

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON AGRICULTURE
February 14, 2006
LB 1162, 1034, 1197

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 14, 2006, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1162, LB 1034, and LB 1197. Senators present: Bob Kremer, Chairperson; Philip Erdman, Vice Chairperson; Carroll Burling; Doug Cunningham; Deb Fischer; Don Preister; and Roger Wehrbein. Senators absent: Ernie Chambers.

SENATOR KREMER: (Recorder malfunction)...our committee: to my far left is Deb Fischer from Valentine; next to her is Senator Wehrbein, he'll be coming soon; Senator Cunningham from Wausa; Senator Erdman from Bayard, Vice Chairman of the committee; Nikki Trexel is the committee clerk; I'm Bob Kremer; and Rick Leonard is our research analyst; Senator Preister from Omaha; Senator Burling from Kenesaw; and Senator Chambers may join us and may not, we don't know. So there are instructions. Oh, I forgot our committee page is Kallie Schneider. And if you have something to hand out, why, please give it to her. If you need a glass of water or anything like that, why, let us know and she'll help you out. We are going to change the order just a little bit. I guess Senator Brown had another...may be introducing a bill in some other committee, so we're going to start out with LB 1162, and then go with LB 1034, and then LB 1197. Please make your testimony concise. If somebody said the same thing that you wanted to do, you don't have to repeat it; you can just agree with what they said. And with that, I guess we'll open on LB 1162 and Senator Stuthman is here to introduce that bill. Welcome.

LB 1162

SENATOR STUTHMAN: Good afternoon, Chairman Kremer and members of the Agriculture Committee. For the record, I am Arnie Stuthman, representing the 22nd Legislative District. LB 1162 amends the current statutory language regarding the sale of cattle within a brand inspection area. The bill would allow a person selling cattle to show the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership. It would also require the original certificate of inspection to be filed in the record of the Brand Committee. I introduced this

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

Committee on Agriculture
February 14, 2006
Page 2

LB 1162

bill because I have heard from constituents that have had problems selling cattle in the brand inspection area. One complaint has been inconsistency amongst the brand inspectors. Another issue raised has been delays in receiving checks for the cattle sold. The delays are directly and indirectly related to having to relinquish the original bill of sale when only a portion of the cattle in that lot were sold originally. When the seller attempts to sell the next lot of cattle described on the original bill of sale, they obviously do not have the original bill of sale anymore. When I decided to take on this bill I realized that there would be strong opposition to changing the practices of the brand commission. I want to go on record today to ensure the brand commission that I'm willing to work with them to resolve these issues. I know that the work they do is very important in preventing fraud and keeping our livestock markets in working order. I'm very flexible with this bill and I am open to anyone's suggestion on how that we can improve this situation. I'm currently having conversations with many different groups, and I am looking into other venues to find and try to solve this issue. Finally, I would like to mention that this bill just scratches the surface of this issue, so I intend, depending upon the testimony that we have today, I intend to possibly introduce an interim study so that we may better understand the issues, and that is what my intention is. I want to hear the testimony today. But for what I want to happen this next summer is possibly having an interim study of which I will introduce to see if we can solve some of these problems. So with that, those are my opening comments and I do have testifiers behind me that will give you the actual experiences that they have encountered with such problems that I had just mentioned.

SENATOR KREMER: Okay. Any questions for Senator Stuthman? Senator Cunningham.

SENATOR CUNNINGHAM: Senator Stuthman, currently what happens to that original bill of sale right now? What do they do with it now?

SENATOR STUTHMAN: The original bill of sale? Maybe I should...the one testifier behind me can give you the practical illustration as to what happened to the bill of sale. The bill of sale goes with...and I'll give you the

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

Committee on Agriculture
February 14, 2006
Page 3

LB 1162

illustration. Say I had bought 100 head of cattle, put in the feed yard; I sold one load to a brand inspected area; I'm not in a brand inspected area. I send the original bill of sale along with that first load of cattle; that's the original brand paper. That goes with that first load of cattle. Two weeks later I sell the other load of cattle. There is no brand...original brand paper for that next load of cattle.

SENATOR CUNNINGHAM: So you want to just be able to present the original bill...?

SENATOR STUTHMAN: Present or work with having the Brand Committee accept a copy of it or a fax portion of it, stating also how many were marketed and then how many were left in that pen. And the testifier behind me has got the experience that he went through.

