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Business and Labor Committee
March 13, 2017

[LB420 LB436 LB473]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 13, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB473, LB436, and LB420. 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: It is 1:32, just had to make sure we had a quorum. You are in the Business and Labor Committee today. I am Senator Joni Albrecht, I'm the Chair of the committee and I'll have the committee members introduce themselves, starting with our Vice Chair, Senator Crawford.

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

SENATOR ALBRECHT: Thank you.

SENATOR LOWE: Senator John Lowe, District 37, southeastern Buffalo County.

SENATOR ALBRECHT: Senator Howard.

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

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

SENATOR ALBRECHT: Very good. And for committee staff we have Meghan Chaffee as our committee counsel to my right. To my left is Beverly Neel, our committee clerk. The pages that we have today...we have one sick--poor Lee-Ann, little flu bug--but Toni Caudillo who is a sophomore at UNL studying elementary education is with us and Heather Bentley, freshman at UNL majoring in agricultural economics. So a few housekeeping items. Again, please turn off your cell phones. Senators know, of course, that the microphones are very sensitive and are able to pick up side conversations. Testifiers should have the appropriate number of copies of handouts and exhibits 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 outside the door at the entrance of the hearing room, the yellow sheets. Sign in only if you're going to testify. Your form must be given to the page before you begin presenting your

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

Business and Labor Committee
March 13, 2017

testimony. Each testifier will be allotted five minutes before the committee. We use a light system: green light indicates that you may begin; yellow indicates that you're nearing the end of your time; and the red indicates that it is time to end your testimony. Please begin your testimony by stating your name clearly into the microphone and then please spell your first and last name for the record. Okay. Note that committee members may need to leave in the middle of the hearing as they might have other bills that they're introducing in other committees, so don't be offended if the senators come and go. And we have Senator Hansen that has joined us. Senator Hansen, would you like to introduce yourself?

SENATOR HANSEN: Yes. Matt Hansen, representing District 26 in northeast Lincoln.

SENATOR ALBRECHT: Thank you. And we will get started today with LB473, Senator Walz. But we have a gentleman in her office that's going to be presenting. [LB473]

BRANDON BAYER: Thank you, Chairman Albrecht and members of the Business and Labor Committee. My name is Brandon Bayer, B-r-a-n-d-o-n B-a-y-e-r, and I'm the legislative aide for Senator Lynne Walz. Senator Walz apologizes for not being here; she has multiple committee hearings today. LB473 would require employers with six or more employees to provide a paid, 15-minute rest period for every four hours worked, in addition to the regularly scheduled lunch period. It also provides an exemption for employers and employees already covered in a collective bargaining agreement. Senator Walz originally looked into this because we had heard from constituents that requested this and we had talked with other senators and staff and they had heard the same thing. While researching the issue, we found cases from other states where people were working in meatpacking plants had to wear diapers because they weren't allowed a break to go to the bathroom. We've heard stories right here in the state of Nebraska from food servers, from employees of movie theaters, and from people who work in processing plants, manufacturing plants, and more. While most businesses are great about how they treat their employees, there's always the exception. Currently, the federal Labor Standards Act (sic: Fair Labor Standards Act) governs rest periods. The Wage and Hour Division of the U.S. Department of Labor enforces this act. The federal Labor Standards Act governs minimum wage, overtime pay, and regulates how rest periods must be compensated if they are offered. However, that law does not require rest periods. Only nine states have state rest period laws and 20 states, including Nebraska, have some sort of lunch period law. When we met with the Department of Labor we were under the assumption that they could help enforce things of this nature if reasonable accommodations for rest periods to use the restroom or things of the like were not offered. However, that's not the case. In addition, we realized that the lunch period law only applies to manufacturing plants and does not cover most employees in the state. Since introducing the bill our office has received messages of support from hardworking Nebraskans and concerns from organizations and businesses. Senator Walz introduced this with the intent of ensuring that hardworking Nebraskans had basic workplace protections, but did not want to harm businesses

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

Business and Labor Committee
March 13, 2017

or discourage new businesses from coming to the state. We feel that the bill as currently drafted is too broad and needs a narrower scope to accomplish what we intended for the bill. For example, we provided the collective bargaining agreement clause so that teachers would not be included. Teachers are hardworking, but their schedules most likely allow for rest breaks throughout the day. While most teachers would not be affected because they're in a collective bargaining agreement, teacher aides would be subject to this law. Other states, like Colorado, have provided a narrow parameter for who needs to be covered under these laws to include retail and service workers, food and beverage, commercial support service, manufacturing, and more. We feel that this concept would also work in the state of Nebraska. While many employees, like myself, are extremely hardworking, I have the privilege of getting coffee or using the restroom as needed. Senator Walz feels that every employee deserves that basic right. I'll end by asking the committee to hold the bill and explore the idea of doing an interim study. I know that there is likely to be opponents following me and Senator Walz wanted to make it clear, we're not against business, we just want employees to have those basic protections and we're willing to work out any issues that the committee and anybody else has with the bill. I'd be happy to answer questions if you have any. Thank you. [LB473]

SENATOR ALBRECHT: Great. Does anyone have any questions for Mr. Bayer? Seeing none, we'll go ahead with the testimonies. [LB473]

BRANDON BAYER: Thank you. And I'll waive closing and I'll probably watch from my office. Thank you. [LB473]

SENATOR ALBRECHT: Very good. Thank you. Okay, we're going to start with proponents of LB473. Do we have any proponents wishing to speak? Good afternoon. [LB473]

OMAID ZABIH: (Exhibit 1) Afternoon, Chairperson Albrecht. Chairperson Albrecht and committee members, my name is Omaid Zabih, my first name is spelled O-m-a-i-d, my last name is spelled Z-a-b-i-h. I'm the staff attorney for the Immigrants and Communities program at Nebraska Appleseed. We're a nonpartisan, nonprofit organization dedicated to justice and opportunity for all Nebraskans. And I'm here today to express our support for LB473. Every year we speak with hundreds of Nebraska workers across the state through our program and Nebraska Appleseed's other programs. We have extensive experience in the area of meatpacking and food processing safety, and a particular concern with increasing work speeds in these and other industries that lead to high rates of crippling, repetitive-motion, and musculoskeletal injuries. In our conversations with workers we regularly hear descriptions of insufficient and inconsistent scheduled time for rest breaks during the work day. Currently, as you heard previously, there are no federal laws or regulations that require employers to provide rest breaks, along with meal or lunch breaks, to employees. Thus far, nine states have begun to address this by creating state-

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

Business and Labor Committee
March 13, 2017

level laws governing rest breaks, some of which only apply to certain industries. I wanted to share some worker comments that demonstrate the importance of this legislation. I won't read through every quote in my written testimony, I'll just highlight a few but I'll let committee members read through the rest after my testimony. The first set comes from two graduate level research students that we hosted this last summer as a part of the national Occupational Health Internship Program, otherwise known as OHIP, to focus on meatpacking safety and health. They conducted two focus groups with meatpacking workers from several Nebraska communities. Just some relevant quotes that demonstrate the time pressure and scarcity of rest breaks and the corresponding importance of reliable breaks. One worker said, sometimes we get breaks but depending on your position you could end up with lot of fluids on you. This is for meatpacking again. You go on break and try to clean up. However, they do not give you any extra time. The supervisor tells you that you have to be at the machine when they turn it on and if you are not, then they put your name on a list. The supervisor tells you that the company gives you those 15 minutes. We have to remove our equipment in five minutes, however, and so we only really get a ten-minute break. They tell us that if you are not back in time, then they are going to take away our break. Also, as part of a rule-making petition submitted to OSHA, which is the federal agency that oversees workers' safety and health, this petition asked the agency to create a safe work speed standard for meatpacking and poultry plants across the country. Appleseed, along with the Southern Poverty Law Center and other organizations, conducted a survey of more than 55 meatpacking and poultry workers in four states, including Nebraska. This sort of gets at the intensity of the work in terms of how much or a very little pause time they have in between actually doing the work. This is from the report itself: Workers commonly described performing 15,000 to 20,000 motions per shift on the low end and up to 40,000 to 100,000 motions per shift on the high end. And not one worker reported having any pause time between motions or between pieces processed; in fact, laughter commonly accompanied the response to those questions. In work environments like these a reliable break every four hours is a small but critical support to physical and mental health. And as I noted earlier, intensifying work speeds and the lack of breaks are taking a very serious toll on workers, sometimes causing permanent injuries. I wanted to highlight just a couple more quotes from the focus groups that we helped conduct last summer. One worker said, we came to pursue the American dream and then we end up in an American nightmare. It needs to be an animal slaughterhouse and not of humans. One other worker said, it affected me at my house, my family, and even in the way I cook. Even now I can no longer sweep or do any other normal things like before. I cannot fold clothes. I cannot go to the store and look at clothes. I can no longer do any of that. We have a public interest in ensuring that hardworking Nebraskans are able to take a break from strenuous work. This bill would provide one small form of relief to workers and is one step to ensuring that Nebraskans work in safe and healthy workplaces so that families are strong and its industries sustainable. We strongly urge you to advance this bill. And I'd be happy to answer any questions. [LB473]

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

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Welcome, Senator Chambers. We missed you. Thank you very much for this testimony, appreciate it. [LB473]

OMAID ZABIH: Thank you. [LB473]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak? Proponents. [LB473]

STEVEN HOWARD: Good afternoon. And may it please the committee, my name is Steven Howard, S-t-e-v-e-n H-o-w-a-r-d, and I'm proud to represent the Nebraska State AFL-CIO in support of LB473. While union membership ordinarily negotiates breaks in terms and conditions of employment, the Nebraska State AFL-CIO supports the hardworking folks in Nebraska, union or otherwise. So when we talk about breaks from these repetitive, cumulative activities that workers engage in, we're really talking about thousands and thousands of repetitive movements in these packing plants. And it's been our personal experience that the majority of these cumulative repetitive trauma injuries, trauma and microtrauma in the words that the court uses, come late in the shift, they come after hours and hours and then weeks and months of performing the same activities. Now, there are some places that rotate their employees. Most don't, but some will have employees on a job where they're using their wrists over and over, and then maybe after two hours that person is moved over and they're on their feet doing some other activity, and then they're back and doing something where they're lifting. But they're not doing that same thing over and over. We tend to see less of those injuries. And I would just sort of try to put this in context. What else do we do in life where we do something for two hours and don't get a break? A professor in a classroom after two hours is probably going to give the students a break. A coach in a sports setting in school after two hours is probably going to give a person a break. So it's a case where it just makes sense to offer a break. And I would suggest to you that the productivity of those workers during the nonbreak times may actually go up because they have a chance to rest and recuperate. So the one other thing I thought I would do today is to take the opportunity to talk a little bit about workers' comp and what these repetitive, cumulative injuries sometimes result in. It's, of course, set by a schedule, given the injury involved. So all of our body parts have been given a certain number of weeks. So if you have an injury that's below your elbow, it's considered your hand. Well, if you lose your hand in an industrial accident you get 175 weeks of benefits after you're healed up and after you've reached permanency. That's for an amputation injury. In the real world what happens is the doctors look in a book and they see that there's a 5 percent or a 10 percent rating. And that is the equivalency applied to the number of weeks that results in the compensation to the employee. So if you have a 10 percent rating to your hand, you get 17.5 weeks of benefits. And a 10 percent rating doesn't mean your hand is 90 percent good and 10 percent bad, that's not how the book works. But that is a permanent injury. That's something that a person walks around the rest of their life with, yet it only pays over the

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

Business and Labor Committee
March 13, 2017

next 17.5 weeks if it's a 10 percent. A 20 percent is a big injury, according to the book. Above the elbow is 225 weeks. And I have yet to represent the workers' compensation claimant that thought they got a great deal out of their case, given what they went through and the injury they suffered and these payments that come in the form of a permanent partial disability payment. And, by the way, that's at two-thirds of the average weekly wage, so they're not paid at 100 percent of the wages. So we believe that this bill will result less cumulative repetitive trauma injuries and will drive up morale in the workplace and that it's just a good idea. So those are my comments and I urge you in support of LB473. [LB473]

SENATOR ALBRECHT: Thank you for your testimony. Any questions? [LB473]

STEVEN HOWARD: Thank you very much. [LB473]

SENATOR ALBRECHT: Thank you. Do we have any other proponents wishing to speak to LB473? Any other proponents? Seeing none, we'll move to opponents. Are there any opponents wishing to speak to LB473? Hi there. [LB473]

RON SEDLACEK: Good afternoon, Chair Albrecht and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, here on behalf of the Nebraska Chamber of Commerce. Our membership has looked at this particular bill and weighed in with a lot of comments. And we come in opposed to the legislation, certainly as it's currently drafted. It was mentioned that eight states do have this type of law on the books, which is fine. The thing is that it's not as broad as this particular bill. A number of these, say, for example, Illinois, it applies only to hotel workers in counties where there's more than a million in population, so effectively Cook County, which is effectively Chicago. That's how pinpointed it is. Most states have a break time that is less than 15 minutes. I think the standard is between five...about ten minutes. Vermont's are rather vague. It just says that you have to...should provide a break, reasonable opportunity during the workday to go to the restroom, to eat. And so it varies. But there's always white collar exceptions in almost every case. So your executives, your professionals, and outside sales people are generally excluded. Some are targeting only one particular industry. So essentially, this one-size-fits-all policy is problematic for us. You can go through and you can probably think of a number of examples yourself from day-to-day activities. If you're hired, for example, as a companion for someone who has Alzheimer's--you might be Right at Home or Home Instead or Guardian Angels, something to that effect--you're with the person maybe eight hours a day. It's really hard...you are taking breaks throughout that period. But you're not taking an absolute break and walking away from the person or the job. If you're a private airline pilot you're not going to be taking a break after four hours of flight. If you're a surgeon, you're an attorney, you can see all these examples where there's going to be some period of time. If you're a part-time employee and you're looking at working for four and a half hours,

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

Business and Labor Committee
March 13, 2017

five hours a day, it doesn't really make a lot of sense to have that break right before you're just going to get off the job. Some employers have said that we have essentially 8:00 to 12:00 and 1:00 to 5:00 type of a situation here. It doesn't really apply, they are four-hour blocks. But let's say you're going to 8:00 to 12:15, well then we do allow for hour breaks but if you wanted to really accommodate you could do 15 minutes here and there and just reduce the lunch hour then from one hour to half an hour. It's paid anyway. And so that inconveniences some employees, because they'd like that hour break to get away from the office and maybe to go home, take care of things, do some banking or do some shopping or let out the dog, whatever it might be. And so they would rather see that kind of thing negotiated. So I can understand this in the context of those who are working in a particular industry where it's probably not a good idea safetywise to have that type of no break situation at all. If you're going to have productivity in the workforce it would seem that you'd want to have those breaks when necessary. So there may be these situations. We're not representing people that are driving people to work fourteen-, fifteen hour days without breaks consistently. Most of our community sees the value of rest breaks. And you can say, well, gee, if that's part of the job, you ought to leave it. Well, not everybody can do that. When you're living from paycheck to paycheck you're pretty much stuck where you're at. So we see and understand the issue, but this one-size-fits-all is something we just can't support.

