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Business and Labor Committee  
January 23, 2017

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[LB181 LB203 LB212 LB248]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 23, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB212, LB181, LB248, and LB203. Senators present: Joni Albrecht, Chairperson; Sue Crawford, Vice Chairperson; Ernie Chambers; Steve Halloran; Matt Hansen; Sara Howard; and John Lowe. Senators absent: None.

SENATOR ALBRECHT: Welcome to the very first Business and Labor Committee meeting. My name is Joni Albrecht, I'm the senator from northeast Nebraska, District 17; encompasses Thurston, Wayne, and Dakota Counties. I'd like to go around and introduce, if you will, Senators, for yourself, tell them a little bit about yourself, where you're from. And we do have a whole new group here so I want to introduce first, my Vice Chair, Senator Crawford, will be vice chairing the Business and Labor Committee this year. And Senator, go ahead and...

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

SENATOR LOWE: Senator John Lowe from Kearney, District 37, representing Kearney, Gibbon, and Shelton and the surrounding farm ag land around there.

SENATOR ALBRECHT: Senator Hansen.

SENATOR HANSEN: Senator Matt Hansen, representing District 26 in northeast Lincoln, neighborhoods of University Place, Bethany, Meadow Lane, Havelock.

SENATOR ALBRECHT: Thank you.

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

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

SENATOR ALBRECHT: Very good. And our legal counsel with us today is Meghan Chaffee. And I have a fill-in--thank you very much--Krissa Delka, she's with the Revenue Department...with Revenue Committee, excuse me, with Senator Smith. So she's loaned to us today. Beverly Neel is not with us, but hopefully by next week she will be. And I have Lee-Ann

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is one of our pages here today, our page for the Business and Labor Committee. So if you have any of your copies or anything you want to let her know. And she's studying, in her sophomore year at UNL, global studies and political science. So thank you all for being here. I do have a few clean-up items before we get started. Again, please turn off any cell phones that you may have on. Senators, please note that these microphones are very sensitive--there's a new program they're using this year--and are able to pick up side conversations. And any time that you hit it, it will be annoying to those that have to listen later. Testifiers should have the appropriate number of copies of handouts with you ready for distribution. The Business and Labor (Committee) requires ten copies. Each witness appearing before the committee must sign in using the forms...there's yellow sheets at the back of the room before you enter through the door, provided at the entrance there. And sign in only if you're going to testify. And your form must be given to the committee clerk before you begin presenting your testimony. Each testifier will be allotted five minutes before the committee. We use a light system. Green indicates that you may begin; yellow indicates that you're nearing the end of your time so you'll get three minutes, then the four, then the five will indicate that you're going to the end of your testimony. So please begin your testimony by stating your name clearly into the microphone and then please spell your first and last name to ensure accuracy for the records. And then of course the agenda is posted outside the door. Indicate...okay, sorry about that. We'll take proponents first and then opponents and then anybody in a neutral position after the senator, of course, introduces the bill. And then he'll get one more chance, or she, to end the conversation and we'll end the hearing. Also, closing remarks will only be by the senator. Identify the first item on the agenda will be LB212, and also we just had Senator Chambers...we had everyone introduce themselves. If you'd like to just tell them a little bit where you're from and we'll get started. You're from district... [LB212]

SENATOR CHAMBERS: Oh, District 11 in Omaha. [LB212]

SENATOR ALBRECHT: Everyone probably knows that but me, but sorry about that. But senators will at times leave the chamber if they have to introduce a bill somewhere else, so please allow them to be excused and they'll be right back in when it's...when they're finished. So we'll go ahead and get started with Senator Hansen, LB212. [LB212]

SENATOR HANSEN: Great. Thank you. [LB212]

SENATOR ALBRECHT: Thank you. [LB212]

SENATOR HANSEN: Good afternoon, Chairwoman Albrecht and fellow members of the Business and Labor Committee. I am State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB212, which would adopt the In the Line of Duty Compensation Act. This is based off a bill from last year, which

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was LB836, introduced by Senator Mello. LB212 does the following: It provides a family member or designee to receive compensation if a firefighter, police officer, or correction officer dies while in the line of duty. This is common practice in other states and I believe long overdue here in Nebraska. Most of our neighboring states have some form of compensation for those that die in the line of duty. I believe it's time for Nebraska to join our neighbors in making sure that not only our first responders and correction officers know that we value their work, their service, and their lives. LB212 would include paid and volunteer firefighters, emergency medical service ambulance squad members, law enforcement, and correctional employees. This bill allows for a one-time payment starting at \$50,000 in 2018 and indexed for inflation each year following, to the family of a person killed. Each employee has the opportunity to designate a beneficiary or if they do not, it will follow their wills or other procedures of inheritance. As introduced, the State Fire Marshal and the Superintendent of Law Enforcement and Public Safety would serve as the compensation administrators. It is my intent that this be in addition to any other death benefit available to the officers or firefighters. I think that LB212 is an important bill and I will continue to make sure that we have taken care of our firefighters, police, and corrections officers and their families while they are helping us in protecting our community. With that, I will close by noting that there are several people behind me looking to testify. And thank you for the committee for their consideration of the bill. [LB212]

SENATOR ALBRECHT: Great, thank you. Would you like any questions at this time? Senator Chambers. [LB212]

SENATOR CHAMBERS: Senator, did you say it's in addition to any other compensation they may receive? [LB212]

SENATOR HANSEN: Yes. [LB212]

SENATOR CHAMBERS: Okay. [LB212]

SENATOR ALBRECHT: Any other questions from the committee? [LB212]

SENATOR LOWE: Where would this money...excuse me. [LB212]

SENATOR ALBRECHT: I'm sorry. Senator Lowe, go ahead. [LB212]

SENATOR LOWE: Chairman, thank you. Senator, where does this money come from then? [LB212]

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SENATOR HANSEN: It would be my intention to be come from the state, particularly General Funds. There has been some discussion already that maybe it might be better suited to go through the State Claims Board, as with the other claims against the state introduced by the Business and Labor Chair. And that's certainly an avenue to making sure the funding source is clear. But it's my intent for it to come from the state. [LB212]

SENATOR ALBRECHT: Senator Chambers. [LB212]

SENATOR CHAMBERS: I'm trying to get caught up. Does this go on forever, this money per year? [LB212]

SENATOR HANSEN: No, it would be a one-time benefit. [LB212]

SENATOR CHAMBERS: So what about when it says...oh, so you mean the benefit itself will increase based on cost of living increase? [LB212]

SENATOR HANSEN: Yes. So it's my intent...if I can respond. [LB212]

SENATOR CHAMBERS: Sure. [LB212]

SENATOR HANSEN: It's my intent that it's a kind of a one-time death payment, but that the payment itself will increase with inflation. That way we don't necessarily have to come back every few years and jump up the amount. [LB212]

SENATOR CHAMBERS: Why should it increase...I just want for the record? [LB212]

SENATOR HANSEN: Sure. I think quite simply, \$50,000 means one value today, in 20, 30 years it will mean less. I think once we decide on what level we want to commit to serving people in the line of duty who are killed in the line of duty, we should make sure that that doesn't fall behind. [LB212]

SENATOR CHAMBERS: And how was the figure arrived at? [LB212]

SENATOR HANSEN: I'll admit it's kind of an arbitrary number. [LB212]

SENATOR CHAMBERS: Okay. [LB212]

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SENATOR HANSEN: I'd be happy to figure out with the committee if there's a more appropriate number. [LB212]

SENATOR CHAMBERS: That's all I have of you. Thanks a lot. [LB212]

SENATOR HANSEN: Thank you. [LB212]

SENATOR ALBRECHT: Thank you. Anyone else have any questions, Senators? Okay, let's start the testimony. [LB212]

SENATOR HANSEN: Thank you. [LB212]

SENATOR ALBRECHT: Again, we're asking for proponents first. Do we have any proponents wishing to speak? [LB212]

DARREN GARREAN: Chairman Albrecht and members of the committee, I appreciate the opportunity to speak before you. I appreciate Senator Hansen for bringing this bill. LB212 is a carryover that was introduced from last year and some... [LB212]

SENATOR ALBRECHT: I'm sorry, I'm sorry. Can I just stop you one second. Pronounce your name, first and last name. [LB212]

DARREN GARREAN: Absolutely. Yes, my first name is Darren, D-a-r-r-e-n, last name is Garrean, G-a-r-r-e-a-n. [LB212]

SENATOR ALBRECHT: Thank you. [LB212]

DARREN GARREAN: I'm president of Nebraska Professional Fire Fighters, represent approximately 1,300 full-time, paid firefighters throughout the state of Nebraska. [LB212]

SENATOR ALBRECHT: Thank you. [LB212]

DARREN GARREAN: Sorry about that. [LB212]

SENATOR ALBRECHT: No, that's all right. [LB212]

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DARREN GARREAN: LB212 is a carryover somewhat of last year's in line of duty death, death bill and some questions were raised at that point in time as to who was going to be in charge of it. Should somebody die in the line of duty as far as the comptroller and those types of things and think some of those things were addressed. I think the issue of...to address Senator Chambers about the \$50,000, in other states around us: Iowa provides \$100,000 benefit; Missouri provides like a \$25,000 benefit; Kansas provides a \$100,000 benefit. The \$50,000 benefit was arrived I think somewhat from states in this region somewhat of what other states are paying and we felt that a \$50,000 was I guess a conservative for this region, based upon what other states are offering. The \$50,000 benefit I think is a statement that the state of Nebraska would say to its first responders and correction officers, things of that nature, that would die in the line of duty that it believes in the job that they're doing in providing a service to the citizens of the state of Nebraska. We realize that the job that we do is inherently dangerous. We take that risk, but we also understand that we also inject ourselves into situations that not everybody may be presented with. It's my opinion that the state of Nebraska offering a death benefit of \$50,000 is basically an investment saying, hey, we believe in what you do. Should you die in the line of duty, this money can be used to...maybe for your family, make things right as far as burying the individual, funeral expenses, maybe helping the family out just a little bit. I think other states around this region have already taken that step in order to make those measures for their first responders. I think Nebraska should be able to do the same thing. I'll gladly answer any questions on this issue if I can or if there's questions that have arisen about it. [LB212]

SENATOR ALBRECHT: Thank you. Senators? Senator Chambers. [LB212]

SENATOR CHAMBERS: On page 2 is a definition and it says, beginning in line 19, "Killed in the line of duty excludes death resulting from the willful misconduct or intoxication of the law enforcement officer or firefighter". It could read a different way and say, death...killed in the line of duty...well, I won't say it the other way. But you know, it could be stated either way. This would mean that if there is negligence, then there still is recovery. This excludes recovery only in the case of willful, which is almost intentional. So negligence...the officer or the firefighter could be negligent and that would not exclude recovery. So when this bill says willful misconduct, what does that mean in your opinion? [LB212]

DARREN GARREAN: In my opinion, if I was doing something outside of what I would consider my scope, my duties, willfully making a decision that was harming or putting in harm's way you or the public or whoever, that that would negate this benefit. [LB212]

SENATOR CHAMBERS: Suppose it puts you in harm's way? [LB212]

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DARREN GARREAN: If I was doing it willfully and knowingly, if I was reckless in my actions...let's say I did something knowing it would put myself or somebody else in harm and that end result was because of my (inaudible)... [LB212]

SENATOR CHAMBERS: Well, don't think recklessness would exclude because it says willful. [LB212]

DARREN GARREAN: Yeah, but if that reckless was because I... [LB212]

SENATOR CHAMBERS: You mean willful? [LB212]

DARREN GARREAN: Willfully reckless, right. I think that was a question that I think you had last year, too. And to address some of that kind of went back to either the State Fire Marshal or had that ability of somebody to look at, was the decisionmaking process sound through going through the events of whatever happened. [LB212]

SENATOR CHAMBERS: Do firefighters have insurance? [LB212]

DARREN GARREAN: Some, not all. [LB212]

SENATOR CHAMBERS: They have to purchase it themselves? [LB212]

DARREN GARREAN: Well, it depends. And that's part of...every...in our opinion, every city may have something different. Like, for instance, the city of Omaha has something that they have negotiated in their contract. The city of North Platte will have something different. Scottsbluff will have something different. Volunteers may have something different as far as a benefit. There may not be anything at all. I realize that I could also go out on the open market and buy something on my own individually, but that's not necessarily all the case for anybody that would want to do that. This would be a uniform standard across the board for everybody that provides that service. For me, particularly, it would be like for firefighting. [LB212]

SENATOR CHAMBERS: That's all I'll ask of you. Thanks. [LB212]

SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions? [LB212]

SENATOR LOWE: Does...excuse me, Chairman. [LB212]

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SENATOR ALBRECHT: Go ahead. Senator Lowe. [LB212]

SENATOR LOWE: Does this count for voluntary firemen also? [LB212]

DARREN GARREAN: Yes. In the bill it states specifically paid and volunteer in addition to your rescue personnel, which would be somebody providing ambulance service or EMS. [LB212]

SENATOR LOWE: And time of payment? It doesn't list time of payment on there really. [LB212]

DARREN GARREAN: I think there's a 45-day after the decision is made. I don't have the bill in front of me, specifically, as far as reference. I thought that might have been towards the bottom of it. [LB212]

SENATOR ALBRECHT: Line 17? Page 5, line 17. [LB212]

SENATOR LOWE: Okay. Thank you. [LB212]

SENATOR ALBRECHT: Forty-five days. [LB212]

SENATOR LOWE: I missed that. [LB212]

SENATOR ALBRECHT: Any other questions? [LB212]

DARREN GARREAN: That's a good question though, because that was something that had arisen I believe from last year was, what if it just got held and never got compensated? [LB212]

SENATOR LOWE: So they were paid three years later whenever they got around to it. [LB212]

DARREN GARREAN: Absolutely. [LB212]

SENATOR ALBRECHT: Seeing no other questions, I'll just...can you clarify again the other states around us that currently have this? [LB212]



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DARREN GARREAN: Yeah. To the best of my knowledge, unless they've recently changed or whatever, Iowa provides \$100,000 benefit; Missouri provides a \$25,000 benefit; Kansas provides a \$100,000 benefit. [LB212]

SENATOR ALBRECHT: A hundred? [LB212]

DARREN GARREAN: Yes. [LB212]

SENATOR ALBRECHT: Okay. Senator Chambers, another question? [LB212]

SENATOR CHAMBERS: I'm looking at law enforcement officer, beginning line 22, page 2, and they lump state correctional employees or any county correctional employee with...is that to indicate that the element of risk in carrying out the ordinary duties and functions are the same for all of these people? [LB212]

DARREN GARREAN: For me, specifically, I don't know that I could testify to a corrections officer or a police officer. [LB212]

SENATOR CHAMBERS: Okay. Somebody else may come up and then I'll... [LB212]

DARREN GARREAN: I could gladly tell you about the fire and EMS side of things, but I don't think I could do that fairly. [LB212]

SENATOR CHAMBERS: Okay. [LB212]

SENATOR ALBRECHT: Do you have another question, Senator Lowe? [LB212]

SENATOR LOWE: One more, then I'll stop. Can you tell me how many firefighters--because you don't know about the police department--have died in the last...give me the years that you might have knowledge of. [LB212]

DARREN GARREAN: Yes. That is a very good question when you consider the actual cost of this. And we realize, I think everybody is cost conscious. To the best of my knowledge as far as the firefighters that I represent, the last line of duty death that we know about was in 2005, was a North Platte firefighter that was in an ambulance that crashed and he died. That was the last traumatic injury that I can remember from the quote paid, full-time firefighters. I know there's been some volunteers since then that have died in the line of duty traumatically, but that was the

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last one as far as the full-time, paid members that I represent was in approximately 2005 I think, in an ambulance crash. [LB212]

SENATOR LOWE: I know Gibbon had several die in one fell swoop when a roof fell on top of them. I don't remember the number or the year. I'd rather not pay this out at all just because I want to have everybody... [LB212]

DARREN GARREAN: Absolutely. It's unfortunate to even have the discussion, but if it puts any family some financial burden at ease, I think it's something that is why we're here. [LB212]

SENATOR ALBRECHT: Do we have any other questions before I...well, it sounds like you're finished. Thank you for your testimony. [LB212]

DARREN GARREAN: Thank you. Thank you for your time. [LB212]

SENATOR ALBRECHT: Okay. I'm sorry. While she's passing things out do you want to go ahead and get started just with your name and spell it for the clerk, please? [LB212]

ROSEANNE SCURTO: (Exhibits 1, 2) Sure. First of all, thank you, Senator Albrecht, for allowing me to speak today. [LB212]

SENATOR ALBRECHT: No problem. [LB212]

ROSEANNE SCURTO: My name is Roseanne Scurto, it's R-o-s-e-a-n-n-e S-c-u-r-t-o. Can I continue? [LB212]

SENATOR ALBRECHT: Sure. [LB212]

ROSEANNE SCURTO: Okay. Thank you all for allowing me to be here today and speak on behalf of the firefighters in the state of Nebraska. As I said, my name is Roseanne Scurto. I am the president of the Nebraska Serious Injury and Line of Duty Death Response Team. We're an organization that was established in 2006 in the state of Nebraska after we had lost two firefighters in Wood River in the line of duty. Yes, sir. Our organization functions under the National Fallen Firefighters Foundation. We cover all fire, rescue, both paid and volunteer, law enforcement, including corrections and public service officers. So any, for instance, Forestry Service that are law enforcement certified, dispatchers, and so on, that will cover emergency services. So they all fall under our hands. Our team has 37 members. Our mission in the state of

