

COMMITTEE ON BUSINESS AND LABOR

February 27, 1995

LBs 21, 400, 478, 479 and 800

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 27, 1995, in Room 2102, at the State Capitol, Lincoln, Nebraska for the purpose of conducting a public hearing on LB 21, LB 400, LB 478, LB 479, and LB 800. Senators present were: Senators Chris Abboud, Chairperson; Ernie Chambers, DiAnna Schimek. Absent: Senators Floyd Vrtiska, Merton "Cap" Dierks, Don Preister and Jerry Schmitt.

SENATOR ABBODD: I'm trying to size up how many people we have testifying on each one of the bills. How many are going to be testifying today... we are going to take LB 21, Senator Chambers bill and LB 400, Senator Hall's bill together. So we will have support and opposition on those two bills. How many are here to testify on either 21 or 400? Can I see a show of hands? How many in support, could you keep your hands raised, in support of the bills. How many in opposition, could I see a show of hands? Okay. How many are here to testify on LB 800? How many are here to testify on LB 479? LB 478. Okay. Why don't we do this. We are going to try to restrict the testimony on these bills to get done at a reasonable time. I think what we will try, what the committee has tried to do is limit the testimony on these bills to about an hour for both of the bills, we may go over that a little bit, but that will be alright, but that will be our goal. So we are going to try to do a half an hour in support and a half an hour in opposition. I'll allow some leeway if... for the testimony. But what I would request for anyone testifying either in support or in opposition is that you try not to make your statements repetitive to the prior speakers. Then offer the committee some information, try to make it something different from what the prior speaker had testified to (inaudible). So we are going to try to do it a half hour for each side minus the introductory remarks made by the two introducers of the bill. Any questions? What we would like to do. It would probably be helpful to try to get as many people to testify in support or opposition of the bill, we will try to limit the time to about three minutes. Normally we would say five minutes but because of the amount of people testifying on that. I will also add that we do have papers here. If you want to not testify but show your support or opposition, we have papers up here, sign-in sheets that you can be listed and you will be listed on the transcript as being here in support or being here in opposition, depending upon how you mark it. I'm Chris Abboud, I am chair of the committee.

The hearing room is given to us by the Legislative Council. I'm sorry about the small room but Appropriations has one too. Also, we... for anyone that doesn't have a seat here and would like to watch the proceedings to this hearing may go to the East Chamber and watch it there as well. There is a television camera that is set up so you can watch it there. Okay, as I stated the time for the bill both in support and opposition to an hour will not... the time for the introduction by Senator Chambers and Senator Hall will not be taken from the time of supporters of the bill. We can listen to you all afternoon Senator Chambers.

SENATOR CHAMBERS: I was going to say...

SENATOR ABOUD: (inaudible).

LB 21

SENATOR CHAMBERS: I was just going to say I may take more time than both of them put together, but. I am Ernie Chambers. I represent the 11th Legislative District. The bill that I am introducing is LB 21. What it does is to prohibit discrimination in employment based on sexual orientation. In my statement of intent I gave the definition that is found in the bill and that is on page 19, lines 7-13 and I'll read it for the record: "Sexual orientation shall mean having an orientation for heterosexuality, homosexuality, or bisexuality. Having a history of such orientation or being identified with such an orientation. Sexual orientation shall not include, transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or any other sexual behavior disorders." That disclaimer sentence is found on page 16 in lines 6-9 of the bill and it comes from current language dealing with disabilities to make it clear that these types of factors do not constitute a disability. Exempted specifically from the bill are quotas and numerical goals for, with reference to enforcing this bill in terms of its nondiscrimination policies. Also, there is a specific exemption for religions, religious organizations, societies, associations and any nonprofit operations that may be connected to them. I am bringing this bill because I think there is a serious problem in this society at large, especially in Nebraska with reference towards the attitude of people whose sexual orientation is other than heterosexual. But a peculiar thing occurs. I collect articles on all types of things and we had to enact legislation prohibiting sexual harassment in the workplace

not because of homosexuals but because of heterosexual misconduct in the workplace. This bill would not make legal any type of misconduct. Any type of behavior which would allow the termination of a person from misconduct is not legalized by this bill. This relates to a person's orientation and what they do or may not do when they are away from the job on their own time and wherever they do the things that they do in private. I don't know what all of those things are but when I watched a movie called, *Something Wicked This Way Comes*, there was this individual who represented evil and he told this little boy in trying to tantalize him that he would make it possible for him to know what grown ups talk about behind locked doors at night. So there are many things that happen behind locked doors which is nobody's business except that of the people who engage in it. I know there will be religious arguments against this bill. I know that there are people who are Catholics who are against this bill, but there are also people who are Catholics who are for it. If the church had the same attitude during the Renaissance that some parts of it have today, the Sistine Chapel ceiling would not be with us because Michelangelo was a homosexual and he was working in the employ of the church and not only was he in the employ of the church, the pope was bringing pressure on him to make him keep doing that work. Some people in analyzing the work that Michelangelo did on the ceiling of the Sistine Chapel have found what they detect as homosexual themes but because of its setting, the circumstances under which it came into being, people don't want to talk about that. One of the most remarkable depictions was that called, *The Creation of Adam*. Michelangelo did a statue of David, I'm going to let a Page give the members of the committee one of these (Exhibit \_\_) to show the remarkable skill of this individual. I am mentioning Michelangelo on purpose. There are people with tremendous amounts and types of talent which would be snuffed out if a negative bigoted, backward, and in my view, ignorant attitude toward people, because of their sexual orientation, was allowed to overbalance everything else. Some people have read poetry by John Milton, especially his Paradise Lost and Paradise Regained, that was a translation into verse of the paintings of Michelangelo and Rafello(sp) also but Michelangelo. So, when people are going to throw an individual away because of sexual orientation, it would be good to consider what all is entailed in that. I want to make it clear that we are not dealing with diseased things, we are not dealing with sub-humans, we are dealing with human beings. They may be our relatives, our friends, acquaintances, colleagues may have relatives. I had something brought to me the other day

where one of our former colleagues had a son who was gay and he died. There was a type of sympathy expressed in that situation which may not be expressed generally. But when we put a human face on all of these types of things towards which we may have these superstitious or these uninformed and misinformed attitudes, our attitude will begin to moderate. Barry Goldwater changed drastically in his attitude toward gay people when he learned that either his nephew or his grandson is gay. I have an article where a Wausau, Nebraska doctor was put on some kind of medical prohibition for kissing patients. This was a male doctor kissing females, heterosexual misconduct in the workplace. A principal out in little Chester, Nebraska fired for having made improper sexual comments to young girls. Again we have the heterosexual. Here, an article dated January 28th of this year, a 17 year old gay teenager in Omaha hanged himself. He had been going to Benson High School for a few days. About 12 days before he hanged himself there was the announcement by the Department of Social Services that gay adults could not be foster parents. The irony is that a study had been undertaken and an evaluation of his situation because it was known that he was gay and the conclusion was that it would be advisable to try to have him associated with gay foster parents. They want to say that they can not find a direct connection between that announcement plus the director, or I meant the department's announcement that they are going to get all the names of homosexual children. I don't know what that is for, maybe some kind of a register which would follow these children the rest of their lives, but the teasing and the taunting of the children at school is believed to have played a role in his suicide. When one of our children die in this manner, it is troubling to me, and I don't care what that child's sexual orientation is, in this case, was. Here is a case where a woman had been in the military a total of over two decades about 26 or 28 years, her name was Margaret Camameyer(sp), she had served in Vietnam, she had earned a purple cross, nobody knew she was gay and she was considered an exemplary soldier, military person. Then she was seeking a top security clearance and she was asked a question by an investigator and she told the truth. She acknowledged that she was a lesbian and she was summarily dismissed from the military, for telling the truth. Obviously her being a lesbian had not impaired her ability to discharge every duty and responsibility that was entailed in that position. I have no doubt that people, because of their sexual orientation, are not going to be prevented from carrying out any of the jobs that I have seen any people do. Most of them don't require a tremendous amount of intelligence, ability or



anything else, but we certainly shouldn't say, that whether the job requires a great amount of skill and ability or minimal skills, every person has a right to earn an honest living. When I was going to a Jesuit(sp) University, Creighton University, they emphasized the right of a person to food, clothing, shelter and all of those things necessary to sustain oneself at a decent standard. To say that it is possible under the law of Nebraska to discharge a person simply because of sexual orientation would mean that if every employer chose to do that these people could not work, and if they can not work they are entitled to do as Jesus did with his disciples, find another way to get what you need to live. He went through the mans field and took his corn without asking for it. I don't have a great amount more to say. But I remember seeing a movie called, The Elephant Man, and it was, it involved this man that had this dieasels that caused these growths that tremendously disfigured him. They even disfigured the shape of his skull. He wore kind of a cloth bag over his face with eye holes, he walked as though he were crippled and he was hurrying down the street and he bumped into this little girl and she fell down. People began to chase him like hounds after a fox. They were screaming and hollering and he was running and making it the best he could. Then he went into this doorway down these stairs and he was in an area where there was no way out. As the people were closing in on him he said, and you could barely understand him, I am a human being. And, everybody stopped. This was a human being. They were behaving like beasts towards a human being. That is what I am talking about today. I am talking about human beings. Anybody in this room could be homosexual, bisexual, heterosexual, chased, not likely, but celibate, which means you are not married, and we won't know unless the person tells us. You may have shaken hands with one of these people, you may have shared a meal with one of these people, they are not all paragons of virtue. They are in the penitentiary, they wear priests robes, they wear nun's habits, they wear Rabbi's yarmulke's, they wear minister's coats and neckties and administer communion. They violate speed laws, they commit murder, they commit assault, they even have children. Everything that the rest of us do, they do. They are everywhere. They are among us. There is no way all of them are going to be eliminated and now that society is more becoming enlightened, our laws have to reflect that and we have to make sure that nobody is going to be denied rights which are essential to a human being to such an extent that they should be called "human rights", not mere "civil rights". I say again, there are people who fit into these categories and we don't even know who they

are. I received a startling number of phone calls and letters from people who identified themselves to me as being homosexual and they said they will not come to this hearing and I was shocked at the jobs that some of them hold. Not shocked because they couldn't do the job, but I had never suspected it and I have never suspected that some of the people who identified themselves as being gay are. And it is of no interest or concern to me, but the fact that they feel that they can not come and speak on a bill such as this because they would lose their job. And the reason they have the fear is because of the remarks that they hear at work, the attitudes that are exemplified make them justifiably fearful. So, I hope what you will do is consider what it is we are dealing with and not allow anything that should not play a part in our decision, enter into our decision. We are like a sounding board as a committee and people are going to say all types of things and they are free to do that. But, sometimes the things that we say reveal more about us than the ones who are the targets. I have read the Bible I don't know how many times. I have read the new testament dealing with Jesus and his words more times than I have read the entire Bible. And, no place did I ever see him discard a human being. I read where he cast devils out of people, cast devils out of people in the swine that ran into the sea. I read where he went around the lepers who were made to holler, "unclean, unclean", so that people wouldn't come near them. He spent time with what we would consider scarlet women, the sick, the (inaudible) the lame, the maimed, no time did he adopt a hateful attitude and say, draw not nigh unto me for I am holier than thou. So, maybe some of those religious people ought to consider whether it would not be better to show by their example the compassion, the understanding, the humanity that would make us all better people and make this a more civilized society. My final comment. I do not put this type of discrimination on a par with discrimination based on gender or race where a person's fitting into that category can be discerned through the census. But, that doesn't mean that it is any less hurtful or wrong. The fact that as a black man I and my people have been discriminated against in so many ways in this society, has put me in the frame of mind where instead of saying that other people who have discrimination against them don't have it at the level or to the degree that we do, so they are on their own, it causes me to say with what has happened to me and based on how I feel about it, I don't want anybody else to have to go through it. And there may be racist homosexuals, but that doesn't take away my responsibility and obligation as a public official to do everything I can to see that we get rid of discrimination

wherever it is found. If you have any questions of me, then I will answer them.

SENATOR ABOUD: Any questions for Senator Chambers? Thank you.

SENATOR CHAMBERS: Thank you.

SENATOR ABOUD: We will next go to Senator Hall, for his introduction of LB 400.

LB 400

SENATOR HALL: Senator Abboud, members of the Business and Labor Committee, for the record, my name is Tim Hall, H-A-L-L. I'm here at the introducer of LB 400. The bill is similar in scope, in terms of what it intends to do, with Senator Chambers' LB 21. I won't touch on some of the same issues that Senator Chambers did, but I will touch on a few of the differences in the bill and, as you know, this committee two years ago heard LB 395, which is a bill that is very similar to LB 21 that Senator Chambers introduced and he and I cosponsored that measure two years ago. The reason we didn't cosponsor the proposals this year is because Senator Chambers never asked me and he has his ready before I had mine drafted, and there's a couple differences. The difference...I think the religious exemption is the same. I believe it's drafted almost identical to the, if not identical, in both proposals. There also is in LB 400, there is...and I'm on page 33 of the bill and I'll just do some of the technical things here, you'll see Sections 19, 20 and 21 that deal with the exemptions. The first is the religious exemption and I must admit, Senator Abboud, I did not hold them up side by side, but I believe that they are almost identical. Section 20 deals with the issue of quotas and, again, I believe that that is another...also language that mirrors each other in the two proposals. Section 21 is a residential facility exemption for individuals who educate children in residential care facilities. That is language that was brought to the committee, I brought the amendment last year if you remember to LB 395 and it was adopted as part of the committee amendments of the bill that was advanced to the floor. The proposal is an amendment to the Nebraska Fair Employment Practices Act. It deals with the issue of where discrimination is allowed and I guess where it is not. It would add to the list sexual orientation as a area where discrimination is not an issue that will be tolerated by employers who fall under the act within the

State of Nebraska. If you read the act you'll see, and I know you all know, that it applies only to those employers who employ 15 or more employees, so small employers are exempted by definition of the act, not by this proposal, but within the act itself as it currently exists. There are a number of other states that have touched on this, have passed legislation in this area--Connecticut, Hawaii, Massachusetts, New Jersey, Vermont, Wisconsin, California, Minnesota, as well as the District of Columbia. There are a number of municipalities and counties that have also passed ordinances in this area and, frankly, the policy is enforce here in Nebraska in some of our own state institutions. The University of Nebraska has adopted that policy at all three of its campuses--UNL, UNO and University at Kearney. It's also been adopted by major corporations and other businesses within this state. To somehow think that it will be a tremendous burden on those businesses when, in fact, it has been adopted by many of them through their own Employment Practices Acts, personnel policies, human relation...human resources guides or whatever, is in fact how they treat it right now. US West, Bryan Memorial Hospital, Norwest Bank, First Data Corp, the labor unions have adopted and supported this type of a proposal across the country. It's an issue that I think is, for some, difficult to understand and I...I don't know why, frankly. Discrimination, no matter what it's form, is something that I believe the state should fight to keep out of every aspect of our lives, but especially the employment aspect. People should have the ability to work to pay their own way to, in fact, be responsible citizens and with the passage of LB 400, LB 21, I think we go a long way toward ensuring that in this other area that has been heretofore left out of the Fair Employment Practices Act. With that, I would say that whether it's LB 21 or LB 400 makes no matter to me as long as the language in LB 400 is the language that's used. Senator Chambers, I...

(LAUGHTER)

SENATOR HALL: The...(laugh)...the...and this, and this is one...very few cases where I think I outdrafted you, or at least my staff outdrafted you, let's put it that way, and I...it makes no matter to me if it's...up to the committee which bill is advanced on the floor, but I do believe this issue needs to be debated. I...it is an important enough issue to me, and I know, Senator Chambers, we touched briefly on it, that I think it...it ought have a priority bill designation, and I don't know. We haven't decided if that's something we are going to do, but I believe it should

have. That's how strongly I feel about it. The...the last thing I would say is that to the proponents of the measure, I would ask you...I would echo Senator Abboud's comments as I listened coming down the hall that you keep your testimony as brief as possible, try not to be repetitive and that the...I know the committee has other work to do, at least three other bills that they have to hear, Senator Abboud, and for that reason, not because I'm not extremely interested in the proposal but also because I know my counterpart, "Senator Oats" is there for the...for the entire hearing, I'll waive closing and I've got to go down to a committee, as well. But I will leave that, I will leave closing on LB 400 to Senator Chambers as he should see fit to close on one or both of the bills.

SENATOR CHAMBERS: And just for the record, the reference to "Senator Oats" is based on the team Hall and Oats, so he's referring to me.

(LAUGHTER)

SENATOR HALL: With that, Senator Abboud, I'd respond to any questions.

SENATOR ABOUD: Thank you, Senator Hall. Any questions? Senator Preister.

SENATOR PREISTER: Senator Hall, it's my understanding that Nebraska has a policy or our law is that an employer can fire an employee at will.

SENATOR HALL: Correct.

SENATOR PREISTER: If this were enacted, would that really make that much difference?

