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Judiciary Committee  
January 26, 2017

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[LB158 LB180 LB269 LB296]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 26, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB269, LB296, LB180, and LB158. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; and Bob Krist. Senators absent: Adam Morfeld.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32, and I'm the Chair of the Judiciary Committee. I'd like to start off by introducing or having members of the committee introduce themselves, starting with Senator Baker. [LB269]

SENATOR BAKER: Senator Roy Baker, District 30, southern Lancaster County and all of Gage County. [LB269]

SENATOR KRIST: Bob Krist, District 10. [LB269]

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln. [LB269]

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and parts of Hall County. [LB269]

SENATOR EBKE: Okay. And assisting the committee today are Laurie Vollertsen, our committee clerk, and Tim Hruza, one of our legal counsel, and the committee pages are...we have Kaylee and...okay, Kaylee and Toni. On the table at the front over there you will find some testifier sheets. If you're planning on testifying today, please fill one out and hand it to one of our pages when you come up to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We will begin bill testimony with the introducer's opening statement, one of the senators. Following the opening we will hear from proponents of the bill, those in favor, then opponents, followed by those speaking in the neutral capacity. We will finish with a closing statement by the introducer if he or she wishes to give one. We ask that you begin your testimony by giving us your first and last name and please spell them for the record. If you are going to testify, I ask that we keep the on-deck chair, the one with the yellow sheet there, filled so when we start out, please, proponents of the bill, go ahead and start filling in the chair. When Senator Watermeier gets done, then we'll just move out of that chair. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies already,

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the page can help you make more. We will be using a five-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask you to please wrap up your final thought and stop. If you're in the middle of something really exciting, one of the members of the committee will ask you to finish up your final thought. As a matter of committee policy, I'd like to remind everyone that we ask you not to talk on your cell phones and please go ahead and silence those at this point. Senators may be using their computers or their cell phones to stay in contact with staff or to take notes. And I'd also remind everybody that outbursts of applause and so forth are not expected during the committee hearings. One more thing, you'll notice people coming and going, and Senator Pansing Brooks just walked in. People will be coming and going. That has nothing to do with the importance of the bills that are being heard but, rather, senators may have their own bills that are being heard in other committees or they may have other meetings that they have to attend to briefly. So don't take it personally if somebody gets up and walks out while you're testifying. So with that in mind, let's commence the hearing on LB269. Senator Watermeier. [LB269]

SENATOR WATERMEIER: Thank you, Chairman Ebke. Members of the Judiciary Committee, I am Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of the state. I'm here introduce LB269. LB269 would require movie theaters with five or more screens at one location to provide open movie caption during at least two showings per week of each movie shown at the theater that is produced with open captioning. Violators will be guilty of a discriminatory practice and subject to penalties as specified under public accommodations sections of the civil rights statute. This requirement would sunset in four years. Before we go further, I did want to explain that open captioning is where the words are on the screen for all to see. Closed captioning can include glasses where captions are projected onto the glasses and appear in front of the user. Another option is rear-window captioning which displays reverse captions on a text display which is mounted on the rear of the theater. Deaf and hard-of-hearing patrons have transparent acrylic panels attached to their seats to reflect the captions so that they appear superimposed on the movie screen, or it can be a device that sits on the cup holder with a screen attached. This device is called CaptiView and users complain that the text is often displayed out of line on their vision. Last year I introduced LR412 which was an interim study on how to improve communication access for movie theaters to ensure all persons can fully experience the movie theater experience. During the interim study I believe the Commission for the Deaf and Hard of Hearing reached out to the movie theater industry, as stated in the resolution, but they did not participate in the study. The Nebraska Commission for the Deaf and Hard of Hearing Board met on December 9 to approve an interim study report and voted to seek legislation in Nebraska similar to what is in Hawaii where a law was recently passed to require movie theaters to provide open captioning at least two times a week. For background information I do want to mention that in 2014 the deaf and hard of hearing advocacy groups and Theatre Owners Association announced an agreement to file joint recommendations with the Department

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of Justice regarding captioning requirements in U.S. movie theaters. One of the requirements was that closed captioning technology should be installed in all digital movie theater auditoriums nationwide. Just last month the Department of Justice issued a rule which takes effect on the 17th of this month requiring that theaters purchase and deploy specific equipment to provide closed captionings for individuals who are deaf and/or hard of hearing. The proposed regulations also include requirements to advertise the availability of these technologies and have a staff member on site to locate, operate, and troubleshoot this equipment. The final rule provides that theaters can utilize open captioning as an alternative means of complying. Following the interim study, I met with the representatives of the deaf and the hard-of-hearing community and was told that although they are pleased that the attempt was made to assist the deaf and hard of hearing with their movie experience because we're requiring closed captioning, oftentimes these hand-held devices don't work. Furthermore, I was told that they are cumbersome in requiring the patron to look at the device and on the screen at the same time. One experience shared with me was of a theater in Omaha that had eight CaptiView devices but not even one of them was working. Their solution was to offer the patron their money back for the movie theater ticket. This was really not an acceptable solution. Consequently, the deaf and hard-of-hearing community would prefer the option of open captioning. I was told that theaters can request a captioned movie and that it will be distributed then at no cost. The theaters could advise which screenings could offer the open captionings so that the deaf and hard of hearing could take advantage of this option and the hearing public would not have to attend if they did not want to see the captioning on the screen. According to the Hearing Loss Association of America, approximately 20 percent of Americans report some degree of hearing loss. This would equate to approximately 375,000 Nebraskans. Therefore, I don't believe that LB269 is requiring too much of the larger movie theaters. I think it is important that we provide the means for which the deaf and hard-of-hearing residents of Nebraska can fully enjoy their movie experience. I appreciate your support here today and I would ask for you to consider LB269. [LB269]

SENATOR EBKE: Thank you, Senator Watermeier. Does anybody on the committee have any questions? Going to hang around? [LB269]

SENATOR WATERMEIER: I've got Appropriations and I really kind of need to be involved in that process here. I'll stick around for a minute or two. [LB269]

SENATOR EBKE: Okay. [LB269]

SENATOR WATERMEIER: But I probably will not close. [LB269]

SENATOR EBKE: Okay. Thank you, Senator Watermeier. [LB269]

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SENATOR WATERMEIER: All right. Thank you, Chairman. [LB269]

SENATOR EBKE: First proponent. Before you get started, can I get a show of hands of how many people intend to testify on this particular bill on either side, proponents, opponents? Okay, around seven or eight. Remember, proponents, to go ahead and start hitting the chair so that we know that there's somebody that's next. That will help us keep things moving, okay? Okay. [LB269]

JOHN WYVILL: (Exhibit 2) Good afternoon, Madam Chairperson, members of the Judiciary Committee. My name is John, J-o-h-n, Wyvill, W-y-v-i-l-l. I am the executive director for the Nebraska Commission for the Deaf and Hard of Hearing. Two housekeeping things: First of all, to my right is Macy (phonetic). She is the (inaudible) interpreter for me that's providing captioning for me so I can have communication access in this committee. To my left is Sharon Sinkler who is an American Sign Language interpreter providing communication access for Dr. Pete Seiler in the room. Today we're here before you, this bill, and we are very grateful for Senator Watermeier for sponsoring our agency bill. Our board is a nine-member board. We're an independent state agency. We have three deaf members on the board, three hard-of-hearing members on the board, and three with interest in professionals on the board representing nine members appointed by the Governor. They have unanimously asked me to take steps to get this bill filed as communication access is a very important component of our agency work and mission. So that is why I'm here today. Also for your convenience we have three letters of support that we have submitted to the clerk representing three statewide organizations that are supportive of the bill which is Nebraska Hands and Voices, which is a parent organization, nonprofit; we have the Nebraska Association for the Deaf; and then we also have the Hearing Loss Association of America-Omaha Chapter. Also for the record we have my agency letter signifying our support and why we're in favor of the bill. My remarks would be very brief. Very simply, if the communication access is not effective in movie theaters, it prevents roughly 20 percent of our population from fully enjoying the movie experience. Just to share my personal experiences, for those that know me at work, I am an avid movie fan. Although I cannot go to the movies as much, my daughter very much wanted to go see Star Wars so I took her to Star Wars. With the communication device that's offered are not acceptable or work for me, they sometimes are broken, not effective. They have a device that you have to look here and you have to look here and look up there which has the words. All we're asking in this bill is very simply have captioning on the movies, very similar to you see on the Red Box movies, on TV, on Netflix. That's all we're asking, for two shows a week--not an unreasonable request. And all we're asking is to be treated equal under the law which is, as you know, is our state motto found on our state flag. So thank you very much for your time. I open it up for any questions you may have. We do have one of my board members testifying, too, and a student that will also share their experiences. [LB269]

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SENATOR EBKE: Thank you, Mr. Wyvill. Any questions for Mr. Wyvill? Okay. Okay, thank you. [LB269]

JOHN WYVILL: Thank you for your time. [LB269]

JACOB CUSTER: My name is Jacob Custer, J-a-c-o-b C-u-s-t-e-r. And I am a senior from Lincoln Southeast High School. And I worked with Mr. Wyvill, with this research committee on this bill. This is my first time testifying and I'm supporting of this bill because it will allow individuals like me, all range of ages, to have equal access when watching movies. It will also make them feel more part of the audience and also have the exact same time, like enjoying their time with their friends and families when they go see movies. I watch movies. I love watching movies, especially at movie theaters, and one of the difficult things I have to do is I have to get a CaptiView and sometimes it takes up my cup so I have to hold my cup or anyone else don't have to. Sometimes the system will not connect to the theater in the room so I won't get every single word that the characters are saying on the screen or sometimes I'll miss the jokes, miss the plot twists and what people are saying. There have been times where I went with my family and friends and the captioning would not work so I barely understood 50 percent of the movie, so I did not have the exact same enjoyment with my family and friends, so they had to get refund and I had to get free tickets and come by and watch it another time when it was actually working. And then I used it again next week and exact same thing happened and they still haven't fixed it. So, yeah, that's just my experience. My personal issue is I'm not getting the enjoyment like everybody else in the room and I want to be able to continue to watch movies in movie theaters instead of having to wait for it to come out where I can watch with captions on TV or the DVD player. [LB269]

SENATOR EBKE: Thank you for coming today, Mr. Custer. Anybody...Senator Krist. [LB269]

SENATOR KRIST: You said you participated in the actual study to make sure that it was quality that you were bringing to us. Is that right? [LB269]

JACOB CUSTER: Yes, I provided the...I showed different types I...was mentioned, like the CaptiView, the glasses. I brought those up and I tested the CaptiViews because I use them every time I go to movies. [LB269]

SENATOR KRIST: What would be your recommendation for the times that these movies would be shown, times of the day? [LB269]

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JACOB CUSTER: There are a lot of students who are deaf and hard of hearing, too, and they would like to see movies, so I would to request most of them to kind of be like after-school times or if it's on the weekend, pretty much any time of the day, just when most people are available, especially students like me. [LB269]

SENATOR KRIST: Were the theaters and the owners accommodating to that in terms of timing where these would be shown? [LB269]

JACOB CUSTER: I'm not exactly quite sure if I understand the question. [LB269]

SENATOR KRIST: Did you have interface with the theaters and with the owners of those theaters? [LB269]

JACOB CUSTER: I'm not...no, I don't think so. [LB269]

SENATOR KRIST: No? Okay, I'll save the question for one of them then. Thank you. Thanks for coming. [LB269]

JACOB CUSTER: Okay, thank you. [LB269]

SENATOR EBKE: Senator Pansing Brooks. [LB269]

SENATOR PANSING BROOKS: Yeah. Thank you, Mr. Custer, for coming. You're a member of my alma mater, Southeast High School, so I feel a connection to you, and all my kids. [LB269]

SENATOR EBKE: That would be Southwest. He's Southwest. [LB269]

SENATOR PANSING BROOKS: Southeast I thought he said. [LB269]

SENATOR EBKE: Southwest. [LB269]

JACOB CUSTER: Southeast. [LB269]

SENATOR EBKE: Oh, Southeast? [LB269]

JACOB CUSTER: Southeast. [LB269]

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SENATOR EBKE: (Laughter) I thought...okay, I was (inaudible). I thought he said Southwest. Okay. [LB269]

SENATOR PANSING BROOKS: I was carefully listening. [LB269]

SENATOR BAKER: (Inaudible.) [LB269]

SENATOR PANSING BROOKS: So, go Knights! [LB269]

JACOB CUSTER: Go Knights, yeah. [LB269]

SENATOR PANSING BROOKS: And so I'm so proud of you for how clearly you stated what you're trying to tell us and to advocate for your position. Can you explain, and I don't know if we're going to hear about it, but the CaptiView. What is that? I haven't seen it. [LB269]

JACOB CUSTER: Okay. A CaptiView is a device commonly used in Marcus Theatres in Lincoln, I believe, also Omaha. It is a...it's a black box and it has a long, flexible metal arm. And there's a black plastic cup holder, so it goes into your cup holder and you can adjust it with the metal arm and then the black...there will be a small box about this big with...there are lines sticking out of it but it's...(inaudible) so you can enhance the green words. So it's black enough that it will blend in with the black screen or the darkness in the room and the green words will pop up. [LB269]

SENATOR PANSING BROOKS: So is it like a teleprompter almost that you can see through? [LB269]

JACOB CUSTER: Kind of, it's...so if I set it in my cup holder and I adjusted it, I can adjust it like this so it can be like below the screen... [LB269]

SENATOR PANSING BROOKS: Oh, I see. Okay. [LB269]

JACOB CUSTER: ...and the...so only I can see it. But if there's people like next to me, they can see it too. So it's just the green words, green glowing words that just reads, so I kind of, you know... [LB269]

SENATOR PANSING BROOKS: But it doesn't work very well. [LB269]

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JACOB CUSTER: There has been a lot of occasions where it doesn't connect or the battery dies or sometimes it will catch a different theater room, so I'm watching a different movie, like I'm watching a movie but reading different characters from a different room. [LB269]

SENATOR PANSING BROOKS: So you're wanting the words on the...above the screen, is that what you're saying? [LB269]

JACOB CUSTER: No, I'm just saying that I want the words like on the screen kind of a little, like, toward the bottom, not on top of it. [LB269]

SENATOR PANSING BROOKS: The bottom? [LB269]

JACOB CUSTER: Yeah, so like on the bottom, so it's kind of like when you turn on the captioning on a TV. Most of the time it will be on the bottom and not on top but, you know... [LB269]

SENATOR PANSING BROOKS: And so it would be viewable by everybody. [LB269]

JACOB CUSTER: Yes, it can be viewable by everybody. Generally it's out of the way so it's not on the screen. [LB269]

SENATOR PANSING BROOKS: Right. [LB269]

JACOB CUSTER: It's like the space below it so it's just an empty space so you can fill that up with captions so they won't interfere with the motion pictures. [LB269]

SENATOR PANSING BROOKS: Right. So those who don't need to see it, it doesn't...they don't notice...or, I mean, they don't have to read it. [LB269]

JACOB CUSTER: No. [LB269]

SENATOR PANSING BROOKS: Yeah. Okay, well, I really appreciate your testimony and for coming forward. You did a beautiful job. Thank you. [LB269]

JACOB CUSTER: Thank you. [LB269]



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SENATOR EBKE: Any other questions for Mr. Custer who is a senior at Lincoln Southeast?  
[LB269]

SENATOR PANSING BROOKS: Southeast, yeah. [LB269]

SENATOR EBKE: (Laughter) Okay, thank you very much for coming today. [LB269]

JACOB CUSTER: Thank you. [LB269]

SENATOR EBKE: Good job. [LB269]

PETER SEILER (THROUGH INTERPRETER): (Exhibit 3) Good afternoon. My name is Dr. Peter, P-e-t-e-r, last name Seiler, S-e-i-l-e-r. I'm here today representing the Nebraska Association of the Deaf. I happen to live in Omaha, and so I have experienced a lot of time going to movie theaters. The Nebraska Association of the Deaf is a nonprofit organization, maybe the oldest state association of and by a disability group, founded in 1902. So we have a long history of advocating for those who are deaf and hard of hearing. Today I have a letter from the Nebraska Association of the Deaf which is in your packet that Mr. Wyvill provided to you. I also wanted to add a few more comments. First of all, I wanted to explain the closed captioning that the movie industry is offering. There are three options. You can have special glasses. I'm not quite sure how they work, but apparently the words show up right on your glasses, almost like a 3D pair of glasses. So the first time they show up, you're like, whoa. (Laughter) You're afraid the words are going to hit you in the face. That's the feeling you get anyway. I don't know if you've ever seen a 3D movie where some of the characters or things come right out at you and you kind of say, whoa, what is that? So that's one option. It's not very popular. The second option is what we call rear view that Senator Watermeier explained. There's a box in the back of the theater where the words are reversed, and so then you have a mirror in front of you which also has a flexible arm that you can adjust in order for the captions to show up on the mirror. You cannot see the screen. You're always looking down. You can't see the movie screen. The problem is most movie theaters will only pick one screening room with the rear view and not the other...none of the other theaters will show it because it is quite expensive to install. Then there's the CaptiView which is a wireless option. As Mr. Custer explained to you, the signal comes into the device. So if you have eight screening rooms in your theater, sometimes you'll pick up the words from another movie and you think, well, wait a minute, this isn't matching what I'm watching. So my experience is, in receiving those, I have to ask, did you charge this? They look at me like, what are you talking about? Well, if it's not charged, it's going to die in the middle of the movie. Then I've got to come back. I've got to ask for a refund. I've got to come back again to another movie. They don't understand that. They don't see that as a problem. Or the words show up and they drop. Maybe you'll have four sentences later the words will come back up, but you've missed

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those four sentences and now it's not matching with what they're saying on the movie screen. My wife, who is hearing, I have to ask her, what happened in the meantime where I missed all those captions? She gets frustrated because we both can't just sit back and enjoy the movie. I've had several parents complain about their children going to the movie theater who are deaf and hard of hearing. And they ask their parents, what did they say? With the captions open, they're embedded into the screen and so the people can choose to look or not. Today restaurants and bars have it. Generally the captions are open on the televisions because it's so loud in a restaurant or a bar people can't actually hear the TV anyway. So that's why I'm asking for this bill to give us four options. Right now the theaters don't seem to want the open captioning. It's free. The movie industry, when they create the movie, it's already embedded into the film. So my hope is that you will pass this bill and take it to the floor and help it pass to become law. I'm happy to answer any questions. [LB269]

SENATOR EBKE: Thank you, Dr. Seiler. Questions from the committee? Guess you answered all of our questions. Thank you for being here today. [LB269]

PETER SEILER (THROUGH INTERPRETER): Tomorrow is the test. [LB269]

SENATOR EBKE: (Laughter) Okay. [LB269]

PETER SEILER (THROUGH INTERPRETER): Thank you very much. [LB269]

SENATOR EBKE: Thank you. Are there any other proponents of the bill? Proponents? How about opponents? Opponents of the bill? Here we go. [LB269]

LISA FRYDA: (Exhibits 4 and 5) My name is Lisa Fryda; that's L-i-s-a F-r-y-d-a, and I'm with Marcus Theatres. And I wanted to bring in some of our devices and go over why we feel we (inaudible)--thank you--adequate equipment in our facilities, and to go over...we do, do training with our associates. We have...and this is a CaptiView that you've been talking about, so that you can see the device, and it does go in the cup holder like they've been describing, and then it does bend to different levels. And we can pass this around so you can see it when it's on, on the screen, and what everything looks like. We do training with all of our associates when they do come in. We have a training manual that goes over all the different components of the devices. And then Jeff Logan will be speaking later about the Department of Justice laws to go over different things. We have the Fidelio system also, as well, that is for the hearing impaired which enhances the hearing devices. I have some letters from individuals that use our devices that feel these devices are adequate systems in our facilities that if you would like these...these are from two different individuals that use them within our facilities that are very satisfied with our equipment that don't feel the need necessary to have the open captioning necessary that do have

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the hearing impairment right now that use these devices. The device, right now what we have is you go ahead and you will select the auditorium and then you connect it. What happens is the studios decide what films. Almost all of your feature films now, 90-some percent of them--Jeff will get into that a little bit more--have the captioning on these devices. It's our trailers that don't come with that. So what ends up happening is the individuals will go in there and think that our devices are maybe not connecting and so that the wording is not coming across on the trailers. So that may be some of the misconception of why the devices are not working. But overall these work fantastic in there. Open captioning, if it's up on the screen, may not be as crisp and clear. And that's a preference I feel for individuals. But these devices have been...the technology is developing at a fantastic rate. They work wonderful in our facilities. I can pass these around if you'd like to see them and see what they look like. [LB269]

SENATOR EBKE: No, we'll... [LB269]

LISA FRYDA: No? [LB269]

SENATOR EBKE: You can keep them back there if you want to but then we can look at them later. [LB269]

LISA FRYDA: Okay, sure, absolutely. And we also have programs where if...before we've been working...I've been in the business for 21 years in the theater industry and I work with different school programs and other programs where they come in ahead of time and we'll do tutorials on these where they've been working with these devices within the school systems and other programs for the visually impaired and the hearing impaired. And they are very, very satisfied with our systems. So I wanted to also bring that to your attention so that you realize that we do have ongoing partnerships within the community here in Lincoln so that you know that they are very satisfied with our systems as well. And I just thought I'd bring that up today. [LB269]

SENATOR EBKE: Thank you. [LB269]

LISA FRYDA: Okay. [LB269]

SENATOR EBKE: Any questions for Ms. Fryda? Senator Pansing Brooks. [LB269]

SENATOR PANSING BROOKS: Thank you, Ms. Chairman. [LB269]

SENATOR EBKE: And let me note that Senator Chambers has joined us, so. [LB269]

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SENATOR PANSING BROOKS: Thank you for coming, Ms. Fryda. I guess I'm wondering--we've heard testimony that often they don't work, they aren't charged properly--what are your processes for charging and making sure that they aren't connecting to other movies nearby and...? [LB269]

LISA FRYDA: Okay. The only issue that I've experienced is when we have like a remodel. We had to reposition our equipment and that with Wi-Fi and that had to do with resituation of transmitter. We have a docking station. It's with any equipment you're always going to have some technical issues on and off. A lot of it has to do with on these...when a guest comes in, if they are messing with any of the buttons and they end up connecting to another auditorium. So if they start changing some of the buttons on the bottom of these, they can connect to another auditorium themselves. So that's typically... [LB269]