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Nebraska is to provide for our fallen emergency responders, fire, rescue, and law enforcement. When somebody dies in the line of duty our team is activated to go to that organization and provide whatever assistance we can to that organization in not only planning their funeral, making sure that they're laid to rest with the proper honors, but also at the end of that to be there with the families to make sure that if there are any death benefits that they're entitled to, that we go through the process with them to help them receive those benefits. There is a national benefit, it's called the Public Safety Officer Benefit, it's the PSOB in our words...it's called the PSOB. That death benefit is a one-time payment to the family of the fallen emergency responder. And our organization is responsible for helping these organizations apply for that if they ask us to. There are some career organizations that may take that on themselves, which is absolutely fine. We help where we're asked to help. And we go through the process of applying for the benefits, getting the fire department or the law enforcement agency's help in gathering all of the information, presenting it to the Department of Justice, who the claim is processed through. Our thoughts on LB212, as they were with LB836, haven't changed. We strongly, whole-heartedly believe in this bill and what it can do for the families of our fallen, but there are some concerns we have about the vagueness in the bill. And the following pages in what was handed out to you covers our concerns, pretty much line by line. And, you know, we don't want to be nitpicky. Our biggest thing is that when we have dealt with all of the families that we've dealt with, in the years that we've been doing this, the one thing we don't want to see is something fall through the cracks because we didn't have it covered in the original verbiage. And with the Public Safety Officer Benefit, that federal claim has very well-versed language on how to do the process. And I guess I would offer that, you know, maybe look at our concerns, our suggestions, and if our organization can help this organization or you people to come up with a more clear plan for all of the concerns that are out there about the benefit, we would be happy to assist in any way. I had to talk to Senator Mello's office last year about our concerns. We had actually talked quite a bit. And it's a little disheartening to see nothing changed in the presentation, but I also understand how the process goes. So there was a couple of questions asked before I just want to address really quickly. You had asked how many line of duty deaths there have been in the state of Nebraska since a certain time period. Since 1990 there have been 18 line of duty deaths in the state of Nebraska. The most recent one was on September 11, in Dakota City. Other than that, just for information sake, there have been 119 line of duty deaths in the state of Nebraska since records have been kept, which would be 1878. That's firefighters. Now law enforcement, I can't speak on behalf of law enforcement because I'm not as well versed in their numbers and so on, so speaking on the firefighters only. I hope you'll look at our concerns. And if you have any questions, I'd absolutely be happy to answer them if I can. [LB212]

SENATOR ALBRECHT: Very good. Senator Chambers, we'll take questions. [LB212]

SENATOR CHAMBERS: This is for the record that I'm asking this question and you may not want to answer it. I think most people would agree that there is an inherent degree in risk,

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whether we try to quantify it or not, in being a firefighter or a law enforcement officer. I don't see that kind of risk in being a correctional employee. It says anyone. So suppose somebody--without disparaging clerks--is a clerk at the Department of Corrections and is going to work and slips on the ice and falls and cracks open the head and dies. That person would be entitled to \$50,000, because it's an accidental death, it's in the line of duty because the person is at work and works more than 100 hours a year as you...the number of hours...I'm not sure what that is for. But that person, it seems to me, would be entitled at the same level and under the same circumstances as a firefighter or a law enforcement officer when you lump all of them into the same provision of law. So without using the example I gave, do you agree that all of the people or types of work listed on page 2, beginning at line 22...it says law enforcement officer and describes that. Then...oh, it doesn't mention others here, but it does say a law enforcement officer and (b) any state correctional employee or any county correctional employee. And that seems to me they are equating the risk in the two jobs as being the same. [LB212]

ROSEANNE SCURTO: Actually, in our concerns...that is one of the things that we address in our concerns. And we actually feel, if you want to look at my first page of my concerns, that we see no mention of contract firefighters; incorporated fire departments; Fire Marshal's Office, which includes deputies, inspectors, and instructors; U.S. Marshals; hospital-based EMS or private EMS; chaplains; emergency op center; Federal Emergency Management Administration; Forestry; wildland firefighters; government workers, those aren't listed in there. Then you look at law enforcement, contract law enforcement officers that provide law enforcement to universities and churches with their permission from their agencies, so those not being listed are those not covered? That's one of our concerns and one of our...that's why we're careful and cautious about how it's written, because it's very vague in determining. And I can only use the example of the PSOB benefit because that's the one I know. And they list out who--yes, nos--as to who is covered. And our fear is that you'll have somebody die in the line of duty and the people tasked with the responsibility of figuring out if that claim is going to be paid or not can only say, fire, EMS, and law enforcement, and there's no narrowing it down to make it any more specific as to, does that law enforcement officer because he's a contract law enforcement officer, or does that firefighter because he's contract, is he covered? And so on. There's no lesser risk in being a contract firefighter as opposed to a paid firefighter, it's just the title that kind of goes behind it. There's no lesser risk. Same with law enforcement. There's no lesser risk because they have that little change in their title. So that is one of our concerns, but not in the way that you're addressing it. [LB212]

SENATOR CHAMBERS: Got you. [LB212]

SENATOR ALBRECHT: Very good. Other questions from the senators? Thank you, Senator Chambers. Okay. Thank you very much for testifying. [LB212]

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ROSEANNE SCURTO: Thank you. I have business cards that I forgot to hand to her. I don't know if you want my business cards or not. But if you need to contact me or have questions about the PSOB, I'd be happy to answer it for you. [LB212]

SENATOR ALBRECHT: Thank you. [LB212]

ROSEANNE SCURTO: Thank you, Senator. [LB212]

SENATOR ALBRECHT: Welcome. [LB212]

MIKE MARVIN: Thank you, Chairwoman Albrecht, members of the committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n, I'm the executive director of Nebraska Association of Public Employees. We are the union representing the majority of state employees. I wanted to thank Senator Hansen today for introducing this bill. Senator Hansen happens to be my senator, so I'm proud of him for that, so. But I'm here today to urge you to please support this bill. We have had in the past, oh, year a lot of press on the dangers of what's happening at the Department of Corrections with the riot, the assaults, all those instances. We have never had, in my memory, a state correctional officer or a correctional employee killed in the line of duty. There has been one correctional officer that I'm aware of out in the Scottsbluff area, I believe it was the county sheriff employee who was killed in the line of duty. The state employees...I think Senator Chambers asked about insurance and those kind of things. I believe that workmen's comp has a very small payment of about \$10,000 for those people that are killed in the line of duty. I'm not sure on that. State employees, the insurance...life insurance that's carried on them is \$20,000. A very small amount for somebody who would have a family they were trying to raise, a spouse that is left to carry the bills and take care of those. So we would urge you to support this bill. We think it's a good bill. We think it's a necessary bill. And we think it would help with a lot of problems that could arise when someone is killed in the line of duty. Senator Chambers, you asked about a clerk in a correctional facility. And while I agree with your analogy of slipping on the ice, they are also though in danger if a riot occurs and an area is overrun. During our riot at the Tecumseh state facility, there were people besides correctional officers who were put in danger. We had to have a CERT team go in to rescue them. We have religious coordinators, activity people, chemical dependency counselors, counselors, a lot of other people besides the correctional officers who could be hurt in these kind of events. [LB212]

SENATOR ALBRECHT: Are you done? [LB212]

MIKE MARVIN: Yeah, I'm done. I'm willing to answer any questions at this point in time. [LB212]

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SENATOR ALBRECHT: Very good. Senator Chambers. [LB212]

SENATOR CHAMBERS: This says accidental. I know people want to go to the most drastic possible thing that could occur to make the case, but I have to look at the least consequential thing that can occur to see whether the case has been made. And when it says, any correctional employee, that would mean somebody cutting the grass. If this person were riding a mower, and I'm not discounting the value of that person's life... [LB212]

MIKE MARVIN: I understand that. [LB212]

SENATOR CHAMBERS: And without any negligence even, not ordinary negligence, the mower could tip and fall and that person would be entitled to \$50,000. And when we talk about trying to value the life of people and make the lives of some more valuable than others and we're going to reckon it in terms of how much money the state will pay, it's getting into an area that I think may not be wise in terms of policy. Are you aware of some Roads Department people who were killed in accidents? [LB212]

MIKE MARVIN: There were. There were. I can't cite you the specific incident, but there have been. [LB212]

SENATOR CHAMBERS: Right, I can't either. But I'm aware of some, because when they would occur. [LB212]

MIKE MARVIN: Yes. [LB212]

SENATOR CHAMBERS: And it might be a case where a driver was not doing as he or she should, the weather conditions, or whatever, but all it has to do is be accidental. What a Legislature looks at is how much this ultimately is going to cost. And I don't think an accurate what they call calculation of the cost of this could be made. And since you represent public employees, which ones do you think if they die accidentally should not be covered? [LB212]

MIKE MARVIN: Well, you put me on the spot and that's a tough question to answer. I would say this, you know, my concerns lie in the areas of corrections, the regional centers where we've had some vicious assaults, at the youth facilities in Kearney where we've had some vicious assaults that are not covered in it. I would love to see everybody covered in it. But to me, this is a step. This is where we can start and not everything is done perfectly the first time, I understand. And we might be able to make some adjustments in it later. Personally, I don't think that any worker

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in the country's life is worth less than \$50,000. I would love to see that be just a standard.  
[LB212]

SENATOR CHAMBERS: And this is all for the record. Did you hear the previous testifier mention certain categories of persons who might would fit under what the bill is purporting to do, but they're not listed so they're not covered? [LB212]

MIKE MARVIN: I agree, Senator. [LB212]

SENATOR CHAMBERS: And would you agree that the more categories that you put in, the more the state is going to have to pay? [LB212]

MIKE MARVIN: The more risk the state assumes, absolutely. [LB212]

SENATOR CHAMBERS: And if the Governor is talking about cutting money from the courts, from child welfare programs in HHS, and all across the board, how much money is going to be available for this when it's what you call new money, without raising taxes or cutting taxes?  
[LB212]

MIKE MARVIN: Well, I understand that. Well, cutting taxes is not in my vocabulary. So I understand that, but, yes. [LB212]

SENATOR CHAMBERS: With all those considerations, it may not be a matter of people disagreeing with the underlying philosophy, that the reality and the practicality is based on what the Governor intends to do and the people in the Legislature who are pledged to support everything he does. And I didn't see anyplace where this program is listed as having any kind of priority. [LB212]

MIKE MARVIN: I understand that, Senator. My answer to that would be the Governor has his priorities, the Legislature has their priorities, and I have my priorities. And everybody's may not be the same. The Governor doesn't run your part of state government, you do. And if you tell him... [LB212]

SENATOR CHAMBERS: Uh-huh. He does now. [LB212]

MIKE MARVIN: I'm not going to argue that point. [LB212]

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SENATOR CHAMBERS: You're cagey. [LB212]

MIKE MARVIN: But, yeah, so. [LB212]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB212]

SENATOR ALBRECHT: Any other questions of the senators? [LB212]

MIKE MARVIN: Well, thank you for the time. I appreciate it and I'm sure I'll see you some more this session. Thank you. [LB212]

SENATOR ALBRECHT: Very good. Thank you. Do we have another proponent? Yes. [LB212]

JIM MAGUIRE: Senators, good afternoon. My name is Jim Maguire, J-i-m, last name is spelled M-a-g-u-i-r-e, I am the current president of the Nebraska Fraternal Order of Police, who represent approximately 3,000 law enforcement officers throughout the state of Nebraska. We appreciate Senator Hansen submitting this bill for consideration. Obviously, our organization would strongly support such progress through this bill and have it implemented. I know that there's been some discussion over how many law enforcement officers have been killed throughout...over the years. I will just say that in my brief, I guess, looking up, it appears in the last 20 years there have ten law enforcement officers that have been killed. So you're looking at one every other year that would qualify for this benefit. There's also been...Senator, there's been some question over the language over law enforcement officer. Now, unless the language has been changed, a law enforcement officer is currently defined as somebody who has the authority to make an arrest. That would exclude several of the Forestry people and everything else, and I think that's why they included the correctional...it says employee. And you're absolutely right. Now whether it should say correctional officer or what have you, that's for this body to decide and to determine was that the intent. Was it for anybody that's in corrections to have this benefit or not? But, obviously, as a law enforcement officer, you would think city cop, deputy sheriff, State Patrol, that's essentially who we are. We're effectively the ones that have the authority to make an arrest in the state of Nebraska. So I'm assuming... [LB212]

SENATOR CHAMBERS: Excuse me. [LB212]

JIM MAGUIRE: Yes, sir. [LB212]

SENATOR CHAMBERS: What about university police? [LB212]



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JIM MAGUIRE: University police are considered...it all depends on which university. Now, UNO, under...I believe under the current they do not have the authority, because they do not go through certification. Now, they hire law enforcement officers to assist them. But the City of Lincoln...the Lincoln PD or university system, they do. They go through the formal process of becoming certified law enforcement officers. So does Metro Community College in Omaha, they are certified law enforcement officers so they would be covered under this bill. But just doing some research, it appears Nebraska is one of 12 states that do not offer this benefit. There are 38 other states throughout the country that offer some type of benefit towards a law enforcement officer killed in the line of duty. So this is not something that is going to be...we're the minority in this. We're the one's...you know, all the other states already provide these sort of benefits. Now you can go throughout and see what states...what they offer. The majority of them offer a lot more. The majority of them...very few offer less than \$50,000. Whether or not...what the magic number for \$50,000 was, I don't know. But, obviously, we would be in support of that. [LB212]

SENATOR ALBRECHT: Are you finished with your testimony? [LB212]

JIM MAGUIRE: I'm sorry, yes. [LB212]

SENATOR CHAMBERS: Do you have any idea how many officers have died from accidents? If you don't, you don't have to... [LB212]

JIM MAGUIRE: Well, it all depends, because currently if I had...this would be a guess. It would be about five in the last 20 years. And there was...I believe there was four that were killed in the line of duty, as you would describe as having an act of violence made against them. And then you would have...currently, there is an officer in the city of Omaha that contracted the flu and the feds are considering that a line of duty death, because he contracted it while he served a search warrant. [LB212]

SENATOR ALBRECHT: Yes, Senator Chambers. [LB212]

SENATOR CHAMBERS: In Omaha they pay a percentage--I don't know what it is--to an officer who becomes disabled. But I don't know what they pay if an officer is killed. Do you have any idea? [LB212]

JIM MAGUIRE: I don't. I don't work for the city of Omaha, so I don't know what their policies are and what's in their current contract. I work for the Douglas County Sheriff's Office. I can tell you that there is a...it's a burial benefit, that there's a certain amount of money that is set aside that can go strictly to burial costs. It cannot go to the family for other types of bills or anything

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that they're going to incur. But that is something that we have in our collective bargaining agreement. The vast majority of officers in the state of Nebraska don't have collective bargaining contracts, so they would obviously benefit a great deal with this type of legislation. [LB212]

SENATOR CHAMBERS: That's all I have. Thank you. [LB212]

JIM MAGUIRE: You bet. [LB212]

SENATOR ALBRECHT: Thank you. Any other questions of the senators? Senator Lowe. [LB212]

SENATOR LOWE: Thank you, Chairman. Jim, does the Fraternal Order of Police, do they offer a death benefit to the officer? [LB212]

JIM MAGUIRE: What we offer them is a life insurance policy that they can sign up for that has a minimum amount, just by being a part...being a member of our organization. It's gone up, it used to be \$2,000. It might be \$4,000 now. Off the top of my head I think it's around \$4,000, but that is something, if you're not a part of our organization, obviously, you're not going to qualify for that type of insurance. So I can't answer for some of the officers that are not part of our organization, you know, like what happens to the officers. [LB212]

SENATOR LOWE: I'm just curious about your organization. [LB212]

JIM MAGUIRE: Yes. [LB212]

SENATOR LOWE: Thank you. [LB212]

SENATOR ALBRECHT: Any other questions? Could you speak a little bit more to the 38 other states that offer benefits? And when you say that, are you talking about something like what we're talking about here... [LB212]

JIM MAGUIRE: Yes. [LB212]

SENATOR ALBRECHT: ...or are there other programs out there that they have? [LB212]

JIM MAGUIRE: I'm talking about what you're trying to do here. And if you want me to go down the list, I can. I'd have to list all 50 of them but there's, you know, like Arkansas, they have

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\$25,000, but you can also go all the way up to Maryland, they have \$133,000. But then you can go to Alaska and they offer \$5,000, so it's kind of all over the place. The biggest one that I've been able to see is Louisiana; Louisiana offers \$250,000. So it can be...it just depends on which state that you're in and what they're offering. [LB212]

SENATOR ALBRECHT: Okay. And so you're with Douglas County Sheriff's Department. [LB212]

JIM MAGUIRE: Yes. [LB212]

SENATOR ALBRECHT: So Douglas County themselves, all they offer their employees, whether it's a sheriff or clerk or do they all get the same? [LB212]

JIM MAGUIRE: No. No, they do not get the same. This is something that we, as an organization, it is just for the deputy sheriffs and it has to be killed in the line of duty. [LB212]

SENATOR ALBRECHT: Okay. [LB212]

JIM MAGUIRE: So it can't be something that's outside of work. So if you're driving home from work and you get in a car accident, you're not going to be...it's not going to qualify. But say that you pull somebody over and you get in a shoot out and you're killed. Then in Douglas County they offer up to it's either \$15,000 or \$25,000, but it can only go to burial costs. It can't go to anything else. [LB212]

SENATOR ALBRECHT: And I have just one more question. So if you're a deputy and they don't offer much more than that, you're obviously going to want to protect your family. [LB212]

JIM MAGUIRE: Right. [LB212]

SENATOR ALBRECHT: If you were killed, whether in the line of duty or other, but if it were in the line of duty, would an insurance company insure you differently because of your high risk-type job or... [LB212]

JIM MAGUIRE: In Douglas County they offer life insurance policies through, I believe it's Minnesota Life, and that you can opt into purchasing more coverage. It's going to cost you a couple of extra dollars but that's blanket, that's for everybody. Now if you're speaking high risk, we've looked into looking at disability insurance just for deputies and I think I talked to about six

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different insurance companies and they wouldn't cover us. They said that you guys are, you're just too high risk, that you're on your own. [LB212]

SENATOR ALBRECHT: Okay, thank you. No other questions? We'll close this testimony. Do we have any more proponents wanting to speak? [LB212]

JIM MAGUIRE: Thank you. [LB212]

SENATOR ALBRECHT: Thank you. [LB212]

ELAINE MENZEL: Chair Albrecht and members of the Business and Labor Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials in support of this legislation. I just want to follow up in part to express what our association enables the sheriffs and deputy sheriffs to have for purposes of line of duty coverage. All counties have the option of electing to participate in the NACO life insurance plan, but not all do at this time. The NACO life insurance plan has a line of duty benefit. I'm uncertain of that amount at this time. The Nebraska Department of Insurance approved the line of duty option benefit in the NACO life insurance plan. And just for example, if a sheriff were to lose his or her life in the line of duty, he or she would receive death benefits and a line of duty benefit under the plan. And then, as has been expressed earlier, not all life insurance plans have this coverage. I certainly would be glad to answer any questions if you have any. [LB212]

