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Judiciary Committee  
January 19, 2007

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[LB176 LB180 LB216 LB217 LB227]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 19, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB227, LB176, LB180, LB216, and LB217. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. []

SENATOR ASHFORD: Welcome all to the Judiciary Committee hearing. I'd like to begin by introducing my colleagues. Senator Pedersen, to my right over here; Senator Lathrop. Are we all ready? I'm sorry. Senator McGill; Senator Chambers; Senator McDonald; Senator Pirsch; Senator Schimek; and I'm Senator Ashford. My counsel, Mister...I pronounced his name wrong, and I apologize for doing that, so, Mr. Beaty. And Stacey isn't here today, Stacey Trout. And Jon Bradford is the committee clerk. Some ground rules. We have...those of you who have testified before this committee before know about the lights that have been...who were instituted by Senator Brashear, and it's a good way to keep the...I think, keep the process moving along. And when you start your testimony there will be a blue light that will flash on, and a yellow light will tell you when we'd like you to sum up, and the red light is the stop time. So if you...if we try to follow that, we can move through these hearings and still have all the information that we need. Let's see, what else? The...I'm sure most of you...or, if you're not aware of the sign-in procedure, but the testifier, before they come up to testify, if they would go to the table behind the testifier's chair and provide their name, and then we'll have that information when they're ready to testify, and the bill number. With that, the first bill is LB227. Senator Cornett is not here today, and her aid will be presenting the bill, so. []

BRENDA MURABITO: Thank you, Senator Ashford and members of the Judiciary Committee. My name is Brenda Murabito, and that's M-u-r-a-b-i-t-o, and I'm legislative aide to Senator Cornett, and I'm here on her behalf. I am here today to introduce LB227. This bill would change the animal cruelty statute. Presently, 28-1009, animal cruelty, includes three elements that allow for felony prosecution. These elements are mutilation, repeated beatings, and torture. LB227 adds a fourth, that being animal abandonment resulting in serious injury, illness, or death. Currently, all cases of animal abandonment, no matter the seriousness, are Class I misdemeanors, under 28-1009. It does not allow for more serious charges for such cases as animals that are starved to death. Also, LB227 provides a definition of "serious injury or illness," that being any injury or illness to any animal which creates a substantial risk of death or which causes prolonged impairment of health or prolonged loss of impairment...or impairment of the function of any bodily organ. There are several other representatives here which can give you more information on the bill and the need for this change. Thank you for your time and consideration, and I'll try to answer any questions if you have them. [LB227]

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SENATOR ASHFORD: Any questions of Brenda? Thank you. [LB227]

BRENDA MURABITO: Okay, thank you. [LB227]

SENATOR ASHFORD: Yes. Proceed. [LB227]

MARK LANGAN: (Exhibit 2) My name is Mark T. Langan, L-a-n-g-a-n. [LB227]

SENATOR ASHFORD: Proceed. I'm sorry. [LB227]

MARK LANGAN: Thank you, Senator Ashford. Thank you for this opportunity. My name is Mark Langan, and I am the vice president of field operations for the Nebraska Humane Society. We provide animal control service in the Omaha area and Sarpy County, but routinely provide assistance and advice all throughout Nebraska. In our jurisdiction, we have authority to conduct investigations, write citations, and obtain search warrants regarding animal control and cruelty investigations. We also work closely with local and state law enforcement on animal control laws throughout the state of Nebraska. Nebraska state statute 28-1009 deals with animal cruelty. The statute makes it a Class I misdemeanor to abandon an animal, and statute 28-1008 defines abandonment as leaving an animal for any length of time without food, water, or other needed care. Section 28-1009 currently requires one of three elements for felony animal cruelty: repeated beatings, torture, or mutilation. This bill would add a fourth element for felony animal cruelty, that being abandonment resulting in serious injury, illness, or death. The reason for my proposal can best be described through two actual cases of abandonment my department has investigated. The first involves a male suspect who moved out of a rental house, leaving behind nine dogs and puppies. They were alone in this house with no food and water for up to two weeks. Most were dead when the landlord discovered them, dying of starvation and dehydration. The suspect was charged with misdemeanor abandonment, and received a seven-day jail sentence. The second example occurred in April of 2006. Nebraska Humane Society officers found a dead American Eskimo dog chained to a dog house in a back yard. The investigation showed the dog had not been fed in two weeks. The dog was 25 pounds underweight. During the necropsy, or the animal autopsy, the stomach contents were found to be sticks, grass, and a dry corn cob, which illustrates the dog's efforts to find any type of food. The female suspect in this case received two days in jail. Other states have felony animal abandonment laws. These states recognize that animal abandonment cases resulting in serious injury to the animal should be dealt with on the felony level. Starving to death is agony. Animals that starve to death undergo severe dehydration. The kidneys and liver fail, and they develop painful gastrointestinal ulcers. In other words, animals that are abandoned suffer and, if not located in time, die a painful and uncomfortable death. There is simply no excuse for this. I provided each of you two Nebraska Humane Society crime scene photos of separate abandonment cases. They're inside your folders. They are somewhat graphic, which is why I placed them in

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an envelope. The first shows two dogs left in a backyard for three days in July of 2006 with no food, water, or shelter. The temperature on those three days were 100 degrees, 101 degrees, and 103 degrees. One dog is dead in the picture; the other had to be immediately euthanized. The second picture shows a dead dog left in kennel for up to three weeks with no food or water. Nebraska does have effective statutes on dogfighting and animal cruelty. Recently, a man in Douglas County was sentenced to two years in prison on a felony for beating his puppy to death. However, making animal abandonment a felony in serious incidents is a much needed addition to the animal cruelty statute. I've also enclosed in the folders letters of support from Douglas County Attorney Don Kleine, and Douglas...or, Sarpy County Attorney Lee Polikov. Thank you very much, and I can certainly answer any questions you might have. [LB227]

SENATOR ASHFORD: Senator Lathrop. [LB227]

SENATOR LATHROP: I do. You are making a felony out of...as I read the language, it would include negligent conduct? [LB227]

MARK LANGAN: That's correct. [LB227]

SENATOR LATHROP: You're describing incidents today as examples, and they're typically intentional abandonments, aren't they? I mean, when they leave the nine dogs in the house, or they leave the dog chained out for three days. [LB227]

MARK LANGAN: The first example, I believe we could have shown that the person knowingly and intentionally left those dogs in that house. The other cases that I've talked about here today, the one with the animals we left in the backyard on the 100-degree days, and the dog left in the kennel, both people stated they had forgot about the dogs. And I've talked to County Attorney Don Kleine and Sarpy County Attorney Lee Polikov about this, and in order to show "knowingly and intentionally," an affirmative defense on their part is going to be that they forgot about them. In our mind, forgetting about them can't be tolerated, that they simply can't use the excuse, well, I forgot about that dog in the backyard for three days. That's why we built in the language, knowingly, and intentionally, recklessly, and negligently, to cover both those individuals who purposely leave animals inside of an address with no food and water, or in a backyard, and those who simply just forget about it and don't feel that it's important. [LB227]

SENATOR LATHROP: You get calls during the summer where people left a dog in the...I mean, they run into the grocery store or they run in someplace and leave the dog in the car, and it can die in a very short period of time, right? [LB227]

MARK LANGAN: Correct. [LB227]

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SENATOR LATHROP: Without ever intending to torture their animal or hurt it. [LB227]

MARK LANGAN: We get calls like that all the time, and the common defense is that...we had a situation last summer where the...a young lady returned to the car with her dog near death, on one of those 100-degree days, and her excuse was, well, I rolled the windows up as far as they could go to keep the heat out. I mean, that's what we're dealing with in situations like this. [LB227]

SENATOR LATHROP: Okay, that's a perfect example and maybe illustrates my point. That would turn what she did into a felony, and subject her to going to the prison, the penitentiary? [LB227]

MARK LANGAN: That would be a call by the county attorney's office as to whether or not they filed a felony in a situation like that, a short-term abandonment case like that. When I wrote this, or proposed this bill, the intention was the long-term abandonment cases that we're seeing, animals left for days at a time with no food, water, shelter, dying a long, prolonged death, painful death being caused by the starvation and dehydration. Obviously, and being an attorney yourself, you realize that the county attorney's office is the one who makes the ultimate decision on whether charges are filed. I'm not so sure that the bill was written with the intent of a situation like you just talked about. [LB227]

SENATOR LATHROP: And that may be my point. You're...you said it was designed to go after the long-term abandonment, the people that leave their dog for several days. And that really gets you to the place where it's knowing, isn't it? [LB227]

MARK LANGAN: Well, again, we'd have to prove in court that that person intended to leave those animals in that house for nine days, or in the backyard for umpteen days. We'd have to prove that their mind frame was that they knew what they were doing, that they were purposely abandoning those animals with the intent to cause harm to them. And with their...with the most common defense being that they forgot about it, or that I thought my neighbor was going to take care of the dogs, I think it would be tough to get a conviction in court in a situation where the person said, I simply forgot about the dogs. If the statute is written "knowingly and intentionally," the person had to knowingly and intentionally leave those animals in that backyard for three days, that caused their death. [LB227]

SENATOR LATHROP: That answered my question. Thanks. [LB227]

MARK LANGAN: Thank you. [LB227]

SENATOR ASHFORD: Any other questions? Thank you. [LB227]

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MARK LANGAN: Thank you. [LB227]

SENATOR ASHFORD: The next proponent? [LB227]

ROBERT DOWNEY: (Exhibit 1) My name is Robert Downey. I'm executive director of Capital Humane Society in Lincoln, Nebraska. Chairperson Ashford and distinguished members of the Judiciary Committee, I'm honored to be able to address you today. [LB227]

SENATOR ASHFORD: Mr. Downey, just for the record, could you just spell your last name? I didn't make that clear, but could you...? [LB227]

ROBERT DOWNEY: Yes. D-o-w-n-e-y is the last name. No relationship to the Junior. (Laugh) [LB227]

SENATOR ASHFORD: That's fine. Thank you. [LB227]

ROBERT DOWNEY: I'm testifying in favor of LB227. Several years ago, the Nebraska State Legislature upgraded the penalties for heinous acts of cruelty to a Class IV felony. Examples of such acts might be beating your dog to death because you are angry at it, or dragging it to death behind a motor vehicle. These are acts that the perpetrator has the control over not committing, and they are acts that take another life. These felony penalties not only apply to situations where the animal loses its life, but also to situations where the animal undergoes extreme suffering or irreparable physical harm at the hands of a human. The intentional abandonment of an animal is also an act that the perpetrator has control over. The animal can suffer from dehydration, starvation, physical harm, or loss of life because of this abandonment. These outcomes are no different than the outcomes of extreme cruel mistreatment of an animal. Raising these penalties to a Class IV felony harmonizes the penalties for these acts. It is my understanding these changes would apply to livestock, too. I think it is important that they do. During my career with Capital Humane Society, I have seen a number of instances where livestock have been abandoned. In all cases but one, the owner of the animals involved did not have to put the animals through the ordeal that ensued. It has also been my experience that those who are most outraged when livestock are involved in cases like that are other livestock producers themselves. They are usually the ones to report these events. They are usually the first to come forward with offers of help to relieve the suffering that is taking place. I urge you to move forward with this bill to upgrade the penalties for animal abandonment that results in the outcomes defined in the proposed legislation. [LB227]

SENATOR ASHFORD: Thank you, Mr. Downey. Any questions of Mr. Downey? Thank you, Mr. Downey. [LB227]

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ROBERT DOWNEY: You're welcome. [LB227]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral testifiers? That will end the hearing on LB176 (sic.) LB180 (sic). Is that right? I'm sorry, LB...I'm in the wrong place. LB227. LB176. Okay, Brenda. [LB227 LB176]

BRENDA MURABITO: (Exhibit 4) Again, thank you, Senator Ashford, members of the Judiciary Committee. Again, my name is Brenda Murabito, M-u-r-a-b-i-t-o, and I will be introducing LB176. This bill would expand the current protection of police service dogs owned and controlled by the Nebraska State Patrol to all service dogs owned and controlled by law enforcement agencies in the state. There are approximately 74 other police service dogs in the state of Nebraska. I've worked as an Omaha police officer, and have made numerous calls with police dogs. The dogs are extremely valuable assets when tracking suspects looking for drugs, or searching buildings. In many cases, such as the building searches, they went in first and faced a potentially dangerous situation long before I would have. There are several people here who work with police service dogs, and they can give you more information and insight into the need for LB176. Thank you for your time and consideration, and I would, again, try and answer any questions if you have them. [LB176]

SENATOR ASHFORD: Thanks, Brenda. Do we have...how many testifiers do we have on LB216 (sic--LB176)? Proponents? Any opponents? Proceed with the next witness then. [LB176]

JEFF TREU: Go ahead? [LB176]

SENATOR ASHFORD: I'm sorry, go ahead. [LB176]

JEFF TREU: I would like to thank the Judiciary Committee for allowing us to speak here today. My name is Jeff Treu, T-r-e-u. I'm currently a vice president of the Nebraska Canine Association, and that's what I'm here to represent. I am currently a full-time canine handler for a sheriff's department. We...first off, when we talk about the bill changing...and it currently protects only dogs of the State Patrol. We certainly don't want to see that changed. We work in conjunction with the State Patrol quite often. Many times, they don't have a dog in our area, and they use ours, and vice versa, we've used theirs. So we work in conjunction with the State Patrol. Currently, there's roughly 14 dogs in the state that are covered because the State Patrol dogs are. There's currently around 74 dogs belonging to sheriff departments and police departments that are not covered. We just kind of want to even the odds. I believe Ms. Murabito is passing out some letters of support from other state associations across the United States. We are one of, I think, only three states that does not have legislation, so we're in the minority there. Pretty well the gist of the letters...there's a letter you'll see from Terry Fleck. He's probably the most knowledgeable man in the United States when it comes to police

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dogs. For 27 years, he's done the legal process of police dogs. He's trained them, used them, worked them, and now he is retired from that and just does the legal update process for different states. The gist of the letters from everyone is, we want to support, because these animals cost between \$8,000 and \$15,000. A lot of times, they're purchased with private donations. And we'd sure hate to have anything happen to them. We're...the people aren't held not only criminally liable, but civilly liable to, you know, replace the dog if they kill it or wound the dog. That's basically all I have to say. I'll entertain any questions anyone has. [LB176]

SENATOR ASHFORD: Any questions of Mr. Treu? Senator Chambers. [LB176]

SENATOR CHAMBERS: Mr. Treu, how long have you been doing what it is that you do? [LB176]

JEFF TREU: As a canine handler, sir? About five years. [LB176]

SENATOR CHAMBERS: How many dogs have been injured while doing whatever it is that they do in this capacity? [LB176]

JEFF TREU: Senator Chambers, I couldn't answer as far as the State Patrol's dogs, but I know as far as the others, there was three last year in the state. As far as the State Patrol's dogs, I wouldn't be able to tell you. [LB176]

