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Transportation and Telecommunications Committee
February 08, 2010

[LB761 LB772 LB810 LB841 LB924]

The Committee on Transportation and Telecommunications met at 1:30 p.m., Monday, February 8, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB772; LB810; LB761; LB841; and LB924. 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: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer, I am Chair of the committee and I represent the 43rd District here in the Nebraska Unicameral. I'd like to begin by introducing the senators on the committee and our staff. On my far right is Senator Kathy Campbell, she is from Lincoln. Next we have Senator Tim Gay from Papillion. Next we have our Vice Chair of the Committee, Senator Arnie Stuthman and he is from Platte Center. On my immediate right is our committee counsel, Dusty Vaughan. On my immediate left is our committee clerk, Laurie Vollertsen. Next we have Senator Scott Lautenbaugh from Omaha; Senator Galen Hadley from Kearney; and Senator LeRoy Loudon who is from Ellsworth. Senator Charlie Janssen from Fremont is also on the committee; he is not here yet, he might have a bill to introduce in another committee. We do have senators that come and go from the committee during our hearing process and that's because many of us have bills in other committees that we need to introduce during these scheduled times that we have hearings, so please do not take offense if we do get up and have to leave during the hearing. I would like to introduce our pages: we have Lisa Cook from Omaha and Tony Pastrana who is from Fort Collins, Colorado, and they would be happy to help you if you have any handouts or anything for the members of the committee. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill need to come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing process moving. I would ask that you complete this yellow sign-in sheet which is at the on-deck table and have that ready to hand in when you testify. We use a computerized transcription program and so it's very important that you follow the directions on that sign-in sheet and I ask that you hand the sign-in sheet to our committee clerk before you sit down to testify. For the record, please spell your first and last name and keep your testimony concise; try not to repeat what someone else has covered. I don't think we have a lot of people here today to testify, so we are not going to be using the light system today, but I reserve the right to limit anyone's testimony. If you do not want to testify, but you want to voice your support or your opposition to a bill, you can indicate so at that on-deck table and there is a sheet that is provided for that. And this will be part of the official record of the hearing. However, if you want to be listed on the committee statement as a testifier at the hearing, you have to complete that yellow sign-in sheet and actually come forward to testify even if it's just to state your name and your position on the bill. We do accept written testimony, so if you do not

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

Transportation and Telecommunications Committee
February 08, 2010

want to publicly testify at the hearing, you can certainly submit written testimony and we will include that in the official record. At this time I would ask that you turn off your cell phones; in this committee we do not allow cell phones on and that means no texting. So with that, I will open the hearing on LB772 and I see Senator Coash is here for his introduction. So welcome, Senator Coash. [LB772]

SENATOR COASH: Thank you. It's my first time in front of the Transportation Committee. Good afternoon, Chairman Fischer and members of the Transportation and Telecommunications Committee. My name is Colby Coash, C-o-a-s-h, and I represent the 27th Legislative District and I'm here today to introduce LB772, legislation that provides penalties for driving on a revoked license. While looking at this issue over the summer, I've come to the conclusion that driving while your license is suspended is a problem as evidenced by the handout that the page is passing around. Specifically, LB772 provides that any person operating a motor vehicle in violation of the Nebraska Rules of the Road while their operator's license has been revoked shall, as part of their subsequent judgment of conviction, have their operator's license revoked for a period of time equal to the revocation period the person was subject to at the time of their current offense. This, in effect, restarts the clock on that person's revocation period. For example, if I'm serving a 3-year revocation and 2 years into it I get caught driving during that revocation, I get a new 3-year revocation; in effect the clock restarts at 3 years from the date of my newest conviction. I would get exactly the same amount of revocation time I got under my original offense. I'll point out that there is no fiscal note to this bill, and in anticipation of some questions, this bill does not affect anybody's ability to get a work permit or use interlock devices if so ordered by the court. With that I'll close and I'll defer any technical questions on the bill to Jeff Gaertig in the Attorney General's Office who will testify after me. Thank you. [LB772]

SENATOR FISCHER: Thank you, Senator Coash. Are there any questions? I see none. Thank you very much. First proponent for the bill please. Good afternoon. [LB772]

JEFF GAERTIG: (Exhibit 1) Good afternoon, Chairwoman Fischer, members of the Transportation Committee. My name is Jeff Gaertig, J-e-f-f G-a-e-r-t-i-g, assistant attorney general, Nebraska Attorney General's Office, and I appear before you today on behalf of Attorney General Jon Bruning in support of LB772. I would like to take this opportunity and our office would like to take this opportunity to thank Senator Coash for introducing this very important piece of legislation and for his efforts in strengthening our revocation laws. LB772 addresses the very serious problem of driving under revocation by enhancing the penalties for those revoked drivers who, again and again, choose to get behind the wheel. This bill provides a remedy for the problem by extending the period of revocation for subsequent driving offenses committed by a person caught driving under revocation. Simply put, this is a penalty enhancement bill. The goals of LB772 are to hold repeat offenders accountable for their continued law-breaking activities and actions and to send a strong message that driving under revocation

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

Transportation and Telecommunications Committee
February 08, 2010

carries significant and legal consequences. The heart of LB772 can be found in Section 5 of the bill which starts at the bottom of page 4 and continues to page 5. Section 5 is the enhancement provision of the bill. This section provides that if a person operates a motor vehicle and violates any of the Nebraska's Rules of the Road while under revocation, that person's driver's license will be revoked for a period of time equal to and measured by the underlying revocation period in effect at the time of the subsequent Rule of the Road violation. Section 5 also provides that a person caught violating a Rules of the Road while driving under revocation is not eligible for any credit for prior revocation time earned. In other words, the revocation clock starts over and it starts fresh for a Rule of the Road violation committed by an illegal driver under revocation. LB772 seeks to advance the goals of cracking down on repeat DUR offenders and holding them accountable for their illegal driving actions, and too, protecting the citizens of Nebraska who are lawfully travelling upon our highways, byways and roads. Other changes within the bill, specifically Section 4, as you may notice, are recommendations by Bill Drafting that identified areas of current law in need of harmonizing and clarifying language and statutory organization. On behalf of Attorney General Jon Bruning, I urge the committee to advance LB772 from committee to General File for debate by the full Legislature. Thank you for your consideration of this bill and I will attempt to answer any questions that you may have regarding the legalities of the bill. Thank you. [LB772]

SENATOR FISCHER: Thank you very much. For the record I would note that we have been joined by Senator Janssen from Fremont. Are there questions? Senator Gay. [LB772]

SENATOR GAY: Thank you, Senator Fischer. I guess my question is this: If they're already driving under revoked license and they consistently do this, I understand, why would they care? I mean, what does this do? Shouldn't it be a little stiffer, quite honestly? Because all you're doing is telling somebody who is already repeatedly breaking the law, we're going to, you know, it's revoked. Well they didn't care to begin with. How does this fix that? [LB772]

JEFF GAERTIG: Senator, it's a valid point that you make and it's one that with regards to how do you get the attention of someone who has continually violated the law? Is this sending a deterrent message? We would like to believe it would be simply if someone comes in and has to restart a 15-year revocation and they're in year five, perhaps, we hope, one day he or she gets the message. Will this have an effect remains to be seen; but you make a valid point as far as how do we get these people's attention? They obviously don't care if they're out there driving under revocation and it's important because what they're under revocation, the bill in Section 4 points out there's like four big heavy hitters, like worst offenses that these people are driving under revocation and they go out and break a Rule of the Road. Will it have a deterring effect? We hope so. It remains to be seen how we get these people's attention. [LB772]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR FISCHER: Other questions? Senator Hadley. [LB772]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Gaertig, I think that was a very good question that Senator Gay asked and to follow up on that, could you quickly tell me the difference between a Class IV felony and a Class III felony as far as punishments? [LB772]

JEFF GAERTIG: Yes, Class IV felony would be our lower level felony offense; it's punishable by zero to five years imprisonment and/or incarceration and \$10,000 fine or both. Class III felony is a, I believe, zero to 20 years imprisonment and a \$25,000 fine or both. So they...the Class III felony is a step-up from the Class IV felony. [LB772]

SENATOR HADLEY: Okay. I guess the second question, since I basically flunked business law years ago, basic, what is the difference between Section 4 (1) and (2)? One talks about the Class IV felony and the other Class III. I guess I under...you just explained what the difference in the felonies were, but what causes one to be charged with a Class IV and the other a Class III? [LB772]

JEFF GAERTIG: Senator, this based...Section 4 is some of that statutory reorganization and harmonizing effect. If you look at Section 6, this is...Section 4 and Section 6 is current law, but to answer your question, with regard to a Class IV felony under Section 4(1), if someone who has been convicted of a motor vehicle homicide, so that's a biggie, right there, that's one of the four that this bill has identified as worst of the worst offenses, motor vehicle homicide under 28-306. They have a conviction; they've killed someone by operating their motor vehicle and then they have a revocation; and then they go out and they are driving and they violate any Rules of the Road, then they are subject to a Class IV felony. And in that first time when they are driving under revoked, the court has the discretion to sentence them from anywhere from 1 to 15 years revocation, that's Section 1. Now Section 2, if I understand it, is the enhancement portion of that where this is a person who has went out again, who again killed someone with a vehicle and now this is like their second violation of the Rules of the Road, this is an enhancement and now they're looking at a Class III felony. So the difference is basically this person under subsection (2), this driver, went out and drove again. And again, it goes back to the deterring message that Senator Gay presents as we're trying to step-up the enhancement penalties and provisions so that people take these matters very seriously. [LB772]

SENATOR HADLEY: One last question; do we ever revoke a person's license permanently? [LB772]

JEFF GAERTIG: Yes. That would...revocation is a permanent...it's a permanent loss of the license. In order to be reinstated upon revocation, you have to, basically, resurrect

