a third party on the phone saying that he did a TVI according to policy. Then his story changes. Well, our administration's position, look, is that somebody whom you'd want testifying in a jury trial in which one of your loved ones has their liberty on the line based on his honest testimony? Okay? That's why Trooper Flick was placed on suspension--the inconsistency in that story. Now again, because of these contractual provisions, I'm not able to share with you what the results of that investigation are, but that's what our motives were. What else has STAN done? Well, defended repeatedly the actions of Lindsey Bixby, the lethal force rifle butt strike to the back of the head of a man who had his arms out here like this. They say that's defensible. We say it's not. That's conduct that's beyond the pale. What else have they done? All right. Trooper Kober, you may remember Trooper Kober. Trooper Kober is... [LB791]

SENATOR ALBRECHT: Excuse me. Excuse me one second. [LB791]

JASON JACKSON: Yeah. [LB791]

SENATOR CRAWFORD: Yeah. [LB791]

SENATOR ALBRECHT: Were these your questions? [LB791]

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SENATOR CRAWFORD: No, they weren't. (Laugh) [LB791]

SENATOR ALBRECHT: We probably should stick to the questions... [LB791]

SENATOR CRAWFORD: Right. [LB791]

SENATOR ALBRECHT: ...that were asked before elaborating, so... [LB791]

SENATOR CRAWFORD: No, I appreciate, I appreciate you indicating some of the concerns that you have,... [LB791]

JASON JACKSON: Sure. [LB791]

SENATOR CRAWFORD: ...the efforts made to negotiate on the disciplinary matters. I guess I see these as there's two parts of the bill. I'm trying to understand why pulling the sergeants out of the unit is critical for these other objectives you're trying to reach. [LB791]

JASON JACKSON: Great question. Okay. So why is pulling sergeants out of the unit critical to accountability and transparency at State Patrol? A couple reasons. One, sergeants conduct a large portion of the internal affairs investigations and complaints that happen at State Patrol. Kurt Frazey, legislative liaison for the troopers, said...was quoted by JoAnne Young in a Journal Star article dated January 4 that...more than 50 percent, a majority, of internal affairs investigations are conducted by sergeants. I take Trooper Frazey's quote at face value. That's a sizable number of internal affairs investigations that are conducted by sergeants. Let's also look at, again, at the Trooper Flick case. Okay. Trooper Flick's supervisor, a sergeant; the accident reconstructionist in Trooper Flick's case, a sergeant; the criminal investigator called to the scene, a sergeant; the IA specialist that assisted the IA commander in determining whether or not it was a TVI, a sergeant. These are all different people, by the way. The person who reviewed the pursuit critique, a sergeant. You can't separate sergeants from the investigative process at State Patrol. It's key to the role. Now I'm not trying to impugn the integrity of those people... [LB791]

SENATOR CRAWFORD: We heard, we heard earlier that, you know, major concerns would then get moved to a lieutenant or moved up the line in terms of investigation. [LB791]

JASON JACKSON: I'm sorry, could you repeat? [LB791]

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SENATOR CRAWFORD: Yes. I think we heard from an earlier testifier that the sergeants were mainly dealing with complaint issues and serious allegations would then tend to be moved to a lieutenant level. Is there some reason that these weren't moved to a lieutenant level? [LB791]

JASON JACKSON: Well, what I'm illustrating for you, Senator, is the assignment of the IA investigator on point is but a very small piece of the overall investigative process at the State Patrol. You can't separate investigations from sergeants. It's just core to the role. And so in this case, these five people that I've referred to...and, again, I'm not trying to impugn their integrity. Many of them operated honorably. But you can't separate the sergeant position from their contributions to that investigative effort. And if they have a conflict of interest, it invites scrutiny from the public as to whether or not that investigation was above reproach in its conduct. [LB791]

SENATOR CRAWFORD: Right. Which transparency rules would help with that process. I mean those two pieces: one piece is the transparency, one piece is the bargaining unit (inaudible). [LB791]

JASON JACKSON: That's right. And that was the other piece of Senator Howard's question, I believe, is what gets in the way of this transparency. I have here, and I regret I didn't have more time to organize myself but I'm going to attempt to find it for your benefit. [LB791]

SENATOR CRAWFORD: Well, I think we heard about provisions. [LB791]

JASON JACKSON: You heard about what? I'm sorry, Senator. [LB791]

SENATOR CRAWFORD: Some provisions that prevented information from being released (inaudible). [LB791]

JASON JACKSON: Yeah, so... [LB791]

SENATOR CRAWFORD: But we haven't heard as much about the impact of the bargaining unit shift in terms of the benefits for the sergeants, the bargaining ability of sergeants in terms of their pay and benefits, and the impact in terms of their protections on the other, on basic wages and benefits side. [LB791]

JASON JACKSON: So let me answer the first part of your question first with respect to transparency. What I just distributed to the members of the panel are the lengths to which legal representatives of Trooper Flick, Sergeant Wallace, and Trooper Bixby went to prevent the State

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Patrol from disclosing the investigative results into their cases. What you have here is basically three threatening legal letters--one from David Domina, representing Trooper Flick; one from Gary Young, representing Travis Wallace; one from Gary Young, representing Trooper Bixby--basically threatening the agency if the results of these investigations were disclosed to anybody. Also note that last one with respect to Trooper Bixby in the last paragraph in Gary Young's e-mail in which he says, quote: Therefore, please put the superintendent on notice that if he puts a termination letter in the Bixby file--in other words, if he indicates that he fired Bixby, this is the rifle strike butt (sic--rifle butt strike) guy--which the Colonel knows will be available to future employers, we will treat that as slander of his employment record and we will pursue an action against that. Okay. So this is getting to what we've said is an issue in terms of the disclosure of these officers' conduct to future employers. Now with respect to pay and benefits, the intent of this bill is not to compromise anybody's pay and benefits at the State Patrol. This isn't a cost play. This is about principles, it's about transparency, it's about accountability. By our estimates, the average sergeant in 2017 earned \$83,000. You couple that with what the state estimates is about 15 percent for medical benefits, it brings the total compensation package to nearly six figures. We are very confident that the pay and benefits package of sergeants (inaudible) after this bill continue to be very competitive. What's more, this bill won't do anything to compromise their overtime eligibility, to compromise the wages that are already negotiated in terms of increases into their contract. And we're happy to look, as an administration, into any issues that would result in harm from a total rewards perspective as it pertains to these sergeants that are impacted by this bill. [LB791]

SENATOR CRAWFORD: Well, I share your concern about making sure we have transparency and about making sure we're protecting women from harassment and providing benefits for women. I'm still trying to understand if we have those provisions, say like LB792 or the procedures not being bargainable, why removing the sergeants from the bargaining unit is a critical piece. But we may...and I...that's what I'm still trying to understand and understand also just the other implications of that in terms of what that means for sergeants, male and female sergeants, in the future. So that's what...I'm sure other people behind you also will give their perspective on that. [LB791]

JASON JACKSON: I'm sure. [LB791]

SENATOR CRAWFORD: Yes. Yes. Your argument is...you're arguing that there will be some kind of protection for their wages despite not being in the bargaining unit. [LB791]

JASON JACKSON: If your question goes to specifically their, yes, they will still earn the already negotiated increase that will occur this coming summer. There is nothing in this bill that reflects the administration's intent to in any way compromise their rewards, their total rewards or their

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compensation. And like I said, the administration is happy to look at anything that would...
[LB791]

SENATOR CRAWFORD: Yeah, I think their health insurance I think comes from their bargaining unit. [LB791]

JASON JACKSON: Correct. [LB791]

SENATOR CRAWFORD: And so if they're not in the bargaining unit, would the state then pick up that cost for their health insurance? [LB791]

JASON JACKSON: The state, the state plan pays 79 percent of their benefits. The SLEBC plan I believe pays 83 percent. So again, that's where the state would be happy to take a look at our rewards portfolio and, to the degree we can, assess whether or not we can make them whole.
[LB791]

SENATOR CRAWFORD: Thank you. [LB791]

SENATOR ALBRECHT: Other questions? I saw Senator Chambers' hand up. [LB791]

SENATOR CHAMBERS: Maybe I'll let Senator Hansen go first because I'm interested in the information that Mr. Jackson was giving when Senator Crawford indicated that wasn't the direction that she was going. [LB791]

SENATOR ALBRECHT: Okay. [LB791]

SENATOR CHAMBERS: I want to hear that. And the reason I want to hear it is going to be a matter of public record from somebody connected with the administration, not speculation and so forth. So I will follow Senator Hansen and whoever else might have a question. [LB791]

SENATOR ALBRECHT: Senator Hansen, do you have a question? [LB791]

SENATOR HANSEN: I do, and thank you. Thank you, Senator Chambers. Thank you, Chair Albrecht. Thank you for coming, Mr. Jackson. So I guess I kind of am coming from a...taking a couple steps back. There's some legislative history here of I had introduced a bill several years ago that would have done some things for state employees, and I was told that it was not the Legislature's function to decide what could be contracted for in a bargaining unit. Mine was

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specifically for salary pay, longevity increase, which is not super important here other than we heard some kind of spirited testimony from the administration that it was not the role of the Legislature to come in and decide what can and cannot be negotiated for. Is that no longer the position of the administration? Can you speak to that? [LB791]

JASON JACKSON: Well, Senator, I think I spoke at some length to the lengths at which the administration has attempted to work with SLEBC to resolve these issues. [LB791]

SENATOR HANSEN: Sure. [LB791]

JASON JACKSON: And so our position is, look, we brought to bear and reported to the public the malfeasance that we found at the State Patrol. And we also saw it as our affirmative duty to recommend policy recommendations that would preclude or mitigate the risk of those types of things happening again in the future. That's what we've done and what we're advancing to the Legislature today is basically to say, look, there's been a lot of leaders in this body that have said they're interested in reforming the State Patrol, that they're concerned about the misconduct this past summer. This bill is the one vehicle that the senators have this session to address those issues and we hope it will be given serious consideration. [LB791]

SENATOR HANSEN: I guess I'm talking to a more fundamental issue on kind of separation of powers, the role of the Legislature. So we, as the Legislature, can come in and dictate contract terms and the scope of collective bargaining? [LB791]

JASON JACKSON: What the Legislature is empowered to do is dictate what terms can be negotiated, what is the scope of collective bargaining. That's what the State Collective Bargaining Act does, is it lays out the terms and the process by which collective bargaining occurs. And so what we're basically doing here is we're saying, look, if you're interested in transparency and accountability at the State Patrol, is that something the administration and the State Patrol should be able to contract out of? I would hope that senators would be concerned that we can enter into a union labor agreement that would preclude us from being able to disclose to you information that's happened in our own investigations. I would think that would be concerning to this body. And so that's why we've advanced the recommendations we've had to basically say, hey, look, the Legislature, in its wisdom, has defined within the State Collective Bargaining Act what are the terms and conditions of employment that are subject to collective bargaining. In light of the misconduct that's occurred at the State Patrol over the past year,... [LB791]

SENATOR HANSEN: Uh-huh. [LB791]

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JASON JACKSON: ...is this one of those terms that perhaps shouldn't be subject to collective bargaining? [LB791]

SENATOR HANSEN: Okay. Kind of building off that, so then getting more specific to the contract, so when was this specific contract signed? When was this negotiated and adopted? [LB791]

JASON JACKSON: The research that we've done, and particularly the most egregious term being that term that bars disclosure from third parties. [LB791]

SENATOR HANSEN: Sure. [LB791]

JASON JACKSON: What we've been able to determine from the folks at DAS is that's a legacy of the '95 to '96 contract. [LB791]

SENATOR HANSEN: Okay. [LB791]

JASON JACKSON: And that it's basically been carried forward in every subsequent agreement since then. [LB791]

SENATOR HANSEN: And I guess so when was the most recent subsequent agreement, the one that we're on now that's (inaudible)? [LB791]

JASON JACKSON: I think it would have been executed in January of last year, so about a year ago. [LB791]

SENATOR HANSEN: Okay. So about a year ago. [LB791]

JASON JACKSON: Yeah. [LB791]

SENATOR HANSEN: Okay. So this is something the administration has had a chance to see and we're currently undoing a contract. It's not a holdover from the Heineman administration. This is a new contract under the Ricketts administration. [LB791]

JASON JACKSON: Yeah. Well, I want to be very clear on that, Senator. This bill doesn't abrogate any existing contract, so that's not the intent here. We want to absolutely be respectful

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of the existing agreement that's been entered into. This bill will become effective at the conclusion of this contract's effectiveness. [LB791]

SENATOR HANSEN: Okay. But just...I'm just trying to still get all of the facts here. So this is a contract that the Ricketts administration, Governor Ricketts, signed about a year ago and we want to, before we go back to the bargaining table for the next round, we want to make sure that this is no longer on the table, period. And that's kind of the goal of, in the spirit of transparency, that's the goal of LB791? [LB791]

JASON JACKSON: I'm not...I'm not sure, Senator, how that was framed differently than the prior question that I answered. Maybe you could repeat it again. [LB791]

SENATOR HANSEN: Well, I wasn't 100 percent sure you answered the prior question, so that's why I rephrased it. [LB791]

JASON JACKSON: Okay. So, well, let me test for understanding. We...this existing contract was entered into in January of '17. [LB791]

SENATOR HANSEN: Okay. [LB791]

JASON JACKSON: It became effective in July 1, '17. It's right here if anybody wants to see it. We're not intending to abrogate the existing contract. What we're doing is basically recommending policy for future contract negotiations. [LB791]

SENATOR HANSEN: All right. Thank you. Thank you, Chair. [LB791]

SENATOR ALBRECHT: Okay. Thank you. Other questions before Senator Chambers? [LB791]

SENATOR HOWARD: I'll do a fast one, I promise. [LB791]

SENATOR ALBRECHT: Senator Howard. [LB791]

SENATOR HOWARD: I was looking at this e-mail. It says that somebody quit the Patrol on Friday and he does not have the Colonel's permission to quit. So you have to have permission to quit your job? [LB791]

JASON JACKSON: No. [LB791]

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SENATOR HOWARD: Oh. What does that...what does that mean then? [LB791]

JASON JACKSON: Let me attempt to see what you're looking at. [LB791]

SENATOR HOWARD: Monday, June 27, 2015. [LB791]

JASON JACKSON: I believe what that is, without it right in front of me--I'm sorry, I have a lot of documents in front of me--but without that right in front of me, I believe what that's characterizing is the representative for that trooper is trying to ensure that the termination is characterized as voluntary rather than involuntary. [LB791]

SENATOR HOWARD: Oh, okay. [LB791]

JASON JACKSON: And the implication there is that if it's characterized as voluntary, somehow that makes their employment record...won't reflect the misconduct that occurred and makes it more likely that they'll be able to pursue employment in another law enforcement agency in spite of their misconduct. And so I believe what that letter is attempting to do is to compel the State Patrol to characterize that termination as voluntary in character and make sure that the employment record reflects that, if I were to speculate as to motive, so that that officer could obtain employment in another law enforcement agency in spite of their misconduct. [LB791]

SENATOR HOWARD: So was a file...or was a letter placed in this person's file that they were terminated when they quit two days before? [LB791]

JASON JACKSON: I couldn't say. I don't know. [LB791]

SENATOR HOWARD: And this is more of a comment. It's not...so my mom was one of the original founders of NAPE/AFSCME in the '70s, when my sister was little. And the foundation of the reason why that union was created was a lack of trust between the administration and the workers, right? We had a lot of caseworkers who didn't get a lot of support and they were really struggling and who didn't have a lot of benefits, right? And so this e-mail in particular concerns me because it really shows that there's not that trust between the worker and the administration and management that you would want to see when you're going into a contract negotiation like this. And so I guess that's more of a comment, but I felt like this e-mail was much more revealing than I think you meant for it to be. [LB791]

JASON JACKSON: Oh, I don't think so. If...I believe that e-mail is pertaining to Lindsey Bixby, who's the trooper that engaged in the rifle butt strike to the back of the head. Personally, I don't

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trust Lindsey Bixby. I wouldn't trust somebody who would walk up behind a vulnerable person, with his arms out at his side, and take a rifle and engage in lethal force to the back of his head. So I mean that's just, to me, that's just the standard of how do we comport ourselves and what level of professionalism is expected. So I don't think that you can view those e-mails in a vacuum and characterize them as distrust for the work force generally. That's certainly not the intent. What it does speak to is an effort by legal representatives of these troopers engaged in misconduct to have their misconduct shielded from public scrutiny. [LB791]

