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Judiciary Committee  
February 22, 2012

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[LB785 LB912 LB914 LB1162 LB1169]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 22, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB912, LB1162, LB1169, LB785, and LB914. Senators present: Brad Ashford, Chair; Steve Lathrop, Vice Chair; Burke Harr; Colby Coash; Brenda Council; Amanda McGill; and Scott Lautenbaugh. Senators absent: Tyson Larson.

SENATOR ASHFORD: Welcome, everyone. It's a little past 1:30, so we are a little late, but we will get started here with LB912. Let me start out by asking who is here to talk about--on either side or neutral--on LB912. Okay. How about LB1162, which is Senator Nelson's bill? Anybody here on that one? One person? LB1169, Senator Pirsch's bill, dealing with disappearance or death of a child? Senator Christensen, dealing with possession of firearms? A few? Okay. And then Senator McGill, LB914, dealing with sex offender registration? Okay. Let me introduce Senator Harr from Benson; Senator Lathrop from Ralston; Senator McGill from Lincoln; Senator Council from Omaha; LaMont Rainey is legal counsel; Oliver VanDervoort is the committee clerk; and Senator Coash is from Lincoln. We do have a lights system here that we ask you to confine your comments to three minutes. There of course may be questions which would make your testimony longer. The yellow light will come on and we ask you to, at that point, to sum up and give us your summary comments. If you wish to state a position on one of these bills and don't wish to actually get up and testify, you may fill out the forms that you see on the desk here and over by the door and indicate your opposition or support or even if you're neutral. So with that, Senator McCoy, LB912.

SENATOR MCCOY: Thank you, Chairman Ashford, and good afternoon, members. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District here in the Legislature and I am here this afternoon to introduce LB912 to you. LB912 does not address who is included or who is not included as a protected class, but clarifies that the creation of new protected classes be made at the state level. I think you would agree with me that discrimination does not stop at a city or a county border. If adding or removing a protected class is the right thing to do, it is the right thing to do border-to-border across Nebraska in my mind, not just in one city or one municipality. If it's discrimination in Lincoln, it's discrimination in Scottsbluff, Gering, Kearney, Grand Island, or a farm outside of Wahoo. A uniform list of protected classes in our state will ease the burden on businesses who would otherwise need to invest time and money that is difficult to come by in these economic times to guarantee they are following the law for each individual community and allows the appropriate authorities to investigate and address discrimination more effectively. With a patchwork of protected classes, authorities may have to tell someone, yes, you were discriminated against but it was not within the city limits, so there is nothing we can do. State statute 20-113, which allows incorporated cities and counties to enact ordinances and resolutions which are substantially equivalent or which are more comprehensive, was changed through LB681

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

Judiciary Committee  
February 22, 2012

---

in 1974 to include the term "more comprehensive." Since that term wasn't defined in statute, we went back to the legislative history for LB681 to try to get a perspective on how that particular piece of legislation came about. From reading the transcripts from the committee discussion and on the floor of the Legislature on LB681, it appears a private club in Lincoln was racially discriminating against guests of members. The conversation between senators is a little difficult to follow almost 40 years later, but the term "more comprehensive" is never mentioned as a way to add to the list of protected classes; rather, to allow the communities the flexibility in how they address discrimination. One example of how a city is addressing nondiscrimination more comprehensively is the city of Omaha. Under the Nebraska Fair Employment Act, an employer is defined as having 15 or more employees. Omaha defines employee--employer, pardon me--as six or more employees. LB912 would continue to allow Omaha's more comprehensive definition of employer to continue. State statute 20-113.01, which is the legislative findings, states, "In order to declare the intent of the present Legislature and to effect the original intent of sections 18-1724 and 20-113, the Legislature finds that civil rights are a local as well as state concern and the Legislature desires to provide for the local enforcement and enactment of civil rights legislation concurrent with the authority of the State of Nebraska." This was added in 1979 with the intent of the bill to establish a clear grant of authority to municipalities and counties allowing those political subdivisions to adopt ordinances to provide for the protection of certain enumerated individuals' civil rights. This allows the municipalities and counties to more comprehensively address those civil rights already listed in state statute. The Omaha World-Herald editorial this past Sunday I believe got it right when they stated the appropriate place to address antidiscrimination issues is at the state and federal level, where we "are equipped to handle the complaints and hearing processes that are necessary to administer such a law." I believe this has been the intent of state statutes all along in Nebraska, and I believe that LB912 helps to clarify that. And with that, I would close, Mr. Chairman, and take any questions if there are any. [LB912]

SENATOR ASHFORD: Thank you, Senator McCoy. Yes, Senator Council. [LB912]

SENATOR COUNCIL: Senator McCoy, so it's your understanding of the legislative intent of 20-113 that "more comprehensive" wasn't designed to cover the protected classes? [LB912]

SENATOR McCOY: It appears to me, as we go back and study this, that that was never really fleshed out as what the meaning of that was, Senator Council, and that it appeared to be that it would allow a municipality or city to expand on what was listed under state statute as protected classes, which Omaha has done, but not to add to or take away what the state had defined as protected classes. [LB912]

SENATOR COUNCIL: Right. Well, if it allows it to expand, isn't that the same as add to what the state has identified as protected classes? [LB912]

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

Judiciary Committee  
February 22, 2012

---

SENATOR McCOY: Well, as I mentioned with LB681 from 1974, I would disagree with that in that it didn't...what was added to that was a better understanding, as I mentioned, with the number of employers--employees, I should say--as defined under Omaha, but there weren't any additional classes added. It was an expansion of how that particular class was defined, but it wasn't...didn't add to the protected classes or detract. [LB912]

SENATOR COUNCIL: Okay. But going along with the rationale, is it your intent that LB912 would prohibit cities and counties from taking action similar to what the city of Omaha took when they redefined employer for purposes of their antidiscrimination laws? [LB912]

SENATOR McCOY: Well, I don't think that's what this legislation entails, Senator Council. I think it merely says that if you're going to add to or take away--which again, this legislation doesn't do either one; it just merely says if you're going to--that it be here at the state level. What you're speaking of, I believe, would be fully--as it's been done already--would be fully allowable under law and this legislation doesn't change that. [LB912]

SENATOR COUNCIL: Okay. But in that regard, then the argument for your legislation, it's my opinion, would equally apply in that instance because if you're an employer in Omaha if you employ 6 but you're an employer in Lincoln if you employ 10, I mean, isn't that the same issue that is purported to be at the root of LB912, that there are differences in the application of the antidiscrimination laws? [LB912]

SENATOR McCOY: Differences in application, but not differences in the different classes. The classes themselves aren't any different between the city of Lincoln and the city of Omaha; maybe merely a definition of the number of employees, as defined, what constitutes a business or a small business, but it doesn't change the actual classes themselves that are in state statute. [LB912]

SENATOR COUNCIL: Okay. And I understand that, but I'm just getting to the basis for...as I understood the reason for LB912 was that you shouldn't have to be subjected to different laws regarding antidiscrimination from one community to the next. And if you have differences in the definition of what an employer is, you most assuredly have differences in your being subject to antidiscrimination laws. If you're an employer of 6 or more in Omaha, you're going to be subject to their antidiscrimination laws regardless of who they identify as protected class. But if you're in Scottsbluff and there it says 10, the same employer with the same protected classes would not be subject to antidiscrimination. And I guess that's...I thought I understood the reason for your introduction of LB912 was to have uniformity. And if it's your belief that your...that LB912 doesn't affect that level of uniformity, then I guess I question where there's an advantage to enacting LB912, if at the core purpose is to have uniformity across the

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

Judiciary Committee  
February 22, 2012

---

state. [LB912]

SENATOR McCOY: Well, I think we're talking about somewhat different things perhaps, Senator Council, if I may expand on that. Again, as I mentioned in my opening, what you're speaking of is not changed by LB912, nor do I desire to change that; that is currently the system as it exists today with how Omaha defines that as far as number of employees by an employer. So if you are, as you mentioned, a business that perhaps does business in Scottsbluff or a business such as I'm involved in as a small business owner that maybe operates in a number of different municipalities, we already understand that and we deal with that. But under the understanding and dealing with that is not dealing with a difference in actual additions or subtractions to what is a protected class; it's a further definition of what is already in the protected classes in state statute. And what LB912--again, in my mind--does is it just very simply says: If something is discrimination, why does it stop at a city limit sign? Why is it not discrimination across the state? Why is it any more important to address discrimination in one particular municipality or another than it is in the Sandhills or that it is in Valentine? To me, if it is discrimination, it is discrimination everywhere and not just in one particular municipality. And in addition to that, as a number of...I haven't dealt with this and nor have you in our times here in the Legislature. But not too many years prior to you and I's time in the Legislature--and there are members here on the committee who did deal with this--smoking ordinances and the smoking ban was dealt with across the state, as was concealed carry, and the differences in a patchwork quilt of enforcement and ordinances across our state. And there may have been citizens, as there were lawmakers, who had differences of opinions personally on those two particular issues. But nonetheless, it was determined ultimately that a statewide decision and a statewide uniformity was the best particular method to use in those particular issues. I view this in much the same way, although probably this, you can argue, is even a more important issue than either one of those. [LB912]

SENATOR COUNCIL: Okay. Well, in your beginning comments a minute ago, that's the precise point I'm making, that apparently isn't being communicated well. But if in one community you're an employer for purposes of their antidiscrimination laws if you employ 6 but in another community you're an employer only if you employ 10, then it's going to be discrimination in one community and it's not going to be discrimination in another community, based upon the number of employees you have. You could commit the same act of discrimination in Omaha, and because you employ six people you're going to be subject to their antidiscrimination ordinance. But if you commit the same act against the same protected-class person, and I'm just pulling Scottsbluff, and say they define an employer as 10, that employer commits the same act against the same protected-class person, they're not going to be subject to a discrimination claim. Are you...do you see the point I'm making? [LB912]

SENATOR McCOY: I do. And let's be clear to define in my particular opinion, and I

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

Judiciary Committee  
February 22, 2012

---

presume it to be yours as well, that it would still be discrimination either way, and then as wrong, regardless of whether it's been defined as 6 employees or 15, and... [LB912]

SENATOR COUNCIL: But you couldn't prosecute it. [LB912]

SENATOR McCOY: Well, I understand that. But that is not the same as adding or subtracting to what is constituted as protected classes in state statute. I understand what you're talking about on an enforcement level when you break it down as to number of employees. But the example that you use and examples that you've used, Senator Council, don't apply, don't interfere with what are constituted as the protected classes. It may come into play with whether or not it applies based upon whether or not it is in the city of Omaha because it's my understanding, unless I'm mistaken, that no other municipality has enacted a description such as the city of Omaha has as to the number of employees. I believe the rest of the state operates under the 15 or more employees, but nonetheless, that doesn't change what's in state statute as to the protected classes. It may come into play with whether or not it applies based upon the number of employees and whether you're in Scottsbluff or Omaha, but it doesn't change what is the protected classes as defined under state statute. [LB912]

SENATOR COUNCIL: Okay. Now...and in that regard, your bill provides that any local law, ordinance, resolution, rule, or policy adopted before the effective date of this act that violates subsection 2, which is the provision that speaks to limiting protected classes to those set forth in state statute, you say is null and void. The city of Omaha, for example, their antidiscrimination ordinance includes age; state statute doesn't. So is it your intent that by virtue of LB912, Omaha now, if this bill is passed, would be unable to handle discrimination claims based on age? [LB912]

SENATOR McCOY: I'm not aware that there's any difference between Omaha and the state of Nebraska as to age. [LB912]

SENATOR COUNCIL: The Nebraska statutes only speak to race, color, religion, sex, disability, or national origin; it doesn't include age. [LB912]

SENATOR McCOY: I'd be happy to address that concern if it's a concern that the committee would have. It's not my intent to create any sort of a difference between what is state statute and what is Omaha city ordinance as to age. [LB912]

SENATOR COUNCIL: Okay. But under your bill, the only way to make it consistent would be to amend state statute to include age; or, just having your bill operate, Omaha couldn't prosecute allegations of age discrimination because it's not a stated protected class. [LB912]

SENATOR McCOY: Well, again I would stand ready to address that if we need to. I'm

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

Judiciary Committee  
February 22, 2012

---

not aware, and as we investigated this, that there is a difference between state statute and city statute; may be mistaken on age. [LB912]

SENATOR COUNCIL: Okay. So if this would apply in the case of age, since state statute doesn't cover age but Omaha covers age, the willingness to address it in that regard would require a...if your bill were enacted, would require Nebraska statute to be amended. So the question is if Omaha's ordinance provides for a protected class covering gays, lesbians, bisexual, and transgender and current Nebraska statute doesn't, would the same process be open to be pursued in that instance, since Omaha covers age, state doesn't? Let's assume Omaha covers gays, lesbians, bisexual, transgender and Nebraska doesn't. Would your bill be open to amending Nebraska statute to cover those areas? [LB912]

SENATOR McCOY: Wouldn't want to speak to a hypothetical, Senator Council. That's not currently in city of Omaha ordinance, and so because of that it's impossible for me to define how that would operate in that particular environment. [LB912]

SENATOR COUNCIL: Okay. But according to the language in your bill, Omaha would be precluded from prosecuting age discrimination claims. [LB912]

SENATOR COUNCIL: Well, again I don't believe there to be a difference between what is in, as far as to age, between the city of Omaha and the state of Nebraska. I'm not...I am in disagreement as to whether or not that's fundamentally even the case. I'm not aware that it is, and so as such I find it impossible to be able to answer the hypothetical that you're asking. [LB912]

SENATOR COUNCIL: Okay. Well, rest assured, Senator McCoy, I would not read to you from the statute and omit language from the statute. I just read from you the existing Fair Employment Practices Act which is covered by your bill... [LB912]