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

Transportation and Telecommunications Committee
February 08, 2010

your license. You have to go through proceedings in order to do that. Now contrast that with the suspension where someone might have an indefinite suspension of a license for a compliance issue; say, they haven't paid a fine or perhaps alimony. That driver basically holds the keys to his or her car because if he or she pays that fee or outstanding penalty, they'll be reinstated automatically. But a revocation, again, this is something where these people have lost the privileges by what they have done on the road primarily by killing someone, by not rendering aid or assistance to a person in need on the road; DUIs, three or more; second enhanced DUIs, 0.15. These people's license have been revoked until they are reinstated through the proceedings. [LB772]

SENATOR HADLEY: But it's for a period of 15 years, right? That's what we're talking about. [LB772]

JEFF GAERTIG: Right. On that one, on the 15 years. And so that 15 years; and so, is there a lifetime revocation? I think to clarify my remarks, it's a 15-year revocation, but what this thing...this bill does, it will restart it again and again. As far as lifetime revocation, I believe it's just more of a 15-year revocation. [LB772]

SENATOR HADLEY: I would concur with Senator Gay that this person's whose license has been revoked anyway and is driving on a revoked license; you revoke it again, I just have the concern that they say: so, it didn't bother me the first time, so. [LB772]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Gay. [LB772]

SENATOR GAY: In that case, what are other states doing though? I'm sure this isn't a common problem to Nebraska. [LB772]

JEFF GAERTIG: Correct. [LB772]

SENATOR GAY: And I've heard from many constituents, too, who don't like this and I've seen it, too, what do you do? What are other states doing that are more stringent than this? [LB772]

JEFF GAERTIG: I think on the legislative front, this is exactly what we're seeing other states adopting as our revocation provisions that are increasing revocation times, stepping up the felonies from Class IVs to Class IIIs under their statutory scheme. One of the things that the...speaking on behalf of Attorney General Bruning, I think the genesis of this is that as a member of the Pardons Board, my understanding is that Attorney General Bruning will see people come in for pardons who have DUR revocation for 15 years and then on their traffic citation they have been seen running a red light or something and so Attorney General Bruning, my understanding, was looking at this thing, well this doesn't seem right that these people are out there driving and if

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

Transportation and Telecommunications Committee
February 08, 2010

they're coming in front of the Pardons Board and we're supposed to be ignoring the fact they have these traffic infractions, so other states have model legislation, but I also know that the Attorney General has taken a personal interest in this matter with regard to his personal experience on the Pardons Board. [LB772]

SENATOR FISCHER: Thank you. Other questions? Senator Campbell. [LB772]

SENATOR CAMPBELL: Thank you, Senator Fischer. Sir, do you have any idea how many people in an annualized basis we revoke the license for? [LB772]

JEFF GAERTIG: Yes, Senator, we have some numbers and these numbers were compiled by the Department of Motor Vehicles with their financial responsibilities, the DMV annual reports based on 2008-2009. The most current numbers we have are from 2009 and these are the FR statistics from the DMV. On an annual basis we have driving during suspension, so this is DUS: We have 13,726 DUS offenders. But then for those driving under revocation or DUR for 2009, the number is 1,911 and that's based on convictions, felony convictions. So with that I hope that answers your question. [LB772]

SENATOR CAMPBELL: It does. Thank you. [LB772]

JEFF GAERTIG: Thank you. [LB772]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here. [LB772]

JEFF GAERTIG: Thank you, members. [LB772]

SENATOR FISCHER: Next proponent, please. [LB772]

RUSSELL ZEEB: I apologize up front; I don't have much of a voice. [LB772]

SENATOR FISCHER: Good afternoon. [LB772]

RUSSELL ZEEB: My name is Russell L. Zeeb, I'm lieutenant with the Sarpy County Sheriff and I've been in that capacity over 36 years. [LB772]

SENATOR FISCHER: Could you spell your name, please. [LB772]

RUSSELL ZEEB: I'm sorry. Z-e-e-b. [LB772]

SENATOR FISHER: Thank you. [LB772]

RUSSELL ZEEB: (Exhibit 2) And real quick, I just want to applaud the Attorney

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

Transportation and Telecommunications Committee
February 08, 2010

General's Office for bringing this matter up and asking that it to be hopefully strengthened and hopefully you'll see some of it in there. They made a couple of good comments. You know, all these people are violating the law when they're out there driving. And the sad thing is when they're violating that law, they're putting your families, your loved ones, and everybody else's in danger and that's the reason we need to make sure that this law stiffens up. Senator Gay asked the question of, you know, people are already under revocation; you're right and they're going to keep doing it, you know. It's kind of like they don't care. But the sad thing is, I care for the victims on the street and the people they do affect every day and everything else. If you have watched the papers here recently, several cases, criminal cases, mostly hit and runs; it seems like a lot of those people are either under suspension revocation--unfortunately, a lot of them for driving while intoxicated or impaired anyway. And again, I ask that your support be for the victims that are suffering every day. We also have to look at...and this is a completely different issue, but remember if they're under suspension or revocation, they probably do not have any insurance either and that puts a lot of other people in danger from civil liabilities that they're going be prepared for. But Senator Gay, you're right, there are people that are suspended and revoked numerous times and they don't care. What's going to have to care though is when the judge slams that gavel down and they start seeing long prison sentences and everything else there for them to do. I'd also like to, for the record, I've distributed a letter and ask that my testimony also be taken in support on behalf of the Nebraska Sheriffs Association and Mothers Against Drunk Drivers for their support on this same bill. [LB772]

SENATOR FISCHER: Thank you, Sheriff. Are there questions? Senator Stuthman. [LB772]

SENATOR STUTHMAN: Thank you, Senator Fischer. Honorable Sheriff, the complaint that I get from my constituents on this and the majority of it is, you know, without a license, without registration, everything like that; is there any value to impounding the vehicle? Because, you know... [LB772]

RUSSELL ZEEB: I can see you and I need to talk in your office some day because that's a bill that I would love to see. You know, years ago we used to impound vehicles and impound the license plates off of the cars. The sad thing is, those people are using that automobile as a weapon when they're driving down the road and I'd be 100 percent in favor of that. I know that's a different chapter of the book, but I'd be 100 percent in favor of that. [LB772]

SENATOR STUTHMAN: That's the situation I run into a lot of times; but then a lot of times that vehicle is used by other members of the family too and they only have one vehicle, and so, but I really think, you know, we're not going far enough with trying to address the situation. So thank you. [LB772]

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

Transportation and Telecommunications Committee
February 08, 2010

RUSSELL ZEEB: And I applaud you for that, sir. [LB772]

SENATOR FISCHER: Other questions? I see none. [LB772]

RUSSELL ZEEB: Thank you. [LB772]

SENATOR FISCHER: Thank you very much. Next proponent please. Are there other proponents for the bill? Are there any opponents to the bill? Good afternoon. [LB772]

COLEEN NIELSEN: Good afternoon, Chairman Fischer and members of the Transportation Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the lobbyist for the Nebraska Criminal Defense Attorneys Association here in opposition to LB772. I just want to briefly comment about the fact that I've had a lot of experience; I used to be a public defender and worked in this area quite a bit and when I represented people that were driving on suspended license, it generally wasn't because they just didn't care, but rather were...felt they were caught between a rock and a hard place. Many of them had their license suspended because they couldn't pay child support and they couldn't get a job and it ends up being an endless cycle because they couldn't drive; if they couldn't drive, they couldn't get a job. So they ended up in jail. So they drive. So then they end up in jail. And so we see these people over and over again and I really appreciate the comment that these people then are probably driving uninsured, but we never let them out of the cycle. We don't do anything to get them...we want them to do the right thing and get a job, and yet we never let them out of this particular cycle. You know, if other states are doing this, and enhancing the penalties such as this, most likely I'm going to guess that many of those states have mass transportation. We just don't have that in Nebraska; in the rural areas. The car is the only way that's going to get them to a job. So I think that in terms of public policy, we have to look at the whole situation. Do we want these people to be able to secure a job; be able to carry insurance on their cars; or do we want to continually punish them to the point where we want to send them to prison? I've noted in here that, you know, zero to five years, sometimes we toss these penalties around like they're nothing; but I will tell you that when people have to go to jail on suspended license, even if it's 90 days or whatever, it's an important thing. It hurts them; it hurts their families; it hurts us as a society if we allow this to continue. You know, one to...Class III felony, one to 20 years imprisonment for driving on a suspended license seems to be too much for this particular offense. So in any event, the Nebraska Criminal Defense Attorneys Association opposes this legislation and I'd be happy to answer any questions. [LB772]

SENATOR FISCHER: Thank you, Miss Nielsen. Are there questions? Senator Stuthman. [LB772]

SENATOR STUTHMAN: Thank you, Senator Fischer. I appreciate the fact that you

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

Transportation and Telecommunications Committee
February 08, 2010

brought up all of this stuff and, you know, I've always had the question in my mind, you know, they don't have a job and they can't go apply for a job because they don't have a license and the child support and they get their license taken away and everything like that. Maybe, you know, we've got, you know, if you get picked up for speeding you can take that STOP Class of eight hours; maybe we should initiate a program that would have eight hours of being a responsible citizen; that we should have, you know, and then they'd be able to drive again or something like that. I mean, we're just...we're creating part of the problem that creates another problem in my opinion. So would you agree with that? [LB772]

COLEEN NIELSEN: I do agree, Senator Stuthman. I think that there...we've got to take another approach with this because I think we're just digging ourselves deeper. [LB772]

SENATOR STUTHMAN: For those that are almost caught between the hard stone and the rock. [LB772]

COLEEN NIELSEN: Right. [LB772]

SENATOR STUTHMAN: Okay. Thank you. [LB772]

COLEEN NIELSEN: Thank you. [LB772]

SENATOR FISCHER: Senator Hadley. [LB772]

SENATOR HADLEY: Thank you, Senator Fischer. Quick question: it seemed to me that the...this bill deals with licenses that have been revoked. Is that common that a person that doesn't pay child support or such as that, would have their license revoked versus suspended? [LB772]

COLEEN NIELSEN: You know, frankly, I...and I apologize for not being able to answer this question, because I didn't review the difference between suspension and revocation. As I understand it, the revocation comes from the courts, but...and I don't remember or recall what child support...whether it's a revocation or a suspension and I'm sorry. [LB772]

