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Judiciary Committee  
February 21, 2014

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[LB808 LB862 LB893 LB927 LB1015]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 21, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB808, LB927, LB1015, LB862, and LB893. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Ernie Chambers.

SENATOR ASHFORD: Welcome, everyone, to the Judiciary Committee. It's a beautiful Friday. We have five bills. There are two bills, LB...at the end of the list, LB862 and LB893, that deal with, generally, the same topic, the Hospital-Medical Liability Act; so we're going to take those two bills together. And when you come up to talk about those bills, either for or against, just tell us whether...I assume you're either for or against one or the other, just clarify that, and...for us. Let me introduce my colleagues over here. To my left, far left--he's not really far left--but he's... [LB808]

SENATOR MCGILL: Well...(laugh).

SENATOR ASHFORD: He's on my far...

SENATOR LATHROP: He's more left that we thought he'd be. (Laughter)

SENATOR ASHFORD: But slightly left of center, Senator Les Seiler from Hastings, Nebraska.

SENATOR MCGILL: That means we're the far right.

SENATOR LATHROP: Yeah, we're the far right.

SENATOR SEILER: That will probably be the only time I'm accused of that.

SENATOR MCGILL: We're the far right.

SENATOR ASHFORD: You're the far...it's...you know, think...

SENATOR LATHROP: Happens all the time to me.

SENATOR ASHFORD: Times change. Things change over time. Political winds change. Anyway, Oliver VanDervoort, to my left, is committee clerk; Diane Amdor, over here to my right, is our lawyer, committee counsel; to my far right, Senator Steve Lathrop of Omaha and Ralston, the king of the Ralston Arena, we like to...

SENATOR LATHROP: Oh, great.

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SENATOR ASHFORD: So any of you that have been to the Ralston Arena, it wouldn't be there without Senator Steve Lathrop. Senator Amanda McGill from Lincoln. So with that, let's go...Senator Conrad is here with LB808.

SENATOR CONRAD: (Exhibit 1) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Danielle Conrad; that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent, as you know, the "Fightin' 46th" Legislative District of north Lincoln. I am here today to introduce LB808. I introduced LB808 for two reasons: (1) to address a critical attorney shortage in certain rural areas of Nebraska, and (2) to fund the Legal Education for Public Service Loan Repayment Fund. This fund was established by our own Speaker Flood in 2008 to provide loan repayment funds for lawyers employed by nonprofit organizations providing legal services to indigent persons. A board of directors was created to oversee the program which allowed for an initial maximum award of \$6,000 per year per recipient to help with student loans. Unfortunately, this program was never funded. This interim period a news article caught my eye and drew my attention, discussing the shortage of attorneys in rural Nebraska. There was also an Omaha World-Herald editorial on point following that story. As you know, I was here just earlier this week talking about similar issues. Access to justice is an issue that is near and dear to my heart. As you can see from the handout I just passed around, I testified on a bill to create a loan repayment fund in 2003, while I was still a law student; so I think that you'll enjoy, as much as I did, that little blast from the past. In looking for a solution, I became familiar with efforts the Nebraska Bar Association was working on to promote rural practice, as well as look to see what other states have done to deal with this issue. From those efforts we drafted LB808. LB808 creates the Legal Education for Public Service and Rural Practice Loan Repayment Fund, and as drafted, would be funded by a one-time transfer of \$500,000 from the State Settlement Cash Fund. After I introduced this legislation, I had conversations with the Attorney General's Office in regard to the utilization of that fund and how it supported the consumer protection division. Due to that information, and in the spirit of compromise and consensus, I do have a proposed amendment for the committee that would change the funding source but not the amount. The funding source that we would propose instead would come from the UCC Cash Fund where there is a significant balance that could be transferred for these purposes. There are several people to follow me today and who will testify on the critical need for this legislation and how it would boost not only access to justice in Nebraska but would be a critical tool in terms of youth retention and ensuring sound opportunity all across our great state. So with that, I'd be happy to answer any questions. [LB808]

SENATOR ASHFORD: Do we have any questions of Senator Conrad? Yes, Senator Seiler. [LB808]

SENATOR SEILER: There's two that I have a question on, and one is on page 2, line

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15. It says "loan forgiveness," and then back again on page 5, line 6, it says "loan forgiveness." I'm wondering if you're running into two statutes of the IRS Code, if you change that to loan "repayment" that you would avoid the possible conflict? [LB808]

SENATOR CONRAD: Senator Seiler, thank you for pointing that out. We'd be happy to work with the committee on that issue to ensure it is drafted in its appropriate format. And I'm guessing that's a vestige of the former framework that was established in 2008, so this would be a good opportunity to harmonize and modernize that. [LB808]

SENATOR SEILER Right. [LB808]

SENATOR ASHFORD: I don't see any other questions, Danielle. [LB808]

SENATOR CONRAD: Thank you. [LB808]

SENATOR ASHFORD: Thanks. To the right, the far right of Senator Lathrop, is Senator Al Davis from Hyannis, Nebraska; and to my left, over here, Senator Colby Coash, from Lincoln, so almost a full complement here. [LB808]

LIZ NEELEY: (Exhibit 2) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Dr. Liz Neeley, L-i-z, Neeley, N-e-e-l-e-y. I am the executive director of the Nebraska State Bar Association and here today to support LB808. In the last ten years, the amount of law school debt that students graduate with has nearly doubled. The ABA now predicts that the average law school graduate has between \$125,000 and \$150,000 in debt upon graduation. In effect, students graduate with a loan payment now between \$1,400 and \$1,700 a month--a monthly payment that is now being referred to as "the house we'll never live in." Another important but less talked about shift in law schools is a philosophy of need-based aid to merit-based aid, and this shift means that the financially disadvantaged students are the ones graduating with even more debt. This major increase in student loan debt hinders Nebraska's, and especially rural Nebraska's, ability to attract lawyers to work in their communities. New lawyers are pressed to look instead to jobs in larger cities that have the possibility of higher pay. What I've handed out to you is a map of active attorneys in the state of Nebraska. You'll notice the counties in red, there are 12 counties in Nebraska without access to an attorney, and 22 others with three or fewer attorneys, so approaching that same threshold. The bar association has established a rural practice initiative to encourage new graduates to consider locating in and serving in rural communities, and we do that primarily through an annual bus tour as well as clerkship opportunities and other partnerships with the University of Nebraska College of Law, and Creighton. The bar association views LB808 as an important tool in attracting new graduates to rural areas and ensuring access to legal services across the state, and keeping courthouses in rural communities open, and investing in the future of rural communities. And I'd be happy to answer any questions that you may have. [LB808]

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SENATOR ASHFORD: I don't see any. It is a graphic illustration. I mean, we're many, many counties with not one lawyer. [LB808]

LIZ NEELEY: There are. Anecdotally, we do hear from attorneys very frequently in greater Nebraska that would like to retire. Their clients won't let them. They do not have anyone to pass the business on to. It's an important issue and it's one that's growing very rapidly. [LB808]

SENATOR ASHFORD: Okay. Thanks. [LB808]

LIZ NEELEY: Thank you. [LB808]

SENATOR ASHFORD: Next proponent. It would be interesting to have this broken down by judicial district, too, if you could just get me the... [LB808]

LIZ NEELEY: We can do that. [LB808]

SENATOR ASHFORD: I know you can. [LB808]

SUSAN POSER: (Exhibit 3) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Susan Poser, S-u-s-a-n P-o-s-e-r, and I am the dean at the University of Nebraska College of Law. My testimony today is not a statement of the official position of the College of Law, because the College of Law does not take official positions on pending legislation. I'm testifying today in support of LB808 introduced by Senator Danielle Conrad, of whom we are very proud, an alum of our college. This is critical legislation for the state of Nebraska. Although it is almost cliché to bemoan the fact that there are too many lawyers in this country, no one can disagree with the proposition that we do not have enough lawyers in the rural parts of this country, including rural Nebraska. And when we talk about the need for lawyers in rural America, we are talking about the needs of real people who need real, competent legal help with very common issues, like divorces, adoptions, estate planning, and starting up a business. As the dean of the law school at the state's land grant university, I personally feel responsible for helping to solve this problem. At the College of Law, we are already addressing these issues in a variety of ways. We recently created a course of study, what we call an area of concentrated study that second- and third-year law students can take, that provide guidance for students who are planning to practice in rural parts of Nebraska. Students who sign up for the solo and small firm area of concentrated study must take courses in the basics of general practice; they must take a clinical course; and they must take a course in law office management, which is actually taught by Bill Olson who is here today. Students can then specialize in a particular area of rural practice, be it family law, criminal law, or agricultural and water law. Our career services office brings in lawyers from around the state who talk with

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students about their law practices in places like Sidney and Broken Bow and North Platte. Last year, we partnered with the Nebraska State Bar Association, and 14 of our students went on that spring break bus tour, which took them to Ord and Albion to meet with lawyers and learn about their practices and their communities. We are currently arranging a similar tour this year, which I believe is going to Holdrege and Broken Bow. Finally, the College of Law is part of the Rural Futures initiative that was recently started at the University of Nebraska. This institute has the mission of fostering economic development in rural Nebraska and across the country. The law school is involved because lawyers help provide economic and community development not only with their law practice but also with their leadership in the community in organizations like the Rotary Club and the Chamber of Commerce. For many law students, especially today, the bottom line is often financial. If the state of Nebraska helped law graduates who want to practice in rural Nebraska to pay back their students loans, it would encourage more students to consider working in these communities, thus benefiting the people of Nebraska and contributing to economic development. Loan repayment would also be a powerful recruiting tool for the law school. I assure you that if we had that tool, we would promote it to potential law students, particularly those from rural Nebraska who might be inclined to come to Lincoln for a few years to attend law school and then return back home to serve their communities. This bill would open doors for young Nebraskans to get an excellent education and then use that education to help the underserved people and communities of Nebraska. Thank you. [LB808]

SENATOR ASHFORD: Thank you, Susan. Thanks for coming. Is...I take it that...is this...it's \$6,000. So is that what it is with the amendment, \$6,000 as well, Danielle? Six thousand a year, is that still stay; is it \$6,000? So it would be...that comes off the... [LB808]

SUSAN POSER: Off the student loans. [LB808]

SENATOR ASHFORD: Off the debt itself, so.... [LB808]

SUSAN POSER Off the debt. I believe so. [LB808]

SENATOR ASHFORD: So over five years it would be a \$30,000 reduction? [LB808]

SUSAN POSER: Yes, and our... [LB808]

SENATOR ASHFORD: Is there a cap on the number of years that it...or is it just as long as they're practicing in rural Nebraska? [LB808]

SUSAN POSER: I'm not... [LB808]

SENATOR ASHFORD: Well, that's okay. I mean, it's in the bill, I'm sure. [LB808]

