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Business and Labor Committee
January 25, 2010

[LB709 LB729 LB884 LB913]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 25, 2010, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB709, LB729, LB884, and LB913. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; Norman Wallman; and Tom White. Senators absent: None. []

SENATOR LATHROP: We're going to start with LB709. Just a few things to keep in mind when you're testifying. There's some faces that I'm not familiar with, so some of you, I assume, haven't done this before. And I'll just...while we're waiting for, I guess, Senator Schilz to show up. Maybe I'll take a minute to talk about how we proceed here. When a bill gets called up, we'll take the proponents first, so if you are in support of the bill, you'll come up when that time...we'll have the senator introduce it, and then proponents, opponents, and then those that are here to testify in a neutral capacity. We do not have the light system in place, but we would like you to try to limit your comments to three minutes or somewhere in that vicinity, so that we can give everyone an opportunity to be heard. If folks come up and sit down and then talk for a half hour, then we're here till eight at night, and some folks have to leave before we can give everyone a chance to be heard, so if you'd observe that. If you don't, then Kate over here, my committee clerk, is going to elbow me, and then I'm going to find some polite way to interrupt you, and I hope I don't have to do that. I'll also take this opportunity to introduce the committee and Senator Carlson called us. He's seated to my farthest right. Senator Carlson is introducing a bill in another committee; he'll be along shortly. Then we have Senator McGill from Lincoln; Senator Council from Omaha; Molly Burton, committee counsel; Kate Wolfe, who is our committee clerk. Senator Schilz is out of Ogallala or those parts, and he'll be along shortly, I presume; Senator Wallman from Cortland; and Senator Tom White from Omaha. And Senator White has the first bill up, and that's LB709. So with that, we'll let Senator White introduce his bill. []

SENATOR WHITE: (Exhibits 1, 2) Thank you, Mr. Chairman, members of the Business and Labor Committee. LB709 is a bill that would require state agencies when they are ready to promulgate a regulation to end, as part of their public hearing obligations... to notify in cases where they know a small business is likely to be affected, but in all cases, to take testimony and to give consideration of the impact or the costs of the proposed regulation on small businesses. Small business is defined in the bill as under 500 employees or under \$6 million annual gross sales. Now, I would...with the Chairman's permission, I have two items I'd like to pass out... [LB709]

SENATOR LATHROP: Sure. We lost our page. I'm not sure where he went but... [LB709]

SENATOR WHITE: ...and what these are are...these are from the Small Business

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

Business and Labor Committee
January 25, 2010

Administration, and it is a study, a 2005 study that shows that the cost to a small business of governmental regulation is substantially higher per employee than it is to a large business. In that study, it indicates that the small business will annually spend about \$7,647 per employee to comply with federal regulations compared with \$5,282 spent by firms with 500 or more employees, so there is a 45 percent increase in the burden in the federal realm alone for a small business on a per employee cost of complying with regulations. A number of states have seen this as a profound problem and it's a problem that prevents economic development in the state. As a result, they've passed bills similar to this. In fact, there are only six states that do not have the equivalent of a regulatory flexibility statute, and Nebraska is one of them; 44 states have this bill or similar bills. This bill is really important if we want to try to get the economy in the state of Nebraska moving again. The regulatory compliance with the business is a tax. As you know, I'm also on Revenue Committee, and the businesspeople will tell you, it's...you know, it's not just the money they send in to the treasury; it's the money they have to expend in order to just stay in business and keep their doors open. We have a number of fiscal notes which I find distressing for a number of reasons. First of all, the fiscal notes indicate a very large cost to comply with this act even though there's already requirement in law that there be public hearings on any of these kind of regulations in the first instance. The law itself only requires...only requires that they take into consideration specifically the impact the regulation will have on small businesses, the cost, whether or not the purposes of the law could be upheld in a less expensive manner, and it gives a business the right, if that's not been done, to sue the agency and ask the court to enjoin the regulation until such time as the act is complied with. So the fiscal cost to me as a person familiar with hearings, would not seem in any way to be supported by the facts. We have specifically through help of counsel--Ms. Burton has been very helpful throughout this process--excluded the requirement that any agency have an economist on staff or do any economics or make any specific findings on cost analysis. All we say is that a record should be available. A small business can take and say how it could affect the intent of the law for less expense. That is one aspect of the fiscal note that I found deeply concerning. The other aspect is this. The state is taking a position with these fiscal notes that it's too onerous to consider the burden it's placing on small businesses, and that means just a hearing and a consideration of making the regulation. What really needs to be seen and balanced, if in fact these fiscal notes are accurate--I have serious questions as to whether they are. What are the costs then by...on businesses of regulations that are just passed without concern of cost? And so, I think the fiscal note needs to be looked at in the first instance with skepticism given that we already require public hearings. And then the second instance, that we have an irony here of a company...or of state agencies complaining that complying with the regulation will be unduly burdensome in their efforts to get the laws...to pass appropriate regulations. With that, I would be happy to answer any questions. [LB709]

SENATOR LATHROP: Thanks, Senator White. Are there any questions from the committee? Senator Schilz, do you have any questions? [LB709]

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

Business and Labor Committee
January 25, 2010

SENATOR SCHILZ: No, not at this time (laughter). [LB709]

SENATOR LATHROP: No, we're joined by Senator Schilz, who I'm sure was somewhere doing the state's business. I do have a question for you, Senator White, that does this require a second hearing? Or if we're going to promulgate a rule, can we do the hearing and take these things into consideration all in one proceeding? [LB709]

SENATOR WHITE: All at once. Now...all at once. There's no second hearing required. In fact, I'd be shocked if there were. The only thing it does require is on a four-year basis...and we can be flexible if that's too fast. They review the regulations to see if they can now be done more efficiently. One of the problems we have in government is often regulations...there's theoretically, two kinds of regulations. One is if you want to reduce, let's say, fecal pollution of streams from livestock animals. One is you just say you have to put in this kind of a barrier between you and the stream. Another kind is, you can't let more than X percentage of fecal matter in there. We often find that technology overtakes their loss, and we're still requiring a specific type of fix even though that's no longer the most effective or even the most cost effective, and yet they're stagnant. And so, one aspect of the bill that would require new hearings, but they'd be with everything, is over a period of every four years they'd have to review the regulations and then analyze whether or not they could be done...have a hearing and see if they could be done more cost effectively. That would be an additional set of hearings. But other than that, no, the hearings would be just unified once. [LB709]

SENATOR LATHROP: One more question for you, at least from me. The fiscal notes...can you tell me where most of that expense is? Is it in the publication? Is it in the...? [LB709]

SENATOR WHITE: We don't get it. I mean, the only thing I can understand is it might be in that they'd have to have public hearings on regulations every four years to make sure they're staying up to date, and they're most cost effective. But other than that, there should be no incremental cost. If you have the people there, you're having the hearing, it's notified in, and you...and the state has no obligation to have an economist on staff. They have no obligation in the bill to analyze it themselves. All they have to do is listen to business, come up and say, look, you want to reduce air pollution? Don't do it this way. We can reduce it even more or the same amount for a third of the cost if we do this. [LB709]

SENATOR LATHROP: You brought up another point, and that is, what kind of people need to be involved in the process of considering the ramifications to small business of a proposed regulation? Do you anticipate or is it your intention that we have expert...that the state would have to go out and secure experts to determine...? [LB709]

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

Business and Labor Committee
January 25, 2010

SENATOR WHITE: Absolutely not. The same people that are promulgating the regulations. Businesses may choose to have an expert testify and bring it in and make a record on that, but if business doesn't do it, the state has no obligation. I mean, an obligation is on the businesses to come forward and say, here's the intent of legislation. Here's how you can do it more cost effectively than what you are proposing now. [LB709]

SENATOR LATHROP: And this is kind of important in terms of the legislative history because there is a judicial review process involved, and it would be your intention that if a court were reviewing the decision, that the decision wouldn't be subject to attack because they didn't have an economist or... [LB709]

SENATOR WHITE: No. [LB709]

SENATOR LATHROP: ...or somebody like that. They just have to listen to the input of business and then make a...a fair decision. [LB709]

SENATOR WHITE: Well, if the only evidence in there is the business says look, here's an expert. We can do this for half, and the agency says, well, we don't find him credible because of this. They don't have to follow it. They have to take it into account. Now if the expert says we can do this, and then the agency, for whatever reason, says we don't care. You know, it's not that you're not right; we don't care. We just want to do it this way. Then that will be problematic for the agency and should be. The point on this whole law is to listen to the businesses that are being regulated because often they know the industry and how things can be done more efficiently, better than anyone else. And it's to invite them into a process to say okay, look, we need picket...safer workplace; we need clean water; we need clean air. How can we achieve that? And listen to the businesses saying, yeah, okay, agreed, but if we do it this way, you can still get there, and it's just a lot less burden. [LB709]

SENATOR LATHROP: I'm wondering if you're going to have an opportunity to go share that with fiscal and see if it makes a difference to... [LB709]

SENATOR WHITE: I've never had any luck talking to anybody about a fiscal note, Senator, but if you have a route, I would be delighted to follow it. [LB709]

SENATOR LATHROP: I don't know that I have either, Tom. I was just (laughter)... [LB709]

SENATOR WHITE: You know, and it's unfortunate, you know, because no one contacted us. Nobody talked to us about the problems; nobody said this. And I will say to the agencies that are here, if you think this is onerous, be on the other side of your regulations. You know, all we're saying is, take into consideration the cost of what you

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

Business and Labor Committee
January 25, 2010

propose. Nobody has a corner on the best ideas or the most efficient way. And it is, in my opinion, very bad government to assume that the regulatory agency have the corner on the most efficient way. And it is only common sense that we would allow room for business to say, we can get there for less money; 44 states manage this. And for us to be one of the six that don't seems to me to be unacceptable. [LB709]

SENATOR LATHROP: Very good. Are there any other questions? I don't see any. We'll look to hear from you at close. [LB709]

SENATOR WHITE: Thank you. [LB709]

SENATOR LATHROP: Are there any proponents that are here to testify in support of this bill? Jerry, come on up. [LB709]

JERRY STILMOCK: (Exhibit 3) Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y. Stilmock, S-t-i-l-m-o-c-k, appearing as a registered lobbyist for the National Federation of Independent Business in support of LB709. Because of three minutes, I'm going to kind of cut through some of the points, but I want to go right to the problems or issues which give rise to government action in passing laws and adopting regulations may not have been caused by smaller entities yet the regulations designed to address the problems and issues are applied uniformly to small businesses; small businesses which have a much harder time complying with uniform regulatory and reporting requirements due to burdensome demands on legal, accounting, or consulting services. Many studies have reflected that small businesses bear a disproportionate burden in complying with rules and regulations. Small businesses particularly feel the crunch and incur additional costs in comparison to larger businesses in complying with environmental and tax rules and regulations. The Small Business Administration Office of Advocacy, fiscal year 2008, presented a report reflecting that the federal Regulatory Flexibility Act saved nearly \$11 billion for small businesses. Of course, that amount would be reduced on a smaller scale, but yet important to recognize that the federal government has significantly stepped in to help and assist small businesses. If one of the agreed-upon objectives for Nebraska is to grow Nebraska, we should continue to promote a climate for entrepreneurial success in Nebraska, so that small businesses will continue to create jobs, continue to produce innovative new products, and continue to provide valuable services in order to bring more Nebraskans into the economic mainstream and broaden the tax base. One of the greatest small business success stories began in the basement of Chappell, Nebraska, home where two brothers began to promote their love of the outdoors and their entrepreneurial skill as they formed in what due course would become known as the world's foremost outfitter. Cabela's has become one of Nebraska's most famous success stories on small business achievement. Nevertheless, the same regulations and reporting requirements which Cabela's must follow today must also be followed by today's small businesses which simply do not have the resources available to them as does Cabela's. As of 2008,

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

Business and Labor Committee
January 25, 2010

Senator White mentioned that Nebraska is one of six states yet to adopt the regulatory flexibility statute or executive order in relation to relieving some of the burden to small businesses. Of course, in the current economic environment, it is more important than ever to minimize unnecessary regulatory burdens on the sector of the economy that will likely be the innovators and job creators, that being small business. We believe LB709 would accomplish this purpose by reducing regulatory burden on small businesses and for these reasons, NFIB asked the committee to advance the bill to General File. Thank you. [LB709]

SENATOR LATHROP: Very good, thanks, Jerry. Any questions for Mr. Stilmock? I see none. [LB709]

JERRY STILMOCK: Thank you, Senators. [LB709]

KATE WOLFE: I didn't get a testifier sheet? [LB709]

SENATOR LATHROP: Oh, did... [LB709]

JERRY STILMOCK: Sign in? [LB709]

SENATOR LATHROP: Did you sign in? I told you what you needed to do, and I forgot maybe the most important part of my job. We need to have you sign in on the sign-in sheet, so that Kate here can make sure that we get everybody's name properly recorded in the directory. Are there any other proponents here on LB709? Good afternoon. [LB709]

CRAIG HEAD: Good afternoon, Senator Lathrop and members of the committee. My name is Craig Head. That's C-r-a-i-g H-e-a-d,, and I am the State Director of Government Relations for the Nebraska Farm Bureau Federation and here today on behalf of the organization to offer our support for LB709. One of the issues that we continue to hear about from members is the growing amount of regulation that our producers are supposed to deal with and required to deal with, and from our perspective it's always important to keep in mind that a lot of our farming ranches in this state are family-run, smaller operations. They don't have the financial wherewithal to hire environmental or regulatory compliance officers, that's simply not feasible. And so, when you hear about producers talking about the challenges they have with meeting today's regulations and the growing number of regulations, the concept of having some recourse to look at regulations here at the state level is important. I do want to point out, though, a couple of things I think is important to recognize, at least from the agriculture perspective is a lot of the regulations that we are dealing with are regulations that are being passed down to the federal level for the state to address and minister. And I do want to go on record as saying, we appreciate the efforts of our state agencies in Nebraska. Our experience has been very positive in working with them to try and make

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

Business and Labor Committee
January 25, 2010

adjustments where we can, but when it comes to regulations that are developed here at the state level, we do think this is a good process to at least start talking about in terms of minimizing the impact that might put producers out of business, so with that, I'd conclude my testimony and offer our support for LB709. [LB709]

SENATOR LATHROP: Very good. Thanks, Mr. Head. Let's see. Any questions? I don't see any. Thanks for your testimony. We appreciate you coming down today. [LB709]

CRAIG HEAD: Thank you. [LB709]

SENATOR LATHROP: Anyone else here in support of LB709 who cares to testify? By the way, you're always welcome to submit letters, and we'll enter those into the record too, if you're not interested in actually testifying. Is there anyone here in opposition to LB709? [LB709]

MIKE LINDER: Good afternoon, Senator Lathrop and members of the Business and Labor Committee. My name is Mike Linder. That's spelled M-i-k-e L-i-n-d-e-r. I'm the Director of Nebraska Department of Environmental Quality, here today to present some opposing testimony on LB709. First of all, I definitely applaud the intent of the legislation to reach out to small and all impacted businesses on governmental burden. My concern, however, rises out of the cost of implementation and, hopefully, be able to answer some of the questions on costs, at least as we see the bill. The concerns are driven by a couple of factors, first being that it appears the definition of rule and regulation is broader than the Nebraska APA definition, and it would appear to take in guidance documents and what we call fact sheets there are meant to help the regulated public understand our regulations. We did a quick tally and counted up about 142 of those documents, and I think under LB709 we'd be required to do an analysis of those existing documents. So that is the bulk of the cost that we identified. And, you know, unfortunately, that's one of our main outreach tools is guidance documents, and to the extent they become more expensive and we're unable to do them, that would be a disincentive for that type of outreach. The other issue is one that Craig had just mentioned, and that is, by far, most of our regulations are essentially federal regulations that we either have to mirror or not be less stringent than, so much of the analysis of flexibility in a rule would be of limited use for us because we have to meet that federal standard. And, finally, I just wanted to point out at least that in the DEQ process, we do take all of our regulations before the Environmental Quality Council which is a 17-member public member group that hears all of our regulatory proposals. It's made up of a cross section of conservation groups, industry, and minority populations in the state. That group meets quarterly, and should be noted that long before we take a proposed regulation to the council, we have done quite a significant amount of outreach and actually some similar requirements to what is in LB709 that is currently in the Administrative Procedures Act, dealing with fiscal impact and identifying stakeholders and who is impacted. And we work with trade groups and others to try to get that