SENATOR PANSING BROOKS: Okay. Are there instructions that go with it so they know not to do that and... [LB269]

LISA FRYDA: Yes. They are on the bottom or we used to have them up top. So a lot of times when they're bringing them back out, they've connected them to another auditorium. So there are some others that are now coming out that we are looking at getting up that are a different model as well. And that's the updated technology that we keep evolving to and so the technology just keeps the enhancement going forward of this equipment at all times. And this equipment, like in a week probably on average this is used by zero to two guests; this is used three to five times by a guest. So you have the knowledge base of what we are using...utilizing out of our facility. And that's at the Grand, because we keep track of that by our box office cashiers of what's going on with our facility. [LB269]

SENATOR PANSING BROOKS: So how...can you tell me about how much it costs to run one movie and if you were to do something like this there...from what I...my notes, they want two shows per week. So what kind of cost is that? I presume that you're coming here because you don't want to do it because of the cost to Marcus Theatres. So what kind of cost is it to run two shows a week for... [LB269]

LISA FRYDA: If we have any requests that a group would like to do it, we're more than happy to do open captioning for any group that requests it. [LB269]

SENATOR PANSING BROOKS: But if it were a periodic basis, I presume it would be easier for people to come if they know that they don't...they only have one or two options if they go to a specific movie and if somebody is using it they can't do it. So I'm just interested, is it because of the cost or why is it that you're really opposing doing this? [LB269]

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LISA FRYDA: In my own experience, we did a test and that was probably ten years ago. There were, I don't know, three to four different times we had done it with open captioning. And what I had had happen were individuals came out that were just regular guests that were told that it was going to be open captioning on the screen and we had them come back out complaining about what was on the screen. And you also have the fact that how the film company films the film, it's either going to be crisp and clear with the wording up on the screen or it's going to be a little bit fuzzy with the wording. So that's all in personal preference of how you're going to be reading it, where this is very clear on there. Pricewise, that's something I really can't answer for the company because that would depend upon if we're doing this on a regular basis and it's open to the public and they know we have open captioning. I don't...I couldn't speak to that for our company. [LB269]

SENATOR PANSING BROOKS: Thank you very much. [LB269]

LISA FRYDA: Um-hum. [LB269]

SENATOR EBKE: Senator Baker. [LB269]

SENATOR BAKER: Thank you. Did I hear correctly earlier that it doesn't cost any more for the film if you receive it with open captioning? Is that true? [LB269]

LISA FRYDA: Right. The open captioning is offered on a certain percentage of movies, not all of them. It's more like your art films, your independent films, and that's... [LB269]

SENATOR BAKER: Okay, so if they all had open captioning, that would be your cheapest option. [LB269]

LISA FRYDA: That's based on the content that's offered by the studio. The studio is the one that controls that, not us. So that's mandated by the studios what's offered open caption. [LB269]

SENATOR BAKER: When did it become required that you make accommodations and what year? [LB269]

LISA FRYDA: For this? Jeff would be better able to speak to that in a little bit which he'll be up here in a little bit. [LB269]

SENATOR BAKER: Okay. Has it been a long time? [LB269]

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LISA FRYDA: We've had this available for a very, very long time. [LB269]

SENATOR BAKER: Ten years? [LB269]

LISA FRYDA: Oh, yeah, over that we've had it available, yes. [LB269]

SENATOR BAKER: Thank you. [LB269]

LISA FRYDA: Uh-huh. [LB269]

SENATOR EBKE: Any other questions? Thank you, Ms. Fryda. [LB269]

LISA FRYDA: Thank you. [LB269]

SENATOR EBKE: Next opponent. [LB269]

BOBBY WILSON: Good afternoon. I want to thank you for the opportunity to come speak today. My name is Bobby Wilson, and that's B-o-b-b-y W-i-l-s-o-n, and I'm with Kearney Cinema in Kearney, Nebraska, and we also have the Hilltop Cinema in Kearney, Nebraska. And I've been in the business for 29 years and, you know, and over all the time, you know, and I am an old-school theater manager and I love customer service. I go back to the days of the old theater customer service. And the hardest thing that in this business that's to do is to try to make...please everyone and accommodate everyone. And the technologies, you know, especially I have family members that have hearing issues and my father, I've taken him to the movies before. And, you know, the...we've had the amplified devices. And he says they're not...they're okay but they're not good enough. And so you have to excuse my southern accent too. I'm from Arkansas originally. But, you know, he...and I was like, well, what can we do? And so the past several years the technology has been slowly growing and I am so thankful of what we have now. The technology is an ever-growing business and it provides us a way to entertain everyone because we have the equipment availability so to help the hearing impaired. And also the new equipment that we have, and I think Jeff is going to show you this because we're upgrading our equipment to...it's called a USL and a lot of the problems that you have with the bleeding over from other auditoriums, that's solved because it's an infrared signal that comes from every auditorium. So when you walk in, you have that. But not only does this technology with the USL system provide for closed captioning for every patron, they can sit wherever they want to sit, we can put that in there, but it also comes with the adaptability, too, to help the blind, because we have descriptive audio on this technology. And so, you know, I just want to...I'm just asking you, I guess, to consider that this is a growing thing, it's a great thing that's happened. We're really,

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really happy to see the new technologies coming out, but it's advancing daily. And so I would just ask you to consider the...you know, and trying to please everybody and like the...the only thing that I would see that we would have with open captioning is, you know, there's some people that may not like that. And, you know, and it could possibly cause a loss of income, you know, to the theaters if, you know, some...if we run a show, say at 2:00 on a Saturday afternoon, and you have customers come in and say, let's go catch a movie. You've got a family that wants to catch a movie and they walk in and they're not happy with that. I'm just glad we have the technologies available that are advancing that we can accommodate everyone now. Thank you. [LB269]

SENATOR EBKE: Okay. Any questions for Mr. Wilson? [LB269]

SENATOR PANSING BROOKS: I guess I have a question. [LB269]

SENATOR EBKE: Senator Pansing Brooks. [LB269]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Wilson. [LB269]

BOBBY WILSON: Yes. [LB269]

SENATOR PANSING BROOKS: So I understand that...so you have your own cinema. Do you have a feel for how much it costs to run one show and if you run it and three people show up, or two? [LB269]

BOBBY WILSON: Well, if we run it and three people show up, we don't make a whole lot but, yeah, it runs us... [LB269]

SENATOR PANSING BROOKS: Right, but do you lose money? That's what I'm... [LB269]

BOBBY WILSON: Yes, we do lose money. [LB269]

SENATOR PANSING BROOKS: How much money do you lose, because you have popcorn sales and different things (inaudible)... [LB269]

BOBBY WILSON: Yeah, we would...you know, it just depends on...it's kind of a hard number to put because we have different times of the year, different seasons, but, you know, if we'd done...are you referring to, you know, one in open captioning? [LB269]

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SENATOR PANSING BROOKS: Yes. [LB269]

BOBBY WILSON: Okay. We would have the additional expense of advertising because, you know, I mean this is one thing that we'd really want...when we upgrade to our new systems, this is one thing we want everybody to come and use and enjoy. We want to expand on that so... [LB269]

SENATOR PANSING BROOKS: So how much additional expense did you have when you incorporated the CaptiView? [LB269]

BOBBY WILSON: We are in the process of upgrading to the USL on the...so... [LB269]

SENATOR PANSING BROOKS: Okay, so do you have an estimate of how much expense? [LB269]

BOBBY WILSON: It's going to cost around \$10,000 per screen to convert to that. [LB269]

SENATOR PANSING BROOKS: Okay. But I'm saying...you're saying that there would be additional marketing to let people know that you have it or...? [LB269]

BOBBY WILSON: Yeah. We would definitely market more, I mean, you know, we're happy to have it. [LB269]

SENATOR PANSING BROOKS: Yeah. [LB269]

BOBBY WILSON: I mean it's a great addition. You know, if we had, you know, the open captioning, you know, I can see where that would...we would actually maybe lose some business, you know, because some people wouldn't want to come to see that show once we...you know, we'd have the expense of advertising that and then we would also have, you know, the loss of income for people that didn't want to see it in an open caption format. [LB269]

SENATOR PANSING BROOKS: If you had a special showing, though, once a week or something? [LB269]

BOBBY WILSON: A special showing, you know, I mean that could be possible. But then we would have an additional expense and how many...you know, we would have to have more staff



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if we have a special showing of that, have more staff just for that showing. And then what if two or three people showed up? [LB269]

SENATOR PANSING BROOKS: Thank you very much. [LB269]

SENATOR EBKE: Other questions for Mr. Wilson? Senator Halloran. [LB269]

BOBBY WILSON: Yes, sir. [LB269]

SENATOR HALLORAN: Chairman Ebke, thank you. Mr. Wilson, thanks for your testimony. [LB269]

BOBBY WILSON: Yes. [LB269]

SENATOR HALLORAN: Near as I can tell, I'm one of these people that have to kind of draw out schematics or diagrams of what might be happening and I'm trying to figure, trying to determine if you have, for example, five movie theaters in your complex and you have four shows per complex or theater a day, I was trying to determine how much of your time and space or theater space would be used to qualify for doing this. My nearest guess is if you had five theater complexes, you would probably, probably have to consume one theater and devote it almost entirely to, if you had five different movies a week, you would have to devote one theater to do this. These are just rough... [LB269]

BOBBY WILSON: Well, if we, you know, for instance,... [LB269]

SENATOR HALLORAN: Is it a demographic issue is what I'm saying. I mean, do you have a logistic issue? [LB269]

BOBBY WILSON: It would be hard because, I mean, you're looking at, you know, if we'd done...you know, with the devices we can show every movie in that. We can have that available and it would pick up every movie. If we done this open, with the open caption, we would have to take up all eight screens because, if we're showing Star Wars on one screen, what if somebody wants to watch the other movie that's showing on the other screens? [LB269]

SENATOR HALLORAN: Okay, so it is a logistic and a cost issue and I know it's a hard one to quantify but I'm just...was just trying to get a feel for that. Thank you. [LB269]

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SENATOR EBKE: Any other questions? Okay, thank you, Mr. Wilson. [LB269]

BOBBY WILSON: Thank you. [LB269]

JEFF LOGAN: (Exhibit 6) Good afternoon. My name is Jeff Logan, J-e-f-f L-o-g-a-n. I own theaters, a five-screen, a four-screen, and a single-screen theater in South Dakota. I'm here because I'm president of the north-central unit of the National Association of Theatre Owners and also serve on the executive board of the National Association. And I apologize that we didn't last year reach out to the Nebraska Commission for the Deaf and Hard of Hearing. We weren't aware and they...I think they weren't aware of us. Despite our Web sites and so forth, we didn't Google enough to find each other. I know the commission did talk with individual theater companies. But what I'd like, to answer some of the questions that have been brought up before. First off, the CaptiView system and some of that technology has been available for about ten years, but just this...during the past two years, national NATO and our lead negotiator really was Randy Smith with Regal theaters who has a son who is totally deaf and needs this equipment. And it was kind of a passion project that Randy, that a sensible, workable solution comes that works for his deaf son and also works for the theaters so that it's used. The U.S. Department of Justice did not issue the final guidelines on how many units you have to have available until about two months ago. So some theaters have held off buying because they didn't know what to buy. And I have copies of the joint recommendations to the Department of Justice. We've talked about it but there's the actual document. It's about nine pages, gives a good background. Open captioning really is, if you will, the term, an "old school" solution. It's an older solution and I think there are better solutions now and I'll tell you why for a couple of reasons. The technology is evolving. There is CaptiView which is about ten years old. This system from Ultra-Stereo Labs is a competitive system, works very well. There's no cross-channeling from one auditorium to another. As Bobby said, when you walk into the room, it gives you the right dialogue. And matter of fact, it has a battery check when you turn it on and is flashing the captions right now. It's doing some movie trivia until the feature comes on. So this unit, if you'd like to see it, I can pass it around, but that takes care of those who are totally deaf and need the captions. They...and then we also have as part of the system, as Bobby alluded to, earphones. These are for the hard of hearing and I think when we talked about the 20 percent of Nebraskans who have need, I think that would be like Bobby's father, my own father whose hearing was ruined in the army when he was fixing machine guns for the Air Corps after a couple of years of that. So he was hard of hearing all of his life and needed something. This will give you the dialogue track. It has an A/B switch, so on A it gets you the dialogue without all the extraneous sound effects. If you switch it to the B channel, it helps those who are blind so that they can understand the show because in one ear you get the dialogue, in the other ear you get a description of the action on the screen--John drives away, Susie walks into the room--so the blind can enjoy the movie. So we are very interested in our industry. We don't want to exclude anyone from the business. And we're thrilled that everyone enjoys a movie experience and we want to help you do that. This

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system we think works better for a couple of reasons. Open captioning does not really give equal access. It only gives you equal access at those show times. And I think into Senator Pansing Brooks's question, it isn't a cost. In the days of a single-screen theater, we could tell you what the cost was. In a multiplex, it's amortized over all of them. What we would do is you would take two showings a week and you would use those of your regular schedule. And that's the fear is that when the general public comes they don't like the open captions on the screen because they're distracting. The bar analogy doesn't work because it's true you can't hear it. Subtitles, it's not a real analogy. What is the analogy is if you've been in a hotel and someone left the open caption on in that hotel TV or your kids turn it on, on the remote, and you sit there and you're comparing the open captions to the real dialogue and you are pulled out of the trance of the movie and the storyline. So the general public hates open captioning and that is the basis of our opposition is that if two showings of our showings a week are going to that and we're doing the best times, as Jacob said he wants the after-school show times, then we have to take one of those away. So that's why. We also alluded to the...it isn't that the open captions are fuzzy. If it's a dark background, a white letter, you can see it well. If it's against a sky-blue background or a white background, you can't read the open captioning. So that's why this provides accessibility at every movie, every time. Well, there has been some talk, too, of some of the earlier systems. Rear view...Rear Window has pretty much been abandoned. It's an outdated system. And because these systems actually, and as it's evolving and getting better, provide a better access for everyone, that's why we would urge you to not pass along LB269. I'll answer questions. [LB269]

SENATOR EBKE: Let's see if there's any questions. [LB269]

JEFF LOGAN: Yeah. [LB269]

SENATOR EBKE: Senator Krist. [LB269]

SENATOR KRIST: So the...let's get to the piece of legislation. [LB269]

JEFF LOGAN: Yes. [LB269]

SENATOR KRIST: I think it's important to talk about...first of all, I think it's always important that when there are obviously two different ideas or factions that are coming together and trying to find solutions, that indeed if they came together and talked by themselves or worked their issues out before they came to the body asking for another law that actually is going to require penalties for the law, it would have been nice for everyone to work it out. So I'm one of those people. I even stopped a piece of legislation on the floor the other day, didn't stop it, I tried to intervene and say we need to do an interim study. I know you've studied it. I know you on the

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hard-of-hearing side have studied it well, maybe not interfaced with the theaters as much as practical or possible. That's my first comment. But looking at this piece of legislation, any public accommodation that operates as a motion picture theater and that is defined in this piece of legislation as "For the purposes of this section, motion picture theater means a movie theater, a screening room, or another venue used primarily for the exhibition of motion pictures," so we're not talking about a live play or anything like that. We're looking at technology which today, as I account for myself going to bars, and I don't do it very often but I go to watch sporting events, when you look around the room, because of the noise, because of the...for me it's disturbing. I do use the captions on the...closed caption, I guess it's referred to, on the television. Is that correct? [LB269]

JEFF LOGAN: Well, that would be open captioning on the television when it's visible for everyone. [LB269]

SENATOR KRIST: The remote calls it closed captioning but they're out of date. [LB269]

JEFF LOGAN: Yeah, no, yeah, yeah, yeah. [LB269]

SENATOR KRIST: Okay, I got it. But the open caption is good for me in that environment because I'm... [LB269]

JEFF LOGAN: Yes. [LB269]

SENATOR KRIST: ...not necessarily looking for the exact words and the dialogue. I want to see what's going on and get some kind of an idea of what's being said because you can't hear it. But this one clearly in Section 1 says, "Any public accommodation that operates as a motion...theater that consists of five or more screens in one location," so in your case, this would...if we did this in the state of South Dakota, this would only affect one of your theaters. [LB269]

JEFF LOGAN: And you would not have access in the others. And the DOJ is requiring every theater, so I even have this in my single-screen theater. And in talking, working with the Nebraska theater owners, I know I just talked with Chuck and Julie Wisheart up in Seward who have a little twin theater and they've just installed this equipment. So everyone by law is rushing to meet deadline to install this equipment, so every theater will have it and is spending a great deal of money. That's why it's so disturbing to say, even though we're spending a great deal of money on new technology, this law would ask us to use a much older and, we feel, not as good of technology that doesn't serve the deaf community as well because it limits them to show times. [LB269]

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SENATOR KRIST: So this only, excuse me, but this only affects those theaters that have five screens or more... [LB269]

JEFF LOGAN: Correct. [LB269]

SENATOR KRIST: ...would have to put this in place. The lady who testified before told me that if she had a group that came in and requested this, she would accommodate that by showing a special showing. Is that your experience with your industry across the board or is that just Grand being nice? [LB269]

JEFF LOGAN: No. Marcus is a very well-run company. But I think all of us, if there is an opportunity, and I know...matter of fact, I think today in Dell Rapids we're running a special showing for a group. That's, you know, it's extra income. If it's off-hours showing, a school group wants to come to a movie that has historical or scientific value, you know, be it Hidden Figures or a lot of the shows about the space race, we'll always run special showings for a group. If the group happens to need certain facilities, be it open caption, closed caption, we'll do it for them certainly. We're very happy to. [LB269]

SENATOR KRIST: What is the penalty for you not complying with that federal piece of legislation by the date prescribed? [LB269]

JEFF LOGAN: Then there are fines and it's...you know, nowadays, enforcement is often by complaint since the Reagan era. [LB269]

SENATOR KRIST: Sure. [LB269]

JEFF LOGAN: So you're risking lawsuits and fines and so forth so. [LB269]

SENATOR KRIST: Okay. Please understand on both sides my line of questioning is only to put things in a legislative record so that we have something whereby we can do an Exec Session and potentially make a decision to move forward or not. So I'm not taking sides. I'm trying to get as much data as I can. [LB269]

JEFF LOGAN: I understand. [LB269]

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SENATOR KRIST: My final question is, there's...the elephant in the room is money, it's profit. If I have to run this and the general public who is not hearing impaired does not want to sit there, they're going to walk out and ask for their money. Is that a true statement? [LB269]

JEFF LOGAN: That's correct, yes. [LB269]

SENATOR KRIST: Okay. All right. [LB269]

JEFF LOGAN: That's our experience. [LB269]

SENATOR KRIST: Thank you very much. [LB269]

SENATOR EBKE: Senator Halloran. [LB269]

SENATOR HALLORAN: Thank you, Senator Ebke. And this is just maybe too broad a question, but generally what's the economic well-being of the theater business? [LB269]

JEFF LOGAN: For...since 1952 when television hit we've...we're...there are people who are predicting our demise. Right now it's we're able to show a profit, I can make a living. My wife tells me we shouldn't invest in any more theaters. We are faced with challenges of new technology. I don't want to say that we're going away tomorrow. We're certainly fighting for our survival. But there are plans to release movie on alternate means, on video, on demand. The bar has been raised with stadium seating theaters and the digital sound. We've all invested in that and digital projection that you no longer can scrape by. A lot of the small towns have become nonprofit theaters. That's the only way they can do it. We are not an industry who is flush and I don't know that...I mean I hope we're all here ten years from now. We were just out in California meeting with studio heads and there's two studios who would like to see movies go day and date with a theater run and then you pay \$50, you can watch it in your home. It's called premium video on demand. That would take another slice out of our pie. And can we survive without that slice? Some of us may not. We may see, like 1952, the bottom third of the theaters dropped away and closed up in the small towns. I hope that doesn't happen but, I mean, I don't want to paint a picture of poverty but I don't want to say we're...we're not bankers. [LB269]

SENATOR HALLORAN: Okay, thank you. [LB269]

SENATOR EBKE: Any other questions? Okay, thank you, Mr. Logan. [LB269]

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JEFF LOGAN: Thank you. [LB269]

SENATOR EBKE: Any other opponents? Anyone speaking in the neutral? [LB269]

VINCENT LITWINOWICZ: Thank you. Hello. My name...thank...good afternoon to you all. I didn't know I was going to speak but it's really relevant. My name is Vincent J. Litwinowicz, V-i-n-c-e-n-t J. L-i-t-w-i-n-o-w-i-c-z. All I wanted to say is that I've loved open captioning on the TV, or closed or whatever. I've been using it forever. I mean I've never seen it on the TV where it's obscured. I need it. I'm on my way probably to a cochlear implant because my mother needed the same, and it has something to do with understanding language itself as opposed to hearing, I mean, audio, I guess. But I use it when I watch lots of news and I love it. And I don't...I want theaters to be around in ten years as well and so I'm sure the problems are very real. But as a person I wonder how much...I wonder how many people are out there who love to have it on the screen like I do, and I'm not there yet, you know, so to speak. And that's it. Thank you. [LB269]

SENATOR EBKE: Thank you. Any questions? Thank you for coming in today. Any other neutral testimony? [LB269]

STAN ODENTHAL: Good afternoon. My name is Stan Odenthal; it's S-t-a-n O-d-e-n-t-h-a-l. I am the executive director of the Nebraska Equal Opportunity Commission. The Nebraska Equal Opportunity Commission's mission is to eliminate discrimination in Nebraska through effective outreach as well as through effective processing of cases that come before us. The principal function of the NEOC is to receive, investigate, and render determinations of unlawful discrimination occurring anywhere within the state of Nebraska in the context of housing, public accommodation, and employment. I'm here to testify in a neutral capacity regarding LB269. The reason why the NEOC is taking a neutral stance in regard to this bill is simply that the way the bill is currently written, it would be extremely difficult for individuals to have standing to file a complaint with our agency. The statute that governs standing under the Nebraska public accommodation law is Nebraska Revised Statute 20-132. That statute provides standing only based on six protected categories and those six categories are: race, color, sex, religion, national origin, or ancestry. It's also reiterated in 20-134. So Nebraska is one of only a few states that does not include some sort of protection for disability under its public accommodation law. According to our research, every state with a public accommodation law except Nebraska, Tennessee, Utah, and Wyoming, have disability as a protected class under their public accommodation law. Disability is protected in the context of employment in Nebraska under our Fair Employment Practices Act and it's also protected in the context of housing under the Nebraska Fair Housing Act. Disability, however, is not protected under the public accommodation law so my agency would have to look at one of the other six protected classifications for any complaint received and that would be very difficult based on the reason