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SUSAN POSER: Yeah, I'm not sure. Our in-state tuition right now is \$14,000 and our out-of-state tuition is about \$30,000; so it would cover our tuition. [LB808]

SENATOR ASHFORD: It's a big deal. I think it would make a big difference. [LB808]

SUSAN POSER: It would make a huge difference. [LB808]

SENATOR ASHFORD: Okay. Thanks, Susan. Thanks for coming over. [LB808]

SENATOR DAVIS: I've got a question. [LB808]

SENATOR ASHFORD: Yeah, Senator Davis. [LB808]

SENATOR DAVIS: Just to play the devil's advocate a little bit, you know, 15,000 is a fairly high number in terms of population in rural Nebraska, and you already have attorneys in those communities where probably their population is over 15,000. So in some respects aren't we just essentially sending competition out for the attorneys that are out there and having the taxpayer pay for that? [LB808]

SUSAN POSER: That's not what we hear from attorneys in Nebraska. Again, this is anecdotal. But what we hear is that there are lawyers out there who are ready to turn over their whole book of business, their whole practice, and they need some young lawyers to continue their practice and help serve their current clients; so I think it's less a question of competition than of continuity of legal practice. That's my...that's what I have heard about it. [LB808]

SENATOR DAVIS: Thank you. [LB808]

SENATOR ASHFORD: I don't see any other. Thanks, Susan. Thanks for coming over. [LB808]

WILLIAM OLSON: Mr. Chairman, members of the committee, I'm Bill Olson. I teach that class. In 1971, I started law school. Tuition was \$400 a semester, roughly. Books were about \$250 a semester, I think. Total was about \$1,500 for the year. Today, they're looking at \$20,000 a year. They bring student debt with them; they take it out with them; they add on to it. Rural Nebraska is crying...crying for lawyers, for young lawyers. Older lawyers--I'm one of them--have a choice in rural Nebraska: practice till they die, retire and give up their practice, or run for the Legislature. (Laughter) [LB808]

SENATOR ASHFORD: Is that referring to Senator Seiler? [LB808]

WILLIAM OLSON: No. I'm not making any reference. I do know and I have a lot of

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contacts and an attorney of my age or older in rural Nebraska, that that is a huge problem, including for certain law firms who might have been involved in that run for the Legislature. The only way to get young lawyers to rural Nebraska is if they grew up there and want to go back, and especially, young lawyers who don't have a family--because it's a tough environment to meet spouses, it's tough in small towns, or to help them financially. This bill does that. I could on and on. I'm not going to do that, but I will urge you. I have 18 students now in my third year. I had 20 the first year, 19 last year. It's either my class skills aren't that good because I've got a diminishing population, but in my class right now I think about half of them want to go out into rural Nebraska and teach--or not teach, I'm sorry--and practice. The jobs are there. Until about two years ago, Chadron, for a period of time, had two lawyers. Chadron is a pretty good-sized community. If one of them is the county attorney or the city attorney, you've got an immediate conflict issue. There needs to be multiple lawyers in these communities. You can't get by with one in some of these communities. I could go on. So any questions? [LB808]

SENATOR ASHFORD: You sort of poisoned...before you get into the questions, you sort of poisoned the well with your initial statement that you had started law school in 1971, which is about when I started law school,... [LB808]

WILLIAM OLSON: I'm aware of that. [LB808]

SENATOR ASHFORD: ...and then you're denying...you said that you were an old lawyer and I didn't mean that. That's not really what you meant. [LB808]

WILLIAM OLSON: No. No. No, of course not. I'm an experienced lawyer. [LB808]

SENATOR ASHFORD: Thank you. Yes, Senator Seiler. [LB808]

SENATOR SEILER: Well, I knew he was lying, right off the bat, when he said that. (Laughter) Because when Harvey Perlman and I started, it was \$75 a semester tuition, and...but Bill, would you check something for me? On this bill, uses in two places "forgiveness"... [LB808]

WILLIAM OLSON: Yes, I... [LB808]

SENATOR SEILER: ...and I think it should be "repayment." [LB808]

WILLIAM OLSON: Would you like to me to testify to that? I can testify to what that means. The difference is with the tax ramifications. [LB808]

SENATOR SEILER: Right. [LB808]

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WILLIAM OLSON: If a loan is forgiven, the person whose loan was forgiven has income tax consequences to the amount of the debt forgiven. If it's a repayment by a third party, that is not an issue. [LB808]

SENATOR SEILER: Right. [LB808]

SENATOR ASHFORD: Good point. Thanks, Bill. [LB808]

WILLIAM OLSON: Thank you. [LB808]

SENATOR SEILER: Thanks, Bill. [LB808]

DAVID PANTOS: (Exhibit 4) Good afternoon. My name is Dave Pantos, D-a-v-e P-a-n-t-o-s. I'm the executive director of Legal Aid of Nebraska; so, Mr. Chairperson, members of the committee, I appreciate you holding this hearing today about a very, very important issue. I'm testifying in favor of LB808. Legal Aid of Nebraska, for those who don't know, is a nonprofit law firm that provides free civil legal services for low-income and poor people in Nebraska. In 2013, we helped over 13,000 people with legal advice and representation in cases involving domestic violence, foreclosures, bankruptcies, elder financial abuse. Hundreds and hundreds of our cases are in rural underserved counties of Nebraska. The number of attorneys who choose public service work, like Legal Aid, who have student loan debt of over \$100,000, grows every year. The average starting salary for a Legal Aid attorney in Nebraska is only \$40,000 per year. Monthly student loan payments for newer attorneys can average, as was said earlier \$750, \$1,200, \$1,500 a month. As young attorneys get married and want to start a family, it becomes increasingly difficult to juggle these student loan payments with new life milestones, like purchasing a home or paying for childcare. While there are federal programs for student loan forgiveness, they are very challenging to comply with and they do not apply to private loans. The federal funder for Legal Aid provides loan repayment assistance but has a limited budget of only \$3.5 million for the entire country, and they award payments based on a lottery system. So if your state doesn't get it that year, none of your public service lawyers get it that year. Legal Aid's own loan repayment program has paid only an average of \$7,000 per year for all staff with an average annual award of assistance of only \$600. So there's a real need. There's a real, real, huge need for state financing of loan repayment assistance. The number of individuals who cannot afford attorneys in Nebraska grows every year, and we must be able to recruit and retain great attorneys at Legal Aid to help them. And as Legal Aid provides legal services in rural Nebraska, it is even more vital to ensure that we have staff to do so as the number of even paid attorneys, as was testified to earlier, in rural Nebraska decreases. I think that LB808 provides an innovative approach for funding loan repayment. It is neither a new tax nor a new fee. And several nearby states, such as Iowa, Montana, and Illinois already provide loan repayment assistance to public service attorneys. I urge you to support LB808 and to support high quality, free legal

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representation for the poor in Nebraska. Thanks. Any questions? [LB808]

SENATOR ASHFORD: Any questions? Seeing none, David, thanks. Thanks for all you do. [LB808]

DAVID PANTOS: Thank you very much. [LB808]

SENATOR ASHFORD: Judge. [LB808]

DAVID PIESTER: (Exhibit 5) Thank you, Mr. Chairman, members of the committee. My name is David Piester, P-i-e-s-t-e-r. I am the president of the board of directors of Legal Aid of Nebraska. And since you just heard the last speaker, in the interest of time I won't describe Legal Aid in detail; but it's sets forth in my testimony and you can look a little about that. We do engage in a priority setting process, and one of the priorities is to hire and retain qualified and professional staff. Hiring attorneys to practice poverty law is difficult. I know this from my own experience, 40 years ago, as an executive director of a legal services program. While there were plenty of people who were interested in representing poor people, the low salaries kept them from applying for these positions. Today, the salaries are a bit better although still lagging far behind other public service attorneys, such as county attorneys or public defenders. Today, an additional element complicates the process: student loan debt. Often, a new attorney cannot afford to take a public interest position because he or she cannot afford to live on the salary and still make the payments necessary on an outstanding student loan. Or, if they do take such positions, they must leave within a few years to be able to make enough money to pay back their student loans. This is where LB808 can make a difference. By increasing the amount of money available to assist lawyers with their loan obligations, it facilitates the hiring and retentions of lawyers committed to serving the interests of poor and low-income clients, particularly in rural areas. There will not likely be enough money guaranteed by...or excuse me, generated by LB808 to solve this problem, but it will help; it's a tool; and for that reason I urge you to support LB808. [LB808]

SENATOR ASHFORD: Thanks, Judge. Thanks very much. [LB808]

DAVID PIESTER: Thank you. [LB808]

LAUREL JOHNSON: (Exhibit 6) Mr. Chairperson and members of the Judiciary Committee, my name is Laurel Johnson. I'm here today to testify in favor of LB808. I grew up in rural Brown County, Nebraska, District 43, and I'm now in my first year as a practicing attorney with Legal Aid of Nebraska. I grew up knowing several attorneys who practiced in my community near Ainsworth, Nebraska. Looking back, I wonder if my initial impression of the nobility of law came from my observation that lawyers did things like pro bono work on Native American reservations; or helped my brother with the small, intricate but very important, details when he started a business and bought a

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home; or have an honest and open conversation with my parents whose situation they were thoroughly familiar with when they helped them write a will. As I grew up, my perception of the law changed very much. I met people in law school openly driven by money and power. I realized this was okay but it was not what motivated me. There is nowhere I would have rather started my career than Legal Aid. I was not new to Legal Aid. I had interned in 2009 to fulfill 480 hours of unpaid practicum to get my bachelor's degree in social work. It was somewhere during these 480 hours, in fact, that I made the decision to go to law school. I realized that, right or wrong, sometimes one can be a more effective advocate and powerful voice for those in need with a law degree. I completed my expensive undergraduate education and started law school at another private institution, swayed heavily by an emphasis in social justice and a desire to enrich my law degree with these types of experiences. During law school, I again found myself at Legal Aid where I worked as a clerk. Now, for the third time, I'm back at Legal Aid as a practicing attorney. I completed an education I am proud of, I gained valuable experiences, and I also accrued over \$100,000 of debt. Actually, a lot more than \$100,000 of debt. I set my sights on public interest law, and with perseverance and luck I did achieve that goal. But would I tell someone in my shoes ten years ago to go to law school? My answer would definitely be conditioned upon the certainty that they be as fortunate as I am on my journey through my education and my career. I had the support, financially and otherwise, of my family, both through undergraduate and law school. I held convictions about wanting to serve the public and using my bachelor's degree in social work to shape my career as an attorney. I went to law school with many people who didn't share the same passion, but some who did; and many, if not most of those who did, are not doing what I do now--and most of that comes down to money. Do I understand the choice people make entering into a profession, starting careers where they make at least twice the salary I do, even when they would rather be doing public interest work? Yes, I do. When the debt you've accrued over a period of eight years of education is no longer in forbearance and loans become a big part of your financial reality, I can understand why those with ambitions similar to my own choose to pursue work in a private, much higher paying sector. I did not go to law school to make a lot of money. I went to law school to become a stronger advocate for those without a voice. I can and will continue to do that but it's time that we're honest about the financial situation of lawyers in this position. We certainly gain the satisfaction... [LB808]