SENATOR CHAMBERS: What was the nature of the injury? [LB176]

JEFF TREU: Two of them had been kicked, and one had had some problems where they were harassing it in a car and it scratched itself up. [LB176]

SENATOR CHAMBERS: How were they harassed? [LB176]

JEFF TREU: For instance, my patrol car has a sign on it that says, don't come near the car because the dog is there. Most people will read that and they interpret that as, come near the car. And they want to pound on the car and let the dog scratch on the window. They think that's cute. And it isn't. They'll hook a toenail and rip it off, or...but we had, actually, a couple assaulted, actually kicked and assaulted severely. [LB176]

SENATOR CHAMBERS: You mean a person just walked up and kicked a police dog? [LB176]

JEFF TREU: Both times, it was at an incident where the police dog was being deployed. [LB176]

SENATOR CHAMBERS: So the dog was attacking the person? [LB176]

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JEFF TREU: He was not attacking the person. He was chasing after someone. [LB176]

SENATOR CHAMBERS: Well, why would the person kick the dog if the...well, was the dog just sitting there, looking at the person? [LB176]

JEFF TREU: No, the dog was chasing them. [LB176]

SENATOR CHAMBERS: And a person chased by a dog would be required, under this law, to let the dog attack him or her and bite or do whatever it's going to do? [LB176]

JEFF TREU: When a dog chases someone, if...when they lay down, the dog is not trained to just attack anyone. The dog is trained to chase after them. If they lay down and give up, the dog will quit chasing them. [LB176]

SENATOR CHAMBERS: How many people know that they should...or, how many people would, if they're being chased by a dog, lie down while being pursued by a dog? [LB176]

JEFF TREU: They'll be told by the officer to lay down and they won't get hurt, and that's just how it happens. [LB176]

SENATOR CHAMBERS: Are you aware that there are people who don't believe police officers? [LB176]

JEFF TREU: I'm sure there is. [LB176]

SENATOR CHAMBERS: There's an article in today's paper where a black man in handcuffs was Tasered ten times by the Omaha Police. []

JEFF TREU: I'm not aware of that. That has nothing to do with... [LB176]

SENATOR CHAMBERS: That's why I'm telling you. [LB176]

JEFF TREU: I understand that. [LB176]

SENATOR CHAMBERS: I don't trust the police. [LB176]

JEFF TREU: I understand that. [LB176]

SENATOR CHAMBERS: These animals are like weapons, aren't they? [LB176]

JEFF TREU: If used wrongly, they could be, yes. [LB176]

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SENATOR CHAMBERS: They're not like pets, whose role is to just be a companion animal, or for comfort, or whatever. [LB176]

JEFF TREU: They're a tool, such as a Taser or a nightstick or anything like that. Yes, they're a tool. [LB176]

SENATOR CHAMBERS: Okay, so we're dealing with an animal who has been trained to do something other than be a comforter or companion, but rather, an animal who will attack a person if ordered to do so. [LB176]

JEFF TREU: I don't really approve of the word "attack." That's not...when a dog does bite, he's not there to injure that person. He's there to grab that person and take them down to the ground. [LB176]

SENATOR CHAMBERS: Why don't you like the word "attack"? [LB176]

JEFF TREU: Because I've been bitten many times by the dog in training, and I've never been attacked. He's never hurt me. They're not trained to hurt you. They grab skin around your...they don't grab bone and that. They're not trained to do that. [LB176]

SENATOR CHAMBERS: So... [LB176]

JEFF TREU: The ultimate goal isn't to hurt someone with a dog. [LB176]

SENATOR CHAMBERS: So if one of these dogs would bite me, I shouldn't say that the dog ran me down and attacked me? I shouldn't use that word? [LB176]

JEFF TREU: No, he would take you to the ground, Senator. [LB176]

SENATOR CHAMBERS: But that's not an attack? [LB176]

JEFF TREU: No, I don't see that. [LB176]

SENATOR CHAMBERS: Do these dogs have teeth? [LB176]

JEFF TREU: (Laugh) Yes, they do. [LB176]

SENATOR CHAMBERS: Are their jaws operational, meaning that they can open and close? [LB176]

JEFF TREU: Yes, they are. [LB176]

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SENATOR CHAMBERS: Are the teeth effective when the jaws open and then close on an individual... [LB176]

JEFF TREU: Probably not. [LB176]

SENATOR CHAMBERS: ...and the jaws are equipped with teeth? [LB176]

JEFF TREU: Probably not. I have been bitten many times during training, and I'm here to tell you, I'm fine today because of it, so. [LB176]

SENATOR CHAMBERS: Have there been people injured by these dogs? [LB176]

JEFF TREU: I'm sure there have been, yes. [LB176]

SENATOR CHAMBERS: Are these dogs trained not to break flesh when they bite? [LB176]

JEFF TREU: They're trained to bite in certain ways to take people down to the ground, by grabbing clothing. [LB176]

SENATOR CHAMBERS: If somebody has tight-fitting clothing, then the dog wouldn't bother that person? [LB176]

JEFF TREU: I'm not saying that. I'm not...no. [LB176]

SENATOR CHAMBERS: So the nature of the clothing doesn't determine how much pressure the dog exerts when biting? [LB176]

JEFF TREU: No. [LB176]

SENATOR CHAMBERS: I read parts of these letters, and they all seem to say basically the same thing. The one thing I noticed, all of them are from people who make money training these dogs. These are profit-making individuals, aren't they? [LB176]

JEFF TREU: Those are state associations made up of canine handlers, Senator. [LB176]

SENATOR CHAMBERS: And they make money doing what they do, don't they? [LB176]

JEFF TREU: No, they're like us, they're a nonprofit organization. I believe there's one letter in there from a vendor or a trainer. [LB176]

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SENATOR CHAMBERS: So you don't get paid for what you do? Is that what you're saying? [LB176]

JEFF TREU: No sir. [LB176]

SENATOR CHAMBERS: Then explain to me what you do. [LB176]

JEFF TREU: I don't understand your question, I guess. [LB176]

SENATOR CHAMBERS: Do you understand what you do? [LB176]

JEFF TREU: As an association member or as a police officer? [LB176]

SENATOR CHAMBERS: Are you a police officer? [LB176]

JEFF TREU: Yes, I am. [LB176]

SENATOR CHAMBERS: And part of your job is to train these animals? [LB176]

JEFF TREU: No. No, they are trained by a certified trainer. I'm just a handler of the dog. [LB176]

SENATOR CHAMBERS: Oh, I thought you were a trainer. [LB176]

JEFF TREU: No. [LB176]

SENATOR CHAMBERS: What are...these people who sent these letters, have you read those letters? [LB176]

JEFF TREU: Yes, I have, Senator. [LB176]

SENATOR CHAMBERS: Are they paid for what they do? [LB176]

JEFF TREU: No, they're like myself. I'm part of the state Canine Association. That is not a paid position. We just represent...we're made up of people that are dog handlers in the state. We don't train dogs. We don't sell dogs. [LB176]

SENATOR CHAMBERS: So then this K9 Training Academy, Inc. is a police unit? There's a police unit called Cross Creek K9 Training Academy, Inc.? [LB176]

JEFF TREU: That is a trainer. I told you there was one in there that was from a trainer. [LB176]

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SENATOR CHAMBERS: Okay, and he does make money? [LB176]

JEFF TREU: Yes, he does. [LB176]

SENATOR CHAMBERS: Okay. [LB176]

JEFF TREU: The rest of those should be associations like the Nebraska Police Canine Association. [LB176]

SENATOR CHAMBERS: So when I see this other one, K9 Tactical Operations and Consulting, they consult for free? [LB176]

JEFF TREU: I'm not sure, Senator. That's part of an...he's a member of an canine association in, I believe, California. That was written on behalf of their canine association. [LB176]

SENATOR CHAMBERS: So the letterhead does not necessarily mean that those who signed this letter are part of the consulting...the operations and consulting activity? [LB176]

JEFF TREU: I believe, Senator, if you look at the bottom, he's an officer for the California Association of Tactical Officers. That's who wrote the letter. [LB176]

SENATOR CHAMBERS: Well, why would he use the letterhead of an operation that probably is a profit-making operation? [LB176]

JEFF TREU: I don't know. I can't answer that. [LB176]

SENATOR CHAMBERS: If I see the words "SWAT & K-9's Interacting During Deployment School," and "CANine Tactical School," am I to understand from that that it is the police department that conducts these schools? [LB176]

JEFF TREU: It could be. I'm not aware of that. He...like I said, he wrote as a member of the Association of Tactical Officers. [LB176]

SENATOR CHAMBERS: Did he send it to you? [LB176]

JEFF TREU: Yes, he did. That was e-mailed to me. [LB176]

SENATOR CHAMBERS: If you look at this emblem on the left-hand side of this letter that I'm discussing with you, do you see a person in a crouching position holding a pistol with both hands? [LB176]

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JEFF TREU: Yes, I do. [LB176]

SENATOR CHAMBERS: And there's a dog--I think that's supposed to be a dog--below that person. [LB176]

JEFF TREU: Yeah. [LB176]

SENATOR CHAMBERS: And it says "canine tactical operations." Is that the emblem of this police agency? [LB176]

JEFF TREU: Probably...I don't know. I don't know. [LB176]

SENATOR CHAMBERS: And then at the bottom it says "SKIDDS, CATS." So do they have a cat unit also, in case somebody climbed a tree? (Laugh) [LB176]

JEFF TREU: I don't believe so. I think that's an acronym for Canine Tactical School, sir. [LB176]

SENATOR CHAMBERS: So what does the CATS refer to on that emblem? [LB176]

JEFF TREU: Canine Tactical School. [LB176]

SENATOR CHAMBERS: Oh, Canine? Oh, so that's a bit of cleverness. Okay. Now the next one says, "Terry Fleck, Police Canine Expert." [LB176]

JEFF TREU: Yes, sir. [LB176]

SENATOR CHAMBERS: That means that this person is a police officer? [LB176]

JEFF TREU: He's retired. [LB176]

SENATOR CHAMBERS: And he does this for free, whatever he's doing? [LB176]

JEFF TREU: He does canine legal consulting across the United States, and yes, his services are free. I don't pay to use his services, no. [LB176]

SENATOR CHAMBERS: So he doesn't make any money doing this, you're telling me? [LB176]

JEFF TREU: He's a retired police officer. I don't know what his pension is, but I have access to his services free of charge any time. [LB176]

SENATOR CHAMBERS: How many dogs have you trained? I...you don't train them.

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That's right. [LB176]

JEFF TREU: I don't train dogs. [LB176]

SENATOR CHAMBERS: Which police agency are you employed by? [LB176]

JEFF TREU: Antelope County Sheriff's Department. [LB176]

SENATOR CHAMBERS: And how many dogs does the Antelope County Sheriff's Department have? [LB176]

JEFF TREU: We've had two. I had one that I worked for a year and a half, and he got cancer and died, and now I have another dog that I've worked for a little over three years. [LB176]

SENATOR CHAMBERS: But I meant, there's one dog in operation at one time? [LB176]

JEFF TREU: For the agency. Yes, sir. [LB176]

SENATOR CHAMBERS: And you use that dog now? [LB176]

JEFF TREU: Yes. [LB176]

SENATOR CHAMBERS: How have you been hindered in the use of that dog because this law is not in effect? [LB176]

JEFF TREU: I have not personally been hindered. [LB176]

SENATOR CHAMBERS: But you're here because you're sympathetic toward your fellow officers? [LB176]

JEFF TREU: All the police dogs in Nebraska, correct. [LB176]

SENATOR CHAMBERS: Are you aware of a dog having been shot? [LB176]

JEFF TREU: Not in Nebraska since I've been handling, no. I'll answer that, yes, I'm aware of a dog being shot in Grand Island years ago, but not since I've been handling a dog, not. [LB176]

SENATOR CHAMBERS: Years ago a dog was shot, so we ought to change the...? [LB176]

JEFF TREU: A police dog in Grand Island, years ago. [LB176]

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SENATOR CHAMBERS: So we ought to...how many years ago? [LB176]

JEFF TREU: Years ago. I don't know. It was before my time. [LB176]

SENATOR CHAMBERS: So we ought to change the law because that happened a long time ago? That's why we ought to change the law? [LB176]

JEFF TREU: I'm not referring to that incident. You asked me if a dog had been shot, and I answered that. [LB176]

SENATOR CHAMBERS: Okay. Because I want to see what kind of injuries these animals are suffering that would justify this kind of a law. They've tried to get this into the law before, haven't they, in Nebraska? [LB176]

JEFF TREU: I believe so. [LB176]

SENATOR CHAMBERS: And it hasn't been successful, obviously, because you're back, correct? [LB176]

JEFF TREU: I guess. [LB176]

SENATOR CHAMBERS: I want to take advantage of your knowledge. What is the Police Standards Advisory Council? [LB176]

JEFF TREU: That's a council made up of, I believe, six or seven chiefs. I think there's a police officer on there. They set all the standards for the state of Nebraska, or anything to do with police. That's an advisory council. [LB176]

SENATOR CHAMBERS: Do they set standards for the training of these animals? [LB176]

JEFF TREU: Yes. Well, they would, for that. They set the training standards for police officers themselves. [LB176]

SENATOR CHAMBERS: They don't set those standards now, though? [LB176]

JEFF TREU: No, sir. [LB176]

SENATOR CHAMBERS: So dogs that are currently being used might not meet those standards. Is that true? [LB176]

JEFF TREU: All dogs being used now would meet the standards of the National Police

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Canine Association. [LB176]

SENATOR CHAMBERS: But that's not what we're talking about, are we? Is that in here? Because maybe I missed it. [LB176]

JEFF TREU: That's what the Police Standards Advisory Council would use as a national certification, because that's standardized in all 50 states. [LB176]

SENATOR CHAMBERS: How do you know that's what they would use? This bill doesn't say they have to use it, does it? [LB176]

JEFF TREU: No, it says it's at the discretion of the Police Advisory...that's what we would recommend they use as an association. Then we're up to snuff with everybody else. [LB176]

SENATOR CHAMBERS: But your recommendation does not mandate that they do that, does it? [LB176]

JEFF TREU: They have no other standards to use, sir. They'd have to go with the Nebraska...or, the National Police Canine Association has. [LB176]

SENATOR CHAMBERS: Your recommendation does not mean that they would follow this...whatever this national organization does, does it? [LB176]

JEFF TREU: They could set stricter standards, I assume, if they wanted to. [LB176]

SENATOR CHAMBERS: Mr. Treu, what in this law mandates that this Police Standards Advisory Council adopt the standards of this national group that you're talking about? What in this law mandates that? [LB176]

JEFF TREU: I don't understand your question, I guess. It's up to the Police Standards Advisory Council to set all standards in the state of Nebraska for law enforcement, to do with anything--dogs or humans or... [LB176]