[LB473]

SENATOR ALBRECHT: Very good. Thank you for your testimony. Any questions? Seeing none. [LB473]

RON SEDLACEK: Thank you. [LB473]

SENATOR ALBRECHT: We'll take the next opponent. [LB473]

ROBERT HALLSTROM: Chairman Albrecht and 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 opposition to LB473. Mr. Sedlacek has done a nice job of covering the same concerns that NFIB has with this bill in terms of comparing other states' laws that are much more narrow. We do appreciate the fact that Senator Walz has acknowledged that the bill is broader than she may have intended. I certainly would look forward to working with her in any way that we can to take a look at narrowing the bill to see if that could work out. And I'd be happy to address any questions of the committee. [LB473]

SENATOR ALBRECHT: Thank you. Questions? Senator Chambers. [LB473]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Well, when you say you're willing to work with her, does that mean to find a solution, which would suggest that there's some version of this bill your group would support? [LB473]

BOB HALLSTROM: Well, Senator, I'm not sure what Senator Walz would look at in terms of narrowing it. There's been some indications that specific industries may be more problematic than others. We represent small businesses who are going to have situations where the workplace setting is not going to necessarily accommodate itself to a 15-minute break that's mandated by state law, but certainly we'd be willing to look at what she's going to suggest in terms of narrowing it. [LB473]

SENATOR CHAMBERS: So it would be likely, as a result of your working with her if you're successful, the businesses you represent would not be affected by it. That would be ideal for you and those you represent. [LB473]

BOB HALLSTROM: There could be a potential that that could happen. [LB473]

SENATOR CHAMBERS: So she's building a tree house and...well, I won't put you through that today. I'm going to save that for another hearing. [LB473]

BOB HALLSTROM: Thank you, Senator. Thank you. [LB473]

SENATOR ALBRECHT: (Exhibits 2-5) Thank you. Any other questions? Thank you. Seeing none, any other opponents? Any other opponents wishing to speak to LB473? Seeing none, do we have anyone in neutral position? Anyone in a neutral capacity? Seeing none, the senator's gentleman, Mr. Bayers, has waived closing so we have a couple of proponents: John Else is a proponent, social policy director, and Sherry Miller, president, of the League of Women Voters of Nebraska, we have a letter on file; and a Mary Bahney, National Association of Social Workers, advocacy committee. And opponents: Brad Wegner, president of National Utility Contractors Association of Nebraska; and Rocky Weber, president and general counsel, Nebraska Cooperative. Those are two opponents. Moving on, do we have Senator Ebke? I thought I saw her outside. Do you want to check and see if she's out in the hall? We're calling. Senator Ebke will be presenting LB436, changing the definition of employer to exclude franchisors for purpose of certain labor statutes. [LB473 LB436]

SENATOR EBKE: (Exhibit 1) Good afternoon, Chair Albrecht and members of the Business and Labor Committee. My name is Laura Ebke, I represent Legislative District 32, that's E-b-k-e. Thank you for this hearing on LB436. I introduced LB436 on behalf of the Retail Federation and

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

Business and Labor Committee
March 13, 2017

also it has support from the Nebraska Grocers Association. LB436 clarifies in Nebraska statute that, one, persons who work for a franchisee are employees of only the franchisee and, two, franchisors are not employers of franchisees and are not the employers of employees of franchisees. This is necessary because recent national developments have suggested that franchisors may be found to be joint employers with franchisees. Franchising is an important business model, which provides small business opportunities, creates jobs, and benefits communities throughout the state of Nebraska. Franchisees are able to own their own businesses, but with protections, such as a brand name recognition and proven methods. Joint employers' status of franchisors threatens the independence of franchisees and the entire franchise model. I'm sure that as we look around we all have franchisees...are you a franchisee, Senator Halloran? See, we all have franchises in our district. Similar legislation has been passed in 2015 and 2016 in the following states: Texas, Tennessee, Louisiana, Utah, Wisconsin, Georgia, Michigan, Oklahoma, and Indiana. These bills are an ongoing effort to promote state-level laws addressing joint employer issues, pushing back against bureaucratic overreach. While each state law is preempted by the National Labor Relations Act, these state legislative efforts codify the traditional joint employer standard for purposes of state law and protects businesses in those states from certain joint employment claims. Additionally, these bills provide clarity to state agencies when they are presented with joint employment claims. While these laws have varied some state by state, tailored to suit the needs in each of the states and its legislature, at the core the laws are based on the reality that franchising is a mutually beneficial contractual agreement between two parties, but not one that creates an employee-employer or joint-employment relationship between those two parties. These laws feature two fundamental principles as reflected in LB436 that I mentioned in my opening. And I think it bears repeating. First of all, a franchisee is not an employee of his or her franchisor. And a franchisee's employees are not employees of the franchisor. I have provided a handout with some facts about our franchisor businesses, including a page specific to Nebraska. If you look at page 2 of the handout you'll see the economic impact of these businesses. Seven thousand such businesses in the state, supplying 64,000 jobs, over \$2 billion in payroll, giving a \$5 billion output, and contributing \$3 billion to GDP. Also noted on the page are some results from Nebraska voters from the International Franchise Association: 79 percent of Nebraska voters want policy that promotes and supports local ownership of stores and restaurants. So I would urge you to move LB436 to General File. It is not a priority designation. Jim Otto, from the Retail Federation will be testifying behind me shortly and he'll be able to provide more color and detail on the bill and the need for it. And I'd be happy to attempt to address any questions you might have. Oh, Senator Chambers. Okay. [LB436]

SENATOR ALBRECHT: Great. Senator Chambers. [LB436]

SENATOR CHAMBERS: Senator Ebke, what was it that you said about the survey that had been taken? What was it that the majority wanted to see happen? [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR EBKE: The majority...79 percent of Nebraska voters want policy that promotes and supports local ownership of stores and restaurants. [LB436]

SENATOR CHAMBERS: Now is the franchisee the owner of that business? [LB436]

SENATOR EBKE: The franchisee is the owner of the business. [LB436]

SENATOR CHAMBERS: Well, what's the connection between the franchisee and the franchisor? [LB436]

SENATOR EBKE: The franchisee--and Senator Halloran will be able to tell you even more later--but the franchisee typically purchases the right to use the name and the training materials and so forth. So Burger Kings, McDonald's, Pizza Huts, all of these are oftentimes franchise operations and they are allowed to use the name while maintaining the ownership themselves. [LB436]

SENATOR CHAMBERS: Does the franchisor have the right to require a certain quality level of the products being sold? [LB436]

SENATOR EBKE: Sure. Yes. [LB436]

SENATOR CHAMBERS: Can the franchisor determine which products are sold? [LB436]

SENATOR EBKE: Sure. [LB436]

SENATOR CHAMBERS: Can the franchisor determine what products will not be sold? [LB436]

SENATOR EBKE: Sure. In most cases...I mean, in all the franchise arrangements that I know of, yes. [LB436]

SENATOR CHAMBERS: You're right and I'm aware of that. I think what is being asked here for is a term of art that will deny the reality. If I can control what you sell, what you cannot sell, the quality standards, I'm the boss. If I am a franchisee for Burger King, can I tell you that I see McDonald's selling hamburgers faster than me, so I'm going to sell McDonald hamburgers, too? Could I do that at Burger King? [LB436]

SENATOR EBKE: No. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Then I'm not the boss of (inaudible). [LB436]

SENATOR EBKE: Well, it's a contractual arrangement made between the franchisor and the franchisee, who agrees to these conditions of the contract up front. [LB436]

SENATOR CHAMBERS: In the same way that an employee agrees to follow the requirements of the employer in order to work there. [LB436]

SENATOR EBKE: Right. Right. [LB436]

SENATOR CHAMBERS: So it is an employer-employee relationship, but they want the law to call it something other than what it is for legal purposes. [LB436]

SENATOR EBKE: Well, but the franchisee does not get paid by the franchisor. The franchisee is an independent business and the success or failure of that business is dependent on the efforts of the franchisee. [LB436]

SENATOR CHAMBERS: It's independent but it's like a yo-yo where there's a string... [LB436]

SENATOR EBKE: Well, sure. [LB436]

SENATOR CHAMBERS: And if you know how to use a yo-yo, you can make the yo-yo pause at the bottom of the string and keep spinning. But if you flick your finger, then the yo-yo comes back up the string. [LB436]

SENATOR EBKE: I could never do that. [LB436]

SENATOR CHAMBERS: Okay, I'll show you sometime. [LB436]

SENATOR EBKE: Okay, you bet. Yeah. [LB436]

SENATOR CHAMBERS: Okay. I'm listening very carefully. I have never been convinced that the franchisee is an independent operation. To be independent means to lack all dependency. So maybe it's semi-independent. [LB436]

SENATOR EBKE: Okay. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Maybe. I'll give you that much and then I'll listen to what the others say. [LB436]

SENATOR EBKE: Okay. Appreciate that. [LB436]

SENATOR ALBRECHT: Another question. Senator Halloran. [LB436]

SENATOR HALLORAN: Thank you, Madam Chair. A franchise model is a unique model for business, there's no question about it. The franchisee benefits from the hard work in designing the concept that the franchisor has. And the limits that the franchisor has over the franchisee are dedicated to areas to try to keep the concept as pure as possible on a nationwide, multiple unit basis, so that we don't have these units out here, these franchises all over the place that are selling McDonald's hamburgers in Burger King franchises and such. People need to have this understanding as a customer when they go into a franchise that it's consistent with other franchises of the same brand name across the country. In our franchise, we are so anal in regard to that separation of employment...the definition of employment and employee, we've had franchisees ask us to develop employee manuals for them, which every business should have an employee manual defining all the aspects of employment. We will not do that. It's up to the individual franchisee to do that, because it's his. He's buying into the model of the franchise. He's buying into the work that the franchisor has done. But what's payback on that is he has to live within some parameters of consistency on what's sellable. [LB436]

SENATOR CHAMBERS: But for the sake of the Ricketts, since we're having a back and forth, that's the way your particular franchise works, but not all of them are bound by the same principles that you operate under. Isn't that true? [LB436]

SENATOR HALLORAN: The platform...the prototype for the model is virtually universal. [LB436]

SENATOR CHAMBERS: But they can...other franchisors may write manuals for the franchisees, isn't that true? [LB436]

SENATOR HALLORAN: They'd be foolhardy to do that. [LB436]

SENATOR CHAMBERS: But they can do it, can't they? [LB436]

SENATOR HALLORAN: Well, they can do anything they want, but it would encourage more liability, Senator. And that's what we're... [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: He hit the key, liability. He said it. That's... [LB436]

SENATOR HALLORAN: Well, it does. But there's... [LB436]

SENATOR CHAMBERS: I don't have any more questions of this witness, do you? [LB436]

SENATOR EBKE: I'm happy to answer more of them just like these. [LB436]

SENATOR HALLORAN: If I pay a million dollars to buy into a franchise, I expect to have ownership of that franchise. And I don't expect...and I expect, as a result, to have my share of the liability as a result of buying into that business model. And that's the way it is. [LB436]

SENATOR ALBRECHT: Any other questions? Will you be here to close, Senator Ebke? [LB436]

SENATOR EBKE: I will be here, but I don't know if I'll close. [LB436]

SENATOR ALBRECHT: Okay, very good. Any other proponents wishing to speak? We're taking proponents. [LB436]

JIM OTTO: (Exhibits 2-4) Senator Albrecht, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o, and I am president of the Nebraska Retail Federation, also registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association. And I am here in support of LB436 on behalf of both associations and thank Senator Ebke very much for introducing the bill. I guess the first thing that I want to point out is the two letters that I'm handing out. You all should have in your packets four letters of support from HobbyTown. A lot of people don't realize HobbyTown is actually a business right here in Lincoln that is a very, very successful franchisor. It has over 150 stores all across the United States. It has a very great Web site if you're ever looking for something for your kids or grandkids or going into a HobbyTown store. Also, there should be a letter in your packet from Runza International, another Nebraska-based franchisor. And I just passed out letters from Valentino's and Eileen's Cookies, two other Nebraska-based franchisors and many franchisees in Nebraska and other states. I guess I pass those out so that we all recognize that this is a very viable industry in Nebraska and something that we need to make sure goes forward. And as Senator Ebke mentioned, there's over 63,000 jobs created by franchises in Nebraska. She's pretty much explained the need for the bill. I might just address and I think...the discussion between the two senators, this bill goes simply to employment in that the franchisor does not control the hours, does not control who's hired, it does not control their hours, it does not control their wages, and so that...and it is stating that the

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Business and Labor Committee
March 13, 2017

franchise...the employee is an employee of the franchisee and not an employee of the franchisor. It's that very simple distinction we're trying to make. With that, I'd be glad to try to answer any questions. [LB436]

SENATOR ALBRECHT: Thank you for your testimony. Senator Chambers, you have a question? [LB436]

SENATOR CHAMBERS: Thank you, Madam Chair, Mr. Otto. He's the only person whose name is spelled the same upside down and backwards. [LB436]

JIM OTTO: I always have to say, you know, inside out it's toot. [LB436]

SENATOR CHAMBERS: Toot? Okay. He's a smart aleck. Tell me what these words spell. What does t-o spell? [LB436]

JIM OTTO: To. [LB436]

SENATOR CHAMBERS: What does t-w-o spell? [LB436]

JIM OTTO: Two. [LB436]

SENATOR CHAMBERS: What does t-w-a-i-n spell? [LB436]

JIM OTTO: Twain. [LB436]

SENATOR CHAMBERS: Say all three of them. [LB436]

JIM OTTO: To too twain. [LB436]

SENATOR CHAMBERS: And I'll teach you how to spell locomotive tomorrow. Here's what I want to ask. And, by the way, Mr. Otto and I know each other so he doesn't...you don't feel harassed by the way I approached... [LB436]

JIM OTTO: Not at all. [LB436]

SENATOR CHAMBERS: Okay. Is Eileen's Colossal Cookies a franchisor? [LB436]

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

Business and Labor Committee
March 13, 2017

JIM OTTO: Yes. [LB436]

SENATOR CHAMBERS: And Valentino's is a franchisor? [LB436]

JIM OTTO: Yes. [LB436]

SENATOR CHAMBERS: And if I were to superimpose these two letters, they both have exactly the same words, other than the fact that they mention...each mentions his or her respective name. [LB436]

JIM OTTO: There might be a reason for that. [LB436]

SENATOR CHAMBERS: So who wrote...did you draft this letter for them? [LB436]

JIM OTTO: Yes. [LB436]

SENATOR CHAMBERS: You did? [LB436]

JIM OTTO: Yes. [LB436]

SENATOR CHAMBERS: So I shouldn't be surprised that they say the same thing. [LB436]

JIM OTTO: Exactly. [LB436]

SENATOR CHAMBERS: You heard the discussion between Senator Halloran and I. [LB436]

JIM OTTO: Yes. [LB436]

SENATOR CHAMBERS: Can you add anything to it, one side or the other? [LB436]

JIM OTTO: No, I think you guys can pretty much handle it. [LB436]

SENATOR CHAMBERS: And if you're here representing the franchisors, your main interest is in making sure--and you can answer yes or no and elaborate--that the franchisee cannot create any liability for the franchisor in terms of...well, is that what they're interested in, because Senator Halloran mentioned the word liability? [LB436]

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

Business and Labor Committee
March 13, 2017

JIM OTTO: I was not...the way I understand it is that there has been an effort to say that employees of the franchisee--this is a national effort, the National Labor Relations Board--an employee of the franchisee is also an employee of the franchisor. And that is in...what I understand what this bill is trying to clarify. [LB436]

SENATOR CHAMBERS: And the state can pass a law that would modify what the National Labor Relations Board has determined? [LB436]

JIM OTTO: No, it cannot. This would not...the National Labor Relations Board could override the state. This would be just a step in the right direction, we believe, in that other states have done it. And if it conveys the mood of the country as to what should be, we're hoping that that would have an effect on what the National Labor Relations Board decides. [LB436]

SENATOR CHAMBERS: But right now, what is the National Labor...the NLRB's position? [LB436]

JIM OTTO: Well, I can read, but somebody else wrote this. Is that... [LB436]

SENATOR CHAMBERS: That's all right. I don't care what...just so you agree that what you're reading is the answer. [LB436]

JIM OTTO: Okay. This law is needed to...due to the National Labor Relations Board decision in Browning-Ferris that while on its face it appears unrelated to franchising, actually has the potential to affect the legal relationship between franchisors and franchisees. And so what that decision in Browning-Ferris specifically says, I don't know, but that's what I was told to refer to. [LB436]

SENATOR CHAMBERS: From what you read, I don't know what they mean by the ones who gave that. But did you indicate that the employees of the franchisee are considered to be employees of the franchisor? [LB436]

JIM OTTO: I think there is concern that it could be blurred to take that effect. I don't know that that's the case yet. [LB436]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB436]

JIM OTTO: Thank you. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Thank you. Do we have any other questions? Senator Halloran. [LB436]

SENATOR HALLORAN: Let me just think a minute. Just to clarify, I probably in our conversations with Senator Chambers made this a more complex issue than it really is, as far as the nature of the bill is concerned. But backing up just a step or two and not to over complex it, my sister and her family are a franchisor for a franchise chain. I bought into that franchise, so I was a franchisee. And I also, at times, contract to work with that franchisor. But I can guarantee, as a franchisee I would not invest in a franchise if the franchisor had control over my labor. I would not. I would have absolutely no control over the success or failure of my immediate franchise business, be it a restaurant in this case, if the franchisor had that ability to dictate or determine any aspects of my employee-employer relationship with my employees. So that's I think the kind of the crux of it, in my estimation, is that separation of responsibilities between the two. [LB436]

JIM OTTO: The joint employer concern is what this is trying to address. [LB436]

SENATOR HALLORAN: Right, exactly. [LB436]

SENATOR ALBRECHT: Okay, we have another question. Senator Chambers. [LB436]

SENATOR CHAMBERS: I used to eat at a restaurant called Old Country Buffet on Dodge in Omaha. He was a franchisee and he went out of business. He could not remodel that building the way he wanted to. He could not change the interior decor. He could not determine which products were to be sold. And he said that it was just too much in the way of restrictions, so he was closing down the franchise. So as Senator Halloran mentions may work with him, you cannot...I don't believe you could take Valentino's and "Ma Brown's Cookies" or whoever that is and lay them side by side and everything would be exactly lined up as the words are in these two letters. I don't think every franchisor has the same relationship with franchisees that every other franchisee or has with...for example, if you looked at McDonald's over here and Burger King over here, I don't believe the only difference you'd find is the name of the two companies. I believe there are differences that each of those franchisors will impose on the franchisee if you want one of their franchises. So I'm going to ask you this question. From the work you have done in representing these outfits, could you say that if you wrote the requirements that a franchisee must have for franchisor A, you could write the requirements that franchisee has for franchisor Z and they would match up perfectly? [LB436]

JIM OTTO: No. I agree with you, Senator, except when it comes to employment. In other words, every franchise is going to be different. They're going to offer different benefits, they've got

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

Business and Labor Committee
March 13, 2017

maybe different maybe recipes, different products. But when it comes to an employment, if the franchisor is in control of the franchisee's employees they're in violation of the law as I understand it, at least up to now the way we've always interpreted the law. So I would agree with everything you said except when it comes to who does the hiring, who does the scheduling, who does...who decides who is hired, who is let go, who is scheduled, etcetera, and what they earn. [LB436]