SENATOR CUNNINGHAM: Okay.

SENATOR KREMER: Any other questions? Do they...if you would sell half that group of 100, do they send the original back? Then what do you do the next time if you cannot present a duplicate?

SENATOR STUTHMAN: Well, in the instance that this gentleman that will testify, it seems that original brand paper got lost, and then there wasn't anything.

SENATOR KREMER: If it wouldn't have gotten lost though, would they send it back after and say that so many had been sold out of that group or...?

SENATOR STUTHMAN: I can't answer that.

SENATOR KREMER: Okay, we'll wait and ask them. Okay.

SENATOR STUTHMAN: Okay.

SENATOR KREMER: Senator Cunningham again.

SENATOR CUNNINGHAM: Was this a problem just, like, with just one individual, or are you hearing this as a general...?

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

Committee on Agriculture
February 14, 2006
Page 4

LB 1162

SENATOR STUTHMAN: I'm hearing this as a general occurrence that is happening. And the realistic portion of it is that when the next load of cattle was sent, payment will not be made until the original bill is produced. So it could be delayed by two weeks before you get the check for the cattle or longer.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR KREMER: Is this only a problem, cattle going from a nonbrand inspected into a brand inspected area, or would...does it happen also, a brand inspected area, into a...I mean sold within that brand inspected area?

SENATOR STUTHMAN: That I can't answer you because I'm dealing with a nonbrand area into a brand area. But I'm sure there will be testifiers that can deal with that.

SENATOR KREMER: We were just trying to stump you a little bit here.

SENATOR STUTHMAN: You gotta work hard.

SENATOR KREMER: Okay. Any other questions? Thank you, Senator Stuthman. First to testify as a proponent, please.

SCOTT MUELLER: Good afternoon, senators. My name is Scott Mueller, spelled M-u-e-l-l-e-r, and I am a proponent of LB 1162. I want to thank Senator Stuthman for introducing this as I am one of the producers who has had a struggle with the brand laws in our state. The situation that occurred to me was that in October of 2004 I purchased a group of cattle out of Belfield, North Dakota. I fed those cattle out and sold the first load to Cargill Meat Solutions in Schuyler, Nebraska, and received prompt payment for my cattle. Later on that summer I sent another load, only this time sold to Tyson Foods to be delivered to Lexington, Nebraska. Having sold cattle to Lexington before and it being in a brand territory, I was aware that either health papers or brand papers would be necessary to get the cattle marketed at that location. However, they got misplaced and I sent instead...or actually filled out a trucker's affidavit saying that the cattle originated in our feedyard. They did not accept that and said that I needed to send in my original bill of sale for those cattle, at which time I

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

Committee on Agriculture
February 14, 2006
Page 5

LB 1162

did not want to let go of my original, knowing that I had more cattle to be sold later...to sell later on. But they did not want to relent, so I then delivered my original bill of sale for those cattle. Unfortunately at that time it set in motion a chain of events that occurred, finalized in September. After the first group of cattle sold and I relented my original bill of sale, I contacted the state Ombudsman's Office and asked for their opinion if I needed to do that or if I could provide a copy of that bill of sale as evidence of ownership. And I have copies of their reply to me in which they agreed with me that a copy would provide reasonable evidence of ownership. (Exhibit 1) However the Brand Committee chose not to follow their decision and continued in their current practices. Then in September I sent another load of cattle into Lexington and was informed that I needed to have my original bill of sale, at which time I told them I did not have it anymore because they took it from the first group of cattle. They would not accept the copy that I retained for my own records and I have a copy of that, as well, as to deny the use of that one per Dave Horton, nor was there any other opportunity to prove ownership. They then sent me a letter signifying a livestock affidavit which I had to sign, signifying that the copy I had was indeed a true representative of the original and have it notarized. I then sent that back to the Brand Committee or brand inspector and they finally released my check for payment of those cattle. Then finally the third group of cattle I sold I ran into the same situation again; and when I informed them, can I have another livestock shippers affidavit, I was told that's only good for one time. Fortunately we resolved that issue and they again released my check. But three concurrent times I had difficulty selling my cattle within the state of Nebraska. I realize that the brand inspection procedures have a value for the state, and I am not trying to mitigate those in any certain way. But I would like to see four specific outcomes to this bill. The first is to clarify the ability to use copies of originals for ownership verification. The second is to exclude cattle originating from nonbrand inspection areas destined for harvest within brand areas. Third, to allow the USDA program requirements and procedures to preempt all brand inspection requirements. There are procedures out there through the USDA of marketing cattle to the European union that require the seller of the cattle to maintain documentation of all the original papers. And

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

Committee on Agriculture
February 14, 2006
Page 6

LB 1162

finally, that the sale proceeds shall not be withheld from the seller of cattle without reasonable proof of guilt. Rather than myself proving I am innocent, I would like to be proven guilty first. Thank you.