SENATOR HALL: In no way can an individual...does this impact the at will employment aspect of Nebraska's statute. The difference is, Senator Preister, is that you, under...the Fair Employment Practices Act says that you can't deny somebody the opportunity to apply for the job, to hold the job, to interview for the job, to be fired for this reason or the other reasons that are listed in the act. If there is...if somebody is not performing up to par they should be fired. This doesn't prevent that. It doesn't prevent my brother from firing me at the restaurant because I'm not handling my duties in the kitchen appropriately. It doesn't prevent anyone from firing an individual because they're chronically late or they have misappropriated funds

or whatever other kind of infraction may come up. It does not impact that at will status for employers at all so that.... What it says is, is that this area...in this area you cannot discriminate. In other words, for sexual orientation purposes you judge individuals like you do everyone else on their job performance, not on what their orientation might be sexually.

SENATOR PREISTER: Thank you.

SENATOR HALL: Thank you.

SENATOR ABBODD: Any other questions? Thank you, Senator Hall.

SENATOR HALL: If not, Senator Abboud, thank you very much. I'd like to see one or other, probably just one of the bills advanced to the floor. I doubt that you'd want to send both of them, but...

SENATOR ABBODD: Okay.

SENATOR HALL: ..thank you very much.

SENATOR ABBODD: Okay. We will now go...it's two o'clock and we'll now go to the proponents to...as I said, we're going to hear both of the bills together, proponents for LB 21 and 400 or if you have a...if you're in support of one bill and not the other then let the committee know that as well.

LB 21 400

JAMES KIMBERLY: (See Exhibit F) My name is James Kimberly, K-I-M-B-E-R-L-Y. I reside at 6210 Oakridge Drive in Lincoln. I am a retired UNL professor. I want to tell you briefly about a young woman. She graduated two years ago from UNL with a very high grade point average. That same year she was married in her church before approximately 100 family members and friends. Some years before her marriage a member of a continental wide young adult religious group she served as a person responsible for arranging the worship components of the annual continental meeting. Shortly after that, her church sent her to its regional leadership school. Today, she teaches Sunday school and serves as a mentor for youth in the church's Coming of Age Program. One would think that on the basis of her activity within the church that she would have a bright employment future.

Unfortunately, her employment future is bleak. The person she married is a woman. She is a lesbian. She is my daughter. She can be denied employment or fired from a job solely because she is a lesbian. The employer could tell her that she was not being hired or fired because she is a lesbian and there is nothing she could do about it. That is because Nebraska has no law protecting gays and lesbians from job discrimination. These two bills would give her the job protection she needs. The reason my daughter is so well accepted in her church is that our church believes in the inherent worth and dignity of every individual. This is not true of every employer. Sometimes laws help individuals realize what is right. Having to do what is right sometimes changes attitudes. In other words, attitudes sometimes follows behavior. This is certainly what occurred in the south with the passage of the civil rights laws concerning blacks. That many Americans know what is right is shown by two national polls. One in 1991 showed that 80 percent of Americans agreed that gays, lesbian and bisexual Americans should have equal job opportunities. Another in 1992 showed 71 percent of Americans believed that job discrimination based on sexual orientation is wrong. Eight states and the District of Columbia have laws outlawing discrimination based on sexual orientation. More than 100 cities and counties have similar laws. I ask you to do what is right. I ask you to refer one of these bills to the full Legislature.

SENATOR ABBODD: Thank you. Any questions? Thank you for your testimony today. Additional proponents?

KAREN IHRIG: (See Exhibit A) Good afternoon. My name is Karen Ihrig, and that's spelled I-H-R-I-G, and I live in Omaha and I am here today in support of LB 400 and LB 21. I am the owner and president of a small company called Printmakers in Omaha. I am speaking to you today as a business owner who strongly supports LB 400. As I view it, this legislation which is before us does not force me or any employer to hire, retain or release an individual merely because of her or his sexual orientation. What it does ensure is that no applicant is refused work simply because of orientation. Surely we have not lost sight of the point that we hire because of potential, the potential that people will provide and use their skills to help an employer realize company objectives. In a similar fashion, I release people because of the failure to make the contributions which are expected of them. In my company, the hiring, continued employment or termination of people is on the basis of performance and not sexual orientation. I pride



myself in the personnel who work with me in my company. The company's personnel policies has a statement prohibiting discrimination on the basis of sexual orientation. This is an addition to the original policy that included sex, race, age, religion, national origin, and handicapping conditions. Employment in America is the way in which we all define ourselves. Statistics have shown that employees who cannot be out at work do not produce to their full potential. Try to visualize a job where one's sexual orientation must be kept a secret. How terribly counterproductive this is. Each and every discussion of personal activities, likes and dislikes, friends, family, phone calls or a host or other matters which reflect on an individual must be guarded because if the truth came out the individual would also be out. Not only "out" as far as sexual orientation, but potentially out of work. The daily ebb and flow of any business is dependent upon the personnel who make up that company. I hire people who are qualified for the positions which they fill. This is generally true for any enterprise, small or large, profit or nonprofit. My company is small and so it is extremely necessary that individuals perform the tasks for which they are paid. We deal with each other many times during the day in both business and personal matters. I do not pry into their personal lives, though, I do refuse to make any of them hide or lie during these personal conversations. Whatever the topic, an open and frank discussion is best. This entire matter did not seem important to me at one time. I wanted sales to grow and the company to continue to meet customer needs. These are still part of my plan for the company. What has changed for me, however, is on a very personal level. I am here also as an advocate of my son, Scott, who is a gay man, so that he does not have to experience discrimination in the workplace on the basis of his sexual orientation. Let us not forget that we are all created by God and God does not make mistakes. Thank you. Do you have any questions?

SENATOR ABOUD: Any questions for Karen? Thank you.

JOHN TAYLOR: Senator Abboud, members of the committee, my name is John Taylor. I will be very brief. I've been before this committee before when it was before you as LB 395 and I don't intend to repeat that, that full testimony. I appear before you as an openly gay man who, some of you know, was fired from a position in management of a local retail store in 1974 simply because of my orientation. I was told that after the firing. Three days before my termination I was given a 25 percent raise to reward me for the level of performance that I had been doing

at that company. One of the things you will not hear this afternoon is a litany of statistics, how many people have been terminated or not hired in positions because of their orientation, and the reason you won't hear those statistics is that there is no mechanism in this state to identify those items of discrimination. Because there is nothing in the law to protect somebody because of orientation, the Nebraska Equal Opportunity Commission has no mechanism whereby they can take a complaint against that employer. I can tell you, however, that during the almost five years that I was employed with the Nebraska Civil Liberties Union we received multiple phone calls each year from people who had been terminated. I was also Chair of the Coalition for Gay and Lesbian Civil Rights here in Lincoln for a little over a decade. I stopped being Chair three years ago when I went to law school and to this day I still receive phone calls from people wanting to know what they can do because they have been terminated based on...on orientation. Three years after I left a position of leadership, they're still calling me at home. I also want to let you know that as an employer, a former employer, I'm not longer employing people at this point, but as a former employer I could have chosen under the laws of the State of Nebraska to only hire gay or lesbian people had I chosen to do so. I wouldn't do that. That's not the type of person I am. But there is no protection in Nebraska under current law for people who are heterosexual based on orientation and the definition of orientation that you have before you in both LB 21 and 400 protects straight people from being discriminated against by somebody who doesn't want to have them on staff because they're straight. It seems hard to believe, but I have heard of gay and lesbian employers who choose only to hire gay or lesbian people, and I have heard of cases where gay or lesbian people who have purchased businesses have gone in and terminated people who were not gay or lesbian. It's far-fetched, but it has happened and there is no protection. That's why this law, if passed, needs to be there, not only to protect the gay and lesbian people in our community but everybody so that when people are looked at for employment they're looked at based on their ability to do the work, not based on something superficial to that. If there are any questions, I would be free to answer them.

SENATOR ABBODD: Any questions for John? Thank you.

JOHN TAYLOR: Thank you.

DAVE IHRIG: (See Exhibit B) Good afternoon. My name is Dave Ihrig and it's spelled identically to my wife who

preceded the gentleman who just spoke with you. I live in Omaha and I am here today in support of both of these bills. I'm a fourth generation Nebraskan...Nebraskan. Next year will be the 125th anniversary of my great-great-grandfather's arrival and homesteading in this state. He moved here from Germany and began living in Nemaha County in 1871. Proudly, I lay claim to being a Nebraskan and that our sons are fifth generation Nebraskans. To the people of this state I say with pride that we have grown your food, we have taken care of your ill and informed, we have taught you, made your beds, cleaned your houses, prepared your meals, baptized your children, married you, consoled you in your grief and buried your dead. We have been your employees, we have consumed many of your products and services, and we have and continue to be employers in this state. This family history is not unique. Unfortunately, it may be coming to an end. I am sad to be here today. I find that I am torn because this state doesn't offer the degree of employment protection for some of the many Nebraskans...that many Nebraskans take for granted, but the main reason I am say is because of the impact the absence of this protection has for my two sons. One of my sons, Tim, probably won't suffer the capriciousness of an employer because of his heterosexual orientation, while my other son, Scott, could be subject to blatant employment discrimination because he is gay. My wife and I love our sons and we know that they will positively contribute to the communities where in which they will live and work. However, what saddens most as parents is that these contributions will not, in all likelihood, occur in the state of Nebraska. These young men studying for careers in medicine and law, will realize their goals outside of this state. This is something that they have already agreed upon, as long as one or the other is not protected by statute. This is a family loss and this is also a loss for this state. Must this continue? The implication to our family is clear. When my wife and I are gone the span of contributing Nebraskans, now covering nearly one and one-quarter century, will end. I have deep and fond memories of my experiences in this state. This ending is not something that I anticipate with humor and good will. Obviously, it disturbs me and it angers me. I urge each of you, members of this committee, to act on one or other of these bills and move it to the Unicameral so that it may be discussed upon and voted by the full body. This action is ought for my sons, Nebraskans both. Thank you. I'll entertain any questions.

SENATOR ABBODD: Any questions? Thank you.

RICHARD DIENSTBIER: (See Exhibit E) My name is Richard Dienstbier. I live at 501 Dale Drive.

SENATOR AB: JD: Could you spell your name for the record?

RICHARD DIENSTBIER: Pardon me?

SENATOR ABBOD: Could you spell your last name for the record?

RICHARD DIENSTBIER: D-I-E-N-S-T-B-I-E-R.

SENATOR ABBOD: Go ahead.

RICHARD DIENSTBIER: I testify on behalf of both of the bills that had been advanced on behalf of the Social Action Committee of the Unitarian Church. Because my testimony will focus on what people with gay and lesbian orientations do and do not typically do and whether they're a threat to society, I'll take a moment to tell you about my credentials to say these things. I'm a professor of psychology at your university, the University of Nebraska at Lincoln. For more than ten years, I've taught the course called Human Sexuality and Society. Four different academic departments offer credit to their students to take my course. That course is taught at the senior and graduate level to prepare future therapists, social workers, criminal justice workers, et cetera, with research-based information about human sexuality. Thus, I must stay knowledgeable about current research in the sexuality area. One of the cornerstones of our society is fairness of opportunity. To ensure that fairness, we systematically prohibit discrimination against peoples when there is not good reason for that discrimination to exist. Those who would permit or encourage discrimination against gays and lesbians believe that they should be discriminated against either simply because they are different or because they are potentially harmful to others. But in our enlightened society, it is intolerable to allow discrimination merely because someone is different. People in ethnic and religious minorities are different, and there are people who would discriminate against them, but rational people with a normal sense of morality and decency will not discriminate merely because others are different. Discrimination against gay and lesbian people seems particularly reprehensible in light of the preponderance of evidence that both the sexual orientations of homosexuality and of heterosexuality are strongly guided by genes and by hormonal differences in the

fetus or the young individual--causes that the individual cannot control. If discrimination based only on the fact of differences is not appropriate for gays and lesbians, the only rational basis for discrimination that can be argued is that they pose a rational danger to others. The dangers often ascribed to people who are gay and lesbian are that they are potential child molesters or that by their example or by their mere presence they'll encourage the sexual orientation of others, particularly impressionable young people, to be gay or lesbian. What are the facts concerning these two issues? The research evidence strongly affirms that men and women who are legitimately termed gay or lesbian are no more likely to seek out sex with children than are men and women who are heterosexual. In fact, one of the leading experts on sexual deviance in this country, Dr. A.N. Groth, who works with sexual criminals in the Massachusetts prison system, believes that adult homosexuality is incompatible with pedophilia, or sexual attraction towards children. Another research literature shows us that kids who are adopted and raised by homosexual couples are no more likely to become homosexual themselves than are kids raised by heterosexuals. If growing up in a home with two homosexual parents does not influence the sexual orientation of children, then it seems very, very unlikely that having a gay or lesbian co-worker or teacher will have a major impact except possibly to make people more tolerant of others who have a different sexual orientation. As a footnote to my comments that gays and lesbians seem unlikely to molest children, let me add that I know people sometimes claim that some statistics show that homosexuals are more likely to molest. Let me explain that a bit. It is certainly true that some men who molest children prefer to sexually molest boys. Far less commonly, women sometimes sexually molest girls. Most of the time, those people in both categories prefer adult sexual partners of the other sex if they have an adult sexual orientation. In other words, if they can be classified as homosexual or heterosexual based on their sexual preferences toward adults, the vast majority of molesters are heterosexual. On the other hand, many child molesters have no adult sexual orientation. They cannot be classified as homosexual or heterosexual. They are genuine pedophile's--people who sexually molest or attracted only to children. You can see that if every instance of a man molesting boys were seen as a homosexual molesting boys, that would be a grave error, for the man who molests boys is far more likely to be either properly classified as a heterosexual or as a pedophile or both. Beware of the pedophiles and protect our children from them, but also beware of those who cite statistics

showing that everyone who molests children of their own sex is a homosexual. Remember, homosexuals seem less likely to molest kids than are heterosexuals. For those short on reading material, I have some copies of that.

SENATOR ABOUD: If you'd...if you'd like to distribute them to the committee, that would be...that would be fine.

RICHARD DIENSTBIER: What's that?

SENATOR ABOUD: I said we'd be happy to have them distributed to the committee members.

RICHARD DIENSTBIER: Okay.

SENATOR ABOUD: Are there any questions? Thank you.

EILEEN DURGIN-CLINCHARD: (See Exhibit C) Good afternoon, Senator Aboud and members of the Business and Labor Committee. I am Jean Eileen Durgin-Clinchard. We're distributing my testimony.

SENATOR ABOUD: Could you spell that last name for the transcriber.

EILEEN DURGIN-CLINCHARD: D-U-R-G-I-N, dash Clinchard, C-L-I-N-C-H-A-R-D.

SENATOR ABOUD: Thank you.

EILEEN DURGIN-CLINCHARD: I'm here today representing...I'm a past-president of Parents and Friends of Lesbians and Gays Cornhusker and a current member, and I'm also the Northern Plains regional director for PFLAG. I'm representing myself and my family, as well as PFLAG. The mission statement of PFLAG states, we promote the health and well-being of gay, lesbian and bisexual persons, their families and friends through support to cope with an adverse society, education to enlighten an ill-informed public, and advocacy to end discrimination and to secure equal civil rights. PFLAG provides opportunity for dialogue about sexual orientation and acts to create a society that is healthy and respectful of human diversity. I believe, I truly believe, that we in Nebraska believe in a society that is healthy and respectful and human diversity, the dignity of the individual and the enormous potential of individuals working to promote their own well-being and health for the good life as we know it. To that end, it is of the utmost importance that we enact legislation that promotes fairness and opportunity for all



our citizens to seek and retain employment without any discrimination on any basis other than the quality of their job performance. I'm skipping over some of what I had written because it's been stated before. I've been a resident of Nebraska since 1959. I was employed in public schools here in Lincoln, I supervised speech-language pathologists at ESU 9 in Hastings, and taught at Kearney State College. I have hired, evaluated and written recommendations for students and employees. Never was their sexual orientation considered relevant, or even if I knew it, to the individual's qualifications to carry out his or her employment or academic work. One's sexual orientation, homosexual or heterosexual, is simply not relevant in the workplace unless it inappropriately becomes a source of harassment, abuse or discrimination. At present there is no protection against such discrimination. As a PFLAG Helpline volunteer for over eight years, I had a number of examples of people calling, wondering what we could do to help, fearful of even asking if there were any employer...asking their employers or union policy in place, and I had no place where I could refer them. Sexual orientation is not a criteria for determining one's buying power, tax-paying responsibility, or value as a citizen contributing to one's community in a myriad of other ways. Well employed citizens make for a healthy economy. On a personal level, I am the parent of four children, three sons and a daughter. My eldest son is gay and has chosen not to live in Nebraska, nor would I want him to if he had to live either as a hidden minority or openly but in the knowledge that he could be fired for who he is. Discrimination impacts not only the individual, but his or her family members as well. There are a large number of parents and families of gay men and lesbian women here in Nebraska who must guard themselves continually from revealing their loved one's sexuality for fear of recrimination for either themselves or the family member. Parents, families, friends who speak out as allies have been told at times that such openness and advocacy, even in small and incidental ways such as calling others when they tell a joke a fag joke, posting a pink triangle, or otherwise indicating supportiveness might be viewed as too supportive of those people, perhaps too controversial. They might even be considered to be one of them. We are not censured for supporting, even in the workplace, the activities and endeavors of our nongay children. The implication is clear and, while not defensible, is nevertheless chilling and not conducive to a productive work environment. Discrimination impacts the bystanders who must witness it, as well as the targets. I said I have a gay son and that I am glad that he does not live here for his sake.