SENATOR CHAMBERS: So what in here says that this Police Standards Advisory Council is going to accept the standards of that national association that you mentioned? [LB176]

JEFF TREU: I don't know that there is, sir. I don't know. [LB176]

SENATOR CHAMBERS: There's nothing in here that says that, is there? [LB176]

JEFF TREU: I don't know that there is, no. [LB176]

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SENATOR CHAMBERS: So we wouldn't know what standards they're going to use, would we, as members of the Legislature? [LB176]

JEFF TREU: Probably not. I don't know why anybody would go with anything other than what the national standards are, though. [LB176]

SENATOR CHAMBERS: Well, you don't know why they would either, though, would you? You have an opinion, but you don't actually know why they would or would not, do you? [LB176]

JEFF TREU: No. [LB176]

SENATOR CHAMBERS: Are you familiar with those national standards? [LB176]

JEFF TREU: Yes, I am. That's what both of my trainers train their dogs to. [LB176]

SENATOR CHAMBERS: So if those standards are not adopted, then your dogs might not necessarily meet the standards set by this advisory council. Is that correct? Let me ask it a different way. [LB176]

JEFF TREU: Ask...yes, ask it again, please. [LB176]

SENATOR CHAMBERS: Let me ask it a different way. Your dogs are trained according to standards "A." If this law is passed and standards "B" are adopted, and standard "B"...standards "B" are different from standards "A," then your dogs, trained according to standards "A," would not be in compliance with standards "B," would they? [LB176]

JEFF TREU: I guess I could answer that by saying that no one is going to change from...they're not going to deviate from the national standards, because nobody wants to be in line for any type of litigation that would come down for not sticking with what our trainers...for instance, Senator Chambers, my dog was trained in South Carolina. We have dogs in this state who were trained in Kansas. They're all trained to this standard, set nationally, so they can pass the national standard certification. And that's... [LB176]

SENATOR CHAMBERS: There's no requirement under this statute that they pass any national standard certification, is there? [LB176]

JEFF TREU: There is with the trainers, and we have to go back...I go to South Carolina every year to recertify with my dog. He's trained to those standards, which are very high standards. [LB176]

SENATOR CHAMBERS: Is there anything in this statute that mentions this group that

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you're talking about? [LB176]

JEFF TREU: It will be up to the Police Standards Advisory Committee. [LB176]

SENATOR CHAMBERS: And they don't have to adopt those standards, do they? [LB176]

JEFF TREU: I don't know why they wouldn't, but to answer your question, I don't know, they probably wouldn't have to. I don't know. [LB176]

SENATOR CHAMBERS: I'm going to ask it, and I think you can answer yes or no. [LB176]

JEFF TREU: Okay. [LB176]

SENATOR CHAMBERS: They don't have to adopt those standards, do they? [LB176]

JEFF TREU: No. [LB176]

SENATOR CHAMBERS: And if they adopt different standards, your dogs would be out of compliance, wouldn't they? [LB176]

JEFF TREU: Possibly. [LB176]

SENATOR CHAMBERS: And they would have to be retrained to meet those new standards. Is that true? [LB176]

JEFF TREU: Yes. [LB176]

SENATOR CHAMBERS: Have you talked to other dog handlers on other police forces in Nebraska about this bill? [LB176]

JEFF TREU: Yes. [LB176]

SENATOR CHAMBERS: Did any of them relate examples to you of where dogs were harmed and nothing was done about it? [LB176]

JEFF TREU: Yes. [LB176]

SENATOR CHAMBERS: So then right now, are you...? [LB176]

JEFF TREU: Seward County had a dog assaulted last year that took hundreds of dollars of medical bills, or vet bills, to sew him up. They testified in front of this

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committee last year. And there was nothing could be done about that, because there was no law to protect the dog. They couldn't go after the individual criminally or civilly. It's a \$100 fine for cruelty to animals. That's it. [LB176]

SENATOR CHAMBERS: And why isn't there enough? Because the dog's safety and well-being is what should be protected. [LB176]

JEFF TREU: That's why we're trying to change this. [LB176]

SENATOR CHAMBERS: What is the worst penalty that somebody could suffer if this were the law and it were in effect? [LB176]

JEFF TREU: I believe the bill reads they would be guilty of a Class I misdemeanor, Senator. I haven't...I think that's what it read in there. [LB176]

SENATOR CHAMBERS: So if I'm running and a dog comes after me, I'm going to think, now, if I kick this dog because he's going to bite me, then I'm facing a Class I misdemeanor, so I'm going to let the dog bite me? [LB176]

JEFF TREU: Yeah. [LB176]

SENATOR CHAMBERS: Are you aware that there have been cases decided by the Nebraska Supreme Court where people in the lower court were convicted for running from a cop, and the cop grabbed the person, and said he grabbed the person because the individual was running and that made him suspicious, and the Supreme Court said merely running from an officer is not sufficient...probable cause to arrest somebody? [LB176]

JEFF TREU: I'm not aware of that. I'm sure there is some like that, yeah. [LB176]

SENATOR CHAMBERS: Well, if there are cops who will arrest somebody, there might be cops who will sic a dog on somebody if the person runs from the cop, huh? [LB176]

JEFF TREU: Nobody I know would do that, Senator. [LB176]

SENATOR CHAMBERS: You said what? [LB176]

JEFF TREU: Nobody that I know that handles a dog would do that. [LB176]

SENATOR CHAMBERS: Do you know of anybody who would use a Taser on a handcuffed man ten times? [LB176]

JEFF TREU: No, I don't. [LB176]

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SENATOR CHAMBERS: So the fact that you don't know it doesn't mean it wouldn't happen, does it? [LB176]

JEFF TREU: No, it probably could happen. [LB176]

SENATOR CHAMBERS: And I have to be concerned, because I know some rotten, dirty things that police in Omaha have done. [LB176]

JEFF TREU: That could be. [LB176]

SENATOR CHAMBERS: And that's to let you know why I'm skeptical. And that's all I will ask you. Thank you. [LB176]

SENATOR ASHFORD: Thank you, Senator Chambers. Senator McDonald. [LB176]

SENATOR McDONALD: This is just broadening the law to include other dogs, not just the ones owned by the state of Nebraska? [LB176]

JEFF TREU: That's correct, Senator. [LB176]

SENATOR McDONALD: And they already have that protection, those dogs that are owned by the state of Nebraska? [LB176]

JEFF TREU: Yes, they do. [LB176]

SENATOR McDONALD: And so this would just be broadening that to include the dogs that are owned by police departments across... [LB176]

JEFF TREU: And sheriffs' departments, yes. [LB176]

SENATOR McDONALD: ...and sheriffs' departments, across the state? [LB176]

JEFF TREU: Yes. Yes. [LB176]

SENATOR McDONALD: So it's just expanding this protection? [LB176]

JEFF TREU: That's correct. [LB176]

SENATOR McDONALD: Okay. Thank you. [LB176]

SENATOR ASHFORD: Thank you, Senator. Any other...Senator Pedersen. [LB176]

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SENATOR PEDERSEN: Thank you, Senator Ashford. Are you aware, sir, of any laws that would...that you could charge a dog with going over and beyond their command if they do attack somebody when...at command, or whatever you call it, take down, and they mutilate somebody? [LB176]

JEFF TREU: Yes and no. I'm...in looking at other state statutes, they also cover if the dog goes overboard, which he shouldn't. I mean, dogs train...I guess it's tough to explain. I think we're required four and a half, five hours every week for every certification that dog has. [LB176]

SENATOR PEDERSEN: In Omaha right now there's a case going on where a police officer used a Taser gun on a young man who was handcuffed, and overly...was overzealous with this gun. And there's...and the man is probably going to be fired. What would you do if a dog did that and the dog was sent upon a person to do such? [LB176]

JEFF TREU: Well, certainly, canine officers wouldn't condone that. You know, you could...I guess you could abuse power with anything you have, including your dog. But the dog is trained to grasp and take somebody down. If you're running, as Senator Chambers said, from the dog, and you lay down, the dog is trained to not grab that person. There's a great deal of training goes into these dogs, hours, hundreds of hours. [LB176]

SENATOR PEDERSEN: Aren't sometimes the dogs used to go in because they're more dispensable than the human life? [LB176]

JEFF TREU: Well, we don't like to think of it as that way, but yes, they do...they have dogs--my dog is not trained in that way--to send into a building to do a building search. My dog is not trained to do that. [LB176]

SENATOR PEDERSEN: Thank you. [LB176]

SENATOR ASHFORD: Senator Chambers,... [LB176]

SENATOR CHAMBERS: Oh, if there was somebody else's hand, go ahead. [LB176]

SENATOR ASHFORD: ...I just had one question, but go...I just had one...following up, I thought...I think Senator Pedersen brings up the question that I had in my mind, is, once you start establishing...you apply the standards in the statute...and the idea, of course, is if the standards are adhered to, that provides protection to the person who's utilizing the dog, who's trained, and so forth and so on. But arguably, if those standards are not applied properly and the evidence in a particular case would show that those standards are not applied properly in some way--and I haven't seen the standards, but I suppose it's possible that they may not be applied properly--then that officer could be, and the

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entity that the officer works for, could be liable for injury to...? [LB176]

JEFF TREU: Very much so. [LB176]

SENATOR ASHFORD: So that's a very...that's a reality. So those standards are, in a way, a protection, but in another way, they create a standard that must be complied with. [LB176]

JEFF TREU: And one thing that comes up, Senator, is about the vendors. They do this for a living. They make money on it. That's true. But when I go back every year to South Carolina, I invest a lot of time and money to go down there, because that's who my dog...if there's a liability issue here, it also would fall back on him. So he isn't going to just... [LB176]

SENATOR ASHFORD: I understand that, and that's all I'm suggesting. And I'm not saying you would do that. And obviously, you're very well trained. But there is the possibility, I think, as Senator Pedersen is bringing this issue up--it's a good one--is, there could be injury caused by the negligence of a handler of the dog. I mean, the dog isn't negligent; the handler is negligent, because the handler has supposedly been trained. [LB176]

JEFF TREU: That's correct. It's just like your Taser incident. That officer needs to be held accountable for that. I'm not aware of that case. I have not... [LB176]

SENATOR ASHFORD: Right. And I think Senator Pedersen was asking if you're aware of any law that provides that. But other than negligence laws and that sort of thing, there wouldn't be anything particularly specific that would...there may be some rules or regulations within the department that cover that, possibly, maybe. Senator Chambers. [LB176]

SENATOR CHAMBERS: The State Patrol is under the direct control of the state. It is a state agency. It is an arm of the state. All this multiplicity of police agencies throughout this state are not directly under the state, and nobody in this Legislature knows anything about how those agencies function. We know about the State Patrol, and we can get at them. They are part of the state. So the mere fact that a state agency is granted certain prerogatives does not mean they therefore ought to be granted to every entity anywhere in the state that might carry on functions similar to those of the state agency. So the mere fact that the State Patrol dogs are covered is not, in my mind, an argument in favor of all these miscellaneous police agencies having their dogs covered. I'm aware of instances in Omaha where police have shot unarmed black men, and they said, well, I didn't realize he was unarmed, I didn't know, it was a split-second decision and I shot him. Well, that split-second decision can be made with a dog, too, couldn't it? And if it had been a dog instead of a gun, the dog would have been set upon somebody where

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that should not have been the case. That could happen with a dog like it can with a gun, can't it? [LB176]

JEFF TREU: It could. [LB176]

SENATOR CHAMBERS: And if I fought the dog, then I'm committing a crime under this law. Isn't that true? [LB176]

JEFF TREU: That's true. [LB176]

SENATOR CHAMBERS: So under this law, I have to let a dog bite me or do whatever it wants to do, and I can't resist it. Isn't that true? [LB176]

JEFF TREU: No, sir. [LB176]

SENATOR CHAMBERS: Then I'm free, under this law, to resist the dog? If I'm in a corner and the dog comes at me, then I can kick the dog, and if I'm strong enough, I can grab the dog and strangle him, and I wouldn't be guilty of a crime? Is that what you're telling me? [LB176]

JEFF TREU: You would be if you harassed or assaulted the dog, yes, sir, if you assaulted it. [LB176]

SENATOR CHAMBERS: So in other words, I can't resist the dog, whatever it's doing. Is that true? [LB176]

JEFF TREU: If the dog is (inaudible), yes, you're right. [LB176]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB176]

SENATOR ASHFORD: Thank you, Senator Chambers. Thank you, Mr. Treu. Appreciate it. Any other proponents? []

ED BURMOOD: Good afternoon, Senators. My name is Ed Burmood. I'm with the Hastings Police Department. I spell my last name B-u-r-m-o-o-d. This is my second time testifying in front the Judiciary Committee on behalf of this LB. Last time it was introduced, it was LB100. I'm the president of the Nebraska Police Canine Association. I founded the association with another officer. The reason we set out to do that was because we saw a need for all the dogs across the state to be certified. And the reason we like to have certified dogs is because certified dogs are less likely to produce bad case law. Departments that may be looking for a less expensive route to obtain a dog may get one out of the pound and not train it to the standards that we are seeking. Our association recommends the same standards that the State Patrol uses, which is the

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DB-01 (phonetic) standard, which is the nationally recognized standard. Working with the Police Advisory Committee a couple years ago, they had chosen to wait until the law was passed before they worked on any setting of standards. We have recommended that they use the DB-01 (phonetic), same as Nebraska, so we have the same type of standards across the state, and make it easier for the court systems to work with. As far as certifications and departments and stuff like that, we've also incorporated that the handler must also be certified. In other words, he needs to know when a dog is authorized to be deployed. And the United States Supreme Court has determined what those are. We have a three-pronged test before we can deploy a dog for an apprehension. I'm not going to go in and quote those case laws at this time, but I know what the general meaning of them are. Being a canine handler myself, my dog has been harassed and attacked and provoked, several times while he's in the vehicle. And since these are working dogs, they're high-energy dogs, this harassment while they're in the vehicle causes them to spin in the vehicle. The spinning can lead to them flipping their stomach, which causes a medical condition called torsion. If that develops in the dog, it can kill the dog if it doesn't have emergency surgery within 30 minutes. Now, that would be a tremendous loss for a department that spent \$8,000 to \$10,000 for a dog. So we're looking at helping those departments if that would happen to their dog, some type of way to recover their loss. My dog has been a victim of that. He's also been a victim of standing with me and college students there in Hastings have developed a game of trying to get close and...close enough to hit the dog while he's standing there with me, which is something I can't do anything about, other than tell them to stay back. If I'm dealing with somebody over here, somebody comes up on my back side and hits the dog or something, it diverts his attention away from the issue that I'm dealing with, and that...there I believe it's called obstruction. However, this statute currently, in its nomenclature, doesn't allow me to do anything when that dog is diverted from his job. About all I have to say. If you have any questions for me, I'd be willing to answer them. [LB176]

SENATOR ASHFORD: Senator Chambers. [LB176]

