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Judiciary Committee
February 26, 2009

[LB144 LB208 LB292 LB354 LB373]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 26, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB373, LB292, LB144, LB354, and LB208. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Mark Christensen. []

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Ernie Chambers Judiciary Hearing Room, and welcome, Coach Osborne. You're somewhat recognizable, Coach. (Laughter) We have five bills today: LB373, LB292, LB144, LB354, and LB208, so let's get going. LB373 is Senator Lautenbaugh's bill. And those of you who, and I don't see too many who haven't been around this place for a long time, we do have the light system. We do ask you to make your remarks in three minutes and we will give you a little yellow light when it's time to sum up. And with that, Senator Lautenbaugh, LB373. []

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Scott Lautenbaugh. I'm the introducer of LB373. LB373 seeks to create a rebuttable presumption that certain infectious diseases contracted by firefighters and emergency medical personnel are job related for the purpose of death and disability retirement. Scientific evidence shows firefighters and emergency medical personnel are at increased risk of contracting infectious diseases while providing emergency care. Firefighters and emergency medical responders may be exposed to infectious diseases during their duties and not realize they've been contaminated. This rebuttable presumption will provide for a fair opportunity for firefighters and emergency personnel to appeal for their death and disability retirement benefits on a more level playing field due to the inherent dangers of their jobs. I'd appreciate your support of the bill. I'd be happy to take any questions. I will stay to close too. [LB373]

SENATOR ASHFORD: You're stuck here anyway. [LB373]

SENATOR LAUTENBAUGH: Yes. [LB373]

SENATOR ASHFORD: You're stuck here anyway, Scott. Any questions? Seeing none, thanks, Scott. Proponents. How many proponent testifiers do we have? Okay. Moving right along. [LB373]

DAVID ENGLER: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Dave Engler and I'm the president of the Nebraska Professional Firefighters Association as well as the Lincoln Firefighters Association. We represent 1,300 career firefighters and emergency personnel across Nebraska. I'm here today in full support of LB373, and I'd like to thank Senator Lautenbaugh for introducing this very

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important legislation. LB373 would create a rebuttable presumption for certain infectious diseases that scientific evidence has shown firefighters and emergency personnel have an increased risk of contracting while working in the line of duty. If a firefighter or emergency medical responder contracts one of these diseases, then it's presumed that they contracted this disease or condition as a result of their occupation unless there's evidence that can be produced to the contrary. This will also lengthen the time line in which someone who separates service can make a claim under the current Nebraska presumptive statutes. Nebraska already has similar language for heart- and lung-related disorders as well as cancer. LB373 is very important to emergency responders who work in uncontrolled environments and may be exposed to these life-threatening conditions and may not realize that the exposure actually occurred. These diseases often take months to years before they are discovered. Emergency medical personnel take precautions to prevent these exposures from occurring, but there are cases in which even the most cautious responder can be exposed. Oftentimes emergency responders are not made aware that their patient has an infectious disease during or after they treat the patient. LB373 is very important to ensure that any responder who dies or becomes disabled due to an illness is able to receive benefits without having to prove the precise exposure that caused his or her illness because this can be an insurmountable burden on the responder. Those who oppose this legislation are going to discuss the potential financial impact of lengthening the time line. This cost increase is purely speculation, and there has been no evidence given to us nor was there any financial analysis that this will increase costs to the pensions. These pensions are not automatic and, again, can be rebutted by medical evidence that's presented otherwise. I thank you for your time and encourage you to support this very important legislation and add infectious diseases to the current presumptive language that exists to protect our emergency responders here in Nebraska. [LB373]

SENATOR ASHFORD: Any questions? Seeing none, thanks. [LB373]

DAVID ENGLER: Thank you. [LB373]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Oh. [LB373]

JACK CHELOHA: That was pretty quick there. [LB373]

SENATOR ROGERT: Got to move fast, Jack. [LB373]

JACK CHELOHA: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Jack Cheloha, that's J-a-c-k, last name spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha, registering our opposition to LB373. Under current collective bargaining agreements between the city of Omaha and our professional firefighters, we have procedures within the terms of our pension fund where we can look at the specifics of the disability, if you will, and separation and the

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firefighters can make application within the realm of this is the causal connection, if you will, between their disability and what risk they were exposed to. So there are provisions now where we can account for this and take it into consideration and ultimately, you know, award a pension or disability based on, you know, the factors as looked at and agreed to. You know, granted we all know that firefighters work very hard. We're sympathetic to the risks that they take. I'm proud to say that I'm a fellow city employee of our firefighters and police officers, etcetera. However, we just think it's just not the time to, you know, change the balance of the scales of justice, if you will, by allowing a presumption one way or the other. It already tips the scale too far. We'd like to start, you know, on an even scale, if you will. And then once the causal connection has been made, then we'll pursue, you know, the payments as allowed under our agreements. Currently, well, it's not really current. Frankly, we do an actuarial study on our pension annually. And as of January 1, 2008, our city of Omaha police-fire pension was \$358 million in the red or underfunded. And we will have the results of our January 1, 2009, study soon. We don't know it, but we anticipate that shortfall being about \$500,000 in the red. And because of that factor along with the uncertainty of what this bill would bring, we do think it would raise the cost and tax the pension even further. And for those reasons, we're opposed to the bill. [LB373]

SENATOR ASHFORD: Senator Lathrop. [LB373]

SENATOR LATHROP: I just have a couple of questions. This bill includes an extension, and I'm wondering if that's removed does the city of Omaha get on board at that point? Is that the underlying problem for you? [LB373]