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

Business and Labor Committee
January 25, 2010

outreach available long before the hearing. That concludes my testimony. I'd be happy to respond to any questions. [LB709]

SENATOR LATHROP: Questions? Senator White. [LB709]

SENATOR WHITE: With regard to the federal regulations, it would be more than sufficient under the act, wouldn't it, if you said, look, we have to do it this way. The feds say so, in which case that will have no impact, correct? [LB709]

MIKE LINDER: I can't...it looks like there's the analysis required for any guidance document or regulation as drafted, at least in our reading. [LB709]

SENATOR WHITE: Sure, but I mean, I think defining the agency is we have no discretion here. We must follow the federal regulation, in which case you've complied. [LB709]

MIKE LINDER: Right. Yeah, and we didn't identify costs for that. I was just pointing out that issue. [LB709]

SENATOR WHITE: Okay. And then we would be happy if you wish to talk to...I would be since a sponsor, to talk to you about defining things a little differently. I don't know how far I'll be able to go or how far you can go, but that maybe it'll relieve some of your concerns. Would that be helpful? [LB709]

MIKE LINDER: Yes, sir. [LB709]

SENATOR WHITE: Would you contact my staff, please, about that? [LB709]

MIKE LINDER: Sure. [LB709]

SENATOR WHITE: Thank you, appreciate the courtesy. [LB709]

SENATOR LATHROP: Any other questions? We've been joined by Senator Carlson from Holdrege, and he didn't just come in from Holdrege. I think he was introducing a bill somewhere else? [LB709]

SENATOR CARLSON: Yes. [LB709]

SENATOR LATHROP: Yep, good. Good to have you here. [LB709]

SENATOR CARLSON: Thank you. [LB709]

SENATOR LATHROP: Any other questions for Mr. Linder? I don't see any. Okay,

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

Business and Labor Committee
January 25, 2010

anyone else here in opposition? She's got a handout, I think, Ryan. I didn't introduce our page because he was out of the room. That's Ryan Langle is going to be our page for this session for our hearings. If you have anything you want handed out, just hand it to Ryan, and he'll make sure we get a copy. Director. [LB709]

ANN FROHMAN: (Exhibit 4) Thank you. My name is Ann Frohman. That's A-n-n F-r-o-h-m-a-n. I'm the Director of Insurance, and I'm here to testify in opposition to LB709 as an approach to help small businesses. In viewing this proposal, I would like to add to the previous testimony that we think that it would provide additional burdens to the Department of Insurance such that we see the benefit of attempting to assist small businesses as being one that would not be appreciative and realize gains out of this proposal. The burdens are many to the department. First of all, the actual notice provisions that would be required to be distributed would impact tens of thousands of small businesses we regulate; insurance agents, brokers. We license between...well, just the domestic alone are 26,000; 60,000 do business in the state to varying degrees. And we also regulate the insurance companies and the financial oversight policing powers, if you will, of that industry, and we're looking at this from that perspective and have substantial concerns about how that would impact many insurance companies that would fall under this as small businesses. Looking at this and requiring that we consider the protections or the needs to reduce the burdens would always have to be weighed in relation to the protections we're providing insurance policyholders which, incidentally, are also small businesses, so that creates a dichotomy of sorts in terms of which small business perspective are you examining the business needs on the insurance side or the business needs on the regulatory licensee side? We do see the requirement that we review again and again. The four-year requirement is one that's also fairly burdensome to us, and I think given the intense work that we do on regulations when we enact them from the get-go, these considerations are embedded in our philosophy. While they may not be our statutory mission, they are there; they're built in to every dialogue, every discussion, everything we do in our oversight because we realize that for Nebraska, insurance industry is a strong industry. It's a growing industry, and we want to make sure that we provide an environment that will be conducive to businesses wanting to operate insurance enterprises here, so in that regard, we just see it as a very built-in embedded philosophy in what we do. It does cut across our statutory mission of trying to look at the policyholders, and we think there will be rubs on occasion. But, you know, when you look at the protections that we're providing, and you're weighing that, those considerations while they're there, the exercise will be one where I do believe it would be the Legislature's will that the policyholders, when you're looking at their retirement products and their insurance protections would probably be one that would weigh out when it makes sense. We're going to be bringing to the Legislature next year suitability proposal, for instance, that will put an additional burden on insurance agents that sell certain annuity products. That is really going to dovetail with what the feds are already doing on the...through the FINRA process. And so we, like you see with the environmental issues, want to be streamlining along with those. And, again, it may be

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

Business and Labor Committee
January 25, 2010

an exercise in dotting our i's and crossing our t's through bureaucratic requirements that are imposed on us as well that, at the end of the exercise, may not provide much in terms of value to the state. We are a small business state; Nebraska is small business, and so to say that this adds something to what we're doing doesn't make a whole lot of sense, at least in terms of the insurance regulatory area. We do take an approach through the National Association of Insurance Commissioners when we enact regulations that we try to accommodate, you know, we have large sectors, mid-size sectors, small sectors, and we regularly review and ask and reach out to our industry and say, what is it that we can do to assist you and assist the small businesses? And what we have heard in the last few years is we would like uniformity. We aren't looking for reductions in compliance because we understand the insurance industry is very well aware of the protections that need to be in place for the policyholders because if the policyholders are protected, they can sell the products with confidence. If they're not, it's hard to sell an insurance product. But what they've asked is for uniformity, and so what we do through the national association is spend a lot of time going through reviews when we draft proposed regulations such that we look at these issues, and the insurance agents say give us uniformity. So we went through an exercise on our licensing where they could one-stop shop, file, get your license in Nebraska. Then all you have to do is file in the other states, and we've really reduced and simplified the requirements there. So we're taking the same issue on, but from a different approach than this approach, and I think it's pretty effective. And it will require, you know, that we fall in line on uniform issues of this national association when we're enacting regulations to give them the benefit of being able to cross state lines and do business with these whether it's in Nebraska or Iowa or Kansas. There is a concern that we think might come out of this that is the frustrations with insurance in general. Regulating the insurance industry is a challenging job, and right now I don't think I've ever seen it quite as challenging with respects to a lot of dissatisfaction in the marketplace trying to serve the needs whether it's healthcare, Workers' Compensation, so many insurance needs, and we do see this as an opportunity for those that are frustrated with perhaps their underlying insurance products as another way to cast their frustration. And, you know, judicial relief is a fine tool, but is the underlying consideration going to be the substantive issue of the rule versus the issue of, you know, giving small business a break. We are sued in every which way sort of fashion that can happen whether it's going to the State Claims Board or whether it's, you know, going to the courts on different issues that are not on point with what the real issue can be for a business. And sometimes those are tough issues and sometimes they're not always insurance issues, but they start out as insurance issues. And that's something to keep in mind as you're looking at this. We do want regulatory efficiency available, not just for small business but for everyone. I think that's really important. We want to see businesses run efficiently, and we think that the explicit standards right now that we have under the APA are challenging, and they're not easy. It's not easy to enact a regulation and adding new rules that affect small business simply think it's not the right approach to assisting with growing the economy. Thank you. [LB709]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: Very good. Thank you. Any questions for the director? Senator White. [LB709]

SENATOR WHITE: Thank you for coming, Director. Let me try to get a handle on some of your testimony. What I heard you say is the Department of Insurance is already pretty much embodying the essence of this bill which is trying to look for more cost effective measures. Is that correct? [LB709]

ANN FROHMAN: It is routinely weighed in every decision we make. Yeah. [LB709]

SENATOR WHITE: Okay. So you're not being required by this bill to have a level of thoughtfulness, so you're not already employed, correct? [LB709]

ANN FROHMAN: Correct. [LB709]

SENATOR WHITE: And second, were you aware 44 other states already have this, and they are able to function with it? [LB709]

ANN FROHMAN: Right. Nebraska...yeah. [LB709]

SENATOR WHITE: And in uniformities...if uniformity...one of the things that's important is that we be in the same step with other states, correct? [LB709]

ANN FROHMAN: With respect to insurance, I think so, not with respect to all situations, no. [LB709]

SENATOR WHITE: Well, we have 44 other states doing this; 44 other states looking at this, and if your statement here, which I understood it to be is uniformity saves money. That alone would be a justification for regulation saying, look, it's the same one in, you know, 43 other states. There's already a computer system available. It's the most efficient, so that's really not a burden, is it? [LB709]

ANN FROHMAN: I don't think this is the same thing. It's not a regulatory body that provides a specific industry with oversight, so I wouldn't think that uniformity there would be relevant, you know, and we're a Unicameral. I do think we take pride in finding distinctions when we think they make sense for Nebraska. [LB709]

SENATOR WHITE: Is it your testimony that your department has been able to do what 44 other states do? [LB709]

ANN FROHMAN: I think we do a good job; I don't think it's needed. [LB709]

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

Business and Labor Committee
January 25, 2010

SENATOR WHITE: Thank you. [LB709]

SENATOR LATHROP: Senator Wallman. [LB709]

ANN FROHMAN: Yes. [LB709]

SENATOR WALLMAN: Thank you, Director. How many do you have in your department just investigating insurance? Do you have an idea? [LB709]

ANN FROHMAN: We have 110 on staff, but in terms of...most of those are financial examiners. [LB709]

SENATOR WALLMAN: That's for retirement plans and all this stuff? [LB709]

ANN FROHMAN: We look at every insurance product that's issued that's under our jurisdiction, yeah--22 lines of insurance. [LB709]

SENATOR WALLMAN: And do you grade them companies A, B, C, or? [LB709]

ANN FROHMAN: No, we leave that to the rating agencies, but we do financial ratio testing, and so we do some solvency oversight, and we also do market oversight in terms of how they're treating the public and the rates and the forms that they're using. [LB709]

SENATOR WALLMAN: Thank you. [LB709]

ANN FROHMAN: You bet. [LB709]

SENATOR LATHROP: I don't see any other questions. Thank you for coming down today. We appreciate your input. [LB709]

ANN FROHMAN: Thank you for having me. [LB709]

SENATOR LATHROP: Anyone else here to testify in opposition? Anyone here in a neutral capacity? [LB709]

RON SEDLACEK: Good afternoon, Mr. Chairman and members of the Business and Labor Committee. My name is Ron Sedlacek. That's spelled S-e-d-l-a-c-e-k. First of all, during the interim, we were made aware that there may be regulatory flexibility legislation introduced, and so they gave us a little bit of time to discuss this when we had some of our meetings during the interim. And I'm here today to testify to indicate that the Nebraska Chamber of Commerce who I'm here to represent is continuing to express interest in the legislation. And I would like to continue to dialogue in this regard,

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Business and Labor Committee
January 25, 2010

are aware that 44 states either have executive orders or statutes. And one of the reasons why is because we had been visited in the past by the Small Business Administration's regional office encouraging us to actually...to have a bill like this introduced in the past, or to at least be supportive of such legislation. So this was not the first time we had discussions. So why...what's the reason why we're sitting on the fence, and we're not one way or the other? And essentially it's because the state chamber is composed of such a wide diversity of membership from the small businesses to very large businesses. And we do appreciate and are supportive of the objectives of the legislation, what appears to be stumbling blocks are in a couple of areas that we just can't get ourselves resolved to. And the first area deals with the threshold, and for not so much on the employment side of the threshold but the \$6 million gross sales threshold because it does affect the businesses quite a bit differently, depending upon the kind of products or services that they're engaged in. So that's one issue. Where is the cutoff? The second one is more of a philosophical nature I would present, and that is in regard to the mechanics of the bill, if there's going to be an assessment and particularly notification of parties, it would be good if it were done across the board in the sense that small business would be considered, but also if there's an adverse effect of regulation on large class businesses, that they ought to be specifically informed of that too, so they could weigh in. So the direct notification issue might better be applied across the board as a possibility. And the other issue is, again, a little bit even more deeper philosophically, and that is will we encourage essentially bifurcated regulations in some cases? Now, we heard testimony from the opponents that at least one opponent that that's not the case. They try to consider all aspects. The question becomes, in reality, and I do not know the specific histories of particular states, although it does appear that there is some bifurcation of regulatory activity in that regard, and, again, that should be considered across the board. So we will continue to re-review the legislation in our upcoming committee meetings and our board meeting that take place here in the near future and revisit the issue. And we'll advise Senator White as well as the members of the committee if we have a change of position. So thank you very much. [LB709]

SENATOR LATHROP: Very good. [LB709]

RON SEDLACEK: And I'll entertain any questions. [LB709]

SENATOR LATHROP: All right. Are there any questions for Ron? Senator White. [LB709]

SENATOR WHITE: Ron, is the Chamber's concern that the six million is too high or too low? [LB709]

RON SEDLACEK: Too high...or too low, I should say. [LB709]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

SENATOR WHITE: Too low? And how high do you think it should be before...what number are they working with? [LB709]

RON SEDLACEK: That I can't...I can't convey at this point but... [LB709]

SENATOR WHITE: And then your...the Chamber's concern is large businesses should be separately notified as well all business, in other words, regulations? [LB709]

RON SEDLACEK: Yes, it would be...it would be so much easier, of course, if Nebraska had an equivalent of federal registers subscribed to where you could see these. Unfortunately, we don't. [LB709]

SENATOR WHITE: Right. [LB709]

RON SEDLACEK: And so, and, of course, there's concern about potentially those costs, but that is... [LB709]

SENATOR WHITE: And then the bifurcated regulation that the small business may get an easier compliance path than a big business. Is that your concern? [LB709]

RON SEDLACEK: Correct. Um-hum. [LB709]

SENATOR WHITE: So if I can't... [LB709]

RON SEDLACEK: It's a matter of competitive nature, and that is, I meet the threshold just barely, and my competitor doesn't meet the threshold, I've got an advantage of the...or the other...course, going to say they have a competitive advantage. [LB709]

SENATOR WHITE: Basically, at this point, where your concerns are is not that the bill would be bad for small business, but it's not including big business. [LB709]

RON SEDLACEK: Yeah, essentially. [LB709]

SENATOR WHITE: Okay. Nothing intrinsic in the bill, though, that causes you concern. [LB709]

RON SEDLACEK: That's correct. [LB709]

SENATOR WHITE: Thank you. [LB709]

SENATOR LATHROP: I do have a question for you. If this...I don't know how much of these fiscal notes relate to the publication costs in the notice, but if this were the law, would your organization...would the state chamber send notice out to its membership of

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

Business and Labor Committee
January 25, 2010

hearings that are coming up that deal with the subject matter? So if they're going to deal with regulation over in the Department of Environmental Quality,... [LB709]

RON SEDLACEK: Um-hum. [LB709]

SENATOR LATHROP: ...would...typically, would your organization send notice out and say hey, they're taking up the subject matter of rules and regulations over at the Department of Environmental Quality? [LB709]

RON SEDLACEK: Currently, Senator, it's hit or miss, and it depends upon how it affects the organization as a whole. And we get some, you know, if there's a potential revenue ruling or regulation that affects across the board, that's something that we might send out. If it deals with a particular industry, and it's unique to that industry, we're probably going to be less involved. So it kind of depends upon how it affects the organization as a whole. [LB709]

SENATOR LATHROP: All right. That's the only question I had. Any other questions? I don't see any. Thanks for coming down, Ron. [LB709]

RON SEDLACEK: Um-hum. I'm just going to start a column called neutral and positive, I guess, so (laughter). Thank you. [LB709]

SENATOR LATHROP: I'm not sure what category we're going to put you in after that, Ron (laughter). [LB709]

RON SEDLACEK: I think neutral-positive would be good (laugh). Thank you. [LB709]