SENATOR CHAMBERS: Officer Burmood, are you telling me that your superiors have told you that if you are properly using this dog and properly enforcing the law and carrying out your duties as an officer and somebody struck the dog, you couldn't do anything about that? Is that what you're telling me? []

ED BURMOOD: By statute, I cannot, sir. [LB176]

SENATOR CHAMBERS: What does the statute allow you to do if I strike your gun? Is there anything in the statute that makes it a crime for me to strike your pistol? [LB176]

ED BURMOOD: No. [LB176]

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SENATOR CHAMBERS: Suppose I strike your pistol. Can you arrest me? [LB176]

ED BURMOOD: I can tell you to stay away. [LB176]

SENATOR CHAMBERS: Have you heard of the charge, interfering with an officer? [LB176]

ED BURMOOD: Yes, sir. [LB176]

SENATOR CHAMBERS: Have you ever arrested anybody for interfering with an officer? [LB176]

ED BURMOOD: Yes. [LB176]

SENATOR CHAMBERS: If I attempt to take your firearm or disable it while you are carrying out your duties, am I interfering with an officer, even though I don't touch your body? [LB176]

ED BURMOOD: That would be dependent upon the circumstances. I can't answer that in the broad terms you've laid it out. [LB176]

SENATOR CHAMBERS: If you're using this dog appropriately to carry out your duties as an officer and I interfere with you carrying out that duty, even though using a dog rather than a gun, that's not... [LB176]

ED BURMOOD: The dog is not an inanimate object. It can't turn away from its task, okay; the dog can. [LB176]

SENATOR CHAMBERS: So that...and you don't think that would be interfering with an officer if the dog is considered an extension of you when you're functioning as an officer? Who told you that? Your county attorney? [LB176]

ED BURMOOD: That the dog is not an extension of me? [LB176]

SENATOR CHAMBERS: No, did your county attorney tell you that if you're using this dog and somebody strikes the dog, you cannot make an arrest? Your county attorney told you that? [LB176]

ED BURMOOD: As far as everyone that I've spoken with, you can't do anything unless it's the State Patrol's dog, under the control of the State Patrol. [LB176]

SENATOR CHAMBERS: Who told you that in law...is that what your county attorney or your city prosecutor, whoever the legal advisor is for your police agency? [LB176]

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ED BURMOOD: In the several training sessions that I've been in, that's basically the crux of all the training that we get, as far as the protections afforded our dogs, that... [LB176]

SENATOR CHAMBERS: Then why do you even use a dog, if somebody can strike the dog...well, suppose I take the dog away from you. Can you do anything about that? [LB176]

ED BURMOOD: Yes, sir. [LB176]

SENATOR CHAMBERS: What can you do? [LB176]

ED BURMOOD: Well, then I could probably arrest you. [LB176]

SENATOR CHAMBERS: For what, theft? [LB176]

ED BURMOOD: (Laugh) Yes, he's city property. [LB176]

SENATOR CHAMBERS: And that's the only thing you think you could do? [LB176]

ED BURMOOD: Well, if you took my dog away, sir, he would probably be making the arrest. [LB176]

SENATOR CHAMBERS: So when you go back to Grand Island, I think you ought to ask whoever, the legal advisor for the department, what you can do if somebody attacks your dog or hits your dog, because from what you said, people actually hit the animal. [LB176]

ED BURMOOD: Yes. [LB176]

SENATOR CHAMBERS: And you cannot make an arrest. [LB176]

ED BURMOOD: That's correct. [LB176]

SENATOR CHAMBERS: If I kick your cruiser, can you make an arrest? [LB176]

ED BURMOOD: If you damage it, yes. [LB176]

SENATOR CHAMBERS: You said that your dog has been harassed while in the vehicle. [LB176]

ED BURMOOD: Yes. [LB176]

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SENATOR CHAMBERS: What does its harassment consist of? [LB176]

ED BURMOOD: Going up and hitting on the screen of his window. [LB176]

SENATOR CHAMBERS: Could you excuse me one second? [LB176]

ED BURMOOD: Yes. [LB176]

SENATOR CHAMBERS: Somebody sent some information that the dog should be listening to only one command, that of the handler, and no one else. So it shouldn't be listening to anybody else. [LB176]

ED BURMOOD: That's correct. [LB176]

SENATOR CHAMBERS: Somebody who's watching this, because it's carried on the television, they could... [LB176]

ED BURMOOD: But if somebody slaps him on the rear end, he's going to turn towards that person. [LB176]

SENATOR CHAMBERS: So now, tell me what...has anybody vocally harassed the dog in such a way that you feel if this law were in place you could take action against the dog for doing that? [LB176]

ED BURMOOD: Vocally, there's nothing I can do. [LB176]

SENATOR CHAMBERS: Bark at the dog. [LB176]

ED BURMOOD: My dog did make the news because somebody barked at him. [LB176]

SENATOR CHAMBERS: And what happened? [LB176]

ED BURMOOD: He wasn't charged with barking at the dog. That was the media's play on the story. He was arrested because he assaulted another person right in our presence. [LB176]

SENATOR CHAMBERS: Okay, so the dog then being barked at had nothing to do with this issue? [LB176]

ED BURMOOD: No, sir. [LB176]

SENATOR CHAMBERS: Okay. If this bill is not enacted into law, will you continue to

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use your dog? [LB176]

ED BURMOOD: Yes, sir. [LB176]

SENATOR CHAMBERS: What prevents you and any other...when I say "you," I mean the agency you work for. What prevents any police agency from having their dogs trained to the level that would be required to obtain certification? What prevents that from happening right now? [LB176]

ED BURMOOD: The same thing that would allow them not to train them to those levels. [LB176]

SENATOR CHAMBERS: Can you say that a different way for me? [LB176]

ED BURMOOD: Sure. The same things that are required to...for any department that's not protected under law to train their dogs to the highest levels of standards is the same thing that allows them or disallows them to train them to the lowest standards. [LB176]

SENATOR CHAMBERS: Okay, but here's what I'm asking you. What would prevent them, if they want to have that dog highly trained,...I'll ask the question a different way. [LB176]

ED BURMOOD: Okay. [LB176]

SENATOR CHAMBERS: There is nothing that prevents them from doing that right now, is there? [LB176]

ED BURMOOD: No, and that's...I believe my dog is trained to one of those higher standards. [LB176]

SENATOR CHAMBERS: So... [LB176]

ED BURMOOD: And the state doesn't require any type of certification at this point. That's why we're introducing this bill. [LB176]

SENATOR CHAMBERS: Your interest is in being able to punish somebody if they do certain things for this dog. Is that what the purpose of this bill is? [LB176]

ED BURMOOD: The purpose is to allow that option. It's also there to create a standard that's statewide. [LB176]

SENATOR CHAMBERS: Well, here's what the language says that this...that you're talking about follows. A person commits the offense of obstructing a peace officer when

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by using or threatening to use violence, force, physical interference, or obstacle, he or she intentionally obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his or her official authority; (b) a police animal assisting a police officer acting pursuant to the peace officer's official authority. So you're interested in being able to charge people with an offense. That's what this is about, isn't it? Because you can't charge them with an offense of... [LB176]

ED BURMOOD: Senator, my wording on this is not exactly the same as yours, I don't think. Could I read mine? [LB176]

SENATOR CHAMBERS: Well, I'm reading the language that's in the statute. [LB176]

SENATOR ASHFORD: Let's try to stick with the green copy if at all possible. (Laugh) [LB176]

ED BURMOOD: Okay. I don't have a green copy. [LB176]

SENATOR CHAMBERS: Okay. Well, that's all I'll ask you, though, because I...there are others who are going to speak, and maybe some of these things I can pursue with them, and I don't have to keep you here much longer. [LB176]

ED BURMOOD: Okay. Thank you. [LB176]

SENATOR CHAMBERS: Could I ask you one question? [LB176]

ED BURMOOD: Yes, sir. [LB176]

SENATOR CHAMBERS: I see a lot of hardware on your right front chest. What are those for? [LB176]

ED BURMOOD: Those are recognitions of things I'm involved with. One up here is probably...it says CASA, Court-Appointed Special Advocate. I'm a volunteer for children in the court system. [LB176]

SENATOR CHAMBERS: I thought that might be one of them. And I thought, after all my questioning, I should give you a chance to point out that you're not just on the side of putting a dog on somebody. [LB176]

ED BURMOOD: Thank you. [LB176]

SENATOR CHAMBERS: Okay. [LB176]

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SENATOR ASHFORD: Senator Lathrop. [LB176]

SENATOR LATHROP: I do have two short questions for you. The dogs that police use, do they have some kind of a vest on or something that identifies them as a police dog? Or if somebody encounters a police dog, how are they going to know it's a police dog? [LB176]

ED BURMOOD: My dog always wears a harness that says "police." He has "police" down both sides. When he's sent into a building, he's wearing an armored vest that also says "police" down the sides. Not every department can afford those. My department certainly couldn't, so we had a fund-raiser to purchase those items. But the harness is, like, \$50, and most departments use them. [LB176]

SENATOR LATHROP: Generally, we're going to be able to tell a police dog from any other animal, any other similar-type dog. [LB176]

ED BURMOOD: And most of the time, they're at the end of the leash that the officer is holding. [LB176]

SENATOR LATHROP: Okay. And the other question I have for you is, you've talked about--two witnesses have--about banging on the glass. You stop your police car someplace and you go to investigate something and somebody taps on the glass and the dog jumps around. That really isn't covered here, though, is it? We're not making a Class I misdemeanor out of tapping on the glass of the police cruiser, are we? [LB176]

ED BURMOOD: That's a good question, Senator. There's another statute, I think it's 28-1008, that uses the definition in this statute. If it uses the definition as it currently is, it only pertains to State Patrol dogs. The harassment of the dog in the vehicle is covered under another statute, and I think it's that 1008 or 1009, and it uses the definition from 906. [LB176]

SENATOR LATHROP: Okay. But what we're doing here is making...extending the criminal behavior to dogs other than the State Patrol when they're being employed, so when you have them out on a leash, and not when they're sitting in the car. [LB176]

ED BURMOOD: That's not the only thing we're doing here. We're changing the definition of what a police dog is. Right now, the definition says, State Patrol dog. [LB176]

SENATOR LATHROP: Okay. But we're not trying to make a Class I misdemeanor out of the person that comes too close to the police cruiser and the dog starts jumping around in the back. [LB176]

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ED BURMOOD: No. In statute 1008, it makes it a Class IV misdemeanor. [LB176]

SENATOR LATHROP: Okay, that's all I had. [LB176]

ED BURMOOD: Okay. Anything else? [LB176]

SENATOR ASHFORD: Senator, anyone else? I just have one question. I'm just intrigued when we put standards into statute that we don't really know what those standards are. And I think that question is...but I do commend you for your professionalism in utilizing trained dogs and so forth and so on. Would you have any...I mean, do you have any objection if we were to simply say in a straightforward manner that dogs utilized by law enforcement agencies must be trained pursuant to those standards? [LB176]

ED BURMOOD: No, I wouldn't have a problem at all. [LB176]

SENATOR ASHFORD: And would you...are most dogs trained under these standards? Are the handlers and the dogs trained under these standards? [LB176]

ED BURMOOD: Standards across the nation are so similar that one dog could probably go into the others, and it's just a matter of... [LB176]

SENATOR ASHFORD: Right, but I mean, they're...I mean, there's a standard. The Police Standards Advisory Council recognizes certain standards, and they may be different from state to state, but they're generally the same, they have the same sort of thing. [LB176]

ED BURMOOD: Correct. [LB176]

SENATOR ASHFORD: So if we were simply to say that it's required that all law enforcement animals be trained pursuant to certain standards, you agree with that idea? [LB176]

ED BURMOOD: Yes. It's just...we added those wordings because they set the standards for police officers, we thought they might as well set the standards for canines. [LB176]

SENATOR ASHFORD: For...and do you believe that this statute...this statute doesn't require that they all meet that standard, but if they wish to have this...if a law enforcement agency desires to have this law apply to its animals, its dogs or horses, that these...they have to be certified. If they're not certified, this law doesn't apply. [LB176]

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ED BURMOOD: Correct. [LB176]

SENATOR ASHFORD: Which encourages them to be certified, I suspect, but it doesn't... [LB176]

ED BURMOOD: And the handler has to be certified as well. [LB176]

SENATOR ASHFORD: And the handler to be certified. But it doesn't require it. [LB176]

ED BURMOOD: Not right now it doesn't. [LB176]

SENATOR ASHFORD: Okay, and you have no objection to it being required of all law enforcement agencies? [LB176]

ED BURMOOD: No, I welcome a certification. [LB176]

SENATOR ASHFORD: Okay. Generally, are most of them certified, most dogs, most handlers, certified? [LB176]

ED BURMOOD: There's only one or two that I know of that were taken from a pound, but they don't use them for criminal apprehension. [LB176]

SENATOR ASHFORD: But the handlers, now. The handlers are, for the most part, certified under some standards? [LB176]

ED BURMOOD: No. There's a couple out there, I think, that... [LB176]

SENATOR ASHFORD: You are. [LB176]

ED BURMOOD: No, I've been certified several times. [LB176]

SENATOR ASHFORD: Right, you are. And Mr. Treu, Officer Treu was certified. [LB176]

ED BURMOOD: Yes. [LB176]

SENATOR ASHFORD: But are there officers out there that utilize dogs in the furtherance of their duties who are not certified, that you know of, or across the state? [LB176]

ED BURMOOD: There's two out towards the Panhandle, I believe, sir. [LB176]

SENATOR ASHFORD: Just two in the whole state? [LB176]

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ED BURMOOD: That I'm aware of. [LB176]

SENATOR ASHFORD: Okay. That's all I have. Thanks. [LB176]

ED BURMOOD: Thank you. [LB176]

ALAN BALDWIN: (Unlabeled exhibit) Good afternoon. My name is Alan Baldwin, B-a-l-d-w-i-n. I'm the chief of police in Seward. I'm here representing the Police Chiefs Association. I'm testifying in support of LB176 on behalf of the Police Officers...or, Police Chiefs Association. LB176 expands the definition of a police animal to include the certified police dogs recognized by the Police Standards Advisory Council. And this is included, hopefully will be included in Section 28-905. Basically, I'm here to answer questions. And as you pointed out earlier, Senator, what this...we're hoping to, with this, that it will require some...the requirements of becoming certified, either for the officer themselves or for the dogs. And as the officer just said, he doesn't know whether or not there's other agencies out there running around with noncertified officers or noncertified canines specifically trained for canine handling. So this law would enhance the likelihood of... [LB176]

SENATOR ASHFORD: It wouldn't require it, but... [LB176]

ALAN BALDWIN: It wouldn't require it, but it would enhance the likelihood that hopefully more officers and more dogs would then become certified. [LB176]

SENATOR ASHFORD: I appreciate that. Any questions? Senator Chambers. [LB176]

