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Business and Labor Committee
January 25, 2016

[LB841 LB855 LB933 LB972]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 25, 2016, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB841, LB933, LB855, and LB972. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Sue Crawford; Laura Ebke; Sara Howard; and Jerry Johnson. Senators absent: Ernie Chambers.

SENATOR HARR: My name is Burke Harr. I'm the Chair of the Business and Labor Committee. Looks like we have pretty much regulars here today. That being said, we'll go through the formalities. We can officially begin now that Bob Hallstrom is here, a regular. We...this is Business and Labor Committee. If this is where you are supposed to be, you're in the right place. Otherwise, you can look. We have two pages this year, Jordan and Brenda, and I do not see either one here right now. Here comes Jordan. So just to go through some of the formalities, please turn off your cell phones. Testifiers should have the appropriate number of copies, handouts, exhibits with you ready for distribution. B&L requires ten. If you do not have ten copies, please let one of the pages know and they can get you a copy. Each witness must sign in prior to testifying with a green form which I believe are up there. Are they towards the front?

JORDAN SNADER: Yeah, they're right beside the door.

SENATOR HARR: Okay, thank you. Please provide the information requested. When you come up, please hand it and a page will come and get it for you. Each testifier will be allotted five minutes before the committee. We do use the light system in here. Green indicates it's safe to begin; yellow indicates you are nearing the end of your time, a minute left and so start wrapping up your thoughts; red indicates it is the end of your testimony. I generally like to say you can finish that sentence, although if you have a little bit more, I won't complain. Always begin your testimony by stating your name clearly into the microphone and then please spell your first and last name to ensure the accuracy of the record. This is more for the committee members. We have new microphones this year. And as I understand, they are highly sensitive. So covering them does not work anymore. They can still hear you. So if you need to speak with staff, please get up and walk away so that it is not on the microphone. Also, senators will be testifying on other bills. Senator Bloomfield, the Vice Chair of this committee is testifying first and then I know he has a bill in another committee. So just because a senator leaves does not mean they are not interested in you or the bill. It's that they have other duties. To my left is our new committee clerk, Lauren, and we're very excited to have her, Lauren Williams. And then to my right we have Meghan Chaffee (short a)? Chaffee (long a), Chaffee?

MEGHAN CHAFFEE: Yeah, Chaffee (long a). I'll answer to either.

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Either/or. And then we have the members of the committee. As I stated, in the audience is Vice Chair Senator Bloomfield. And I'm going to start to my left.

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

SENATOR JOHNSON: Senator Jerry Johnson, District 23, Saunders, Butler, and most of Colfax County.

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

SENATOR HARR: All right. And with that, we are ready to begin on LB841.

SENATOR BLOOMFIELD: I understand, Chairman, that you have the second bill up. I will stay as long as I can if I don't get called out to the next hearing.

SENATOR HARR: All right. Thank you. I appreciate it.

SENATOR BLOOMFIELD: Good afternoon, Chairman Harr and members of the Business and Labor Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d. I represent the 17th Legislative District. I'm here today to introduce LB841 to the committee for your consideration. I'm going to keep my remarks brief this afternoon because there are individuals that will follow me and they will be able to go into more detail than I will. Briefly, LB841 would make changes to the requirements for those seeking unemployment benefits after voluntarily leaving their job. It's my understanding that Nebraska is one of only a few states that currently does not require some kind of a requalification for benefits after they voluntarily quit without a good cause. Thank you for your time. While I'm willing to attempt to answer your questions, they may be better suited for the individuals that are following me. [LB841]

SENATOR HARR: Thank you, Senator Bloomfield. [LB841]

SENATOR BLOOMFIELD: (Exhibit 1) And I do have a letter in support from the Nebraska Grocery Industry Association. [LB841]

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Great. Thank you. Any questions for Senator Bloomfield? And Senator Ebke has, for the record, joined us as well. Seeing none, thank you. Are you sticking around or waiving or we'll see? [LB841]

SENATOR BLOOMFIELD: I will stick around and hopefully get through your testimony before I need to leave. [LB841]

SENATOR HARR: Great. Thank you. Mr. Albin, it's always a pleasure to have you here. Thank you for coming and braving the weather. [LB841]

JOHN ALBIN: (Exhibit 2) It's good to visit. Senator Harr and members of the Business and Labor Committee, for the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I'm Commissioner of Labor appearing here today in support of LB841. I would like to thank Senator Bloomfield for introducing LB841 on behalf of the department. The unemployment system was established to provide economic support to individuals who become unemployed through no fault of their own. Of the 53 jurisdictions that provide...with an unemployment program, 45 require individuals who quit their employment without good cause to requalify for benefits through subsequent employment. Under LB841, Nebraska would join those 45 jurisdictions and require that when a worker quits his or her most recent employment without good cause, he or she will not be able to draw unemployment benefits until he or she requalifies for unemployment benefits by finding other employment and earning wages in employment equal to at least six times his or her weekly benefit amount. LB841 address only the disqualification applied to an individual who quits without good cause and only if it is the most recent employer. Other quits occurring during the base period would continue to be treated as they currently are. Of the 72,653 initial claims filed in calendar year 2014, 9,904 of those claim involved a voluntary separation without good cause from the most recent employer. Of those 9,904 individuals, 4,288 drew benefits and the total benefits drawn by those individuals was \$11,286,390. It's important to note that LB841 does not change what constitutes good cause for leaving one's employment. The ten good-cause quits listed in 48-628.01 would continue to apply, as would those good-cause quits established through case law. Examples of good-cause quits established through case law include but are not limited to a reduction in pay, termination of benefits promised at time of hire, failure of the employer to timely pay wages, a substantial increase or decrease in the number of hours work agreed to at the time of hire, demotion due to causes other than misconduct, material changes in the working conditions, and changes in job duties to a point where the workload becomes unreasonable. In summary, LB841 would bring Nebraska into the mainstream of unemployment law in terms of its treatment of those who voluntarily quit their employment without good cause. I'd be happy to try and answer any questions you might have. [LB841]