SENATOR ASHFORD: Laurel, Laurel,.... [LB808]

LAUREL JOHNSON: Yes. [LB808]

SENATOR ASHFORD: It's my fault, but... [LB808]

LAUREL JOHNSON: You're okay? [LB808]

SENATOR ASHFORD: ...I didn't tell you about the red light rule. Normally, when the red

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light comes on, you're ejected up into the sky. (Laughter) [LB808]

LAUREL JOHNSON: It didn't happen this time. [LB808]

SENATOR ASHFORD: But since I didn't say that to you at the beginning, we won't eject you, but we will... [LB808]

LAUREL JOHNSON: It's okay. I'm on my last sentence but I can stop anytime. [LB808]

SENATOR ASHFORD: Go ahead. Bring it on. [LB808]

LAUREL JOHNSON: Are you sure? [LB808]

SENATOR ASHFORD: Yeah. [LB808]

LAUREL JOHNSON: Okay. I'm just letting you know that we do...we gain satisfaction when we serve clients like this, but we make our own sacrifices. And so I ask you to take this into consideration and vote in favor of LB808. [LB808]

SENATOR ASHFORD: Thank you, and thanks for what you do. Senator Lathrop, then Senator Davis. [LB808]

SENATOR LATHROP: You know, I...yeah, exactly. Thanks. Thank you for your service. You know what, I look at what Creighton does and UNL does or what they do with their legal clinics, the service to the poor, and what you do with your law degree is commendable. So we appreciate what you do and your testimony here today. [LB808]

LAUREL JOHNSON: Well, I do think I...I mean, I can attest to classmates who would like to be doing some of the same things, but right off the bat, didn't even pursue it because loans are scary. I mean, it's a scary financial reality. And when you're in a situation different than my own, when you have a family and other needs, that you have to put those first and you just can't choose to do that kind of work, so. [LB808]

SENATOR LATHROP: Right. Yeah, thanks, Laurel. [LB808]

LAUREL JOHNSON: Yes. [LB808]

SENATOR ASHFORD: Senator Davis. [LB808]

SENATOR DAVIS: Welcome, Laurel. Good to see you. And I'm glad always to see people who know where I come from and...so. [LB808]

LAUREL JOHNSON: That's right. [LB808]

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SENATOR DAVIS: Your family is still there in Ainsworth? [LB808]

LAUREL JOHNSON: They are rural Johnstown area. [LB808]

SENATOR DAVIS: Do you have any interest in moving back to rural Nebraska? [LB808]

LAUREL JOHNSON: I don't. [LB808]

SENATOR DAVIS: So do you think a loan program like this will really incentivize people? [LB808]

LAUREL JOHNSON: I do. I think...again, I think I can attest to other classmates of mine who not only would they like to be doing public interest work, you know, in a less rural community, but I also know that they just don't look at opportunities like that because of funding. [LB808]

SENATOR DAVIS: And I guess I would just make an observation, and maybe I'd like to see what Senator Seiler has to say. I think a lot of the young lawyers move back and you start out in a struggling situation. Over the course of your 40 years there in that community, by the time you leave you're probably in many respects better off than a lot of your urban, you know, comrades who have been to school with you. But Senator Seiler, do you have an observation on that? [LB808]

SENATOR SEILER: I believe that to be true. It may be more than four years though. [LB808]

LAUREL JOHNSON: I think... [LB808]

SENATOR SEILER: But you've built...till you've... [LB808]

SENATOR ASHFORD: 40. [LB808]

SENATOR DAVIS: 40. [LB808]

SENATOR ASHFORD: He said 40. [LB808]

SENATOR DAVIS: 40. [LB808]

SENATOR ASHFORD: 40. [LB808]

SENATOR DAVIS: 40. [LB808]

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SENATOR SEILER: Oh, okay. Right. [LB808]

LAUREL JOHNSON: I think it's hard though when you start off and you have all this debt and maybe you have a family to support and, you know, needs that you need met right away. And so it's hard to think 40 years down the road I might be in a comfortable place, but I have kids to feed and, you know, I have needs that are immediate; so you can't think that long term in your career planning always, but. [LB808]

SENATOR DAVIS: Thank you. [LB808]

LAUREL JOHNSON: You're welcome. [LB808]

SENATOR ASHFORD: Thanks, Laurel, very much. [LB808]

LAUREL JOHNSON: Thank you. [LB808]

LOGAN HOYT: (Exhibit 7) Mr. Chairman, members of the committee, my name is Logan Hoyt, L-o-g-a-n H-o-y-t, and I'm a student at the University of Nebraska College of Law, and I am here today to testify in support of LB808. I grew up as a son of a fourth-generation farmer in southwest Nebraska. When commodity prices were low, up, my father could no longer continue; and so I decided to go to law school, mostly because I wanted to help the farmers and ranchers and the communities that depend on them with their legal needs. During my first year of law school, I began looking at summer clerkships in southwest Nebraska, and it didn't take me long to realize that the legal profession had declined significantly since I had been away. Ten years ago, McCook had about 20 practicing lawyers. That's down to about 13. And, you know, the number, unfortunately, is poised to decline even further and faster. And the problem isn't just limited to McCook. In Nebraska, 75 percent of the state's lawyers are located in the three most populated counties: Douglas, Sarpy, and Lancaster. And, you know, those three counties only have 52 percent of the state's population. You know, there's a very big imbalance there. And, you know, I viewed the rural shortage to be very much associated with the high student debt burden. I myself will graduate with over \$100,000, and it's certainly not unusual. Now, I am not here to testify today because I think this bill will benefit me. I know that I will be able to make it if I go back myself. But I also don't have a family to support, I don't have any other obligations. And, you know, I believe that LB808 ultimately would help people who are not in my situation, who have families to support and are in greater need. You know, ultimately, I think we all agree that one of the...a key goal is to ensure that ZIP codes do not determine which Nebraskan has access to our court system and which Nebraskan is left out in the cold. And that is ultimately why I would like you to support LB808. Do you have any questions? [LB808]

SENATOR ASHFORD: Other...not...no. Senator Christensen. [LB808]

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SENATOR CHRISTENSEN: Thank you for coming, Logan. You touched on it in your testimony that you went back your first year looking for internships. Was there any problems finding them? I know you said it's difficult finding as many lawyers as there used to be, but how was finding internships? [LB808]

LOGAN HOYT: Well, I actually did spend a lot of time looking for a clerkship, and I did find one. However, this firm had kind of toyed with the idea of expanding for a few years but was kind of afraid to do so because they had...they have hired people before and they didn't stay out there very long. You know, unfortunately, law in rural areas, you know, there's a huge flight risk. And so, you know, they did hire me and I think part of that was because I was from there, and, you know, they saw my name in the paper occasionally growing up. But, you know, I didn't have too much of a problem. There are a lot of areas in this state, though, where that's not very easy, you know, just because of those fears and, you know, there just aren't very many firms to choose from. [LB808]

SENATOR CHRISTENSEN: Okay. Thank you. [LB808]

SENATOR ASHFORD: Thanks, Logan. [LB808]

KATIE SAMPLES: Good afternoon, Mr. Chairman and the Judiciary Committee. My name is Katie Samples, K-a-t-i-e S-a-m-p-l-e-s. I'm a second-year student at UNL College of Law, as well. I am actually originally from northeastern Colorado, but I...and I went to Kansas State University to pursue my bachelor's degree in ag business. But I will be moving to the big metropolis of Lisco, Nebraska, after law school, where my fiance owns a pig farm. I actually am not like a lot of students. I turned down a great job with John Deere to pursue law because that's where my passion is. My family farms. I know that it's an underserved need in all rural areas, and it's not just something that Nebraska is facing. We just seem to be slower in addressing it. If I didn't have a fiance who needs me on the farm today to tie me down, I would be moving to South Dakota where I could get \$12,000 a year, or back to Kansas where I could get up to \$15,000, or had I known this was such a issue I would have gone to vet school where I can get all my student loans repaid. I have at least \$50,000 as of now just in law school debt. I'm an out-of-state student. That was a choice I made. But with that, Nebraska needs people like me. I'm an asset. I'm fluent in Spanish, I understand the rural life, and I want to live there. That's a big catch for a lot of people. Nobody wants to live in a town of 60 people, who is soon to probably have a population of about 10. And so it's an issue to get people to stay. This would be something that would be helpful. Because I want to pursue law and serving the communities, I don't want to have to deal with, can I make enough money to put food on the table and also to pay the student loans. Cost of living is less, but that does not change how much our student loans are. So if I walk out and only make \$40,000 a year, that's a great living in Lisco. That's fine. But I still have \$50,000 of student loan debt plus more to cover. And I think for a lot of students that are on the bubble, it's a big push. This would be really helpful. I spoke to three students

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today, one that's going to Ogallala, one to Broken Bow, and one I think to Norfolk, who said this would push them to different areas. I don't think it will be a competition because if you look at your map I will be going to Garden County, which has two attorneys. One doesn't practice there really, and one is, like, on his way out. And so it will soon have zero. [LB808]

SENATOR ASHFORD: Where's he going? Oh, just retiring? [LB808]

KATIE SAMPLES: Retiring. [LB808]

SENATOR ASHFORD: Okay. [LB808]

KATIE SAMPLES: Maybe...(laughter)...I don't know. That's not what I meant. But I know lawyers aren't something everyone loves; I get it. But everyone needs it, especially with an aging population, small business owners, farmers, and ranchers. I think this would be really crucial in a lot our decisions to move there and stay there. And I don't necessarily think we would compete, because even if they're younger, they know somebody else needs to fill their shoes. And, quite frankly, right now, there's more business than they can handle with all the estates and wills and all the small businesses and everything going on. I'll entertain any questions if you have any. [LB808]

SENATOR ASHFORD: Any questions? I just want to comment on. This seems...this is extremely important, I think. And I'm just thinking in my mind what bills we can use to put this...get this out there, because it certainly is relevant to our efforts in juvenile justice, statewide. And Senator Davis, Senator Seiler, and Senator Christensen have consistently been talking...we've made a massive shift in how we deal with juveniles, and it depends upon having attorneys out there. You know, even one of the guardian ad litem, Senator Coash has made really a career almost out of dealing with guardianships and the inability to find guardians in rural Nebraska. I mean, I think this is a critical bill. I...somehow I think we have to find a way to get it out there because this could make a big difference. And I didn't realize the...I mean, I know a lot of things but I didn't know this. [LB808]