SENATOR HOWARD: So was the intention to put in a termination letter an effort to go around that Article 29 so that there would be some evidence of the misconduct? [LB791]

JASON JACKSON: Probably. I couldn't say. I believe that our intention is to be as transparent with the public as possible and transparent with the Crime Commission as possible about misconduct that occurs. And within the constraints of the contract and the law, we've attempted to do so. It...I couldn't say what the motives were behind that but I do know that the administration has always been...attempted to be as transparent as possible, and that that represents resistance. [LB791]

SENATOR HOWARD: And termination letters are not subject to Article 29 so they would follow you to another place of employment? [LB791]

JASON JACKSON: Termination letters would be considered part of a personnel record and would not be considered public information. And so within the context of Article 29 and the SLEBC agreement, we couldn't release those absent a waiver by the trooper. And so again, that gets back to the issues of transparency and this agreement that bar us from being able to be transparent with the Crime Commission, subsequent employers, or the public about misconduct that's occurred. [LB791]

SENATOR HOWARD: So why was this person worried that if the letter got in his file it would go to future employers? But you're saying it couldn't go to a future employer. [LB791]

JASON JACKSON: Not absent his waiver. [LB791]

SENATOR HOWARD: Okay. Thank you. [LB791]

JASON JACKSON: Yeah. [LB791]

SENATOR ALBRECHT: Senator... [LB791]

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SENATOR HALLORAN: With...with...with permission... [LB791]

SENATOR ALBRECHT: With permission from Senator Chambers,... [LB791]

SENATOR HALLORAN: ...from Senator Chambers, because he's a hard act to follow, can I just ask a quick question? [LB791]

SENATOR HOWARD: We all think they're quick. [LB791]

SENATOR ALBRECHT: Can Senator Halloran go? [LB791]

SENATOR CHAMBERS: Anyone who has a question can go first. [LB791]

SENATOR ALBRECHT: Yes. Okay. Thank you. Senator Halloran, you may ask your question. [LB791]

SENATOR HALLORAN: Thank you. Thank you, Mr. Jackson, for being here. [LB791]

JASON JACKSON: Yep. [LB791]

SENATOR HALLORAN: A quick question or a statement first. Sometimes we ask for legislation for sometimes internal policy changes that resolve an issue. For Section 1 and 2 dealing with the sergeants, couldn't we have an internal policy for state troopers dealing with internal affairs complaints that absolutely states that when we have internal affairs complaints on officers that it would be limited, that it would be restricted to lieutenants--Senator Crawford's point--to lieutenants and above, period, thus, eliminating Section 1 and 2 of this bill and getting it down to Section 3? [LB791]

JASON JACKSON: Great question. Let me hit a couple of points in response, okay, first of which I know you're a limited government conservative, sir. It's a uniquely government remedy to suggest that the way we alleviate a conflict of interest is we delegate upward to supervisors, other people to do the work. When we say that sergeants, just because of this conflict of interest, we're just not going to have them do these investigations, we're going to shift that work over to lieutenants, we don't believe that's a scalable remedy, particularly in light of the fact that by some evidence by some estimates, as many as 50 percent of these cases are done by sergeants. Okay? That's a sizable portion of the workload. [LB791]

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SENATOR HALLORAN: If I may interrupt,... [LB791]

JASON JACKSON: Yeah. [LB791]

SENATOR HALLORAN: Then Section 1 and 2 should have lieutenants in there too? [LB791]

JASON JACKSON: Lieutenants aren't in the bargaining unit. [LB791]

SENATOR HALLORAN: I understand that, but we can eliminate that issue with the bargaining unit and the conflict of interest in Section 1 and 2 dealing with sergeants if we just had an internal policy that said it's limited to, when investigations take place, of lieutenants and above, or you don't trust lieutenants to deal with it. [LB791]

JASON JACKSON: I'm not sure I understand the question, Senator. So the current state is the State Patrol assigns out these investigations based on who's available, what they're work force constraints are, who's in the best position to do it. What the Colonel has testified to is that the most sophisticated and problematic cases go to lieutenants; others that are characterized as minor go to sergeants. To shift all of this work on to lieutenants would, hypothetically, remove the conflict. [LB791]

SENATOR HALLORAN: We're talking about the most serious cases here. [LB791]

JASON JACKSON: Right. [LB791]

SENATOR HALLORAN: Right. Okay. [LB791]

JASON JACKSON: Okay. So did I answer your question? [LB791]

SENATOR HALLORAN: I'm not sure that you did. I mean it's... [LB791]

JASON JACKSON: Okay. [LB791]

SENATOR HALLORAN: ...mostly the...how many cases are there against troopers? [LB791]

JASON JACKSON: Okay. So if we look at total complaints, total, you know, so at the State Patrol a complaint against an officer is reduced to what's called an 801 Form. I believe, by the

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estimates I've heard, in 2017 there was approximately 160 to 170 total complaints filed. So that's the total volume of potential complaints that are investigated at the State Patrol. [LB791]

SENATOR HALLORAN: Okay. Against troopers? [LB791]

JASON JACKSON: Correct. [LB791]

SENATOR HALLORAN: Okay. Thanks. [LB791]

JASON JACKSON: Yep. [LB791]

SENATOR HALLORAN: Senator Chambers is up. [LB791]

SENATOR ALBRECHT: Actually, Senator Lowe, did you have a question? [LB791]

SENATOR HALLORAN: Oh, I'm sorry. (Laughter) [LB791]

SENATOR HOWARD: It will be short. [LB791]

SENATOR LOWE: Thank you, Chairwoman. And thank you, Mr. Jackson, for being here. [LB791]

JASON JACKSON: Yeah. [LB791]

SENATOR LOWE: To continue on with Senator Howard's question, if that letter is included in the file, when that trooper or the officer then goes to apply for a new position, they're going to request the waiver then and that's how they will see the letter. Is that not correct? [LB791]

JASON JACKSON: Hypothetically. That relies on the due diligence of the hiring agency. And as we've talked about in the companion bill, LB792, that isn't always reliable. We've seen a number of cases in the past year where the hiring agency doesn't do that due diligence and officers who have founded allegations of misconduct or even criminal violations have been able to subsequently obtain employment in other agencies. And so that's why we feel that Nebraskans expect us to be proactive on this issue and not rely on the due diligence of local law enforcement agencies or subsequent employers to request this information and, rather, that we create an environment where the State Patrol can fully disclose this information. [LB791]

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SENATOR LOWE: Why wouldn't the other agency request a waiver to look at the file? [LB791]

JASON JACKSON: That's a very nuanced question that will be more than a brief answer, but I'll attempt to make it brief. There's perverse financial incentives for agencies not to request these files. Let me illustrate a couple of examples. Let's take the very high-profile case of this officer from Fremont PD who exposed himself, was fired, charged criminally, but still managed to find employment in Thurston County Sheriff's Department. [LB791]

SENATOR ALBRECHT: Do we have to be real specific in those things? [LB791]

JASON JACKSON: I'm sorry? [LB791]

SENATOR ALBRECHT: Can you just give an example of just...I guess I have some issues talking about specific instances that if they want to read about it in the paper it's okay but if it's in here I would prefer it not be discussed, as I'm a little uncomfortable with these letters. [LB791]

JASON JACKSON: Okay. [LB791]

SENATOR ALBRECHT: I might ask that you take them all back rather than put them on the record. When I see confidentiality and I get a little concerned whether names should be put on e-mails and such. So I would prefer... [LB791]

JASON JACKSON: I'm deferential to your discretion on that, Senator. My intent is to be as transparent as possible and... [LB791]

SENATOR ALBRECHT: And while I... [LB791]

JASON JACKSON: ...my predisposition was to believe that policymakers would want this information. But that having been said, I'm happy to speak. [LB791]

SENATOR CHAMBERS: When I ask my questions, I'll get the information from you and they can ask and refrain from asking what they want. But nobody, nobody is going to limit the information I can get from a source when I am going to make a policy decision. So that's why I want to let them ask all of their questions; then you and I are going to have a very in-depth discussion. And if they don't want those kind of discussions, I have nothing to say about that. But there's no way I'm going to be here with the opportunity to get information on the record and I'm

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going to be prevented from getting it. And with all due respect to the Chair, she cannot dictate to me the kind of questions that I will ask. First,... [LB791]

SENATOR ALBRECHT: You could certainly ask whatever questions you'd like, but I've also been in situations where Health and Human Services, there were some names of people on there that should not have been. So I think, you know preventing any lawsuits or anything like that, I think it's important that we allow this to play out, as it should, in the courts rather than in front of our committee. [LB791]

SENATOR CHAMBERS: Well, courts have said in debate it's supposed to be specially legislated. First of all, the Constitution of Nebraska says that nothing that a senator says in debate or committee hearing, nothing can be the subject of a legal action anywhere, criminal or civil. I can say anything I want to under the constitution. [LB791]

SENATOR ALBRECHT: But what you say and what's presented I think are two different things. [LB791]

SENATOR CHAMBERS: And that... [LB791]

SENATOR ALBRECHT: What we say as elected officials, we should have qualified immunity as well, right? But if it's in somebody else's e-mail given to us about someone else, that's what I take issue with. So, well,... [LB791]

SENATOR CHAMBERS: Well, then we'll... [LB791]

SENATOR ALBRECHT: ...you go right ahead. [LB791]

SENATOR CHAMBERS: ...we'll have ours and you all be extra cautious. [LB791]

SENATOR ALBRECHT: We will. [LB791]

SENATOR CHAMBERS: Okay. [LB791]

SENATOR ALBRECHT: Senator Lowe, are you finished with your question or are you... [LB791]

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JASON JACKSON: I know, so the question was, what are the reasons why an agency wouldn't request these files, and I was using a very high-profile, publicized, open in the media example. There's a couple of reasons. An officer who already has their certification, the hiring agency doesn't need then to send them to get their certification. Okay? So that represents a cost savings. Secondly, we can infer that officers that have poor records are probably not going to be hired by some of the more high-profile agencies, like an OPD or an LPD or a Nebraska State Patrol, these types of things that go through the rigor and have the luxury of a lot of applicants. But Thurston County, Fremont PD, these kind of departments, they may be trying to hire officers that aren't as highly sought after and that can hold down wages. So you have a couple of perverse financial incentives there for agencies, particularly small agencies, to not be interested in the past employment history of these officers and maybe not rigorously pursue their proactive disclosure. [LB791]

SENATOR LOWE: Thank you. [LB791]

SENATOR ALBRECHT: Thank you. [LB791]

JASON JACKSON: Yeah. [LB791]

SENATOR ALBRECHT: Senator Chambers, you're up. [LB791]

SENATOR CHAMBERS: At last. (Laughter) Mr. Jackson,... [LB791]

JASON JACKSON: Sir. [LB791]

SENATOR CHAMBERS: ...first of all, I touched on it, officers have a kind of discretionary power that nobody else in this society has. When it becomes clear that one has violated the oath of an officer, has violated the law, used excessive force, and wants to conceal the reason for his or her termination, I think that is wrong. The public has a right to know what those who are being paid with public money will be doing. So I'd like you to continue with what you were presenting before, you know, earlier... [LB791]

JASON JACKSON: My pleasure. [LB791]

SENATOR CHAMBERS: ...because you'll remember what it was and I will listen intensely and... [LB791]

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JASON JACKSON: Okay. [LB791]

SENATOR CHAMBERS: ...attentively. [LB791]

JASON JACKSON: One of the things I was trying to highlight which I think gets to the reason we've had difficulty working with the State Troopers Association to arrive at compromise is we just have fundamentally different motives and different priorities. For example, I referenced Trooper Kober, and many of you will probably remember Trooper Kober. First, he was a State Patrol investigator from Bellevue accused of stealing ammo from work. By the internal estimates I've had shared with me, Mr. Kober had in his possession at the time of his arrest approximately 12,000 rounds of NSP ammunition. What he intended to do with that I don't know. Subsequently, the same individual, Trooper Kober, a former State Patrol investigator accused of stealing prescription drugs and controlled substances. So he's alleged to be engaged in drug trafficking as well. Now why is this interesting? Well, SLEBC/STAN sought Trooper Kober's reinstatement into the Patrol. They objected to his firing. And out of deference to the Chairwoman, I won't share this but what I have here is an e-mail from Tara Johnson, who's in employment, who's a secretary at the State Troopers Association. Her e-mail account authored by Matt Sutter, eastern vice president of the State Troopers Association, in which, reading down: The STAN and SLEBC boards voted unanimously to send the grievance filed by Christopher Kober in regards to his termination forward for arbitration. So unanimously, this board wanted to see Trooper Kober in the employ of the State Patrol. All right? Now from our perspective, we don't think this actually represents the state troopers, and that's why I went through at some length in the outset to say the high esteem that we hold our troopers. We don't think that the average state trooper, when they get in a tough situation and need to call for backup, that it should be Trooper Kober who's responding to that call, but apparently SLEBC or STAN disagrees. They sought his reinstatement. [LB791]

SENATOR CHAMBERS: And so that we can have an exchange, there were instances in Omaha where Omaha police officers were fired by the chief. It went to arbitration and they were rehired. I brought legislation to do away with arbitration. In the military, if a commanding officer takes action, first of all, a police department has been referred to as a paramilitary organization. If the authority of the commander is undermined, then the chain of command is broken, the line of authority is broken, authority does not need to be recognized or respected because it can be circumvented through these agreements. I don't think any kind of agreement should make it possible for a wrong-doing police officer to get back on the force. So I will again, before I leave this Legislature, bring legislation to abolish arbitration for police agencies. Now, when you mentioned these other individuals who had committed these wrongful acts and would be returned to employment, that's what was desired, then that takes away the sense that any officer has of responsibility to comply with the rules. I think they should be held to a higher standard. And when they violate it, I think the public ought to know. The public ought to know in detail

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every detail, every fact involved in that case. And I don't like police unions because no matter what a cop does, the union backs that cop. When they know that the cop has committed a wrongful act and when they know that the cop has lied, they support them. And I've seen cases recently where there would be video that these cops didn't know existed and it would show from the video that a murder was committed by a cop. The other cops who were not even there, who said they were, lied and said they were there. They fabricated a story that all fell apart when the video was there. Had there been no video then people would say, well, all these guys are not going to lie. But they all did. So I'm interested--and this bill cannot do it--in taking away that shield of protection that police officers have. Everybody has heard the term "blue wall of silence," meaning that there are cops who cover for others. When that cop used that, the butt of that rifle and struck that individual, that was a crime. And another officer was on the scene but made no arrest. So they do not enforce the law against everybody. And this is why I wanted you to continue with the presentation because I want it known what these unions will do. Now their lawyers are paid to defend them no matter what. So the lawyers, I don't care what they say. I'm concerned about the police conduct. I'm concerned about the investigation of it. And more than anything else I want all of that made public, all of it. I'm a State Senator. Let me do something wrong and everybody would (inaudible). They'd shout it from the housetops. And there's nothing I could say as far as condemning people because I made myself a public person. I took an oath. If I violated it, the public is entitled to know. They challenged where I live. Man, I've spent thousands of dollars to have my trees trimmed and they said I don't live in that house. But anyway, that's what happens with me. I have never assaulted anybody. I have never attacked anybody. I'm talking about in some cases the use/misuse of deadly force, the misuse of physical force where it's not needed. And that's why whatever you have that you want to present, I would like it presented here because this is the only way the public is going to actually know what occurred and what was behind some of the decisions that were taken and why under certain circumstances other information is not taken. If I'm not mistaken, there's a guy on the OPD who had some bad stuff going on that apparently they didn't know at OPD and they hired him. I know that what you say is true about these smaller agencies because there were two cops involved in a shooting of a young black man in Omaha. They claimed that he was inside the bay of a filling station and that he climbed out this window, before the cops could come--they were approaching--ran down an alleyway, and they shot him in the back and killed him and were exonerated. First of all, I was down at the police station looking at the police reports. In those days they'd let me see them. A commanding officer walked by and he wouldn't look at me. He said, Ernie, because I wasn't a senator then, he said, Ernie, check the dimensions of that window. And when...I didn't know what he meant at first. He meant the window through which this man was supposed to have exited. So I went to the filling station and measured it. It was too small for a man to have gotten through it in the way they said. So what Channel 7 did was to get one of their employees, a woman who was smaller than this man they shot, and she tried to find every way she could to get through that window and she couldn't. Well, one of the officers involved, they were both exonerated, was fired for stealing some lunchmeat, I believe. He had put it down