He was reared in Nebraska, graduated from Fremont High School with a National Merit Scholarship, and attended UNL as an ROTC cadet for one year before enlisting in the Army in 1968. Three years later he received an honorable discharge and has settled on the West Coast. He could have been on Nebraska tax rolls and close to his family for the last 24 years. Nebraska is a good place to live, but Nebraska has lost his contributions as a taxpaying, law abiding, well employed citizen. How many other talented and productive individuals have been lost to our economy? It is simply justice for all citizens of Nebraska to be judged by their job performance and not their sexual orientation. I urge your support of LB 400 or 21, whichever you end up with, and that you move them out of committee to discussion on the floor of the Unicameral. Thank you.

SENATOR ABBODD: Thank you. Are there questions? No questions. Thank you. Go ahead.

LOWEN KRUSE: I am Lowen Kruse from Omaha, a pastor in the United Methodist Church. Senators, I thank you for attention to this matter that you are giving. I support both of the bills and I'll speak, because of the time limitation, I'll speak as a pastor recognizing that there are many other pastors who would be as able and willing to take this place. My church's stand on the matter of civil rights for gay and lesbian persons is clear and direct and unqualified and, it may surprise you, we're quite willing to talk about it. We have no discussion or debate about this. It's right there and I know of nobody questioning. Now, since Senator Chambers has well recognized in his opening remarks our position, which is basically the mainline position, we'll be challenged by some that as being unbiblical and that we are unwilling to read our Bibles or we've lost them or something, I want to make it very clear that we come to our stand from a scriptural basis. That's where we're there. We are not ignoring scripture. Quite the opposite, we're taking all of scripture, Jewish and Christian, and we stand on it and that's where we come from. The Jewish scripture has some references to practice but none to orientation and that...those references would have to be understood in the context of the Hebrew community in which they were written. The Christian Witness is equally clear. Jesus said not a word about it. Paul, if you want to read the whole, which is what we would urge, have a little Bible study here which you started, thank you, you want to read the whole of it, Paul is opposed to lust. He's an equal opportunity opposer. He opposes heterosexual lust with a passion, if you'll forget the little pun, and

homosexual lust, both of which we felt were being done by heterosexual persons. That's quite to the side of it--he opposes lust, and that's real clear. And our churches take pretty clear stands on that too and it's already been documented that there's enough lust on both sides to go round, but that's not what we're here talking about. There's not one verse on sexual orientation. There are many passages about God's love for all God created. We understand orientation to be a gift of birth. Most of us in this room or any room in this land do not remember choosing our orientation. It's just as plain as that. It is always amazing to me that persons who want to rattle us around a religious cage on this and deny that there's any kind of a genetic or birth connection are among those who are quick to say that their heterosexuality came at birth without any decision from them and even add that they can spot one of those kind at 30 paces by their body structure or something else. You can't have it both ways. We are concerned about this issue because of that kind of thing. It's the judging of somebody by an appearance that is the heart of it, by sensual appearance or by some other appearance or sound or feel, judging somebody else by something you don't know anything about unless the person tells you. That is the struggle. We've been struggling for over 200 years, or however old this country is, on the matter of the darkness of our skin. We still aren't done. Our City of Omaha and our state is filled with racism. We're grateful some people are working on it. We hope that all are. But without the protection of law it's not an even playing field, and this is the experience that we're recognizing for persons. I could give lots of illustrations. They've been done. I'll not repeat them because I'm dealing with a number of people who are among our finest citizens, but are barred from some kinds of employment, especially employment where they're asked to tell the truth. I urge that there be granted protection against people's assumption about what somebody's going to do after looking at them or listening to them. Thank you.

SENATOR ABBODD: Thank you. Any questions? No questions. We'll take a couple more proponents and then we'll go to the opponents.

BRIAN DAVIS: Hi. My name is Brian Davis and I live in Omaha, Nebraska. I had something written, but I don't think I'm going to use it. I would rather speak from my heart. What I do as a human being is simply obey what my Mom and my dad have always taught me and that is to leave the world in a better condition than the way you found it, and I've done

that through a variety of ways. I work with UT youth and the Nebraska Drug-Free Network because when I was growing up, even though it was not popular to stay away from drugs and alcohol as a teenager, I thought that that was the right thing to do. Currently, I'm in a dance troupe that performs in front of elderly...elderly men and women and we also perform at elementary schools for children because I believe in bringing a smile to people is the right thing to do. When my friends need someone to talk to, they know that they can come to me and talk to me and that I'll listen because that is the right thing to do. And those three things tell you more about what kind of employee that I would make. They tell you more than that than three words--I am gay. I think that it is sad and appalling that most people won't give that a chance. They're willing to hire someone else not knowing what I could bring to a situation, not knowing what I could bring to a job. The simple fact is when I wake up in the morning I do what everyone else does. I look at the sun and I think it's beautiful. I go to work. I pay taxes. I go to school and I learn. I hold doors open for people. I generally believe in the decency and the compassion of human beings and the only thing that separates me from anyone else is the fact that when I fall in love with someone it will be with a man. I can't believe that in this country, America, people want to edit out the very thing that makes America great and that is its freedom. I'm scared today because I'm not out in all my circles of life. I'm out to my parents, I'm out to a few of my friends, but I'm not out to everyone. I can't be out to everyone. I don't feel it's safe. I'm only 21 years old and I don't feel safe in my own state. I urge you to pass one of the two bills just so that I don't feel and other people my age can't feel disenfranchised from a system that we would love to be a part of. No one is talking about anarchy or anything. We're talking about being part of something that's life, that's being part of everyone else's life and I do that on a regular basis but, no, it seems that it's still too scary and still too dangerous for other people to be a part of my life. You have a tremendous power today. You have the power to push Nebraska forward into a new direction and that's a direction that says we will not discriminate against someone because they are different. We will not put human beings on a lesser plane. I urge you to take that power and use it. Thank you very much.

SENATOR ABBODD: Thank you, Brian. This will be the last proponent.

DONNA WRIGHT: Pastor Donna Wright, W-R-I-G-H-T. My address,

is 616 Fifth Street in Scribner. My husband and I are copastors of three Lutheran Churches, one in Scribner, one in Snyder and one in the middle of what is this year a corn field in the farm country in between the metropolises of Scribner and Snyder. As an ordained minister of the Evangelical Lutheran Church in America, I come here to talk about the Bible and the direction that it holds. Some people regard the Bible a book of laws. Now you are familiar with laws and law making, but a lot of people say the Bible has all the laws in it, and there are a lot of laws and rules in the Bible. The Jews had hundreds of them that they were expected to follow. One time someone asked Jesus, whom we Christians claim as primary over any part of the Bible that we call the Old Testaments, one time someone asked Jesus, Teacher, what is the most important law? Which of all those hundreds of laws is the most important? And Jesus said this one--love the Lord, your God, with all your heart and with all your mind and with all your soul and with all your strength and, Jesus added, as a good lawyer, and there's a second one very much like it--to love your neighbor as yourself. Two laws, and I would submit to you that following those two laws is harder than following the hundreds of laws that the Jews tried to follow every day of their lives. Somewhere among those laws that the Jews were required to follow was a prohibition against a man lying with a man. In the Jewish law it was said that is an abomination and the penalty for that abominable act was the death penalty. And there were other abominations cited in the law too. Eating shellfish was one. Wearing fabric made...wearing clothes made of more than one fabric. You couldn't combine cotton and wool. Another abomination was to combine meat and dairy products. Another abomination was when a child spoke back to its parents. That also resulted in the death penalty, at least that's what the Jewish law was. Now I submit if we were to carry that...that law out today there would be a lot more room in this room and there wouldn't be so many people standing around here. I wouldn't be here either 'cause I talked back to my parents. But those laws are set aside because Jesus came up with new laws, laws of love. And we in the Lutheran Church do not always succeed but we try to follow that law of love in as many ways as possible. And in March of 1993 our board, our board elected by the entire church in convention, the Board of the Division of Church and Society passed this resolution: Whereas gay, lesbian and bisexual persons today are particular targets of violent assault, as well as verbal or physical harassment and other discriminatory practices due to their sexual orientation, therefore be it resolved that the Board of the Division for Church and Society

affirms that the historical position of the Evangelical Lutheran Church in America is, one, strong opposition to all forms of verbal or physical harassment or assault of persons because of their sexual orientation and, two, support for legislation, referendums and policies to protect the civil rights of all persons regardless of their sexual orientation and to prohibit discrimination in housing, employment and public services and accommodations. I will leave this copy of the "whereas" with you, as well as copies of similar statements by the United Methodist Church, the United Church of Christ, the Unitarian Universalist Association, the National Federation of Priests' Councils, the Union of American Hebrew Congregations, the National Assembly of Religious Brothers, and the Central Conference of American Rabbis. (See Exhibit I) All these various religious groups have come to the similar conclusion and I urge you to make that conclusion the law of Nebraska; that this state not discriminate in employment on the basis of sexual orientation. Thank you.

SENATOR ABOUD: Thank you. We'll make copies of those and distribute to the members of the committee. Are there any questions for Donna? No questions.

DONNA WRIGHT: Thank you.

SENATOR ABOUD: Yes?

SCOTT WINKLER: Senator Abboud, there are several people here that have wanted to present testimony in favor of this bill. Can we submit written copy of that for the record?

SENATOR ABOUD: Yes, we would be happy to have any...

SCOTT WINKLER: Did you want to do that at this time or at the end of the hearing?

SENATOR ABOUD: You can submit it now. If you have any written testimony, we'll take that right now. (See Exhibits D, G, J, K, L, M, O and P) We'll...any written testimony, we'll make copies and distribute to each one of the committee members. Also, if you are a proponent and you want to go on record in support of these two bills or one of the bills, please put your name on the sign-in sheet and you'll be made a part of the record as being in support of the legislation. (See sign-in sheets) Okay, we're now going to go to the opponents to LB 21 and LB 400.

ALICE BROWN: Senator Abboud and members of the committee,

my name is Alice Brown and I am here to make just a couple of points. I know that other people will make other points. One is that statistics indicate that the homosexual community is not underprivileged in terms of employment or their ability to make a living. In fact, they rank among the highest of the strata as far as employment and wages in this country. The point that I would like to make is that sodomy, which is the act employed by a homosexual in the fulfillment of his orientation, is derived from the city named Sodom. Sodom and Gomorrah were utterly destroyed before God because of the wickedness of the men who inhabited them. In Romans Chapter 1 it says that the lust of a man for a man is unseemly, it is conduct that is not convenient and such practices are worthy of death. In second Peter, which is also the New Testament, references made to Sodom and Gomorrah, which were made an example for all others who would live ungodly. Abraham Lincoln once made the point that it is not important that God be on our side, what is important is that we be on the side of God, and I would assert to you that no matter what law is made by the State of Nebraska if it is in violation of the law of God it is no law. Are there any questions?

SENATOR ABBODD: Any questions for Alice? Seeing none, thank you.

GUYLA MILLS: Senator Abboud and members of the Business and Labor Committee, my name is Guyla Mills. I am the policy director for the Nebraska Family Council. I am here today to register our opposition to LB 21 and LB 400. We believe that these bills would jeopardize the fundamental rights of Christian business owners. The homosexual agenda is one that is based on the principle that the lifestyle of the homosexual is good and legitimate and that it deserves total social acceptance. It's also an agenda that sends a message that for individuals or business owners who do not think that way that those people need to be silenced. As the previous testimony stated, the homosexual agenda is not about jobs and economic justice. Homosexuals right now are considered among the most affluent groups in the United States. As a business manager, I have knowingly hired a homosexual employee. However, if I were to open a Christian book store I would want to retain my right to hire employees based on character and, as Pastor Kruse pointed out, as a proponent of this legislation that Paul discussed lust, basically in terms of heterosexuals, I would want that right not to hire a heterosexual adulterer. Character does matter. As Senators, if you pass this bill out of committee on to the floor of the Legislature, you are sending a

message that you as individuals believe that homosexuality is morally on the same par as marriage and family lifestyle and that you want to penalize Christian book store owners and other Christian businesses who hold a different world view. That concludes my testimony on behalf of the Nebraska Family Council. I do have the Notre Dame Law Review (See Exhibit) that was written by Professor Rick Duncan that I would like to give to a Page to enter in as an exhibit and if I could, Senator, I would just like to make, thank you, Senator, a couple of just personal remarks for myself to Senator Chambers' remark that Christians need to show their compassion toward people and we need to keep in mind that Christ did forgive the woman at the well and he did tell her to go and to sin no more, and we, as Christians, and particularly today because we're talking about Christian business owners, have a fundamental right in this country to hold the world review...hold the world view that there are absolutes, that there are right and wrongs, and we just please ask you not to pass this bill on to General File. Thank you.

SENATOR CHAMBERS: I have one question.

GUYLA MILLS: Yes, Senator.

SENATOR CHAMBERS: Have you achieved the status of sinless perfection?

GUYLA MILLS: No, I haven't. You know, past...

SENATOR CHAMBERS: Okay. I don't even want to argue. Thank you. That's all.

GUYLA MILLS: I would...

SENATOR CHAMBERS: I just want to be sure...

GUYLA MILLS: May I comment to that?

SENATOR CHAMBERS: ..that that's not what you're saying your status is and you've said, no, it's not and that's not what you're saying so I don't have anything else.

GUYLA MILLS: Senator Abboud, may I have permission to respond to that?

SENATOR ABBODD: Sure. Go ahead. Yeah.

GUYLA MILLS: As a Christian, justification occurs right



away, sanctification is a process that takes a lifetime and I do not doubt that homosexuals, many are born with an orientation toward that lifestyle just as I have a sister who's three and a half years older than me, Senator, who has had three children and still weighs 110 pounds. I have a propensity toward obesity and I am in a church that does not hold homosexuality to be a greater sin than gluttony, but it is a church that contends that as human beings we are born into sin and that the best way to deal with sin is to accept that Jesus Christ has atoned for those sins and that then we are set on a process of overcoming those sins, and that is the difference. So I am not sitting here in judgment in any way that sins that I have been forgiven from are less sins than what homosexuals have been forgiven of. I am just saying that there are absolutes and there are standards and that there are consequences to behavior.

SENATOR CHAMBERS: Do you think an obese person, since your church teaches that's a sin, should be fired for being obese or prohibited from applying for a job?

GUYLA MILLS: It happens all the time.

SENATOR CHAMBERS: Do you think that's the way it should be?

GUYLA MILLS: You know, we can't legislatively say this and this is right and wrong.

SENATOR CHAMBERS: No, I'm just asking you is that what.... See, there are a lot of things I know that happen that shouldn't. I'm asking for your opinion, is that the way you think it should be?

GUYLA MILLS: In this...

SENATOR CHAMBERS: If you say yes, I'm not going to argue with you. If you say no, I'm not going to argue with you.

GUYLA MILLS: I guess I would say yes. I would say that a health club owner should have the right not to hire me or to retain me as a spokesperson for a health club. I would say that the airlines would have the right not to retain me...

SENATOR CHAMBERS: Why?

GUYLA MILLS: ..as a stewardess.

SENATOR CHAMBERS: Because...

GUYLA MILLS: Because they have...they have established standards that they, as employers, should be able to if they are the ones that own that business.

SENATOR CHAMBERS: So then if...

GUYLA MILLS: I'm saying they have that right as business owners.

SENATOR CHAMBERS: But if the work is not of the type where being obese impairs the persons ability to do it, should that person be denied that job opportunity?

GUYLA MILLS: In theory they...in theory, a person should not, but if that does happen, you know what I have found? I have overcome every obstacle because I am excellent at what I do and so I can be a woman of size and go along quite fine in this life, because I know what my liabilities are but I also know that if I work hard, that if I pursue and if I persevere that I will achieve what my goals are. So, no, I don't believe that there have been hindrances to me reaching my goals and I would, incidentally, be an opponent of any kind of legislation that would try to put obesity on that kind of par needing equal protection.

SENATOR CHAMBERS: But haven't...haven't you been assisted along the way by people who did not hold your being obese against you?

GUYLA MILLS: Probably no more than when I hired an art director...

SENATOR CHAMBERS: No, I'm not talking about when you hired...

GUYLA MILLS: ..who was a homosexual.

SENATOR CHAMBERS: I'm not talking about that. What you did could not have been done in a vacuum. If everybody had closed the door on you because of obesity, you could not have gone to school, you could not have done any of the things that you did and that's the only point that I'm making.

GUYLA MILLS: Senator, that's true with everything in life, absolutely.

SENATOR CHAMBERS: Exactly. Exactly.

GUYLA MILLS: And you know what? And obviously people have not closed the door on homosexuals or the Wall Street Journal wouldn't have reported that they are the most affluent group of individuals in the United States.

SENATOR CHAMBERS: Well, I don't see how they can make that determination since they don't know all the homosexuals.

GUYLA MILLS: They did a statistical study. I don't know what the basis was exactly right now.

SENATOR CHAMBERS: And I...I know some very impoverished homosexuals and, as I stated when I was offering this bill, I found out some people are gay that I never suspected were and, by the way, for their peace of mind I've destroyed all the letters where they gave their names and did not want it disclosed because I would never do that. But if your being obese has not prevented you from doing things I don't think being homosexual prevents somebody from doing things either. Like Michelangelo, I draw but I'll never be able to draw like Michelangelo so maybe I ought to get a little sugar in my britches and maybe I'd be a better artist, huh? Okay.