KATIE SAMPLES: And, I mean, that is from 2012, and there's...the average age of attorneys out in outstate Nebraska is old, and when I say old, I mean seventies and eighties. [LB808]

SENATOR CHRISTENSEN: Careful. [LB808]

SENATOR COASH: That's pretty old. (Laughter) [LB808]

SENATOR CHRISTENSEN: Careful. [LB808]

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SENATOR ASHFORD: That's very...that's very...I would go...no, wait, could I... [LB808]

KATIE SAMPLES: Okay, they're... [LB808]

SENATOR ASHFORD: What I would do, Katie, with that, is I would say eighties... [LB808]

SENATOR LATHROP: There will be a day when that doesn't seem that old. [LB808]

KATIE SAMPLES: Eighties, nineties. [LB808]

SENATOR ASHFORD: Eighties. Eighties and nineties. [LB808]

KATIE SAMPLES: I think there's one that's 98. [LB808]

SENATOR ASHFORD: I think I'd go with that and then... [LB808]

SENATOR SEILER: Senator, I move to IPP this bill. (Laughter) [LB808]

SENATOR ASHFORD: Right. This... [LB808]

KATIE SAMPLES: Sorry. Sorry. [LB808]

SENATOR ASHFORD: You had totally sold us on this until...you know, it's... [LB808]

KATIE SAMPLES: I know. I kicked myself. [LB808]

SENATOR DAVIS: Katie, you are going to be an attorney. You need to use your words carefully. [LB808]

KATIE SAMPLES: I know. I know. [LB808]

SENATOR ASHFORD: Well, as Rod Shkolnick used to say... [LB808]

KATIE SAMPLES: Okay. Past the age they want to practice. [LB808]

SENATOR LATHROP: You put in good evidence and you muffed the close. [LB808]

SENATOR ASHFORD: As Rod Shkolnick used to say, don't ever ask the question about what color the red wagon is, right? Isn't that what he used to say? Or something to that effect. I'm not much of an evidence guy, but. [LB808]

SENATOR LATHROP: Apparently not. [LB808]

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SENATOR ASHFORD: Anyway, this is extremely important and...very important. I don't know what we're going to do with it but we've got to find something. So thank you. [LB808]

SENATOR LATHROP: Great to have you here. [LB808]

KATIE SAMPLES: Thank you. [LB808]

SENATOR ASHFORD: Oh, anyone else? Anybody against the bill? It would be an interesting comments. But anyway, anybody neutral? Senator Conrad. [LB808]

SENATOR CONRAD: Briefly. Thank you, Chairman. Thank you, members of the committee, for your kind attention and your good questions. A couple points just in conclusion that I failed to mention in my opening. Twenty-four other states have some sort of program like this on the books and varying degree in scope; so I do want to point that out for comparative purposes. The other piece that I think is important to remember is that through recent events, let's say, the role of the bar association is changing and evolving, and we once had the luxury to put a lot of this on their shoulders. We no longer have that luxury. It is important that they continue their work. The partnerships that they've formed with the law school, with the private sector, with the judicial system, are critically important and provide a great baseline for this program. But we need to take it to the next level. We need to give them another tool and this is a critical piece in that tool bag. The other piece I want to point out in relation to Senator Davis' question is, this is not a tax and this is not a competition issue. As pointed out in some of the media articles on this topic, in some cases people have to travel over 200 miles just to get legal help in Nebraska. And, of course, there's 12 counties that have no lawyers at all. So it's not a competition issue when there is no one to compete with. And the other point that I think that's important to remember is this legislation, for the first time, does address the need in rural Nebraska but it also doesn't forget the need in other underserved areas through the public interest component that is on the books. And just in parting words I'll let you know that the state of Nebraska makes a commitment of about \$2 million each year through cash fund, general funds, and other sources, to ensure that we have medical professionals all throughout our state. It's been a very successful program. It has served our state well. It's time to do the same to ensure that we have that same sort of competent, professional, personnel on the legal system out in every single community. And Chairman Ashford, you're right. As to the timing of it, it could not be better, based upon the changing landscape with the guardianship, the changing landscape with juvenile justice reform, and, of course, the aging population and shifting demographics that are a significant challenge before our state. So I thank you again for your kind attention. We will absolutely work with the committee to address the income tax liability situation that Senator Seiler appropriately noted, and to find a vehicle to move this piece forward. Thank you. [LB808]

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SENATOR DAVIS: Can I ask a couple...? [LB808]

SENATOR ASHFORD: Yes, Senator Davis. [LB808]

SENATOR DAVIS: Senator Conrad, I just have a couple questions. We're dealing with something similar to this in education. [LB808]

SENATOR CONRAD: For like a teacher repayment? [LB808]

SENATOR DAVIS: Teachers going back to get their master's degree... [LB808]

SENATOR CONRAD: Yes. [LB808]

SENATOR DAVIS: ...and some, you know, reimbursement. And part of that legislation is a delay in the beginning of the repayment, and I think...and that's been in the statute already, but I think the objective was, well, we don't want somebody coming out just to do the work and then leaving. Would you be at all receptive to doing something like that with this? [LB808]

SENATOR CONRAD: Yes, I think that we should be receptive to all ideas and would welcome a continued dialogue in that regard. But I'll tell you, a delay initially makes me a bit nervous because it is those fresh out of law school folks that aren't well established, that do have young families, that may have the most acute need. But I think that we should put safeguards in place to ensure that the dollars go where they are needed most. [LB808]

SENATOR DAVIS: I mean, can we envision another way that, okay, if you pay your loan off in six years, you need to stay there nine years, or there is some recapture? I mean, would you be amenable to that? Do you think that's doable, even? [LB808]

SENATOR CONRAD: Yes. And I think that there actually are similar provisions in the medical repayment program that we can maybe take a look at. [LB808]

SENATOR DAVIS: I'd like to see us look at that anyway, but I do...I think it's a good bill and I think it's probably needed. [LB808]

SENATOR CONRAD: And I appreciate your cosponsorship of the legislation. [LB808]

SENATOR ASHFORD: Good job, Danielle. [LB927]

SENATOR CONRAD: Thanks. [LB808]

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SENATOR ASHFORD: Okay. Let's go on to Senator Nordquist: provide that judges retirement fees cannot be waived. [LB927]

SENATOR NORDQUIST: Ready? [LB927]

SENATOR ASHFORD: Go ahead, Jeremy. [LB927]

SENATOR NORDQUIST: (Exhibits 8-10) Good afternoon, Chairman Ashford and members of the Judiciary Committee, here...Jeremy Nordquist, N-o-r-d-q-u-i-s-t, from District 7, which covers downtown and south Omaha, here today to introduce LB927. In all of our public employees retirement plans--the members for our defined benefit plans--the members of the plan contribute a percentage of their compensation to the retirement plan. That percentage does vary by each of the system. And then the employer provides some match to that contribution. The judges retirement system is a little different than our others in that the employer match for the judges retirement system actually comes all from court fees. There is no state as the employer match to the judges retirement plan. Thus, the contribution is tied to the number of cases filed, not the judges compensation. There are several issues related to these court fees, but this bill today, LB927, addresses just one aspect. It says that none of the fees earmarked for the judges retirement fund may be waived. We have, the Retirement Committee, my legal counsel Kate Allen, has worked...had a number of discussions with the Chief Justice, the Court Administrator, the Public Employees Retirement Board, to try to identify the causes for the decreased revenue in our court fee. You'll see in the Chart 2 that the number of cases has been dropping significantly since we moved to...in '04 we increased the court fee from \$1 to \$5, and really since that time the number of cases has fallen off dramatically; and we did, in 2010, increase that fee to \$6 and we have still seen a decrease in the number of filings. But just looking at some of the data here, just the last...looking at 2012 to 2013, there was a 3,000 drop in cases but \$135,000 drop in revenue to our retirement plan. That obviously can't all...isn't all due to just the drop in cases. We know that indigents do not pay court fees. Counties, instead, however, it appears are likely waiving the court fees that are to be earmarked for the judges retirement plan, and that's most likely what's driving the decrease in revenue. I just anecdotally was speaking with a legislative employee and had two traffic violations in the same county, and on one of those instances all of the court fees were waived. She certainly wasn't an indigent...wouldn't qualify as an indigent. So there really is an issue going on here with court fees being waived that we have been able to identify at least with the fees that come to the judges retirement plan. And because of that, you can see in the last column on Chart 2 it's having a compounding problem on our retirement plan. Future prospects show that we're looking at somewhere in a million dollars a year of additional contribution on top of all the contributions that are going into the plan right now; and that does assume we return an 8 percent rate of return. So even if we hit that 8 percent rate of return every year, we would still have an additional million dollars. The Retirement Committee will be going next year and looking at the benefit

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side and the entire structure of the judges retirement plan, much like we did last year with the teachers plan. But this is one step to ensure that all the revenue that's going in to the judges retirement plan...or that should go into the plan, is being collected. One of the problems with this structure long-term, and we will run some actuarial models on it next year, is with all the other plans, with the employer contribution, much like the employee contribution, salaries typically go up every year by, you know, somewhere between 1 percent, and I think for judges we did 5 percent on the employee side. But in this plan, because we're tied to a court fee that stays stagnant and the number of court cases are falling and now likely more are being waived, we don't have a growing revenue stream going in on the employer contribution side. So that also compounds the problem. But we really think there's an issue with the number of fees being waived. And on the fiscal note you'll see that there's an estimate that this change, not making those fees not waivable, would generate about another \$100,000 a year for the plan, and then obviously we will need to make some additional adjustments to the plan going forward. Thank you. [LB927]

SENATOR LATHROP: Very good. Any questions? Senator Christensen. [LB927]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. There's another approach rather than I'd prefer having them from waiving is just charge them double to the judge if they do waive them. Wouldn't that accomplish just the same? [LB927]

SENATOR NORDQUIST: They'd make the judge pay them, is that what you're saying? Or the county? [LB927]

SENATOR CHRISTENSEN: They wouldn't waive them, then, would they. (Laugh)  
Thank you. [LB927]

SENATOR NORDQUIST: That's right. That's probably right. There you go. You guys can take that up in Exec, I think, and talk about that. [LB927]

SENATOR LATHROP: Do you intend to stay to close? [LB927]

SENATOR NORDQUIST: Yeah, I'll be around if there's any final questions. [LB927]

SENATOR LATHROP: Okay. Very good. First testifier in support of LB927. [LB927]

BILL MUELLER: Senator Lathrop, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today in support of LB927 on behalf of the Nebraska District Court Judges Association. I want to start by thanking Senator Nordquist and his legal counsel Kate Allen. We have been in discussions with them continuously on judges retirement. There is a shortfall from an actuarial standpoint of between \$800,000 and \$1

