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Transportation and Telecommunications Committee
January 26, 2009

[LB204 LB222 LB229 LB261]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, January 26, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB229, LB261, LB222, and LB204. Senators present: Deb Fischer, Chairperson, Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Galen Hadley; Charlie Janssen; Scott Lautenbaugh; and LeRoy Loudon. Senators absent: None.

SENATOR FISCHER: My name is Deb Fischer and I am the Chair of the committee. I am a senator from Valentine, Nebraska, the 43rd District. At this time I would like to introduce the members of my committee. On my far right is Senator Charlie Janssen, he is from Fremont, Nebraska; next is Senator Kathy Campbell from Lincoln; next to Senator Campbell is Senator Tim Gay from Papillion; next we have Senator Arnie Stuthman from Platte Center and he is the Vice Chair of the committee. On my immediate right is Mr. Dustin Vaughan, he is our committee counsel; on my immediate left is Ms. Laurie Vollertsen, she is our new committee clerk this year; and next...tomorrow when we have a hearing I will pronounce her name correctly. Next to our clerk is Senator Scott Lautenbaugh, he is from Omaha; next to Senator Lautenbaugh is Senator Galen Hadley from Kearney, Nebraska; and our far left is Senator LeRoy Loudon from Ellsworth, Nebraska. Our pages today are Justin Escamilla from Scottsbluff, and Jamie Myers, who is from my Legislative District, and she is from Stuart, Nebraska. We do have some housekeeping rules to go over. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. I would ask that you complete the yellow sign-in sheet: those are found on the on-deck table which is right out there, and have that ready to hand in when you testify. We do have a computerized transcription program that we use, and so it's very important that you follow the directions on that sign-in sheet. When you come forward to testify, I would ask that you hand your sign-in sheet to our committee clerk before you testify. For the record, at the beginning of the testimony please spell your last name and also your first name, if it can be spelled several different ways. And I would ask that you keep your testimony concise and you try not to repeat what someone else has covered. If there are large numbers testifying, which I don't see right now, but I do reserve the right to limit testimony as we go through the day. If you don't want to testify but you do want to voice your support or opposition to the bill, you can indicate so at the on-deck table on the sheet provided. This will be part of our official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a yellow sign-in sheet and actually testify, even if you just state your name and position on the bill. If you choose not to testify, you may submit comments in writing and have them read into the official record. I would ask that you not be nervous; try to relax. If you need anything just let us know. The pages will be happy to get anything you need; a glass of water, copies

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made of anything. We're here to try and be helpful. And I would ask that you turn off all of your cell phones; in this committee I do not allow cell phones to be on, and that means no texting either. At this time I will turn the chair over to our Vice Chairman, Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Fischer. The first bill that we will hear today is LB229, Senator Fischer's bill. Welcome, Senator Fischer. [LB229]

SENATOR FISCHER: Thank you, Senator Stuthman. Members of the committee...oh, for the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District here in the Nebraska Unicameral. LB229 is the continuation of a review of our driver's license and identification card issuing process that we began last year with LB911. This analytical process was started in response to the REAL ID Act. For those new to the committee, this may be your first introduction to REAL ID. The federal REAL ID Act of 2005 was passed by Congress to create national standards for the issuance of states driver's licenses and identification cards if state-issued IDs are to be accepted as valid identification by the federal government. As REAL ID currently stands, no citizen will be able to board a commercial airline without a valid REAL ID driver's license or identification card in hand. States are required to begin issuing REAL ID compliant license to their citizens under the age of 55 by May 11, 2011. I still have my reservations about implementing REAL ID here in Nebraska. Whether Congress decides to alter or repeal REAL ID is irrelevant to the purpose of LB229. I believe the DMV is taking the necessary steps to analyze our current process and look for ways to improve the system against potential fraud and security concerns, regardless if REAL ID goes forward. LB229 is an attempt to strengthen our process so that when a person presents a license or identification card, we can be sure that he or she is actually the person depicted on the license. Last year, the DMV estimated that there were approximately 15,000 possible instances of fraud--individuals who hold multiple documents in different names. In 2005, the DMV created a fraud investigator position. From January 2006 to June 2007, they opened 208 fraud and/or identity theft cases. Those investigations have led to 45 arrests and prosecutions. In some instances the individuals were seeking an identity that will allow them access to age-sensitive products, alcohol being chief among them. Other times the individual is gaining a new identity to leave behind a revoked or suspended driver's license; or an illegal immigrant seeking to assume the identity of a legal resident. The DMV has uncovered several instances of welfare and/or disability fraud. Some are seeking new identities for financial gain. Others still are seeking a new identity to avoid the sex offender registration requirements. It is evident that identity theft and fraudulently obtained driver's license and ID cards are occurring here in the state of Nebraska. The reality of our situation is that driver's license does not just signify that we possess the privilege to operate a motor vehicle. It is the identity document issued by the state of Nebraska. It is the one document commonly requested and proffered to establish our identity. Viewed that way, it makes sense to institute and demand the highest level of security and integrity in the

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systems and the process. LB229 implements several processes that will be implemented in the near future. By January 1, 2010, background checks will be required from all employees who have the ability to affect information appearing on a driver's license. These background checks will include criminal history, past employment references, and lawful status. By May 11, 2011, all driver's license and identification card applicants will be required to prove identity: date of birth, Social Security number, and lawful status, through a limited source document list. The DMV will retain images of an applicant's source documents in its system and verify the documents with the issuing agency. Individuals will not be allowed to hold a driver's license and state ID card at the same time. Temporary licenses will be issued for noncitizens legally in the United States, limited to the expiration of the person's authorized stay. These measures will help make a Nebraska license and identification card secure in the eyes of the government and the public, and add validity to the license as the prime evidence of identity for our citizens. I will say that Director Neth with the Department of Motor Vehicles is ready to come up after I am finished here, but if you have any questions I would be happy to answer them. Thank you, Mr. Chair. [LB229]

SENATOR STUTHMAN: Thank you, Senator Fisher. Does the committee have any questions for Senator Fischer? Seeing none, thank you. [LB229]

SENATOR FISCHER: Thank you. [LB229]

SENATOR STUTHMAN: At this time we will hear the proponents on this bill, so will you please come forward. If I may ask, how many proponents on this bill are there? Welcome, Director Neth. [LB229]

BEVERLY NETH: (Exhibit 1) Thank you, Vice Chair Stuthman, members of the committee. I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, Director of the Department of Motor Vehicles. I'm here today to testify in support of LB229. I want to thank Senator Fischer for sponsoring this bill on behalf of the department. Before I speak directly to the bill, the provisions of the bill, I'd like to give the committee just a very brief overview of the history of the DMV driver license improvement initiatives, and each one of these items is listed on the testimony that you're getting a copy of. And I won't go into great detail about them all, but if there's any questions you might have about what we've done along the way, I certainly can try to answer those for you. We really began our improvement initiatives in 1999 when we developed and implemented the Interactive Driver License System. What that did was really take all of the statutes, all of the procedures and policies and training manuals, and everything associated with the driver licensing process and it made an automated process out of it. It allowed the examining staff to have a uniform way of enrolling and processing applicants, and that system has worked very, very well for us. It also allows us to store history of driving records, the types of documents that you provided to obtain your driver license, the number of times you took a test, the interaction with the customer; all kinds of information is stored with each

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driving record. In 2001, we began the development and implementation of the Digital Driver License System. That is the system that allowed us to move away from a paper driver license with a laminate folded over top of it into a more sophisticated technology that included a credit card-like driver license that's printed on site. We do that over the counter now. In 2004, we began implementing the digital water mark in our driver license. And in a bill later I will talk more fully about the digital watermark, but it is a forensic security device that's encoded into every document--has been since 2004. You can't see it with the naked eye, but it is a highly sophisticated security device. 2005: We implemented the automated testing system which automates the testing process, allows us to store data, and look at how applicants are coming through the system and how they're progressing through the testing. It also allows...it has some fraud components to it as well. 2006: We developed our fraud unit, and Senator Fischer certainly touched on the type of work that the fraud unit has been doing. 2007: we conducted an antifraud report that returned to us a fairly eye-opening report that showed us that we had anywhere between 12,000 and 20,000 possible instances of fraud in our system, which is way too high of a number for us to be having. We have 1.5 million records, but even 12,000, 20,000 is too many instances of fraud. Last year, of course, we did pass LB911 which will bring some process changes to how you are enrolled as an applicant, to where your photo is captured, and ultimately at which point the driver license is issued to you. In Nebraska later this year, we will no longer issue documents over the counter; those will be issued from a central facility that will be secure. The card process, manufacturing process, and issuance process will be very secure. It will also allow us to entertain the idea of some additional security features for the card. In each phase, we have been guided by the principal objective of improving and securing the integrity of our driver license process and our systems to mitigate the opportunities for fraud, card counterfeiting, and identity theft. Along the way we have had some help from the federal government in the form of federal driver licensing standards, known as the REAL ID Act, which Senator Fischer referred to. Compliance with those standards has been and, with the recent change in administration on a federal level, continues to be a moving target. The new secretary of the Department of Homeland Security, Janet Napolitano, stated during her confirmation hearing that the REAL ID Act places a huge financial burden on the state, and that it was developed without sufficient consultation with states. She went on to advocate that the Department of Homeland Security sit back down with the governors and with the National Governors Association to get a sense of their recommendations. She further stated that a partnership between the federal government and states regarding REAL ID should be built differently and, again, highlighted the need to work with governors as well as the need for greater financial assistance. While she did not specifically call for new legislation, she said she hopes to work with the Senate Committee on legislation, if necessary. Regardless, the REAL ID Act and its duly promulgated regulations remain the federal law and, as Senator Fischer stated, there are consequences to citizens for a state's noncompliance. As the REAL ID Act debate continued to wage, the Nebraska DMV and the Legislature, with the passage of LB911 last year, took the position that there is value in focusing on securing

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the driver license process. With LB911, and again with LB229, we've put forth proposals that do just that. I'll try to cover some of the major provisions. First of all, we're asking for authority to conduct background checks on employees of the DMV, and also the counties, who are engaged in driver licensing. We currently do background checks on new hires in our examining-licensing division, but we don't do...we cannot do them on existing employees; the contract doesn't provide for it and statute doesn't provide for it. This provision would expand DMV's background checks in to include existing employees and would reach beyond the licensing divisions to other divisions that do operate with information on the card. The bill includes language regarding the presentation of a Social Security card number for verification. In fact, the DMV has been verifying Social Security numbers since 2003. That verification is stored within our driver license database. With the language of LB229 we are codifying the process. We do not intend to subject existing card holders to the presentation of a Social Security card if their number has been previously verified. LB229 proposes to limit people to holding either a driver license or a state ID card. A person will not be allowed to hold both documents simultaneously. It gives the DMV the authority to image the applicant's source documents. These images will be stored within the Nebraska driver record history database. Potentially, those images could be accessed for investigative purposes by the DMV fraud investigators or other law enforcement. Currently, the REAL ID Act--and really, we'd probably look to that for some guidance--it calls for storage of those documents for a minimum for 10 years. We may store them longer. If there's a change in the person's status, they'll have to bring us a different document--they're married, or whatever the case may be. That would be normal. So those will be kind of a...I would expect them to be something of a living history of a driver record applicant. Nebraska currently is, and the testimony you have says that we are currently one of seven states that does not expressly state that lawful presence in the United States is required as a condition of driver licensing. Just before lunch, I learned that Washington, Hawaii, and Maryland all had legislation introduced that would require a legal presence verification process and expressly states it in statute. Utah also had a bill put in which would eliminate their driving certificates, which does not require a lawful presence. If those were to pass, then Nebraska would be one of three states in the country that does not have a lawful presence expressedly (sic) in statute. LB229 includes language that requires an applicant to provide evidence of lawful status. The bill articulates a limited number of documents that will be accepted as evidence of lawful presence. However, it also gives the director the authority to expand that list pursuant to a documented exceptions process. And quite often, we see individuals who are here and have documentation that they are here legally, but they may be on a student visa or some kind of a work permit that's just a little odd, we haven't quite seen before, so we are asking for some broader authority to assist those customers. Lawful immigrants will be issued a temporary document that will expire upon expiration of immigration documents, or if the immigration document has no expiration date, then the temporary document is valid for only one year. In such a case, the applicant would be required to renew his or her driver license or ID card annually. LB229 contains permissive language that will

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allow the DMV to verify the applicant's source identity document to the original issuing agency. We will only be verifying documents to those agencies that have secure, electronic verification process. Currently, only the Social Security Administration and the Department of Homeland Security have such systems, those being the Social Security Online Verification Network, or SSOLVN, and the Systematic Alien Verification for Entitlements Program, SAVE. As I say, we have been verifying Social Security numbers in our database since, I believe, 2003, so we have a full record of those. And we also have started verifying through SAVE. With this bill, we are also modifying the renewal process for military personnel. I want to be clear that we aren't changing the fact that the driver license of an active duty military personnel are valid during the term of service and for not longer than 60 days after separation from service. The changes we are seeking are a direct result of the modifications that we are making with LB911--that being that we are moving the applicant's photo capture from the county treasurer's side over to the DMV side. In order to renew and have the photo updated, the military personnel will be required to begin the process with the DMV, not the county treasurer, and that's the change we're seeking in LB229. The final sections of LB229 replicate all of the requested statutory changes in both the commercial driver license section and the state issued identification card sections. I'll be happy to answer any questions or provide any additional background regarding this issue. [LB229]

SENATOR STUTHMAN: Thank you, Director Neth. Does the committee have any questions for the director? Senator Hadley. [LB229]

SENATOR HADLEY: Senator Stuthman, Director Neth. The background checks, what happens if...will there be a pass/fail? Will there...I mean, I understand giving them...but what are the penalties? Can someone use this just to get rid of somebody they don't like, or... [LB229]

BEVERLY NETH: No. Really what we're looking at is we're adopting...we're looking more focused upon those types of criminal history, criminal violations that would go towards your truthfulness or your...the fact that you may or may not be attempting to engage in fraud. We're looking at...on a federal level, a few years ago, the federal government adopted some background checks for hazardous material CDLs, that a person could not engage in or hold a hazardous material CDL if they had violated certain federal laws or certain state laws. Those are things like extortion or theft or of those nature. There were also some things in there of whether or not you'd ever been adjudicated criminally insane, those kinds of things. We're looking to that same kind of model to replicate on ours, so we're looking for limited violations of the law and obviously, we would continue to do...have some conversation with that person if it shows up that their background check has something suspicious in it. And really, with respect to existing hires, if something comes up we would be having a long conversation with them about what transpired, what happened. It will be very much on an individual basis, case by case, whether or not the person is retained as an employee

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or the person is not hired as an employee. And also, from the county perspective--although we will give them some guidance and develop some policies for them--ultimately, it's up to them to decide whether or not they're hiring their own personnel. [LB229]

SENATOR STUTHMAN: Thank you. Senator Gay. [LB229]

SENATOR GAY: Thank you, Senator Stuthman. Director Neth, is there a problem now, or how many Nebraskans currently hold both a driver's license and an ID card? I can see why you wouldn't want both, but is that a problem now? [LB229]

BEVERLY NETH: It's not that it's an overwhelming number. I think it probably would be somewhere in the neighborhood of 100,000-200,000 people. It's not really a problem, per se, but it is an opportunity for people to hold multiple documents in multiple names if they were able to do that. You can even come in and have your photo taken, if they were able to give us some kind of fraudulent documents. Our goal really is to be able to better control--that you're only holding one document at a time; that you don't have two or more documents. You could give an ID card to someone who looks similar to you to purchase alcohol, mostly, I would guess is what they'd be doing with that. [LB229]

SENATOR STUTHMAN: Thank you, Director. Senator Janssen. [LB229]

SENATOR JANSSEN: Director's pay is probably better than senator's pay, but... (Laughter) [LB229]

BEVERLY NETH: Only marginally. [LB229]

SENATOR JANSSEN: Thank you, Senator Stuthman, Director Neth. I just wanted you to revisit briefly the...I thought I heard this about in 2011 you can't get on a plane unless you have this...if you could clarify that for me. And also in that same question, there's an age limit that we said that would not have to have the new ID, and then how would they get on planes? [LB229]

BEVERLY NETH: Right. What the current rule states is that it's really kind of a multistep process in the current federal rule. What they've allowed is that states can come into material compliance with REAL ID by meeting 18 benchmarks. And that material compliance can take place--is required to take place--by January 1, 2010. If you don't meet all of those benchmarks, all indications are as long as you are on the path to meeting most of those benchmarks, they'll still bless your card as materially compliant. On May 11, 2011, is when the actual rule states that you must be REAL ID compliant. That is the time when all cards, all states, are supposed to be enrolling applicants and following security procedures in issuing documents according to the rule. On that date is when we begin the clock, so to speak, for reenrolling or initially enrolling all applicants