SENATOR CHAMBERS: Chief Baldwin. [LB176]

ALAN BALDWIN: Yes, sir. [LB176]

SENATOR CHAMBERS: Right now, the state could say that unless a dog and a handler are certified according to certain standards, those dogs cannot be used in a law enforcement function. We can do that right now, without expanding this definition, can't we? [LB176]

ALAN BALDWIN: I...you probably can, sir. [LB176]

SENATOR CHAMBERS: So there's nothing that we have to do with this piece of legislation to require that dogs that are used be certified. We can just state that as the law, and if an agency is not going to have the dogs certified, that agency cannot use the dogs. Isn't that true? [LB176]

ALAN BALDWIN: Under the scenario that you just gave, that would be correct. [LB176]

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SENATOR CHAMBERS: Because the Legislature, we can pass any law we want to. We can set the standards for law enforcement. We can say that if an officer isn't trained with a firearm according to certain standards, that person cannot use the firearm. We can say that in the law, and we don't have to make them a part of the State Patrol or anything else. We can just make that a requirement of law enforcement, can't we? [LB176]

ALAN BALDWIN: That is correct, sir. [LB176]

SENATOR CHAMBERS: Okay. So we don't have to pass this law to get certified...get dogs trained to meet a certain standard. We don't have to do anything with this law. We can just declare that, and they have to do it or not use the dogs. Isn't that true? [LB176]

ALAN BALDWIN: That is correct. I look at this as a possibility or probability of enhancing some reform with inside of our own organizations, to the point that we are wanting to see certified handlers and certified dogs out there on the street, and mandating more so than what there is. So I also look at this as a way of protecting our cities' tax dollars and county tax dollars in protecting those investments of those animals that are out there. [LB176]

SENATOR CHAMBERS: But as Chairman Ashford elicited from his questioning, even if this becomes the law, no agency needs to certify a dog. No agency needs to have a certified dog. That agency can go get a dog from the pound and use it in police work, even with this law. Isn't that true? [LB176]

ALAN BALDWIN: That is correct. However, for this law to come into play where that dog and that handler...or the dog is protected by this law, then that dog would then have to be certified through and recognized by the Police Standard Advisory Committee. [LB176]

SENATOR CHAMBERS: But I want to make clear for the record and everybody listening here today, we're looking at two different things. If this law were passed, it sets conditions which must be met in order for a police agency's dog to hold the same status as a dog owned by the State Patrol. It does not require that any dog owned by one of these agencies and used by one of these agencies be trained at all, does it? If we put this in law, there's nothing in here that requires any training of any of these dogs, is there? [LB176]

ALAN BALDWIN: If the dog is to be protected by this law,... [LB176]

SENATOR CHAMBERS: No, you're getting into the second area. [LB176]

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ALAN BALDWIN: Okay. Then the answer is no. [LB176]

SENATOR CHAMBERS: Right. And they could use a Pomeranian if they wanted to, they could use a Great Dane if they wanted to, that had no training of any kind, even if this law were passed. Isn't that true? [LB176]

ALAN BALDWIN: That would be correct. [LB176]

SENATOR CHAMBERS: The only thing that passage of this law will do is say that if the dogs used by a certain agency are certified, then that dog holds the same status as a dog owned by the State Patrol. [LB176]

ALAN BALDWIN: That would be correct. [LB176]

SENATOR CHAMBERS: But this...well, why don't you say that every dog used in law enforcement must be certified according to these standards? Why don't we just do that? [LB176]

ALAN BALDWIN: As long as we come up with the protection for that dog, that would be great. [LB176]

SENATOR CHAMBERS: So what do you mean by "protection"? You mean if certain things are...? [LB176]

ALAN BALDWIN: In other words, when our dogs are being harassed, when they are being assaulted, we want those individuals to be taken into custody. And I understand what you were saying earlier, Senator, that there's possibly some other laws out there. But unfortunately, because of this LB...this one law that says specifically to the State Patrol dog, it has pushed some agencies and/or others, prosecutors and others investigating this particular thing, to believe that their dogs aren't being protected. Why is that law specific to just the State Patrol if it's not good on the other side? I understand what you were saying earlier. Aren't these dogs being protected? Isn't there some issues there about them tampering with or hindering the police officer in the line of duty and some of those others? I'm not disagreeing that those things might be in play there. But why is this law specifically saying state dogs, and why not the others? And that's...we're saying, if our dogs go through the same training, if our officers go through the same training as the State Patrol, then we should be up to the same standard. We all appreciate, in some way or another, the minimum requirements for us to become handgun certified. Okay? All of the officers inside the state of Nebraska has to maintain a minimum qualification thing. Right now, there is no minimum qualification for the purpose of these dogs. If this law gets put in, or similar to the one that you're talking about, maybe we could include some more dogs that are certified, more dog handlers that are truly certified, and reducing the likelihood of injuring others. [LB176]

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SENATOR CHAMBERS: This last point, then I'm not going to keep you, because I've asked all the questions of others that I wanted to get into the record. Maybe my colleagues don't understand why we set standards that apply to the State Patrol and not these others. If a state employee does something that harms an individual, the state has a liability. The state is not liable if your dog goes out here and bites somebody; your county or your city is. I thought some of these things were...would be obvious to my colleagues here. But we set standards for state agencies, state employees, and others, because the liability that flows from the misconduct of those people is on the state, not the county, not the local police. So if the State Patrol is going to use certain animals, the state is going to set standards that must be met, not only to protect the dog, but to protect the state from liability. If the state, even by statute, allows its employees to do certain things that will hurt the public, the state is going to be liable. So that's the difference between putting standards on state agencies and state employees that don't apply to county and city people. But anyway, I just wanted to make that distinction. [LB176]

ALAN BALDWIN: Senator, the way that I look at that, if it's good for the state employees and justified for them, then we should be held to that same type of standard. Our employees should be. If a state employee has to live up to a certain standard, then the local one should be, as well. [LB176]

SENATOR CHAMBERS: So then the law...? [LB176]

ALAN BALDWIN: We don't have local driver's license; we have state driver's license. [LB176]

SENATOR CHAMBERS: So the law you should be seeking is one that would say, no dog can be used by any entity unless it is trained to a certain standard. [LB176]

ALAN BALDWIN: Okay. [LB176]

SENATOR CHAMBERS: But that's not what this is doing. [LB176]

SENATOR ASHFORD: Thank you, Senator Chambers. Any other questions? I just want to summarize. I understand exactly what you're saying, and I appreciate what Officer Treu and Officer Burmood are talking about, and I support the idea that all dogs must be certified and all trainers must be certified. And that currently is not the law today, and we should...that should be the law, it seems to me, in my opinion. And my colleagues would have to answer for themselves. But I agree with you. And I also understand the financial investment that Seward makes when it purchases a dog and goes through the training and so forth and so on, and I know there's a big investment and I appreciate that. I'm having a hard time making the connection between the portion of the law that deals with

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putting the State Patrol and the cities...and the officers on the same...in the same standard, for the reasons that Senator Chambers has brought up. It's liability issues. They're different when we're dealing with state employees. But I do think that these dogs and these trainers ought to adhere to same standards that Officer Burmood and Officer Treu do every day. I mean, they obviously are exemplary, and have set a standard, and I think it's what should be...I mean, I absolutely agree. I'm surprised that they're not. So that's just my humble opinion. But any other questions? [LB176]

ALAN BALDWIN: Thank you for your time. [LB176]

SENATOR ASHFORD: Thanks, Chief. Any other proponents of this bill? Any opponents? Neutral? That ends the hearing on this bill. (See also Exhibit 3.) The next bill...let's see, what time? Do we still have...I think we still have 15 minutes before our break. Is that...hopefully we can get everything. Senator Kruse is next. Do we have a Senator Kruse person? Yes, Senator Chambers? [LB176 LB180]

SENATOR CHAMBERS: He might be participating in communion of some kind or other. (Laughter) [LB180]

SENATOR ASHFORD: Welcome, Senator Kruse. [LB180]

SENATOR KRUSE: Yes. You ready to do it? [LB180]

SENATOR ASHFORD: Yes, we are. [LB180]

SENATOR CHAMBERS: And while you're here, the committee will be under "Kruse control." [LB180]

SENATOR KRUSE: (Laugh) Yes. Oh, thank you. [LB180]

SENATOR ASHFORD: LB180, Senator Kruse. Proceed. [LB180]

SENATOR KRUSE: Senators, Mr. Chairman, thank you. My name is Lowen Kruse. I'm District 13. And I can put the point of this bill pretty quickly. It's basically to plug a loophole in current statute. We have kegs, which I think you are all aware of, but I'll describe just enough for the record. A keg of beer may be purchased from a package outlet. At that time, the seller is required to attach a tag to that keg, which says where it was purchased and who purchased it. And then when the officer comes to a keg party with teenagers and sees that a law is being broken because some adult has given some alcohol to teenagers, they can look in the keg and see who brought it. As you would suspect, persons that are responsible for this tear the tag off, and therefore the officer doesn't have any account of it. We've looked at various ways of stamping a number on that keg or so on, and finally have come to the conclusion that the thing to do is to

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extend present law. Present law is that it is a misdemeanor to remove that tag from the keg, and this bill simply extends that: to remove the tag or to possess a keg where the tag has been removed. So the officer doesn't have to observe the tag being torn off. They can observe a keg that has no tag, and that would be a misdemeanor under the proposed bill. It's the same penalty as removing the tag. It has nothing to do with the person selling. It doesn't put an additional weight on the business or anything like that. It does open the door for a prosecutor or police to find out who really did buy that keg. And of course, they can pursue that. Possess...or, procuring is a much more serious crime than removing the tag, so it's going to be pursued to find out who actually is providing the alcohol. I think that's sufficient, Mr. Chairman. [LB180]

SENATOR ASHFORD: Thank you, Senator Kruse. Any questions of Senator Kruse? Senator Chambers. I'm sorry. [LB180]

SENATOR CHAMBERS: Senator Kruse, to help me, what...it says in the new language, in possession of a beer container described in Section 53-167.02, which, since it's not being amended by this, is not here. What would that container look like, if you know? If you don't know, that's all right. [LB180]

SENATOR KRUSE: I'm not closely acquainted with them, and there will be others that could describe it. But it's a metal container about this big around and, like, that tall. And it's full of...usually full of beer. [LB180]

SENATOR CHAMBERS: If it's going to be a crime to merely possess it, does it have to have any alcohol in it? [LB180]

SENATOR KRUSE: No, it's a crime to possess it without a tag. That tag is permanently affixed to it, and is to be on it when they bring it back. [LB180]

SENATOR CHAMBERS: Are these things...can these things be discarded? [LB180]

SENATOR KRUSE: No, they're to be brought back. Well,...no, they're to be brought back to the seller. [LB180]

SENATOR CHAMBERS: But there's nothing...all right, let's say that I get one of these containers, I get it legally, however you get it. [LB180]

SENATOR KRUSE: Yes. [LB180]

SENATOR CHAMBERS: And then when I have no more use for it, I throw it away. And then somebody sees it, and they think it might have value, and they pick it up, and maybe they're going to sell it as scrap or make use of it or whatever. That person possessing it is guilty of a crime, simply by possessing it, and need not know that

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there's anything illegal about that container. Isn't that true? [LB180]

SENATOR KRUSE: Yes, though you're using yourself as an illustration, and I know you're careful enough about money you would not give away the deposit. [LB180]

SENATOR CHAMBERS: The deposit of what? Oh, you mean when you get one of these... [LB180]

SENATOR KRUSE: The deposit on this keg. It's serious money. [LB180]

SENATOR CHAMBERS: Okay, then,...and I will pursue it...I see Mr. Conboy... [LB180]

SENATOR KRUSE: And if I found one someplace, I would take it back and try to collect the deposit. [LB180]

SENATOR CHAMBERS: But you're guilty of a crime just by possessing it. [LB180]

SENATOR KRUSE: Yes. [LB180]

SENATOR CHAMBERS: So you couldn't pick it up. [LB180]

SENATOR KRUSE: Well, you know,... [LB180]

SENATOR CHAMBERS: But you don't... [LB180]

SENATOR KRUSE: No, I'm not devious, Senator. [LB180]

SENATOR CHAMBERS: You don't mind it being a crime without a person knowing or intending to possess such a container? Let me ask it a different way. Would it be obvious to anybody who looks at one of these kegs that there has been tampering with an identification number? How would I know that by looking at it? [LB180]

SENATOR KRUSE: If you were totally unaware of the keg system, you probably would not be aware just by looking at it. [LB180]

SENATOR CHAMBERS: If somebody is aware of it, what would let a person know that that tag, or whatever it is, had been tampered with or altered? [LB180]

SENATOR KRUSE: Well, if they are acquainted with the system, it's kind of an insulated...it's a substantial piece of equipment, and... [LB180]

SENATOR CHAMBERS: Well, maybe the prosecutor will know, because I see him back there, and... [LB180]

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SENATOR KRUSE: He will be coming, and I'd much rather have him answer that question, Senator. [LB180]

SENATOR CHAMBERS: Okay. Thank you, Senator Kruse. [LB180]

SENATOR ASHFORD: Senator Schimek. [LB180]

SENATOR SCHIMEK: Actually, I think Senator Chambers touched a little bit on what I was going to ask. I remember when we passed this bill, and it was Senator Haberman's bill, I believe. And you were here, Senator Ashford. It was very contentious. We had a long, difficult discussion on it. And I think it was difficult because we envisioned some things could go wrong with the system. I don't remember from that discussion, either, what this number looks like or how it's affixed. Because it says here, or removed keg identification number. It almost sounds as if in some cases it's removable. [LB180]

SENATOR KRUSE: In all cases. It is a tag, like a luggage tag that you have in the airport. [LB180]

SENATOR SCHIMEK: Right. [LB180]

SENATOR KRUSE: It's not on...directly onto the container. We tried to get that through. [LB180]

SENATOR SCHIMEK: It's not printed on the... [LB180]

SENATOR KRUSE: We wanted a black light number or something. And the industry said that was just too difficult for them to do, and it gets confusing, because these kegs float around to various businesses. So at any rate, it's easily removable just by taking off the wire. [LB180]

SENATOR SCHIMEK: Well, that was what was leading to my discomfort with this, in a small way, and that is, someone who isn't, again, familiar with the keg system, doesn't even know there's supposed to be a number, might not even notice there's not a number on it, and could take this out. And then how is that person going to prove that...okay, let me back up a minute. When the keg is checked out, does the store check it for the number and make sure that there's a number on it? [LB180]

SENATOR KRUSE: They are required to do that, yes. [LB180]

SENATOR SCHIMEK: Okay. [LB180]

SENATOR KRUSE: And it's freshly done. It's a brand-new tag... [LB180]

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SENATOR SCHIMEK: Every time it's checked out. [LB180]

SENATOR KRUSE: ...every time, because it has to show who purchased it and identification and... [LB180]