SENATOR McCOY: I'm...sure. [LB912]

SENATOR COUNCIL: ...and it does not cover age, so that's all I have, Senator. [LB912]

SENATOR ASHFORD: Thanks, Beau. [LB912]

SENATOR McCOY: Thank you. [LB912]

SENATOR ASHFORD: You going to stick...? [LB912]

SENATOR McCOY: And I will waive closing as well. I need to get back to the Natural Resources Committee for hearings. Thank you, Mr. Chairman. [LB912]

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

Judiciary Committee  
February 22, 2012

---

SENATOR ASHFORD: Very well. Thank you, Beau. How many proponents? We'll take the proponents, obviously, first. And if the proponents can kind of...if there's space in the front, just sort of move up to the front and...good afternoon. [LB912]

BYRON BABIONE: Good afternoon. Thank you, Chairman Ashford, members of the committee. My name is Byron Babione. I'm senior counsel with the Alliance Defense Fund, a nonprofit public-interest law firm that advocates for, educates about, and defends religious liberty. [LB912]

SENATOR ASHFORD: Can you give us...just spell your last name for the record. [LB912]

BYRON BABIONE: Yes. Babione, B-a-b-i-o-n-e. [LB912]

SENATOR ASHFORD: Thank you. [LB912]

BYRON BABIONE: I am testifying in support of LB912. The bill's terms rationally achieve the legitimate government purposes of improving interstate commerce and the effectiveness of municipalities in eliminating discrimination against those protected classes identified by the Legislature. LB912 achieves those ends consistent with the Nebraska and federal constitutions. LB912 concentrates the resources of the business community on eliminating discrimination against groups the Legislature has determined are in need of protection without subjecting businesses to the impediments of nonuniform laws. This uniform statewide approach to defining protected classes frees businesses to engage in commerce while meeting their civil rights obligations as mandated by the State Legislature. It will free businesses from navigating a patchwork of protected classes that could be as divergent as the number of municipalities and political subdivisions in the state. The bill allows companies to do business more predictably, more smoothly, and more cost-effectively since they are not subjected to the expense of multiple compliance schemes depending on where they are doing business in the state. LB912 focuses government resources on enhancing protections for vulnerable classes recognized by the Legislature and directs all concerns about class discrimination to the attention of the Legislature for statewide consideration. This bill is a proactive measure that prevents municipalities from creating novel protected classifications which would necessarily cause those municipalities to divert resources away from protecting the classes the State Legislature has carefully chosen and specially mandated for protection such as race, religion, sex, and ancestry. It also fosters careful statewide deliberation by the Legislature of all proposals to protect civil rights, and it ensures that multitudinous voices from all corners from the state will be able to debate these important public policy questions. LB912 is compatible with the Nebraska and federal constitutions. Easing burdens on commerce while concentrating government resources on enforcing state antidiscrimination laws easily satisfy constitutional standards. Chairman, members of the committee, thank you for allowing

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

Judiciary Committee  
February 22, 2012

---

me this opportunity to speak in favor of LB912. [LB912]

SENATOR ASHFORD: Thanks, Byron. I mean, my only question was there aren't any, as far as I know...I don't know about Lincoln. We were...I was just asking LaMont, but...yeah, our...when it deals with gender and sexual orientation, I'm not aware of any other local ordinance in the state that covers that particular issue. Do you know if...? [LB912]

BYRON BABIONE: Nor am I, Senator. [LB912]

SENATOR ASHFORD: So I'm just wondering what the...and so the harm would be that there may...it may occur if there's only one city that chooses to do this--and again, I'm not sure if Lincoln does. They do? So Lincoln does. [LB912]

BYRON BABIONE: No. [LB912]

SENATOR ASHFORD: So Lincoln and Omaha may be the only two and there may be others--I don't think so. But if those are the only two, the point you're making is that that's not...that's unconstitutional or it's potentially unconstitutional or interference with interstate commerce because...? [LB912]

BYRON BABIONE: The point is, Senator, is that it's constitutional to have the State Legislature address matters of... [LB912]

SENATOR ASHFORD: Well, I get that part, but... [LB912]

BYRON BABIONE: Okay. [LB912]

SENATOR ASHFORD: But...so the harm here is that Omaha and Lincoln would have an ordinance. And if nobody else does, the harm is what? [LB912]

BYRON BABIONE: Well, I don't think there is any harm, Senator. [LB912]

SENATOR ASHFORD: Okay. [LB912]

BYRON BABIONE: I think that if everybody is allowed to participate in the political process and come to the State Legislature to debate matters of discrimination... [LB912]

SENATOR ASHFORD: Sure. [LB912]

BYRON BABIONE: ...especially when you're talking about protected classes. [LB912]

SENATOR ASHFORD: Uh-huh. [LB912]



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

Judiciary Committee  
February 22, 2012

---

BYRON BABIONE: And that's a big deal and that's an important thing and it involves a fundamental change, really, to the antidiscrimination statutory scheme. [LB912]

SENATOR ASHFORD: Okay. [LB912]

BYRON BABIONE: Then all voices from the state have an opportunity. [LB912]

SENATOR ASHFORD: So you think it's the proper place is to be here. [LB912]

BYRON BABIONE: Yeah, I think so. I think everybody... [LB912]

SENATOR ASHFORD: But what if you have...like in the case of Omaha, if you have a population that represents 35 or 40 percent of the state, which is a pretty big chunk--maybe it's 40 percent; I don't know exactly--but decides they want to enact an ordinance dealing with discrimination against...on the basis of sexual preference and the other parts of the state don't have a desire to do that, I'm trying to figure out what the... [LB912]

BYRON BABIONE: Well, this law would not allow municipalities to add protected classifications, whether they're protected classifications like personal appearances or sources of income. [LB912]

SENATOR ASHFORD: Well, I know it doesn't apply just to that,... [LB912]

BYRON BABIONE: Right. [LB912]

SENATOR ASHFORD: ...but I'm not saying that it does. I'm just...that's the topic of the day. [LB912]

BYRON BABIONE: Well, those cities would not be able to add protected classifications to their ordinances, but the interested persons and those with a stake in it could come to the State Legislature to have the state statutes amended. [LB912]

SENATOR ASHFORD: But, well, let's say...let's take it a step further. Let's say there was an ordinance passed in Omaha that said that the people of the city of Omaha could vote to add a protected class of...based on sexual orientation to its ordinance. There you have direct voter participation in an ordinance regarding that issue. Do you feel that that's a problem as well or that the better...are you saying the better place to come is here? It's not necessarily harmful to do that, but the better place to debate it is in the Legislature? [LB912]

BYRON BABIONE: Yes, and that's what LB912 does, and the reason is, is because

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

Judiciary Committee  
February 22, 2012

---

that's a pretty...if you have problems of discrimination, especially if you're saying you have those kinds of problems in the largest city in the state, then it's probably something the State Legislature should take a hard look at. That's what LB912 allows. [LB912]

SENATOR ASHFORD: But what if they take a hard look at it and decide they don't want to do anything about it even though the majority of the people in the city of Omaha want to do something about it? [LB912]

BYRON BABIONE: Well, that's an indication that the majority of the people in the state of Nebraska don't want to change that, and so then you have all voices of the state speaking on the matter. [LB912]

SENATOR ASHFORD: Okay. [LB912]

BYRON BABIONE: And if I... [LB912]

SENATOR ASHFORD: No, that's fine; I get your point. Okay. [LB912]

BYRON BABIONE: Thank you, Senator. [LB912]

SENATOR ASHFORD: Thanks. [LB912]

BYRON BABIONE: If I could, Senator Council, I just wanted to point out that Nebraska statutes do prevent discrimination based on age; it's at Section 48-1001. There's a comprehensive state statute that covers that, so LB912 would not affect any municipal ordinance that also prevented discrimination based on age. [LB912]

SENATOR ASHFORD: Okay. [LB912]

SENATOR COUNCIL: And if I may respond. In fact, I was going to publicly state in reading LB912, I didn't...overlooked the statement of age discrimination. I was focusing in on the Nebraska Fair Employment Practice Act and the Fair Housing Act that were referred to in the bill; did not see that it also mentioned the Age Discrimination in Employment Act. [LB912]

BYRON BABIONE: Okay. [LB912]

SENATOR COUNCIL: And would publicly apologize to Senator McCoy because that was my oversight; I was focusing in on the Nebraska Fair Employment Practices Act. [LB912]

BYRON BABIONE: Sure, that's totally understandable. [LB912]

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

Judiciary Committee  
February 22, 2012

---

SENATOR ASHFORD: Thanks, Byron. [LB912]

BYRON BABIONE: Okay, thank you. [LB912]

SENATOR ASHFORD: Next proponent? Next person in favor of the bill? [LB912]

RICHARD HEDRICK: I am Richard Hedrick, H-e-d-r-i-c-k. As I read this bill, this bill brings up states' rights arguments. Some will argue that a village cannot pass any law they want; states can't. LB912 to me is an attempt to rein in a village, attempt to dictate their beliefs on all state citizens. That's me, a citizen. What kind of a mess would there be if all villages, towns, cities would pass different discrimination laws in Nebraska? Discrimination laws are in a class that should be in...at state level, not village level. Village, state, or federal level brings to me the grain embargo. To keep the food prices in the United States low, grain was not allowed to be shipped out of the U.S. I cannot remember who was President. My wife said that was Eisenhower. Her father was so mad that he named one of his pigs Ike and the other Mamie. The embargo had to be at federal level by a conservative President, not village level. Farmers will not change party. All the "Repub" wannabees say they will lower gas prices if elected. I heard a news statement: Last year, the U.S. sold more oil products than bought. Hitler-liberal Obama hasn't used an embargo to lower gas prices. The wannabees, "arch-conservatives" running for President are all going to lower gas prices. How? Not letting China pay more for gasoline by a low oil embargo. I can't remember when traveling to another country, you could bring back only \$300 worth of goods. This kept jobs in the U.S. Open borders has worked longer than I thought. For the people who will remember Barnum and Bailey Circus, Karl Rove following in Barnum's footsteps has kept the rogues in line for years. Thank you. [LB912]

SENATOR ASHFORD: Thanks, Richard. I don't see any questions, but thanks for coming down. Any other proponents of the bill? [LB912]

JOHN CHATELAIN: (Exhibit 4) Yes. My name is John Chatelain, J-o-h-n C-h-a-t-e-l-a-i-n, and I'm speaking on behalf of the Statewide Property Owners Association. We have about 750 members in a statewide association. We represent people who have maybe just a few rental properties up to some that have several hundred or thousands of properties. Our association represents thousands of properties across the state. Now our concern with the proposed GLBT ordinance is that it would make it more difficult and burdensome and litigious for the members of our association to work in Nebraska. We don't take the position that GLBT people should be discriminated against, and I'm sure that many of our members already rent to many people that fall into this classification and they end up being very good tenants, and so that really isn't the issue. We're concerned about adding more burdensome regulations to our business. Currently, there are a number of different classifications that we have to deal with as property owners under fair housing rules. Examples would be race, religion,

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

Judiciary Committee  
February 22, 2012

---

gender, nation of origin, and disability; and in each of these cases it's clear that the classification is not based on the behavior of the person. It's based on, you know, someone...something that somebody can't control. It's not settled, in the case of GLBT, that this is the case with those classifications, so there is a difference. I don't think the case has been made that GLBT people need special protection either. They're already renting houses and apartments in Nebraska. They're already working, they're employed by employers across the state, and I'm not sure the case has been made. So what is really behind this? It appears to be an endorsement of the GLBT class. And then you get into religious problems of imposing compliance with this upon people who would disagree with it for religious reasons. So I think on this type of thing where it's a serious policy issue, it should be statewide; it should not be done on a citywide basis. You can imagine that many cities across the state could adopt extensions or additions to the classification for protected classes under fair housing if this gets, you know, if this gets out of control. Maybe recovering alcoholics or drug addicts should be protected in housing and employment, maybe people with tattoos or body piercings should be protected, maybe gambling addicts, I don't know. You can imagine a city taking that on as a cause and saying we need to protect these people. And so it's our position that we do not want to discriminate against these people, but we do not want additional burdens added to our business. And for the reasons that I've stated, I think the committee should support LB912 and pass it. [LB912]

SENATOR ASHFORD: Thank you, John. [LB912]

JOHN CHATELAIN: Okay. [LB912]

SENATOR ASHFORD: Yeah. You may have some questions. Senator McGill. [LB912]

SENATOR MCGILL: I don't really have a question, but I just need to say for the record that I take offense to comparing members of our gay and lesbian community to addicts. [LB912]

JOHN CHATELAIN: I wasn't comparing them. [LB912]

SENATOR MCGILL: I...yeah. [LB912]

SENATOR ASHFORD: Senator Council, Senator Lathrop. [LB912]

SENATOR COUNCIL: Yeah, and I guess I was kind of confused, Mr. Chatelain. I was following your testimony and I didn't know whether you thought you were at an Omaha City Council meeting or talking on LB912. But let's talk about LB912, and LB912 seeks to limit the ability to add protected classes at the local government level. And I'm trying to understand your statement that you don't believe anyone should be discriminated against but you don't want to add protected classes. So is it your position that you

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

Judiciary Committee  
February 22, 2012

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support discrimination for which there is no recourse? [LB912]

JOHN CHATELAIN: No, that's not my position. And GLBT members are renting units in our association, and so... [LB912]

SENATOR COUNCIL: So are African-Americans and they're still discriminated against every day, so. [LB912]

JOHN CHATELAIN: But in that case, the policy decision has been made by the state to make that a class that there could be recourse for discrimination. [LB912]

SENATOR COUNCIL: So your answer to my question is that you believe that there are certain acts of discrimination for which there should be no recourse? [LB912]