GUYLA MILLS: Thank you very much.

SENATOR ABOUD: Okay. Any other questions? Thank you.

DAVID RILEY: My name is David Riley. My address is 3311 Orchard Street, Lincoln, Nebraska, 68503. Regarding LB 21 and LB 400, the United States Supreme Court in the year of our Lord, 1986, in the case of Bowers versus Hardwick ruled that homosexual sodomy would require the eventual, I repeat the eventual, protection of other deviant sexual behaviors, such as incest. The court said we are not willing to travel down that road. I feel it's worth noting they said "down" in describing the road. What road will we travel here in Nebraska? The road of morality and Christianity as our forefathers here, "foresenators" have, or will we choose to choose the road of immorality and deceptive secular humanism? I have the right to expect my state representatives to choose the road that will provide fairness and morality to the at least 96 to 98 percent of Nebraskans who are not homosexual. Do I feel concern and compassion for the homosexual? The answer is yes. I have prayed they would, as many others of that lifestyle have successfully done and that is seek help if necessary in becoming heterosexual. I'm sure this was difficult and meant choosing their friends and environment carefully and I also feel they would have to be dedicated to this

transition. Samuel Adams, one of our founding fathers, wrote in one of his tracks the rights of the colonist as Christians may be best understood by reading and carefully studying the New Testament. The founding fathers did not believe the civil rights came from the federal government, God knows not even the Supreme Court branch of the federal government, but they came from God himself. Our founding fathers were quite clear about that. John Adams, our second president, said our constitution was designed only for a moral and religious people. It is wholly inadequate for the government of any other. No wonder we're increasing in greater political dilemmas. Our very political institutions fail to function properly as designed. We have lost a large part of our biblical base for our government of the people, by the people and for the people. We have broken the covenant with God our founding fathers afforded us in the constitution...in the U.S. Constitution, excuse me, and now we daily live with the results of our growing immorality. I do thank you sincerely for this time to defend my beliefs and I'm sure I didn't use up six minutes as your last proponent did.

SENATOR ABBODD: Okay. Any questions for Mr. Riley? Seeing none, thank you.

BILL ALFORD: I'm Bill Alford from Elkhorn, Nebraska.

SENATOR ABBODD: Could you spell your last name for the record.

BILL ALFORD: A-L-F-O-R-D. I'm a small businessman. I have several small businesses and I need to probably say that I don't have any argument against homosexual people. I do have an appeal to you not to pass this kind of legislation. I've already been subjected to several claims under equal opportunity that have been frivolous. I've won them all, but you have no concept of how serious it is to be stepped on by your government at the taxpayers' expense over the most frivolous kind of claims. There has to...there does not need to be any proof of any kind. Somebody can go to the Equal Opportunity and just make a statement that I think maybe I didn't get a raise because, or I think possibly somebody else got a promotion because, and the federal government and the city and the state government come down on you with hobnail boots demanding all kinds of investigations of every applicant that you've ever had, what race they are, what they were paid, what gender they are, and you don't realize what it's like to be judged guilty before you even start. In the courts, you know, you watch

on television, you see that the person on trial is assumed to be innocent unless there's evidence beyond any shadow of a doubt that you are guilty. When you pass a law like this you determine me to be guilty beyond any shadow of a doubt unless I can prove otherwise, and it's very difficult because any little hint of anything from an employee, and I don't know how in the world it is...it is possible for us to determine something of people's race and generally the gender, but I don't know how in the world I would tell, nor would I care, what people's sexual orientation is. It's a private matter. I don't see why in the world I should get involved or why you should start passing laws that are very oppressive to a small business person. You've probably seen numerous comments that the small business area is where most of the new jobs come from and yet small business people are the most vulnerable to this kind of legislation, and I would appeal to you. I would say that there certainly are cases of people who have been beat up on or misused in one case or another, but I think in order to pass this kind of legislation you need to determine that there is actually a class of people who have been repressed and who can't make an adequate living, and I don't think that can be demonstrated beyond a shadow of a doubt. Thank you.

SENATOR ABOUD: Thank you. Any questions for Mr. Alford?  
Senator Chambers.

SENATOR CHAMBERS: What do you mean by a small business? How many employees would be involved based on your...? When you say small business, how large an operation do you have in mind?

BILL ALFORD: We have several companies and they'll run from 40 to 50 each, 60.

SENATOR CHAMBERS: You had mentioned...first of all, I don't think you correctly stated the law or the policies and practices of the EEOC when you say any hint of something they come down on you with hobnail boots, but that's a difference of opinion. But you had mentioned something that does catch my interest that I did, being presumed innocent...I meant presumed guilty without having done anything. Maybe something like a gay person, huh? Isn't that what they face?

BILL ALFORD: I don't think so, no. I don't know of any reason why...why does it get into the employment place?

SENATOR CHAMBERS: Because people will fire them.

BILL ALFORD: How do they know who is...

SENATOR CHAMBERS: Well, let me ask you this.

BILL ALFORD: ..who is and who isn't?

SENATOR CHAMBERS: Because somebody can say that.

BILL ALFORD: Isn't it a private matter? Why is it something that you have to fight about in business?

SENATOR CHAMBERS: Do you...if a person were working for you...well, you probably wouldn't fire a person because they were gay, would you?

BILL ALFORD: No, I wouldn't.

SENATOR CHAMBERS: Okay, but there are some people not as enlightened as you are. If this person had been discharging the duties of the job satisfactorily for however long a period of time, then one of the employees told you...told this employer so and so is gay and the employer said, are you, and the person didn't lie and said, yes, I am, and the employer said you're fired, do you think that's right and fair?

BILL ALFORD: I don't know. I'd have to know the...

SENATOR CHAMBERS: Okay. That's all I have.

BILL ALFORD: ..circumstances.

SENATOR CHAMBERS: That's...that's...the circumstances are what I gave you.

BILL ALFORD: It's very simple. Employees can quit if they wish to and employers ought to have the right to change employees if they have a good reason for it.

SENATOR CHAMBERS: So then you do believe that firing because a person is gay is all right.

BILL ALFORD: Or any other reason that the employer feels is suitable, yes.

SENATOR CHAMBERS: But, okay, so see what...

BILL ALFORD: You have an employment at will policy in the

State of Nebraska. Is that correct?

SENATOR CHAMBERS: But that's not strictly true because if a person uses an inappropriate basis for firing somebody, they aren't free to do that, so the statement that this is a state of employment at will is not strictly true, but I don't want to argue with you.

BILL ALFORD: Well, it's generally...

SENATOR CHAMBERS: You answered the questions that I had. Thank you.

BILL ALFORD: There are some exceptions with you...yeah.

SENATOR CHAMBERS: Thank you.

BILL ALFORD: I believe basically in the golden rule. I'm going to treat you the same as I would want you to treat me, and I treat...

SENATOR CHAMBERS: So if you were gay you wouldn't want me to fire you because you're gay.

BILL ALFORD: I treat all of my employees the same way and I think most employers do. I don't think very many employers are interested in losing a good employee over something that's private and not involved in the workplace. I don't believe there is a problem, to tell you the truth.

SENATOR CHAMBERS: I understand your position.

BILL ALFORD: Okay. Thank you.

SENATOR ABBOD: Any other questions? Thank you.

ROBERT CONNOR: Good afternoon, Senator Abode (sic) Abboud, sorry. I've been practicing your name all day.

SENATOR ABBOD: That's close enough. That's all right.

ROBERT CONNOR: My name is Robert Connor. I'm Pastor of Evangelist Assembly of God Church in Omaha, Nebraska, and my purpose here today is to register my opposition to LB 21 and 400. Obviously, when you...I talked to another pastor in the city and said, are you going? He said, no. He said, it's pretty impossible to be able to sit down and not sound like a Bible-thumping radical in this day and age and I guess I'm probably as guilty as any. But I want to go back



in history for a minute and look at the evidence. It's quite compelling that our country's laws were based on scripture. We can debate that point one way or the other, but it stands very standardized that that's the truth. Genesis 2:24, also echoed in Matthew 19:5, Mark 10:7, Ephesians 5:31 all state therefore shall a man leave his father and mother and shall cleave to his wife, let that sink in a minute, and they shall be one flesh. And this is where we get the covenant of marriage. This principle is broken in Genesis 19 versus 1 through 29, and the consequences of God's judgment can be dug up to this day under the molten rock and ashes of the plains of Sodom and Gomorrah. A less known passage which is just as impressive is in Judges, Chapters 19 and 20. This is where Gibeah specifically and Benjamin in general was almost totally destroyed as a people due to their sexual perversions. Looking ahead in Romans Chapter 1, Paul gave us a peek into the minds and lives of persons who reject the revelation of God and, if you don't know, Romans is in the New Testament. Verse 18 says, for the wrath of God is revealed from heaven against all ungodliness and unrighteousness of men who suppress the truth in unrighteousness. He continues his thought by showing what some of the steps towards God wrath would entail as we get farther from the truth. Verse 24 says, therefore, God also gave them up to uncleanness in the lust of their hearts to dishonor their bodies among themselves, who exchange the truth of God for a lie and worshiped and served the creature rather than the creator, who is blessed forever. Then Verse 26 goes on and says for this reason God gave them up to vile passions, meaning as we were talking, lust and uncontrolled passions. Then it goes on to say for even their women exchanged the natural use for what is against nature. Likewise, also the men, leaving the nature use of the woman, burned in their lust and their uncontrolled desire for one another, men with men committing what is shameful, a word we don't use much, and receiving in themselves the penalty of their error which was due. Verse 29 continues to define these unrighteous deeds as including sexual immorality, wickedness, covetous, maliciousness, envy, strife, murder, deceit, and it goes on and on. Conspicuously absent from that list of unrighteous things is being Irish, as I am, or being Swedish, as my wife is, or being Hispanic or of African descent, or being from any nation in the world. When we start putting sexual preference as a cohabiter with varieties of races, creeds, religions and so on how long will it be before the exceptions of page 19, Section 18 of LB 21 will no longer exclude other forms of sexual perversions, and very soon murderers and rapists and all will prove their rights to

carry out their lifestyles without any social stigma, any restraints to curb their antisocial and deviant behaviors? I think, as leaders, it may be time to hear and understand the words of the great Abraham Lincoln, a true standard bearer in speaking to his friends and neighbors in Springfield on the eve of his leaving for Washington. Quote, he says, "I go to assume a task more difficult than that which is devolved upon any other man since the days of George Washington. He never would have succeeded except for the age of divine providence upon which he at all times relied. I feel that I cannot succeed without this same divine blessing which sustained him and on the same almighty being I place my reliance for support. And I hope you, my friends," he went on to say, "will all pray that I may receive that divine assistance without which I cannot succeed, but with which success is certain. Again, I bid you an affectionate farewell. I move on to Isaiah 5:20 where it says woe to them that call evil good and good evil, that put darkness for light and replace light for darkness, that move sweet for bitter and bitter for sweet. Woe unto them that are mighty to drink wine and men strong in mingling strong drink which justify the wicked for reward or for bribe and take away the righteousness from the righteous man. I wish to leave you with a quote of a song called "America Again": When it gets to the point where people would rather come out of the closet than clean their closet it's a sign that the judgment of God is going to fall. We cannot allow public policy to tear down the moral fabric of our society just as we...just so we as politicians, ministers and public servants can remain politically correct or socially relevant. It may be time to learn how to stand for what's right again. Thank you very much. Do you have any questions?

SENATOR ABBODD: Questions? Senator Chambers.

ROBERT CONNOR: I saw his mouth watering.

SENATOR CHAMBERS: Reverend, what you said intrigued me. You mention that the covenant of marriage started based on that verse you read for us in Genesis.

ROBERT CONNOR: Yes, sir.

SENATOR CHAMBERS: Did God really mean it when it said, if God was the one speaking, that you should leave your mother and your father and cleave to your wife?

ROBERT CONNOR: I believe he did.

SENATOR CHAMBERS: How many wives?

ROBERT CONNOR: Said one wife. It didn't imply multiple marriages at all.

SENATOR CHAMBERS: Well, King David was called the apple of God's eye and he had many wives.

ROBERT CONNOR: Yes.

SENATOR CHAMBERS: Solomon deemed the wisest man and the servant of God, had many wives and concubines.

ROBERT CONNOR: He had 200 to be exact and what caused his destruction?

SENATOR CHAMBERS: So they were...they were sinful too, right?

ROBERT CONNOR: What caused his destruction?

SENATOR CHAMBERS: I'm just asking, is that correct?

ROBERT CONNOR: Okay, answer me that and I'll answer that.

SENATOR CHAMBERS: We don't answer the questions...

ROBERT CONNOR: Okay.

SENATOR CHAMBERS: But if you come to speak then you would respond to questions because you're prepared to, but if you don't want to then (inaudible).

ROBERT CONNOR: Okay. Oh, I'd like that. I'd like that.

SENATOR CHAMBERS: Okay. Was David in violation of the covenant God...

ROBERT CONNOR: Yes, he was.

SENATOR CHAMBERS: ..(inaudible) down with reference to marriage?

ROBERT CONNOR: Yes, he was.

SENATOR CHAMBERS: Was Solomon?

ROBERT CONNOR: Yes, he was.

SENATOR CHAMBERS: Is there anything in the Bible that condemns David for this?

ROBERT CONNOR: Yes, there is.

SENATOR CHAMBERS: And Solomon?

ROBERT CONNOR: Yes, sir. In the New Testament there's a statement...

SENATOR CHAMBERS: No, no, I mean in the Old Testament where they lived, when Samuel condemned them for taking another man's wife, not for having many. In fact, he said you have many wives, why'd you take this man's one wife?

ROBERT CONNOR: You can't take the Old Testament on its own if you're going to discuss Christianity.

SENATOR CHAMBERS: Well, when you started.... Okay, let me ask you this. Is...

ROBERT CONNOR: I used one from each side.

SENATOR CHAMBERS: ..is...is incest wrong?

ROBERT CONNOR: Yes, it is.

SENATOR CHAMBERS: Was Lot the man who fled from Sodom and Gomorrah because God wanted to spare him?

ROBERT CONNOR: Yes, he was. In the New Testament, please let me finish this...

SENATOR CHAMBERS: Did...did...wait a minute.

ROBERT CONNOR: Please let me finish.

SENATOR CHAMBERS: Did Lot commit incest with...

ROBERT CONNOR: Please let me finish.

SENATOR CHAMBERS: ..his daughters?

ROBERT CONNOR: I'm answering your question.

SENATOR CHAMBERS: Did Lot commit incest with his daughters?

ROBERT CONNOR: No, his daughters committed incest with him.

(LAUGHTER)

SENATOR CHAMBERS: So then it's like one hand clapping.

ROBERT CONNOR: It's more like if you allow me to explain in the New Testament, it said that even just Lot, a man who was just, was...and this is where this, this particular bill brings up a very important point, he was vexed by the lifestyle of those who lived in Sodom and Gomorrah. It means he was affected by those homosexuals he lived around and, yes, that's why I feel it's very important.

SENATOR CHAMBERS: So his incest was excused and he wasn't responsible for it.

ROBERT CONNOR: No, not at all. They suffered very much and that entire family suffered for his sin.

SENATOR CHAMBERS: Did Abraham have a wife and a woman?

ROBERT CONNOR: Yes, he did...

SENATOR CHAMBERS: And he had a child...

ROBERT CONNOR: ..and Ishmael suffers today because of what he did. His name was Ishmael. Yes.

SENATOR CHAMBERS: And he had...and Ishmael suffered for the sin of his father.

ROBERT CONNOR: Yes, he did.

SENATOR CHAMBERS: So then you believe that one person should be punished for that which another has done.

ROBERT CONNOR: The Old Testament says that the sins of the fathers are handed down to the third and fourth generation, much we see a child molester give birth to a child molester, a wife beater give birth to a wife beater, an alcoholic give birth to an alcoholic.

SENATOR CHAMBERS: What did Jesus say about one person being punished for something somebody else did?

ROBERT CONNOR: Jesus didn't talk about that much...

SENATOR CHAMBERS: Did you find that anywhere?

ROBERT CONNOR: ..but in...

SENATOR CHAMBERS: Well, I thought you were taking the 'both of them, that's why I thought I'd ask you that. In this case, we go just by the Old Testament, right?

ROBERT CONNOR: No, sir, we can take the New Testament if you like and we can go a long way with it.

SENATOR CHAMBERS: And then I'm going to let...I'm going to let you go. Show me one place where Jesus said that the father will commit a son...a sin and the son or daughter will be punished for it.

ROBERT CONNOR: I won't...

SENATOR CHAMBERS: Or my brother would commit a sin and I would be punished for it.

ROBERT CONNOR: I won't take scripture out of context for you.

SENATOR CHAMBERS: So he didn't say it, right?

ROBERT CONNOR: I won't take scripture out of context for you.

SENATOR CHAMBERS: Well, did he say that?

ROBERT CONNOR: No, he didn't use those words.

SENATOR CHAMBERS: Okay.

ROBERT CONNOR: There are many words.

SENATOR CHAMBERS: That's all that I had. Thank you.

ROBERT CONNOR: Anyone else?

SENATOR ABBODD: Any other questions? Thank you for your testimony here today.