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in his pants and they caught him. He was fired. He became the chief of police in a small town. And when I found out about it I contacted the people there and they had to go ahead and fire him. But before he went there, he had gotten a job in another small Nebraska town. So these people do drift and float from place to place. And if that bad conduct is not a matter of public record, then they can get away with it. Even if a hiring agency is trying to get all the information they can, they may not get it. So I'm still thinking about whether sergeants ought to be a part of the bargaining unit, but I know that sergeants do exercise some degree even of command, because in my community, and it's the OPD, when the sergeants would come on the scene and should stop this stuff, they'd become a part of it. They'd become a part of assaulting black people, and in some cases it's the black person who called the police. And this person would be trying to argue and say, look, I called you. Shut up when I'm talking. But I'm the one.... I said shut up, get down on the ground. And the person is still trying to say something so they do that leg sweep and put the person on the ground, put the knee in the person's back, put the handcuffs on. And then when they get downtown, mea culpa, I...I...I'm sorry. Sorry doesn't cut it. And that person will never have any use for the police. That person's children will have no use for the police. And it's why I said from the experiences I've had the police are our ISIS. I said it then and I mean it now. The fear that white people say they have of ISIS, who will not touch them, to make them understand how we feel I say the way you fear ISIS is the way we fear the police. And I can give example after example after example. And there are cops still on the Omaha Police Department who have done terrible things and we in the community know it. But what can we do? Nothing. But there are some people who, but for me, would have taken some action against the police. They didn't even care if it was the one who had done something to them. All of them look alike. And I shouldn't say that because I don't want these cops to think I'm intervening with somebody who's going to bring some street justice. But I tell people it's not worth it for you to get locked up over something that you do to somebody who's not worth it. Whether these people have any respect for me or not, the people in my community do and I can demonstrate that I have saved the lives of some cops. Now I say probably, because I don't know that somebody would have gone after them, but I know that there were people who intended to. These problems are more serious than anybody around this table knows, than anybody in this room knows. But I'm 80 years old. I don't have a reason to lie. I can bring articles and prove how I intervened trying to make the police treat us in a fair way. I was arrested several times, never convicted of anything. But they could take me to jail and there's nothing I can do about it. Then I'm released. A couple of times I went before a judge. The judge would throw out the charges. But the cops got what they wanted. They inconvenienced me. They took me to jail. They thought they could embarrass and humiliate me in front of my community. But that made me more of a hero because my community knew what the police were and I was a black man and I was a young man, not afraid of the police, never was, because I was so infuriated by what I saw them doing to us and getting away with it. And there was no place to turn. Even now we don't have any place to turn. If this information is put into the public record then it's not me. They can't say I'm making up things. This is from a source connected with law enforcement. And that's why I'm

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saying whatever you have to say, you're saying it to me. With all due respect to the Chairperson, we do not owe confidentiality to anybody. We're trying to get information. We don't have closed hearings and we shouldn't. If these people don't want that kind of information put out here, don't do the misbehaving. I'm not against unions ordinarily. I think that employees are at a disadvantage. But when you have sergeants who are a part, as far as we're concerned, of the command structure, who come on the scene and are supposed to be able to bring these cops in line and they don't but they join in, one hand washes the other. The patrolmen, corporals wash the hands of the sergeant, and the sergeant washes their hands, and will not do what the sergeant ought to do. I'm not saying every sergeant is like that, but the fact that there are some, and I have the opportunity now to publicize it, I want to do it. And I know we're staying here late for this committee, but for the Judiciary Committee we have not yet begun really. So I hope that from what I've said here will let you know that whatever information you have, whatever names you want to use, we are talking and I'm requesting that you do it. Now if you've said all you want to say, I'm not trying to pressure you. But if there's more you were trying to say to make the point of why this legislation is here and whatever steps the administration is taking...and nobody can say I'm a friend of the Governor. But this transcends him. It transcends me. I want you to feel free to say what you think you have to say. Naturally, you're not going to keep us here all night, but you're talking to me. And if anybody's ears are too tender then nobody is going to get upset if they leave the room. [LB791]

JASON JACKSON: Well, thank you, Senator. I would say in response...there's at least three additional points that I would like to make on the record before my time here at the podium is (inaudible). I would begin by saying, of course, your life experience and my own are different. I personally don't harbor the skepticism or animus toward law enforcement that you do. I hold law enforcement in very high esteem. I hold the people behind us in very high esteem. And as I said at the outset, I think what they do is noble. And I hate to see their conduct called into question by the actions of others, which is exactly why I don't think the likes of Trooper Kober should be wearing the uniform. That having been said, I think your comments hit upon a couple of additional points that I'd hoped to make today. The first of which, and I had some documents here that I was prepared to share. Senator, perhaps I'll just give a copy to you and let the committee judge if they'd like to have copies. But the comment was made about sergeants only do the minor investigations in the field. Minor, of course, I'm even reluctant to use that word because to a citizens who is bringing forth the complaint, all of these issues are important. It was by pure circumstance that I, just in the past couple of weeks, that Director Wyvill of the Commission for the Deaf and Hard of Hearing sent me a case that was investigated in Omaha, just in the past couple of weeks, just as an FYI, because he knew my involvement with the State Patrol. What I'm going to go ahead and do is read for the record the letter that the Nebraska Commission for the Deaf and Hard of Hearing sent to the State Patrol. Dear Captain Konfrst; this letter is regarding the treatment of a deaf citizen...and it's dated January 4, this year...this letter is regarding the treatment of a deaf citizen who shared concerns with our agency in regards

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to experiences he had with several Nebraska State Patrol officers. Attached is a complaint which has been filed with the Nebraska Commission for the Deaf and Hard of Hearing regarding the overall communication and treatment this individual received from three officers during an automobile accident. I've redacted the name for this individual's privacy; but this complainant is deaf and was involved in a car accident. During the incident, the trooper...I'm sorry, the complainant initially made attempts to communicate with the officers and was denied. During the time frame in which the officers and the complainant did interact, there was little or no explanation as to what happened or the procedures that needed to take place after the report was filed. Also, there was concerns for leading to how the officers conducted themselves. Now I've read this citizen's complaint and basically what he alleges is the trooper that was involved in responding to this incident treated him with disrespect, was aggressive, used curse words, didn't explain to him what was going on, put him in the back of a cop car and spread the fact that he was a suspect. And so this individual brought forward a complaint to the Nebraska Commission for the Deaf and Hard of Hearing, which they referred over to the State Patrol for subsequent investigation. Now, this complaint was investigated by a sergeant. It's in the realm of the somewhat minor traffic incidents that are investigated by sergeants every day. Would you believe that this investigation was concluded and no wrong doing was found. Well, the curious thing is, the complainant wasn't even so much as interviewed. So, of course, Director Wyvill follows up with me and says, well, how could we say we did a thorough investigation here if the complainant wasn't even interviewed. The other curious thing is, wouldn't you know it, but the dash cam video happened to cut out right at the moment in which the trooper was talking to the suspect, unfortunate coincidence that is. But that's an example of these so-called minor issues that are investigated by sergeants all the time. Now maybe this was completely above board. But again, it would be far easier to arrive at that conclusion if there wasn't a conflict of interest present in how our folks interact with one another, supervise one another, and investigate one another. Senator, the other point I'll make is you talked about the degree to which law enforcement influences internal affairs investigative process and outcomes, it specifically states the way to which law enforcement unions influence internal affairs process and outcomes. What I have here is some communications that were actually found in Colonel Rice's office following his termination and retained by State Patrol because they were state records and not of a personal character. This document is a copy of meeting notes which Colonel Rice took during a one-on-one meeting with SLEBC president, Brian Peterson, on March 25, 2015. Among the subject matter that's discussed the 48-hour rule. The shooting policy regarding the 48-rule, basically, what's at issue here is a request that whenever a law enforcement officer is involved in a use-of-force shooting, they be given a Garrity warning immediately so that they can escape any criminal liability for any statement they may make about that shooting at the time. Skipping down, there's a reference to a Mr. Schneckelberg's (phonetic) grievance on these notes; that was another issue that was subject to internal affairs. Skipping ahead, item F on these meeting minutes, a request for Mr. Peterson: can there be a medication process at some point in the grievance or IA process to alleviate or bring them to a conclusion earlier. Skipping down, item H on this, sensitive to the

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801 process; again, that's the complaint process that initiates internal affairs investigation, could we engage in more routine guidance rather than actually commencing an investigation into misconduct. Then what I have here is a letter...formal letter on STAN letterhead to Colonel Rice from SLEBC president, Brian Peterson in which he says: One, in paragraph two, the membership embraces your tenure and leadership at the agency and they expect your leadership and trust in it just the same. Skipping down to the second paragraph: I understand your concern, as you've explained to me, that STAN has given the impression that it leads the agency, or may be better stated that your decisions have often been influenced by STAN, or so it appears to certain people in the administration. This is not the intent of the association, but association does believe that it can bring true and original ideas to the table to be considered. For instance, I knew in my heart that the original concept of taking the IA Lieutenant's job out statewide would not be in pure formats presented. I must say for the record, and this is just the official position of the association, that there are several lieutenants of whom would be the wrong fit to be placed in that position. So what we have here is, basically, a SLEBC president, one, in writing saying that they were making formal recommendations on how the IA command was to be structured, and also, making it the official position of the association to exercise vetoes on particular lieutenants who may have been selected to that role. I'll leave it to Mr Peterson to explain or reconcile how that's...how he can reconcile that statement with his August 4 press conference in which he says he has no role in any IA command decisions or assignments. I think perhaps the last thing I'd say, at least in terms of what I had prepared to say, Senator Chambers, in response to your question is we didn't arrive at these recommendations lightly. We were very cognizant of how difficult these decisions are, the nature of who is impacted, my style is complete transparency and candor. We get that voting against unions is a tough vote for many people. It was our objective to narrowly tailor these recommendations to be as precise instruments as possible to address the malfeasances that we saw. Again, when we looked at the Bixby case, or the Flick case, Bixby's supervisor was a sergeant, Flick's supervisor was a sergeant, the criminal investigator was a sergeant, the accident reconstructionist was a sergeant, the pursuit critique--sergeant, the IA expert--sergeant. You saw a pattern. Then what we did is we did some benchmarking and we said, okay, what do other states do? We were deferential to the Legislature in doing that. We looked at comparability. The state has already set forward policy for how we regard labor relations. They outline terms of what other comparable states are and where we should be looking for guidance in terms of what informs these decisions. Iowa sergeants, not a part of a bargaining unit; Indiana, not a part of the bargaining unit; Wyoming, not a part of the bargaining unit; Arkansas, not a part of the bargaining unit; Kansas, not a part of the bargaining unit; Wisconsin, not a part of the bargaining unit; Utah, not a part of the bargaining unit; Missouri, not a part of the bargaining unit; Colorado, not a part of the bargaining unit; North Dakota, not a part of the bargaining unit. The only state in our array in which sergeants were in the same unit as those that are supervised were New Mexico. So we're an outlier here. Then we looked at, in terms of state government internally, just benchmarking across the state. Sergeants are... [LB791]

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SENATOR ALBRECHT: Sorry, one second. Senator Chambers, is he answering your questions? [LB791]

SENATOR CHAMBERS: I didn't understand. [LB791]

SENATOR ALBRECHT: Are you getting all of your questions answered? Are you okay? [LB791]

SENATOR CHAMBERS: Yes, my question is over. [LB791]

SENATOR ALBRECHT: You're done? So I'd like to just stop you there, because we can...I think your...okay, are we all finished with questions from the...we have one more. [LB791]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. I actually would like to hear the comparison of states. [LB791]

SENATOR HOWARD: (Inaudible) [LB791]

JASON JACKSON: Yeah, okay, so...let me pull (inaudible). [LB791]

SENATOR CRAWFORD: So we already have these ones that you listed, sergeants or not... [LB791]

SENATOR HOWARD: Right, and then New Mexico is the only state... [LB791]

SENATOR CRAWFORD: New Mexico is... [LB791]

JASON JACKSON: New Mexico is the only state in the array in which sergeants are included in the same bargaining unit with their subordinates. And what's more is, sergeants are the only class of supervisor in state government that's permitted to be in the same bargaining unit with those whom they supervise. And so from an administration perspective, we saw...look, this is outside of what's best practice in terms of what the Legislature has said about bargaining within the context of the State Collective Bargaining Act and are practice within state government. It's outside the best practice for our peer states from a comparability perspective of all of our border states, sergeants aren't in the same bargaining unit with whom they supervise. So those are some of the data points that form these recommendations. [LB791]

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SENATOR CRAWFORD: Thank you. [LB791]

SENATOR HOWARD: May I ask a follow-up? [LB791]

SENATOR ALBRECHT: Sure. [LB791]

SENATOR HOWARD: For the disciplinary and investigatory procedures, did you do a state-by-state comparison of that? [LB791]

JASON JACKSON: No. [LB791]

SENATOR HOWARD: No, okay, all right. Thank you. [LB791]

SENATOR ALBRECHT: Okay, I think we're all finished with senators. Do you have another one, Senator Crawford? [LB791]

SENATOR CRAWFORD: No. [LB791]

SENATOR ALBRECHT: Good. Okay, I'd like to ask you just a few. The gentleman that came before you, before the Colonel even, Darrell Fisher with the Executive Crime Commission. If you are removing the sergeants from the disciplinary and the investigatory, are you removing them from that as well? Like, they can't do any investigations. [LB791]

JASON JACKSON: No. [LB791]

SENATOR ALBRECHT: Okay, so you're still going to allow them to do that, they just have to go into the bargaining is your suggestion. [LB791]

JASON JACKSON: No, what...what we're...we're not trying to change the duties of sergeants at all. What we're simply trying to do is remove the conflict of interest that places them as supervisors and investigators in the same bargaining unit with those whom they're supervising and investigating. So the duties would remain the same, it's just the conflict of interest that would be removed. [LB791]

SENATOR ALBRECHT: Okay, so when you're giving examples of why would sergeants be involved in these extraordinary cases that are probably in a lieutenant's realm rather than a sergeant's realm, is that a reasonable conclusion as to why you want to change this? Do you

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believe that...I guess I'm looking at it...if we have a Crime Commission and if it is something as serious as some of these things are, why wouldn't they have the opportunity to come in and work with the problem? [LB791]

JASON JACKSON: Great question, Senator. So within the context of Article 29, the internal affairs investigated and disciplinary process now in our existing contract, one of the provisions there that's most problematic is the provision that prevents the disclosure of any investigative findings to any third party without the trooper's waiver. Okay? So, that creates a couple of issues. It prevents us from disclosing to the public the results of investigations. It prevents us, as with Colonel Bolduc's press conference at the conclusion of this most recent investigation, he couldn't share the investigative results because of that contractual barrier. It bars us from being able to share with complainants or people who brought... [LB791]

SENATOR ALBRECHT: So is this part of LB791 or is this what you're doing with another bill? [LB791]

JASON JACKSON: This bill is two parts. It removes internal affairs processes from the scope of collective bargaining. One of those internal affairs processes is the barrier from the disclosure of this information. So if this process were outside the scope of collective bargaining, then the State Patrol would be able to be more transparent about these investigative results with the Crime Commission, with complainants, and with the public general. [LB791]

SENATOR ALBRECHT: Okay. So that's not really part of what we're actually discussing in this bill, right? [LB791]

JASON JACKSON: No, it absolutely is. [LB791]

SENATOR ALBRECHT: But you're trying to bring them back into...the sergeants, they have to go...take a step back and go back into the bargaining unit, is that correct? [LB791]

JASON JACKSON: No, there's two components... [LB791]

SENATOR ALBRECHT: You're taking them out of the bargaining... [LB791]

JASON JACKSON: Yeah, what we're doing with respect to...so you got to distinguish, there's two components to this bill--the internal affairs process and the sergeants piece. What we're doing with sergeants is we're taking them out of the law enforcement bargaining unit and we're placing them along side other supervisors and state government in the supervisory bargaining

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unit. That's part one of this bill. The other part is to remove internal affairs processes from the scope of collective bargaining. By doing that, then we would have the discretion to be more transparent without these investigative processes and investigative results and share with the Crime Commission, the public, and complainants the result of the investigations they're bringing forward. [LB791]

SENATOR ALBRECHT: So, so you were able to go in and look at all of this just in the HR position you hold, correct? [LB791]

JASON JACKSON: Correct. [LB791]

SENATOR ALBRECHT: And so you were able to conduct the interviews and go through and that's where you found that you would like to change the sergeant's role. I'm going to...just because we don't have anyone else here but yourself, maybe we do, maybe we have people on both sides, but I know we've taken up probably almost an hour with you, so I think I'm going to just ask you to take a seat. [LB791]