SENATOR LATHROP: Okay. Anybody else here in a neutral sort of capacity? Okay, I think that's it. Senator White, do you care to close? [LB709]

SENATOR WHITE: Waive. [LB709]

SENATOR LATHROP: Okay. Thank you. That will close our hearing on LB709 and bring us to LB729. And Senator Lautenbaugh, welcome to the Business and Labor Committee where we don't expect you to be a stranger this year. [LB709]

SENATOR LAUTENBAUGH: (Exhibit 5) Well, it seems like I'm going to be a lot of places a lot of times this year for...solely through my own fault, I guess. Thank you, Mr. Chairman and members of the committee. I am not a long-term participant in this particular area. This is my first foray into the area of elevator litigation or regulation, I should say. I don't want to say litigation. I'm not pandering to the Chairman; I'm just (laughter)...I introduced LB729 for three main reasons. The case could be made that the original act may not have been needed, may be a hidden tax on some of the population,

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

Business and Labor Committee
January 25, 2010

some parts of the state that can't afford it, and it creates larger government and extra cost on the business community. The handouts, I believe, provide a justification for this. Former senator, Bob Kremer asked Workforce Development a series of questions about the original bill, LB99 in 2005. He asked about the potential problems and what could happen if the bill became law. You have a copy of his response before you now. The next to the last paragraph has the question and answer. You also ask, "Is the present system in such a mess and public safety being jeopardized that such a bill is needed?" Answer from the Department of Labor: The Department of Labor believes the present elevator inspection program does a good job of protecting the citizens of the state of Nebraska and that public safety will not be jeopardized if LB99 fails to pass. In 2009, LB573 was introduced to expand the act to the entire state. Senator Wallman asked the department a series of questions about the need for the expansion and the additional costs. You have that response letter in front of you as well. The department again said, in essence, that the act isn't needed and probably will result in dramatically increasing costs to out-state businesses, elderly, and handicapped people. I believe that was especially true when LB573 contained the provisions regarding stair lifts as well. This act does present an increase in the size of government, creates a new board and adds more regulation and costs. It also imposes a fee or hidden tax on people the department has twice stated that may not be needed. When the original act was passed in 2006, a compromise was reached to limit it to counties over 100,000 in population and exempting stair and platform lifts in residences. Three years later and before the original act was fully implemented, supporters came back with LB573 to put the entire state in and add residences back in with the stair lifts. The committee last year advanced this bill, but wisely exempted the residential lifts. I believe LB573...excuse me, my constituents feel that if LB573 is passed as amended, well, the act is not needed. The same people would be back in a couple of years to include residences again. Basically put, this is an attempt, I guess,...I don't think I would be here but for the attempt to expand the existing act. I know that, as I indicated at the outset, this has not been an area for which I've been immersed for years on end, to say the least. I know Mr. Pappas behind me has some definite feelings on this and more experience with the issue over the years in representing the League of Human Dignity. But I'd be happy to take any questions you might have, defer any questions you might have. I'll stay to close either way. [LB729]

SENATOR LATHROP: Okay, thanks, Scott. The record should reflect that you've provided us with a handout, and we'll make this part of the record which is a letter dated February 27, 2009, to Senator Wallman, and that letter is from Commissioner Lang. And also attached to that is a March 1, 2005, letter to Senator Kremer, and that's signed by legal counsel, Thomas Ukinski, and that will be made a part of the record. [LB729]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. [LB729]

SENATOR LATHROP: Thank you for that handout. Any questions for Senator

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Transcriber's Office

Business and Labor Committee
January 25, 2010

Lautenbaugh? [LB729]

SENATOR COUNCIL: I have a question. [LB729]

SENATOR LATHROP: Certainly. Senator Council. [LB729]

SENATOR COUNCIL: Senator Lautenbaugh, have you had discussions with representatives of the League of Human Dignity since LB573 passed? [LB729]

SENATOR LAUTENBAUGH: In a secondhand way, yes. [LB729]

SENATOR COUNCIL: Okay. And what have they expressed as...because last year when the committee considered LB573, the issue and I think the committee unanimously agreed that the bill should be amended to take out private lifts and chairs, that there's no intent here to add any undue costs to those who are mobility impaired in their individual homes. And it was my understanding when that agreement was reached, the amendment was filed, approved, the bill was voted out that those issues had been addressed. So it appears now that it's that same issue that's fueling the introduction of LB729, and I guess I need to know what has changed? What has occurred? [LB729]

SENATOR LAUTENBAUGH: This will be one where I don't want to speak for the League. I believe they will have a representative here who can do that. That was one of the issues, and I believe a party might reasonably conclude that even though that was taken out of the bill last year, if the proposed bill would move as amended, we'd be back next year putting the residential lifts back in again. That's...I'm not saying that's what the League is saying to me. I'm saying, I think a reasonable person could surmise that based upon the course of the legislation. [LB729]

SENATOR COUNCIL: Well, and I think they feel the course of whoever introduced the bill in its original fashion would at least...it's my impression from speaking from the committee that that was something that was not going to be accepted by this committee, a bill that included chairs and lifts in primary residences was not going to make it out of this committee. And I don't think that that sentiment has changed. [LB729]

SENATOR LAUTENBAUGH: I will agree that it is essentially a slippery slope argument which is...I always say is invalid unless I'm the one making it, so (laughter). [LB729]

SENATOR COUNCIL: And I appreciate your candor (laughter). That's all, Mr. Chair. [LB729]

SENATOR LATHROP: I'm going to write that down (laughter). Any other questions for Senator Lautenbaugh? Okay, thank you. Are there any proponents? [LB729]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

JIM PAPPAS: Mr. Chairman, committee members, my name is Jim Pappas, P-a-p-p-a-s, J-i-m, representing the League of Human Dignity. And I'll give the chairman my compliments for the seating arrangements he has of the committee where he put the more appealing people on one side and maybe the little less appealing on the other side? (Laughter) I didn't think I'd get a vote (inaudible)... [LB729]

SENATOR LATHROP: That's not a great way to start out, Jim, especially when they can't figure out which side you're talking about (laughter). [LB729]

JIM PAPPAS: To address Senator Council's question she had to Senator Lathrop, last year, a year ago, I had several conversations with Senator Council about this particular bill, and she assured me a year ago that the bill would never come out of committee unless the stairway and platform lifts were exempted. There was nobody from the people supporting the legislation ever came to me or my client and said, hey, you know, would it be okay if we take this out, or we'll take this out, will you be okay on the bill? And what happened is when the original bill was introduced in 2005, that was the first time the bill would include stairway lifts and platform lifts under the regulation, and we fought it then. The following year through a compromise that we worked out with them, they took the stair lifts and platform lifts out. And less than three years later, lo and behold, another bill appears to put this back in, so we come back in and fight it again. And true to the committee and the compliments to the committee, the committee advanced the bill without that portion in the bill. And my client said, hey, you know, this is almost starting to develop into be a pattern, you know. Put us in, take us out, we don't fight. The bill, if it passes, expands. Put us in, take us out. The bill expands the regulation and the act. They said, you know, if we don't...if we let it go through again this time, probably in a year or two years or three years, they're going to be back again and say, hey, you know, we need to put these guys back in because we got everybody else but these guys. We want to put them back in. And they basically said, enough is enough, you know. It's not a good piece of legislation. There's two letters from the Department of Labor say, it's not needed. I'm elated to hear Senator White's enthusiasm to support helping small businesses from excessive regulation and things and help them succeed, so I know Senator White will probably be a champion on this particular piece of legislation (laugh). [LB729]

SENATOR WHITE: Oh, no, I just guarantee you a hearing, not that you'll like the results. (Laughter). [LB729]

JIM PAPPAS: But, you know, there's parts of the regulation I think a lot of people don't really realize what it does do if the act would expand to all the...you know, the entire state. And one of the provisions that we've had a deep concern with since the original act came into place is dealing with accidents on elevators, that if you have an accident, personal or injury accident, property accident over \$1,000 you cannot use that elevator until it was inspected by the state to give its okay, and the inspector makes a report.

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

Business and Labor Committee
January 25, 2010

The problem with this, you have a hospital or a motel in western Nebraska on a Friday night. You get a personal injury or a property injury that's probably going to be more than \$1,000, legally, you can't use that elevator probably again till the following Wednesday at the earliest because you got to notify the state before the next business day. Friday night, Saturday, notify them Monday--maybe get somebody out there by Tuesday or Wednesday. And, you know, a motel or a small hospital, one elevator, this is a hardship. I think a lot of people didn't really look over this bill and some of the regulations on how potentially it could affect. Now elevators are not a key issue with a lot of people. I doubt if there's anybody in here...anybody in the room outside of maybe some elevator mechanics behind me, that's had anybody call them up with concerns about elevators. But this is an area that, you know, the state has said we don't need. You know, my client has been doing this for 33 years without an accident reported, and they're saying, you know, if we stop by and let it go through again, you know, we really didn't...we thought we had a pretty good trust situation with them three years ago, and they came back and threw us back in, and the committee wisely threw us back out. And, you know, we're afraid they're going to come back in two or three years, and we have this fight all over again, not that I don't like being employed and like coming in front of you guys all the time. But, you know, sometimes we got to look at what we really do, how big we need to make state government, how much we need to protect people. [LB729]

SENATOR LATHROP: Jim, this would be an outright repeal of the requirement that we inspect elevators? [LB729]

JIM PAPPAS: No, it would be a repeal of the original Conveyance Act passed in 2006. It does not repeal that we inspect elevators. It repeals the original act that was passed in 2006. [LB729]

SENATOR LATHROP: Okay. [LB729]

JIM PAPPAS: You don't have to ask any questions, Senator White (laughter). You can stand mute...stand mute (laughter). [LB729]

SENATOR LATHROP: Jim, I feel like I got the headliner at the Funny Bone in front of me today (laughter). Senator White, you're recognized. [LB729]

SENATOR WHITE: Thank you. Jim, your clients haven't had an accident all those years, so never had to close down their elevator. So it's not a worry. And the second thing is, if this did repeal it, they can come back the next year again. I mean, that's no solution. [LB729]

JIM PAPPAS: They do that all the time. I mean, yeah, people do that. [LB729]

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

Business and Labor Committee
January 25, 2010

SENATOR WHITE: So, I mean, that slope will stay slippery whether or not Senator Lautenbaugh is skiing on it or not. (Laughter) [LB729]

JIM PAPPAS: But just like one person a long time ago put out his arm and said, let my people go (laughter). And we're trying to free Douglas, Sarpy, and Lancaster County from enslavement. [LB729]

SENATOR WHITE: I think he wandered in the desert for 40 years and didn't come to a very good ending (laughter). [LB729]

JIM PAPPAS: He didn't have a GPS, and he wasn't great. (Laughter) [LB729]

SENATOR WHITE: Thank you. (Laughter) [LB729]

SENATOR LATHROP: I'm losing control here (laughter). The decorum. Okay, any other questions for Mr. Pappas that are related to the Conveyance Act? (Laughter) Okay, thanks, Jim. Are there any other proponents? I have LB729. No other proponents? Any opponents? [LB729]

GREGG ROGERS: (Exhibits 6, 7) Good afternoon. My name is Gregg Rogers. I brought you the first bill and the second one. And I'm here to oppose this third one here with a little clarification on something. We did meet with the folks and agreed to take residential out. When the bill was amended and brought back in last year or two years ago...I've already signed the sheet over here. Oh, these are handouts... [LB729]

SENATOR LATHROP: If they're handouts, let the page have them, and we'll get them passed around. [LB729]

GREGG ROGERS: We...the intent was to drop platform lifts and stairway chair lifts from the residential homeowner's home. Inadvertently, it got dropped out of the whole bill which removed it from platform lifts, stairway chair lifts that are in schools that the children ride. They're in churches. They're in like commercial buildings. Those are now not regulated in your state. In fact, I think the number is close to 350 that were swept off with that last bill that passed. So we brought it back to correct that issue. It was pared down to three counties instead of statewide which was our original intent, and in the process, we went ahead and added residential in because we're starting to see a pattern in the industry of homes with elevators as people are trying to stay in their home rather than move into retirement homes, installing more and more elevators. There's a market out there that is unregulated, basically. The home is a man's castle, and government's got no business intruding is the feeling out there, but that's a Draconian law out there that really doesn't apply today because the mobility-impaired in their home need protections for those that are willing to put profit ahead of safety. Elevators are very powerful by nature and unforgiving when they malfunction. I'm passing...or Ryan is

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

Business and Labor Committee
January 25, 2010

passing around an accident fatality report that deals with commercial elevators. I just printed off a news article this morning before I came over here on an elevator accident in a church that was not ever inspected. Fatality at a kid's grandmother's wedding. He was there. These are the type of accidents that we're starting to see out here. And with the repeal of this act, the way I'm reading it, is you would no longer have inspections even though I heard the gentleman say that it would only go back to 2005 when we introduced the first bill. But the way I read this bill, it does...it repeals your whole elevator, and it leaves an amusement ride department left. The funds stay in the...for amusement rides which are set up on a temporary basis. Elevators are out there; they're a highly sophisticated piece of equipment. The education and training needed to work on them is four years or more. I'm an elevator mechanic by trade. I'm an elevator inspector, certified as an inspector, and I introduce this legislation around the country. There's only four states left in the nation that don't have elevator regulations. Two of them are just north of us here, and Mississippi and Kansas just to the south of you. Those are the four states left in the nation that no longer...that have never regulated elevators. You do have a good elevator inspection program. You got good people working for the department. I would sure hate to see that thrown out the window because of a dispute that we're having over residential issue. If it would help, if we can cover the platform lifts and stairway chair lifts in a commercial setting such as churches and schools where the kids are going to ride them, we're willing to do that. I'm done fighting that issue with residential because it's a battle in every state I go into, and I do this all over the country. So I'd be glad to answer any questions. That's... [LB729]

SENATOR LATHROP: Where are you from? [LB729]

GREGG ROGERS: I'm from Des Moines, Iowa. [LB729]

SENATOR LATHROP: Okay. [LB729]

GREGG ROGERS: I started...if I could, Chairman, I started my elevator career with one of your local companies, O'Keefe Elevator as a helper in 1974, and that's how I learned this industry from the ground up. [LB729]

SENATOR LATHROP: Good, and you've been at it for 35 years then. [LB729]

GREGG ROGERS: Yes. [LB729]

SENATOR LATHROP: Okay, good. Any questions? Senator Wallman. [LB729]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for being here. I have a neighbor family that actually lost a child's life in an industrial elevator, and what's...I don't know how you're going to stop that. You know, you can have regulations up to the yin yang, but commercial elevators that carry tractors and all this stuff, they're

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Transcriber's Office

Business and Labor Committee
January 25, 2010

just wide open, you know. And mistake on the operator. [LB729]

GREGG ROGERS: Yeah, Mr. Chairman, if I may. [LB729]

SENATOR LATHROP: Yeah, that's a question... [LB729]

GREGG ROGERS: I don't know the details on your accident. Was it freight elevator or passenger? Freight elevator? [LB729]

SENATOR WALLMAN: Yes. Industrial, yeah. [LB729]

GREGG ROGERS: You know, freight elevators can be very dangerous. All of them can be dangerous if they're not properly maintained; if they're not inspected after the installation and on an annual basis to make sure that somebody doesn't jump out a safety circuit. A lot of factories will do their own in-house maintenance, shall we say, and their electricians can figure out how to jump from point A to point B on an electrical control panel and allow the unit to run. But in doing so, they allow it to run with the doors open, and the codes are designed that they don't run with doors open. Things like that happen if you don't have qualified people working on them. And I'm sorry for that young child that lost its life; it does happen. And no, we're not going to prevent all of them, but we can...if we can save one life, we're well ahead of the game. [LB729]

SENATOR WALLMAN: But if we pass this, we are really putting an onerous burden on small business, you know, that's installed elevators. [LB729]

GREGG ROGERS: If you pass this LB729? Yeah, it leaves the market wide open for anything. [LB729]