SENATOR CHAMBERS: We have a listing in a document prepared by legal counsel and it mentions the different things for the purposes of certain labor statutes. So if the employee-employer relationship is what is behind all this, that lets me know that there is established right now a type of employer-employee relationship that the franchisor doesn't want and the franchisor wants the Legislature to say that this kind of relationship in Nebraska does not exist, this employer-employee relationship. Is that what this bill is about? [LB436]

JIM OTTO: In Nebraska we handle it correctly. I don't honestly think there's been an actual concern or an issue raised with the Nebraska Department of Labor concerning the difference and whether or not a franchisor or franchisee...I don't think this has been an issue. But nationally, with the National Labor Relations Board, they have attempted...at least some of the things they've done tend to blur that relationship, that unique relationship that the employee is an employee of the franchisee and not of the franchisor and have gone to the possibility that they could...an employee could...it could be a joint employer relationship, that the employee is an employee of both the franchisee and the franchisor. [LB436]

SENATOR CHAMBERS: So then Nebraska as a state is being asked to do something that would help people in other states who are not as lucky as those in Nebraska? If the situation in Nebraska is all right, but this is part of a national effort, it's not because of what's happening in Nebraska, if I understand you correctly, but what is happening in other places. [LB436]

JIM OTTO: Yep. The frustration nationally, Senator, is nothing happens at the federal level, so everything comes to the state level. And I think you can go issue after issue after issue and what you say is, I believe correct, I don't think it has been a problem in Nebraska. [LB436]

SENATOR CHAMBERS: Well, if there's no problem, then I don't like bills that are looking for a solution...I meant looking for a problem. You know what they always say, this is a solution looking for a problem. The problem doesn't exist in Nebraska, so there's no need for it in my opinion. [LB436]

JIM OTTO: We would say that it could exist in Nebraska, based on what's been done nationally. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Well, the moon could be green cheese... [LB436]

JIM OTTO: That's true. [LB436]

SENATOR CHAMBERS: ...and Mars could be strawberry Jello. [LB436]

JIM OTTO: That's true. [LB436]

SENATOR CHAMBERS: But we don't have to worry about that realistically. [LB436]

JIM OTTO: Realistically. [LB436]

SENATOR CHAMBERS: Thank you. [LB436]

JIM OTTO: Thank you. [LB436]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for your testimony, Mr. Otto. Any other proponents? [LB436]

RON SEDLACEK: (Exhibit 4) Chairman Albrecht and members of the Business and Labor Committee, again my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, here on behalf of Nebraska Chamber of Commerce. And we support in concept this legislation. We were going to have one of our franchise members...franchisor members come in and testify but called earlier today and is not going to be able to make it and so I'm pitch hitting for the gentleman. What...this bill is kind of a second generation. There was a piece of legislation introduced a couple of sessions ago by Senator Burke Harr that tried to address this issue. Like I say, we support this in concept. We think this is a superior draft now to the previous legislation and for two reasons. First of all, on page 2, line 13, it defines the terms franchisee and franchisor. They have the same meanings as 16 C.F.R. 436.1, which is a definitional section in the franchise statutes, and that pins that down. Secondly, lines 9 through 11 are an out in regard to whether or not there's an employee or nonemployee relationship or franchisee-franchisor relationship. And that's if you exercise the type or degree of control that is not customarily exercised, then you can't take advantage of this. So this is where the litigation comes in. What we don't want to see is a situation where you have...as an example, say you want to clean buildings and so you're hiring different people. But you're hiring...you're contracting with them and saying, well, I'm the franchisor, you're a franchisee, so you go out and do this and here's the buckets and this is what you use, this is the building you clean, and this is what time, but you're a franchisee. No, you're not. We don't want that to happen. That I think is covered here in that regard as long as that language stays within

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

Business and Labor Committee
March 13, 2017

the legislation. So I think that the second draft is much better than what we had a couple of years ago. What we want to do though is make sure that...and what is frustrating for franchisors, as I understand it, is where they don't have that control and they want to protect the brand name and the model. But what happens is, your franchisee who is under contract who, you know, there's a money exchange for it and the use of that trademark and you want to make sure that it's always the best in the public eye. If that person is having personal problems or if they're not keeping up with workers' compensation and unemployment or they're doing some violation, you can jerk that franchise away usually by contract by the franchise agreement. But by the same token, you don't have control over that franchisee's employees. You might like to tell them what to do, but if you do, then you get into the situation where you become essentially an employer. And that's not part of the model so you have to be very careful in that regard. So about the only recourse is for a franchisor to see that there's a breach of contract or breach of the agreement and then jerk the franchise in order to protect the quality of the name. So I'd be happy to answer any questions. [LB436]

SENATOR ALBRECHT: Very good. Senator Chambers. [LB436]

SENATOR CHAMBERS: Is this bill designed to make franchisors great again? Here's what I get. Business groups come in here and they try to support each other. If with the other...the earlier draft, your group supported it in concept. And this is a better draft, but you still put that proviso: We support the bill in concept. It means you're not necessarily supporting what the bill is, but what the ones who want this bill are trying to do. [LB436]

RON SEDLACEK: That's correct. [LB436]

SENATOR CHAMBERS: But you would not say that your...the group you represent unqualifiedly supports this bill as it's drafted. [LB436]

RON SEDLACEK: That's right. And the reason I say that is because in our...in order to take positions on legislation, we have our committees--or councils, we call them--and they go over the legislation and make recommendations to the board of directors. And on this particular legislation it was like, we don't know enough exactly to make...to know and unequivocally state to you this is the bill, this is the right language. But it looks good. It looks better; its own concept. We should support it. That's kind of the instruction. [LB436]

SENATOR CHAMBERS: And that's why you have counsel, legal counsel. [LB436]

RON SEDLACEK: Well, it's committee. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Well, that's what I mean. People who specialize in analyzing legislation in detail. You can take... [LB436]

RON SEDLACEK: Well, they know subject matter. [LB436]

SENATOR CHAMBERS: Right. The way the bill is drafted, these people could find something that they could not support in the bill. Is that possible? [LB436]

RON SEDLACEK: It's always possible. [LB436]

SENATOR CHAMBERS: And if that were the case would you testify and say, we agree with the bill, except we don't agree with this part of it or would you just not appear on the bill? Do you...have you had a situation like that before? [LB436]

RON SEDLACEK: That kind of depends on the fate of the bill, what it looks like. If it's something very serious, we'll be weighing in. If it's something that can be studied or it's going to be laid over and you have time to work with it, then I might not come forward. [LB436]

SENATOR CHAMBERS: If you had to take a position absolutely, yes or no, you'd still say, perhaps. [LB436]

RON SEDLACEK: On this legislation, itself? [LB436]

SENATOR CHAMBERS: Uh-huh. [LB436]

RON SEDLACEK: I...perhaps-plus. [LB436]

SENATOR CHAMBERS: I see why you've kept your job all these years. But that's all that I have. [LB436]

RON SEDLACEK: Thank you. [LB436]

SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions? Seeing none, thank you for your testimony. [LB436]

RON SEDLACEK: I do have copies of a letter that can be circulated... [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Okay. [LB436]

RON SEDLACEK: ...just in case we weren't sure if we were going to send a letter in or have testimony per se. [LB436]

SENATOR CHAMBERS: While those are handing out, this is what Eisenhower actually said. He was on the golf course and he was asked a question by a reporter. And Eisenhower said, I can say absolutely, positively, I think so. And he didn't even see any irony. I guess he was absolute in that he thinks so, so I've got to leave him alone. [LB436]

RON SEDLACEK: Thank you. [LB436]

SENATOR CHAMBERS: You're welcome. [LB436]

SENATOR ALBRECHT: Very good. Any other proponents wishing to speak? [LB436]

KATHY SIEFKEN: Good afternoon. 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 registered lobbyist for the Nebraska Grocery Industry Association here today in support of LB436. And while I represent grocery stores, if you think about the grocery stores across the state of Nebraska, we have a lot of franchisees that are in our grocery stores around the perimeter of the store and that's why I'm here. We had our members take a look...those franchisees, they took a look at this bill, they liked it, and they asked that I come in and support it. We do have a very close relationship with our national organization and in the last year or two there has been discussion about the issue with the National Labor Relations Board and the...what our industry feels is an overreach in that they are going to franchisees and trying to reach back up through to the franchisors, so that they can tap into their employees at the franchisor level. And that's why our people liked this bill, because it clarifies that that is...there is no relationship between the employees of the franchisee to the franchisor. If you have any questions, I'd be happy to try to answer. [LB436]

SENATOR ALBRECHT: Thank you. [LB436]

KATHY SIEFKEN: Although I do believe that Senator Halloran is the local expert here. [LB436]

SENATOR ALBRECHT: Senator Chambers has a question. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: But I don't think he's here to represent the grocers today. We're just bantering. Are you here to represent the grocers or the franchisors? [LB436]

KATHY SIEFKEN: The grocers that are grocers and franchisees. The grocers are not franchisors. The grocers have franchisee locations within their grocery stores. For example, there are Starbucks, our c-stores have Godfather's, those type of things. They are franchisees. [LB436]

SENATOR CHAMBERS: I understand that. But you're not representing franchisees, is that correct? [LB436]

KATHY SIEFKEN: I'm representing the grocers that are also franchisees; they cross over. [LB436]

SENATOR CHAMBERS: So there are franchisees who want this bill, not just franchisors? Is that what you're telling me? [LB436]

KATHY SIEFKEN: Correct. Correct. Because it's better for everyone that is in that franchisee-franchisor relationship. [LB436]

SENATOR CHAMBERS: But you're here not representing a grocer who is a franchisee? [LB436]

KATHY SIEFKEN: Yes, I am. [LB436]

SENATOR CHAMBERS: Okay. Now, what grocer or what grocery is a franchisee and it is a franchisee of what franchisor? [LB436]

KATHY SIEFKEN: So I have a grocer in Crete, who is Senator Ebke's district, who has several Subways in his grocery stores. Is that your question? [LB436]

SENATOR CHAMBERS: Does the grocer...is the grocer a franchisee of Subway? [LB436]

KATHY SIEFKEN: No. The franchisee... [LB436]

SENATOR CHAMBERS: So of what franchisor is this grocer a franchisee? [LB436]

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

Business and Labor Committee
March 13, 2017

KATHY SIEFKEN: Oh. The grocer is the franchisee of Subway, of Godfathers, of Starbucks. All of those perimeter stores, perimeter locations in grocery stores, the bulk of those are franchisees. [LB436]

SENATOR CHAMBERS: What's the name of the store? If this store has a Starbucks, a Subway, and all these others, what franchisor would allow his franchisee to have all of those separate franchisees on its franchisee's premises? [LB436]

KATHY SIEFKEN: Hy-Vee has many. Hy-Vee has some. [LB436]

SENATOR CHAMBERS: So Hy-Vee is the franchisor? [LB436]

KATHY SIEFKEN: They are the franchisee. We are not...people in the grocery industry are not franchisors, they are franchisees. [LB436]

SENATOR CHAMBERS: So in order to be a franchisee, there must be a franchisor. Who is the franchisor of Hy-Vee? [LB436]

KATHY SIEFKEN: That would be Subway is a franchisor. Yeah. The franchisee is the location in the grocery store that has the employees. Right? [LB436]

SENATOR CHAMBERS: Here's what I want to find out. Here is...that's Hy-Vee. [LB436]

KATHY SIEFKEN: Right. [LB436]

SENATOR CHAMBERS: There's Starbucks. There's Hy-Vee. [LB436]

KATHY SIEFKEN: Well, Hy-Vee is not a franchisee. [LB436]

SENATOR CHAMBERS: I meant Starbucks and...who was that other one you mentioned? Subway. [LB436]

KATHY SIEFKEN: Subway. I don't know that there's a Subway in Hy-Vees, but let's go with it. Just go with it. [LB436]

SENATOR CHAMBERS: Well, it's for the example. [LB436]

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

Business and Labor Committee
March 13, 2017

KATHY SIEFKEN: Yes. [LB436]

SENATOR CHAMBERS: Okay. And this is a McDonald's, just so we have another one. [LB436]

KATHY SIEFKEN: Yes. [LB436]

SENATOR CHAMBERS: Each one of these is a franchisee of its respective franchisor. [LB436]

KATHY SIEFKEN: Yes. [LB436]

SENATOR CHAMBERS: McDonald's franchisor is McDonald's and so forth. [LB436]

KATHY SIEFKEN: Yes. [LB436]

SENATOR CHAMBERS: Hy-Vee is not a franchisee of anybody. Hy-Vee is independent. Is that correct? [LB436]

KATHY SIEFKEN: Hy-Vee is the franchisee. [LB436]

SENATOR CHAMBERS: Of whom? [LB436]

KATHY SIEFKEN: Of every one of those little retail stores within their store. [LB436]

SENATOR CHAMBERS: So Hy-Vee is a franchisee of McDonald's. [LB436]

KATHY SIEFKEN: Yes. [LB436]

SENATOR CHAMBERS: A franchisee of Burger King. [LB436]

KATHY SIEFKEN: Starbucks. Yes. [LB436]

SENATOR CHAMBERS: And a franchisee of Subway. [LB436]

KATHY SIEFKEN: Yes. Yes. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: So then... [LB436]

KATHY SIEFKEN: They each have their own kitchens. [LB436]

SENATOR CHAMBERS: So then Burger King can tell Hy-Vee certain things that would have to be done in Hy-Vee to remain a franchisee of Burger King. [LB436]

KATHY SIEFKEN: In their little corner, yes. [LB436]

SENATOR CHAMBERS: But here's what they could say to Hy-Vee. You cannot have a Burger King in there. You cannot have a Subway there. You can only have a McDonald's there. [LB436]

KATHY SIEFKEN: I believe that's part of the agreement that they have. That's the contractual agreement between them. [LB436]

SENATOR CHAMBERS: Well, then Hy-Vee is not a...if Hy-Vee is not a franchisee of anybody, Hy-Vee leases space in its building to these people apparently. [LB436]

KATHY SIEFKEN: I have been told that they are a franchisee. [LB436]

SENATOR CHAMBERS: Of whom? [LB436]

KATHY SIEFKEN: Starbucks. Hy-Vee. Hy-Vee is a franchisee of Starbucks. [LB436]

SENATOR CHAMBERS: So then Starbucks can tell... [LB436]

KATHY SIEFKEN: No. They cannot... [LB436]

SENATOR CHAMBERS: Okay. [LB436]

KATHY SIEFKEN: ...because the only relationship that this bill is talking about is, it's clarifying the employer-employee relationship as related to franchisee and franchisor and there is a wall there. There is no relationship between the franchisor's employees and the franchisor. [LB436]

SENATOR CHAMBERS: I want to make one thing clear. Who sent you here today? Who are you representing here today? [LB436]

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

Business and Labor Committee
March 13, 2017

KATHY SIEFKEN: Grocers that own franchisee locations. [LB436]

SENATOR HALLORAN: Can I...can I... [LB436]

SENATOR CHAMBERS: I think you can answer that. [LB436]

SENATOR ALBRECHT: Senator Halloran, do you have question for our testifier? [LB436]

SENATOR HALLORAN: Well, just a comment. I think part of the confusion is, as a franchisee you're obligated to find a location to...for...to put in place the franchise facility, whether it's Starbucks, okay? As a Starbucks franchisee I would have to find a location. The franchisor is always going to have to approve it, because they're not going to let you put it just anywhere, right? But the role that Hy-Vee plays is, is that they do--to your point at some level--they do own a building where they're selling groceries and they're willing to--because they've got space--they're willing to use that space as a franchisee to Starbucks to set up a Starbucks location. So they are truly a franchisee. It just happens they own the space, so they got that part down. [LB436]

SENATOR CHAMBERS: The store would be the landlord. That's what the store would be. [LB436]

SENATOR HALLORAN: Well, they own their own property, yes. [LB436]

SENATOR CHAMBERS: They're the landlord of whomever they allow to rent space in their place. [LB436]

KATHY SIEFKEN: They control the employee. [LB436]

SENATOR CHAMBERS: They don't tell Starbucks what coffee they can sell. [LB436]

SENATOR HALLORAN: No, absolutely. Absolutely. [LB436]

SENATOR CHAMBERS: Starbucks in that store is the franchisee of the parent Starbucks, not the franchisee of the grocery store. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR HALLORAN: No. The grocery store, in this case, is the franchisee. They own the building location that they're willing to negotiate with Starbucks to put a franchise in as a location. That's all that is. We're looking too deep into this (inaudible). [LB436]

SENATOR CHAMBERS: Then these words need a better definition, because what you're defining is not what this bill defines. And franchisor and franchisee relationship does not operate the way you're talking about. We had letters from Valentino's. Valentino's could have a restaurant and could allow a Starbucks in their restaurant. But Valentino's does not become a franchisee of Starbucks, this Valentino's in Omaha is the franchisee of the parent Valentino's. Next time maybe they ought to send somebody here who just represents the grocery stores. See, when he put McDonald's in there, (inaudible). [LB436]

SENATOR HALLORAN: We settle this over a Starbucks sometime, Senator. [LB436]

SENATOR ALBRECHT: Senator Crawford. [LB436]

SENATOR CRAWFORD: Thank you, Senator Albrecht. And thank you for being here. To perhaps help us understand this relationship, if the grocery store is the franchisee, then the grocery store is determining who works at Starbucks and their hours... [LB436]