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why this law is being put forward. For the bill to be meaningfully successful in enforcement, a provision adding disability to our existing public accommodation law would need to be added in order for someone to have grounds to bring a case before us. So any questions? [LB269]

SENATOR PANSING BROOKS: Question. [LB269]

SENATOR EBKE: Senator Pansing Brooks. [LB269]

SENATOR PANSING BROOKS: Thank you, Madam Chair. Just...I'm just trying to...thank you for this information, Mr. Odenthal. [LB269]

STAN ODENTHAL: Yeah. [LB269]

SENATOR PANSING BROOKS: I'm wondering, have there been efforts to add disability to the protected classes within (inaudible)? [LB269]

STAN ODENTHAL: You know, I've only been in this position for about seven months so in my seven months... [LB269]

SENATOR PANSING BROOKS: Oh, you're not sure. [LB269]

STAN ODENTHAL: ...I'm not sure as whether there's been previous efforts brought forward. [LB269]

SENATOR PANSING BROOKS: Wouldn't have happened but...in seven months but okay. [LB269]

STAN ODENTHAL: I don't know if Senator Chambers may know the history of that if that's ever been a... [LB269]

SENATOR PANSING BROOKS: Well, thank you for your testimony, appreciate it. [LB269]

STAN ODENTHAL: (Inaudible.) [LB269]

SENATOR EBKE: Senator Krist. [LB269]



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SENATOR KRIST: I guess you know what you're going to do in the next seven months. [LB269]

STAN ODENTHAL: I guess so, yeah. [LB269]

SENATOR KRIST: Okay. We'll see you. [LB269]

STAN ODENTHAL: Okay. [LB269]

SENATOR EBKE: (Exhibit 1) Any other questions? Thank you. Is there any other neutral testimony today? Senator Watermeier waived closing. We do have one letter of support from Marc Brennan, Nebraska Speech-Language-Hearing Association, in addition to the ones that have already been mentioned. And what I'm going to do now, because I suspect that we'll have some people wanting to make an exit, I'm going to ask for five minutes. We're going to have to take five-minute break, let people stand up, move around, exit if you want. And then we'll start back up just a few minutes before 2:40. [LB269]

BREAK

SENATOR EBKE: Okay, we're going to open the hearing on LB296. Can I see a show of hands who is going...who is here to speak either for or against the bill? Okay, just giving me a good idea. Okay, Senator McCollister. [LB296]

SENATOR MCCOLLISTER: Good afternoon, Chairwoman Ebke and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm here today to introduce LB296. This proposal would extend civil liability immunity to the prescribers and dispensers of the non-patient-specific medication the schools are required to keep on hand to satisfy the Nebraska Department of Education's protocols for responding to a life-threatening asthma or allergic reaction. I've a personal interest in this bill. Our son Dan, age three, was diagnosed with severe asthma. When he started attending elementary school, my wife and I were relieved to know the school has an asthma protocol--and actually, there were occasions when he required a treatment to be administered at school. Since 2002, all schools in Nebraska, public, parochial, and private, are required to adopt the Emergency Response to Life-Threatening Asthma or Systemic Allergic Reactions Protocol. One of the requirements is that schools must keep on hand medications such as EpiPen and albuterol for nebulizing. A degree of civil liability immunity is currently in place to give school staff like the school nurse, the medication aide, or another person designed and trained by the school who administer this protocol, some legal protection and peace of mind when rendering

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life-saving emergency care for a person experiencing a breathing emergency at school. Nebraska has been a leader in this effort to save lives of children who have first-time allergic reaction at school or children who have not yet been diagnosed with asthma and have an action plan and medications at school. We were the first state in the nation to implement such statewide protocol and now nearly every state in the country has enacted a law similar to our legislation, to our regulation. However, since this protocol has been in place, there have been physicians who have refused to prescribe and also dispensers who have been confused about whether they may dispense the non-patient-specific medications to schools, citing liability concerns to the non-patient-specific nature of the prescription. This can create a challenge when schools need to replace their supply of these medications and not...are able to...and are not able to obtain a prescription locally. Additional expert testimony will be...provide greater detail about the protocols and how all this plays out practically in our schools. I'll be happy to answer any questions. [LB296]

SENATOR EBKE: Okay. While we get ready to answer/ask questions, let me remind you, if you are a proponent, please start making your way to the front and man the on-deck chair. Senator Chambers. [LB296]

SENATOR CHAMBERS: Thank you, Madam Chair. Before I ask you or anybody any questions, are you going to have a person with legal training on your side to testify? Okay, then I'm not going to ask you questions. [LB296]

SENATOR McCOLLISTER: Yes, we will. [LB296]

SENATOR CHAMBERS: But here's what I want to ask you, and for the record. Senator, you said your name is John J. McCollister? [LB296]

SENATOR McCOLLISTER: John McCollister, right. [LB296]

SENATOR CHAMBERS: John McCollister. Is that the name on your birth certificate? [LB296]

SENATOR McCOLLISTER: (Laugh) Indeed so. [LB296]

SENATOR CHAMBERS: And you're a member of the Legislature. [LB296]

SENATOR McCOLLISTER: Yes, I am. [LB296]

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SENATOR CHAMBERS: And you hold a position on the Executive Board of the Legislature. [LB296]

SENATOR McCOLLISTER: Yes, I do, Senator. [LB296]

SENATOR CHAMBERS: And it also serves as the Reference Committee for sending bills to the appropriate committee for hearing. [LB296]

SENATOR McCOLLISTER: I do, sir. [LB296]

SENATOR CHAMBERS: This bill deals with immunity, correct? [LB296]

SENATOR McCOLLISTER: Yes. [LB296]

SENATOR CHAMBERS: And it talks about situations that occur in a school setting, correct? [LB296]

SENATOR McCOLLISTER: Yes, sir. [LB296]

SENATOR CHAMBERS: But it didn't go to Education, did it? [LB296]

SENATOR McCOLLISTER: No, it did not. [LB296]

SENATOR CHAMBERS: And it's talking about medical conditions, the administration of medicine, and various procedures. It could have gone to Health and Human Services, couldn't it? [LB296]

SENATOR McCOLLISTER: It could have. [LB296]

SENATOR CHAMBERS: We had a bill that we referred that had to do with immunity for school people and that board referred it to Education because they said it involves a school. Do you remember that? [LB296]

SENATOR McCOLLISTER: I do indeed. [LB296]

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SENATOR CHAMBERS: I just wanted that for the record, and that's the only questioning I'm going to do of you, but I may ask some questions of the attorney who will come. [LB296]

SENATOR McCOLLISTER: Thank you, Senator. [LB296]

SENATOR EBKE: Any other questions for Senator McCollister? Okay, thank you. Going to be here? [LB296]

SENATOR McCOLLISTER: I hope so. [LB296]

SENATOR EBKE: Okay, (laugh) us too. First proponent. [LB296]

RANDY KOHL: (Exhibit 7) Senator Ebke and Judiciary Committee members, I am Randy Kohl, R-a-n-d-y K-o-h-l. I'm a family physician testifying in support of this legislation on behalf of the Nebraska Medical Association, on behalf of Nebraska Academy of Family Physicians, and AIRE Nebraska. The Nebraska Department of Education Rule 59 requires that schools adopt and implement Emergency Response to Life-Threatening Asthma or Systemic Allergic Reactions (Protocol) and to procure and maintain the equipment and medication necessary to implement this protocol. So why is this important to Nebraska? Well, less than 50 percent of diagnosed asthmatic students have personally prescribed medications and action plans, which may be due to either inaction by the physician or the parents or they may not have a need for medication at that point in their diagnosis. Approximately 25 percent of the allergic reactions at a current school actually occur in those that have not been diagnosed previously with a food allergy. Now this is particularly important if they have that kind of reaction at school. The school can take care of the students with medication being available on site, potentially resulting in prevention of a death. Based on CDC statistics, there are greater than 50,000 students in Nebraska who are under 18 years of age who have asthma or some type of allergy, thus, it is important for schools to be equipped to handle any reactions that may occur on school grounds where students spend the vast majority of their time for three-quarters of the year. The problem that has been encountered is for some schools to gain access to the epinephrine and the albuterol through their local physicians and pharmacists. Some physicians have been advised that they should not prescribe to the schools without a specific student being prescribed for. This is because of concerns regarding potential liability providing non-patient-specific medication. This does place the burden on the schools experiencing a problem to find a prescriber or pharmacist who is willing to take potential risk. Presently, school personnel who are implementing protocol are immune from civil liability, as mentioned earlier. This will simply extend this immunity to prescribing physicians, midlevel practitioners, and to dispensing physicians. Since the protocol was implemented, there have been no student deaths that I'm aware of due to asthma or anaphylaxis. This legislation should further assure that none of our students die from these emergencies. And, Senator Ebke, I have a number

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of letters of support that I have submitted. I would like to read them into the record if I may. [LB296]

SENATOR EBKE: The full letters or the names? [LB296]

RANDY KOHL: Just the names, please, just... [LB296]

SENATOR EBKE: Okay, sure, that's fine, yeah. [LB296]

RANDY KOHL: (Exhibit 15) A letter...the first letter is Cindy Ellis...do I need to spell the names? [LB296]

SENATOR EBKE: That would help, yeah, and then you'll just hand us the letter, yeah. We've got all the letters? Okay. Okay. [LB296]

RANDY KOHL: (Exhibits 1, 8-14) Yes...M.D., representing Nebraska Academy of Pediatrics; Wendy Rau, R.N., B.S.N., B.A., representing Nebraska School Nurse Association; Jon Habben, representing Nebraska Rural Community Schools Association; Tonya Winders, representing Allergy and Asthma Network; Luke Anschutz, M.D., a pediatrician in Lincoln; Heather Christianson, M.D., pediatrician in Lincoln; Russell Hopp, D.O., a pediatric allergist and immunologist in Omaha; and, finally, Michelle Sell, M.D., a family physician in Central City. I would entertain any questions. [LB296]

SENATOR EBKE: Very good. Thank you, Dr. Kohl. Senator Krist. [LB296]

SENATOR KRIST: Thank you, Doctor, for coming, In the beginning of your testimony you said there are reasons why. Can you read those reasons again why a child may not have that medication? [LB296]

RANDY KOHL: Why they did not have a personal plan? [LB296]

SENATOR KRIST: Right. [LB296]

RANDY KOHL: Either that the physician has not pushed to have that done, or the parents have not requested the physician to do that or the patient may have allergies that are not given, they're not provided regular medications such as an albuterol inhaler or other medications. In other words, the asthma may not be of a severity that it needs that. However, since I have asthma

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myself, I can testify that I've never had an asthma attack until last summer when I was in Pine Falls, Manitoba--not a good place to have a severe asthma attack. So it can happen anytime, even though you're not on meds or you have mild asthma. [LB296]

SENATOR KRIST: I would contend that there might be a fourth and maybe overarching reason why, and that is that a child or parent may not have the wherewithal to have a family physician or a doctor or medical treatment necessary to make sure that the peanut allergy, that other allergy, that asthma condition was not recognized. And I would also support that this bill would make sure that those emergency medications are in place in the schools. I know myself, in my district, I have a good portion of legal immigrants that don't get the proper medical treatment that they probably need. And the only way they're going to be saved in the emergency condition that they would be put into with a severe attack is to have immediate response to their needs. So I wanted to put that into the record and I also...well, please respond if you'd like to. [LB296]

RANDY KOHL: Well, that is a potential issue, yes, I agree with you. And certainly the rural areas this is a real issue. When I was practicing in the rural areas, I actually lost a patient in the country because there was no rapid enough time frame for response. In other words, when they live out in the country, for EMS to get there in time to administer these medications, (inaudible)... [LB296]

SENATOR KRIST: It's kind of like having an AED on the first floor and you live on the 14th, huh? [LB296]

RANDY KOHL: (Laugh) Yes. [LB296]

SENATOR KRIST: Thank you. [LB296]

SENATOR EBKE: Senator Baker. [LB296]

SENATOR BAKER: Thank you, Chairman Ebke. I have asthma too. I had my first asthma attack at age 41 and had a horrible ten years. It's under control now but medication I take is the reason I'm hoarse all the time. My question of you, is it not true that oftentimes the most fatalities for asthma attack are people who have never had asthma attack before, their first one? [LB296]

RANDY KOHL: I can give you an example of that. I was practicing in Albion, Nebraska, and I was out jogging one morning and I was 40 years old. I was on my way up toward the graveyard, that...the location. (Laughter) And I suddenly went into an asthma attack, had never had one.

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Fortunate thing I had a phone, was able to call my partner who was able to bring me an inhaler. But that is correct. [LB296]

SENATOR EBKE: Senator Chambers. [LB296]

SENATOR CHAMBERS: Dr. Kohl, as a physician, you have some familiarity with medical malpractice issues... [LB296]

RANDY KOHL: Yes, sir. [LB296]

SENATOR CHAMBERS: ...not from the standpoint necessarily of technical legal knowledge. A doctor is held to the standard of care that is prevalent or found in the particular community where that doctor is practicing. In general is that true? [LB296]

RANDY KOHL: I'm sorry, Senator? [LB296]

SENATOR CHAMBERS: Okay, the standard of care that a doctor must meet, is that in the community where that doctor is practicing... [LB296]

RANDY KOHL: Actually... [LB296]

SENATOR CHAMBERS: ...for general purpose...go ahead. [LB296]

RANDY KOHL: Actually, yes, it would apply to the community but also there are other standards too. One of the things we're taught in medical school is that we are not to prescribe medications for individuals with which we have not established a doctor-patient relationship. And so that is where some of my colleagues are hanging their hat at this point. And so we need to think differently in that regard and that's why this bill should allay some of those fears. And I think some of them are false perceptions that there is a problem. [LB296]

SENATOR CHAMBERS: Now what level of negligence can a doctor manifest without being held responsible for it? Negligence is the absence of due care. That's the legal definition. It means that under the circumstances this is the level of care expected of one trained in whatever the profession is. Now if that person fails to exercise that care, it means not that it's something esoteric, something that has to be guessed about, something speculated about. It's what that person knows he or she is to do and if knowingly failing to do that renders that professional liable. This standard in the bill, have you read the bill to see the standard? "Willful or wanton

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act," that's a very high standard; that's almost intentional. It might be higher than recklessness. It might be higher than gross negligence that a doctor can engage in, in making this prescription, the healthcare professional, the pharmacist who dispenses. Does that mean that the pharmacist can have this medication and drop it on the floor? It's now perhaps contaminated and is put back in a container and shipped to a school. The pharmacist, if that comes out, can say, well, I didn't do that on purpose. In other words, they want to be virtually free from all liability and accountability under a wanton statute or willful statute. Is that what you think is a high level of medical practice, you personally? [LB296]

RANDY KOHL: I personally feel the concern here, Senator Chambers, was, is that they are...could potentially be liable if a bad outcome, if they indeed furnish that particular medication to the school system, and likewise the physicians or a midlevel practitioner. Now pharmacywise, I believe there is...they have an ability to prescribe under...legally here in Nebraska but there seems to be a lack of knowledge in that regard. We did have several larger pharmacy systems that have refused in the past and that has been corrected. I'm not going to mention any names here at this point. [LB296]

SENATOR CHAMBERS: I understand that. [LB296]

RANDY KOHL: Okay. [LB296]

SENATOR CHAMBERS: Here's what I'm getting to. I am extremely concerned about what happens to children. Children are victimized everywhere. They've been victimized by teachers and recently there seems to be a rash of exposure of teachers who have sexually abused students, one girl as young as 11 years old and he finally is being brought to book. Professionals cannot be presumed to do the right thing. They're in a position dealing with vulnerable people and some take advantage of that. So I'm not looking at professionals as though they can be presumed to do the right thing. I'm looking at the vulnerability of the child or the patient. In this case we have children who may face a life-threatening incident. And a doctor can be grossly negligent in prescribing. Does that mean that he can prescribe...he or she can prescribe the wrong medication and not be held liable if the intention was to do the right thing but he or she just didn't pay enough attention? Should that doctor be liable? [LB296]

RANDY KOHL: Yes, he could. [LB296]

SENATOR CHAMBERS: If a pharmacist...as you pointed out, some can prescribe. But without going into those words because I want to stay on the issue, a pharmacist should be aware of what is indicated and contraindicated with reference to medication because when it comes to those substances I feel pharmacists know more than doctors and some doctors get advice from



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pharmacists. So when we talk about a pharmacist, we're not talking about somebody who's just out there doing the best he or she can do. They have knowledge, or should have. If a pharmacist sends out the wrong medication due to carelessness, under this the pharmacist would not be liable because it wasn't wanton, it wasn't willful. [LB296]

RANDY KOHL: I don't think that was the intent, I mean, that the doctor or the pharmacist, you know, in the case of negligence, that they would be not held accountable. [LB296]

SENATOR CHAMBERS: Well, what I'm doing with this is to get some things out here so that when that lawyer comes to speak in favor of this bill, he or she will know some of the things I have in mind and will have heard your comments--I haven't grilled you on it--as to the standard that a doctor or a pharmacist should meet in order not to be liable. So rather than you responding to questions which I may have inartfully presented to you, could you describe a negligent act by a doctor in this context for which the doctor should not be held liable? What kind of negligent act should he or she be able to engage in, in prescribing this medication, and not be liable for it? [LB296]

RANDY KOHL: I think the intent was for the physician to prescribe the albuterol and injectable epinephrine to the school system without a specific patient indicated. I think I... [LB296]

SENATOR CHAMBERS: So you're not...excuse me. [LB296]

RANDY KOHL: I believe that was the only...the immunity that we were alluding to. [LB296]

SENATOR CHAMBERS: Then why did they put wanton and willful? From what you've said, if I knew what containers these substances were in, I could send them to the school. I wouldn't even have to be a doctor. I wouldn't even have to be a pharmacist. So if there is a limited range of medication that we're dealing with, I don't understand why they have this high standard of willfulness or wantonness in failing to meet the proper standard of care before they're held liable. I just don't understand why they need this. Would you feel that you would not treat a patient without having this kind of standard? I will not treat you as a physician unless I'm held liable only if I wantonly or willfully violate a standard of care. Would you want to be that incompetent that you would say, before I will treat a patient, the only time I'm liable for not treating properly is if I do something wantonly or willfully? I can be negligent, quite negligent, but I don't want to be held accountable for that--is that the standard you would operate under? [LB296]

RANDY KOHL: Since I'm not a lawyer, the language is perhaps out of my area of expertise but I guess I... [LB296]

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SENATOR CHAMBERS: So that's why I want you to tell me. [LB296]

RANDY KOHL: But I did give you what I felt the intent was, is that the bill was intended to give civil immunity to the prescribers to provide the medications for schools under the Rule 59. [LB296]

SENATOR CHAMBERS: I'll let you go and I'll wait till that lawyer comes. Thank you, though, Dr. Kohl. [LB296]

RANDY KOHL: Thank you. [LB296]

SENATOR EBKE: Dr. Kohl, maybe I...I've got a couple of questions here, like to try to just clarify a few things. Is it your understanding, because it's mine, that the bill is very narrow in its focus with...for just emergency procedures, for emergency medications, albuterol and EpiPen? [LB296]

RANDY KOHL: Those are the medications at present time. [LB296]

SENATOR EBKE: Right. And those are required to be prescribed by physicians? [LB296]

RANDY KOHL: Yes, those are prescription medications, prescribed. [LB296]

SENATOR EBKE: So in order for anybody, a school or anybody to get hold of them, they have to have a prescription. [LB296]

RANDY KOHL: That is correct. [LB296]

SENATOR EBKE: Okay. And physicians are allowed to prescribe. [LB296]

RANDY KOHL: Yes. [LB296]

SENATOR EBKE: And the pharmacies as a general rule can't dispense them to the school without a prescription. [LB296]

RANDY KOHL: That's correct. [LB296]

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SENATOR EBKE: But physicians--okay, let me see if I'm following this--but physicians are not...are taught, if you will, as you said, that you're not supposed to prescribe unless you have a preexisting relationship with a patient. [LB296]

RANDY KOHL: Correct. [LB296]

SENATOR EBKE: But there is no specific patient here. [LB296]

RANDY KOHL: Right, and subsequently with that relationship then you'd generate a medical record... [LB296]

SENATOR EBKE: Right. [LB296]

RANDY KOHL: ...which then becomes a legal document. [LB296]

SENATOR EBKE: So in this instance there would be no legal medical record. [LB296]

RANDY KOHL: That's correct. [LB296]

SENATOR EBKE: And there is no specific patient that it's being prescribed to. It's being prescribed for emergency purposes. [LB296]

RANDY KOHL: Correct. [LB296]

SENATOR EBKE: And so physicians are sort of, and other prescribers, are in a bit of a quandary as to what their legal liability status is. Is that fair? [LB296]

RANDY KOHL: That is fair. [LB296]

SENATOR EBKE: Okay. [LB296]

RANDY KOHL: But I think perhaps there are a lot of us physicians that would be willing to prescribe despite any perceived liability. [LB296]

SENATOR EBKE: And I'm sure that there are many that are prescribing despite the perceived liability, yeah. [LB296]

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RANDY KOHL: Well, and there are a number that have had to be contacted for those school systems who could not get a physician to do that. They would contact a number of physicians in the state who are willing to do that. But it takes away from that local flavor also. [LB296]

SENATOR EBKE: All right. Okay, great. Anybody else have any other questions? Senator Krist. [LB296]

SENATOR KRIST: One follow-up. There is a model in the state and it's used across the United States. Any EMS, any paramedic, any fire department, any police department, has to have a physician overseeing their programs. [LB296]

RANDY KOHL: Correct. [LB296]