JACK CHELOHA: The extension? Well, there's an extension under both of the causal connections. The first one has to do with, let's see, the heart and respiratory, hypertension, etcetera. You know, frankly, the city was opposed to that bill when that was adopted, you know, a decade ago or it might have been even longer now. But...so I think it's kind of a one-two punch. We're opposed to the extension on that and then the new type of, you know, airborne things as well so. [LB373]

SENATOR LATHROP: You're talking about it like it's going to raise costs for the city. Do you have any idea what the costs are? [LB373]

JACK CHELOHA: I do not at this point. I pressed my finance director a little bit on that to get me some numbers, and she couldn't at this point. You know, all they could say is what they indicate on the fiscal note there would be a significant cost is how they worded it. If the committee wants to hold it and look at it, we can push them harder and see if we can get some actual numbers and see what it would look like but. [LB373]

SENATOR LATHROP: Well, if your reason for not supporting it or your reason for coming in in opposition is it's going to cost more money, it's helpful for us to know that

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that's more than just a bald statement and that you have something to back it up.
[LB373]

JACK CHELOHA: Right. Well, we were...once you grant something, we're almost certain it will be used so that's my point today. That's all, Senator. [LB373]

SENATOR LATHROP: All right. Thank you. [LB373]

SENATOR ASHFORD: But it's a rebuttable presumption. [LB373]

JACK CHELOHA: It's true, still rebuttable. [LB373]

SENATOR ASHFORD: Right, and these diseases are covered if they're work related.
[LB373]

JACK CHELOHA: Under the current law and agreement, yes. [LB373]

SENATOR ASHFORD: Right. I mean you cover these kinds of diseases. [LB373]

JACK CHELOHA: Right, right. So it's really the question, once again, you know, the scale. At what point do we start the case? Do we start on an even level and allow the plaintiff or the claimant to prove their case? Or do we say that he already proved it now you have to rebut it, city? [LB373]

SENATOR ASHFORD: I get that, but the reverse of...these are employees though. This isn't an automobile accident. [LB373]

JACK CHELOHA: Right. [LB373]

SENATOR ASHFORD: This is somebody who's worked for the city and has done a dangerous task. [LB373]

JACK CHELOHA: Right. Absolutely. [LB373]

SENATOR ASHFORD: And you've acknowledged that so I'm not... [LB373]

JACK CHELOHA: Right. [LB373]

SENATOR ASHFORD: ...and I know you agree with me on that. I just...and the pension, the \$358 million shortfall really isn't the fault of the firefighters who are out there.
[LB373]

JACK CHELOHA: Absolutely not. [LB373]

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SENATOR ASHFORD: Okay. And I know you're not saying that. [LB373]

JACK CHELOHA: No. [LB373]

SENATOR ASHFORD: But I think it would be helpful to know what significant is. [LB373]

JACK CHELOHA: Right, okay. I will go back to our finance director and ask her to... [LB373]

SENATOR ASHFORD: I mean is it, you know, is it going to put us... [LB373]

JACK CHELOHA: Right. [LB373]

SENATOR ASHFORD: ...so there isn't a headline that we're putting you \$50 million more in the hole or something so okay. Thanks, Jack. [LB373]

JACK CHELOHA: Okay, right. Hopefully, the headline won't be tomorrow already. [LB373]

SENATOR ASHFORD: Well, we don't work that fast, do we? We don't work that fast. We'll give you...sometimes we do. All right. Thanks, Jack, appreciate it. Gary. How many opponents do we have? Just Gary and Jack. That's quite a bit but. [LB373]

GARY KRUMLAND: Senator Ashford and members of the committee, my name is Gary Krumland. It's G-a-r-y K-r-u-m-l-a-n-d, from the League of Nebraska Municipalities, also appearing in opposition to LB373 and for similar reasons. Even though I don't have specific numbers, there is concern expressed to us about the cost, a concern about extending this beyond separation and having to deal with that either through additional insurance or putting additional money into the system. And that is the concern. Cities, as you know, are facing hard times like the state is, and any additional cost is a concern so. [LB373]

SENATOR ASHFORD: Thanks, Gary. Any questions of Gary? Thanks, Gary. Any neutral testifiers? Senator Lautenbaugh. [LB373]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, members of the committee. And I did become aware over the last couple of days that parts of the city government in Omaha might oppose this so I'm willing to work with them to see if there's a way we can address their concerns. I've also been e-mailed by a deputy from York, I believe, who wants to know why this doesn't include police officers. And I don't throw that out there as a take that, city of Omaha. I just (laugh), I throw that out there because it's a question

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that, first of all, I don't know if the level of risk is the same, but it's at least a fair question to ask. So... [LB373]

SENATOR ASHFORD: Football coaches. [LB373]

SENATOR LAUTENBAUGH: Well, perhaps, yeah. We'll see where it takes us, but with that said, this is one that we should not exec on tonight because there are some questions. So... [LB373]

SENATOR ASHFORD: Okay. No, we won't. We'll exec on other stuff tonight. [LB373]

SENATOR LAUTENBAUGH: Okay. But I'm willing to work on it. [LB373]

SENATOR ASHFORD: Okay. That concludes the hearing. Senator Lathrop, you're next. [LB373]