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Any questions for the commissioner? I have one. So if I submit a letter of resignation, is that voluntary? If I'm asked to submit a letter of resignation, is that voluntary or how is that handled by the department? [LB841]

JOHN ALBIN: Under our case law that's treated as a termination for all practical purposes. It's...the hearing officers come up with some fancy term. But if you are asked to resign, you submit a letter of resignation, we consider you terminated because you really didn't have any choice. [LB841]

SENATOR HARR: Okay. Senator Johnson. [LB841]

SENATOR JOHNSON: Thank you, Chairman Harr. Second point there, termination of benefits promised, is that a handwritten...is that contract then or is that a verbal agreement that you were to get benefits? [LB841]

JOHN ALBIN: It can be verbal or written. [LB841]

SENATOR JOHNSON: Okay. [LB841]

JOHN ALBIN: Obviously the verbal ones are a little bit harder to substantiate. But if, for example, in a case you were promised health insurance benefits at the time of hire and everybody else was getting health benefits and then the employer would terminate that plan later on, I think it would be pretty easy to establish the verbal agreement. But it can be verbal or written. [LB841]

SENATOR JOHNSON: Okay. Thank you. [LB841]

SENATOR HARR: Any other questions for the commissioner? Seeing none, thank you. And while the next...well, is there anyone else here in support? And while the next witness comes up I want to formally welcome Senator Howard to the Business and Labor Committee. She is new. I see she has a Senator McCollister cup, so he's still here in spirit. The floor is yours. [LB841]

RON SEDLACEK: Thank you, Senator. Chairman Harr and members of the Business and Labor Committee, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce. When this bill was introduced, our labor relations council was able to review last week and there was a recommendation to find out further information in regard to the legislation, where it came from. And there was generally support for the legislation and found recently that it was a Department of Labor initiative and talked with other members

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

Business and Labor Committee
January 25, 2016

and explained the intent and purpose of the bill. And a recommendation was to come in and testify in support of the legislation. And that's why I'm here today, of course. I believe Nebraska is one of five states, perhaps. There are 45 states that have a requalification period and they can vary in length and the legislation here proposes six weeks but I've seen as long as nine weeks. I think Massachusetts is one, perhaps. And there are shorter periods as well. However, this appears to be someplace in the middle. One of the interesting facets of our law is because we are so unique, we're one of that handful of states, we often have human resource people who counsel on unemployment benefits and so forth and scratch their heads and say why is Nebraska so different? How did that develop? And can't really tell you legislative historywise but, you know, when the act has evolved, the requalification issue just never made its way into statute. And we would be supportive as being more uniform among the states in this regard. It's not a...it certainly isn't a new concept. And just to make sure the committee knows, too, there's a number of reasons where you can quit for...with good cause. And as Mr. Albin gave some examples, there are situations where sickness in the family, where there's a change in the scope of the work, and other variables, situations in the workplace, it can be constructive essentially, a constructive termination. All those can be shown...will not be considered voluntary quits. So what I believe the legislation does and the way our current law is written as well as interpreted, it has to be a true, true voluntary quit before this would ever kick in. But for these reasons, we would support the concepts of this legislation. [LB841]

SENATOR HARR: Thank you. Any questions? I will ask a couple, if you will. [LB841]

RON SEDLACEK: Okay, if I can answer. [LB841]

SENATOR HARR: So I don't know a lot about unemployment insurance and maybe some of these I should have asked the commissioner. But the employee doesn't pay any unemployment insurance, is that correct? [LB841]

RON SEDLACEK: That's correct. It's all employer funded. [LB841]

SENATOR HARR: Okay, all employer funded. I noticed... [LB841]

RON SEDLACEK: Except for...it's employer funded through an insurance-type system for those except, for example, those that...there's a self-funding mechanism, for example, for public employers. [LB841]

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Okay. And I notice there's no fiscal note on this. And I'm a little confused because I assume there would be people that would, since the employer pays it, would this lead to a lower rate of insurance premiums do you think for unemployment insurance? [LB841]

RON SEDLACEK: I would speculate yes, it would. But I don't know that for certain. But I think that certainly that would be out there because there are situations where people will jump from employment to employment to qualify for benefits at times. I don't know at what percentage that would be, if it's at all. That would be something probably the Labor Commissioner and his staff would be able to answer for you. I don't want to speculate too much on that. [LB841]

SENATOR HARR: Okay. No other questions. Thank you. [LB841]

RON SEDLACEK: Okay. [LB841]