JASON JACKSON: Okay. [LB791]

SENATOR ALBRECHT: And if we're finished here, and I would like and I would feel more comfortable if I could pick these up. [LB791]

JASON JACKSON: By all means. [LB791]

SENATOR ALBRECHT: This is the...this is e-mails to you, not to us, and I'm just very uncomfortable with the confidentiality part of it, so. [LB791]

JASON JACKSON: Understood. [LB791]

SENATOR ALBRECHT: He can do it anywhere else, but I prefer it not to be in here. Okay. So if everyone can hand those back. Do you choose to give them out other than in our committee. [LB791]

SENATOR HOWARD: Yeah, you can drop them off in our offices, if you'd like. [LB791]

JASON JACKSON: Understood. [LB791]

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SENATOR ALBRECHT: I appreciate your testimony. [LB791]

JASON JACKSON: My pleasure, Senator; thank you. [LB791]

SENATOR ALBRECHT: Okay, do we have any other proponents wishing to speak to LB791? Any other proponents? Do we have...one letter in support, the ACLU of LB791 signed by Amy Miller, the legal director. Okay, we're going to move on to opponents of LB791. Opponents? [LB791]

GARY YOUNG: Senator Albrecht, members of the committee, my name is Gary Young, G-a-r-y Y-o-u-n-g. I'm here on behalf of the State Troopers Association of Nebraska, and also as the general counsel for the State Law Enforcement Bargaining Council. A lot has already been said and there's a lot of pieces to the puzzle that have been raised. And I did not want to make this a personal matter. But I would ask you to withhold judgment on what Mr. Jackson has told you. I was present for the history of almost all of the incidents he has described. He was not. And there are many people here who will testify, in addition to me, about what the actual circumstances were with regard to the allegations he has made against the character of STAN and SLEBC and the troopers that are here today and the troopers across the state of Nebraska. And I would ask you that you listen to them rather than accept his characterizations because he has proven he's willing to make characterizations without sufficient basis and they should be addressed by the committee with evaluation. I'm here on behalf of these folks. I want to address LB791. I was hoping that we could focus on what the bill actually does. And because you've raised a bunch of questions, I would like to ask you please prompt me if I don't address the questions you want to know the answers to about bargaining and rights of folks and so on, because a lot of good questions have been asked, but I don't want to forget them because of the amount. Here's what I would first start...and start with. One is the organizational rank structure of the Patrol, just so you understand what it is. We have colonel, we have the lieutenant colonel, we have three majors under different divisions of the Patrol. We have multiple captains, and then 25 or 30 to 35 lieutenants and then we have the people that actually carry out the work--sergeants and troopers. Okay. There are 62 sergeants in the Patrol at our last count, and about 340 troopers. It is noteworthy the sergeants we keep talking about, none of those are in state headquarters. These are not people who are administering the work, these are people who are carrying out the work, side by side, they are the employees on the ground across the state. Everyone else above them works in an office, lieutenants and above, and administers the work. It fits, I think, the ordinary pattern of hierarchy to think about as far as managers and employees that carry out work that is delegated to them by managers. For practical purposes, the true managers in the Patrol at the first level are lieutenants. They are not in the bargaining unit. SLEBC is the bargaining unit created by the state Political Collective Bargaining Act. We represent the protective services, or excuse me, the law enforcement bargaining unit. That, until this bill, for as long as it's been in place, has always said the sergeants were in the same unit as the troopers. The idea that we've come to a

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place where they must be in their own bargaining unit or in a separate one in order to ensure the proper operation of the Patrol is a totally new concept. It is not required. If, to answer some of the questions that have been asked, if they are put in the other bargaining unit, what will happen is they'll be in the supervisory bargaining unit. By statute they will lose all of their collective bargaining rights. The statute already expressly states that supervisors and the supervisory unit do not have collective bargaining rights. They have meet and confer rights which are not collective bargaining rights at all. They're the right to petition the government, basically, about your employment; and their employer is the government. But that's it, they can't require contracts, they can't negotiate for wages; they can't negotiate for protections. In particularly important...I see I'm already on yellow...in particular importance is if the sergeants are put in this other bargaining unit STAN will not be able to represent them nor SLEBC. As a result, they will actually be employees on the ground carrying out uses of force and so on and would not have the benefit of any legal protection provided by anyone, because what Mr. Jackson has not told you, in LB792 that the Governor has asked that the statutes be changed to remove any protection or any representation by the Attorney General of employees in Nebraska State Patrol when they are accused or when they are investigated for crimes. And this would include, in Nebraska, of course, we have an automatic investigation done by a grand jury in every case where there is a death in custody. And so we would be in a position of placing the sergeants in peril, legal peril, and telling them to hire their own lawyer. That's how this operates with LB792. [LB791]

SENATOR ALBRECHT: Mr. Young, I'm going to ask you to finish your testimony up real quick. [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR ALBRECHT: But I'm sure that we will have questions for you that will... [LB791]

GARY YOUNG: Yeah, please, please do. Here's one more thing I would like to point out: we negotiated this contract beginning September of 2016-2017, we negotiated every day...one day a week, eight hours a day for four months on this contract. The state...the Governor's Office presented a proposal to remove sergeants from the bargaining unit. And the stated reason at that time had nothing to do with conflicts of interest that are raised as the pretext for it now. The reason was financial. They wanted to move people out of the collective bargaining representative...or out of the unit. We negotiated with the Governor in good faith. The Governor...we made concessions to have that piece removed from the table. And the Governor agreed with us and signed the deal. Two months later after the contract began, in July 1, 2017, we start hearing that from the state HR director that he's going to insist that we, basically, go back on that agreement and sort of back up on that agreement, claw it back. And so I feel like we've been treated with bad faith in negotiations at the table. We've always said we were willing

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to sit down with the Governor in good faith. And we just started this process again on Thursday, in contrary to the conversation...the description of that discussion that took place today, Mr. Jackson was not there, it is not an accurate representation of what took place, nor is it an accurate representation of good people that I represent. I'm happy to answer any questions. [LB791]

SENATOR ALBRECHT: Thank you for tying it up. Questions? Senator Chambers. [LB791]

SENATOR CHAMBERS: Are you aware that the Attorney General said that he doesn't want to be in a position of having to possibly prosecute troopers and defend them at the same time. Are you aware of that? [LB791]

GARY YOUNG: Yes, yes. [LB791]

SENATOR CHAMBERS: So I think we should make it clear that the Attorney General is not the lawyer for any member of the State Patrol. Are you in favor of that, or you want the Attorney General to continue being the lawyer for individual troopers? [LB791]

GARY YOUNG: Yeah, 81-2009 is what Senator Chambers is referring to. There's been a change proposed on that. And that provision, as it currently states, is if there is a conflict concern, the Attorney General can appoint a private attorney to represent a trooper who is in a grand jury. And that's what I would suggest that he do. This Attorney General, the first one, that statute has been in place for a long time, he's the first one who has seen a conflict there. And I recommended to him that that's what he do. And for some reason he doesn't wish to do it. That solution is already present. [LB791]

SENATOR CHAMBERS: But if we change that statute, then it would be clear that the Attorney General does not defend...is not the lawyer for any state trooper... [LB791]

GARY YOUNG: That's true. [LB791]

SENATOR CHAMBERS: ...we would do that, and then there would be no question whatsoever. Would you agree with that? [LB791]

GARY YOUNG: That is true. And the sergeants who are...we ask to attend to uses of force on our behalf would not have legal representation if LB791 is passed. That is an intolerable situation for a police officer to work under, as you might imagine. They cannot go into a call with knowing that whatever takes place, I'm going to have no one to help me explain what took

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place to the grand jury. And that's the part we don't like. They ought to have the benefit of that assistance if we're asking them to go into harms way and do things that...for us and protect us, that we're not willing to do ourselves. [LB791]

SENATOR CHAMBERS: That's bogus. First of all, they're not volunteers. They fight tooth and nail to get these jobs; they fight tooth and nail to hold these jobs, and they get well paid and they have benefits, so I'm tired of that thing like we got guys who are just altruistic out here. They are employees. There are duties they are to carry out. And if the duties are too onerous, they can leave. But here's what I want to get to more in line with what the bill talks about. If these sergeants wanted...if these sergeants were removed from the bargaining unit of those of a lower rank, the Legislature could enact a law that would allow the sergeants to have some bargaining rights, couldn't we do that? [LB791]

GARY YOUNG: Do I believe you could do that, yes. [LB791]

SENATOR CHAMBERS: Right, we can do anything that's not prohibited by the constitution. So we can do whatever it is we want to do. Are you employed by the trooper's union? [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR CHAMBERS: So that means you're paid. [LB791]

GARY YOUNG: Hopefully, yes. We'll find out after today, right? [LB791]

SENATOR CHAMBERS: And I know that the lawyer is duty bound under the code of professional responsibility to zealously represent his or her client. I know that. Now, when we're dealing with a criminal defense, the lawyer can know that the person did the crime, but the lawyer is not allowed to work against the client's interest. The lawyer is there to make sure that they convict this person is going to be in strict accord with the law. They're going to have to prove every element of that offense beyond a reasonable doubt with no assistance from the accused. And the lawyer is there to make sure...in other words, that the rules of the game are followed. [LB791]

GARY YOUNG: Yes, sir. [LB791]

SENATOR CHAMBERS: And the lawyer is not by virtue of defending somebody endorsing what that person is accused of. And I'm saying this now so that people will understand that even Jack the Ripper is entitled to a lawyer. That's what lawyers do. So I'm aware of all that, and that

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can be out of the way and off the table. When you decided and agreed to represent the trooper's union, you are representing them as a lawyer. Correct? [LB791]

GARY YOUNG: Yes, sir; although I would draw a distinction. [LB791]

SENATOR CHAMBERS: And you would have certain...there would be certain matters that would be confidential between you and your client in the lawyer-client aspect of the relationship. [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR CHAMBERS: All right. Now, when a trooper violates the law, you don't represent that trooper do you? Or do you? [LB791]

GARY YOUNG: When they violate the law... [LB791]

SENATOR CHAMBERS: When they are accused of having violated a criminal statute, are you the one who represents that trooper? [LB791]

GARY YOUNG: In a grand jury investigation of use of force, I do represent troopers. If they have been accused of a crime, it is ordinarily the case that STAN or SLEBC, and if they...they make a judgment about whether the person is entitled to have a lawyer paid for by STAN or SLEBC represent them. And if there is a determination made, including cases that have been recited here today by others, that they do not believe that the person is entitled to have STAN's lawyer represent them in a criminal defense, I will not represent them. And that does happen, not infrequently. [LB791]

SENATOR CHAMBERS: So, exactly what are you here to achieve today in this hearing? [LB791]

GARY YOUNG: Well, the first thing is I want people to understand what is going to happen to sergeants if LB791 is passed as it's written. [LB791]

SENATOR CHAMBERS: Okay. [LB791]

GARY YOUNG: The second piece would be, I mean, I didn't get to it, but the second piece would be--what is the point of the fact that bargaining covers disciplinary matters. And here's the

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answer, if you don't mind, the answer is is because we don't only have to protect people against wrongful behavior. That's what the disciplinary process is for. What we also have to protect people is against the wrongful behavior of people who are making the allegations or enforcing the allegations against them. Because what we find--and it happens all the time, I've represented people in thousands of IAs--is that sometimes that process is done by people poorly as well or with bad motivations or with other kinds of complications that need to be protected against. And so we're trying to protect everyone in the process. Now, the question you raise is a fair one. Okay, well, what's the problem with Darrell Fisher, for example, getting a copy of what's taken place in a disciplinary proceeding. And we have actually testified with regard to LB792 because that's where it came up, and we've given our position on that is that we would be willing to agree to those accommodations for him to have subpoena power in the initial stage of the process, which is what he wants, so long as the statements that are made under the Fifth Amendment protections that are provided for under the Fifth Amendment of the constitution are not disclosed in those communications because those have been made with the constitutional protection in place. I think you may remember, we talked about this, those...as long as we're protecting those things, we would be much more agreeable to the Crime Commission having a look at what took place. We don't want...I mean, our troopers don't want to work with police who are dishonest or are doing abusive things and so on. [LB791]

SENATOR CHAMBERS: Well, right there, and then I'll let you...please... [LB791]

GARY YOUNG: Yeah, yes. [LB791]

SENATOR CHAMBERS: Why didn't the officer who saw that officer use the butt...first of all, do you think using the butt of a rifle to the head of an inebriated person is not a crime? [LB791]

GARY YOUNG: It depends is the answer. [LB791]

SENATOR CHAMBERS: On what? [LB791]

GARY YOUNG: It depends on whether the officer is justified in using that. [LB791]

SENATOR CHAMBERS: I know that's what you're saying. Tell me what would justify that. On the video, the man is standing there and this other officer comes from out of the shadows and immediately strikes him in the head with the butt of the rifle. He couldn't say that he was threatened. He couldn't say the other cop was threatened. So justify that for me. [LB791]

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GARY YOUNG: Yeah, I'm not here to justify that. I don't know that I don't disagree with you (inaudible). [LB791]

SENATOR CHAMBERS: Then why wasn't an arrest made? That was a crime committed in the presence of another officer. [LB791]

GARY YOUNG: That matter was addressed to the county attorney of that county and that person...I did not represent the person at the time, that person explained his justification for using the rifle in the way that you described and the county attorney himself evaluated and determined that that may very well have been a justified use of force and it did not meet the standards for prosecution. Now that isn't my decision, that's his. [LB791]

SENATOR CHAMBERS: And that shows the corruption of that county attorney and the fact that the public has no recourse when these cops, obviously, misbehave. Obviously, now I was in the Army. [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR CHAMBERS: If any soldier hit another person with the butt of a rifle, that person would have been court martialed and there would have been no justification. But you all have to justify him. And this is why I say the police are our ISIS. That's what they get away with. The officer who saw it should have made an arrest. They never will arrest another cop, never. So getting back to what you're here for today, you're here to try to defeat this bill. Isn't that really what you're here for? [LB791]

GARY YOUNG: Absolutely. [LB791]

SENATOR CHAMBERS: And no matter what it takes to do it, I don't mean you're threatening or lying or like that, but whatever ethically can be done is what you're supposed to do to defeat this bill. [LB791]

GARY YOUNG: Well, I will tell you, Senator, I will not sit here and misrepresent what took place in the past about bargaining or about the treatment of women, and who defended women, and about the 48-hour rule, and about...the number of things I've heard today about all of these matters that have no...there's no relationship to actually what took place, I will not misrepresent to you ever the truth, as I understand it to be, on behalf of anyone. [LB791]

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SENATOR CHAMBERS: But here's what I'm asking you about today, you are here specifically to try to persuade the committee members to kill this bill or at least not advance it, isn't that what your ultimate goal is? [LB791]

GARY YOUNG: Yes, Senator, yes. [LB791]

SENATOR CHAMBERS: Okay. I understand that. And that's what I'll be taking into consideration when you speak, just as we should take into consideration that when Mr. Jackson speaks, his aim is to persuade the senators to advance the bill, just so that nobody will be under a misperception of what everybody's role is. Now, my (inaudible) from both yours and his, I want the facts out in the open. I want people to see how the public can be mistreated, how violence can be used against us, those of us who they think are afraid to do anything in retaliation. And if you read the newspaper, you see more cops are being attacked because they see in cases where obviously the cop did wrong, white juries acquit them. Mr. Jackson said he has no animus toward law enforcement as I have. I don't have animus toward every cop, there's some I get along with very well. There were those who gave me information from what was happening inside the Omaha Police Department because they disagreed with it, and they knew that I would do something about it to the extent that I could. I want the law to be properly enforced. But it's not enforced in our community. These cops are occupying forces. They sexually harass the women. There was a lady who was a prostitute and a cop made her give him a blow job and she was smart enough to use her credit card to collect his semen. She kept it in her mouth. He made her do that or he would have taken her to jail. And because she had the evidence, he was prosecuted and convicted, but he didn't go to jail. That's a cop. More should be expected. That's what they do in my community. And I'm supposed to sit up here like these white people who never had anything happen and they praise them, act like they're some kind of heroes. They are paid to do what they do. And if they do it well, they won't have a better friend than me, because what they're supposed to do is protect and serve. But when they come in my community and they harass children...there were two little boys, they had cap pistols, and it happened to have happened about a block from where I live. And one of them was a lady cop. And they had them down on the ground and one of the kids said something, and she slapped them upside the head. And they wanted to say those cap pistols could have been deadly weapons. These are little black boys. That's the way they treat our boys. Then when they grow up with a negative attitude toward the cops, it's as if they're saying that's what they will do. The police are your enemy, not because I say so, but because the way they treat you, the way they've seen you treat their mother; the way you've seen them treat their father. I had to intervene on behalf of two elderly women on a Mother's Day. They were going into a store and these white cops pulled up behind them and starting harassing two elderly black women on a Sunday, Mother's Day, and I intervened. Now maybe they could have arrested me for interfering with an officer. And when I reported it to the then chief, he did, he said, and pulled some reprimand against them. That's what I see happening. I had to file a complaint against a state trooper because he was out in our community playing a