SENATOR KREMER: Okay, just a second. Maybe we have some questions. Any questions from the committee? Senator Preister.

SENATOR PREISTER: Mr. Mueller, you did go to the Ombudsman's Office after you had to surrender your original ownership certificate. How did you know about the Ombudsman as even an option for you to approach?

SCOTT MUELLER: That is not real clear. It was either through Senator Stuthman's office, or I think...or through the...it was through Senator Stuthman's office, I believe; yes.

SENATOR PREISTER: Okay. I'm glad you know about them, because it is an option that's there for people that they don't always avail themselves of, so I'm glad that you did. Your experience with them in contacting them was what?

SCOTT MUELLER: Excellent; they were very receptive. They returned my calls promptly and researched it and were very supportive and gave me, I thought, a very candid analysis of what their observations were.

SENATOR PREISTER: And that would be my assessment from the letter that they sent to you. And they, too, recommended that there no longer be a requirement for originals to be submitted; that a copy would suffice.

SCOTT MUELLER: Correct.

SENATOR PREISTER: And that was one of the four points that you were wanting to accomplish.

SCOTT MUELLER: Correct.

SENATOR PREISTER: Thank you.

SENATOR KREMER: But even after they determined that, then the packer did not accept that...

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

Committee on Agriculture
February 14, 2006
Page 7

LB 1162

SCOTT MUELLER: The packer was not at the discretion of whether they could return the check or not. That was up to the brand inspector to put a hold on that check.

SENATOR KREMER: I see.

SCOTT MUELLER: And as the state Ombudsman's Office informed me, they cannot require another state agency to perform an act, only give their recommendation.

SENATOR KREMER: Okay, thank you. Senator Wehrbein, and then Senator Fischer.

SENATOR WEHRBEIN: I wasn't clear, I missed it. Were these cattle branded out of North Dakota?

SCOTT MUELLER: Yes, they were.

SENATOR WEHRBEIN: Okay.

SCOTT MUELLER: And, in fact, I do have several documents which question the acceptance of an original. They would have accepted, had I had them, a carbon copy of a health inspection paper. They would have accepted a brand paper, which clearly states on here this is from the state of Nebraska, not good for proof of ownership, but they would not accept a copy of our livestock contract with the owner of the cattle, which both he and I had signed.

SENATOR WEHRBEIN: A bill of sale?

SCOTT MUELLER: A bill of sale.

SENATOR KREMER: Okay. Senator Fischer, did you have a question?

SENATOR FISCHER: I have a question on some of your points here. You would like to see that the sale proceeds are...they can't be withheld, unless you're proven guilty?

SCOTT MUELLER: Without reasonable proof of guilt, of fraud.

SENATOR FISCHER: What would happen though if, say, the feedlot or the packer or whoever, they send the check out

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

Committee on Agriculture
February 14, 2006
Page 8

LB 1162

and then find out six months later that there was fraud, how would they ever get the money back?

SCOTT MUELLER: Through the...either through the judicial system or through the confiscation of other assets.

SENATOR FISCHER: Okay. You got these animals from North Dakota and they were branded.

SCOTT MUELLER: Correct.

SENATOR FISCHER: Another of your points, you'd like to see that animals are excluded from the nonbrand areas if they go into brand areas.

SCOTT MUELLER: Directly to harvest.

SENATOR FISCHER: Oh, directly to harvest. Okay, thank you for clarifying that. Thank you.

SENATOR KREMER: I have a question a little bit along that line. If they could not withhold the check without some proof of guilt, wouldn't that take some time? I mean, you'd like to have them just issue the check immediately, then try to prove that there was...