JOHN CHATELAIN: No, I'm not saying that. I'm saying that if you're going to add to those suspect classes, it should be done statewide and not city by city by city. And each city might adopt different extensions to those classes, which would make a real difficult time for anybody doing business in the state if you had to keep track of every city having different suspect classifications and worried about running afoul of those. My experience has been that you get taken to the Nebraska Equal Opportunity Commission if someone alleges that you have violated their suspect class in discrimination against them. It doesn't mean that I agree with discriminating against them and that's not the policy of our association. But if we add more groups to those classes that could go to the EOC and sue us, then that's burdensome on our association; and if every town or city can do that, then we have a real problem on our hands statewide. And so I think the intent of LB912 is what we would buy into, is that if you are going to add to these classifications, that it should be done statewide rather than each city doing its own thing. [LB912]

SENATOR COUNCIL: And I, you know, I appreciate the argument that's made by business owners, including your property owners, about the "burden" of giving people additional opportunities to litigate, but we do that quite a bit down here. I mean, we initiate, we enact laws that provide new causes of actions every day that impose burdens. And you know for me, I find that the contradiction in saying that you want people not to be discriminated against but if they're discriminated against and happen to be in a certain class, they're not entitled to...you don't believe that they're entitled to recourse because granting them recourse would be too much of a burden on you. Is that...does that...? [LB912]

JOHN CHATELAIN: I'm not saying that these classes should not be added as suspect classes. All I'm saying is that it should be done statewide, where I think there's a better vehicle for determining those types of policy decisions, rather than having each city adopt its own policy decisions on that. [LB912]

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Transcriber's Office

Judiciary Committee  
February 22, 2012

---

SENATOR COUNCIL: Okay. And you know...and I respect that. But your testimony began with why GLBT shouldn't be a protected class, so I...that's all I... [LB912]

JOHN CHATELAIN: I personally believe that it shouldn't be added. [LB912]

SENATOR COUNCIL: Okay. [LB912]

JOHN CHATELAIN: But if the State Legislature added it, then we would live with it. [LB912]

SENATOR COUNCIL: Thank you. [LB912]

SENATOR ASHFORD: Senator Lathrop. [LB912]

SENATOR LATHROP: I just wonder if you think this would stop or prohibit--you know, they have an ordinance up in Fremont that deals with immigration in housing--if you feel like this would prohibit communities from coming up with their own policies regarding immigration issues? [LB912]

JOHN CHATELAIN: You know, I haven't thought about what the effect of LB912 would be on the Fremont situation, so I'd have to study that a little bit more before I could respond to that. It may indeed affect that, but... [LB912]

SENATOR LATHROP: Okay. [LB912]

JOHN CHATELAIN: ...it's not, you know, it's not my intent that it do so. [LB912]

SENATOR LATHROP: Okay. [LB912]

SENATOR ASHFORD: Thanks, John. I don't see any more questions. [LB912]

JOHN CHATELAIN: Thank you. [LB912]

SENATOR ASHFORD: Thank you. Next proponent? Proponent? Going once... [LB912]

KERI TIMMERMAN: I am. [LB912]

SENATOR ASHFORD: Here she is. Okay. [LB912]

KERI TIMMERMAN: (Exhibit 6) Hi. Good afternoon. My name is Keri Timmerman. I'm an attorney here in the state of Nebraska. Thank you for allowing me to give a brief testimony regarding why I support LB912. I have heard of the issues surrounding

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

Judiciary Committee  
February 22, 2012

---

political subdivisions, including additional protected classes in their employment discrimination policies, but the state of Nebraska has not included sexual orientation as a protected class in its own employment discrimination laws. The committee here has the opportunity to curb a potentially confusing and contradictory patchwork of rights relating to hiring and employment within this state. Several political subdivisions have taken it upon themselves to include classes of persons as deserving protection from potential discrimination even though those persons are not within a protected class. These include the city of Lincoln, the University of Nebraska, and the Lower Platte South Natural Resources District. The debate about whether homosexuals, the morbidly obese, or former alcoholics deserve the same protection accorded to persons on the basis of race, color, sex, disability, or religion is not before this committee, at least in the current form of this bill. That debate will need to occur if you want to change the provisions of Nebraska Revised Statute 48-1102, which is the state statute. It appears several political subdivisions have included sexual orientation as a protected class when there is no state or federal statute that provides protection for persons based upon this class. In fact, federal courts have generally been very careful to avoid creating such a right to employment protection when Congress has not acted. Even the U.S. Court of Appeals for the Second Circuit in New York has recognized the firestorm that may arise if they bypass the electorate and create such a protected class under the Fourteenth Amendment of the U.S. Constitution. Their statements of the current state of the federal law are clear. Title VII does not include sexual orientation as a protected class despite several opportunities for Congress to include it. The committee should approve LB912. Why? Because it avoids the disingenuous position taken by these political subdivisions, namely, that homosexual persons have legal recourse if they are actually discriminated against based upon their sexual orientation. Unless the authority of the University of Nebraska or Lower Platte South Natural Resources District has increased dramatically, no employee of these entities could reach a trial on any claim of discrimination based upon sexual orientation. While it may be politically expedient for these political subdivisions to claim they provide such protection, any aggrieved person would likely find the political subdivision's internal policy to have no basis in statute. They have no real protection based upon an internal policy. [LB912]

SENATOR ASHFORD: Keri, could just sum up? I know you realize that... [LB912]

KERI TIMMERMAN: Yes, I'll sum up, and you have a copy of my statement. [LB912]

SENATOR ASHFORD: I do, and could you just tell us what city you are from? [LB912]

KERI TIMMERMAN: Um-hum. I'm from Lincoln. [LB912]

SENATOR ASHFORD: Okay. [LB912]

KERI TIMMERMAN: I'm here in Lincoln. [LB912]

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

Judiciary Committee  
February 22, 2012

---

SENATOR ASHFORD: Great. [LB912]

KERI TIMMERMAN: Yes, to sum up... [LB912]

SENATOR ASHFORD: Oh, okay. Well, actually, why don't we go to questions? [LB912]

KERI TIMMERMAN: Yes. Do you have any questions? [LB912]

SENATOR ASHFORD: I don't see any questions. [LB912]

KERI TIMMERMAN: Okay. [LB912]

SENATOR ASHFORD: So thank you. [LB912]

KERI TIMMERMAN: Great. Thank you so much for your time. [LB912]

SENATOR ASHFORD: Thank you for your time. Other proponents, those who are for the bill? Okay, those who are opposed to the bill, against it? Why don't we come down--no, come on up. Ben can sit there and we've got other...if you're speaking, kind of move up to the front is all I'm trying to say here. [LB912]

RHONDA UHER: Okay. Good afternoon. Senator Ashford and members of the Judiciary Committee, my name is Rhonda, R-h-o-n-d-a; Uher, U-h-e-r. I am the department manager for the Omaha Human Rights and Relations Department and I'm here to represent the city of Omaha in opposition of LB912. Currently, Nebraska law allows cities to adopt policies which are more comprehensive than those contained in state law. LB912, however, would prevent cities from passing an ordinance addressing any additional protected classes that are not recognized by state statutes. Omaha has been proactive over the years in protecting the equality of all of its residents. We would like to continue to do so without the restriction on our local control. Others today will testify about a proposed ordinance that the Omaha City Council will consider beginning next week. I would like right now to just focus on what LB912...how that would affect existing law for the city of Omaha. Currently, the Nebraska Fair Housing Act--now this is the Nebraska state Fair Housing Act--does not include protections for age or marital status. LB912, Section 3(3) would nullify Omaha's Section 13-300(a) and (j) of the Omaha Municipal Code, which currently protects age and marital status for fair housing. The ordinance was adopted by the city council in 1992. The passage of LB912 would set the city of Omaha back 20 years in the protection of individuals based on age and marital status. If employers and landlords are not discriminating as a whole, they should not have any worries about what protected classes are added in the future. We respectfully request that the committee indefinitely postpone LB912. [LB912]



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

Judiciary Committee  
February 22, 2012

---

SENATOR ASHFORD: Fine. Let me...just one little caveat to the group. I have...we have no problem in hearing about the Omaha proposal, but let's try and, if we can, focus our testimony on the state, on Beau McCoy's measure because, you know, we're not deciding that one. [LB912]

RHONDA UHER: Okay. [LB912]

SENATOR ASHFORD: But I certainly...you can refer to it in your testimony, but I'd prefer if we just deal with this. Any questions? Senator Council. [LB912]

SENATOR COUNCIL: Yes, yes. And thank you, Ms. Uher, and I apologize again for not being clear about the distinction I was trying to draw on age discrimination. [LB912]

RHONDA UHER: Um-hum. [LB912]

SENATOR COUNCIL: And I referred to the Fair Employment Practices and was intending to refer to the Fair Housing Act, recognizing that we have a separate Age Discrimination and Employment Act. [LB912]

RHONDA UHER: Right. [LB912]

SENATOR COUNCIL: But under our current fair housing statute, age is not a protected class... [LB912]

RHONDA UHER: Um-hum, that's right. [LB912]

SENATOR COUNCIL: ...nor is marital status... [LB912]

RHONDA UHER: That is right. [LB912]

SENATOR COUNCIL: ...a protected class. But Omaha, since 19-- [LB912]

RHONDA UHER: '92. [LB912]

SENATOR COUNCIL: ...'92 has added those as protected classes. [LB912]

RHONDA UHER: That's correct. [LB912]

BRENDA COUNCIL: And that was the question I was trying to address with Senator McCoy, that under his bill as I read it--and I guess it would require some discussion of the constitutionality of its retroactive effect--but you have in city ordinance for 20 years... [LB912]

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

Judiciary Committee  
February 22, 2012

---

RHONDA UHER: That's right. [LB912]

SENATOR COUNCIL: ...included age as a protected class under housing discrimination... [LB912]

RHONDA UHER: Um-hum. [LB912]

SENATOR COUNCIL: ...where the state of Nebraska hasn't. [LB912]

RHONDA UHER: That's correct. [LB912]

SENATOR COUNCIL: And would you view LB912 as written, without discussing constitutional implications, to void your age and marital status discrimination in housing? [LB912]

RHONDA UHER: Yes, I do, yes, I do. [LB912]

SENATOR COUNCIL: And what kind of complaints has your department received over the time...in the time that you've been there that are based on age? [LB912]

RHONDA UHER: We do not see that many, probably two to three a year. But discrimination is if a person believes they've been discriminated against, so just because you don't see that, you know, many doesn't mean it's nonexistent. [LB912]

SENATOR COUNCIL: All right. Okay, thank you. [LB912]

SENATOR ASHFORD: Thanks, Rhonda. [LB912]

RHONDA UHER: Um-hum. [LB912]

SENATOR ASHFORD: Next? Ben is next. Councilman. [LB912]

BEN GRAY: Chairman Ashford. Chairman Ashford and members of the committee, my name is Ben Gray. I reside at 5425 Fort Street in Omaha, Nebraska, 68131. My last name is spelled G-r-a-y, and I represent the city council from the second city council district in the city of Omaha. I'm here in opposition to LB912 for a number of reasons, but I just want to...as a beginning statement, I do have some concerns about the timing of this. I have even more concerns about the retroactivity of it because not only do I find that onerous, but I question the constitutionality of it. And Senator McCoy also mentioned that, you know, he believes that the World-Herald got it right. I believe that the World-Herald got it right, too, because they endorsed the passage of my ordinance. So I believe they got it right as well, so we don't differ on that. But let me say this. Right now, there are 150 cities in this country that have passed ordinances like this. Right

now, there are 17 states that have passed ordinances like this. There was a recognition in Omaha based on a study that was done by the University of Nebraska Medical Center which indicates that we have a problem. There are...as I mentioned, the cities and states that reflect this also consider that we have a problem, and that problem is a class of individuals that are treated differently because of attitudes and beliefs of the majority. And when you have those attitudes and beliefs of the majority, then we are obligated by law, all of us who are elected officials, we are obligated by law to undertake the oath that we took and defend the Fourteenth Amendment to the Constitution. And the Fourteenth Amendment is clear: If you were born or naturalized in this country, you have the right to life, liberty, and property with due process and equal protection under the law. Right now, we have a class of citizens who are not being protected as they should be. And we're not talking about citizens who are...we're not talking about citizens with ear piercings or other body piercings or body art or some of those other things, Senator McGill, that you talked about. We're talking about individuals who go to work every day, who create businesses, who contribute to the economy, who have fought and defended our nation, who continue to protect us as police and firefighters. So we're talking about individuals who have...who are of a class that has been discriminated against. The evidence, I think, is abundantly clear in the cities and states and the study that I mentioned. I will also say that of all those cities and states, when I checked with the vast majority of them, that there was no increase, no significant increase in litigation in cases because they approved these ordinances. So I'm opposed to LB912 because, first of all, I don't think that one size fits all. Secondly, I don't think that in a legislative body where many of you have talked about wanting to have considerably more...allowing municipalities and other government subdivisions to have more local control. I think we need to either have more local control or not have local control, but this body ought to make the decision about that and make it clear. Thank you. I will stop now with the red light and answer any questions that you all might have. [LB912]

SENATOR ASHFORD: Any questions of Ben? Yes, Senator Council. [LB912]

SENATOR COUNCIL: Thank you. Thank you, Councilman Gray. Mr. Chatelain made a point, and I think Senator McCoy also alluded to it, and that's the issue of letting all of the residents of the state of Nebraska determine what protected classes should be in any community in the state of Nebraska, and there was some conversation about...and Ms. Uher talked about what's going...what Omaha has done for age, and I suspect that... [LB912]

BEN GRAY: Yes, and marital status. [LB912]

SENATOR COUNCIL: Age and marital status for housing. [LB912]