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game. They had given him, the cops, a nickname. He'd stop people on parking lots, make them get out and lean over the car and then he'd search. And then while people are driving by, he'd be looking around smiling, and people took pictures of him. And I filed a complaint and there was discipline imposed, but as Mr. Jackson said, the colonel at that time would not tell me what kind of disciplinary action was taken. That's what I do in my community. I shouldn't have to do that. But I had no recourse. Then I heard these guys come here with these cops and they say, well, my salary, my benefits...I don't care about their salary. I don't care about their benefits. I care about the misusing their authority. They've got that gun and they can, at their discretion, take our lives. And that's why when you come here, I'm not going to attack you for representing them because you're paid to do that. You're functioning as a lawyer. And you can know every one of them is a rat. But it's not your job to say he's a rat. It's my job to ferret that out. And then it's your job to protect him from the punishment that he should get. But, I want to ask you this question again-- why do the sergeants have to be in the same bargaining unit with those who are of a lesser rank when they, indeed, are the ones who will investigate those individuals and exercise of their supervisory functions? [LB791]

GARY YOUNG: Let me just say I appreciate everything you said. I don't think there's a single trooper I represent who would disagree with you on almost everything you just told us. [LB791]

SENATOR CHAMBERS: That's why I want to bring up (inaudible). [LB791]

GARY YOUNG: I can assure you that. Now, let me just tell you about the reason...okay, about the conflict issue you raised. Okay. The conflict issue was never an issue at the bargaining table in the past. But the state always wanted the sergeants out of the unit. Why? It's a financial matter. Okay. There is absolutely no conflict between a sergeant and a trooper being in the same bargaining unit. Why? Because all the...to answer the question that's already been asked, all the colonel has to do is assign internal affairs investigations to lieutenants and above. In fact, that's what takes place. In the last four or five years that I've represented...well, it's longer than that now, but STAN and police troopers in disciplinary cases...or investigations, 75 percent of the ones that get to the level where I'm called in, were done by lieutenants. Every one of them was assigned by the colonel. The colonel could have just assigned lieutenants on those; he could have, in fact, assigned troopers to do those investigations. He doesn't for good reason. We've told him at the table, we've told the Governor, there's been a policy recommendation made by representatives of STAN that he no longer have sergeants doing internal affairs investigations, have it done by lieutenants. [LB791]

SENATOR CHAMBERS: Just so you won't go beyond what you have to answer the question, and I believe the information that Mr. Jackson gave us about Nebraska being the outlier when it comes to having sergeants as a part of the bargaining unit. So it's not unheard of that they not be

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a part of the bargaining unit. And these other police agencies, apparently, get along quite well without that. And the fact that the Governor, or whoever else you say, took the position they took from financial reasons...people can have a bad motive for doing the right thing. My interest is not in how much it costs one way or the other, but in the roles that these people play. And again, I've seen what happens when sergeants come on the scene and they're underlings misbehaving. So I still don't see anything that has been said so far that would justify the sergeants being in the bargaining unit. It has become hardened since I've been in this particular room. But let me ask you this--do you say that sergeants should be able to bargain...and now forget all these other disciplinary or whatever else, but for benefits, salary, tenured, insurance, and all the rest of that, do you think that sergeants should be able to bargain, have bargaining rights just as the lower ranks would have? [LB791]

GARY YOUNG: Absolutely. Here's what I would...can I add to that? [LB791]

SENATOR CHAMBERS: Yes. [LB791]

GARY YOUNG: The representations that were made to this committee earlier about what states, in comparable states and so on, have bargaining...have sergeants and troopers in the bargaining units are false. The allegation...the statements that were made included multiple states that don't have collective bargaining at all. Utah does not have collective bargaining; Arkansas, Colorado, and those are being cited as the comparables for when we have...whether Nebraska is comparable or not. Let me suggest another... [LB791]

SENATOR CHAMBERS: Let me ask this before you get too far from my question. [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR CHAMBERS: Why not create a bargaining unit comprising sergeants? There are a lot of them in the State Patrol. How many are there, roughly? There are dozens of them. [LB791]

GARY YOUNG: Sixty-two. [LB791]

SENATOR CHAMBERS: Okay, 62, three score and two. Why cannot they have a bargaining unit? Because they have common interests. Their interests are the same. Their interests are not the same as the troopers. [LB791]

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GARY YOUNG: The proposal in LB791 is to take them out of the bargaining unit and put them in a bargaining unit that does not have collective bargaining rights. [LB791]

SENATOR CHAMBERS: Well, suppose we say they have collective bargaining rights. [LB791]

GARY YOUNG: Then here's the issue then, in my opinion, okay, I think they have community interest with the troopers as well. The statements...the differences here...we probably differ. Okay. But the Nebraska Constitution itself governs what we do here today prevents the Legislature from identifying who can represent a bargaining organization. So that's in the constitution, it's not in the statutes. [LB791]

SENATOR CHAMBERS: What it says who can represent, what is it talking about? Somebody like you as a lawyer? [LB791]

GARY YOUNG: No, labor organization is actually the term used. So if the Legislature was to go and take and carve out the sergeants and put them in their own bargaining unit, okay, that would be fine, but it doesn't solve the problem that's being alleged to be here today because the constitution itself says that STAN or SLEBC could represent that group in the bargaining and that would be unconstitutional to restrict who they would choose. Here's what I would say to you, maybe we just disagree. And that's okay. But here's what my answer is, there is not a problem here to be solved with regard to the conflict of interest. They cannot be solved by the colonel himself stating in policy that sergeants will not investigate troopers. [LB791]

SENATOR CHAMBERS: Well, let's forget that. Let's say that this bill passes. And this bill itself is not unconstitutional, in my view, the way it's written. [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR CHAMBERS: If it's unconstitutional, you would challenge it in court on that basis. [LB791]

GARY YOUNG: And we may. But the issue, and I think, Senator, we may agree on, there is, is that would place those sergeants in a position where they could not collectively bargain on their wages and benefits and protections. [LB791]

SENATOR CHAMBERS: Can lieutenants bargain? [LB791]

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GARY YOUNG: They cannot. [LB791]

SENATOR CHAMBERS: Can captains bargain? [LB791]

GARY YOUNG: They cannot. [LB791]

SENATOR CHAMBERS: Can...well, the colonel is the highest person they've got in the State Patrol, but if there were generals, not also...but why could that not be done, constitutionally, even if people don't like it. I think the sergeants can legally and constitutionally be taken out of the bargaining unit and let the troopers continue to have theirs. I think the sergeants can legally be severed. And as you say, they wouldn't have bargaining rights under the way this bill is written. Why do they need those? [LB791]

GARY YOUNG: Because bargaining is the way that we protect them from overreaching by the people that have power over them. Right? We got to protect...we're trying to protect multiple groups of people here; and that's the way to do it. [LB791]

SENATOR CHAMBERS: And what do you have to protect the sergeants from? [LB791]

GARY YOUNG: Well, in Nebraska, meet-and-confer rights. Right? Those aren't any rights at all. If you look at the rights...the collective bargaining that some groups have versus others, some groups are taken advantage of because they don't have the power to resist. [LB791]

SENATOR CHAMBERS: Have you heard of the "blue flu" where cops actually go on strike when they're not supposed to? [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR CHAMBERS: Since the sergeants don't mind violating people's rights, let them have a walkout and don't call it that--they all get sick. They could do that, couldn't they? [LB791]

GARY YOUNG: Not honorably they couldn't. [LB791]

SENATOR CHAMBERS: Who's talking about honor when you're talking about cops. [LB791]

GARY YOUNG: I am. [LB791]

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SENATOR CHAMBERS: That's right, you represent them. You and I can talk about this at another time. But I don't want to prolong the discussion. [LB791]

GARY YOUNG: We should. [LB791]

SENATOR CHAMBERS: But I wanted to give you a chance because your time had run out to have the opportunity to put your whole argument on the table like everybody else has done. So if there's more you have to say, and I will not interrupt you, then I want you to earn your money. [LB791]

GARY YOUNG: Happy to...in deference to others, I'm happy to field any question you have. I would like to talk to you otherwise. [LB791]

SENATOR CHAMBERS: Okay. [LB791]

GARY YOUNG: Go ahead. [LB791]

SENATOR ALBRECHT: Senator Crawford, do you have a question? [LB791]

SENATOR CRAWFORD: Oh, I was just...thank you, Chairman Albrecht, and thank you for being here, Mr. Young. I wondered if you would...because one of the issues is identifying the issue of conflict of interest and the extent to which it has to do with being in the same bargaining unit versus being on the ground together working on the same kinds of cases. And I don't know if you feel like you can respond to that question. [LB791]

GARY YOUNG: Yes. Yeah, that's a good question. Here's the answer I would give, you know, there's a way in which part of the answer here is you can't establish a form of organization here that is so perfect that the people within it can operate without integrity. It is always the case that a police officer arrives at a scene where a sergeant or lieutenant arrives at a scene and evaluates another police officer...law enforcement officer and sees something wrong and does not report it lacks integrity. And there's not a system we can build today that can protect against that decision, okay. And so with that caveat I would say this, there is absolutely no duty for, despite what's been told to you earlier, there's no duty from a member of the SLEBC bargaining unit to protect the interests of another member of the SLEBC bargaining unit. That's fiction. In fact, there is a duty of that person to turn in an offender when they see wrong doing. And I've represented multiple members of the Patrol who have done that, turned in other officers. And that's how it goes. That's what we do as law enforcement. There is a duty of SLEBC to represent the person or to defend them, but that's an institutional duty of the unit. And that duty is limited. That duty

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is limited because at the step where they go to arbitration, after they've been through the grievance process, SLEBC makes its own substantive determination about whether they should be supported to go to arbitration. And they can say yes or no. And I can tell you despite what's been recorded here, there are many occasions in which they say no. There are other occasions where SLEBC says, yes, you can go, but you got to have your own lawyer because we're not having any part of this, but you can go have your rights to make sure due process is completed, which is one of the examples that was addressed here. But that does not...that's not a substantive statement by SLEBC that they support somebody accused of doing some...stealing ammunition or something from the Patrol, not at all. And to claim that it is is just a false representation about the character of people in SLEBC. So they get that chance too. They just say no, we're not going to support you at arbitration; and then it doesn't go any further. So maybe that's addressing your question, maybe not. [LB791]

SENATOR CRAWFORD: Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? I just have a quick one. [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR ALBRECHT: When you said that there was a...help me out with this time line when you said that the new contract was 2016 through 2017, and then there was a two-month period, and then all of a sudden you're back at the table. What transpired in that time frame that led to the Governor wanting...was it the Governor that wanted to talk to you about some...? [LB791]

GARY YOUNG: No. So...okay, so just to back us up, the SLEBC contract is done on a biannual basis that coordinates with the budget. [LB791]

SENATOR ALBRECHT: Okay. [LB791]

GARY YOUNG: So it runs from July 1 of each odd year to June 30 of the next odd year. So in this case, it's July 1, 2017 to June 30, 2019. [LB791]

SENATOR ALBRECHT: Okay. [LB791]

GARY YOUNG: We begin by statute...the statute articulates we must begin negotiations at least by the prior September, second week in September, so we had started that process in September of 2016 and the state proposed that we eliminate sergeants from the union...from the bargaining unit. [LB791]

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SENATOR ALBRECHT: In 2016? [LB791]

GARY YOUNG: In September of 2016. That negotiation period continued into the middle of January when the Governor signed the agreement. But it doesn't become into effect until July 1 of that year. Okay? So we had a signed agreement; we had been at the table. We made concessions to get that off the table and then it got sort of back channeled in July with the announcement that, well, we're going to do it to you and we're going to use the Legislature to take that away when we couldn't get it at the table. That's how we perceived it. Okay. And there was no change. At the table it was all about money, it was about financial interest, bargaining, we don't want them to bargain somewhat. And nothing really changed. All of the IAs that were brought up in July and August by...in the Governor's review of the IA situation with Rice, all of those IAs were conducted by lieutenants. There was not a single sergeant involved in those IAs at all. And so I don't...I think it's just...they see this as an opportunity to get...to change the bargaining landscape because there's controversies in these other matters, if you want to be plain. [LB791]

SENATOR ALBRECHT: Well, it appeared that when we had the previous person in your chair... [LB791]

GARY YOUNG: Yes. [LB791]

SENATOR ALBRECHT: Mr. Jackson was talking about three different situations where they were all sergeants investigating...not lieutenants, and those seem to be a little bit more severe cases than just some thing... [LB791]

GARY YOUNG: All of those cases that were recited in his review, all the cases that he has mentioned here today were, that I'm aware of, because I was representing the officer involved in those things, and I was at the interviews conducted by the IA people, were investigated by lieutenants. There is...an IA commander position that's held by a lieutenant, the colonel could do...could do what can be done in LB791 with a stroke of a pen which is to change the policy so that sergeants don't investigate troopers. But here's the problem with doing it that way: it removes any claim that they have a conflict that can be mediated by taking them out of the bargaining unit in the Legislature. And we're happy to talk with them, despite what's been said, we've been happy to talk with them about changes to the disciplinary process and so on. In fact, we've made proposals in those regards at any time. But what we're objecting to is the use of legislation to sort of force it on us, when in fact, it's a matter of bargaining. [LB791]

SENATOR ALBRECHT: Very good. Any other questions? Senator Lowe. [LB791]

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SENATOR LOWE: Thank you, Chairman. And thank you for coming today. [LB791]

GARY YOUNG: Thank you, Senator. [LB791]

SENATOR LOWE: And all the troopers, I feel very safe here today. That's because you're sitting next to me. [LB791]

SENATOR CHAMBERS: Oh, okay, carry on. [LB791]

SENATOR LOWE: I'll ask the same question as I asked Mr. Jackson, if a letter is put in the file and it needs a waiver to get out, is that not a line to try to hide records. [LB791]

GARY YOUNG: If it... [LB791]

SENATOR LOWE: I mean, if somebody tries to come and request those records, they can't get them out without the waiver. [LB791]

GARY YOUNG: Well, that's true with all personnel files of all state employees. If there's a subpoena, that file can be taken without their permission, but it's their personnel file, just like it is for the Department of Roads employee or someone. If they go to imply that any agency worth their salt they're going to have to sign a waiver to get their file. And that's what happens. With regard to the letter that was referred to earlier with regard to Lindsey Bixby and all of that e-mails that were passed out, in fact, what the objection was, if you read those, is that the colonel was making a representation about Lindsey Bixby record that was not true. He had, in fact, quit the Patrol before the termination of his...before the colonel tried to terminate him, he already quit. And so what I was objecting to was the attempt by, essentially, the attempt to misrepresent the actual record of his personnel file. It wasn't that we were trying to conceal anything. If Lindsey Bixby goes and applies to any kind of agency at all, he's going to have to sign a waiver and they're going to get his whole IA file, including all of the circumstances and the video that's been shown and so on. So it wasn't to conceal anything, in other words, if that's helpful. [LB791]

SENATOR LOWE: All right. Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony, sir. [LB791]

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GARY YOUNG: Thank you very much. [LB791]

SENATOR ALBRECHT: Okay, we're looking for the next opponent. Okay, you want to go ahead and start. [LB791]