SCOTT MUELLER: From the best of my awareness, these cattle were delivered to Lexington at the Tyson plant. There are approximately 5,000 head of cattle killed there each day, rough estimate, close to 1.3 million head per year, at which time a dollar per head is collected. In the time that Lexington has been open, my local livestock buyer informed me that a total of zero head have been found to be fraudulently sold at that plant.

SENATOR KREMER: Okay. But if they would issue the check and then find out there was some fraud or something, then they would have to try to go to legal...

SCOTT MUELLER: Through other legal means.

SENATOR KREMER: ...avenues. Okay.

SCOTT MUELLER: Which there could be criminal penalties for jail time.

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

Committee on Agriculture
February 14, 2006
Page 9

LB 1162

SENATOR KREMER: Okay. Any other questions? Thank you, Mr. Mueller, appreciate you coming. Anyone else wishing to testify in support? Anyone wishing to testify in opposition? How about in a neutral capacity? Welcome, Steve.

STEVE STANEC: Chairman Kremer, committee members, my name is Steve Stanec. Last name is spelled S-t-a-n-e-c, executive director of the Nebraska Brand Committee, here to give testimony on LB 1162. (Exhibits 2-6) I would like to start off by saying that we strongly support a legislative resolution study of any problems or concerns that may be raised here today. This is an issue that is readily disputed, if you will, within the legal community. It is an issue that has a lot of risks involved. The cattle industry, to the state of Nebraska, is worth billions and billions of dollars and deserves protection thereof. So I have prepared a rather lengthy testimony, however I will take five minutes of your time and just go over some of the high points that I feel are necessary. And if you so desire, you can review all the testimony at your leisure. One of the major statutory responsibilities of a brand inspector is to physically inspect animals and, from such inspection, determine true and correct ownership of all cattle sold, slaughtered or shipped outside the brand inspection area. Additionally, an inspector, upon completing said inspection, is obligated to transfer evidence of ownership title from seller to buyer by issuing a certificate of inspection. Statutorily a certificate of inspection is defined as an official document and shall be construed and is intended to be documentary evidence of ownership on all livestock covered by such document. All certificates are individually numbered and indicate the word "title." In its current form, Nebraska Statute 54-1,111 states "Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the Brand Committee." Keeping in mind what was stated earlier, that a certificate of inspection is an official document that establishes ownership/title of cattle listed. Similarly a bill of sale in the Livestock Brand Act is a formal instrument for the conveyance or transfer of title to livestock. A properly executed bill of

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

Committee on Agriculture
February 14, 2006
Page 10

LB 1162

sale means a bill of sale that is provided by the seller and received by the buyer. Also a bill of sale is given for the purposes of passing the absolute title in a written agreement by which one person transfers his right to, or interest in, goods and chattels to another. A bill of sale is a writing evidencing the transfer of personal property from one person to another. Also in Nebraska statute, "All livestock sold or otherwise disposed of shall be accompanied by a properly executed bill of sale in writing or, for cattle, a certificate of inspection." In determining true and correct ownership as well as proficiently transferring ownership to the new owner, a Brand Inspector must receive and take up the original evidence of ownership document to determine the authenticity of said document. If an inspector is negligent in this duty and ownership is not correctly determined, said inspector and the Nebraska Brand Committee can be held civilly liable for the value of the cattle involved. The Supreme Court, in Coomes v. Drinkwater, in 1967, stated, "While the brand statutes do not go so far as statutes dealing with transfer of title to motor vehicles in the sense of making title certificates the sole method of establishing ownership, their import is similar in many respects." Nebraska Evidence Rule 1002: Requirement of Original Documents, "To prove the content in writing, recording or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules by act of Congress, or the Legislature of the state of Nebraska, or by other rules adopted by the Supreme Court of Nebraska." The original document is not only important in determining ownership, it is definitely required when there is a responsibility in determining the authenticity of an evidence of ownership document. Nebraska Brand Investigators are deputy state sheriffs and have the duty and responsibility to enforce all state statutes pertaining to brands, brand inspection, and associated laws, and are responsible to investigate all problems associated thereof. Inspectors and investigators are responsible for the enforcement of the provision of the Livestock Brand Act, which not only involves theft of livestock and the illegal sale of cattle belonging to another, but also to determine whether or not a document is fraudulent or falsely prepared. Nebraska Statute governing false documents, states, "Any person who knowingly offers as evidence of ownership for any livestock sold, traded," et cetera "any forged, altered, or otherwise falsely