KATHY SIEFKEN: Yes. [LB436]

SENATOR CRAWFORD: ...and take the responsibility for them for workers' comp... [LB436]

KATHY SIEFKEN: Yes. [LB436]

SENATOR CRAWFORD: ...etcetera, because Hy-Vee in this case is the franchisee and they're employed by Hy-Vee even though they're standing behind a counter that says Starbucks. Is that correct? [LB436]

KATHY SIEFKEN: Yes, exactly. The benefits, the vacation packages, the salary, the hours, the store controls that. And this bill is about controlling...it's about that relationship between the employee, the franchisee, and not a relationship with the franchisor. [LB436]

SENATOR CHAMBERS: Now let me see if Senator Howard...I meant Senator Crawford made it clear for me. There is a Starbucks I think in Baker's. So you're saying the people who are working at that Starbucks counter really are the employees of Baker's. [LB436]

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

Business and Labor Committee
March 13, 2017

KATHY SIEFKEN: Or the Baker's Corporation, because they own the franchisee. [LB436]

SENATOR CHAMBERS: Then Baker's is the franchisor. [LB436]

KATHY SIEFKEN: No. [LB436]

SENATOR CHAMBERS: Then you can't own a franchise if you're not the franchisor, unless you're a franchisee of Starbucks. You're saying that once Baker's let Starbucks in, Baker's becomes the franchisee of the Starbucks Corporation. [LB436]

KATHY SIEFKEN: No. [LB436]

SENATOR CHAMBERS: Okay. I don't have any more questions. [LB436]

KATHY SIEFKEN: Oh, no. Yes. The answer to that was, yes. Sorry. [LB436]

SENATOR CHAMBERS: I won't prolong it. This is too slippery a fish for me. [LB436]

SENATOR ALBRECHT: Question? Senator Hansen. [LB436]

SENATOR HANSEN: This is just more. I think I finally got here (inaudible) discussion, but this is to you, Ms. Siefken or Senator Ebke or anybody that wants to help. This is something that really cries out for a flow chart, maybe some diagrams. If we could get to that, I would appreciate it. [LB436]

KATHY SIEFKEN: Okay. [LB436]

SENATOR ALBRECHT: Any other questions, comments? Thank you for being patient with us. [LB436]

KATHY SIEFKEN: Thank you. [LB436]

SENATOR ALBRECHT: Any other proponents wishing to speak? It really won't be this hard. We promise. [LB436]

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

Business and Labor Committee
March 13, 2017

STAN ODENTHAL: All right. Good afternoon, Chairman Albrecht and members of the Business and Labor Committee. My name is Stan Odenthal, that's S-t-a-n O-d-e-n-t-h-a-l, I am the executive director of the Nebraska Equal Opportunity Commission, here to testify in support of LB436. So this bill would have a direct impact on two of the laws that the NEOC is tasked to enforce, including the Nebraska Age Discrimination in Employment Act and the Nebraska Fair Employment Practice Act. So the definition of employer under this bill already aligns with exactly the way the NEOC interprets the term employer in relation to franchisee and franchisor. We believe that this bill would help clarify the term employer, and because of that we're standing in support of this bill. And then as mentioned before, I think one of the important elements of this bill is that subsection (2) of Section 1 there on page 2, lines 9 through 11, where there is that situation where a franchisor--if they are acting kind of above and beyond what is expected of a franchisor--that they can be kind of held as an employer in that situation where they're going above and beyond what is expected of a franchisor. And because of that, we're in support of this bill. It already aligns with everything that we do and it helps to clarify our statutes. So with that, I'll open up to questions. [LB436]

SENATOR ALBRECHT: Very good. Thank you very much. Questions? Senator Chambers. [LB436]

SENATOR CHAMBERS: What connection does that have with the work that you do? What could you do if this bill were in place that you cannot do right now? [LB436]

STAN ODENTHAL: It really wouldn't change the way we operate at all. The only thing that it would change is just the information that we're providing to employers and employees. It would help clarify that language. [LB436]

SENATOR CHAMBERS: And for that you support everything else in this bill? Let me ask you differently. Have you read the entire bill? [LB436]

STAN ODENTHAL: Yes, I have. [LB436]

SENATOR CHAMBERS: Do you understand all that's in the bill? [LB436]

STAN ODENTHAL: Yes, I do. [LB436]

SENATOR CHAMBERS: Then you might be the man. [LB436]

STAN ODENTHAL: Is it too late to change my answer to that? [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: No. In lines 12 and 13, "For purposes of this section, the terms franchisee and franchisor have the same meanings as in 16 C.F.R. 436.1." Do you know what that says? [LB436]

STAN ODENTHAL: I looked at it originally when the bill was introduced, but I couldn't tell you off the top of my head. [LB436]

SENATOR CHAMBERS: What did it seem to be saying? What was the subject, in general, of that provision? [LB436]

STAN ODENTHAL: You know, it's been so long since I looked at that, I don't even want to... [LB436]

SENATOR CHAMBERS: So then you're not sure that...are you sure that what they're referencing as 16 C.F.R. and the rest of it is the same? How long ago did you look up this C.F.R. provision? How long ago did you look it up? [LB436]

STAN ODENTHAL: It's been at least three or four weeks. [LB436]

SENATOR CHAMBERS: And at that time you did understand what it was saying? [LB436]

STAN ODENTHAL: Uh-huh. [LB436]

SENATOR CHAMBERS: And what it did say, whatever that might happen to be would be in line with the work that you do in the commission? [LB436]

STAN ODENTHAL: I believe so, yeah. [LB436]

SENATOR CHAMBERS: But you don't need this to do the work that you do in the commission, do you? [LB436]

STAN ODENTHAL: No, we don't. Again, this would just help clarify the language that we...in order for us to provide that information to employers and employees. [LB436]

SENATOR CHAMBERS: Is this a federal reference, I presume? [LB436]

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

Business and Labor Committee
March 13, 2017

STAN ODENTHAL: The C.F.R.? [LB436]

SENATOR CHAMBERS: And the federal defines terms that your agency uses or are the terms that your agency uses defined by state law? [LB436]

STAN ODENTHAL: Both. [LB436]

SENATOR CHAMBERS: And this would clarify for you the current definition that you use? [LB436]

STAN ODENTHAL: Yes, because it just isn't expressly written out in either of the statutes that I mentioned. And so this is the way we've always interpreted it, but this would help clarify. [LB436]

SENATOR CHAMBERS: But it doesn't change anything so you don't need it. If it doesn't change anything, if it's what you've already been doing...you just stated without realizing it the Loran Schmit theorem. It doesn't help anybody. It doesn't hurt anybody. It doesn't cost anything. It doesn't do anything. [LB436]

STAN ODENTHAL: The only thing that it would do to help us is that when we do have someone come in our doors and file a case and want to file against multiple entities or organizations or employers, we can point to something in statute indicating that that is not allowed or that we're going to have to take a closer look at the role of the employer in order to add that other employer as a secondary employer on an investigation that we're going to look into. [LB436]

SENATOR CHAMBERS: So then this would have a substantive impact on what you do. Would this expand the reach of your organization? [LB436]

STAN ODENTHAL: No, it wouldn't. [LB436]

SENATOR CHAMBERS: And without it, it wouldn't...your jurisdiction would not be restricted. [LB436]

STAN ODENTHAL: No. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: I don't really know why you're here on the bill. Just being frank, I just don't. Did your commissioners look at this bill? [LB436]

STAN ODENTHAL: Yes, they did. [LB436]

SENATOR CHAMBERS: And they agreed that this is a bill they should take a position on? [LB436]

STAN ODENTHAL: Yes, they did. [LB436]

SENATOR CHAMBERS: Did they seem to understand it? Oh, I won't ask you that,... [LB436]

STAN ODENTHAL: Okay. [LB436]

SENATOR CHAMBERS: ...because you work for them, right? [LB436]

STAN ODENTHAL: I do work for them, yes. [LB436]

SENATOR CHAMBERS: I don't have any other questions. Thank you. [LB436]

SENATOR ALBRECHT: Any other questions? Senator Crawford. [LB436]

SENATOR CRAWFORD: Thank you, Senator Albrecht. And thank you for being here. Just to clarify, in terms of it...as I understand it the bill is broad in part because of some concern about how this is being interpreted at the federal level. And so by putting this language in our statute, does that mean that when someone comes to you they might be coming to you to try to make a claim against the franchisor? Is that the reason that this might help clarify your work is that if they're coming to you to make a claim against a franchisor, this puts in statute something to clarify that that's not appropriate? Is that... [LB436]

STAN ODENTHAL: Yeah, I think that makes a lot of sense. And so that finding or that case law from the federal government is from the NLRB. Whereas we have the work-share agreement with the Equal Opportunity Commission we're not looking so much at labor standards, we're looking at equal opportunity and the effect of equal opportunity laws here in Nebraska. And so EEOC federally hasn't come out with any guidance really that deviates from basically the way we interpret it now and what's in this bill. And so for our purposes on the equal opportunity side

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

Business and Labor Committee
March 13, 2017

of things, everything lines up federally and with the state with this bill. On the labor standards side, I couldn't answer that question. [LB436]

SENATOR CRAWFORD: So, currently, if somebody came in to make that claim you already currently could say, well, it really is the franchisee that this case should be made against. [LB436]

STAN ODENTHAL: Yeah, absolutely. And that's what we're saying right now, yes. [LB436]

SENATOR CRAWFORD: You can already say that right now. [LB436]

STAN ODENTHAL: And...but if we're asked to point to something in statute, again it's not there, so. [LB436]

SENATOR CRAWFORD: Okay. Thank you. [LB436]

SENATOR ALBRECHT: Very good. Any other questions? [LB436]

SENATOR CHAMBERS: Excuse me. [LB436]

SENATOR ALBRECHT: Yes, sir. Senator Chambers. [LB436]

SENATOR CHAMBERS: If the federal government changes the definition that is here now, you could not automatically incorporate that into what you're doing, because that would be an unconstitutional delegation of legislative authority. It would mean that the federal government is legislating for Nebraska, which under Nebraska law is unconstitutional. You would be stuck with what's here right now and there might be no longer this lining up that you say, because if that which lines up now is changed then what this federal is dealing with no longer lines up with what you're doing. So it's not of any value. So you're looking at just this moment in time, but you don't really need this for your purposes. [LB436]

STAN ODENTHAL: We could operate without it, but it does provide some clarity. [LB436]

SENATOR CHAMBERS: Did the commissioners take a vote on this bill? [LB436]

STAN ODENTHAL: Yes, they did, at our January commission meeting. [LB436]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Did they discuss it? Were you at that meeting? [LB436]

STAN ODENTHAL: Yes, I was. [LB436]

SENATOR CHAMBERS: Did they discuss it? [LB436]

STAN ODENTHAL: Yes, they did. [LB436]

SENATOR CHAMBERS: Did they read this provision, this C.F.R. provision, if you remember? [LB436]

STAN ODENTHAL: It wasn't read out loud in that meeting. I provided them information about the bill beforehand and so I'm not sure how many of them read that or didn't. [LB436]

SENATOR CHAMBERS: Do they have to...are there minutes for that meeting? [LB436]

STAN ODENTHAL: Yes, there are minutes. [LB436]

SENATOR CHAMBERS: Could you send me a copy of the minutes? [LB436]

STAN ODENTHAL: Okay. [LB436]

SENATOR CHAMBERS: Okay. [LB436]

STAN ODENTHAL: And those meeting minutes are still in draft status, but I can get you a copy of those. [LB436]

SENATOR CHAMBERS: Okay. That's all I would have then. [LB436]

SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions? Seeing none, thank you for your testimony. Do we have any other proponents for LB436? Any other proponents? Seeing none, any opponents wishing to speak? Any opponents? Seeing none, anyone in a neutral stand? [LB436]

STEVEN HOWARD: Good afternoon. I'm Steven Howard, S-t-e-v-e-n H-o-w-a-r-d, and I'm proud to represent the Nebraska State AFL-CIO, which is neutral on this bill. And I would just

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

Business and Labor Committee
March 13, 2017

state for the record that our neutrality is premised on the notion that franchisors won't interpret this to mean that franchisees have some lower obligation than they do right now. We don't think it changes things. I'll tell you, if someone is working at a fast food place and they suffer a burn injury at the fryer, when the case is brought it's usually brought against the franchisee--which is something like "ABC Joint Ventures" or something like that--as opposed to the name that we would all recognize on the outside of the building on the big sign. So we are here neutral. Some things to think about are the definitions of employer in the Fair Employment Practice Act and the Age Discrimination in Employment Act. That defines employer as having a certain number of employees over a certain number of calendar days. But practically speaking, I don't think it changes anything. I suppose if I had one comment on the discussion earlier, there seem to be times when the Legislature wishes to codify something that's already happening in the real world. And from a practical standpoint we're neutral on this. Thank you for the opportunity to address you. [LB436]

SENATOR ALBRECHT: (Exhibits 5-9) Thank you very much. Any questions? Seeing none. Thank you for being here. Anyone else in a neutral position. No one else wishing to speak in a neutral position? Senator Ebke waives close. And do we have any letters? Okay. Proponents, we have: Brill Graeve, vice president of finance for HobbyTown, national franchise headquarters in Lincoln; Daniel and Chelsy Schmidt of HobbyTown franchise in Lincoln; Renee Sjulín, vice president and Linda Dennis, operations director at the Runza National in Lincoln; Jeff Hanscom, senior director of state government relations and public policy, International Franchise Association in Washington, D.C. were all proponents. Opponents: John Else, social policy director and Sherry Miller, president, of the League of Women Voters of Nebraska. Those are our letters. And next we have Senator McCollister with LB420. You may begin. Thank you. [LB436]

SENATOR MCCOLLISTER: Thank you. Good afternoon, Chairman Albrecht and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today, I'm introducing LB420 and offering AM553 for the committee's consideration. LB420 would create the Fair Chance Hiring Act and prohibit most employers from inquiring at the time of application into an applicant's criminal history. This type of law has been introduced in many other states and is commonly referred to as Ban-the-Box Law, to ban the check box in the initial job application that asks about a prior criminal record. According to the EEOC, over 1,500 cities and counties and 25 states have adopted a version of ban-the-box legislation, and these numbers continue to rise. Under current Nebraska law, most public positions are prohibited from inquiring about criminal history at the time of application. This change was made in the Legislature in 2014. LB420 only affects employers with more than 15 employees. Smaller employers or small family businesses are excluded. This 15-employee distinction exists in several other areas of employment law; for example, in anti-discrimination law. I suspect many of you have constituents who have told you they have a criminal record and ask about how to get a pardon or a set-aside order or some other similar remedy that would let

Business and Labor Committee
March 13, 2017

them move on, begin again after they have served their sentences. LB420 would create a more positive and hopefully more successful pathway to employment for these individuals. AM553 would add a private denomination or a parochial school to subsection (3) on page 4. As introduced, this subsection will allow a school or a school district or ESU to require a job applicant to disclose a criminal record or history relating to sexual or physical abuse. I ask the committee to adopt AM553 so the provisions in subsection (3) are more inclusive. LB420 would not completely prohibit an employer from inquiring into an applicant's criminal history, but would bar this inquiry as an automatic precondition to being considered eligible for that position. This would allow an applicant who may have made a mistake in his or her past to at least get a foot in the door to meet with a potential employer. LB420 would provide exceptions for jobs which a criminal history is a disqualifier under state or federal law. For example, I think the history of a conviction for fraud or embezzlement as an allowable disqualifier for a candidate for a bank job that requires a state license. LB420 would require a prospective employer to evaluate jobs' disqualifications without an initial inquiry about the applicant's history of criminal law violations. In effect, it would prevent a criminal history from having any disqualifying impact if the applicant is otherwise qualified for this position. This would eliminate any tendency to prejudge a job applicant based on their criminal record. In effect, it would remove a criminal history from any disqualifying impact if the applicant is otherwise qualified for the job. Thank you very much. Thank you for the opportunity to speak. [LB420]

SENATOR ALBRECHT: Thank you. Do you have any questions? Senator Chambers. [LB420]

SENATOR CHAMBERS: I don't have any problem with the amendment at all. I'm trying to understand the impact of this: they cannot ask about the criminal history prior to the person going through whatever the preemployment steps are. If there's an examination, if there is an interview...explain it so that my questions won't make it different from what you intend. [LB420]

SENATOR McCOLLISTER: Thank you, Senator Chambers. So a prospective employer (sic-employee) goes in to apply for a job. They hand him an employment application. And so all we're saying is that you can't have any kind of indication or a box that said have you had any kind of felony conviction on that particular applicant...application form. [LB420]

SENATOR CHAMBERS: Okay. So the person gets past the application form stage. And what would the next...if there's an examination, the person take the examination; if there's an interview, the person will take the interview, and none of those prior matters could come up at either of those stages if the person had passed the test, if the person had done well on the interview, then inquiries can be made as to whether or not the person has a criminal record. Is that the law...bill would allow? [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR McCOLLISTER: Yes. Yeah, that's exactly what it says. [LB420]

SENATOR CHAMBERS: And would that be a basis for refusing employment? [LB420]