BEN GRAY: Yes. [LB912]

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

Judiciary Committee  
February 22, 2012

---

SENATOR COUNCIL: I guess my question to you is: Do you view the subject of LB912 to be one of those areas where while a majority may not see it as good for the state of Nebraska but because of unique issues in Omaha or Lincoln that the residents of Omaha, Lincoln, and/or their representative see it as being in their best interest to add a protected class, that LB912 would be a rollback that could actually harm the city of Omaha? [LB912]

BEN GRAY: LB912 could actually harm the city of Omaha because as we look across the country, and especially in this economic climate, we need to have our best face on. And our best face, in my judgment, needs to be that, you know, we have a welcoming city, we have a welcoming state. The difference here...the only difference here, as I see it, is that in Omaha and in Lincoln at this current time, we have the will to act. We know that there's a problem. We've seen information back and forth that there are significant issues as it relates to the GLBT community. And so, yeah, I agree. Yes, to answer your question, I think Omaha would be harmed by legislation of this type because it would send a signal that the city of Omaha, which is the largest metropolitan-class-sized city in the state, is an unwelcoming environment and I think it would run...have the chilling effect of running businesses away. I might also add, though, that as it relates to sexual orientation, you may recall, Senator Council, that the Omaha Public Schools Board passed legislation of this type about 15 years ago, and if the city...and if this bill were enacted, the Omaha city...the Omaha Schools Board would not have the ability to have that as a protected class. And, as you all know, we have serious concerns about bullying in our schools both locally and nationally, and to enact LB912 with the retroactivity that it would cause would do undue harm to the Omaha Public Schools and would run the risk of bullying increasing and not decreasing. And it would also run the risk of businesses looking somewhere else other than in the state of Nebraska and the city of Omaha and Lincoln. [LB912]

SENATOR COUNCIL: Thank you. [LB912]

SENATOR ASHFORD: On a totally unrelated topic, but I have to always publicly thank you for the work you do in the hospitals. The 3:00 a.m. calls and the 4:00 a.m. calls that I'm aware of and that you're aware of is exemplary, and I do want to thank you for that work. [LB912]

BEN GRAY: Thank you, Senator; I appreciate it. [LB912]

SENATOR ASHFORD: Any other questions of Ben? Seeing none, thank you. [LB912]

BEN GRAY: Thank you; and thank you, Senators. [LB912]

SENATOR ASHFORD: Next opponent. [LB912]

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

Judiciary Committee  
February 22, 2012

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AARON WEINER: Hello, Senators. My name is Aaron Weiner. I'm an attorney in Omaha, Nebraska. My address is 2708 North 53rd Street, and I feel like I'm here to speak for Omaha really. I don't think Omaha requires the paternalism that has been suggested here, and I see Omaha as just a very dynamic town right now. I live in Benson, and you would be very impressed to see what's going on in Benson and kind of the new resurgence of that community. I think you'd be impressed. I was involved in the Leadership Omaha program through the chamber of commerce and had a nice inclusivity day where we talked about being honest about these issues and forthright, which I'm not really hearing a lot today with some of the witnesses. But the young professionals organization out of the chamber wrote a very nice letter to the city council the last time this came up suggesting that they would like to have a more inclusive message sent out to the world and invite people to Omaha and welcome them. And I think that that is a good thing, but I think it's up to Omaha to debate that and to decide what Omaha's identity should be. I see this bill as an attempt to cut off the debate in Omaha, to take away Omaha's autonomy on this issue, and I think Omaha should have every ability to have a public debate about this and determine what it wants to say about its own character into the future. I am a huge fan of Omaha. I was born and raised there, went away to school, came back every summer. I hope my daughter wants to live there and stay in Omaha, and I think Omaha should decide its own character on this issue. And in fact, I kind of think the news here is if any of the Omaha City Council people are involved in having the state basically disenfranchise Omaha, I think that's the news. I think Omaha can make its own decision. And if people are saying, well, we don't trust the Omaha City Council to make a decision or the people of Omaha to have their own debate on this issue and make their own decision, I think that's the news. I really think what I'd like to see here is support for the local debate in Omaha, support for local autonomy in Omaha, and give them a chance, Omaha, to say that their value is that they want to respect everybody and be inclusive, and they want to send that message loud and clear. Omaha should have every right to do that and make that decision on their own. Thank you. [LB912]

SENATOR ASHFORD: Thanks, Aaron. Any questions of Aaron? Seeing none, thank you. Next opponent. [LB912]

CHAD EACKER: (Exhibit 7) Hello, good afternoon. My name is Chad Eacker, it's spelled E-a-c-k-e-r. I'm from Omaha. I really have two perspectives on this issue. I'm opposed to LB912. I'm a board member on the Greater Omaha Young Professionals board, which was referred to in the last testimony. I'm also a small business owner in Omaha. My partner and I own our business. We've added the antidiscrimination verbiage to our own workplace policy; LB912 will never change that. So if you want consistency, I don't believe this will do it because inevitably young professionals, young people who own businesses will want to attract the talented people that we need to operate our business. I'm also part of the equal employment, or Equal Omaha, which is proponents of the equal employment ordinance which has been referred to as the GLBT

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

Judiciary Committee  
February 22, 2012

---

ordinance. I just want to clarify housing is exempt, so there should be no issue there as long...as well as religious institutions, so there is no argument there. What I'd really like to bring home, though, is that there has been a lot of grass-roots work done up through...since November to try to get the ordinance passed. I think you all know that there was a resolution passed to seven...all council members voted for, 7-0, as kind of a prelude we see to introducing the ordinance on the 28th. We have the momentum behind us; we simply ask that you allow us to continue our work and not interfere with what we're trying to do in trying to create an image that's welcoming for Omaha so that my business can attract employees from across the country. Thank you. [LB912]

SENATOR ASHFORD: Thank you, Chad. What is your business? [LB912]

CHAD EACKER: I'm a multimedia design firm, Delinea Design. [LB912]

SENATOR ASHFORD: Good. Senator McGill. [LB912]

SENATOR MCGILL: I just asked Senator Council this, too, but do you have any idea in Omaha how many businesses currently include sexual orientation as part of their policy? I know a lot of bigger corporations are starting to do that. [LB912]

CHAD EACKER: Fortune 500s do. [LB912]

SENATOR MCGILL: Yeah. [LB912]

CHAD EACKER: Most of the Fortune 500s in Omaha do include the verbiage. It's hard to say because there's no legal standing. [LB912]

SENATOR MCGILL: Yeah, lots of small businesses, too, obviously, but... [LB912]

CHAD EACKER: Lots of small businesses simply choose, because there's no law, to include it; it's hard to track. [LB912]

SENATOR MCGILL: Okay. [LB912]

CHAD EACKER: But as I'm saying this, also we have over 100 businesses in support of the ordinance in Omaha. We have...we're gaining a lot of support for what we're trying to do, and we simply ask that we are allowed to continue that effort. [LB912]

SENATOR MCGILL: Thanks. [LB912]

SENATOR ASHFORD: Thanks, Chad. [LB912]

CHAD EACKER: Thank you. [LB912]

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

Judiciary Committee  
February 22, 2012

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SENATOR ASHFORD: I don't see any other questions. Next opponent. Next? Yeah, okay. Then how many more opponents do we have after this testifier? A few more? Okay. Shelley isn't going to testify? (Laughter) She's back in her old stomping grounds here. Yes, ma'am. [LB912]

DOREEN MORITZ: Perhaps I should speak on behalf of Shelley Kiel. (Laugh) [LB912]

SENATOR ASHFORD: Yeah. [LB912]

DOREEN MORITZ: (Exhibit 8) My name is Doreen Moritz, D-o-r-e-e-n, last name M-o-r-i-t-z. I live in Lincoln, Nebraska. Dear Senators, we come today before you on behalf of the Standing on the Side of Love campaign to ask that you do not advance LB912. Standing on the Side of Love is a national public advocacy campaign with about 250 Nebraska members that harnesses love's power to stop oppression. LB912 is about oppression, exclusion, and fear. If passed, it will perpetuate city laws and ordinances which include people, particularly based on sexual orientation or gender identity, from nondiscrimination laws. We actually urge Senator McCoy to express his concerns that a city-level nondiscrimination law would include groups that are not protected under state nondiscrimination laws by asking him to return to the next legislative session and bring a legislative bill that would include sexual orientation and gender identity in our state nondiscrimination law. Thank you, and we urge you not passing. [LB912]

SENATOR ASHFORD: Thank you very much, Doreen. Any questions of Doreen? No? I don't see any. Thank you. Next opponent. [LB912]

SHANE STRONG: Hello. My name is Shane Strong, that's spelled S-t-r-o-n-g, and I reside at 2418 Ohio Street in north Omaha. And I'm here today to talk to you about my opposition to LB912. I come to you, before you for three reasons: (1) I am against this because I am a veteran; (2) I am against this because I'm an Independent; and (3) I am against this because I am a brother of two homosexual individuals. First off, as a veteran I came to Omaha. My wife and I both served in the Air Force by way of Offutt Air Force Base. You want to talk about potential of discrimination maybe not being one part of the state as the other, there aren't a lot of veterans, but we do have an awful lot in Omaha. And we came by and we stayed here in Omaha and we had a really great time and we were both linguists. And I don't know if you're familiar with the Defense Language Institute, but after 9/11 it made headlines when 75 Arabic and Farsi linguists were kicked out under "don't ask, don't tell," post 9/11, a very mission-integral part of our wars against terror. And in my time I saw individuals who went through basic training successfully, were participating in the program--which had a 50 percent attrition rate, by the way--successfully, who ultimately were reduced to a single word: dishonorable. Reduced to a single word: homosexual. So I have seen workplace discrimination, hostile work environments outside of the war zone. The government was

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

Judiciary Committee  
February 22, 2012

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trying to root out people that they told us never go to a...the gay bars in Omaha because OSI was staking out the place, so that's one thing. So as a veteran, I've heard the proponents of this bill compare homosexuals to drug addicts, compare them to tattooed individuals. I compare them to veterans because it's a choice to serve. We are not in a compulsory military state. And I have served with closeted homosexuals and with great distinction and honor. Secondly, I am an Independent. I see this bill as turning civil liberties on its head. The federal government sets a minimum for the states to follow and the states comply with that. The state sets a minimum for the cities to follow and they comply to that. I don't see why the state is interested in trying to take away rights that the city wishes to give its people. I do not think that the Legislature here, the Unicameral, is the only place we can have this debate, and I don't think that's necessary for us to have this bill. Finally, I am a brother of two homosexuals, so this is an issue very dear and near to me, and they do have occasions where they know individuals or they themselves have experienced discrimination in the workplace. They're my brothers; I want to do right by them. I think that Omaha can do better than that, and I think that Nebraska can do better than that. Thank you very much. [LB912]

SENATOR ASHFORD: Thank you, Shane. Any questions of Shane? Seeing none, thank you for your comments. [LB912]

SHANE STRONG: Thank you. [LB912]

SENATOR ASHFORD: Next opponent. Hi, Jane. [LB912]

JANE KLEEB: Good afternoon, Senators. Hello, Chairman Ashford. I'm here today to oppose Senator McCoy's bill, LB912. There...hopefully soon--oh, sorry. Jane Kleeb, K-I-e-e-b, 1010 North Denver, Hastings, Nebraska, representing Bold Nebraska--I'm not just representing myself--representing the organization Bold Nebraska, which is a progressive advocacy group in the state. I think there's going to come a day when, and hopefully it's very soon, when our state has the dialogue statewide about rights for the GLBT community. It has been a void in our state. I think it's inevitable that the day will come. We have a lot of talented, very giving parents and children that are gay in our state that deserve equal protection under the law. Omaha is having that dialogue right now. And anything that would stop that dialogue I just don't think it's the state's business to get in. It's clear that this is and needs to be a statewide law as well. But if we have cities that are ready to move forward with that, I don't think that we as a state should get in the way of that, just like I don't think that, you know, the state should get in the business of cities moving forward on solar energy or on wind energy or other very necessary things that cities in particular are doing. And so I'm here, really in solidarity with the GLBT community as well. On a very personal level, my little girls' godfathers are both gay. And as a single mom when I lived in D.C., I'm not sure what I would have done without them, so I know that there's lots of other families like that in Nebraska that are deeply affected by discriminatory practices, so thank you. [LB912]



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Transcriber's Office

Judiciary Committee  
February 22, 2012

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SENATOR ASHFORD: Thanks, Jane, for your comments. Any questions? No, I don't see any. Thank you. Former--I knew we'd get you up here--former Senator Kiel is here. I knew I'd get you. [LB912]

SHELLEY KIEL: Yeah. I feel like I'm the codger pulling up behind the rest of the youngsters here, as a matter of fact. But I am Shelley Kiel, K-i-e-l, 319 South 53rd Street, Omaha, Nebraska, and I'm president of Citizens for Equal Protection. And I have been president actually for a few years now, and this is some of the most exciting thing that I have...one of the most exciting things I have seen happen in Omaha in a long time with regard to protection of civil rights. And I, like Councilman Gray, have suspicions about the timing of LB912. It's not exactly like it's the elephant in the room; it's very clear that this was brought because it was an effort to throw a roadblock in the way of the ordinance that Councilman Gray is bringing in order to enact--hopefully enact--discrimination prohibition against GLBT community. And I've thought, as I've considered everybody who has talked here today and the questions that have been asked, and as a former policymaker myself, that...it might...you all know the Hippocratic Oath, a part of which is first do no harm. And I've always thought that perhaps that ought to be an oath that policymakers take, too--first, please do not do harm to any group--and I see LB912 as intending to harm a particular group. You know, we can talk around this, you know, all day and all night, but this is the intent of this legislation, is to keep discrimination prohibition from being done in Omaha, Nebraska. You know, it's happened before; it will happen again. People have a problem with allowing other people to live their lives sometimes. But what I would ask this committee to consider is that, first, please do not do harm to a class of people in the state of Nebraska and in Omaha, and also to...hopefully, all of you will be invited to the party we'd like to have in Omaha when this ordinance is actually passed. So thank you very much for your time. Do you have any questions? [LB912]