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

Committee on Agriculture
February 14, 2006
Page 11

LB 1162

prepared document or form is guilty of a Class IV felony." Not only do the statutes of the Livestock Brand Act ensure the protection of producers through the prosecution of violators, it acts as a deterrent to those who might be on the verge of doing something dishonest. I've offered to you copies of a Texas Health Inspection Certificate that was offered as evidence of ownership when the original document was unattainable. The original document was to cover the ownership of 72 head of steers and heifers shipped to Nebraska on 9-18-2003. This copy of the same document was offered two more times to clear cattle they no longer owned by changing the dates, as well as the head counts, to clear an additional 220 head of cattle. In the past 6 years, Nebraska Brand Committee investigators have successfully secured through their investigations 25 felony convictions and 8 misdemeanor theft and associated crime convictions in 21 separate Nebraska counties. The monetary values of potential losses to the victims in these cases were almost \$1,100,000. In all 33 cases, brand recording and brand inspection documents, as well as bills of sales, played a major role. A number of those cases were prosecuted in Holt County, Nebraska. I have also provided you with a letter from the county attorney outlining what he perceives as the importance of the original evidence of ownership documents and the retention by the Brand Committee thereof. Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of fact; that which makes evident or plain." "In some circumstances best evidence may mean that evidence which is more specific and definite as opposed to that which is merely general and indefinite or descriptive." So in determining evidence of ownership, an original certificate of inspection or an original bill of sale is currently the best evidence in establishing who the rightful owners of the cattle are when performing a brand inspection or prosecuting a crime of theft or fraud. Nebraska Livestock Brand Act in reference to evidentiary effect states, "Other documentary evidence such as bills of sale or certificates of brand clearance transferring title from an owner to another party may also be introduced as evidence of livestock ownership in any court in this state." There again, refer back to the Nebraska Evidence Rule and the requirement for the original document. Nebraska's Livestock Brand Act is consistent with most, if not all, the western states that provide brand inspection, ownership determination, transfer of title,

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

Committee on Agriculture
February 14, 2006
Page 12

LB 1162

et cetera, and that is illustrated in the copies of the letters from our neighboring states which I have provided to you for your review. With that, I would just like...I would have one comment here in that this is a very disputable issue within the legal community, as well. And I have a response here from specially appointed Assistant Attorney General with issues relating to the Ombudsman's letter that you have been provided earlier and the reasons why the Nebraska Brand Committee has the stand that it does. With that, I guess I have no further comments. I would be glad to try to answer any questions you may have.

SENATOR KREMER: Okay. Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: I have to admit, I can't quite...this can't be an original problem. I mean, I've shipped branded cattle out of my area west. I've never had any question whatsoever; never even gave it a thought, although I admit there was not a brand inspector because we don't have them. But I don't understand. There's got to be hundreds almost every day under these same circumstances.

STEVE STANEC: Yes, there are. We have people that are unable to provide satisfactory document of evidence upon sale or shipment, and their money is held until they're able to provide that document or that evidence or satisfactory proof that they are in fact the owners of those animals before they are allowed to ship or sell.

SENATOR WEHRBEIN: And I also missed another thing. Why do you accept a health certificate and not a brand?

STEVE STANEC: What we generally require in the position of...and there we go back to the best evidence. Coming out of the state of Texas, for example, all you will get is a health inspection certificate, if they are inspected to leave the state and come into Nebraska under the law; and we get a lot of cattle that aren't. But generally what we require then is the original health inspection certificate. And because there are no identifying characteristics on that as far as brands are concerned, we will write on that original health certificate that they sold X amount of cattle on such and such a date at such and such a market, take a copy of that document, and give it back to them. But then there again it's...you go back to the best evidence.

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

Committee on Agriculture
February 14, 2006
Page 13

LB 1162

Health papers do not show herd identification in most cases, because they are issued by a health official.

SENATOR WEHRBEIN: A veterinarian, usually.

STEVE STANEC: Right. So there are no markings or identifying characteristics on those papers. So if you look at a brand certificate, it has those identifying characteristics by the brand.

SENATOR WEHRBEIN: So then it takes a step...you have to go another step.

STEVE STANEC: Right. There are a vast number of things that we can accept as documentary evidence of ownership. And the hierarchy in that is brand clearance, which is an official document, a bill of sale which is a document that transfers title, and so on. If those documents are not available, you have to go to the best evidence that you can get.