SENATOR HADLEY: I just had got the impression that...I need to look up more also whether revocation isn't a more serious offense you have your license revoked versus a suspension of a license, but I'll have to figure it. [LB772]

COLEEN NIELSEN: I think that the result is the same, but...thank you. [LB772]

SENATOR FISCHER: Other questions? I have a question. [LB772]

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

Transportation and Telecommunications Committee
February 08, 2010

COLEEN NIELSEN: Sure. [LB772]

SENATOR FISCHER: We were handed a report from 2008 by the DMV, their annual report, and Senator Coash passed it out; it was attached to an e-mail. Why do you believe people get their licenses revoked? What's the major cause? [LB772]

COLEEN NIELSEN: I don't know what the major cause is; but I would say that it is probably DUIs or driving on suspensions before or child support. I would say those are probably the top three. [LB772]

SENATOR FISCHER: Do you know how many accidents occur when somebody's driving on a suspended license or a revocation of a license? [LB772]

COLEEN NIELSEN: No. [LB772]

SENATOR FISHER: Do you have that? [LB772]

COLEEN NIELSEN: No. [LB772]

SENATOR FISCHER: I certainly understand your comments during your testimony and I appreciate those and I think we need to be aware of them because how do these people get out of this cycle. However, what is the harm done to society as a whole? I guess that's where I'm coming from on this. If we're going to enhance penalties in a case like this, are we protecting other drivers? Are we protecting society as a whole or are we doing it for other reasons? That's what I'm trying to get at with this bill. How would you answer that? [LB772]

COLEEN NIELSEN: Well, Senator, I think that, in my mind, I think that it would benefit society as a whole more by getting people to work; getting the cars insured that they drive and work at that. You know, I'm not saying that, you know, that taking this away would...or taking even suspended license away would do that. But somehow or another we hear of those accidents and we find out that they're uninsured; that's the tragedy of the situation is that these people aren't insured. And it...I don't think there's a nexus between the fact that a person has a suspended license and that they're a bad driver necessarily. I mean, so. That would be my answer. [LB772]

SENATOR FISCHER: Okay. Thank you. [LB772]

COLEEN NIELSEN: Um-hum. [LB772]

SENATOR FISCHER: Other questions? Thank you very much. Are there other opponents to the bill? Any other opponents? Anyone wishing to testify in the neutral capacity? Senator Coash, would you like to close, please? [LB772]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR COASH: Yes, thank you. Thank you again, members of the committee. Want to address a couple of things I heard during the testimony. Do we think this will work? Well, you know, I'm a new parent, a lot of you are parents, and I'm a behaviorist by training. Think about if you've ever used time-out as a strategy to change your child's behavior and if you ask your kid to sit in time-out and you say: you're going to sit here for three minutes and he jumps up after one, what do the parents typically do? They set the timer back. And it doesn't take long for that child to learn I'm serious and I believe the same concept applies here. You asked why would they care? Well they didn't care because the original...they don't care now because their original revocation doesn't change under current law. If I'm one day from the end of my revocation and I get busted again, I don't...I just have to wait. That next day I still get my license back. So I think this will have an effect. I want to address something the criminal defense said: this is very narrow. This bill applies to the worst of the worst. This applies to motor vehicle homicide; DUI, third offense; okay, those kind of crimes are the ones this bill is intended to address. Two things that were inaccurate in Coleen's testimony: one thing, you can get a work permit here. This doesn't prohibit anybody from getting a work permit. So the argument that somebody can't get to work, they have the same rights to do that, they can get the Interlock if necessary as well. We are not enhancing penalties other than revocation. Senator Hadley, you had asked a couple of questions. This deals with just enhancing the revocation. Anything else that you might get whether it's Class III, Class IV felony, misdemeanor, all of those provisions stay the same. This is about adding enhanced penalties specific to revocations. So that clears some of these things up. Thank you. [LB772]

SENATOR FISCHER: Thank you, Senator Coash. Any questions? I see none. Thank you very much for being here today. [LB772]

SENATOR COASH: Thank you. [LB772]

SENATOR FISCHER: With that I will close the hearing on LB772 and open the hearing on LB810 and I believe Senator Rogert is here for his opening. Good afternoon. [LB772]

SENATOR ROGERT: Well good afternoon, Chairperson Fischer. Didn't we change this so we could really call you Chairman Fischer and it's okay? [LB810]

SENATOR FISCHER: Pardon me. [LB810]

SENATOR ROGERT: Didn't we change it so we could call you Chairman or do we have to call you Chairperson? [LB810]

SENATOR FISCHER: I seriously prefer Chairman. [LB810]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR ROBERT: Well, Chairman Fischer, members of the Transportation Committee, my name is Kent Rogert, I represent the 16th Legislative District and I'm here today to introduce LB810. And I will tell you that this was introduced as a package with another bill in Judiciary that allows for the extension of the statute of limitations on Medicaid fraud claims and that's what this goes along with. This legislation will allow the Department of Justice, i.e., the Attorney General's Office, and theirs involved, to use undercover license plates and driver's licenses in the courses of their investigations. Currently, investigators use vehicles with state license plates and the state's license plates can hinder an investigation because they are easily identified as a government vehicle. Under both Sections 60-3,135 and 60-480.01 federal, state, county, city, and village law enforcement agencies; the State Patrol; the Game and Parks Commission; State Brand Committee Investigators; the Fire Marshal; the Department of Health and Human Services Investigators; investigators with the Tax Commission; Department of Agriculture; and the fraud investigators with the Department of Insurance, all are permitted to use regular license plates and carry undercover driver's licenses to enhance their investigative abilities. That's a pretty extensive list. We're simply proposing to add the Department of Justice to that list. Mark Collins, the director of Medicaid Fraud and Patient Abuse Unit from the Attorney General's Office, is behind me to give you some numbers of what their successes have been over the past few years and I will answer any questions that I can. [LB810]

SENATOR FISCHER: Thank you, Senator Rogert. Are there any questions? I see none. Thank you very much. [LB810]

SENATOR ROBERT: And I will waive closing. I have a couple other bills up today. [LB810]

SENATOR FISCHER: Okay. Thank you. Always good to see you. [LB810]

SENATOR ROBERT: Glad to be here. [LB810]

SENATOR FISCHER: First proponent for the bill please. Good afternoon. [LB810]

MARK COLLINS: Good afternoon, Chairman Fischer, members of the committee. My name is Mark Collins, C-o-l-l-i-n-s; I'm the Assistant Attorney General and I'm the director of the Nebraska Medicaid Fraud and Patient Abuse Unit and we come here in support of this bill. The unit that I direct has two primary responsibilities: the investigation and prosecution of cases of fraud that are committed by service providers against the state Medicaid program and the investigation and prosecution of abuse, neglect and exploitation of residents that receive...who are in the facilities that receive Medicaid funding such as nursing homes. Our unit has been in existence since 2004 when Attorney General Bruning asked your predecessors to partially fund the unit that I supervise. And since its inception, we have recovered over \$32 million that were

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

Transportation and Telecommunications Committee
February 08, 2010

improperly paid to Medicaid providers. We've also successfully prosecuted those providers when they've violated the Public Assistance Fraud Statute. And we also investigated and prosecuted dozens of cases involving residents of Medicaid facilities who have been abused or exploited. During an investigation, our investigators employ many tried and true investigative techniques in law enforcement methods such as performing stationary or moving surveillance in an unmarked state vehicle. We have, you know, several state cars that are assigned to the Attorney General's Office, but as Senator Rogert had indicated, current law does not allow our state cars with the Department of Justice to be outfitted with regular license plates. But instead, our cars display state government plates and that obviously, easily identifies them as some sort of a state vehicle, official vehicle and that can pose problems when our investigators need to operate in an undercover capacity and can jeopardize our investigations. For example, if you have an...our investigators in the Medicaid Fraud Unit or our investigator who is involved in investigating cases of Internet sex predators, if you pull up in a neighborhood to see where somebody lives or to surveil their residence, and if this is true, especially in a smaller town, and you're pulling up in a car that's got state plates on it, somebody knows that there's a state person sitting there, you know, watching some house or another in the neighborhood. They know you're there. And that poses the problem. And for similar reasons we're asking that our investigators in the office have the ability to apply for and carry an undercover driver's license for investigative purposes and that's also provided...both of these things are already provided under statute for all the other agencies that Senator Rogert mentioned from the State Patrol to the Department of Agriculture and we're asking to be included in that list as well. Because when it is necessary to conduct an undercover investigation, our agents having them be able to carry a license...or having them show...carry a license that shows their true identity can hinder the investigation and in an extreme case can pose a safety risk to them. We only have...like in my unit, we have two investigators, both with very unique names and if people know who they are, they know who they are. And the same with the Internet Crimes Unit in our office which only has one investigator and if you know who he is, you know who he is. And so this would be a tool that could be used, if necessary, for the investigators only, not for the attorneys, to carry an undercover license similar to those that can be carried by anybody from the State Patrol to the Agriculture Department in the proper circumstances. Our investigators are sworn law enforcement officers; they're deputy state sheriffs and so we wanted to make sure that you are aware of that; they're not just laypeople investigators. So this bill, LB810, is designed to extend the policy that applies to all those other departments to the investigators who work for the Department of Justice and that way we should be able to more effectively and more safely carry out our duties. And with that I'd be glad to answer any questions. [LB810]

SENATOR FISCHER: Thank you, Mr. Collins. Are there questions? Senator Stuthman. [LB810]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR STUTHMAN: Thank you, Senator Fischer. Mr. Collins, the undercover license plate, now does that mean it's...that is not a specified undercover plate, it's just a regular plate like me and Senator Louden have? [LB810]

MARK COLLINS: Yes, sir. [LB810]

SENATOR STUTHMAN: I mean, it's just a common plate that anybody else has, so, yeah. [LB810]

MARK COLLINS: That's correct. It's just a regular looking state plate instead of the plate that most every other state vehicle says...that says state of Nebraska or state government on it. [LB810]