SENATOR ASHFORD: Thanks, Shelley. Any questions of Shelley? Thank you very much. Any other opponents? Neutral testifiers? Seeing none, I think Senator McCoy waived, so that concludes the hearing on this bill, and we'll go to Senator Nelson, who is promptly here, so. (See also Exhibits 1-3 and 5) [LB912]

BREAK

SENATOR HARR: All right. [LB1162]

SENATOR LAUTENBAUGH: I think Steve's in charge now. [LB1162]

SENATOR MCGILL: Oh, it is your show. [LB1162]

SENATOR LATHROP: Oh, all right. Senator Nelson to open on LB1162. [LB1162]

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Transcriber's Office

Judiciary Committee  
February 22, 2012

---

SENATOR NELSON: Good afternoon, Senator Ashford, Senator Lathrop, and members of the Judiciary Committee. My name is Senator John E. Nelson, spelled N-e-l-s-o-n, and I represent District 6 in midtown Omaha. LB1162 grants the Secretary of State the power to appoint and commission a resident of a state bordering Nebraska, who is employed or has a business in Nebraska, to the position of notary public. Currently, only Nebraska residents may be appointed as notary public. Iowa and Wyoming, which border Nebraska, allow Nebraska residents to become a notary public as long as they work in the bordering state or maintain a business there. Several nearby states, namely, Minnesota, North Dakota, Montana, and others permit residents who reside in bordering states to become notaries in their state. This bill would provide residents of bordering states with the same opportunities afforded to Nebraska residents. LB1162 requires nonresidents and residents to follow the same application procedures. All applicants must pass a written examination, must not have been convicted of a felony or other crime involving fraud or dishonesty, and must be 19 years of age at the time of their appointment. After filing LB1162, I became aware of an inconsistency. Residents of a bordering state may be appointed as notaries as long as they meet all the application requirements and they continue to be employed or maintain a business in Nebraska. However, Nebraska residents will be removed from office if they move to a bordering state even if they continue to be employed or maintain a business in Nebraska, so this bill should be amended to allow residents to continue to serve as notaries if they move to a bordering state such as Iowa, as long as they continue to be employed or maintain a business in Nebraska. For that purpose, I have distributed a copy of the proposed amendment for your consideration. I urge you to support LB1162, advance it, and I will gladly answer any questions you might have. [LB1162]

SENATOR LATHROP: Thanks, John. I see no questions. Are you going to stay to close? [LB1162]

SENATOR NELSON: Well, I...yes, I will stay a while; let's put it that way. [LB1162]

SENATOR LATHROP: Okay, okay. Anybody here to testify in favor of the bill? How about in opposition? Neutral capacity? Okay. [LB1162]

SENATOR MCGILL: Got one. [LB1162]

SENATOR LATHROP: Looks like the bar is here. [LB1162]

SENATOR NELSON: Oh, yeah, I...just by... [LB1162]

SENATOR LATHROP: No, no, no. There's somebody... [LB1162]

SENATOR NELSON: Oh, is there someone? [LB1162]

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Transcriber's Office

Judiciary Committee  
February 22, 2012

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SENATOR LATHROP: ...testifying in a neutral capacity. [LB1162]

SENATOR NELSON: Oh, all right. [LB1162]

SENATOR HARR: Once again, it's who you're required to belong to. [LB1162]

KATIE ZULKOSKI: Actually... [LB1162]

SENATOR MCGILL: And what was the process. [LB1162]

KATIE ZULKOSKI: Senator Lathrop... [LB1162]

SENATOR MCGILL: And what was the process. [LB1162]

KATIE ZULKOSKI: Members of the committee, my name is Katie Zulkoski, and I am testifying today on behalf of the Nebraska Court Reporters Association, a voluntary association of court reporters in Nebraska. (Laughter) We're neutral on this bill. We appreciate what Senator Nelson has said with his intent of the bill and actually, his point about the continuation of the notary is a good one. We do just want to point to the committee that LB398, which Senator Lathrop introduced and your committee has advanced to General File, does also address this issue, and I'd be happy to answer any questions. [LB1162]

SENATOR LATHROP: Thank you. [LB1162]

SENATOR HARR: Thank you. [LB1162]

SENATOR LATHROP: I see no questions. [LB1162]

SENATOR LAUTENBAUGH: Always good to hear... [LB1162]

SENATOR LATHROP: Anyone else here in the neutral capacity? [LB1162]

SENATOR LAUTENBAUGH: It's always good to hear from the court reporters. [LB1162]

SENATOR LATHROP: Yes, it is. I see no one else to testify. Do you wish to close, Senator Nelson? [LB1162]

SENATOR NELSON: Just very briefly. Thank you, Senator Lathrop. [LB1162]

SENATOR LATHROP: Certainly. [LB1162]

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

Judiciary Committee  
February 22, 2012

---

SENATOR NELSON: (Exhibits 9-10) I just wanted to point out, and I think the committee has, letters of support both from Walt Radcliffe's office as far as Nebraska realtors are concerned, and also, I think, a letter from Thomas Cavanaugh in Omaha, the clerk there. I will just add that I had some personal experience with this in the practice of law. I had an employee, longtime secretary, who moved over into Iowa and could no longer serve as a notary, and that just seemed to me not quite right; that's the purpose I brought this bill. I realize that Senator Lathrop--I talked with him earlier--that there is a bill, and I understand it's been advanced to the floor, so I present this as...for your consideration and if it works, why, then go for it. Thank you very much. [LB1162]

SENATOR LATHROP: Very good. Thanks, John. We will next take up...that will close the hearing on LB1162 and bring us to LB1169, Senator Pirsch. Pete Pirsch. "Red Tie" Pete Pirsch. [LB1162]

SENATOR MCGILL: (Inaudible) [LB1169]

SENATOR PIRSCH: All-rightey. [LB1169]

SENATOR LATHROP: Blue coat. All right. [LB1169]

SENATOR PIRSCH: Thank you, Vice Chairman Lathrop and members of the Judiciary Committee. My name is, for the record, Pete Pirsch, P-e-t-e P-i-r-s-c-h. I represent the Legislative 4th District. I am the sponsor of LB1169. This bill, LB1169, is designed to target cases where young kids are dead due to foul play. Period. Perhaps many of you have seen newspaper articles, TV shows, over what has been called Caylee's Law. I know there has been categorical concern over the proposed reporting laws such as Caylee's Law, and of the ones I'm aware of as well, I, too, am aware of...or wary of facets of many of these reporting laws in other states as they've been designed. Many are very rigid and therefore have the potential to catch individuals in their nets who, I posit, should not be caught. That is not the design and intent of this bill though. Those bills, in my mind, are fundamentally different in their facets, and other than the commonality that there is a reporting requirement embedded in this bill, they are fundamentally different. So the net is very finely and narrowly focused in this bill to get at bad actors only and protect children. So in my mind, if the net is springing under my bill, it's because there is a...there has to be a dead young child and foul play is involved. Why we need it: Each state, I think you know, has to approach the need for reporting requirements based upon, first and foremost, an inventory of their existing criminal laws to determine if there is a need for it or not. And when you look at the backdrop in Nebraska and put the potential for harm to make sure justice is served when a young kid dies due to foul play, existing Nebraska criminal law, when you look at it, makes clear that we do have an opening in our armor, so to speak. Our criminal laws that protect, we have put up to protect kids and include 28-707, our child abuse and neglect, and there are certain subsections of that that do contain the words "serious bodily

injury" and "death." There are traditional kind of homicide charges as well that you as a prosecutor or law enforcement could look to if...in instances where a child is...you know, foul play is suspected with the child. There are statutes that deal with concealing the body. There's statutes that deal with providing false information. But there are...you know, reasonably, when you think about it, there are a series of facts that have...that can occur and have occurred in other jurisdictions where these currently existing statutes would be inapplicable and not able to bring about what we'd all agree is justice for the case where a parent acts in what I think we'd all agree is a very culpable manner--the child is dead and there is foul play pretty evident. And so I think at this point in time, probably another element that I wanted to talk about within the bill is the language that is utilized in this bill, as I mentioned before, is pretty finely honed to reach only appropriate cases in a way that I think other so-called Caylee's laws have not been, so this law applies--and this is not how it is administered or suggested in other states--only to young kids. So you're talking about babies and tots and grade-school kids only. We're not talking about teenagers. You run the risk, I agree, once you get into a series of kids who tend to have more emotional problems, tend to have the ability to be more self-sufficient or independent. You know, when you're talking runaways, you know, you're talking about kids who are 13, maybe 14, 15, 16, 17, and that hasn't been the approach taken in other states. I think in this that we...I want to make it abundantly clear here that we're talking about heavily dependent kids, kids who are very young and unable to care for themselves such that they're...if in the instance that they're absent that they...it is because foul play is involved. With respect to how this law differs from other Caylee's Law approaches, this law only applies to parents who knew their young kids were dead or missing for several days, so not...that's the beginning of the point in time. When you know your child is dead, you still get three days after that point in time--or missing--then the clock starts going. And a lot of other approaches are far more strict; 24 hours, I think, is the traditional approach. And it may be from...you know, arguable in other states, that it's not from a triggering point in which you actually knew, that you just...you know, that the child was dead. So this is, I think, a very important protective feature. It's also important to emphasize that even if it takes a period of time, you know, for them to know that it's missing, it's from that point in time that they realize the child is missing or dead, and with the...so the affirmative defenses, as a protective measure in this bill, are such that even if you technically violate the mainline rule of you wait longer than three days after you know your child is dead or missing--and this is the young child who is, you know, arguably incapable of taking care of itself--even if you violate that three-day, unlike other states where it's kind of a bright-line rule--you either violate it and, you know, strict liability--the affirmative defenses embedded in here are designed to weed out any cases where the child is anything other than dead. And so if the parents of a missing young child know they're missing and they wait longer than the three days to report, they still cannot be prosecuted as if it...if the kid turns out after the fact that the child is not dead but alive, and I think that's an important protection. Neither can a parent or guardian be prosecuted if they reasonably believed law enforcement was already aware that the child was missing. So a lot of the criticisms...you know, kind

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Transcriber's Office

Judiciary Committee  
February 22, 2012

---

of methodically went down and looked at the criticisms of the application of other Caylee's laws and took steps to design safeguards around them. Neither can a parent be prosecuted under my law--or my proposed law, the bill--if the parent was physically incapable of reporting the child missing. And then with respect to children who are deceased, it would be a...you could not be prosecuted under this. There's an affirmative defense if the deceased child died of natural causes, it turned out, even if you waited past the three-day period with this young child to report. Secondly, there would...you could not be prosecuted if the deceased child had previously been diagnosed by a physician with a terminal disease or terminal condition. Thirdly, you could not...it's an affirmative defense and you could not be prosecuted under this if the parent or legal guardian reasonably believe that law enforcement was already aware of the death and again, the not physically able to make a report is an affirmative defense to reporting the death of a child as well. So with that said, I think that the underlying concept of this bill is closing that gap and it's admittedly...it doesn't happen every day, but it does happen occasionally where, you know, parents...we afford a great deal of trust in parents in terms of taking care of their kids and not wanting to harm kids and rightfully so. It just very rarely happens but it does happen. Witness the, you know, in Nebraska, the Tristan (sic) Peterson case where the father actually had his son (sic) buried in a different county underground. It was very fortuitous that they were able...and there was a disagreement and it went all the way up on appeal as to whether or not there was a plea agreement that actually should have gone into effect to give the father protection, and that that alone was the basis by which they found the body, the father revealing it in a different county. The Michael Belitz case, another illustration of a parent...you know, the parent in that case had him in a bathtub decomposing, and then the Brendan Gonzales case in Sarpy. So it does happen and in those cases, because of the rightful trust that society affords in parents, which is unique...you know, it's parents that we look to, to be looking for their kids if they go missing. So if they're the bad actors in those rare cases, there is a gap in our law and this is, I think, commonsensically designed to get at that potential blue moon type of problem. [LB1169]

SENATOR LATHROP: If I may just make an observation by way of a question? It strikes me that under the bill, if you read it literally, anybody who doesn't report a death can be charged, and then they have an affirmative defense which they'd have the burden to carry. And it's not a priority bill for anybody, is that true? [LB1169]

SENATOR PIRSCH: It is not a priority bill. But it's not anyone who has a duty to report; you must be...and I call your attention to both line 5 on page 2. You have to have a certain relationship to the... [LB1169]

SENATOR LATHROP: Right. Okay, I get that. Parent. So my son or daughter is at Methodist, God forbid they're 11 years old when they die. [LB1169]

SENATOR PIRSCH: Right. [LB1169]

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

Judiciary Committee  
February 22, 2012

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SENATOR LATHROP: The first section would...Section 2 would literally require that I report that and if I don't, then I have an affirmative defense, but I'm still violating the law if I don't. And if you're going to work on this again next year, my thought is, and I haven't looked at the other statutes, Pete, but it just has to not be against the law and not be a violation. It's not enough, in my opinion, to make it an affirmative defense that my son or daughter died of natural causes because then, literally, you could prosecute somebody under this bill, and then they would have the duty to affirmatively allege that--and prove--that their son or daughter died of...you know, at Children's Hospital. [LB1169]

SENATOR PIRSCH: Yeah, well, and to answer, you're right. We're past the point of bill prioritization; I don't think that this has been prioritized. [LB1169]