SENATOR KRIST: So, for example, in Omaha it used to be...I won't mention the name, but he used to be a doctor. They were operating under his license. So what we're doing is putting specific medications for these specific problems, which are...could be emergencies and life-threatening if they're not treated immediately, in the ambulance and the ambulance is going to be the school medicine cabinet. I see the same model here. I understand Senator Chambers' concern about waiving the legal liabilities. [LB296]

RANDY KOHL: The language, yeah. [LB296]

SENATOR KRIST: And I'm sure the trial lawyers are going to come up and tell us how that's not a good idea. However, we do have a problem in the fact that we do need to have the prescription, the drug, for anyone to use when they walk in the door. Just...I made light of the fact of the AED, but there's really nothing in that package that is a drug that needs to be prescribed. But if you don't have it and it's not there, then you're going to die if you don't get the right treatment at the right time. So I'm using the analogy that this is a blanket prescription that's put in place for the nurse or a trained person in the school--and I know, having sat on the Education Committee for awhile, I understand that the provision within the chapter and the title is very specific in terms of who can and who cannot--but we need to get that capability in the right hands, in the school environment, so that they can be treated. Is that a fair statement? [LB296]

RANDY KOHL: Yes. [LB296]

SENATOR KRIST: Okay, thank you. Let us worry about the words. You just keep prescribing for those...out of those schools. [LB296]

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RANDY KOHL: Okay. [LB296]

SENATOR EBKE: Any other questions? Thank you, Dr. Kohl. [LB296]

RANDY KOHL: You're quite welcome. [LB296]

SENATOR EBKE: Next. [LB296]

ANDREA HOLKA: (Exhibit 16) Hello. [LB296]

SENATOR EBKE: Go right ahead. [LB296]

ANDREA HOLKA: Thank you very much, Committee, Senator Ebke. My name is Andrea Holka; that's spelled A-n-d-r-e-a H-o-l-k-a, and I am speaking on behalf of AIRE Nebraska. I'm the executive director. It's a really pompous title basically for a mom who wanted to make sure that her child was safe at school. So I've been in this position since 2005 and before that I was actually involved with the founding group for this initiative, so since 2000, early 2000, 2001 at the very latest, so I've seen this from...go from zero to 100 and it's pretty amazing. I will also tell you that the leadership from the Department of Education way back in the early 2000s and the leadership and the visionary common sense of the State Board of Education at that time is amazing because what we did in Nebraska, being the first state in the nation and the only state for many years to have this type of protocol in place in schools, was amazing. And many states called over the years: How are you doing this? How is this working out? What are your challenges? What are your barriers? And to be really honest, it's been amazing over the past five years to see that 49 out of 50 states now have a similar regulation or law that's in place. So this was due to Nebraska setting the stage and setting the model. So this is the Emergency Response to Life-Threatening Asthma or Severe Allergic Reactions Protocol that we're talking about. We're talking about a very specific protocol when a student, staff, or visitor shows a specific set of signs and symptoms and this is specifically EpiPens and specifically albuterol for nebulizing that are to be prescribed for schools. As far as some of the questions that have come up, I'm the one that takes the calls when the schools call and say, hey, you know, for whatever reason our local doc doesn't want to prescribe. I don't often know who that is. I help troubleshoot these instances--you know, who else is in your community, who prescribed last year. A lot of these instances come up due to time and turnover and that's time and turnover on the school staff side. Maybe there's a school nurse in place. It's also time and turnover on the medical staff side in that local community and for whatever reason there is a concern and that healthcare provider says, yeah, I'm not real comfortable with providing that. So the idea or the intent behind this was in looking at states across the nation in the last five years who have come up to par with Nebraska, as it were, I've been looking at their laws and regulations since 2014 and there's well over 25

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states that include prescribers and dispensers in their laws on their immunity clauses in a variety of different words. And I know, Senator Chambers, that you have a concern about the wording, and I want to point out that the wording that's already there also includes wanton or willful. I don't know if that's good or bad. I have no legal background whatsoever and I am not a medical person. I have just been working with this for the past 12 years. So basically the idea behind this was to improve and upgrade what we have and make it easier for schools to come into compliance with the current regulation. I have all kinds of data and stats if you have questions about numbers. We haven't had any deaths in Nebraska schools since this has been in place--that is huge--and what we do know is that children who have been administered the emergency response protocol for the large part, almost 50 percent, come back with an action plan and come back with their own personally prescribed meds, as these emergency medications are not intended to take the place of their own plan and medications. I am open to any questions. [LB296]

SENATOR EBKE: Okay. Great. Questions? Senator Chambers. [LB296]

SENATOR CHAMBERS: I'm not going to ask you any legal questions. [LB296]

ANDREA HOLKA: Thank you. [LB296]

SENATOR CHAMBERS: But people on this committee, some just now, others who have been on it in the past, know that I acknowledge a lack of knowledge and awareness of every law in all those volumes of statute books. So when a bill is brought to us amending a law, I don't just look at the part that's amended. I look at the law that is being amended and I see things in the existing law that ought not be there. I think it's very careless to just willy-nilly tell people that you're going to deal with somebody who is in a very vulnerable situation, so as long as you don't intentionally do something, you can be ever so negligent, ever so careless, you can get away with it. I think the existing law is far too loose on nurses and others that they allow to do this in the schools. And maybe the schools have to be required to have somebody at every school who has the qualification to do what is being done here and they have to meet a standard higher than wanton and willful before they are held liable. But in this particular area, we're dealing with trained people, we're dealing with doctors, we're dealing with pharmacists, not school nurses, not security guards or whoever the school says is going to do this, and that's why I want to talk to this lawyer who is going to come, once again, to make it clear, if I can, where I'm coming from. No disparagement of you, your organization, or anything people try to do to help those who are going to need it, but when we start extending and reaching to the point where people who have sworn to uphold a higher standard, whose ethics require them to meet a higher standard than wanton and willfulness, then we're going to relax that and say, because we're dealing with very vulnerable children, you don't have to meet that standard here. If it's a rich person's child, you

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better straighten up and fly right, don't walk box-ankled and slue-footed. But when it's children, then everything goes out the door. I'm not a doctor. But if I were, based on my disposition, I would feel a degree of insult and disparagement if somebody would tell me, Ernie, now you don't have to meet the standard of a doctor in this case; we're talking about schoolchildren so you can be negligent, maybe even grossly negligent, and that's okay. That's what this is saying. You don't have to meet that standard of a doctor, a pharmacist, or these other medical care providers. That's what I'm getting at. And I'm not talking about your organization. They're needed. They create an awareness, and maybe they'll even help to raise the standard of some of these ne'er-do-well doctors who are saying unless you let me get away with virtual medical murder, I'm not going to work with these children. That's the way I'm looking at this. You are not a part of that and I wanted to make you understand where my focus is. [LB296]

ANDREA HOLKA: Thank you. I think our medical community across the state has done a really good job in support of schools. We can't thank them enough, I mean, in doing that without any civil liability immunity, so. [LB296]

SENATOR EBKE: Thank you. Any other questions? Senator Halloran. [LB296]

SENATOR HALLORAN: Thank you, Chair Ebke. Thank you, Ms. Holka, for your testimony. Your child has asthma? [LB296]

ANDREA HOLKA: I have two boys. Both have asthma and one was diagnosed with a severe allergy to tree nuts at the age of three. He carried that diagnosis until he was 14 and he is one of very, very few people whose body actually naturally becomes tolerant of tree nuts. So he eats tree nuts but now he's allergic to eggs, so, you know. [LB296]

SENATOR HALLORAN: Who knew, right? So have you ever had to administer medicine, EpiPen or...to help him through symptoms of peanut...or pine nut allergy? [LB296]

ANDREA HOLKA: That's a really good question and the answer, plain and simple, is no. But I can also tell you that I remember to this very day driving into Lincoln, because we live just outside of Lincoln, on Highway 34 and around about the time I hit Kawasaki I was thinking to myself, do I keep going or do I stop? Now he's lucky to be alive because I should have stopped and I should have administered epinephrine. So I got very, very lucky. That will not happen again. I will stop and I will administer that EpiPen. So I have not personally administered epinephrine to a human being but I have saved a lot of grapefruit. We do that for training. Sorry. [LB296]

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SENATOR HALLORAN: I guess my question is, is it very technical training to administer an EpiPen to someone that's suffering from symptoms? [LB296]

ANDREA HOLKA: No, it's extremely easy and it's made that way on purpose. [LB296]

SENATOR HALLORAN: It's hard on the grapefruit, I understand. [LB296]

ANDREA HOLKA: Yeah. No, (laugh) it's extremely easy and I have a trainer in my bag. I guess I didn't think to bring it up here. Our regulation speaks specifically to one device. It was...and that is the EpiPen. The EpiPen is quite simple to use. You take the safety off and you press firmly to the outer thigh and you hear a click and that needle is forced down and that medication within...under three seconds that medication is inside the body, intermuscularly. [LB296]

SENATOR HALLORAN: Okay. I guess the reasons I'm asking that series of questions is that if it were a school nurse, they would not have to have comprehensive training to do that. [LB296]

ANDREA HOLKA: That is correct. [LB296]

SENATOR HALLORAN: Is that correct? [LB296]

ANDREA HOLKA: Well,... [LB296]

SENATOR HALLORAN: Would you be, as a parent, would you be willing to...would you take the risk of your child having symptoms at school and not have someone there to administer that to them? Maybe that question isn't clear but I mean... [LB296]

ANDREA HOLKA: So, yeah, one more time. Sorry. So as a parent... [LB296]

SENATOR HALLORAN: Would you be willing to sacrifice the...would you be willing to sacrifice having the ability to sue somebody in the school, to forgo that in turn for having someone there with the medicine in hand to administer that to your child? [LB296]

ANDREA HOLKA: So I can probably illustrate that with my own experience. When my child was three, he had a severe allergic reaction at day care. EpiPen was prescribed. I went to kindergarten roundup and this has never been a problem with preschool. And I said, yeah, my child has an EpiPen so we'll be bringing that in. And at that time, and the school district still has no school nurse, the medication aide said, good luck with that, I can't help you. I said, what are



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you even talking about? And she said, yeah, I'm not allowed to administer that and as an EMS person I'm not allowed to administer that. I can assist but I cannot administer that. So she sent me down the hill to the superintendent and he told me that what kind of mother was I to want just anyone to administer medication to my child, that at the age of five, if he thought he needed it, he was responsible for that on his own. This is why I sit here before you today and this is why I was on that committee in the early 2000s because that was ridiculous. And it wasn't about suing; it wasn't about anything like that. Any parent will take anyone to administer a life-saving dose of epinephrine to their child, anyone. [LB296]

SENATOR HALLORAN: The alternative: he might have died. [LB296]

ANDREA HOLKA: Absolutely. [LB296]

SENATOR HALLORAN: Okay, thank you. [LB296]

ANDREA HOLKA: Good question. [LB296]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB296]

ANDREA HOLKA: Thank you so much for your time and consideration. [LB296]

SENATOR EBKE: Absolutely. Next proponent. [LB296]

KURT SCHMECKPEPER: Good afternoon. My name is Kurt Schmeckpeper, K-u-r-t S-c-h-m-e-c-k-p-e-p-e-r. I'm a physician assistant here in Nebraska. I practice in Crete, Nebraska, a family practice, as well as Wilber. Thank you, honorable senators of the Judiciary Committee, and thank you for the opportunity to testify on behalf of LB296 relating to the civil liability and amends Sections of 25-21,280 which would provide the change of immunity positions...provisions with the respect of asthma and allergic reactions. I represent and speak on the behalf of the Nebraska Academy of Physician Assistants and would like to show our support for this bill. I am first of all very proud of Nebraska being the first in the nation to implement the Emergency Response of Life-Threatening Asthma and Systemic Allergic Reactions Protocol. It's this progressive action and preventive policies that place...which can maintain Nebraska in the forefront, as well as the gold standard, towards appropriate patient and public safety. There is no reason that national standards need to start in Washington, D.C., New York, or somewhere out on the West Coast. According to the Asthma and Allergy Foundation of America, allergies are increasing and may affect as many as 40 percent of children in the U.S. Allergic conditions are the most common health issue affecting children in the United States with the most common triggers of

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anaphylaxis being medications, foods, and insect stings. Many times an allergy is not known until its first exposure of the new food or medication. According to a study performed by the American College of Allergy, Asthma, and Immunology in November of 2014 of Chicago Public Schools found that 35 children, as well as 3 adults, suffered an anaphylactic-like symptom related to food or an insect sting during the school year of 2012 and '13. It was noted at that time more than half of the reactions were first-time instances to those people who received injections from the EpiPen. About one-fourth of an epinephrine injection, the medicine in the EpiPen, was given at the schools were involved with children who did not know that they had an allergy. We know the benefits of implementing life-saving devices in the public with the example Senator Krist mentioned of AEDs. When you consider that the survival rate of victims decreased by 7 to 10 percent for every minute that passes when someone does not provide the CPR protocols, when the CPR protocols are not implemented, AEDs can now more than double a victim's chance of survival. Communities who have comprehensive AED programs with training for the rescuers have also achieved a survival rate of nearly 40 percent of those who are having cardiac arrest victims. Making these devices available saves lives. This could be doubly true for having EpiPens and albuterol available in public and private schools not only for children but also for the school staff and volunteers. We are taught fundamental lessons in school: the benefit of teamwork; staying focused on tasks; and also being prepared. These lessons are crucial when taking care of someone during life-saving events. Everyone's responsibility, no matter what occupation, has to continue to evolve and increase if we need to adapt to the changing times. Nothing could be truer when describing the vital roles teachers and school employees play in the lives of children when addressing the issue of dealing with life-threatening asthma attacks or severe allergic reactions. Not having these medications would be taking away parents' peace of mind and having them available would be strengthening their confidence knowing that the teachers and school employees have the basic training to come to the aid of their children during that life-threatening event. Administering these medications is minimal in effort and training. Training can be given and refreshed yearly, prior to the beginning of school and/or during teacher in services during that day. As little as an eight-minute training video can be used to administer an EpiPen; respectfully, the same time can also be reviewing the protocol, which is evidence based, in the nebulizing treatment of albuterol. We as primary care providers are ready to assist schools with guidance and instruction of each important medication needed during the time of life-saving emergencies. In conclusion, I would like to restate that the Nebraska Academy of Physician Assistants shows support for LB296 and encourage the committee to show similar support in pushing this forward. Thank you. [LB296]

SENATOR EBKE: Thank you, Mr. Schmeckpeper. Senator Chambers. [LB296]

SENATOR CHAMBERS: If this procedure is so simple and it can be taught by way of an eight-minute video, there is no excuse for allowing anybody who is going to administer this medication to be negligent. It's not complicated. You would almost have to do something

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intentionally for it to go wrong. Where it would go wrong is if you administer the wrong medication for the wrong condition. Now when I was in the army, they would teach us things we didn't even need. We were not going to be under a gas attack--well, maybe so--but here's what they would do. They would sit two of us facing each other. They gave us a little plastic bag--I don't know if you call it an ampule--and a needle. And each of us when they gave the signal was to plunge it into the thigh of the one across from us and squeeze the bag, and that would give you what you needed if you were under a gas attack. Now I can agree that it may not take a lot of training to do this. And that's why, to say the only time somebody is going to be liable is if what they do is willful or wanton, you would almost have to do it blindfolded and just stick somebody anywhere. This is the lowest standard of care that you can have. It would be almost like saying you've got to put antifreeze in the device rather than the medication. I'm still waiting for that lawyer to come. I'm saying this to let you and everybody who is a part of this program know that I'm not attacking them, but it takes somebody like me other than to say to a mother whose child is ill, would you deny your child treatment or would you give up the right to sue? People aren't thinking about suing or anything. That's a wrongful question to even portray and it's designed to make the woman feel like she's an unfit mother. There have to be policymakers who can hold people responsible who are going to administer things to the public. Otherwise we could say this doctor may use dirty instruments but, because the instruments might be dirty, would you refuse to let the doctor operate on your child, when the doctor is the only one. Well, it's for people like us, not silly people, to make sure that those doctors know there are standards they have to meet. Courts have said, and it's why people trained in the law have to do this, not merchants, not cattle growers, not ranchers, not farmers, who set the standards that doctors have to meet but, because those who are in the profession understand the trust that's being reposed in them, have set their own professional standards that must be met. So when I hear questions posed like that, to give the person benefit of the doubt, they just don't know anything, they're not accustomed to being in this environment. But here's the question I'm going to ask you. [LB296]

KURT SCHMECKPEPER: Yes, sir. [LB296]

SENATOR CHAMBERS: And you're not a lawyer. Before you would work with somebody, would you have to know that before you're going to be held accountable for what you do you would have to do something almost intentionally wrongful? And if you weren't told that you can do almost anything before you're going to be held responsible, would you have to be given that guarantee before you would help somebody? [LB296]

KURT SCHMECKPEPER: The way I would answer you, sir, would be the way that medicine is going today is a team-based approach and we have to rely upon everybody in the team whether that team be in medicine, whether that team be in education or that team be in the judiciary or agricultural means. In this sense, for this law, the thing that we appreciate is the administration of these medications are totally different. One is an injectable and one is within a respiration vapor.

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To maybe put you a little bit at ease, the mixing up of those medications would not be able to happen because of that fact of one is injectable and one is in respiratory form. But I am in medical training. I apologize that I can't answer you in the legal form. [LB296]

SENATOR CHAMBERS: You said it. Why have to give that kind of guarantee when you would have to do something on purpose to mess this up? But I'm being told that those doctors, the healthcare professionals, and the pharmacists feel that they are so likely to do this wrong that if you don't protect them from the results of their negligence, gross negligence, they're not going to be involved, then they don't need to be involved. Let people who are not doctors do this because they apparently have a higher standard. But the profession has standards that these people must meet. And even if they may fail but not to the point where they would be held liable under the state's medical malpractice law, the standards of the profession may cause some doctors to lose their licenses because they didn't meet those standards. And whatever people on this panel say, whatever people in that audience says, I have an obligation to not be a fool, to not be simpleminded, and not try to embarrass people into making a statement. See, I don't like to talk about personal things. My son had a horrible case of asthma. I often had to get up in the middle of the night, more than once, to get him to Children's Hospital. He took shots on a regular basis to try to do something about the allergies that might lead to something like this. I had to make sure that there was always a humidifier...well, it's not called a humidifier. You put water in it, the air (inaudible)... [LB296]

KURT SCHMECKPEPER: It's still a humidifier, um-hum. [LB296]

SENATOR CHAMBERS: Uh-huh. And I had to make sure that it was clean. I had to make sure that there were no germs that could be kept out by proper cleaning and sanitizing. So when people want to talk about what they have gone through with their family, I'm not one who stands on the floor and says it. But I'm bringing it up now because some people think unless you had it in your family you don't know. Well, I've had things in my family but I don't use that to hide behind. And nobody could get me to say, well, now, you're a father, would you be willing to risk your child and not even think about the right to sue? Here's what's being asked. Are you willing to say you won't hold this person accountable for negligently treating your child? And I would and I'd hold him or her accountable in a way that maybe the law wouldn't. I'm not talking about a slight slip-up. This low level of negligence, misconduct, is so low that it would have to be intentional. So I take my child for one of these shots and the doctor has been working on his car earlier in the day. So he gets some antifreeze and injects it into my son but he didn't realize it was antifreeze so he's not liable. That's crazy and that's almost what would have to be done before somebody is liable under this. All we're talking about is these people who are going to make these prescriptions without having examined personally the persons who may be patients. There doesn't have to be a loose standard like this. If there are standardized medications that are used, these medications are compounded on a regular basis by competent compounders or whatever

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you want to call them, pharmaceutical houses, I don't see how they could be handled by a physician, a trained medical care provider, or a pharmacist in such a careless way that they're not going to be held accountable for their negligence. That's what I'm getting at and apparently they're not people who understand what I'm saying, not you, but I want it clear on the record what I'm talking about. And I will hold to it. And this bill won't go anywhere if I don't get some better answers than I've gotten. And so far that lawyer hasn't come up here who was going to come and talk to us. But that's all that I have with you. Thank you. [LB296]

KURT SCHMECKPEPER: I appreciate your efforts there. [LB296]

SENATOR EBKE: Any other questions for Mr. Schmeckpeper? Thank you. [LB296]

KURT SCHMECKPEPER: Thank you. [LB296]

SENATOR EBKE: Next proponent. [LB296]

ANNE MULLIN: Hello, Senators. My name is Anne Mullin, A-n-n-e M-u-l-l-i-n. This is my first time ever testifying for a bill. I'm a physician assistant. I've been practicing for not quite two years, so I'm kind of new to that as well. But I work with the Nebraska Academy of Physician Assistants and so that is...I'm testifying on their behalf today. And just kind of going off of what Senator Chambers has been discussing as far as the negligence term not being included, I do have...my father is an attorney and when I was getting my first job he went through my contract that they had given me, with me, and there was, he explained to me, these terms about negligence versus, you know, willful harm. And so we talked about that and so I am familiar with what you're discussing and I do think that that would be a good idea to kind of broaden that and include the negligence portion of it. But if this bill is going to be...I mean it's already existing, the regulation. If that's going to be out there and they're going to be asking physicians and PAs like myself to prescribe these medicines for entire schools, I do think that we need to be mentioned as somewhat with liability, whether it's going to be for negligence or for willful harm. I do think we need to be on there and it is...it's not our typical work that we do. You know, I usually prescribe medicine to patients that I see in my office and I evaluate them and I diagnose them and write a prescription and they take it, or I administer it in the office. So this is totally different. It's an entire school, children I've never met before, and I'm trusting these people that work at the school to recognize signs and symptoms and administer the treatment. So I do think it's right to have the healthcare professionals to be granted some sort of immunity but I do recognize what Senator Chambers was saying, too, and I think that's valuable. So I just would like to say that on behalf of the Nebraska Academy of Physician Assistants I do support the healthcare providers and physicians and dispensers being granted immunity as well in this amendment. [LB296]

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SENATOR EBKE: Okay, thank you. Any questions of Ms. Mullin? Thank you for coming today. [LB296]

ANNE MULLIN: Thanks. [LB296]

SENATOR EBKE: Other proponents? [LB296]