SENATOR LATHROP: (Exhibit 1) Good afternoon, Mr. Chair and members of the legislative Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12. I'm here today to introduce LB292. LB292 establishes the Uniform Athlete Agents Act. This is an act that has been passed by 38 other jurisdictions and would provide for the uniform registration and certification of sports agents seeking to represent student athletes, as well as provide certain protections for those student athletes and their educational institutions. The act contains many provisions including requiring agents to disclose specific information about themselves. This information would involve details such as their training, experience, education, and even whether or not they or an associate have been convicted of a felony or crime. In addition, the agent would be prohibited from providing materially false or misleading information with the intent of inducing a student athlete to enter into an agency contract or from furnishing anything of value to a student athlete or another person before the athlete enters into an agency contract. LB292 also provides a student athlete and the educational institution with certain protections. For example, student athletes would be given the right to cancel an agency contract within 14 days after the contract is signed. Educational institutions would be allowed to pursue a statutory right of action against an agent for damages, including losses and expenses incurred as a result of the educational institution being penalized, disqualified, or suspended from participation in any athletic association or conference. This bill was brought to me by the University of Nebraska, who believed that it is needed to prevent actions by unscrupulous sports agents that negatively impact student athletes and their educational institutions. There are others testifying after me that can provide more details on the bill and who will likely provide examples of why the bill is necessary. I have also provided an amendment to our legal counsel that was suggested by the Secretary of State. That amendment simply clarifies that the fees collected under the bill would be used to administer the act. One other note that I would make before I take any questions, and that is it's a uniform act and it's

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subject to the process of the Uniform Law Commission. We have folks here from that commission. And it's been enacted in 38 other states, and as a uniform law its terms have been tested and thought through. This isn't something that was just put together by Bill Drafting. It's been carefully crafted to conform to the law in 38 other jurisdictions. With that I'd urge you to move this to General File. [LB292]

SENATOR ASHFORD: Steve, did we...I mean, I recall this bill when I was here in the late '80s. Did it...we didn't pass it? There's nothing on the...I guess we didn't. I thought we did. [LB292]

SENATOR LATHROP: We haven't passed it. [LB292]

SENATOR ASHFORD: We haven't passed anything like it. [LB292]

SENATOR LATHROP: No, because I wouldn't bring it here if we had passed it already. [LB292]

SENATOR ASHFORD: Or not even anything...not anything even. There's nothing in statute. No, I think we know if we passed this but I thought maybe we passed something else. [LB292]

SENATOR LATHROP: Not to my knowledge. I think it had run into... [LB292]

SENATOR ASHFORD: But it has been...it was before us... [LB292]

SENATOR LATHROP: I think it had run into some opposition by one of our former members of the Judiciary Committee. [LB292]

SENATOR ASHFORD: Oh, is that what it was? Okay. [LB292]

SENATOR LATHROP: Yeah. [LB292]

SENATOR ASHFORD: Thanks, Steve. Any questions of Steve? How many proponents do we have? One, two. Okay. [LB292]

STEVE WILLBORN: (Exhibit 2) Thank you, Senator Ashford, members of the committee. My name is Steve Willborn, W-i-l-l-b-o-r-n. I'm the dean of the University of Nebraska College of Law but I'm here today in my role as one of Nebraska's commissioners on the National Conference of Commissioners and Uniform State Laws. As Senator Lathrop mentioned, LB292 is a product of the Uniform Law Commission. The commission is in its 116th year and this state has supported it for almost all of that time. You support the institution financially and you provide funds for our commissioners to attend the annual meetings where much of the work is done. In addition to myself,

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Nebraska's current commissioners are the Honorable C. Arlen Beam from the 8th Circuit Court of Appeals; Amy Longo, an attorney from Omaha and former president of the Nebraska State Bar Association, who is here today--raise your hand Amy; Joanne Pepperl, our Revisor of Statutes; Harvey Perlman, whom you may have heard of; and Larry Ruth. The Uniform Law Commission produces laws of the highest technical quality. The process used by the commission ensures bills of high quality. Each uniform act is years in the making. It's led by an expert in the field. Each drafting committee has representatives from all the major interest groups, as this one did. This one had the drafting committee, agents, coaches, representatives from the NFL, NHL, major league baseball, and the NCAA. In addition, you have assurance of its quality because Harvey Perlman was on the committee that produced the act. Jo Potuto, who is here today as well, also participated as a public member; she's the longtime faculty athletics representative at the university. The act has been approved by the American Bar Association, it's supported by the National Collegiate Athletics Association, and as Senator Lathrop said, 38 other jurisdictions have already enacted it into law. Thank you for your consideration and I urge you to support it. [LB292]

SENATOR ASHFORD: Thanks, Dean. Okay. Any questions? Sounds good. Thank you. [LB292]

STEVE WILLBORN: Thank you so much. [LB292]

SENATOR ASHFORD: Other proponents? [LB292]

TOM OSBORNE: Thank you, Mr. Chairman. My name is Tom Osborne. I'm here to testify in support of LB292. It's very similar to a bill that Congressman Bart Gordon and I introduced in Congress in year 2000. And at that time it was a federal backstop to the legislation that many states had in effect. And so as has been mentioned, this has some very positive attributes. It requires the prospective agent to declare what his credentials are, what his qualifications are. Right now, in the state of Nebraska, to be a sports agent all you have to do is say you are one. You may not even have a high school diploma. You may have had no training in contracts. And you may come in and say, well, we'll handle your taxes, we'll handle your contract, we'll handle your endorsements, we'll do the whole thing. And even with the best people, you hardly find one person that can do all those things, and with somebody that's untrained it's almost impossible. So credentials are important. Illegal inducements are always a problem. The 14 days to reconsider, if you're 17, 18, 19, 20 years old, it's easy to get talked into something that in the light of day and with reflection is not going to sound very good. And then, of course, of prime importance, the athletic director must be notified if an agency contract is entered into. Let me just give you a couple of examples of why this is important. Back in the 1980s we had a young man who was talked into a contract by an agent and this agent was from California, and we subsequently found out that he was not registered in California even though California had a bill like this. And he charged the young man 12