SENATOR McCOLLISTER: Yeah, I am not sure you could go to court on that basis. All this will simply do is on that initial application form, or that initial interview where they're just doing a general discussion of a job and whether that applicant meets the qualification, whether or not you would be a...you could not ask about that criminal conviction at that point. Down the road in the job interview process, you can ask that question. [LB420]

SENATOR CHAMBERS: Let's say it should be...they don't have packing houses anymore, but let's say you get a job in the hide cellar, that's one of the worst jobs you can...it was hot, it was nasty, but they might not want you to work...I'm trying to reach the point where we've got just a menial job. The person does well on the general exam; the person does well on the interview. Then they ask--do you have a criminal record? And you say, yes. Could that be a basis for denying a person a job in the hide cellar when whatever the criminal incident was had nothing to do with the work in a hide cellar? [LB420]

SENATOR McCOLLISTER: No. [LB420]

SENATOR CHAMBERS: They couldn't use that as a basis to turn away (inaudible). [LB420]

SENATOR McCOLLISTER: They could use that as a basis to disqualify that candidate if they thought that was relevant. It's only in that initial interview process that you would be banning the box. [LB420]

SENATOR CHAMBERS: So is this making in private industry what is done in public...in the public realm? [LB420]

SENATOR McCOLLISTER: That's correct. [LB420]

SENATOR CHAMBERS: That a person with a record could still, ultimately, be denied employment on the basis of the record. [LB420]

SENATOR McCOLLISTER: Yes, sir. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: And you...I don't want to put words in your mouth, it is the consensus of those who are working in this area, and it's one where I think a lot of work needs to be done, more than this, but that incremental steps are about all that can be feasibly taken at this point and that's why it stops short of saying that anything other than what's being said here. [LB420]

SENATOR McCOLLISTER: Well, I think your point that in some jobs where a criminal conviction wouldn't be...wouldn't normally be a barrier, but that's not what this statute says. It's only in that initial process that you'd be prohibited from asking questions about criminal (inaudible). [LB420]

SENATOR CHAMBERS: And we could say definitively, if the company had a policy against hiring anybody with any kind of criminal record, then that policy could come into play and the person could be turned away without further explanation. [LB420]

SENATOR McCOLLISTER: Nope, not...not...that's not my understanding. You could not have that box... [LB420]

SENATOR CHAMBERS: No, the box is not there. [LB420]

SENATOR McCOLLISTER: Okay. If the box is gone and they make it through that initial interview, then at a later point if they had an automatic prohibition against anybody with a felony, they could do that. [LB420]

SENATOR CHAMBERS: So it's not a guarantee of employment at this point. [LB420]

SENATOR McCOLLISTER: Absolutely not. [LB420]

SENATOR CHAMBERS: And the only reason I'm doing this, I'm not saying yea or nay, but I want it clear on the record so people won't think we're doing more than what we're doing. From my perspective, I would like to have more done, but I don't want it to be misunderstood in terms of what this bill is actually saying. [LB420]

SENATOR McCOLLISTER: And I agree with you, Senator. Ultimately, that's where I'd like to go with something like this, but this is an initial first step. Twenty-some states have done it, so I think it's a good first move. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: And if I had a bouncing baby daughter, I would like her, when she is able to take her first step, to run a hundred meters faster than anybody has run it before, but she can't, so we have to let her grow and reach the point where she can someday be in the Olympics and run, but I don't want people's hopes to get higher than what they ought to be based on what the bill actually says. I'm not disparaging it either. But we don't want to create false hope. [LB420]

SENATOR McCOLLISTER: Yes, sir. [LB420]

SENATOR CHAMBERS: That's all that I have. [LB420]

SENATOR McCOLLISTER: Thank you. [LB420]

SENATOR CHAMBERS: By they way, I favor it. [LB420]

SENATOR ALBRECHT: Thank you. Any other questions? Senator Lowe. [LB420]

SENATOR LOWE: Thank you, Chairwoman. Thank you, John, for bringing this. With your...number of 15 for employees, it doesn't state whether it's full time or part time. Does it include part time? [LB420]

SENATOR McCOLLISTER: We simply said 15. If that is a...if you think it's a flaw, we could work that out. [LB420]

SENATOR LOWE: I just know many small restaurants and many small stores at any one time have more than 15 people employed, so that would bring in those small businesses also. I'm just worried that maybe trying to tackle larger businesses, but the small businesses are being drug in here too. So just... [LB420]

SENATOR McCOLLISTER: That's a very good point. Thank you, Senator Lowe. [LB420]

SENATOR LOWE: Thank you. [LB420]

SENATOR ALBRECHT: Okay, I have Senator Crawford next. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR CRAWFORD: Thank you, Senator Albrecht; and thank you, Senator McCollister, for bringing this bill. I wonder, just for the record, we might talk a little bit about the vision or expectation about the provision in Section 4 on page 4. [LB420]

SENATOR McCOLLISTER: What line? [LB420]

SENATOR CRAWFORD: So this starts on line 14. In terms of what expectation is...if you get past the first hurdles and then it does...it is...you do get to the point where someone does reveal their criminal background, this provision is trying to provide an opportunity to make a case for employment, is what I understand. What would you imagine that to be? Is that a...would you imagine that to be a face-to-face opportunity to have that conversation? Or what would you imagine that opportunity to be? [LB420]

SENATOR McCOLLISTER: I would hope that it would be a face-to-face opportunity, or at least a phone conversation, just to give that candidate an opportunity to indicate whether it had been a long period...a long time ago or they perhaps were a fairly young adult, those kinds of things that would indicate that that person has moved on in their life and would do the job and be a good employee. [LB420]

SENATOR CRAWFORD: So it would not be the case that an employer could dismiss them out of hand, they would at least have to have some document of a conversation with the potential employee. Is that fair? [LB420]

SENATOR McCOLLISTER: Yeah, that would be optimal. [LB420]

SENATOR CRAWFORD: Yeah. But it would not necessarily be the case that there is...that there would be grounds for suing in terms of discrimination, it's just you get a chance to make your case, basically, at this point. [LB420]

SENATOR McCOLLISTER: We don't identify how the communications is to transpire, and that, perhaps, could be a refinement as well. I don't know. [LB420]

SENATOR CRAWFORD: Thank you. [LB420]

SENATOR McCOLLISTER: Thank you. [LB420]

SENATOR ALBRECHT: Senator Chambers. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: If I understand what Senator Crawford was getting at, since she said it was for the record, the only thing that would be required is to give the opportunity and it does not form a basis for anything by the prospective employer to pursue it. But here's what...I want to be sure I don't mix with what I'm asking you with what Senator Crawford had asked. I'll let it go at this point because I don't want to make it more complicated. But from the way I understand it, when I apply for the job, there can be nothing on the employment form that mentions a criminal record. If there is some kind of oral test or an interview prior to that, they cannot ask me about a criminal record. [LB420]

SENATOR McCOLLISTER: Yes, sir. [LB420]

SENATOR CHAMBERS: If I do well on both of them and would be eligible, all things being equal to get the job, they could then ask me--do you have a criminal record? And I say yes. Then the only obligation they have under the law is to give me a chance to say what it involves and they're not required to hire me or...from this, even tell me why they're not hiring me, even though the real reason might be because of my criminal record. But they could go ahead and admit, well, it's your criminal record and they could let that be a basis for denying me employment. [LB420]

SENATOR McCOLLISTER: That's correct. [LB420]

SENATOR CHAMBERS: What this really shows us is how difficult the area is that we're working in. But I think in some cases you must crawl before you walk. And if we cannot even get this into law, then it means that everything is utterly hopeless as far as the Legislature doing anything. But I'm going to see if there are business people and I will not skewer them who would object even to this that have been explained what kind of problem or burden that would put on employers. [LB420]

SENATOR McCOLLISTER: I will say that there's testifiers behind me that have seen this operate in other states. So your question could be more productively addressed to them. [LB420]

SENATOR CHAMBERS: Thank you. [LB420]

SENATOR ALBRECHT: Any other questions? Seeing none...oh, I'm sorry, Senator Lowe. [LB420]

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Business and Labor Committee
March 13, 2017

SENATOR LOWE: I've got one more, sorry. Thank you. Many small businesses go to an office supply store and buy a pad of applications there. And I believe on that pad it has criminal history as one of the things. Could a business not knowingly become unlawful by using one of those pads and an employee come back later on against that and that business not even knowing that that law exists. [LB420]

SENATOR McCOLLISTER: I'd argue, Senator Lowe, that with 25 states having passed this legislation that you'd probably have a good opportunity to buy forms without the box. If that didn't work, you could take a black highlighter and just mark it out and satisfy the requirement of the statute. [LB420]

SENATOR LOWE: My thought is though that there are a lot of businesses that still have many pads of these and if you buy a new one and throw it down in the box, you peel that off and go through all 25, or whatever comes in a pad, and the 26th employee comes in and you grab one more off the old one and give it to him. It may be a problem, but...thank you. [LB420]

SENATOR McCOLLISTER: Thank you. [LB420]

SENATOR ALBRECHT: Senator Chambers has another question. [LB420]

SENATOR CHAMBERS: I think that's about as much of a problem as somebody buying a box of 2017 calendars and then in 2018 they don't buy 2018 calendars. I don't think it would be any substantial expense and the businesses would know. But on the other about the number of employees, since there's no mandate, it doesn't matter whether the employees or person...I meant permanent or temporary because the person would be applying for the kind of job that's available. And whether the employees would be permanent or temporary, there would come a point of which that question could be asked--do you have a criminal record? And then the employer could determine whether on that basis to hire or not. So I don't think whether the employees are personal...I mean, permanent or temporary would matter too much. And I think the 15 might be so that corresponds what they do under the Equal Opportunity Employment. For them to have jurisdiction, the employer must have at least 15 employees. But those are good questions, I'm not kidding. [LB420]

SENATOR ALBRECHT: Any other questions? Will you stay to close? [LB420]

SENATOR McCOLLISTER: I'll be back. [LB420]

SENATOR ALBRECHT: Okay. Great. [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Will you? [LB420]

SENATOR McCOLLISTER: I promise. [LB420]

SENATOR CHAMBERS: Okay. (Inaudible). [LB420]

SENATOR ALBRECHT: Thank you. Okay, we'll start with proponents. Any proponents wishing to speak to LB420? [LB420]

KENNETH ACKERMAN: (Exhibit 2) Good afternoon, Madam Chairperson Senator Albrecht and committee members, and a special hi to Senator Howard who is the senator from my district. My name is Kenneth Ackerman, K-e-n-n-e-t-h A-c-k-e-r-m-a-n. My wife and I work with citizens, many who are military veterans who enter and leave the prison system. We offer our home to sex offenders reentering society. I have been approved by the Nebraska Parole Office and the Federal Supervised Release Program for taking these men who need a place to restart their lives. I have found the three necessary elements allowing former prisoners to succeed are: (1) a safe place to live; (2) community support; and (3) a meaningful job. These three necessary items can result in a purposeful, protective, productive citizen and a safer society. As a business owner like Senator Halloran, I dislike government intrusion, and especially unnecessary regulations. I believe in the free market that will sort things out better for the...and the public with their purchasing power will chose winners and losers the best way. But this bill is an exception and I support it. I've also hired many different people for a ice company my wife and I owned and operated for over 16 years. Although the resume and the hiring application are important elements, the key to hiring the best employee is a personal interview. Unfortunately, there's a lot of prejudice against those who have served time in prison. It is exacerbated and hyped by news reports, TV shows, and the movies. Therefore, all too many businesses and housing owners for renters will not even consider someone with a past felony conviction. These applications oftentimes go right into the trash. This bill will increase the chance that a potential employer will listen to a story of a former offender and give him or her a better chance at obtaining a job. A job is a key factor for reintegrating into our community and building a new life. And to give further feedback for Senator Crawford, I did counsel people who were in prison and talked to them about the importance of disclosing in the job interview that they have a felony, what they did, why they did it, why they wouldn't do it in the future. And that kind of practice made it much easier for people who were getting out of prison to be able to interview and find a job. So thank you for your time and consideration. Please support this bill. And I welcome any questions or comments. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Senator Halloran. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR HALLORAN: Madam Chair, thank you. I just want to compliment you on what you do and compliment you on hiring folks that have had criminal records. And not for the record, necessarily, but just so people understand what the...my past life as a farmer, I hired many ex-convicts. And generally the experience was very good. And I won't pass judgement on those that weren't good in the future on anyone else that might want to be hired by me. In the restaurant business, I did the same thing with work release programs which many times, and I'm not looking for kudos on any of this, but just so you know, they turned out, generally, pretty good too because they were under very strong parameters of being back where they should...on the job on time and then be back where they need to be on time. And generally, that worked out very well. Many times I had to pick them up or take them back so they would be on time, but I would not do anything to discourage...well, let me rephrase that; I would do a lot to encourage the opportunity for people to have a job in spite of their criminal record, just so that the employer has a chance to ask the question ultimately. And this bill, apparently, allows them to have that. [LB420]

KENNETH ACKERMAN: Thank you, Senator Halloran, I agree. [LB420]

SENATOR ALBRECHT: Thank you. Senator Chambers. [LB420]

SENATOR CHAMBERS: Sonny, the more I listen to you the more I like you. (Laughter) [LB420]

SENATOR HALLORAN: Well, as long as you listen more, we'll be fine. (Laughter) [LB420]

SENATOR ALBRECHT: All right. Any other questions? Seeing none, thank you for your testimony, sir. Any other proponents? [LB420]

JASMINE HARRIS: (Exhibits 3-5) Good afternoon, Senator Albrecht, senators of Business and Labor Committee, my name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s, and I come before you this afternoon in support of LB420. In 2014, Governor Heineman signed into law to where the public employer cannot ask on their applications about criminal pasts for individuals who are applying for those jobs in the government sector. And I want us to be realistic, the majority of people with criminal records are not applying for government jobs. We are all one decision away from having a criminal record, most of us just don't get caught. People have been convicted of minor infraction like speeding do not consider themselves to be in the same category as individuals who have committed crimes that are far worse. When they're applying for jobs, there is not a subsequent box that someone can mark that says they're in a different category outside of have you been convicted of an infraction. The majority of employers have already formed preconceived judgements or biases when they see that box checked. So I think moving this a step

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

Business and Labor Committee
March 13, 2017

further and putting it into the private employer sector makes it an equal footing for someone to have that opportunity to have that interview to prove that they have changed themselves and are ready to move forward in life. According to The Sentencing Project, there are 70 (million) to 100 million Americans with a criminal record, that's whether they've been arrested, misdemeanor, felony. And that's enough people to circle the earth three times holding hands. And when we look at the sheer numbers of individuals with criminal records, we cannot reasonably, logically, morally, or fiscally responsibly write them off and cast their applications into file 13, otherwise known as the trash can, or be disqualified automatically when processed by these new software systems that don't even get into a person's face. I've been advocating for ban the box before I even knew there was an initiative with a name to it. Between 2003 and 2005, I found myself not being able to cope with things from my past and my current life situations. I was attending college, had my first child, in a volatile relationship. My way of coping with anxiety and stresses was like any other college student was to drink and party. I never intended to commit crimes; I had no mind to say I'm going to go be a criminal. I finally got help for my alcohol abuse and with the way my life was spinning out of control it was inevitable I was having those issues. I was ready to graduate and conquer the world, but what I was not ready for was the world to conquer me. In 2006, I was faithfully and productively working a job through a temp agency at a place and when it came time for me to apply for the position to be a permanent employee, I was denied that position that I had been working for, for eight months, faithfully and productively. I provided the temp agency with my past; they gave me the job at that place and that employer said you should never even been given this position to begin with. I harmed no one and I was an outstanding worker in that position and the job site supervisor was upset that there was nothing else he could do. For the next year and a half I applied for countless jobs; jobs I was overqualified for, jobs that I worked before, and to no avail. I was not able to find employment. So I had to rely on state assistance and housing vouchers to feed myself and my son and to provide shelter. In order to make it work, I had to apply for graduate school and get a work study position. That was my last resort. Everybody is not offered that same opportunity to try and move forward to get a job. And I was not a convicted felon, I had misdemeanors. Even after remaining alcohol free, obtaining my masters degree, and staying at my work study job which was then turned into a full-time position for me because I was that good (laugh) when it came time for me to look for a job where I could utilize my degree, I was stonewalled yet again. Being denied position after position without as much as a call for an interview became disheartening almost to a point of wanting to give up, and this feeling of despair is not just unique to me, the feeling is valid and the experience must be recognized. And people when they're in that position they want to give up. And if they don't have those opportunities that are afforded to them, they turn right back to what put them in trouble in the beginning, so we're looking at recidivism. So many employers will figure out or try to argue against this is taking away their right to figure out about that person's past and it's not...it's giving that person that opportunity to come in front of that employer and prove to them that they are a person, I'm not just a second-class citizen marked by this box. Man, I'm on the yellow light. I also want to draw attention to the fact that

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Business and Labor Committee
March 13, 2017

there are individuals who are willing to work. When you take all this many people out of the economy, your economy is going to tank. Nationally, it's about \$78 (billion) to \$87 billion per year in the domestic gross product of losses. And also, there are over 10,000 Baby Boomers retiring every day; we have to make sure that we have a workforce there because 1 out of 3 Americans will have a criminal record by the time they're 23. [LB420]

SENATOR ALBRECHT: Very good, very good testimony, thanks for sharing. [LB420]