SENATOR LATHROP: Okay. [LB1169]

SENATOR PIRSCH: So this... [LB1169]

SENATOR LATHROP: Just a thought. [LB1169]

SENATOR PIRSCH: But in terms of...I think that substantively...and I understand your argument that a prosecutor technically could. I think that a prosecutor has a very in-law duty to look at the statute as a whole and not just read the first, and then determine quite clearly that that would never be. But from a...so whether it's stylistic or substantive, I think that's a very good... [LB1169]

SENATOR LATHROP: Well, here's the difference. And not to argue with you about it but we just went through this on truancy. [LB1169]

SENATOR PIRSCH: Yeah. [LB1169]

SENATOR LATHROP: Literally, we could have the place fill up with people who said, I felt like I was going to be in trouble with the cops because I didn't... [LB1169]

SENATOR PIRSCH: Right. [LB1169]

SENATOR LATHROP: After my son or daughter died over at Children's, I didn't call the cops within 72 hours. And we just went through that with truancy... [LB1169]

SENATOR PIRSCH: Yeah, yeah. I think you hit the nail on the...yeah. [LB1169]

SENATOR LATHROP: ...and I would just say if we're going to define the crime, we probably need to define it more clearly. [LB1169]

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Transcriber's Office

Judiciary Committee  
February 22, 2012

---

SENATOR PIRSCH: Yeah. I think that's really well taken... [LB1169]

SENATOR LATHROP: Okay. [LB1169]

SENATOR PIRSCH: ...and I will accept that as a...some...an action item that needs to be done, so I'll do that, yeah. [LB1169]

SENATOR ASHFORD: Okay, good. Thanks, Pete. [LB1169]

SENATOR PIRSCH: Yeah. [LB1169]

SENATOR ASHFORD: Thanks, Pete. [LB1169]

SENATOR PIRSCH: Yeah. [LB1169]

SENATOR ASHFORD: Any testifiers on this bill, for or against? Seeing none, Pete, are you...? [LB1169]

SENATOR PIRSCH: I'm going to waive. [LB1169]

SENATOR ASHFORD: You're going to waive? [LB1169]

SENATOR PIRSCH: Yeah. [LB1169]

SENATOR LATHROP: All right. Good. [LB1169]

SENATOR ASHFORD: Thanks, Pete, very much. Senator Christensen is next. [LB1169]

SENATOR LATHROP: We're moving right along today. [LB1169]

SENATOR ASHFORD: We are. [LB1169]

SENATOR LAUTENBAUGH: Didn't anticipate this. [LB1169]

SENATOR ASHFORD: Yeah. [LB1169]

SENATOR CHRISTENSEN: I'm always quick. [LB785]

SENATOR ASHFORD: All right, Christensen's here. [LB785]

SENATOR COASH: Christensen usually fills up this room. [LB785]



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

Judiciary Committee  
February 22, 2012

---

SENATOR LATHROP: He's back. [LB785]

SENATOR LAUTENBAUGH: Bringing a gun bill? What's going on here? [LB785]

SENATOR LATHROP: Wow. [LB785]

SENATOR CHRISTENSEN: I had to have one. Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, here to introduce LB785. LB785 was brought to us by the NRA to begin a conversation about transportation storage of firearms in Nebraska. The bill seeks to provide clear guidelines for the transportation and storage of firearms in vehicles in publicly accessible parking lots throughout the state of Nebraska. Currently, many firearm owners are being subject to inconsistent rules and actions by employers regarding the transportation storage of firearms by employees and customers in private vehicles in parking lots open to the public. LB785 wants to bring a balance between private property rights and the right to bear arms for self-defense for law-abiding citizens. LB785 would put us in line with 16 other states that have some form of parking lot law for firearms, along with bringing the state policy for transportation and firearms...of all firearms more in line with Nebraska Concealed Handgun Permit Act in Section 69-2441(3) and (4). I have had several Nebraskans contact my office regarding situations they have found themselves in at work, some regarding concealed handgun permits and other transportation of other firearms. LB785 would prohibit an employer from creating a policy that prohibits the otherwise legal transportation and storage of the firearm in a private vehicle of an employee or customer with the vehicle...while the vehicle is in the employer's publicly accessible parking lot. In addition, it would allow for several remedies for employees who are injured while subject to such policies at work. It protects employees from termination because of employer's policy that prohibits firearms in private motor vehicles--violating subsection 2 of this bill--while also protecting employers from liability from an employee's action with a firearm in their vehicle. Finally, LB785 provides exemptions protecting the owners of residential property and removing persons that cannot legally possess firearms from the privileges of this bill. I will try to answer any questions and may ask...you...and also be able to ask the NRA testifier after me. [LB785]

SENATOR ASHFORD: Any questions of Mark? Yes, Senator. [LB785]

SENATOR COUNCIL: Thank you, Senator Ashford, and thank you, Senator Christensen. In your opening, you stated that the intent of LB785 is to balance private property rights against the right of individuals to bear arms. Tell me where the balance is in LB785. [LB785]

SENATOR CHRISTENSEN: Well, if it's your private vehicle and your private gun in that vehicle, the vehicle may be in a public facility which is an employer's private property,

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Transcriber's Office

Judiciary Committee  
February 22, 2012

---

but the gun actually is laying in the private property of your vehicle. [LB785]

SENATOR COUNCIL: Yeah, but you're on my private property as an employee, so you're...in terms of balancing rights, it's my private property right to control what is physically on my private property and you're also...my interest in terms of my business, in terms of having policies that are implemented for whatever reason the employer deems, it's just...I find it interesting when we talk about imposing rules and regulations on businesses that it's too much of a restriction on the exercise of their private business interests. But here, you actually...the bill actually prohibits a policy... [LB785]

SENATOR CHRISTENSEN: Correct. [LB785]

SENATOR COUNCIL: ...that would say, this is my private property; I don't want these items on my private property. And your...the language of your bill supersedes my right in that regard, correct? [LB785]

SENATOR CHRISTENSEN: Correct. [LB785]

SENATOR COUNCIL: Okay, so it's not a balance. The... [LB785]

SENATOR CHRISTENSEN: It's imposing... [LB785]

SENATOR COUNCIL: LB785 places the gun owner's rights above the rights of the private property owner. [LB785]

SENATOR CHRISTENSEN: Yes, it does. [LB785]

SENATOR COUNCIL: Okay. The other question I have is on page 2, beginning at line 20. It says, "A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (2)," and subsection 2 is the language that prohibits me as a business owner from prohibiting you from having a weapon in your vehicle. Subsection 3 says that if someone is injured or incurs damages because I say you can't have a weapon in your vehicle. How do you envision that working? [LB785]

SENATOR CHRISTENSEN: Well, that would be the case where if somebody attacks you at your vehicle or in your vehicle and you could have defended yourself is the way I would see it. [LB785]

SENATOR COUNCIL: Well, I wonder if I'm...I don't have a weapon in my vehicle and I'm walking to the parking lot. You may have a weapon in your vehicle, but I don't have one in mine. I'm walking to a parking lot and I get injured by someone with a bat, a pipe, a gun. Under the reading of subsection 3, the employer could be liable because of the possibility that somebody could have had a gun in their car. Isn't it...isn't that how it

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

Judiciary Committee  
February 22, 2012

---

could be read? [LB785]

SENATOR CHRISTENSEN: Well, the...it...I guess I read it that that individual would have had to have one in their vehicle for their protection. But if they're in...walking in the parking lot, they're not going to have access to the gun. That's not the same as being attacked while you're in the vehicle where you have access to it. [LB785]

SENATOR COUNCIL: Okay, well...and again, that...it just...that's not what it says. It says, "A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (2)...may bring a civil action against any business entity, owner...who committed or caused such violation." Period. Now then it goes on to say an employee who was denied the opportunity to transfer or store--of this section--they also have rights. But it appears that at least the first sentence here is designed to be a broad liability that if I institute a policy that prohibits you from carrying...having a weapon in your vehicle and someone gets injured on my property and I didn't allow somebody to have a weapon in their car, I'd be subject to damages whether it was the person who wanted to have a weapon in their car or not. I mean, that's how broad this language is written. [LB785]

SENATOR CHRISTENSEN: Okay. Well, that could be corrected. I don't...didn't intend that broad, no. [LB785]

SENATOR COUNCIL: Okay, and then the...which is always subject to opposition in any bill that comes before this committee is immunity. And on page 3, "No business entity, owner, manager, or legal possessor of real property...shall be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored pursuant to subsection (2) of this section." So if, under this bill, if someone drove onto my property, had a gun in their glove compartment that was contrary to my policy--because I can't have a policy under your bill--and that person used that weapon to injure another one of my employees under LB785, the employer is immune from liability, so they have no duty to protect. [LB785]

SENATOR CHRISTENSEN: Well, I guess I seen this as establishing that the person that caused the damages is the one liable, you know. So I had the gun and I harmed somebody else there, then I'm the one liable. Isn't that where it should be? [LB785]

SENATOR COUNCIL: Well, but you could also have liability on the owner of the property for failure to take steps to protect. [LB785]

SENATOR CHRISTENSEN: Well, they're... [LB785]

SENATOR COUNCIL: I mean, there's an argument. I mean, okay, I get injured, okay,

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

Judiciary Committee  
February 22, 2012

---

and I have a choice of suing you or Ameritrade. Who do you think I'm going to sue?  
[LB785]

SENATOR CHRISTENSEN: Well, you're going to want to sue Ameritrade. [LB785]

SENATOR COUNCIL: I'm going to want to sue Ameritrade, and under here... [LB785]

SENATOR ASHFORD: What did they do? [LB785]

SENATOR COUNCIL: They happen to be the parking lot and they happen to have the deep pockets. [LB785]

SENATOR ASHFORD: (Laughter) All right. I'm sorry. Oh, okay. I'm sorry, I'm sorry.  
[LB785]

SENATOR COUNCIL: And under your bill, Ameritrade would be immune, even if they had knowledge that you had a gun in your glove compartment. [LB785]

SENATOR CHRISTENSEN: Well, that's part of giving the rights to the person that...because they don't have the rights to prohibit that, so why would you put liability onto that business owner? I guess that, to me, is part of the trade-off of taking off the ability to regulate that private property; get rid of their liability if someone on there does it because we are restricting them. [LB785]

SENATOR COUNCIL: Yeah, but it's...but that policy that we've imposed on them is still a policy that I can take exception to and say that that policy is what is the cause of my injuries, so. [LB785]

SENATOR CHRISTENSEN: Okay. [LB785]

SENATOR COUNCIL: That's all I have, Senator. [LB785]

SENATOR ASHFORD: Okay. Thank you, Senator Council. Thanks, Mark. As always, great to see you. Okay. [LB785]

RON JENSEN: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Ron Jensen, J-e-n-s-e-n. I'm a registered lobbyist and I'm representing the National Rifle Association in support of LB785. It...I'm not...I have no data to support this and it's not scientific, but I've been involved with these issues for several years now. And my observation and my impression is that the typical permittee, under the Concealed Carry (sic) Permit Act doesn't obtain that permit and use it to carry a firearm on their person on an everyday basis. Those people, I think, are in a...probably a distinct minority, and many more people obtain that permit and use it to legally have a

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

Judiciary Committee  
February 22, 2012

---

firearm in their vehicle and that makes sense, or a kind of sense if you think about it. When we're in a vehicle--a car or a truck--you come in contact with a lot more people, you come into many more areas, you're much more exposed than you are if you're walking or standing still. If we prohibit that individual, that permittee, from having that gun in their vehicle in a place where it is otherwise legal, we do detract from the utility, the usefulness, and the self-protection that is afforded the individual that's been the reason for them to go to the trouble and expense of obtaining the permit and the reason why the state put the statute on the books in the first place. That's the thrust of LB785. There was a huge lawsuit around this several years ago in Oklahoma which, if I recall correctly, the plaintiffs won. I believe the NRA's...at issue even in this instance is to try to change the law statutorily in states rather than through case law, which is usually a better way to do it, or some folks think so. I'd be happy to try to answer any questions about LB785 if I can. [LB785]

SENATOR ASHFORD: Senator Council. [LB785]

SENATOR COUNCIL: Yes, thank you. Yeah, and Mr. Jensen, in your experience...and my experience is limited; I've been just watching these things, I guess, with greater intensity since I've been here. [LB785]

RON JENSEN: Sure. [LB785]

SENATOR COUNCIL: But a significant number of workplace shootings have involved individuals who have had carry concealed permit, got upset, went out to their car, got their weapon, and came back in. And according to NRA and Senator Christensen, in supporting or introducing LB785, that that risk is outweighed by...in the benefit of being able to carry your weapon in your vehicle. Is that the position you're taking? [LB785]

RON JENSEN: Well, first of all, Senator, I don't know about nationwide, but I know here in Nebraska we've not had any workplace shootings or any other kind of shooting by a concealed carry permit holder. Our state's experience with the statute, despite all the dire predictions that were made at the time the Legislature considered it, has been very good and permittees have been very responsible. I don't think we've had more than a handful of permits even rescinded for a rules violation or anything. Yeah, workplace shootings. I only have had personal...kind of brushed up against one of those in all the years I've been around, and in that case the individual went home and got a gun, came back, and shot the supervisor that had discharged him. Those shootings are actually--and I think I've got statistics in here; obviously not going to try to look it up--are actually a very distinct minority, something like 6 or 8 percent of...I shouldn't even say this because I'm not certain of it. It's a consideration, but I think in actual fact--obviously, those incidents get a lot of press and a lot of attention--but it's a small number of homicides, a very small proportion of homicides. I want to say 8 percent, but don't nail me on that. [LB785]

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

Judiciary Committee  
February 22, 2012

---

SENATOR COUNCIL: Okay. And it's the NRA's position that a private property owner's rights must succumb to the rights of a carry concealed person? [LB785]