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percent of his total contract. The going rate was 2-4 percent. So we were able to recover about \$250,000 for the young man. The agent had no qualifications at all. And we also had some experience with Norby Walters and Lloyd Bloom, who became rather notorious in their activities. They had flown one very young man, while he still had eligibility, to California. He was subsequently injured and never did play, but he would have been ineligible because he had taken a plane ride, at their initiation, to California. The idea was to get him to sign a contract prior to the exhaustion of his eligibility. We have had many cases where agents have come in and told players that they would get them drafted higher. The NFL projects you to be a third-round pick; we'll get you to be a first-round pick, and so all you have to do is go to New Jersey. We'll get you a trainer, personal trainer; we'll get you a nutritionist; and that draft pick will go from third to first and there will be millions of dollars. And quite often this is done when the young man maybe has three hours or six hours to get a degree, and he can probably get much better training right here at the University of Nebraska using our weight room, our nutrition, than he could ever get going somewhere else. Now whether this bill would regulate that type of activity or not, I don't know, but certainly it would at least expose those who have no credentials and are making promises that just simply can't be kept. So...and one last example. We had a young man who was signed after his eligibility, was given a car by the agent, and it turned out the young man was never drafted. Got no contract at all and he was stuck with the car and no money to pay for it. And so I could probably give you another 30 or 40 cases. So some regulation of agents is really critical and so I'd really encourage support of this particular legislation. It's very similar to what we had drafted 8-9 years ago, so I know that it is well-thought-out, it's well-constructed, and would certainly be to the benefit of student athletes and certainly to those institutions which have athletic departments. Any questions, I would be happy them? [LB292]

SENATOR ASHFORD: Any questions of Tom? Tom, what is the NCA standard on this activity now? When may an agent contact a...? How does that...how...what...how does that work? [LB292]

TOM OSBORNE: You're not able to enter into either a written or verbal agreement with an agent while you still have eligibility remaining. [LB292]

SENATOR ASHFORD: To play. [LB292]

TOM OSBORNE: Right. [LB292]

SENATOR ASHFORD: Okay. [LB292]

TOM OSBORNE: Now once your eligibility is exhausted, then you may enter into an agreement. So those players that finished the Bowl Game but have not yet graduated, could enter into some type of a verbal or written agreement with an agent. [LB292]

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SENATOR ASHFORD: Okay. And do they...is the normal practice to go through, if it's an agent that you would know of, do they go through you or do they contact the person directly? How does that normally...? [LB292]

TOM OSBORNE: Well, we have had a committee set up, at one time, at least, where usually somebody from the Law College, somebody from the Athletics Department, maybe some other person, would be willing to sit down with a student athlete and interview agents. So if three or four agents, to grab a guy who's going to be a first-round pick--there's a lot of people after them--and interview all three and then make a recommendation. And unfortunately you find that a lot of young people tend to believe those who are telling them what they want to hear. And so they may have been with you for four or five years as student athletes, and some agent will come in and have them out for dinner and tell him everything that he wants to hear. And all of a sudden that agent has tremendous ability to persuade that young person. So we would advocate that people go through a process like we've recommended, but often they don't, and some of them get very, very poor representation, and at least this would screen out the really bad actors. The people who have felonies, those who have a record of malfeasance and criminal activity would be pretty much exposed before the process starts. And I think to have the Secretary of State with some authority in the matter right here in Nebraska would be very helpful. [LB292]

SENATOR ASHFORD: And they would have to notify you, for example, as athletic director, in this act, as well. [LB292]

TOM OSBORNE: Right. And we would, I think, be able to then review the contract. [LB292]

SENATOR ASHFORD: Right. [LB292]

TOM OSBORNE: And if you see something in there that's really outlandish you can at least call the young man and say, hey, look at this. And you've got 14 days to undo it, and I think in most cases you would be able to get the tables turned. [LB292]

SENATOR ASHFORD: Yeah. It seems good. Any other questions of Tom? Thanks. Anyone else wish to talk about this? Steve...or opponents? I thought maybe...you know, if someone around here is an opponent we would love to see them. Neutral. Steve. Oh, looks there is a neutral...well, from the Secretary of State's Office. Okay, sorry. [LB292]

RONALD MORAVEC: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Ron Moravec, M-o-r-a-v-e-c. I'm Chief Deputy Secretary of State here to just briefly tell you that, with Senator Lathrop's help with the amendment that he's proposing, the Secretary of State's Office is satisfied, willing, and looking

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forward to acting as the agency that will issue the certificates of registration under this act, if passed. [LB292]

SENATOR ASHFORD: Thanks, Ron. Any questions of Ron? Thanks. Thanks for working on this. Senator Lathrop. [LB292]

SENATOR LATHROP: Just very briefly. I think you can see two things are pretty clear. One is that this is necessary to protect young people who are subject to being talked into contracts that are not, in the long run, good for them. And the second is that it's been prepared by the Uniform Law commission and that's a...as a lawyer, that's the blue...that's the gold standard for laws and bills and the drafting of those bills. As a practicing lawyer, I don't think, we can't get a license to practice law without going through a process not unlike this, and it just seems to me that if we're going to allow these people to be signing up impressionable young people, that they go through a process not unlike those of us who are licensed to practice law. So I would encourage you to move LB292 to General File. [LB292]

SENATOR ASHFORD: Seems so. Thanks, Steve, very much. [LB292]

SENATOR LATHROP: Thank you. (See also Exhibit 10) [LB292]

SENATOR ASHFORD: Thank you all. LB144, Senator Avery. [LB292]

SENATOR AVERY: (Exhibit 3) Good afternoon, Chairman Ashford. My name is Bill Avery, spelled A-v-e-r-y. I represent District 28 and I am here today to introduce LB144. You may recall this bill from last year. It was debated rather contentiously on General File and it was presented by Senator Chambers and fell just short of being approved. And I talked with Senator Chambers about bringing this back, although I haven't talked to him about the amendment I just passed out. What it does... [LB144]