ROBERT CONNOR: Thank you very much.

LINDA PETERSEN: Senator Abboud and members of the Business and Labor Committee, my name is Linda Petersen, P-E-T-E-R-S-E-N, and I come to you as an individual involved in a family business. I come and ask that you not support LB 21 and LB 400. I do not feel that the passing of these

bills would be in the best interests of the citizens of Nebraska, the businesses in Nebraska, nor is it necessitated by statistical evidence that discrimination occurs because of sexual orientation. You, as Senators, have and are currently working long hours to pass legislation that would encourage business expansion. You know the importance of economic development and the need for this state to increase its tax base. We have had a migration out of Nebraska for several years and we must reverse this trend or face higher taxes. Nebraska must be business friendly in order to survive in the future. I feel that LB 2...21 and LB 400 are not pro-business pieces of legislation. I ask these questions: How is this type of legislation enforced? How do I, as an employer, prove I don't discriminate? Suppose I have two equally qualified persons apply for a job, hire one, and then have an EEOC complaint filed by the other who happens to be a homosexual, a fact unknown to me when I hired the other person, how do I prove I didn't discriminate? The burden of proof is on the employer. Perhaps these bills should be amended to cover the time and cost of an employer in defending him or herself when they are found innocent of a charge. Now I recognize that your jobs as Senators is to balance the scales of justice and, as this committee is titled Business and Labor, you must not only consider what's fair for business but what also what is fair for labor. I also recognize that there are more important things than the profit and loss statement of a business record. The very drafting of this bill says that there are those who feel that there is discrimination in the State of Nebraska because of sexual orientation. Would I agree that there have been cases of discrimination because of sexual orientation, that this has happened in Nebraska? Would you agree that there have been cases of discrimination because of an individual being overweight, discrimination because of being bald or of being unattractive, just plain ugly? Try becoming an anchorwoman on a news channel if you fall into one of the last categories. Do you, as legislators, feel you can address every injustice through legislation? If there were statistical evidence that proved that homosexuals and bisexuals were disadvantaged economically, I would understand the creation of this bill, but statistics show just the opposite. And I'd be glad to get those for you if you'd like. I don't have them with me today. I ask you, as legislators, if you are pre...I ask you, as legislators, if you are prepared to grant other rights to those who are homosexual or bisexuals should this legislation pass? You'll be making this group of people a protected class. At UNL they are a protected class and now this protected class is asking for insurance benefits as



given to married couples. And what about marriage rights? How is it that the State of Nebraska can discriminate against homosexuals and bisexuals by not giving insurance rights or marriage rights? You are asking that business not discriminate, but you do. As a parent, when one of my children comes to me after a fight with their sibling, I go to the other child involved in the situation and try to learn his or her side of the story. If I discipline my children based on hearing only one side, I'm hearing only one perspective, I would be a very unfair parent and my children would quickly bring that to my attention. Please keep this scenario in mind as you hear from those who share with you about sexual discrimination from employers. You, as legislators, would be very unfair to judge the situation without at least considering that there is another side to every story. I respectfully submit this testimony and thank you for your time and commitment as State Senators.

SENATOR ABOUD: Thank you, Linda. Any questions? Thank you.

EMILIE VOLQUARTSEN: My name is Emilie Volquartsen. My address is 604 Nob Hill Terrace in Bellevue, Nebraska.

SENATOR ABOUD: Could you spell your last name for the record?

EMILIE VOLQUARTSEN: V-O-L-Q-U-A-R-T-S-E-N.

SENATOR ABOUD: Thank you.

EMILIE VOLQUARTSEN: Good afternoon, Mr. Chairman and the members of Business and Labor Committee. I am here to register my opposition to LB 21 and 400. I do feel sympathy for the homosexual. I, too, at one time wanted my freedoms as a lesbian. I felt good about who I was. Taking my lover to a park and showing my affections freely was what I desired to do. I rented the Sons of Italy Hall and had the first open gay dance. The dance wasn't successful, but that was my desire--to bring homosexuality in...out in the open. I was at the downtown Unity Church in Omaha, Nebraska, when homosexual ministers from Washington State came in and introduced the first gay church named Metropolitan Community Church. If I stayed in that lifestyle I would be here today advancing these two bills, LB 21 and 400, but I had a choice to go out of that lifestyle. When I was approached by a Christian believer who read to me from the Bible the first chapter of Romans. At Metropolitan Community Church verses on homosexuality was not...was avoided. I was told to read

the Book of Proverbs. As the lady read to me from the Bible, I understood three things. God gave homosexuals up to their own sinful desires. Women exchange their desire...unnatural desires, their desires, their natural relation...women exchange their natural relations for unnatural relations and men doing lustful things with other men abandoning natural relations with women. And, last, in the Book of Romans, homosexuals would not even acknowledge the truth of God so he gave them up to do everything their evil minds could think of. This represented me. This scared me. I feared God and I didn't want him to let go of me. As a result of reading these scriptures and hearing the truth, I left my lover and gave my life to Jesus Christ that very day. Experiencing God's love and his forgiveness, I am living proof that a person can change and leave the homosexual lifestyle. I work for a company that has imposed special rights for homosexuals and there is a man in my department who has announced he is gay. It has brought about dissension among the workers. He refuses to do certain aspects of his job, thus resulting in greater workload on others. His attitude reflects the knowledge that he has special rights. All employees are subjected to attend...all of the employees at my company are subjected to mandatory diversity classes, introducing sexual orientation to civil rights. The majority of the employees are upset with this company policy. My personal feelings with so much controversy about this, I believe this thing should go to the State of Nebraska and let the people vote on it. Thank you very much for hearing me. Do you have any questions?

SENATOR ABBODD: Questions? No questions. Thank you. We're going to have a couple more opponents and then we'll be concluded with.... You want to testify? Okay.

CYNTHIA LAMM: Thank you, Senator. My name is Cynthia Lamm. I reside at 5025 J Street here in Lincoln and I am here representing on behalf of thousands of citizens across Nebraska who signed petitions against similar legislation last year, LB 395. I urge this committee to kill the bills, LB 21 and 400. There are a couple of areas of concern that I have, one being the term sexual orientation. Though Senator Chambers has attempted to define what is not included, not included in sexual orientation, the gentleman who testified from UNL I believe was a professor made the point and I have also visited with several psychologists that consider pedophiles, what they lack is adult orientation. In fact, many define pedophiles as having a sexual orientation towards children, so that would be of primary concern to me. Secondly, to discriminate can mean

to single out for unfavorable treatment and when in the past this has caused a group of people sharing common, inherent characteristics to experience economic, educational or political powerlessness then corrective measures have been enacted. But Webster's Dictionary also defines "discriminate" as to use good judgment in making a choice, to observe or make distinctions, to distinguish between. It's important to note that discrimination can be a good thing. In fact, employers and personnel managers everywhere must discriminate daily using their good judgment to determine which business practices, applicants and employees best suit the needs and best represent their companies. The criteria used during this process varies from business to business, just as products, services, target markets and expenses vary. While one company may look at how someone dresses, concerning itself with outward appearance when public contact is required, another may determine that someone who smokes cigarettes is not the best suited to represent its health products. Bottom line, each company must maintain the right to determine if the behavior or lifestyle exhibited by an employee or potential employee will affect the company. Mr. Chambers made the point earlier that if all employers decided to discriminate against those in the homosexual lifestyle they would not be able to work. Then Mr. Hall came forward and made the point that that's not the case in Nebraska, that UNL and various schools have enacted policies and companies and corporations have enacted policies that favor special treatment for homosexuals that in fact say they cannot discriminate against them. So has been...as has been mentioned before, homosexuals have not experienced pervasive economic or educational hardship, nor political powerlessness. In fact, these statements, as well as studies that have been conducted on their own behalf, have proved just the opposite. Furthermore, homosexuality is not an inherent characteristic. We've just heard testimony from someone who has come out of the lifestyle. It's nothing that can't be changed. It's a behavior, a lifestyle that some citizens choose to take part in. In 1991, three Nebraska men were arrested at a rest area between Lincoln and Omaha for being involved in lewd sex acts with one another. In 1993, several men involved in homosexual acts were arrested in a park in Omaha for taking part in public lewd sex acts. In 1994, obscene artwork depicting homosexual acts was removed from a gay bar in Omaha. The owner stated that this was an infringement of the First Amendment because this art was a part of the homosexual lifestyle and culture. In San Francisco, New York and Los Angeles bathhouses and clubs are frequented by homosexuals who take part in promiscuous,

anonymous sex. While all homosexuals may not take part in these type of activities, around the country they do remain a real and perceived part of the homosexual lifestyle. Though to some firms this may not make a difference, other business owners would object to someone connected with a homosexual lifestyle representing their company. In this country, all citizens, including homosexuals, have the right to challenge employers in court if they feel they've been discharged for no cause. Many in fact do just that. What LBs 21 and 400 would do is expand the rights of homosexuals, extending to them a special minority status. This would enable them to use taxpayer dollars to challenge employers through EEOC if they feel they have not been hired or have been discharged for no cause other than their homosexuality. During the 1994 legislative session, approximately 15,000 signatures from citizens throughout Nebraska were delivered to State Senators urging their opposition to similar legislation. Many of those signatures were hand delivered on January 11, 1994, when over 600 citizens came to this statehouse to visit in person with their senators. In Washington, work is being done to halt increasing regulations that are overwhelming businesses and citizens throughout the country. This body has spent recent days passing legislation designed to attract companies and bring more jobs to Nebraska. I propose to you that it is equally important to make certain that locally owned companies are able to thrive in our state. This cannot be done with increased regulation. Business owners know what is best for their business. They must be allowed to continue to use their good judgment when conducting business, including who they will hire and what employees they will keep.

SENATOR ABBODD: Any questions?

CYNTHIA LAMM: Thank you.

KEN BOROWIAK: Senators, my name is Father Ken Borowiak, B-O-R-O-W-I-A-K. I am a spokesman for the Catholic Diocese of Lincoln. I have a prepared statement to read which is the position of the Catholic Diocese of Lincoln. The references to in the first person are of the Catholic Bishop of Lincoln. (See Exhibit M) As the Bishop of the Catholic Diocese of Lincoln, teaching is one of my primary duties. One of the ways that the bishop fulfills this duty is by both defending and propagating the church's deposit of faith to his own congregants. This duty is also fulfilled by commenting on public policy and legislation, especially when it adversely affects the human person and the common good of society. The new Catechism of the Catholic Church

explicitly mentions this role: "The Church, the 'pillar and bulwark of the truth,' has received this solemn command of Christ from the apostles to announce the saving truth. To the Church belongs the rights always and everywhere to announce the saving truth, also to announce moral principles, including those pertaining to the social order, and to make judgments on any human affairs to the extent that they are required by the fundamental rights of the human person or the salvation of souls." The policy change proposed by LB 21 and LB 400 provides me, as the Bishop of Lincoln, with an occasion to speak out concerning the proposed legislation, as I believe that it adversely affects the human person and the common good of society. There are a number of reasons for opposing the policy change proposed by LB 21 and LB 400. First of all, there does not appear to be a clear and compelling need for this legislation. Second, the proposed legislation does not recognize the well-established distinction made between a homosexual orientation and a homosexual behavior or lifestyle. The proposed legislation would seek to protect a person with a homosexual orientation who acts upon the psycho-sexual attraction to a person of the same sex in a public expression of his or her orientation. A person who merely feels a homosexual orientation but does not engage in homosexual activity would not be the subject of any sort of discrimination, unless of course the orientation were to be made known by the individual. Third, the proposed legislation accepts sexual orientation as a basis for protection under civil rights legislation. Homosexual activity is not analogous to race, religion or gender, which are at the very least morally neutral, as a basis for special protection under the law. Homosexual activity is merely one of the many activities left unprotected by anti-discrimination laws. The main reason that some persons publicly announce their homosexual orientation or openly engage in homosexual acts or lobby for so-called gay rights is to win acceptability by society and protection under the law. Fourth, the proposed legislation would elevate homosexual activity to the status of protected activity, thereby implicitly promoting this activity. In our society there is a common perception that whatever is declared legal, by that very fact is perceived to be morally acceptable. Homosexual activity is a morally controversial activity. There is no consensus about its moral acceptability. Fifth, the proposed legislation does not recognize the well-established distinction between just and unjust discrimination. Just discrimination can be defined as the protection that society gives to some when the activity of others threaten their basic human rights.

Unjust discrimination, on the other hand, can be defined as the arbitrary limitation of human rights, which is always opposed by people of good will. Granting homosexual activity protected status would make just discrimination look like an attack against the civil rights of homosexual citizens, rather than protecting the common good of society against specific antisocial activity. Homosexual persons already enjoy the protection of the law against unjust discrimination because they are human beings, and not because they are homosexuals. I am, of course, supportive of measures to protect the civil rights of homosexual persons, provided the common good of the entire society is also protected. The Catholic Church's judgment on the immorality of homosexual behavior is based primarily on natural law, but also on divine revelation. The natural law binds all people of every time and place, regardless of religion. It is called natural law because it is integral to the nature of man--human reason discerning good and evil, truth and falsehood. It is a law written on the human heart which commands man to do good and to avoid evil, to seek truth and spurn falsehood. The exercise of human reason concludes that homosexual behavior is wrong because the human body was not designed for sexual activity between two persons of the same sex. Nor can it fulfill the primary end of sexuality, that is the conception of new life. Divine revelation also speaks decidedly and definitively about the immorality of homosexual behavior. In the Book of Leviticus, the Old Testament, it is stated that those persons who willingly engage in homosexual activity may not be numbered among the people of God. And Saint Paul in the New Testament states that they are not found worthy of the kingdom of God who commit homosexual acts, in first Corinthians. Homosexual actions are even presented as the consequence of rejecting God in Paul's letter to the Romans. Revelation condemns homosexual behavior as seriously depraved because it is not in accord with the Creator's design for the expression of human sexuality. According to the Book of Genesis, God created males with a sexual desire for females, and vice versa, so that one man and one woman might enter into the permanent bond of marriage, characterized by a love that is both unitive and procreative, providing the proper context for the protection and upbringing of children.

SENATOR ABOUD: Father, could you...could you kind of wrap it up.

KEN BOROWIAK: Yes.



SENATOR ABOUD: We're trying to...

KEN BOROWIAK: The Catechism of the Catholic Church sums up the position of the Catholic Church quite effectively. Basing itself on sacred scripture which presents homosexual acts as acts of grave depravity, tradition has always declared that homosexual acts are intrinsically disordered. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from genuine affective and sexual complementarity and under no circumstance can they be approved. This said, I hasten to add also from the catechism the number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition and for most of them it is a trial. They must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided. The decision to stand in opposition to the proposed legislation in LB 21 and LB 400 is made in defense of the common good, in particular, of the traditional marriage and family life. The decision to oppose this proposed legislation must not be taken as indifference to the serious difficulties experienced by homosexual persons. Even though I take a firm stand on this issue, I urge proper respect for the rights of every citizen of the State of Nebraska. I will discourage unjust discrimination against all people, including homosexual persons. As Bishop of Lincoln and as one who has the common good of society in mind, I urge all citizens of Nebraska to seriously reflect upon these issues, especially what is dictated to us by natural law, and to act in an upright way.

SENATOR ABOUD: Thank you. Questions?

KEN BOROWIAK: And I have copies of this for the Senators.

SENATOR ABOUD: Okay.

SENATOR CHAMBERS: Father, how long have you been a priest?

KEN BOROWIAK: I've been instructed not to answer any questions, regretfully. Eight years.

SENATOR CHAMBERS: I was wondering if you were sent here as a penance and does that...did they tell you don't answer questions because you don't really understand what you read, or what did they say was the reason?

KEN BOROWIAK: No, I quite well understand what I read.



SENATOR CHAMBERS: Did he, did the Bishop refuse to come because he didn't want questions answered about the statement that he gave?

KEN BOROWIAK: Oh, no, no, no. He very much welcomes questions submitted to the Chancery and he said that...

SENATOR CHAMBERS: Well, no, no, I meant why didn't he come here since he's going to become a part of the political process, which he has a right to do, and he does understand this is not the church, he doesn't want to be questioned about the announcements that he makes in condemning an entire group of people? He felt he was above that, in your opinion?

KEN BOROWIAK: Well, why aren't all the citizens of your district here to speak for themselves?

SENATOR CHAMBERS: Because I do and I answer questions and conduct myself in such a way that anybody can ask me whatever they choose and my position is out there and I don't send people to do my work. That's why I'm here and not them. But here is the question I was going to ask and maybe you can remember it and ask him to answer it. Does the church believe that if a person is immoral it's all right to deny that person employment whatever the type of immorality is? If the church believes that the orientation is not wrong but acting on it is wrong, does the church believe that that type of sexual orientation is morally neutral? If they believe that it is not morally neutral, then the orientation itself is wrong. If they say the orientation is not wrong, but only acting on it, that means that the orientation itself is neutral and if it's neutral that means it's not voluntary because lust and wicked thoughts are culpable. But he...and I'm giving you things that maybe you would want to present to him. Now if the purpose of sex is to procreate, and I don't have much regard for the opinion of men who don't know anything about what they're talking about, I'm just being frank with you, but some do know. Is the position of church that sterile people should not marry?

KEN BOROWIAK: Um...