SENATOR WEHRBEIN: So you have a higher standard then; the higher it is the hierarchy, the higher the standard is to prove it, isn't it? I mean you have to get...it gets more technical for lack of a better word.

STEVE STANEC: Right, it takes a lot longer to establish, in fact, if that document does apply to those animals; that was the health paper that I provided to you. The other thing, one thing I might want to bring up in reference to cattle being consigned from a nonbrand inspection area to a brand inspection area, I have documentation in my briefcase back there that would establish there are a lot of cattle that come from the nonbrand area back into the brand area and are carrying brands or ownership identification from producers that reside inside the brand inspection area. And we have a responsibility to produce (sic) all of Nebraska brand owners from theft and fraud, no matter where they originate.

SENATOR KREMER: Senator Fischer.

SENATOR FISCHER: Thank you for coming today. You made the comment that our brand inspection laws are similar to western states where brand inspection is required.

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

Committee on Agriculture
February 14, 2006
Page 14

LB 1162

STEVE STANEC: Right.

SENATOR FISCHER: What is required at the federal level?

STEVE STANEC: As far as ownership? Similar to brand inspection, none. The only requirement that I'm aware of is under packers and stockyards licensing of auction markets and so on, that when ownership of animals is questioned by a brand inspection agency, then they are to pay out those proceeds as instructed by that agency.

SENATOR FISCHER: So basically the USDA has no rules and regulations dealing with this.

STEVE STANEC: Not to my knowledge.

SENATOR FISCHER: Okay, thank you. In your letter you did mention animal ID I'm just curious, how do you think brands are going to play into the national animal ID requirements?

STEVE STANEC: Just in cooperation, they can go hand-in-hand. I don't think the national ID program is directed towards ownership, as brand inspection laws are not designed to protect against health issues. But they can, as they have in the past, worked hand-in-hand as in the cases of when brucellosis was a problem in the state of Nebraska, where they were tagged with metal tags. There was no mechanism to follow that number through to establish that that was the number that was originally given to that animal. And the national ID is the same. There was no mechanism in place, as of yet, to determine who's going to keep track of those records, how accurate are they going to be, and things of that nature. They can cooperatively work together as we are working now, but they'll never replace each other.

SENATOR FISCHER: I don't want to get you in trouble, however would you, in your opinion, personal opinion, would you support a brand area covering the whole state?

STEVE STANEC: I will say this, it would make our job easier in that it's easier to draw a boundary on a state line than a county line. People are more apt to adhere to laws when it's a state line. It would certainly increase our workload. We would have to increase our manpower, double

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

Committee on Agriculture
February 14, 2006
Page 15

LB 1162

our manpower, if you will, which would cost an astronomical amount of money, which we do not have because we are a self-supporting agency. We would have to come to the Legislature for appropriations for at least three to five years to make that happen.

SENATOR FISCHER: Thank you.

SENATOR KREMER: That question was out of order, by the way.
(Laughter)

SENATOR FISCHER: You know I had to slip that one in.
(Laugh)

SENATOR KREMER: Okay. Senator Cunningham.

SENATOR CUNNINGHAM: Well to ask another, more knowledgeable question then, would you be interested in eliminating brand inspection?

STEVE STANEC: I think that...

SENATOR CUNNINGHAM: I mean, so you didn't have to come to the Legislature and ask for more money.

STEVE STANEC: That is not a problem.

SENATOR CUNNINGHAM: That was just a joke anyway, I'm sorry.
(Laughter) I would ask you though, why is a copy of the bill of sale...why would that not be good enough?

STEVE STANEC: In some cases, it may be. However what you probably would run into is somebody offering you that copy versus giving the opportunity to view it for the authenticity of that document. As you saw in the health certificates, someone could alter a bill of sale and give you a copy and you could never tell whether it's been altered or not. The authenticity is a big issue. And without being able to view that original, which is something that's still going to have a lag problem, if you will, unless the producer hand delivers that to the brand inspector.

SENATOR CUNNINGHAM: Well, let me ask, you said you'd be willing to work with the introducer of the bill. Do you

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

Committee on Agriculture
February 14, 2006
Page 16

LB 1162

have any suggestion on how to fix the problem, because apparently there is a problem?

STEVE STANEC: That...no, I don't have one sound issue that would resolve all the problems, because if you resolve one problem, unfortunately, you'd probably create another one.