SENATOR ASHFORD: We'll have to wing it, Bill, without him. We'll have to wing it without him maybe. [LB144]

SENATOR AVERY: (Laugh) What it does, it requires records of misconduct by teachers and law enforcement officials to be open to the public. Misconduct that is subject to public access in this bill is limited to physical and sexual abuse. The amendment that I am having distributed clarifies what is to be publicly accessible with respect to teachers, administrators, and school employees. In the original, the green copy you have, the misconduct that would be subject to public access for teachers and administrators and school employees is a bit broader than what was in the bill for law enforcement officials. And for law enforcement officials, it was misconduct constituting physical or sexual abuse. So the amendment that you have there applies the same to teachers. I understand that...and one of the reasons for this amendment is that there are often

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minor disciplinary actions taken against teachers, and law enforcement officials, for that matter, that really don't rise to the level where they...that information needs to be open to the public. If a teacher is late for class and gets a disciplinary action taken, I don't think that should be included. If a teacher is late getting a lesson plan together, perhaps that also is not...doesn't rise to that level. But sexual and physical abuse I think does. It is not my intent for personal information to be open to the public. I would leave it up to the committee, though, if you think some of that language needs to be changed. I believe, however, that disclosures that involve such things as sexual and physical abuse is in the public interest. This bill is about openness and accountability. It's not about going after anybody. Those of you who know me know that I am a strong supporter of law enforcement and of teachers. But for public officials entrusted with a high degree of public responsibility, as teachers and law enforcement officers are, we have to set the standard high. The bar has to be set high. The public has a right to know when these officials have been found guilty of egregious misconduct of the sort contained in this bill. That's why I'm bringing it. It's about openness. It's about accountability. It's about the people's right to know. I believe you have a letter from Media of Nebraska supporting this. I would hope that you would agree with me that this is something we need to do and would advance it to General File. With that, I will stop and answer any questions. [LB144]

SENATOR ASHFORD: Any questions of Senator Avery? Thanks, Bill. [LB144]

SENATOR AVERY: Thank you. [LB144]

SENATOR ASHFORD: Do you wish to remain or...? [LB144]

SENATOR AVERY: Actually I have a bill in another committee and it was coming up just as I got called out, so I've got to get back there or they're going to skip over it. [LB144]

SENATOR ASHFORD: Well, if it's get real hot we'll call you back. [LB144]

SENATOR AVERY: Okay. Thanks. [LB144]

SENATOR ASHFORD: Any proponents...any other proponents of this bill? Opponents? [LB144]

KORBY GILBERTSON: Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the State Troopers Association of Nebraska in opposition to LB144. The state troopers opposed the bill last year and continue to have concerns with the legislation proposed this year. The reason for the opposition and concern is that there are a number of actions that can be taken in

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internal affairs investigations, regarding things that would be considered under this legislation to be something that would be physical or sexual abuse that would not rise to the level of being a criminal action. However, under this bill, we are afraid that it would be made public record. And for obvious reasons, there are a number of things that take place in internal affairs investigations--the records, the different depositions taken, statements from various people--that officers and members of the State Patrol would not like to be made public for obvious reasons. For those reasons we oppose the bill and will continue to do so, and ask that you indefinitely postpone it. [LB144]

SENATOR ASHFORD: Okay. Any questions of Korby? Thanks, Korby [LB144]

KORBY GILBERTSON: Thank you. [LB144]

SENATOR ASHFORD: Opponents? How many opponents do we have? Okay. [LB144]

JACK CHELOHA: Senator Ashford and members of the Judiciary Committee, my name is Jack Cheloha; last name spelled C-h-e-l-o-h-a; registered lobbyist for the city of Omaha. I want to testify in opposition to LB144 on behalf of the city of Omaha. As you know, we employ the largest law enforcement agency in the state of Nebraska. The finites of the employment with the city of Omaha is covered by a collective bargaining agreement which is very detailed. It takes extensive work to reach agreement and move forward in terms of how the city operates its law enforcement agency. We cover internal discipline and other activities within our contract, and so this legislation would throw that into flux. And I mean, granted, the state has the ability to pass laws, but we're respectfully asking that we be able to deal with this internally. As the previous witness pointed out, a lot of times when there is a charge of physical or sexual abuse, there's an internal investigation and various aspects could come out, or even the fact that you were at risk if nothing was substantiated by the charge, then it still could be embarrassing. We feel that our law enforcement officers have an expectation of privacy. Despite the fact that they do work and serve the public, we feel that you shouldn't single out them or these two groups of people. I'm not sure how the teachers feel about theirs; we haven't heard from them yet. But for those reasons we think that...you know, we appreciate where Senator Avery is coming from, but we opposed this bill when it was introduced by a previous senator and we still oppose it and we think it's maybe a solution in search of a problem: that there really isn't one out there. Because if it rises to the point where there's actually a crime, that will come out and people will be charged, so that's why we oppose it. [LB144]

SENATOR ASHFORD: Thanks, Jack. Any questions of Jack? Yes, Senator Lautenbaugh. [LB144]

SENATOR LAUTENBAUGH: If we removed the provisions that apply to law enforcement, would the city support this bill? [LB144]

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JACK CHELOHA: I think we'd move to no position or neutral then. [LB144]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB144]

SENATOR ASHFORD: Any other opponents? Neutral. Mark. [LB144]