SENATOR CHAMBERS: You don't have to answer it.

KEN BOROWIAK: Okay.

SENATOR CHAMBERS: I want you to take it back and, if they can marry, are they not to engage in sex because there's no possibility of procreation?

KEN BOROWIAK: Would you submit that to the Bishop, that question?

SENATOR CHAMBERS: No, I'm not...

KEN BOROWIAK: Okay.

SENATOR CHAMBERS: ..I'm not ridiculous or a child. He doesn't want to participate in the discussion, but these are things that maybe made him realize would be asked, 'cause he's a smart man, and why he chose to send you and not come himself.

KEN BOROWIAK: Okay. You say...you imply that I don't know what I'm talking about.

SENATOR CHAMBERS: You don't know what he's talking about 'cause he told you don't answer questions.

KEN BOROWIAK: He did ask that any questions could be submitted and they would certainly be addressed on a timely, efficient manner and we...

SENATOR CHAMBERS: Then let me apolo...let me apologize. I will not say that you don't understand it well enough. The Bishop feels that you don't know and that's why he said don't answer the questions.

KEN BOROWIAK: Do you know his mind on that topic?

SENATOR CHAMBERS: Well, we know things by their operations. As you know, we can never conceive of or completely comprehend God because he's beyond us, but we know God through his operations. So I know about the Bishop through what he does and since he sent you here to speak but told you don't answer questions, it's obvious that he didn't feel you could handle the job. I'm reading his actions. I learned that at Jesuit Creighton University. All of my teachers were Jesuits and they didn't like me to come to class and they didn't like to answer questions either.

KEN BOROWIAK: Okay.

SENATOR CHAMBERS: Tell him you did your penance and you shouldn't have to do another one as long as you live.

KEN BOROWIAK: Yes, Senator.

SENATOR ABOUD: I tell you what, Judge Walsh was going to have a couple comments and then I think we're going to have to conclude the...

ALBERT WALSH: I'll be very brief.

RITA GREENWOOD: Can the little guy speak? I've been really waiting here. I missed...

ALBERT WALSH: Well, so have I. (Laugh)

RITA GREENWOOD: ...my job, actually, to be here and I have been waiting for the first part.

SENATOR ABOUD: Well, I'd like to have Judge Walsh testify here first. Go ahead, Judge.

RITA GREENWOOD: Sure. As long as I can wait. I've been patiently waiting.

ALBERT WALSH: My name is Albert C. Walsh. I'm a retired county judge. I live now in David City, Nebraska. I have some handouts here for you that I would like to have distributed. (See Exhibit N) I think there's a copy here for all the members of the committee. I will be brief. I would like to say that these analysis I've had here is one of the Christian Law Institute. I'm the secretary of that and that's why my address is on the letterhead. It's an institution that's been in existence since 1972. It's not really a membership organization, but it does have various functions and one of them is to comment on legislation. Second is a newspaper column of mine I wrote when I was...when I was columnist for the Gretna Guide and News. It's one of the columns I write. I write now for the Gretna Breeze. The third is a story that appeared in last Thursday's Omaha World-Herald about Greg Louganis. I think you'll find some supporting material in what I have submitted to you here on questions of statistics and various things like that, as well as source material on where the homosexuals stand as far as employment and that kind of thing is concerned. One of the things that hasn't been pointed out here today is that this bill, these...both these bills, and I oppose both of them, both of these bills would make it mandatory that the State of Nebraska, in every contract made with the State of Nebraska there be a provision that the employer or the other contracting party

not discriminate on the basis of sexual orientation in performance of that contract. In every...not only the State of Nebraska but every subdivision of the state, this means every natural resources district, this means every school district, this means the counties and every government institution in the State of Nebraska would have to have that kind of a provision in there. One of the employers who spoke here talked about the burden that's placed on employers if there's a claim of discrimination. This bill would put the...an employer who is alleged to have discriminated against homosexuals in before the commission that determines whether or not there has been such discrimination. If there has been discrimination, there can be back pay awarded, there can be...the job can be reinstated in the job or the job, an equivalent job. This bill also provides, as the general law does, that even emotional distress can be...can be a...render the employer liable for emotional distress. If the would-be employee is not satisfied with the way things are going for him in the commission, he has a right to file a suit in the district court and he can claim emotional damages as well as everything else, attorneys' fees and costs and so on and so forth, and the employer has no...no option but to defend against that. I...my position would be that we ought to leave the employers in the State of Nebraska in a position to decide who their employees should be and at least as far as homosexuals are concerned. For the past 5,000 years or thereabouts, homosexual activity has been considered to be a crime or a sin, crying to heaven for vengeance. That's in Genesis. I think the reference is in the material I have given you. This is a consistent position and it was only in 1977 the State of Nebraska decriminalized sodomy and, until that time, it was a penitentiary offense. The burden of proof is on the homosexuals that their orientation is not something that they have chosen. If the person has homosexual orientation and keeps quiet about it, there is no problem. There is no problem. It's only if they wanted to become open about the thing that it might be a problem for an employer, but they have...the homosexual has complete control of that question. He doesn't...if he doesn't...if he keeps it to himself there isn't a problem. One thing I would like to point out to you is the activity, and this is the last thing I would bring up, is the activity of Greg Louganis. Now this is a four...male gold medal winner, Olympic gold medal winner. He knew when he went to the Olympics that he was HIV positive. He knew when his head was...struck that diving board and he bled into that pool that he contaminated that pool. Did he say anything about it to anybody? No. Did he...he warn anybody that maybe

that pool should be drained before somebody else? No. He didn't even tell the doctor who treated him and put five stitches in him, who was doing it bare-handed, that he was HIV positive. Now this is in the story. I'm not making this up. Now here is a man who has reached one of the pinnacles of American life. This is a homosexual, not admittedly such. He has AIDS now. If this man does those kind of things, this is what the people out there have to contend with. If you're going to make a...if you're going to make sexual orientation a part of the law in the State of Nebraska, first place, the bill doesn't do anything for heterosexuals. Sexual orientation is a code word for preferences, privileges for homosexuals and it's only the second thing on their agenda. The next thing is the marriage, the adoption of children and the whole nine yards. You also have to remember that if every contract in the State of Nebraska has this provision, no discrimination against...against...on the basis of sexual orientation, they're going to be openly...every...every employer who is subject to this law is going to have to hire homosexuals in order to protect him or herself against their claims. There is no other way to do it. The bill says, oh, we're not going to establish any quotas or anything like that, but that's the fact. They're going to have to hire homosexuals in order to protect themselves against lawsuits and claims against the Equal Opportunity Commission. That's all I have to say. I'll take any questions.

SENATOR ABOUD: Questions for Judge Walsh? Thank you, Judge Walsh.

ALBERT WALSH: Thank you.

SENATOR ABOUD: Now that's going to conclude the hearing for the opponents on LB...

SENATOR CHAMBERS: Chris, I...

SENATOR ABOUD: Senator Chambers, before you...I'd like to make a comment here before we go, okay?

SENATOR CHAMBERS: I wish you would 'cause I feel I'm about to get in trouble and get some other people in trouble. I'm listening.

SENATOR ABOUD: Okay. We've had...we've had nine proponents and we've had ten opponents and I was wondering if the committee would entertain hearing...

RITA GREENWOOD: I'm a proponent for this bill and I have been waiting for a long time.

SENATOR CHAMBERS: Oh, then you...then you won't...

RITA GREENWOOD: And so that's ten for ten. Is that okay?

SENATOR CHAMBERS: No, then you won't be able to speak. I thought you were an opponent. Once the proponents are through...

RITA GREENWOOD: In a matter of fact, I am both...

SENATOR CHAMBERS: Well, then you'd have to wait...

RITA GREENWOOD: ..because...

SENATOR CHAMBERS: ..until he asked for neutral testimony.

RITA GREENWOOD: Will there be a time for neutral testimony?

SENATOR CHAMBERS: Yes, but you can't speak for or against. I thought she was with the opponents and the Judge would be put in front of her so I'm cool.

SENATOR ABBOD: Okay. Anyway, we've had...we have had ten opponents and nine proponents and I was going to ask Senator Chambers if he wanted to have an additional proponent testify on the bill?

SENATOR CHAMBERS: The reason I won't say do it in this instance, I wouldn't do it in another instance. If the proponents were through I would say that they were through and that's what the process is, so if she'd want to testify in a neutral capacity that would be all right, but even though it's a bill that I favor I wouldn't say change the process like that.

SENATOR ABBOD: Okay. Okay. Is there anyone here to testify in a neutral capacity? One person? We'll take that person and then we'll allow...Senator Chambers, you can close on the bill. Okay?

RITA GREENWOOD: Hi. My name's Rita Greenwood, R-I-T-A, and my last name's just spelled Greenwood the way it sounds, G-R-double E-N-W-double O-D. And unfortunately I think I sound a little frustrated and that's because I am a little bit. I sit here. I don't have any credentials. I'm not a judge. I'm not a lawyer. I don't have a business, but I do

speaking from personal experience and I wasn't going to speak today, but I just have to say I am a Seventh-Day Adventist and a very strong, I believe, Seventh-Day Adventist. I am an advocate for what I believe in the community with my queer friends, with my straight friends. Lincoln I'm not...I've lived in Lincoln for quite awhile and I like Lincoln and I plan to stay here. I am not originally an American citizen. I am from Honduras, born on a tiny little island, and I came here and I love Lincoln because the people are good, the people are nice. I do plan to stay here and I was surprised when I heard that there was this law going into effect because I thought it was already part of this law. I thought it was part of the American law, the American government, to have all people equal. I'm not better than them and they're not better than me. All of you here have the power to do what you came in your mind...I feel like everyone came in here today already with an idea of what they're for and what they're against and no one's here to twist your arm. I have brothers, all brothers. Neither one of them are gay. They're all straight. I have friends, like I said, who are Christian, straight and queer, and my belief on it has kind of been, you know, what do I believe, and what I've had to conclusion is that let's leave the judging for God and just let everyone have equal rights, their rights, not special privileges or anything. That's what I thought America was. Unfortunately, it's not really true, but to some extent it is. And I like this country, I'm not downing it, I'm not down on Lincoln. It's a great place. I believe in the Bible and I take the Old and the New Testament and I say...I'm starting to talk about religious things because obviously it comes down to is homosexuality right or wrong and that's what you guys are judging on. You're not judging on just labor and business. You're judging on is this right or wrong. And if you look in the Bible you will find in Leviticus, you will find in Corinthians...I could...it's been quoted to me and I've been quoting it and you will find that the Bible does point, and a good thing about the Bible, it has laws for this country that are good. This country's good because it does base some of their laws on the principles thou shall not kill, et cetera. But my underlying thing, like someone else here said that was for this bill, is that Jesus came and he showed love. He wasn't superior than anyone. He showed love. He was with prostitutes and whatever. He did condemn also some acts that were wrong because they were lustful. He did condemn marriages because they were in it for the wrong reasons also, straight couples, so I see myself as neutral. I am asexual. Sometimes I consider myself bisexual because of the fact that I can like a guy or a



girl. I can think they're cute or like them and if I like chocolate why can't he like chocolate also? So that's my decision and I just leave it up to my God to decide is this right or wrong, and I use his example as treating everyone as equal and making love be the underlying thing. Because what are we going to do with our brothers that can't work, or afraid to talk about who they are in their jobs? Are you guys going to create a special island or country to send them to? Obviously, there are some places that do support them and that's good. It's good to know that you're not already counted against. And so I, I don't know, for some you might think that I am pro this bill and to a certain extent I am because I am pro equality of all people and I think that's what this country's all about, at least I hope that's what it's all about. Thank you. Questions at all?

SENATOR ABOUD: Questions? No questions.

SCOTT WINKLER: Senator, I do have a very brief statement that I think is neutral (inaudible) if I could read that.

SENATOR ABOUD: Sure. Come on up.

SCOTT WINKLER: (See Exhibit P) My name is Scott Winkler. The Nebraska Catholic Conference consists of the Grand Island, Lincoln and Omaha Diocese because of a lack of unanimity among the diocese, the Nebraska Catholic Conference officially takes no position on this legislation. Any comments offered regarding this legislation would be statements of an individual diocese only.

SENATOR ABOUD: Okay. Did you state your name for the record too?

SCOTT WINKLER: Scott Winkler.

SENATOR ABOUD: Okay.

SCOTT WINKLER: It's W-I-N-K-L-E-R.

SENATOR ABOUD: Okay. Do you rep...

SENATOR CHAMBERS: Would you leave a copy (inaudible)?

SENATOR ABOUD: Certainly, why don't you make a copy and...

SCOTT WINKLER: Okay.

SENATOR ABOUD: Would that be okay?

SCOTT WINKLER: Sure.

RICHARD HEDRICK: I'm Richard Hedrick. I make a brief statement. I don't think I can make any better statement than she did in most part.

SENATOR CHAMBERS: Then just say ditto and get out of here (inaudible). (Laugh) (inaudible) wise man.

RICHARD HEDRICK: I think that this might be a good...I'm scared of it because it tells the employer what to do, but on the other hand I can remember when I worked at the railroad them came around, the foreman came around and said, do you know anybody that'd want to work for the railroad? We're going to have to hire blacks if you don't. They hired them. Nobody worried. They got along just fine. So I think it can be done. Thank you.

SENATOR ABBOD: Thank you.

SENATOR CHAMBERS: I'll be very brief.

SENATOR SCHIMEK: We'll hold you to that. (Laugh)

SENATOR CHAMBERS: Huh?

SENATOR SCHIMEK: We'll hold you to that.

SENATOR CHAMBERS: I want you to. I'm Ernie Chambers and the introducer of LB 21 and, as Senator Hall pointed out who introduced LB 400, my closing would serve for the two of us. One thing I want to indicate is that our legislative policy also will not allow the Legislature to have any practices or policies that discriminate based on sexual orientation. When people say that discrimination against gay people is not on a par with that based on race or gender I would agree, but the people who make that argument don't make it for the purpose of arguing against racial discrimination and gender discrimination, but in order to justify discrimination against gays by saying it is not as bad as the other two and, ironically, the ones who use that argument are the same ones who, as black people, we generally find discriminating against us and being opposed to fair treatment. Some of the people who testified, and this is about the only point that I'll make, the only other one, about businesses being enticed to Nebraska and how this is an antibusiness bill, what large businesses have realized is that they operate in an international context. We know that about Micron. Their

main competition comes from places other than in America and they recognize that it's in their best interest, regardless of how they may feel personally, to have diversity. Whether it relates to sexual orientation, religion, gender, national origin, ethnicity, race or any of the other categories into which people are put that have nothing to do with their ability to do the job, these companies are learning how not to close the doors on huge talent pools. So if a company learns that a state like Nebraska is so backward, narrow-minded, bigoted and intolerant that serious problems would exist for that company should they have a diverse work force, that's an argument against coming to Nebraska. I'll bet not one of the people who talked to Micron said come here because last year thousands of people signed petitions telling the Legislature they think it should be fair and lawful to discriminate against gay people. That's ridiculous. It is preposterous and, despite the fact that I think that view is sincerely held by the people who hold it, our responsibility is to move beyond that and look at people as human beings and make sure that the laws protect the human rights that people have to do those things which are necessary and essential to living a decent life in a civilized society and that's all that I have. I believe it was brief. Okay.

SENATOR ABBODD: Thank you. Any questions? That will conclude the hearing on LB 21 and LB 400. We will next proceed to LB 800, Senator Lynch's bill. We would like to begin the hearing on LB 800, that is the next bill. If you would like to take your conversations out into the hall it would be appreciated by the committee.

SENATOR CHAMBERS: (gavel), please, would you all clear the room if you are not going to be here for the next hearing. Thank you very much.

SENATOR ABBODD: Okay, Senator Lynch, we are ready to bring LB 800.

LB 800

SENATOR LYNCH: Chairman Abboud and members of the committee, my name is Dan Lynch, I represent the district just north of Ernie and I am here to introduce LB 800. I am going to just read something real quickly here. On the second page of 800, starting on line 13 it says, "In the taking of evidence, the rules of evidence prevailing in the trial of civil cases in Nebraska shall be observed by the Commission of Industrial Relations." And except for maybe

two or three or four of you, you probably understand that. In my opinion this is what it means. It means that for an awful lot of people a terrible hardship is provided because they have to physically observe and visit those areas to be able to make a case as to why they felt they were treated unfairly. And as a result of that, appeal to the CIR. This legislation is permissive, but at the present time, this kind of a hardship, in my opinion, is unfair to an awful lot of people who must work for a living. The language that has been, that replaced the language that I read to you simply provides that there should be other ways of gathering information to be able to justify that workers concern and suit. Now it has been mentioned, you notice in the A Bill that it could increase the cost of the CIR, but you know that is not all bad. If at the present time, people are not filing with the CIR because they can't afford to take the time to get the evidence physically themselves, then we have an unfair system, in my opinion. And, that is about it. I could say much more but it is unnecessary. I think that pretty well covers it and I'll try to answer any questions you might have.

SENATOR LYNCH: Thank you.

SENATOR BOHLKE: Thank you Senator Lynch. Are there any questions? Seeing none, thank you. Can I see a show of hands as to how many are going to be testifying in support of LB 800? In support? (one). In opposition? (one) Okay, we are going to hold both of you gentlemen to five minutes and it will be strictly enforced, so keep your... you want to be neutral? Okay, we are going to hold you to five minutes, so we want you to crystallize what your comments are on the subject, because this is a subject that we have had numerous times before the committee. Thank you.