ROBERT HALLSTROM: Chairman Harr, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today in support of LB841 on behalf of the National Federation of Independent Business. Our organization would be supportive of the requalification provision set forth in LB841. Appreciate the commissioner both taking the time to walk me through the bill and explain the nuances and also that he and Mr. Sedlacek have adequately addressed the mechanics of the bill. There is a...in the fiscal note that's filed, Senator Harr, it indicates the different percentages of those that might requalify based on 30 percent to 100 percent. And I think the fiscal note would then indicate that the Unemployment Insurance Trust Fund could possibly benefit somewhere between \$2.8 million and \$7.56 million depending upon how many did or did not requalify under the standard that's set forth in LB841. [LB841]

SENATOR HARR: Thank you. Any questions for Mr. Hallstrom? Where are you reading that? [LB841]

ROBERT HALLSTROM: Page 2 of the fiscal note. [LB841]

SENATOR HARR: Oh. Therein lies our problem. We only have one page. [LB841]

ROBERT HALLSTROM: (Laugh) That pesky second page, yes. It goes through and shows the...some of the information that Mr. Albin provided, that 9,904 disqualifications; 4,288 had received unemployment insurance benefits. Those benefits totaled \$11,286,390. And then they go through and show based on a... [LB841]

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Okay. We don't have the second page, so we'll get that and I will send that around to the members. So thank you for that clarification. [LB841]

ROBERT HALLSTROM: You bet. [LB841]

SENATOR HARR: Appreciate the testimony. [LB841]

ROBERT HALLSTROM: Thank you, Senators. [LB841]

KATIE THURBER: (Exhibit 3) Good afternoon. My name is Katie Thurber, K-a-t-i-e T-h-u-r-b-e-r, and I wanted to let the Business and Labor Committee know that we've sent the fiscal note to the page. [LB841]

SENATOR HARR: What's that? [LB841]

KATIE THURBER: We sent the fiscal note to the page and he should be bringing copies. [LB841]

SENATOR HARR: Okay. [LB841]

KATIE THURBER: But I thought I'd take this opportunity to answer any questions that you may have on the fiscal note. And we apologize for you not having it before the hearing. [LB841]

SENATOR HARR: No, it's probably a mistake on our side. So no worries. But thank you. I'm glad we were able to clarify. Thanks for coming up. I don't know, I don't have any questions. [LB841]

KATIE THURBER: Okay. [LB841]

SENATOR HARR: So, thank you. I bet you didn't know you were going to testify. [LB841]

KATIE THURBER: I did not. (Laugh) [LB841]

SENATOR HARR: We'll get...we got (inaudible) on it and I want to thank you. Any other one here in the affirmative? Anyone in the negative? Neutral testimony? Seeing none, Senator Bloomfield waives closing. We're going to go a little out of order to accommodate due to

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

Business and Labor Committee
January 25, 2016

scheduling and the weather and we are going to go to Senator Coash with LB933. Senator Coash, welcome to your Business and Labor Committee. [LB841]

SENATOR COASH: Thank you. In eight years, this is the first time I've introduced a bill in front of this committee. [LB933]

SENATOR HARR: Well, welcome. [LB933]

SENATOR COASH: All right. So, my name is Colby Coash, C-o-l-b-y C-o-a-s-h, of Lincoln. I represent the 27th District right here in the Legislature here to introduce LB933. LB933 is a bill, it's pretty simple. It requires agencies that offer payroll processing services to provide to the Tax Commissioner evidence of a surety bond. Now before I explain what this bill does, I'm going to begin by providing you with some background as to why I have decided to bring this bill. Last summer, I was contacted by some companies in my district that alerted me about their payroll providers' dishonorable business practices. DS Resources, which I'll refer to as DSR for the rest of my statement, was a small payroll provider company for several organizations here in Nebraska. As you know, payroll providers are third-party middlemen that contract their services to companies where they collect payroll taxes from the companies and then pay those taxes to the state and federal governments. Payroll providers save their clients time and effort by figuring out these expenses. DSR was a small company that had been providing payroll services for many years and some clients had been with them for over ten years without any problems or red flags. Well, early last year around February, at least four companies that I'm aware of were notified by the IRS that they had failed to pay their payroll taxes despite the fact that the payroll processor was collecting money for those payroll taxes. DSR collected the money from these companies but did not pay the IRS the taxes. However, even though the payroll company, DSR, failed to pay the IRS, the companies, the businesses are the ones that were held liable for paying the IRS payroll taxes. All the notifications of past due--we're going to find you, you haven't paid, all of those notices from the IRS--did not go to the businesses. They were cleverly diverted right to the payroll company. During this period of collecting taxes, the company was collecting the taxes but not paying them to the IRS. And then finding out the taxes weren't being paid, this company then filed for bankruptcy providing it protections of not having to pay those taxes it had collected. Since the companies were liable for those taxes, they had to pay again. So essentially we had businesses that ended up paying payroll taxes two...twice, in many cases, for several months and years. Most of these companies were liable for several months and fines were assessed. One company finally received a letter that they owed the IRS over \$120,000 plus penalties for failure to pay their taxes over a few months' time frame. I'm sure you can imagine the shock that came to this company considering \$120,000 was withdrawn from their account already. The payroll processor filed bankruptcy around April, right about the time the companies were finding out that DSR owned their portion of the...owed their portion of taxes to the IRS. But because they had filed corporate bankruptcy, there is nothing the companies can do to