MARK McGUIRE: (Exhibit 4) Senator Ashford and members of the committee, my name is Mark McGuire, M-a-r-k M-c-G-u-i-r-e. I am general counsel and a registered lobbyist for the Nebraska State Education Association. As the bill was originally written, we would oppose it in terms of the section that pertains to teachers and teacher files, which begins on page 3 of the bill. I have an amendment...and this might be what Senator Avery just gave you. I don't know; I haven't...we talked about this language. I haven't seen what he's proposing. I have this amendment for consideration, which I would say, if adopted, our concerns about this bill would be lessened. I'll give you a bit of background. The underlying statute that's being amended was 79-8,109 was promoted by the NSEA and adopted in 1973. It was slightly revised in 1994. Safeguarding the personnel file of educational employees, particularly teachers or administrators, and it's worked well. Initially there was some angst by school administrators but they've gotten over that. We don't want and indeed the original sponsor of the bill was not interested in opening all that up, that you could just go up to the school administration building and say I want to go through so-and-so's file. The amendment obviously narrows this down to only situations where there's a final report pertaining to misconduct, either of a physical or a sexual nature...or assaults is what it really goes to. So that would make it somewhat better. I'd be happy to respond to any questions. [LB144]

SENATOR ASHFORD: Any questions of Mark? Yes, Senator Rogert. [LB144]

SENATOR ROBERT: Mark, why, in your opinion, do you think the bill was written in two different ways--"final" in Section 1 and "any" in Section 2--which is what you're seeking to amend. [LB144]

MARK McGUIRE: Why was it written that way? [LB144]

SENATOR ROBERT: Yes. [LB144]

MARK McGUIRE: I'm not so sure that there was any intent, actually. [LB144]

SENATOR ROBERT: Okay. [LB144]

MARK McGUIRE: Last year, when it was out there, the police officers groups, if you will, were working with the sponsor on language. We were doing it. And I tend to think it's probably kind of the two sides didn't meet, and as compared to some really brilliant idea

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that's behind that. [LB144]

SENATOR ROBERT: Well, I mean, (laugh) if you look at it in the first part, it says final, and then the second part with teachers it's anything, so I see what you're trying to amend. [LB144]

MARK McGUIRE: Yeah. I don't have much of a better answer than that, which isn't very good. [LB144]

SENATOR ROBERT: That's fine. Thanks, Mark. [LB144]

SENATOR MCGILL: Any other questions? Thank you, Mr. McGuire, for your testimony. [LB144]

MARK McGUIRE: Oh, I was about to say your voice changed, Brad. (Laugh) [LB144]

SENATOR MCGILL: He got up and walked away... [LB144]

SENATOR ROBERT: You got prettier, Senator Ashford. What happened? [LB144]

SENATOR MCGILL: ...or something more drastic perhaps. I don't know. Thank you though. [LB144]

MARK McGUIRE: Okay. Yes, thank you. [LB144]

SENATOR MCGILL: (See also Exhibits 8 and 9) Any other neutral testimony? Seeing none, Senator Avery waived closing and so we will move on to LB354. Senator Lautenbaugh gets to return to the chair. Hello [LB144]

SENATOR LAUTENBAUGH: Hello. Thank you, Madam Chairman and members of the committee. Those of you who know me best, know that I've long had a passion for cross-appeals under the Nebraska Administrative Procedure Act...(laughter)...and that's what's led me to be here today, bringing this bill to you. (Laughter) LB354 simply clarifies a murky provision in regards to the timing and right to cross-appeal. LB354 would adjust the code to provide that a cross-appeal be filed within 30 days of being served with a summons and petition for review rather than within 30 days of an administrative decision as is currently the standard, I believe, based upon some court decisions. There may be someone from the bar here who has even more passion for this than I do, to answer any questions you might have, but I'll be happy to take a stab at it as well. [LB354]

SENATOR MCGILL: Thank you. Senator Rogert. [LB354]

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SENATOR ROBERT: Because of your passion, can you explain to me what the reason for this is? Give me an example. [LB354]

SENATOR LAUTENBAUGH: Yes. A lot of times, in other areas of the law, you have a right to cross-appeal once someone files an appeal. As I understand it, because that's not specifically spelled out in the administrative code, you don't still get to cross-appeal 30 days from when someone files an appeal. The deadline runs the same as with any other appeal so this would allow someone who isn't really married to the idea of appealing but receives an appeal and says, well, I might as well cross-appeal than to do that as they can in many other areas of the law. [LB354]

SENATOR ROBERT: And bill a few more hours while they're at it. [LB354]

SENATOR LAUTENBAUGH: Yes. [LB354]

SENATOR ROBERT: Thank you. [LB354]

SENATOR MCGILL: Does that answer your question? Okay. That's it. [LB354]

SENATOR LAUTENBAUGH: I'll stay to close. [LB354]

SENATOR MCGILL: Thank you, Senator Lautenbaugh. All right. We'll look forward to that and sharing your passion. Proponents. [LB354]

KATIE ZULKOSKI: Good afternoon, Senator McGill, members of the Judiciary Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, and I'm here representing the Nebraska State Bar Association. We would like to thank Senator Lautenbaugh for following his passion, as ours, with the Administrative Procedure Act. Hopefully I'll be able to answer any questions you have about this, but just to clarify, under the Administrative Procedure Act any party may file a cross-appeal; it just needs to be filed. Under current law, it is not clear when that needs to be filed. Any party may file within 30 days, the initial appeal, but a cross-appeal it's not clear what the time period is that that needs to be filed; and this would clarify that a party would have a right to a cross-appeal 30 days after they were served with the petition for the original appeal. And this is the result of a Supreme Court case that was decided this September, and so this is the need for all of us to be passionate about this issue came to our attention at that time. [LB354]

SENATOR MCGILL: All right. Any questions? No. Thank you very much. [LB354]

KATIE ZULKOSKI: All right. Thank you. [LB354]

SENATOR MCGILL: Any other proponents? Any opponents? Anyone here neutral?