MATT SCHAEFER: Good afternoon, Chairwoman Ebke, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, registered lobbyist appearing today on behalf of the Nebraska Medical Association. I actually was not intending to testify but realized none of our prepared witnesses did have legal training and so I offer myself up as someone who has had legal training. But I would say before questions that in the discussions involving drafting of the bill, the intent was to give physicians and other prescribers and the dispensers the assurance that...or more assurance that there's not a strong likelihood of a lawsuit against them solely based on the fact that they've prescribed or dispensed non-patient-specific medication. This bill would not cover some of the instances you mentioned, Senator Chambers, of specific treatment of specific children. And if there's a way other than what we chose, which just matches the current language earlier in the section, we would be amenable to figuring out a different way of solving the problem. I think there are other states who have given specific authority to dispense and prescribe to non-patient-specific situations. Perhaps that could be a different way of solving the problem as well. That's all I have for you. [LB296]

SENATOR EBKE: Any questions for Mr. Schaefer, the attorney? (Laugh) [LB296]

SENATOR CHAMBERS: You are an attorney? [LB296]

MATT SCHAEFER: I am. [LB296]

SENATOR CHAMBERS: Okay. Would you explain, are there differing degrees of negligence? [LB296]

MATT SCHAEFER: Yes. [LB296]

SENATOR CHAMBERS: What is simple negligence? [LB296]

MATT SCHAEFER: Breaching an ordinary...not doing what an ordinary person, ordinary, reasonable person would do. [LB296]

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SENATOR CHAMBERS: Right, you fail to exercise due care, period. What is gross negligence? [LB296]

MATT SCHAEFER: Something slightly beyond that, and I don't know that it's easily defined. [LB296]

SENATOR CHAMBERS: And what is recklessness? [LB296]

MATT SCHAEFER: Something even further beyond gross negligence. I'm not sure there are hard and fast lines and that's why there are juries. [LB296]

SENATOR CHAMBERS: And would you say that willful, willfulness and wantonness, willfulness now brings in volitional? [LB296]

MATT SCHAEFER: Intentional, yes, yeah. [LB296]

SENATOR CHAMBERS: Would willfulness and wantonness be the highest degree? I don't even want to call it negligence because I think when it's willful it's beyond mere negligence. [LB296]

MATT SCHAEFER: Yes. [LB296]

SENATOR CHAMBERS: That is a very low standard of care that a person would have to meet. Would you agree with that? [LB296]

MATT SCHAEFER: Yes. [LB296]

SENATOR CHAMBERS: Okay. I'm not going to grill you. The reason I wanted a lawyer, these people don't think that I know anything, so I wanted somebody trained in the law who is on their side to point out that there are differing degrees of negligence and the greater the degree of negligence, the greater degree of legal culpability or liability. Is that a correct statement? [LB296]

MATT SCHAEFER: Yes, it is. [LB296]

SENATOR CHAMBERS: Okay, that's all I wanted to ask their lawyer, not that you're the lawyer for them in that sense, but somebody trained in the law. [LB296]

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MATT SCHAEFER: Sure. [LB296]

SENATOR CHAMBERS: Thank you. [LB296]

MATT SCHAEFER: Yeah. [LB296]

SENATOR EBKE: Are there any other questions for Mr. Schaefer? Senator Halloran. [LB296]

SENATOR HALLORAN: Thank you. Thank you, Senator Ebke. Is there an alternative to this particular proposal that would solve the problem that...Andrea Holka testified in regard to her children and the example that she gave with her child that was I believe five years old and the administration of that school said they would not take the liability of administering an EpiPen. Is there an alternative to this, because that seems to be the reason for this legislation is to allow for some relief of liability for a very fairly simple administration of treatment for asthma or for a nut allergy or any kind of allergy. Is there some other remedy other than this legislation that you can suggest might be a good remedy? [LB296]

MATT SCHAEFER: I'm not specific with the previous testifier's specific situation, but I would say this bill may not address that one. This is only attempting to make sure that schools can easily obtain these medications hopefully from their local community. I think we see more chains for dispensers, more medical practices that are not sole practitioners anymore. And those entities may not be as willing to prescribe and dispense non-patient-specific medication as your local family physician might. So I think what we're attempting to do is put in some level of immunity. And if this language isn't the correct level, we're certainly willing to figure out if there's an intermediate level that makes sense so that we can explain to those prescribers and dispensers that this is not something that will subject them to a lawsuit; it could still subject them to a lawsuit but it would be easier to defend. [LB296]

SENATOR HALLORAN: I've asked other attorneys this before and if you don't mind I'm going to ask you the same question. In your estimation, is there such a thing as a perfect law? [LB296]

MATT SCHAEFER: I've seen very many perfect laws written by this committee and members of this committee. (Laughter) [LB296]

SENATOR HALLORAN: So you're answering it with a negative then. Well, let me ask it another way. In your estimation or experience, is there any law that a good attorney couldn't chase ambulances with (inaudible)? [LB296]



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MATT SCHAEFER: I would say our plaintiff bar in Nebraska is very good at what they do and they can ably represent their clients and they will be creative. And it's difficult. I think your point is it's difficult to foresee every situation and that's absolutely correct. [LB296]

SENATOR EBKE: Any other questions? Senator Krist. [LB296]

SENATOR KRIST: I want to paint a picture here because you have a problem. What is the problem? [LB296]

MATT SCHAEFER: The problem is some schools cannot obtain the medicine that they are required by law and regulation of the Nebraska Department of Education to keep on hand. [LB296]

SENATOR KRIST: And we are one of the first states, if not the first state, that put this in place. [LB296]

MATT SCHAEFER: That's my understanding. [LB296]

SENATOR KRIST: In the statement of intent: "Among other items, the emergency protocols require schools to keep on hand"--on hand--"non-patient specific medication for use during these emergencies." Then the bill, in terms of what currently exists, says this is how it's going to happen for the nurse, and that goes through "Any person employed by a school approved or accredited" by the state of Nebraska. I have personal knowledge of people who go through the accreditation process to hand out medications at schools of all kinds around the state, or you have a school nurse who is doing the same kind of thing. Your change to the current law purports to change or to help in the situation that you are trying to correct, which is you can't get enough doctors to prescribe the medications to comply with Nebraska state law to have those drugs on hand. And what you want to do is assure those doctors that there is some--some--immunity in terms of putting them in place if the schools comply with everything the schools are to comply with. Now I'm not putting words in your mouth, barrister, but... [LB296]

MATT SCHAEFER: That was an excellent summary of the bill... [LB296]

SENATOR KRIST: Thank you very much. [LB296]

MATT SCHAEFER: ...and its intent. [LB296]

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SENATOR KRIST: So what we need to work on is, I agree with Senator Chambers wholeheartedly most of the time, I do--I'm sitting too close to do anything else--but the point is that we need to make sure that that liability is...incentivizes doctors to do the right thing and help our schools do the right thing but yet not get them to the point where they're completely in any way immune. Does that... [LB296]

MATT SCHAEFER: I agree. [LB296]

SENATOR KRIST: Okay, thank you very much. [LB296]

SENATOR EBKE: Senator Chambers. [LB296]

SENATOR CHAMBERS: Counselor, I would like to refine my discussion of negligence a bit further. I'm going to make a presumption we both would agree that what would be considered negligence on the part of a doctor in a hospital setting may not be considered negligent at all if he or she happens upon an accident on the highway and must act right now in an emergency setting. The standards take into consideration the circumstances under which an act is performed, and that's why they say due care. A similar situation may not require the same level of care because there is not the time to provide that. So when the law says, uses the word "due," it means that which is appropriate given all of the circumstances and what is required to be done. So although a doctor would not be held to a hospital room, a surgical theater in a hospital, that would not apply on the street, but still a doctor is going to be held to the standard that a doctor in that set of circumstances would meet in addressing this situation and that standard would be higher than what you or I would do. A doctor in a hospital could never use a butter knife to perform a tracheotomy without sanitizing or anything else; the appropriate instruments would need to be used. But in an emergency situation in a restaurant where a person is choking and whatever the obstruction is, is deep in the throat, a butter knife or whatever other instrumentality is available may be employed to save that person's life and that would not be considered negligent, it wouldn't be considered wanton, it wouldn't be considered any of those things, because that actually happened. The person was put on life support, ultimately died a few days later. But what the doctor did, and it was a doctor who used the butter knife--I think maybe they meant a steak knife, but anyway, a butter knife--was not found to have done anything that contributed to the death and had not done anything that was outside the realm of what a doctor could or should do in a situation like that. So I'm not in my conversation trying to make these people meet a superhuman standard but one that holds them accountable for their conduct based on their training, their knowledge, and their responsibility, And if a doctor is so fearful of liability that he or she says you must allow me to do practically anything I want to any way I want to, that doctor should not be involved in supplying the service in the first place. I believe at least generally all of us are interested in getting to the same point. But when they put language

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like this in a statute, that's where I as a policymaker put on the brakes and say there has to be a better way than this. So I hope you didn't think that when you came up here I was going to try to give you the third degree and embarrass you. I just wanted somebody with legal training to point out that there are different levels of negligence and you did that so I thank you. [LB296]

SENATOR EBKE: Any other questions for Mr. Schaefer? Okay, you're off the hook. Thank you for coming. Next proponent. Going once, going twice. First opponent. [LB296]

JOHN LINDSAY: Senator Ebke, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. The conversation, before I get to what I was going to say, the conversation about the existing law I think does need to be clarified. When that bill was passed, when this bill was originally passed, not this one but the first, the part that's already statute, there was an immunity granted to the employees of the school district, to the school nurse, to the medical technician, whoever might be administering the EpiPen or the albuterol. But it specifically, if you look in subsection (2), it specifically says the school district remains responsible because I...we think it's very important that somebody has an incentive to make sure that care is done in a reasonable fashion. Too often when we talk about liability, we forget that just because somebody files a lawsuit--for example, against God--it doesn't mean that you're going to win. Filing a lawsuit is not an automatic win; a bad outcome is not an automatic win. What you have to do, and Senator Chambers touched on this, you have to establish the elements of negligence. You have to show that there was a duty of care owed, that that duty was breached, that that breach was the proximate cause of damages, and what the damages were. I think it is summed up, as I think you heard Mr. Schaefer and Senator Chambers talk, the bottom line is you have to act with due care: What would a reasonable, prudent person in the same or similar circumstances do? Our law is well settled. That law that I just described goes back 1,000 years, back to England, was imported into America, and has been developing over that time and has handled all sorts of situations. Effectively, this bill is not about whether kids should get the use of an EpiPen or albuterol or any other nonspecific medication...or, excuse me, medication not specified for a particular patient. The issue is whether they should get it in a careful manner, whether it should be done without carelessness. That's the issue. This bill effectively says we don't know what the facts are, we don't know who did what, but the injured party loses and the negligent party wins, deciding the cases when we don't have the facts. I think that at times we have to remember we have a Seventh Amendment right to a jury trial. We talk about the Bill of Rights; embedded in there is our Seventh Amendment right to a jury trial in civil cases. When we decide a case ahead of time, we're stripping that from the jury. And I would argue that the founders who were very insistent upon jury trials...James Madison said trial by jury in civil cases is as essential to secure the liberty of the people as any one of the preexisting rights of nature--very important right that we have. I do think that the issue, I think Senator Ebke's questions brought out what the issue is, and that is that doctors are taught you don't do nonspecific prescriptions. The Legislature can

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establish what a doctor can and can't do, what a pharmacist can and can't do. I would suggest that the change in the bill address that, allow a doctor to prescribe and a pharmacist to dispense the medications as in furtherance of the act without granting any immunity from liability. That way, doctors have that backing that they need that they are allowed to do this, it's within their scope of practice, but they're still required to do it carefully and not without that absence of care. So I'd urge that either the bill be indefinitely postponed or that it be altered to simply prescribe or grant the authority to the doctors and pharmacists to do what the existing act needs. [LB296]

SENATOR EBKE: Senator Krist. [LB296]

SENATOR KRIST: Thank you, Mr. Lindsay. You heard my analogy before about the EMTs and fire departments. Does such language exist to protect that doctor with those drugs that are aboard the rescue squads and the fire departments and the like? [LB296]

JOHN LINDSAY: You mean if the prescription medications were not on hand or were not close by? Is that...your example on AED was it's on the first floor and you're on the 14th floor. [LB296]

SENATOR KRIST: Well, more specifically, you're saying that your change in language would make, continue to make people responsible for the... [LB296]

JOHN LINDSAY: Yes. [LB296]

SENATOR KRIST: ...and make them under normal circumstances not to give the immunity that we were talking about here. But in the situation that we have with all the fire departments being under the license of a physician... [LB296]

JOHN LINDSAY: Okay. [LB296]

SENATOR KRIST: ...those drugs that are being carried in the rescue squads, etcetera, are under his license. And so is there such language that exists in that parallel universe that can be used here? [LB296]

JOHN LINDSAY: The question is I think going back to the elements of negligence: What is the duty that is owed by the doctor? And the doctor, if authorized by statute to prescribe albuterol or EpiPen to a school, is allowed to do that, to... [LB296]

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SENATOR KRIST: To a non-patient-specific (inaudible). [LB296]

JOHN LINDSAY: Yeah, right. And the existing law says to the school or the ESU or...the doctor can do that and is not liable for doing that. The doctor is only liable if, instead of an EpiPen, he prescribes an insulin pen... [LB296]

SENATOR KRIST: Right. [LB296]

JOHN LINDSAY: ...or a technician or a pharmacist. You have to...what drives the liability is the breach of a duty of care. [LB296]

SENATOR KRIST: Got it, thank you. [LB296]

SENATOR EBKE: Any other questions? Senator Baker. [LB296]

SENATOR BAKER: Thank you. Mr. Lindsay, this is a bit of a bird walk. Doesn't really talk about the parts that are changed, it's parts of the law that were already there. Do you think there could be any possibility of someone found having liability if they didn't do anything? Say the school has the EpiPen there. The child dies. The EpiPen was not administered. Is there liability? [LB296]

JOHN LINDSAY: Probably. I mean it would depend on all of the facts, but the question is, if the EpiPen was available, if the trained personnel were available and child is having an episode, that person should be taking action. The...but it would depend on the facts of the case. And regardless, that person does not take action probably indicates a lack of training on the part of the school district. And the school district under what the legal doctors call vicarious liability, and that is the employer...or, excuse me, it's respondeat superior, but it's the obligation of the employer to be responsible for the acts of the employee. That's the theory of why the existing statute is like that. But it would depend on the facts. But in what you just described, yeah, there probably would be at the school district level, not at the employee level. [LB296]

SENATOR BAKER: Thank you. [LB296]

SENATOR EBKE: Any other questions for Mr. Lindsay? Thank you for being here today. [LB296]

JOHN LINDSAY: Thank you. [LB296]

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SENATOR EBKE: Any other opponents? Anyone testifying in the neutral capacity? [LB296]

STEPHANIE MACK: Hey. My name is Stephanie Mack. [LB296]

SENATOR EBKE: Speak up just a little. [LB296]

STEPHANIE MACK: Sorry. My name is Stephanie Mack, S-t-e-p-h-a-n-i-e, Mack, M-a-c-k. And I'm a mother of six and I have a daughter who has asthma and allergies. To be honest, I really wasn't aware that we had an EpiPen and albuterol okayed right now in the system, the school system. The first thing that comes to my mind is I'm a CNA and I administer medication to my clients and if I had a client that showed signs that they were in distress, I am not a doctor and I cannot diagnose what is going on, so my first thought would be to call 911. I wouldn't even make that call. So that always stops me right there, thinking that people are diagnosing whether my child is having an allergic reaction or an asthma attack, when I know my daughter has had such things, you know, not to the severity of having to call 911, but if she had, had something going on, or any one of my children, I would want an expert to deal with that and I would not consider a nurse somebody to diagnose. So I have a problem even getting past the fact that somebody is going to diagnose my child. I can understand the doctor's perspective of not wanting to actually prescribe something like that and, you know, be worried about that. I believe they should be because, if they're wrong and my child is not having an allergic reaction or an asthma attack and they spend, they waste their time administering those medications instead of calling 911, I would definitely seek some kind of legal action because that is time wasted. I mean we've already brought that up that time wasted is very precious and these are people that are trained to bring what is needed to your child, you know. And if there are places in our communities that don't have that service to them, that's where I think that real problem is because, you know, we can only do, as has been pointed out, what we are capable of doing. I would not as a CNA ever make that decision, even if my, you know...even as a nurse I understand that they're not supposed to really diagnose either. So I guess I just have some concern and I just wanted to bring that to the attention of everybody and I appreciate that opportunity. So I can understand why this is such an issue and I would not want to just decide. I wouldn't want to be the doctor saying it's okay, you can use my okay by giving this medication, and I wouldn't want to...as a parent I wouldn't want that done, so I appreciate you listening to my response, to listening to everybody's information. I guess the only way I'd feel comfortable, and still you're not maybe calling 911, is knowing is there going to be a negative effect, if it's not an allergy or if it's not asthma, to the medication, but you're still maybe not calling 911 and that's my real concern. Are we getting the experts there on time? That's how we could lose a child. So thank you. [LB296]

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SENATOR EBKE: Any questions? Thank you for being here today. Guess we're good. Thanks. [LB296]

STEPHANIE MACK: Thank you. [LB296]

SENATOR EBKE: Anybody else in the neutral? [LB296]

VINCENT LITWINOWICZ: Hi. My name is Vincent J. Litwinowicz, V-i-n-c-e-n-t J. L-i-t-w-i-n-o-w-i-c-z. By the way, that was my health aide and good friend and she wanted to see this process and I'm glad. She didn't intend to speak today and that was great. I don't intend to be self-indulgent, but I love this democracy and this is...I'm never going to use this platform again, but I think I'm addressing something fundamental to the underlying problem here. And so I will not do this at any other committee meeting certainly for a long time. But, you know, to...I think there's a fundamental problem in the education of our jurors. And for example, people, minority kids and kids in general that are taught philosophy do much better on their...in whatever evaluation. I can't speak today. Anyway, so what the problem is, we have juries, and I might not...I didn't really form...how is it, you know, when you have lawyers coming at you from each side and you don't have educated people perhaps? And I'm not making fun of them, I'm not...I'm just saying, you know, people are swayed. I mean look what happened in our election. I'm sorry. He's a moron and...not moron, but he's so cruel and bigoted and...so there's a susceptibility here, you know. And you can talk about the law all you want I think is one of the underlying...as I was sitting here and so I have...I guess that's all I wanted to say. So when the lawyers come on each side and, you know, people try to do good, or maybe not, inevitably we have people that have to listen to the arguments that through...as a result of their own or other people's influence, they don't have the real ability to deal with the issue. Anyway, thank you and I appreciate it. And if I speak again this year, it will just be on the issue. But thanks a lot. [LB296]

SENATOR EBKE: Thank you. See if there's any questions. Anybody have any questions? [LB296]

VINCENT LITWINOWICZ: All right. [LB296]

SENATOR EBKE: Okay, thank you very much for being here today. Any others in the neutral? Senator McCollister, would you like to close? [LB296]

SENATOR MCCOLLISTER: Yes, ma'am. I would like to thank Mr. Lindsay, Mr. Schaefer, and, of course, Senator Chambers, for furthering my legal education. The language we employed in this bill actually came from a previous bill so it's nothing new, but we're simply extending that

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immunity to the physicians. Senator Krist identified the problem that we need to deal with. It is a problem and, you know, we perhaps need to make some accommodations in this bill to move it forward. I'm willing to do that. What we're actually looking to do is to, you know, put into statute something that protects the student but yet gets doctors to prescribe. And that's the objective and I'm willing to work for that objective. [LB296]

SENATOR EBKE: Okay. Any final questions? Senator Chambers. [LB296]

SENATOR CHAMBERS: Allow the physician, the healthcare professional who will prescribe, and the pharmacist who will dispense the non-patient-specific medication to these entities to do so and the mere doing of that, it does not create liability, they are allowed to do that, but the liability comes if they violate the due care responsibility they have in carrying that out. The way the language goes now, they don't have to exercise due care anywhere along the line. It can be so careless that it goes beyond mere carelessness and becomes willful and wanton. And the problem when you take language from one area of the law and put it into another, the circumstances where it first comes from will be different from the circumstances where it is being imposed. There is a much higher standard of care on a doctor who is training than on a civilian who is acting as a good Samaritan in doing the best he or she can do under the circumstances. But even when it comes to being a good Samaritan, you cannot behave in a way that a reasonable person behaving as a good Samaritan, without medical training, would have behaved in a situation like that. So it wouldn't be that difficult to resolve this, I don't believe, and I'm willing to work with you on it. Nothing is wrong with what is being attempted here but the way that the bill goes about it is not what I think is the best way to do it. That's what I was aiming to establish, but I think a way can be found to do what you want to do. [LB296]

SENATOR McCOLLISTER: Thank you, Senator Chambers, and I'm willing to make that effort. Thank you. [LB296]

SENATOR EBKE: Okay, so, Senator McCollister, Senator Chambers, if you would work with committee counsel and we'll see if we can get the language cleaned up before we Exec on this bill. Okay? We have a few letters. That will close the hearing on LB296 and we're going to...just for everybody's information, I'm going to read letters into the record, additional names, but we are calling an audible because Senator Pansing Brooks has some folks testifying from out of state and we want to help them get on the road, so we are switching up number three and number four on the... [LB296]

SENATOR PANSING BROOKS: It was out of town, I'm sorry. I just want to be clear so people don't get... [LB296]



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SENATOR EBKE: Oh, out of town, okay. It sounds better if they're from out of state. [LB296]

SENATOR PANSING BROOKS: That's true but I didn't want people to go... [LB296]

SENATOR EBKE: (Exhibits 1-6) (Laugh) Okay, LB296, letters for the record: Wendy Rau from the Nebraska School Nurse Association; Dr. Allison Dering-Anderson on behalf of herself, a pharmacist; Kurt Schmeckpeper, Nebraska Academy of PAs; Julia McCarville, the American Lung Association; Robert Hallstrom, the Nebraska Pharmacists Association; and LeAnn Holmes, Nebraska Nurse Practitioners, all in support. Thank you all for coming. This closes the hearing on LB296. And, Senator Pansing Brooks, LB158. [LB296]