SENATOR WALLMAN: Thank you. [LB729]

SENATOR LATHROP: (Exhibit 7) Any other questions? You did hand out, and the record will reflect that you've handed out and we'll incorporate into the record a news article as well as a handout from the Center to Protect Workers' Rights on death and injuries involving elevators and escalators, and we'll include that in our record. [LB729]

GREGG ROGERS: Thank you very much. [LB729]

SENATOR LATHROP: Thank you for your testimony today. Anyone else here in opposition to this measure? Anyone here...oh, I'm sorry. [LB729]

STEVE SIMPSON: (Exhibit 8) I do have a handout. I need to sign in as well. My handout is more to keep me on task. If you don't mind, I kind of don't want to drift off a little bit here, so. My name is Steve Simpson, S-t-e-v-e S-i-m-p-s-o-n. And I'm the

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

Business and Labor Committee
January 25, 2010

business representative for the International Union of Elevator Constructors, Local 28, here in Nebraska. Local 28's jurisdiction covers the entire state of Nebraska except for a few counties around Sioux City. I represent 95 of the current licensed elevator mechanics in the state of Nebraska, and I, too, am a licensed elevator mechanic. I'm opposed to LB729 as I believe that this bill is a step backward in safety. Currently, the Conveyance Safety Act covers all the counties in Nebraska. The counties that are most populated have the licensing. That's based on population of 100,000. If any other county in the state of Nebraska goes over 100,000 licensing will be required to work on the elevators in that county. I believe that the right step, in fact, right now would be to expand this act and require licensing to the rest of the state regardless of how populated the county is. To get a license in the state, the act spells out qualifications. This includes education, experience, and continuing education which means they have to keep going to school to learn their trade. To repeal this act would remove all of the qualifications that are in it, everything I mentioned. Elevators and other conveyances run 24 hours a day every day. There are no holidays, weekends, or any time off. Six of the 90 elevators at the University of Nebraska Medical Center ran, and they have counters on these, ran 7,106 times on January 22, 2010, alone from midnight to midnight. The mid-range elevators at the First National Bank Tower in Omaha and mid-range would be the ones who start in the lobby and go to 17 without a break, and then go 17 through 29 and service those floors. They run over a million feet a week. When Life Flight is needed, and I know it was spoken earlier about these hospitals that are out of town, and when they have an elevator that breaks down. But when Life Flight is needed to get a patient to the hospital as quickly as possible, the helicopter lands on the rooftops of hospitals, but then the paramedics need to get the patient to an elevator to get him off the rooftop. Otherwise, they have to drag him down the steps, lose valuable time. Other surrounding states have also adopted licensing. Colorado and Minnesota have a state license. It was mentioned earlier that Kansas does not, but the city of Wichita does. Missouri has passed a licensing bill and is waiting for their elevator board to set up the parameters. Iowa has an elevator board that determines what is to be allowed in their state, and licensing is up for a vote this year. Wyoming requires a low voltage electrical license to work on elevators. Wisconsin and Illinois both require apprentices as well as mechanics to be licensed. No system is perfect. However, I worked on some elevators in a packinghouse in Fremont, Nebraska. I went there. We got there; we went on the main floor. We were told this elevator is down. We walked over to see where it was. No barricades, nothing going on, doors wide open. Here comes the elevator screaming up the hole. Okay? What happened was, was the electricians in this building jumped out the safety circuit on the doors because of production they needed to keep the elevator running for production. So instead of calling the company to come fix it, they called the company, jumped out their circuits, and the company is on their way. Now, I've worked in construction most of my career. I've installed a lot of elevators in the area. When you go on the job site as an elevator constructor, it happens all the time. We have barricades up; everything is protected. And when we're working from falls, people stepping over and falling in. But every single

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Business and Labor Committee
January 25, 2010

time you look at the hole--there's somebody going like this. Every time. Now if they're curious on a construction site, do you think they're curious in a packinghouse? And if they stuck their head in there at the wrong time, what happens? Imperial, Nebraska, they had a dumbwaiter that crashed. They had an irrigation company that was working on elevators out there that was their trusted company that they hired to come out and work on their dumbwaiters and their elevators. There was a cable that was frayed on this dumbwaiter. Instead of fixing the cable by recabling it, they took tape and taped around the cable. The thing crashed. Now nobody was riding it, but you know as well as I do, in order to put weight on a dumbwaiter, you have to shove things inside of it. Somebody's hand could have been in there when it actually broke loose. There was a funeral home in Omaha that wasn't registered with the state. They were using it as a hallway when it wasn't being used. The elevator went up, lady picks up a piece of paper, starts walking through the hallway; the elevator isn't there. Down she went. Now they had tires in the pit to protect her from hurting herself, but she did get hurt, but they were using tires to stop her from crashing. Okay? Elevators carry more passengers every day than any other form of transportation. Elevators do not require a license to run nor do they have an age requirement. The citizens of the state of Nebraska never consider if the elevator will work. Almost everybody who rides an elevator or any other conveyance such as an escalator never thinks about any safety. Elevators travel more miles in one year than most citizens in Nebraska do in their own vehicles. In fact, some elevators travel more miles in one month than most citizens in Nebraska travel in one year. In closing, I again would like to ask the committee to stop this bill and not move it to the floor. This bill is a huge step backwards in safety. Please remember that this bill covers many different types of conveyances, and need to have highly qualified mechanics and their apprentices under supervision is imperative. The next step is to expand this act statewide, not kill it. Thank you. I'll take any questions. [LB729]

SENATOR LATHROP: Very good. Thanks, Steve. Are there any questions for Mr. Simpson? I don't see any. Thank you for your testimony. [LB729]

STEVE SIMPSON: Thank you. [LB729]

SENATOR LATHROP: Anyone else here in opposition to LB729? Anyone here in a neutral capacity? Seeing none, Senator Lautenbaugh, you're free to close. [LB729]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. I do appreciate the discussion today, and it does seem to me that there could be some stopping point between expanding the act and eliminating the act. I'm just thinking out loud, though, things we may or may not choose to do, but there doesn't seem to be from some of the testimony a choice. We either expand it, or we pass this bill, and we eliminate it. I'm not sure why the status quo is problematic, but apparently it is. A lot of the elevators that were mentioned and some of the hypotheticals...I shouldn't say hypotheticals--the examples were not covered now nor dumbwaiters. The act has been

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Business and Labor Committee
January 25, 2010

in effect, I believe...it wasn't even fully implemented yet before the first changes were being proposed to it. I understand the reaction. I understand why I'm here, and once again, I suggest that there may be some sort of a middle ground that can be taken between aggressively expanding the act or obliterating the act. [LB729]

SENATOR LATHROP: Very good. [LB729]

SENATOR LAUTENBAUGH: Thank you. [LB729]

SENATOR LATHROP: Thank you for being here today and introducing LB729. That will close our hearing on your bill. Next up is LB884 and that brings us to Senator McGill. [LB729]

SENATOR MCGILL: You ready? []

SENATOR LATHROP: Senator McGill, you're up. []

SENATOR MCGILL: Chairman Lathrop and members of the committee, I'm Amanda McGill, M-c-G-i-l-l, and I represent the 26th District of northeast Lincoln. LB884 is pretty simple and straightforward. It was brought to me by a constituent who is here today to testify next who was unable to have his wife's income counted in a home loan application because she worked for a small business and was unable to obtain an itemized wage statement with deductions. Currently, there's no law in Nebraska requiring such a statement to be made available to an employee, even if they request it. Iowa, Missouri, and Minnesota all have statutory requirements for itemized wage statements, with Minnesota going as far as requiring a statement to be issued for each pay period. LB884 would not require employers to issue an itemized statement for each pay period, only within ten days of the request of an employee. We've worked with the Nebraska Federation of Independent Businesses to prepare an amendment to LB884. The introduced copy of the bill allows the employee to dictate whether the statement is provided in electronic or paper format. Our amendment gives greater flexibility to the employer regarding how they are best able to furnish the statement, as some businesses are trying to go paperless, while others may not yet have that computer access and ability. It also requires a written request from the employee for adequate recordkeeping purposes and changes an employer's refusal to furnish an itemized wage statement to an infraction. I believe this amendment would also address the concerns brought to the committee in a letter from the Department of Administrative Services, and I've been approached by several other entities concerned about that whole paperless versus paper. But really, the point is just to make sure that people can get their hands on those deductions if they need be for something like trying to apply for a home loan. [LB884]

SENATOR LATHROP: Very good. I imagine it's important when calculating child

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

Business and Labor Committee
January 25, 2010

support or...in divorce proceedings too. [LB884]

SENATOR MCGILL: Yeah, and in so many different ways, and I had no idea someone couldn't get that if requested. And you'll hear more from the individual story that brought this to me. I think it's, you know, a pretty reasonable, straightforward idea. [LB884]

SENATOR LATHROP: Very good. Thanks, Senator McGill. We will take testimony from proponents, those in favor of LB884. [LB884]

ALI NAWSHAD: (Exhibit 9) My name is Dr. Ali Nawshad, N-a-w-s-h-a-d. I'm a professor at the University of Nebraska Medical Center, so I recently moved to Lincoln, Nebraska, and I was working in Massachusetts. The first thing you do once you move to Nebraska is to buy a home. So, being a state employee and on the University of Nebraska, my paycheck always has all the deduction and the tax withheld, NPERS contribution. And my wife works for a small company and as soon as we moved here she also became employed with this small company. But when we approached to at least 12 different banks for buying a house in Nebraska, in Lincoln, Nebraska, basically 12 of them, they told us that my wife's income, they cannot include that partly because of the stringent situation with the bank loan application after the home mortgage meltdown. So eventually it was we had to compromise significantly and they only included my income in opposed to my wife income. Therefore, instead of buying a house, we ended up buying a townhouse. So that's why we're here. So my point over here is that I have a written statement, I wish I could give it to you. I don't have that many copies but if you could make a copy of that. So the bottom line is that, despite my wife having a generous income and credit score over 800, she was not able to include her income and overall bank...overall loan application, so it was basically my income alone. So I was literally appalled, partly because my wife doesn't know whether the employer is contributing towards the FICA, my wife doesn't know whether the employer is contributing their part towards FICA, not only my wife's part but their part FICA. She doesn't know how much she has been taxed. So basically, at the end of the month, it is a personal paycheck, personal check written to my wife. She takes a check, cash it or deposit it to her bank's account, and that's how it is. When we approached by the banks and my wife approached to her employer, the employer said that he is basically, by state legislation, he is not supposed to and he can go by and not provide the...a paycheck. So I personally felt that it is inappropriate in the manner that not only that it is important that they...Senator McGill, we're saying that it is important for house loan, any loan, car loan, or you can go and get a car loan or a house loan for a higher interest rate. Because bank will eventually give you the money even if you don't provide those documents. The interest rate will be higher. And so I thought it was an important. Like Iowa, Minnesota, and Missouri, they all have (inaudible) for the employer needs to provide at least that basic document of paycheck knowing where my taxes are going, how much is my tax, what are my balances, and that kind of information, at least in the paycheck form the way we all get in our paycheck as a state employee. [LB884]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: Very good. Before you leave, did you fill out one of the sign-in sheets? [LB884]

ALI NAWSHAD: No, I have not. [LB884]

SENATOR LATHROP: Well, make sure you do that. You don't have to do it right now but before you leave so that we have your full spelling and all that. [LB884]

ALI NAWSHAD: Sure. I will do that. [LB884]

SENATOR LATHROP: We want to make sure we get it all in the record. [LB884]

ALI NAWSHAD: Thank you. Thanks. [LB884]

SENATOR LATHROP: Are there any questions? Okay. I don't see any. Thank you for your testimony... [LB884]

ALI NAWSHAD: Thank you. [LB884]

SENATOR LATHROP: ...and your interest in the subject. [LB884]

RON SEDLACEK: Chairman Lathrop,... [LB884]

SENATOR LATHROP: You're here as a proponent. [LB884]

RON SEDLACEK: Yes. [LB884]

SENATOR LATHROP: Very good. Welcome. (Laughter) [LB884]

RON SEDLACEK: Would you think otherwise? (Laugh) [LB884]

SENATOR LATHROP: I wasn't trying to be...I'm not trying to continue Pappas' comedy show. [LB884]

RON SEDLACEK: My name is Ron Sedlacek, S-e-d-l-a-c-e-k. I'm here today representing the Nebraska Chamber of Commerce. We were informed of the legislation during the interim, had the opportunity at that point then to take it to our councils and they asked us to come and testify in support of the legislation. And with the amendments that Senator McGill had referred to in her opening, that would make it even better, a little bit more clear, and we would support those amendments as well. [LB884]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: Very good. We appreciate the support and your testimony today. Any questions for Mr. Sedlacek? Do you have a question? Okay. I don't see any, Ron. Thank you. [LB884]

RON SEDLACEK: Okay. Uh-huh. [LB884]

SENATOR LATHROP: Any other proponents? [LB884]

JERRY STILMOCK: (Exhibit 10) Thank you, Senator. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of the National Federation of Independent Business. We have had that communication that...with Senator McGill and her staff to go through the proposed changes of which there are three: simply to require in the amendment to be considered by Senator McGill--and of course that's what we base our premise on, that the amendment will be...will be introduced by Senator McGill--that the request be in writing by the employee; that the employer be able to elect whether it be printed or electronically provided, the information; and finally that...the language in the green copy using the term "injunction," that that be removed and instead insert language so that it would be an infraction. Most likely the word "infraction" is over in the criminal court system; ranges anywhere from a \$100 fine, not to exceed a \$100 fine for the first offense to a range of \$100 to \$300 for a second offense within a two-year period, etcetera, on. And I'm glad to hear that Senator McGill has had an opportunity to review the proposed language changes and certainly with those language changes coming in that the NFIB Nebraska would be in support of LB884. I have a handout and I'll just set those at the side. The page has exited again. But if I may then, Mr. Page, when you have a moment, Daniel, a letter that I've been asked to introduce on behalf of the Greater Omaha Chamber of Commerce penned by David Brown, president of the Omaha Chamber, once again in support of LB884 with the proposed amendments. Senators, thank you. [LB884]

SENATOR LATHROP: Thanks, Jerry. Senator Wallman has a question for you. [LB884]

JERRY STILMOCK: Sir. [LB884]

SENATOR WALLMAN: Thank you, Chairman Lathrop. And thanks for being here, Jerry. You know, I used to be on various things. If you garnish somebody wages, I always found out what they got. You can't on this? Evidently not. [LB884]

JERRY STILMOCK: If you garnish somebody's wages. [LB884]

SENATOR WALLMAN: Yeah. [LB884]

JERRY STILMOCK: Well, if you garnish somebody's wages, you're going to get the bottom line, the net, if you will, of what that party holding the funds, if they're wages,

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

Business and Labor Committee
January 25, 2010

what that party is holding in terms of net. But I don't know that I would, as a garnish...as a garnisher, I don't know if I'm going to find out what the withholdings are. [LB884]

SENATOR WALLMAN: Okay. Yep. Thank you. [LB884]

JERRY STILMOCK: Yes, sir. [LB884]

SENATOR LATHROP: I see no other questions. Thanks for coming down, Jerry. [LB884]

JERRY STILMOCK: Okay. Thank you, Senators. Yes, sir. [LB884]