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into a REAL ID...with a REAL ID card. What the rule says is that if you are under age 50, I think it was, or if you were born after December 1, 1964, that you have until...gosh, I can't exactly remember the date...some time in 2014 to obtain your document. If you were born prior to December 1, 1964, then you have until sometime in 2015 to obtain your document. Everyone still has to obtain a REAL ID compliant document if they want one and if they want to get on a plane--to use it as a primary document. So what the rule says is you get the opportunity to reenroll over a five-year period and all of your existing cards are still valid. So if you're...you're not up for renewal until 2013, your driver license is still good, it will still operate as an identity document to get you onto a plane, but there is a drop-dead date in the future under the rule that no driver license issued without being marked either materially compliant or REAL ID compliant would be accepted on the federal level for identity purposes. And that biggest reason on a federal level, the official purpose that would probably impact the most of us, would be for commercial airline travel. It also would not be acceptable as identification to enter into a federal building where they require identification prior to entrance, and a few other things as well. [LB229]

SENATOR JANSSEN: Is this...if I may, is this somewhat of a federal blackmail thing saying...am I hearing that if we don't approve this, we are not going to be able to...if we don't act as a Legislative body, Nebraskans won't be able to get on planes in 2011? [LB229]

BEVERLY NETH: Well, not really. It's probably more like 2015 you wouldn't be able to get on planes. We have some time to reenroll everyone. But ultimately, what the federal government has looked at, and the Department of Homeland Security--prior administration, their interpretation of it was always that it was truly a voluntary thing for states to adopt. There currently is no penalty that flows to the state entity in terms of noncompliance. However, there was a bill introduced again this year that would penalize states with federal funds--withholding federal funds for noncompliance, so that is out there. But, in essence, there are some other documents that we, as citizens, can use to get on...to access commercial travel: That would be a passport, maybe military-issued ID; those kinds of things that are recognized as federal ID on a federal level, so there are some options. But a passport is expensive, and as you look at trying to entertain that for everyone, it's a fairly costly proposition. [LB229]

SENATOR JANSSEN: Thank you. [LB229]

BEVERLY NETH: Um-hum. [LB229]

SENATOR STUTHMAN: Any other questions from the committee? Senator Louden. [LB229]

SENATOR LOUDEN: Yeah, thank you, Senator Stuthman. Thank you, Director Neth,

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for being here today. As I read where you've deleted the language for county treasurers, now that just has to do with military personnel? [LB229]

BEVERLY NETH: That's correct. That is specific to the military renewal only. [LB229]

SENATOR LOUDEN: Okay. Now, as you mentioned...Senator Janssen and your discussion about what has to be done in 2014, 2016...where does this 19 places to get your driver's license...how'd that all fit into this scheme? [LB229]

BEVERLY NETH: That is not being proposed in this bill. We will still be providing services in all counties. Their driver licensing staff will be in all counties and the county treasurers will still be involved. Their role's going to change a little bit with the bill we passed last year; they're not going to be taking the photo anymore nor will they be actually issuing your document. They will be issuing a receipt with driving privileges, which is a piece of paper that will have all of the same information your driver license will have on it, but it will only be valid for 30 days while your actual driver license would be mailed to you from the central production facility. So they still will be collecting the fees, and they'll still be issuing a receipt that has some driving privileges attached to it. So they are still involved in the process. [LB229]

SENATOR LOUDEN: Now does that mean, then, we don't have to go back to our own counties and get our driver's license, we can get them anyplace that there's a Department of Motor Vehicles, the people that are doing it like, forever? [LB229]

BEVERLY NETH: Yes, that has not changed. In Nebraska, since 1999 or sometime, we've been able to renew our driver license in any county--it didn't have to be your home county of residence. [LB229]

SENATOR LOUDEN: Okay, one last thing. When you mentioned, I think, to Senator Janssen about getting on a plane or something--you'll still be able to get on a plane with a passport, is that correct? [LB229]

BEVERLY NETH: Yes, that is correct. [LB229]

SENATOR LOUDEN: Yeah, this doesn't have anything to do with a passport. [LB229]

BEVERLY NETH: No. [LB229]

SENATOR LOUDEN: Okay, thank you. [LB229]

BEVERLY NETH: You're welcome. [LB229]

SENATOR STUTHMAN: Thank you, Director Neth and Senator Louden. Any other

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questions? Senator Hadley. [LB229]

SENATOR HADLEY: Thank you, Senator Stuthman. Just one...couple of quick, quick questions. When you were talking about lawful immigrants and such as that, that wouldn't stop a tourist from coming to Nebraska and still being able to drive on an international driver's license or a driver's license issued by their own company, is that correct? [LB229]

BEVERLY NETH: It would not. I think the focus behind or the reason behind international driver license, I mean, they're supposed to be for a very limited basis, and what they tell law enforcement or someone that would look at them is that I hold driving privileges in my home country, and those driving privileges are valid. And so under reciprocity agreements and those kinds of things we allow people to drive here on a limited basis under those. But those aren't a driver license that you can get to drive around Nebraska if you live in Nebraska. That's not what an international driver license is used for. [LB229]

SENATOR HADLEY: And then when we talk about the lawful immigrants, would these be...for example, I have friends who have green cards. They would be...that would be the kind of person who would get a Nebraska driver's license and when...if that green card expires, they have to go about... [LB229]

BEVERLY NETH: Right, renewing that, um-hum. [LB229]

SENATOR HADLEY: ...renewing it, and if the card never expires they have to do it yearly. [LB229]

BEVERLY NETH: On a yearly basis, that's right, that's right. And there are some cards...the bill as proposed does enumerate the type of immigration documents that would be accepted, and those documents cover the vast majority of documented immigrants who come here into this country. And then with that kind of catch-all provision that says we can accept other documents as long as we're documenting why we took it and what it was, I think that we will be able to cover most people who are here in lawful status to obtain a driver license. [LB229]

SENATOR STUTHMAN: Okay, any other questions? I do have one for you, Director Neth, and that's going back to what Senator Hadley brought up the conducting the background checks on the county level. Is that going to be the responsibility of the DMV, state, or will it be the responsibility of the county? [LB229]

BEVERLY NETH: It will be the responsibility of the county, and what we'll probably do is ask them to certify to us that they've put their people through the background check and then we can then use that for...if REAL ID remains the same and if we're required to

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comply, there is a certification process that we have to do with the federal government that we are in compliance that we'll use that information from the counties to do the overall state compliant certification. [LB229]

SENATOR STUTHMAN: Okay, thank you. Senator Gay. [LB229]

SENATOR GAY: If that's the county's responsibility, is there a charge to run the background checks? [LB229]

BEVERLY NETH: Yeah, there is, and honestly, I don't know exactly what that cost is to do a federal background check--maybe about \$35 per applicant. And we're still discussing...there are some federal grant funds that are available through this program. This year we are receiving roughly, I think it's \$756,000, and the federal...the fiscal year 2009 funds have been released for applying and in that equation it looks like we could get about \$800,000. You see the fiscal note does reference that federal grant program as how we would help pay for the imaging system. We're talking about, could we use some of those funds to do that initial background check, not only for the DMV but also for the counties. As they add staff they may have to take those on themselves, but the initial background checks we're considering whether or not we would pay for those on a one-time basis for the county staff. [LB229]

SENATOR GAY: Well, I'm just saying, it's one thing and then another thing, and then time involved in doing that has to go to the sheriff's department and all this, so little by little we keep adding more things for the counties to do that adds up. And I know...you know, I've spoken about our relationship, too, but sometimes this is where little things start adding up long term, so I'd encourage you to look for another way to help them out. [LB229]

BEVERLY NETH: Yeah, it could become costly as you have a larger county that has staff turnover, those kinds of things. And so we will continue to investigate whether or not we could use those federal funds. I think we could use them. Whether or not we have the opportunity depends on how much that imaging system costs us. [LB229]

SENATOR GAY: Okay, thank you. [LB229]

SENATOR STUTHMAN: Thank you, Director Neth. Any other questions? Otherwise, thanks again. Any other proponents of this bill? Any opponents? Anyone in the neutral want to testify? Yes. You are an opponent or neutral? [LB229]

LAUREL MARSH: Yes. [LB229]

SENATOR STUTHMAN: Opponent? [LB229]

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LAUREL MARSH: Opponent, yes. [LB229]

SENATOR STUTHMAN: Okay, thank you. Welcome. [LB229]

LAUREL MARSH: Thank you. Good afternoon, members of the Transportation Committee. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here today representing ACLU Nebraska in opposition to LB229. And when reading LB229, I tried to ask myself two questions. First, what elements of the bill are legitimate fraud control issues? There has been a problem expressed and of course we need to meet that problem. And second, which elements are here only because of the REAL ID Act of 2005? And the REAL ID process is something that our organization has followed for the last few years and that we have worked with the Transportation Committee on before, and also the Department of Motor Vehicles, and we want to thank both groups for their attention and concern on this issue and the many changes that this process has gone through over time. We're basically trying to determine what uses of technology proposed by LB229 enhance our privacy and freedom, and which do not. And the short answer is that this is a partial REAL ID implementation bill--one that takes some parts of the law but dodges some of the more expensive parts, which is probably good. It also presents some privacy problems beyond the largest of which and that we believe that it...and the largest privacy problem is that it would move us closer towards a national identity card, though this itself would not produce that result. I'd like to call your attention to a couple of specific concerns that we have, and they may be things that you would want to look at as you review the bill. On page 8 there is...on lines 6-10 it talks about the use of...proving the validity of a Social Security number through a W-2, which...this is one of the source things that would be permitted or suggested under the REAL ID regulations. This provision raises some privacy concerns since DMV would now hold onto the source documents--it would retain them over time--so your W-2 or pay stub, not only would it verify your Social Security number, but it would also let everyone know your salary. And that salary would be fixed in time forever and accessible to more people beyond you privately. On page 11, it specifically...Section 5 specifically is a section that permits the retention of source documents over time. And this requirement also comes directly from REAL ID, and we think poses some potential identity theft concerns because of the wealth of information that would be retained. You might be scanning in a passport, a birth certificate, other types of very private language. The language does not say that...the bill does not say whether you would use electronic or paper record retention, but the fiscal note does say that you would be buying scanners so we'll assume it's electronic, and electronic records are sometimes easier to penetrate or access. I guess the other thing that I would like to note is that there isn't anything specific in this bill, though I understand the Department of Motor Vehicles is bound by other laws and has other things that talk about records retention, but that talk about how long these records would be kept--Director Neth referred to them as like a living history of the driver's license applicant. And after records are checked for validity, how will the records be used? And we think that it is an area that might be right for function creep.

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After you create and retain an extensive database, we believe that it will inevitably, over time, become drawn upon for an ever wider set of purposes that we may not anticipate at this point in time when we're creating. There's also no set time frame for expungement; if I leave Nebraska and move to Iowa and get a driver's license there, would my records be deleted from Nebraska if they are then created in Iowa--assuming Iowa has a similar system? So you might want to look at some set of mechanics that would allow for the expungement of records or clarify that section. On page 12, Section 6, you do have a fairly good list of those documents that you can use for lawful presence; this is also the list that's required by REAL ID. But it would be necessary for all of us to use these documents, and I guess the thing I found especially interesting is that at the top of page 13, Section 1 when they're talking about I could use a driver's identification card that met the compliance aspect of REAL ID, but I did not know if that included our current Nebraska driver's license. Can I use my current driver's license to renew my future drivers license? I was unclear on that, but it might be something that we would want to know. In the giving of temporary licenses, which is talked about in the next section, and starts on page 14, these licenses have to be marked with a special symbol. The special symbol is also required under REAL ID and it seems to open up the possibility of kind of a bull's-eye or gotcha type of marketing that might increase discrimination or how some people...it might create an opportunity to treat someone in a discriminatory fashion. And certainly that is not an over-arching goal of our state policy. So I guess in summary, many of the very onerous provisions of the regulations that have come before the committee to be looked at and reviewed over time that were in the REAL ID Act are not in LB229, and that is a good thing. But the statute does raise some significant privacy concerns and it brings us, we feel organizationally, it brings us closer to a national identity card. It increases the risk of identity theft and makes more of our personal information available and places more of our personal information at risk. And for these reasons, we would ask the Transportation Committee to hold LB229 until some of these questions can be clarified, and perhaps national policy on REAL ID rules and regulations settles down a bit. [LB229]

SENATOR STUTHMAN: Thank you, Laurel. [LB229]

LAUREL MARSH: Thank you. [LB229]

SENATOR STUTHMAN: Any questions from the committee? Seeing none, thank you. Any other testifiers in the opposition? Come forward, please. You place that in the clerk's...the yellow sheet, please. Welcome. [LB229]

NORMAN PFLANZ: (Exhibit 2) Thank you. Good afternoon, Chairperson Fischer and members of the committee. My name is Norman Pflanz, N-o-r-m-a-n P-f-l-a-n-z. I'm a staff attorney with Nebraska Appleseed Center for Law in the Public Interest. We are a nonprofit, nonpartisan law project dedicated to equal justice for all Nebraskans. I'm here today in opposition to LB229. We oppose this bill for three key reasons. (1) we have

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serious concerns about privacy, security, and practical problems this law would create for Nebraskans; We're also concerned about the high cost of implementation for the state; and lastly, there's a real potential that this law may be repealed or changed from the federal level, considering the significant opposition to this law by the states and also recent comments by the new secretary of the Department of Homeland Security. So first, there is a real possibility that the REAL ID Act could be repealed or changed at the federal level by the new Obama administration. So for that reason, Nebraska should, at this time, not move forward with implementing a costly and imperfect system. Instead, we should...after we have a chance to see where the new administration goes with REAL ID, perhaps we could then take a look at potential changes that make sense, rather than looking through the lens of this seriously flawed federal legislation. Recent comments by Secretary Napolitano of DHS support this. She said that, "We will rethink the REAL ID program," and she also stated, "It really has taken the form of a huge, unfunded mandate on our states which are struggling with huge cuts right now." As was stated previously, she is going to be meeting with the governors to take a look at the cost compared to its value. In fact, last year many states introduced laws and resolutions rejecting REAL ID. These laws and resolutions were passed in 17 states, and another 11 have a statute or resolution that passed one chamber, and still others have bills that have been introduced. The second reason why we oppose this bill is because implementing REAL ID in Nebraska would create...we have serious concerns about the privacy, security, and practical problems regarding this bill. REAL ID requires the state's Department of Transportation to keep hard copy or electronic copies of applicant's source documents--birth certificates, etcetera--which they can keep on file in centralized locations, basically creating a honey pot of data for identity thieves, as was stated previously. Drivers personal information must be included in a two-dimensional barcode on the back of the card. This also raises serious security concerns. Also, the law's requirements would lead to significant delays in processing, and this would require applicants to wait for long periods and perhaps even come back on a subsequent day, which would have a serious impact on rural individuals as well as low-income applicants who may lose a day's work because of this. Finally, the implementation of REAL ID in Nebraska would also be costly for the state at a time when our budget is already strained. As has been testified before, the bill would require additional expenditures to be made on the county level, and while the DMV has indicated that federal funds received from DHS would likely be used to fund these mandates, no cost estimate is currently available. I think one interesting example is the state of Maryland, which recently announced that it will likely delay implementation of the REAL ID program because it's expected to cost the state \$30 million, while the federal government has only given the state \$1.1 million, while promising another \$700,000 in the coming fiscal year. The chairman of that state senate's judicial proceeding committee, Brian Frosh, stated, I think it's unlikely we'll do anything this year--it's going to be a tremendous burden on the state. So as Nebraska and numerous other states have found, the REAL ID Act creates huge administrative burdens for state governments; it provides little, if any, federal funds for implementing its requirements; it does nothing to combat

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terrorism; and it puts us at greater risk for invasions of privacy and identity theft. For all those reasons, we ask that the committee reject LB229. Instead, we should continue to join the states across the nation that have joined in opposition to implementation of REAL ID. And I thank the committee for its time. [LB229]

SENATOR STUTHMAN: Thank you for your testimony. Are there any questions for this testifier? Seeing none, thank you. [LB229]

NORMAN PFLANZ: Thank you so much. [LB229]

SENATOR STUTHMAN: Are there any other testifiers in the opposition? Are there any testifiers in the neutral? Seeing none, that closes the hearing and I will return it back over to Chairman Fischer. [LB229]

SENATOR FISCHER: Thank you, Senator Stuthman. With that, I will open the hearing on LB261, and I see Senator Rogert is here to open on his bill. Welcome. Is this your first time before our committee? [LB261]

SENATOR ROGERT: This year. [LB261]

SENATOR FISCHER: I don't remember if you've been here last couple... [LB261]

SENATOR ROGERT: Oh, I had some helmet thing. [LB261]

SENATOR FISCHER: ...last year? Oh, goodness sakes. Oh, yes, Senator Rogert, welcome back. [LB261]

SENATOR ROGERT: Freshman initiation as you know Senator Janssen can... [LB261]

SENATOR FISCHER: How soon we forget all the joys. Yes, welcome back. [LB261]

SENATOR ROGERT: Thank you. Good afternoon, Chairwoman Fischer and members of the Transportation and Telecommunications Committee. My name is Senator Kent Rogert, representing the 16th Legislative District, and I'm here to introduce to you today LB261, a bill that would allow for the scanning and storing of information from the bar code on the back of an operator's license in order to provide better compliance with the enforcement of and restrictions on the sale of alcohol for minors. Just a...I have a prop but it's very small. If you knew or you didn't know, on the back of a driver's license there's a little shaded area. There's information contained in there that can be retrieved from a bar scan coder. Currently under Nebraska law, it's already legal to scan the bar code on the back of an operator's license, but it's not legal to store that information. This bill would allow a retailer to scan the bar code on the back of the operator's license and store very specifically the license number and the age of the birth date when alcohol,

tobacco, or lottery tickets are purchased. Signage would be posted at the point of sale informing consumers that when these products are purchased their license will be scanned and the information stored. A software programmer must certify that only the card number and the age of birth date will be stored, as a programmer would be guilty of a Class IV felony if more information than that is stored. This change will help retailers in identifying minors who attempt to purchase alcohol and tobacco products and assist retailers in keeping those products out of the hands of underage consumers. As such, retailers will be able to implement software that will control the sale of age-sensitive products by stopping the sale if a fake ID is used or if the purchaser is underage. In addition to that, we believe that the scanning and storing of this information and posting notice of the scan will discourage adults from purchasing alcohol for minors, knowing that their information is on file for that purchase and will be stored. LB261 would also allow a retailer with either electronic or written permission from the consumer to scan the bar code on the back of the license in order to store the age and operator license number. However, the retailer is prohibited from selling that information that is collected and stored. And if they would sell it, they would be guilty of a Class IV felony and such. In many stores today, consumers are required to have valid information on file in order for a consumer to cash a check or take advantage of a customer loyalty program. As a result, consumers are already providing via written document the information that would be obtained in the scan. So retailers are currently then reentering that information into a database. By allowing retailers to scan and store this information, it would provide a more secure environment for this information and would cut down on data entry errors and save on labor costs. Not only does LB261 provide for efficiency, accountability, checks and balances in a more secure environment for this information to be stored by a retailer, it allows for them to have better compliance with the enforcement of and restrictions on the purchase of alcohol for minors. I believe also coming behind me there's going to be an amendment to add a little bit more language for insufficient fund checks, check forgery, and I most likely would be in support of that amendment as well. So with that, I'll answer any questions that I can about this bill if you have any. [LB261]

SENATOR FISCHER: Thank you, Senator Rogert. Are there questions? Senator Gay. [LB261]

SENATOR GAY: So could the customer opt out then if I don't want the back of my card read, I just want to show it to the retailer? [LB261]

SENATOR ROGERT: Their best option might be to go somewhere else. They may not be able to write a check for purchase without allowing them to do this. [LB261]

SENATOR GAY: Okay. So the retailer has the option to say it's this or buy it somewhere else. [LB261]

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SENATOR ROBERT: Right. They have the option to do that because...it comes from folks coming in to buy alcohol or cigarettes for guys out in the street. And if they know they're going to be stored right then, their information, it's a good deterrent from keeping them from doing it further. [LB261]

SENATOR FISCHER: Other questions? Senator Louden. [LB261]

SENATOR LOUDEN: Yeah. Thank you, Senator Fischer. Senator Rogert, why do we have to show a driver's license to somebody? I mean that doesn't have anything to do with writing a check. The only reason that's on there is so that they can run you down if your check bounces. I mean, it doesn't have anything to do with the value of the check or anything. And the same way with some of the other reasons. Why do we have to use our driver's license to do this? [LB261]

SENATOR ROBERT: Well, I think...well, typically it's usually done to prove age. Although you're a young looking guy, Senator Louden, I assume that you're old enough to buy alcohol. Well, many retailers just require it regardless, and this would...I think part of it would be a deterrent for folks who buy it for younger kids. You almost always have to provide it when writing a check unless your information is on hand with the store that you're writing a check at, just...and usually it is just for that because of insufficient funds checks are written way too often. And they want to be able to have a valid driver's license to show that it's actually your account, it's a good account. [LB261]

SENATOR LOUDEN: What I'm wondering is why we should give the business community this authority to look at our driver's license when all they're wanting is to either find out where we're going or what we're doing, I guess. I mean, a passport or any other instrument could work just as well as a driver's license and it wouldn't be scanned. I'm wondering why we have to have it set up so they'd scan a driver's license. [LB261]

SENATOR ROBERT: Well, currently they can scan it right now. They can scan that information and pull it out of there. I think it's to see that it's valid, that you don't have a fake ID. And they're using it as a tie...well, they're using it for check writing a lot as a tie to make sure that the account is good and it's actually...the account goes along with the driver's license that you hand them. [LB261]

SENATOR LOUDEN: Don't they...if you write a check in a store or something like that, they take that check and run it through that machine that runs through there a time or two and all that does is see if that check...that goes out someplace into the world and finds out whether or not that check is any good, doesn't it? [LB261]

SENATOR ROBERT: Yeah, it does except there's a delay. On most of those check systems, there may be a one, two, even several day delay on bad checks. And if

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somebody is running around writing multiple checks in a couple of days on an account that doesn't have any money in it, that TeleCheck system isn't going to catch it. So they're trying to tie it to a driver's license to make sure that they've got a number and a name of the guy who wrote the check. [LB261]

SENATOR LOUDEN: In other words, a national ID number. [LB261]

SENATOR ROBERT: No, just a driver's license number. [LB261]

SENATOR LOUDEN: I know, but that's the only reason you're using that driver's license as an identification. [LB261]

SENATOR ROBERT: Right. [LB261]

SENATOR LOUDEN: Okay, thank you. [LB261]

SENATOR ROBERT: Yeah. [LB261]

SENATOR FISCHER: Senator Hadley. [LB261]

SENATOR HADLEY: Senator Fischer. Senator Robert, the original intent of what we're looking at right now is basically the sale of alcohol, tobacco, and lottery. And we have safeguards right now. Underage, am I right, they pose differently on the driver's license, it's a different color? There's a lot of safeguards built in already for selling to an underage person. So if a person comes in with the correct looking driver's license, they're facing the right way, it's the right color, the right everything, what do we gain by scanning their information into some database? [LB261]

SENATOR ROBERT: Well, there's two points I'll make on that, and the first one is I may be using somebody else's driver's license, so there's one point. The second point is this, is kind of for folks of legal age that are purchasing things for folks underage. And it's a pretty darn good deterrent if I'm over the age of 21 and I come in and buy a 12-pack and I'm going to take that and give it to somebody out in the parking lot, if I've been told right at the counter that my name or my identification number and age is going to be kept on file with that sale and it could be tied to me if the younger kids get picked up with it, it might turn me around pretty fast from buying it for them. Does that make sense? [LB261]

SENATOR HADLEY: Can I ask another question? One last thing--is there anything in there that stops the retailer from downloading every week my name and address and saying, Galen, your last quart of vodka was two weeks ago. If you run out, stop back again or anything, you know? (Laughter) [LB261]

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SENATOR ROBERT: It does. It keeps them from selling that information. It doesn't...first of all, it doesn't keep your address. It's only going to keep, on this language as it's written today, it just says the name or, excuse me, the operator ID and the age of the birth date which it would put G29, blank, blank, blank, and 36 if it was mine. That's all it would keep. And my identification number as the driver's license holder and my age and that's all it would keep under this language. So that wouldn't do them any good. It wouldn't have an address. [LB261]

SENATOR HADLEY: Okay. Then on page 3 it does say: With the written or electronic permission of the holder of the license, the following may be obtained from the scan. [LB261]

SENATOR ROBERT: May be. [LB261]

SENATOR HADLEY: Yeah. [LB261]

SENATOR ROBERT: May be. So if you give them permission to keep other things, but they cannot sell it. [LB261]

SENATOR HADLEY: They can't sell it, but they could sure let me know if they think I ran out. [LB261]

SENATOR ROBERT: I suppose they could. [LB261]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Louden. [LB261]

SENATOR LOUDEN: Yeah, one other question, Senator Robert. Did I hear you correctly saying it doesn't put your address? They don't... [LB261]

SENATOR ROBERT: Correct. [LB261]

SENATOR LOUDEN: Well, then what's the point in using it to cash a check if it doesn't carry your address? [LB261]

SENATOR ROBERT: Well, because it still ties it to that operator number. That operator number, and if you had insufficient funds, the police can get that operator number and then they can find your address at that point. [LB261]

SENATOR LOUDEN: Well, then it does put your address in there. It must...it runs you down some way or another or else they wouldn't use it. [LB261]

SENATOR ROBERT: No. You would have to go to the DMV to get that. So if the police can get that number, they can go to the DMV and pick up the address at that point. But

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they cannot get the address, according to this language, into the system. [LB261]

SENATOR LOUDEN: Okay, thank you. [LB261]

SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB261]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. Thank you, Senator Rogert. I have to admit I don't write checks anymore. [LB261]

SENATOR ROGERT: Me neither. [LB261]

SENATOR LAUTENBAUGH: I get impatient when people in front of me do, I confess. But that said... [LB261]

SENATOR ROGERT: Senator Fischer writes a lot of checks. I can tell. [LB261]

SENATOR FISCHER: Older people do, Senator Rogert (laugh). [LB261]

SENATOR ROGERT: I didn't say it. [LB261]

SENATOR LAUTENBAUGH: I was not going to go there, but in any event, don't we now allow people to copy down the driver's license information on the front of a check? [LB261]

SENATOR ROGERT: Yes. [LB261]

SENATOR LAUTENBAUGH: You can record the number. [LB261]

SENATOR ROGERT: You can write it down, yes. [LB261]

SENATOR LAUTENBAUGH: And that number is on the check. [LB261]

SENATOR ROGERT: Yes. [LB261]

SENATOR LAUTENBAUGH: So if the check comes back, you could call the police and they could run down that driver's license number. [LB261]

SENATOR ROGERT: If they wrote it down correctly. [LB261]

SENATOR LAUTENBAUGH: If they wrote it down correctly on the front of the check. [LB261]

SENATOR ROGERT: Um-hum. [LB261]

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SENATOR LAUTENBAUGH: So this would allow automating the storing of that number. [LB261]

SENATOR ROBERT: It would and for two reasons I will say. One of them is to make sure it gets written down, that it gets recorded correctly rather than having something wrong. The second is by actually writing that down, that's laying out where anybody who gets into that cash register can get ahold of that driver's license number. This actually puts it into a system that's completely secure that nobody else can see, including anybody that works there or anybody that would come into there and see a driver's license number and an address written right next to it. [LB261]

SENATOR LAUTENBAUGH: So in a way this improves the security and something we're already doing. [LB261]

SENATOR ROBERT: It certainly does. [LB261]

SENATOR LAUTENBAUGH: Thank you. [LB261]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator Robert. [LB261]

SENATOR ROBERT: I have another committee. I'm going to waive closing. [LB261]

SENATOR FISCHER: You waive closing, fine. Thank you for being here. Next could we have our first proponent come forward, please. Good afternoon. [LB261]

JIM MOYLAN: Good afternoon, Senator Fischer, Chairlady, and members of the committee. I'm Jim Moylan, an attorney from Omaha, and I represent the Nebraska Licensed Beverage Association, which is a state association of liquor retailers. [LB261]

SENATOR FISCHER: I need you to spell your last name. [LB261]

JIM MOYLAN: Oh, excuse me, M-o-y-l-a-n. [LB261]

SENATOR FISCHER: Thank you. [LB261]

JIM MOYLAN: I'm sorry. As you know, there's approximately 4,500 or 4,600 liquor licenses in the state. All of them sell liquor and have a lot of patronage. They also, many of them, sell tobacco products. And then a lot of the convenience stores, of course, sell lottery tickets, which the ordinary bars do not. We've been asked, you know, looking for legislation like this for a number of years. As you know, years ago when they first started putting photos on them, they made the backgrounds of the minors red and I

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think blue for the majority people. Subsequent to that, I think now they turn a different way the driver's licenses for minors. I think that's still in existence. And we also happen to have and they use it a lot of time, we have a law that's 30 years old that if a retailer uses the minor's book, we call it, and he checks the ID of somebody that comes in and they fill out that book and it happens to be a fake ID or a license that was for an older person that a minor was using, it's an absolute defense to the charge of sale to a minor for them. So we've had some good things over the years, but this would probably be the best thing in the world for the retailers in the state. Therefore, we ask you to put the bill out of committee and pass it. If there's any questions, I'd be happy to try to answer them. [LB261]

SENATOR FISCHER: Thank you, Mr. Moylan. Are there questions? Senator Hadley. [LB261]

SENATOR HADLEY: Senator Fischer. Mr. Moylan, I'm trying to remember and as I'm getting older my memory isn't quite as good. But when I was on the city council in Kearney and mayor, we had a lot of applicants come in for liquor licenses that were using electronic devices to check IDs and as part of a process. Can you do this now without a law? I mean can a retailer have something sitting on their counter that says if you look underage and you want to buy liquor or if you look young, you have to give me your driver's license and I can put it in the machine and it tells me how old you are? [LB261]

JIM MOYLAN: Yes. There's a company in Minneapolis has an office in Des Moines who does provide these machines. And I think there's two separate types: one that are separate from the cash register, also in the cash register system. And I know there are some retailers, convenience stores I think in Kearney, that has one; and I did talk to them last year and it works very well for them--rather expensive for, you know, a small-town retailer. So we're hoping that in time the costs would go down so that all of them could have these type of machines of some type that would scan the license and take the information (inaudible). [LB261]

SENATOR HADLEY: So effectively we're saying there are ways of doing it. What we're asking...what we're saying here is that this would make it a law that everyone could do it. Right? [LB261]

JIM MOYLAN: Yeah. [LB261]

SENATOR HADLEY: We don't say they have to, right? [LB261]

JIM MOYLAN: No, it's not mandatory. They may use it, right so. [LB261]

SENATOR HADLEY: But I guess if they can do it now, what are we accomplishing by

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the bill? [LB261]

JIM MOYLAN: Well, I guess you are kind of putting some safeguards on what they can put into those machines. Number one, the age and the license number is all the retailer could put in that machine under this law. If they get the permission of the cardholder, then, you know, they can get more information. I think it's probably more safeguards for the use of it. Right now I think you could take anything that was on that license out there and sell it if you want to, you know. So I think it's more of a safeguard than anything, so. [LB261]

SENATOR FISCHER: Other questions? Senator Louden. [LB261]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Mr. Moylan, what's on that bar code now on a driver's license? [LB261]

JIM MOYLAN: What is on? [LB261]

SENATOR LOUDEN: Yeah. [LB261]

JIM MOYLAN: I don't know. I don't know that I've...they've checked my ID lately, number one, so I don't know what's on there, you know. [LB261]

SENATOR LOUDEN: Yeah, but they don't scan it. They just look at that and look at the other side. The next question I have, there's some ethnic groups that's hard to tell apart. But if you had it set up where you just scanned the card, why couldn't someone that looked similar to somebody that was a little bit older go ahead and loan them their license and they scan the card and buy their liquor or booze or whatever it is they want to buy that they weren't old enough to do to start with? And it would be legally there, I guess, because there's no fingerprints on the thing or anything. [LB261]

JIM MOYLAN: No, there aren't but, of course, they don't take fingerprints. But, number two, I think anybody could borrow one of those cards. And if they look similar to the picture, they can go in and buy liquor. I'm familiar with that. I have six children, and I know what some of the things that they did over the years, you know, so. But, no, you can use it and a lot of younger people have gotten licenses. You can obtain them around that shows that you're older with your picture on it, and a lot of them use it. [LB261]

SENATOR LOUDEN: In other words, it's still not foolproof. They can get around this. Yeah. [LB261]

JIM MOYLAN: No, this...that's right. You could have a minor that borrowed somebody else's license that showed they were 21 and come in and scan it and it's going to show

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they're 21. [LB261]

SENATOR LOUDEN: Okay, thank you. [LB261]

SENATOR FISCHER: Thank you, Senator Louden. And thank you, Mr. Moylan, for being here today. [LB261]

JIM MOYLAN: Thank you. [LB261]

SENATOR FISCHER: Next proponent, please. Are there any other proponents? Good afternoon. [LB261]

STEVE MOSKOVITS: Good afternoon. My name is Steve, S-t-e-v-e, Moskovits, M-o-s-k-o-v-i-t-s. I'm with No Frills Supermarkets and Nebraska Grocers. Thank you, Chairperson Fischer and state senators. I'll try to keep my remarks brief and maybe respond a little bit of what we heard today. Essentially, we're here today as a responsible retailer who is licensed to sell age-restricted products: alcohol, tobacco, and lottery. And in doing so, we are attempting to try to make the situation better than it is today. I think we've had a very good track record, but we know there's still room to improve. When you run a chain like we do with multiple stores, multiple lanes, you're only as good as your weakest link. We, as a retailer, spend a lot of money internally. We have loss prevention. We don't wait for the State Patrol to come. We actually pay and do our own internal stings and investigations, progressive discipline where we will suspend, terminate cashiers we find guilty of making sales. But unfortunately as we find out by doing this, it still happens to some degree today, and that's what we're here today to try to figure out how we can close some of the loopholes, eliminate human error, and again be better than our weakest link. What we're trying to do is establish a system that would allow us to scan electronically the card, make it required for the sale of these items in our system. And by doing so, the cashier would not have the alternative as to making a decision whether or not to ID a person if they look old enough. Secondly, they would remove any error as far as input. What we found when we do our internal stings is there are times, and more times than you would like to believe, where they actually ask for ID, look at the ID, they will actually type the ID into our system, the system may even prompt and say the person is not old enough, and the sale still will get made, and that's an unfortunate fact of life. With this situation, what we find is if we're able to close that loophole where we can machine-readable the back of the card and then we can integrate it into our system where that sale would be prevented, once the card is scanned and the system knows that the person is not old enough, it would stop the transaction from happening without any discretion of the cashier. And that's what we're looking to do today. The ID format, I know Senator Louden asked the question, everything that's on the front of the card is on the machine readable--and we have our IT director here, too, who can answer some questions or he'll testify after I do--but the information that's on the front is on the back. And what

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we've asked is the ability to take information as to the ID number and calculation of age. And as Mr. Moylan referred to before, the system today allows us to have a black book where we can write in all the information. You put in the name, the address, the ID number, the date, and you have the person sign it. And then that book is simply maintained in an unsecure environment and would have the ability for anybody to take that information. And we think that if you have it scanned and secured in a database format it would be much better than filling out the book. From our standpoint with a multichain, multilane operator, the black book really doesn't serve our purposes and we don't use it. But I know there are probably other bars and other smaller retailers who do still use it today. But this situation would be better than what would exist in that situation. The second adjunct piece of this that we talked about is with the check verification piece. And we, in fact, to Senator Lautenbaugh's question earlier, we actually convert the checks electronically at the front end today, so we've tried to make it a little better and quicker than people having to write out the whole check. But at the end of the day what we're still trying to do is associate new check writers with a driver's license such that if you do end up with accounts that go bad you're able to go back and have some sort of information on that person. The other thing the system we have that does today, too, is that we have people who go from account to account to account, but they still use the same driver's license. It associates the driver's license with a bad checking account. And so if they come in today with an account from one bank and three months later come back with a check from a different bank, but they use the same ID number, it would associate under the ID that that person is still in the file for writing bad checks under a different account number. And that's what we're trying to do. The problem with the system, again, is that it's fraught with human error and that is a cashier takes the license and has to enter it in and it's not even as easy as with the regular keyboard. You know, it's a cashier keyboard where they have to do an alphanumeric and they have to...you know, it's not designed for computer input. And we've had real-life cases again where it wasn't our error, but we've had customers trying to write checks in our stores where when they've come in and it's said that their ID is flagged because of previous bad checks, and what it ended up being was another retailer had typed in incorrectly into a database a driver's license number and it happened to match this person's driver's license. And so this person now got essentially associated as a bad check writer and had to take the process to try to clear their name, get out of bad negative files with various check companies through no fault of their own. And so again, accuracy in information is paramount to make sure that, again, the actual check number is accurately recorded, shall we say. And again, when you're talking about how many different retailers, how many different cashiers, how many different lanes, it's difficult to assure that everybody's information is being put in accurately today. And so being able to do it mechanically and machine readably would solve that issue as well for people. What we talked about earlier, again, is the fact that we are legally able to scan it today. The difference is we can't record any of that information. We can't store it. Our intent would then be, again, to assist with a deterrent effect with people who are buying for minors and also to be able to say if the State Patrol ever did come in that we did, in fact,

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take an ID and we can verify here's the ID number that we took with that particular sale. That's the only difference between what's happening today. And again the comparison would be if we're filling out a black book that's on a piece of paper, hard copy, versus something that is mechanically put into our system. With that, I'm available to answer any questions. [LB261]

SENATOR FISCHER: Thank you, Mr. Moskovits. Is that correct, Moskovits? [LB261]

STEVE MOSKOVITS: Yes, that is correct. [LB261]

SENATOR FISCHER: You clarified at the end of your testimony the purpose of the bill, and I appreciate that you did so. Right now do you scan the bar code on driver's licenses at your stores? [LB261]

STEVE MOSKOVITS: We do not. We have the technology available to do so, but we have not implemented it at this time until we're able to actually verify and keep a record of that license that we scan to protect. [LB261]

SENATOR FISCHER: But you have...the capability out there is out there right now that a driver's license could be scanned. You would see the date of birth on that license and you could refuse sale. Is that correct? [LB261]

STEVE MOSKOVITS: That is correct. [LB261]

SENATOR FISCHER: Why do you need this bill? Why do you need to store the information? On the bar code, as I understand it, on driver's licenses right now, on that bar code it has the name, the address is on the bar code, the race, gender, date of birth, those types of things are on the bar code. I understand that with this bill you'd want to have software just to have the name and date of birth. Is that correct? [LB261]

STEVE MOSKOVITS: That is correct. [LB261]

SENATOR FISCHER: But why do you need to store that information? You mentioned the black book that people sign. But if you can scan that card right now and see that somebody is not old enough to purchase a product that has an age limitation on it, why can't you stop the sale at that point? [LB261]

STEVE MOSKOVITS: It gets back to what Mr. Moylan said, too, about it being a defense. And again, the scenario is if someone who is overage comes in, makes the purchase, and then ends up in the hands of a minor and they come back to us, we have no verification of what license we actually saw when we made the sale. [LB261]

SENATOR FISCHER: But how do you know that it was Senator Louden that you had

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scanned his card for a legal substance for his age, how do you know that he turned around and sold it to minors? [LB261]

STEVE MOSKOVITS: We know which license was presented and actually physically in our store and was scanned. And you are correct. [LB261]

SENATOR FISCHER: But how do you know that he turned around and gave it to minors? What is law enforcement going to do with that--question the minors to find out who purchased for them or what? [LB261]

STEVE MOSKOVITS: Well, yeah. There are times where, again, there's a receipt that's found or there are times when we'll do an investigation and a minor will say this is where it was obtained from. And they can come back to a retailer and say, okay, you were in violation of selling to that minor when, in fact, that wasn't the situation. [LB261]

SENATOR FISCHER: So you are viewing this bill...let's see if I get this correct, you are viewing this bill as helping retailers in the defense of possibly a legal action that they sold to a minor and an accident occurs or whatever... [LB261]

STEVE MOSKOVITS: No. [LB261]

SENATOR FISCHER: ...or even if there's not an accident. [LB261]

STEVE MOSKOVITS: No. What I'm saying again is we're trying to close a loophole and prevent the sale to minors before it happens by linking it into our front-end system. But without being able to retain that information in some format, we have no proof that we scanned an ID. And that's to us...you're back to again why do you have the black book, because you're trying to say you had an ID and this is the ID you had. This is simply a more accurate and efficient and secure way of doing what the black book does is all we're saying. [LB261]

SENATOR FISCHER: Right. And you had mentioned for your defense earlier. [LB261]

STEVE MOSKOVITS: That is part of it. But as Senator Rogert also said and part of it would be a deterrent effect as well, if you are someone who is of age who is inclined to buy and intending to give to a minor knowing that you were going to scan your ID and retain that information, it may actually have a deterrent effect on that individual's behavior as well. [LB261]

SENATOR FISCHER: Did you hear the testimony on the previous bill in regards to the REAL ID Act that the state is faced with? [LB261]

STEVE MOSKOVITS: I did, yes. [LB261]

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SENATOR FISCHER: So you know there's concern out there with privacy issues on many different fronts when it comes to personal identification. [LB261]

STEVE MOSKOVITS: Absolutely. Absolutely, and again, we do have our IT person here. But what we would say to you is we believe this to be a more secure avenue than the black book affords in today's world. And when you talk about the check verification piece, there are people who just make photocopies of your license and photocopies of checks, and that's perfectly legal today. This certainly is a step above that. [LB261]

SENATOR FISCHER: Okay, thank you. Other questions? Senator Janssen. [LB261]

SENATOR JANSSEN: Thank you, Senator Fischer. Mr. Moskovits, I'm trying to like this idea. I worked in a liquor store, and the only thing worst than getting stuck behind Senator Hadley and Fischer filling out a check is somebody filling out that book in front of you and then buying lottery tickets after they're done doing that and then balancing their checkbook while they're in line. (Laughter) [LB261]

SENATOR FISCHER: Now, now, now, Senator Janssen. You want to ask a question? [LB261]

SENATOR JANSSEN: But in your particular...I'm trying to see where the stopgap would be. Is there...in your case, do you have cameras at your checkout lanes? [LB261]

STEVE MOSKOVITS: We do not have cameras at the lanes. We have various cameras around the store, but not cameras at every lane, no. [LB261]

SENATOR JANSSEN: Okay. And I guess I wanted some follow-up on Senator Hadley's question that he asked earlier about the...you can...I can go in, make a purchase under this proposal and you say, well, would you like your address to be put down? I say, yeah, you could go ahead and store my address as well. Now in the scenario that he said will Senator Hadley get reminded weekly that he needs more vodka from No Frills liquor department? [LB261]

STEVE MOSKOVITS: That's certainly not our intent. And again, there are other retailers that have the frequent shopper programs where people voluntarily enroll and that's the function of that. That's not the function of what we're trying to do, and that's why in the bill that we proposed we limit it to just identification and proof of age because that's not the intent of what we're trying to do. [LB261]

SENATOR JANSSEN: That would be my concern is a lot of times, and whether you see it on Internet whenever you sign up for something, would you like to check this to receive (inaudible), a lot of times you check the box as you don't know or you say yes,

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the next thing you know you're getting all kinds of information. So it could be used for that. [LB261]

STEVE MOSKOVITS: Again, if all I have is your driver's license number and then I have no ability to solicit off of that. And if it's an investigative matter, you know, it may not be us doing it, but it may be, you know, law enforcement and we still wouldn't necessarily have that information per se. Even with our check process today, you know, we have a MICR line that's read electronically and you have an ID. And unless there's a reason where the check was bounced and someone had to follow up, anybody who is writing good checks, we do not have that information. [LB261]

SENATOR JANSSEN: Okay, thank you. [LB261]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Campbell. [LB261]

SENATOR CAMPBELL: I'm going to move to what happens when you walk in and you pay for this with a debit card, for those of us that don't write checks and don't carry cash? Do you record the debit card? Do you keep a record of that? [LB261]

STEVE MOSKOVITS: No. The debit card is taken electronically. Your PIN number is encrypted, and again my IT will follow me and speak more intelligently than I can to this. But that information is not stored in the transaction log. We do not...the numbers are truncated so I believe we could go back if there were a question and give pieces of that number and the date and time of the transaction with our processor to do investigation. But we do not have the entire debit card number, and the PIN number is encrypted and we do not have access to the PIN number. [LB261]

SENATOR CAMPBELL: Can I follow up, Senator? Thank you. So at that point then all you would have is whatever we give you on that driver's license. If you say, well, I want you...when I give you a debit card, then you ask for my driver's license at that point, right, if you think I'm underage? [LB261]

STEVE MOSKOVITS: You're talking about if you're making a purchase. [LB261]

SENATOR CAMPBELL: Yes. [LB261]

STEVE MOSKOVITS: Yes. What we're envisioning as a retailer again, it's not a mandate, it's not every retailer would do this, but what we're envisioning is in our system would be that if you want to purchase an age-restricted product, you would be required to present age verification and we would scan it. And how you choose to pay, be it cash, credit, debit, would not matter. [LB261]

SENATOR CAMPBELL: Thank you, Senator. [LB261]

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SENATOR FISCHER: Thank you, Senator Campbell. Senator Hadley. [LB261]

SENATOR HADLEY: I guess I'm back to my original question. If we have technology now that we can verify a person's...that the driver's license, we can verify the age, and such as that now, we have...bars have that, liquor stores have that, so I'm back to asking why do we need a law that says you can do it if we have places that are doing it now? [LB261]

STEVE MOSKOVITS: Sure. The difference again is storing some of the information versus simply using the information. I could use it and make a determination at the point of sale, but I can't retain that information for follow-up later to show what I did. An example I would give you again that I think of because, again, we deal with cashiers and we deal with multiple locations, a cashier, what happens if they scan their own identification versus someone presented them identification? Later on we can't prove exactly what identification they scanned when they made the purchase if we don't retain what information was actually presented at the time the sale was made. And so knowing that it's recorded and it's recording the exact license that was presented, again, is a deterrent effect for people to follow rules, for people that are making purposes, and for my employees to make sure that, you know, they understand that this information is, you know, retained and there would be consequences. [LB261]

SENATOR FISCHER: Other questions? I see none, thank you very much for being here today. [LB261]

STEVE MOSKOVITS: Thank you. [LB261]

SENATOR FISCHER: Next proponent, please. Could I have a show of hands if there's any more proponents who plan to come up? I see four. And any opponents to the bill? I see three. Thank you. I say that so senators that are listening realize we still have some time. Thank you very much and welcome. [LB261]

WILLIAM BREWER, JR: Good afternoon, Chairperson Fischer and senators. My name is William Brewer, W-i-l-l-i-a-m B-r-e-w-e-r, and I'm an employee of No Frills Supermarkets, and I'm here today to speak on behalf of LB261 to try and dispel any fears about ID retention and the security involved in it. I, too, as with Steve work for No Frills Supermarkets and my responsibilities with the store is to maintain what we refer to as PCI compliance, which is personal card information. And, Senator Campbell, you asked about the debit card. There are specific guidelines that we...are mandated to us on behalf of VISA and the personal card information mandates that require us to store information or not to store information to maintain the security of their customers that shop within our stores. Things like account numbers for credit/debit are illegal to store, and there are strict violations and we would actually lose our ability to accept debit or

credit. Conversely with the check piece, we do have a significant number of customers that pay by check. We also have a significant number of customers that also purchase alcohol, tobacco, and liquor. And the differences in the systems what we term stand-alone systems and not integrated are they do read identification, but there is no mechanism to actually prevent the sale of that liquor or tobacco or lottery ticket pending the results of that scan. It's not an integrated system. Also there is not a log file that's kept to prove that you actually scanned the identification on the person that exited your store with the alcohol, tobacco, or lottery ticket. So LB261 would allow us to store the identification. It would tie that together as a means of protection from the retail standpoint and also as a deterrent, as was mentioned before, from the potential customer standpoint. From a communications standpoint today, customers that enter into a grocery environment and either purchase alcohol, tobacco, or liquor or even present checks for payment routinely volunteer their driver's license for identification as a means to show the retailer in support of the law that they are of age to purchase. In today's environment, there are black books and also identification that's written on a paper check. And if you follow the path of the payment systems, especially with regard to paper checks, that identification becomes hand-held information for a multitude of people. In the electronic viewpoint of this bill, that information would be much more secure and not visible to anybody that's working in a banking facility or even internal to the cash office of the store. So it does present a lot more scrutiny in terms of security. There were questions that were asked about today when I enter the store and I present my identification to either purchase liquor or tobacco, why do we need to scan it? The electronic scanning of the identification is not going to circumvent the manual disciplines that have to be in place to view the driver's license. This is just a means of reinforcement for the cashier who may, themselves, be underage that it removes the peer pressure. It gives them another tool so that when they scan that identification the system tells that cashier whether they can proceed with the transaction or not. Within our systems, if an identification is scanned or entered incorrectly and the person's age is not valid, it will lock the transaction and prevent any further sale of any age-determined merchandise. So there is an advantage to having the ability to scan it. And also in speaking to the information that's available on the identification, the two-dimensional bar code that appears on the back of a Nebraska driver's license contains the identical information that's visible on the front. So any customer that volunteers their driver's license to have anything written down from it, it would be no different. They could either write it down manually or scan it with the hand-held scanners. The driver's license number that's stored in the document really pertains to validation of the document that's presented. It's a tie. And as Steve alluded to, there's a lot of forms of fraud that are taking place today where people are altering the MICR line on the check. They're even presenting invalid debit cards or credit cards. So the driver's license itself does tie the authenticity of the customer standing in front of you. And that in turn with the verification of the picture on the identification kind of seals that transactional effort. I'm open for any questions. [LB261]

SENATOR FISCHER: Thank you, Mr. Brewer. Are there questions? Senator Gay.
[LB261]

SENATOR GAY: Thank you, Senator Fischer. You touched on a point I was going to ask. No Frills, you have self-checkout. So you take the card and you're buying something through the self-checkout. You have a person there watching you do it. I could just flash my...right now, you can run your debit card through there. Sometimes they do check; sometimes they don't. They clear a tab that you can check yourself out. On...and you said, so the back of the card, I'd run it by this scanner. It says, okay, I'm 34 years old or something like that. And then the person checking me out has to actually physically look at that? You still can't just go through a self-checkout, go through, run your debit card, swipe your back of your license, and walk on out the door, because anybody can come in with my license. So under the state law right now, you still have to have somebody monitoring and physically checking out that card? [LB261]

WILLIAM BREWER JR.: Actually within the operational unit of our self-checkouts, we require our attendants to validate the age verification on alcohol and tobacco purchases, and if LB261 is passed, we would require that anybody purchasing liquor, tobacco, or lottery tickets for that matter, would have to attend...present their ID at the attendant station where a qualified attendant would then scan it and complete the transaction. So today, in today's environment, the attendant does have the ability to override that transaction and give an age approval on it. What we're proposing is we want to tie it down so that everybody that shops within our stores would have to display some form of identification to complete those transactions. [LB261]

SENATOR GAY: Okay. And then a follow-up question. To me, just listening more and more, I'm hearing dual purpose here. You're loving it because you can watch the bad checks coming through and you're kind of pushing it as a safety valve for, which I can kind of see both. I'm still listening to what's happening. But I think, you know, we're saying, well, we can be more secure and watching minors, but also I hear the underlying tone as this also helps us with bad checks. So it is dual purpose, isn't it?
[LB261]

WILLIAM BREWER JR.: Well, it is, but let me clarify the check piece for a minute. It's apparent to me that you've been in our grocery stores. Today, if you were a new check writer in our grocery stores and our system detected that you had not written a check in our stores, we would prompt for your identification. We would have a cashier manually enter that same driver's license into the system in order for you to continue the payment process. So this bill really doesn't change that focus. What it does is it eliminates the user input and makes it more mechanical and more secure. And because of the fact that it's a manually entered driver's license today, there are issues where people are still writing your driver's license number down on the check even though they're imaging that check, because once that check is imaged and given back to you, there's no other

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means to tie that check to that transaction. [LB261]

SENATOR GAY: I'm more concerned about I think the future is more the debit card, too, because I don't write checks at your place. I mean, I see more people going to the debit cards. And I'm concerned they just start swiping these cards, and anyone walks through. So that's why the physical viewing and some common sense from the human being, saying there's no way this person is 21 years old, still has to enter into this. But so you're saying...and that is the law now, you have to physically look at it? [LB261]

WILLIAM BREWER JR.: We also have policies within our environment that require every cashier, cash office manager, and anybody that comes into contact with personal card information or check information, to pass a qualified on-line assessment so that they understand what the gravity is to their job and to the company in terms of personal information. [LB261]

SENATOR GAY: Okay, thank you. [LB261]

SENATOR FISCHER: Thank you, Senator Gay. Senator Campbell. [LB261]

SENATOR CAMPBELL: Thank you, Senator Fischer. In this bill it would require the store to post a sign that you are storing information. Right now, there is no such requirement that you are storing things in a black book or...correct? [LB261]

WILLIAM BREWER JR.: That's correct. [LB261]

SENATOR FISCHER: Other questions? Senator Hadley. [LB261]

SENATOR HADLEY: Thank you, Senator Fischer. Just one last question: What will this bill allow you to do that you can't do legally right now? [LB261]

WILLIAM BREWER JR.: We legally cannot store the driver's license in the transaction log at the time that the sale is conducted. So as an example, if...I know there's been a lot of examples displayed, but if a customer comes into our store and they pass our existing age validation testing--the scrutiny of the driver's license, the entering of the birth date into the system--and they walk out the store with their receipt and the alcohol or tobacco that they purchased, and they hand that over to somebody else and that person ultimately becomes involved in a motor vehicle accident or maybe some other lawbreaking activity, the liability comes back to us to prove that we, in fact, carded this person, didn't sell to a minor. And in today's environment, it doesn't close that loop. Even the age validation equipment that you referred to, that our stand-alone systems do not do that. So basically what we're requesting is that we have the ability to store the age of the customer along with the ID as a means of confirmation that this person that had this identification, conducted this sale, and it was acceptable under the laws of

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Nebraska in terms of the age. [LB261]

SENATOR HADLEY: To me, that's...I'm kind of a slow learner and I see that now as the important link in this, because I want to be sure there's something that we legally allow you to do that...you know, if you could do it now anyway, and just want us to be the club, we don't need laws just to do that. [LB261]

WILLIAM BREWER JR.: Right. [LB261]

SENATOR HADLEY: But if this does close some kind of loop, even maybe a little bit of a farfetched loop, but I understand the loop. [LB261]

WILLIAM BREWER JR.: Senator, it would be the same closed loop in terms of a check, also. We have instances where customers come in to us and say that we accepted a check from somebody that they didn't give the check to. And the onus is on the retailer to be able to substantiate that the person standing in front of us is actually the person that belongs to that check. So the tying of the identification to that also helps facilitate that for us. [LB261]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? I see none. Thank you very much, Mr. Brewer. Next proponent, please. Welcome. [LB261]

LAURIE VANDERWAL: Chair Fischer and committee members, thank you. My name is Laurie VanderWal, L-a-u-r-i-e, VanderWal, V-a-n-d-e-r-W-a-l. I'm a certified identity theft risk management specialist. And the reason I'm here today is in looking at a better system for them to be able to track and store that information has been discussed that currently there is a system, a hardcopy information. And the reality is, in identity theft, is you cannot prevent it, is that in over 50 percent of identity theft it really does not come from the hacking of a system and a data breach through the Internet or through software. It is actually from hardcopy information that is processed, it is copied, it is reproduced and sold in some manner. And currently the system that they have available to them, which was referenced that "black book," they are actually writing down hardcopy information, and more than they're requesting to store via software. They are currently storing and retaining more information than what the bill is allowing them to do through software. So when I come in to purchase that, they're writing my name, my address, my birth date, and my driver's license down in that book. That book can float, as Senator Janssen said, coming from a liquor store, they're physically writing it down. That book is being maintained in that facility. It may travel from cashier to cashier when someone needs that, to again put that information down and obtain a signature from the person that's purchasing the alcohol or the tobacco. What they're asking is, is to allow a system that they can input that software and again retain it and store it in the same manner that they're already doing through hardcopy information. Statistically, right now, as identity theft, you have about a 1-in-6 opportunity to be a victim of identity theft, and

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about 1-in-2 for your information being breached. So this properly designed software that has security measures, some kind of security-driven software, is a much better system than it is being able to continue to carry hardcopy information for them. It will minimize the data breaches and it also assists the retailer from a liability standpoint, and we've talked about that a little bit, as the ability for them to be able to verify that they did sell it to someone of age and to assist law enforcement as a deterrent if someone is purchasing it. The discussion was, well, if I come in, the cashier may not card me because I don't look like the kind of person that's going to sell it or give it to somebody out in the parking lot, that hardcopy information. Going to a software, again, is taking some of that judgment out of the cashier because they're going to ask that information of everyone. And again, for me, that's a better system. You're not putting it out to your employees or the liability to your employees to pick and choose who they think might be someone that's going to go out to the parking lot and provide information to a minor. By storing or retaining on a software, I think you have a much better opportunity to do that. I would just stop and ask you to think about, as you mentioned that you write a check and you put your driver's license number on it and you put your birth date. You go to your doctor and you give medical information. They make a copy of your driver's license, of your health insurance card. What are those industries doing to store and protect your information? This industry is asking, by a bill, to be more responsible than they currently have a system to be, and that's where I think that is why I came to support the bill. [LB261]

SENATOR FISCHER: Thank you, Ms. VanderWal. Are there questions? I see none. Thank you very much. Next proponent, please. Good afternoon. [LB261]

KATHY SIEFKEN: Senator Fischer and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association. And there were just two things that I wanted to clarify. A bill was passed two years where, if minors purchase alcohol in our stores and they go out and have an accident, we are held liable. And what this bill will do, it will provide source identification. In the event someone comes into the store, purchases alcohol, the receipt is in the car with the minor. The minor has an accident. In today's world you could tie that receipt back to the store, and there's no proof of who actually made the purchase. This bill would identify the individuals that made that purchase, and we think that if an older adult is aware of the fact that their information will be on file in that store and directly linked to that purchase, it should stop that shoulder tapping that happens in parking lots. And as prior testifiers said, what we're trying to do is be proactive. We're trying to keep these products out of the hands of minors. And so that would be one of the reasons that we support this bill. Another thing that I wanted to mention is the fact that if this bill is passed, the training that we are now conducting in our stores won't change. Right now, the training that takes place for all of our clerks, it's a multiple-step process, but when someone gives you their ID, the clerks are trained to do the face-to-card check to make sure that it is the person, that person's identification. And they're trained to look at the ID

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to see if there are any alterations. They're trained to see if the age is appropriate for that card. So what this bill does is it simply gives us another tool. It takes that judgment out of the hands of the clerk. It makes us better, more responsible retailers, and that's really what we're looking for. [LB261]

SENATOR FISCHER: Thank you, Ms. Siefken. Are there questions? Senator Hadley. [LB261]

SENATOR HADLEY: Senator Fischer, just one real quick question (inaudible). It says a retailer who sells alcohol, tobacco, or lottery tickets may scan...blah, blah, blah. So the purchase actually doesn't have to be alcohol or an age-related product for you to ask the person to scan their information. Correct? [LB261]

KATHY SIEFKEN: You're right. There are two segments of this bill, and as I'm sitting here listening to the testimony, the two have just kind of been melded together. And there are two distinct, separate segments of the bill. One is if someone comes in and they purchase age-sensitive products. Without the consumer's permission, we want to be able to scan the driver's license and hold only the license number and the age of that birth date so that in the event law enforcement needs that to tie back for source identification or if our attorneys need it, then we would have to go to the DMV to obtain further information, because all we would have for that segment of this bill is the card number and the age at that time when it was scanned. Now, the second segment of the bill, we have people that come in and they fill out applications to get permission to cash checks or be part of a customer loyalty program or...they voluntarily give us that information right now. And all that segment of the bill does is rather than us rekeying that information that the consumer is voluntarily providing to us, we can shoot the back...just zap the back of the license and import that electronically. And what that...it does a couple of things. It cuts down on the amount of labor. But, more importantly, it gives us accurate information. People transpose numbers. Errors are made. And so it would be an opportunity to bring technology to the front end of our stores. [LB261]

SENATOR HADLEY: So there really is two parts. There's the...one part is... [LB261]

KATHY SIEFKEN: Absolutely. Two separate and distinct parts. Yes. [LB261]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB261]

KATHY SIEFKEN: Thank you. [LB261]

SENATOR FISCHER: Proponents. Is this our last proponent? Do we have any others? One more. Okay. I noticed you moved to the front too. Thank you for doing that. Good afternoon. [LB261]

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KIMBERLY HALL: (Exhibit 3) Good afternoon, Madam Chair, members of the committee. I'm Kim Hall, K-i-m H-a-l-l, and I am with First Data Corporation. I'm actually out of Denver, but First Data has about 6,000 employees in Omaha actually, and one of the businesses that we own is a company called TeleCheck, which you've heard from the retailers' standpoint today about check verification. So that's really what I'm focusing on with my comments. And what is being passed out to you is an amendment that we'd like to offer to the bill that really just focuses, again, solely on the check verification piece. So as you've heard in the previous testimony, we rely on the driver's license number to link a person's check writing history. So where this is extremely important, if you think about somebody who is trying to perpetrate fraud, they will often open and close accounts, right? To evade law enforcement and folks like that. But the driver's license is much harder to change, over time. In fact, a lot of states make it quite cumbersome to change your driver's license number. So we rely on that number to link a person, over time, with actually good checks and bad checks. So for a merchant such as a grocery store or a liquor store who decides to use the TeleCheck system, they...you know, we do charge a service for that, and when a person goes up to present a check at the point of sale, we will ask for their driver's license. Well, we will prompt the retailer to get the driver's license, and then they will scan the check through a terminal with our TeleCheck logo on it, and that's actually reading the bottom of the check, which is that MICR number. And again, in Nebraska, they would have to key in that information. In other states, we would simply scan it. It is my understanding from our legal counsel, that Nebraska is the only state remaining that does not allow for the scanning of the DL in the storage. It was New Hampshire and Texas, but they had some legislative action in '07. So if you see the amendment language, basically one of the things that it does is TeleCheck, because when we work with a retailer we are actually giving them a code based on the information in our system, and so that code is deemed by the federal regulators as a credit history. So we are considered a speciality consumer reporting agency under federal law. We are governed by the Fair Credit Reporting Act, and that actually places restrictions on the type of data that we can access, and it also places restrictions on, you know, selling or transferring that data. And then it also has various security guidelines in place, and data breach notification requirements, that sort of thing. I would just like to say TeleCheck does not sell the information. We do not market the information. We simply keep it in a secure system so that we can provide to merchants the most accurate picture of a person's check writing history. And I think everything else has probably been repeated, so I'll stop there and open it up for questions. [LB261]

SENATOR FISCHER: Thank you, Ms. Hall. Are there questions? Senator Stuthman. [LB261]

SENATOR STUTHMAN: Thank you, Senator Fischer. Kim, thank you for testifying. How many states have your type of data processing? [LB261]

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KIMBERLY HALL: TeleCheck operates in all 50 states. [LB261]

SENATOR STUTHMAN: In all 50 states. [LB261]

KIMBERLY HALL: Yes, sir. [LB261]

SENATOR STUTHMAN: They do. Okay. [LB261]

KIMBERLY HALL: Yes. [LB261]

SENATOR STUTHMAN: Thank you. [LB261]

KIMBERLY HALL: You're welcome. [LB261]

SENATOR FISCHER: Other questions? I see...Senator Lautenbaugh. [LB261]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. Briefly, what's the rationale, again, for referencing the federal Fair Credit Reporting Act in here? [LB261]

KIMBERLY HALL: It was really something...we were trying to limit this so that there would be fewer, hopefully, privacy concerns about what kind of entities could just scan and store and, you know, use the information. So we thought we would start out with, you know, limiting that universe to folks that are governed by this federal law and already have to comply with it. And then the (i), (ii)...actually the first two exemptions there came directly also from another federal privacy law, the Gramm-Leach-Bliley Act, and that...so again it's really just to kind of be more specific about what kinds of transactions, and then limit the universe that could use this data. Does that answer your question? [LB261]

SENATOR LAUTENBAUGH: Yes. Thank you. [LB261]

KIMBERLY HALL: Okay. [LB261]

SENATOR FISCHER: Other questions? I see none. Thank you very much, and welcome to Nebraska. [LB261]

KIMBERLY HALL: All right. Thank you. [LB261]

SENATOR FISCHER Next proponent. Good afternoon. [LB261]

JIM OTTO: Senator Fischer, members of the committee, my name is Jim Otto, O-t-t-o. I am a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association, and I'm here today to testify as a proponent of LB261 on behalf

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of both associations. I guess I just want to go over a couple of things just to reiterate. I wanted to make sure. I know Kathy Siefken mentioned the fact that two years ago there was a third-party liability bill passed. I just wanted to make sure that everybody realizes that the black book...and the reason everybody talks about the black book, that is a positive defense. If a liquor retailer were to get you to sign the black book and show that all of that information in the black book, that is a positive defense so that if someone got hurt or killed as a result of that alcohol sale, that retailer could not be held responsible for that sale because they could prove that that person was not a minor when they sold it. Presently, if the retailer can't prove that that was not a minor, they can be held third-party liable. So I just wanted to make sure everybody did realize that. And scanning this and retaining it, maybe not directly, but hopefully eventually would take the place of that black book. I wanted to mention Senator Hadley mentioned the fact that would you be reminded that you needed another quart? Presently, with loyalty, that has been...for example, my Russ's card lets Russ's know every time I buy a case of Miller Lite, so I tend to buy every other case at Hy-Vee so they only think I drink half as much as I do, but presently those things are held, and not necessarily does this change that. I guess two other things. I wanted to point out that you are correct: There are two separate parts of this bill. The first part, there would be a sign saying it's going to be scanned and retained for the age-sensitive material. The second part, your permission would be asked for and it would not be retained unless you gave that permission. So that's the only things I wanted to point out. [LB261]

SENATOR FISCHER: Any questions? I see none. Thank you, Mr. Otto. [LB261]

JIM OTTO: Thank you. [LB261]

SENATOR FISCHER: Other proponents. I see no other proponents. Opponents to bill, please. If you would step forward. And could I have a show of hands again on the opponents. I think there were maybe three. Two. Okay. We have a couple opponents and one neutral for the staff that's watching this. Good afternoon. [LB261]

JAIMEE NAPP: (Exhibit 4) Good afternoon. Thank you, Chairman Fischer and members of the committee, for this opportunity to speak in opposition to LB261. For the record, my name is Jaimee Napp. It's J-a-i-m-e-e N-a-p-p, and I'm the executive director and founder of the Identity Theft Action Council of Nebraska. We are the only nonprofit in the state working solely on identity theft issues affecting all Nebraskans. We do not oppose the retailers' mission to reduce alcohol sales to minors. It's an attempt at assisting law enforcement with investigation on age-restricted products or cracking down on bad check writers. However, we do oppose how that information would be gathered. Allowing any retailer to store information scanned from the Nebraska driver's license bar code is unnecessary. To restate what Senator Fischer said earlier, when a bar code is scanned, all the information on the front of the license, except for the photograph and signature, are available no matter if it is wanted or not. Work must be

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done on the back end with software to compile and store only certain pieces of this information. It would be nearly impossible for the state to ensure a business is only storing what it would be allowed to in this proposed bill. In reference to Senator Hadley's point earlier of if this bill is needed or not, it is not. There is another way for retailers to gather the information they are requesting without compromising additional personal information of a driver's license holder, and it's called the digital watermark and it's currently available on all Nebraska licenses. We would like to see discussions between retailers, law enforcement, and the DMV be reopened to explore this technology before considering taking this drastic step. Any time data is compiled and stored, increases the potential for information to be breached, misused for fraud. This bill allows all alcohol, tobacco, and lottery ticket license holders to compile and store data. In addition to retailers, this would be mean bars, restaurants, and convenience stores, and other businesses of varying sizes, ethical principles, and security policies could compile and store data. And this should be a point of concern because there is no such thing as a completely secure database. Our organization works with identity theft victims who have had many types of personal information stolen, including driver's license information. I lend my personal story as a cautionary tale. My identity was stolen, in part, because the company I provided my personal information to didn't utilize proper security measures to keep it private, and this is a fate I do not wish upon anyone. Thieves are very creative and looking for easy opportunities to gain access to this information, and I believe this bill would make it a lot easier for them. Our personal information is very valuable and retailers know it. Allowing retailers to compile and create databases on their customers using driver's license data, they could combine that with other consumer purchase items and habits, and it would enable them to store this information. It's extremely valuable to retailers and other companies for marketing purposes, and although this bill does not allow them to sell it, it still would allow them to trade or barter it. Currently, there is no regulatory oversight or enforcement to protect this data from misuse, and we believe that taking what is now considered a Class IV felony and suddenly allowing it to be legal is a very large step. Nebraska's current law, which prohibits compiling and storage of driver's license data, is referred to a model legislation. I've included, in the packet I passed out, an excerpt from the Department of Homeland Security's privacy impact assessment for the REAL ID Act. It was dated March 1, 2007. In the assessment, DHS references the current statute this bill is proposed to change. It says, "The Department of Homeland Security Privacy Office is hopeful that the states will take action similar to that of California, Nebraska, New Hampshire, and Texas to prohibit nongovernmental entities and individuals from harvesting the information on driver's licenses or identification cards. Retailers and financial institutions should be able to continue to examine the Real IDs for purposes of age verification, but should be barred from downloading the information from the machine-readable zone." Other states, such as Oklahoma, Washington, and New Jersey, are having a difficult time trying to get legislation passed that would prohibit compiling and storage of data. I've included a couple of media articles on what they've seen. They've seen firsthand issues on what happens and can happen when data is collected from driver's licenses. In closing,

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before this committee considers taking drastic steps proposed in this bill, we ask that LB261 be rejected and we believe other solutions should be discussed and seriously considered on behalf of all Nebraska driver's license holders. Thank you. I'd be happy to answer any questions. [LB261]

SENATOR FISCHER: Thank you, Ms. Napp. Are there questions? Senator Lautenbaugh. [LB261]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. I just want to know, and I don't know if you'll be able to answer this or not, it appears in the other states some level of scanning is allowed. Do you know, has it lead to identity theft, this particular activity, in any other state? [LB261]

JAIMEE NAPP: It certainly could. [LB261]

SENATOR LAUTENBAUGH: But do you have any examples of it having happened previously? [LB261]

JAIMEE NAPP: I don't have any specific examples. I can certainly find some and share that with you. [LB261]

SENATOR LAUTENBAUGH: Thank you. [LB261]

SENATOR FISCHER: I believe Director Neth is still in our audience, and if she would come up in a neutral capacity later, maybe you can answer some of those questions for us, so we'll look forward to that. Any other questions for Ms. Napp? Senator Gay. [LB261]

SENATOR GAY: I was...the article you handed, the Daily Oklahoman had a...it said it's a misdemeanor in Oklahoma. They're using it as a promotion and cigarette companies or whatever. But so you don't think...because in this bill there is, if you use it you can't sell the information. You don't think a Class IV felony is deterrence enough for somebody not to use it, to sell it; but maybe should it be maybe not even a market with it, because I don't hear a whole lot of marketing going on from the proponents. They're saying it's more of a...it would protect somebody's identity on the other hand, and here you're opposite of what the other expert just kind of testified on,... [LB261]

JAIMEE NAPP: Right. [LB261]

SENATOR GAY: ...so you don't think Class IV felony is enough deterrence? [LB261]

JAIMEE NAPP: No, I don't believe it is, because the law as we have right now is being currently violated. We have a Nebraska retailer that does currently scan and store data

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for multiple reasons, and probably on an average busy Saturday commits hundreds of felonies, so I don't believe it is a deterrent. [LB261]

SENATOR FISCHER: Other questions? Senator Hadley. [LB261]

SENATOR HADLEY: I am sorry. I didn't hear that last statement. You say some stores are now? [LB261]

JAIMEE NAPP: Yes. Some stores are currently violating Nebraska's law as it is written. Um-hum. [LB261]

SENATOR HADLEY: Okay. So...okay, that's what I wanted to hear. [LB261]

JAIMEE NAPP: There currently isn't any state agency that regulates or has any oversight over that. [LB261]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in today. [LB261]

JAIMEE NAPP: Okay. Thank you. [LB261]

SENATOR FISCHER: Any other opponents? [LB261]

LAUREL MARSH: Good afternoon. [LB261]

SENATOR FISCHER: Welcome. [LB261]

LAUREL MARSH: My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here again today on behalf of ACLU Nebraska in opposition to LB261. And the reasons for our opposition are very similar to those that I expressed earlier. Basically, we do not believe that this is a use of technology that enhances our privacy or our freedom. In fact, we think that LB261 is an excellent example of the function creep that I talked about earlier where you are potentially using information, private information that was given for one purpose and collected for one purpose, to be used in an entirely different way than originally anticipated. A couple of comments on the bill itself. One is the use of the data is...the stated purpose of the bill is for compliance with the enforcement of restrictions on the purchase of alcohol, lottery tickets, or tobacco products. But there is no limitation to this purpose, and that may be something that you want to consider adding if this bill goes forward. You might want to put a stated limit on if you collect this information, what purposes; otherwise, you could use it for just about any purpose that those two items of information might be useful for. We would ask, again, how long would the data be stored? Are there a set of mechanics for the deletion or expungement of this data under certain circumstances? And I guess under certain circumstances some things might be

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mutually exclusive. What do you do if you want to buy beer and you have no driver's license or state identification card? What do you do if you're my age--I know, you're shocked; no one has asked for my ID in a long, long time--and sometimes I even use cash when I buy beer. Does this mean that I still have to show my identification? Lastly, I think that there are two other things I want to call attention to. The only penalties are for overcollection of information, not for the overuse of the information; that the information, as a previous speaker said, it says you cannot compile, store, preserve, trade, or sell without the changes that are here. But you could share the data. You could change the data. You could barter the data. You could give the data. And so I think, again, you want to be real clear about how all this data, once collected, be used. And lastly, I want to tell you that in our organizational opinion I have a handy-dandy little watch fob here, a key fob for Ace Hardware, and I have another one for Curves, and I think that it is entirely different if I, as an individual, give a business information that they might use. I know I'm giving it to them. But I don't think that it is a function of government to provide information, my private information, for a business purpose--even a purpose as good as trying to cut down on insufficient fund checks. So we would urge you to indefinitely postpone LB261. [LB261]

SENATOR FISCHER: Thank you, Ms. Marsh. Are there questions? Did...oh, Senator Stuthman. [LB261]

SENATOR STUTHMAN: Thank you, Senator Fischer. Ms. Marsh...and the illustration you gave with your Ace Hardware credit card there, what would Ace Hardware ever sell your information on there? In my opinion, the only data collected on there is how many business transactions you've done in that year, six months, or whatever. What value would be to sell that information? [LB261]

LAUREL MARSH: I have noticed that because of our privacy laws, sometimes one business that I voluntarily give my information to will be in another line of business that I didn't know about, but because they are under the same corporate umbrella, then sometimes I receive offers to purchase insurance or offers to purchase...you know, make an investment, or offers to...I would say generally it's marketing type of information, and sometimes I have failed to check "No" in a little box, either this way or electronically, that says please don't send me more marketing information. I like the things I get from Ace Hardware. That's why I signed up for their program. But I really don't care to have my information redistributed over time, even if it is under the same corporate umbrella for marketing purposes--and that's generally what it's for. [LB261]

SENATOR STUTHMAN: Thank you. [LB261]

SENATOR FISCHER: Ms. Marsh, did you give your driver's license to Ace Hardware and did they swipe it in order to get your information or did you fill out a form? [LB261]

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LAUREL MARSH: They did not swipe my driver's license to get my information. I filled out a form. [LB261]

SENATOR FISCHER: Have you ever had a store swipe your driver's license electronically for any information, that you know of? [LB261]

LAUREL MARSH: In Colorado. And it didn't work because it wasn't a Colorado license. [LB261]

SENATOR FISCHER: So you think our Nebraska licenses are somewhat safe from being swiped electronically in other states? I guess we can ask Director Neth that, but. [LB261]

LAUREL MARSH: That would be a better question to ask her. I can tell you that I certainly haven't had things from other states follow me home unless I know that I have given them information.. [LB261]

SENATOR FISCHER: Unless you've been to Ace Hardware. [LB261]

LAUREL MARSH: Correct. Right. [LB261]

SENATOR FISCHER: Okay. Thank you. I appreciate it. Senator Louden. [LB261]

SENATOR LOUDEN: Yeah. Your Ace Hardware, it's like any of them though. They ask for your date of birth and nearly your pedigree and everything else in order to fill out that form, don't they? I mean, it would be like filling out a credit card, literally. They ask for a lot of information that you have to voluntarily give or else you don't get the card. [LB261]

LAUREL MARSH: In my personal experience, I've noticed that if I give them an address and/or a phone number, that they will continue to market to me or my rewards program did not cease to work because I failed to fill in all of the blanks. [LB261]

SENATOR LOUDEN: Did you have to give your date of birth? [LB261]

LAUREL MARSH: I can't remember. [LB261]

SENATOR LOUDEN: You did, because they just gave me one the other day, and that's the reason it's still laying on the...out on the... [LB261]

LAUREL MARSH: Well, just don't fill that out. They'll still send it to you. [LB261]

SENATOR LOUDEN: But I don't know if they will reject the card or not. But I know they asked for that as part of the information, and there's a lot of other information that I

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thought they didn't need to know if I just wanted to go in and do business with Ace Hardware. [LB261]

SENATOR HADLEY: Senator Louden, they wanted to sell you beer. That's why they wanted your date of birth. They were worried you weren't old enough. [LB261]

SENATOR LOUDEN: It would be pretty hard beer at Ace. Thank you. [LB261]

LAUREL MARSH: Thank you. [LB261]

SENATOR FISCHER: Other questions? I see none. Thank you very much. Other opponents? Good afternoon. [LB261]

DIANE RIIBE: (Exhibit 5) Good afternoon, Senator Fischer and members of the committee. My name is Diane Riibe, R-i-i-b-e, and I'm the director for Project Extra Mile. We're a network of coalitions across Nebraska working to prevent underage drinking. We're here today to oppose LB261 and encourage you to not move it out of committee. We submit that the proposal is not only not required, it's not needed and it poses harm to Nebraska's citizens. There is no evidence whatsoever that this proposal or anything like it would prevent underage drinking or youth access to alcohol. I can tell you, in my nearly 20 years of doing this work, I've never read anything that even comes close to this. What is being proposed today, as you've heard already, has been determined by the state of Nebraska as a serious violation of an individual's right to privacy. In fact, with narrow exception--law enforcement, for example--it's currently a felony offense to capture that; not just to scan it but to do the capturing of that information. Reversing the statute certainly would allow the action, making it permissible, would have a huge impact and would be a large shift in policy. I want to share with you some of our experiences in working with law enforcement as they conduct compliance checks, and you should have a second sheet that provides for you the history of those operations over the last 10-plus years. Since 1997, law enforcement has conducted more than 6,000 compliance checks of liquor license establishments just in the Omaha metropolitan area. Without exception, the single most important action that a retail clerk can do and take to assure that they will not sell alcohol to a minor is to take the identification into his or her hand and verify the age of the individual and the validity of that document. I cannot tell you how important that is. We've watched that and we've watched it in the numbers, consistently over years. Virtually all of the businesses that don't make the sale during the compliance checks are those that have verified--not just checked, not just swiped, not just quickly done a scan, but verified the age of the individual by physically looking at the driver's license and that individual. There are also those clerks in locations that struggle with this issue, but the numbers continue to bear out the importance of making that physical inspection. Some that sell alcohol to minors, check the ID and sell to the young person anyway, but the numbers are significantly less. Some businesses have systems where once the birth date is plugged into the

system, the machine actually does an audible beep. Unfortunately, in our experience of the more than 6,000 compliance checks, it's not uncommon. Is it frequent? Not frequent, but it's not uncommon that clerks, and yes, even managers override that system physically, intentionally. When working to prevent underage drinking and youth access to alcohol, relying upon technology can never replace the diligent oversight of a human being in that process. If that were so, I would suggest that we have a keg registration law, and we don't see the kind of reporting that is purported to be a desire under this particular proposal happening under keg registration. You have an opportunity for that information to be gathered on the purchaser of those kegs, but there is a very rare moment that a retailer is making contact with law enforcement to pursue that sale of an adult of that keg that might have passed it on to a minor. It's just extremely, extremely rare. In fact, we sent a letter recently to a retailer, thanking him for doing that, and that's the only letter I can ever recall in the entire history of our organization. I'd like to address just a few of the comments that were made earlier. There are actually approximately 5,400 liquor license outlets in the state...licenses in the state. There seem to be a lot of confusion over what the minor's book is. There was a reference to the fact that that was used a lot of times. Absolutely, positively false. I don't have the numbers here. I certainly can get you to the best of the knowledge of law enforcement. But again, it is a book that is about the size of this book, and when a young person or anyone goes into make a purchase of alcohol and that clerk has a reasonable suspicion that that person is not of age or have something that makes them feel a little sketchy, that clerk, that retailer has the opportunity to use that minor's book, and that provides an absolutely affirmative defense, both in the administrative and now under Dram Shop--absolute defense. But it does require them to say something doesn't seem right; I'm going to use the backup plan. Do they keep that information? Absolutely. Unless--and this is the important piece--unless we're doing compliance checks, and law enforcement is conducting an enforcement operation. At that time, law enforcement goes in and snatches that information out, rips that page out of the book. Let's talk about why they do that. They do that because it is not uncommon either for retailers to share, very quickly, that compliance checks are happening. It was interesting listening to the proponents' testimony, because two things came up consistently in their comments. Apparently, they have a desire for a deterrent effect in some fashion. That's commendable. If that is so, I would suggest that we look at what we already know from the research, decades of research as to what works in deterring youth access to alcohol. There is a lot of information out there. This is simply not one of them. I would suggest that in fact the other reasons that were talked about several times by multiple testifiers that actually this proposal has two purposes in its introduction: (1) the potential of stopping compliance checks dead in their tracks the evening of the operation--I'll talk about how that might happen; and (2) to allow for an excusing of liability during the civil process if Dram Shop were used. First, when we talk about compliance checks, again retailers have an absolute defense currently. It's the same defense that is outlined under the Dram Shop proposal that was passed a couple years ago and referred to. It is 53.180.07. I'll go quickly. I won't read it all to you. But it talks about an absolute defense on the charge.

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And first, "The purchaser falsely represented in writing"--there's the minor's book--"and supported with other documentary proof"--they had to have presented their ID of some fashion--that they were "of legal age to purchase." So in other words, someone comes and attempts to use a fake ID. Absolutely, the retailer ought to have a defense on that. So it says if they do their job, they have that defense. Next, "The appearance of such purchaser...to an ordinary person would believe that," that was someone not a minor. So, again, to the ordinary person it provides a latitude that says our common judgment in looking at the person. "The seller was acting in good faith, in reliance upon the written" documentation and that ID that was presented. And then finally, "The seller was acting with the knowledge of and in cooperation with a duly authorized law enforcement officer." That's important because what we know is retailers share that information very quickly. One of the individuals before the gentleman from No Frills talked about the fact that when a driver's license is inputted and it's done inaccurately, that an individual may have a difficult time shopping in another place before they have that cleared up; hence, clearly they share that information across retailers, certainly across their own stores. There are lots of...for instance, Anderson Food Shops in Omaha, once a compliance check happened there, if that evening operation...and in Omaha we do dozens upon dozens when we do those, all that retailer had to do is to let that next store know: Here's the ID, all you have to do is swipe. Instantaneous information. Now, if we have an intent to get rid of and to be done with compliance checks, that would do it very, very quickly. But I will tell you--and you can see from the information you have--they're extremely successful if done with consistency and with some integrity. The second piece is an ability to stop a Dram Shop claim. Currently, Nebraska has no claim before it. I don't know of a case where someone has come forward. But again, in that particular proposal, and now statute, clearly the senators thought that it made sense to use this same defense that was allowed for retailers that they're required to do now. No new hoops. Nothing miraculous. Nothing special. Just do the job. And it's, again, for reasonable people, it's not an expectation that's out of the ordinary. I would suggest to you, without going into enormous emotional detail, there are families in this state who are devastated because of...not always from the retail end, but it also provides under the social end, if you're at someone's home, drinking. But when young people have access to alcohol, and they in some fashion injure or harm another third innocent party, there ought to be a remedy in our state. Let's not negate the opportunity to recover before we even allow the law to work. So those are our two primary concerns: The impact on compliance checks and the impact on a potential Dram Shop claim. So thank you. [LB261]

SENATOR FISCHER: Thank you, Ms. Riibe. Are there questions? I see none. Thank you very much. Anyone else wishing to oppose the bill? I see none. Neutral testimony. Director Neth, would you like to come forward? [LB261]

BEVERLY NETH: (Exhibits 6 and 7) I have my testimony. [LB261]

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SENATOR FISCHER: And do you have points you would like to make before you open this up for questions? [LB261]

BEVERLY NETH: I can answer a couple of questions, and let me look at my notes here. Particularly I think it's been fairly well-addressed and I address it again in my testimony: What is in the bar code that currently exists? But it is the state of issuance, the type of document that it is, the Class O license, CDL license, that kind of thing. It is all of the demographic information: name, address, height, weight, all of that information. Those are the things. And now we do display race in the code, as well. That does not appear on the face of your document. The things that don't appear in the bar code are: the photo, your signature, whether or not you're an organ donor, endorsements, restrictions, those kinds of things. But it is generally, by and large, the demographic information. Senator Hadley, you had something...oh, I wanted to show...I do have some documents that we can take a look at with respect to what a driver's license looks like, a minor and adult license. And Senator Louden, I think you had asked about why people scan the bar code or what's the use of the bar code. The bar code is really used for a number of things: internal use in the DMV to pull records out of the database. It can be used by law enforcement to populate citation fields. But one of the things that it is that people don't think about in general use, it is actually a security device that we put onto the cards, because when you scan it and it's read properly, it can evidence that you have an authentic card in front of you. If the machine-readable information is encoded properly, then it can be a security device. And so that's part of why some people do want to scan it for authenticity--is it truly a card. With that, Senator Fischer, I'll kind of launch...Senator Lautenbaugh, I know you had a question regarding identity theft instances in other states. And I do kind of address that in here in the history of how we got to this language. I'm not aware of a particular instance of a retailer amassing a database and selling it, other than the one I'm talking about in my testimony. Probably if that happened, they would be a fairly small retailer, I imagine, not the retailers like the First Datas or the TeleChecks. Their business relies upon them following the federal standards and the federal laws. With that, Chairman Fischer...oh, excuse me. [LB261]

SENATOR FISCHER: Would you mind if we would just read this on our own and...? [LB261]

BEVERLY NETH: That would be fine. I think it really is good. One of the things that I do want to point out, if you have just a moment, is I would like to say that there are real differences between...there are two machine-encoded technologies on a Nebraska driver's license, and the one that we all know about is the bar code. We've been talking about that a lot and you know what's in there. The other machine-coded technology is the digital watermark, and Ms. Napp referred to that in her testimony, and Senator Hadley, I think that's the type of technology you're referring to. The digital watermark was...we began putting that on our driver's license in 2004. It is machine-readable forensic encoded technology. You have to have hardware. You have to have software.

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This device, if it's still on, actually reads the digital watermark, and I know you don't care for, particularly, props, but it's very quick. You hit the start button, you hit the DL forensics. It should come up. And I can put the card behind it and hit start, and it will read this card. So I get at the photo. [LB261]

SENATOR FISCHER: And that's available for law enforcement or your agency? [LB261]

BEVERLY NETH: Right. It's available for law enforcement. It's also available for retailers. And here you see...very quickly, you see the three icons and they're the same icons that are on the piece of paper I gave you. There is a liquor bottle, a lotto ticket, and a cigarette. And in this instance, there are green circles around all of them, so the person is old enough to purchase all three age-sensitive products. [LB261]

SENATOR FISCHER: So retail establishments can...they have access to that now. [LB261]

BEVERLY NETH: We did deploy this in a pilot project, and that's the case study you see that's attached the testimony. Nebraska was chosen as the one state in the nation to do a pilot project. The idea behind it was to determine both the efficacy of a digital watermark--could it be used in a cross-jurisdictional setting, and can you scale it to different functions. For DMV, we read the digital watermark in the document, but we read much different information and much more information than what a retailer can read. Law enforcement can also read the digital watermark through the devices that we created with the pilot project. They, too, because they, under our privacy act, have access to all the information. They, too, have kind of the same information DMV has. What we did for the retail environment is we said we'll return very specific limited items of data to you. We won't give you a name. We won't give you the address. We won't give you the things that we can't give you under the Uniform Motor Vehicle Records Disclosure Act. You're not entitled to that data under Nebraska's privacy act, so we won't let you see it in a card. When it's in our database, it's protected. When we give it to the citizen, it's their duty to protect that information. But it becomes a question of how do they even know what we've encoded into the card and how do they know how to protect it. You asked that question about have you ever seen...has your card ever been scanned. I certainly have never let someone scan my card, but I've seen it at a major retailer. Very large multinational company, probably--well, national company definitely--scanned a card. And I asked, what did you do with that? And they said, we stored it for use in our credit card application process. And I said, do you know you just committed a felony? And the clerk nearly swallowed her tongue. And I said...and she goes, What? And I said, you really should speak to your management about it. And I know in other places people have talked to the management about it. So it is happening. I think, in this environment, what we said was this is a win-win situation, because it allows retail environment to use the machine-encoded information we put on a card, but it also only allows them to store that information for particular purposes--not

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a broader database of information that does have value. Names and addresses have value, and selling and trading and preserving that information is valuable. So with that, I hope you will read the testimony. I do try to point out the difference between bar codes and digital technology and the digital watermark technology and why it's important to consider how we're going to use that information. [LB261]

SENATOR FISCHER: Thank you, Director. Are there questions? Senator Louden. [LB261]

SENATOR LOUDEN: Yeah, Director Neth. Thank you for your testimony. When you say you've got additional information on that watermark, now do you have any violations, traffic violations they have on there and all that? Is that in there? [LB261]

BEVERLY NETH: No. No, none of that information is displayed either in the...that information is not displayed in the bar code nor would it be displayed in the digital watermark. The only place where that information is retained is in the driver history, the driver record database. Access to that database is governed by the Uniform Motor Vehicle Records Disclosure Act. There are only 15 accepted uses for us to release that data beyond our own uses and law enforcement's uses. So the statute is very clear that in Nebraska and every other state, DMV motor vehicle records, driver records, are protected information. They're not a public record like almost every other governmental record is. It's protected. You have to fall under one of the exceptions to have access to that. One of the things I'll say, as well: Even in the sense of the driver history, what kinds of documents you gave us to get your driver's license or those kinds of things, that is never given out. That would only be given out to law enforcement under subpoena. That kind of information is only used by the DMV for internal purposes. Even if you're one of the accepted uses, you don't get access to source ID documents or anything like that. You have access to the driver record file, which is your criminal...your traffic infraction history. [LB261]

SENATOR LOUDEN: Well, my concern was that if whatever is on that driver's license in the watermarks or whatever, if it's on there, somebody will figure out a way to get it out if it's of any value, either whether they have the little thing or whether they find the little gizmo or what. But if the information is there, why, someone can get it out if it's valuable, and that was my concern. [LB261]

BEVERLY NETH: Yeah, it's...I wouldn't begin to be able to tell you how they do it or how it works because I did see a demonstration and talked to the superintelligent technical people who did it, and I have no idea how anybody would ever figure out how to get it out of there. It's very, very, very sophisticated technology. I think one point I would like to make with respect to Senator Gay's comment about the Class IV felony that's in the proposed bill. I think it's interesting that that Class IV felony flows to the programmer, it does not flow to the business owner. It flows...if you read that section, it flows to the

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programmer, which is an interesting...I'm not sure that's a...you might want to consider if you're interested in the bill, whether it's appropriate to have the programmer the one who is going to be subject to the felony for not programming correctly. [LB261]

SENATOR FISCHER: Senator Hadley. [LB261]

SENATOR HADLEY: Senator Fischer. Director Neth, just one quick thing. Maybe it sounds like we, no matter how this all turns out, we need some kind of education piece to make sure that our retailers do know that it is illegal to store--not take--but store the information. [LB261]

BEVERLY NETH: Yeah. I expect that when the bill passed originally in 2001, there was a lot of conversation about that bill, and most retailers probably had some knowledge of it. But since then, time has gone on and lots of different technology has been developed, so it probably does make some sense. [LB261]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB261]

BEVERLY NETH: Thank you. [LB261]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. With that, I will close the hearing on LB261 and open the hearing on LB222. I see Senator Giese is here. Good afternoon, Senator. Welcome to the Transportation Telecommunications Committee. [LB261 LB222]

SENATOR GIESE: Good afternoon. Thank you, Senator Fischer, members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. I am before the committee today to speak on behalf of LB222. Committee members should have received a copy of an amendment which I am recommending to the committee after conversations between my office and the Department of Motor Vehicles. The purpose of LB222 is to close a loophole in the issuance of LPD learner's permits to individuals over the age of 18. What has been happening in Dakota County and the South Sioux City area is that a number of individuals over the age of 18 will apply for an LPD permit not for the purpose of learning how to drive, but rather to use the permit as a driving permit. Each year when their learner's permit is about to expire, the permit holders return to the county treasurer's office not to apply for a driver's license, but rather to apply for another learner's permit. The rationale behind LB222 is to encourage individuals using the LPD learner's permit as a driving permit instead to apply for a regular Class O driver's license. The holder of a permit is entitled only to drive while another licensed driver is present with them in the vehicle, which is not often the case with these individuals. Only a written test, not a driver's test, is required to receive a LPD permit, so essentially these permit holders are unlicensed drivers on Nebraska's

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roads and highways. While compared to the overall number of LPD permit applications statewide, this problem may seem small. Several county treasurers that my office has spoken to consider this to be a serious problem. In particular, rural counties with a high percentage of residents who do not speak English appear more likely to experience this problem. As originally written, LB222 would close the learner's permit loophole by restricting the issuance of such permits to individuals over the age of 18. This language provided for exceptions only by waiver of the Director of the Department of Motor Vehicles which they believe would be overly burdensome on the department. The proposed amendment language would instead require that an individual over the age of 18 seeking to renew an LPD permit must first apply for a Class O license before they would be able to receive a new LPD permit. This would ensure that applicants are making the effort to learn the rules of the road, and if there are any language barriers preventing the applicants from passing the driver's test, the amendment language would serve to encourage the applicants to learn English. Certainly, the inability to speak English should not serve as a barrier to the right to operate a motor vehicle in Nebraska, but the use of LPD permits as a way around taking a driver's test presents a very real traffic safety concern. Thank you for your time, and I would be happy to take any questions. [LB222]

SENATOR FISCHER: Thank you, Senator Giese. Are there questions? Senator Louden. [LB222]

SENATOR LOUDEN: Yeah, thank you for your testimony, Senator Giese. When...what is the cost to get a learner's permit, for cost? Isn't there a cost? [LB222]

SENATOR GIESE: Currently, I believe the cost is \$8. [LB222]

SENATOR LOUDEN: Okay, and then when they...do they have to take a written test? I mean, they have to pass something in order...they have to know the rules of the road or something like that, don't they? [LB222]

SENATOR GIESE: You have to take a written test to receive your learner's permit, which is \$8, and the driver's license is \$25, if that was going to be the next question or I'll just offer that as a... [LB222]

SENATOR LOUDEN: And then when they take that test, don't they...is it about the same test as when you would be taking the driver's license test? [LB222]

SENATOR GIESE: I do not know that, if that's the same test. [LB222]

SENATOR LOUDEN: In other words, they're more saving the \$17 than they are doing anything different on the test, because I would suppose they'd be similar tests, but I don't know for sure. Because, I mean, nowadays you don't always have to drive unless

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they ask you to. If you pass the test and can see, why, you don't always have to go drive a car. [LB222]

SENATOR GIESE: Well, it seems to be that the problem, and why this has come up is that people are just renewing their permits, as I said, and just show up and fill out the papers and on a renewed permit and just receive another one, and then for another year and they're driving with those...such permits. [LB222]

SENATOR LOUDEN: Do they have to show a immigrant or legal residency or something in order to get...I guess, can they get the learner's permit without showing legal residency? [LB222]

SENATOR GIESE: I think just some standard paperwork is required and you pay the fee and you get a permit. [LB222]

SENATOR LOUDEN: Okay, thank you. [LB222]

SENATOR FISCHER: Other questions? Senator Gay. [LB222]

SENATOR GAY: Thank you, Senator Fischer. So, this was brought to you by the county treasurer or who brought this? [LB222]

SENATOR GIESE: It's been brought up by several different people, but just brought to my attention that it was going on in several counties. And my staff has checked with other counties and there will be other testimony, proponents of that, and it is becoming a bigger issue than... [LB222]

SENATOR GAY: So to follow up Senator Louden's question then, you just come in and you get this issued. You've passed the test and then you get it issued. You just go in and pay the \$8 year by year, so you're just letting it roll with no intention of getting a permanent driver's license. [LB222]

SENATOR GIESE: That's my understanding on the repeat permits; you just come in, fill out your form, get another permit, and you're good for another year. [LB222]

SENATOR GAY: Thank you. [LB222]

SENATOR HADLEY: Senator, thank you. Just one quick question. [LB222]

SENATOR FISCHER: Senator Hadley. [LB222]

SENATOR HADLEY: Just so I understand it, so this would be the third time is when you're (inaudible) because they can get one before age 18, one over age 18, and then

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the second one over age 18 they can't get. Is that correct? [LB222]

SENATOR GIESE: Actually, our initial bill was to limit it to one permit but I think that would cause a lot of...over the age of 18 that would cause more work, so to accommodate on that, after the age of 18 if you get a permit and you come back, you can get...you must take the test. If you're over the age of 18, you get one permit, you come back; you at least take the test. [LB222]

SENATOR HADLEY: And one other last question. It always bothered me when we say, without first showing good cause. I always worry about what is meant by showing good cause. You're either right minority or you're the wrong minority...you know, that's... [LB222]

SENATOR FISCHER: I think we'll get answers for some of those questions with testifiers coming up. Any other questions? I see none, thank you very much, Senator. [LB222]

SENATOR GIESE: Thank you. [LB222]

SENATOR FISCHER: Are there proponents for the bill? Any proponents please step forward. Good afternoon. [LB222]

SHARON WOOD: Good afternoon, Chairman Fischer and senators. My name is Sharon Wood, S-h-a-r-o-n W-o-o-d. I am the Dawson County Treasurer in Lexington, Nebraska. We have an extremely diverse culture there. Lexington, especially, is now 40 percent Caucasian. We have approximately 60-80 different languages that the court has to find interpreters for, so we are very diverse and we do have a wonderful community. After I was contacted by the senator's office, I went down and spoke to the driver's license examiners to see exactly what was taking place, and they explained to me that when you fill out your learner's permit it is a very minimal test that you take, and you take an eye test. And if you are awarded that, you are granted a license for one year. It does cost \$11 rather than \$8. Then to renew it you just have to come back, retake your eye test, and you're issued another permit. We are seeing a lot of people struggling to learn, with the language barrier. However, I would also encourage that after they have the learner's permit for one year, which is a substantial amount of time, that they be encouraged to take the driver's license exam before they are awarded a learner's permit. It's not an extreme problem but it is a growing problem, and it's just...as our communities change and become more diverse, it is becoming more of a problem than it has been in the past. I do not have any statistics. I'm sure Bev can provide you with those, as our system does not allow us to run those. [LB222]

SENATOR FISCHER: Thank you, Ms. Wood. [LB222]

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SHARON WOOD: Um-hum. [LB222]

SENATOR FISCHER: Are there questions? I see none. Thank you for coming. [LB222]

SHARON WOOD: You're welcome. [LB222]

SENATOR FISCHER: I appreciate it. Any other proponents? Proponents for the bill? Are there any opponents for the bill? Good afternoon. [LB222]

BEVERLY NETH: (Exhibit 8) Good afternoon, I'll make it brief. Chairwoman Fischer, members of the committee, I'm Beverly Neth, Director of the Department of Motor Vehicles, appearing today to offer testimony in opposition to LB222. I do want to thank Senator Giese and his staff for engaging us in reviewing and discussing this legislation. I appreciate his open approach and the opportunity to review the proposed amended language as well. The bill as originally introduced prohibits the DMV from issuing a second learner's permit, or what we call an LPD, to a person over the age of 18. We normally think of a learner's permit as being issued to a 15-year-old. An LPD is valid for only one year. The holder is required to drive with supervision, and it's truly supposed to be a learning period. In 2007, we issued some 60,000 LPDs to 15-year-olds in Nebraska. However, we also issue LPDs to individuals older than 15. In 2007, we issued approximately 6,000 LPDs to individuals 18 years or older. To give you context, we do have 1.3 million licensed drivers in Nebraska, so this is a small number. Since 2002, approximately 2,300 individuals 18 years or older have been issued three or more LPDs, so that's over a six-year period we've issued three or more to 2,300 people. Regardless of the age, the premise for requesting an LPD remains the same--the applicant does not feel prepared to drive without supervision or assistance. Applicants have a wide variety for wanting or needing an LPD. They may have suffered a severe head injury and are now relearning to drive; they may have a permanent diminished capacity and although their capacity to have some high functioning, they'll never drive unsupervised, but they have enough function to drive safely. They may have been subjected to a recall of their driver license. In the older population we do recall driver licenses if people tell us they fear for the safety of the individual. In those instances, people sometimes ask for the LPD so they can hone their driving skills with supervision. And we also know that we issue LPDs to legal immigrants who are both learning the language and learning to drive. As evidence of his willingness to address the DMV concerns, Senator Giese has proposed amendment to LB222 and did share that amendment with us. That amendment requires the applicant over 18 to complete a written exam. In fact, they already have. A first-time applicant for an LPD is required to pass a written exam. The amendment would also force the applicant to take a drive test prior to reviewing an LPD. The DMV does not give drive tests to any LPD applicants. Our view is that the applicant has basically admitted that they don't know how to drive and they want to learn how to drive. So forcing our driver licensing staff to get into the car with them is a risk that I think we want to weigh carefully. We don't drive with them

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now and we may, if we do that, be subjecting state employees to unnecessary risks. I'll be happy to answer any question. I need to clarify a couple of things. An LPD is \$11, I believe it's \$11; it is good for one year. So I don't think people are actually trying to save money on a cost basis, because a five-year driver license is \$24. I mean, it's more cost-effective to get the five-year document. Plus, you don't have to come back and see us every year--it's only good for one year so you're coming in every year to have that document reissued to you. Then, yes, we do enroll them using source documents. We request verifying their Social Security numbers, making sure that they are a documented immigrant to the state, and following that process--even for an LPD. [LB222]

SENATOR FISCHER: Thank you, Director Neth. Are there questions? Senator Stuthman. [LB222]

SENATOR STUTHMAN: Senator Fisher. Director Neth, what would be the maximum age, right now, of an individual that still has a learner's permit? [LB222]

BEVERLY NETH: Gosh, you know what, I did not ask staff to run that particular report for me. You know, we have a driver who, I think she may be 103 years old--so it could be 103-year-old. [LB222]

SENATOR STUTHMAN: That he can still have a learner's permit? [LB222]

BEVERLY NETH: Um-hum. [LB222]

SENATOR STUTHMAN: Well, in my opinion it would be better to have had them have a learner's permit than not allow them to have a learner's permit if a person is not comfortable with driving on his own. [LB222]

BEVERLY NETH: Yeah. [LB222]

SENATOR STUTHMAN: No matter what age. [LB222]

BEVERLY NETH: And I think that's the point we're trying to make with the wide variety of the permits. Not to discount Senator Giese's concern with respect to immigrants and the language barrier, we do think in some instances it is a function of people don't really understand because we can't communicate. As Treasurer Wood said, they have 60-80 different languages just in Dawson County alone. We attempt to translate some of our documents for the greater population; we do have a Spanish manual, we do have those kinds of things. But for us to try to translate things into the variety of languages we're seeing in Nebraska...first of all, we probably couldn't find translators, and then we have problems with translation--that they actually come across in the dialects of the language and the nuances of the language, so it gets very tough to try to communicate. And

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perhaps what we need to do is take a look at how we can deliver that message better. If we think that immigrants are using the document as an unrestricted Class O operator license, you know, we can take a look and see if that is happening in concentrated areas, how can we get that message to that general population working with advocacy groups or whomever it may be to let them know that that's simply against the law--that they can't drive that way. In all honesty, I think probably we have a bigger problem of people driving under suspended license. We think at any one given time we have anywhere between 100,000 and 150,000 people who are simply driving around the state of Nebraska without driving privilege--adults, every day. And that's a big problem for us. [LB222]

SENATOR STUTHMAN: Is there any situations with insurance companies that the insurance rates are higher with a learner's permit than they are with a regular license? [LB222]

BEVERLY NETH: You know, I'm not aware of that; I don't know. I've never asked that question of an insurance company. I think they'd rate you probably...honestly, when you look at statistics between a 14-year-old, a 15-year-old, and a 16-year-old, the safest driving group in that population is the 15-year-old because they're driving under supervision. 14-year-olds have a high rate of crashes; the 16-year-olds have a high rate of crashes, and so if people are using the document appropriately and driving with supervision, I imagine they're fairly safe because whoever is driving with them would want to be safe, I would think. So if you take that and... [LB222]

SENATOR STUTHMAN: And a 15-year-old would still listen. [LB222]

BEVERLY NETH: (Laugh) Not any 15-year-old I know, but... [LB222]

SENATOR STUTHMAN: Thank you, Director Neth. [LB222]

SENATOR FISCHER: Senator Hadley. [LB222]

SENATOR HADLEY: Senator Fischer, just a point of clarification. This amendment, is this Senator Giese's amendment? [LB222]

SENATOR FISCHER: That is correct. Senator Giese gave this to legal counsel and so we passed it out to the committee members to give you an opportunity to look it over. Other questions? Senator Louden. [LB222]

SENATOR LOUDEN: Yeah, thank you, Director Neth. What is the, I guess, the fine or whatever if they're caught driving with a learner's permit and they don't have someone under supervision? I mean, is...there must be...do they lose a privilege to get another learner's permit or is there just a flat dollar fine and they can go down the road again?

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[LB222]

BEVERLY NETH: You know, that's an interesting question, Senator Louden, because it's really two different things. If you're a 15-year-old and you're driving unsupervised, you risk your opportunity to get your POP, to move into your next document at age 16; so it's different for that group than it would be for the 18-year-old group. [LB222]

SENATOR LOUDEN: Well, the 18 ones are the ones... [LB222]

BEVERLY NETH: Yes, for that group I think it would probably be driving without an operator license. I imagine that would be the citation they would be issued, and honestly, I suspect that's a nominal fine, not too high. It probably is a point accumulation; it probably is a one or two points on your driver license. [LB222]

SENATOR LOUDEN: Yeah, but they don't have a driver's license yet. [LB222]

BEVERLY NETH: Yeah, well, they have a driving record and we would put those points onto their learner's permit record as well, so. [LB222]

SENATOR LOUDEN: Okay, but their permit to drive would be withheld if they got caught driving without a... [LB222]

BEVERLY NETH: No, that's not one of the sanctions that we can place on...no. [LB222]

SENATOR LOUDEN: That's not part of it then--they would just pay a fine and if they ever got a driver's license...okay, now my next question is, so say there's someone who's got a very poor driving record and doesn't have very many points left and that sort of thing, is there some way or another that they can go get a learner's permit and start all over again or... [LB222]

BEVERLY NETH: No, they can't. And honestly, if someone over the age of 18 were getting repeated citations and those points would accumulate, at some point they would be prohibited from getting a learner's permit. The same holds true if you're an adult and you accumulate more than 12 points on your driving record, then you are simply shut out from getting any driving document from us until a period of time has elapsed or you qualify for whatever permit it may be that you could get. [LB222]

SENATOR LOUDEN: Okay, thank you. [LB222]

SENATOR FISCHER: Other questions? I see none, thank you very much. [LB222]

BEVERLY NETH: Thank you. [LB222]

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SENATOR FISCHER: Other opponents to the bill? Anyone wishing to testify in a neutral capacity? Senator Giese, would you like to close? [LB222]

SENATOR GIESE: I would just like to offer to the committee today that I raised the issue from a safety concern. I think that it's a problem that we've not discovered, but been made aware of, and it may not be a statewide problem but I think there are certain counties that are seeing more of this in the learner's permits. And quite frankly, I don't find any comfort, actually, in hearing that...and I appreciate the work that the driver's license examiners do...that people will come get a permit and are not going to take the driver's test, so if they don't get the test, they get another permit and away they go and go ahead and drive, so. I just want to share that with the committee and I appreciate your consideration for the bill. [LB222]

SENATOR FISCHER: Thank you, Senator. With that I will close the hearing on LB222 and open the hearing on LB204. Good afternoon. [LB222 LB204]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I am the legal counsel for the committee. This is a Transportation and Telecommunications Committee bill. LB204 is the result of a Federal Motor Carrier Safety Administration audit. The audit discovered some discrepancies between the Nebraska Motor Vehicle Operator's License Act and federal rules and regulations. This bill is an attempt to remedy those discrepancies. The bill expands the scope of potential violations for out-of-service order violations applicable to commercial driver license holders and operators of commercial motor vehicles in Nebraska. The bill places restrictions on a person from operating a commercial motor vehicle when there is an out-of-service order in effect for his or her commercial motor vehicle or motor carrier operation. This pertains to the operation of any commercial motor vehicle, including transporting hazardous materials, as well as transporting 16 or more passengers. The penalty for violation of this provision is a Class II misdemeanor for the first offense, including the revocation of a person's CDL for one year. Any subsequent offense is a Class II misdemeanor and a prohibition from operating any motor vehicle for two years and revocation of the person's CDL for the same period. Section 2 of the bill amends the disqualification requirement that applies for CDL holders for out-of-service convictions. For a driver convicted of violating an out-of-service order while transporting nonhazardous materials, the bill increases the disqualification period to at least 180 days. Currently, under our law, it's 90 days for the first conviction and at least two years for a second conviction--that's currently one year. The bill also defines an out-of-service order as found in federal rules and regulations. Thank you, Senator. [LB204]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? Senator Gay. [LB204]

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SENATOR GAY: Just quickly for those of us that are new, how do you get an out-of-service order? What would lead to that? [LB204]

DUSTY VAUGHAN: It can be a number of things, Senator. I think usually getting an out-of-service happens when something...you have a defect on your motor vehicle, or it can be you have operated past the limited amount of hours that a commercial driver can go before they have to take a certain amount of hours of rest. Those are a couple of examples. [LB204]

SENATOR FISCHER: Senator Stuthman. [LB204]

SENATOR STUTHMAN: Thank you, Senator Fischer. In my opinion, the out-of-service orders are given when they have the roadside check and they...well, in Columbus, they wheel all 340 trucks out to the ag park and put them there and either you have bad tires or bad brakes or everything like that, that's an out-of-service order. Either they've got to be fixed immediately or you get a grace period of some time. But if you don't fix that and get picked up the next time, that's what this bill is. [LB204]

DUSTY VAUGHAN: That's correct, Senator. [LB204]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Vaughan. Are there proponents for the bill? Welcome. [LB204]

BEVERLY NETH: (Exhibit 9) Chairwoman Fischer, members of the committee, Beverly Neth, director of the Department of Motor Vehicles, appearing and offer testimony in support of LB204. I want to thank Senator Fischer and the committee for introducing this bill. I'll just say there's nothing like a good CDL bill to clear the room. (Laugh) I have my testimony--it's here, it's in writing. I will submit it to you for your consideration. The one thing I want to do is take an opportunity with the new committee members, just to let you know, the CDL program really is federal law. We adopt the program into Nebraska law. We don't have much choice but to follow the federal law because there are highway funds at risk if we are not in what is termed substantial material compliance with the law. And at risk, if we were to be found out of substantial compliance, at risk in Nebraska could be \$9 million of highway funds the first year; \$18 million on an ongoing basis, so a very high number. We wouldn't want to lose any money for roads funds at this point. The program is audited by federal auditors once every three years. They always find something wrong with our CDL program, but I will tell you that across the country, Nebraska has the best CDL program, bar none. We know it; we continually are told by FMCSA that we have a good CDL program. Not only how the DMV administers it, but how the Carrier Enforcement Division carries out their enforcement piece of the program as well. These changes we're asking for today will keep us in compliance with a few of the audit exceptions that were found this last time. We haven't completed that process, but we knew as we had this legislative session, we could come in with a few of

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these things. So we ask your consideration of these to make sure we stay in compliance. There are...I think my testimony will help you understand the bill a little bit better, because it's kind of a confusing bill the way it's drafted. But I hope I lay it out here, and if you have any questions I'll be happy to answer them. [LB204]

SENATOR FISCHER: Okay, thank you, Director Neth. This is a bill that we just need to pass and get these changes into statute, as the Director said, so we are in compliance with federal law. Other committees face these types of bills too; that's when you hear the Chairman stand up on the floor and say, this is a bill we have to pass to get in compliance with federal law. So, are there any questions? I see none, thank you very much. [LB204]

BEVERLY NETH: Thank you. I've enjoyed my day with the committee. [LB204]

SENATOR FISCHER: Yes, thank you. We like to schedule all the department's bills for one day. It helps the department; I think it helps the committee also. Are there any other proponents for the bill? Any opponents? Anyone testifying in a neutral capacity? I see none. With that, I will close the hearing on LB204 and close the hearings for the day. Thank you very much. [LB204]

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Disposition of Bills:

LB204 - Placed on General File.

LB222 - Indefinitely postponed.

LB229 - Held in committee.

LB261 - Place on General File with amendments.

Chairperson

Committee Clerk