SENATOR STUTHMAN: And it wouldn't have even that little bit on the top, you know, commercial or farm truck or not for hire, like private investigator or anything like that on it. [LB810]

MARK COLLINS: No, sir. [LB810]

SENATOR STUTHMAN: Thank you. [LB810]

MARK COLLINS: You bet. [LB810]

SENATOR FISCHER: Other questions? Senator Gay. [LB810]

SENATOR GAY: Thank you, Senator Fischer. You relieved some of my concern when you said there are law enforcement people who are doing this; it's not you out there doing it or anything like that. Retired law enforcement or current law enforcement that are doing the investigations? [LB810]

MARK COLLINS: Well, they're current law enforcement with the state of Nebraska. They are deputy state sheriffs per appointment of the Governor and that's how they have their law enforcement ability to continue to carry out the enforcement of state law at this time. My investigators that are in the Medicaid Fraud Unit; one is a retired Omaha homicide detective and the other one is not a retiree, he came to us from the Fairbury Police Department. The investigator with the Internet Crimes Unit in the Attorney General's Office, I know, is a retiree of the Lincoln Police Department and is now a state employee. But they're all still sworn officers. [LB810]

SENATOR GAY: Okay, is there a law that they have to be sworn officers? Because...let me give you a scenario; let's say you're trying to save a few bucks and maybe you could get by with someone else doing this and now...is there a law in place that you have to hire an officer now to be in that division, in that fraud division or could you just change

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

Transportation and Telecommunications Committee
February 08, 2010

your policy down the road and get whatever, Senator Stuthman, let's say, when he's retired, let's say he wants to get into this; do you have to be a law enforcement officer to do this? [LB810]

MARK COLLINS: The statute...the Medicaid...the statute that formed the Medicaid Fraud Unit is based upon federal law which requires every state to have a Medicaid Fraud Unit and it just states that you have to have investigators. Now in Nebraska, we choose to have sworn law enforcement officers in that position. In other states, I can tell you, they have...some states have sworn, but there are a couple who have...who have nonsworn officers and in that case, I think they're probably doing more desk type investigations; obviously, those are not people who can go out and arrest folks and put them in handcuffs, etcetera. But our policy here in Nebraska, and I believe it's the correct one, is that you need to have sworn law enforcement officers doing these things. [LB810]

SENATOR FISCHER: Other questions? Senator Hadley. [LB810]

SENATOR HADLEY: Senator Fischer, thank you. I appreciate you being here. Just a couple of quick questions. I guess you shouldn't ask a question unless you know the answer, but the Department of Justice is basically the Attorney General's Office is that correct? [LB810]

MARK COLLINS: That's correct, Senator. [LB810]

SENATOR HADLEY: That's correct. Okay. Secondly, you always hear the story that the cars we use, the cars the policemen uses always look like police cars so what do you really gain by having regular plates on them or can people say, well, here comes a state car down the street, even though its got a... [LB810]

MARK COLLINS: Well I know them when I see them. But then I've been involved in...as an assistant attorney general either here or in South Dakota for 20 years, so I know a state car when I see one because they're usually a domestic model and like a Chevy Impala or something like that. But there are cases where, you know, it's a whole fleet of different kinds of cars that anybody...they would blend right in, you know. We don't, for example, in our office, we don't have any Ford Crown Victorias which are the ones the State Patrol drives because, I mean, otherwise you know that that's a policeman, a patrolman or a cab driver because that's what they drive. But...so we have them mixed up a little bit. But, you know, they're usually a domestic car, etcetera, and so you kind of have an idea, but you never know. But I'll tell you one thing, you certainly know when you see the license plate. [LB810]

SENATOR FISCHER: Other questions? Senator Louden. [LB810]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR LOUDEN: Yes, thank you, Senator Fischer. This just applies to state investigative offices right? None of the sheriffs departments or anybody like that? What do they do for plates? [LB810]

MARK COLLINS: They already have that authority under the law, Senator. State Patrol; county sheriffs; city and village law enforcement; that whole litany that Senator Rogert gave you; they already have that ability. Federal law officers were added to this list last year and then there are a variety of state agencies: HHS; Agriculture; the Brand Board...Brand Commission, etcetera, have that authority. So it's multiple...different layers of government that have that authority and we're just asking to be added to that. [LB810]

SENATOR LOUDEN: Brand investigators can have these different plates that don't have to say state government on them? [LB810]

MARK COLLINS: They are authorized to, that's correct. [LB810]

SENATOR LOUDEN: Mostly because they're what...a state sheriff? Is that where it comes through? [LB810]

MARK COLLINS: I don't know if they're state sheriffs or not, Senator. I've never looked at that and I wouldn't want to answer that question one way or the other. [LB810]

SENATOR LOUDEN: Okay. Thank you. [LB810]

SENATOR FISCHER: Other questions? When did all these other agencies get the right or the power to have regular license plates? Have they been added through the years? Were they all put in at once? [LB810]

MARK COLLINS: The source of this bill, I see, when it was...if my information is correct, and this is Nebraska Revised Statute 60-3,135, it appears that it was passed originally by LB274 in 2005; it was amended in 2007 and again last year, but what agencies were added when, I can't tell you and whether or not this particular statute replaced an earlier statute that had...has similar authorization I am not aware. [LB810]

SENATOR FISCHER: Why do you think the Attorney General's Office was specifically left out? [LB810]

MARK COLLINS: Well, I speak for myself in this respect; it seems to me that up until General Bruning's...Attorney General Bruning's tenure that our office did not have investigators, or at least not sworn investigators. Where I came from in South Dakota, I practiced as an attorney general up there with the attorney general's office up there. We had our own separate division of criminal investigation and had for...since the thirties

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

Transportation and Telecommunications Committee
February 08, 2010

within the attorney general's office. But here I think the genesis of having actual investigators who go out and do special things originated with Attorney General Bruning's tenure and there are...there are the two who work in my division, the Medicaid Fraud Unit; there's one who does Internet crimes; there is a...one in the consumer protection division; although I don't believe he's a...he's a retired postal inspector, I'm not sure he's a sworn state officer. And then the criminal bureau also employs two or three who are retired law enforcement and sworn deputy state sheriffs. And I'm not sure that before Attorney General Bruning came on board that they had those types of investigators on staff at the office. [LB810]

SENATOR FISCHER: So before Attorney General Bruning took office, who did the investigative work? I would assume the State Patrol. [LB810]

MARK COLLINS: I would assume the State Patrol did, but that's before I became a Nebraskan, so I'm not sure. Now with the Medicaid Fraud Unit...the Medicaid Fraud Unit came into existence back in 2004 and... [LB810]

SENATOR FISCHER: Was it 2005 then, you said, when...or was it earlier when Attorney General Bruning then set up a different investigative offices? [LB810]

MARK COLLINS: I'm sorry, I missed the last part of your question. [LB810]

SENATOR FISCHER: When did the current Attorney General set up his investigative offices? Was it due to the Medicaid fraud? [LB810]

MARK COLLINS: I believe he had...that's before my time, Senator, but I believe that he had some sworn investigators there before the Medicaid Fraud Unit came into place. The Medicaid Fraud Unit is required under federal law... [LB810]

SENATOR FISCHER: Right. [LB810]

MARK COLLINS: ...under the Social Security Act and it requires that we have those types of investigators that we now employ and that's why we have them in my division and why we've had them since its inception. I believe that the other criminal investigators were there before that. The Internet crimes investigator came afterwards; I believe he's been with us for a couple of years. And I don't know how long the consumer protection investigator has been a part of the office. But then again, it's my belief that he is not a sworn officer. [LB810]

SENATOR FISCHER: Do you know how many investigators are employed within the Department of Justice here? [LB810]

MARK COLLINS: I believe there are three in the criminal bureau, plus the Internet

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

Transportation and Telecommunications Committee
February 08, 2010

crimes investigator. Are my colleagues still here? No. They're with the criminal bureau and so I was going to see if they could say for sure; but I believe there are three with the criminal bureau; one...additional one who does Internet crimes against children; two in the Medicaid Fraud Unit; and one in the Consumer Protection Division, now he's part-time; and I believe that one of the ones in the criminal bureau is part-time, but I'm not sure about that. [LB810]

SENATOR FISCHER: So with the bill, we're looking at, the most, seven individuals who would be using these license plates if this bill would advance and be passed. [LB810]

MARK COLLINS: They'd be put on the three cars that the state...that the Attorney General's office has. [LB810]

SENATOR FISCHER: But it would be these seven individuals who would be involved in the investigation and driving those vehicles that would have those license plates, or...do you get to drive one? [LB810]

MARK COLLINS: If I'm on state business or if an assistant attorney general is on state business, then we drive state cars as well and we would probably... [LB810]

SENATOR FISCHER: With a regular license plate though or with a state license plate? [LB810]

MARK COLLINS: I think if we put them on these cars, I don't know that we would interchange them. I guess that would be something that we've not discussed in my office. Now the driver licenses are just for the investigators; so no one...and they still have to go through the approval process, through the DMV to get those. But the license plates for the Attorney General's cars, I don't know if we would be switching those out only when the investigators use them. My guess is...well, I shouldn't say, because that's a policy to be determined by the Attorney General. [LB810]

SENATOR FISCHER: Maybe we could discuss that. If you could possibly get us information on how other agencies use those plates; if only the investigators are driving those vehicles when those plates are on the vehicles and otherwise employees within the agency or within the Attorney General's Office would have to be in a vehicle that identifies them as a state employee. [LB810]

MARK COLLINS: I can do that. [LB810]

SENATOR FISCHER: There's an issue, I think, of transparency here that I certainly can see the need for investigators to be able to do their work and to do it well. And I think and I do believe there is a need to have the ability to not be identified and to go undercover. But I think we have a...my personal opinion is we have an issue of

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

Transportation and Telecommunications Committee
February 08, 2010

transparency of state employees able to drive a vehicle that's not identified as a state vehicle when they aren't performing that specific work that I think you're trying to get at with this bill. [LB810]