SAM FRANCO: Mr. Chairman, members of the committee, my name is Sam Franco. I'm with the...I'm the interim director, probably for another week or ten days anyhow, of the Mexican American Commission, and I come here today to speak in support of LB884. I want to take a different twist and a different approach to what is the content of the bill, if I may. One of the things that I have found and I've heard now for several years and particularly since I've been here and that is that far too many people are being designated as independent contractors, if you would, individuals that are not receiving any kind of indication of what their earnings are. They're just told, we just took this money out for taxes, etcetera. There's no evidence that any of this money is being remitted to the state, the federal government. I think what we're seeing is that both the state and the federal government are being denied that kind of money that is being generated by allegedly taking it away from employees. That would be one. The other one, of course, that troubles me is that oftentimes, and I hear this, too, about people being hired as a group, work all week and they tell them, well, you show up tomorrow morning here and your check will be here, and nobody shows up. So they're not any...not only do we have a case of somebody not even getting a statement; they're not getting any check at all. And I think that this whole issue of fraud and denying people their gainful wages for the time that they have worked I think is something that maybe perhaps the committee ought to take a look at. Far too often we just say, well, that happens. "Happens" isn't sufficient. You know we talk every day about the defense of this country, we talk about how important it is that the Rules of the Road be implemented, we talk about the security within banks, we talk about security about our investments, we talk about all kinds of things, and yet when it comes to being able to go ahead and to provide something that is so important, to be able to go ahead and to provide people their wages when they earn it and everything else, well, that happens. Senator, that's my...those are my comments. [LB884]

SENATOR LATHROP: Very good. We appreciate your thoughts, Sam. [LB884]

SAM FRANCO: Thank you very much. [LB884]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: Any questions? I don't see any. Thanks for coming down today. [LB884]

SAM FRANCO: Thank you. You bet. [LB884]

MARK McGUIRE: Mr. Chairman, members of the committee, my name is Mark McGuire, M-a-r-k, McGuire, M-c-G-u-i-r-e. I'm general counsel and legal...and lobbyist for the Nebraska State Education Association. Senator Lathrop, you must really be doing something right because I've never before known when Mr. Sedlacek and I were sitting in this room on the same side. (Laugh) [LB884]

SENATOR LATHROP: I was a little taken aback. (Laughter) [LB884]

MARK McGUIRE: It's a pleasure. I enjoy that, that new role. Briefly, NSEA supports, as good, sound public policy, LB884. Occasionally, we do have problems with pays, usually in a situation where an adjustment has to be made because a person is leaving midyear or things of that nature. Or, as I discovered this morning in dealing with a negotiation settlement, the person got their first paycheck under this new collectively bargained agreement, and here they did all the right stuff. They show all the deductions for Blue Cross Blue Shield, Nebraska retirement, FICA, withholding, etcetera, etcetera. There's seven of them there. And it struck me when I was looking at this, I thought, wow, what if you had to try and figure that out yourself and it wasn't printed on the pay stub? It would be highly challenging. We didn't know, for example, just by looking at it till we did a little research, Nebraska retirement. Well, is that the fixed retirement or does that include the 1 percent more that's involved this year? So it's information like that that's there. It's invaluable, sound public policy to make it available; a good piece of legislation that should be enacted. I'd be happy to respond to any questions. [LB884]

SENATOR LATHROP: Thanks, Mark. Any questions for Mr. McGuire? I don't see any. [LB884]

MARK McGUIRE: Thank you. [LB884]

SENATOR LATHROP: Thanks for coming down. [LB884]

MARK McGUIRE: Sure. [LB884]

SENATOR LATHROP: Anyone else here to testify as a proponent? Anyone here in opposition? Anyone here in a neutral capacity? Okay. Senator McGill, would you like to close? Senator McGill waives closing. Before we close the hearing, though, I do want to have the record reflect that I've received letters that have been offered, one from Carlos Castillo and DAS. It's a letter dated January 25, 2010, addressed to Senator McGill; a letter from David Brown, president and CEO of the Greater Omaha Chamber of

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

Business and Labor Committee
January 25, 2010

Commerce, dated January 25, 2010. (Exhibit 10) And that's it. That will close our hearing on LB884 and take us to LB913 and Senator Council. [LB884]

SENATOR COUNCIL: Thank you, Senator Lathrop. Mr. Chairman, fellow members of the Business and Labor Committee, as you know, I am Brenda Council, C-o-u-n-c-i-l. I proudly represent the 11th Legislative District, which is fondly referred to as north Omaha. I appear before you this afternoon to introduce LB913, which is known as the Criminal Offender Employment Act. Allow me to provide some perspective for your consideration of this legislation. According to the Pew Center on States, 1 out of every 44 Nebraskans is under correctional control, which means that over 9,000 Nebraskans are currently confined in jail or prison while nearly 21,000 Nebraskans are either on probation or parole. Of greater significance is that those Nebraskans, over 30,000 total, fall into the category of ex-offender. All of them have been convicted of an offense that has resulted in either incarceration or probation. While studies show that unquestionably ex-offenders run a high risk for recidivism, risk assessments also show that not all ex-offenders are equally at risk for reoffending. But there are studies, however, that show that in nearly 50 percent of cases, employers are unwilling to consider equally qualified applicants on the basis of their criminal record. Of more significance is the fact that 40 percent of employers will not even consider a job applicant for employment once they are aware that the individual has a criminal record. It is that last statistic that leads many ex-offenders to not even seek employment because of their belief that disclosure of their criminal history record acts to automatically eliminate them from consideration for employment. In an effort to remove barriers to the employment of ex-offenders and to make our community safer by decreasing the probability for recidivism, I am offering LB913. LB913 prohibits certain public employers from making inquiry regarding a criminal conviction on the initial application form for employment and allows them to take a prior conviction into consideration at some point after the review of the initial application. I want to get back to that point because there have been some concerns expressed that I have every intention of addressing through amendment. It is important to note that this legislation does not bar the public employer from asking about criminal history records. All it does is postpone that question until later in the process. The goal is to get the individual with a criminal conviction an opportunity to be considered on his or her other merits before adding in the information about the criminal history record. LB913 also speaks to the types of criminal records that are appropriate for an employer to consider. The act prevents consideration of records of arrests that are not followed by a valid conviction. A number of individuals have been disqualified from employment by the mere fact that they were arrested, although they were never convicted. And for those members of the committee who had an opportunity to listen to the testimony that was offered last week when we were discussing the racial profiling legislation in the Judiciary Committee, there is no question that certain individuals in our state are more likely to have contact with the police, those contacts are more likely to end in arrests, and many of those arrests do not wind up in convictions. Yet an employer, depending upon what source they use for accessing and checking criminal history records, will pull

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

Business and Labor Committee
January 25, 2010

those up and consider them. This act also prohibits a public employer...and I want to emphasize that. This bill is limited to public employers--state government and political subdivisions and agencies and departments thereof--because I wanted to take a measured approach to addressing this issue, and what better way to show leadership and commitment to reintegrating our ex-offenders is for the state to be first out of the gate in terms of eliminating the questioning of prior criminal history on an initial application. Public employers would be prohibited from considering misdemeanor convictions that do not involve moral turpitude, as is defined in the act. I will certainly respect Senator Lathrop's desire that we stay within the recognized time for testifying or I would share with you an incident that occurred just last week here in this building involving a young man who applied for an internship in an agency of this state government, who did not check the box on the application because at the age of 16 he had been charged and had pled no contest to shoplifting. That individual is now a 19-year-old sophomore at the University of Nebraska-Lincoln with a 3.52 grade point average who is moving forward with his life, did not check the box on the state application, was granted an interview, wowed the interviewer, and was on the brink of being offered the internship until the criminal history was checked. And at that point in time, that young man was told that it is the policy or practice of that particular agency not to employ anyone who has a prior conviction, regardless of the nature of the conviction and regardless of how long ago it was or how old the individual was at the time they committed the offense. The point is, if that young man had checked the box and checked it saying, yes, I have been convicted of something other than a traffic violation, he would not have even been extended the interview. So that is what we're trying to address by LB913. As written, LB913 does not apply to law enforcement agencies, although law enforcement agencies can choose, if they would like, to follow the policy that's outlined in LB913, and it does not alter the scrutiny that must be given to applicants for employment in positions that are in contact with children or other vulnerable individuals. In that regard, I want to acknowledge that I am aware of a concern expressed by representatives of a few school districts, and while they did not express any opposition to the substance of the legislation, in fact they were very supportive of the intent of the legislation, they wanted to be sure that the act allowed them to consider the criminal records of applicants earlier in the process, and that's not an issue. The bill was drafted and modeled after legislation in other states and the model that we used said that you couldn't consider the criminal record until the applicant was a finalist for the position. The school districts made it clear that that's probably a little too late in the application process for them. I have no problem with addressing that issue to make clear that they can conduct that earlier in the application process. But in speaking with them, they had no objection to removing the "have you been convicted" box from the application because they will conduct an extensive criminal background check on each and every applicant that they consider. So it doesn't matter whether they check the box yes or no; they're going to conduct a criminal background check on anyone that they're considering. And for their consideration, we're looking at the city of Boston's ordinance, because a number of major cities across the United States and

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

Business and Labor Committee
January 25, 2010

other states have been looking at this legislation, have enacted ordinances at the city level and county levels, and have enacted legislation at the state level. I will propose for their consideration that we amend this to say that the public employer can review the qualification of an applicant and, once determines that an applicant is otherwise qualified for the relevant position, that is the point in time in which they can conduct their background...criminal background investigation. So all they'd have to do is, if they determine that this person is otherwise qualified, that's the point in time where they would be authorized to undertake that. I also spoke with representatives of the Nebraska State Bar Association and, to my chagrin and embarrassment, they directed my attention to the fact that, although I thought I had addressed the fact that the Nebraska State Bar Commission has their process for evaluating candidates for admission to the bar and that those standards are developed by the Nebraska State Bar Commission under the authority of the Supreme Court and that the Nebraska State Bar Association also supports the concept of LB913, and in fact, what is set forth in LB913 basically parallels the process that the Nebraska State Bar Association goes through. They do not automatically disqualify individuals from consideration for admission to the bar if they have a prior conviction. So to address my oversight, the bill would be amended to make it clear that the Nebraska State Bar Association would not be obligated to comply with LB913 but would be obligated to comply with the standards that they operate under through the Supreme Court. There are persons here who will be testifying in support of this measure. Many of them have been working on offender reentry matters for a number of years and most of them have been recently participating in a consortium of individuals and organizations who are committed to assisting ex-offenders to successfully reintegrate into our community, because they know that that increases safety in our community as well as cutting the cost to the state by reducing recidivism. With respect to support, I would like to direct your attention to the letter that should be before you from the Greater Omaha Chamber of Commerce. (Exhibit 11) I don't know if they have a representative here to testify, but you do have a letter before you from the Greater Omaha Chamber of Commerce supporting LB913 with the caveat that we proceed with great caution and that's...I pledge will be done, as evidenced by the discussions I've already been having with individuals in the effort to develop the amendments necessary to address those concerns. [LB913]

SENATOR LATHROP: Very good. Thank you, Senator Council. Before you get away let's see if there's any questions. Senator Carlson. [LB913]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Council, very early in your comments you used the terminology "conviction" or "valid conviction." What's the difference between the two? [LB913]

SENATOR COUNCIL: Well, let me...that's...we want to be sure that there is a valid conviction. A lot of reporting services...I think you need to understand that there are several ways that an employer can check criminal records. They can use the national

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

Business and Labor Committee
January 25, 2010

law enforcement system, the bureau of...what's the...what's the... [LB913]

_____ : The NCIC. [LB913]

SENATOR COUNCIL: ...the NCIC and there's one other, but then they can hire these private entities to do background checks. And what they'll do is you can have a report that shows that you were arrested and they show that you were convicted but there was never a conviction. So that's what's meant by valid conviction, that there actually has to have been an adjudication and that you were actually convicted. [LB913]

SENATOR CARLSON: Almost one is an accusation and the other is an actual conviction. [LB913]

SENATOR COUNCIL: Yes. [LB913]

SENATOR CARLSON: Another question that I have that came up as you were explaining this and I don't understand or pretend to know the complete procedures of public employers for hiring. Is it always a multiple appointment type situation? Because you talk about not divulging this in the first interview. If I were interviewing you and may be very impressed by your...the interview that we're having and I have a need to fill this spot, it looks to me like you are very qualified and I might want to hire you on the spot the first interview, how does that complicate this? [LB913]

SENATOR COUNCIL: It doesn't complicate it at all. If you don't wish to conduct a criminal background investigation, nothing in LB913 prevents you from doing it. [LB913]

SENATOR CARLSON: Well, I'm not prohibited if I hire you, then I'm not prohibited after hiring you from running the check. [LB913]

SENATOR COUNCIL: No. Well, you have to be sure that if you do it that it's made clear to me that this is a conditional offer of employment and that my employment is conditioned upon satisfactory review of my criminal record. Because if you hire me and then come back and then terminate me, there may be question as to whether or not I have a cause of action against you for...because we don't have a cause of action for breach of contract in employment situations but, you know, detrimental reliance or something, when you could very easily just say this is conditioned upon satisfactory review of your criminal record. [LB913]

SENATOR MCGILL: Uh-huh. [LB913]

SENATOR CARLSON: Okay. Thank you. [LB913]

SENATOR MCGILL: Yeah, it's just, if you don't mind, it's just like conditioned upon

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

Business and Labor Committee
January 25, 2010

passing a drug test. [LB913]

SENATOR COUNCIL: Exactly. [LB913]

SENATOR MCGILL: I know with my wonderful gig at Target, you know, it's in relation to passing those things first. [LB913]

SENATOR COUNCIL: Yes, a lot of people start before they get the results... [LB913]

SENATOR MCGILL: Uh-huh. [LB913]

SENATOR COUNCIL: ...back from drug testing. [LB913]

SENATOR LATHROP: I have a couple questions for you. [LB913]

SENATOR COUNCIL: Yes, sir. [LB913]

SENATOR LATHROP: The first one is that there's sort of an assumption built into your...into your bill and that is that if people are not identified as having a criminal conviction on the application, that they have a better chance of getting employed by being engaged in the process just a little bit longer. Do you have any...are there any studies that suggest that if they...if...and now we're talking about political subdivisions so let's take a school district. I'm just going to make up an example. Let's take a school district and they want to hire some bus drivers, okay? And if it is their policy that they are not going to hire anybody who has a criminal conviction, what good is...what good is going to come out of the bill? If they are not identified early, obviously people will have interviews, but that's not really a goal in itself to have people experience the interview process. What are we going to get out of this, Senator Council, or do you have any studies that suggest that if this is in place that more people that do have a conviction will be...will enter or be allowed to work at the school district? [LB913]

SENATOR COUNCIL: Well, and the school district is an interesting public employer to choose because the school district certainly has an obligation to make sure that they don't employ individuals who would place the children that they're responsible for at risk. But assuming that the conviction has no relation to the position that the person is making application for doesn't evidence moral turpitude on the part of that individual, then what this bill does is it encourages public employers to consider ex-offenders who are otherwise qualified on merits...on their own merits rather than on the criminal record. Now in terms of... [LB913]

SENATOR LATHROP: But all that gets them...all...isn't it true all that gets them is just one more visit? [LB913]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

SENATOR COUNCIL: Well, now that... [LB913]

SENATOR LATHROP: Or at least it gets them an interview? [LB913]

SENATOR COUNCIL: It...our hope is that it gets an interview and there are studies, Senator Lathrop, that shows that when individuals, ex-offenders, are granted an opportunity, who are otherwise qualified for the position, who are granted an opportunity during the interview to explain the circumstances surrounding their conviction, that it increases the likelihood of them being employed. [LB913]

SENATOR LATHROP: I got another question for you, and this occurred to me as you were testifying and you brought up something that we did in Judiciary Committee, which was racial profiling, in your comments and this occurred to me and I'm wondering if you thought this through and whether or not it doesn't kind of present the dark side to what you're talking about here. If we now on all public employees, you want to take a job with a school district or OPPD or the state of Nebraska or the city of Omaha, you don't check the box that says I have a conviction, all of these people, black and white, now have an interview and in the interview process we don't have an application to record what happened, what was said, what conversation took place, could you not end up with a process where you could have Caucasians who have criminal convictions getting hired and blacks who have a criminal conviction not getting hired and you have no way to demonstrate that the political subdivision is engaged in using race as a criteria for hiring rather than the criminal conviction? In other words--you litigate in this area or you have--if you have all these applications and the employer hires white people who have criminal convictions but not black people, you can make a civil rights claim, right? [LB913]

SENATOR COUNCIL: Well, yeah. Well, the interest... [LB913]