SENATOR ALBRECHT: Thank you. Any questions from the senators? So I just have a quick question if no one else does. You don't have any idea what that amount would be? [LB212]

ELAINE MENZEL: I don't, but I certainly could follow up with you if you would like. [LB212]

SENATOR ALBRECHT: Yeah, I would like to have that, if you could for us. [LB212]

ELAINE MENZEL: Okay, I'd be glad to. [LB212]

SENATOR ALBRECHT: Thank you. [LB212]

ELAINE MENZEL: Thank you. [LB212]

SENATOR ALBRECHT: Do we have any other proponents? Yes. Very good. [LB212]

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MICHEAL DWYER: Good afternoon, Chairman Albrecht and members of the Business and Labor Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I'm the secretary-treasurer of the Nebraska State Volunteer Firefighters Association and here on behalf of that association just to testify in favor of LB212. I certainly appreciate Senator Hansen's efforts to bring this bill back from last year. This is an effort that's incredibly important, particularly for the volunteers of the state of Nebraska. We understand, and certainly my colleague has expressed, we have some details of the bill to work out, both on the front end--who is covered, who is not--and on the back end as to how we actually go through the coverage process and some of the details. In our side of the world with the State Fire Marshal's Office, but our office and the 7,500 members that we have stand ready to help with those details in any way that we possibly can. I know that in my case in my 18 months or so in our office, I've attended four line of duty deaths in the state of Nebraska. And I don't want to do that again. Our office...our association provides a small line of duty death benefit and it's certainly great, and it's helped in having to personally having handed that check before, I know the importance of that. But again, as we go forward, our association and our office is certainly ready to help with this in any way that we possibly can. And I would encourage your support. Happy to answer any questions. [LB212]

SENATOR ALBRECHT: Thank you. Questions? Senator Crawford, question? [LB212]

SENATOR CRAWFORD: Thank you, Chair Albrecht. So you had just mentioned you have participated in, what did you say, four line of duty death circumstances? [LB212]

MICHEAL DWYER: Correct. [LB212]

SENATOR CRAWFORD: And what was that time period? [LB212]

MICHEAL DWYER: I could defer to Roseanne, but I believe the first incident would have been 17 months ago in May of 2015, does that sound reasonably correct? Yeah. So whatever that 17 months is. [LB212]

SENATOR CRAWFORD: So you are participating with this federal...you are participating with this other process? [LB212]

MICHEAL DWYER: Yeah. In the funeral--maybe I should clarify that--in the funeral services for those four members. Did that help clarify? [LB212]

SENATOR CRAWFORD: Sure. I was just trying to get an idea if we're estimating how many people... [LB212]

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MICHEAL DWYER: Sure. [LB212]

SENATOR CRAWFORD: ...how many deaths there may be in terms of thinking ahead. That was why I was trying to ask in what kind of time frame, like four in five years, four in ten years? [LB212]

MICHEAL DWYER: Yeah, and I think as the bill rolls out here there would be some question about...I believe LB212 speaks to accidental deaths. And in some of those cases I think it was more of a medical as opposed to an injury. Does that make sense? [LB212]

SENATOR CRAWFORD: Okay. [LB212]

MICHEAL DWYER: But it was still line of duty death still related to the call. Does that help? I understand you're trying to get numbers and I'm not sure I have that. [LB212]

SENATOR CRAWFORD: Okay. And are you telling me you don't know for sure on the numbers so you prefer not to say? [LB212]

MICHEAL DWYER: Only because of that LB212 would clarify a little bit whether it's an accident or an illness or injury. Does that help? Back in these four cases I'm not sure which would qualify. [LB212]

SENATOR CRAWFORD: Okay. So given that they may or may not qualify, it was still four cases in about five years, ten years? [LB212]

MICHEAL DWYER: That would be four cases in the last 17 months. [LB212]

SENATOR CRAWFORD: Seventeen months. Thank you, I appreciate that. I missed that, thanks. Thank you. [LB212]

SENATOR ALBRECHT: Any other questions? Others? Senator Halloran. [LB212]

SENATOR HALLORAN: Thank you, Chairwoman. Who all was involved in authoring this bill? I know it was a carryover from a previous bill, but that may take us back to that bill. But I guess my initial question is, was the National Fallen Firefighters Foundation involved in preparing this bill? [LB212]

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MICHEAL DWYER: Yeah, I would defer to our lobbyist and to Ms. Scurto. I apologize, I can't answer that question. I know that when the bill was out last year clearly we...the thing that I would stress is that the volunteers of the state clearly support the broad concept. I don't know that I'm qualified to comment specifically to the details. Sorry. [LB212]

SENATOR HALLORAN: Part of the reason I ask is that I think it's very important, I mean, it's noted here in her presentation of the questioning or offering suggestions of different individuals in questioning whether they would be included or not. And I think it may be just as important to make sure that we include those that are not included as well as defining those that are so that it eliminates any question about the state liability, to Senator Chambers' comment. [LB212]

MICHEAL DWYER: Sure. Yeah, and I respect that sooner or later this is going to come down to the fiscal note. And I respect that. The only hesitation I would have, in the volunteer world our roles get blurred a little bit more. At 7:00 a.m. I'm a dad and at 8:00 I'm a small business owner and a noon I'm helping the city do something and at 2:00 I'm fighting a fire, it gets a little blurrier. [LB212]

SENATOR HALLORAN: I mean I don't care if it's...how we define who the volunteer fire department is down to the gnats' details so much as are they included in it or not... [LB212]

MICHEAL DWYER: Sure. [LB212]

SENATOR HALLORAN: ...or is the emergency operation center, a Federal Emergency Management Administration, Forestry, and so forth, are they or are they not included, just to help clarify the liability and responsibility. [LB212]

MICHEAL DWYER: And again I'm not sure that I...that's far up into the details. I would defer to my (inaudible). Thank you though. [LB212]

SENATOR ALBRECHT: Any other questions? I have just a couple. Okay. I know last year Dakota City lost three firefighters, two on the scene and one just coming back from the scene. [LB212]

MICHEAL DWYER: That's correct. [LB212]

SENATOR ALBRECHT: So clarifying, did it happen in the line of duty? Obviously, they were all three serving, but I don't know the details of the third exactly. But who determines, again, was it line of duty? And when they specify exactly who that person is, would you have any

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challenges that way, would be a question I would have. But more importantly, with all these 7,500 volunteers, do cities and counties have anything in the line of duty that you know of throughout the state, any benefits? [LB212]

MICHEAL DWYER: Our association...our office offers a small stipend in the God forbid case of line of duty death or we also offer... [LB212]

SENATOR ALBRECHT: And can you reveal what that stipend is? [LB212]

MICHEAL DWYER: I'm sorry? [LB212]

SENATOR ALBRECHT: Can you reveal to us what that is? [LB212]

MICHEAL DWYER: That's \$2,000. [LB212]

SENATOR ALBRECHT: Two thousand? [LB212]

MICHEAL DWYER: You're talking about the amount? [LB212]

SENATOR ALBRECHT: Yes. Okay. [LB212]

MICHEAL DWYER: And then there's also a \$2,000 accidental death and dismemberment policy that applies in a broader sense. If I trip going down the steps leaving today I would be eligible for that. Nothing to do with a call or line of duty death. Does that help answer your question? [LB212]

SENATOR ALBRECHT: Yes. [LB212]

MICHEAL DWYER: Beyond that I don't know of...with the exception of blended departments, which include some paid people and some volunteer people, with those exceptions, I don't know personally of any city in Nebraska that covers volunteers with respect to insurance, with the exception of course of workmen's comp. [LB212]

SENATOR ALBRECHT: Very good. No other questions, we'll close this testimony and move onto the next. Thank you for coming. [LB212]



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MICHEAL DWYER: Thank you. [LB212]

JOHN CORRIGAN: Good afternoon. Madam Chair, members of the committee, my name is John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, I'm here today on behalf of the Nebraska Professional Fire Fighters Association. I also do a lot of work for the Douglas County Corrections officers as an attorney. And I just, as a proponent, want to suggest to you that certainly if somebody is engaged in the active duties of law enforcement officers it's pretty easy to identify. And Jim Maguire is exactly right in the sense that if you have the authority to arrest then you're covered under this legislation. I don't think it's unclear at all. I think that that's fairly simple. With the firefighter, if you're engaged in either emergency medical service or attempting to respond to an emergency call, either fire or public safety related, you should be covered. Now this bill doesn't suggest you cover federal employees. And existing benefits exists for federal employees, such as U.S. Marshals and FEMA employees and that sort of thing. But I also recognize the concern of drawing this line. And of course you have a claims procedure and whoever gets to decide whether it's covered is subject to some judicial review under the Administrative Procedures Act. So eventually a court could decide whether an event satisfied the statutory language. We did litigate a case last year, couple of years ago called Timberlake v. Douglas County, where a young corrections officer was injured as a result of trying to provide medical services to another corrections officer who passed out and she tried to render aid to him and got injured herself. And that went to the court on the issue of whether under a contract that provided for special leave if you were injured on duty as opposed to accidental injury, but injury because of dangerous activity, whether that contract applied and she got that benefit. And I just bring that up to you because if you're debating how to get through that issue, then that offers a good guideline on how the court dealt with the issue of simple negligence or simple...the slip and fall versus actively engaged with a dangerous situation. And you know dangerous situations don't always involve combative inmates or combative citizens. We ask these folks to run red lights all the time and that's inherently dangerous. Now firefighters, they stop and they look and then they go through the red light and people with their cell phones and stereos, sometimes they don't hear those sirens. And it goes both ways. So under those situations, while it may be a case of negligence--and it could be a negligence case on the part of the driver of the medic unit or fire truck, too--we think they ought to be covered. And this bill covers them. So with those comments, I'd ask that the committee please support LB212 through the State Professional Fire Fighters and Mr. Garrean I'm certainly available to provide any assistance or comments you think you may need. Thank you. [LB212]

SENATOR ALBRECHT: Thank you. Any questions of the senators? Seeing none, we'll take the next testifier. Thank you. Any other proponents? Do we have any other proponents that would like to speak? [LB212]

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CLINT MERITHEW: Good afternoon, Senator Albrecht and members. My name is Clint Merithew, C-l-i-n-t M-e-r-i-t-h-e-w, I'm the fire chief for South Sioux City, Nebraska, fire department. I'm a career fire chief, the first one they've ever had in the department. It's always been volunteer. Two-thousand eight the department went to full-time people, they went to paramedics. So throughout the state we have volunteers everywhere, businessmen, teachers, truck drivers. They put their time on the line to put the fires out, to respond to the calls, to go to the hazmat incidents that businesses, enterprises cause. It's not every day that they pass away. It could be down the line. There's still an injurious part of doing the job. This is a necessary bill. I can't agree with all the language that's in the bill, but being a career fireman of 31 years I've seen it, I've done it, I have the scars, I've got the nightmares. And that's all part of it, too. This is a very necessary bill. And it's an egregious act, in my opinion, not to support this. Yes, there's some language you need to look at, but I think all of you can understand how important it is; law enforcement as well. Again, language that needs to be talked about. In voluntary aspects, what happened in Dakota City, for two years...the past two years they did lose three people. There were some underlying issues. There's medical screening that needs to be done. There's some vicarious liability and responsibility on all parts. That's language that needs to be understood as well. In our department I have 21 of us, 5 of us are career, 15 are volunteer. As a new chief coming in, in October of last year I've implemented a lot of change. And part of that is going to be the medical screening, that if they drive and operate an EMS equipment or a fire truck they have a medical responsibility to the citizens, to themselves, and to the city, whether they have an anomaly, something wrong with them. We need to know, get it corrected, or you're done. That is something that we're trying to work on. I'm not a politician, I'm a career fireman. I ended my career in '09. My wife says, no, you're not done. I spent six years traveling as an arson and explosion investigator for an international firm. This job in South Sioux City came up, I put my hat in the ring. Nine people put in for it, I was the only one that got it. Again, I'm not a politician. This bill came out on my cell phone over the weekend. I talked to the city manager and felt it was my duty to come up and represent the city and represent those firemen that aren't here today, to speak for them. Hopefully, I've spoke well for them, to let them know that this is a necessary bill. Is \$50,000 really enough? Is \$10,000 enough? Can you really put an actual dollar amount on the life of those that serve and protect you day in and day out while you sleep, while you're here working and your house burns or your car catches fire? You can't put a dollar amount on it. Fifty thousand is a start. Senator, you asked about, where does it end? The cost of living adjustment, we all look for that in our paychecks every year. That should be something again on a rider in the language in that, to understand that, that this is just a start. Let's not make it the ending, make it the start. I understand it went through last year. Let's just keep going on this until we get it right. If \$50,000 is it to start, we'll start with that. But just understand that this all rests on you to get this through. Everybody else in this room is trying to entice you, to get the right words to you. Me, I'm just a crusty old guy that's done it and seen it and live it. I've got to see it every day. I thank you for your time. [LB212]

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SENATOR ALBRECHT: Thank you. Senator Chambers. [LB212]

SENATOR CHAMBERS: The state does not set the terms and conditions of employment for these people at these various local and county agencies, so why should the state assume the burden of paying this money? [LB212]

CLINT MERITHEW: That's a good question. If I was a politician I'd have an answer in a snap for you. I don't have one for you. [LB212]

SENATOR CHAMBERS: That's why I'm asking you. I'm a politician. I don't have the answer. [LB212]

CLINT MERITHEW: But there's monies that our taxes go to, to the county, to the state that is also sent back down through the counties, so those are still part of our monies that we're getting back in the whole. The death benefit that volunteers get is whatever the municipalities or the agencies can afford them, \$2,000, \$5,000 maybe. Or if the agency or the department has their own association funds that they would be able to put for that, too. It's very horrendous to have to go through to recover one of our fallen brothers or sisters. [LB212]

SENATOR ALBRECHT: Senator Chambers. [LB212]

CLINT MERITHEW: And to have to go and tell the families what happened. [LB212]

SENATOR CHAMBERS: When you have a state...and federal money is available to expand the reach of medical care to hardworking families who don't have a lot of money and the state will not extend care of routine type to all these families, which include children, why should certain segments be carved out and by so doing establish the state policy as saying, what these people are doing is worth more than what anybody else is doing or if they lose their life, their life has a greater value. When not any of those people are compelled to do what it is they do, why should a bill like this be enacted, in other words? We're not dealing with compulsory service. Like when I was in the Army a long time ago, I got \$65 a month because they made me...well, they didn't make me, I volunteered. But the point I'm getting to, nobody in any of these capacities was compelled to be there. They assumed the risk. If there was adequate money available, fine. But when I see the Governor and legislators unwilling to take care of the basic needs of citizens that the state should take care of, I don't look very kindly to tack on programs, which is not to say they lack worth and merit. But each group, as yours, as law enforcement people, as corrections officers come for their specific narrow interest. We are supposed to be interested in the population as a whole. And when we are unwilling to provide medical care for the citizens and

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their children who need it and cannot afford it otherwise, these kind of programs are not the kind that are high on my list of priorities. Just so you know. I (inaudible)... [LB212]

CLINT MERITHEW: I hear you... [LB212]

SENATOR CHAMBERS: ...feel like I do, they're not going to say it publicly because it's not a popular thing to say. Everybody should support law enforcement now. Ask them, how much money are you willing to pledge yourself to fight the Governor on to get that money? Then you'll begin to see the truth. It's easy to give the impression that we're sympathetic, but sympathy won't buy you a slice of bread. So people in this room are not ordinary citizens. They have jobs, they have wants, they are special interest groups. They need to watch what politicians do. But if they had their small area taken care of they don't care about anybody else. And I'm not saying they should. But I care and I establish priorities. And I don't see the life and the welfare of these groups as being of a higher order or higher value than the ordinary citizen. And before I would agree to make a harsher punishment for doing something to a cop who has a gun, who has protective gear, the means to defend himself or herself, than I would for an 85-year-old woman who can't take care of herself. But you don't hear these legislators looking at vulnerable citizens. They do what is popular. Right now law enforcement is popular. I don't blame you all for striking while the iron is hot, because it's not going to be hot all the time. And I say it to you because you're not an ordinary citizen, you are somebody representing a group, have an interest in this specific legislation, you're a grown man, and you can take hearing from at least one politician what that politician considers to be the truth. [LB212]

CLINT MERITHEW: And I can take that, thick skinned (inaudible). [LB212]

SENATOR CHAMBERS: That's why I gave it to you. I select people. [LB212]

CLINT MERITHEW: Yep. But I'm not a policymaker, sir. [LB212]

SENATOR CHAMBERS: I know. [LB212]

CLINT MERITHEW: I'm one bringing you the facts, not a bunch of paperwork. I'm bringing you the facts from the experience. So there's other voices, not just yours. [LB212]

SENATOR CHAMBERS: And I want to present some things from this side of the table that might not ordinarily be presented. Sympathy can be expressed. Then when the Governor says, cut this money, the Legislature is going to cut the money. If they're cutting money to children's

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programs they're not going to give money to you all. I'm being frank. I'd wager you a nickel, except we can't gamble. [LB212]

CLINT MERITHEW: We can take a break. [LB212]

SENATOR CHAMBERS: He's a good man. That's all that I have. [LB212]

SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions? Thank you for coming down from District 17, South Sioux City. [LB212]

CLINT MERITHEW: Thank you for your time. [LB212]

SENATOR ALBRECHT: Thanks for your service. Another proponent? Any other proponents wishing to speak? I'll ask one more time. Do we have any other proponents wishing to speak to LB212? Seeing none, do we have any opponents in the room wishing to speak? Any opponents? Seeing none, we'll go on to any neutral positions. [LB212]