SENATOR PANSING BROOKS: (Exhibits 1 and 2) Okay. Thank you, Chairman Ebke and fellow members of the Education (sic) Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here to introduce LB158 today to assure that all juveniles who go to court are represented by an attorney regardless of where they live in Nebraska. Specifically, LB158 establishes that when any juvenile petition is filed, counsel shall be appointed for such juvenile. My education and experience as an attorney has showed me that the right to counsel is one of the most basic rights of our entire legal system. This is a big year. Fifty years ago this year the United States Supreme Court extended the right to counsel for juveniles in In re Gault. The court stated that youth need the "guiding hand of counsel" to navigate the complicated legal system. Writing for the majority, Justice Fortas famously wrote, "Under our Constitution, the condition of being a boy does not justify a kangaroo court." Despite this ruling, there remains a wide gap in juvenile access to counsel across our state. Last interim we did a study looking at access to counsel. We learned more facts that make the need to move forward this session imperative. According to Voices for Children data, a mixture of urban and rural counties like Douglas, Cherry, Garden, Sarpy, and Knox, are providing counsel 100 percent of the time or nearly 100 percent. I would also like to emphasize that many of these counties are providing counsel despite a low number of attorneys. For instance, Cherry County has only 2.1 lawyers per capita yet has an 80 percent appointment rate. And drive times in that county are probably larger than anywhere else in the state. Dundy County has only 1.1 lawyers per capita but also has a 100 percent appointment rate. So many Nebraska counties have a lot to be proud of, but in other counties the percent of juveniles with counsel is very low, some as low as 0 percent. A map and spreadsheet showing access to counsel is being provided to you so you can see how each county scores. That a child's access to counsel is dependent on where they live just isn't acceptable. Why should a child in one part of the state have less legal protection than a child in another? Why should one child have their constitutional rights guaranteed while a child in another does not, especially when we consider that there are real consequences for a child who does not have counsel? Some mistakenly think that the charges and consequences for juveniles are minor. That is not so. I need to explain briefly why assuring that juveniles get attorneys is so critical. No charge is minor. The juvenile court system

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has two tracks. One track deals with issues under 3(a) that go down the track of child welfare and is under the purview of HHS for abuse, neglect, and trafficking cases. The child under these cases is treated legally as a victim. The second track is the one within the juvenile justice system. It includes probation and diversion. Under that juvenile justice system, a court has the entire panoply of dispositional options available including detention and/or out-of-home placement for any matter--again, I repeat, any matter. A child may be taken out of their home for something even as insignificant as an MIP if the facts surrounding that child's case so warrant. On the juvenile justice side, if the charge is small enough, the county attorney does have the discretion to refer the case to diversion without going to the court at all. Such a decision is far less costly to the county and infringes less on a juvenile's rights. No county attorney is required...oh, no attorney is required for the child at that point if the county attorney sends the juvenile straight to diversion without filing a charge. If the county attorney, instead, chooses to file charges, even if he or she later decides to offer diversion instead, that child needs an attorney. They're going to court and could have a determination that they be placed out of their home. Anytime a child must appear before a court, it is necessary for them to be represented by counsel. If a county attorney believes that the case is serious enough to warrant being in the juvenile court where anything can happen to that juvenile, then the case is serious enough for that child to have a lawyer. In our justice system, an adult gets a lawyer if there is a chance that their liberty can be taken away. Even if a charge could result in just one day of jail, an adult is offered a lawyer. In juvenile court, charges aren't linked to sentences in the same way. Regardless of the charge, the judge has every option open to him or her in sentencing. This is why it is so important for kids to have representation. In 2008, the Legislature, recognizing that Nebraska's juvenile indigent defense system was in serious need of attention, commissioned a \$250,000 study of the system. I have provided an executive copy of the report--it's 240 pages, the real report--but I've given you an executive copy of the report for the committee. That \$1.4 million study used assessment watch procedures in court. The executive summary, on page iii, shows that the very first, the first of the...excuse me, I want to get to it. The first of the recommendations, the significant findings of...the first of their most significant findings was that in Nebraska there is excessive waiver of counsel. And you should have that before you. The report looks like this. Do you have that, I hope? Yeah, okay. So they found that in some parts of the state, 60 to 75 percent of youth waived the right to counsel and that youth are encouraged to do so by a combination of individual and systemic factors. The report states, "In the counties with high waiver rights (sic: rates), assessment team investigators observed practices by judges that subtly encouraged youth to waive counsel--for example, giving youth the impression that children who waived counsel would be treated more leniently, or arranging the docket so that the cases of youth who will waive counsel are heard first, and the youth who follow are encouraged to waive by (the) example of the earlier cases. Parents also encourage youth to waive counsel, sometimes applying substantial pressure." One case mentioned in their report was especially troubling to me: A 17-year-old boy appeared before the court with his mother accused of a minor drug charge. In front of the packed courtroom, the judge asked if he understood the rights given to the group at that

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day's mass arraignment. The youth answered yes. The judge then told him he had the right to request the case be transferred to juvenile court. The youth said he didn't think he wanted that. The judge then advised him again and said he had the right to counsel, and the juvenile decided to proceed without counsel. The court entered a guilty plea. The entire exchange happened in about three minutes. Once the youth had pled, the judge proceeded to disposition, and asked the juvenile if he had planned to go to college. The youth answered yes, and named his top school choice. The judge said then, "You realize that you have now lost any ability to receive federal funding for financial aid because you just pled guilty to a drug offense." There was an audible gasp of shock from both the youth and from the people waiting for their cases to be called. Clearly, the complexity of the criminal justice system means that we all need lawyers but specifically children need them. That is why I brought LB158: because these kids do not have a grasp of our legal system and the rights that they have because they are kids. I know some counties that are not providing counsel or expressing concern that this may be an unfunded mandate. I would argue against this in the strongest terms. The constitution already requires that counties provide these counsels so the state isn't mandating it. The fact that some counties are not currently doing it means that they have been living off the fat of the backs of the kids. Counties shouldn't expect to receive a windfall based upon the deprivation of a constitutional right. The Fourteenth Amendment guarantees...the right to counsel established in Gault did not say the right could be denied if it increased county budgets. In fact, it said that counsel should be provided at no cost to the juvenile if finances are an issue. When children are charged, it naturally incurs a number of costs. The price of an attorney is a cost of doing business. A county attorney cannot charge at whim and have the county expect that the person charged won't have legal defense. The counties are absorbing costs to charge adults because they recognize these as the cost of doing business. Money could certainly be saved by the counties if they didn't provide these attorneys for adults, but no one would suggest that. The idea of depriving an adult of their constitutional right to an attorney would be considered preposterous. Counties know that depriving adults of constitutional rights would initiate costly lawsuits against the counties. If children fully understood their rights, counties are currently at the same risk. I would argue that if counties don't have enough funds to provide for adequate defense, then they do not have enough money for a true judicial system. Courthouses would need to be closed. Systematic deprivation of constitutional rights exposes counties to significant lawsuits; however, I am not unsympathetic to the struggles of our counties and that they have to provide services while keeping property taxes from increasing. LB158 addresses this concern by stipulating that if the court ascertains that the juvenile and his or her parent cannot afford an attorney, the court shall continue the appointment of counsel. So if the family can afford counsel, the family pays for it. Again, if they can afford counsel, the family would pay for it. Further, there are resources for the counties to apply for if they do need financial assistance. For instance, the counties are eligible to pursue funds from the Commission on Public Advocacy for indigent juvenile defense. But once again, the issue is really our children. Even more than adults, the children need help in navigating our complicated justice system and the constitution requires it. In closing I would ask

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you to vote for LB158 out of committee. And with that, I'm happy to answer any questions.  
[LB158]

SENATOR EBKE: Senator Krist. [LB158]

SENATOR KRIST: Is this the same bill you brought last year? [LB158]

SENATOR PANSING BROOKS: It's just a little bit different because we've included the payment by the...if the families can afford to pay, that they will pay it and... [LB158]

SENATOR KRIST: So just to put it on the record, I supported it last year, two years ago. We had some issues with on the floor and I think we can anticipate the same issues again and I'd be more than ready to help in any way. My involvement is well known with juvenile justice and JDAI. And one of the principles is no child should have justice by geography. [LB158]

SENATOR PANSING BROOKS: No. [LB158]

SENATOR KRIST: That's a principle of Annie E. Casey; it's a principle of JDAI. And, you know, parents are also not suitable substitutes for good legal counsel. [LB158]

SENATOR PANSING BROOKS: No. [LB158]

SENATOR KRIST: So thanks for bringing it again. [LB158]

SENATOR PANSING BROOKS: Thank you so much, Senator Krist. And again, in the interim we did do this study and so it shows we have much more information than we did last year during the session, so some of that information will be coming forward. We have a lot of advocates that are supporting this. The Children's Commission is making it one of their priorities, which we're grateful for. And, Senator Krist, your advocacy is well known and there are so many people grateful for that. It's important work that you do. Thank you. [LB158]

SENATOR KRIST: Thank you. [LB158]

SENATOR EBKE: Any other questions at this time? Okay, you'll be here? [LB158]

SENATOR PANSING BROOKS: I will. [LB158]

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SENATOR EBKE: Okay. First proponent. [LB158]

JULIET SUMMERS: (Exhibit 9) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the policy coordinator for Voices for Children in Nebraska and I'm happy to be here supporting this bill today. Because every child in Nebraska deserves equal protection under the law, we believe that this bill, which is an extension of last year's bill and which we also supported last year, would ensure that youth across our state have meaningful access to one of the great protections of the American justice system, the constitutional right to counsel. We believe that this protection is especially important for children who may by their age fail to fully comprehend the grave nature of the legal actions or of their own actions, the complicated legal proceedings against them, and the potentially life-altering outcomes. So as the senator mentioned in her opening, I think sometimes juvenile court can be perceived as kiddie court or diversionary in nature, but it's a full court proceeding that results in charges on the record that can result in an adult record that may or may not be sealed and is there following the child for the rest of their life. And though it's rehabilitative in nature, juvenile court judges have actually many more options at their fingertips for how to respond to a child's behavior or their charge in the juvenile court. So this means a lower reliance on incarceration, which is a good thing for kids. But it also means that even those very minor-looking charges, like MIP or like shoplifting, can give rise to any sort of outcome. So that could include confinement; it could include incarceration in a jail-like detention facility; removal from the family home or placement in a long-term group home; being placed on probation for an indefinite number of years up to the age 19; or even commitment to the youth rehabilitation and treatment centers. So the senator is absolutely right to say that there is no such thing as a small charge in juvenile court. There's no small or big charge. The judge has every option. And I would note that in this regard, after the trial phase, juvenile courts are relatively unbound by the rules of evidence. So in a dispositional hearing, which is like sentencing in the juvenile court, the judge has a lot of latitude to make decisions about treatment or placement based on any kind of evidence, including hearsay evidence. So a psychiatrist can make written recommendations, without appearing in court, recommending the child be placed on psychotropic medication or committed. The probation officer can come to the judge without even having a hearing and say, hey, this kid needs to be picked up for safety and sent to detention and then the youth can be held in detention for an indefinite length of time; there's no set sentence in the juvenile court. So those examples are permissible because the purview of the juvenile court is in the best interest of the child and the judge may well find that those decisions are in the best interest of the child. But I have to ask, would you want to face such a proceeding yourself without a lawyer at your side, and would you allow your child to? I know that I wouldn't. So what does the data show about this? Unfortunately, as the senator noted, the data when you look at it county by county makes clear that youth across our state are not getting the same access to this important constitutional protection of having a lawyer to guide and assist them through a complicated process. The second or third page that you have of my testimony is a map of

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Nebraska broken down by county and the rate of access to counsel. So you can see that even though in every case, because it exposes the child to out-of-home placement or incarceration, in every case the child is entitled to the right to counsel, they're not necessarily getting meaningful access to that right the same way across the state. So how and when the judge asks the question do you want a lawyer, whether the right is adequately explained to the youth or not, or the pressure applied to take the lawyer or not to take the lawyer, that can affect the rate at which children take up that right. And as you can see, this is not an urban versus rural issue; this is not separate juvenile courts versus everywhere else. Counties right next-door to each other can vary as much as 100 percent in how many kids are actually getting a lawyer, and this bill would ensure that every child coming before the juvenile court gets that constitutional protection to which he is entitled. I've got my yellow light on so I'm going to skip ahead a little bit in my testimony and say I know there is discussion about cost, there is concern about cost. I would note that lawyers do have costs but they also can produce savings. So the final page of my document is an infographic that compares the cost of one night in a secure detention facility to an hour of a lawyer's time. And we did some of the math on this and found out that if a lawyer takes even, like, two hours to file a motion getting the case into court sooner, if they can get that case in sooner by one day, they save the county \$45. If they get the case in sooner by a week, it's \$1,400. So I would put that information out there for you as well. And then I've got my red light, so I'd be happy to answer any questions. [LB158]

SENATOR EBKE: Any questions for Ms. Summers? Senator Hansen. [LB158]

SENATOR HANSEN: Thank you, Chairwoman Ebke. And, Ms. Summers, not a question but answering your question, I am an attorney and if I was charged with a crime I would hire an attorney who's better than I am. (Laughter) Thank you. [LB158]

JULIET SUMMERS: Thank you, Senator. [LB158]

SENATOR HALLORAN: That's a pretty humble statement. [LB158]

JULIET SUMMERS: I am an attorney, as well, and my background is in juvenile defense and criminal defense and I would still not represent myself or my own child. I would hire an attorney better than myself as well. [LB158]

SENATOR EBKE: Senator Halloran. [LB158]

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SENATOR HALLORAN: Thank you, Senator Ebke. I'm not sure if you're the right person to ask this question, but how does the court decide whether or not the guardian or parent are financially capable of paying? [LB158]

JULIET SUMMERS: Yeah. Senator, I have some experience with this in Douglas County, which is where I practiced. So Douglas County has had a court rule in effect since 2011 to do exactly what this bill would do statewide; to say as soon as paperwork is filed in juvenile court I'm going to appoint a lawyer without asking at that moment if the family can afford it or not. I'll go ahead and appoint the lawyer. Everyone comes into the first appearance and then the judge asks the family if the child wants to keep that lawyer appointed and, if they do, if they say yes, then the judge asks them to fill out a financial affidavit form showing their ability to afford counsel or not afford counsel. In my experience as a public defender, so I would be appointed, you know, a few weeks ahead of the first appearance, I don't think I had a single case where it turned out the family was able to pay on their own. Many of the youth coming before the juvenile court do, and their families would qualify for that indigency finding. But I do think that the language the senator has included this year provides a protection so that if there is a child charged who has the ability to pay or their family has the ability to pay, that the juvenile court and the county wouldn't be on the hook for it. [LB158]

SENATOR HALLORAN: Okay, thanks. One more question. "If the parent or guardian willfully refuses to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney," yada, yada, yada. So if there's contempt filed on the parent, will the court issue the parent an attorney as well? [LB158]

JULIET SUMMERS: I don't have a good answer for that, Senator. I've never...I've never seen that operate in my experience. [LB158]

SENATOR HALLORAN: Purely a hypothetical but I just thought I would... [LB158]

JULIET SUMMERS: I do know that when this...so LB894 was last year's bill and it rolled out...after some amendments on the floor, it extended exactly what this bill does but only to the three largest counties in Nebraska with populations over 150,000. And I know that there's been discussion among the Lancaster County bench about that particular question. And I know we have some letters of support from Lancaster County judges and presumably we could follow up and ask them how they've ended up with that. [LB158]

SENATOR HALLORAN: Don't want to hog my opportunity, but one more question if it's okay, and if you want to defer that to someone else that's testifying later that's perfectly fine. And I understand if Senator Chambers were here and I said unfunded mandates, we would go into

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another dialogue. But is there any estimation? I mean we don't have a fiscal note on this because it's not coming out of the state funds. But is there any estimation of what that might cost, say, some of the larger counties, for example? [LB158]

JULIET SUMMERS: Well, it depends on sort of two factors. So the first factor is the average appointment rate per hour for attorneys in that district or county, and that does differ across the state. So for our infographic that we made, we did a very informal survey of lawyers and found lawyers across the state getting different rates: anywhere as low as \$50 per hour up to \$100 was the most. So that's one factor. And then the other factor, of course, is the number of cases... [LB158]

SENATOR HALLORAN: Cases. [LB158]

JULIET SUMMERS: ...that you could expect. [LB158]

SENATOR HALLORAN: Right. [LB158]

JULIET SUMMERS: And that's dependent on the county attorney; it's dependent on practices about whether diversion is offered to more youth or fewer youth, more youth are brought into the court system. So it's...I think...I don't have a good answer for you but it would be dependent on those two factors. [LB158]

SENATOR HALLORAN: Okay. The only reason I asked that is because the counties have to have budgets as well, right? And so as hard as it is to project something like that, it might be helpful to at least make a rough estimate so that there are some means of measuring that, however rough that estimate might be, because they have to do budgets as well in advance. [LB158]

JULIET SUMMERS: Um-hum. [LB158]

SENATOR HALLORAN: So thank you very much. [LB158]

JULIET SUMMERS: Yeah, absolutely. [LB158]

SENATOR EBKE: Any other questions? Senator Krist. [LB158]



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SENATOR KRIST: On the subject of the fiscal note, the state, our Fiscal Office is the one that we particularly pay attention to. But we do have Lancaster County reporting they're already doing it, so they project nothing in addition to it. My suggestion would be, if this is important to us in terms of walking through it, that Lancaster, Douglas...and who else is it? [LB158]

JULIET SUMMERS: Sarpy. [LB158]

SENATOR KRIST: ...Sarpy, any one of those counties, I think, can give you a rough projection of what that dollar amount looks like. You can extend it by population or, if you look at the map, I mean we could make...Cherry County could give us an estimate because they're at 100 percent, I think, as is Douglas, so I think that's an easy way to drill down to get the answer. [LB158]

JULIET SUMMERS: Yeah. I think it's hard, too, because it involves dynamic forecasting. So as I noted, lawyers come with costs but they also come with savings. [LB158]

SENATOR KRIST: Right. [LB158]

JULIET SUMMERS: If you, you know, you pay the lawyer up-front and it turns out it's a no-good charge and the lawyer gets the county attorney to dismiss it, all those costs are saved. If the lawyer is able to fight and keep the kid out of detention or out of out-of-home placement, those costs are saved. So it's a little bit hard to say it's just a one to one. And again, I would also note that the constitutional right already exists, you know, so kids are entitled to a lawyer. If I went around the state and told every kid in every courtroom say yes when they ask, there would be no fighting that because the entitlement is there, the right is there. The issue that this bill seeks to address is the fact that different practices in different jurisdictions, you know, or kids' lack of understanding of that right can mean that they give up this really powerful protection that they already have. [LB158]

SENATOR KRIST: So one other question, if I might, one point of clarification: Can I look at this map and say that every jurisdiction that currently has a separate juvenile court is already complying with this? [LB158]

JULIET SUMMERS: Yeah, so I apologize, I should have mentioned this in my testimony. This map is based on 2015 data so it does not reflect the change to the law last year and it doesn't reflect...we also know there are some judges in rural parts of the state who, after seeing what happened with the bill last year, said, hey, we're going to step up and do this because it's the right thing for kids. So it also doesn't reflect changes that are already happening in some counties. As

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soon as I get the 2016 data I will update this map and share it with this committee and with the body but we just didn't have those numbers. [LB158]

SENATOR KRIST: Hopefully you can do that before the floor debate. That would be very helpful. [LB158]

JULIET SUMMERS: Yes. Well, that's a...we'll take it up with the Administrative Office of the Courts. [LB158]

SENATOR KRIST: Oh, okay. (Laughter) [LB158]

JULIET SUMMERS: Get us your data! (Laugh) It's from a really wonderful statistical annual report that they do. [LB158]

SENATOR EBKE: Okay. Any other questions at this time? Okay, thank you. [LB158]

JULIET SUMMERS: Thank you, Senator. [LB158]

SENATOR EBKE: Next proponent. [LB158]

BETH BAXTER: (Exhibit 10) Good afternoon. Chairman Ebke and members of the Judiciary Committee, my name is Beth Baxter, B-e-t-h B-a-x-t-e-r, and I am testifying in my capacity as the chairperson of the Nebraska Children's Commission in support of LB158. The Nebraska Children's Commission is a high-level leadership body created in 2012 by the Nebraska Legislature for the reform of juvenile justice and child welfare systems and programs, and has made recommendations related to legal counsel for youth involved in the juvenile justice system. The following recommendations reflect the commission's work on this important issue, and are provided for your consideration. We have two recommendations that we've brought forth that are related to this issue. The first recommendation is a change in statutory language to require that all youth have legal counsel and appropriate, adequate funding for this requirement; and, as been stated before, concerns raised that the funding for youth counsel would be maintained at the county level. The Children's Commission has consistently recognized increased access to counsel for children as essential in improving the well-being of children and families. The juvenile services committee of the Nebraska Children's Commission first identified youth access to counsel as a cornerstone of meaningful juvenile justice reform in its 2013 report. This recommendation was created with representation from the Department of Health and Human Services, their Office of Juvenile Services, the Administrative Office of Probation, representatives of the juvenile court bench, child and family service providers, the University of

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Nebraska, we had a detention center involved, and many other juvenile justice stakeholders. The second recommendation is to increase youth access to legal counsel to ensure that the youth's legal rights are protected. And I think that's been articulated very well this afternoon. The Children's Commission also recognizes that it's important for youth to have legal counsel so that their rights are protected. Many system-involved youth feel at some point in their case that their rights have been violated. Effective legal counsel can address the youth's concern and assist the youth as necessary if youth need assistance in navigating the legal system, understanding the process that they're involved in, and what action to take if the youth believes that their rights have been violated. The recommendations are provided for your consideration as you deliberate this important issue. The Nebraska Children's Commission, we're available as a resource to you on all issues related to juvenile justice and child welfare reform. Thank you, Senator Pansing Brooks, for your leadership on this issue and your service to the Children's Commission--we greatly appreciate it--and, members of the Judiciary Committee, for your time and consideration. I would welcome any questions that you might have. [LB158]

SENATOR EBKE: Does anyone have any questions for Ms. Baxter? Okay, thank you for coming this afternoon. Next proponent. [LB158]