SENATOR LATHROP: And if that stuff isn't disclosed in the application, you have no place to go and say whites and blacks are being treated differently with respect to their criminal convictions. In other words, it becomes an excuse not to hire a black person, it's ignored in the case of hiring a white person, and no one can ever sort that out or demonstrate that because it's not in the application. [LB913]

SENATOR COUNCIL: Well, the interesting thing, Senator Lathrop, is there is data that shows today that with the question being asked on the initial application you already have those types of disparities that ordinarily a white individual with a conviction is going to be viewed more favorably and have a greater chance of being employed than a... [LB913]

SENATOR LATHROP: And that's my...that's my question or a concern. [LB913]

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

Business and Labor Committee
January 25, 2010

SENATOR COUNCIL: But you...but...but...but...but... [LB913]

SENATOR LATHROP: At least I'm going to... [LB913]

SENATOR COUNCIL: Uh-huh. [LB913]

SENATOR LATHROP: ...express it to you as I'm listening to you, is that we're now going to take it from the objective, checking a box, where we can go back and look at all the applicants for a position or jobs that have been taken at OPPD, for example, and move it into the realm of the subjective where you really can't demonstrate that race has played a role in who gets hired and who doesn't. [LB913]

SENATOR COUNCIL: And I think that...and I'll come back to it in my closing, but I think when you hear from those who are testifying in support that while that is a concern and it's a legitimate concern, the greater concern is that there is this belief among the ex-offenders that they won't be given any consideration, and as a result of that they're not even actively seeking employment and... [LB913]

SENATOR LATHROP: Certainly this...certainly this measure dovetails with what we're learning in Judiciary Committee about trying to reduce recidivism, improve conditions for people, not just in your legislative district but... [LB913]

SENATOR COUNCIL: Across the state to reenter. [LB913]

SENATOR LATHROP: ...across the state, folks who have criminal convictions that shouldn't stop them from being employed. But I don't know if we get there with this. It's almost like we have to create a new class of protected people, which is criminal convicts whose conviction doesn't have anything to do with the job they might take, and that's a place where I don't think we're going to get. [LB913]

SENATOR COUNCIL: Well, Senator Lathrop, it's interesting that you should raise that because in my research during the interim to see what steps...what policy steps we could begin to take to address this, I looked at all of that type of legislation and there are states, some in very close proximity, who have changed their fair employment practice laws to add criminal convictions as being grounds for a cause of action for discrimination if the criminal record has not been considered in the appropriately described context. So rather than go that route, and again listening to those who are dealing with this issue in the trenches every day, the support was for what is now becoming a national movement--ban the box. [LB913]

SENATOR LATHROP: Okay. Well, there seems to be some...a lot of things to consider and I'm not suggesting that I'm in favor of any one of the things that we talked about but more as a devil's advocate. Because if you take it out of the realm of the objective and

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Transcriber's Office

Business and Labor Committee
January 25, 2010

put it in the realm of the subjective where the job interview happens, it becomes, as a matter of proof, much more difficult... [LB913]

SENATOR COUNCIL: Right. [LB913]

SENATOR LATHROP: ...to show that race is the real reason and not a criminal conviction. But we'll look to hear from some of the folks that are here in support of your bill and those who are here in opposition, if any. So... [LB913]

SENATOR COUNCIL: Thank you. [LB913]

SENATOR LATHROP: ...thank you for your introduction. Those in support, you may come up and testify. [LB913]

RAY KYLES: Good afternoon, Senator Lathrop and members of the committee, other senators. My name is Ray Kyles and I'm the founder and director of a program called You're Not Alone. [LB913]

SENATOR LATHROP: Can you spell your last name for us, Ray? [LB913]

RAY KYLES: K-y-l-e-s. You're Not Alone is an education and prevention program for ex-felons making a reentry into society, on parole or probation, age 16 and older. Most of the time, I really enjoy my job, but what happens is there are times when it's very unbearable. The unbearable times are usually when I am unable to help assist an individual in employment, and that's even domestic employment. The doors are slammed. Individuals are misled that once they've completed their sentence that they've paid their dues to society, and it's just not so. However, there are no signs posted or anything to read which will allow you to understand that this is a sentence that you will have for the rest of your life and is a form of discrimination. It is time that the city, the state, and the Legislature, the city, state, and local governments take under consideration that these men and women are taxpaying citizens once they have been released and released from the obligations that the state has imposed upon them as a sentence. Have we forgotten that the pool in which these individuals come from are our family members, our coworkers, our lawyers, our doctors, and there have been senators who have become ex-felons? Or have we forgot that we must want for ourself what we want for our brothers? I must...we must start to look at these individuals and start to understand that these individuals may have something to offer the state, the city, or local government, and before we eighty-six their applications we must understand that they have truthfully, and I do mean truthfully, checked the box where it's truthfully an act of discrimination for the states, local governments, and cities. They are not the only ones who practice this. There are the companies in the state of Nebraska who look for tax breaks which practice these same practices. These same tax breaks that they receive come from...are made up by the citizens of Nebraska and for the ex-felons that

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

Business and Labor Committee
January 25, 2010

are not...that do not pay for this, their families pay for these tax breaks and their families have ex-felons. What I'd like to ask is the city, the states, the local government, and even these companies that refuse to hire ex-felons or anyone that has a criminal record: Is there any difference in the revenue that you receive from an ex-felon, his family, or anyone else when they purchase your services? I'd like for everyone to understand that stumbling is not falling. However, if you put enough weight on any man or woman, they're sure to fall. We have put an excessive amount of weight on these individuals, these individuals who have been convicted of felonies and misdemeanors, and once these individuals are returned to society from prisons and jails with well-meaning intentions and have received treatment for their addictions, they are at once met unfair with discriminating practices by those who ask the question once again: Have you ever been convicted of a felony or a misdemeanor in the last seven years? For answering the question truthfully, these individuals are sentenced to double-jeopardy, which is a sentence of life, which they serve a life sentence for. We can no longer cripple these individuals because of their class, their position in life, their success or failures. The only difference between one that is an ex-felon is that their record is public knowledge and their peers' records are not. So please, I ask you to consider this because stumbling is not falling. And I'd like to...we'd like to take the weight off of these individuals because they're already bent over, in a position to fall. My name is Ray Kyles and I am the founder/director of You're Not Alone, and I am 551134642733894, the Nebraska Department of Corrections, and I have been handcuff-free for the last ten years and eight months, and I deal with ex-offenders on a daily basis. When they come to me, the first thing a man asks me is, can you help me get a job? I tell them to begin with, it's a monumental task helping you get a job, I tell them to begin with. That's why I do what I do, because I could not get a job. When I was released from prison, for four and a half years I worked for a company. I had more education than the district manager, regional manager, and the manager. I could not go any higher because I was an ex-felon. We have to unhandcuff these individuals and find out what they have to offer us because at this time, on average, we're spending \$32,000 a year to keep a person locked up. Well, we take \$32,000 times ten and we know what that ends up to be, but let's go a little deeper. Let's look to see that a man or woman who is incarcerated at this time and goes free, that two and a half years that the state says that they hold an individual, which is actually four years, \$32,000 times four is a lot of money that we spend on these individuals. Not only have we spent this money on these individuals, we have spent it on their families who go on welfare, we spend it on their children who go into the system. And we know that half the individuals who are incarcerated today, their children follow their footsteps to prison. This is an excessive amount of money on the state of Nebraska and we have to look at this. If we give a man a job, and I don't mean just a job, a job that he's able to take care of his family with and where he can show his sons and daughters that he's able to do this, they follow those footsteps. So the \$32,000 that we spend on these individuals, along with the money in welfare, the other monies that we spend on the court system with these individuals, with their children, goes back into the system along with maybe 25 percent of their taxes. So it's a win-win situation for

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

Business and Labor Committee
January 25, 2010

them as well as the offenders. And I thank you for your time and patience, and I'm open for any questions that you may have. [LB913]

SENATOR LATHROP: Very good. Thanks, Ray. [LB913]

RAY KYLES: Thank you. [LB913]

SENATOR LATHROP: And thanks for what you're doing. We particularly hear a lot about this in the Judiciary Committee, the importance of being able to provide jobs for people who have stumbled and the likelihood that we can make them taxpayers instead of repeat offenders. It's a very important subject and we appreciate your work in the area. Are there any questions? I don't see any. Thanks for coming down. [LB913]

RAY KYLES: Thank you for your time and patience. [LB913]

SENATOR LATHROP: Mr. Councilman, good to have you here. [LB913]

BEN GRAY: Sir. Thank you, sir. [LB913]

SENATOR LATHROP: It's always a pleasure. [LB913]

BEN GRAY: Thank you. Mr. Chairman, members of the committee, my name is Ben Gray. I reside at 5217 North 60 Street in Omaha, Nebraska. I have been known in the past as a television show host and recently as a city council member, but the reason I'm here today is as the emergency team director for an organization called Impact One Community Connection. That is an organization that engages actively in addressing issues in dealing directly with gang members and severely at risk young people. We have been involved in a process for the last couple of years where we have conducted a summer jobs program, where we have...for we have hired up to 150 severely at risk youth and individuals who have declared themselves or the police department has declared them as gang members. It is our intent to change their behavior, to turn them around, and it is an extremely...it's an extremely intense process but at the end of the day we can demonstrate for you in significant ways, including data and research, that we are having a significant impact on the young people that we reach in these summer jobs programs, and many of them get an opportunity to move on. Senator Lathrop, I was going to go in a different direction, but I do want to address a couple of the questions that you raised because I think they're significantly important. Number one, the city of Omaha is already engaging in a process where they actually hire ex-felons and they do it kind of quietly because there is no legislation and, in some instances, there are...there could be potential liability issues. And so they're very careful about how they do it, but they do engage in that process. With our organization, Impact One, we have a group of ex-gang members who work directly in our organization. Many of them have felony records. But I'm going to give you an example. At Northwest High School in

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Transcriber's Office

Business and Labor Committee
January 25, 2010

2007 there were 822 suspensions. There were almost brawls and fights on a weekly basis at that high school. The school district asked our organization to step in, Impact One. Knowing, you know, the background of some of the people who we employ, we went into that building. Because of their connections and their understanding about where people come from and some of the circumstances that they face, they were able to, at the end of the day, at the end of 2008, we cut that suspension rate almost in half with a program called Remix, and this was started by our ex-gang members working with at-risk youth in the school district. And recognizing when individuals who would come on the property who were not members of the school district in any fashion, they were able to identify them, get word to various people, and we were able to stop a lot of things that went on before they actually got bad. So there is some of this that already occurs and what the mayor and I have talked about on an ongoing basis, and we're beginning a pilot program fairly soon, we are going to be monitoring. Because you're right, there are concerns about racism, continued racial profiling and those sorts of things. But the fact of the matter is, is that if you have a dedicated government subdivision that is not only willing to take the time to employ such an effort and to go after specifically some of these individuals but to also monitor periodically, whether it be quarterly, twice a year, at the end of year, who was hired, what their racial makeup was, why were some of the people not hired, I think there are opportunities to look at the various data and determine if you do have an issue where there may be some unintended or maybe even intended racism that goes on. So I think there's some opportunities there, especially if we can encourage some of the government subdivisions to engage in this type of process but also go the next step and monitor over a period of time who's being hired, what their racial makeup is, what their...what their crime was, you know, and some of those other things, and I think that would give us better data and better information. So it is a concern and I agree with you. And I understand playing the devil's advocate and it always...and I always encourage that because at the end of the day it makes a better bill and I think we are going to have that. But I do think that there are some things that are already being done by other government subdivisions, most notably the city of Omaha and the Omaha Public School District, to address some of this already and to continue to monitor and make sure that if there are issues of race that come up they can, through the data and the research, they can go ahead and look at those things. Let me also say that in terms of the bill that Senator Council has introduced, I'm 100 percent in support of it. I think at some point in time we have to recognize that the litmus test that we need to use to determine whether or not we have...we are being successful in terms of turning people around, in terms of stopping violence and so forth, the litmus test ought to be how safe our community is. And if our community is not safe, then we have not done our job. Prior to 1980, it was almost routine that individuals would get pardons, that they could be employed and those sorts of things, prior to 1980. During the 1980s up until today, there was an atmosphere of getting tough on crime, so to speak. And so a lot of things that were in place that were there and one of those is being the bill that Senator Council is talking about introducing, I mean that was a routine...that was routinely done prior to the 1980s.

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Transcriber's Office

Business and Labor Committee
January 25, 2010

It was only after that, when we started getting, allegedly, getting tough on crime, that a lot of these things went away. So there is history that reflects that Senator Council's bill or the proposed legislation does have an impact and can be successful given the right set of circumstances. So I would encourage you to do that. The other thing I would say also is that there are a number of circumstances in our community where we have demonstrated that when people have the ability to work and the willingness and the desire to work, they will do an excellent job. I will give you, and I don't know what your political persuasion is of some of the folks here, but the fact of the matter is that in 2008 the President of the United States, Barack Obama, got a delegate out of the 2nd Congressional District. That was a massive voter registration drive that was paid for by private entities. The majority of the people that were hired to do that work and to gain that delegate were gang members and individuals who were severely at risk, which shows...and they...and it was interesting to follow some of them around because they engaged in creative ideas on getting people registered to vote. Some would just sit at bus stops and stop people and get them registered, and some just went door to door, but the fact of the matter is that they engaged in work in a very hot summer of walking door to door. Some of them would walk four to five miles a day, but at the end of the day, because there was a paycheck there, these people could feel like they were part of society and they were part of a movement that made something happen. So I would encourage you all to continue to support this legislation, move it forward, continue to play devil's advocate because it will make a better bill. But at the end of the day, Senator, I do believe very strongly that if the measurements and the monitoring that is being proposed by the city of Omaha and the Omaha Public School District, if we can engage in those sorts of things, we can address some of the concerns that you ably pointed out and can be a barrier if we're not careful. [LB913]

SENATOR LATHROP: Very good. [LB913]

BEN GRAY: With that, I would close my testimony and answer any questions you all might have. [LB913]

SENATOR LATHROP: Senator McGill. [LB913]

SENATOR MCGILL: I have a question. [LB913]

BEN GRAY: Yes. [LB913]

SENATOR MCGILL: I don't know if you'll be coming down again on Wednesday for Senator Ashford's bills, but he has the one on sealing juvenile records which attempts to get at the same... [LB913]

BEN GRAY: I'll be here for that, Senator McGill. (Laugh) [LB913]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

SENATOR MCGILL: I was thinking you would. [LB913]

BEN GRAY: I will be here for... [LB913]

SENATOR MCGILL: So I was wondering if you could give us, I guess, a preview in terms of, you know, the impact that might have as opposed to this, because they both kind of are trying to get at the same issue... [LB913]

BEN GRAY: They are, yes. [LB913]

SENATOR MCGILL: ...and just your opinion on what would maybe have the bigger impact. [LB913]

BEN GRAY: You know, it would be kind of hard to say which would have the bigger impact right now because we have...we have incarcerated so many people and many of those that we've incarcerated, as a matter of fact the vast majority, almost 80 percent, have been incarcerated for nonviolent offenses. And in many instances they...what happens with juveniles and what happens with these...with adults that get caught up, a lot of times most of what they're trying to do is buy Pampers for the family or milk or some other, you know, something of necessity that they really can't afford because they're not working, they don't have a job and there are other circumstances at play. So I think both are critical but I think sealing juvenile records is extremely important because we have people now in various professions that go back, I think unfairly, and look at juvenile records and from that perspective they don't...and it's even worse with juvenile records, Senator McGill, because in some instances you don't get the opportunity to go back to school and further your education. So in a lot of ways, that's even more insidious, but both are bad. I mean you're talking about degrees of badness. (Laughter) [LB913]

SENATOR MCGILL: Yes. (Laugh) Well, thank you for your early input on that. [LB913]

BEN GRAY: Thank you. [LB913]

SENATOR LATHROP: Senator Wallman. [LB913]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thanks for being here. [LB913]

BEN GRAY: Yes, sir. [LB913]