SENATOR SCHIMEK: Okay, so that kind of takes care of that angle. Then let's suppose this is a big keg party out in some sand pit out in the country, and there's all kinds of people there, and somebody removes the tag. And the person who checked it out doesn't know it even, takes it back to the store, and discovers that there's no tag on it. And then that person can be charged, right, even though...? [LB180]

SENATOR KRUSE: They can be charged at present. [LB180]

SENATOR SCHIMEK: Okay. [LB180]

SENATOR KRUSE: That keg has to come back with its tag on. [LB180]

SENATOR SCHIMEK: It has to. [LB180]

SENATOR KRUSE: That's already in law. [LB180]

SENATOR SCHIMEK: And what's the current penalty? [LB180]

SENATOR KRUSE: For bringing it back without a tag? I don't know. It's not enforced because the business is not going to turn in one of their customers. So that just becomes a loophole. Now, part of the matter is, is that this keg really isn't a problem if it's out in a group of adults or a service club or something like that. It really only becomes a problem when it's teenagers taking the alcohol out of it. [LB180]

SENATOR SCHIMEK: Well, I'm not quite sure what we're solving here. If already the person who brings it back without a number on it is penalized, what are we doing additionally here? [LB180]

SENATOR KRUSE: We are saying that the officer at the keg party can challenge that this keg doesn't have a tag on it. [LB180]

SENATOR SCHIMEK: I see. [LB180]

SENATOR KRUSE: We're not asking the business to do anything more. [LB180]

SENATOR SCHIMEK: I see. So you're thinking there would be more chance of a prosecution? [LB180]

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SENATOR KRUSE: Yes, quite a bit more. [LB180]

SENATOR SCHIMEK: Okay. Thank you. [LB180]

SENATOR ASHFORD: Yes. I'm sorry. [LB180]

SENATOR KRUSE: Mr. Chairman? [LB180]

SENATOR ASHFORD: Yes, Senator Pirsch? I'm sorry. [LB180]

SENATOR PIRSCH: Is the typical scenario that you're...the problem that you're describing, such that upon...currently, under the current existing law, returning the keg, there's no tag on it, say, to a store owner who wants to comply to that, no violation of the law is...has existed at that point, under the current...is that right? Because the current language says that you have to...makes it illegal to remove...to be the one to remove it, and that this...in returning it, you're not demonstrating to the store owner that you removed it, but you merely possess it. Is that correct? [LB180]

SENATOR KRUSE: You know better than I, it's a cloudy issue at that point. But I'm told by several sources that there's no enforcement at that point. [LB180]

SENATOR ASHFORD: Senator McDonald. [LB180]

SENATOR McDONALD: So what you're saying is, if there's a keg party, underage drinkers at that keg party, a law enforcement officer has been called, goes to the keg party, finds the keg that's in possession of minors, that a minor at that point in time could remove that keg and there would be no way of finding out who supplied that keg, who purchased that keg for that party? [LB180]

SENATOR KRUSE: That's right. It's... [LB180]

SENATOR McDONALD: And if there is a tag on there, then they can trace that tag back to the retail establishment that sold it, because they have that person's name and they're able to track who possibly supplied the minors to consume that alcohol. And at this point in time, if they take that tag off, even at the party, if they see that happening and they know that that's reported, they could remove that tag and there could be nothing done about it? [LB180]

SENATOR KRUSE: That...under present law, there's nothing for the officer to do. There's no way to pursue it, because you don't know who's standing around there with the tag in their pocket. But this would allow them to pursue it. And again, I'd remind you, removing the tag is a very minor offense; procuring that keg, which was not done by any

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of the teenagers there, procuring that keg is a serious offense, and giving it to the minors. [LB180]

SENATOR ASHFORD: Senator McDonald, are you done? [LB180]

SENATOR McDONALD: Yeah, I'm done. [LB180]

SENATOR ASHFORD: Senator Chambers. [LB180]

SENATOR CHAMBERS: Senator Kruse, the French say, the more things change, the more they remain the same. The more I listen to this, the less sense it makes. If you have a group of underage people drinking, and a keg is there, how can anybody be in lawful possession of the keg if he or she is underage? [LB180]

SENATOR KRUSE: They can't. And they would not be... [LB180]

SENATOR CHAMBERS: So it doesn't matter whether there's a tag on it or not. So if I...let's say that I'm an underage person here. And this will set it up so that the prosecutor can answer it. There's a keg here without a tag. [LB180]

SENATOR KRUSE: Yes. [LB180]

SENATOR CHAMBERS: If there...if that's the case right now, the officer can confiscate that keg. Is that true? [LB180]

SENATOR KRUSE: I would leave the prosecutor to answer that. But to... [LB180]

SENATOR CHAMBERS: Okay, well, I'll wait till he comes. [LB180]

SENATOR KRUSE: But to talk about your scenario, the challenge is to the adult standing there, not to the teenager. [LB180]

SENATOR CHAMBERS: Let's say no adult is there. [LB180]

SENATOR KRUSE: Well, then ask him that question. [LB180]

SENATOR CHAMBERS: Is the adult deemed to be in possession simply because the adult is there? I'll wait till the prosecutor comes. [LB180]

SENATOR KRUSE: It gives them a chance to state that. And of course, that then allows them to pursue, okay, whose keg is it? [LB180]

SENATOR CHAMBERS: I'll wait. [LB180]

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SENATOR KRUSE: Okay. [LB180]

SENATOR ASHFORD: Anybody else? Senator Pedersen. [LB180]

SENATOR PEDERSEN: Thank you, Senator Ashford. Senator Kruse, the way I read it and the way I look at it, this would just add another charge to those people that had it. Is that right? [LB180]

SENATOR KRUSE: No, it's an extension of the charge for removing the tag. [LB180]

SENATOR PEDERSEN: But if the kids bought the keg and they removed the tag, now they're going to get a MIP and a removing the tag charge. [LB180]

SENATOR KRUSE: No, I don't think so. But again, ask the prosecutor that. No, it's a...the charge is against an adult. [LB180]

SENATOR PEDERSEN: If they find an adult. [LB180]

SENATOR KRUSE: But you're saying a kid brought the keg. We'd like to know where the keg was purchased. [LB180]

SENATOR PEDERSEN: But that's why the kid took the tag off, so you don't find out who the adult is. [LB180]

SENATOR KRUSE: Well, you're assuming the kid took the tag off, and I'm assuming that the adult who bought it took the tag off. [LB180]

SENATOR PEDERSEN: Okay. [LB180]

SENATOR KRUSE: We're talking about adult action here. [LB180]

SENATOR CHAMBERS: But the only one this offense applies to is the one in possession of it, and the one in possession is the underage drinker. [LB180]

SENATOR KRUSE: No, I wouldn't think so. [LB180]

SENATOR CHAMBERS: Okay. [LB180]

SENATOR ASHFORD: Okay, we're moving right... [LB180]

SENATOR KRUSE: (Laugh) Moving right along. [LB180]

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SENATOR ASHFORD: ...moving right along. Thank you, Senator Kruse, for your... [LB180]

SENATOR KRUSE: You bet. [LB180]

SENATOR ASHFORD: And you may...do you wish to close, or would you like to wait around and see? [LB180]

SENATOR KRUSE: This is so much fun, I'm going to wait and see. [LB180]

SENATOR ASHFORD: All right. Marty, did you sign in, in the back? [LB180]

MARTY CONBOY: Yes, I did. Thank you. [LB180]

SENATOR ASHFORD: Okay. Thank you. Proceed, Marty, with your testimony here. [LB180]

MARTY CONBOY: Thank you, Mr. Chair. (Recorder malfunction) ...few questions and I'm sure if you have more I'll be glad to answer. We prosecute... [LB180]

SENATOR ASHFORD: Marty, first you have to state your... [LB180]

MARTY CONBOY: I'm sorry. Marty Conboy, city prosecutor, city of Omaha. We prosecute hundreds of cases of kegger parties. And over the years, I've talked to officers from all over the state. Nobody has ever found a keg at an illegal gathering that has a tag on it because, obviously, it comes off right out the door of the liquor establishment by whoever bought it. And I'm serious, 100 percent of the time it's never happened because the current law, although it requires the keg to have a tag and it's illegal to remove it, there's no...it's like telling people they have to have plates on their car but you don't have to put them on the car because you can drive around without them. Well, if you...without this change in the law, we pretty much have a useless law. And the purpose of the law was to try and allow law enforcement to find out who provides alcohol to minors. The kegs belong to the liquor establishment. They are not like cans. They aren't actually subject to a deposit. There's not even a mention of a deposit in the law here. So if they're found or in the possession of another person, they are the property of that liquor establishment subject to a fee that is deposited with them to ensure the return of that keg. So if it is found by somebody, they shouldn't have it and they should return it. And it mentions in here the exemption, as Senator Schimek had asked about, what if somebody shows up with this keg or is taking it back. The return of the keg exempts a person. If you are returning it or in the process of returning it, that person basically is exempted from prosecution in this situation. We are talking about people who are at another location other than the licensed...after it's been taken or returned. So in that period from when it's taken to when it's returned, it is in the

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possession of a person in an illegal state. It is illegal now to remove the tag. We are just making that status an illegality. And what it accomplishes basically is it allows law enforcement, when they find this keg in the possession of somebody that has been brought to their attention as a potential crime, the ability to determine who is responsible for that keg in terms of its registration and to, if possible, determine if it was provided illegally to others to their detriment, who should be held responsible. In response to Senator Chambers, you had asked if it's in possession of a minor, isn't it illegal for that minor to possess it at all? And the answer to that is not necessarily. In fact, if it's their residence, under an exception that exists in our law right now, they can keep it and drink it all they want at their own residence. Now if you're a college student living east of the university in a house and that's where you live and you're 18 years old, you can have a keg in there and drink it all you want because that's your principal place of residence and under our statutes you're exempted from our MIP law. If you invite all your friends over to drink at your house, you are contributing to their delinquency and providing alcohol illegally. Yet if you don't have a tag on that keg when the police show up and you basically put your hand up, say, gosh, what happened to that tag, there is no recourse. Our keg registration law is meaningless because that tag is long gone and there's no way to hold anybody accountable for violation of our statute. If the statute is going to have any meaning and accomplish its purpose, it's necessary to have some way of enforcing this requirement to have that tag on the keg. In some jurisdictions, it's an indelible tag that has to be wired on and metal, that's an expense to the liquor industry. And because these kegs move in interstate commerce, I'm told it would be difficult for them to make all kegs comply with our state law, and I could understand that. This does not impose an additional requirement to make it more difficult to remove the tag because that is a mandate to an industry that is already complying well with this process. This basically puts the burden on the person in possession of the keg to make sure it's legal. If they've got a keg and it's not legal, they should return it, as the statute implies, and have another tag put on it or get their deposit back. But it basically is the responsibility of a person who has a keg to comply with this law, although that does raise the possibility of somebody finding one of these kegs. If they are in the process of returning it, it says it's returned to the licensed premises, that is...at a time then this statute would not apply. It would have to actually be at a location other than the licensed premises. And again, I would just reiterate that without this change, and it's a very minor one, in a system that is already in existence, it has been for some time as Senator Schimek pointed out, our law that we have in Nebraska is ineffectual. [LB180]

SENATOR ASHFORD: Thanks, Marty. Senator Chambers. [LB180]

SENATOR CHAMBERS: The person could have a keg with a tag that had been altered. How would that person know that the tag had been altered? [LB180]

MARTY CONBOY: The tag is affixed at the time that it is sold. And under state law, there is a requirement already that it have that, by criminal mandate, that it have that tag

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on there. So... [LB180]

SENATOR CHAMBERS: So what is on the tag that would let a person know that an alteration had occurred? [LB180]

MARTY CONBOY: This statute doesn't obviate. It's not a strict liability statute. It would not obviate the idea of intent. So if a person came in and pointed out that somebody has written something else on there or a cut a corner off of it, that that would be incumbent upon the state to still prove that the keg is relevant under that statute, 53-167.03, and that they would have had the intent and the knowledge to have committed this offense. [LB180]

SENATOR CHAMBERS: Is this tag so unique...now if young people can make fraudulent driver's licenses that deceive people, what is there about this tag, I'm unfamiliar with it, that makes it so unique that it could not be duplicated and something other than the name of the person who obtained the keg in the first place be placed on it? [LB180]

MARTY CONBOY: I know Mr. Rupe is here with copies of those registration tags for you to observe. They are actually recorded at the time of the sale so a unique number is listed with the retailer and that keg can be traced back to the retailer. So it would be easy to look at the tag that's on there, go back to the retailer and see if that has been altered or some bogus tag has been attached to it to determine that it is properly tagged. So there would be a system available to basically run that number to make sure it's valid. [LB180]

SENATOR CHAMBERS: But if the keg is in my possession and I'm underage but I'm at home, this is the point I'm trying to get to, there's nothing in here that says that I have to know or intend to possess one of these kegs where there's been an unlawful tampering, alteration, or removal of the identification number. It just says if I'm in possession of one where there here been an alteration. The alteration could be such that I'm possessing this keg and I think it's legal, but it's not because the tag on it had been altered. But my mere possession, even without knowledge of the alteration, makes me guilty of this offense even though there is a tag but it's been altered. [LB180]

MARTY CONBOY: I think that's true of a variety of laws that we have in Nebraska. Our car registration law--somebody tampers with plates on a vehicle and you borrow it and start to drive it or you are loaned a vehicle, you are...necessarily subscribe to know that's valid license plate. You can be stopped and ticketed even if you tell the officer, hey, this isn't my car. I didn't know he had bogus plates on this car, that is the responsibility of the driver to have a vehicle that is properly licensed. If you have a firearm and the serial number has been modified, if you've got a financial transaction device that belongs to another person that perhaps had been improperly taken,

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somebody gives it to you to use and you don't realize that it had been reported missing or improperly placed, all of those things...now obviously in those cases it would be a defense for you to come in and say, I can establish in my defense that I didn't know it and there's pretty evident facts to support that. But we prosecute and convict people every day in this state of regulatory offenses that don't require knowledge of the party. It's the responsibility of them to determine that legality before they take the regulated step. Possessing a keg in Nebraska right now is a regulated step. So there is that possibility that a person could come into possession of it, as you have pointed out, as there is with these other offenses. [LB180]

SENATOR CHAMBERS: Okay, thank you. [LB180]

SENATOR ASHFORD: Yes, Senator McDonald. [LB180]

SENATOR McDONALD: And you talk about putting a different tag on it. Would there be a code on the container of itself that is unique to the container that stays with the container and then another one that attaches on that has the information of the person that's purchasing it so those two numbers have to be recorded? The one that's tagged changes with the purchaser, but the one that's actually with the container stays the same. And so when they come back with an altered or changed, they're going to know immediately that that had happened. [LB180]

MARTY CONBOY: My understanding is throughout the state that's true. And certainly my experience is...and again, Hobie Rupe, counsel for the Liquor Commission, can tell you to make sure that that's absolutely true throughout the state. I don't want to say it's all true, but the sellers and owners of those kegs do keep track through a tracking system and that is coordinated with that tag which is used then every time it's leased out. But I think he could answer how they identify them. I'm not sure of their numbering system. [LB180]

SENATOR ASHFORD: Thank you. Yes, Senator Lathrop. [LB180]

SENATOR LATHROP: Just a short question. Mr. Conboy, can you tell us if the police bust a keg party with a bunch of underage people and there is a keg with no tag, who is in possession of that keg? [LB180]

MARTY CONBOY: Well, and that's...first of all, that's something that would have to be proven. Somebody would have to either take responsibility or there had to be such compelling circumstantial evidence, for instance, they own the house, they're there, they're charging \$5 at the door, something to describe that. But it is also, you know, situation where if there's a keg with no tag, certainly having a sandpit party, everybody just starts running and there's nobody who is in charge of the premise and there's nobody who can testify they saw somebody bring it, you might have a difficulty of proof.