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

Business and Labor Committee
January 25, 2016

recover their losses. No criminal charges have been brought against the company. And to date, the losses are not enough to even trigger a federal investigation and the district attorney has no recourse of action against the owners of the payroll processing company. The Attorney General and I met and he was briefed on the issue. And although we have not been able to find solution for these companies that were swindled out of hundreds of thousands of dollars, the person for this fraudulent activity cannot be held civilly or criminally responsible. So it is saddening to me that DSR can get away with this clear deception. So I've been working with the Attorney General and other interested parties on this legislation. LB933 requires an individual or company such as an LLC, corporation, partnership, or association that provides third-party payroll processing services to provide to the Tax Commissioner evidence of a surety bond in an amount equal to the total of all state and federal tax payments and unemployment insurance premiums processed by the payroll processor on behalf of employers in this state in the three-consecutive-month period of highest volume during the previous calendar year or \$50,000, whichever is greater, but not to exceed \$500,000. The bond must designate the Tax Commissioner as the payee. The bond paid to the Tax Commissioner may be used for the purpose of the Tax Commissioner and for the benefit of any employer who may have a cause of action against the payroll processor. The bond must run continuously until canceled. A surety company issuing a bond pursuant to this section shall immediately notify the Tax Commissioner if the bond is cancelled, terminated, or lapses. A payroll processor shall not designate itself as the sole recipient of notices from the state or federal authorities for nonpayment of taxes or other unemployment insurance contributions. The notices must ensure that such notices are provided directly to the affected employers. This is important because when the IRS was sending notifications about not paying taxes, they were not going to the businesses. The payroll provider said, no, send all those notices to me. So we had businesses in the dark, seeing money going out but unaware that they weren't being paid to the IRS. The failure of a payroll processor that fails to maintain a bond or security measure under this act shall subject the payroll processor to the revocation, suspension, or nonrenewal of the payroll processor's license. Unfortunately, it may be too late for the victims of DSR to recover any reimbursement of any kind, but they have come to grips with the reality that they will most likely not recover any of their funds. However, they want to make sure that this shady business practice does not happen to anyone else without consequences for the perpetrator. As legislators, we cannot allow this type of deceptive activity to continue to occur in Nebraska without holding them accountable. And that is the reason I brought LB933. One of the things I would mention is if you're a certified public accountant you're exempt from this. And the reason for that is that if you are a CPA you have a license under the state. And if you were to do something like as a CPA there would be a cause of action and you could lose your CPA license. We don't regulate payroll processors in our state. They don't have to have a business license as the law stands today. So they have...so we're putting that into play so that we have something that we can remove if they are bad actors. I thank you for your time. [LB933]

SENATOR HARR: Questions? Senator Bloomfield. [LB933]

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

Business and Labor Committee
January 25, 2016

SENATOR BLOOMFIELD: Thank you, Senator Harr. You mentioned a dollar figure in one business. What was the total dollar figure? [LB933]

SENATOR COASH: One hundred twenty thousand (dollars), one business right here in Lincoln where the payroll...it's a large plumbing company. And the committee has a letter from this company. I don't think they're going to be here today given the circumstances. But \$120,000 worth of payroll taxes were removed from this company with the understanding it be paid to the IRS. So they paid it twice. [LB933]

SENATOR BLOOMFIELD: It was my understanding there was more than one company defrauded. [LB933]

SENATOR COASH: There were several companies. [LB933]

SENATOR BLOOMFIELD: Do you have a total dollar figure or a guesstimate? [LB933]

SENATOR COASH: It was over \$1 million. [LB933]

SENATOR BLOOMFIELD: Okay. Thank you. [LB933]

SENATOR HARR: Senator Howard. [LB933]

SENATOR HOWARD: Thank you, Senator Harr. You and I had discussed this bill a little bit because I had heard from a constituent in my district who runs a payroll processing company. Were you able to find any organizations that would write the surety bonds for them? [LB933]

SENATOR COASH: We did contact some surety bonds companies. And the answers that we got were, obviously we've never written a bond like this before because we've never had to but we could. [LB933]

SENATOR HOWARD: Okay. Thank you. [LB933]

SENATOR HARR: Excellent. Any other questions? And we have a letter from the National Payroll Reporting Consortium. And that's from your office, is that correct? [LB933]

SENATOR COASH: I don't believe so. [LB933]

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Okay. Any other questions for Senator Coash? [LB933]

SENATOR COASH: You should have some letters from several of the businesses who were affected... [LB933]

SENATOR HARR: And we do. Thank you. [LB933]

SENATOR COASH: ...by the example. I'll give you another example briefly. Another company totally different from this, the owner was doing the same thing. He passed away, didn't file bankruptcy but passed away. And it wasn't until his death and the transfer of the business that it was discovered that he had not been, although he had been deducting payroll taxes from the employer, had not been paying that. And so in one case it was bankruptcy that brought it to light. In the other case it was an untimely death. But in both cases one of the important things...the bond is a big part of this bill. But another big part of this bill is just mandating that these notices get sent to the employer so that the employer knows if the person they've hired is doing what they've been doing because many of the companies I talk to said if I'd have got the first letter after the first quarter from the IRS, I would have gone to my vendor and said, hey, I got this letter. Why didn't you pay that? But instead, several quarters went by and hundreds of thousands of dollars was unaccounted for. [LB933]