MARGENE TIMM: Good afternoon as we go into the evening. I'm Margene Timm, M-a-r-g-e-n-e, last name Timm, T-i-m-m. I'm an attorney in the Lancaster County Public Defender's Office. I'm the juvenile division supervisor. I'm here testifying on behalf of my office as well as the Nebraska Criminal Defense Attorneys Association. I'm an attorney who is in the trenches. I'm in court every single day. I'm representing juveniles. I believe there's a letter from Judge Heideman, who is one of the Lancaster County juvenile judges, that's been submitted to this committee. Some of the observations he makes are some of the same that I am seeing as a defense attorney in juvenile court. LB, I believe it was LB894 last year, required Lancaster County to start appointing attorneys at the time of filing. At that time, according to the statistics from the Voices for Children, Lancaster County only was providing attorneys in 63.2 percent of the cases. That's much lower than either Douglas or Sarpy County. They were both over 90 percent so we had a lot of catching up to do as we implemented the changes. We've seen a number of benefits or improvements. First of all, there's been a reduction in the number of hearings. With attorneys being appointed right out the bat, getting discovery, meeting with the clients, that first hearing is now what used to be the second hearing. The juveniles are prepared to make decisions and move forward, whether that's to waive the right to an attorney, admit to the charge, enter a denial, and get it on a trial list. Another advantage or improvement that we've seen is that more families are actually appearing for that first court hearing, again saving cost to the counties with service, saving additional court time, saving the parents from taking off multiple times from work, juveniles from school. They're appearing for that first hearing and part of that is because, as soon as we get appointed in a case, we reach out to the family. We notify them. We try to get them in so we can interview them and prepare for that hearing. We have contacted families who were

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unaware yet that they even had a juvenile court filing, so the impact of talking to an attorney is a strong reminder that you've got a court case, you need to come into court. But of course the biggest improvement in my opinion as a defender for juveniles is that the juveniles, when they comes into court, they have a better understanding of the process. When they appear for their first appearance, many times, that's a mass or a group arraignment. There can be anywhere from four juveniles with their families up till eight or ten. The judge can talk fast, he uses big terms, he uses legal terms. When you have the ability to sit down with an attorney one on one, that attorney is going to explain the juvenile court process in developmentally appropriate language in a way that the juvenile can understand it. The juvenile also has a chance to discuss the merits of their case so that they can make an informed decision when they go into court as to how they want to proceed. To echo what Senator Pansing Brooks said is that a juvenile in Norfolk or Holdrege should have the same right to early access to counsel as a juvenile in Omaha or Lincoln. Our office has seen some of the negative effects and the collateral effects that have come from juveniles not having an attorney. Cases can be transferred to Lancaster County if the family moves to Lancaster County. Last year in March of 2016 we were appointed on a case where the boy was 13. He was a month from turning 14. At that time he had already had nine separate cases involving 12 counts. He was 11 years old when he first appeared in juvenile court. The first hearings he did have an attorney but after that he waived; he never had an attorney for any of the subsequent filings. He now has many adjudications on his record, including three felony adjudications, he's been detained multiple times, he's been in out-of-home placements. We've represented another youth who was in the juvenile detention center on a contract county. When I went to visit that youth on a charge for an incident in the detention center, he had been there two months. He didn't have an attorney. He told me that he had no visitors, that he hadn't had a detention hearing. Well, he told me he'd talked to his OJS worker which would now be equivalent to a probation officer before the change in the law. It turned out that he did have a detention hearing but it was by phone. He didn't even realize that. I helped this youth fill out a right to an attorney form and I had the detention center fax it to the clerk of the county court, the juvenile division, for this youth. That got the case moving, not in the way I had hoped, but they transported him to a hearing where he was still not given an attorney and he was subsequently sent to the YRTC facility. As Senator Pansing Brooks pointed, any case can result in detention, out-of-home placements. The most minor cases that I've been appointed on, minor in possession of tobacco and littering, those can have the same consequences. I would urge this committee to support LB158 and to pass it out of committee so that all juveniles have equal access to justice. [LB158]

SENATOR EBKE: Thank you, Ms. Timm. Any questions? Senator Krist. [LB158]

SENATOR KRIST: If Senator Pansing Brooks doesn't get a copy of this transcript and read it on the floor, I will, because someone who is in the trenches, who sees what happens after you made the change and went from 65 percent to where you've come to today, that's testimony that it

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works and it's a perfect example of dynamic fiscal notes because the reinvestment and putting somebody there is both saving us money and saving us kids. Thank you very much for your testimony. [LB158]

MARGENE TIMM: I think Judge Heideman's letter also makes note that, as of now, six months into it, they have not seen any budget impact as well. [LB158]

SENATOR KRIST: Thank you very much. [LB158]

SENATOR EBKE: Any other questions? Thank you for being here today. Next proponent. [LB158]

KIM HAWEKOTTE: (Exhibit 11) Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I am the executive director of the Foster Care Review Office and we are here in support of LB158. You will be handed out my testimony because we really felt that it's very important that we talk about a little about the number of youth that we are dealing with. Really when it comes to probation youth, probably the hardest thing we can do for them is placing them out of home. And so we need to know how many of these youth are actually being placed out of home. This document shows that as of January 24 of this year, when it comes to probation youth, delinquent and status youth, we have 958 youth in out-of-home care. You will notice the next chart really looks at the age of those youth. Please pay close attention to 14 percent of those youth are 14 years and under. There's one 9-year-old, there's two 11-year-olds, there's eight 12-year-olds that are being placed out of home in our delinquent and status system. We also have it broken down in this chart by areas of the state because some people will say, well, it's mainly in the urban areas not in the rural areas. You will notice that in the western service area they have 93 youth in out-of-home care through probation alone; this is not counting HHS. On the second page we do also then have it broken down by gender of the youth, and I don't think it's surprising that about two thirds are male and a third are female. But most importantly to us is actually looking at the placement type of these youth because both from what's in the best interest of these youth but also from a fiscal standpoint we have to know where they're placed and how much they're costing. You will notice currently in the state we have 336 kids in a group home in some type of congregate care. I can tell you through our work we do not have that many group home beds in the state of Nebraska, so that means many are being placed out of state. Most group home rates run anywhere from \$100 to \$150 a day. Also note that when it comes to PRTF, those are treatment-level facilities. Most treatment-level facilities cost between \$300 and \$400 a day and we have 97 youth in the state in that. So the impact of not having counsel we feel can be directly shown by the number of youth we currently have in out-of-home care. I do agree with Margene that, if we have counsel at the very beginning, we can keep these youth from going deeper in the

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system than they need to go to because we know the expensive cost of what happens and we should not have 958 youth in out-of-home care in our delinquent and status system. So in our opinion, and thanks to Senator Pansing Brooks, we need to continue forward with this bill. I do agree with Senator Krist that justice by geography does not work. We need justice for all of our youth and we really do need this. So I am open for any questions and you can read the rest of my testimony. I know the afternoon is getting late. [LB158]

SENATOR EBKE: Thank you, Ms. Hawekotte. Any questions? Senator Chambers. [LB158]

SENATOR CHAMBERS: Sorry I was away. I was doing something. But I'm Senator Pansing Brooks's godfather and I'm very proud of my goddaughter. [LB158]

KIM HAWEKOTTE: I...(laugh) I'm hoping you want no comment to that. Correct, Senator? (Laughter) [LB158]

SENATOR CHAMBERS: (Inaudible.) [LB158]

KIM HAWEKOTTE: Okay. [LB158]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB158]

KIM HAWEKOTTE: Thank you. [LB158]

SENATOR EBKE: Next proponent. [LB158]

SARAH HELVEY: (Exhibit 12) Good afternoon. My name is Sarah Helvey; that's S-a-r-a-h, last name H-e-l-v-e-y, and I am a staff attorney and director of the child welfare program at Nebraska Appleseed. And as others have stated, youth in delinquency proceedings with a liberty interest at stake have a right to counsel under the due process clause of the Fourteenth Amendment. This right must be available to all children in Nebraska. Therefore, we support LB158 because we believe it will help Nebraska meet its constitutional obligation and we believe it tracks national standards. I'll keep my testimony brief today so as not to be repetitive. I do want to note one aspect that has not been highlighted up to this point and that is that we support a particular provision of LB...we're supportive of the bill overall but wanted to point out the provision that requires standards for guardians ad litem and all attorneys who practice in juvenile court to be reviewed periodically and maintained by the Supreme Court. We think it's important that those standards are reviewed as the system evolves and to ensure issues are addressed and want to note that I'm currently serving as the cochair of the subcommittee on juvenile defense standards under

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the Supreme Court Commission on Children in the Courts. However, I am testifying today solely in my capacity on behalf of Nebraska Appleseed. But I did want to note that a subcommittee was created at the children...at the commission's June 2016 meeting and will be holding calls bimonthly to make recommendations to the commission for their June 2017 meeting under the existing language of the statute. But as Nebraska Appleseed, we support the provision that would continue to review those standards both for guardians ad litem and for all attorneys in juvenile court. Again, we think this is really important. The right to counsel must be available to all children. We want to thank Senator Pansing Brooks and this committee for your efforts on behalf of children in Nebraska. And we respectfully request that you vote to advance LB158 out of committee. [LB158]

SENATOR EBKE: Thank you, Ms. Helvey. Any questions? None from the godfather? (Laughter) Okay. Thank you. Next proponent. [LB158]

CHRISTINE HENNINGSEN: (Exhibit 13) Thank you. Good afternoon. Chairperson Ebke and members of the Judiciary Committee, my name is Christine Henningsen, C-h-r-i-s-t-i-n-e H-e-n-n-i-n-g-s-e-n, and I'm an attorney at UNL Center on Children, Families, and the Law. I direct a project there focused on supporting and enhancing the practice of juvenile defense called Nebraska Youth Advocates. I also practiced juvenile defense in Douglas County for five years in the public defender's office. As Senator Pansing Brooks noted, this year we're celebrating the 50th anniversary of the United States Supreme Court decision in In re Gault. And it's a good time to take a step back and see how well we are carrying out the promises that are included in this important decision. Children in juvenile proceedings must be provided due process rights, including the right to counsel, the right to remain silent, the right to notice of charges against them, and the right to cross-examine. In re Gault involved the case of 15-year-old Gerald Gault who, as a result of a complaint from his neighbor of a lewd phone call, was detained, found delinquent, and committed to the state industrial school, all without being afforded an attorney. I want to highlight a few of the key findings in this case which are applicable to this bill. First, the Gault court made it clear that all youth who are involved in a juvenile court on a delinquency or status offense in Nebraska have the right to an attorney. Specifically the Gault court found that no matter how euphemistic the title of a receiving home or industrial school or, in our case, a group home, these are all institutions of confinement and when there is a proceeding where the issue is whether the child will be found delinquent and subjected to the loss of liberty in one of these institutions, it's comparable in seriousness to a felony prosecution. Every child in juvenile court is facing out-of-home placement. Indeed, a case referred to in the Inspector General of Child Welfare's report in 2014-15 indicated there is a case where a youth had been involved in the juvenile justice system for six years and sent to the YRTC's two times without any legal representation. Second, the Gault court further found there is no substitute for a child's attorney. Specifically they said a probation officer cannot be the child's attorney, nor can a judge be the child's attorney. The juvenile needs the assistance of counsel to cope with the proceedings to

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make...to cope with the problems of law, to insist upon regularity in the proceedings, and to ascertain whether he has a defense and to prepare and submit it. This is not to doubt that other individuals involved in the case have the juvenile's best interest at heart. But they cannot fill the unique role which children need to navigate the complex system of juvenile court. Third, the Gault court pointed out that children are often easy victims of the law and special care is required when examining admissions or confessions of our children. The court warned that what is required to ensure fairness to children, if we do not do what is required to ensure fairness, we encounter instances that might have been avoided of unfairness to individuals, inadequate or inaccurate findings of fact, and unfortunate prescriptions of remedy. The same is true when we discuss whether or not a child truly understands what is involved in the decision of whether or not to waive their right to counsel. When you have a county like Scotts Bluff County with 276 cases and a 35.1 percent appointment rate and a neighboring county like Cheyenne with 43 cases and a 76.7 percent appointment rate, there is a disconnect and it warrants further investigation into whether there are processes there such that youth are not truly making a knowing and voluntary waiver. This bill protects us from that danger. The U.S. Department of Justice recommends that in every case a child has an opportunity for meaningful consultation with an attorney before making the decision. It is the right thing to do. It's a constitutional right which goes along with every case that the county attorney decides to file in juvenile court and the county must be able to fulfill that right in order to protect due process rights for our children. I'd be happy to answer any questions that the committee has. [LB158]

SENATOR EBKE: Any questions? I have one. [LB158]

CHRISTINE HENNINGSEN: Yeah. [LB158]

SENATOR EBKE: Okay. If you look at the disparity between counties, especially once you get into more rural areas, how would you explain jurisdictions within the same judicial district, counties within the same judicial district, perhaps counties served by the same county court, juvenile court judge, with such wide disparity? I mean is there something else going on there, you think? [LB158]

CHRISTINE HENNINGSEN: Well, I think these are kind of entry points that then we do need to dig deeper into some of the numbers. If you look at the numbers who sometimes if the case...there are only three cases filed and, you know,... [LB158]

SENATOR EBKE: Yeah (inaudible), right. [LB158]

CHRISTINE HENNINGSEN: ...there was one attorney appointed, that drastically impacts the percentages there. [LB158]



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SENATOR EBKE: Um-hum. [LB158]

CHRISTINE HENNINGSEN: Also you would have to look and see if it is, if there is a regular judge who is there or if, you know, there is changing in staff or something that might have affected those. [LB158]

SENATOR EBKE: Do you suppose, do present...does the presence of local attorneys available for appointment, would that have anything to do with that, you suppose? [LB158]

CHRISTINE HENNINGSEN: That could. But under this bill the attorney would be appointed at the time of the filing. So they already would be there. I know in my experience in Douglas County I would sometimes be pulled in from the hallway on a case if the judge thought it warranted, you know, if the judge thought it warranted an attorney, which kinds of begs the point where this is the youth's right to an attorney. So we really have to make sure that it's...if they are waiving that right, they know that...what they're giving up. We did a survey for youth kind of based on interactions with attorneys and surveyed about 100 youth in the Douglas County Youth Center and of...there were, let's see, it was 97 youth. Only 25 percent indicated that an attorney and a lawyer were the same thing; 61 percent thought an attorney is someone that the court appoints and a lawyer is someone you pay. Right? So there are some real, real dangers that the standard rights advisory is not getting through to youth. And the brain science backs that up as well. [LB158]

SENATOR EBKE: Okay. Any other questions? Thanks for coming today. [LB158]

CHRISTINE HENNINGSEN: Thank you. [LB158]

SENATOR EBKE: Thanks. Next proponent. [LB158]

BUB WINDLE: (Exhibit 14) Chairwoman Ebke, members of the Judiciary Committee, my name is Bub Windle; that's B-u-b W-i-n-d-l-e. I am here today on behalf of the Nebraska State Bar Association in support of LB158. Joy Suder, who is a former Douglas County Public Defender in the juvenile division, a current juvenile law attorney and a member of the Nebraska State Bar Association's juvenile law executive committee, had hoped to be here today to testify in support of the bill. She was unable to make it because her child is sick so I've handed out what would have been her statement so you have it. She can say it a lot better than I can and you've heard a number of compelling reasons to support the bill so I will not repeat them here. I will simply say that the Nebraska State Bar Association supports the right to counsel and access to counsel and

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being informed of one's right to counsel. We support LB158 and we thank Senator Pansing Brooks for introducing the bill. Thank you. [LB158]

SENATOR EBKE: Thank you. Any questions for Mr. Windle? Thank you for coming. Next proponent. Any more proponents? How about opponents? [LB158]

ELAINE MENZEL: (Exhibit 15) Chair Ebke and members of the Judiciary Committee, for the record, my name is Elaine Menzel; it's E-l-a-i-n-e M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials in opposition to LB158 today. And first I would like to thank Senator Pansing Brooks and other advocates for meeting with us earlier this week to discuss about some of our concerns. For those of you who were on the committee last year, perhaps you will recall that our association testified in the neutral capacity and the basis for us doing so at that time is that I had contacted various representatives from Judiciary Committee members' legislative districts to make a determination, if I could, on potential fiscal impacts. And at the time I believe that was...they believed it was either negligible or minimal, so we were able to testify in the neutral capacity and at that time we were not in a position to support because we hadn't met as a legislative committee to make that determination. As those of you who were around last year, you will also recall that once it went to the legislative floor there was debate about, as was suggested, the unfunded mandates and those types of things. As I'm talking about some of the fiscal issues, Senator Halloran had asked what some of the fiscal amount would be and my recollection is at the time that Lancaster expected it to be about \$60,000; however, what I'm hearing today is that maybe it was not quite that much. So obviously the year is not complete for it to have taken effect. But I have provided you with a letter of my testimony, or I guess it's not point by point, my testimony, because I am deviating to some extent. But our opposition is not necessarily related to the...or it's not because of the right to counsel opposition; rather, it's two primary issues and those deal with first funding issues and also the resources available to counties in the various areas. I have provided you a map of what is available for attorneys and that's based on a 2017 map that had been created by the Nebraska Bar Association. And I know one of the counties that was mentioned by Senator Pansing Brooks in terms of the percentage of population, and I'm not recalling what she stated specifically, but was Cherry County and I will just ask you to please note that there were more than three attorneys. And part of my point was that there is over a third of the state that is not represented by more than three attorneys. And even in those counties with three attorneys you may not have an attorney who is conversant in juvenile law, therefore, not going to necessarily provide sufficient counsel to that individual. I know also another comment is that counties would have the availability of the Public Advocacy Commission and while it is true to the extent that it's for first-degree murder and serious violent or drug-related, it is also true that it was created to assist counties with property tax relief and that type of thing, so we certainly express appreciation to the Legislature for in the past enabling that legislation. I believe those are the primary comments I would like to make at this time. And if there are any questions, I would be glad to respond to them if I'm able to. [LB158]

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SENATOR EBKE: Senator Krist, do you have a question? [LB158]

SENATOR KRIST: I do. How many judicial districts are there in the state of Nebraska? And that's not a...I'm not...I'll just tell you there's 12. [LB158]

ELAINE MENZEL: Is that...is it 12? I was thinking 12. [LB158]

SENATOR KRIST: There's 12, yeah. And so every one of the 93 counties belongs in some part or parcel to a judicial district. [LB158]

ELAINE MENZEL: Correct, correct. [LB158]

SENATOR KRIST: And the disparity that Senator Ebke brings up is a disparity that I would bring to your attention. You have counties that are not participating in the extent that the judicial district has coverage and capability in the county that's right next-door. So rather than thinking about this in NACO's usual 93 counties, 93 ways of doing business, there's 12 judicial districts and the judicial districts themselves all have the capability in almost every courtroom to do some kind of "tele" possibility. They're running courts with telecommunications, in some cases meaning pretrial and whatever, which would mean that an attorney, not the ideal situation but an attorney could be appointed out of a pool in another judicial district that could service that child there. I also point out just for the record this isn't a we just thought about this yesterday kind of thing; this was a matter of principle and federal law and constitutional rights afforded to juveniles. So although I respect the opinion that some may call it an unfunded county mandate, they're in violation of the law. So let's try to think outside of the box and solve the issue and, in my opinion, get the child the representation he or she needs. [LB158]

ELAINE MENZEL: May I just add something... [LB158]

SENATOR KRIST: Absolutely. [LB158]

ELAINE MENZEL: ...to your discussion? I will tell you that counties were, I don't recall the year, I think it was...must have been 1997 roughly, or '98, because that was the first year I was working full time. But we were the organization that asked for the Legislature to please consider whether video arraignments would be a possibility, and for the adults more so than the juveniles that I recall, but we're supportive of that concept. [LB158]

SENATOR KRIST: Yeah, and that further...that further represents the disparity between the adult and the juvenile court: If you're trying to do it in the adult court and you have the video or

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telecommunication capability of doing it, then that's another option. So I think it warrants a little bit of digging to make sure that we're obviously not going to be charged again with unfunded mandates. But at the same time, this isn't us; this is their constitutional right. So let's figure out a way to make it happen rather than blocking. Thank you. [LB158]

ELAINE MENZEL: Thank you. [LB158]

SENATOR EBKE: Any other questions? Thank you, Ms. Menzel. [LB158]

ELAINE MENZEL: Thank you. [LB158]

SENATOR EBKE: Any other opponents? Anyone testifying in the neutral on this bill? Senator Pansing Brooks. [LB158]

SENATOR PANSING BROOKS: Well, I want to thank you all for such good questions and I do appreciate the fact that NACO did come to talk with us this week. I was of course really disappointed since they had been neutral last year. And even last year from the testimony Elaine Menzel had said, "(But) in looking at the fiscal note, it doesn't appear as if...I hate to say it won't be a great deal, because any cost is a concern to us, but obviously not significant in comparison to some other bills that are before us this year." So of course the most direct and shortest path to adult prison is right through the juvenile justice system. We have issues of overcrowding. This clearly contributes to the overcrowding crisis. You saw in the sheet that was passed out, some of you weren't here, but the sheet that was passed out by Voices for Children shows that one night in prison is \$227 in juvenile detention versus \$91 for cost for an hour with an attorney. And so these are significant issues. Again, we're in celebration of In re Gault. As Senator Krist said, these are constitutional rights that we're talking about. You know, the concern in the letter that our mileage...somebody said that, "Our mileage bill for our office is huge." Well, we're weighing cost for some mileage versus a constitutional right. So somehow we're not in the same realm of legal hierarchy of important reasons to support a bill or not. But I just want to add that Douglas and Lancaster County are already doing this. Douglas and Sarpy did it themselves. They just took it on to do it and they were 100 percent last year. So there are counties that have just done it on their own. You asked about...many parents will come in with counsel in a situation where their child has been going through the court system. So I agree that there are some that could be trying to scam the system and we and the courts need to be wary of that and not...and to be able to find out for sure whether or not a parent can pay for it. But parents do come in having hired representation for their children. I just want to quickly, finally, read...I have to read these into the...just a couple things from the two judges into the record. Judge Johnson from Douglas County and...has written a letter with Christine Castenock (phonetically)...Costantakis (phonetically)... [LB158]