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million this year. My client, the District Judges Association, supports this bill because this is a way to use existing court costs to at least make up for \$100,000 of that. You'll remember that last year the Legislature passed a bill making the \$1 increase permanent; and at that time, the judges' additional 1 percent contribution was also made permanent. So we've been working on trying to address the actuarial shortfall in the judges retirement plan; and this bill, LB927, is one act that the Legislature can take that will get us closer to where we need to be, and answer questions. [LB927]

SENATOR LATHROP: Very good. Senator Coash. [LB927]

SENATOR COASH: Thank you, Senator Lathrop. Mr. Mueller, I'm confused. The judges want to be prohibited from waiving it, but can't you just go back and tell your clients to stop waiving these fees? I mean, they... [LB927]

BILL MUELLER: This is a discussion that we would have. I think part of the problem is, it may be as much a computer issue as it is an individual judge actually waiving a fee. And again...and I'm not throwing the county court judges under the bus, but primarily that is where we're seeing these fees waived, as I understand it. [LB927]

SENATOR COASH: A computer is doing it? So... [LB927]

BILL MUELLER: I think it is as much that as it is this. I think if we do this and then we educate judges better, hopefully, we will get fewer and fewer of these waivers. [LB927]

SENATOR COASH: I mean, it's pretty rare that we hear the judges want discretion taken away from them. [LB927]

BILL MUELLER: I understand. [LB927]

SENATOR COASH: But I don't...I'm confused. They... [LB927]

BILL MUELLER: I was hoping that the Court Administrator would be here who could answer some of these questions, but I don't see her in the room. [LB927]

SENATOR COASH: I mean, it would seem to me that maybe you could just go to your clients and say, okay, stop waiving your own retirement. [LB927]

BILL MUELLER: That would seem reasonable, wouldn't it? [LB927]

SENATOR COASH: But instead we've got Senator Nordquist has to come and make them. Okay, thank you. [LB927]

BILL MUELLER: Yes. [LB927]

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SENATOR LATHROP: So, Bill, do you know why they're waiving them? Is it indigency or...? [LB927]

BILL MUELLER: I don't think so. I think it is primarily...and, I am sorry, I had hoped that the Court Administrator would be here. I believe that some of these, at least, are fees being waived that the county would be required to pay. [LB927]

SENATOR LATHROP: What Nordquist's bill does, though, it says...the former language, or what we would strike here would be, no retirement fund for judges fee, which is uncollectible for any reason, shall be waived. So we're talking about waiving the uncollectible fee. I don't know who's unable or what makes a fee uncollectible, and who are we going to insist on getting the fee from that couldn't pay it in the first place. [LB927]

BILL MUELLER: Again, I think that we are...that that fee becomes an obligation of the county, and the county would pay it. And now I think that that's being waived. [LB927]

SENATOR LATHROP: So if somebody goes through that ends up with a public defender, they get convicted, they go to jail, say they go to prison for ten years, those guys aren't writing a check on their way out of the courthouse, right? [LB927]

BILL MUELLER: I'm certain that they're not. [LB927]

SENATOR LATHROP: And so the fee ends up waived. And what are we going to do? [LB927]

BILL MUELLER: I think that is... [LB927]

SENATOR LATHROP: Not let them out of prison until they pay you a dollar? [LB927]

BILL MUELLER: That's the question. I think that is the question. And this bill, I think, would put it on the county to pay that fee, as they're doing now. [LB927]

SENATOR LATHROP: Oh, I get you. You want the counties to pay it instead of the... [LB927]

BILL MUELLER: And I believe that that is the county's obligation now. [LB927]

SENATOR LATHROP: Okay. Senator Davis, do you have a question? [LB927]

SENATOR DAVIS: So, Bill, you're saying that the counties are not being asked to pay that, when it's their reasonability, because of indigency. [LB927]

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BILL MUELLER: That is my understanding. I am not an expert on this subject and I'll be the first one to admit that. [LB927]

SENATOR DAVIS: And I was just asking Senator Nordquist about when you take a STOP class the fees are waived, and if there was a possibility of recouping those fees in that way. [LB927]

BILL MUELLER: I think that's something we should look at, because as Senator Nordquist described, there's no employer contribution to the judges fund, unlike the other funds; so that's neither good nor bad. It's just a reality that as judges make more money these court costs do not necessarily go up. And as a matter of fact, they're going down because court filings are down significantly; so we need to do something in that. And that's what Senator Nordquist is working on, to make some employer contribution. [LB927]

SENATOR DAVIS: So are court cases down because people are settling out of court more? [LB927]

BILL MUELLER: I think that the economy has an effect. We're not sure. We're just not sure, but they're down significantly. [LB927]

SENATOR DAVIS: Yeah, they are. [LB927]

SENATOR LATHROP: It's just the costs associated with litigation,... [LB927]

BILL MUELLER: And I... [LB927]

SENATOR LATHROP: ...the threshold for what kind of a case you're going to sue gets higher, right? [LB927]

BILL MUELLER: I think that's clearly true. [LB927]

SENATOR LATHROP: Bill, do you represent the bar today or just the district court judges? [LB927]

BILL MUELLER: We do. No, I represent just the district judges on this issue. The bar did not take a position on this bill. [LB927]

SENATOR LATHROP: Can you track down information for the committee... [LB927]

BILL MUELLER: I will. [LB927]

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SENATOR LATHROP: ...that demonstrates or tells us... [LB927]

BILL MUELLER: I absolutely will. [LB927]

SENATOR LATHROP: ...whose fees are being waived and why.... [LB927]

BILL MUELLER: Yes. [LB927]

SENATOR LATHROP: ...and what the effect of this would be? [LB927]

BILL MUELLER: Yes. [LB927]

SENATOR DAVIS: Can you break it down by judicial district? [LB927]

BILL MUELLER: We'll certainly try. I'm going to grab the Court Administrator and we'll come and speak with all of you. [LB927]

SENATOR LATHROP: Okay. Very good. I see no other questions. [LB927]

BILL MUELLER: Thank you. [LB927]

SENATOR LATHROP: Thanks, Bill. Next proponent. Anyone here to testify in support of LB927? Seeing none, anyone here in opposition? No one? Anyone here in a neutral capacity? Welcome. [LB927]

BETH BAZYN FERRELL: Thank you. Senator Lathrop, members of the committee, for the record my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials appearing neutral today. I was going to point out some of the issues that were just discussed about when the fee is waived who makes up the cost. And there are instances where the county does make up the cost. We would be happy to work with the committee and the bar association and come up with some more information about that, those circumstances, and possibly some numbers if we could. [LB927]

SENATOR LATHROP: Very good. Thanks, Beth. I don't see any questions. Anyone else here in a neutral capacity? Seeing none, Senator Nordquist to close. [LB927]

SENATOR NORDQUIST: I'll just say, remembering back to some discussions we've had this interim, one theory that came from the Fiscal Office is the number of state troopers has been down and I believe the number of tickets they have been writing have been done, which is one potential falloff of the number of court filings. We have tried over the interim to work on getting the data with the Chief Justice and the Court Administrator, and it seems like them and overall we've just a hard time identifying there

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is not apparently a good tracking system for who is waiving and how many cases are being waived, and that's why we've kind of come to this point. But we will have...this is one part, but we will have to have a discussion going forward. I mean, we have the judges retirement plan is a cost to having a court system, and we will need to decide going forward some additional revenue stream. Most likely this won't solve the problem. We will work on the benefit side, but either a dedicated General Fund dedication to this plan or an increase in court fees, most likely. So that discussion will be next year. [LB927]

SENATOR LATHROP: Very good. [LB927]

SENATOR NORDQUIST: Thank you. [LB927]

SENATOR LATHROP: I see no questions. Thanks, Jeremy. That will close our hearing on LB927 and bring us to Senator Kintner who is here to open on LB1015. [LB927]

SENATOR KINTNER: (Exhibits 11 and 12) I'm Senator Bill Kintner, B-i-l-l K-i-n-t-n-e-r. I represent Legislative District 2. Thank you, Chairman Ashford and the Judiciary Committee for this hearing on LB1015. I'm pleased to bring this bill on behalf of my constituents who raised an important public safety issue. An integral component of public safety relates to emergency services. Many times these basic emergency services can only be provided to the general public through volunteer groups. The vast majority of our Nebraska emergency services are provided by volunteer fire and rescue departments. These men and women devote hundreds of hours each year to training, education, and protecting our communities without compensation. Not only do these volunteers sacrifice their time and personal safety, but their families sacrifice along with them. The vast majority of our Nebraska volunteer fire and rescue departments are divisions of their local public entities. They are typically governed by their rural fire districts, cities, villages, or counties. In return, these public entities and their volunteer employees are afforded the protections of the Nebraska Political Subdivisions Tort Claims Act. This act safeguards the Nebraska taxpayer and allows local community members to freely volunteer without the fear of being sued for their honest actions. A handful of these Nebraska volunteer fire and rescue departments are no longer governed by political subdivisions. They have become organized as 501(c)(3), or hold a similar nonprofit status. Many nonprofit emergency organizations believe that establishing their departments in this manner would be a better fit for their community. These nongovernmental organizations provide the same emergency services to the general public as their neighboring political subdivisions. Their employers must abide by the same workers' compensation laws as other volunteer public entity departments. However, they are not funded by tax dollars but funded through charitable donations and service charges. Their employers are not required to offer life insurance benefits as public entities must. Most importantly, these volunteers do not have the protections of the Nebraska Political Subdivisions Tort Claims Act. This exposes our volunteers, their

families, and communities to possible unlimited financial hardships. Every single one of our fire and rescue volunteers are exposed to liability situations on every emergency call they respond to. They are potentially walking into a liability lawsuit before they can even engage at the scene. Concerns of legalities should not have to be calculated before attending to an injured patient or assessing a grass fire. Fortunately, for most of our volunteers, they do not consider these consequences while they are attempting to save our property and lives. Unfortunately for them, most volunteers are unaware that they are exposed to liability lawsuits that could leave their families destitute. LB1015 will allow these organizations which provide emergency services to the general public and operate outside a political division to be granted the protections of the Nebraska Political Subdivisions Tort Claims Act. A few examples of these organizations that would be brought into the protections of the Subdivisions Tort Act are the Ralston Volunteer Fire Department and Rescue; Johnson Lake Emergency Association; Ashland Volunteer EMS; and Loup City-Rockville-Ashton EMS. The intention of this bill is not to include for-profit hospitals, life flight, or for-profit ambulance services. Our Nebraska volunteers are a vital resource for the sustainability of our public safety. Nebraskans are indebted to their volunteers and there is no doubt in my mind that the majority of our constituents would support this bill. We, as legislators, are obligated to protect those who protect us. LB1015 will bring us one step closer to fulfilling that obligation. Thank you for your time and I'll be happy to take any questions. And I do want to say, you know, I'm not an expert on a lot of this but I do have some people behind me that know it a little better than I do. [LB1015]