MARK COLLINS: I would note that the law, as it currently reads in Section (1)(a), this is 60-3,135(1)(a), says that: undercover plates may be issued to federal, state, county, law enforcement, etcetera, etcetera, only for legitimate criminal investigatory purposes. [LB810]

SENATOR FISCHER: Okay, that should take care of it then I would think, wouldn't you? [LB810]

MARK COLLINS: I would think so. [LB810]

SENATOR FISCHER: Okay. Senator Gay. [LB810]

SENATOR GAY: Thank you, Senator Fischer. My concern, how many joint...when you do an investigation, aren't many times they're done with joint law enforcement agencies that could do some of these things for you instead of your people doing them? I'm a big supporter of the Medicaid Fraud Division, as you know, but don't you sometimes work with local law enforcement many times on the Internet things? And I guess I'm trying to see where you would need this so much when you could be working in partnership with that local person maybe because they do have these...they all have investigations going on. But do you work closely with them? [LB810]

MARK COLLINS: We work, especially in the Medicaid Fraud area, we work our cases from the ground up. We're the...it's not a situation where we receive a referral from the State Patrol or from local...from a local or a county law enforcement officer. We get our referrals from the Department of Health and Human Services either from their Medicaid program, integrity unit, when it comes to cases of provider fraud or from Adult Protective Services in cases where we have an allegation of a person in a nursing home, for example, who's being abused, neglected or exploited. We work those cases from their initial steps. It's not a situation where we have the State Patrol or the county sheriff go out and do the groundwork for us; nor do I think that it would be a good use of resources for those offices to be imposed upon to do work that we are statutorily required to do. That's why we do these things on our own from the ground up. We do work with local law enforcement, especially in cases of violations of the Adult Protective Services Act because those kinds of cases, by law, have to be referred to local law enforcement as well. So they are involved in those, but when it comes to the Medicaid fraud cases, those are cases that we do ourselves from the very first allegation. I can't speak specifically to all the other areas of the office, but I do know that, for example, that State Patrol does Internet crimes against children exploitation cases, but our office does them as well. And it's my understanding that the investigator assigned to those,

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

Transportation and Telecommunications Committee
February 08, 2010

likewise, does his cases from the ground up, from the initial complaints or a belief that someone is violating that law. [LB810]

SENATOR GAY: Okay. You could say they're very unique cases, so you need to do this, is that kind of what you're saying? [LB810]

MARK COLLINS: Absolutely. [LB810]

SENATOR GAY: Okay. Thank you. [LB810]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Collins, for being here. [LB810]

MARK COLLINS: Thank you. [LB810]

SENATOR FISCHER: Other proponents for the bill please? Good afternoon. [LB810]

AMY PRENDA: Good afternoon, Senator Fischer, and members of the Transportation Committee. My name is Amy Prenda, it's P-r-e-n-d-a and I'm here as a registered lobbyist for the Nebraska Sheriffs Association and would like to let you know that the Sheriffs Association took a position of support for LB810. They'd like to support the AG's ability to do their investigations and their work. I'll be honest, I'll try to answer any questions that you might have, but the Sheriffs Association is a new issues for me, so I will do my best. [LB810]

SENATOR FISCHER: Are there questions? I see none. Thank you very much. [LB810]

AMY PRENDA: Thank you. [LB810]

SENATOR FISCHER: Next proponent, please. Any other proponents? Are there any opponents to the bill? Any opponents? Anyone wishing to testify in the neutral capacity? I see none. Senator Rogert did waive closing. With that I will close the hearing on LB810 and open the hearing on LB761. Mr. Vaughan, would you open, please? Good afternoon. [LB810]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the committee. For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB761 was introduced on behalf of the Department of Motor Vehicles. The bill limits an employment driving permit to a first-time DUI offender. This has been the current practice of the DMV until a recent court case. There the court decided that since the statute was silent as to the DMV's authority to issue an employment driving permit for a repeat offender, the agency was required to issue the permit. The court ordered the issuance of the permit with a no-wait period which is 30

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

Transportation and Telecommunications Committee
February 08, 2010

days for a first-time offender thereby treating a repeat offender more favorably than a first-time offender. LB761 amends the Employment Driving Permit Statutes to make it clear that it only applies to a first-time DUI offender and the first-time offender is the only one that is eligible for the permit. And with that I will end my testimony, Senator Fischer. [LB761]

SENATOR FISCHER: Thank you, Mr. Vaughan. Any questions? I see none. Thank you, Mr. Vaughan. First proponent, please. Good afternoon. [LB761]

BEVERLY NETH: (Exhibit 3) Good afternoon. Chairman Fischer, 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 appearing before you today to offer testimony in support of LB761. I want to thank Senator Fischer for sponsoring the bill on behalf of the department. LB761 is introduced in response to a Nebraska Court of Appeals decision entitled Bazar v. Department of Motor Vehicles issued...the opinion was issued in September of 2009. Mr. Bazar appealed the DMV ruling that he was not eligible for an employment driving permit because he had prior Administrative License Revocation convictions or ALR convictions. The department relied upon its 18-year interpretation of the ALR statutes in conjunction with Nebraska Revised Statute 60-4,129 to reach its decision not to issue the permit. The ALR statutes were clear at the time the Bazar case was filed in 2008, that anyone subject to a one-year ALR revocation was not eligible for an employment driving permit. One-year ALR revocations applied in two instances at that...that applied in two instances at that time: one, a conviction for a second or subsequent ALR within 12 years of the first offense, and two, refusing to submit to an alcohol test. Nebraska Revised Statute 60-4,129 references the ALR statute 60-498.02 and goes on to establish the employment driving permit program. It also references other statutes. It also specifically bars the issuance of an employment driving permit for the operation of a motor vehicle license and limits the time that a person under a child support suspension may hold an employment driving permit to three months. The DMV relied upon the internal reference to the ALR statutes to apply the employment driving permit limitations relating to the ALR program. In the Bazar decision, the court found that the prohibition in the ALR statute was contradictory to Nebraska Revised Statute 60-4,129 and that Bazar should be eligible for an employment driving permit. The practical application of the ruling is that a driver whose license is revoked for only 90 days for a first offense must wait a period of 30 days before applying for an employment driving permit, while a driver whose license is revoked for a period of one year may apply for an employment driving permit immediately. The court acknowledged in the Bazar Opinion that its decision led to a more stringent requirement for a person subject to a first offense 90-day ALR than for a person subject to a one-year ALR for a subsequent...second or subsequent offense or refusal to submit to an alcohol test. Since the Bazar case began, the Legislature has twice amended the language in the ALR statutes to broaden the availability of ignition interlock permits and employment driving permits for first offense refusal to submit. The first amendment was with LB736

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

Transportation and Telecommunications Committee
February 08, 2010

in 2008 and the second with LB497 in 2009. LB497 specified that a person with a first offense refusal to submit may apply for an employment driving permit after a 60-day no driving period. However, the current statute is silent as to whether a person with a one-year ALR for a second or subsequent offense is eligible for an employment driving permit. Read together, the Bazar Opinion and the current statutes mean there are no limitation...there is no limit on the availability of employment driving permits for multiple offenders. It is important to note that LB736 and LB497 have expanded the eligibility for an ignition interlock permit for a person with a one-year ALR for either second or subsequent offense or first offense refusal to submit. Such an individual may apply for an ignition interlock permit during his or her revocation after a period of 60-day no driving. LB761 will bring consistency and clarity to the statutes as they relate to the eligibility for employment driving permits for all offenses. I'll be happy to answer any questions you might have. [LB761]

SENATOR FISCHER: Thank you, Director. Are there questions? Any questions? Senator Stuthman. [LB761]

SENATOR STUTHMAN: Thank you, Senator Fischer. Director Neth, the concern that I've always had with this, you know, I know I don't want those people driving, but the issue of, you know, 12 years and then they can't get to work and if they can't get a driving permit, a work permit, how do they generate revenue to support their family? [LB761]

BEVERLY NETH: Well I think one of the things that the Legislature has done in the past, I referenced in my testimony, is that we have expanded the use of ignition interlock permits. That option is available to individuals who have a second or subsequent offense. And so they still have that; they have a...under our current statutory scheme, 60-day no driving, at which point then they can install the ignition, if they're eligible, install the ignition interlock device and get an ignition interlock permit. And then drive with the overview of the ignition interlock device for the period of the revocation, be it 1 year or 15 years or whatever the case may be. So there is a tool. There is a resource now available for people and I think that really was part of the reason that the Legislature went that way was specifically for the reason that you're citing is that in many areas of Nebraska, it's very difficult to get around without an automobile and do we want to...do we want to stop driving or do we want to stop drunk driving? And I think what we said is we want to stop drunk driving. [LB761]

SENATOR STUTHMAN: How successful or how often is that interlock system used or is it widely used? [LB761]

BEVERLY NETH: The ignition interlock device? [LB761]

SENATOR STUTHMAN: Yeah, yeah. [LB761]

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

Transportation and Telecommunications Committee
February 08, 2010

BEVERLY NETH: It's certainly much more widely used now that it's a tool available to judges in sentencing and I'm sorry I don't have those numbers. Last...I mean...we...I know we issued considerably more in 2009 than we did in 2008; really hundreds more than we did in 2008. [LB761]

SENATOR STUTHMAN: And you feel that's very effective? [LB761]

BEVERLY NETH: I think in the long run, ignition interlock devices and the ignition interlock permits afford the greatest opportunity for public safety when you're talking about someone rather than a work permit, employment driving permit, where there's no oversight, that person is simply driving to and from work and we're not having any oversight on whether or not they're driving to and from work intoxicated. However, if they're in a vehicle where there's an ignition interlock device installed, they're having to blow in the device and there is a registration of whether or not there's alcohol present in the driver's body. And so that really gives us the best opportunity for public safety as what we have right now, as opposed to an employment drive permit. [LB761]

SENATOR STUTHMAN: Okay. Thank you, Director. [LB761]

SENATOR FISCHER: Other questions? Senator Hadley. [LB761]

SENATOR HADLEY: Senator Fischer, thank you. Director Neth, I assume that there's probably no data available on people driving...you made your point, people driving to and from work under the influence. [LB761]