SENATOR HARR: Sounds good. Thank you, Senator. [LB933]

SENATOR COASH: Thank you. [LB933]

SENATOR HARR: And welcome. You can check the box now. [LB933]

SENATOR COASH: I think I hit them all now. [LB933]

SENATOR HARR: There you go. Any other proponents? Any opponents? Come on up, sir. [LB933]

PETE ISBERG: (Exhibit 1) Thank you. Chairman Harr, members of the Business and Labor Committee, I appreciate this opportunity to provide our insights and recommendations on the subject of how to safeguard taxes administered by payroll service providers. My name is Pete Isberg, I-s-b-e-r-g. I serve as president of the National Payroll Reporting Consortium. The NPRC is a nonprofit association whose member companies provide payroll services to roughly 1.5 million employers nationwide covering at least a third of the private sector work force. NPRC members share your interest in preventing these problems as occurred in Nebraska. We have

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

Business and Labor Committee
January 25, 2016

worked with states, Congress, the IRS, the IRS Taxpayer Advocate to study the issue and to make recommendations that will protect businesses that use payroll service companies. I should say the IRS already does regulate payroll processors and our efforts in recent years have resulted in new IRS regulations, new IRS procedures, and federal legislation that improves the industry safety and oversight. The address change, for example, the payroll processor changed the address of a company. That was resolved just in 2015, last year. The IRS started to send out notices of address change to both the old and the new address so that any client of a payroll processor would know if somebody tried to change their address and would have an opportunity to object. I should also say this is not an industry crying out for regulation. Again, it's very, very broad use. We've been doing this since the early 1980s. It probably covers about 40 percent of the work force, has their payroll taxes filed and remitted through a payroll service provider. Problems are very rare. In fact, most states, I think 28 states have had absolute zero incidents of this nature in the past ten years. And if you look at just the clients, 99.99 percent of clients have never had a problem with a payroll provider along these lines. There's a reason for that and that is that every past incident has been prosecuted. The person has spent significant time in prison and had to pay restitution with the possible exception of somebody, you know, dying and you know just having been behind. But you know, we do share the concern. We've been working hard to resolve this issue. We would like to assist the Legislature and the senator to assist in whatever direction the Legislature deems appropriate. Happy to do that. We do not, however, recommend licensing and bonding. And that is because it would pretty much wipe out about half of the payroll processors in this state. We estimated that you have between 200-300 Nebraska payroll services companies. About half of them would go away. They would not...either they would not qualify for a surety bond, or it just wouldn't be worth their while. The economics of it is such that if you have 120...if you're doing services for 126 employees, that equates to \$500,000 in a quarter, \$2 million in a year. So you could have 1, 2, 3, 4, 5 clients that collectively, if I have 126 clients and you'd have to put up the maximum amount, \$500,000. To get a surety bond, you actually have to put up that much collateral. So if this is a small business, if you a payroll service business, you'd have to put up \$500,000 in collateral that you couldn't use and also pay a \$5,000 premium every year for that bond. It just wouldn't be worth your while. So those services providers would just go away all together. If surety bonding is adopted, we strongly recommend against the acceptance of a letter of credit. That's something that is in the bill today. It's basically a copy of Maine's legislation. Maine remains the only state to have comprehensive legislation overseeing the payroll service industry. But you know, without the surety bond, that's your most powerful tool as a regulator. This is how you get a third party to scrutinize, look into the business, make sure they have the qualifications and the wherewithal to perform these services. And arguably, not just anybody should be able to do these kinds of services. But without that third-part surety, a letter of...irrevocable letter of credit does not give you that sense of...it doesn't prequalify anybody to get a license. And it doesn't protect them either. Even if you have a \$500,000 letter of credit, you know, again, a very, very small business can easily accrue \$2 million in payroll taxes over the course of the year. It's not like insurance. You're not going to cover that. The bill would also

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

Business and Labor Committee
January 25, 2016

impose new workload on the Department of Revenue with no funding. The department would have to administer the (inaudible) so you'd have to notify all those people that they need licenses, figure out how to administer the licenses and then enforce the law ultimately. We recommend alternatives. Again, we've worked with IRS in recent years. The IRS has an electronic verification system. A business using a payroll service provider is encouraged, in fact, the IRS now requires every payroll service provider to disclose to their clients every single quarter that they remain liable for these taxes and here's how to easily verify on-line that your taxes are being paid. So it's just a matter of looking on-line, my tax payment is there. We suggest that Nebraska should do the same. Nebraska Department of Revenue does not have a system like that. That would be very helpful. Secondly, make employers aware of EFTPS, that they remain liable for these taxes. Here's how to verify that your tax is being paid on your behalf. Problem goes away. We might also suggest conducting a study of alternatives. If you really want to delve into this, we'd love to work with you on that. Maryland recently conducted a study in 2013, very comprehensive. I added a URL to the testimony and you've got additional documentation that we've offered to the senator. And I think, Senator Harr, we sent you a copy of that. Happy to provide all that electronically. Lastly, I'd suggest you refer the bill to the Revenue Committee before consideration of its impact on the Department of Revenue. Happy to take any questions. Thank you. [LB933]