ORRON HILL: Good afternoon, Chairperson and senators of the Business and Labor Committee. My name is Orron Hill, the first name is spelled O-r-r-o-n, last name spelled H-i-l-l. I'm the legal counsel for the Nebraska Public Employees Retirement Board, also known as the PERB and the Nebraska Public Employees Retirement Systems, also known as NPERS. I'm here to testify neutrally on LB212. The PERB and NPERS are not taking a position on the general policy or purpose of the bill. However, the PERB has a question relating to the implementation of the bill, should it be passed into law, that we would seek clarification on. The language of LB212 does not specify whether the compensation paid pursuant to the Line of Duty Compensation Act would be treated as compensation for retirement purposes for those individuals who are members of our plans. Compensation for retirement purposes generally consists of gross wages or salaries payable to the member for personal services performed during the plan year. It includes such things as overtime pay, member retirement contributions, and amounts contributed by members to plans under Sections 125 and 457 of the Internal Revenue Code. It generally does not include such things as payments from life insurance policies or other fringe benefits. The PERB and NPERS recommend that the payments made pursuant to LB212, should it pass, be excluded from the definition of compensation for retirement purposes. This would help ensure consistency across the plans and also would help ensure consistency in payment with those individuals who are not covered by our plans, but would be covered by the Line of Duty Compensation Act, such as volunteer firefighters or contract firefighters of those individuals. We would be willing to work with Senator Hansen and others on the amendment of the bill that would specifically articulate that position and clarify that point of law. Subject to your questions, that concludes my testimony. [LB212]

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SENATOR ALBRECHT: Thank you. Any questions from the senators? Seeing none, thank you for coming. [LB212]

ORRON HILL: Thank you. [LB212]

SENATOR ALBRECHT: Anyone else in a neutral position that would like to speak to LB212? Welcome. [LB212]

BRAD RICE: (Exhibit 3) Good afternoon, Senator Albrecht, members of the committee. Thank you for allowing me to testify today. Good afternoon. I am Colonel Brad Rice, B-r-a-d R-i-c-e, Superintendent of the Nebraska State Patrol. I would like to thank the committee for giving me the opportunity to appear before you today to offer my agency's neutral position to LB212 and share some concerns with the language as it currently exists. Please know that I did offer testimony expressing my agency's concerns with this legislation previously when it was introduced as LB836 in 2016. As Superintendent of Law Enforcement and Public Safety and as Colonel of the Nebraska State Patrol, I support Nebraska's public safety officers and all that they do to keep Nebraskans safe. Our public safety officers risk their lives to protect us and I certainly appreciate the concept of a line of duty death benefit, which would recognize the sacrifice of public safety officers who are killed in the line of duty. I know that Nebraska State Patrol officers could benefit from such a program. We have experienced 11 line of duty deaths over the Patrol's 76-year history. It is important that the brave men and women who protect and serve know that they have our support and appreciation. One of the concerns that I see with LB212 relates to the funding for the line of duty death benefit. The state is facing difficult financial times and agencies do not have the funding flexibility to carry the potential cost associated with this bill. Due to the unpredictability of line of duty deaths, the financial impact of this bill is difficult to identify and could be significant. This bill proposes that as Colonel of the State Patrol, I would be the compensation administrator. In cases in which a Nebraska State Patrol Trooper is killed in the line of duty, it would seem to be a conflict of interest for the agency to determine whether the benefit should be payable and to whom it should be paid. In other cases, when sheriffs and police chiefs have an officer who they believe died in the line of duty, determining whether that death is a result of an injury occurring during their service puts the Nebraska State Patrol in a position of making judgments that may cause hard feelings and potentially damage working relationships with our law enforcement partners. I believe the determination of payments in a 45-day time frame would be an extremely difficult requirement to meet. Even disability claims through the Nebraska Public Employee Retirement System are not processed that rapidly. The Nebraska Workers' Compensation Courts do not make a determination of whether a death was caused in the scope of employment that quickly. Further, the probate courts do not probate an estate within 45 days. However, this bill requires that the Nebraska State Patrol determine the cause of death, determine whether it was in the course of duty and not caused by any willful misconduct or intoxication, all within a 45-day time frame. Further, the bill requires benefits to be paid out in

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accordance with a legally binding will. This would create issues if the court system has not yet determined that the will is a legally binding document. Clarification is necessary to determine if benefits are to be paid after the estate has been probated which seems to be the only method in which these benefits could be allocated to be consistent with the language of the bill. The federal government has a similar line of duty death benefit. Less than half of their claims are approved within one year. In the Commonwealth of Virginia, their line of duty death benefit takes six to nine months to process. For a claim that requires review of law enforcement reports, medical records, autopsy reports, toxicology reports, marriage license, birth certificates, and a will, 45 days will not be sufficient to read, research, and process such an extremely important claim. While I believe all claims in Nebraska would be filed in good faith. I would note the federal benefit has been denied 26 percent of the time in 2013, and 12 percent of the time in 2014, utilizing a broader federal definition of what constitutes a line of duty death than is proposed here. In LB212 any process must meet State Auditor requirements as this involves state funding. The process of administering the benefit simply cannot be a quick rubber stamp of approval on the application for benefits. Due diligence with regards to the investigation must be done, and the time frame of 45 days simply does not offer enough time to do the benefit and the officer's family justice. I'd be happy to answer any questions that you might have. [LB212]

SENATOR ALBRECHT: Thank you. Perfect timing. Any questions from the senators? Very good. [LB212]

BRAD RICE: Thank you. [LB212]

SENATOR ALBRECHT: Thank you very much for coming. Is there anyone else serving in the neutral capacity wishing to testify? I'll ask one more time. Anybody in the neutral position wanting to testify on LB212? Seeing none, Senator Hansen, if you'd like to close. Thank you. [LB212]

SENATOR HANSEN: Thank you, Chairwoman Albrecht and members of the committee. And thank you to all of the testifiers, both in support and neutral. As always with all of my bills I look forward to having a continued discussion with the committee and interested stakeholders to give us the best possible outcome and the best possible product. Before I take questions, I do have a couple of things just addressing some notes I jotted down when people were speaking. One, kind of the issue of why there were no changes from last year to this year. That was...based on my experience, that was a tactical choice I made. I know sometimes when you change bills in the interim you make new friends and new enemies. And starting with exactly where we left off with LB836 I thought it was a good starting point for discussions this year. Obviously, part of my intent in introducing early and getting an early committee hearing is having us the opportunity to work on a bill as a committee, me work with interested stakeholders who have come forward this

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year in time for the priority designation deadline and other opportunities. It was kind of addressed, why state money? I agree that we, as a state, don't have a duty to support death benefits for those killed in the line of duty the same way we have a state duty to provide K-12 or to balance the budget. But at the same time, we are also one of the...we have the ability to do so. When we think about what \$50,000 means to the state of Nebraska as opposed to what \$50,000 means to the city of Waterloo, that's a considerable different portion of our budget in our discretionary funds. So that seems an opportunity for us to get involved. This might be a little bit of, you know, when you have a hammer every problem starts to look like a nail. I'm a state senator. I introduce state law. But I'm willing to work with that to continue to make the most productive outcome and resources, as opposed to trying to get every individual municipality, county, and state agency to have their own individual program. Three, as opposed to its likelihood of its budget priority and the priorities of the state, I think that it is a tough fiscal year and I will note that my two years on the Legislature I've yet to pass anything with a fiscal note, so I understand that experience. I'm interested in working with stakeholders and if this has the support of the committee and we can get it out on the floor, I'd be interested in working with other stakeholders and the Appropriations Committee to see what we can do from there. I agree this is an issue that is hard to kind of project fiscal notes, and that was both mentioned by the State Patrol in their fiscal note and here in their testimony. I mean, frankly, ideally, we have no fiscal note, we've experienced our last line of duty death in the state of Nebraska. I know that's unrealistic, but it's something that as with many programs you hope the expenses are very low. The specificity, in the green copy there are rules and regulations and some authority delegated to the State Fire Marshal and the Superintendent of Public Safety. If that's too broad of a delegation of powers and we want to make more explicit definitions in the bill, that's certainly something I would be supportive of and willing to talk about, but that is kind of my initial intent there. And then, finally, the inclusion of correctional officers, I know Senator Chambers brought up the point of comparing...I believe he was comparing a correctional...a Department of Corrections groundskeeper versus a Department of Roads groundskeeper--I don't know if the position titles are exactly the same. In terms of making a dividing line of which people are deserving of this and which people are not, I mean, that is going to be a tough call. It's a tough call that I don't look forward to making. It's a tough call I don't think people will be looking forward to make. I would certainly be, if there's concerns going in either direction and we get support for this bill by either being more inclusive or more exclusive, that would be something I would be willing to talk about and discuss. With that, I will see if there are any questions. [LB212]

SENATOR ALBRECHT: Great. Thank you. Senator Chambers. [LB212]

SENATOR CHAMBERS: There's nothing in this law that prohibits a family or one of the possible recipients of this from going to court if a decision is not made that would allow such a payment to one whose relative has died, is it? People can go to court, in other words, to try to



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have a death declared to have been by accident or in the line of duty under this law. Isn't that true? [LB212]

SENATOR HANSEN: Yeah, I would think so. [LB212]

SENATOR CHAMBERS: And if that matter went to court, who is going to be the defendant if not the state? Would the state be the defendant? And would the state have to waive its sovereign immunity in order for a person to file such a lawsuit? And if the state had to, but refused to, then what? The person is just out in the cold, isn't that true? Maybe this bill should have gone to the Judicial Committee, huh? [LB212]

SENATOR HANSEN: Yes. I would say that would certainly...we'd have to clarify the mechanism and process there. Certainly, any time you have lawsuits against state or state agencies, in this case it might be the State Fire Marshal... [LB212]

SENATOR CHAMBERS: See, you all have colleagues on the Reference Committee who are not referencing bills correctly. And bills because...I'm hoping some of the new people can see what happens when bills are inappropriately referenced. There are matters that this committee is not designed to handle. The legal issues are there. None of them are addressed in this bill. So I'm going to ask you as the introducer of this bill, had you considered the challenge that could be made to a determination that a person's death was not in the line of duty, was not due to an accident, or that the one who died was willfully in violation of rules? That's not considered in here, is it? Does it tell how those issues are to be resolved? [LB212]

SENATOR HANSEN: No, it does not. [LB212]

SENATOR CHAMBERS: And I'm not blaming you. I just wanted that on the record for my smart-aleck colleagues who don't know how bills ought to be referred but they refer them for political reasons. And when that happens the issue in the bill gets caught up in other things. But that's all that I have to ask, except one question. [LB212]

SENATOR HANSEN: Yes. [LB212]

SENATOR CHAMBERS: I'm the Governor. You know I like to use analogies and metaphors. Senator, you have a magnificent bill here. You know that I believe in public safety and taking care of our citizens who risk their lives on a daily basis in order that we all might have a greater degree of safety. I've heard you and others of your persuasion concerned about the unwillingness of certain extensions or expansions of medical coverage to families you describe as deserving.

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Without me challenging your characterization, there's money only for one of those groups. Which group should I consider allowing to have money and the other not? It's on you. [LB212]

SENATOR HANSEN: It's on me? [LB212]

SENATOR CHAMBERS: Yes. [LB212]

SENATOR HANSEN: Uh... [LB212]

SENATOR CHAMBERS: Uh is not an answer. [LB212]

SENATOR HANSEN: No, no. Uh was a stall for time, I'll be honest. I would say that is a very insightful question, Governor, and I would have to make the decision as to what would do the greater benefit for the people of the state of Nebraska. [LB212]

SENATOR CHAMBERS: Would you say in determining the greater benefit for the people of Nebraska would be the greater benefit that goes to the greater number? [LB212]

SENATOR HANSEN: I think that would be fair, yes. [LB212]

SENATOR CHAMBERS: Are there more children and families in need of medical coverage than there would be people who would die in the line of duty, whether from violence or accident, in your opinion? [LB212]

SENATOR HANSEN: I would have to assume so, yes. [LB212]

SENATOR CHAMBERS: So then this should not be as high on my list of priorities for funding as the others. [LB212]

SENATOR HANSEN: If that's the standard you want to apply, that would be certainly a fair decision. [LB212]

SENATOR CHAMBERS: Thank you, young man. You've been very helpful. [LB212]

SENATOR HANSEN: Thank you. [LB212]

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SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions from the senators? Seeing none, thank you. [LB212]

SENATOR HANSEN: Thank you. [LB212]

SENATOR ALBRECHT: (Exhibits 4-8) And we will close this. Before I do so, I want to...for the record, we have some people that are proponents that mailed information in. So I have Clint Merithew of South Sioux City, the fire chief--I believe he's here though--I got a letter, too; Kim Quick from the Teamsters Local #554; Susan Martin from the Nebraska State AFL-CIO; Bill Bowes from the city of Papillion, the fire chief; and Jack Lennemann from Snyder Fire and Rescue Department. Those would all be proponents. We have no opponents or any neutral letters. So we'll close out LB212. And thank you all for being here. We'll talk with you about it soon. Next up, we have LB181, and Senator Quick will provide us with the information on reimbursement to the employees for certain medical examinations under Nebraska workmen's comp. [LB212]

SENATOR CHAMBERS: Are you going to require that he live up to his name? [LB181]

SENATOR ALBRECHT: I'm sorry? [LB181]

SENATOR CHAMBERS: Are you going to require that he live up to his name? [LB181]

SENATOR ALBRECHT: Yes, quick. No, I'm just...take as much time as you like. [LB181]

SENATOR QUICK: All right. Thank you, Madam Chair and thank you members of the Business and Labor Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I am the state senator from District 35 from Grand Island, Nebraska, and I'm here to bring you LB181. Under the current law an employee is required to submit to a medical exam performed by a physician furnished by the employer for its insured. The physician would then submit a report that could be used in a workmen's compensation case. LB181 would allow an employee who disagrees with the medical findings of the employer-appointed physician to be reimbursed by the employer or its insurer for a similar examination and report by a physician selected by the employee. This would provide a balance of medical findings for (inaudible). Understand that current law provides that if the employee does not already have a physician, the employer has a right to select a treating physician for the employee. This means that in a lot of cases the employee's treating physician has been selected by the employer and the physician doing a medical examination has been selected by the employer. And I would say that just doesn't seem quite fair. So I'm going to talk a little bit about my own personal experience. I've gone through work comp through...I had a work

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comp injury. And although my employer treated me very well, I would have to say I had some disagreements with my doctor who I would say I chose myself. And work comp probably liked my choice. But I had a rotator cuff injury and then as they did the surgery they also found two torn bicep ligaments. And I went in, they did the...as they were doing the surgery, that's when they found the two torn bicep ligaments. They reattached those. I found out quickly when I went in a week later for my first checkup after my surgery, the doctor gave me a return to work slip on light duty with restrictions. And I actually questioned him and said...well, actually, what I said to him, are you kidding me? And he said, this is work comp, this is what work comp tells me I have to do. And so from that point I was still on narcotics, I still had the staples in, I had a two and a half inch incision in my shoulder. And I called my HR person and told them and I had to take them the note. And my restriction was that I couldn't use my right arm at all. So from that point then I started getting calls from my case manager who oversees my work comp case and she told me that, oh, you can surely go to work, even though you're taking the narcotic. But just don't take it in the morning. Well, at that point I still required it pretty much...you know, I would take it every so many hours, whatever my prescription required. I was fortunate that my supervisor at that time said, we have a drug-free policy. You will not come to work while you're on narcotics. From that point, I had to keep...the nurse manager would call me every week and say, you can go to work. And my employer would say, no, you can't. So my...the part where I asked for a second opinion comes when I had my disability rating. And that...I could see from that point when I talked to my doctor that I was going to probably have an issue there. And when I went in they gave me an 8 percent disability rating, which I felt was a little low. We'd had a coworker...I had a coworker who had to have the same surgery, only without the torn bicep ligaments, he could move his shoulder pretty much anywhere he wanted. He could move his arm. He had a 10 percent disability rating. I received a 8 percent. I could get my arm up about 45 percent and that was with them pushing my arm up. I can get it up pretty much there now, but it's still painful. From that point I did call the case manager in Kearney and asked him, I said I was disappointed in my rating and said that, is there anything I can do? Can I get a second opinion? And he said, well, you can, but you'll have to pay for that yourself. And so that's where my position on this comes in for the second opinion. I felt like the employer should have probably paid for that second opinion visit. I also know that from experience if I had had this accident outside my workplace I would not have been able to come back to work until I was 100 percent. And then I also would have had to take a physical, carry so much weight, lift some, you know, lift things so high, and do that before I could even come back to work. And so I didn't have to do any of that to go back to work with the city after my work comp. I went back after about five weeks on light duty with restrictions. I started out at no more than five pounds, nothing above my shoulders, and then it just kind of increasingly went up. So I have to say my employer treated me well. I was a little disappointed with my doctor and I was disappointed in my disability rating. I chose not to fight it. I chose not to get a second opinion. I second guess myself sometimes on that, but that's what I chose to do. There will be others coming behind me that can testify to maybe some of the

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technical and legal questions. But I would be happy to answer any questions that you might have of me. [LB181]

SENATOR ALBRECHT: Any senators with any questions at this time? Seeing none, we'll call you back after we hear some testimony. [LB181]

SENATOR QUICK: All right. Thank you. [LB181]

SENATOR ALBRECHT: Okay. Do we have any proponents that would like to speak to LB181? [LB181]

ADAM TABOR: Chairperson Albrecht and members of the committee, thank you for allowing me to appear before you today. My name is Adam Tabor, T-a-b-o-r, and I'm an attorney out of Omaha and I represent injured workers in workers' compensation cases. I appear before you in support of LB181, which seeks to provide an injured worker with the right to obtain a second opinion with a physician of his or her choosing at the expense of the employer or its workers' compensation insurance carrier. Under current Nebraska law employers are able, they are allowed to compel an injured worker to attend a medical examination with a physician of their choosing. And they have the financial ability to pay for that examination. There are no limits to the number of examinations that the injured worker must attend with an employer- or insurance carrier-selected physician. And it's not unusual for an employer or insurance carrier to obtain multiple of these kinds of evaluations. For injured workers, it's not so easy to obtain a second opinion. Under the current law an injured worker has essentially two options: Number one, pay for it themselves. Or, number two, use one of the code sections, which is 48-134.01, regarding paying for an examination themselves. I can speak from experience that asking an injured worker--one of my clients--to pay for a medical evaluation and a report is simply not an option for them. They don't have the money to do it. Regarding 48-134.01, this is a statute that allows injured workers, employers, or the work comp carrier to obtain a medical evaluation from an independent medical examiner. The parties are expected to try and agree on the physician who will perform the evaluation. If the parties can't agree, then the Nebraska Work Comp Court would appoint a physician. Unfortunately, there's a prerequisite to utilizing 48-134.01. And that is, there has to be a dispute in the medical records. In order to have a dispute there has to be at least two medical opinions that are in conflict and employees or injured workers find themselves in a Catch-22. There might be only one opinion in the record so far. They have to go out and obtain a second one, which I've already described, financially they can't do. The ineffectiveness of 48-134.01 can be seen by looking at the number of cases in which it's used. According to the 2016 Nebraska Workers' Compensation Court Annual Report 48-134.01 was used only 29 times by injured workers in 2016. In 2016, there were approximately...well, there were 2,579 petitions either pending or filed during the year. That means that in approximately 1 percent of the cases,