JASMINE HARRIS: Thank you. [LB420]

SENATOR ALBRECHT: Senator Chambers. [LB420]

SENATOR CHAMBERS: Every story has an end. Has your story an ending? [LB420]

JASMINE HARRIS: My story is still going. I am gainfully employed. I am an advocate in the community for criminal justice reform and juvenile justice reform. I sit on many boards and just I'm all around involved in trying to make it better for everyone who is fighting the same thing I fought. [LB420]

SENATOR CHAMBERS: Have you heard a song by the Animals called "The House of the Rising Sun?" [LB420]

JASMINE HARRIS: Yes. [LB420]

SENATOR CHAMBERS: Have you heard that line in one of the lyrics say: this ball and chain? There's sometimes a ball and a chain that attaches to a person and after everything that the law requires to be done, has been done, but there's no hacksaw that you can use to cut the ball and chain loose. And again, from what you've gone through, you know that we have to take it a step at a time and be realistic. But I hope whatever happens you don't give up. And at some point I'd like to talk to you and we'll just see what's what. [LB420]

JASMINE HARRIS: Awesome. Thank you. [LB420]

SENATOR ALBRECHT: Thank you. Senator Halloran, did you have a question? [LB420]

SENATOR HALLORAN: Other than you present yourself very well. [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

JASMINE HARRIS: Thank you. And there's more written; I had to rush through it. [LB420]

SENATOR ALBRECHT: We have lots to look at; we appreciate that. Any other questions? Thank you very much. [LB420]

JASMINE HARRIS: Awesome. Thank you so much. [LB420]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak? [LB420]

WILLIE HAMILTON: How you doing today? [LB420]

SENATOR ALBRECHT: Fine, thanks. [LB420]

WILLIE HAMILTON: (Exhibit 6) My name is Willie Hamilton, W-i-l-l-i-e H-a-m-i-l-t-o-n. Honorable Senators of the Business and Labor Committee, again, my name is Willie Hamilton. I'm a father of two sons, Staff Sargent Damien Hamilton who is serving in the United States Army, currently stationed in South Korea; Jamel Hamilton, newly married living in Omaha; and one daughter, Alexia, who is a freshman at the University of Nebraska-Lincoln. I'm the executive director of Black Men United in Omaha. In part, our mission is the purpose of Black Men United is to foster black male achievement by enhancing economic, social, educational, and political inclusion in the U.S. To accomplish this, it will focus on providing services in three critical areas: education, work, and family while promoting positive images and messages about black boys and men. People can get swept up into the criminal justice system. Sadly, that includes five brothers, other relatives and friends. My five brothers were all incarcerated and we are being greatly affected by their criminal history preventing them from fulfilling gainful employment. Therefore, I am compelled to speak in full support of LB420, not only for the effect on my family, but on my race and my community. One out of every three African-Americans is affected by mass incarceration. Many of our youth are getting into the system at an early age and for much longer sentencing for minor, nonviolent crimes, particularly in communities of color. They are stripped of the very rights won in the Civil Rights Movement like the right to vote, the right to serve on a jury, and the right to be free of legal discrimination and employment, not to mention access to education and public benefits. Many of old forms of discrimination that we supposedly left behind during the Jim Crow era are becoming legal again. We are the only industrialized country in the world that gives someone who has committed a felony a life sentence. They serve their time, pay their debt to society, get released and then are unable to find a job where they can earn a living wage taking care of themselves or their families on top of this. They are most often unable to find housing. There is a growing movement across the country, currently nationwide, over 150 cities and counties have adopted what is widely known as "ban the box." And there is a total of 25 states representing nearly every region of the country that

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Transcriber's Office

Business and Labor Committee
March 13, 2017

have removed the conviction history question on job applications for private employers, which advocates embrace as the next step in the evolution of these policies--baby steps. The movement has been energized by recent federal warnings that using criminal background checks to screen initial applications is discriminatory. In 35 years, leading up to the 1960s, the number of African-Americans incarcerated in federal and state prison have increased by 52 percent. In the subsequent 35 years, the number increased to 1,266,000 people. A mistake should not cost a person the rest of their life, but men and women are being denied employment for mistakes they made 20, 30, 40 years ago. How are they supposed to support themselves and their families? Our system needs reform. I urge you to vote yes in support of LB420. Punishing people for a lifetime isn't working; and as Americans, we believe in second chances. Thank you. [LB420]

SENATOR ALBRECHT: Thank you very much for your testimony. Do we have any questions? Seeing none... [LB420]

SENATOR LOWE: I want to say thank you for your life service. [LB420]

WILLIE HAMILTON: All right then. [LB420]

SENATOR ALBRECHT: Thank you. Do we have any other proponents wishing to speak? [LB420]

DOUGLAS SHOCKLEY: Good afternoon. My name is Douglas Shockley, D-o-u-g-l-a-s S-h-o-c-k-l-e-y. I'm here on behalf of myself, but I also come with another group, it's called Fearless. In December, I was let go from my job of 17 years that a friend helped me get into. In '92, I was released from prison and I had two friends help me get a job and then I had a job...I got a job at the Olive Garden and I had to leave that because of health issues. I do have health issues and since I've gotten released...or since I got terminated in December, I have been looking for a job and the first thing that popped up is if you have a criminal record we do not want you. And I've been really struggling at getting a job and even making ends meet and getting my medications. I do prison ministry and at prison ministry I see a lot of people have come back and they say the biggest problem is they cannot get a job. I've heard for the last 8, 12 years about prison reform. And if we don't get a lot of people to get jobs, there's no such thing as prison reform because people need to work. That's all I have to say. Thank you. [LB420]

SENATOR ALBRECHT: I appreciate your testimony. Senator Chambers. [LB420]

SENATOR CHAMBERS: The reason I'm glad that you all came that had problems, these situations need, as they say, to have a face. And when we can see people who had these

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

Business and Labor Committee
March 13, 2017

problems, it might have a greater impact than maybe volumes of statistics. When I was a much younger man, I was arrested. It was on a phoney gun charge; it would have been a felony. I could have gotten two years in prison and over \$1,000 fine and everybody knew it was phoney, even the prosecutor. They wanted to embarrass me; they wanted to inconvenience me. And the whole thing was dismissed, dismissed without a trial. But suppose that that hadn't happened and I'd been processed and convicted. Well, they knew that I knew something. I could have defended myself in court anyway and they didn't want me to have a chance to say anything in the courtroom. But let's say those weren't my circumstances. I wouldn't be here now in the Legislature. I'd be a felon and none of the things that I've done would I have had the opportunity to do. Anybody can do something that is very unwise, some things can spin out of control and more is done than was intended. So I have never been one to judge a person for his or her whole life by one act. I never have been, maybe it's from early religious upbringing, which I did outgrow. When I was a child, I thought as a child, behaved as a child; but when I became a man I threw away childish things. But some of those things carry over and I don't know where I got so deeply engrained in me that everybody is entitled to another chance other than if I had done something, I wouldn't want to be judged by that forever. And by you all coming here, it takes more than a notion to do it. We could sit here and listen to it, we can be moved by it and think about what we ought to do, but in the meantime when you all leave here, you still have to face the world that has not heard what you said, who may not be sympathetic, and that's why we have to get laws to try to open the door just a crack. But we're in a political setting, not everybody is in agreement with what we're doing, so I'm appreciative of the fact that you all, being led by Senator McCollister in being the front man, are willing to take the incremental steps that have to be taken in a political setting. Sometimes getting one piece of legislation might cause some people to be very critical and look at it and then they say, wait a minute, that makes sense. And the reason I say it, there's a guy he had run for an office, and I won't tell what it is, but not only did he change his mind, he had a company, he started hiring ex-felons. And for a period, that's all that he would hire to show that people who had done things in the past didn't have to be branded by that. And somebody mentioned about embezzlement, maybe just disqualifying a person for a job in a bank. Well, with all due respect and as quiet as it's kept, I think that kind of mentality is necessary to work in a bank anyway because what they did to the farmers, a lot of them just didn't get charged with it. But let's say that a person was very good with numbers, statistics, all kind of numbers. He or she might not be able to be a teacher because you might not be able to get a certificate. If you got a certificate, maybe nobody would hire you. Your knowledge doesn't go away; your ability doesn't go away. And I think as a society we need to learn how to tap every resource that we've got. This, and then I'm through, you're just my sounding board. I got commies in the Legislature who think...will find out that I did have that arrest and they will wish that I'd been convicted. Then they wouldn't have to deal with me. (Laughter) That's all that I had. And you all, don't give up. You got people who are going to keep trying. But you have to keep trying to give us a basis to keep moving in the right direction. That's all that I have. [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions? Thank you for coming. [LB420]

DOUGLAS SHOCKLEY: Thank you. [LB420]

SENATOR ALBRECHT: Do we have any other proponents wishing to speak? [LB420]

TALIESHA GOODWIN: I'm waiting for my phone to come on because I have... [LB420]

SENATOR ALBRECHT: That's fine, (inaudible). [LB420]

TALIESHA GOODWIN: But hello everyone. I guess I could introduce myself. I am Taliesha Goodwin, and it's T-a-l-i-e-s-h-a, Goodwin, G-o-o-d-w-i-n. So, good afternoon, Chairwoman Albrecht and members of the Business and Labor Committee. Once again, my name is Taliesha Goodwin and I am here to testify in support of LB420. I can speak to limitless reasons why the box should be banned from all employment applications. I will speak to only two I deem most pertinent and that affect not only individuals but other systematic efforts which are rehabilitation and recidivism. I'm not here just speaking on my behalf, but on the behalf of the many individuals I have advised in relation to this topic being addressed today. Have you ever committed a crime? Have you committed a crime within the last 3, 7, or even 10 years? If so, check the box. The question no matter how you state it is intrusive, most of the time vague in defining the word "crime." And when explained what crime is included or excluded, it takes on an ambiguous nature. The layman one time offender, and in some cases, even the repeat offender feels uncomfortable and uncertain if not enough or too much information was given. It automatically sets a less than positive tone. Moving ahead and staying in line with my two points, I will address rehabilitation. Whether a one-time offender or a repeat offender, the court has made a decision on how you should be reprimanded as an adult and one of the few states still able to say rehabilitated only as a minor. The box takes away from the trust and belief in the rehabilitative programs and processes put in place by the judicial systems and those who can contract with it. Rehabilitation means to restore to a condition of good health, ability to work, or the like. But if we are denying individuals the chance to be considered, excuse me, or to...or the first to be disposed of in the employment process, we are contradicting ourselves. The box being eliminated allows for a conversation to be had and a second chance to be recognized and considered on a case-by-case basis. When you take away the voice of individuals who have committed crimes rather for the first time or as a repeat offender; well, if you take away anyone's voice. For instance, think how frustrated are you when you are cut off in conversation or think if you slammed your finger in the door and couldn't yell, say ouch, or even jump up and down, etcetera, because communication is not always verbal. It would be frustrating and discouraging and you would soon find other ways to cope and be heard, which leads me to my point of

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

Business and Labor Committee
March 13, 2017

recidivism. If these individuals lose trust in the rehabilitative programs and processes which is the only new information and plan they are equipped with after coming into contact with the law, they will resort back to what they know. For those who do not get a rehabilitative option, they will be less likely to seek them out themselves. If you told me, hey, you have a felony but employers, depending on your rehabilitative approaches, will consider you for employment, I would seek the best rehabilitative program there was to be self-sufficient and take care and support my family. But if every time I was faced with a box and not getting hired due to my record with only words on paper speaking for me and against me, it would result me to reoffending because it's human nature to survive by any means necessary. And at that time, the skewed perception which filled whatever void or perceived the need will supersede the rehabilitative process that is failing me. In summary, we have to be clear on what crimes are to be disqualified increasing the ambiguity in verbiage used. Rehabilitation needs to be recognized as a possibility across the board and once recognized by banning the box we need to have real and optimistic conversations in regards to the how, why, and what have you done differently. Finally, I have worked in the education field working with a diverse group of children and families for over ten-plus years and in many facets and I have been denied positions where I knew my plight could save multiple individuals and I watch others experience the same. [LB420]

SENATOR ALBRECHT: Very good. Thank you for your testimony. Senator Chambers. [LB420]

SENATOR CHAMBERS: You made me think of something. Let me change my situation. Let's say that everything that I mentioned before about this charge were true, and let's say I actually violated a gun law. But a judge...and obviously I want a bench trial, no jury, and the judge knew me, and the judge knew I'd gone to law school, that I had family, and all these kind of things, but knowing the way that society would judge me, the judge would find me not guilty. Well, when you go by the facts, I would have been as much of a felon as anybody who had been convicted and sent to prison. But I didn't have to say that I had a criminal record. The box doesn't ask what you did and whether other people did the same thing were not convicted, may not even been charged, it just asked--was the point reached where a determination was made that you're guilty and that's it. That marks a person forever. Then society is not only robbing its own till, but it's cheating all these people. So this effort is not moving as fast as anybody would want to see, but I don't think the work is being done in vain. We are like a glacier; we move slowly, but we move. And who knows, we might reach a point where there's a drop off and we might then move with the speed of light because suddenly there is an awareness of what's involved. So I hope you all don't get discouraged. The ones who have those balls and chains and the ones who are working to try to do the help. And you got some friends in the court if you want to call the Legislature a court. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Senator Halloran. Thank you, Senator Chambers. [LB420]

SENATOR HALLORAN: Thank you, Madam Chair. You bring up an interesting question. So let's use that example that, but we're talking about just anybody else, not just you specifically. Did I understand you correctly that...say it's Senator Lowe, not you, that went to court...bench case...bench court, and he knew the judge and the judge knew him. I'm playing naive here, but does it happen, could it happen that someone might know of a defendant and let him go? [LB420]

SENATOR CHAMBERS: Right, and the judge would determine that this person is a good person and entitled to a chance. [LB420]

SENATOR HALLORAN: Remember, we're talking about Senator Lowe here. (Laughter) Okay, no, that's fine. [LB420]

SENATOR CHAMBERS: I'd think a long time, but to do the right thing, I'd let him go. (Laughter) [LB420]

SENATOR HALLORAN: Thank you. [LB420]

SENATOR ALBRECHT: Thank you. Any other questions? Appreciate your testimony; thank you for coming. Do we have any other proponents wishing to speak? Proponents? [LB420]

JULIA TSE: (Exhibit 7) Good afternoon, Chairman Albrecht. My name is Julia Tse, J-u-l-i-a, T-s-e, and I'm here on behalf of Voices for Children in Nebraska. We are a nonprofit, nonpartisan advocacy organization that is dedicated to building pathways, opportunities for all kids and families in our state. We believe that children need stability to thrive, and that parents provide the foundation for child well-being. Voices for Children in Nebraska supports LB420 because it removes a significant barrier to a strong family foundation for many Nebraska children who are already facing other adversities. Ensuring that fair-chance employment practices are in place is an essential feature of a fair system that does not construct roadblocks when Nebraskans who are formerly incarcerated or convicted are walking the path to reentry. Such barriers are counterproductive to strong communities and they are harmful to the many children of parents who have a conviction history. Children have paid a hidden and very heavy cost for mass incarceration in our state and in our country. It is estimated that there are at least 41,000 Nebraska children, or 9 percent of all of our children who have had a parent in prison or jail at some time during their childhood. The loss of a parent under any circumstance is devastating, and the developmental science research tells us that there is much cause for concern. Without

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Transcriber's Office

Business and Labor Committee
March 13, 2017

proper intervention, children who experience severe adversity and trauma in childhood suffer a lifetime of poor outcomes by a number of dimensions--physical and mental health, educational achievement, economic stability, and justice involvement themselves. Parental incarceration leaves a dramatic ripple effect on children and the communities in which they live. And in the last few months, Voices for Children have been conducting focus groups with Nebraska families that can speak to parental incarceration, and employment was one of the biggest barriers that was identified upon reentry and other barriers to maintaining basic financial stability and making ends meet. So I think, like others have said, this is a very important first step. There are a lot of opportunities to ensure that children who have been affected by the justice system are positioned for long-term success. As a state, we can continue to invest in and support our children through the support systems on which they rely--their parents and their communities. Parental employment is crucial to household stability and allows parents to be able to provide the love and care that every child needs. Challenges to meeting basic needs is the most basic barrier that children face when a parent is incarcerated or jailed due to a loss of income. And LB420 is an important first step to ensuring that such challenges do not continue upon reentry. We want to thank Senator McCollister for his leadership on this issue and this committee for their time and consideration, and would urge you to advance LB420. [LB420]

SENATOR ALBRECHT: Thank you. Any questions? Seeing none... [LB420]

JULIA TSE: Thank you. [LB420]

SENATOR ALBRECHT: Any other proponents wishing to speak? [LB420]

FRAN KAYE: (Exhibit 8) Thank you very much for hearing me today. Thank you to Senator McCollister for bringing this bill. My name is Fran Kaye, F-r-a-n K-a-y-e, and I'm happy to come before you in support of LB420. I'm here representing the Re-Entry Alliance of Nebraska, and I have a really bad cold, so sorry if I sound awful. [LB420]

SENATOR CHAMBERS: Don't breathe too hard when you look my direction. [LB420]