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This doesn't solve every problem, but it is a step in the direction of at least effectuating what we already have on the books. [LB180]

SENATOR LATHROP: Somebody asked the question earlier about whether everybody charged with an MIP at the party is also going to get charged with being in possession of a keg with no tag. And you answer is, no, that's not going to happen. It's going to be the person in charge of the premises. [LB180]

MARTY CONBOY: You have to establish somebody's possession, which would require an admission, witnesses, or some actual physical arrangement that would make it clear that that person was in possession of it. But just being there is clearly not enough to possess. It's like saying people or a passenger in a car that's not properly licensed they're not ascribed to ownership. [LB180]

SENATOR ASHFORD: Just one last question. I'm sorry, Senator Schimek, did you... [LB180]

SENATOR SCHIMEK: That's okay, go ahead. [LB180]

SENATOR ASHFORD: No, go ahead. [LB180]

SENATOR SCHIMEK: I'm still trying to kind of work this out in my head. And the deposit is for what the keg itself is worth. What kind of money are we talking about there--\$100, \$200, \$50? [LB180]

MARTY CONBOY: Yeah, I'd have to confess it's been awhile since I rented a keg (laughter) but I think \$75 is what I had paid one of the most recent recollection, and that also includes the tapper, which is a device that is apparently more valuable than the keg. [LB180]

SENATOR ASHFORD: And that's not covered by the, the tapper itself is not covered by this. [LB180]

MARTY CONBOY: Right. And so I couldn't tell you exactly how much value one of these containers has. And apparently there's different sizes which have different deposits. There's like a pony keg which is a smaller keg and there's a full-size keg. So I don't know for sure how that relates to the value. [LB180]

SENATOR SCHIMEK: I'm just trying to think out loud I guess. I haven't really thought this through, but if an adult buys a keg and removes the tags because they don't want that maybe traced back to himself or herself and then there is a minor at the party that's clearly in possession that you can make some assumptions anyway that that minor is in possession, then at that point does the minor squeal on whomever the adult was who

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bought that keg? [LB180]

MARTY CONBOY: It is the... [LB180]

SENATOR SCHIMEK: Is that part of the idea here is to tell adults really if they are doing this they're probably going to get caught because the minor is not going to pay \$500 or whatever the fine would be? [LB180]

MARTY CONBOY: The deterrent effect works both ways. The minor hopefully would recognize that it exposes him to criminal liability to have this altered keg. The alteration is designed to protect the adult who provided and purchased the alcohol. The adult, on the other hand, should be deterred from the fact by knowing this minor is now going to be pointing the finger at somebody else to be responsible for this crime. And so both of them, hopefully, involved in this illegal activity would be deterred by the fact that we have now a law that is really going to hold somebody accountable. And it won't be perfect, but I think right now it's absolutely not effective. I think if we make it, you know, half effective we've made tremendous stride. [LB180]

SENATOR SCHIMEK: Thank you. [LB180]

SENATOR ASHFORD: You know, Senator McDonald made a good point I thought. I'd like to hear, I guess we will hear, how many more witnesses are there on this bill? Do we have several or two--three? To me the issue of the tag itself and how permanent it is and how it's affixed is in my mind kind of a determinative issue. But I appreciate your testimony, Marty, and we'll go from there. Okay, thank you. [LB180]

HOBERT RUPE: Good afternoon, Senators. My name is Hobert Rupe. I'm executive director of the Nebraska Liquor Control Commission. The commission is in support of this bill, although this is... [LB180]

SENATOR ASHFORD: Just spell, I know. [LB180]

HOBERT RUPE: I'm sorry. [LB180]

SENATOR ASHFORD: We know who you are, but the... [LB180]

HOBERT RUPE: H-o-b-e-r-t, last name is Rupe, R-u-p-e. And you're aware there's two sides, there's a criminal side and a civil side. The commission generally deals with the civil side. But we're in support of this bill, but the smartest thing I did today was I thought, you know, maybe they want to see what a keg book looks like. And so I went to my person in charge of these and said, I need a keg seeker book. Are you bringing it back? I plan on doing it. Well, okay, we got to mark down what numbers you have. Okay. This is what's commonly called a keg book. We keep track of...what they are in

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there is it's a two-part form and this is the white form. You place the carbon that's attached here in-between, you fill out the information on this, it transfers to the sticker portion. The sticker is then removed and placed on the upper one-third of the container. Hopefully they're smart enough to do it in the cooler before they bring it out. We direct them to do that here. And that is what's then called the keg sticker. All right. We keep track of...there's a number and each sheet in here that we have produced has an independent number. We know what retailers have received what numbers. That information is kept by the commission. It's available for law enforcement's use. In other words, if law enforcement comes up and says, we've got, let's use this as an example, 000601426. We found it at a party. There were minors involved. We're trying to track down the keg on it. We can tell them what retailer we sold or that has that book. They can go to that retailer. That retailer under law is required to keep these documents so they can determine who they sold it to. The information that is required is the date of sale, the name of the purchaser must be printed, their address, their birth date, a signature which says, I swear under penalty of perjury that I'm 21 or older; that I will not allow persons under 21 to consumer this beverage; I will not remove or obliterate the registration tag or allow its removal or obliteration; the signature of the purchaser; and then they also have to put down what type of identification and the number that they utilized. And to make it easier for them, we put the five types of legal identification for the purchase of alcohol in the state of Nebraska on the front. It must either be a valid driver's or operator's license; a Nebraska state identification card; ID from Iowa is not proper identification in the state of Nebraska for purchase; a military identification card; an alien registration card; or a passport. These documents, can they be removed? Yes. Are they easy to remove? No. They're designed to be removed because these kegs are reused in interstate commerce. To answer your question, Senator Schimek, the same keg that might be at a legislative gathering tonight three months from now might be at a minor's party at a sandpit. Because once that keg is returned, they're returned to the brewery who then sanitizes them and reuses them. They are reused devices. And to be a keg...I'm sorry, Senator. [LB180]

SENATOR ASHFORD: No, proceed because you're sort of answering a lot of other questions here so we'll give you a little (inaudible). [LB180]

HOBERT RUPE: Okay. To be a keg, it must be five gallons or more. That's by the statute. If it's under five gallons, it's not considered a keg. So pony kegs would be considered, the regular 55-gallon size, whatever size they're getting, or 33 gallons, I'm sorry. The information, as I said, is kept at the Liquor Commission so that we can help police track down who has got...who purchased the keg. The problem with the statute is more from the criminal side. And I believe that the prosecutor from the city of Omaha, Mr. Conboy, answered those questions. The one problem that we're seeing is there's not a real stick on this but there's a carrot. The statute provides that if I were to bring in an altered keg, a keg that has the tag removed, the licensee cannot return the deposit so long as they notify law enforcement. Well, generally they're not doing that because

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the keg value, as far as I understand it, the deposit is \$75 to \$100. The big deposit is actually on the tappers which are close to \$200. I'm unaware of, at least in the last three years, of a retailer calling law enforcement. I'm not saying it never happens, but I just personally have never been made aware of it. And the alcohol-tobacco enforcement liaison, Sgt. Costello for the Patrol, is unaware of one as well. So that's sort of how the act works. And if you want to, I can pass this around. If at all possible, I'd like to have it back because if we have this big void in our numbers, someone is going to get mad at me. So if you'd like to see it because we do track them. We keep I think five years worth of records. Overall, the keg registration has worked since it was first introduced. Until a year or two ago, there was a requirement that law enforcement officers would send...we would send out a request for how many keg parties we stopped. At first we had great response from law enforcement. Over the last ten years it dwindled down to like 10 or 15 percent would respond. And you think did they say it works? I see less keggers than we used to. There was a market drop early on then the keg worked. I mean I'm not saying kids weren't drinking alcohol, but at least the use of kegs apparently declined as a result of the keg registration act. And in fact, I believe our act has been utilized by a couple of other states in formulating their own keg registration act so they've sort of patterned theirs after ours. [LB180]

SENATOR ASHFORD: Senator McDonald. [LB180]

SENATOR McDONALD: So you're saying that if the keg is returned without the ticket that they are not supposed to get their deposit back and law enforcement is supposed to be called. You're saying that doesn't happen or have I got that wrong? [LB180]

HOBERT RUPE: No, you've got it wrong in that it's not a...they gave us a carrot instead of a stick on it. Instead of holding the retailer responsible for accepting a keg which has been altered, they give the advantage that if it comes back you can keep the deposit, you know, so long as you notify law enforcement. So it sort of works the other way. It was an incentive rather than a prohibition on the retailer at the return level. [LB180]

SENATOR ASHFORD: Senator Chambers. [LB180]

SENATOR CHAMBERS: This is not a deep question. Why would I return it if I'm not going to get my deposit? [LB180]

HOBERT RUPE: That's the problem--a lot of people don't. They are finding more kegs not returned. There are people who are waiving the deposit. [LB180]

SENATOR CHAMBERS: Okay. [LB180]

HOBERT RUPE: And their problem with that is the statute only allows them to charge up to the replacement cost of the keg. They can't charge a higher deposit to make sure

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you've got it back. And so unfortunately, given that those things are somewhere between \$75 and \$100, some people who are illegally obtaining them are just considering that the price of doing business and not returning the kegs. [LB180]

SENATOR CHAMBERS: So somebody could find one of these that did not have a sticker on it. [LB180]

HOBERT RUPE: Yes. [LB180]

SENATOR CHAMBERS: And if that person returned it, why would that person return it since he or she can't get a deposit from it? It would just be out there lying around then probably. [LB180]

HOBERT RUPE: Well, for one thing, I'm not sure they would know what store they brought it to. [LB180]

SENATOR CHAMBERS: Okay. [LB180]

HOBERT RUPE: You know, these kegs, you know, if somebody tries to drop this off at the local Kwik Shop thinking they can get a deposit back, the Kwik Shop didn't sell that keg. They don't sell kegs. [LB180]

SENATOR CHAMBERS: Okay. [LB180]

HOBERT RUPE: So you're limited...the people who are selling kegs, you're more limited to packaged stores, some small town bars, you know. Say if you're looking to obtain a keg for an anniversary party, you can go down to your local bar who has an off-sale permit as well and purchase a keg through him. So the people who actually sell kegs is somewhat limited. It's not as broad as anybody who has an off-sale license. [LB180]

SENATOR CHAMBERS: Okay. [LB180]

SENATOR ASHFORD: Senator Lathrop. [LB180]

SENATOR LATHROP: I just had a real simple question. You put these in the top third of the keg, sometimes that gets in the water and the ice and these stickers don't come off? [LB180]

HOBERT RUPE: No. They're designed to withstand that. [LB180]

SENATOR LATHROP: Okay. [LB180]

HOBERT RUPE: The only technical problem that really comes up where it might fall off

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accidentally instead of somebody having to make an action of pulling it off is if the person were to bring the keg out of the cooler first, do the paperwork there, and then affix the keg there. That's allowed the keg to sweat, it's allowed condensation, and it's underneath the seal. So long as the glue is placed on it before that water is allowed to form, you've got to deliberately pull it off. They're designed to be...they know they're being stuck in buckets full of ice. [LB180]

SENATOR CHAMBERS: Either this committee is peopled by individuals who are not party animals or we got people telling fibs (laugh). But I really don't know anything about all this so I appreciate the information. [LB180]

SENATOR ASHFORD: I think I get it. Anybody else down there? Okay, thank you. [LB180]

HOBERT RUPE: Thank you very much. [LB180]

DIANE RIIBE: Hi. Welcome back, Senator. [LB180]

SENATOR ASHFORD: Thank you. [LB180]

DIANE RIIBE: (Exhibit 5) My name is Diane Riibe. I'm the director of Project Extra Mile. We are an underage drinking prevention effort with coalitions across the state of Nebraska. And I won't go over my prepared testimony. We've had some really good questions here. I think what you can see is that we have a pretty broken system overall and that there's a need to do something to begin to fix it. I will tell you that a pretty standard keg is 16 gallons. With a 16-gallon keg in a check of prices just recently, someone can get that keg for about \$62 which comes down to about 37 cents for a 12-ounce serving. And in that 16-gallon keg there are about 165 12-ounce servings in one keg. And when we look at a couple of cases that come to mind very quickly, a 5-kegger north of Tekamah, up in the Tekamah area several years ago with an Omaha student, a senior about to graduate, left that keg party, crashed and has and will suffer permanent life injuries. Recently the Nebraska State Patrol went to a keg party in Cass County where they had 15 kegs, 13 of them empty. And if you can imagine just the volume of that alcohol, it's obviously an extremely serious problem when it comes to underage drinking. I would respectfully disagree a little bit with Mr. Rupe, although he's not unfamiliar with that so we'll leave it there. They may be difficult, these tags, to come off, but they certainly aren't very difficult. Because in my 15, almost 20 years of doing this work and working with kids and law enforcement, I've only met one officer who's ever come to a keg that had a tag still affixed, and that officer could only think of one time. So we may have a system for making sure we keep track of the little tags that have been signed and filled out, but we certainly aren't good at all of keeping track of who actually has that keg and when it's an underage party how we follow that up and how we make certain that we look at the source which, of course, is the primary issue

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that we would be concerned with. We just want to commend Senator Kruse because it's a start. Is it perfect? No, not at all, but such is the way of policymaking. We'd be happy to look at other options. Some states, for instance, require those getting kegs to actually identify the location where the keg is going, not where the person buying it lives, but where the keg is going so that they can have sufficient time and those kegs can't be purchased on the spot immediately, but there has to be some notification, some time lapse so that they can actually check out that party and law enforcement has ample notification ahead of time as to when and where the party is going to be so, in fact, it doesn't allow for an underage drinking party to kind of gather. So there are lots of issues, and you've touched on some of them. And we would ask that you continue to ask those and do what we can to at least shore up a really flawed law. [LB180]

SENATOR ASHFORD: Thank you, Diane. Any questions? I mean what bothers me is the tag can be removed. [LB180]