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injured workers used that statute to obtain a medical examination. The point here is that the current system is not adequate. LB181 levels the playing field by recognizing the disparate financial positions between injured workers and insurance carriers. And with that, that concludes my remarks. And I respectfully request that this committee supports LB181. I'd be happy to answer any questions. [LB181]

SENATOR ALBRECHT: Thank you. Senators, do we have any questions? Go ahead, Senator Lowe. [LB181]

SENATOR LOWE: Adam, this does not have a business size. I know many small businesses, this may put a financial drain on them if you have three or four employees or ten employees, where it would not hurt a larger corporation to do this as much. But a small business, this may put a financial problem to them. I just worry about that. What's your feeling on that? [LB181]

ADAM TABOR: My feeling is that in the overwhelming amount of cases there will be an insurance carrier...work comp insurance carrier in place. I can't say in every case that the comp carrier would pay for this kind of evaluation, but I think that that would probably be the expectation. [LB181]

SENATOR LOWE: Okay. What if this would be put on the back of the business, not on the work comp carrier? [LB181]

ADAM TABOR: Well, I mean, we say the employer, but in work comp the employer and the insurance carrier are interchangeable. [LB181]

SENATOR ALBRECHT: Other questions? I guess I have a couple. You had mentioned only 1 percent in a year's time have really stepped up and went out and tried to find...to get another exam and the report for their employer? [LB181]

ADAM TABOR: What I'm saying is the procedure set forth in 48-134.01, which is statutorily the only opportunity that an employee has to get a second opinion, was only used in 1 percent of the cases that were where a petition was either pending during the year or filed. Now a petition is not a prerequisite for using 48-134.01, so the number is actually probably lower, but that's just a hard and fast number that I could find. [LB181]

SENATOR ALBRECHT: So why do you think that is only 1 percent? [LB181]

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ADAM TABOR: Because I think it is too...because I think that the fact that there has to be two opinions...there has to be conflicting medical evidence, the injured worker is forced to go out and find a second opinion. You know, they have to pay for that examination. And either it doesn't get done or, if they're lucky enough to get a second opinion, then they don't even follow through on this 48-134.01. [LB181]

SENATOR ALBRECHT: Okay. Thank you. [LB181]

ADAM TABOR: Thank you. [LB181]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak to LB181? Thank you. [LB181]

JOHN LINDSAY: Senator Albrecht, members of the committee...Senator Albrecht, I didn't fill out one of the sheet. I will get that when I'm finished. [LB181]

SENATOR ALBRECHT: Very good, very good. [LB181]

JOHN LINDSAY: John Lindsay, L-i-n-d-s-a-y, appearing as registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. And I want to just give a little overview. Since this is the first Business and Labor Committee hearing I think for several members, I want to give you just a review from kind of a 30,000 foot level of workers' compensation. Workers' compensation was called the great bargain or social compact from the early 1900s that had its roots in the industrial revolution. People were getting killed and injured on the job. The social compact that was reached was, an employee...if an employee is hurt would be compensated at a lower rate, but without having to prove liability, would have medical bills taken care of and a disability payment that under Nebraska law is two-thirds of their wages, capped by the average weekly wage statewide. In exchange the employer received immunity from lawsuit. The employee cannot sue the employer. You'll hear it probably throughout the session as the exclusive remedy, and that is that the exclusive remedy for the employee is the work comp system. So this...when Senator Quick talks about what his recovery was, that's it. And I'm not intimately familiar with the details of his injury, but regardless of how negligent the employer was, the employer is responsible only for work comp benefits. Second issue is that--and it's more drafting and I think the previous witness did address it a little bit--and that is, when you're dealing with Chapter 48 in the work comp area, when the term employer is used those are the obligations of the employer. The employer is typically insuring himself, herself, itself against any claims under the Work Comp Act. And so while the employer is the term that's used, it is the carrier who is stepping up and taking those responsibilities because that's what the employer has insured against. There are also self insureds. Now, those who are large enough to be able to gather enough financial

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resources to be able to cover those and to meet the statutory obligations to be able to qualify as a self insurer. Now I think the balance you're going to see throughout the year is balancing the issues of work comp premiums versus an injured worker who may not be able to work anymore. And I think that's going to be your job during a session is to balance those two ideas off of each other to determine what is good public policy. NATA is in support of this bill, and I'd be happy to answer any questions. [LB181]

SENATOR ALBRECHT: Thank you. Any questions from the senators? Seeing none, thank you. [LB181]

JOHN LINDSAY: Thank you. [LB181]

SENATOR ALBRECHT: Any other proponents for LB181? Any other proponents for LB181? Seeing none, I'll go on to opponents. Do we have any opponents on LB181? Please come forward. Hi there. [LB181]

PAUL BARTA: (Exhibit 1) Afternoon to the committee. My name is Paul Barta, P-a-u-l B-a-r-t-a. I'm here in opposition to LB181. I'm here on behalf of Nebraskans for Workers' Compensation Equity and Fairness, which is an association of employers. I likely will not take the entire amount of my five minutes, but I wanted to talk a little bit why I'm speaking in opposition to this bill. And frankly, I think some of the employers that our association represents have concerns. First, with all due respect to the senator who introduced the bill, I think some of his discussion regarding his experience addresses some of the concerns. Reading LB181 the way I do--and the concern is not limited just to this--but when Senator Quick talked about some of the issues he had where he wanted to have a second opinion he mentioned two or three concerns during the course of that. Looking at this bill as it is written, as a lawyer I look at it and I think, is this limited? Is it a one-time thing? Is it...when he indicated he had a need for temporary restrictions and then there was a discussion of permanent restrictions. So right off the bat Senator Lowe's question earlier regarding the issue of costs, of course, there are insurance companies involved. But those insurance companies get paid by the employers and so there's a concern on that. The other issue I would address, which I think is more important and frankly more fundamental to some of the concerns here is, this looks like...I practice law in Nebraska and Iowa, workers' compensation exclusively. This looks like the second opinion provision coming out of Iowa. And I realize we're not concerned about what Iowa does here, but that is an employer-directed care state. And what Iowa says is, at the end of the case after permanency and work restrictions have all been opined upon, because the employer has the exclusive right to direct care and to redirect care should they feel it medically necessary, the employee has a right at the end for an employer-funded second opinion examination, because the system is set up in such a fashion where that employee has to go through the employer-directed care for an accepted work injury. Now there



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was some discussion earlier about employers directing care in Nebraska. That's not entirely correct. An employee in Nebraska initially has the right for an accepted claim to treat with a physician either they've treated with or a close family member has treated with. The employer has to abide by that and the employer has to accept any kind of referral down the chain of referral. So understanding that the employee has the right from the start to go see their family physician and if their family physician says, well, you need to see an orthopedist, then the employer has to pay for the orthopedist going down the line. Further, there was discussion about how the employer, if the employee does not initially elect their own physician, how the employer has the right. Nebraska statutes already provide for, if you are recommended for a major surgery which is pretty much any surgery, that employee has the right at that time--even if the employer has been selecting care up until that point because the employee didn't elect early on--the employee has the right to select its surgeon. So the idea that there's a company doctor out there who's saying, well, stamped back to work, that's really not the current situation. So I guess my concern in this context is, we're taking a statutory scheme, the second opinion, from a state that is purely employer directed and we're putting it into a statutory scheme in Nebraska which is not. Finally, and I won't take too much more time here, there is a provision which Mr. Tabor had discussed regarding the ability to request a second opinion examination. He is correct that there has to be a dispute between medical professionals. And now different judges will indicate that means two different things. But in that context, I guess the question is, why are people not utilizing that? It is typically a situation where I think people are choosing to select the doctors they like to select as opposed to an impartial doctor. So I will stop there and if there's any questions, I'd be more than willing to answer them. [LB181]

SENATOR ALBRECHT: Thank you. Any questions from the senators? Senator Chambers. [LB181]

SENATOR CHAMBERS: If the court is going to make this order, is it necessary that there be two conflicting medical opinions in the record? [LB181]

PAUL BARTA: There has to be a dispute, yes, Senator. [LB181]

SENATOR CHAMBERS: And does the employee have to pay for one of those exams or... [LB181]

PAUL BARTA: Senator, frankly, in the context I see most often what will happen is there will be the employee will select a physician. The physician may have some comment or care or referral. The employer goes out and gets a second opinion on their own dime and then there will be a dispute at that point, frankly. The employee has a family doctor or whatever doctor saying, hey, he needs to see an orthopedist. There's another doctor retained by the employer saying, no, he

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doesn't. And then that's usually where that dispute arises. But, yes, there are situations where the employee, if the employer has obtained an opinion and there are no contradictory medical opinions, the employee would be responsible for that. [LB181]

SENATOR CHAMBERS: And if the employee cannot afford to get this opinion...I can tell that you don't have any problem with this for yourself and your family, but there are people who, you know, they're living on the edge or the cusp of poverty even with some jobs. If the employee cannot afford to get that opinion into the record, there's only one opinion. And in that case, the court would not order anything. Isn't that true? [LB181]

PAUL BARTA: Yes. [LB181]

SENATOR CHAMBERS: Okay. That's all I wanted to ask. Thank you. [LB181]

SENATOR ALBRECHT: Thank you. Any other questions? Seeing none, we'll go on to...do we have any other opponents wishing to speak? [LB181]

BOB HALLSTROM: (Exhibit 2) Chairman Albrecht and members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the National Federation of Independent Business in opposition to LB181. I believe Mr. Barta has covered most of the substantive issues that are in my written testimony, which I have submitted to become part of the record. But just in summary, we think also that this proposal would install an additional layer of expense upon employers or their workers' compensation carriers that provide them coverage that we don't think is necessary in light of the existing provisions of law. I think in most cases you are going to have a scenario where the employer or the workers' comp carrier is going to be paying for the physician that has been selected by the employee, so the employer or their carrier will foot the bill for that expense. If the employer has some reason to question any type of opinion that's been issued by that particular physician or a specialist or surgeon to which they've been referred, the employer will most likely go out and get their own opinion, which is also on the employer's dime. At that point, if there is a conflict then you have the mechanism set in place for individuals to go into the 81-3401 independent medical examiner system, which if that is utilized the employer pays for that particular examination as well, as I understand the law. And so I think we've got plenty of opinions that are already paid by the employer. Perhaps there's some way that we can try to improve the system with regard to the existing independent medical examiner system to encourage or enhance the ability to use that particular existing mechanism, even though that is again paid by the employer. So with that, I'd be happy to address any questions that the committee might have. [LB181]

SENATOR ALBRECHT: Thank you. Senator Chambers. [LB181]

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SENATOR CHAMBERS: Why doesn't the employer want to go ahead and pay for this second opinion that the employee procures? [LB181]

BOB HALLSTROM: Well, I think, Senator, you're already paying for the first physician or any specialist to which that injured employee is referred. [LB181]

SENATOR CHAMBERS: And you've selected that. You're the employer and you selected that one. [LB181]

BOB HALLSTROM: No, Senator. In most cases...by way of background, the way that the system works is that at the time of injury...we have an employee choice of physician provision. At the time of injury the employer must give a specific notice and form to the employee so that they may select, if they have a preexisting relationship or an immediate family member has an existing relationship with a family physician, they can select that and they are free to select that physician that they have that relationship with. If they do so, anything that flows from that in terms of a reference to an orthopedist for potential surgery and an opinion... [LB181]

SENATOR CHAMBERS: But you're getting ahead of me. [LB181]

BOB HALLSTROM: Okay. [LB181]

SENATOR CHAMBERS: If there is no physician. I haven't had a personal doctor in decades. And when I go in for a checkup of any kind, which I don't...I happened to get a "collin-o-scopy" (phonetically), as President Bush used to refer to them, but we ignorant people call them colonoscopies. When I went to get my "collin-o-scopy" they were shocked that at my age I hadn't gone to a doctor, I had no doctor. So if the employee has no doctor, then what? [LB181]

BOB HALLSTROM: Then in that case they probably have had a physician directed by the employer. [LB181]

SENATOR CHAMBERS: The employer? [LB181]

BOB HALLSTROM: Yes. [LB181]

SENATOR CHAMBERS: And that's what I think often happens. Many people who work don't have, cannot afford a physician. So in those cases where there is no ability to have a connection

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with a doctor the employer makes the selection. Why cannot the employee who does not have a doctor, family physician, obtain a second opinion which the employer pays for? [LB181]

BOB HALLSTROM: Senator, that could possibly be something that would be open to discussion. However, I think in the majority of cases, and perhaps a significant majority of cases, the physician is selected by the employee. [LB181]

SENATOR CHAMBERS: But the...I'm looking at the...see, you all deal with rich people, people who wear suits like you that can buy suits and things like that. So it's hard for you to envision people who are poor. I'm a poor man and I'm a poor man's son. But my poverty, in a sense, is by choice because I'm not seeking the kind of work that I could get with my knowledge and so forth that would pay me a sizable amount of money. And I've turned down jobs where I wouldn't even have to show up, just let my name be associated with a law firm and I'd be paid for it. But I won't do that. So even though it's a matter of choice, I live like a poor person. And I understand what poor people go through. And that informs my judgments and my decisions. You won't have a lobbyist for poor people at any committee hearings. You may have people who work with and on behalf, but poor people can't afford to hire a lobbyist. So here's what I'm saying all that in order to get to. I watch television on occasion and I hear people in the medical profession say, don't be afraid to tell your doctor you want a second opinion. Don't be afraid to get a second opinion. You should get a second opinion as though all you have to do is go ask a doctor to give me a second opinion and the doctor will. It doesn't work that way in reality. So for the constituency that I'm concerned about who have no connection with or to a doctor and they have gone to the employer-selected doctor, and I'm skeptical about the objectivity in a situation like that. And for that reason, I had to get a change in the law which at one point allowed the prosecutor to select the lawyer who would defend the defendant. That's hard for people to believe, that before I came along prosecutors were selecting the lawyer for indigent defendants and nobody saw it as a problem except me, because I'm a poor man and the son of a poor man. And I also know how the legal system works. So if you feel that everything is on the up and up and the employer has not skewed the system by selecting...let me ask you a question. From your experience, do employers have doctors that they usually refer employees to or do they go out when an employee gets hurt and find a doctor? [LB181]

BOB HALLSTROM: It probably depends, Senator, on the company involved. I would assume there are larger employers who may have medical staff on hand that would be there for the types of injuries that would occur in the workplace, whether they're significant or perhaps more likely if they're minor in nature. [LB181]

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SENATOR CHAMBERS: Well, let's say that they're not on staff. Are there doctors to whom employers routinely or regularly refer injured employees who do not have a physician of their own? [LB181]

BOB HALLSTROM: I would assume that may be the case, Senator, but I do not know personally so I would not venture a guess on that. [LB181]

SENATOR CHAMBERS: Well, since we deal in speculation, extrapolation, and cogitation, if that does happen, can you conceive of people who are also the children of poor parents wondering how much objectivity this doctor is going to have when the employer, who has an interest in that employee returning to work, would be skeptical about the objectivity of such a doctor? [LB181]

BOB HALLSTROM: Well, if you're suspecting that the employer is interested--which I believe they are--in getting that employee to return back to work, I would not have as much skepticism as you might imagine, because if the employer is interested in getting the employee back to work as quickly as possible, whether it's on limited duty or back to full capacity, I would suspect they would want to get a valid opinion and good treatment and, in fact, hope and think that that is the case. [LB181]

SENATOR CHAMBERS: Now based on the testimony of the introducer, let us say that before injury Jack was nimble and Jack was quick, then Jack fell over the candlestick. And after that fall, Jack is neither quick nor nimble, but the employer wants him back to work so Jack is sent to a doctor who will say he can go back to work and gives a work order. And in reality the person is not really ready and fit to go back to work. So here's what I'm trying to get an answer from you on. Are employers saying that the expense is a consideration as to why they'd be opposed to a bill like this, where they would have to pay for the second opinion? [LB181]

BOB HALLSTROM: Certainly, Senator, the expense and the fact that you're paying for the first doctor. In Senator Quick's situation, unfortunately, he was faced with an opinion from his own doctor that he had selected and that he wasn't happy with and perhaps rightfully so. But in this case where you've got a situation where the employer is paying for that doctor and the opinion that's rendered by that doctor and then goes out and gets their own second opinion or first opinion for them but the second opinion for in the case and they're also footing the bill for that one, and then... [LB181]

SENATOR CHAMBERS: But, my friend, I see difficulty here. If it's expensive to a business to pay for a second opinion, why does it become less expensive and difficult for a poor employee to pay for their second opinion? In other words, the impression is given that it's not going to cost

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the employee that much to get a second opinion, so don't plead poverty. But when you look at it from the standpoint of the business, well, those second opinions are so expensive we don't want to have to do it. It can't be both ways, but it is, because the business people can afford a competent lawyer like you as a lobbyist but the poor people can't. And you think businesses would go out of business and there are so many injuries to their employees that having to pay for a second opinion would be the difference between them staying in business or going out of business? [LB181]

BOB HALLSTROM: And, Senator, I'm not trying to make the distinction between the cost to the employer versus the cost to a poor person. I think what you look at is, the question is perhaps more aptly put, how many bites at the apple do we end up getting? If we have a situation where there is an opinion that's been rendered because the employee has chosen their own physician and then we have to go out and get a second opinion, how many bites at the apple do we get? [LB181]

SENATOR CHAMBERS: So you're saying if a mistake is made, then you live with it. That's what you're saying. [LB181]