SENATOR ASHFORD: Fair enough, Bill...or Senator Seiler. [LB1015]

SENATOR SEILER: Senator Kintner, how is this different than Hatcher v. Bellevue Volunteer Fire Department, the 2001 Supreme Court case, that held that volunteer firefighters and, therefore, employees of political...are employees of political subdivision and are immune under the Political Tort Claims Act? [LB1015]

SENATOR KINTNER: I think that had to do with interlocal agreements, I believe. But I am certainly not an expert in that. [LB1015]

SENATOR SEILER: Will some of the people be able to distinguish that? [LB1015]

SENATOR KINTNER: I believe so. Yes. [LB1015]

SENATOR SEILER: Okay. [LB1015]

SENATOR ASHFORD: Senator Davis. [LB1015]

SENATOR DAVIS: Senator Kintner, on page 2, the new language, it talks about "Political subdivision shall include a nonprofit organization." And I understand what

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you're trying to do there. But essentially you're trying to get some liability protection through an insurance policy with this bill, right? [LB1015]

SENATOR KINTNER: Correct. [LB1015]

SENATOR DAVIS: So how are these political sub...how are your volunteer firemen...who are they looking to in order to...for coverage? Are they looking to the county, are they looking to the city or a fire district or...can...do you have any idea? [LB1015]

SENATOR KINTNER: Yeah, the town. They're usually a part of a town. And for whatever reason I don't fully understand why they always do this, sometimes they break away and become independent, and sometimes there's political involved. I don't think they understand the problems with doing that; and they do that and they find themselves exposed. And they can go out and buy insurance but it's not capped at a million dollars, and if you're a political subdivision it's capped at a million dollars. So that's the difference. [LB1015]

SENATOR DAVIS: Um-hum. Well, I'm kind of familiar with...well, fire insurance issues, you know, from my service out in the western part of the state. But I just wonder if we need to sort of drill down on that and make sure that we know it's the village rather than another political subdivision who's got to do the carriage of the insurance. [LB1015]

SENATOR KINTNER: I believe someone who will testify after me can possibly answer that. [LB1015]

SENATOR DAVIS: Okay. Thank you. [LB1015]

SENATOR ASHFORD: Thanks, Bill. I don't see any other questions. So let's go to the proponents, those for the bill. Do we have...those who like it. Good afternoon. [LB1015]

JEFF CLYMER: Good afternoon. My name is Jeff Clymer, it's J-e-f-f C-l-y-m-e-r, and I am an insurance agent here in the state. I own the Ball Insurance Services agency out of Elmwood, Nebraska. And my position is, I'm the state director for Continental Western Insurance Group. I don't work for another insurance group but I just own my own little small-town agency. But we specialize in public entities, and we insure approximately 75-80 percent of all the fire districts in the state, and we have for quite a few years, so. And probably about twice a week I go and I speak with fire departments, and so I get a pretty good idea of what is happening across the state and also all the claims that come into our office, so. If I could take any questions, I know there was a couple of questions. If you could repeat them, that will help me out a little bit. [LB1015]

SENATOR ASHFORD: Senator Seiler. [LB1015]

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SENATOR SEILER: I have the question of the Hatcher v. Bellevue Fire Department, which they held that they were employees of the city and were under the Political Tort Claim. Did you happen to have that insurance? [LB1015]

JEFF CLYMER: No, I didn't have that insurance. And that's okay if they deem that. See, a lot of my time is spent going and speaking to these volunteer fire departments, and the vast majority of them are under a public entity, usually the rural fire district or the village or the city. But a lot of the times, these volunteers, they don't understand that they're employees like what you are referring to. They have no idea. They just think they're volunteers. And so I do spend some of my time trying to clarify that to the insurance companies which is... [LB1015]

SENATOR SEILER: What I'm trying to figure out is the difference between this bill and what the Supreme Court has already ruled. [LB1015]

JEFF CLYMER: Oh. It wouldn't have...it wouldn't be the same thing. There's no relations. [LB1015]

SENATOR SEILER: But they're covered under the Political Tort Claim Act. What's the difference? [LB1015]

JEFF CLYMER: Because they're employees of the rural...or, excuse me, they're employees of the city. In this particular case, in these cases with these associations that Senator Kintner had mentioned, what they have done is they have separated themselves away from the city or the municipality or the rural fire district. So in Bellevue...was it Bellevue? [LB1015]

SENATOR SEILER: This one was Bellevue. Yeah. [LB1015]

JEFF CLYMER: In Bellevue's case.... [LB1015]

SENATOR SEILER: They were a nonprofit corporation independent from the...but they were providing agency service to the city. [LB1015]

JEFF CLYMER: They would be looked at as...they wouldn't be looked at as a contractor in that sense. A lot of these fire districts, they will have nonprofit. The fire department within or underneath the public entity, they will create their own nonprofit for fund-raisers, those types of things. [LB1015]

SENATOR SEILER: I assume that's what they did here. [LB1015]

JEFF CLYMER: But they're still employees or still under the guise of their

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government--oh, I want to say, their governing board is still the public entity. [LB1015]

SENATOR SEILER: Okay. [LB1015]

SENATOR ASHFORD: Yes, Senator Davis. [LB1015]

SENATOR DAVIS: So, Mr. Clymer, I think you heard my question, but do we have a list of how many of these entities that are not affiliated, do we know how many there are and where they are? [LB1015]

JEFF CLYMER: There's roughly 15 of them in the state. [LB1015]

SENATOR DAVIS: And do you know where they are? I mean, can you...? [LB1015]

JEFF CLYMER: No, I do not. I can...off the top of my head I probably know of seven of them. But I think I can get a list from the state association as well. [LB1015]

SENATOR DAVIS: You heard my questions earlier. The thing that I have wanted to be sure we...be sure that happens is that the entity that's going to end up being required to have this insurance knows about that, Because if it...we say it's going to be the village but it very well could be the county in some instances. [LB1015]

JEFF CLYMER: Well, it doesn't have really much to do with insurance. What's happened is, is these rescue squads or the volunteer fire departments, they for some reason, as Senator Kintner had mentioned, they had separated themselves away from the public entity. Why they did that, that's my question to them: Why would they leave? But they don't understand that they don't receive those protections any longer. They felt either it was political or they felt that they would receive more contributions to the department, charitable contributions. For some reason they decided to do that. But what they've done then is they've created a 501(c)(3) or some sort of other nonprofit, and now they don't understand that now they don't have any protections as they did before when their governing board was either the rural fire district or the village or city. [LB1015]

SENATOR DAVIS: Well, then isn't that sort of a free choice decision that they made to opt out of what they had before for other reasons? [LB1015]

JEFF CLYMER: They may have felt that...I know in some cases they may have felt that they would be able to fund, especially rescue squads, EMS rescue squads, that they would be able to fund their rescue squad. It would be easier for them to do it that way. And then they would...in a sense they would be contractors... [LB1015]

SENATOR DAVIS: Well, I understand that, but, you know, they made the choice and

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they gave up, or...you know, they gave up the benefits that they had by making that choice. That's my question. [LB1015]

JEFF CLYMER: They didn't understand that they were losing those benefits if they were to do that. Most of the people that we work with are, you know, salt of the earth people, and they don't know about the tort limits and those types of things. And that's why I try to go out and educate them about that and what their exposures are. [LB1015]

SENATOR DAVIS: Thank you. [LB1015]

SENATOR LATHROP: So we're doing this for 15 outfits? [LB1015]

JEFF CLYMER: Yes. [LB1015]

SENATOR LATHROP: Is that what you estimate to be the number of people that have separated themselves from the municipality or the political subdivision, and now they're running their volunteer fire department as a separate entity. [LB1015]

JEFF CLYMER: Yes. [LB1015]

SENATOR LATHROP: And you would like for us to make them a political subdivision in and of themselves so that they would have the protections available through the Political Subdivision Tort Claims Act. [LB1015]

JEFF CLYMER: Correct. [LB1015]

SENATOR LATHROP: Do you know if it would lower premiums? [LB1015]

JEFF CLYMER: Yes. Right now,... [LB1015]

SENATOR LATHROP: Have you had an underwriter tell you that, or you're just speculating? [LB1015]

JEFF CLYMER: No. I can tell you for a fact that with... [LB1015]

SENATOR LATHROP: So do you insure these 15? [LB1015]

JEFF CLYMER: No. Some I do. A few of them, I do. [LB1015]

SENATOR LATHROP: Okay. Well, do you just tell them, you know, this is going to be cheaper for you if you just go back and be part of the city? [LB1015]

JEFF CLYMER: That would be a great idea but then you're dealing with politics, local

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politics. We've actually had, I believe it was Ponca Hills Rural Fire District at one time was under the rural fire district, and the fire and rescue department decided they were going to separate and create their own nonprofit, and they did that. And then when they found out that they didn't have the tort protections, they tried...they went back and were under the rural fire district again. But it was very, very difficult. They just did it last year and they said that they would never want to do that again. It was very, very difficult to do, and I don't think...they weren't really happy with having to do all of that. And some of these associations or nonprofits, they don't have a public entity to go back to. [LB1015]

SENATOR LATHROP: Do they all end up getting their insurance through, is it NARM? The League of Municipalities? [LB1015]

JEFF CLYMER: Oh, the pools? [LB1015]

SENATOR LATHROP: Yeah, the pool. [LB1015]

JEFF CLYMER: No. No. [LB1015]

SENATOR LATHROP: No? Okay. That's all the questions I have. Thank you. [LB1015]

SENATOR ASHFORD: Thanks, Jeff. I don't see any other questions. Okay, thank you. [LB1015]

JEFF CLYMER: Thank you. [LB1015]

SENATOR ASHFORD: Okay, next supporter of the bill. [LB1015]

TIM NORRIS: My name is Tim Norris, T-i-m N-o-r-r-i-s. I'm assistant chief of the Bennet Fire Department. I'm also an insurance agent and I do insure Ralston Fire, along with Ball Insurance. We do...I think part of the issue is for Ralston and they unfortunately were not able to be here today. I do think they did send their senator a letter regarding their concern or their support of it. But Ralston Fire does include... [LB1015]

SENATOR ASHFORD: That would be Senator Lathrop over here. [LB1015]

TIM NORRIS: Yeah. [LB1015]

SENATOR ASHFORD: Yeah. [LB1015]

TIM NORRIS: So they sent you a letter, I know, or several letters, I'm not sure. But Ralston Fire incorporates not just the city of Ralston but beyond their city. So how all that changed at some point, I don't know the details. You know, I'm sure, Senator Lathrop, if you wanted to get ahold of the fire chief or someone on the board, they would