FRAN KAYE: (Laugh) Okay. If I'm going to sneeze, I'll turn the other way. (Laughter) As part of my work as an ethics studies professor at UNL, I have volunteered in the prisons for more than 20 years and I am often involved with helping people to fit back into society after they are released. We know anecdotally that ex-offenders are less likely to be employed than are similar people without a criminal record, that lack of a job increases the danger that former offenders might reoffend, that high percentages of unemployed citizens destabilize communities, and that we all, as a society, lose out when qualified people are not allowed to become economic contributors. We also know that some of the reasons ex-inmates are less likely to be employed

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Business and Labor Committee
March 13, 2017

have nothing to do with banning the box, but with their loss of skills during incarceration, their statistically lower levels of education, and, frequently, a lack of job skills and experience. On top of all this, we should not introduce biases against hiring ex-inmates that make it much harder for people to land jobs after release from jail or prison. I was trying to find out if we have any good statistical information on the exact level of former inmate unemployment, but we don't; or about the reasons for that unemployment, but we don't, that's not one of the questions the census asks. We do, however, have several useful studies that give us the general scope of the problem and some suggestions for alleviating it. A study by the Center for Economic and Policy Research estimates that there is a 15 to 30 percent decline in employment rate subsequent to prison. That is, the same person is 15 to 30 percent less likely to be employed after going to prison. The effect is particularly high for black men who are severely overrepresented in prisons nationwide and here in Nebraska. A National Institute of Justice Study...actually there's a whole bunch of them, but they're all on the same URL so I'm just referring to them as one, sent out pairs of applicants for advertised jobs. It showed that employers were only about half as likely to call back if a supposed job candidate admitted to having a criminal record. And again, the rate was worse for black applicants than for white applicants. The study also showed that employment prospects for applicants with criminal records improved when applicants had an opportunity to interact with the hiring managers. And that's a direct quotation from this study. And a follow-up telephone survey of the same employer showed that self-reports significantly understated the barriers to entry-level employment faced by both blacks and ex-offenders. That is when you called them up, they said--well, yeah, I'd be less likely to hire them, but not completely; but then they didn't call back nearly as much as they said they would, which is kind of interesting. LB420 allows ex-offenders to interact with hiring agents before the agents can form a preconception of the job candidate based only on former status as a convict. It gives people a foot in the door that they clearly lack if they must first check an ex-felon box. When they get a chance to sell themselves, they are more likely to be considered for a job. The prospective employer can still decide not to hire the candidate who has a criminal record, but they are much less likely to turn down that candidate based only on the inaccurate preconception of what he or she has to offer despite that record. LB420 will not only enhance a former offender's chance of getting a job, it will also help encourage him or her to keep on looking. No one likes to be rejected, and being continually rejected without even a hearing for something that happened some years ago and that you cannot change is really hard on your confidence and self-image, especially if you have been conditioned to think of yourself as a loser anyway. And unfortunately, that's a lot of what prison does. I have seen people get really dejected and frustrated as they drop off application after application knowing that it has a box for them to check saying they have ever been convicted of a felony and they're just not going to get a callback. Reentering society after being incarcerated is exhilarating, but it can be frightening and anxiety-ridden too. There is so much to do, and after awhile if you just keep getting turned down without ever meeting a real person, it becomes easier to put off looking for a job because it seems that applications only lead to rejection or failure. LB420 gives individuals who are trying to reenter a society a chance to talk to a hiring manager

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

Business and Labor Committee
March 13, 2017

and to make their own case for themselves, something that checking boxes on an application can never do. If we want ex-offenders to become contributing members of society, we owe it to them to not put necessary hurdles in their path. Thank you. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. Do we have any questions? Senator Halloran. [LB420]

SENATOR HALLORAN: Madam Chair, thanks for allowing me to ask probably too many questions; but thank you, Ms. Kaye, for your testimony. Just so we understand, I'm supportive of this bill primarily because getting a job...getting a job, from my estimation, is more about marketing than it is anything else. And what, if I understand the bill correctly, that allows the individual to market themselves one-on-one in a personal interview. I'm okay with that and I'm highly supportive of that. That being said, I hope everybody does have some level of empathy or understanding from an employer's perspective, in general, that they have obligations to themselves, if it's their own company, or a company that they're employed as a manager to look out for the well-being of the company and fellow employees. And so there is a level, you may not appreciate this, or you may, but there's a level of anxiety with the possibilities of dealing with hiring someone that has a past. And I think this is an effort...I think this is a legitimate effort to overcome that bias, if you will, and allow for that one-on-one marketing which should indeed be taking place. So, but I'm asking for a little understanding from the employers' perspective as well. Thank you. [LB420]

FRAN KAYE: Thank you. [LB420]

SENATOR ALBRECHT: Excuse, ma'am. Senator Chambers. [LB420]

SENATOR CHAMBERS: You have to give me an opportunity. Senator Halloran and I have been kind of doing a dog and pony show. Senator Halloran, that makes a lot of sense; I'm glad that was in the record. And I think all of us understand the anxiety that employers and others have. But as you said, the marketing...given a chance, and for some people, just to be treated like a human being and being given a chance and if an explanation can be given why the job is not given, that would make a difference, even if the employer lies, but thinks enough of you as a person to talk to you in that way goes a long way. And I'm sure there are people who came down here as new senators who has had anxiety spells about me, but now they see that I'm just in the daytime mild-mannered, easy-going, elderly gentleman who may kick off at any moment, but an overall, all things considered, pretty decent chap. (Laughter) [LB420]

FRAN KAYE: Can I say something about anxiety and people meeting people, because I bring a lot of students to the prison and I bring them usually to the self-betterment club's symposium and

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Transcriber's Office

Business and Labor Committee
March 13, 2017

they get to meet people and sit with them, and one of my students said afterward--I was really nervous going in there, I had all these images of these big burly guys with tattoos all over their arms and I walked in and there was this big burly guy with tattoos all over his arms and he was shaking everybody's hands and offering us pop and cookies and he wasn't really scary at all. [LB420]

SENATOR HALLORAN: May I add to that, Senator Chambers is from time to time giving very clever and entertaining anecdotes. I would like to bring up the movie "Cool Hand Luke". Cool Hand Luke (inaudible) was in a prison scene circumstance where Cool Hand Luke played by Paul Newman said--what we have here is a failure to communicate. And that's all you're asking for is a little bit of communication. [LB420]

FRAN KAYE: That's true. [LB420]

SENATOR ALBRECHT: Okay. No other questions? Thank you so much for your testimony. Okay, we're still on proponents. Any other proponents wishing to speak? Hi. [LB420]

OMAID ZABIH: (Exhibit 9) Good afternoon, again. My name is Omaid Zabih, and it's spelled O-m-a-i-d, my last name is spelled Z-a-b-i-h and I'm a staff attorney at Nebraska Appleseed. Once people have paid their debt to society by completing their prison sentence, acquiring gainful employment, as you've heard here today, is a critical step to reintegration into society. Ban-the-box policies are extremely important in that they require employers to delay inquiring about an applicant's criminal history until after the initial step of the hiring process. This allows applicants the opportunity to present their skills and qualifications without their past impeding their prospects for a job. And according to a 2017 report from the institute, researchers have found that such policies increase call back rates for people with criminal records and that ban-the-box policies effectively eliminate the effect of having a criminal record on receiving a callback. And again, this bill would not prevent an employer from inquiring about an applicant's criminal history altogether, it would simply ensure that an applicant first has the opportunity to present themselves as a person and their qualifications to the potential employer. And this bill would also continue the recent work of this Legislature to help curb the rate of unemployment among returning Nebraskans, to provide more opportunities for a person to contribute to their community, and to help returning Nebraskans support themselves and their family. And we strongly urge the committee to advance this bill. I'd be happy to answer any questions. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. [LB420]

OMAID ZABIH: Thanks. [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Questions? Seeing none, thank you. Do we have any other proponents? Any other proponents? Hi. [LB420]

JOHN GIBBS: Good afternoon, Senator Albrecht and members of the committee. I'm John Gibbs, J-o-h-n G-i-b-b-s, and I have a past. I was a professional for over 20 years, and after my felony conviction and subsequent loss of my job, I was mostly unemployed for 17 months. While I was trying to get back into a professional capacity, I applied for any job that would pay: lawn care, fast food, handing out stickers at your local store, anything. I filled out dozens of applications and so many I lost track, but I do remember how many job interviews I got, which was one. I can't say that the box is the cause of my experience, but I had never had a problem getting an interview prior. Recently, my job for the last four years unexpectedly transitioned from salary to 100 percent commission. While looking for part-time work to help alleviate the financial burdens, I began to face similar experience of not going past the application stage. In fact, the work that I've gotten was done face-to-face, no application required. I was hired for my skills, not looked over because of my past mistake. My felony was my fault and I fulfilled my conviction, but having the have you been convicted of a crime box prevents me from making a comfortable living, providing my teenage daughter with the things kids require and fully contributing to society. I ask that you please consider supporting LB420 so people who want to make an opportunity can make an opportunity if they want to find work. Thank you. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. Senator Chambers. [LB420]

SENATOR CHAMBERS: Even when a fine-looking young man like this who comports himself so well applied to me for a job and didn't tell me anything, I'd hire him. On the other hand, if somebody looked like me who doesn't have a conviction came, just be realistic, the appearance something like Ms. Kaye indicated, the guy with the tattoos, there can be preconceptions. So if you can get past that and have a person present himself or herself as a person, then you might be able to give them a shot at least. I'm glad you came. [LB420]

JOHN GIBBS: Thank you. And might I add that I would...when I got face to face, I would reveal my past. I just feel, honestly. And I did look like you for my fifth grade Halloween, even that's not too PC now, but I wanted you back in the '70s... [LB420]

SENATOR CHAMBERS: You look like (inaudible). Now I want to say something... (laughter) [LB420]

SENATOR HALLORAN: Stop. [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: You just had a job. [LB420]

SENATOR CHAMBERS: ...you should not have revealed anything, but if they ask you and didn't have ban the box you should have lied and said, no. Then when they found out, and you said...and he said you can't have the job, and you'd ask him why. He said, well, because you lied. I lied about what? You said you didn't have a criminal past. Well, what did you expect, I am a criminal. That's what you should tell him. Then he might say--you got me, you got the job because you're clever, too, and quick. [LB420]

JOHN GIBBS: I would rather be honest up front. [LB420]

SENATOR CHAMBERS: I was just getting even for what you said I look like a Halloween character. [LB420]

JOHN GIBBS: No, I went as you for Halloween. [LB420]

SENATOR ALBRECHT: Senator Lowe. [LB420]

SENATOR LOWE: Did you get more candy than any other kid? [LB420]

JOHN GIBBS: I think some people thought I was Bob Ross. (Laughter) [LB420]

SENATOR LOWE: Okay. [LB420]

SENATOR ALBRECHT: Very good. Thank you for coming. [LB420]

JOHN GIBBS: Thank you very much. [LB420]

SENATOR ALBRECHT: Any other proponents wishing to speak? Any other proponents? [LB420]

STEVEN HOWARD: Good afternoon. I'm Steven Howard, S-t-e-v-e-n H-o-w-a-r-d. And I appreciate the opportunity to address the committee in support of LB420 on behalf of the Nebraska State AFL-CIO. You know, the work of this committee is so important to Nebraska employees. I just want you to think about when you meet someone new, you meet someone over the fence post or someone at a coffee shop or walking down the street, you ask--well, what do you do? What do you do? We're really asking what that person does for a living. Nobody ever

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Transcriber's Office

Business and Labor Committee
March 13, 2017

answers that question and says, well I'm a left-handed Presbyterian that likes collecting trains or I enjoy studying Russian literature or something. And the point is, we're so defined and so interwoven and into what our jobs are, it's such a big part of us. And it's like when you meet a child and you ask the child--what do you want to do when you grow up? Again, their mind immediately goes to their job: I want to be a nurse; I want to be a fire fighter; I want to be...I want to be like my mom or my dad. Union membership are very proud of their work. They display it on their vehicles. I'm a cement mason; I am an electrician; I have the support of my brothers and sisters, but my point is that it is so critical to what we do and it really is a matter of self-esteem and self importance. And I sat across the table from so many people that have put in 20, 30, 40 years at a job and it doesn't matter if it's a kind of job that a high school senior might look at and think, boy, I don't want to do that for 30 years. But that person swells with pride because they're proud of what they've done and the work that they've done over their years and then you could have a person next to them--and what do you do? And the air just goes out of the room, and, well, I'm between work, I'm a convicted felon and I'm trying to find a job, and they feel like less than a person. And I've had these experiences over and over again. And everybody that I talk to, their work is somehow related to the issues that we're taking up that day whether it's a work comp claim or an unemployment issue of something like that. And so we support LB420. And there's been some discussion today about what happens in the criminal court and, you know, when a person is sentenced, and you can read about this in...by criminologists writing studies that there are really three things that come into play in the sentencing. Number one is to protect society, because there are people that we need to protect ourselves from, that need to be in custody. There's interest of rehabilitation. Unfortunately, we have less and less dollars, public dollars, going toward rehabilitation. And the third one is punishment, and the statute says right in there--this crime shall be punishable by the following. But I've never had a judge say--well, I'm thinking of sentencing you and here's going to be your fine and this many days and these terms of probation and oh, by the way, I'm taking into account the fact that for the rest of your life when you apply for a job, you're going to have this held against you. That's not how the judge is thinking. The judge thinks when the sentence is done and parole and probation and everything is behind you, then it's all behind you and, hopefully, employers can have the same perspective and give folks a second chance. So, those are the things I wanted to say today. And the Nebraska State AFL-CIO supports LB420 and we hope that you advance it. [LB420]

SENATOR ALBRECHT: Thank you very much. Any questions? [LB420]

STEVEN HOWARD: Thank you. [LB420]

SENATOR ALBRECHT: Seeing none, thanks. Any other proponents wishing to speak? [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

JOE NIGRO: Good afternoon. Chairwoman Albrecht and members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB420. When someone has served a sentence for conviction of a crime, we are all better off the sooner that person can be fully restored to society. Obtaining employment is crucial to that person becoming a positive productive member of the community. If they can't obtain gainful employment, the odds of that person will engage in further criminal conduct go way up. We see clients get very frustrated when they can't find work. A job isn't just a way to pay the bills, it provides hope for a brighter future. I work with our drug court. A big incentive for participants to complete that program is the opportunity to get their charges dismissed because a felony conviction can make gaining employment so difficult. This bill would help those people gain employment; it still protects employers who need to know about certain types of convictions before they hire someone, but it will prevent potential employees from being unnecessarily disqualified from many jobs. Only people committed to prison for the most serious crimes are going to spend their lives in prison. The vast majority will get out. If we want them to succeed, we must treat mental health and substance abuse issues, we must provide education and job training, and we must improve impediments to finding employment. We all benefit when someone coming out of the criminal justice gets a job. LB420 will remove a big obstacle for people coming out of the system and I urge you to advance the bill. Thank you. I'm happy to take any questions. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. Any questions? Seeing none, appreciate you coming. [LB420]

JOE NIGRO: Thank you. You're welcome. [LB420]

SENATOR ALBRECHT: Any other proponents wishing to speak? Go ahead. [LB420]

AMY MILLER: (Exhibit 10) Good afternoon, Senators. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. We are so pleased that so many of the cosponsors of this bill are here in this room. Thank you so much to Senator McCollister, Senator Chambers, Senator Crawford, and Senator Howard for your leadership on this important issue. You've already heard great reasons why this is good public policy. I just wanted to provide a short insight into who we're talking about because I think when we're talking about people with criminal convictions there's sort of an assumption that we're thinking about people who are doing serious time for very serious hard crimes. The reality is, the average person, as Mr. Nigro just referenced, that is sentenced to do time in Nebraska, even at our state-level facility for serious felonies, the average length of stay is only 25 months. The Department of Corrections collects statistics on who it is that's currently serving time in our state prison and they divide them into Part I offenses and Part II offenses. Part I offenses are the serious and scary things: robbery,

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Transcriber's Office

Business and Labor Committee
March 13, 2017

murder, rape, physical assault, sexual assault. And the Part II offenses are things like drugs, kiting bad checks, traffic offenses, DUIs, theft of some sort that doesn't involve physical force with someone. The reality is that 86 percent of people who are currently serving time in Nebraska are Part II offenses. They may have committed a crime; it may be a felony, which is a serious label, but these are not crimes of the sort of people that we should be worried about or fearful of. The majority of these folks are going to be coming back home, living in our communities, and we need to make sure that we have opportunities available for them. I've also heard about how the impact on not just the offender but the offender's family, the offender's children, the offender's communities. There are so many factors why we have too many people of color behind bars. I will point out that it is such a shocking number, a correlation for people who have a felony conviction with race that the Equal Employment Opportunity Commission now has issued guidance saying that employers that ask about criminal records or have a per se rule of refusing to hire someone with a criminal record may be engaging in, essentially, racial discrimination, but that it's simply a code or a mask for it. So there's 2012 guidance suggesting that someone could file a lawsuit saying your rule that you won't hire someone with a conviction is actually just a mask for racial discrimination. All of these things, of course, have the possibility to touch on the larger conversation we're having with the Legislature this year about mass incarceration, about the need to reform our prison systems. We urge you to pass LB420 so that we can be helping the people who have served their time and come back to our communities. I'm happy to answer any questions you have. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. Do you have any questions? Seeing none, thanks for coming. [LB420]