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Well, then Senator Lautenbaugh waives closing and we'll move on to the last of our bills for the day, also with Senator Lautenbaugh: LB208. [LB354]

SENATOR LAUTENBAUGH: Thank you, Madam Chairman and members of the committee. Senator Council, your timing was almost perfect, but... [LB208]

SENATOR COUNCIL: (Inaudible) almost perfect. [LB208]

SENATOR LAUTENBAUGH: LB208 is designed to serve as a deterrent to businesses that misclassify workers or take actions designated to reduce the premium they would otherwise have to pay for workers' compensation coverage. What this primarily involves is when an employer misclassifies a worker as an independent contractor when they are actually employees, an erroneous designation of an employee status to reflect a less risky category such as clerical rather than roofer or something like that, all designed to lower workers' compensation premiums. I believe this is very straightforward, and just as if you knowingly do that to gain some...to lower your premiums and gain some competitive advantage, you are guilty of a crime. And I'll be happy to answer any questions you might have. [LB208]

SENATOR MCGILL: Do you have the same passion for this issue as the last one? [LB208]

SENATOR LAUTENBAUGH: Even more. Seriously, I do though. [LB208]

SENATOR MCGILL: Senator Rogert. [LB208]

SENATOR ROGERT: Couple questions. This is a result of some stuff we've done the last couple years in legislation? [LB208]

SENATOR LAUTENBAUGH: I do believe it follows on some other issues that we've had regarding classification of employees. [LB208]

SENATOR ROGERT: And Class III misdemeanor is what we fall into as a crime? It's not listed so I'm just kind of assuming. [LB208]

SENATOR LAUTENBAUGH: You know, I'll have to get back to you, too; I cannot remember. Class III misdemeanor, I want to say... [LB208]

SENATOR ROGERT: Well, I think if it's not listed, it's a default, but maybe Mr. Hallstrom could...yeah, okay. [LB208]

SENATOR LAUTENBAUGH: Yes. Yes. [LB208]

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SENATOR ROBERT: Thanks. [LB208]

SENATOR MCGILL: Senator Coash. [LB208]

SENATOR COASH: Thank you, Madam Chairman. Senator Lautenbaugh, in my private life I enter in work comp codes for employees. Sometimes I transpose a number. Am I going to get a Class III misdemeanor for a typo under this bill? [LB208]

SENATOR LAUTENBAUGH: No. I would say the intent element would be lacking. [LB208]

SENATOR COASH: I'm sorry? [LB208]

SENATOR LAUTENBAUGH: The intent element of the crime would be lacking. [LB208]

SENATOR COASH: So I would have to... [LB208]

SENATOR LAUTENBAUGH: Intentionally misclassify. [LB208]

SENATOR COASH: Somebody would have to prove that I was doing that on purpose to try to get a, reclassify them so I don't have to pay so much work comp insurance or something like that? [LB208]

SENATOR LAUTENBAUGH: Yes. [LB208]

SENATOR MCGILL: All right. Thank you, Senator Lautenbaugh. [LB208]

SENATOR LAUTENBAUGH: Thank you. [LB208]

SENATOR MCGILL: The first proponent. [LB208]

BOB HALLSTROM: (Exhibit 5) Senator McGill, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for both the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness to testify in support of LB208. I've also handed out some materials that were provided by Mr. Jim Steele of the Falewitch Construction Services, Inc., in Omaha, which I'd note for your review, has an example of a comparison between somebody playing by the rules and somebody that's not playing by the rules, and the significant competitive advantages that result from someone that intentionally misclassifies workers as independent contractors rather than employees. One of the things I want to make clear, perhaps in response to Senator Coash's question, there is an intentional and knowing standard with regard to the criminal aspect and the civil penalties under the Insurance Fraud Act that will, I think in recognition of

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the fact that the independent contractor tests are not an exact science, they differ whether you're working with the IRS, the unemployment insurance purposes, or workers' compensation. It has to do a lot about control than other tests and factors that, again, are not an exact science. So thus in order to expose someone to the criminal or civil penalties provided under LB208, there is that knowingly and intentionally to deceive or provide deception to an insurance carrier for the purpose of reducing workers' compensation premiums. I've noted in my testimony that obviously the misclassification issue is not the only area of the law that we're looking at. Folks can try to understate their payroll for purposes of gaining an advantage on workers' compensation premiums. They can also classify them as a less risky designation of employment to come about with the same result. So all of those types of activities, if done intentionally and knowingly, would serve as a potential violation under this statute. We have indicated in our testimony that obviously this is a small part of the bigger problem of misclassification of employees or workers. Obviously the state can be hurt from a revenue perspective. There can be unemployment insurance issues. There can be benefit issues for employees. So the workers can be harmed as well. Those are for a different day. We are only looking at the workers' compensation aspect of this particular issue. I would also note, in my testimony I've indicated a number of surveys, studies, task forces, that have been put together in other states that identify the scope and the nature of the problem, not only with respect to workers' compensation issues, but the payroll tax issues, the unemployment insurance issues, the benefits and safety and training issues for employees, as well, and would ask the committee to look favorably upon LB208, advance it to General File, and would be happy to address any questions that you might have. [LB208]

SENATOR ASHFORD: Go ahead, Amanda. [LB208]

SENATOR MCGILL: You're the Chairman, Senator Ashford. [LB208]

SENATOR ASHFORD: I was just getting caught up here. Any questions? Thanks, Bob. [LB208]

BOB HALLSTROM: Thank you. [LB208]

SENATOR ROBERT: Brad, hold on. [LB208]

SENATOR ASHFORD: And I have one, too, actually. Go ahead, Kent. [LB208]

BOB HALLSTROM: I should have jumped up quicker. [LB208]

SENATOR ROBERT: Yeah. No, this is easy. No, I'm just kind of...just for the record. The Department of Labor has sole jurisdiction on this. [LB208]