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be happy to give you the details. I don't know all that. But, you know, I think the concern or question is really about the protection of the volunteer like I am, is protecting and limiting what my exposure potentially is. I mean, that's the biggest concern is for those volunteers and those organizations, because again, the average firefighter, they don't know the difference between my uniform that I'm protected this way and a Ralston firefighter uniform that they're not. They don't know the difference or see the difference. So I think it's really about protecting those people that are volunteering. [LB1015]

SENATOR ASHFORD: Makes sense. Thanks. [LB1015]

TIM NORRIS: Okay. Anybody have any questions, or good? [LB1015]

SENATOR ASHFORD: I don't see any more. Thanks. [LB1015]

TIM NORRIS: You bet. [LB1015]

SENATOR ASHFORD: All right. Next supporter. Do we have any opponents? [LB1015]

JOHN LINDSAY: Mr. Chairman, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys in opposition to LB1015. The rationale behind that, I think, need to flip the perspective a little bit rather from looking at from comparing volunteer fire departments and who has the protection of the act and who doesn't. I think you need to flip that back to why do those that have the protection, have the protection? And it stems from the old common-law principle of sovereign immunity: The king cannot be sued; the king cannot be wrong. And from that, hundreds of years of law have developed saying the government has sovereign immunity. The government cannot be sued unless the government gives permission for itself to be sued. And that is what happened with the Political Subdivision Tort Claims Act. It allowed...the government said, okay, we're going to allow ourselves to be sued but under these circumstances and under these conditions, and adopted the Political Subdivisions Tort Claims Act. What this bill does is tries to say we want government immunity even though we don't want to be government. And that is the fundamental premise of what the bill does. Remember, government has other protections. All of you have to report to voters. All city councils have to respond to the voters, have to have open meetings, have to do all that we require of political subdivisions. I don't believe, once we start getting into the private sector, that the same laws are going to apply. And so I think what you're doing is treating two different sectors. And while that difference may not be great right now, between a political subdivision volunteer fire department or a 501, I assume, (c)(3), (4), (5), whatever it is, political subdivision...or excuse me, volunteer fire department. But the problem is now we've made the jump over into the private sector and we're going to define government to include nongovernment organizations. Now it just becomes a question of negotiating. Maybe the blood bank that delivers blood to the city hospital,

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maybe we can consider them as bringing it under. I mean, there's a lot of different situations where you can argue they're doing a good deed; we ought to consider them to be government too. I think this is a big step in changing a definition to say nongovernment entities are, in fact, government. And we'd urge that the bill not be advanced. [LB1015]

SENATOR ASHFORD: Okay, John. Senator Seiler. [LB1015]

SENATOR SEILER: John, have you read the Hatcher v. Bellevue case? [LB1015]

JOHN LINDSAY: I glanced at it, and it appeared to me that that was decided kind of on an agency basis. The... [LB1015]

SENATOR SEILER: It did, but it took a nonprofit corporation, just like we're talking about, and through the Supreme Court's normal gymnastics found that they were a political subdivision through the agency rules. So what difference is there between Hatcher than this rule? Because when I look at the new language, it's almost taken right out of the Hatcher case. [LB1015]

JOHN LINDSAY: And I think the difference is that it's statutory. Supreme Court decisions, of course, by nature, can be. [LB1015]

SENATOR SEILER: But I wanted to know the difference...I realize one is statutory and one is... [LB1015]

JOHN LINDSAY: Right. [LB1015]

SENATOR SEILER: ...but what's the fundamental difference? I don't see any. [LB1015]

JOHN LINDSAY: That I don't know. [LB1015]

SENATOR SEILER: Okay. [LB1015]

JOHN LINDSAY: I think right now the law is Hatcher v. Bellevue. But this would mean the law is what's in this green copy. [LB1015]

SENATOR SEILER: All you're doing is reinforcing the Hatcher rule. [LB1015]

JOHN LINDSAY: Right. [LB1015]

SENATOR SEILER: Okay. I wouldn't argue that. [LB1015]

JOHN LINDSAY: And we would rather not... [LB1015]

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SENATOR SEILER: I wouldn't argue that. [LB1015]

SENATOR ASHFORD: Thanks, John. I don't see any other. [LB1015]

JOHN LINDSAY: Thanks. [LB1015]

SENATOR ASHFORD: Anybody else in opposition to LB1015? Neutral? Senator Kintner, do you want to...? [LB1015]

SENATOR KINTNER: You know, this is a very basic attempt to protect people that put their time, effort, life on the line to protect us and to make sure that, in good faith, as they're doing their job they don't get taken down financially. I did want to say something to Senator Seiler. I've got that Hatcher v. Bellevue here, June 22, 2001. That's...you have a great question. I'm going to get that answered and I'll make sure you... [LB1015]

SENATOR SEILER: That's fine. [LB1015]

SENATOR KINTNER: I'll get it to you in writing, because that's a... [LB1015]

SENATOR SEILER: I kind of agree with Lindsay that this looks like a codification of an existing law, but. [LB1015]

SENATOR KINTNER: Right. You're right. If I can't get that answer, there's no reason for this law; so I will get that to you. [LB1015]

SENATOR SEILER: Okay. [LB1015]

SENATOR KINTNER: And thank you very much for your time today. [LB1015]

SENATOR ASHFORD: Thanks, Bill. Okay. Anybody else? No. We're done with that. Here's what we're going to do. LB862 and LB893. Steve is going to introduce his and then Senator Seiler will introduce LB893, and then we'll go to the testimony; so we combine it. [LB1015 LB862 LB893]

SENATOR LATHROP: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm here...state senator from District 12 and here today to introduce LB862. And LB862 very simply raises the cap. Senator Seiler's bill does the very same thing; we just have different amounts. Mine would raise the cap to \$2.5 million and Senator Seiler would raise it to \$2 million. And for those of you that are not familiar with the Medical Liability Act, basically what we did back in the '70s in response to what we were to understand was a crisis, we developed the Medical Liability Act, which essentially provided a cap on damages when you sue a

doctor or a hospital. The idea behind it, or the rationale that was articulated when the bill passed, was that we will avoid the expense of malpractice insurance for doctors and hospitals. Doctors will come to Nebraska and practice here and not flee the state, I think was the way they pitched the bill back then. As you might be able to tell, I'm not fully sold on the Medical Liability Act, but it is a fact in Nebraska. And when we passed it back in the '70s I think the original cap was \$500,000. In '85...in 1985 it was raised to a million. In 1993 it was raised to \$1.25 million. In 2004, so ten years ago, we raised it to \$1.75 million. And today I would propose raising it to \$1.5 million (sic--\$2 million). You should know that the way it works for doctors is they buy underlying coverage and then they contribute to a fund. The fund is operated to pay claims over and above the underlying policy, and this has the effect of providing a cheaper way to purchase insurance. That fund, I want to give you the history of that fund while we talk about this. In 2003, that fund maintained a balance of \$57 million; in 2005 that fund had a balance of \$60 million. It went up to \$68 million two years later; in 2009 it was at \$75 million; 2011 it was at \$90 million. And now that fund that is there to protect the physicians financially in the event they have a claim that exceeds their coverage, is \$91.5 million. I think it is time to increase for two reasons. One is the fund is getting very, very significant and it can certainly afford an increase. And the second reason is, and understand that when these cases that you bump into the cap on aren't the small cases, right. You only worry about the cap in the very, very catastrophically injured person, and the cost of medical care has gone up significantly in the last ten years and because most of the damages in a medical malpractice claim, at least for the catastrophically injured, are for their future medical expenses and past medical expenses, having increases that generally reflect the increase in the cost of care are appropriate. And for that reason I would encourage your support of LB862. [LB862 LB893]

SENATOR ASHFORD: Thanks, Steve. I don't...thank you. Senator Seiler, do you want to introduce yours next. I think we'll just do them together and then we'll... [LB862 LB893]

SENATOR SEILER: Mr. Chairman, members of the committee, I bring LB893 to the committee. It is exactly the same as...has the same history and has the same language as Senator Lathrop's bill except mine caps it at \$2 million. That's the only difference. [LB862 LB893]

SENATOR ASHFORD: Okay. Great. Thanks, Les. All right, so let's do it this way. Those who are for raising the cap in one or both of these bills, if they would testify first. Senator Schmit, was this your bill in '76? [LB862 LB893]

LORAN SCHMIT: Yes. [LB862 LB893]

SENATOR ASHFORD: That's what I thought. You're watching over it. [LB862 LB893]

SENATOR ASHFORD: Peter. [LB862 LB893]

PETE WHITTED: Mr. Chairman, members of the committee, I'm Pete Whitted; that's W-h-i-t-t-e-d. I'm a practicing ophthalmologist in Omaha, Nebraska. I speak on behalf of the Nebraska Medical Association. I've appeared before this committee in the past, including the last hearing on the cap in 2003. I argued at that time, in light of the changes in costs of medical care, as outlined by Senator Lathrop, that it was reasonable to consider a cap increase. The result was an increase in the cap from \$1.25 million to \$1.75 million. Today, because of the overwhelming upheaval in healthcare, such an increase is less obvious but worthy of debate. I want to thank Senators Seiler and Lathrop for bringing this up for discussion and facilitating it. Since 2004, the MEI, the medical economic index, which is the index used by the federal government to establish reimbursement levels for hospitals and other healthcare providers--except physicians, whose reimbursement is determined via the sustainable growth rate which is a much less liberal standard--would suggest an increase in the cap from \$1.75 million to \$2.1 million. Any prediction of what medical costs will do going forward is highly speculative. History shows that since the statute's inception in 1976, indemnity payments that reached the cap, which has been gradually increased, are uncommon. It can be argued with considerable support that stringent reform, such as this cap on damages, promotes an environment that supports access to a broader range of the services in rural communities, particularly women in obstetrical care. A decrease in the practice of defensive medicine, which is driven more by the perception of risk rather than the actual risk, and stable medical liability insurance premiums, it's been theorized that premiums will increase 3.9 percent over time for every \$100,000 increase in cap levels. The cap on damages is simply a stopgap measure to ensure access to a broad range of medical services in Nebraska. Until we as a population are willing to adopt a system that ensures adequate compensation for injured patients in a timely fashion, without excess costs associated with the legal process, that encourages quality care and mandates patient safety, we are stuck with an imperfect system that relies on our present statutes. The maintenance of a liability cap that is reasonable for all involved is immensely important. I urge you to support a continued cap on damages as outlined in both LB893 and LB862. Thank you very much. I'm willing to answer any questions. [LB862 LB893]

SENATOR ASHFORD: Peter, the...thanks for coming down again on this. As I recall, Indiana is the only other state that has... [LB862 LB893]