BEVERLY NETH: We issued some 630 permits last year, employment drive permits, and I know we issued in the thousand ignition interlock devices; but really with the ignition interlock device, you do have...you do have oversight of the individual while they're driving that automobile. You have the start...at the time they start the automobile they're required to blow into the ignition interlock and then there are rolling retests and so, and then when they get back in it at the end of the day, they're required to blow again and go through that entire process and so you do have that continuous oversight. With an employment drive permit, they're simply...they're limited to driving to and from work, but there's no oversight as to whether or not they're intoxicated or they have any level of alcohol in their system while they're operating under that permit. [LB761]

SENATOR HADLEY: Okay. Thank you. [LB761]

SENATOR FISCHER: Other questions? I see none. Thank you, Director. [LB761]

BEVERLY NETH: Thank you. [LB761]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR FISCHER: Are there other proponents to the bill? Any other proponents? Any opponents to the bill? Anyone wishing to testify in the neutral capacity? Seeing none, I will close the hearing on LB761; open the hearing on LB841. Senator Lautenbaugh is not here. Mr. Smoyer, will you be giving the Senator's opening? [LB761]

BRENT SMOYER: Yes, Madam Chairman, I will be. [LB841]

SENATOR FISCHER: Welcome. [LB841]

BRENT SMOYER: Madam Chairman, members of the committee, my name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, appearing for Senator Scott Lautenbaugh. He apologizes for not being able to be here; he is currently in Business and Labor introducing another bill and he figured since you guys see him enough as it is, you get me. That being said, I bring to you LB841. Just a small alteration to law enforcement access to driver's license information, particularly signatures and photographs, the digital variety. Currently state and local federal law enforcement officials can access this information as a matter of course in their investigations. But due to wording in the statutes, certified law enforcement investigators, like arson investigators, cannot get access to these digital photos and signatures. So we bring this kind of simple adjustment to expand the access to local law enforcement officials, like arson investigators, and basically just to allow them to do their jobs more efficiently and quickly. This bill was brought to us by the city of Omaha. They kind of had...apparently have some issues with arson recently, given the number of arson bills they have brought to various senators and have asked us...well, asked the Senator, I apologize, of course I help the Senator, so that's why I go with us, asked the Senator to introduce this on their behalf. I'd be happy to take any questions, comments, concerns. We also have a representative from the city of Omaha to come in and explain kind of the details behind their ideas. [LB841]

SENATOR FISCHER: Thank you, Mr. Smoyer. Are there any questions? Senator Campbell. [LB841]

SENATOR CAMPBELL: Thank you, Senator Fischer. I don't have a question, I just want to clarify... [LB841]

BRENT SMOYER: Yes, ma'am. [LB841]

SENATOR CAMPBELL: ...that this...LB372 was a bill that I introduced last year on behalf of the director and we've...we had every belief that this was covered; we kept saying to the gentleman in Omaha: you're covered, you're covered, and then we found out they weren't. So I appreciate you bringing the clarification forward. [LB841]

BRENT SMOYER: Yeah, you know, sometimes those things just slip through the cracks. It happens. [LB841]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB841]

BRENT SMOYER: Great. And we will waive closing. Thank you. [LB841]

SENATOR FISCHER: Thank you. I wasn't going to offer it to you though. [LB841]

BRENT SMOYER: Oh, I apologize. [LB841]

SENATOR FISCHER: But that's okay. (Laughter) [LB841]

BRENT SMOYER: My apologies. [LB841]

SENATOR FISCHER: First proponent, please. [LB841]

JOHN McCORMICK: Good afternoon. [LB841]

SENATOR FISCHER: Good afternoon. [LB841]

JOHN McCORMICK: My name is John McCormick, J-o-h-n M-c-C-o-r-m-i-c-k, I'm a battalion chief with the Omaha Fire Department, chief of the Fire and Investigation Bureau. The Omaha Fire Department's Fire and Investigation Bureau is in favor of LB841. The amendments to the Motor Vehicle Operator's License Act would allow the release of DMV photos to certified police officers who work in an investigative manner by local agencies. Allowing the release of the photos would be beneficial to our investigations, as well as our safety. Most of the investigations that we conduct involve felonies. If a person that we are looking for does not have a mug shot in the system, then we do not have a picture of what they look like before contact. It would be very helpful to have a photo because there is less chance that that person might be deceitful in their identity when you approach them. All the members of the Omaha Fire Department, Fire and Investigation Bureau are state-certified police officers and all have the powers associated with that except obtaining DMV photos. The amendments offered under LB841 would allow us to obtain DMV photos and that would be greatly appreciated. [LB841]

SENATOR FISCHER: Thank you, Mr. McCormick. Are there any questions? Senator Gay. [LB841]

SENATOR GAY: Thank you, Senator Fischer. I do know, I think it's important, Mr. McCormick brought up the fact they do the training, so they're fully trained in law enforcement to be an investigator correct? [LB841]

JOHN McCORMICK: Correct. We're state certified police officers trained through the

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Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2010

Omaha Police Department training academy. So we have the power to arrest and all the powers that be that a police officer has. [LB841]

SENATOR GAY: Oh. I think...because I think we have a joint friend, Captain Driscoll. [LB841]

JOHN McCORMICK: Correct. [LB841]

SENATOR GAY: But anyway, when they're out investigating, this is just so they can know who they're kind of after. [LB841]

JOHN McCORMICK: It helps us look...gives us an idea of who we're looking for. Somebody does not...if they haven't been arrested or been in the system before, they do not have a mug shot so therefore, another investigative tool would be looking at their driver's license photo which a lot of people have driver's license so we would have a picture of them and we approach them. A lot of criminals tend not to be...want to be identified, you know, and if you have an idea what they look like, you know, you can, you know, call them on their bluff. [LB841]

SENATOR GAY: He was very busy so I'm sure he's busy doing that. Thank you. [LB841]

SENATOR FISCHER: Other questions? Senator Louden. [LB841]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Are you familiar with the wording in this that they've added the new wording in the bill or anything like that? [LB841]

JOHN McCORMICK: I've read it. [LB841]

SENATOR LOUDEN: Well I just wondered, I was looking before, you had: except to a federal, state or local law enforcement agency; then they go on and add: or local agency, and I was wondering, don't they already have that authority? [LB841]

JOHN McCORMICK: Technically the Omaha Fire Department, under the definition, is not a local law enforcement agency. That's where we run into a problem. We're an agency; we're a government agency, the fire department. We have all the powers of arrest and all that and we're kind of an umbrella to the Omaha police, but technically we're not a law enforcement agency. [LB841]

SENATOR LOUDEN: I see, then this...this would allow the fire department to get this...is this what you're telling me? [LB841]

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

Transportation and Telecommunications Committee
February 08, 2010

JOHN McCORMICK: The investigators, who are state law enforcement, would be the only ones able to get driver's license photos. [LB841]

SENATOR LOUDEN: Okay. That would be the people that are investigating arson or something like that? [LB841]

JOHN McCORMICK: Correct. [LB841]

SENATOR LOUDEN: Okay. And...but this would still be any sheriff in the state of Nebraska could get this information at the present time, can't they? [LB841]

JOHN McCORMICK: Correct; but under...the way it is written under the current law, they cannot give us a photo or they're in violation, it would be like a misdemeanor; they're in violation if they even give us a photo. [LB841]

SENATOR LOUDEN: Is there anybody besides the fire department that would be wanting this? [LB841]

JOHN McCORMICK: I would imagine that possibly like the county attorney's office who has investigators and they have to go find people also and I don't think they're under the current ruling as far as they'd be able to. I think they're certified police officers also. [LB841]

SENATOR LOUDEN: Okay. The county attorney has their own officers; they don't send some of their local police (inaudible)? [LB841]

JOHN McCORMICK: Correct. They have investigators that work in the county attorney's office. [LB841]

SENATOR LOUDEN: Okay. Thank you. [LB841]

JOHN McCORMICK: Um-hum. [LB841]

SENATOR FISCHER: Other questions? Mr. McCormick, I believe current statute allows the State Fire Marshal to have access to driver's licenses. Do you know if that is correct? [LB841]

JOHN McCORMICK: I believe so, because I'd fall under the... [LB841]

SENATOR FISCHER: When you're doing an investigation in Omaha within the Omaha fire department, do you ever call in the State Fire Marshal and work together on a project and wouldn't that kind of take care of the need for access? [LB841]

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

Transportation and Telecommunications Committee
February 08, 2010

JOHN McCORMICK: I would say it wouldn't. We're kind of like a deputized State Fire Marshal for them. We handle all arson cases inside the city limits of Omaha. [LB841]

SENATOR FISCHER: State Fire Marshal does not come ever? [LB841]

JOHN McCORMICK: They do come in sometimes when we call them; but we handle them all. We call them in instances if we need other resources like they have arson dogs we might need to use as a tool, but, you know. They have jurisdiction in Omaha, but they come if we call them. You know, like for example, if we would use...we use them like I said for a state arson dog or like if there was a conflict of interest, like if there was a fire at a fireman's house or something like that, we'd want to repose ourselves from that situation and they would come in and do the investigation. [LB841]

SENATOR FISCHER: Okay. Thank you. Senator Gay. [LB841]

SENATOR GAY: Thank you, Senator Fischer. So what do you...do you...you just do that in Douglas County or the city of Omaha, I guess, but what do like arsons, what do volunteer firefighters...maybe you don't know the answer to this; like other smaller fire departments, do they have arson investigators or do they rely on you? Do you ever work with other people? [LB841]

JOHN McCORMICK: We do within the city of Omaha. I believe Bellevue has a state certified police officer and then everybody else uses the State Fire Marshal. [LB841]

SENATOR GAY: So if...I'm from Papillion, LaVista, but if Papillion had one, would they need to use the State Fire Marshal then? [LB841]

JOHN McCORMICK: The State Fire Marshal would respond. [LB841]

SENATOR GAY: So they call them in. [LB841]

JOHN McCORMICK: Right. [LB841]