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BOB HALLSTROM: Actually probably the enforcement of the civil penalties would be either through the Attorney General's Office or the local enforcement, is my understanding, on...I had some brief discussions with the Department of Insurance as to how it's been handled in the past in that respect. And I would also note, I don't have the bill in front of me but I believe the changes under the criminal code relate to subsection (j), and I believe that that might provide for a Class IV felony for violations of new subsection (j) if I remember correctly. [LB208]

SENATOR ROBERT: Okay. And for all intents and purposes, to get caught you'd be reported by somebody else or through a general audit of your classification reports? [LB208]

BOB HALLSTROM: Most likely would be the case. [LB208]

SENATOR ROBERT: Okay. [LB208]

SENATOR ASHFORD: I just...Bob, I don't have any problem with the theory here. I always worry about incomplete and misleading. False is false. Incomplete is...small businesses sometimes when they get these forms to fill out on their employees for workmen's comp purposes, not that they ignore it, are maybe not as...it's not like their tax return. Maybe it should be. But you've got to be somewhat cautious. [LB208]

BOB HALLSTROM: Yeah, and Senator, obviously we're not here to do gotchas with small businesses. That's who we represent. [LB208]

SENATOR ASHFORD: Right. [LB208]

BOB HALLSTROM: We've taken this language from a couple of other states, virtually verbatim. If there is some clarity, I think the knowingly and intentionally probably addresses that in a positive fashion, but... [LB208]

SENATOR ASHFORD: Right. Incomplete...yeah, incomplete is a...anyway, that's... [LB208]

BOB HALLSTROM: But if the committee has some suggestions or I'd be happy to work... [LB208]

SENATOR ASHFORD: Well, I don't have any...yeah, I just...the word incomplete is always an issue. Yes, Steve. [LB208]

SENATOR LATHROP: I do have questions...or may not questions so much as a comment, because I've run across this in a couple of cases that I've actually worked on. And what you're after isn't...this isn't the bigger misclassification issue like I have up in

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Business and Labor, but about an employer essentially lying to the insurance company about the kind of work his employee does so that his premium is less but he still gets a certificate covering him for work comp. [LB208]

BOB HALLSTROM: That's certainly one aspect of it. You can either understate payroll or you could classify someone...before you came into the room, Senator, I noted and I think Senator Lautenbaugh noted classifying somebody as clerical rather than the fact that they do roofing jobs by day and that type of thing, which all go into lessening or reducing your workers' compensation premium if you do that intentionally. [LB208]

SENATOR LATHROP: And it works out fine. Yeah. What it does to the...if there's two guys that's running roofing operations and one guy calls all of his help clerical and he's paying a very small premium in relationship to his competitor, his competitor is now going to be at a disadvantage when he's competing for work and bidding jobs. [LB208]

BOB HALLSTROM: Exactly. And in Mr. Steele's testimony that should have been handed out, he has a standalone example of his business playing by the rules, paying the health insurance, paying the payroll taxes, paying the workers' compensation premiums, etcetera, etcetera, and then a side-by-side comparison to a business that doesn't do that because they're misclassifying their employees in one fashion or another. [LB208]

SENATOR LATHROP: And forgive me if you covered this or if Senator Lautenbaugh did, but the...once the insurer insures them, even if they've been misclassified, they still have to pay on the claim. And the best they can do is go back and bill a person for the proper premium. [LB208]

BOB HALLSTROM: That would be my understanding if that occurs. I've had some small business owners indicate to me, Senator, for example, even on the other side of the coin for the issue where you don't, on an independent contractor-type of issue versus employee, that where you may not classify them and have work comp coverage, but as soon as they're injured you may be able to actually put them on the payroll. And if nobody does a follow-up audit or investigation, you may give a double whammy of sorts in that you didn't pay along the whole time, and yet that person makes their way into the work comp system and costs the system, in total, because they now do get covered and nobody ever figures out that that type of game was being played. [LB208]

SENATOR LATHROP: And ultimately if you do that, then everybody else is paying more premium. [LB208]

BOB HALLSTROM: Exactly, in that example. Yes. [LB208]

SENATOR LATHROP: Okay. [LB208]

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BOB HALLSTROM: Thank you. [LB208]

SENATOR LATHROP: Thank you. [LB208]

SENATOR ASHFORD: Thanks, Bob. [LB208]

BOB HALLSTROM: Thank you. [LB208]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Lautenbaugh. [LB208]

SENATOR MCGILL: One hour. [LB208]

SENATOR ASHFORD: Exactly. I mean, that's why Senator Lautenbaugh ought to be introducing more bills in this committee. [LB208]

SENATOR LAUTENBAUGH: I would like all of you to notice the economy I have with the proponents and how quickly my hearings move along. [LB208]

SENATOR ASHFORD: You're very efficient. [LB208]

SENATOR LAUTENBAUGH: That said, I think we all have to come and go from time to time, and so I think Senator Lathrop's questioning helped restate, probably more eloquently than I did in the opening certainly, the need for this bill. And I would just urge your support. I'd still be happy to take any questions you might have. [LB208]

SENATOR ASHFORD: And that's a societal issue that we're trying to deal with here where you're having unfair competition because of...on the cost side of... [LB208]

SENATOR LAUTENBAUGH: Yes. [LB208]

SENATOR ASHFORD: (See also Exhibits 6, 7, 11, 12, and 13.) Okay. Thank you. I kind of wanted to prolong it so it was exactly one hour. Now we're...it was exactly one hour and we're done. Thanks. [LB208]

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Disposition of Bills:

LB144 - Indefinitely postponed.
LB208 - Placed on General File.
LB292 - Placed on General File with amendments.
LB354 - Placed on General File.
LB373 - Placed on General File with amendments.

Chairperson

Committee Clerk