PETE WHITTED: There's actually two. There's Virginia and Indiana, and there's some that are close. But Indiana is at \$1.25 million. The law in Virginia, right now, it increases \$50,000 a year for the next...till 2034, which will eventually be capped at \$3 million. We are, right now, the highest. [LB862 LB893]

SENATOR ASHFORD: Okay, right now. But the others might go... [LB862 LB893]

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PETE WHITTED: Right now, yeah, \$1.75 million is the highest. [LB862 LB893]

SENATOR ASHFORD: The highest. But the others don't have these kinds of caps. [LB862 LB893]

PETE WHITTED: Well, there's 28 states that have some limit on liability. Very few have a total damage. [LB862 LB893]

SENATOR ASHFORD: A hard cap or what...okay. And would you agree with...I have had this many, many times since I've been here, to talk about it, and you've always had good comments. One of the...I like the idea of having the Legislature review this. I thought...I think Senator Lathrop's point is well taken. I mean, you could put some kind of automatic trigger in here, but the idea of...because we don't know what healthcare costs are going to be, and we don't...we're not sure about how to evaluate...do you evaluate it over five years, ten years, look back (inaudible), all that stuff. Whereas if we can...this methodology seems to work, doesn't it? [LB862 LB893]

PETE WHITTED: I absolutely agree with you. [LB862 LB893]

SENATOR ASHFORD: Okay. [LB862 LB893]

PETE WHITTED: I think a periodic evaluation of the cap and the statute is important. I think... [LB862 LB893]

SENATOR ASHFORD: I mean, we can get tricky and do all sorts of formulas, but I wonder...I mean, I... [LB862 LB893]

PETE WHITTED: I think COLA is as inflationary in and of itself, and it may not reflect the actual costs. You know, it's frustrating. And, like I say, this is frustrating for physicians when we look at the increase in medical costs, which are real. But they don't reflect reimbursement for physicians. So when we talk about caps--and Senator Seiler sort of falls victim to that--it's very difficult for physicians to work past \$2 million or whatever the number is, because we have not seen our reimbursement go up. It actually has gone down over the last decade and a half, so... [LB862 LB893]

SENATOR ASHFORD: And we have had that argument with you in the room with the Hospital Association right over there about their costs. They seem to be getting reimbursed and you don't, but. [LB862 LB893]

PETE WHITTED: Well, so the bottom line, someplace between that number and this number may ultimately be the answer,... [LB862 LB893]

SENATOR ASHFORD: Yeah. [LB862 LB893]

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PETE WHITTED: ...and I think that we're receptive to discussing this issue. But, you're right, periodically reevaluating it is a great way to proceed. [LB862 LB893]

SENATOR ASHFORD: Thank you. [LB862 LB893]

PETE WHITTED: Although I don't want to come through this committee anymore. [LB862 LB893]

SENATOR ASHFORD: Oh, come on. [LB862 LB893]

SENATOR LATHROP: You won't see us the next time you come. [LB862 LB893]

SENATOR ASHFORD: Peter, you won't see us. [LB862 LB893]

SENATOR SEILER: You might see me. [LB862 LB893]

SENATOR ASHFORD: Yeah. Well, you'll see Senator Davis, possibly. Thanks, Pete. [LB862 LB893]

SENATOR LATHROP: Thanks. [LB862 LB893]

SENATOR ASHFORD: Okay, next proponent. [LB862 LB893]

THOMAS SHOMAKER: Mr. Chairman, members of the committee, my name is Thomas J. Shomaker; 7000 Spring, Omaha, Nebraska. I'm a lawyer, and for the last 35 years I've represented doctors in malpractice cases, that's the only thing I've done. And here's my act that I carry around with me, that you amend every ten years. And I'm here to say I think it's a wonderful thing. I think this is a great piece of legislation. I think that it works. And it's important when we're trying to balance fairly between the plaintiffs and the defendants to constantly revisit this, which you've done every ten years. I think it's a good thing to raise this up to provide for that catastrophic case that we see from time to time, where it's going to take a lot of money to put somebody right. And that's...I remember when the cap was \$500,000, and we had cases and we've had these same arguments: How's that enough to remunerate someone who's in a wheelchair? And that same argument gets made as you raise it every time. It looks like you're on a ten-year schedule here. You went \$500,000 up the first time, then \$250,000 up the next time, then \$500,000 up the next time. So \$250,000 this time is the bill that Senator Seiler has offered. And I'm no actuary and I don't know the answer to that, and I'm sure, in your wisdom, you'll come to something. I think it should be raised. I speak for myself and defense attorneys that deal with this and deal with these cases everyday. I'm not here necessarily on behalf of any other organization. But I wish that you would do something on a periodic basis and raise this up. I think it's fair to protect the doctors but it's also fair

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to protect the plaintiffs. So that's my message. I think it's a good act and I think it works.  
[LB862 LB893]

SENATOR ASHFORD: I agree. Thanks, Tom. [LB862 LB893]

THOMAS SHOMAKER: That's it? No big question there? Okay. [LB862 LB893]

SENATOR LATHROP: That's it. That's it. [LB862 LB893]

THOMAS SHOMAKER: Thank you for your consideration. [LB862 LB893]

SENATOR DAVIS: It's Friday. [LB862 LB893]

SENATOR LATHROP: If we did, it wouldn't be about the act though. [LB862 LB893]

SENATOR ASHFORD: Is that...now, is that the act itself, the original act? [LB862 LB893]

THOMAS SHOMAKER: Well, this is the act plus all the amendments and the legislative history and all this stuff that we consult from time to time. [LB862 LB893]

SENATOR ASHFORD: Thanks for bringing it down. [LB862 LB893]

THOMAS SHOMAKER: Well, that's my friend. [LB862 LB893]

SENATOR ASHFORD: I know. [LB862 LB893]

SENATOR LATHROP: Bible. [LB862 LB893]

SENATOR DAVIS: Yeah, the Bible. [LB862 LB893]

SENATOR ASHFORD: Thank you. [LB862 LB893]

THOMAS SHOMAKER: Thank you. [LB862 LB893]

SENATOR LATHROP: Thanks, Tom. [LB862 LB893]

SENATOR ASHFORD: All right. Next? Anybody else for the bill? Ma'am, come on up.  
[LB862 LB893]

ANGELA GUARIN: Good afternoon. I don't think I can do this without crying. My name is Angela Guarin and this is my son. I'm carrying this folder that contains his cardiac records and his EMS records and his emergency department records as well as his

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autopsy for a mistake a doctor made. This bill passing is probably not going to help me, because I'm already...and this started the process of doing something about this injustice, but it might help somebody else. And I would like doctors to have to think about what they're doing and spend a little bit more time on figuring out what's wrong with these children, patients, whatever, because the cap is higher, so. This is still very raw because he's been gone 11 weeks tomorrow. My family is destroyed and we're in crisis, so. I can't tell you who Cody was, and effectively convey the message, because who he was to me and nobody will understand, and this child taught me how to love unconditionally and how to be patient. And I'm so sorry for the baby that came in here and wanted to talk too, because he's mine too. [LB862 LB893]

SENATOR ASHFORD: Well, the baby is more than welcome to come in. He can cry and...as much as he wants. [LB862 LB893]

ANGELA GUARIN: I didn't want him to disturb anybody else, but I found my child lying dead in a park one house away from my house. And so I got there in time for him to hear me scream and that's all. I just would like the bill to pass so that it gives other people the opportunity to collect and, you know, be compensated. [LB862 LB893]

SENATOR ASHFORD: What was your son's name, Angela? [LB862 LB893]

ANGELA GUARIN: Cody is his name, and he was 19, and this is the prom that he was so proud to go to last year. And that's it. [LB862 LB893]

SENATOR SEILER: Thank you for coming down. [LB862 LB893]

ANGELA GUARIN: Thank you. [LB862 LB893]

SENATOR ASHFORD: Anybody else? Do we have any opponent...or, I'm sorry, opposition, or? [LB862 LB893]

LORAN SCHMIT: Senator, if there's no one else, I'd like to make a few comments. [LB862 LB893]

SENATOR ASHFORD: Yeah. Are you going to be neutral, Senator Schmit? [LB862 LB893]

LORAN SCHMIT: No, I'm in support of the bill. [LB862 LB893]

SENATOR ASHFORD: Good. [LB862 LB893]

LORAN SCHMIT: Yes. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. It's kind of interesting to me to look back to 1976 when we enacted this bill into law. I don't know if

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I'm glad that Senator Chambers is missing or if I wish he were here, because we debated this thoroughly at that time, and he was most eloquent and a very worthy opponent, and we had to discuss it at great length. But in any case, I just want to say I'm pleased that the bill has worked notwithstanding the flagrant violation of medical ethics by one individual, who is no longer a resident of this country, up in Fremont who seriously depleted the entire fund. But I've had occasion over the past 30-some years, upon occasion, to be concerned that upon some instances the cap was a problem. And we have to realize that no solution devised by the Legislature is ever perfect, and so the review by this Legislature is appropriate and I think in order, because things have changed. I think, as one gentleman has just said, we live in the hopes that medical costs will not always escalate. I'm not familiar with the needs and the requirements and that sort of thing, but I think when we look at the medical profession and one of your members told me paid \$35,000 for a pacemaker. That's a pretty substantial amount. A friend of mine who is no longer with us was charged \$32,000 for a 20-minute helicopter ride from Columbus to Omaha. I have had a little experience in that area, but that seems excessive to me. And so we need to be aware. And I'm not a critic of any medical profession or any medical program, but there isn't any way in the world that you can devise an insurance program that will take care or pay for a \$32,000 20-minute helicopter ride. And so those are factors that have come to bear that were not here 37 years ago; and so we need to look at it. I think it's important to recognize that the medical profession today is in better shape in Nebraska. One of the doctors I met by accident told me, we practice medicine both in Nebraska and in Iowa; we need to practice defensive medicine in Iowa, it's much more expensive. He said, we prefer to practice in Nebraska. So with that, I'd just like to say I support the increase, whatever you decide upon. I think it's due and ought to be reviewed periodically. Thank you very much. [LB862 LB893]

SENATOR ASHFORD: Well, this is one of many, Loran, of your initiatives, some of which were passed when I was with you here. So this one has done well, so thank you. [LB862 LB893]

LORAN SCHMIT: Well, we're glad. Thank you very much. [LB862 LB893]

SENATOR ASHFORD: Thank you. All right. Anybody else want to talk about this bill? Senator Seiler or Senator Lathrop, do you wish to close or...? [LB862 LB893]

SENATOR LATHROP: Oh, I'll waive. [LB862 LB893]

SENATOR SEILER: Waive. [LB862 LB893]

SENATOR ASHFORD: (See also Exhibits 13-15) Okay, that concludes the hearing. [LB862 LB893]