SENATOR WALLMAN: Appreciate what you do. We've had inner city youth on the farm one summer and I don't know if they were gang members or not but at the end of the time, we got pretty good, you know, what I mean? [LB913]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

BEN GRAY: They're some of the hardest workers if they get a chance. [LB913]

SENATOR WALLMAN: Yep. So do you think our school system, a year-round school like some of Europe is doing, would help inner cities? Atlanta, you know, changed some of their programs around and they really cleaned up the inner city. [LB913]

BEN GRAY: You know, I don't think...you know, we're talking about school issues now and my wife, who's on a school board that's sitting back here (laugh)...I'm probably...I'm in my league because I'm still chairman of the African American Achievement Council, but she would probably know it better than I would. But I would say that right now the number of days and the additional hours on task are not nearly enough, for a number of reasons, and they create a variety of problems in and of themselves, especially when you're talking about, you know, upwards of 70 percent of some communities on free and reduced lunch and what's going to happen when they're out of school during the summer. [LB913]

SENATOR WALLMAN: I agree with you. Thank you, sir. [LB913]

BEN GRAY: Thank you. [LB913]

SENATOR LATHROP: Ben, it's always good to have you down here. [LB913]

BEN GRAY: Senator Lathrop, thank you. I appreciate it. [LB913]

SENATOR LATHROP: You know we have, because of Senator Ashford's work in Judiciary Committee, we've had a couple of meetings up at the city council building, the city-county building in Omaha, talking about youth violence, recidivism, and clearly the work of Impact One and like organizations that try, what you know and what we've learned on Judiciary Committee is if these people are employed they're going...even gang members, they're going to get out of that line of activity and they're going to go down the straight and narrow if we just have enough work for them to do. [LB913]

BEN GRAY: Absolutely. [LB913]

SENATOR LATHROP: So your efforts and what you do at Impact One are greatly appreciated. [LB913]

BEN GRAY: Thank you, Senator. I appreciate it. [LB913]

SENATOR LATHROP: Yeah, good to have you here. [LB913]

BEN GRAY: Thank you, all. [LB913]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: Anyone else here as a proponent? [LB913]

JIM ERWIN: I'm Jim Erwin with Christian Heritage Fatherhood Initiative. We're working in partnership with the Department of Correction Services in a program called Destination Dad. We have classes with DSCS staff and volunteers in six prisons. We have seven classes. Graduated close to 400 dads already working in this project. You probably know that employment is the number one cause of recidivism. The number two or number three is family connections. That's the ones we're working on. We're trying to rejoin fathers with their children, teach them how to be better dads, stand up and be dads, pay that child support, take care of your family, get them off of state care, be the dad, be the man for your family. I had a dad just last week who called me and said he checked the box. The interviewer told him...he did get an interview and told him, you qualify in every way except you checked the box; if you'll come back in seven years we can hire you. I'll tell you a story about a young lady. I invited her. She's kind of shy. She came to us. We use interns from the local colleges to help us as volunteers, input data, go in, teach classes, whatever. She came to me and kind of sad because she tried, she's on her final internship to get her human services degree. When I did the interview with her, she told me that she had a gun charge, she had drug charges, larceny charges five years ago. We don't have a box at Christian Heritage, so I asked her to explain these charges, so she explained the charges. The gun was to protect herself from a man, her boyfriend, who tried to kill her. She is a single mom raising twin boys. Got in some trouble with the law. She paid all of her fines, did her time. She lost her children to foster care. During the interview she told me that. She told me everything about herself. We learned later that those kids were in our agency. We were actually there. She could not do her internship anywhere else because she checked the box. I told her, well, because we work with Department of Corrections, I need to pull your records. I pulled the young lady's records from the police department, found out everything she said was true. That told me a few things about this young lady. Number one, she's changed. She really wants to make a difference. Number two, she's honest. I asked her to come today. I think she's shy. She's going to graduate with her human services degree and she was told just the other day at college they don't know if she can get a job now because of her past. This is her last month of welfare. She's worked her way off. Would you hire her? I think most of us would say, yes, we would. She's an example of what can happen when a person turns their life around. And we believe, we don't have the data but we are collecting data on the program. From the moment they come in the class, we do class, they graduate, we videotape them reading to their children, we send the DVD and the book to the child. We have monthly seminars with healthcare professionals, mental healthcare professionals, different ones that come in and teach other things. We're starting this year with Department of Corrections visitation where volunteers will take the child in to visit Dad, just him and Dad, no Mom, so they can further bond. We're recruiting teams of volunteers, mentors on the outside who will surround the families and keep them together. So we're collecting all the data. I wish I had the data for you, but I do know if we can bring Dad back in the home, number one

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

Business and Labor Committee
January 25, 2010

thing he needs is a job. And I hear it all the time: They won't even try for a job because they know they got to check that box. That's why I support Senator Council. And if you have any questions, I'd be glad...I've been doing this since 1983. I was a military policeman in the Army. Got out and started working at a residential trade home for ex-offenders. Been doing that, my wife and I. I will say something about your other bill, though. My wife and I both were offenders, youthful offenders, bad youthful offenders in Oklahoma. Our records were sealed. I was able to get in the military because of that. Military changed my life. We've been working full-time in childcare and with ex-offenders since '83. If that record hadn't been sealed, we wouldn't be able to do that today. So whenever you want to talk about that, I'd be glad to come and talk. [LB913]

SENATOR LATHROP: Good. Well, I appreciate your testimony. Are there any questions? I don't see any. Thanks for what you do. That's important work. [LB913]

JIM ERWIN: All right. I did not bring any pamphlets but I brought some videos. Picture speaks 1,000 words. (Exhibits) [LB913]

SENATOR LATHROP: All right. Well, you can share those with Ryan and he'll... [LB913]

JIM ERWIN: Senator Council has one as well. [LB913]

SENATOR LATHROP: Thank you. Anyone else here as a proponent? Anyone here in opposition to LB913? [LB913]

DALE JOHNSON: (Exhibit 12) My name is Dale Johnson. I live at 2216 East Eighth Street in Fremont, Nebraska. I'm not a registered lobbyist so I'm representing myself. I have a hard time disagreeing with the legislation because I've been in this industry. I have a...I'm in the employment screening business. I own a licensed Nebraska detective agency which is a Nebraska requirement for doing background checks. There's a lot of people that do background checks that are not licensed and you get a lot of bad results from that. Like I said before, I have a hard time disagreeing with the essence of the bill because I have been in this business a long time and all the professional associations I belong to do acknowledge that employment is the leading reason why people do not recidivate. It's not the only factor but it's one of the leading causes. But there are some problems with this bill that I feel compelled to address. This bill has a lot to do with licensed professionals. I have a lot of clients in...I have colleges that are clients and I have university systems that are clients, hospitals, most of which will be affected by this legislation because they will be forced to change their hiring policies. Under this...and some things that I'm against are actually in favor of the legislation, like under this law misdemeanors of moral turpitude can be held against an applicant and nowhere in the bill did I see what a definition of "moral turpitude" is. I deal with human resource people all the time and moral turpitude is a hole that you could drive a bus through. So if you want to keep somebody, you know, if for whatever reason you don't want to hire

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Transcriber's Office

Business and Labor Committee
January 25, 2010

somebody, you just say moral turpitude, hang your head on moral turpitude and you're scot-free. So I think that's something that should be looked at, what the heck is moral turpitude and how would that...you know, because evidently the misdemeanors of moral turpitude would preclude employment. So I'm looking for what is the definition of moral turpitude. In fact, that, you know, they should be in favor of that so that you just couldn't hang your hat on moral turpitude and say don't let the door hit you on the way out. LB913 applies to state licensing boards and employment by state or political subdivisions. This does not apply to private employers and creates a double standard. It also creates a double standard within required employers. Employers who are required to follow this law will risk litigation if they have a hiring policy for licensed applicants that is different from nonlicensed applicants. People who work for state, local government or political subdivisions should be held to a higher standard than the private sector. I've heard that quoted by politicians. These are people the taxpayers are employing. They should be held to a higher standard than the private sector. As an owner of a private detective agency, a business that requires licensing of its employees, if I can...if I hired a convicted felon as a plainclothes investigator and this person committed another crime in my employ, this would quite possibly destroy my business. While this law does not apply to whom I must hire, it does create a double standard in the job market and greatly lowers the standards for government and political subdivisions. Also, I would like to know why law enforcement and the state bar are excluded from complying with this law. This appears to be another double standard. This law sets a benchmark of three years as a nonrecidivism requirement. Most research studies show that three things must occur together for recidivism not to occur. One is education, the other is employment, and the other is friends or family support. A number of studies on recidivism has shown that three years is not a sufficient amount of time to gauge rehabilitation and that other factors, such as age at the time of first arrest and the type of crime committed, have a greater influence on recidivism than the amount of time from the last arrest. And I've got a study that somebody might...people might be interested in. It's called "Redemption in an Era of Widespread Criminal Background Checks," by Blumstein and Nakamura. This is in favor of education but it says to look at it closer or that, excuse me, it says that employment is very important. It looks at a number of things that is very important to reduce recidivism, but it...but they look at a close study of what actually does reduce recidivism. [LB913]

SENATOR LATHROP: We'd be happy to make a copy of that and share it with each of the members. [LB913]

DALE JOHNSON: Sure. There's any number of studies on this. I would welcome any questions concerning background checking. [LB913]

SENATOR LATHROP: All right. [LB913]

DALE JOHNSON: There's also federal laws that concern background checking. We're

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

Business and Labor Committee
January 25, 2010

talking about juvenile records. The Fair Credit Report...most people don't understand employment law and you were talking about juvenile records. Juvenile Records, under the Fair Credit Reporting Act, are not considered conviction records and cannot be held against a person as a conviction. In fact, after seven years nonconviction records can no longer be held against an individual. [LB913]

SENATOR LATHROP: Very good. We appreciate the insight. Any questions? I don't see any. Thanks for coming down, Dale. Dr. Schaefer. Good to have you here. I don't think we've seen you in front of Business and Labor before. [LB913]

JOANN SCHAEFER: (Exhibit 13) I know. I know. This is a new time for me, and I have to be in opposition. (Laughter) What a way to start. Well, good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Dr. Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, M.D., director of the Division of Public Health. I am here appearing on behalf of the entire Department of Health and Human Services to testify in opposition of LB913. And first let me say, while the agency is in...understand and admires the intent of LB913 very much, we have concerns with the bill which compels us to testify in opposition. First, in Section 4 of this bill, any agency, department, or regulatory board having jurisdiction over employment or practice of any trade, business, or profession may refuse to grant or renew or may suspend any license only if the applicant has been convicted of any felony or misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment trade, business, or profession. First, we have the same concern for the lack of definition of "moral turpitude." The term is not defined in LB913 and is not defined elsewhere in Nebraska statutes. The lack of any definition will create problems throughout the department. Currently, this agency looks at felonies and misdemeanors that may not appear to be that of moral turpitude. One example in my division particularly is that crimes such as driving under the influence or misdemeanor possession of controlled substances may not be considered moral turpitude. However, the division needs to consider these crimes before giving someone a license to prescribe medications, particularly controlled substances. Also, the division has concerns over vulnerable adults in assisted-living facilities and those using home services may have prescription drugs, particularly narcotics, available. Another example is in the Division of Behavioral Health, is that there are particular crimes not of moral turpitude, such as again DUI or possession, that may indicate a pattern of substance abuse. These patterns could demonstrate significant concern for the personal safety of the vulnerable mental health, substance abuse, and problem gambling populations that they serve. Also, the likelihood of the offender's access to prescription drugs may jeopardize their own personal safety and regain, given the potentially unstable history. In addition, the department has concerns about the phrase "make an inquiry" referenced in the section of the bill on page 2 at line 17. Because it is not defined, it is unclear what is contemplated. Does it just mean that the state of Nebraska or state cannot have a question related to this topic on the application for employment or does it mean that the

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

Business and Labor Committee
January 25, 2010

state cannot start the background check process at all? If the latter is true then the bill creates a very inefficient process. If we narrow our application pool within even...without even considering criminal background histories, we may remove people who are good candidates or who do not have criminal histories that impact the job for which they have applied. Then when we move on to the final stage, we are permitted to consider criminal histories. If we have eliminated the finalist, do we then reach back and grab from the original pool to fill the void? It's very clear and it seems a little...it's unclear and it seems a little inefficient. And then just again considering this is all within the context of the vulnerable populations that we in Health and Human Services serve, the next group of comments, we believe that the state should be able to consider records of arrest. The bill seeks to prohibit that, however, a prospective employer can learn a lot about the potential applicant from such a record or reports. For an employer, such information may not deal specifically with the alleged crime to which an arrest record or report pertained. For example, such records or reports can highlight, among other things: one, the applicant's respect for authority; two, the applicant...the way the applicant treated the investigating law officer or authorities and others; and three, the persons with whom the applicant chooses to associate. These could have bearing on many other positions which provide direct care to the services of vulnerable people. Third, we question the use of the undefined phrase "directly relates" in Section 4 of the bill, page 3, at lines 12 and 16. An example of Banking Department being able to refuse to hire anyone convicted of armed robbery of a bank or embezzlement is clear, however, many of our agencies...many convictions that our agencies currently takes into consideration on the hiring processes are not clear. I've previously mentioned two examples of convictions. The bill presents questions of who is a better arbiter on the term "directly relates to" and what does that mean. It is also not clear whether an applicant who disagrees with the state's conclusion in that regard has an additional basis to challenge or sue based on the agency's decision. Fourth, it was just brought to my attention and it's not in my written testimony that Children and Family Services has concerns over the fact that in the...the federal law does require that a certain amount of background checks be done in order for foster care licenses to be given. I've appreciated having the opportunity to testify. Being an opponent to this bill is very difficult because it's obviously a laudable goal to have a bill such as this be done, so my apologies there. However, many public employers are vested with the responsibility under the state laws to hire people and carry out certain statutory responsibilities for these vulnerable people that we do protect. So we would ask the committee to not advance the bill until more thorough study and review can be done, and we'd be happy to help in any way that we can. With that, I'm happy to take any questions. [LB913]

SENATOR LATHROP: Great. Senator Wallman has a question for you. [LB913]

SENATOR WALLMAN: Thank you, Dr. Schaefer. Thank you, Chairman Lathrop. Yes, as a state employee, you have to check the box? [LB913]

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Transcriber's Office

Business and Labor Committee
January 25, 2010

JOANN SCHAEFER: Uh-huh. [LB913]

SENATOR WALLMAN: And say I'm an embezzler, you know, or for the bank or soft collar, you know, soft crime, whatever you... [LB913]

JOANN SCHAEFER: Uh-huh. [LB913]

SENATOR WALLMAN: ...white-collar crime, whatever you call it. Would you still hire me as a front-line worker in a, like, BSDC or something like that? [LB913]

JOANN SCHAEFER: Well, I think it depends on the time, the length of time, and your access to books and what you would be doing. I can cite numerous examples where we've either given a license to or where we've hired somebody even with a criminal history, with a significant criminal history, but due to the length of time that's passed it's been...it's been worthy of a try. In fact, some of my best employees have been folks that have been given a second chance, so. [LB913]

SENATOR WALLMAN: A lot of...yep. [LB913]

JOANN SCHAEFER: But and so my point is with on licensure, you know, we look and then when we've found histories, you know, we've made decisions and we've put up the appropriate safeguards, whether it be probation or, you know, evaluations or whatever, you know, before the license is just given, so that we make sure that the safeguards are in place and that we can allow the person to obtain the license. But I think that we've done a really good job of ensuring that we do (inaudible) people licenses. I can speak in my division from that standpoint. [LB913]

SENATOR WALLMAN: Thank you. [LB913]

JOANN SCHAEFER: Thank you. [LB913]

SENATOR LATHROP: Dr. Schaefer, a couple questions for you. [LB913]

JOANN SCHAEFER: Sure. [LB913]