J. J. PEDERSEN: (Exhibit 4) Yeah, very well. I'll have to make a small amendment, it's not good afternoon, it's good evening, Senator Albrecht and other committee members. My name is J.J. Pedersen, J.-J. P-e-d-e-r-s-e-n. I'm a sergeant with the Nebraska State Patrol and worked in that capacity for the last two years and five months. I've been employed by the agency for over ten years now all together. I have come before this committee today to testifying in opposition of LB791. I want to make it clear that my testimony today is my personal view and opinion of LB791. I am not testifying on behalf of the agency as a whole. I feel it important to come to the hearing today to tell the committee my personal story and how this bill would negatively affect me, my fellow sergeants, and the future sergeants of the Nebraska State Patrol. I am concerned that getting lost in all the recent turmoil surrounding this great agency and this proposed legislation to address problems identified as a result are the actual folks who do the day-to-day work of the agency and how it will impact them. This is my motivation for being here today. I was promoted to sergeant in September 2015. It was always a career goal of mine to become a sergeant and I was fortunate enough to get the opportunity to pursue and accomplish that. Unfortunately for me, I was forced to make a decision I could have never anticipated. I interviewed for my current position and was offered it as a result. I never would have guessed that in order to be promoted to the rank of sergeant, I would have to take a reduction in pay. This caused me to have to do some serious soul searching to decide if I would take the position and sustain the negative financial result. How did I come to my final decision and know that it will be worth it over the long term? Thankfully for me, the State Law Enforcement Bargaining Council has a negotiated labor contract that specifically addresses employee pay, leave, insurance, and other issues. I was able to consult that contract and realize that while initially I would receive a reduction in pay it made sense for me to make a short-term sacrifice in order for the long-term benefit. I decided to accept the sergeant position and as a result received a \$1.61 an hour reduction in pay to take on additional responsibilities and a leadership position within the organization. I am concerned that if I were to be legislatively removed from the State Law Enforcement Bargaining Council and the State Troopers' Association of Nebraska which this legislative bill aims to do, my long-term benefit is gone. I am currently being compensated 2.81 percent more than I would be as a trooper. Why is this significant to LB791? This legislative bill would remove me and my fellow sergeants from the next labor contract and I believe seeks to classify us as administrative rules employees. According to my calculations, this would result in me being surpassed in pay by a trooper with the same amount of seniority as me within two years. Let me reiterate this fact, I would be making more money as a trooper than being a sergeant supervising that same trooper. I forgot to mention that if classified as a state administrative rules employee, I would not be allowed to work overtime or holidays. Why is this

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important? Sergeants are not administrators. They do not sit behind desks in offices all day. They conduct traffic stops, respond to calls for service, conduct investigations, investigate accidents, make arrests, and they also supervise the troopers engaged in those same duties. By prohibiting sergeants from working holidays and overtime, this could result in some areas seeing a reduction in coverage of between 10 and 20 percent. That means there could be one or two less troopers working in each particular area on a busy holiday travel weekend. I do not believe this to be in the best interest of the agency or the citizens we serve. I believe LB791 will have an impact on four core issues: recruiting, retention, motivation for promotion within the agency, and employee morale. I believe all of these issues will be negatively impacted by this legislation. I would ask this legislative committee to look at the Department of Corrections for guidance as to the consequences of letting these issues develop and go unresolved. I believe there to be many similarities between the two agencies and unfortunately look at the amount of time and resources that have been invested in trying to reserve those results. I address these issues because this committee has the opportunity before it to look at all the issues at hand and make an objective decision. It has been cited as the primary reason for the legislative bill is to separate troopers and sergeants from sharing a labor contract because of perceived conflict of interest that is causing substantial problems as a result. I would ask does that same conflict not exist when a captain is conducting an investigation of misconduct involving another captain. Both of those individuals share the same labor agreement. I can assure the members of this committee that while engaged in my supervisor-related duties to include investigations of misconduct, the thought has never crossed my mind that my response would somehow be dictated by this shared labor contract. To insinuate as such is an insult to my character and the professionalism of all the sergeants within this agency. Thank you for your time and I would be happy to answer any of the questions you have. [LB791]

SENATOR ALBRECHT: Thank you, Mr. Pedersen. Do we have questions? Senator Chambers. [LB791]

SENATOR CHAMBERS: Sergeant, I appreciate you being so straight forward because you bore out what I said before. This is not a job that people take because of altruism, it is the money, the benefits, and the salary, which leads to decisions. You said you had to...I don't want to put words in your mouth, but you had to puzzle over whether you were going to take a promotion to sergeant strictly looking at the compensation. I'm not the one who says anything is wrong with that. That's why people do things. And what I'm saying is that cops take their jobs for the same reason others do and there's no need in making them heroes, cops do not risk their life every day. In my community, I risk my life more when a cop is dealing with me than I worry about from somebody else. But that's what happens as far as my experiences are. I don't think if it's demeaning to the police to say that they're like everybody else...they're not on these jobs to be heroes, and they're not heroes. A hero is something so special that the term should not be applied just as somebody doing the job that he or she is paid for. So the question that I'm going to ask

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you is this: If the sergeants were removed from the bargaining unit, and let's say you made, as a sergeant, \$10 less an hour than a trooper, would you remain a sergeant or would you become a trooper if you had a choice? [LB791]

J. J. PEDERSEN: That's not even a thought I want to entertain. [LB791]

SENATOR CHAMBERS: I know, because I know the decision that would...do you have a family? [LB791]

J. J. PEDERSEN: Absolutely, I've got a wife and two children. [LB791]

SENATOR CHAMBERS: I know what your decision would be. And I wouldn't... [LB791]

J. J. PEDERSEN: Because it would force me to make...it would force me into a position where I'm having to put my character, everything I value, the reason why I came to this job, and then I have to balance that against my family and my wife and children. And I don't even want to think of that at all. [LB791]

SENATOR CHAMBERS: But I want you to think about...that's my job to make people think (inaudible). [LB791]

J. J. PEDERSEN: Sure, absolutely. [LB791]

SENATOR CHAMBERS: But here's what I appreciate again, I didn't hear you try to glorify or deglorify anybody, not make accusations or excuses or whatever. And I can better appreciate it when a person acknowledges what his or her motivations are. Now, I can truly say money is not my motivation. I know good and well I could make more than \$12,000 a year doing...I could be an adviser to lawyers and make more money than this. But I believe in what I'm doing. But I made a choice, you made a choice; but yours is somewhat different because there are other circumstances. And I think financial reward is a legitimate consideration. Nobody does what they do for nothing; you couldn't. [LB791]

J. J. PEDERSEN: Well...can I respond? [LB791]

SENATOR CHAMBERS: Absolutely. [LB791]

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J. J. PEDERSEN: I find it interesting that I sat and listened to the previous testimony regarding the legislative bill when women and wage discrimination. I find it interesting that if this legislative bill would pass and what I predict would come to fruition, wouldn't this agency be violating that same statute that's been proposed? [LB791]

SENATOR CHAMBERS: Well, if you're a woman and you haven't told anybody, then it certainly would be. [LB791]

J. J. PEDERSEN: Well, right, but we're talking about fair labor; we're talking about fair wages, right? Isn't that equal for all? [LB791]

SENATOR CHAMBERS: But if...if everybody in the category would be receiving the same wage, then it's not unfair. If certain people were doing the same work but they're being given less money, then it is unfair. If sergeants get a lesser pay than a trooper, then that's not unfair. [LB791]

J. J. PEDERSEN: You don't believe that a supervisor should make more money than the individual they supervise? [LB791]

SENATOR CHAMBERS: As a private, I thought I should make more than the sergeant who was over me. [LB791]

J. J. PEDERSEN: Sure. [LB791]

SENATOR CHAMBERS: But being serious, I understand what you're saying and I don't fault you for it. But if we could have these kind of realistic discussions, maybe I'd feel less hostility toward the police. And I'm not saying every cop is bad. If the majority of cops were bad, then there would be total chaos. The vast majority have to be doing their job the best they can, whether they make mistakes or not. The problem that I have is that the bad ones are protected by the others and the cops themselves will say there are a few bad apples, then let the cops weed out the bad apples. When I'm going after lawyers and I've gotten some disciplined, they want to save the others, don't paint all lawyers with the same brush. I said, well, your ethical standards require you to do what I'm doing. I'm made to do your job. So if I'm going to have to be the one to watch the watchers, I'm not going to think much of you as a good cop if you're not going to weed out the bad ones. And you know like I know there are some bad apples, but you all are not going to be the ones that get rid of them. You'll protect them. You look the other way. [LB791]

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J. J. PEDERSEN: I would refer you to my statement. And I personally have been involved in investigations involving trooper misconduct. And I don't stand for that. I guess it's an unfair mischaracterization to say that I want a criminal amongst my ranks. That is completely unfair. It would be like me coming in here and saying there's some bad politicians, heck, that's been in the news lately, right? [LB791]

SENATOR CHAMBERS: I'd say you're right, there are. [LB791]

J. J. PEDERSEN: And to say...and then say every single one of you falls into that category. That's an unfair mischaracterization. [LB791]

SENATOR CHAMBERS: You know why I wouldn't be offended? Because it's up to me to show by my conduct that I'm not among them. [LB791]

J. J. PEDERSEN: And me the same, right? [LB791]

SENATOR CHAMBERS: And they can say anything they want to about bad politicians and I will beat them doing it. I do it on the floor of the Legislature. And then...but here's what they can't do, they can't say, well, Ernie, you don't do your job. You don't work; you don't read the bills; you don't have integrity. You're owned by the Governor. They can't say that about me. I'm above them. And I say it to them. And I say it about them. And I've told them, match me, then you can criticize, but they can't. Now, if I do something wrong, then I should pay the price for it. And I don't say (inaudible). [LB791]

J. J. PEDERSEN: And I agree the same aspect should apply to any law enforcement officer in the state. [LB791]

SENATOR CHAMBERS: And as many traffic tickets as I got, it showed that they were waylaying me. But here's what would happen, and I had so much fun, they would bring the captain who is in charge of that, they'd bring the sergeant who did the training, they'd bring the trooper who gave me the ticket, and they would have a lawyer in the courtroom, and I'd beat them, because I knew the law. And I knew that they were not doing what the law said you would have to do if you wanted to catch somebody with radar, VASCAR, or a stop watch. And what I was trying to do was to get these officers to understand how to use their equipment, and people would ask me, Ernie, why do you want them to know how to get you? I said, well, if they know how to properly clock somebody, they're not going to write so many bad tickets. That's what I was interested in doing. And I got changes in the law aimed at that requiring officers to be trained, try to upgrade all law enforcement, and then show them that if I get a ticket...and there

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were some tickets I didn't challenge, but there were others that I did and I won. I didn't win every time I went to court, but they should have been ashamed that I could beat them in the way that I did. What I'm saying here today is a plea that those who take that oath, there's a difference between a sworn officer and these special deputies and so forth; live up to the oath. Do what the oath says you will do. And that doesn't mean you're never going to make a mistake. But if the mistakes are recognized and corrected, then I can go along with that. But when a cop can shoot a black man in the back and a white jury acquits or the prosecutor says I'm not going to prosecute, or the white grand jury releases him, then that's a murderer walking free. That's the way I look at it. And that's the way I make my judgment. The good cops I don't have to worry about them, I have to worry about him because the good cops won't get him in line. But I gave you credit, that credit is due to you I believe. [LB791]

J. J. PEDERSEN: Thank you. [LB791]

SENATOR CHAMBERS: That's all that I have. [LB791]

SENATOR ALBRECHT: Any other questions for Mr. Pedersen? [LB791]

SENATOR CRAWFORD: I just wanted to thank you for your specific comments and (inaudible) impact personally. I appreciate that in terms of thinking about that and the conflict and your perception on the conflict of interest question. Thank you. [LB791]

J. J. PEDERSEN: Sure. Yeah, unfortunately it's...all of us would like to be at the table. Like I talked about on my statement about, you know, we've had some high profile incidents here that put a black eye on the agency. None of us want to be associated with that. It's embarrassing. It's demoralizing. The agency's name has been drug through the mud from it. But all of us understand, we want transparency; we want...in my view, the aspect that if you're terminated from the agency, why wouldn't we be able to share that information with the Crime Commission. That would make sense. They're the ones in charge of certifying us as law enforcement officers. The agency has felt they have the ability to do that, then why wouldn't it be the Crime Commission's ultimate decision whether you retain your law certification or not. So that promotes transparency. The aspect of removing us from SLEBC and collective bargaining, I don't know what interest that serves. As I came here today to testify, and as Senator Chambers has pointed out, it's...I'm not for sure exactly where that's coming from. Typically, like Mr. Young has already said, typically sergeants don't investigate these large cases involving like serious misconduct. And the rifle butt strike to the head would be classified as serious misconduct. What Mr. Jackson is talking about in his review is that in every situation involving a pursuit, use of force, the first person to look at that paperwork is a sergeant. The first supervisor, the person that deals with all that is a sergeant. Now in the TVI case, the accident investigator

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just happened to be a sergeant. I feel it's a little unfair to place a whole bunch of blame on sergeants simply because that's the title in front of their name. [LB791]

SENATOR ALBRECHT: Senator Chambers. [LB791]

SENATOR CHAMBERS: One other item we haven't touched on directly, there's a provision in the bill that says something about disciplinary actions are not bargainable...or something like that, whatever the language is, are you familiar with that in the bill? [LB791]

J. J. PEDERSEN: And that's what I'm talking about with transparency. I think... [LB791]

SENATOR CHAMBERS: Okay, so then you...that part doesn't bother you. [LB791]

J. J. PEDERSEN: Well, what bothers me about it is I think STAN and SLEBC, I guess I'm speaking for them at this point, and I would hope that if I was wrong they would rebuttal me, but I believe they want to negotiate for something like that. [LB791]

SENATOR CHAMBERS: No, we don't make it negotiable. Okay, on page... [LB791]

J. J. PEDERSEN: Is the bill as written, obviously it would be a legislative action, not a contractual negotiation. They haven't been given the chance to enter into a new contract and address these issues that have come up because the contract was entered into and went into effect in July. This legislative bill has been introduced and they've been given...there hasn't been a new bargaining cycle take place yet that would allow them to sit at the table with members of the command staff from the State Patrol. [LB791]

SENATOR CHAMBERS: Here's what I'm asking you... [LB791]

J. J. PEDERSEN: Okay. [LB791]

SENATOR CHAMBERS: ...because I don't want those who are to be investigated to determine how they will be investigated. I don't want them to determine that the information will be kept secret. I'd be willing to let the sergeants stay at the bargaining unit in, what they call a New York second, in exchange for the other things that I'm far more concerned about--the way investigations are conducted and the fact that they want to keep the findings secret. Now, in every entity I'm aware of, while an investigation is in progress, nothing is to be said. I don't have a problem with that. Let that investigation go forth without the distractions of a lot of back and

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forth. But once it's completed and action is taken, that action should be made public. That's my view. But these...as Mr. Jackson said, there are things that cannot be said. As the colonel said, there are things that cannot be shared with members of the Legislature, even when we're the policymakers and that's because of the ones who are involved bargained and reached that point. So we as policymakers have to enact laws to make sure that the information we need to formulate sound policy will be made available to us. I had said that I've got issues with some aspects of the bill, and I don't really care where the sergeants wind up, quite frankly, in the bargaining issue; that can be argued out. But these other matters are far more important to me. You can't get everything that you want, and the reason I accept that is what the Rolling Stones said. But if...and this is not binding you, if you and I were bargaining and I would say in exchange for letting the sergeants stay in the bargaining unit, you have to agree that the findings of these investigations will be made public. [LB791]

J.J. PEDERSEN: Are you asking me as like a leave it or take it? [LB791]

SENATOR CHAMBERS: Would you... [LB791]

J.J. PEDERSEN: Deal or no deal, is that what you're asking? [LB791]

SENATOR CHAMBERS: Would you accept that deal? If it put you on the spot, don't answer. That's not my intent. [LB791]

J.J. PEDERSEN: I guess I would propose this to you, Senator Chambers. Do you believe every state employee, if they're involved in any form of complaint while in the performance of their duties, that everything that that individual would do? Say they're disciplined. Say in my particular case I back out of my driveway and I hit my neighbor's mailbox... [LB791]

SENATOR CHAMBERS: Uh-huh. [LB791]

J.J. PEDERSEN: ...and I damage my patrol car. Do you believe the public deserves to know every single time that that happens? [LB791]

SENATOR CHAMBERS: Yep, I do. [LB791]

J.J. PEDERSEN: Whether that involves law enforcement or any state employee. [LB791]

SENATOR CHAMBERS: Yep. [LB791]

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J.J. PEDERSEN: Okay. [LB791]

SENATOR CHAMBERS: I say once there is a finding. While there's an investigation, if the investigation indicates that there's nothing inappropriate here then I'll accept that. But when a violation of either rules, regulations, or the law is involved, that should be a matter of public record, in my opinion. If the public are paying these people, the public is entitled to know how those they pay are performing their duties. And if they are not performing them correctly, the public has a right to know. [LB791]

J.J. PEDERSEN: But, I guess as Mr. Young has testified, those are the same rules that all state employees are governed by, by this confidentiality. So is the legislative body willing to take action to remove that confidentiality across the board? [LB791]