SENATOR HARR: Any questions? I have a couple. So, first of all, the Department of Revenue was sent a copy of the bill and they did respond with the fiscal note for this, so it is in there. [LB933]

PETE ISBERG: Okay. [LB933]

SENATOR HARR: So, you threw a lot at us. And we in Nebraska try to find ways to do stuff without government regulation if and when and wherever possible. And so...you know, first blush, I like surety bonds because it eliminates the need for the Department of Revenue to become involved. That being said, I understand the restraints that you talk about. What would be your response? Senator Coash said, hey, I excluded CPAs because we already regulate them and they would lose their CPA license. These types of businesses are not required to get a license to do business in Nebraska. What if we required them to get a license to do this? Instead of getting a surety bond, we require them to get into this type of business. It wouldn't be...it wouldn't necessarily protect that person, but going forward it would protect individuals. Would you be okay with that? [LB933]

PETE ISBERG: We have always been worried about licensing just from the perspective of again, without the surety bond element...if you have surety bonds that would be effective. But if you just issued licenses to people who applied for them, I mean, you might have some scrutiny. But it

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Transcriber's Office

Business and Labor Committee
January 25, 2016

really gives those businesses a very powerful impression that the state is taking responsibility for the safety of that provider. If there ever was a problem, they would come back to you as the licensing authority for one thing. But also, it removes...it eliminates...reduces their incentive to be concerned about...concerned enough to check and verify that those taxes are being paid on their behalf. They're thinking, well, the state licensed them, they must be fine. So I'm not going to bother to do that. [LB933]

SENATOR HARR: Okay. And then let me ask you, Senator Coash also stated maybe we should have the department send out statements quarterly. The IRS sends out statements that says, hey, here's where you can look it up. This would take it a step further and say you're behind. Would you oppose requiring the department to send out a statement if you are behind? [LB933]

PETE ISBERG: We would support that, sure. [LB933]

SENATOR HARR: Okay. Any other questions? Seeing none, thank you for coming. I appreciate it. [LB933]

PETE ISBERG: Thank you. [LB933]

SENATOR HARR: Anyone else here in the negative? Neutral? Seeing none, Senator Coash. [LB933]

SENATOR COASH: Thank you, Chairman Harr. Appreciate the committee taking a look at this. I don't like to bring bills to regulate industry either. But I had a lot of businesses in my district, some almost went under because they can't afford to pay their payroll taxes twice. So the only...I appreciate the feedback that you received. Look forward to working with the committee. The only thing I take a little bit of an issue with from the opposition testimony is that this is rare. This happened twice in a year with two different companies to over a dozen businesses right in my district. I don't think that's rare. I'm not aware of any others happening, but I wouldn't be. But unfortunately it is too late for these companies and my goal with this legislation is to prevent it from happening in the future. So I look forward to working with you and the committee. Thank you. [LB933]

SENATOR HARR: Thank you, Senator Coash. Any questions? We look forward to working with you on this bill to see if we can get something done. [LB933]

SENATOR COASH: Thank you. [LB933]

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

Business and Labor Committee
January 25, 2016

SENATOR HARR: Thank you very much. Appreciate it. Which takes us to LB855, Senator Ebke. [LB933]

SENATOR EBKE: Thank you, Senator Harr and members of the Business and Labor Committee. For the record, my name is Senator Laura Ebke, L-a-u-r-a E-b-k-e, and I represent the 32nd Legislative District. LB855 is a bill that I've introduced on behalf of the Department of Labor. The Department of Labor determined there needs to be an adjustment to unemployment earnings. This is a simple bill, so I'll quickly summarize and if you have any questions the representatives, presumably Commissioner Albin or whoever else with the Department of Labor will be better able to address those issues. LB855 provides the minimum base period earnings required for unemployment insurance benefits eligibility shall be rounded down to the nearest whole dollar amount. The bill aligns with other Nebraska Employment Security Law, unemployment insurance benefit calculations that round down to the nearest whole dollar as well. For 2016, claimants' minimum earnings requirement is \$4,107.61. This proposal, for instance, would have made this amount \$4,107. LB855 doesn't change how the calculation is done. It's just rounding down at the end to make a whole dollar amount. The Department of Labor indicates no fiscal impact or cost as a result of LB855, and the Fiscal Office has no basis to disagree with the Department of Labor's estimate of fiscal impact and cost. As I said, representatives from the Department of Labor here will testify and can further explain the change if needed. Thank you for this hearing and I hope this is an easy one that we can pass through committee quickly. [LB855]

SENATOR HARR: Thank you, Senator Ebke. No questions? Seeing none, Commissioner Albin. And thank you for letting Senator Coash go in between. I appreciate that. [LB855]

JOHN ALBIN: (Exhibit 1) No problem. Looks like we're both in good shape to make our flight. Senator Harr, members of the Business and Labor Committee, for the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I am Commissioner of Labor and I'd like to thank Senator Ebke for introducing LB855. I am appearing here today in support of the bill. This proposal is pretty simple. It aligns the calculation of the minimum amount of earnings required to be monetarily eligible for unemployment benefits with other calculations of benefits by rounding down to whole dollar amounts. Other minimum earning tests as well as the calculation of the maximum weekly benefit and the individual weekly benefit amounts are already rounded down to the whole dollar amounts when determining benefit eligibility. Pursuant to statute, the minimum earnings requirement is adjusted up or down annually by the cumulative percentage change in the Consumer Price Index for all urban consumers, which is a mouthful. Because the Consumer Price Index is a percentage, the adjusted amount of minimum earnings required is typically not a whole dollar amount. For example, in 2015 the amount required to have earned during the base period was \$4,094.89, and in 2016 the amount required is \$4,107.61. The department proposes to keep the calculation process the same but once calculated, roll the amounts down to the