RON JENSEN: You've got me at a disadvantage on this, Senator, because you are an attorney and I'm just an English major. [LB785]

SENATOR COUNCIL: Hey, not much distinction. [LB785]

RON JENSEN: I'm sorry, what? [LB785]

SENATOR COUNCIL: Not much distinction. (Laughter) [LB785]

RON JENSEN: Thank you. You know, I park my car in a lot that I rent a space in, adjacent to our office. I kind of feel--and maybe I'm misguided in this; I don't know the legal principle involved--but I kind of think what I have in that car when I drive it onto that lot in the morning and lock it up within reason is my business, my property, not that of Skypark. [LB785]

SENATOR COUNCIL: Okay, but the bill says I'm an employer, you work for me. [LB785]

RON JENSEN: Um-hum. [LB785]

SENATOR COUNCIL: And I say my policy is you park on my lot to come to work, to my employ, my policy is you can't have a weapon in your vehicle. [LB785]

RON JENSEN: Right. [LB785]

SENATOR COUNCIL: And what I'm saying is in that situation, which is about the bulk of the bill, talks about the employers can't have these policies, then I'm assuming the NRA's position is that the right of a carry concealed permitholder supersedes the right of that private business. [LB785]

RON JENSEN: In this particular instance/situation, you're quite correct. [LB785]

SENATOR COUNCIL: Okay, thank you. [LB785]

SENATOR ASHFORD: Yeah, I...what about the overriding concern of...that employers have of a car being broken into and the gun being stolen? [LB785]

RON JENSEN: I think that's what the immunity provision that was discussed is about. [LB785]

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

Judiciary Committee  
February 22, 2012

---

SENATOR ASHFORD: But I mean that's...that may be another danger. [LB785]

RON JENSEN: Sure, sure. [LB785]

SENATOR ASHFORD: I mean, other than the person who...I mean, when you...I agree with you. If you have your sense of this...everything in the car is yours, I tend to agree with that. I mean in that sense, I think it is accurate. But I think the concern might be someone breaking in, taking the gun that's obviously...that's not concealed but that's... [LB785]

RON JENSEN: Well, under the provisions of the bill, it has to be in a locked compartment within a locked vehicle... [LB785]

SENATOR ASHFORD: Yeah. [LB785]

RON JENSEN: ...and not visible. [LB785]

SENATOR ASHFORD: Right. [LB785]

RON JENSEN: So yeah, that can happen. It can happen today. It can happen in an employer's parking lot. It can happen in the Wal-Mart parking lot. [LB785]

SENATOR ASHFORD: Right, right. That's fine, that's... [LB785]

RON JENSEN: Yeah. [LB785]

SENATOR COUNCIL: Just one... [LB785]

SENATOR ASHFORD: Yes, Senator Council. [LB785]

SENATOR COUNCIL: It caused a question, Mr. Jensen, and correct me if I'm wrong. In order to carry my gun loaded, locked in my glove compartment, do I have to have a permit to carry that concealed weapon? [LB785]

RON JENSEN: You do. [LB785]

SENATOR COUNCIL: Okay. [LB785]

RON JENSEN: You most definitely do. [LB785]

SENATOR COUNCIL: There's nothing in this bill that speaks to a carry concealed permitholder. [LB785]

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

Judiciary Committee  
February 22, 2012

---

RON JENSEN: It does not, and it would cover the individual who wants to go hunting on... [LB785]

SENATOR ASHFORD: Okay. [LB785]

RON JENSEN: ...and leave from work or--I don't know--on the way to work. [LB785]

SENATOR ASHFORD: Because they couldn't have it in the first place, under the law, if they didn't have the certificate. [LB785]

SENATOR COUNCIL: Well, no, you could have it. [LB785]

RON JENSEN: Well, they could have a long gun. [LB785]

SENATOR ASHFORD: Oh, a long gun. [LB785]

SENATOR COUNCIL: I mean, you could have it laying on the front seat of your car, I mean, if you had a... [LB785]

RON JENSEN: Yeah. Yeah, right. [LB785]

SENATOR COUNCIL: If you were permitted to have a weapon,... [LB785]

RON JENSEN: Sure. [LB785]

SENATOR COUNCIL: ...you could have the gun laying on the seat of your car and you wouldn't be in violation of anything other than this... [LB785]

RON JENSEN: Exactly. [LB785]

SENATOR COUNCIL: ...which requires you to lock it up in some box which would then require you to have a carry concealed permit. [LB785]

RON JENSEN: And there was a time when it was very common to find them in the back windows of pickups, but enough of those guns were stolen that that trend abated. [LB785]

SENATOR COUNCIL: Yeah. Yeah, we're not in Texas anymore, okay. (Laughter) All right, that's all, Senator Ashford. [LB785]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Ron. [LB785]

RON JENSEN: Okay, thank you. [LB785]



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

Judiciary Committee  
February 22, 2012

---

ANDREAS ALLEN: Okay, Andy Allen, A-I-I-e-n, president of the Nebraska Firearms Owners Association. Senator Council, I'm going to need to ask you for an apology. You said that a lot of workplace shootings have been concealed carry permit holders that went out to their car and got their gun and came in shooting. To my knowledge, that has never happened in the history of the United States, and we have over 200 years of lawful carrying of concealed weapons, at least in some areas of this country. [LB785]

SENATOR COUNCIL: I don't mean to interrupt you, Mr. Allen, but it was reported two weeks ago, an incident in Florida, an individual had a carry concealed permit. [LB785]

ANDREAS ALLEN: That's a very, very rare...the majority of these types of things are... [LB785]

SENATOR ASHFORD: Well, so it did happen someplace; it happened in Florida. [LB785]

ANDREAS ALLEN: It...but the vast majority of those types of incidents are people that go home and get a firearm and come back. The fact that it...I mean, I'm not...that one, I'm not even sure that person had a concealed carry permit. If they did...but it's a very, very rare occurrence. In fact, nationwide, concealed carry permit holders are amongst the most law-abiding people in the United States. They have a less...lower incidence of crime than even police officers. So it...saying that that's always what happens kind of hit me wrong there. Also, I'm going to point... [LB785]

SENATOR COUNCIL: Okay, a point of correction. I never said that's always what happens. [LB785]

ANDREAS ALLEN: It's what it sounded like; I'm sorry. [LB785]

SENATOR COUNCIL: Well, I did...that's not what I said. [LB785]

ANDREAS ALLEN: The other thing is, is people do not have to have a concealed carry permit to be able to legally carry a firearm that is locked in a container in their vehicle, just so it is not accessible to them. That means it could be locked in a container stored in their trunk. If they're in a vehicle that does not have a trunk, it can be locked in a container that is in the rear compartment of the vehicle where the person would not have access to it. Those also...so this affects those people, which means that the guy who wants to go hunting after work or he's leaving right after work to go join the guys for the weekend hunting trip, he can have it in a locked case, stored in his trunk or in the back of the locked vehicle, and it would be completely legal. That's all I've got at this time. [LB785]

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

Judiciary Committee  
February 22, 2012

---

SENATOR LATHROP: Can I ask just a question? [LB785]

SENATOR ASHFORD: Yes, Senator. [LB785]

SENATOR LATHROP: Are...is what we're trying to get at is employees or anybody? [LB785]

ANDREAS ALLEN: This particular, I'd say we're going for employees. [LB785]

SENATOR LATHROP: Okay. Let me just come up with a hypothetical lot. [LB785]

ANDREAS ALLEN: Um-hum. [LB785]

SENATOR LATHROP: Parking lot...see, I go in and out of parking lots all the time as we all do. I don't see signs that prohibit this. So are we talking about employer policies or somebody banning it with a sign at the front entrance to a parking lot? [LB785]

ANDREAS ALLEN: It's employer policies. It's employer policies. Right now what we've got...and the Legislature moved a couple years ago to say that when I come to your business, you may have a no gun sign on your door and I can legally leave my firearm stored properly in my vehicle and then come in and see you. But your employee... [LB785]

SENATOR LATHROP: I think you answered my question. I think you answered my question. [LB785]

ANDREAS ALLEN: Yeah. Your employee is barred from that. [LB785]

SENATOR LATHROP: What we're directing this at is employer policy. Let me just ask this one question, very simple. Are any employers or any businesses putting signs up before the building, like out in the parking lot... [LB785]

ANDREAS ALLEN: There are some, yes. [LB785]

SENATOR LATHROP: ...that would prohibit somebody who has a concealed carry permit from coming onto the...a customer from coming there, leaving it in their car? That's not an issue; we're dealing just with employ... [LB785]

ANDREAS ALLEN: The...actually, there are business parking lots--especially, you'll see them in Lincoln--where the parking lot is posted. They're not always real easy to see because they're 8.5 by 11 signs and people drive by them without realizing it. The other incidence is that legally, do those signs carry any weight? Personally, I wouldn't say they do because the law specifically says that the person that...with a concealed carry

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

Judiciary Committee  
February 22, 2012

---

permit has the ability to store their firearm in their vehicle that's parked in that parking lot; specifically, that's spelled out. [LB785]

SENATOR LATHROP: Okay. [LB785]

ANDREAS ALLEN: So for the concealed carry permitholder that is not employed there, they're protected. It's the employee... [LB785]

SENATOR LATHROP: I got it. [LB785]

ANDREAS ALLEN: ...that has an issue today. [LB785]

SENATOR LATHROP: Okay, I get what you're driving at then. Thank you. [LB785]

ANDREAS ALLEN: Um-hum. [LB785]

SENATOR COUNCIL: One other question, Senator Ashford. [LB785]

SENATOR ASHFORD: Senator Council. [LB785]

SENATOR COUNCIL: And, Mr. Allen, just one other question. Page 2 of the bill speaks to the prohibition against their policy or...that has the effect of prohibiting a person's transportation or storage of a firearm or ammunition when, and (a)(ii) says, "Is kept from ordinary observation and locked within the trunk, glove box, or interior of the person's privately-owned motor vehicle." So under (ii), if I locked it in my glove box, that would be concealing a weapon, which would be...which would necessitate my having a carry concealed permit, wouldn't it? [LB785]

ANDREAS ALLEN: If it is stored in that locked glove box while you're operating the vehicle, I would agree with you. If I am, say, a person that open carries a firearm--we have a few here in this state--and I decide that I'm going to go into the grocery store, and because...okay, I've been to this grocery store before and I know the manager doesn't like me open carrying here, so I want to leave it in my vehicle. I don't want to just lay it on the seat because that's an invitation to have that firearm stolen and nobody wants that to happen, so he would have the ability to place that into his glove box and lock the glove box while his vehicle is sitting there parked. Now if he comes back out and gets in that vehicle and drives off and leaves it in there, would he be guilty of having a concealed weapon? Yes, he would. But if he comes back out to that vehicle, gets in his vehicle, unlocks it, takes it out, lays it on the dash, puts it in his holster, whatever is the appropriate means so that it is no longer a concealed weapon, and then drives off, he would not be in violation of the law. [LB785]

SENATOR COUNCIL: So what you're saying is, in your example, a gentleman who

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

Judiciary Committee  
February 22, 2012

---

normally open carries... [LB785]

ANDREAS ALLEN: Um-hum. [LB785]

SENATOR COUNCIL: ...and all you have to do is have your weapon registered, and then we can carry sidearms? [LB785]

ANDREAS ALLEN: Registered, Omaha have the carry permit, whatever the laws of that jurisdiction. [LB785]

SENATOR COUNCIL: Yeah. Yeah, whatever it is. And I can have my sidearm and someone sees me. I go to get out of my car and I go, oh, oops, you know, these folks don't like me walking around their grocery store with a .357 Magnum on my hip, so I put it in the glove compartment. Person in the next car sees me do that, calls the police. I come out, the police are at my car for that. Can't I be ticketed for carrying a concealed weapon? [LB785]

ANDREAS ALLEN: At that point, you're not carrying a concealed weapon. [LB785]

SENATOR COUNCIL: I think my prosecutor friend would disagree. [LB785]

ANDREAS ALLEN: Ticketing someone for carrying a concealed weapon, they would actually have to be in some act of carrying it. [LB785]

SENATOR HARR: Control; you'd have to have active control. [LB785]

SENATOR COUNCIL: Active control. And it being in my vehicle is not active control? [LB785]

SENATOR HARR: Probably. [LB785]

SENATOR COUNCIL: Yeah. [LB785]

SENATOR HARR: If you have a CCW license, you're... [LB785]

SENATOR COUNCIL: No, no. I'm not saying...I don't have one. [LB785]

SENATOR HARR: ...you're not. [LB785]

SENATOR COUNCIL: So that's... [LB785]

SENATOR HARR: Yeah. [LB785]

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

Judiciary Committee  
February 22, 2012

---

ANDREAS ALLEN: It...that's one of those little gray areas where... [LB785]

SENATOR COUNCIL: That...yeah. [LB785]

ANDREAS ALLEN: ...and we're always going to have little gray areas. [LB785]

SENATOR COUNCIL: Okay. [LB785]

ANDREAS ALLEN: My guess--and I'd take and look at somebody that's a past prosecutor--I'm guessing you might sit and have a nice chat with the individual and either (a) place some type of a reduced charge, or drop the charge, whichever may be correct for this individual case. [LB785]

SENATOR HARR: I think it would be very fact-specific, exactly. [LB785]

ANDREAS ALLEN: Yeah. [LB785]

SENATOR HARR: It's a gray area, I would concur. [LB785]

ANDREAS ALLEN: Yeah, it is. And is it bad to have gray areas? No, it's not, because the world isn't black and white. [LB785]

SENATOR ASHFORD: Thank goodness somebody put that on the record. (Laughter) I've been waiting for that for... [LB785]