DIANE RIIBE: And there are, and you might be...go ahead. [LB180]

SENATOR ASHFORD: Are there other states, and I believe there was testimony earlier about other states. I think Senator Kruse alluded to it that they had more of a permanent affixing and that there's a number that went with the keg. [LB180]

DIANE RIIBE: Right. [LB180]

SENATOR ASHFORD: Once it entered the state it has a number and that stays with the keg and it can't be taken off. [LB180]

DIANE RIIBE: Right. [LB180]

SENATOR ASHFORD: And that would seem to be a better way to do it. [LB180]

DIANE RIIBE: And you can be assured that those keg containers leave Nebraska, and those keg containers in other states that have a more permanent affixed number leave those states and come into Nebraska. You can also be assured that those retailers here in this state are taking back kegs even though they don't know where it came from and there's no deposit that's dealt with at that point because we don't have a shortage of keg containers in the state. So that end is being taken care of. [LB180]

SENATOR ASHFORD: Okay, thank you. Good afternoon. [LB180]

KATHY BURSON: (Exhibit 6) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Kathy Burson, B-u-r-s-o-n. I am from PRIDE Omaha, Incorporated, which is an organization dedicated for the prevention of alcohol, tobacco, and other drugs among our young people. And today I just wanted to come forward to

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be on record that PRIDE Omaha supports this initiative 100 percent. And I'm passing out a survey that was taken by...or was administered by the Nebraska Health and Human Service Systems in 2003 and then again in 2005. And the survey is the Nebraska Risk and Protective Factor Student Survey. And I just am bringing this to your attention because I wanted to reinforce the magnitude of the problem we have as far as underage drinking. And so the first graph that you see is in relation to alcohol, tobacco, and other drugs, but I want to bring to your attention the first category--alcohol. And this is grade 12 that I'm referring to. And you'll see that the graph under the "ever used" category was that 80 percent of 12th graders have used alcohol. If you come to the next "30-day use," you will see that 50 percent of our 12th graders are using alcohol on a regular basis. What you don't see here is that Nebraska ranks among the top ten in the United States as far as underage alcohol use. The next graph I will bring to your attention is where do they get the alcohol, and you will see "last time I drank alcohol I" got it from someone 21 or older and there we're up to about 75 percent. "I drank at" someone else's home, and you'll see that 80 percent of our underage youth are drinking at someone else's house. We have worked closely with law enforcement in the six-county area that we serve which is Douglas, Sarpy, Cass, Washington, Saunders, and Dodge County, with MIP party patrol checks. And we hear frustration from our law enforcement in that when they go to an underage party and there is a keg it usually is either torn off or defaced. And they have no recourse as far as citations. So I am here today to endorse and support any measure that will provide some teeth to law enforcement that they can take action because our underage drinking is a real problem. And we certainly want to do anything we can to bring those numbers down. Thank you. [LB180]

SENATOR ASHFORD: Any questions? Senator Chambers. [LB180]

SENATOR CHAMBERS: Not really a question. I've been on this committee 36 years and I've been in this world almost an equal number of years. And in this society which is run by white people, they always attack symptoms only. Teenage drinking is a symptom. There are no programs in the schools, in the churches, or anywhere else which looks at the underlying cause. When children or anybody else are lacking a genuine sense of self-respect, identity, and personal worth, they're going to act out one way or the other. So you all are going to be swatting these mosquitoes forever and you're not even going to notice the diminution in the number of mosquitoes. You can build enough jails to lock up every current underage drinker and you're going to need more jails because these kids are going to keep drinking because maybe white adults are afraid to look at what's bothering these children. I'm trying to look at what's happening to black children, and I see that our children are cheated in school. Our children are going to schools controlled by the same white people who control white kids' schools, and those white kids are on alcohol, drugs, sex, and all these other things. And when I say give us a chance because we understand our children so that we can educate our children, the first thing these white people said, well, that's segregation.

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Well, it's not segregation when they're going to all-white schools. It's only when we want to say we're tired of white people controlling the education of our children when they're failing their own children. We have no input. We don't establish curriculum. We have no say about anything. So when I sit on this committee as I have and I listen to all the problems that white people bring that they're having with their children, then they want me to be still while they say, but Ernie, we want to be in a position to educate your children too. Until we look at causes, the symptoms are going to be there forever. People who try to attack epidemics will cure the individuals who are infected because that's a part of the job, but they try to look at what is the cause of it. Is it a virus? Is it a bacterium? Is it airborne? Is it ingested? What is the cause? And I've listened here today and I haven't heard one person even use the word "cause." Why are these children turning to alcohol? They know that if they drink and drive they run the risk of dying, but they're willing to assume the risk. You all have serious problems with your children. We have serious problems with our children. But, see, we don't enforce the laws. We don't control the police department. I've been on the FBI; Alcohol, Tobacco, Firearms, and Explosives about the number and ready availability of pistols to subteenage black boys. The FBI is unresponsive. I've contacted the agent in charge. The chief of police is unresponsive. The man who is now the Chief Justice was the head U.S. Attorney, he was unresponsive. If these kids know where to get these guns, you mean to tell me the police don't know where the guns are coming from? It's like when drugs are sold. You need to sell volume. So if kids know where to buy the drugs and who the drug dealers are, the police know too. So why are not the police catching drug dealers? Why do they spend so much time stopping somebody and saying, well, your rear taillight is out if you're black? And the guns--the kids are smarter than the cops. Then let's make the kids the cops. They know where the guns are and they get the guns. We cannot be vigilantes. And I refuse to let these white people and the media or anyplace else say that is my job to enforce the law and go out here and catch criminals, whether they're shooters or the sellers of the guns, because I don't have that authority. I cannot arrest anybody. I shouldn't even have to be thinking about it. So now you've got black people feeling guilty because of the gun crimes in our community. And we've been taught not to put the responsibility on white people because they say, well, you're talking about victimization. Well, they are the law. And I look at how you all deal with the problems of your children. All you can do is come here and tell us, give us more easier ways to charge them with crimes, to lock them up, lock them up longer. But if they're the children of rich people, they don't get a record. They don't have those problems. So until I hear some people come here looking at the underlying causes that create problems in society, I'm not even sympathetic to what we're talking about here. You know why? Because children are punished in many cases for being what children are and doing what children do and we know what they're going to do because we were children. But nobody wants to go after the cause. Now Senator Kruse talked about it, and he caught the blues. If drinking by children is so bad, why you going to let them drink in church? They say, well, they only drink a little bit. All right, so wine in church is religion. You get mad at these kids because they got too much religion. If it's good in church, it ought to

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be good anywhere. But I'm going to sit here and puzzle through it and let you all lock you all's children up while I try to save ours. But you all don't even care when I tell you that our children don't learn how to read in school. Mr. Chairman, I intended to do just what I did, but I'm not going to do it with every person. But I'm trying to put something out there to these well-intentioned, very sincere people, and I'm not saying that as a put-down. You're going to be coming back here every year and I've been here. And I'm not going to call her name, but she's seen me here a lot of times and I've seen her here a lot of times. And after I'm long gone, you're going to have the same kind of problems. And now your kids know how to sniff alcohol. And you know what we're concerned about? This is inconvenient to the liquor industry. This costs the liquor industry too much money and what is the result of it? Our children are suffering because the liquor industry must be accommodated. You have preachers running around here telling these children how to live and what they ought not do. And if you drink just a little bit of the alcohol, it's all right. Well, if you have sex and your penis goes in just a little ways, then that's not bad. I mean these kids are not stupid. And you put commercials on television. This is put a skillet on; that's drugs; then you take an egg; this is your brain; you break an egg in a skillet. And I ask a child, what do you think of when you see that? Well, I think of breakfast and I'm hungry about now. It doesn't make sense to you. I get frustrated because as a member of the Legislature I do feel some kind of responsibility to try to find an answer. But my answers are not what anybody wants. So from time to time you all are going to hear me point out how white society comprising the master race is not behaving very well in my opinion because you can't solve your own problems. And you won't let me be in a position to solve ours. I can make myself an example. I can tell my kids, I will show you what an educated person can do. You know how I do it? I go down there among 48 white people who a lot of time don't like me, but I can read. I can use their language. I mastered their rules and I beat them at their own game. Be an example like me. They say, well, Ernie, how can I? I don't even know how to read. In the schools, our children in reading and language and math are in the 20-something percentile. They can't be like me because they can't read. And then you all want me to sit around here and not do something about these schools because you're going to tell me it's segregation. I don't want my children around white kids to learn about these kegs, which they don't know about right now. To get drugs out of white people's medicine chests as these white kids can do right now. So what do you want my kids to go around white kids for? Integration. And they're as dumb as a post, not because we can't learn, they learn other things. And when you all come here, and some of my colleagues don't like me to take time doing this, but I'm going to take this time because I'm a lawmaker and I'm a member of this Legislature and I'm trying to get at some of these problems. And white people want to say, well, Ernie, your way is not our way because we're white. We know more than you. We know what's best for your children better than you do. And it's best for your children for our purposes that they don't know how to read, that we send white people as their teachers who don't like them, who don't respect them. We get parents banned and barred from the schools. You all don't have to worry about that. You come here because you kids are drinking.

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I'm talking about the basics--a chance to go to school and learn how to read. And you all are going to be telling me this session that that's segregation because you kids know how to read and they know how to do math and they know something about language. But mine are not to know how to read because you build more jail cells for them, and more than 30-something percent of those in prison are people who look like me. And when they come out, they don't know anything except how to prey in a more efficient way on us. I'm not inferior to one of you. I'm not inferior to anybody, and I feel superior to most white people. But white people control everything so they say, Ernie, you can learn as much as you want to. You can play by our rules. You can get the laws, and I'll pick that up after it's over, you can get the laws on the books, but we control everything. And what they do here for me, they change the laws of the Legislature to stop me and they acknowledge it. And they changed the constitution to get me out of the Legislature. That's what you show our children, but they don't become Timothy McVeighs and blow up buildings and kill babies and everybody else. No, they'll get guns and people commit crimes against those they live around. They talk about black on black crime. There's white on white crime; Native American on Native American crime because people commit crimes around the people they live. So white people will commit more crimes against white people because that's who they live around. We commit more crimes against each other because we live around each other. But since white people control the media and everything else, they point to what we're doing and act like it's somehow unique in the context of American society and it's not. So I will tell you all, if you all think that this is going to help, put you all's kids in jail or fine white people who are going to sell this stuff to your kids, I'm going to help you with your laws. I'm going to help you when you tell me what will help your children. But I make a mistake in telling you what will help mine because that's the very thing you're going to try to stop me from doing. So when I say education is important, you say, we're going to make sure you don't get any education for your children. That's all that I have. And this is not directed at you in any way, but if the shoe fits. [LB180]

SENATOR ASHFORD: Thank you, Senator Chambers. Any other questions? Thank you. Any other proponents? Any opponents? Neutral? Senator Kruse, do you wish to... [LB180]

SENATOR KRUSE: Just two comments. I think we all understand this, but do understand that I spend a lot more time on the causes of this problem than on what we're dealing with here. And we all have to share a tremendous amount of frustration. The other point is if the committee wants to make these identifications on these things more permanent, oh, I would love to do that. But we've not been able to find a way to do it. Thank you. [LB180]

SENATOR ASHFORD: Thank you, Senator Kruse. That concludes the hearing on...I have two very, very short bills that I'm going to introduce that will take hopefully... [LB180]

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SENATOR McDONALD: How do you know (laugh)? []

SENATOR ASHFORD: They're short, the length of them are short. It could take...it could be a lengthy debate. []

JEFF BEATY: Turn on the light on him. []

SENATOR LATHROP: LB216 today. [LB216]

SENATOR ASHFORD: LB216, we have LB216 and LB217. [LB216 LB217]

SENATOR LATHROP: To be introduced by Senator Ashford. [LB216 LB217]

SENATOR ASHFORD: Members of the committee, Senator Lathrop, these two bills, LB216 is a revisor bill and simply adds language in Section 1 and in Section 2 to expand the definitions of hearing aid dogs to include hearing dogs. And this is another bill that deals with violence on animals on dogs, and it just simply expands the definition to include the animals that are used by the deaf or hearing impaired. [LB216 LB217]

SENATOR LATHROP: Any questions for Senator Ashford? [LB216 LB217]

SENATOR ASHFORD: And I'd waive closing, Senator. [LB216 LB217]

SENATOR LATHROP: Waive closing. [LB216 LB217]

SENATOR ASHFORD: Senator Lathrop and members, LB217 again is very simply a revisor bill that deletes the word "subsection" and adds the word "section" in a possession of controlled substance bill. [LB216 LB217]

SENATOR LATHROP: Senator McDonald. [LB216 LB217]

SENATOR ASHFORD: Oh. (Laughter) [LB216 LB217]

SENATOR McDONALD: Sorry about that. What is the difference between a hearing aid dog or a hearing dog? [LB216 LB217]

SENATOR ASHFORD: Well, that's a good question. The difference is that, and maybe Senator Pirsch knows, oh... [LB216 LB217]

SENATOR PIRSCH: I was just kind of thinking the same thing myself. [LB216 LB217]

SENATOR ASHFORD: No, a hearing dog is someone who totally helps a person who is

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totally deaf. A hearing aid dog, I believe, helps a person who is partially deaf. That's the difference; I believe I'm correct in that. It's the degree of deafness and that's why the addition was added. I'm glad I...yes, Senator Schimek, am I wrong? [LB216 LB217]

SENATOR SCHIMEK: No. I've just never seen two such unrelated bills heard together in my entire life in the Legislature. [LB217]

SENATOR ASHFORD: Yes. [LB216 LB217]

SENATOR SCHIMEK: But I don't understand, Senator Ashford, why we have a whole bill to change subsection to section. Why isn't this something that we just do when we get into that particular statute? Has this caused a problem or something that you know about? [LB216 LB217]

SENATOR ASHFORD: No. It came down as a revisor bill, is that right? And it was just recommended from Revisor of Statutes. But we could have handled it in a bill on this particular topic. I don't know if we have a bill on this topic. [LB216 LB217]

SENATOR SCHIMEK: We don't always hear revisor bills. [LB216 LB217]

SENATOR ASHFORD: No. [LB216 LB217]

SENATOR SCHIMEK: That's why I'm kind of puzzled by this whole thing, to print a whole green copy here for this little dinky... [LB216 LB217]

SENATOR ASHFORD: Yeah, well, that's a good question and I will consult with counsel and find out why we did this. It does seem like a small change but albeit important change. [LB216 LB217]

SENATOR LATHROP: Any other questions? All right, thank you. [LB216 LB217]

SENATOR ASHFORD: Have a good weekend everyone. [LB216 LB217]

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Disposition of Bills:

LB176 - Held in committee.

LB180 - Held in committee.

LB216 - Held in committee.

LB217 - Held in committee.

LB227 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk