

SENATOR CHAMBERS: And do you have a copy of the amendment with you so you can follow me?

SENATOR WEHRBEIN: Yes, I do.

SENATOR CHAMBERS: All right, now what we are talking about is an employer, some of whose work force is covered by a federally mandated standard. Then it says that if that is applied in a similar manner to other employees tested, then they are exempt. Where in the amendment does it require all the other employees not covered to be subject to the test?

SENATOR WEHRBEIN: Say that again, where...

SENATOR CHAMBERS: Where in the amendment...okay, let me try to draw a word picture so I won't be confusing in setting up the example. Let's say you have 70 employees covered by the federal standard, 30 who are not, where is there anything in the amendment, because those 30 are not covered by the federal mandate, if we adopt your amendment, they are not covered by the state requirement, where is there anything that says those 30 have to be tested, period, before we even talk about the manner of the test?

SENATOR WEHRBEIN: I don't see where it probably would, offhand.

SENATOR CHAMBERS: So what we could be doing is saying that there are a class of employees that the railroad doesn't want to have to test, and if they are not subject to the federal mandate and not subject to the state mandate, they don't have to be worried about testing under any rule. Isn't that right, you can have a double standard and you are not in violation of a state rule or a federal rule, isn't that correct?

SENATOR WEHRBEIN: I would interpret it that way. I guess I'd subject to a lawyer's scrutiny on this one. You are going to say that a state...a worker, say, in the State of Nebraska, if it is exempt under this, would not be subject to Nebraska law, too, that is what you are implying, right?

SENATOR CHAMBERS: Exactly, exactly, because the amendment doesn't say, and starting in line 7, "to its other employees who also shall be tested." It just says "to its other employees tested." Meaning that if they are tested, fine, but they may choose not to test them and there is nothing in the federal rule