BOB HALLSTROM: I'm not sure whether I'd say there's a mistake made. You've got two conflicting opinions. [LB181]

SENATOR CHAMBERS: I don't say that. I look at these people as entitled to dignity, self-respect, and they should not have to grovel, because generally they're not paid a fair wage in the first place. So they're dehumanized by having to work a job that is not giving adequate pay, may not have benefits of any kind to speak of. And the only thing that might be called a benefit, which it is not, would be workers' comp. So now this person has a doctor, who may not be that qualified or competent that he or she has gone to and now they've really needed the services, because poor people have to pay if they go to their own doctor, and we don't go to the doctor unless we really have to. So we develop ailments that people in your situation can avoid because you can seek preventative care. And when finally a doctor's care is needed, we don't know whether this doctor is capable or not, because we haven't gone there. We don't know anything about selecting doctors, so it's the one we go to. And the opinion is not what it ought to be. We have sense enough to know that, because if I can't raise my arm...if I can't raise my arm to shoulder level and this doctor says I can go back to work and everything I do requires me to raise my arms above shoulder level, then I've got to convince that employer I can't go back to work. He says, well, the doctor said you could and you chose the doctor. Well, I'm putting it in your court. Give me...let me get a second opinion. And you say, no, that should not happen. [LB181]

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BOB HALLSTROM: And, Senator, in that case I think that's why the law recognizes the ability and the hope that if that doctor is not qualified to render that opinion as a family physician that the employee can be referred to specialists who can render that opinion in a proper fashion. [LB181]

SENATOR CHAMBERS: And you said, hope. (Singing) Wishing and hoping and thinking and praying. [LB181]

BOB HALLSTROM: That's just the way I feel. Thank you. [LB181]

SENATOR CHAMBERS: That's all I have. I just wanted to get something into the record. And won't have to go through do this with everybody who comes. [LB181]

BOB HALLSTROM: Thank you, Senator. [LB181]

SENATOR ALBRECHT: Thank you. Any questions? Senator... [LB181]

SENATOR CRAWFORD: Thank you, Chairwoman. [LB181]

SENATOR ALBRECHT: Sorry. Crawford. [LB181]

SENATOR CRAWFORD: Just to clarify, if a employee begins the process with the physician chosen by the employer...if they decided, oh, I'll take that first appointment. If they start the process with that physician does that mean they have given up their ability to choose their family physician? [LB181]

BOB HALLSTROM: Well, my understanding, Senator, is that the law provides specifically that the family physician, if they have a relationship with a family physician or an immediate family member has that relationship, that that is the physician that they are to initially choose. And any referrals beyond that are continued to be the responsibility and expense, subject to causation and all of those types of things, of the employer or the work comp carrier. [LB181]

SENATOR CRAWFORD: The employee, though--let's say just for convenience purposes--thinks, well, it's hard to get into, I'll just go to the employer physician. Could they choose that thinking that that would be more convenient? [LB181]

BOB HALLSTROM: Certainly. [LB181]

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SENATOR CRAWFORD: And if they do so, do they give up their ability to then use their family physician if they've started down the one path? [LB181]

BOB HALLSTROM: Senator, I probably can't answer that, but I will get an answer for you. [LB181]

SENATOR CRAWFORD: Okay. Thank you. [LB181]

SENATOR ALBRECHT: Any other questions? Thank you. [LB181]

BOB HALLSTROM: Thank you. [LB181]

SENATOR ALBRECHT: Do we have another opponent? [LB181]

RON SEDLACEK: Good afternoon, Madam Chair and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, that's spelled R-o-n S-e-d-l-a-c-e-k, and I'm here on behalf of the Nebraska Chamber of Commerce. And I wish at this point I would have brought the notices for Rule 50 that take care of this, the choice issue; either that or the statute. The statute is actually 48-120 that kind of lays it all out. So if you take a look at 48-120 you get the actual verbiage. But way back in...many years ago, I'm thinking in the late '70s, there were issues as to whether or not Nebraska should change to an employee-choice or employer-choice state as far as physicians. There are a number of states, such as our neighbor Iowa, was mentioned that where the employer has the choice. Nebraska has always--that I am aware of--has had an employee choice. So there was some movement in work comp reforms effort to reconsider that issue. But it wasn't accepted, mostly because of the fact that we are quite a rural state and it takes...if an employer is going to make a choice and they want to send you halfway across the state, that's expensive, you don't have the relationship, and so forth. So the question was, how do you resolve this, because you do want that employee to get appropriate treatment on both sides...on all sides of the issue? You don't want to prolong the case and make...and exacerbate problems and expend more costs in either indemnity payments or in medical payments, so you want to try to get the best you can. So the compromise was the employee still gets the first choice and has that ability. And it doesn't have to be a physician that you already have a relationship with, it could be what a family member has a relationship with as well. So there was a leniency in that regard. Now if the employee says, I don't care, I don't want to choose one, I'm not going to select one, well, then it's left with the employer and the insurance carrier to make that decision at that point to get treatment. Now most of the time you're going to have the employee choose. And the employer may or the carrier may say, there's something wrong with this case. We'd like to see a second opinion. It doesn't happen all the time, but it can happen. If there's a dispute then it can go to an independent medical examiner. That's exactly what they are,



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independent, so you're kind of rolling the die. As an employer, you're going through additional expenses and you may loose out on that, so. That's not often done, but in those...in some minority cases...but there are cases of course where the employee does not choose a physician. Now if that physician then chosen by the employer or the carrier denies that claim, you get a second opinion. Or if there's surgery involved and so forth, there is exceptions to that, okay? So if there's a denial, you can say, I want a second opinion. You can get a second opinion, your own choosing, okay? And then that could always go again to an independent medical examiner. But that's kind of how the system works. Kind of piggybacking on previous testimony, there's a point where there should be some closure in this regard. But if there's...I'm not sure how many times we need to go through these opinions because what we're dealing here with is essentially getting a second opinion for a lot of subsets. And that was mentioned before in testimony, but only alluded to. It doesn't seem to be one, big medical examination as far as I can read it. It could be several different visits elsewhere and it comes to a point, well, where do you start and where do you stop? So that needs to be looked at and that's why I'm here today. And I'll be happy to entertain any questions. [LB181]

SENATOR ALBRECHT: Do we have any questions? Thank you. Okay. Any other opponents? [LB181]

KORBY GILBERTSON: Good afternoon, Chairwoman Albrecht and members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America and Tyson Foods in opposition to LB181. I just happen to have a copy of Rule 50, and I didn't make enough for the committee but I can leave it behind or I can send it to you, if you want me to. And instead of repeating what the people before me have said, I think our primary concerns is--and Senator Chambers brought this up--if you have someone that made an election for their physician and then perhaps the company asks for a second opinion, if that employee then decides they don't like it this bill allows them to say, oh, well, we want you to pay for another opinion. Well, then what happens when you come to another stage of the decision as far as disability determinations and things like that? So when is there a line going to be drawn as to what the employer has to pay for? I understand there might be some questions insofar as if the employee does not have a doctor or someone in their immediate family does not have a doctor of record that they could go to. I think that's addressed somewhat in the statute already in that if you are denied coverage you have a right to go out and get a second opinion that your employer has to pay for, furthermore. And I think it was said earlier, if there is a major surgery or it is a major injury there is automatically an ability to get a second opinion that is paid for by the employer. So the issues with this bill is perhaps not the issue of getting a second opinion, but where do we draw the line and the potential for a lot of second opinions being asked for just because they can be. With that, I'd be happy to try to answer any questions. [LB181]

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SENATOR ALBRECHT: Thank you. Do we have any questions for the testifier? Senator Crawford. [LB181]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. So that I understand, when you were talking at the beginning saying that there might still be a situation in a case where an employee simply doesn't have a family doctor, that might be an area where we need to do some work in that case. You're worried about the fact that it's too open and too many situations where you could (inaudible)... [LB181]

KORBY GILBERTSON: Well, I have to tell you, when I first started doing workers' compensation work the employee choice was a big issue and we had many, many, many, many, many really fun meetings during the interim for numerous years talking about employee choice. Obviously, in Iowa it is employer choice. You go to whoever your employer tells you to go to. In Nebraska it was hard fought to say, no, the employee should be able to pick who it is. But, obviously, there are concerns on both sides with, you're going to get a company doctor or you're going to get a doctor that's working for the trial attorney who's going to make sure that you have a higher issues or injury rating than what other doctors would say. That's on both sides. I'm not going to...I don't think that needs to be debated. So I think there was finally a decision made and an agreement made that, hey, if you have a doctor that you want to go to we will be with that doctor through the entire process, whoever they recommend for surgeries, the specialists that you need to go to. Then the employer is latched into paying for that. But if the employee says, I don't have a doctor. I'll go to the company doctor or whoever my insurance company recommends, then you need to stick with that decision also, because once we start letting people go back and forth, that's what creates the problem. And I think another thing that we have to keep in mind, I think that we immediately assume doctors are out there making false assumptions and saying people aren't as hurt as they are or they are more hurt than they are. I don't think many doctors would sit in this chair and say that that's what they want to do. Furthermore, I don't think you can say that employers want to have somebody back at work that isn't ready to be back at work, because what that adds to is them getting injured or someone else getting injured because they're back to work too soon. [LB181]

SENATOR ALBRECHT: Any other questions? Thank you. [LB181]

KORBY GILBERTSON: Great. Thank you very much. [LB181]

SENATOR ALBRECHT: Do we have any other opponents that would like to speak to LB181? Any other opponents? Seeing none, are there any in a neutral position that would like to speak? Anybody in a neutral position? Seeing none, I'll ask Senator Quick to come back up and close. [LB181]

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SENATOR QUICK: All right. Well, I'll just try to...so we can make it so that it's clear. I don't know if it's clear as mud or if we're...but the bill does only pay the second opinion if it's an employer doctor...doctor that the employer picks. And then I do agree that I chose my own...it was my personal choice for my doctor and I had a personal relationship with that doctor. How that ended up, I mean, he did great surgery. We disagreed on some of the terms. And the one thing in my testimony I wanted to try to make clear is that there's differences in employers and how they treat their employees. My employer treated me great. They said don't come back to work till you're ready, even though my doctor was giving me a return to work slip, I felt, too early. And there are different ways that the doctors...maybe like on my choice with my doctor he was sending me back to work too early. Another coworker went to a doctor that didn't send him back to work for six weeks with the same surgery that I had. I also would say that another employee that we had there, he went to his choice of doctor. His choice of doctor said he required surgery. The employer didn't like that opinion, so they required a second opinion. That opinion come back that he did not need surgery, so he's going through litigation now. So it can result that way, too. So the employer had the right to pay for a second opinion on their behalf. I would just ask that you please consider this bill. I know a lot of employees, maybe they don't seek a second opinion a lot of times because maybe they're discouraged or they're scared to go out and do it or they don't have enough money to do it. But for whatever reason, I don't think enough employees understand their rights. And I would just ask that you please consider this. And thank you. [LB181]

SENATOR ALBRECHT: (Exhibits 3, 4) Thank you. Then we'll close it, but before we do I want to just let you know that we had two letters. One proponent was Susan Martin from the Nebraska State AFL-CIO. And the other opponent, Margaret Blatchford from the City of Lincoln. So this will be closing. Thank you, Senator. We'll be moving on to Senator Harr. He has LB248, Adopt the Youth Opportunities in Learning and Occupations Act. Hello. [LB181]

SENATOR HARR: Thank you, Chair Albrecht. Members of the Business and Labor Committee, my name is Burke Harr, H-a-r-r, I represent Legislative District 8, in the true heart of Omaha. I am here on LB248. And I think if you look in your book you'll see I also have an amendment on it. I want to thank...start off by thanking legal staff here, Ms. Chaffee, for her assistance on this bill. This bill came about really last...in the last couple of years. I'm trying to figure out...and on this year as well. Long...I'll start out big and work my way down. What is this session about? What are we going to try to do this session? I think, obviously, number one is we need to balance the budget; two, Corrections; and three, we got to figure out a way to grow our economy so we have a little more money so we can afford tax cuts, both income and property. And I think that's probably the most important thing is it's easier to expand our economy and grow it and then we can work on the second part. So I tried to look...and I read some studies on what do we think we should do to grow our economy. And the first place I went to was "Nebraska's Next Economy" which was a report done by SRI International, commissioned by our Governor. And in that

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report it talks about how we need to look at high wage jobs and how do we attract or keep employers here so that we can keep those...our kiddos that we have with a college degree and make sure there are high wage jobs, because we invest a lot in them through K-12 education and through postsecondary education and we lose them. Right? And there are...we have more graduates than we do jobs. So I'm bringing a bill for that. That's not what today is. But the other part is, and it's a two-track, we have a lot of mid-skill jobs and we have very low unemployment. And what are we doing to help those vocational and technical jobs, those that require a year or two of education beyond high school? McDonald's is a great first job, I think is their tag line; America's best first job. But it should just be that, your first job. How do we take you from that job at McDonald's to a technical or vocational job and what are we doing? The community colleges are providing a great service, but they can't do it all. Right? There's a gap. We have a minority group out there and the achievement gap is shrinking, but there are still an increase in poverty and there's an increase in that gap as far as income. So what can we do to provide services to make sure that our kids who are the most vulnerable can get those jobs, so they can learn the job skills, the soft social skills, to help them succeed. The second place I went to was FSG, a "Nebraska Statewide Service (sic: Story)" and this was a survey. This was done by Accelerate Nebraska and this was prepared last February. It was very informative to me and it talks about why we need to decrease the achievement gap for low-income and growing minority populations, increased persistence and completion rate at postsecondary level--which of course means our community colleges, not just our four-year universities--and increase the number of high-skill, high-wage jobs. And this was a great report, because it talked about how there are really two tracks to take. Probably laid it out a little clearer than the SRI, and the SRI did a nice job. And then I also looked at, there was a study done by Gallup, "Analysis of Long-Term U.S. Productivity Decline." And in there they discuss a lot of the same problems in that we need to find a way to make sure we have a good work force. Again, a lot of jobs...we have companies that aren't growing in Nebraska that would probably like to because we have great people, but we don't have the work force. So what can we do collaboratively to create public-private partnerships to try to grow the state and leverage the work force we have along with the employers to do something transformational. And that's what this is about. Again, the idea is long-term property tax relief. So we can provide some of these skills. And the statement of intent lays it out pretty well. It's to provide funding that teaches young people the soft skills like personal attributes and interpersonal skills necessary to succeed in employment, prepare young people to enter the work force, develop marketable skills and competency to increase earning power, secure jobs for young people who successfully complete training. It goes on. And that's through four; you'll see there are nine of them. What we're trying to do here is take our young...there are...Commissioner Albin is behind me. He'll tell you WIOA, which is a great retraining program. We also...he should be commended for what we're doing in unemployment and helping our workers get back to work. This is a front-end bill. This is about how do we get them into the work force? How do we get them into that good job so that maybe we can lower our unemployment even further so they don't have transitional problems and they can continue to

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learn in their job. And so that's what I'm trying to do here. It's...again, this is one of the problems with our fiscal notes. We're going to take these kids, we're going to get them better jobs and we're going to get them past just a high school degree. We're going to provide those wraparound services to get them into that next job. They're going to earn more. They're going to pay more in taxes. And they're also going to be less reliant on our social services as a result. You look at our economy the last 20 years, the two largest increases are HHS and Corrections and the two smallest increases are K-12, special ed, and postsecondary education. Well, one is reactionary, one is an investment. What I want to do is make sure that where there's smaller growth, that we protect that investment we have. And if we protect that, that's going to decrease the need for the others. So there is a fiscal note associated with this, but the idea is this is about long-term growth. How do we grow our economy? And probably even more important than money is how do we make sure that these people have a satisfying life so they want to live in Nebraska, so they have a career, so they don't live day to day, so they're happier people. You know that's going to have...affects this generation, the next generation, it's going to have immediate affects on their communities. That doesn't show up in a fiscal note. This has a fiscal note. I say, granted it's at \$20 million, but I say it's a 50-50 leverage which really makes it \$40 million. Again, we're leveraging our private sector friends. But I'm willing to work with this committee to see what we can afford and to work with Chairman Stinner to see what we can afford to do. But this is I think, like I said earlier, this is one of those transformational pilot programs that we can do that I think can really change this state and make us a better place all around. And with that, I would entertain any questions you may have. [LB248]

SENATOR ALBRECHT: Thank you, Senator. Do we have any questions? Senator Crawford. [LB248]

SENATOR CRAWFORD: Thank you, Chairwoman Albrecht. Thank you, Senator Harr, for this bill and for working...thinking about the future. Is this...it seems to me what I recall from our discussion of WIOA that this age range is a key target for that federal program. Are there federal grants that you would expect we could also pull in to support this effort? [LB248]

SENATOR HARR: Well, and...oh, by the way, I do have letters of support from a number...and we'll read that in. So originally I said...I went to Erin Porterfield of the Work Force Development (sic: Heartland Workforce Solutions) and I said, WIOA takes us to a certain line and my question is, do we need to move the line further? Do we need to be able to move the line further? Do we need...is the line in the right place, but we just don't have enough funding? Or is it...are there gaps in there so that a lot of people won't get to that finish line? Okay? And she said, no, it's none of those. [LB248]

SENATOR CRAWFORD: No what? [LB248]

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SENATOR HARR: It's none of those. This is something separate. Yeah, you can use some federal dollars for this and maybe there will be, but this is something different in that we're teaching those soft social skills, the wraparound services. How to teach kids hope, right, so that they delay gratification. I did a year of Jesuit Volunteer Corps out in San Francisco; it was a predecessor to welfare reform. And it was sitting down with women, mainly women who had families, and teaching the simple, you know, you have to go to a job ten minutes early. You have to find a support basis for yourself so that if you do have children how do you find child care. How do you have a backup in case your daycare provider is sick? You have to continue to work, right? Just because you have money in your pocket you can't say, I'm not going to work for six months because I've got enough money in my pocket. It's teaching some of those skills. Currency, how to work with currency. So take some of the programs of WIOA, but it's something different as well. The other part is--and I leave it pretty vague--and I leave it to the Department of Labor to look to see...what I'm describing may be the needs today. Ten, fifteen years down the road maybe the needs will change. And so they are able to adapt with the changes in our economy. The only thing constant in our economy is the speed is only going to increase of change. So I leave it purposely vague and I want to address these young kids so we can get them off the ground and get them a little head start and then from there let the Department of Labor decide where the needs are. [LB248]