SENATOR CHAMBERS: We're talking to you. This is between you and me, and I will not let you off the hook. You are a great white shark. Oh, no, let me change it. You are a barracuda. If I'm treating you a certain way, you can't say, yeah, but the piranhas over here. Maybe so, but we...these are discrete, separate entities. No other state employee, no other person in this society, I'll say it again, has the powers that police officers have, nobody. So they should be held to a higher standard. And when they violate that standard, it should be made public, the same with judges. And the reason I'm continuing to go after a judge who resigned suddenly, I think the public has a right to know what wrongful conduct he engaged in. And I'm the only politician who's trying to make that disclosure. They have extra powers that nobody has. They can sentence somebody to die. They can terminate parental rights. They can put people in prison. They have a special niche that they occupy and it requires them to meet a higher standard, that of Caesar's wife, who must be above suspicion. And if they don't conduct themselves in a way that accords with the duties of that office, and they knew that when they took it and swore an oath, then when they violate it, it should be made known. They're not entitled to secrecy. [LB791]

J.J. PEDERSEN: If you're asking me whether, basically, in this deal that if you removed the Section 1 that would remove sergeants from SLEBC, out of this legislative bill... [LB791]

SENATOR CHAMBERS: Uh-huh. [LB791]

J.J. PEDERSEN: ...and maintain, are you talking about Section 2 or 3? [LB791]

SENATOR CHAMBERS: Wherever it is. We keep the rest of the bill. [LB791]

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J.J. PEDERSEN: Okay. If you're making me to force me to make a personal decision, I would say, yes, because, you know why? For me personally, if I get in trouble at work, the things you're talking about, that's transparency. Is it not? [LB791]

SENATOR CHAMBERS: Right. [LB791]

J.J. PEDERSEN: So if I am involved in a car crash and I'm at fault, am I not a big enough human being that I can say that was my fault,... [LB791]

SENATOR CHAMBERS: You sure are. [LB791]

J.J. PEDERSEN: ...I deserve accountability, right? [LB791]

SENATOR CHAMBERS: Sergeant, you are a good man. And I'm not being facetious and I'm not being sarcastic. That's all I have to ask of you. Thank you. [LB791]

J.J. PEDERSEN: Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? I appreciate your testimony, too. I'm quite certain your sergeants would feel the same (inaudible). [LB791]

J.J. PEDERSEN: Thank you. [LB791]

SENATOR ALBRECHT: Thanks for being here. Any other opponents wishing to speak? [LB791]

BRIENNE SPLITTGERBER: (Exhibit 5) Does that mean I need to start since it's green already? [LB791]

SENATOR ALBRECHT: Sure. Go right ahead. [LB791]

BRIENNE SPLITTGERBER: Oh, okay. [LB791]

SENATOR ALBRECHT: Sorry. [LB791]

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BRIENNE SPLITTGERBER: I'm going to be...I'm going to push my five minutes. Good evening, committee members. My name is Brienne Splittgerber, B-r-i-e-n-n-e S-p-l-i-t-t-g-e-r-b-e-r, and I'm a trooper with Nebraska State Patrol and a dues-paying member of the State Troopers Association of Nebraska. I want to thank you for allowing me the opportunity to voice my opinions, relay my experiences, and state the reasons why I oppose LB791. I have worked in law enforcement for about 14 years. I have always wanted to be a Nebraska state trooper. I wanted to be a legacy and I wanted to work for the greatest law enforcement agency in the state. I was obviously taken aback by the administration of the Nebraska State Patrol in how they handled an unfortunate experience during my preemployment physical portion of my background investigation. After informing my chain of command and being assured of what would be taken care of, I did not receive a single phone call, e-mail, or text from the administration stating what was found. Meanwhile, they sent the two State Patrol camps to the same facility. I had a supervisor...I had asked the supervisor the progress of the investigations. He stated Human Resources were supposedly handling the investigation. I knew another camp was about to go through the same physical I had experienced, the same facility. I felt something needed to be done. I went to my traffic services supervisor, who was a sergeant, who was also on the STAN board, and I explained the lack of investigation and communication by the NSP administration and the experience I had encountered with my physical. My sergeant put me in touch with Brian Petersen, also a sergeant and our STAN president. I was finally feeling like I was being heard and that someone actually cared and wanted to fix this. I went to my sergeant not only because he's my first line of supervision in my chain of command, but he was someone I could trust. Sergeants are our filters, our bridges, so to speak, currently over troubled waters. Sergeants are the ones that go to bat for us and have our backs. Taking our sergeants out of our contract would eliminate their protection. Who would assist with their representation, if needed? Who will have their backs? We the troopers and the sergeants will have each other's backs the same way we have our communities' backs every day. We will lend our guidance, support, help, and a strong voice. My sergeant was able to guide me in the direction that was best for me. This was the trust I needed, the bridge and guidance that sergeants provide. I felt ignored and shoved to the back burner when trying to get my voice heard. I knew what happened to me and many others was wrong. It felt wrong. I felt violated. The agency I work for, a law enforcement agency, had an administration that did nothing to protect me, even after being notified. Instead, the administration ignored me. What if it was your daughter or your sister or your mother or your granddaughter or your wife? If I was a female coming in from outside the agency and made the same claim, how would it have been handled? The investigator would have moved heaven and earth to make things right because that's his job, that's their job. That's our job. Our job is to protect. Many may wonder why I took it this far. Why not make the administrations listen? I tried. And when I say "I," there was a team of us. I continued because it's my job to protect future victims. I have ruined my career because of this--too much attention on a bad thing that should have been handled correctly and wasn't. The only reason why anything is being changed right now is because the administration knew a lawsuit was coming and because my sergeant and

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STAN president, who is a sergeant, helped me. This all brings me to another point of transparency. I've been hearing this word for the last eight to nine months. Jason Jackson preached this at our Phase IV meetings. When I was asked by Jason Jackson if I wanted an internal affairs investigation done on my allegations, I said yes. The internal affairs investigation took less than two weeks to complete with an unfounded result. Internal affairs investigations take a lot longer than two weeks, as you guys all probably know. One witness, one single witness passed away and the agency felt they found a loophole. Instead of claiming responsibility for what happened and making a change, they used him as an excuse to close the investigation. There are more witnesses than just him. I don't know where my investigation went while I was in camp. How far up the chain? Did anybody actually care? All I wanted was for this administration to take me seriously, to actually look at the complaint and to switch doctors. Instead, two more camps were exposed and I feel guilt every day for it. No one has taken responsibility. If you want to talk about transparency, I think it needs to start at the top. I had never been so excited to start a career with a law enforcement agency until I started with the State Patrol. Current...recently, my husband was offered a position--I guess this was about a year--and he turned it down because he knew I wanted to challenge myself and become a criminal investigator I've always dreamed about since I was a child. He was recently contacted again by the same institution. We have decided the stress, lack of respect, transparency, and the small bits of retaliation being noticed isn't worth staying. I have small kids at home who are more important than fighting an administration filled with chauvinism and disrespect of females. It's an uphill battle for women in law enforcement. Women are constantly proving themselves. I have never put my uniform on as a female; I've always put it on as a Nebraska state trooper. Thank you for listening. [LB791]

SENATOR ALBRECHT: Thank you for your testimony. [LB791]

BRIENNE SPLITTGERBER: Thank you. [LB791]

SENATOR ALBRECHT: Senator Chambers. [LB791]

SENATOR CHAMBERS: We have never met, have we? [LB791]

BRIENNE SPLITTGERBER: No, sir. [LB791]

SENATOR CHAMBERS: We have never talked to each other, have we? [LB791]

BRIENNE SPLITTGERBER: No, but thank you for what you're doing for me. [LB791]

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SENATOR CHAMBERS: Do you...I was going to ask you do you know that I (inaudible). [LB791]

BRIENNE SPLITTGERBER: I do know. [LB791]

SENATOR CHAMBERS: Okay. And you know what? When I read in the paper, I was outraged and I was upset and offended that other officials hadn't said anything. And I thought of it just like you said. I had three sisters. All of them have died. My mother is a woman. But in reality, I didn't need to have...go through all of that. I saw something that was very wrong and I'm pushing to have that doctor disciplined just like I talked about police officers. They're trying to protect him. They have taken far more time than they should have to process my complaint. I've talked about it on the floor of the Legislature and I assure you I'm going to keep pushing to the extent that I can to try to get something done. If you read the paper, maybe you'll see something. [LB791]

BRIENNE SPLITTGERBER: I do. [LB791]

SENATOR CHAMBERS: I don't know when or if, but I'm... [LB791]

BRIENNE SPLITTGERBER: Thank you, Senator. [LB791]

SENATOR CHAMBERS: ...not going to let that go. [LB791]

BRIENNE SPLITTGERBER: I appreciate that, Senator. [LB791]

SENATOR ALBRECHT: Any other questions? [LB791]

SENATOR CHAMBERS: And by the way, I knew you were an officer at the time so I'm not against all officers (inaudible). (Laughter) [LB791]

SENATOR ALBRECHT: Any other questions? Senator Howard. [LB791]

SENATOR HOWARD: Thank you. Thank you for visiting with us today. I know it takes a lot... [LB791]

BRIENNE SPLITTGERBER: Yes, thank you. [LB791]

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SENATOR HOWARD: ...and we're very intimidating. So tell me why you oppose this bill.
[LB791]

BRIENNE SPLITTGERBER: I oppose it. I'm kind of with, well, my former sergeant, but I feel if I didn't have sergeants to go to because they are the people we go to every day. They work out on the road with us. They're out here helping with us accidents, freezing to death in the winter. They are the ones that come and assist us on whatever we need. We call them at all hours. They need to be with us. We're a team. I think this is just going to break up our team and we need that.
[LB791]

SENATOR HOWARD: So you oppose it on the sergeants side. But then what about the side for the transparency in your investigation? [LB791]

BRIENNE SPLITTGERBER: Well, I think the transparency, I'm not against the transparency proposal. I think there needs to be some sort of transparency but it doesn't...it's not where the sergeants are. It's up top. It's something that needs to be taken care of. And you know, I'm always that person that wants to lead by example and I think that's where it starts. We can't make changes if we don't have good leadership. [LB791]

SENATOR HOWARD: Okay. Thank you for coming. [LB791]

BRIENNE SPLITTGERBER: Uh-huh. [LB791]

SENATOR ALBRECHT: Just real quick, did you choose to just step down because of all this? Is that what you're saying? [LB791]

BRIENNE SPLITTGERBER: Yes. It's just not worth it anymore. [LB791]

SENATOR ALBRECHT: All right. Thanks for your service. Thank you for your testimony.
[LB791]

BRIENNE SPLITTGERBER: And I haven't stepped down yet. I still have a few months left, but.
[LB791]

SENATOR ALBRECHT: Well, maybe you won't have to. [LB791]

BRIENNE SPLITTGERBER: Thank you, ma'am. [LB791]

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SENATOR LOWE: And maybe you'll change your mind. [LB791]

SENATOR ALBRECHT: Next person up for opposing the bill. Okay, go ahead. [LB791]

TINA CLEVELAND: (Exhibit 6) Good evening, Chairman Albrecht and committee members. My name is Tina Cleveland, T-i-n-a C-l-e-v-e-l-a-n-d. I'm a drug investigator with the Nebraska State Patrol and I'm here today as a paying...a dues-paying member of the Nebraska State Troopers Association, STAN. I have been employed with the NSP since August of 2005. I have been in carrier enforcement, traffic services, and now I am in investigative services. I'm currently attached to a federal drug task force. I'm a defensive tactics instructor, former DT coordinator, former SWAT negotiator, and former SWAT team member. I am here to provide you just my opinion or my front-line employee perspective on my opposition of LB791. I agree that the disciplinary and investigatory procedures need to change within the Nebraska State Patrol. In my opinion, eliminating the rank of the sergeants from the collective bargaining unit would not fix or solve these problems. The sergeants are the ones that are standing with those of us who are on the front lines. The sergeant understands the job and gives support to the troopers while trying to achieve the goals of the administration. Above the rank of sergeant there appears to be a disconnect on the goals and the objectives of the administration versus the troopers who are serving you, the public. The sergeant is somebody who can see and understand the totality of the incident or issues that occurred. I believe eliminating the sergeants would be a critical mistake and would take away the buffer or the liaison between the troopers who are involved in disciplinary or internal affairs investigations. Sergeants act as a liaison between the administration and the troopers, and because of this role the sergeants do and need to be given every rights and benefits that STAN can provide them. My personal experience with an internal affairs investigation is another reason that I oppose LB791. My complaint was handled, not by a sergeant but at the lieutenant level and above. The first incident was in 2015. This includes years of ongoing sexual discrimination which has created a hostile work environment. I can count on one hand the persons above the rank of sergeant who supported and tried to help me. I received a letter from a 2017 complaint from the current colonel saying how important my complaint was. Nothing addressed what further disciplinary action was taken. Apparently, no steps were put in place to prevent the abuse or hostile work environment from continuing. Nothing has changed. This part of the NSP culture does need to change and I am not alone. Only 6 percent of this agency is comprised of females, which I learned last week that's about half of the national average. It appears that we are not valued or as important. We are here to be seen and not heard. Others have had their stories to tell and those who have come forward and have made complaints, including myself, simply had our voices locked away in a drawer. I do want to stress to you that we do have very good brothers and sisters in the Patrol and those are the people and individuals that we can lean on. The problem is not the sergeants' role in the internal affairs investigations. We need to change the internal affairs investigation process as an agency from within. This process needs to evolve as we have. I look forward to discussing these ideas when as

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an agency we first admit that there's a problem within and this sort of issues. I thank you for your time and I welcome any of your questions. [LB791]

SENATOR ALBRECHT: Thank you. Senators, do you have any questions at this point? Oops, sorry, Senator Howard. [LB791]

SENATOR HOWARD: Thank you, Senator Albrecht. Thank you for visiting with us today. Your testimony is really disturbing. So I guess my...what can I do, what can we do to fix this? [LB791]

TINA CLEVELAND: As an agency, I think that we need to redo our internal affairs investigations process, our disciplinary process. As a senator, I don't know what you can do for us. It is an issue and I think that with the STAN or SLEBC board, they are open to discussing this. But it is an issue that needs to be fixed. My issue was handled above the rank of a sergeant and up through the administration. That is where...that's where it took place and that's where it has landed today. I took this job just like the others said before. Realistically, I wanted to protect innocents. That's why I'm here. I wanted to be able to help people and take care of people who couldn't do that themselves. And also I really like to catch bad guys, so that's another reason. (Laugh) But, yes, this is something that we need to fix as an agency and I don't know how senators could help with that. I don't have the answer to that. [LB791]

SENATOR HOWARD: Okay. Thank you for coming. [LB791]

SENATOR ALBRECHT: Any other questions? Let me ask you a quick one. Do you feel that the new colonel, there's a new colonel in town, I mean is that something you're going to give some time to, to see how he unrolls his program and how he would make some changes for you? Or do you feel that it's even bigger than that? [LB791]

TINA CLEVELAND: He is a new colonel and he did walk into some big issues here. However, I received a letter from him like I stated and it informed me to call our director of human resources if I had any questions. This was a signed letter from the new colonel. I did contact that person and that person stated he was not familiar with my complaint. I would have to call back in a week so he can read and find out what it was about. And then when I did get a call back on a conference call or we had a conference call, again, nothing was told, nothing was said, nothing was assured to me that this wouldn't happen again. Business as usual. I physically removed myself from my duty station because I was fortunate enough to have an office over at the federal task force that I work at. I will not do that anymore. I will do business as usual how I need to do it. So I physically removed myself from situations and training environments that these things were occurring in. So I guess my letter from the colonel is what I just stated I received. [LB791]

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SENATOR ALBRECHT: Okay. There will be more to come. Senator Crawford. [LB791]

SENATOR CRAWFORD: Thank you. Thank you, Chairwoman Albrecht. And thank you, Ms. Cleveland, for being here today. Could you just speak to...you've spoken about the important role of sergeants in your experience, so can you speak to how that is or would be any different if they were not a part of the bargaining union...unit, I mean. In what way is that relationship important in the roles that they play or is that not important in terms of their being an advocate on your behalf? [LB791]

TINA CLEVELAND: I think it is important because...that they stay on the bargaining unit because they are there with us, like she said. They're on the front lines. They...some of these individuals do see these things firsthand occurring. They're not sitting at a desk. They're not taken away from what's actually happening with all of us. So I think the sergeant is, you know, that they're going to see these things little bit more up-front and be able to do stuff, not only for us when incidents happen but something like this. That's their duty or their role and they will be able to help us with those incidents or occurrences or even things of this nature. [LB791]