SENATOR LATHROP: If the bill were just simply that you cannot ask somebody on the application if they've been convicted of a crime, would you be okay with it? In other words, if all this bill did was prohibit the box on the application and you can still talk about these things, still consider them in the interview process, would you be okay with it? [LB913]

JOANN SCHAEFER: Meaning you would still have access to it at some point? [LB913]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: Yes, so that if you put out...let's say that you're looking for some direct care staff. Since we've talked about BSDC, let's just use that as an example. You're looking for some direct-care staff at BSDC. If you don't put the check box in there and the people come in for the interview and you're still permitted to ask them if they've been convicted of any crimes but there they have an opportunity to visit with you about it and say, yeah, I was, I shoplifted three years ago, you know, explain the circumstances, do you have a problem with it then? [LB913]

JOANN SCHAEFER: I think if the process is clearly outlined so that, you know, there you're going to be able to ask eventually and then what happens when, you know, if they fall out. Then do you reach back in to the other applicants? And then you set up the parameters about who is allowed to challenge the decision about, you know, if you think it's related. You know, there's a question in my testimony about if it's related and... [LB913]

SENATOR LATHROP: Sure. [LB913]

JOANN SCHAEFER: ...and you say, no, too risky, then does that...does that open up the door for someone to sue the employer? I think if those questions are answered I think that on its face I don't think that inherently there would be a problem with it. [LB913]

SENATOR LATHROP: So...and I'm just trying to...I don't know where this is going but as we consider what to do with the bill, I'm just wondering if it were amended to simply say the state of Nebraska or a political subdivision cannot ask on the application but they can inquire any other time during the interview process or the consideration process. And there is no standard for who you hire and who you don't hire. They just get a chance to come in and tell you, yeah, I did get convicted and here's my circumstance. Don't you think you'd find some people who would have...you'd have reason to hire? [LB913]

JOANN SCHAEFER: Sure. I think that as the state as an employer is one thing. The state as a licensor, the state as the foster parent, the state as all those other things I think are separate issues that we still have to address. But the state as an employer is a separate issue and I think that's what you're asking me about that. [LB913]

SENATOR LATHROP: Right, I am, but let's talk about the licensure too. If we didn't have a box...do you have a box for licensure? [LB913]

JOANN SCHAEFER: Uh-huh. Yeah. [LB913]

SENATOR LATHROP: So anybody that wants to be a medical doctor or an LPN, for example,... [LB913]

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

Business and Labor Committee
January 25, 2010

JOANN SCHAEFER: Nurse, yeah. [LB913]

SENATOR LATHROP: ...those people all have to check the box... [LB913]

JOANN SCHAEFER: Right. [LB913]

SENATOR LATHROP: ...if they've got a conviction. [LB913]

JOANN SCHAEFER: Right. [LB913]

SENATOR LATHROP: Does the...does a criminal conviction, in and of itself, exclude you from consideration? [LB913]

JOANN SCHAEFER: No. No. And there is no single...there is no death knell, as they would say, on the board. There's no single conviction that absolutely... [LB913]

SENATOR LATHROP: So in the case of licensure... [LB913]

JOANN SCHAEFER: ...restricts you from having a license at all. [LB913]

SENATOR LATHROP: ...there's two different...two different things that we're talking about. [LB913]

JOANN SCHAEFER: Right. [LB913]

SENATOR LATHROP: One is employment and one is licensure. [LB913]

JOANN SCHAEFER: Right. [LB913]

SENATOR LATHROP: You're responsible, your office is, for licensing a lot of healthcare providers,... [LB913]

JOANN SCHAEFER: Right. [LB913]

SENATOR LATHROP: ...pharmacists, nurses,... [LB913]

JOANN SCHAEFER: All of them. [LB913]

SENATOR LATHROP: ...you name it. [LB913]

JOANN SCHAEFER: Right. [LB913]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: You have the box. In the case of licensure, the box doesn't mean anything other than to alert somebody that we better... [LB913]

JOANN SCHAEFER: That's an evaluation. [LB913]

SENATOR LATHROP: ...we better have a conversation about what this conviction is. [LB913]

JOANN SCHAEFER: Exactly. [LB913]

SENATOR LATHROP: So that's not really a barrier to anything that they're not going to encounter during the rest of the licensure process. [LB913]

JOANN SCHAEFER: Right, unless we can't ask it. [LB913]

SENATOR LATHROP: Right. Okay. In the case of employment, though, if all we did was say you can't ask on the employment whether someone has been convicted at that point in time but any other point in time and it's fair game, you can do with it as you please, but at least the person has a chance to come in and explain their circumstance, tell you why, tell you what, demonstrate that they've been through some rehab, you'd be okay with that. [LB913]

JOANN SCHAEFER: Right. Yeah, as long as it's at some point. You know, you wouldn't want to use...the way it's defined though is, you know, generally crimes of moral turpitude are not DUI and possession, so, you know, our concern is from a licensing perspective and you worry about folks with... [LB913]

SENATOR LATHROP: People transporting... [LB913]

JOANNE SCHAEFER: Well, that and, you know, you worry if someone has had multiple DUIs or multiple, you know, drug possession charges. You worry that they have a substance abuse issue. So then if you're going to let them go into someone's home and do in-home services where there might be somebody else's medications there, those are issues that we do deal with, you know, people missing their, you know, narcotics. [LB913]

SENATOR LATHROP: Right. [LB913]

JOANN SCHAEFER: And then if they are transporting the individuals around and then, you know, those are the issues that we are concerned about from the standpoint of not knowing on those. [LB913]

SENATOR LATHROP: Okay. But from the employment point of view, HHS would be

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

Business and Labor Committee
January 25, 2010

okay if we don't have a box, the policy of not having a box on the application but you can bring it up and consider it as you please any time after the initial application. [LB913]

JOANN SCHAEFER: On first blush...obviously, we'd want to look at that, but on first blush, I can't speak for the whole agency but... [LB913]

SENATOR LATHROP: Well, you kind of are, aren't you? [LB913]

JOANN SCHAEFER: I kind of am right now, yes. (Laughter) But, you know, but I mean I'm not looking at the language right now of how you'd write it, but we'd certainly look at that and... [LB913]

SENATOR LATHROP: Okay. [LB913]

JOANN SCHAEFER: ...at first blush, that doesn't sound terrible. (Laugh) [LB913]

SENATOR LATHROP: All right. With that endorsement, any other questions? (Laughter) [LB913]

JOANN SCHAEFER: Well, no, no, it sounds good. [LB913]

SENATOR LATHROP: Okay. [LB913]

JOANN SCHAEFER: I mean the idea of it. It's just there are lots of... [LB913]

SENATOR LATHROP: Well, I don't know where Senator Council is going to be. It's not my bill, but I am wondering if we can... [LB913]

JOANN SCHAEFER: You know we...right. [LB913]

SENATOR LATHROP: ...sort out the problems from...really the initial point as I listened to the testifiers is let them get in front of somebody so that they can explain their circumstance,... [LB913]

JOANN SCHAEFER: Right. [LB913]

SENATOR LATHROP: ...explain that, you know, they've been 12-stepping for four years or, you know, or that whatever their circumstance is. [LB913]

JOANN SCHAEFER: Yeah. And my point is that it's a very complicated agency and a complicated process, and I'm not in HR so I'd hate to say...give an overwhelming endorsement to the process and find out later I hadn't thought of XYZ. [LB913]

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

Business and Labor Committee
January 25, 2010

SENATOR LATHROP: I understand your reason for caution, all of them. [LB913]

JOANN SCHAEFER: Thank you. [LB913]

SENATOR LATHROP: You're very welcome. Thanks for coming down. [LB913]

JOANN SCHAEFER: You're welcome. [LB913]

SENATOR LATHROP: It's good to see you. [LB913]

BRIAN HALSTEAD: Good afternoon, Senator Lathrop, members of the Business and Labor Committee. For the record, my name is Brian, B-r-i-a-n, last name is Halstead, H-a-l-s-t-e-a-d. I am with the Nebraska Department of Education. This morning the State Board of Education, which is the constitutional body entrusted with the general supervision and administration of our K-12 school system in Nebraska, met and voted to oppose LB913. The primary focus was on the language in the bill that impacts their ability to regulate the educators in the education profession, similarly just like the Nebraska Supreme Court and the bar association has with the language in the bill that impacts their ability to regulate the lawyers in the law profession. Clearly, the bill, as it's currently written, implies that even for purposes of getting a Nebraska teaching, administrative, or special services certificate, we are going to be limited on how we can use information we are required to get from the FBI and the Nebraska State Patrol on criminal history backgrounds because the statutes currently require us to deny an application to someone who has a misdemeanor conviction involving abuse, neglect, or sexual misconduct, which does not necessarily line up perfectly with a misdemeanor conviction involving moral turpitude. Obviously, I would hope that Senator Council may consider excluding the State Board of Education and our regulation of educators the same way she apparently is considering eliminating the bar association and the Nebraska Supreme Court from that. So with that, I know it's been a long day. I'll stop in my testimony and I'll take any questions you might have for me. [LB913]

SENATOR LATHROP: Any questions? I see none. Thank you for your testimony, Brian. [LB913]

JUSTIN TOLSTON: Senator Lathrop, I'm a proponent of the bill. I arrived a little late. [LB913]

SENATOR LATHROP: We'll...why don't you hang on a second. Let me take all the opponents and then we'll let you step up and speak in a minute. Is anyone else here in opposition? Anyone here in a neutral capacity? [LB913]

JANE SCHOENIKE: Good afternoon, Mr. Chair, members of the committee. My name is

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

Business and Labor Committee
January 25, 2010

Jane Schoenike, that's spelled S-c-h-o-e-n-i-k-e, and I appear today in a neutral capacity on behalf of the Nebraska State Bar Commission. I am its secretary and director of admissions. The Nebraska State Bar Commission is the Nebraska Supreme Court's commission charged with administering the Supreme Court rules of admission to the practice of law. We are asking that the bill remove the amendment to Nebraska statutes 7-102, which is Section 8 of LB913. We have spoken with Senator Council and she is aware of our concerns. The Nebraska State Bar Commission would have no objection to the bill if that change is approved. The NSBC looks at each application for admission on a case-by-case basis. Their scrutiny of an applicant's character and fitness is very complete. I want to make the committee aware that there is currently no provision in the Supreme Court rules of admission that would prohibit a person from applying for admission simply because of a felony conviction. The commission takes such factors as pardon, expungement, or the set-aside of a criminal record into account. I'd be happy to answer any questions. [LB913]

SENATOR LATHROP: Any questions? I don't see any. [LB913]

JANE SCHOENIKE: Thank you. [LB913]

SENATOR LATHROP: Thanks for your testimony and your thoughts. Anyone else here in a neutral capacity? And because we had a late arrival, we're going to let you come up and testify. Are you in support? [LB913]

JUSTIN TOLSTON: Yes. [LB913]

SENATOR LATHROP: Okay. Have a seat, tell us your name and spell your last name for us and... [LB913]

JUSTIN TOLSTON: My name is Justin Tolston, T-o-l-s-t-o-n. I'm in support of this bill. Senator Council has made me aware that she's already told you my circumstances and why I'm in support of this bill. Just to cleanup, I actually...the reason I am late is because I just finished with the third round of interviews through the Attorney General's Office in regards to this situation, and it was his...Bruning's chief of staff that spoke with me and said, normally if you would have checked this box we would have never considered your application, it would have been thrown out because we don't do misdemeanors, we don't do DUIs, we don't do possessions. And mine was a no contest plea to shoplifting three years ago when I was 16. I have since turned the age of majority, I am 19 years of age, and they still look that up with no concern to me. I mean I started the process of getting that sealed but that's irrelevant. The fact is that if I wouldn't have been able to come in, the reason they have...I have now got that internship and made it aware that I would be testifying here and they said the reason I did get that internship is because I was allowed to come in, give them my resume, speak with them, let them know what happened, and they said without that, that would have never happened. And so I think

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

Business and Labor Committee
January 25, 2010

that's what this bill is trying to address, and in my circumstance and others that may have similar circumstances that should get the opportunity to at least explain and at least talk to a possible employer about something that's come up in their past. [LB913]

SENATOR LATHROP: Very good. [LB913]

JUSTIN TOLSTON: That's all I have to say. [LB913]

SENATOR LATHROP: You're a case study in what we're talking about (laughter) and it's good to have you here. We appreciate you coming down. Anybody have any questions? [LB913]

JUSTIN TOLSTON: Any at all? [LB913]

SENATOR LATHROP: I don't see any. Thanks for coming. [LB913]

JUSTIN TOLSTON: Thank you. [LB913]

SENATOR LATHROP: And, Senator Council,... [LB913]

SENATOR COUNCIL: Yes. [LB913]

SENATOR LATHROP: ...would you like to close? [LB913]

SENATOR COUNCIL: Briefly. The last thing I want to do is keep my colleagues here very long. And I think I alluded to it in my opening when I quoted from the Greater Omaha Chamber of Commerce's letter. This is a matter that we have to approach with a great deal of caution and in our efforts to try to address what I think there is no dispute is a laudable objective and one that as a state we should be seeking. And that's...I'm kind of chuckling, Mr. Johnson's, one of his criticisms was that I didn't include private employers. I'd love to include private employers but we're talking about establishing a policy for the state of Nebraska. Rightly or wrongly, I believe that that policy should first be applied to government before expanding it into the private sector. But if Mr. Johnson is prepared to garner private employer support after addressing the concerns, I'd be more than happy to amend this to apply to every employer in the state. I've had discussions with Ms. Burton and because we didn't have a definition of "moral turpitude," we knew the bill would have to be amended to address that issue and we have every intention of doing that. My colleagues on the committee know how hectic it can get when you're trying to get your bills in before the filing deadline, and my intent was to get the bill in and have an opportunity to address any changes, any concerns that were presented to me. I was happy that the bar association approached me and had no problem dealing with that, State Board of Education. The intent with the legislation, so that the State Board of Education can understand, the intent with the

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

Business and Labor Committee
January 25, 2010

legislation was principally hiring, but in terms of licensing, it was with the eye towards...when you're making these licensing decisions, you know, also make these decisions with an eye towards how you consider felony convictions, how you consider misdemeanor convictions. And the whole issue about the moral turpitude is that we have far too many employers who are disqualifying individuals because they have a misdemeanor conviction, I mean won't consider them at all because they have a misdemeanor conviction. And the issue is, I believe, if you're going to consider misdemeanor convictions, it has to be a misdemeanor conviction of some import. And I listened to Dr. Schaefer and I certainly appreciate her concern from the standpoint of Children and Family Services, Foster Care Review. We thought that the way it was drafted it was kind of consistent with what the practice is in terms of screening people for those licenses, but if we failed in that regard we will correct that. But, for example, in Dr. Schaefer's discussion of what would or would not be a misdemeanor of moral turpitude, mentioned multiple DUIs. Well, there's a point in time where a multiple DUI becomes a felony. There are possession of controlled substances that from the outset are felonies. And most assuredly, someone with a misdemeanor, for example, possession of marijuana, could or could not be an indication that that person has a substance abuse disorder but does it make it an automatic disqualifier for consideration? And that's what we're trying to get around. And I guess I want to conclude by saying that the objective of this bill is to provide hope for individuals who have unfortunately become involved in our criminal justice system, to provide hope for those individuals that if they do what we ask them to do in terms of completing any confinement, completing any terms of probation, completing any terms of parole and remaining free of contact with law enforcement, that they have an opportunity to reintegrate into society. Because I assure you that if these individuals aren't provided hope that they can obtain employment, that they can take care of their families, that they can obtain the kinds of services that they need to be productive citizens, we can talk about all the consequences in the world because consequences don't mean anything to people who don't have hope. [LB913]

SENATOR LATHROP: Thank you, Senator Council. We do have a letter from the state chamber that...or, pardon me, the Omaha Chamber of Commerce that Senator Council has referred to and we'll make that part of the record. (Exhibit 11) It's a letter from David Brown, dated January 25, 2010. And with that, we'll close the hearing. Thank you. (See also Exhibit 14) [LB913]