SENATOR GAY: So you have to be a certain size or whatever to justify it. [LB841]

JOHN McCORMICK: Or if you're...yeah. [LB841]

SENATOR GAY: Thank you. [LB841]

SENATOR FISCHER: Thank you, Senator Gay. Senator Hadley. [LB841]

SENATOR HADLEY: Senator Fischer. And I guess I don't know who to direct this point, but I guess I want to be absolutely clear that when we talk in here about federal, we

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

Transportation and Telecommunications Committee
February 08, 2010

obviously know what federal is, but state or local agency, this wouldn't apply to local agencies outside of the state of Nebraska or in other states? [LB841]

JOHN McCORMICK: I am not... [LB841]

SENATOR HADLEY: Because we don't specifically state Nebraska or a Nebraska local agency. [LB841]

SENATOR FISCHER: We have Director Neth here, maybe she will be coming up... [LB841]

SENATOR HADLEY: I was just curious, I mean could a Kansas agency... [LB841]

SENATOR FISCHER: ...and we can ask her questions in the future. [LB841]

SENATOR HADLEY: ...ask for Nebraska to send this under this law? Okay. [LB841]

SENATOR FISCHER: You don't have to answer if you don't know. [LB841]

JOHN McCORMICK: I would...I don't know what it means,... [LB841]

SENATOR FISCHER: I would assume you wouldn't want to. [LB841]

JOHN McCORMICK: ...but I think the assumption would be that it would be a local agency in the state of Nebraska. [LB841]

SENATOR FISCHER: Other questions? Senator Louden. [LB841]

SENATOR LOUDEN: Yes, one thing I was wondering then, if this is mostly just Omaha for their fire department, should there be something in here that an agency of the city of the metropolitan class or something like that, if everybody else uses the State Fire Marshal? [LB841]

JOHN McCORMICK: I'm not sure what the wording should be because there could be other investigators, like I mentioned before, like the county attorneys and that kind of stuff and like the county attorney out in western Nebraska might also have an investigative unit where they have an investigator and they do things, so. I'm not sure if that would be appropriate language or not. [LB841]

SENATOR LOUDEN: Usually they don't because the county doesn't have enough money and they won't pay for it. [LB841]

JOHN McCORMICK: We're all in that same boat, I think. [LB841]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR LOUDEN: Okay. Thank you. [LB841]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here today. [LB841]

JOHN McCORMICK: All right. Thank you. [LB841]

SENATOR FISCHER: Are there other proponents for the bill? [LB841]

RUSSELL ZEEB: Good afternoon again,... [LB841]

SENATOR FISCHER: Good afternoon, Sheriff. [LB841]

RUSSELL ZEEB: (Exhibit 4) Senator and members of the committee. Just real quick, Russell L. Zeeb, Z-e-e-b, representing the Sarpy County Sheriff and the Nebraska Sheriffs Association. Just kind of clarify on a couple of things: number one, we're currently in the process of completing a memorandum of understanding with the Omaha Fire Department because they have a lot of territory in Sarpy County so we're working with Chief McCormick and Sheriff Davis of getting that to. Currently Omaha Fire comes out to the fire, but they have to call the State Fire Marshal in Sarpy County; all the Millard, Chalco area that they would respond to. So this would be a plus for us on that to do. The access to the files is huge in an investigative standpoint. I used to, not too long ago on a missing persons case that unfortunately ended up with the death of an individual, but it is a huge investigative tool and I welcome the certified arson investigators into it. Maybe just clarify one thing, Senator Gay, on a couple of questions you've had. Any of the arson investigators or anything like that would have to be certified through the Crime Commission and if they lose their certification, they would not be able to hold that position. Thank you. [LB841]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Gay. [LB841]

SENATOR GAY: Thank you, Senator Fischer. Thank you for bringing that...that was the word I think, that we needed clarified too. Certified means you've had law enforcement training... [LB841]

RUSSELL ZEEB: That's correct. [LB841]

SENATOR GAY: ...not just that you're on a volunteer fire department. So that can clarify this very much, thanks. [LB841]

RUSSELL ZEEB: Yeah. Any of the volunteer fire departments, again, would not fall

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

Transportation and Telecommunications Committee
February 08, 2010

under this because they'd have to be a certified through the Crime Commission officer to handle those types of investigations. [LB841]

SENATOR GAY: Thank you for clarifying that. [LB841]

SENATOR FISCHER: Other questions? Senator Louden. [LB841]

SENATOR LOUDEN: Yes, thank you. Doesn't the sheriff's office have this authority now to get this? [LB841]

RUSSELL ZEEB: We have that, but, again, like Chief McCormick said, I can access that. If I have a suspect on a case, I'm bound by law that I cannot share that with him if he is there investigating that case. This is just simply extending... [LB841]

SENATOR LOUDEN: Okay. [LB841]

RUSSELL ZEEB: ...that investigative authority to those investigators. [LB841]

SENATOR LOUDEN: Then...(LOUD BUZZING NOISE IN THE HEARING ROOM)
[LB841]

SENATOR FISCHER: Other questions? [LB841]

SENATOR LOUDEN: You're telling me that this allows you to share information with (LOUD NOISE). [LB841]

RUSSELL ZEEB: (Inaudible) allow me to share it, plus it would allow certified investigators, arson investigators to access that through the Department of Motor Vehicles. [LB841]

SENATOR LOUDEN: Okay. Thank you. [LB841]

SENATOR FISCHER: Any other questions? I see none. Thank you very much. [LB841]

RUSSELL ZEEB: Thank you. [LB841]

SENATOR FISCHER: Are there other proponents to the bill? Any other proponents? Any opponents to the bill? Anyone wishing to testify in a neutral capacity? Director Neth, could you come forward and maybe help us out here with some questions? [LB841]

BEVERLY NETH: If you will allow me to fill out my form. [LB841]

SENATOR FISCHER: You can do that later, that's fine. [LB841]

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

Transportation and Telecommunications Committee
February 08, 2010

BEVERLY NETH: Chairman Fischer, members of the committee, I'm Beverly Neth, B-e-v-e-r-l-y N-e-t-h, Director of the Department of Motor Vehicles, here to offer some neutral testimony and hopefully clarify a couple of things with respect to the previous bill. I'm sorry, I don't know the number, LB841, is that the number of the bill? [LB841]

SENATOR FISCHER: Yes. [LB841]

BEVERLY NETH: LB841, thank you. There has been a question asked...I think a couple of things maybe for clarification sake, and certainly Senator Campbell is right; she carried the bill for the department last year where we expanded the access to driver's licenses...the driver license photos to...our original bill was to local law enforcement and I think the feds came in and spoke to their need for access to that and so it was amended to include federal agencies as well. There's really two things at play here is: the law goes towards the law enforcement agencies, is how it was always drafted, law enforcement agencies have access. And we followed the Crime Commission definition of what a law enforcement agency was which is a very narrow definition in Nebraska statute. So what we did was we asked for expansion of that to include certified law enforcement officers engaged in investigative capacity whether that be within a state agency or a local agency or, we thought local agency, or another...or federal agency and so it went a little broader than just being employed in a pure law enforcement agency; you could be a certified officer employed in not what we historically view as a law enforcement agency such as the Fire Marshal spoke about. And I have, personally, had a couple of conversations with the Douglas County and Omaha County Attorney's Office about their investigative capacity and their need for access to those photos as well. So it does go broader than just law enforcement. At this time, with respect to is it broader than Nebraska and the answer is yes. It does go...we do share our photos with other DMVs; we do that through a digital photo exchange at the time that we register...we...have new applicants here in Nebraska and we sign agreements with those states that they'll use those photos in conjunction with our laws and we will do the same. We also share through the Crime Commission, Nebraska is one of the pilot states that we're allowing sharing of photos to other law enforcement agencies within our context of our statutes of other driver's license photos. I think it's important to point out that the access to those photos is not through the DMV database; it's through the Crime Commission database. Crime Commission has a server that replicates all of the DMV photos; it acts as a disaster recovery backup to the Nebraska DMV so in that sense it has a tremendous amount of value to us if something were to happen to our server. We had the Crime Commission server that we could use to recreate all of our photos that are in our database. Then what they do to allow access to that is, each individual law enforcement officer that's coming through there has their own specific number and I believe this holds true across the country; they have a number that they have to put in there and that validates that that belongs to a law enforcement officer, then they are validated to access those photos. There are some checks and certainly

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

Transportation and Telecommunications Committee
February 08, 2010

there are user IDs and passwords to get into that system so there are checks and balances within who's accessing those photos and is it law enforcement in Nebraska and across the borders as well. So I think that kind of...I hope that covers. If there are other questions, I will try to cover those as well. [LB841]

SENATOR FISCHER: Thank you, Director. Are there any other questions? I see none. I appreciate you coming forward. [LB841]

BEVERLY NETH: Thank you. [LB841]

SENATOR FISCHER: Thank you very much. [LB841]

BEVERLY NETH: Thank you. [LB841]

SENATOR FISCHER: Anyone else in the neutral capacity? I see none. With that, Senator Lautenbaugh is not here to close so I will close the hearing on LB841; open the hearing on LB924 and, Mr. Vaughan, will you give the opening, please. Good afternoon again. [LB841]

DUSTY VAUGHAN: Good afternoon, Senator Fischer, members of the committee. For the record again, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB924 is the result of a federal compliance issue. After LB497 was passed last year which made some changes to the ignition interlock...interlock law, the Nebraska Office of Highway Safety was contacted by the National Highway Traffic Safety Administration or NHTSA to give notice that Nebraska was out of compliance with federal law with regard to our ignition interlock laws here in Nebraska. Under federal requirements, the reinstatement of driving privileges during the revocation period such as an ignition interlock permit must be limited to travel to and from places of employment, school and alcohol treatment facility or ignition interlock service facility. LB497 expanded that permitted use of the ignition interlock permit to required visits to probation officers. This expansion put Nebraska out of compliance with federal law and according to NHTSA puts the state at risk of losing federal highway funds. LB924 strikes the authorization of visits to probation officers from the ignition interlock permit provisions. This will put Nebraska back in to compliance with federal law. The rest of the new language that you see in the bill is meant to make the ignition interlock statutes clear as to what is the controlling provision to issue an ignition interlock permit. And with that, Senator Fischer, I will conclude my testimony. [LB924]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. Proponents for the bill, please. Good afternoon again. [LB924]