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

Business and Labor Committee
January 25, 2016

nearest whole dollar amount. And as stated previously, this year it would have been \$4,107 for the minimum earnings test. And that concludes my testimony unless someone has a question. [LB855]

SENATOR HARR: Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: Thank you. Actually I'll probably have a couple of them, none of them vitally important. When we're dealing with cents here what's the reason we have to do that? I haven't found anything in either one of your testimonies. And secondly, why do we not round up from 50 cents and beyond, and down from 49 (cents) and down? [LB855]

JOHN ALBIN: The history of it is that back in the day it was whole dollar amounts specified in statute. And then about 2005, we went to the adjustments for the annual Consumer Price Index. And the claimants, when you tell them that it's down to the...61 cents, they kind of look at you like, really? Can't you just round? I mean if you look at your IRS return, if you could...you know, I use H&R Block to do my return. It automatically rounds everything up or down. We could round up or down; it doesn't matter. For whatever reason, historically every other calculation is rounded down so we just decided to be consistent. Other than that, it makes it easier to explain when...yeah. Easier to remember for everyone. So it was just kind of simple thing. We looked at statutes real hard just to see if we could have the authority to do that without the statute. But there really isn't anything in statute that authorized this. So lest we fall astray and do things without statutory authority, we thought we'd better ask for permission. [LB855]

SENATOR BLOOMFIELD: Thank you. [LB855]

SENATOR HARR: That was going to be my question, why wasn't it the nearest dollar? So, that was a good explanation. Thank you. Any other questions? Seeing none. Thank you. [LB855]

JOHN ALBIN: Thank you. [LB855]

SENATOR HARR: Appreciate your time. Any other proponents? Opponents? Anyone in the neutral capacity? Seeing none, Senator Ebke to close. She waives closing which now takes us to the important bills of the day. (Laughter) For the record, so there are two bills. I'm going to turn it over in a second to the Vice Chair. LB828, we are going to make some more changes. It's not quite ready for prime time. So...and that's my fault. And I'm going to ask that it be continued until February 29. So, that is done. And I will send out an amendment to everybody prior to that hearing so that you'll have a chance to review. [LB855]

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

Business and Labor Committee
January 25, 2016

SENATOR BLOOMFIELD: These are the important ones though, right? (Laughter) [LB855]

SENATOR HARR: So you'll get a chance to review the amendment if you have any questions, which then I will now turn over LB972 to Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Please proceed.

SENATOR HARR: Thank you. I'm here...my name is Burke, B-u-r-k-e, Harr, H-a-r-r, and I am from the true midtown of Omaha. That's right. So this bill is a bill to help our friends in the executive branch. So currently LB972 allows those individuals who work for the state in a major nontenured policymaking position to be included within the definition under the Employment Security Law. These are...these payments are already being made into the unemployment insurance system and to immediately disqualify those individuals who have worked so tirelessly to serve the state fails to recognize the service they have made as public servants to our state. If the goal is to recruit the most talented, qualified individuals to serve this state, we shouldn't disadvantage those individuals from being...beginning of their start time by immediately disqualifying them for unemployment. LB972 is a way to honor those who serve this state. So let me give you examples of positions designated as major policymaking positions. You have, well, Commissioner of Labor; Property Tax Administrator; DHHS division directors, so that's Behavioral Health, Children and Family Services, Developmental Disabilities, Medicaid and Long-term Care, Public Health, Veterans' Homes; other departments as outlined in 81-102. But it gets a lot further down than that too. So you have the health program manager of the office of minority health hired by DHHS. The problem we have is we want to incentivize individuals to work for the state. And we want to get the best people possible. And that transition from working to the state, back into private employment may not always be smooth. And we want to provide a soft landing. You may...what we want to avoid is individuals who may stick around working for the state and from their job be applying for private sector jobs. That creates a conflict of interest. We don't want that. So, the reason this exists is it mirrors some federal language out there. And if you have a policymaking position in the federal government, it's a lot different than a policymaking position on the state level. This issue was brought to me by a former individual who had worked hard and tireless for the state for a number of years and for whatever reason was having problems finding a job on the outside. Didn't qualify for unemployment insurance. So we want to encourage people to have a safety net. We want to encourage people to serve the state. That's the idea behind this bill. It's fairly simple as we all like to say. With that, I would entertain any questions. [LB972]

SENATOR BLOOMFIELD: Do we have any questions for Senator Harr. [LB972]

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

Business and Labor Committee
January 25, 2016

SENATOR CRAWFORD: Thank you, Senator Bloomfield. Thank you, Senator Harr. I appreciate the intent of the bill. It looks like one of the things we strike out is the people whose duties do not require more than eight hours per week. So maybe we can just talk about that part of the strike out because I can see your point about the major nontenured policymaking advisory positions, you know, that working hard and deserving that protection. But I just raise your attention to whether that, the end of the what is struck parts, eight hours a week, or if that's intended. [LB972]