SENATOR CRAWFORD: All right. And if...so it's not...is it the case that the first part of the bill, the component about the bargaining unit is what's most disconcerting to you about the bill? [LB791]

TINA CLEVELAND: About the investigatory. Yes. [LB791]

SENATOR CRAWFORD: Yes. [LB791]

TINA CLEVELAND: Yes. The bargaining and also the internal affairs process. I think that I do...the transparency, I do understand that. I think that as an agency that's something that we should have the opportunity to look at, go in, and fix this, because this does definitely need to be fixed. And then I think what will happen out of there or what can happen is we can provide a little bit of that, whatever we need to do as far as some sort of, I don't know if it's transparency or what we can provide in order to get the other side of what we're looking for. [LB791]

SENATOR CRAWFORD: So you'd like that to be part of a larger process, that discussion to be part of a larger process. [LB791]

TINA CLEVELAND: Internal affairs? [LB791]

SENATOR CRAWFORD: Yes. [LB791]

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TINA CLEVELAND: I would like that to stay within the agency. I think we can do that. I think we are now getting the right people to do that. But it does need to be done. So I think that as an agency, I think we should fix this issue. And then from that point, go from there. [LB791]

SENATOR CRAWFORD: Thank you. And thank you for coming today. [LB791]

SENATOR ALBRECHT: Thank you so much for your testimony. [LB791]

TINA CLEVELAND: Thank you. [LB791]

SENATOR ALBRECHT: No other questions? Thank you. [LB791]

TINA CLEVELAND: Thank you. [LB791]

SENATOR ALBRECHT: Any other opposition to LB791? I'll let you go ahead and get started while she's handing everything out. [LB791]

KURT FRAZEY: (Exhibits 7, 8, and 9) Okay. Before I officially start, I would, if we could, just take a moment. I'd like to recognize the other state troopers, investigators, sergeants that are in the room. It's been a long day and I very much appreciate everybody being here, so. [LB791]

SENATOR ALBRECHT: Thank you. [LB791]

KURT FRAZEY: With that being said, good evening, Senator Albrecht and the other committee members. My name is Kurt Frazey, K-u-r-t F-r-a-z-e-y, and I am the legislative liaison representative for the State Troopers Association of Nebraska, otherwise known as STAN. I currently hold the position of drug investigator with the Nebraska State Patrol and I come before the committee today testifying in opposition to LB791. Senator Albrecht, along with several other committee members here today, have willingly engaged myself and STAN president Brian Petersen in some very meaningful dialogue prior to the introduction of LB791 and since its introduction, and for that we are grateful, as is our membership. Thank you. If the committee would indulge me for a moment, I would like to take you back four years to 2014 when Pete Ricketts was campaigning to become the Governor of Nebraska. Pete Ricketts approached the State Troopers Association of Nebraska and he asked for our endorsement. On September 18, 2014, Pete Ricketts signed a letter and later mailed the letter to the STAN executive board. The letter stated, and I quote: I support the State Troopers Association's collective bargaining rights and will not support legislative efforts to restrict them or weaken them. I'm going to repeat that for emphasis. Pete Ricketts stated: I support the State Troopers Association's collective

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bargaining rights and I will not support legislative efforts to restrict or weaken them. Ladies and gentlemen of the committee, that's exactly why we're here tonight because he did exactly that. Eliminating sergeants from the bargaining unit and removing disciplinary procedures from the collective bargaining process can be classified in no other way than a conscious effort to undermine the collective bargaining process by means of a legislative effort; acts which could conflict with the labor contract negotiated on behalf of the Governor's Office and signed by Governor Ricketts, February 2017. The state HR director has boasted to the media, this legislative body, and anyone else who would listen that he has single-handedly brought to light the terribly deceitful and corrupt conditions, what supposedly existed within the Nebraska State Patrol. The members of the State Troopers Association of Nebraska and many citizens of Nebraska take great exception to these conclusions, and I would support that with a [Change.org](#) electronic petition that now has over 2,000 signatures supporting us. Mr. Jackson's 15-page review was conducted without statutory authority. Mr. Jackson's report was speculative and lacked documented sourcing. Mr. Jackson was somehow able to obtain information that the Crime Commission is now asking this legislative body to give them the powers to do in LB792. And I have to ask you, how is that possible? How is someone without statutory authority and without subpoena powers able to somehow obtain all this information that the director of the Crime Commission cannot get? The State Troopers Association of Nebraska, the Nebraska State Patrol, and the collective bargaining process has been under attack for the last nine months. The administration's claim to want to better serve the citizens of Nebraska by rebuilding the Nebraska State Patrol and reeling in the supposedly out-of-control State Law Enforcement Bargaining Council's labor contract, yet they repeatedly take every public opportunity to undermine their very own efforts by shamefully degrading those they claim to be attempting to reform. And I think we saw witness of that with Jason Jackson's testimony earlier this evening. The message of and the actions of the administration do not match. When the message and the actions do not match, you must question the motive. I stand before you today and I beg you, question the motives. Support your troopers. Support collective bargaining. Send a message to the administration that this is Nebraska, where law enforcement is respected, where fair labor practices are protected, and where promises are kept. Many of you may be asking yourselves, why don't I see uniformed officers of the Nebraska State Patrol here today? Because it is not allowed. Many wanted to be here today to inform you of their opposition to LB791, but instead, like many days, they self-sacrifice their own best interests to keep the citizens of Nebraska safe. They are attending training, they're teaching, or they're working the highways and interstates to keep you and your family safe. Senators, I ask you to visualize those officers at this very moment on this incredibly cold day. They are doing what they swore an oath to the citizens of Nebraska to do. Do not give the administration the satisfaction of allowing this LB to make it out of committee. Supporting LB791 is a slap in the face to every uniformed officer in the state of Nebraska and their families. You have LB791 in front of you. You have supporting documentation in front of you. I sincerely thank you for your time and I sincerely hope you take this opportunity to ask the questions that need to be asked. Thank you. [LB791]

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SENATOR ALBRECHT: Thank you for your testimony. Questions? Senator Chambers. [LB791]

SENATOR CHAMBERS: This will be brief. Is your name pronounced Frazey? [LB791]

KURT FRAZEY: Yes, it is. [LB791]

SENATOR CHAMBERS: Have we talked before? [LB791]

KURT FRAZEY: Yes, we have, Senator. [LB791]

SENATOR CHAMBERS: You think I know how to pronounce your name? [LB791]

KURT FRAZEY: I would hope so. [LB791]

SENATOR CHAMBERS: I wanted to break the ice. Here's what I would ask you. You said don't let the bill out. Is the most important thing to you, if one thing is more important than the other, to let the sergeants stay in the bargaining unit or to maintain this secrecy, as I call it, where information is not revealed to the public? [LB791]

KURT FRAZEY: I certainly respect your opinion on that, Senator. My opinion, I think the opinion of the majority of our membership, is that we oppose LB791 in its entirety. We do not oppose transparency. We think there are mechanisms that already exist to achieve that transparency. None of us want to work with bad officers, none of us. [LB791]

SENATOR CHAMBERS: But on this bill you'd rather have...it's all or nothing with you. [LB791]

KURT FRAZEY: Yes, it is, sir. [LB791]

SENATOR CHAMBERS: Is that your position? [LB791]

KURT FRAZEY: Yes, sir. [LB791]

SENATOR CHAMBERS: So then you would rather have the whole bill come out than part of it. [LB791]

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KURT FRAZEY: Yes, sir. [LB791]

SENATOR CHAMBERS: Well, you're taking a principled position and you just have to hope that the rope that you're holding will not break. [LB791]

KURT FRAZEY: That's all we can do--hope. [LB791]

SENATOR CHAMBERS: But anyway, I don't have any more questions. Thank you for coming. [LB791]

KURT FRAZEY: Thank you, Senator. [LB791]

SENATOR ALBRECHT: Other questions? You had a couple other handouts. Can you speak to the colored one a little bit more? [LB791]

KURT FRAZEY: Yes. So the one handout, the colored handout that has the three colors on it,... [LB791]

SENATOR ALBRECHT: Uh-huh. [LB791]

KURT FRAZEY: ...this is a little bit of a breakdown that explains what the fiscal impact would be, not only to the individual officers, the sergeants, but what the fiscal impact would also be to the state of Nebraska. The State Troopers Association of Nebraska is self-insured so we have our own health insurance plan that is separate from those that is given to lieutenants and above. We have a very good health plan and we get a better rate than what the state gets, much to the hard work of our president and our office manager. [LB791]

SENATOR ALBRECHT: Maybe you should be negotiating for the state. (Laughter) (Inaudible). [LB791]

KURT FRAZEY: Well, I'll leave that up to our office manager and our STAN president. But unfortunately, with this bill not going in effect, if it were to pass, until July 1 of 2019, it falls outside of this biennium budget and, as such, it's not required to have a fiscal note. So we tried to do the math. And if you take 61-62 sergeants... [LB791]

SENATOR ALBRECHT: Uh-huh. [LB791]

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KURT FRAZEY: ...out of the STAN/SLEBC healthcare plan and put them on the state healthcare plan, at a minimum that's going to cost the state of Nebraska between \$200,000 and \$250,000 a year in increased cost. And that's simply premium costs. That's not getting too far into the numbers on some of the additional costs. In addition, as some of the other people that have testified, there's a negative fiscal impact to those individual sergeants. They're going to take a hit in their monthly pay, which means changes to their family budget, less vacations. And we've had the discussion Senator Chambers had earlier with Sergeant Petersen. None of us got into this job to get rich. None of us got into this job to be famous. We got into this job because we thought it was the right thing to do and we just want to earn a fair wage. The other document...does that answer all your questions? [LB791]

SENATOR ALBRECHT: Yes. Thank you. [LB791]

KURT FRAZEY: The other document I believe was a list of talking points and I would be happy to go through as many of those or as few of those as you would wish, but my intent with handing those out was this is a very broad issue. It's not as simple as removing sergeants from the union. It's not as simple as taking away collective bargaining rights for internal affairs investigations. So I put those ten bullet points out there to the committee to look at that, hopefully spark some thought. [LB791]

SENATOR ALBRECHT: Uh-huh. [LB791]

KURT FRAZEY: If there are questions that you have that haven't been answered yet this evening that pertain to one of those ten bullets, I'm more than happy to try and expound on them. And if we don't have...it's been a long day. If we don't have time to do it now I'd be more than happy to come and visit with any of you at any time to discuss them further. But I think the ten bullet points that you'll find on that document are the crux of what our concerns are in STAN right now with this bill and with LB792. [LB791]

SENATOR ALBRECHT: Senator Chambers. [LB791]

SENATOR CHAMBERS: I assure you that one particular point in your statement will be trumpeted on the floor of the Legislature to show that a certain individual, who shall remain nameless right now, is...has no integrity and will say anything to get elected and then I will elaborate. Is this something that I can have? [LB791]

KURT FRAZEY: Absolutely, Senator. [LB791]

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SENATOR CHAMBERS: And make whatever use of it I choose? [LB791]

KURT FRAZEY: Yes, sir. [LB791]

SENATOR CHAMBERS: Thank you very much. (Laughter) [LB791]

KURT FRAZEY: You're welcome. [LB791]

SENATOR ALBRECHT: Any other questions? Thank you for being here. [LB791]

KURT FRAZEY: Okay. Thank you for your time, Senator. [LB791]

SENATOR ALBRECHT: Can I get a show of how many more testifiers we have? You guys are good. Hey, take your time. Okay. [LB791]

JIM MAGUIRE: Good evening, Senator Albrecht and Senators of the committee. My name is Jim Maguire. It's J-i-m M-a-g-u-i-r-e, president of the Nebraska Fraternal Order of Police, and I'm probably one of the only testifiers here that is not part of the State Patrol. I'm a Douglas County deputy. What we have in front of us with this bill, we have two sections that are so wildly different. The section that seems to be causing the most conversation has to do with the discipline process. Well, there's already a bill that was presented in LB792 that is already going to be dealing with a lot of this stuff. And it probably would have either been better served being a part of that or it should have been on its own. But I am here just to specifically talk about taking the sergeants out of the bargaining unit, which I see as problematic at best. If you look under State Statute 48-816, section (3)(b), and this section was put into the legislation because there was a Nebraska Supreme Court ruling back in the '70s that basically said that sergeants and lieutenants and officers, it said officers because it was an Omaha police case, all serve a community of interest. And the bill, the section says: All firefighters and police officers employed in a fire department or police department of any municipality in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single bargaining unit represented by a public employee organization for the purpose of the Industrial Relations Act. In a nutshell, that means sergeant should be in the bargaining unit. It is a community of interest. You do not want to have separate benefits that are a part of a labor agreement to where you then have to choose: as an officer I get such and such for a pension and health insurance, but if I want to go and progress my occupation I may have to take a step back. And they...and this is just my opinion, they're saying that's not right; you shouldn't...we shouldn't hold back the progress that you were trying to make within

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your job. And by doing that, it would be a mistake. And that's what the Supreme Court has basically already ruled on this. So, in my opinion, this section regarding the sergeants being a part of the bargaining unit, that's already been settled and it should never have been put into this legislation. Regarding the disciplinary process, there is no doubt that we have to do a better job policing the police. We do. We know that there's issues. What's the easiest thing is not to...well, what we shouldn't do is rush into this and come up with bad legislation where you had good intentions but it's just never going to work because you're going to have internal affairs reports that are going to be talking about Garrity rights. And Garrity rights are, hey, I am compelled to testify and write down exactly what happened knowing that I'm not going to give up my Fifth Amendment right. But now we're going to start making this public. The question becomes as a legal one. And that's why we should have all the interested parties that are a part of this, we should sit down and discuss this and hammer this piece of legislation out because sooner or later this is just going to come back and bite us in the behind and say, you know what we should have done better? Rather than just saying let's just go ahead and pass this bill and hope for the best, let's get it right. Let's get everybody to sit down and just figure this thing out. Thank you for your time. I know it's been a long day, so thank you. [LB791]

SENATOR ALBRECHT: Thank you for your testimony. [LB791]

JIM MAGUIRE: You're welcome. [LB791]

SENATOR ALBRECHT: Do we have any questions, Senators? Senator Crawford. [LB791]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. And thank you for being here to testify. Would you just speak to the analogous situation for police in terms of sergeant and bargaining units and situations that you're familiar with? [LB791]

JIM MAGUIRE: Well, are you talking about do I think sergeants should be in a bargaining unit? [LB791]

SENATOR CRAWFORD: Or in the same as front-line officers. [LB791]

JIM MAGUIRE: They are, in my opinion. You could make the argument that in certain, if you want to call it, certain departments, lieutenants are. In the Supreme Court they were talking about you've got a chief and then his or her immediate, if you want to call them, deputy chiefs, you want to call them, you know, majors, commanders, whatever you want to call them. Those folks are truly supervisory. When it comes to sergeants, they can do an investigation, absolutely, but they can't impose discipline. All they can do is just the investigation. Only the head honcho can

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actually enforce any type of discipline. All they can do is forward the reports through their chain of command and say, this is what we found. And then the chief, if it's the colonel, he's the only one that can impose discipline. So I don't see any problem whatsoever having sergeants and troopers all in the same bargaining unit. That's...there's a whole host of issues that go along with insurance and wage and benefits and that is best remedied within one group and that was exactly what the Supreme Court had ruled back in the '70s, and there have been other rulings that have come up that have all basically affirmed that same ruling saying it is no issue. It's a community of interest and that's what's...if you go to that statute, they'll give you numerous examples of court cases that have occurred. So I would encourage you all to look at that state statute.
[LB791]

SENATOR CRAWFORD: Thank you. [LB791]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony.
[LB791]

JIM MAGUIRE: Thank you. [LB791]

SENATOR ALBRECHT: (Exhibits 10, 11, and 12) Appreciate you being here. Any other opposition? Seeing none, anyone in neutral position? Any neutral? Okay. I have three letters of opposition. One is from Tyler Schmidt from Holdrege, Nebraska; another is from Bryan Wiggins; and another is Carolyn O'Brien. Those are all in opposition. Senator Ebke has waived closing. And I just want to say thank you to everyone that was patient and has been here since 1:30 along with us, and thank you for your service. Appreciate it. And this will close the hearing.
[LB791]

SENATOR CHAMBERS: And to all a good night. (Laughter) [LB791]

SENATOR ALBRECHT: Thank you. [LB791]