SENATOR CRAWFORD: Thank you. [LB248]

SENATOR ALBRECHT: Any other questions? Senator Halloran. [LB248]

SENATOR HALLORAN: Thank you, Chairperson Albrecht. So I'm a little confused. The fiscal note is roughly \$206,000 2017-18, 2018-19 is \$245,000, but we're looking at appropriating \$20 million? [LB248]

SENATOR HARR: Right. So that fiscal note is the cost to administer the grant and to follow up to make sure the money is being spent properly. [LB248]

SENATOR HALLORAN: Okay. And it's incumbent upon the Department of Labor to make sure that this is...to administer this grant money? Is that (inaudible). [LB248]

SENATOR HARR: Yeah. And so...you know, and that's a great question. Why did I choose the Department of Labor? Right? And so you have DED, Department of Economic Development, you have Department of Labor, and you have Department of Education. And we are very fortunate, those three work well together. And they have to work seamlessly hand-in-glove together to figure out...and I went with Department of Labor because DED is going to be working on those high-wage jobs. And so I wanted something so that we don't pile all on one

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agency. That's why I went with Department of Labor. And, quite frankly, I think Commissioner Albin is doing a great job. And I knew he could handle this and so I wanted to work with someone I trusted. Not that I don't trust DED, but it was someone I trusted. [LB248]

SENATOR HALLORAN: I guess what I'm looking for is...and maybe the...what I'm looking for is the detail on what these employers are going to do with the money to engage this project (inaudible)... [LB248]

SENATOR HARR: Oh, okay. Right? So, there's a program in Omaha, Blue Cross and Blue Shield works with young kids who come from high poverty, first generational and it's an internship program. We have...that's one of the things that came out. We have Internship Nebraska (sic: InternNE), which is very successful, but it's limited in what it does. It provides kids jobs. But it doesn't provide some of those soft social skills of, what do you wear to work? What do you wear at your job interview? I'll never forget, I used to work in a law firm. And there as a kid who...well, a woman who grew up in poverty and she was very, very, very bright but she didn't know what to wear to a job interview. Formal meant formal, there wasn't business formal versus social formal and so she wore a long dress. Right? Nothing wrong with that, but that's just not...that's formal attire, but that wasn't the proper. And it's just teaching some of those simple things that you and I take for granted. How to...delayed gratification. We take that for granted. And working...it's going to take more time to work with those kids and to say, I understand you're going to be late. You can't be late. I'm going to give you a little longer leash. Okay? And I'm going to work with you. And we're going to have some training outside of your formal job training to make sure you have the skills to succeed, because for whatever reason community colleges exist. And our community colleges do a great job, right? And it's...our prices are very reasonable, some might say too reasonable. But even though they're available and finances I don't think are hindrance for most people attending community college. People aren't successfully completing. Why is that? This will address that issue. [LB248]

SENATOR HALLORAN: I guess what I'm looking for is, are there already set up, prescribed lists? I mean we've got (a) through (h) here... [LB248]

SENATOR HARR: Yeah. [LB248]

SENATOR HALLORAN: ...of objectives. But are there...is there details to what the people that are going to receive this grant money will have in hand to teach these...I mean (inaudible)... [LB248]

SENATOR HARR: That's what the grant application is for, right? That's what rules and regs are for, because what we might need today...there's a nonprofit in Omaha, Avenue Scholars, that

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works with high-poverty, first generation kids, college-going kids, who are in the bottom quartile of their class, but they have a high Gallup-HOPE index. They want to succeed. And so they have a program. That could be one that applies. Tommy Warren, who is a former chief of police, has another program. They could apply. The answer is, I'm going to let the market decide. And that's what that \$200,000 is about, it's analyzing who has the best results and then figure out how can we do that better? I don't want to be overly prescriptive. I have faith that Department of Labor will do what they need to do. I have faith that they can oversee these grants and they'll know ahead of time what work and what don't. And then, quite frankly, we're going to collect data and based on that data it's to inform where the program should go. But I don't want to be overly prescriptive and then have to come back--you know, I only have two years left--have you come back and change the law. I think we need to have more flexibility built into it, but with the understanding of what the objectives are. And then let them decide what's the best way of implementing that. [LB248]

SENATOR HALLORAN: Okay. [LB248]

SENATOR ALBRECHT: Thank you. Any other questions? I have just a couple. I did read through it, but what were the age groups that you're trying to help again? The age groups? [LB248]

SENATOR HARR: Sixteen- to twenty-four-year-olds. [LB248]

SENATOR ALBRECHT: Sixteen to twenty-four, so do you feel like our schools maybe aren't doing enough to help with those (inaudible) type? [LB248]

SENATOR HARR: No, just the opposite is I think we can help our schools to leverage what they're already doing. This is another way of getting property tax relief, right, so we can do a 50-50 grant thing. Voc tech schools went out of style for awhile and I think we're starting to realize that was a mistake. But it's expensive to start them up again. So this is a way...a catalyst of saying, okay, schools, do you want to do this? We'll pay for part of it. You provide some of the services and you can work with a nonprofit and you can work with a community college, however you want. But let's have someone who oversees this and it's outside of the schools. [LB248]

SENATOR ALBRECHT: I will definitely say, talking to several people in the past year that was a big deal. The career centers throughout our state are definitely needed and of course they're asking for funding to try to start up. Both the private and the schools wanted to have a little bit of help there. So spelling out like who can get it and who would qualify and who wouldn't. So



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would you give it to a private...like a body shop to bring kids over and help them understand that they can be a body...? [LB248]

SENATOR HARR: The answer is, they could possibly, yeah. A body shop could qualify, depending on what they do. [LB248]

SENATOR ALBRECHT: A welder, electrician? [LB248]

SENATOR HARR: Yep. Yep, depending what that nonprofit and/or business want. Ultimately, it's going to be the Department of Labor decides which one is most...will work best, but they're going to have to provide guidance on it. But that's the idea, is we want private enterprise. This is a public-private partnership and we want private enterprise being involved and realizing that you may lose a little money on this person in the beginning, but you're going to get it on the back end. And it's going to take a little longer and we're going to supplement that income a little bit, just like we do with the InternNE program, which has been very, very successful. [LB248]

SENATOR ALBRECHT: And when you look at the budget that we have...the budget shortfall... [LB248]

SENATOR HARR: Yeah. [LB248]

SENATOR ALBRECHT: ...have you carved this out somewhere somehow to (inaudible)... [LB248]

SENATOR HARR: Not yet. I'm looking. I'm looking, but again we want to employ...I'm an old soul, right? I've been here all of six years, I'm on seven. But my first year we said we were just going to cut 5 percent across the top and that's how we were going to solve our budget problem. What we found was that was a mistake. HHS had all kinds of problems. Corrections have all kinds of problems. Just because we're in a budget shortfall doesn't mean we shouldn't reinvest in ourselves and should reinvest in the state. And this is one way I think we can reinvest. And this is investing in those people who are on the edge, right? Do you want them not to get this degree and go to our HHS and Corrections, and then they're a liability to the state? Or do you want to spend that little bit of money, penny-wise, you know, or spend that little money and now they get that better job, they have that stability, they're not using our social services, and they're paying income taxes in. I mean, that's how you flip it. And so that's aimed at those who are right there on the edge. I think this is a really good investment. It doesn't show up in fiscal notes. I will fully concede that. We don't do dynamic fiscal notes, but this is something the data out there shows. You take these kids and you get them to that next level and not only are we not paying for them,

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we're not paying for their kids. And their kids go on to the next level. And that's maybe where we get them into the four-year degree. [LB248]

SENATOR ALBRECHT: Very good. Thank you. Any other questions? Seeing none, I'll start taking some proponents. [LB248]

SENATOR HARR: Thank you. [LB248]

SENATOR ALBRECHT: Thank you. Do we have any proponents wishing to speak to LB248? [LB248]

HANNAH YOUNG: (Exhibit 1) Hello. Good afternoon, Senators. I am Hannah Young, H-a-n-n-a-h Y-o-u-n-g, and I am here representing Nonprofit Association of the Midlands. I have handed a letter from our CEO, Anne Hindery, who could unfortunately not be here today. We are a statewide membership organization that represents nonprofits of all sizes and missions across the state of Nebraska, and we are here to show our support for LB248. We have three main reasons why: We believe it would help nonprofits who are already doing this work and encourage more, the funding to be able to do it and continue, and build capacity across the state. We believe it would help the youth across our state get and stay employed in those jobs. And we believe it would help our overall economy in the state of Nebraska. For those reasons, we support LB248. I realize that was pretty short, but I would be happy to answer any questions. [LB248]

SENATOR ALBRECHT: Thank you. Any questions from the senators? [LB248]

HANNAH YOUNG: Thank you very much. [LB248]

SENATOR ALBRECHT: Thank you. Any other proponents that would like to speak to LB248? Any other proponents? Okay, they're on the edge. I'll move on to any opponents that would like to speak to LB248. Any opponents? Must be a good bill. How about anybody in a neutral position? [LB248]

GREG ADAMS: Good afternoon, Senators. I'll make my comments short, I can tell. I can tell. My name is Greg Adams, G-r-e-g A-d-a-m-s, I'm the executive director of the Nebraska Community College Association. I'm here in the neutral. As we went through this bill, my board believes it is important. We don't have a direct place in this, although I suppose it could be interpreted to say that the community colleges could enter into relationships with the nonprofits or if that language needed to be added we'd be appreciative of that. More specifically, maybe I can further the argument. When I occupied the office across the hall a few years ago, an e-mail

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came across my desk one day from a rather large organization here in the state and I was copied on that e-mail. And it said, well, again, education doesn't understand what we need in the work force. Well, having come from the classroom I was a little upset by that. So I called those folks and asked them to come over to the office. I said, you bring whoever you want and I'm going to get the commissioner of Education here and the Chair of the Education Committee and we're going to sit here until we get this articulated what the problem is. Well, to make a long story short, the business community brought HR people from five different people from across the state and the education community was there and we pried away for about 45 minutes. Is it math? No, not really. Is it reading and writing, public speaking? No, not really. What's the problem? What then is the problem? Well, the problem really is soft skills. It's soft skills. In the jobs that these folks were representing, it's soft skills. We have to have people that know what to wear to work. We have to have people that know that 7:00 a.m. means 7:00 a.m., not 7:15. The list goes on, and you know all of that list. I looked at them and I said to them, I hope you don't expect K-12 to fix all of that, because they already carry too big a burden and, oh, by the way, so we create a class in how to act, how to dress for an interview? That makes no sense. What's missing is that relationship that many kids used to have with an employer where they learned how to work. Now there's a lot of kids working, you know, work in fast food, but oftentimes your supervisor is about a year or two older than you are and you don't learn much from that. And in so many instances, the activities and things going on in the K-12 world just simply take away from a kid's opportunity to learn those soft skills. And, frankly, we can go into a lot of our rural communities and the businesses are not there to take on a lot of these kids and to show them. Internships, apprenticeships, these kids need to be able to get into a workplace and have an employer also willing to tell them, this isn't how you act, this isn't how you dress, it doesn't work this way. I'm going to conclude, but I was asked to speak at a business law class at UNO and they were seniors and a handful of juniors. And when it was all over with, I said to the professor that had invited me over, I said, I'm shocked. I said, I saw no ball caps in the room, no coffee cups in front of people's faces, no cell phones being used. He says, watch this. They don't get to leave my lecture hall until they shake my hand. And if they don't shake it the way it's supposed to be shaken, get to the back of the line, try it again. They know contract law. I will guarantee you that before they leave here. They also need to know how to fit in the workplace and get the job done. If this creates an opportunity to learn those kinds of things, to incentivize businesses, then so be it. Thank you. I'd take a question. [LB248]

SENATOR ALBRECHT: Thank you very much. Any questions from the senators? [LB248]

GREG ADAMS: Thank you. [LB248]

SENATOR ALBRECHT: Thank you for being here. [LB248]

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JOHN SPATZ: (Exhibits 2, 3) Good afternoon, Senator Albrecht and the rest of the committee. My name is John Spatz, it is spelled J-o-h-n S-p-a-t-z, but believe it or not it is pronounced Spots (phonetically). I'm the executive director of the Nebraska Association of School Boards and I'm pleased to be here today. And you may wonder, what are the school boards doing in this committee talking about this bill? In July of 2015 my legislative committee met and my legislative committee was made up of representatives from all across the state, urban and rural, east and west. And the discussion of property taxes and school funding came up. And the discussion went about as well as you could imagine. There's no obvious solution. But the direction from my committee was, NASB has to engage in this issue, which is not exactly easy for us because we do represent equalized and nonequalized, big, small, urban, and rural. So we began looking at this and we really identified three areas of concern: One, I'm not going to talk about, but the tax policy, we're kind of calling that the short term. We've evolved over the last few decades into a different type of an economy and our tax system really hasn't evolved. But there's really, more importantly, two longer term concepts that we've been talking about that we're worried about and we're calling it supply and demand. From a long-term perspective, one of the biggest problems in the state is that we're too dependent upon the ag economy. So the question is, how do we develop a strategic plan statewide to diversify our economy, to channel people, kids into higher wage jobs and to high demand jobs on the supply side? And what are the elements that will help us achieve something like that, that diversification? On the demand side we're calling it--and I handed out this sheet, and you've probably seen this before--but over the last 20 years as a percentage of the state budget, the things that are growing are things like Corrections and Medicaid and Child Welfare. The things that are shrinking as a percentage of the state budget are K-12, higher ed, special ed. And there's kind of a good news/bad news story to this. The obvious bad news is, this is a terrible trajectory and it's not sustainable. So even if we found a magic pot of money that solved our budget concerns this year, if this trend continues we'll always be talking about this. So what we've been talking about as a school board association are what are the elements that's going to change this demand, that's going to lower demand? So not simply saying we're going to cut Corrections or cut HHS, but we're seeing fewer people go into Corrections, fewer people qualify for Medicaid? How do we change that demand? What are the key elements? This last fall we talked to our membership statewide from Scottsbluff to Omaha and Valentine, North Platte, Kearney, Norfolk, and we said, what is important to you to change these elements on the supply and demand side at the local level and at the state level? And there's two primary things that came that my board of directors are really looking at right now. Number one, whole child concepts, physical, mental, behavioral, health of kids. But the other one, honestly it surprised me a little bit. But what people said statewide is we've got to find job opportunities for teens and young adults. So that's why when I read this bill I was very intrigued and I appreciate Senator Harr introducing this. Now, obviously, in a year where the budget situation is bad a \$20 million appropriation is difficult for us when we're looking for TEEOSA. Difficult for us except that we're very interested in engaging in this issue. So really for the record, on behalf of the school board members from around the state, we're

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figuratively reaching our hand out to this committee, to Senator Harr, to the Legislature, to let you know we want to engage in this. We've got to find ways to get young kids employed into high demand jobs to diversify our economy. And we've got to begin changing the demand at the state level. The response we got from elected school board members from around the state was that job opportunities for teens and young adults are very important to do that. So we really do want to engage Senator Harr, this committee, on this issue from here moving forward. And like I said, figuratively we're reaching out and saying these are good concepts that we want to participate in. [LB248]

SENATOR ALBRECHT: Great. Thank you. Any questions? [LB248]

JOHN SPATZ: Thank you. Appreciate it. [LB248]

SENATOR ALBRECHT: Thanks for coming. Another in the neutral position? [LB248]

LINDA RICHARDS: Good afternoon, Chairwoman and committee members. I am Linda Richards, L-i-n-d-a R-i-c-h-a-r-d-s, I am here on behalf of the Nebraska Association of School Boards' board of directors' legislative committee, I am the president of the Nebraska Association of School Boards. Mr. Spatz gave you the details and the information that is present. I will just...wanted to come today to tell you that as a school board member, a locally elected official, that conversation that we had statewide, I think it was really important for us to hear the message from our local community leaders, our school board members, the importance that they see in our teen and youth as they progress through our system, through our K-12 system. And what's the outcome? What's the goal? Right? You asked a question earlier I think of Senator Harr, Senator, about is this because schools aren't getting it done? And he did a great job answering that question. But let me just echo that as we looked through this bill and we talked about it, we saw a lot of the great things that we're doing that we will now be able to partner and have some support in doing with those entities that we think are probably the most critical to be partnering with, our businesses, our local community, entities, organizations, not-for-profits, those who come alongside public education all the time. And so we're excited about what this bill speaks of as far as the future and the opportunities that exist. You'll see on the sheet that Mr. Spatz handed out to you--it's two-sided--and it comes from our area membership meeting, what we can do at the local level. And he talked about the left side, the demand side with you. I do want to highlight the supply side and I want to tell you that 1,724 school board members across the state what response is, is top two local issues that strengthen the economy and add jobs in high-wage industries within your community. Look at that number one response: It's K-12 engagement in the local community with local leaders to develop a local vision for economic growth. We see ourselves as a critical part of the pipeline for economic growth in this state. We are a part of what makes Nebraska grow and we're proud of that. And you'll see the next area is career pathway

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programs for K-12. This bill speaks to how that can be executed in partnership with our local communities, with our local leaders. This is the future, working together. We can't do it all at the K-12 level. We shouldn't be doing it all at the K-12 level. We have to partner with our community colleges, with our universities, with our business communities, with our not-for-profits. And we're excited about the vision that this bill casts. I told Senator Harr we would be here. We're here in support, but I'm also a 21-year veteran of my local school board and I know that the appropriation that is outlined in this, at this time in our state is difficult to do. And I get that, but we should not be afraid of having the conversation about the concept, the content of the questions this bill asks us to ask ourselves. What is the future for our students? We spend the time and the dollars and the resources locally to place them through our system, with an outcome of what? Let's partner together. Let's work together to see to it that all the great work that we're doing in the K-12 education arena can continue on as we move these students through their college and into their careers and into high paying in which they stay here in this great state of Nebraska. I'd entertain any questions that you have. [LB248]

SENATOR ALBRECHT: Thank you. Any questions? Just a couple. [LB248]

LINDA RICHARDS: Absolutely. [LB248]

SENATOR ALBRECHT: So are you a neutral position or a proponent? [LB248]