JOHN FAHLEY: Senator Abboud and Senators of the Business and Labor Committee, my name is John Fahey, I am here today representing the Nebraska AFL/CIO, the Nebraska Firefighters, the Omaha Firefighters, the Fraternal Order of Police, Omaha Police Union and Omaha Federation of labor, all in support of this particular bill. This says, a simple sentence that in contested cases the commission may admit and give probable (inaudible) effect evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs as long as the other party to the dispute are advised of the evidence and afforded an opportunity to rebut it. That's it. What it means is, it is a large step forward in taking cases that now cost \$150,000 to have heard before the Commission of

Industrial Relations and cutting them down to size. What it means is that, like in Iowa, rather than have three sets of experts and lawyers and everything else to present one single piece of evidence, an international representative from a union can go in and the city manager can go in and present their evidence to the same body that hears the case as long as the other side knows what evidence is going to be offered as long as the other side has an opportunity to review it and to rebut it, that is all that is necessary. Now the same piece of evidence, the same documents, the same everything can get before the commission so that they can make their decision. All's we are doing is cutting out all of the road blocks, cutting out all of the potholes to keep them from getting from A to B. To get them from this side of the table to the decision maker. It is a simple, simple bill. If... nobody can say it makes it harder, nobody can say it is going to cost more money. I can't even conceive how you can cost more money now in the CIR than it is. You know I was before the CIR the other day and they said, you know we have got to cut these cases from costing \$70,000 and \$80,000 and I said, we passed that long ago. Police and fire unions went down there from Omaha and it cost each of the \$150,000 all because we can't do something simple. We can present cases in any other agency in this state, complex cases without the rules of evidence. Why can't we do it here? There is no reason for it. There is no reason whatsoever. I'll tell you two groups of people...

SENATOR CHAMBERS: Are you keeping track of your time?

JOHN FAHEY: I am, I have got exactly two minutes, and I'm not even going to use them. I'm going to give you a minute. I have two groups of people that if they knew and if they could speak, and one group is speaking today, and that is the union people that would go down there and the second people that would favor this bill if they knew what was going on would be the taxpayer, the person who has to shove that money out of the pocket so that, so that these kind of cases can get heard. It is their end that is \$150,000 or \$100,000 too and that is tax dollars. So I would urge that you pass LB 800. I am slowing down because I have so much time left. Thank you very much.

SENATOR CHAMBERS CHAIRING THE COMMITTEE

SENATOR CHAMBERS: Any questions? Thank you very much. The gentleman who is opposed.

REX SCHULTZE: I think I need to sign a sheet here.

Senators, my name is Rex Schultze, I am an attorney here in Lincoln Nebraska and I am appearing on behalf of the Lincoln Public School District. Before I begin my comments I think we need a point of clarification. In listening to Senator Lynch, he talked about individuals bringing an action before the commission. Individuals can not, by law, bring an action before the commission, only bargaining units can bring an action before the commission. The Commission of Industrial Relations is limited to setting wages, terms and conditions of employment for a bargaining unit, not individuals. If an individual has a complaint they have a right in contract or through their grievance procedure or the through the EOC or NEOC. So this only has to do with wages and terms of conditions of employment. When you are talking about wages and terms of conditions of employment, in political subdivisions you are talking about 70-80 percent of their total budget. If you are talking about the City of Omaha and the police and firemen's union, you are talking about millions of dollars, millions and millions of taxpayer dollars. If you are talking about the Lincoln Public School District, you are talking about millions of dollars, 180 million dollars, so we are talking about a lot of money and we are talking about how these cases are going to be presented. I have to respectfully disagree with Mr. Fahey and his comment that it will cost less money to present cases. All this bill does, and if you read the language of it carefully, is simply shift the burden of proof from the proponent of evidence to the opponent of evidence. It says, in the last sentence after the final comma, "As long as the parties to the dispute are advised of the evidence and afforded an opportunity to rebut it." So I have to rebut evidence that does not come in under the rules of evidence that is, by the way commission may admit and give probative effect to evidence which possess probative value. So I don't even know when I present my case whether or not the evidence is going to come in or not. Does it have probative effect? Does it it probative value? The other point I think needs to be kept in mind is the Commission of Industrial Relations is subject to judicial review. And, judicial review, just like under the Administrative Procedures Act, in other words, there must be substantial evidence, probative evidence, that the Supreme Court can review. How can the Supreme Court know what evidence was probative and what evidence was not probative to the finder effect unless we have rules of evidence. The other dispute I would have with regard to what Mr. Fahey said, was, how do we get evidence in without three sets of experts and three or four different attorneys. If it is indeed an expert, an expert under the rules of

evidence may rely on hearsay is not subject strictly to the rules of evidence in order to support his opinion. If a case cost \$150,000 I think you need to take a look at what was the case worth? If the case was worth \$200 million then I think what percentage is that? Now I can tell you, from my point of view and my practice, and I've practice in the Commission of Industrial Relations for 14 years. I have worked with and basically against Mark McGuire who is the attorney for the Nebraska State Education Association. I think Mark will tell you, and Mark has provided me with a letter, and I think he will be here today to testify on his own behalf, that he is not in favor of LB 800. As a school district attorney representing boards of education, we are not in favor of LB 800 because we have a system that works. We have a system that we can rely upon, we know what the rules are. We know what procedure has to be followed to put the case on. The cases are not overly expensive in light of these particular cases and even though they are teacher cases the teacher cases are the lions share of the cases that are presented to the commission. And even if it is not a teacher case, the case doesn't have to cost \$150,000 if it is prosecuted and brought before the commission with the use of expert witnesses, and even if does, again, you have to take a look at what the relative costs are to the expense we are talking about. The taxpayers of this state should pay for the services that are rendered. But, we have a Commission of Industrial Relations that set wages and terms and conditions of employment that are comparable. And how to determine comparability has to be determined under a set of rules. Those set of rules have to be established in a cogent and in a way that can be predicted. Otherwise you are going to have a shotgun approach. I can tell you that if this rule is adopted, if I get a survey or an affidavit presented to me by opposing counsel, I will have to go out and take the deposition of the person who presents that affidavit otherwise I would not be properly representing my client. To give you one prime example, in one case we went out and took depositions. Now the depositions were being taken by the proponent of the evidence, but during cross examination I discovered something I would not have discovered in reading an affidavit, something that saved my client with that school district \$3.5 million. Now, do I have to ferret that out? Do I have to make the decision that I want to take that deposition? What is the difference in cost? The opposing counsel is going to have to come sit through that deposition with me. I don't think you are going to save any money doing this. I think you are going to ruin a system that has worked well for 25 years. There are ways to efficiently prosecute cases and present cases to



the Commission of Industrial Relations and as such I would encourage you not to pass LB 800. Thank you.

SENATOR ABOUD CHAIRING THE COMMITTEE

SENATOR ABOUD: Questions for Rex? Thank you for your testimony Rex. Additional opponents to LB 800?

KIM POPPY: Good afternoon, my name is Kim Poppy and I am Mark McGuire's paralegal and I have a letter to hand out to all of you and he is testifying downstairs. Is it possible for you to wait or... Okay. There he is.

SENATOR ABOUD: I take it you are done testifying.

KIM POPPY: Nope.

MARK MC GUIRE: You got my work done for me?

KIM POPPY: Yup, done.

SENATOR ABOUD: She just testified against the bill, so you are free to testify against it too Mark. We are going to have two people on the record here. You are up.

MARK MC GUIRE: Oh, how far did we get?

SENATOR ABOUD: Well, she was just opposed to the bill, so... and you walked in.

MARK MC GUIRE: My comments, I think have just been handed out (Exhibit A), sorry I am breathless, but I am.

SENATOR ABOUD: We are trying to limit the testimony to five minutes also.

MARK MC GUIRE: We can do that.

SENATOR ABOUD: Okay.

MARK MC GUIRE: The local affiliates, excuse me, my name is Mark McGuire, Attorney for the Nebraska State Education Association, we oppose LB 800. The many cases that have been tried in the CIR ways determination cases, the vast majority of them are school district cases, teacher cases. All of those have been tried with the rules of evidence, all of those have been tried with the same burden of proof. I set forth that burden of proof in the first page of my letter. The little subparts aren't really numbered that way

in the statute but they show the basic five pieces that have to be found based upon evidence. The evidence required under the rules of evidence is offered in the CIR by way of witnesses and exhibits subject to cross examination. I guess my next question is, what, so what changes of LB 800 (inaudible) law today. My answer is the integrity of the evidence before the CIR which has to ultimately make the decision. Witnesses would not have to be present. We could basically try these cases by way of affidavits. I think the ultimate bottom line has to be looked at. Do you really want a system where the wages to be paid public employees and the dollars to be required to be spent by the public employers are based upon evidence before a commission or upon what is not evidence. In other words, affidavits could go in and what happens when two affidavits disagree. How is the CIR to decide, is the base salary in Lexington \$18,500 or \$19,200, are they supposed to flip a coin because it is those kind of mathematical calculations that ultimately go into resolution of a CIR case. Sometimes we hear that the CIR works for school districts and teachers but doesn't for others. Over the years I have heard that comment from both municipalities, counties as well as their union counterparts. I would suggest to you that the system that works for school districts and teachers didn't just happen, nor did it fall from the sky, but rather was developed over a number of years. That system works for the biggest user of the commission, the Nebraska... teachers in the Nebraska school districts. We would not like to see that system destroyed or put in jeopardy. I can appreciate, and I understand and I have heard many times the problems encountered by other public employee unions and the Commission of Industrial Relations. I sympathize with those and I don't like having to do this to our other friends in the labor community, but nevertheless we have to because our system, as I say works, it has been developed over basically 25 years and it really is what is at risk here. So, I would ask that this bill not be advanced, but if it is, then let us keep what we have and I would suggest then at the bottom of page 2, that I would like excluded from the requirements, if you were to advance it, all employees of school districts, Educational Service Units, community colleges, state colleges and teaching employees of the state. Now frankly then you are going to have two different sets of rules. One for all of those people and one for everyone else. How that would necessarily pass constitutional muster, I'm not certain, but if there was a significant state interest, presumably it could. But, as it appears to simply blanket exclusion of the rules of evidence would not work. I have seen situations where evidence has been

presented or attempted to be presented by affidavit where we can prove that it is just plain wrong, and my faith in affidavits is not great, and I see that is how cases would wind up being "tried". Indeed they wouldn't be tried at all. A bunch of documents that people have notarized would come into the judge on the CIR, he or she would have to decide the case or figure it out and decide it based on that, I don't think that produces a good system or a good result for either the employer who is going to have to pay or the employee who would be the recipient of those terms and conditions of employment. Senator Abboud, if you have any questions I'd be more than happy to respond.

SENATOR ABOUD: Thank you Mr. McGuire. Are there any questions? Thank you. Additional opponents to the bill? Anyone else to testify in opposition? We will take neutral testimony at this time.

JACK CHELOHA: Senator Abboud and Members of the Business and Labor Committee, for the record my name is Jack Cheloha, registered lobbyist for the City of Omaha. I just want to let you know that I am not an expert on CIR cases by any means. I was just asked this afternoon to come in and testify in a neutral capacity. The reason for our testimony is we wanted to be on record as saying we share Senator Lynch's concern as well as the members of the labor community as far as trying to save costs on these matters. Likewise the City of Omaha would like to work towards those means. In terms of LB 800, at this point in time we would see this as maybe being too much of a step or too far of a step. Maybe we could work out some things within some of the rules within the CIR or some other areas in order to try to be able to establish foundations at these hearings without actually having to dispense with the rules of evidence. That is the reason I am here today. I would be happy to try and answer any questions.

SENATOR ABOUD: Questions? Senator Chambers?

SENATOR CHAMBERS: You said you would be happy to answer "any questions". Now although you may not have much facility with the CIR as you would like, do you have more expertise with the CRR? CCR?

JACK CHELOHA: Credance Clearwater Revival?

SENATOR CHAMBERS: You got it. That is all I needed. Thank you.

JACK CHELOHA: Okay, thanks.

SENATOR ABBODD: Additional neutral testimony?

JAMES MC FARLAND: Senator Abboud, my name is Jim McFarland, I'm a judge on the Commission of Industrial Relations. I am here to appear in the neutral capacity primarily for the purpose of advising you that we are currently studying revisions to the rules before the CIR in the hope of diminishing some of the expense that the parties incur. All of you should have received a February 23 letter from our clerk indicating that we had a public hearing on January 20, 1995 for parties to consider how our rules might be changed to reduce some of the costs and expenses. There are currently four changes under consideration. We are going to meet March 16 in a judicial meeting and develop proposed rule changes which we hope to send out by March 20 to the parties who appeared at the public hearing, so we can get feed back from them and then either implement some of the rule changes or not. I would also add that we do often monitor the bills that come before this committee relating to the CIR. We are available if you have questions and you want to send us a letter to respond and provide information on specific questions you may have, or, if you have a particular bill and you have questions on that and you want us to appear and provide information. Either the clerk or the legal counsel or one of the commission judges can appear at the hearing. And with that, I have no other comments. If you have specific questions I'll try to answer them.

SENATOR ABBODD: Questions? Senator Chambers.

SENATOR CHAMBERS: ...you look very judicial this afternoon. I want to let you know that.

JAMES MC FARLAND: Thank you. You can refer to me as the Honorable Jim, Senator.

SENATOR CHAMBERS: I will do that. I will.

JAMES MC FARLAND: Just kidding, just kidding. Thank you.

SENATOR ABBODD: Any other neutral testimony? Senator Lynch, would you like to close?

SENATOR LYNCH: Mr. Chairman and members, this is really an interesting hearing. I have never been before a committee before where both the lawyers, in this case, for the Lincoln School District and the lawyers for the Teachers Association

both agreed that they should oppose the bill. It is really kind of interesting and I think why in addition to CRR and HMA and all the rest, there is something called the TPA, and it is not Travelers Protective Association, it is the Teachers Protective Association, it is a vital part of the CIR, so they have their own good little thing going there and I'm sure they don't want to have that offended in any way. The reason I am here today is because there is an eight member union in Columbus of firemen that had to spend \$60,000 and they can't afford it. I mention those two extremes because you can see where the system might work well for one that has all kinds of money and in both cases the administrators, the school districts and the unions, it doesn't work well at all or is (inaudible) to the other. That is about as simple as it is again. The system can work, and I understand Senator McFarland mentioned it as well that they are taking a look at the process to see if they can improve it or help it in any way. But the only reason we suggested this is because again its voluntary. I'm sure in some cases where the court should decide where they would have to go through the full blown and expensive process, that can happen. But in other cases they could offer opportunities to individual groups, if I use the word, "individual", individual groups like those firemen in Columbus to have a fair shot at justice as well. Without this of course they won't. I'll try to answer any questions you might have.

SENATOR ABOUD: Questions? Thank you Senator Lynch.

SENATOR LYNCH: Thank you.

SENATOR ABOUD: That will conclude the hearing on LB 800. We will now proceed to LB 479, Senator Hudkins is here to testify and introduce her bill. How many people are going to be testifying in support of LB 479? How many in opposition? Neutral? Senator Hudkins, you can begin. You had an interesting statement of intent there, I don't know if you noticed that, if you had a chance to read that, under your signature.

LB 479

SENATOR HUDKINS: You didn't understand it or it was just so clever you couldn't believe it.

SENATOR ABOUD: It was interesting.

SENATOR HUDKINS: Okay, good afternoon Senator Abboud and

Members of the Business and Labor Committee. I am Carol Hudkins, representing the 21st Legislative District here today to introduce LB 479. LB 479 provides for punishment for second offense false representation. The offense would be classified as a Class I misdemeanor. LB 479 does not make a distinction in the amount of funds or benefits that you receive in determining the classification of the offense, and, if the committee felt that the classification of the offense should be made to conform with the penalties for theft, I would be supportive of such an amendment. And just the fact that my intent was very short, so is my introduction. I would be happy to answer any questions.

SENATOR ABOUD: Thank you Senator Hudkins. Senator Chambers.

SENATOR CHAMBERS: Senator Hudkins, I didn't see... was somebody else going to speak in favor of this?

SENATOR HUDKINS: Yes.

SENATOR CHAMBERS: Okay, maybe I will grill that person.

SENATOR HUDKINS: A representative from the Department of Labor.

SENATOR CHAMBERS: I'll grill him.

SENATOR HUDKINS: Thank you. I appreciate that.

SENATOR ABOUD: Any other questions? Thank you Senator Hudkins. We will go to the proponents of LB 479.