BEVERLY NETH: (Exhibit 5) Good afternoon, Chairman Fischer, 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 appearing before you today to offer testimony in support of LB924. I want to thank Senator Fischer for sponsoring this bill and I also want to thank committee counsel for working with us on drafting this bill. He was instrumental in getting this together. Nebraska received notice from the National Highway Traffic Safety Administration or NHTSA on December 15, 2009. The statutory changes to the ignition interlock statutes made in 2009 with LB497 were not in compliance with the federal law Sections 23 United States Code 164 and 23 United States Code 410. These sections govern compliance criteria for federal grant funds available to the Department of Roads for highway funds and the Department of Roads office of Highway Safety Division alcohol education and enforcement grants. NHTSA authorities were clear that Nebraska must amend the interlock laws to maintain compliance with federal standards. The consequence of noncompliance is twofold. One, a portion of federal apportionment and appropriation for the National Highway System, Surface Transportation Program and Interstate Maintenance would be transferred from the state's Section 402 safety program with the option to use all or part for activities eligible under the Hazard Elimination program. The 3 percent provision in the federal law would result in a transfer of approximately \$5.85 million based on the FY '09 data. As the Office of Highway Safety is now statutorily part of the Department of Roads, there is technically no fiscal impact to the Department of Roads. And two, the Office of Highway Safety would annually lose \$1.3 million in Section 410, Alcohol Incentive Funding; 100 percent of which flows to law enforcement for their DUI enforcement activities, for example, preliminary breath testing, PBT equipment; data master evidentiary equipment used in blood alcohol content measurements, BAC measurements; drug recognition expert training and special enforcements, and etcetera, and other activities. NHTSA requested the removal of all provisions in Nebraska statutes that allow an individual with an ignition interlock device and ignition interlock permit to drive to visits with his or her probation officer. The federal law does not allow for this particular use of ignition interlock device. The federal law allows driving to and from work, school, treatment, and to an ignition interlock service center only. NHTSA also requested that Nebraska's statute unequivocally impose a minimum 45-day waiting period on all repeat offenders and high-risk offenders who had a driving under the influence, DUI, conviction with a revocation period of more than one year. Federal law defines a high-risk offender as any person found to have a blood alcohol content of .15 or higher. LB924 amends existing language to make it clear that any person with a revocation period of one year or more must serve a minimum of 45 no driving period...45-day no driving period before a person can drive with a court ordered ignition interlock device and ignition interlock permit for the balance of the one-year revocation. Prior to the introduction of this bill, several conference calls and drafts of bills were pursued with federal authorities to arrive at the draft that ensures compliance. NHTSA authorities have approved LB924, as introduced, as compliant with the federal law. I urge you to move LB924 to the floor of the Legislature as is and without amendments. I will be happy to answer any questions you might have. [LB924]

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

Transportation and Telecommunications Committee
February 08, 2010

SENATOR FISCHER: Thank you, Director. Are there questions? I will say that I thank you for working with committee counsel and your staff also because it went back and forth and back and forth between the state and the federal government. And I see in your testimony you stressed that we not touch this bill in committee with any amendments and that we advance it; would that be the correct assessment? [LB924]

BEVERLY NETH: Senator, it was certainly an exercise to get to the language that the federal government would approve and they have approved this language and they are very clear that this is what keeps us in compliance; keeps the highway funds intact for road building and not moving to hazard mitigation. And, yeah, it was...there were times when it was fairly frustrating, but we accomplished it. Thank you. [LB924]

SENATOR FISCHER: Thank you. Are there questions? Senator Janssen. [LB924]

SENATOR JANSSEN: Thank you, Chairman Fischer. Director Neth, I have a question, right at the end you mentioned the definition of high risk in saying that we had to wait 45 days to get that ignition interlock. Is that part of the compliance or is that just an added in...is it part of the federal compliance in order to do that and we're not currently doing that? [LB924]

BEVERLY NETH: It is part of federal compliance that there be a minimum no...a 45-day no-drive period for high-risk offenders. It's really twofold, it goes to...the federal compliance goes to repeat offenders and high-risk offenders; so it is required that that provision be amended into Nebraska statute at this time in order to remain into compliance. [LB924]

SENATOR JANSSEN: Reminds me of our earlier hearing that we had that, kind of get people caught into this and they just keep going over and over because they drive under suspension because there is no public transportation so they get caught again and then they're thrown out and it just goes on and on and on. So I would like somehow for the federal government or whatever, to realize that ignition interlock is a good thing to be used and high-risk people are at a higher risk also to drive under suspension and realize that...or at least put that safety valve in there. But that's just a different deal for a different day. [LB924]

BEVERLY NETH: And I think with respect to...every one of our current ignition interlock provisions has some kind of a no...mandatory no-drive period and what...we currently have a 60-day no-drive period and what they're saying is there has to be a minimum of 45-no-day. So there is some, I guess, punishment aside, towards breaking the law. [LB924]

SENATOR JANSSEN: Yeah, and I can get that side of it too. It actually makes a little bit of sense that at least there is something out there...be good for 45 days or 60 days and

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

Transportation and Telecommunications Committee
February 08, 2010

you can get this... [LB924]

BEVERLY NETH: The ignition interlock, um-hum. [LB924]

SENATOR JANSSEN: ...ignition interlock. So I can see that side too. [LB924]

BEVERLY NETH: Um-hum. [LB924]

SENATOR FISCHER: Other questions? Senator Hadley. [LB924]

SENATOR HADLEY: Senator Fischer, thank you. Director Neth, I was just interested in this federal definition of high-risk offender. A couple of questions: If a person decides...refuses to take a test, how would they determine whether or not the blood alcohol was .15? [LB924]

BEVERLY NETH: Well you can't. You technically you cannot decide, if a person refuses to submit to a BAC test, you cannot decide. But I think in the statutes, and I'm sorry I did not look at that exactly, but I believe that that high-risk offender statute are parallel. There are no...I'm going to go back a second, that high-risk offender statute was amended after the first year because there was an incentive to refuse. The Legislature went back in and changed the high-risk offender law--I'm sorry don't know exactly how it was changed, but I can find out--so that there wasn't an incentive to refuse to submit to an alcohol...so you wouldn't be subject to those high-risk penalties; which are greater than driving at a lower BAC. [LB924]

SENATOR HADLEY: Okay, I guess that was my second question, we do in the Nebraska statutes have an equivalent of a high risk...isn't that what they call it... [LB924]

BEVERLY NETH: High-risk offender. [LB924]

SENATOR HADLEY: ...high-risk offender, in Nebraska statutes? [LB924]

BEVERLY NETH: We do, we do, that was adopted I think about three years ago Nebraska adopted that program. [LB924]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB924]

BEVERLY NETH: Thank you. [LB924]

SENATOR FISCHER: Are there other proponents for the bill? Good afternoon. [LB924]

NICK PADEN: Good afternoon, Chairman Fischer and members of the committee. My name is Nick Paden, spelled N-i-c-k P-a-d-e-n. I'm appearing today on behalf of Ignition

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

Transportation and Telecommunications Committee
February 08, 2010

Interlock Systems. My client, based in Iowa, is, due to a traveling conflict, was unable to make it today; asked me to come in and express our support for this bill and also thank you, the committee and committee staff, for the work that you've all done on this issue. And with that, I can try to answer any questions and that's all I had. [LB924]

SENATOR FISCHER: Any questions for Mr. Paden? I see none. Thank you very much. [LB924]

NICK PADEN: Thank you. [LB924]

SENATOR FISCHER: Other proponents for the bill? Any other proponents? Are there any opponents to the bill? Any opponents? Anyone wishing to testify in the neutral capacity? Good afternoon. [LB924]

COLEEN NIELSEN: Good afternoon, Chairman Fischer, members of the Transportation and Telecommunications Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n and I'm the lobbyist for the Nebraska Criminal Defense Attorneys Association and I guess this would be what is called officially negative neutral. I will say that the Criminal Defense Attorneys office...or Association talked about this bill at great length and felt that we should oppose the bill. That it is bad public policy not to allow an offender to drive to and from their probation office...officer's office simply because that is often part of their treatment and that a probation officer is often the person that they consistently see during the period of time that they are on probation. In any event though, I was...I tried to work with Senator Fischer's staff; they have worked very hard on this bill and I know the Department of Motor Vehicles has worked very hard on this. And I completely understand the considerations and consequently I am testifying neutral. And with that I'd be happy to answer any questions. [LB924]

SENATOR FISCHER: Thank you, Miss Nielsen. Last year with the way we...the way the bill ended up, I know your organization was supportive and I appreciate your support on that. You do realize that...I mean, my name is on this bill and hopefully it will get to the floor, hopefully we will pass it as it is; so I will not be ready to accept any amendments on the floor this year. Do you understand? [LB924]

COLEEN NIELSEN: Yes, Chairman Fischer, and I...we do not intend to try to amend this bill and that's why I'm testifying neutral here today. I just wanted to go on the record to say that...state that we do think this is bad public policy, so. [LB924]

SENATOR FISCHER: And I don't disagree with you on that. I think a visit to a probation officer can be considered treatment, but this is a case where the state...I believe the state's hands are tied and when you always have the federal government dangling out that they're going to pull your money for certain projects, whether it's roads or anything else, makes it very difficult for the state to change policy to what they think needs to be

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

Transportation and Telecommunications Committee
February 08, 2010

done. So I hope that you understand that too. [LB924]

COLEEN NIELSEN: I do, Chairman Fischer. Thank you very much. [LB924]

SENATOR FISCHER: Thank you. Are there other questions? I see none. Thank you very much. [LB924]

COLEEN NIELSEN: Thank you. [LB924]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? Seeing none, I will close the hearing on LB924 and close the hearings for the day. Thank you very much. [LB924]