SENATOR COUNCIL: You've been waiting all day for that. [LB785]

SENATOR ASHFORD: That kind of...you know, you're a good witness and you've been very patient and you come here all the time... [LB785]

SENATOR COUNCIL: Thank you. [LB785]

SENATOR ASHFORD: ...and you've finally put it--not that you hadn't before--but you've finally put it exactly where it needs to be said, and that is not...the world is not black and white. That's... [LB785]

ANDREAS ALLEN: It's not, and there's got to be some flexibility. [LB785]

SENATOR LATHROP: Should have had him here for the truancy hearing. (Laughter) [LB785]

ANDREAS ALLEN: Well, I'm going to do... [LB785]

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

Judiciary Committee  
February 22, 2012

---

SENATOR ASHFORD: The world is full of debatable points, right? [LB785]

ANDREAS ALLEN: If you give me 30 seconds, I'll take and do something else that don't happen to you very often. [LB785]

SENATOR ASHFORD: No, no, no. [LB785]

SENATOR MCGILL: Oh, God. [LB785]

SENATOR HARR: No, uh-uh. [LB785]

ANDREAS ALLEN: I want to take just a second and say thank you to everybody on this committee. I know there's several of you that have been working very hard on some of the bills that we've been talking about--not just this year, but over the last several years--to get things finished up with them. I've...we've also learned a lot from you folks, you know. [LB785]

SENATOR ASHFORD: Well, we've enjoyed having you here, Andreas. [LB785]

ANDREAS ALLEN: It's...just want to take a moment and say thanks because you guys don't hear it often enough. [LB785]

SENATOR COUNCIL: And, Andy, I just want to let everyone know I thank you. I mean, Andy listens to me and he still works with me although he knows that on most issues I am diametrically opposed. But I respect him and his commitment to his cause, and I can attest to the fact that we...he and I have our disagreements but we're never disagreeable. [LB785]

ANDREAS ALLEN: We...well, it's one of those things that...I actually did a seminar in Chicago of all places last fall. Started out I was invited to be a speaker and I was given 15 minutes to speak. I was having so much fun aside from the convention that when it came my time to speak, I stood up, I talked for two minutes and gave my time back, then went back to what I was doing because I had state legislatures from all over the country and so forth, and I was sitting there talking about how we work here, and it's...you may have an opposing view, but it's...yeah, and there's some confrontation always when that happens. But we work with respect and we try to find the best way to write the law, and we spend a whole lot of time discussing how to do that and how to expand that to other states. [LB785]

SENATOR ASHFORD: Yes, we do, as Mark will attest. [LB785]

SENATOR MCGILL: Yes, we have the best system in America. [LB785]

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

Judiciary Committee  
February 22, 2012

---

SENATOR HARR: Um-hum. [LB785]

SENATOR COUNCIL: You've better believe; that's saying something. [LB785]

SENATOR MCGILL: Best system in America. [LB785]

SENATOR ASHFORD: Thanks, Andy, very much. Any other--let's see where we are... [LB785]

SENATOR COUNCIL: Proponents. [LB785]

SENATOR ASHFORD: The proponent side. Any opponents? Neutral? Senator Christensen. Senator Christensen waives. Thank you all. (See also Exhibits 11-12) Senator McGill has the last bill. [LB785]

SENATOR MCGILL: Hey, I thought today would take longer. [LB785]

SENATOR HARR: Don't be judgmental. (Inaudible) [LB785]

SENATOR MCGILL: I'll be brief. [LB914]

SENATOR ASHFORD: Oh, Senator McGill. [LB914]

SENATOR MCGILL: Hello. [LB914]

SENATOR ASHFORD: Proceed. [LB914]

SENATOR MCGILL: Hi. I'm State Senator Amanda McGill, here to introduce LB914. We've talked a lot about this issue, but I...most of you know I brought this piece of legislation because we're trying to tackle the bigger problems with the Sex Offender Registry that have happened over the last couple of years. And I felt this is one way to articulate one of my concerns in a piece of legislation, which is...I mean, the big concern is that we treat everyone on the registry basically the same way, despite the various types of offenses that were committed and despite somebody's likelihood to reoffend. We're just clumping people together in a way that I feel is not justice, and so I brought to you this bill that would allow folks to petition to get off the registry if they were...my intention in the language isn't perfect, but my intention was for 19- and 20-year-olds who had had some...a relationship that would have otherwise been consensual with someone who is 15 years of age, so a four- or five-year age difference, because I feel that that sort of situation, regardless of the circumstances, is different from a 40-year-old molesting a 4-year-old and, therefore, I think that there should be different...a different approach with the registry. Like I said, this was just one example of...or one bill I could bring forward this year to at least address the issue as briefly as we will, but I look

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

Judiciary Committee  
February 22, 2012

---

forward to our plans to do more research on the registry in general and how we can move forward in a more uniform and holistic way. [LB914]

SENATOR ASHFORD: Thank you, Senator McGill. Yes, Senator Council. [LB914]

SENATOR COUNCIL: Brief question. [LB914]

SENATOR MCGILL: Um-hum. [LB914]

SENATOR COUNCIL: Romeo and Juliet? [LB914]

SENATOR MCGILL: Yeah. [LB914]

SENATOR COUNCIL: Exactly. [LB914]

SENATOR MCGILL: Um-hum. [LB914]

SENATOR COUNCIL: And you'd be surprised at the number of sex offenders who are in the Nebraska Department of Corrections on Romeo and Juliet. [LB914]

SENATOR MCGILL: I know many myself, too, um-hum. [LB914]

SENATOR COUNCIL: And not to indicate support or opposition to those types of relationships in any way, but that does exist. And when...and because we have to look at this again in view of the Department of Justice's ruling that the current deviation from SORNA that we're currently operating under has eliminated us from Adam Walsh funds, is it your expectation that we would be crafting, essentially, our own sex registration statute? [LB914]

SENATOR MCGILL: Yes, Senator Council. And like, for instance, in some of the meetings I've had with Senator Ashford and Senator Lathrop and the State Patrol, even talking about how statutory rape should maybe be identified on the registry as something different than sexual assault of a child so that people can at the very least differentiate between some of these crimes. And certainly, I mean, people serve their time for the crime that they were convicted of, but that likelihood to reoffend...and we just need to take another look and craft our own legislation that works best for our state, based on data that we're hoping to collect. [LB914]

SENATOR COUNCIL: And the other part of that is the retroactive issue... [LB914]

SENATOR MCGILL: Yes. [LB914]

SENATOR COUNCIL: ...where people who, before some of the legislative action we've



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

Judiciary Committee  
February 22, 2012

---

taken, were on the registry for 10 years, now we're on for 25 years, or we're on for 25 years and now they're on for life, so...and it does create tremendous difficulties for some individuals who clearly are...people we're mad at but not people we're scared of... [LB914]

SENATOR MCGILL: Um-hum. [LB914]

SENATOR COUNCIL: ...so thanks. [LB914]

SENATOR MCGILL: Clearly. [LB914]

SENATOR ASHFORD: Thank you very much, Amanda. [LB914]

SENATOR MCGILL: Um-hum. [LB914]

SENATOR ASHFORD: Proponents for this bill? Any opponents? [LB914]

ERIC BAIRD: I'm neutral, Senator Ashford. [LB914]

SENATOR ASHFORD: Neutral. Okay, I was getting to neutral. [LB914]

SENATOR COUNCIL: Well, come on back. Come on down. [LB914]

SENATOR HARR: Shh; don't jinx it. (Laughter) [LB914]

SENATOR ASHFORD: No, I was getting to neutral; I (inaudible). Thanks. [LB914]

ERIC BAIRD: Hi, Senators. Thanks for having me. I have my sheet for you. There you go. Chairman Ashford, Senators, thanks for listening to me today. My name is Eric Baird, E-r-i-c B-a-i-r-d. I represent Families Affirming Community Safety and we're neutral on LB914. I'm here to address Senator McGill's bill which would amend 29-4003 to allow certain Level 2 registrants to apply for early removal from the sex offender registry. FACTS is neutral on this bill but does recognize the acknowledgement of Senator McGill that among registered sex offenders there are those that pose little or no elevated risk to the safety of Nebraska public. Recognizing that and allowing these sex offenders off the registry only serves to make the registry itself more effective by allowing our law enforcement resources to be used to monitor offenders who pose actual public safety risks. I would like to point out the recent numbers from the Department of Correctional Services showing between 4 and 5 percent reoffends rates for all sex offenders regardless of...or, of all three tier groups who are released from Nebraska prisons. Further study of the registrants on the Nebraska sex offender registry shows other categories of offenders who also offered zero elevated risk to public safety. I would encourage the committee to expand LB914 to include these classes as well.

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

Judiciary Committee  
February 22, 2012

---

Optimally, these classes and categories would not be subject to the registry at all; they pose no elevated risk to public safety than the general public. Where was I? Considering that Nebraska is still considered not substantially compliant, as Senator Council mentioned, for the Adam Walsh Act by the SMART office, Nebraska would both save money and increase public safety by doing so. Finally, studies have shown that offenders who remain crime free in all crime categories between six and seven years pose no greater chance of committing a new crime than the general public do. And so a way out of the Sex Offender Registry after 10 years of registration--studies have shown that after six or seven years of the chance to reoffend over all crime categories is nominal with the general public--would not increase risk to public safety by letting anybody who is on the Sex Offender Registry off after their 10-year period, no matter their registration period, as long as they remain crime free and completed a treatment program. That's all I had today. Are there any questions? [LB914]

SENATOR ASHFORD: Any questions? Did you give us the Missouri information? [LB914]

ERIC BAIRD: I did, I did. What Missouri is considering is something very similar to this about the crime barriers. [LB914]

SENATOR ASHFORD: (Exhibit 14) And just for the record, we have...which...and we'll include this in the record because it is another example, apparently, of...and actually, Senator Lathrop had the...sort of that idea at one point, the committee idea or the oversight committee, which apparently they're looking at in Missouri. But go ahead, explain it if you want. [LB914]

ERIC BAIRD: The ideas that are going on in Missouri are in committee itself right now, and it's a state that has been considered Adam Walsh compliant and is reversing their course on that because of the cost associated with it and the zero effect that it has had on public safety; it neither increases nor decreases. The numbers from the Nebraska registry itself, of the registrants, show multiple crime categories that have no escalation rate or no reoffense rate at all, and those categories should be taken into consideration as well as this Romeo and Juliet. And I applaud...personally, I applaud Senator McGill for recognizing that there are different people. The sex offenders, as they've been defined by the Adam Walsh Act or laws like LB285, which tried to comply with the Adam Walsh Act, broadly defines sex offenders in one category. There's differences and there's risks to public safety that are involved. Before LB285 and the registry, the reoffense rates were higher because the registrants were different. And now that they are, the reoffense rates are about 0.9 percent every year. And when you talk about the gun law that was just spoken of, the vast minority that was...I think 8 percent was considered the vast minority on there. Sex offender recidivism rates nationwide are at 5.3 percent. In Nebraska, they're between 4 and 5 percent, and in certain crime categories it's 0 percent on the registry. [LB914]

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Judiciary Committee  
February 22, 2012

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SENATOR ASHFORD: And we're getting that information this summer and verified back to us, so we're at an ongoing...and as Senator Lautenbaugh has so correctly said over and over again, we...Missouri, I guess, is another one like us that probably jumped unnecessarily into something that wasn't...and I'm sure there are other states regretting it as well, so. [LB914]

ERIC BAIRD: I thank you for acknowledging that, sir. [LB914]

SENATOR ASHFORD: Well, I...you've got that from us. I think now we just have to go out and we need some data to verify that, so. [LB914]

ERIC BAIRD: To that end, if I may, Families Affirming Community Safety is doing a study specifically on the recidivism rates for people who are registrants on the published registry. It's going to be in a research paper that's published over the next month or two. [LB914]

SENATOR ASHFORD: How are you doing that? Who is doing that study? [LB914]

ERIC BAIRD: That is because we don't have access to the DCS database that they use and because the DCS database doesn't include every offender in Nebraska, because there's people who move here or were federal crimes. Everybody who is on the public registry at...per LB285, everybody who is a registered sex offender is on the registry on-line. That data has been...a member of our core group used a program to scrub the entire list, create a database from that, and we're comparing the different crime rates. And I dropped in each of your offices this last week a talking sheet with some of the data that we've collected from that, with reoffense rates of the entire registry per year, and then in 5-year blocks. One of the most surprising statistics that I've seen is that one of the reasons that child pornography is considered a sexual offense rather than a computer offense is the association with child sexual abuse and/or beginning stages of an escalation toward child sexual abuse. And in Nebraska, of all the registrants that are on the registry in Nebraska who have started with the child pornography offense and then later escalated to a child sexual abuse offense, zero, not a single one. [LB914]

SENATOR ASHFORD: And that's going back how far? [LB914]

ERIC BAIRD: That's going back to 1971, I believe. [LB914]

SENATOR ASHFORD: Okay. Well, we would love to see that report when... [LB914]

ERIC BAIRD: I will make that available to you as soon as we have it published. We're working with Wesleyan University, with John Krejci, which I'm sure you are all familiar with, to have some peer review and statistical review of our data, so that there's some

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justification and some validation of that data before we put it in your hands. [LB914]

SENATOR ASHFORD: Thank you very much; thanks for your persistence on this issue. [LB914]

ERIC BAIRD: You're welcome; thanks for having me. [LB914]

SENATOR ASHFORD: Anyone else? Senator McGill, do you wish to...? Waive? You wish... [LB914]

SENATOR MCGILL: I'll waive. [LB914]

SENATOR ASHFORD: You're waiving. All right, that concludes the hearing. Thanks. (See also Exhibits 13, 15-16) [LB914]