LINDA RICHARDS: I'm a neutral, but it's only on that appropriation. We wanted to make sure that we were clear as an association, that we are not coming asking for dollars. We really don't want that to be the thing that stops this bill from having the conversation that it desperately needs to have. [LB248]

SENATOR ALBRECHT: Very good. [LB248]

LINDA RICHARDS: Things cost money, we know that. We want you to talk about the concept. We want you to talk about what it is this bill is asking us to consider. [LB248]

SENATOR ALBRECHT: All right. And again, the question that I had for Senator Harr was simply put that, is it really happening in the K-12 that we're not wrapping our arms around that in the schools? So again, if you went to the school boards and... [LB248]

LINDA RICHARDS: Yeah. [LB248]

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SENATOR ALBRECHT: ...they're frustrated, too, because their own children don't have jobs at 16 and we don't have anyplace to put them. I mean, I remember growing up that you had all kinds of business leaders that would come and try to help you out. [LB248]

LINDA RICHARDS: Right. [LB248]

SENATOR ALBRECHT: So what I was hearing in the last year was simply that career centers have got to start popping up. [LB248]

LINDA RICHARDS: Absolutely. [LB248]

SENATOR ALBRECHT: We've got to start getting together with the schools, with the business leaders, all of us have to come together for the greater good of our whole state. [LB248]

LINDA RICHARDS: Absolutely. That's correct. [LB248]

SENATOR ALBRECHT: So simply not put that I'm looking to (inaudible) education by any means. It was simply to let you know that I care about how it gets done. (Inaudible). [LB248]

LINDA RICHARDS: I know you do. And I'm very spot on with your comments and I really do appreciate that. And I appreciate our opportunity. We avail ourselves, 1,724 of us strong, in local communities to help you as you process through this. If there's anything that you need, we'll be glad to help you. [LB248]

SENATOR ALBRECHT: Thank you so much for your testimony. [LB248]

LINDA RICHARDS: Absolutely. Thank you for your service. [LB248]

SENATOR ALBRECHT: Do we have any other in neutral position that would like to testify? Anyone else in a neutral position? Seeing none, I'll let Senator Harr close and then I'll let you know a couple of other letters that we had. Thanks. [LB248]

SENATOR HARR: Thank you. Thank you, Madam Chair, members of the Business and Labor Committee. So I was looking over the FSG because I thought maybe I need a little more data or something to prove and to let you know FSG was a study done by Accelerate Nebraska. Accelerate Nebraska is a organization that was formed by a number of leaders in the Omaha business community, including Jeff Schmid from Mutual of Omaha and Mickey Anderson of

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Performance. And talk to Mr. Anderson and he'll tell you at any given time he has room for 250 employees that need that next level, high-wage, high-skilled jobs, whether that is mechanic or working in his shops. I know the Chair has familiarity with a car dealership that knows, you know, those shops, that's where the money is and they need good employees back there. I was looking at the study and it has key statewide findings in its summary. And it said, Nebraska has a robust economy with one of the lowest unemployment rates in the country. Nebraska--so this is partially the other that I'm working on--Nebraska is producing more postsecondary graduates that can be employed at their appropriate skill level in the state. Then it goes on to state: There is uncertainty about whether our other grads match specific industry needs and have the requisite soft skills to succeed. If Nebraska wishes to better align the supply of talent to its market requirements it will need its graduates aligned to and prepared to succeed in high demand jobs. That's what we're trying to do here. I know there's a cost. I'm willing to work with the committee. I'm willing to work with...and I've already talked to Chairman Stinner about maybe finding some ways of funding this. I think this is an important program. I think this is something, like I said, that's transformational that we'll look back upon, like we do our InternNE, and say, let's take that public-private partnership and let's try to find a way to succeed and really help our young kids not just survive, but strive in this state. So thank you very much. I appreciate your time today. [LB248]

SENATOR ALBRECHT: Thank you. Any questions? Senator Chambers. [LB248]

SENATOR CHAMBERS: I wasn't avoiding you, I couldn't anyway. But we'll have a chance to talk about it, you know, from time to time anyway. [LB248]

SENATOR HARR: Great. I look forward to your input. Thank you. [LB248]

SENATOR ALBRECHT: Thank you. Any other questions? Seeing none, thank you for coming. [LB248]

SENATOR HARR: Thank you. [LB248]

SENATOR ALBRECHT: (Exhibits 4-8) I have two proponents, actually were three proponents that sent letters in. It would be Erin Porterfield from Heartland Workforce Solutions; Sue Martin from the Nebraska (State) AFL-CIO; Barry Kennedy, The State Chamber; Nolan Beyer, Millard Public Schools; David Brown, Greater Omaha Chamber. Those are all proponents. We have no opponents or anyone in a neutral standing. All right. We'll move on to the next bill, it would be LB203 from Senator Kuehn. I'll just go ahead and give you the floor (inaudible). [LB248]



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SENATOR KUEHN: All right. Good afternoon, Chairman Albrecht and members of the Business and Labor Committee. For the record, my name is John Kuehn, J-o-h-n K-u-e-h-n, and I represent the 38th Legislative District in south-central Nebraska. I'm here today to introduce LB203, which is a bill pertaining to unemployment insurance for the consideration of the committee. I have drafted about a 45-minute opening that I know you're very excited about hearing this afternoon. Actually, I will keep my opening remarks brief, allowing those who will be coming behind me, representatives from Department of Labor and industry who are content experts, to provide you greater insight into the specifics and implications of this legislation. LB203 is a bill that is a rewrite essentially of LB841, which was heard by this committee last year and advanced to General File. Briefly, LB203 only makes changes to the requirement for those who seek unemployment benefits after voluntarily leaving a job without good cause. Forty-seven states currently require some form of a requalification for unemployment insurance benefits after a person voluntarily quits without good cause. Currently, Nebraska does not. LB203 would change the time period for qualification of covered wages for unemployment insureds to four times the weekly benefit amount of the employed individual. Once the individual has earned the required amount in covered wages, they are eligible for unemployment insurance upon separation from a new employer under nondisqualifying circumstances. I will again allow ample time for those who work very closely with unemployment insurance and have experience in this field, but I am happy to answer any questions the committee may have at this point in time. [LB203]

SENATOR ALBRECHT: Thank you. Do we have any questions for Senator Kuehn before he sits down and we take some proponents? Seeing none, we'll talk to you and we'll let you close here shortly. Okay, we'd like to start with the proponents of LB203. [LB203]

JOHN ALBIN: (Exhibit 1) Senator Albrecht, 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 here today in support of LB203. I would like to thank Senator Kuehn for introducing LB203 on behalf of the department. The unemployment system was established to provide economic support to individuals who became unemployed through no fault of their own. Of the 53 jurisdictions--50 states plus District of Columbia, Virgin Islands, and Puerto Rico--50 of those jurisdictions require individuals who quit their most recent employment without good cause to requalify for benefits through subsequent employment before they become eligible to receive unemployment payments. Only Nebraska, Colorado, and Alaska do not require an individual to requalify for benefits when the individual quits his or her employment without good cause. All other states and jurisdictions require an individual who quits employment without good cause to requalify for benefits. Under LB203, Nebraska would adopt the majority position 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. Under LB203 an individual who quits without good cause would requalify for unemployment benefits

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by finding subsequent employment and earning wages in employment equal to at least four times the weekly benefit amount they would have otherwise been eligible to receive. I want to emphasize again that the requalification requirement in LB203 would apply only to a quit without good cause from the individual's most recent employer, that is the separation that caused the individual to become unemployed and file for benefits. Other quits occurring during the base period would only result in a benefit reduction as currently applies under section 48-626. It is also important to note that LB203 does not change what constitutes good cause for leaving one's employment. The ten statutorily enumerated good cause quits listed in section 48-628.01 would continue to apply as would those good cause quits established through case law. Examples of good cause quits established by our district and appellate courts include, but are not limited to: a reduction in pay; termination of benefits promised at the time of hire; failure of the employer to timely pay wages; a substantial increase or decrease in the number of hours of work; demotion due to reasons other than misconduct; material changes in the working conditions; and changes in job duties to a point where the workload becomes unreasonable. Of the 60,720 initial claims filed in calendar year 2015, 7,892 of those claims involved a voluntary separation without good cause from the most recent employer. Of those 7,892 individuals, 2,860 subsequently drew benefits in the total amount \$7,279,445. In summary, LB203 would bring Nebraska into the mainstream of unemployment law in terms of its treatment of those who voluntarily quit their employment without good cause. That concludes my testimony and I'd be happy to try and answer any questions that you might have. [LB203]

SENATOR ALBRECHT: Thank you. Do we have any questions? Senator Crawford. [LB203]

SENATOR CRAWFORD: Thank you, Chair Albrecht. And thank you, Commissioner, for being here today. So just understanding what this means in terms of the reduction of benefits to someone who leaves their employment, from the language on page 2 it talks about what you're entitled to is like 26 times your weekly benefit amount in a year. And so is that fair to say then that the condition under section...on the next page, page 3, there's a section (3)(a)(ii), is 13 times his or her weekly benefit amount? Is it basically the case that if you leave under these conditions, in the conditions in that clause, that you're basically cutting your benefits in half? Is that what the 13 times means? [LB203]

JOHN ALBIN: That's current law, Senator. Under the current law...we'll just use easy numbers because I'm not good at math. But if you're entitled to \$2,600 worth of benefits, \$100 a week for 26 weeks and you quit without good cause, we reduce the total amount of benefits that you can draw by 13 times your weekly benefit amount of \$1,300, so that would drop it down to, in that case, half the number of weeks. But that again, that is current law. That's nothing that's changed by LB203. [LB203]

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SENATOR CRAWFORD: So it's here in the bill underlined because it is...the 13 times you're saying is the part that's not changed. It's the other... [LB203]

JOHN ALBIN: Because the...there's a...with our program one of our biggest problems is, any time you make a change there's changes made mid-claim. And so we had to basically, if you will, grandfather in those from the previous system and then make a provision that applies to the new claims that file subsequently. The real change is the requalification requirements. They're over on page 4, starting on line 30, and that's where the real change comes in the law. Everything else is just a restatement of current law and then adjustments for going forward when the new requalification requirement comes in. [LB203]

SENATOR CRAWFORD: Thank you. [LB203]

SENATOR ALBRECHT: Very good. Any other questions? Thank you very much. [LB203]

JOHN ALBIN: Thank you. [LB203]

SENATOR ALBRECHT: Do we have any other proponents that would wish to speak this afternoon? Hello. [LB203]

BOB EVNEN: Good afternoon, Madam Chair, members of the committee. My name is Bob Evnen, B-o-b E-v-n-e-n, I have practiced labor and employment law this year, if I make it, for 40 years, primarily representing employers, but not exclusively. I'm here to testify in support of LB203. The overall purpose of unemployment, the unemployment system and unemployment insurance, is to provide support for workers in a transition when they find themselves out of work through no fault of their own. And the point is to provide financial support to those workers until they can find suitable work. This bill will bring Nebraska into line with 47 other states, as you've heard, that you're not eligible for benefits if you quit your job for an insubstantial reason. It's not the purpose of unemployment to support people who quit jobs for insubstantial reasons. The purpose of unemployment is to assist people in the transition when they've been laid off or when their job has been restructured out of existence--those are two of the biggest examples for it--to support workers as they find their next position. Well, if people have a good job and quit for insubstantial reasons then it's not a proper use of the limited resources and funds of the unemployment system to support them in the transition to whatever they want do next. This bill under the fiscal note would save \$3.7 million in the first year and almost \$5 million in the second year. It's only disqualifying if a worker leaves their job without good cause. So if you quit under conditions that constitute good cause, this disqualification, this requirement that you earn four times the weekly benefit amount doesn't apply to you. And you already have a statute that lists the reasons that constitute good cause for voluntarily leaving employment. And there's a list of, I

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believe, it's ten items in the statute, the last of which is: equity and good conscience demand a finding of good cause. So there are provisions in the system as it exists today to prevent some draconian result as a result of a statute like this. It would be a suitable and a good thing for Nebraska to adopt this qualification requirement for individuals who leave their job without good cause. Thank you. Thank you for your time today. [LB203]

SENATOR ALBRECHT: Thank you. Do you take any questions if there are any questions? [LB203]

BOB EVNEN: I would be happy to. [LB203]

SENATOR ALBRECHT: Thank you. Any questions from the senators? [LB203]

BOB EVNEN: Thank you. [LB203]

SENATOR ALBRECHT: Very good. Thank you for coming. Any other proponents? [LB203]

BOB HALLSTROM: (Exhibit 2) Chairman Albrecht, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, I appear before you today as registered lobbyist for the National Federation of Independent Business in support of LB203. There's probably not too many more ways to say what Mr. Albin and Mr. Evnen have said before me, so I just do want to go on the record in support of this bill and think it's a positive change to bring Nebraska into the mainstream of unemployment security laws across the country. I'd be happy to address any questions. [LB203]

SENATOR ALBRECHT: Thank you. Any questions from the committee? Seeing none, thank you. [LB203]

BOB HALLSTROM: Thank you. [LB203]

SENATOR ALBRECHT: Another proponent? [LB203]

RON SEDLACEK: Good afternoon, Madam Chairman and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, R-o-n S-a-d-l-a-c-e-k, I'm here today on behalf of the Nebraska Chamber of Commerce in support of the legislation. Over the years when I field phone calls from HR people coming into Nebraska one of the first questions they have is, why does Nebraska not have a requalification provision? It's always been a quirk in our state law.

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Why do we have...you know, we have an outright disqualification for 13 weeks, but no requalification. So they've always wondered what the reason for that was. And it's just when the law was written it wasn't addressed. And the number of weeks they've chosen are four. And I look over the 47 states that do have requalification, I think only eight or nine of those states that I can count have four weeks or less. Most of the states are much more than that, I think prevailing into 10 weeks, up to 15, 17 weeks in some states. But so this is pretty...a very narrow approach, but at least we're joining the rest of the states. [LB203]

SENATOR ALBRECHT: Great. Thank you. Would you entertain any questions? Anyone have any questions? Thank you for coming. Other proponent? [LB203]

KATHY SIEFKEN: Chairman Albrecht and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, I'm the executive director and lobbyist for the Nebraska Grocery Industry Association, here in support of LB203. We would like to thank Senator Kuehn for bringing this bill again this year. This is a compromise. We supported the bill last year. It was six times this year; it was reduced to four times. This is simply a way to keep the Unemployment Funds there for the people that are really trying to find work and do a good job. We support the Unemployment Fund and we think that this is a good step in closing that loophole. If you have any questions, I'd be happy to try to answer them. [LB203]

SENATOR ALBRECHT: Thank you. Do we have any questions? Seeing none, thank you. [LB203]

KATHY SIEFKEN: Thank you. [LB203]

SENATOR ALBRECHT: Do we have any other proponents for the bill, LB203? Any other proponents? Seeing none, do we have any opponents that would like to speak to LB203? Any opponents? We'll move on to anybody in a neutral position that would like to speak to LB203. Seeing none, Senator Kuehn, if you'd like to close. [LB203]

SENATOR KUEHN: Certainly. If there are any questions I can answer of the committee, otherwise, I think we've reached a good opportunity to address some of the concerns but still make sure we protect unemployment insurance for those who need it. [LB203]

SENATOR ALBRECHT: Is there any questions of Senator Kuehn before we close this out? Yes, we do. Senator Crawford. [LB203]

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SENATOR CRAWFORD: So just to clarify, when we're talking about if someone that leaves a job is on unemployment, they have already a wait period. And then in this case, in addition to the wait period they would need to be employed in another job long enough to earn this amount, four times their...right... [LB203]

SENATOR KUEHN: Four times their qualifying amount. Correct. [LB203]

SENATOR CRAWFORD: ...before they get the unemployment benefit from the first job that they left? [LB203]

SENATOR KUEHN: No. So if they leave a job voluntarily, okay, they qualify. Before they can qualify a second time, so before...if they were to be reemployed and then voluntarily quit that job they would not qualify for the 13 weeks their weekly benefit unless they had had that qualifying event. So let's just say an extreme scenario would be: I voluntarily left my job. It didn't fall under the idea of a good cause quit. I left my job, I applied for unemployment benefits, I received my 13 weeks. I immediately took another job, worked for a day, voluntarily quit and reapplied for unemployment benefits. I would not be eligible unless I had earned four times my weekly benefit amount. So if my weekly benefit amount, for example, were \$300, I would be eligible again for a voluntary separation once I had earned \$1,200 worth of wages. [LB203]

SENATOR CRAWFORD: So it is that second job... [LB203]

SENATOR KUEHN: Correct. Correct. Right. [LB203]

SENATOR CRAWFORD: ...whose time period is being...okay. I thought so, but then I was confused with the (inaudible). [LB203]

SENATOR KUEHN: Right. And I appreciate your questions as well. The bill is longer, just by virtue of with that date, operative date of October 1, 2018, that they have to...2017, they have to basically restate all of the existing statute. So that's the bulk of the language that is in the bill is simply a restatement of existing statute after the application deadline of the operative date of the bill. [LB203]

SENATOR CRAWFORD: Okay, thank you. [LB203]

SENATOR KUEHN: Yes. [LB203]

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SENATOR ALBRECHT: Senator Chambers. [LB203]

SENATOR CHAMBERS: Suppose a person were a bank robber and his first haul got him \$5,000. Would he then be eligible if he quit robbing banks after the first one? [LB203]

SENATOR KUEHN: Well, I don't know that he's actually filled out the appropriate employment paperwork to have participated in the unemployment program. It depends on the level of integrity of your bank robbers. [LB203]

SENATOR CHAMBERS: Touche (inaudible). [LB203]

SENATOR ALBRECHT: Any other questions? Senator Kuehn, thank you for closing. [LB203]

SENATOR KUEHN: Thank you. [LB203]

SENATOR ALBRECHT: (Exhibits 3-7) I'm going to read into the record we had three proponents: Rocky Weber from Nebraska Cooperative Council; Jim Otto with the Nebraska Retail Federation; and Jim Otto for the Nebraska Restaurant Association. And then on the opponent side, we had Ken Smith with Nebraska Appleseed; and Margaret Blatchford the City of Lincoln as an opponent. That concludes our Business and Labor meeting. [LB203]