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SENATOR KRIST: Consintaykos (phonetically). [LB158]

SENATOR PANSING BROOKS: Pardon me? [LB158]

SENATOR KRIST: Con-sin-tay-kos (phonetically). [LB158]

SENATOR PANSING BROOKS: ...Costantakos, and Christine is the author of Juvenile Court Law and Practice which is devoted particularly and specially to Nebraska Juvenile Courts. They wrote in this letter, "If, in its wisdom, our Legislature has honored the right to (legal) counsel for juveniles throughout the entirety of abuse, neglect, and dependency proceedings," which is all under the welfare cases, "why would we not recognize the same right to the immediate appointment of legal counsel for our juveniles involved in law violation (delinquency) proceedings in juvenile court? Indeed, as compared to those proceedings brought under 43-247(3)(a), delinquency proceedings pose a much greater risk for a juvenile to lose his or her liberty as the result of confinement or commitment to a treatment facility or other institution. In Gault, the U.S. Supreme Court found that (the fact that) delinquency proceedings are technically 'civil' in nature really does not lessen the impact upon the juvenile's loss of liberty. 'For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.'" And finally, Judge Heideman in Lancaster County after the change in the law went to covering and have the juveniles come before them and get counsel immediately upon entering the court. So he has written, in part, "I wanted to share with the committee how these provisions have impacted my courtroom." And this is Judge Heideman in Lancaster County: "On a whole, I have been pleased with the changes I have seen in practice, and looking at our county budget, the increase in appointment rates has not negatively impacted our budget. We are still early in the process, and budget can be impacted by a variety of reasons, but we are currently under budget. We have not had any problems implementing the early appointment of counsel measures, and I have seen many improvements in my courtroom. I do not have any hard data on case processing at this time, but on the whole it appears as though cases are processed quicker because defense counsel has an opportunity to talk with their client and engage with the county attorney before the first court appearance. Many times the parties come to the first court hearing with an agreement already in place, which benefits the process." And he goes on to say, "Further, in my experience, under the old system, there were many times when I would ask the youth if they wanted an attorney and the first thing they would do is look at their parents. If their parent shook their head no, they would say they did not want an attorney. I then had the responsibility to explain to the youth and their parents that this was the youth's right, and not the decision (or right) of their parents. This could create a tense environment in the courtroom and some parents would become upset. The early appointment process has created a smoother system, wherein the youth can make an informed decision about waiver of counsel. We have also created an effective system for the indigency examination, ensuring that families who can afford to pay legal fees are not taking advantage of the system." So with that, I want to thank

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all the wonderful testifiers who are so well versed in all this. And for the 50th anniversary of Gault I hope we can go forward and make sure that counsel is readily available for every child across our state. Thank you. [LB158]

SENATOR EBKE: (Exhibits 3-8) Thank you, Senator Pansing Brooks. Any further questions, comments, concerns? I'm going to read into the record the letters that we have as we're making the switch over. We have Sarah Bryer from the National Juvenile Justice Network in support of LB158; Roger Heideman on behalf of himself in the neutral capacity; Linda Porter on behalf of herself in support; Michelle Hynes on behalf of herself in support; Amy Miller on behalf of the ACLU in support; and Julie Rogers of the Office of Inspector General of Child Welfare in a neutral capacity. That closes our hearing on LB158. LB180. Thank you, Senator Bolz, for your patience. [LB158]

SENATOR PANSING BROOKS: Thank you, Senator Bolz. [LB180]

SENATOR BOLZ: (Exhibits 4-8) My pleasure. Glad to be here. Good evening, committee. I'll be as succinct as I can be. I'm here to introduce LB180. And again, my name is Kate Bolz; that's K-a-t-e B-o-l-z. I represent District 29 in Lincoln. By way of background, this bill was brought to me by members of the Legal Parties Taskforce of the Nebraska Children's Commission. The Children's Commission is a statutorily created body that was established in 2012 to reduce gaps and needs among the child welfare programs and services to create a state plan, to keep it updated, and to serve as a forum for collaboration among state, local, community, public and private stakeholders, and the child welfare and juvenile justice systems. Myself, Senator Pansing Brooks, and Senator Howard serve as the Legislature's representatives on the Children's Commission. So this bill would create a bridge order which would address an issue of jurisdiction between district courts and juvenile courts. As you know, juvenile courts handle matters of child abuse and neglect when a child is made a ward of the state, while the district court handles matters of custody and child support between separated parents. Sometimes a custodial parent may be deemed unsafe. In those circumstances, a child may be made a ward of the state but can be safely placed with the noncustodial parent. Currently, the juvenile court may not close the case until the district court rules on the underlying case related to the parents' custody and other matters. This can result in waiting periods when a child remains a ward of the state but is safely living with a parent. LB180 creates something called a bridge order which establishes physical custody and parenting time so that the juvenile court case can be closed. There are several handouts coming around to you that illustrate not only some details about how this would work, but a flow chart and a bar graph that illustrates when a bridge custody order would be appropriate and how it might function. There are certainly circumstances in which a bridge order would not be appropriate, such as when paternity hasn't been established or when a child does need services through the Department of Health and Human Services related to his or her abuse. So those materials lay those out as simply as we could lay them out for you. I do want

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to share with you a brief amendment that addresses a couple of issues that have been brought to our attention. I'll have the pages hand those out when they're ready. But they make some small changes related first to allowing a guardian ad litem, in addition to the parent, to make a motion for a bridge order. It allows the court to waive an evidentiary hearing if all the issues raised on the motion are resolved by agreement or all parties are on the same page with the issue. And it, finally, clarifies that the district court can give full force and effect to the juvenile court bridge order as to custody and parenting time. So I'll let the page--thank you very much--share those out. The last thing that I will share, before I wrap it up and let some of the folks from the Legal Parties Taskforce provide more detailed and technical information, is to reference that there is a fiscal note on this piece of legislation. It is a one-time \$75,000 fiscal note related to changing the JUSTICE database in order to manage the change for bridge orders. That is a cash fund and it is a cash fund that has been developed specifically for these purposes, so it does not impact our General Fund and it is an appropriate use of the cash funds. So hopefully, as quickly as I could, I have made clear what the intent of the bridge order legislation might be, and I'm happy to take any questions at this time. [LB180]

SENATOR EBKE: Any questions for Senator Bolz at this point? Okay, thank you. [LB180]

SENATOR BOLZ: Okay, thank you. [LB180]

KIM HAWEKOTTE: (Exhibit 9) I think she's right: It's good evening, Chairman Ebke and members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e. I'm executive director of the Foster Care Review Office and I'm also chair of the Legal Parties Taskforce of the Nebraska Children's Commission. And as director of the Foster Care Review Office we are here in support of LB180. As many of you know, I've been a practicing attorney in juvenile court for over 25 years--I hate to say that, I feel old--both as a guardian ad litem, parent's attorney, youth's attorney, county attorney, through all those years. The type of cases this is designed, LB180 is designed to impact, are your 3(a) child abuse and neglect cases. What LB180 does is it grants authority for a juvenile court to terminate jurisdiction of a youth that's there because of an abuse or neglect situation by placing custody of the child or children with a safe noncustodial parent and transfer the jurisdiction to the district court to finish everything. Currently what we have going on in some areas of the state is what I call the proverbial jurisdictional battle. District courts do not want to hear custody cases that are involved, and should not probably hear custody cases where the youth is involved in juvenile court. And juvenile courts across the state, some of them will say we're too busy, we don't have the time to do this. So what happens is these cases will just linger. This all came to light in 2014 when we created the Barriers to Permanency Project. This Barriers to Permanency Project was a collaborative effort involving Health and Human Services, a lead agency, Inspector General, the Court Improvement Project, the Foster Care Review Office, where we looked at 455 children across the state that had been in out-of-home continuously for three years or longer. What we

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wanted to figure out as a system is kind of two things: (1) were there specific characteristics of these children as to why they were remaining out of home so long; and/or were there systemic issues that was causing these children to languish in out-of-home care, because we all know as a state we as a state are not a great parent for these children. What the project found when we looked at these 455 is that 7 percent of them, or about 32 of these children, really were only in out-of-home care due to custody issues and unresolved custody issues. So that then brought us to the Legal Parties Taskforce to start working on legislation starting in 2015 and '16 to really come up with some legislation to help create this barrier. One thing I do want to point on under LB180, it does not change 43-2923 that deals with how you determine custody or what is the best interest. That remains the same. You are still looking at the relationship of the child to the parent, the age, the behavior of the child; all those type of things remain in place no matter what court does it. A couple of things I also want to point out so that you get a picture. The Foster Care Review Office is an independent agency. We do over 3,200 individual case file reviews every year of children in out-of-home care. And as we do those reviews, we also collect data, we do all those other things, but we see this issue constantly coming up. I thought it would be beneficial for me to give you an example of a case we've just reviewed in the last 30 days. Children came into out-of-home care two years ago due to the some abuse/neglect behaviors on the part of the mother. At the time of their removal, they were placed with their noncustodial father, their legal father but he was noncustodial. That case has been going on in juvenile court for over two years. The children have been replaced with the father. The mother still has not been able to get the children back but they're languishing in juvenile court because nobody wants to do a custody order. LB180 is designed to help that situation so we can close those cases out. When you look at the data as of January 24 of 2017, as a state we have 3,439 youth in out-of-home care through the Department of Health and Human Services. If you take that 7 percent from the 7...from the special study that we did in the Barriers to Permanency Project and applied it to that, that means we have 241 children in out-of-home care solely because of custody issues. So even assuming it's half that amount in reality, think about what the impact we would have on those children if we could just close it, but also I know the fiscal is a huge concern this year and I understand it. The fiscal cost: we are paying for guardians ad litem, counties are paying for attorneys, we're paying for judicial time, we're paying for case managers, we're paying for services, all on cases that really don't need to happen if we would just do this type of order. So in our opinion this order is imperative in order to keep cases moving, to give those juvenile court judges an extra tool in their toolbox for the best interest of the children in order to safely keep them with the parent that they're with. I'm more than willing to answer any questions or to provide any more information or data that you might need. [LB180]

SENATOR EBKE: Any questions? Thank you for being here today, Ms. Hawekotte. [LB180]

KIM HAWEKOTTE: Thank you. [LB180]



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SENATOR EBKE: Next proponent. [LB180]

FRANK SKORUPA: Thank you. Good evening. [LB180]

SENATOR EBKE: We don't like to admit to that here so... [LB180]

FRANK SKORUPA: My name... [LB180]

SENATOR EBKE: ...just keep saying good afternoon. [LB180]

FRANK SKORUPA: Well, they evidently turn the heat off after 5:00 in here. I'm not sure about that. My name is Frank Skorupa, F-r-a-n-k, last name is S-k-o-r-u-p-a, and I'm a juvenile judge in Platte County, Nebraska, and I'm appearing in support of LB180. Kind of my background a little bit, if you would, please, first, because you recently heard some numbers with regard to juvenile judges and the numbers that I'm getting are from the Omaha World-Herald so let's take that with a little grain of salt. But in Platte County, Nebraska, our...my juvenile caseload is a little more than the per-judge juvenile judges in Sarpy County and just a little less than the per-judge filings in Lancaster County. There's a big difference between a separate juvenile judge and myself. The caseloads are very similar but there is a big difference. Likewise, you've heard about weighted caseloads and so on and the weighted caseload in Platte County is between that of the individual judges in Sarpy County and between a little less than those in Lancaster County. Our 3(a) cases are about the same percentage as Sarpy County and Lancaster County. I think Sarpy County is like 17 percent; ours are almost 18 percent; and Lancaster County is 18 percent. So that's where I'm coming from with regard to my support for LB180. It's not something that we never see; it's something that we frequently see. It's not something that we see every week. It's not something that we see every month. But I want to try and give you an understanding of why I think LB180 is necessary. A few years ago, quite a few years ago, there was a case out at the Supreme Court and it had to do with grandparent visitation and in fact the Supreme Court said at that time, when a juvenile court has jurisdiction over a juvenile as a result of a 3(a) case, a neglect/dependency case, the district court cannot exercise jurisdiction over that child with regard to custody so that when you have a divorce case pending in Platte County, Nebraska, for instance, and let's say Mary is awarded custody of the minor children, now she comes into, for whatever reason, into juvenile court and the juvenile court assumes jurisdiction over those children. The juvenile court can change custody from Mary to John, the father. Now you have a situation where the district court thinks, whether it's correct or not, many district courts throughout the state think they cannot exercise jurisdiction with regard to custody of those minor children of John and Mary. It may be in the children's best interest--obviously it is in the best interest--that the children be with John because the juvenile court has determined that. Now you have a situation where you have a divorce decree which gives custody to Mary and juvenile court

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which gives custody to John. If the juvenile court terminates its jurisdiction over those children, the custody automatically goes back to Mary because that's what the divorce decree says. The district courts throughout the state have to some extent, a large extent, refused to exercise jurisdiction to make a determination with regard to custody while that juvenile court proceeding is in effect. When I heard about LB180 I put out an e-mail to fellow judges with regard to how do you handle that situation. In Platte County when we have a situation, if it's by agreement, the parties agree that they will go into district court and have a modification of the decree. So on typically Friday morning, they come into juvenile court at 9:30. The juvenile court dismisses its jurisdiction, its case. The parties go over to district court. The district court then enters an order for custody. And I've always wondered, what happens if Mary in that half-hour as she's walking from county court to the juvenile court to the district court changes her mind? Other counties have used different procedures. One judge in particular said, I'm not sure it's right but it works. The fact that there...when I put out this e-mail, there were four or five, six different methods by which the juvenile courts were changing and getting an effective change of custody kind of tells you that this law I think, this LB180, is necessary so that we have a uniform law throughout the state that can terminate these juvenile proceedings in an organized and effective manner. Thank you. [LB180]

SENATOR EBKE: Yeah. Thank you, Judge. Senator Krist. [LB180]

SENATOR KRIST: Thanks, Judge, for coming. I realize that it's a big...it takes a lot out of your day to come down here and sit and I appreciate that you did. [LB180]

FRANK SKORUPA: I had a jury trial fall through and I appreciate that. Thank you though. [LB180]

SENATOR KRIST: Are we bordering now...I've had several conversations with Judge Doyle and Judge Johnson, juvenile court judge in Douglas,... [LB180]

FRANK SKORUPA: Yes. [LB180]

SENATOR KRIST: ...about the concept of a family court. Is this where we're at in terms of a problem-solving court where jurisdiction could be held by one court which would be a family court? Or does this go a step further in the bridge? [LB180]

FRANK SKORUPA: I think it goes a step further. A determination by the juvenile court has been made as to what is in the best interest of the children. Now we have to effect that into the district court and I think the bridge order does that. I do want to correct, with all due respect, Senator

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Bolz, I do want to correct one thing with regard to your testimony. It says that the district court can give full force and effect to the bridge order. And if I'm correct, I haven't seen the amended LB but if I'm correct, the LB states that the district court shall give full force and effect to the juvenile court order. And that can be changed, at least in the first year, only if it is in the best interest of the children that custody be changed rather than by way of a material change in circumstances, as is the usual standard for change of custody in a divorce proceeding. [LB180]

SENATOR KRIST: So the amendment on page 3, line 27, item (6) says, "The district court shall give full force and effect to the juvenile court bridge order as to custody and parenting time and shall not modify the juvenile court bridge order without modification proceedings as provided in subsection (8) of this section." [LB180]

FRANK SKORUPA: Yes, yes. [LB180]

SENATOR KRIST: And that's...that... [LB180]

FRANK SKORUPA: That's the amendment that I suggested that it be a requirement that the district court...otherwise you're just going to get into another situation where you have all different courts exercising their judgment. Somebody has to make a final determination, in my mind, with regard to the custody of the minor children. Generally the juvenile court has been working for months, if not years, with rehabilitation plans and case plans, court reports, and so they've made that determination based on months, if not years, of knowledge of the case as to what is in the best interest of the children. [LB180]

SENATOR KRIST: Thank you, sir. [LB180]

FRANK SKORUPA: Thank you. [LB180]

SENATOR EBKE: Any further questions? Thank you again. [LB180]

FRANK SKORUPA: Chairman, I don't mean to be rude, but I'm going to leave if that's all right with the committee, and I apologize for that. Thank you. [LB180]

SENATOR EBKE: That's absolutely all right. Thank you for coming today. Drive carefully. Next proponent. [LB180]

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ROBERT McEWEN: (Exhibit 10) Chairwoman Ebke and members of the Judiciary Committee, my name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n. I'm a staff attorney in the child welfare program at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans, and we're here to support LB180 because it addresses an area of confusion that's existed at the intersection of family and juvenile law for many years and we believe this bill will clarify many of these problems for juvenile and family law practitioners, juvenile courts, and district courts. Specifically, we believe that this bill will provide an effective mechanism for juvenile courts to transfer cases to district court when a child is able to safely reside with their nonadjudicated legal parent and the juvenile court determines that a transfer is proper. Moreover, we support giving nonadjudicated parents a clear and direct path to exercise their constitutional right to take care of their kids. We also support the provision in this bill that temporarily modifies the substantial change in circumstances standard for the adjudicated parent to seek a modification of custody within the first year after filing the bridge order because it acts as a sufficient buffer between the juvenile court and the district court and the different legal standards that they have to utilize. And lastly, we support this bill because it gives juvenile courts the necessary discretion to determine when and when not to transfer these cases under a bridge order. And while we do think this discretion exists in the bill, and I haven't seen a copy of the amendment, we think it may be helpful to include a nonexhaustive list of factors for the juvenile court to consider. For example--Senator Bolz mentioned some of these and they're in her opening--a court may wish to deny such an order if an adjudicated parent has made progress towards reunification or the kid needs services in the foster care case. But that discretion exists in the bill. It says may, not shall, transfer. So in conclusion, we'd like to thank Senator Bolz and the Judiciary Committee for their work on this issue and we respectfully request that you advance this bill. And I would be happy to answer any questions. [LB180]

SENATOR EBKE: Thank you, Mr. McEwen. Any questions? Okay, thank you. [LB180]

ROBERT McEWEN: Thank you. [LB180]

SENATOR EBKE: Next proponent. [LB180]

BETH BAXTER: (Exhibits 11 and 12) Good afternoon again, Senator Ebke and members of the Judiciary Committee. My name is Beth Baxter, B-e-t-h B-a-x-t-e-r, and I'm testifying before you today in my capacity as the chairperson of the Nebraska Children's Commission in support of LB180. The Legal Parties Taskforce of the Nebraska Children's Commission, which I will refer to as the "task force," was involved in the creation of this bill. The task force undertook significant research and gathering of feedback to ensure that this bill can decrease the length of child welfare cases, increase permanency for children, and reduce juvenile court docket congestion. So on behalf of the task force and the Children's Commission, I'm testifying in

support of this bill. As you know, the task force was created by the Nebraska Children's Commission to support the practice of law and the professionalization of juvenile practice and clarification and enhancement of the legal party roles. The task force has actively engaged in research, discussion, collecting feedback to solve the problems posed by the conflicting jurisdiction between district and juvenile courts. And the various testifiers before me have described these problems and so my testimony will really focus on the process of the task force and some of the technical aspects. The task force reviewed a number of potential solutions, including implementation of a unified family court system and bridge order statutes from other states. The bill that is before you is based on a similar Iowa statute which the task force believes addresses many of the problems posed by conflicting jurisdiction and increases permanency for children without increasing cost or court time. The Legal Parties Taskforce membership includes representation of the juvenile court bench, the Office of Inspector General for Child Welfare, the Foster Care Review Office, DHHS legal department, Nebraska Families Collaborative and their legal department and advocacy group, county attorneys and attorneys who practice regularly in juvenile courts across the state. The task force additionally solicited input on this bill from attorneys practicing in juvenile court, guardians ad litem, attorneys practicing in the district courts, and judges. Feedback consistently show that this bill resolves the conflicting jurisdiction of juvenile and district courts while increasing efficiency and benefiting children and families. This bill would only apply in situations to child welfare cases in juvenile court where a child has been removed from the care of their custodial parent but has been safely placed with a noncustodial parent who is legally recognized as the child's parent. When this criteria is met, the parent, or, as per the amendment, I believe, the guardian ad litem may file a motion for a bridge order. To expedite the process and reduce the number of hearings and motions necessary, this bill does not require the legal parent to intervene before filing a motion for a bridge order. The hearing on the motion for the bridge order is set for an evidentiary hearing no less than 30 days or no more than 90 days from the filing of the motion. This allows the parties to prepare for the hearing without unnecessarily extending the amount of time that the juvenile case is active. The amendment allows a bridge order to be entered without a hearing if all parties agree to all issues raised in the bridge order, saving even time and judicial resources. The bridge order only addresses legal and physical custody and visitation with child and does not require the juvenile court to make determinations on any other matters, such as child support I think has been brought up before. Bridge orders will be docketed by the district court in either an already existing docket related to the custody and paternity of the child or into a new docket as necessary. This bill addresses the Nebraska Parenting Act which requires parents in a court case involving child custody to participate in mediation, creating a parenting plan, and take a parenting class. LB180 would allow for the entry of a bridge order without requiring parents to comply with this portion of the Parenting Act. This would save the court and family time and money while ensuring that the child is in the custody of a safe parent. The Parenting Act would apply to any subsequent modification of the bridge order. An additional provision of LB180

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clarifies that appointed counsel is not required to the district court action. Thank you for the opportunity to testify. And if I may answer any questions, I'll do my best to do so. [LB180]

SENATOR EBKE: Thank you, Ms. Baxter. Does anybody have any questions? Thank you for being here today. Next proponent. Do we have any more proponents? How about opponents? I see no one moving. Anybody testifying in the neutral? All right, doesn't look like it. Okay, Senator Bolz. Senator Bolz waives. [LB180]

SENATOR KRIST: Good answer. [LB180]

SENATOR EBKE: (Exhibits 1-3) We have...we do have some letters for the record. We have a letter from Juliet Summers from Voices for Children in support; Monika Anderson with Nebraska Families Collaborative in support; and Terry Werner of the Nebraska Association of Social Workers--is that what that is?--in support. This closes our hearing on LB180. Everybody have a nice evening. [LB180]