JOHN ALBIN: I have a copy of the written testimony Exhibit A), if one of the Pages would pass it around. Mr. Chairman, members of the committee, my name is John Albin, and I'm legal counsel for the Nebraska Department of Labor. I'm appearing before you today in support of LB 479. Fraudulently obtaining unemployment insurance benefits is currently a Class III misdemeanor with a maximum penalty of up to three months in jail and a \$1,000 fine. LB 479 would not change the penalty for the first offenders but would increase the penalty for second and subsequent offenders to a Class I misdemeanor. A Class I misdemeanor carries a penalty of up to one year in prison and a \$1,000 fine or both. Neither a Class III or a Class I misdemeanor has a minimum sentence. The overwhelming majority of the 50,000 to 75,000 individuals who file an initial claim in a typical year are completely honest and

follow all the rules. Unfortunately, a growing number do not. The number of claims involving fraud established each year has risen from 531 cases in 1990 to 983 in 1994. That is an increase of 85 percent in just a five year period. The amount of fraudulently obtained benefits has risen from \$374,515 in 1990 to \$726,505 in 1994, a 94 percent increase. These fraudulent claims were paid from the Unemployment Insurance Trust Fund, which is established through a payroll tax on Nebraska employers. Of the 983 fraudulent overpayment established in 1994, nearly all were do to unemployment benefit claimants who returned to work on a full or part-time basis and fraudulently failed to report, or under reported, wages earned upon their return to work. Each individual is instructed at the time their claim is established that they must report all earnings during any week for which benefits are claimed. Each weekly benefit claim form asks the claimant whether or not he or she had earnings for the week for which benefits are claimed and then amount of the earnings. A number of options were considered in approaching this growing problem. Although we believe current instructions on issues such as wage reporting are adequate, we are seeking ways to raise claimants' awareness of their rights and responsibilities under the unemployment insurance system and the fact that through computer cross-matches with their earnings, we will eventually uncover any earnings they have during their claim period. This process will continue irrespective of the fate of LB 479. We also considered the appropriateness of the penalty now assessed. Most, if not all, of the surrounding states have more severe penalties for fraudulently obtaining unemployment insurance benefits than does Nebraska. For example, in Iowa, fraudulently obtaining unemployment insurance benefits is a type of theft, and fraudulently obtaining benefits can be a felony if the amount of benefits fraudulently obtained is \$1,000 or more or the recipient has two previous convictions for fraudulently obtaining benefits. The penalty for fraudulently obtaining unemployment insurance benefits is also lower than the current penalties assessed against individuals for fraudulently obtaining benefits from programs administered by the Department of Social Services. Under Neb. Rev. Stat. Section 68-1017, an individual fraudulently obtaining benefits in an amount of \$500 or more from a program administered by the Nebraska Department of Social Services is guilty of a Class IV felony. Although trying similar penalties to unemployment recipients was considered, our intent was to diminish, or at least cap, the number of fraudulent claims filed, rather than create a new class of felons.



SENATOR ABBOD: John, why don't we kind of summarize this. Do you believe that increasing the penalty up to Class I misdemeanor, that would reduce the amount of fraud that is being currently occurring as a result of the unemployment. Is that basically what the....

JOHN ALBION: That is our intent of the bill, that is what we believe will happen. We recognize that there are no guarantees, but it is our thought that if the higher class of second offense is out there that it will reduce the number of fraudulent claims.

SENATOR ABBOD: Do you have any amendments as far as what Senator Hudkins had talked about making changes as far as a scale, a graduated scale as part of the penalties?

JOHN ALBION: That was one of the options we originally had discussed. I guess we are not in a position where we want to say yes, that is what we want to do. We thought about that when we first drafted the bill, amongst the discussions was just throwing it into a theft classification. The problem that we saw with throwing it into a theft classification that is any person who draws three weeks worth of maximum benefits under the current law would automatically be up for a felony. As I stated in my testimony, we were not looking to creating a new class of felons we were just trying to stop the problem from growing like it has grown in the past few years. So, we haven't prepared any amendments. We would be quite satisfied if the current bill was passed and we think it will reduce the problem.

SENATOR ABBOD: Okay, Senator Chambers.

SENATOR CHAMBERS: How many prosecutions did you have under the currently law last year?

JOHN ALBION: We actually referred out for prosecution approximately 200 cases.

SENATOR CHAMBERS: How many were prosecuted? Do prosecutors even want to... who do you refer it to, the County Attorney?

JOHN ALBION: We refer to the County Attorney in all counties but Douglas County and in Douglas County we use the City Prosecutor's Office. Most of them are referred, or are prosecuted that we actually refer, but to be fair I should say, we have already established a cutoff, not every

fraudulent claim is referred out for prosecution. Under our current review standards we don't refer a case out for prosecution unless there is at least three weeks of benefits fraudulently claimed and the amount claimed is over \$500, which is the reason there is a difference between the 983 or whatever the number was that we found to be fraudulent and the number that were actually referred out for prosecution.

SENATOR CHAMBERS: But they don't, under the language of this law as it currently exists, or with your amendment which doesn't go to the question that I am raising, they don't have to receive anything. All they have to do is make a false statement, or withhold a material fact, failure to disclose. So you are saying you can be guilty of the crime if you say something that is false or if you don't say something that you know. Isn't that true about the law the way it is now.

JOHN ALBION: That would basically be correct. Such as if you knew you had wages and you didn't report them, even though you said nothing, yes that would be....

SENATOR CHAMBERS: Then you are guilty as if you had made a material misrepresentation.

JOHN ALBION: Basically the same representation or the same penalty applies to employers, except in their case, right now it is a Class III, we didn't propose anything on changing that, because we haven't had a case that would merit referral in at least eight years.

SENATOR CHAMBERS: I want you to read the law with me, if you will. You new language says, are you with me on line 10? For the first conviction there would be a Class III misdemeanor and a Class I misdemeanor for a second or subsequent conviction. Read with me now, "Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense." So in filling out one document a person could commit first and second offense, isn't that right? If you make two false statements.

JOHN ALBION: No, that would be incorrect Senator Chambers. We thought about that issue when we were preparing the draft for the legislation. We tied the case to the first conviction and Class I misdemeanor for a second and subsequent convictions so unless the individual actually had a prior conviction it would not be a second or subsequent offense.

SENATOR CHAMBERS: No, you haven't heard me. I said in in one application, maybe I didn't state it clearly, you could have first and second offense which could lead to a first and second conviction. If you have got two offenses, that means they are distinct and you can be convicted on each one, is that true?

JOHN ALBION: I don't think so if I am understanding the question correctly. The way unemployment benefits are claimed is on a weekly basis.

SENATOR CHAMBERS: I don't care about unemployment, this is general law that we are talking about. We are talking about creating a crime and talking about an offense. I don't care what the particular violation of law is, a separate offense means you can be prosecuted for that act, otherwise it is not a separate offense. If it is an element, if there are several elements to one offense, each one of those elements is not a separate offense, you must prove all elements to have one offense. If each statement, read with me, "Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense." That doesn't mean what it says? If you give two false statements, would that be two separate offenses? Based on the language written here?

JOHN ALBION: I guess in theory a prosecutor could prosecute that way....

SENATOR CHAMBERS: I don't want you to guess....

JOHN ALBION: ...we have never referred one in that manner....

SENATOR CHAMBERS: ...I don't care what you all do.

JOHN ALBION: ...we are not aware of any that have ever been prosecuted that way.

SENATOR CHAMBERS: ...I don't care what....

JOHN ALBION: In theory the current language in the bill, as it exists, whether or not it is amended by LB 479 does contain language that you stated and I suppose a prosecutor could...

SENATOR CHAMBERS: No, it is not in theory, in fact. In fact.

JOHN ALBION: ...and that exists in current law. We don't change that Senator Chambers. Or don't propose that it be....

SENATOR CHAMBERS: And see when these bad laws come to me, I take issue with the current bad law and I become aware of them when you all bring them to us. Just like you mentioned something on Social Services giving a false statement is a felony. I didn't know that, is that what you had said?

JOHN ALBION: That is correct...

SENATOR CHAMBERS: So when that comes....

JOHN ALBION: ...if it results in \$500 or more in benefits.

SENATOR CHAMBERS: When that comes, it is going to come under my ax. This is bad legislation. Were you there when they got this original language?

JOHN ALBION: No, I wasn't there.

SENATOR CHAMBERS: Would you have sought language such as that? Does that seem like overkill to you? To make each false statement a separate offense.

JOHN ALBION: If it was to be interpreted by a court to mean that each... that you could make three false statements within a single claim for benefits and get three convictions out of it, yes, I would say that is overkill.

SENATOR CHAMBERS: Isn't that what the law says? Do you see anything in here that....

JOHN ALBION: I'm not aware of any court interpretations, unless the Supreme Court tells me the exact meaning of it I'm not sure that I'm in a position to say.

SENATOR CHAMBERS: Can you read? Can you read?

JOHN ALBION: I can read Senator.

SENATOR CHAMBERS: Now, you don't have to interpret any of those words. A separate offense means that you can be prosecuted for each one of those. The offense is defined, or set out, a false statement or representation or failure to disclose a material fact. Each time you fail to disclose a material fact you committed an offense. Each time you

make a false statement you have committed an offense. That is what the law says, you don't have to interpret that. Just read it. I told you I was going to grill you didn't I, you make that salary, you come here with bad legislation. This is preposterous. I think you see it as being preposterous too. Because that is not your intent I know. Or is it.

JOHN ALBION: Our bill simply says that if you have a prior conviction that a second case would be a Class I misdemeanor.

SENATOR CHAMBERS: So if you get convicted twice, based on one fraudulent document, then that is two convictions, isn't it.

JOHN ALBION: That would not be our intention. That was not our intention in drafting it that a single document... in fact we tried in our drafting to avoid the situation where an individual could jump to a Class I misdemeanor on the first pay order card, if you will, that they fraudulently filed. If it is not done that way we would be more than happy to work with you to draft an amendment to satisfy your concerns. We were not trying to take anyone to a Class misdemeanor on a single incident, if you will, of filing a false statement or claim.

SENATOR CHAMBERS: But you all read this before you brought it here?

JOHN ALBION: We did read it.

SENATOR CHAMBERS: You didn't read it the way I am reading it though, obviously, right.

JOHN ALBION: We read it in the manner of which we interpreted it for the last 40-50 years.

SENATOR CHAMBERS: You haven't been there that long.

JOHN ALBION: Well...

SENATOR CHAMBERS: You aren't that old.

JOHN ALBION: ...the department has.

SENATOR CHAMBERS: Okay. That is all I have. Thank you.

SENATOR ABBOD: Questions? Thank you John.

JOHN ALBION: I don't if I am helping or hurting at this point, after the way I have been worked over, but Mr. Ron Sedlacek of the Chamber of Commerce is over at the Governor's Office for a meeting, he hoped to get back, he said if he didn't get back to say that they supported the bill in concept.

SENATOR CHAMBERS: He was over there for that meeting so he wouldn't come over here for his beating. He knows this is bad.

SENATOR ABBODD: Okay. Additional proponents. Now we will go to the opponents. Anyone to testify in opposition to the bill?

GORDON MC DONALD: I'm Gordon McDonald, representing the state AFL/CIO and appearing here in opposition to LB 479, the way it is written. Just briefly, I think it is a little strong for what they are trying to do here and I guess my biggest problem in the bill isn't that we are supporting fraud or false misrepresentation by anybody, but certainly in comparing this to the other portion of the employment security law is or statutes applied to employers, they are left with a Class III misdemeanor in regards to false statements and misrepresentation and I think at least if the committee is inclined to want to move this bill forward that there ought to be an amendment to include employers under the same type Class I misdemeanor that they are proposing in this legislation. I quite frankly overall think it is a pretty heavy hammer for some people who may unwillingly give false statements or misrepresentations in applying for benefits. So, those are my comments on it.

SENATOR ABBODD: Thank you Mr. McDonald. Any questions? No questions. Thank you. Anyone to testify in neutral capacity?

SANDRA TOLBORG: Thank you very much for hearing me today. I am here on my own personal time. I do not represent the opinions of my agency and I am employed by the Department of Labor.

SENATOR ABBODD: Could you state your name please.

SANDRA TOLBORG: Oh, I'm sorry. My name is Sandra Tolborg. I would like to testify in a neutral position because I can see the pros and cons of this legislation, as you can Senator Chambers, I have to agree with you. Since I work

with this on a daily basis I see what happens and how our law applies to the citizens of the State of Nebraska who draw unemployment insurance. I commend the efforts of Senator Hudkins and our agency to open up, and their courage in opening up this section of our law for your review. It is a courageous thing for them to do because we know that anytime we look at these laws that we might get something that agencies might not want. However, the impact of unemployment insurance tax on the State of Nebraska is one that we have to look at and we have to look at what happens when people receive unemployment insurance that they are not eligible for and how it happens. They have to say, the offense that Senator Chambers refers to the offense that these people commit is that they say that they are not working or they are partially unemployed when in fact they are not. This is unfair to scores of people who draw unemployment insurance who are justifiably entitled to it and that is our job is to give it to them. Unfortunately because it is currently a Class I misdemeanor and the burden put on our court system in Douglas and Lancaster County and some of our larger counties, being a Class I misdemeanor oftentimes it does not get... the law does not get applied equally in all counties. It, since they have... since some of our larger counties have a lot more people who are committing more violent crimes against society, and these have to be dealt with, our court systems are over burdened with those crimes and so something that is a Class I misdemeanor may not get the same attention as it would in a smaller county where the incidence of crime is significantly lower. The current... unfortunately for the county attorneys they have to handle all offenses, not just some and so they have to prioritize these offenses and decide how to handle them. Thus they may not always get handled the same across the State of Nebraska which creates a situation of inequity and injustice to the people who are having this particular section applied to them. I would like to suggest that this body look at this very closely before they pass any form of change in the law. I guess if it is not broke, lets not fix it. If we are going to fix it lets look at everything and all aspects of it. Penalizing people for the second time rather than the amount that they steal seems a strange application of the law to me. A person who steals \$10,000 is going to be under this application is going to be treated the same as somebody who steals \$500 twice. If they steal \$10,000 twice it is not going to be any more severe penalty for them.

SENATOR ABBODD: Okay, thank you. Any questions? Thank you for your testimony. Anyone else to testify in the neutral



capacity? Senator Hudkins, would you like to close? Waives closing. That will conclude the hearing on LB 479. We will next proceed to LB 478.

LB 478

SENATOR HUDKINS: Senator Abboud and Members of the Business and Labor Committee, again for the record I am Carol Hudkins representing the 21st Legislative District and I am here today to introduce LB 478. LB 478 originated with the request from the Department of Labor. This bill clarifies that the only moneys that may be withheld from unemployment benefits are child support obligations. It seems like the general statement of support for purposes of income withholding creates some confusion as to what obligations could be legally withheld by the Department of Labor. Due to this confusion the Federal Department of Labor has urged this clarification, because failure to do so would put at risk in excess of \$10 million of federal administrative grants...

SENATOR CHAMBERS: Chicken feed.

SENATOR HUDKINS: ...administrative grants to the Nebraska Department of Labor. Further the employers of Nebraska face the loss of the FUTA tax credit due to the state's lack of conformity with the federal requirements. The loss of this credit will result in employers paying increased federal unemployment taxes. There again are representatives of the Department of Labor here today that could better answer questions regarding the need for this bill. But, I would attempt to answer any that you might have.

SENATOR ABOUD: Questions? No questions, thank you. We will now go to the proponents. Will there be any opponents to this bill?

JOHN SHEAFF: Mr. Chairman and members of the committee, my name is John Sheaff, I am the legislative liaison and agency legal counsel for the Nebraska Department of Labor. I am here today to testify in support of LB 478. I know your time is short so I will try and be real brief. I have handed out a copy of my proposed comments today (Exhibit \_\_\_\_), I think Senator Hudkins covered it real well. First of all I would like to say I won the flip with John Albin's so I didn't have to testify on the last one. What this is all about is last year LB 1224 was enacted and LB 1224 involved partially the duty of the Nebraska Department of Labor to collect unemployment from an

employment insurance benefits child support benefits payments that are due. We thought we had it covered when we put language in there last year about all that we are going to take out is child support. Our federal partners in Washington said, the language was not clear enough, they wanted left no question, no doubt that this would not cover anything but child support. Federal law does not allow for the withdrawal from unemployment insurance benefits of family support, of medical support, spousal support or anything of that nature. So, all we are doing here is clarifying that in this bill. Senator Hudkins stated the jeopardy the employers are put in in the State of Nebraska and I can't emphasize that enough. We do have an agreement with the federal government to hold in advance any actions against the State of Nebraska on our agreement to propose this legislation this year. This was done also, as I mentioned, in conjunction with the Department of Social Services, Mary Dean Harvey and the governor's office.

SENATOR ABOUD: Senator Chambers.

SENATOR CHAMBERS: The federal government requires the withholding of child support payments?

JOHN SHEAFF: The federal government limits what you can withdraw from...

SENATOR CHAMBERS: Did they require?

JOHN SHEAFF: They require, yes.

SENATOR CHAMBERS: Okay, that is all I have. Thank you.

SENATOR ABOUD: Any other questions? No, questions. You have got the right bill this time.

SENATOR CHAMBERS: Oh, just one other question. Did you guys flip a coin or did you see who could flip each other. Just kidding.

JOHN SHEAFF: I'd win that one too.

SENATOR ABOUD: Anyone else to testify in support of the bill? Any opposition to LB 478? Anyone to testify in the neutral capacity? Senator Hudkins waives closing. That will conclude the hearing on LB 478 as well as the hearings today for Business and Labor Committee.

Disposition of Bills:

LB 512 - Held in committee.  
LB 536 - Held in committee  
LB 632 - Indefinitely postponed.  
LB 882 - Advanced to General File, as amended.

  
Chairperson

  
Committee Clerk