AMY MILLER: Thank you. [LB420]

SENATOR ALBRECHT: Do we have any other proponents that wish to speak? Very good. [LB420]

JOANNA LINDBERG: (Exhibit 11) Good afternoon, Chairwoman Albrecht and members of the Business and Labor Committee. My name is Joanna, J-o-a-n-n-a, Lindberg, L-i-n-d-b-e-r-g, and I'm here in support of LB420. Much of what's been said is in my brief testimony, but I just wanted to emphasize just that the dignity of families and employment opportunities what a difference it can make to families and children in communities. Another factor is just the overcrowding in the Correction System and if this could, in some way, reduce the recidivism problem that we have in Nebraska it could make...it's a win-win for the state of Nebraska and for the families. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Very good. Thank you. Questions? Comments? Seeing none, thank you for your testimony. [LB420]

JOANNA LINDBERG: Thank you. [LB420]

SENATOR ALBRECHT: Any other proponents wishing to speak? Hi. [LB420]

MARGE SCHLITT: Well, good afternoon, Senator Albrecht and members of the committee. I'm Marge Schlitt, M-a-r-g-e S-c-h-l-i-t-t. I'm here to testify for Nebraskans for Peace who feels this is one of the issues we very much care about because I personally have been a volunteer in prisons for nearly 30 years. I've known a number of people who have struggled with their conviction, remembering the worst day of their life when they did something they have regretted ever since and wanted to become a productive member of society so that they can go out and get a job. This would be, in my estimation, a baby step, one of the tiny things, many things the Legislature could do to help people who are coming out of prison who are trying their best to do a good job and make it right. And I'm not following the testimony that I have written, but it's...we do want to talk about how former inmates want to become productive members of society and we all know about the obstacles they meet. We've heard all that testimony, so I really don't need to go through what I've written down. But I do want to impress upon you how many people I've known personally who tried and had great difficulty, in spite of their talents, in spite of their motivations, to get good employment, even though they're just as well qualified as anybody else who applies. That's it. [LB420]

SENATOR ALBRECHT: Thank you for your testimony. Any questions? Seeing none, thanks for coming by. Okay, do we have any other proponents. Any other proponents wishing to speak to LB420? Seeing none, any opponents? [LB420]

ROBERT HALLSTROM: (Exhibit 13) Chairman Albrecht, members of the committee, my name is Robert J. 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 to testify in opposition to LB420. While we understand the frustration that individuals with prior criminal convictions may experience in seeking employment, there are also some problems that can be created by the provisions of LB420. One of the things particularly for small businesses has to do with the injection of an additional step and delay in the hiring process. Recruiting and hiring is an expensive proposition, particularly for small businesses, and if there is information that could be learned earlier in the process that may ultimately disqualify someone for the position of employment that's being sought, the earlier that that small business employer can know about it the better. We acknowledge and understand that LB420 does provide for limited exceptions allowing for inquiries, but those are fairly specific in terms of they must be provided expressly under federal

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Transcriber's Office

Business and Labor Committee
March 13, 2017

or state law. There are situations where there's not an absolute disqualification under a federal or state law, but there are circumstances in my testimony that I've referenced in terms of positions at a daycare center or as a security guard where the applicant has a criminal record or history relating to sexual or physical abuse. An applicant for a server or retail clerk position that may be dealing with cash or credit cards where they have previously been convicted of embezzlement or identify theft, may be situations where that person ultimately will not be considered...or may not be considered for that position. Another thing that I'd like to reference for the record and, Senator Chambers, in connection with some of the questions that you asked Senator McCollister earlier, there is Title VII of the Civil Rights Act and the EEOC has interpreted that to prohibit the outright disqualification or automatic disqualification of applicants with convictions from employment. And in my testimony, I've indicated that the standard is there must be a justifying business necessity or otherwise an automatic disqualification violates Title VII and is illegal. In order to establish business necessity, the employer must show that it considered three factors in making the employment decision. Number one, the nature and gravity of the offense; number two, the time that has passed since the conviction and/or completion of the sentence; and number three, the nature of the job held or sought. I think one last thing that I touch on that we can look at, you look at the situation that if we have someone that gets an automatic pass or a pass through to the final round of consideration that we may as employers face more likelihood of litigation by someone who then will automatically allege or potentially allege that the reason that they were rejected was because they did have a criminal record. One other item, with regard to Senator Halloran's comments, there's probably also some concern about negligent hiring that may be at the root of some of the employer concerns with the regard to this legislation. So with that I'd be happy to address any questions that the committee may have. [LB420]

SENATOR ALBRECHT: Senator Chambers. [LB420]

SENATOR CHAMBERS: If a small businessperson had gone under and had to leave business, maybe a bankruptcy, maybe not that, things just went south so to speak, and apply for a loan and the banker would say--have you ever been in business before and were not successful? And the person said--yes. And the banker would think, like these business people are thinking, well, if I take this time to question him, I'm not going to give him a loan anyway, I just got that question out of the way, we're not going to give a loan to somebody like that and I won't tell him. Business people wouldn't like to be cut off at the pass like that; they'd like the opportunity to explain, wouldn't they? Try to make a case. [LB420]

ROBERT HALLSTROM: I would imagine so, Senator. There probably are situations like that where evidence of bankruptcy within so many years may make it less likely that someone is going to get a loan. [LB420]

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Transcriber's Office

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: And now if they could put themselves in a position of somebody who may have an explanation which if heard might open a door to get a job. But these businessmen, based on what I read in your statement are saying, because we might not hire the person anyway, just takes a longer time to get through this process. Is that really and ethically sound reason for being against a bill like this where you ask that question after the person has shown he or she can do the job and then is given the opportunity to explain his or her circumstances, these people you represent feel that's too much to ask of business people because their time is so valuable?
[LB420]

ROBERT HALLSTROM: Well, I think, Senator, with regard to smaller businesses, when they have openings they're going to have a need to fill that job relatively quickly. And anything that delays that process and may require them to get to a point where they then find out that the person that they might choose is not going to be qualified for the position may have them starting the process over from scratch. [LB420]

SENATOR CHAMBERS: And the basis for the disqualification would be because federal or state law would disqualify the person? [LB420]

ROBERT HALLSTROM: That is something, Senator, that you can ask earlier in the process under the bill. It might be a situation where it's not expressly provided for under federal law, but it might be the type of conviction, based upon the type of position that you have that as long as you satisfy the requirements under Title VII of the Civil Rights Act as interpreted by the EEOC that you would still have grounds and a basis to disqualify the person. [LB420]

SENATOR CHAMBERS: I wanted to get that out of the way right away. So we're not talking about that automatic disqualification. [LB420]

ROBERT HALLSTROM: Correct. [LB420]

SENATOR CHAMBERS: We're talking...this...this employer, after the person had cleared all these other hurdles, the employer could still hire that person. The employer is not prohibited from hiring that person just because of a criminal record. [LB420]

ROBERT HALLSTROM: Correct. Correct. But there is a basis upon which that they can disqualify that. [LB420]

SENATOR CHAMBERS: The employer might say despite all that, you're the best person for this job. I think they're going overboard and giving the impression that if the person makes it to a

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Transcriber's Office

Business and Labor Committee
March 13, 2017

certain point there has to be an extending of the job. Let me ask you this: if a person does not have a criminal record and gets through the test, and if there is an interview, gets through that, you're not bound to hire that person. [LB420]

ROBERT HALLSTROM: That would be correct, Senator. [LB420]

SENATOR CHAMBERS: So how would that be different if this person had surmounted those circles and then you find out he or she had a criminal record? That is not an automatic disqualifier under the law. [LB420]

ROBERT HALLSTROM: It is not, Senator. But I think the concern would be that if two equally qualified candidates...a decision has to be made one way or the other and this would form the basis for someone to say--the only reason that you did reject me was because I had a criminal record. [LB420]

SENATOR CHAMBERS: And how much time would it take to do that? [LB420]

ROBERT HALLSTROM: To do...? [LB420]

SENATOR CHAMBERS: (Inaudible) get to the employer as to how quickly his or her process would move? It could all be done in a day, couldn't it? [LB420]

ROBERT HALLSTROM: Conceivably it could. [LB420]

SENATOR CHAMBERS: And a few hours could be the difference between that business succeeding and failing, is that what they're saying? [LB420]

ROBERT HALLSTROM: No, Senator. [LB420]

SENATOR CHAMBERS: That's what it says here. They have to fill the job immediately and this other step will make it...will be an unreasonable delay. Here's what I'm trying to get across. I don't think a persuasive case has been made by what is in the statement that you gave. That's just my opinion. [LB420]

ROBERT HALLSTROM: Correct. [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR CHAMBERS: Like I said, I'm not going to grill anybody, but in response to what this statement said, I think it's not a valid argument. It doesn't sustain the weight that would have to, to be given serious consideration, in my opinion. But that's all I have. [LB420]

SENATOR ALBRECHT: Thank you, Senator Chambers. Any other questions? Senator Crawford. [LB420]

SENATOR CRAWFORD: Thank you, Chairman Albrecht. And thank you, Mr. Halloran (sic-Hallstrom) for being here. I just note in your testimony it notes that the EEOC has interpreted Title VII of the Civil Rights Act to prohibit employers from applying blanket rules that automatically disqualify applicants from convictions for employment. And then I think you note that the employer must show that it considered three factors in making an employment decision: the nature and gravity of the offense; two, the time that's past since the conviction; and three, the nature of the job held or sought. So isn't the case that the businesses are now complying with this by simply saying the nature of the gravity of the offense is a felony, time past is seven years, and they, basically, meet this business necessity by those kinds of blanket provisions? I mean, how do they make the case of the nature and gravity of the offense and the time that's past and if they don't know more about the person other than they have a past felony? [LB420]

ROBERT HALLSTROM: Well, you probably need to make the record as to why you made that decision if you get to the point where they have gone through the process. If you do a criminal background check...in many cases, you may have done a criminal background check to begin with depending upon the type of employment that's involved. [LB420]

SENATOR CRAWFORD: And that's the...the background check is the information that you use to make that case? [LB420]

ROBERT HALLSTROM: It could be, yes. [LB420]

SENATOR CRAWFORD: Thank you. [LB420]

SENATOR ALBRECHT: Any other questions? Seeing none, thank you for coming. [LB420]

ROBERT HALLSTROM: Thank you, Senator. [LB420]

SENATOR ALBRECHT: Okay, any other opponents wishing to speak? Any other opponents? Seeing none, anyone in a neutral capacity? Anyone in a neutral stand? Yes, ma'am. [LB420]

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

Business and Labor Committee
March 13, 2017

TALIESHA GOODWIN (from the audience): Can I just ask a question? [LB420]

SENATOR ALBRECHT: Sure. [LB420]

TALIESHA GOODWIN (from the audience): So with this bill, does it mean that the employer, like when you see on a Web site and it says if have a...less than...you know, if you're not in good standing with your driving record, can they still put stipulations on what they're looking for? Or they just can't ask the question and the box just can't be on the application? [LB420]

SENATOR ALBRECHT: I would probably refer that to Mr....Senator McCollister. Oh, he doesn't have to answer? [LB420]

SENATOR McCOLLISTER: (Inaudible) I'm not sure...(inaudible). [LB420]

TALIESHA GOODWIN (from the audience): Well, I mean, I just used that as an example. I say...they say we're looking for someone with a clean background. So they're not asking that specific applicant the question, they're kind of giving stipulations on what they are looking for. Is that violating this? [LB420]

SENATOR CHAMBERS: Excuse me. For the sake of the record... [LB420]

SENATOR ALBRECHT: Please come to the chair. [LB420]

SENATOR CHAMBERS: ...will you address that, Senator McCollister, so we will have the benefit of... [LB420]

SENATOR ALBRECHT: Okay. [LB420]

SENATOR McCOLLISTER: I'm afraid I don't know your name. [LB420]

TALIESHA GOODWIN (from the audience): Taliesha Goodwin. [LB420]

SENATOR McCOLLISTER: Why don't you come up here and state your question for the record, that way we can... [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR ALBRECHT: Yeah, we can put it in the record if you're at the testifier chair. And she has already testified. Oh, you can't do it? [LB420]

SENATOR HOWARD: No, but how about you tell me your question and I'll state it for the record. [LB420]

TALIESHA GOODWIN (from the audience): Basically, I was asking can the employer put stipulations on what they're looking for in their job description or add saying like you have to have a...you have to be in good standing with your driving record or you can't have this on your criminal background. Not asking the actual applicant or the individual but just saying, this is what we're looking for in the initial description of the position. [LB420]

SENATOR HOWARD: Okay. Senator McCollister, would you like to close? [LB420]

SENATOR ALBRECHT: Thank you. [LB420]

SENATOR HOWARD: Sorry. [LB420]

SENATOR ALBRECHT: Okay, now you can get out of the chair. (Laughter) Unless you want him to sit down...Senator McCollister, you'll be closing now. Thank you. [LB420]

SENATOR McCOLLISTER: It would be my view of the bill that someone couldn't ask that on the Web site or stipulate that on the Web site. [LB420]

SENATOR ALBRECHT: You could ask them to do that. [LB420]

SENATOR McCOLLISTER: I'm sorry. [LB420]

SENATOR ALBRECHT: You said you can ask employer to do that on their Web site? [LB420]

SENATOR McCOLLISTER: Yeah, I think...as I view the scope of the law, an application on a Web site or disqualification based on that issue would be improper under my view of the bill. [LB420]

SENATOR HOWARD: Do you want me to ask it again? [LB420]

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

Business and Labor Committee
March 13, 2017

SENATOR McCOLLISTER: Did I not answer the question? [LB420]

SENATOR HOWARD: I think so, yeah. Can the employer put stipulations on the job description like a good driving record or something like that? [LB420]

SENATOR LOWE: Yes or no? [LB420]

SENATOR McCOLLISTER: Just to put it on the record, I would think that would be prohibited under LB420. Did I misunderstand the question? [LB420]

SENATOR HOWARD: I think you are, though, really just relating to the felony conviction. And so a stipulation around, say, a driving record, if it was a truck driving position, and that was a relevant stipulation, or say a medical degree for a doctor, those are relevant stipulations to the position, whereas a felony charge wouldn't necessarily be so on that initial application. [LB420]

SENATOR McCOLLISTER: So you're saying that the 30 speeding tickets I've had during my life would not be proper, but I hope it's 30, but, no, felony conviction would be the proper way to address that. [LB420]

SENATOR HOWARD: Right. And that's really what your bill is, is trying to reach into. [LB420]

SENATOR McCOLLISTER: Correct. [LB420]

SENATOR ALBRECHT: Would you like to close? [LB420]

SENATOR McCOLLISTER: Yes, I would; yes, I would. And thank you, Madam Chair. My brothers and dad and I operated a small business for 35 years. And would I consider this kind of statute to be burdensome? No, I would not, I would not. Because when we would typically hire somebody it was a multi-stage process. We would look at the application, and if it required a CDL or hearing test or anything else, you know, that was simply part of the process. And to say that...to simply ban the box that wouldn't have been a difficult thing for us to deal with. And I would have agreed readily to do that. In fact, we, in fact, hired some convicted felons and it never became a problem afterwards. Secondly, Joe Nigro said that...Nigro, said that the...our society has an investment in these people coming out of prisons, and we do. It's in our best interest that these folks are successful and do find a job. That way they can be good members of society, pay the bills in their families and move forward with their lives. So I would hope you'll consider that issue as you think of moving this bill forward. We've heard some compelling poignant testimony today. Everybody deserves a second chance. And if someone can leave

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

Business and Labor Committee
March 13, 2017

prison and get a job, that's what we want them to do. So consider that as you're moving this bill forward. And I'm grateful for your attention and please advance the bill. [LB420]

SENATOR ALBRECHT: Thank you. Any questions? [LB420]

SENATOR CHAMBERS: I just have one. [LB420]

SENATOR ALBRECHT: Senator Chambers. [LB420]

SENATOR CHAMBERS: No, it wouldn't be appropriate to ask somebody their political affiliation because this is a nonpartisan body, so I won't ask that question on the record. (Laughter) [LB420]

SENATOR ALBRECHT: Okay. Any other questions? [LB420]

SENATOR McCOLLISTER: I know what I was. [LB420]

SENATOR ALBRECHT: I have just one question. So in this bill there's no penalty whatsoever, it's just delete the box and have a conversation, correct? [LB420]

SENATOR McCOLLISTER: That's correct. [LB420]

SENATOR ALBRECHT: Okay, thank you. [LB420]

SENATOR McCOLLISTER: Thank you. [LB420]

SENATOR ALBRECHT: (Exhibits 14-19) And that concludes the...wait, I've got letters, sorry, sorry, sorry, misstep number four, five, six. Proponents with letters: Jeremy Bouman, executive director of Defy Ventures, Nebraska; John Else, Social Policy Director and Sherry Miller, President of League of Women Voters of Nebraska; Terry Werner, executive director of National Association of Social Workers; Sarah Ann Kotchian, vice president of education and early childhood policy, Holland Children's Movement. Opponents: Rocky Weber, president and general counsel to Nebraska Cooperative Council; and Barry Kennedy, president of Nebraska Chamber (of Commerce and) Industry. That will be all. That concludes the Business and Labor today. Thank you for being here. [LB420]