SENATOR HARR: What we were looking at is individuals who serve on boards. Most boards are voluntary so they don't take hours, but some do take more. And some...I mean if you're on one of these boards it's probably not your sole source of income, but it could have an effect on your ability, our ability to recruit those individuals for those boards because they are, just like becoming a state senator, you take a cut in pay more likely than not. This by the way would not cover state senators so we still don't qualify for unemployment. [LB972]

SENATOR CRAWFORD: Okay. [LB972]

SENATOR HARR: But we want to incentivize to make sure those people are made as close to whole as possible because they probably didn't make...if it makes you more comfortable, we can strike that language. I'm not wed to that language, but that's why it's there. [LB972]

SENATOR CRAWFORD: Okay. Thank you. [LB972]

SENATOR BLOOMFIELD: Are there any further questions? Thank you, Senator. Are there any proponent testifiers? Anyone in the opposition? Thank you, Commissioner. Proceed. [LB972]

JOHN ALBIN: (Exhibit 1) Thank you, Senator Bloomfield. Senator Bloomfield, members of the Business and Labor Committee, for the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I am the Commissioner of Labor. I'm appearing here today in opposition to LB972. When the Employment Security Law was originally passed in 1937, no public employees were eligible for unemployment benefits. Pursuant to federal legislation requiring state unemployment programs to cover public employees, in 1977 the Legislature extended unemployment coverage to all governmental employees except those governmental employees listed in subdivision (6)(f) of the Neb. Rev. Stat. Section 48-604. LB972 would remove that current exemption from coverage for major nontenured policymaking advisory positions such, as Senator Harr said, the Commissioner of Labor and other agency directors. As much as I appreciate the thought, I think individuals such as much myself take these positions for the purpose of providing public service and like elected officials, the exemption from coverage for policymaking positions should be retained for

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

Business and Labor Committee
January 25, 2016

nontenured policymaking provisions. I would ask the committee to indefinitely postpone LB972. Thank you. [LB972]

SENATOR BLOOMFIELD: Thank you, Mr. Albin. Did anybody have any questions? I might throw one out. And I don't know what yours or the other commissioners throughout the state's salary is based on, but I assume it's a little more than ours. [LB972]

JOHN ALBIN: Yes, it's a little bit more than the state senators. [LB972]

SENATOR BLOOMFIELD: So if someone is leaving that position, I wonder do you think they maybe don't need a little softer...if we lose our whole \$12,000 a year, it's not the end of us. I would think yours, somebody leaving that position and not being able to obtain a full-time job later on might be a little harder landing. Would you address that? [LB972]

JOHN ALBIN: Well, I don't want to sound like I'm giving myself praise, but I think most people that are appointed to an agency directorship by the Governor are pretty employable people. And they usually do not have any significant amount of trouble finding a new job. I think our...with this last changeover in this administration, we did quite a look at it. There were about 60 positions that we identified that it actually applied to. And I think we ended up with five or six claims off that and we paid a few thousand dollars, which was why our fiscal note on it was very low. We certainly can't be accused of trying to kill this one with a fiscal note. [LB972]

SENATOR BLOOMFIELD: Okay, thank you. Are there any more questions? Seeing none, thank you. [LB972]

JOHN ALBIN: Thank you. [LB972]

SENATOR BLOOMFIELD: Is there any further opposition testimony? Anyone in the neutral position? Senator Harr, would you care to close? [LB972]

SENATOR HARR: Just quickly, thank you. You know, I found it interesting...and I appreciate Commissioner Albin for coming in, but you can't have it both ways. The argument is these people are employable. Well, we had some people that did apply. Well, obviously there are people out there that have problems finding a job afterwards. And it's no secret that our Governor took almost a year to find someone to run the Department of Revenue. Whoever took that job took a cut in pay. That's why we have trouble finding these people. We found someone who...you know, it paid more than \$12,000 so he was happy to take it, a former senator. But it tells you we are in public service. We are making a sacrifice. And if we want to get people who are either not

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

Business and Labor Committee
January 25, 2016

independently wealthy or if we want to get people who are qualified...but we'll look after you...we realize you're taking a cut in pay on the front end. We got your back on the back end if you can't find employment, if you have to make a controversial call, we'll have your back. If we say, no, then you know what's going to happen is that individual is always going to be making sure they have a job on the outside when they leave. And so they may not always make the right decision. That's what this is about, it's making sure we look out for our policymakers. You know, I noticed in the statement there really was...it was more of a conclusion we're against it. There wasn't a statement why. This is, again, it's ironic that here I am, a legislator looking out for the executive branch. But I do see the importance and I honor what they do and the sacrifices they make. And I want to make sure that we honor it, we as a body honor them and say, hey, on the back end, as policymakers, we understand what you as a policymaker within your department do and we'll stand by you. And we're going to go ahead and give that money. So with that, I would ask that you support this bill. Thank you. I'd entertain any questions. [LB972]

SENATOR BLOOMFIELD: Any questions for Senator Harr? Thank you, sir. [LB972]

SENATOR HARR: Thank you. With that, you want to close it? [LB972]

SENATOR BLOOMFIELD: Are we done? [LB972]

SENATOR HARR: We're done. Thank you. [LB972]

SENATOR BLOOMFIELD: Hearings are done for the day. Thank you. [LB972]