SENATOR CUNNINGHAM: But I mean do you see anything that you can do that might be somewhat of a compromise?

STEVE STANEC: Without being given a proposal as to what that might be, I really don't have an answer for you. I'd certainly be glad to work with the Nebraska Cattlemen's Association, with the senator's office, and anyone involved to try to come up with a satisfactory resolution to this. I don't have any sound answer to give you right now without someone proposing something that we can take a look at.

SENATOR CUNNINGHAM: But you're saying you would legitimately sit down and fairly work with the other side?

STEVE STANEC: Our committee is comprised of three ranchers in the industry and a feeder in the industry, as well as the Secretary of State acts as the chairman. They are producers themselves; they understand the industry. They are always willing to work with anybody to make the system better.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR KREMER: Senator Erdman, did you have your hand up? Steve, is there a brand inspector, say, in Lexington, because that's what was used in the illustration?

STEVE STANEC: Yes, we have 100 brand inspectors across the inside...

SENATOR KREMER: But is there one in Lexington that inspects every animal that is unloaded there? Because I...some of them are inspected at the feedlot, if they're in a brand inspection area.

STEVE STANEC: Right, right.

SENATOR KREMER: Now, some feedlots are certified feedlots that do not have to have a brand inspector there then, or

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

Committee on Agriculture
February 14, 2006
Page 17

LB 1162

what?

STEVE STANEC: Right, right. All animals that come in have received some form of brand inspection, whether it be at the feedyard or at the packing plant or coming from the state that provides brand inspection. We do have a registered feedlot inspection program within the brand area that all animals are brand inspected going into that feedyard. And when they are shipped to slaughter then there is not a duplication of inspection required.

SENATOR KREMER: But they do need to send along the papers showing their ownership of that.

STEVE STANEC: Right.

SENATOR KREMER: Do you...if part of a load or part of a group of cattle was sold, do you send back a copy stating that there's still some of these animals that are still retained in ownership by that feedlot?

STEVE STANEC: Right, right. If we are provided with a certificate of inspection out of Nebraska or any other state that provides that document, or a bill of sale, we will issue what we call a receipt for brands certificate which is generally the same information on an official document that only shows ownership to the balance of those cattle.

SENATOR KREMER: And that document would be sufficient then when they sold those cattle?

STEVE STANEC: Right, right. That actually supersedes or takes the place of the original document.

SENATOR KREMER: Of the original document then. Okay. Senator Cunningham.

SENATOR CUNNINGHAM: Then you lost me. What happened in this case? He got a document back that said he had X amount of cattle that hadn't been sold?

STEVE STANEC: I think what the situation there was, it was a...and I don't have the documents in front of me...that a bill of sale was offered. And I don't know that there was an identifying characteristics on that bill of sale. If we

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

Committee on Agriculture
February 14, 2006
Page 18

LB 1162

have a document that doesn't show those brands, then we cannot reissue a receipt back for brands because we don't know what those brands are. And if they are a group of cattle that are carrying numerous brands, we don't know if those cattle that were sold have the same brands as the cattle that are still at the feedlot unless we have a certificate of inspection or a bill of sale that has those brands noted.

SENATOR CUNNINGHAM: But you can see the problem that (inaudible).

STEVE STANEC: Right, which...that happens to a vast number of people that do not accompany their cattle to...

SENATOR CUNNINGHAM: Which would mean there definitely needs to be a solution.

STEVE STANEC: Well, I think...I don't know what the...you know, the lapse time between the mail and that was, but generally speaking, if there is not a problem or if the brand inspection certificate accompanies the cattle, the inspector will receipt a receipt back that day and give it to the packing house who sends out the checks, and that document goes back with the check, as long as they are willing to do that. Some establishments won't do that and we have to mail it ourselves, but generally speaking, the receipts for brands go back with the check.

SENATOR KREMER: With this document you gave us, was that to show that...

STEVE STANEC: They are easily altered.

SENATOR KREMER: ...that there was no identifying...?

STEVE STANEC: Right. Well, that actually is a case that shows there's no identifying characteristics, as well as that's a document that's easily forged and fraudulent in that you can alter it and give us a copy and no one would know that it was not a copy of the original.

SENATOR KREMER: Okay. Senator Cunningham, go ahead.

SENATOR CUNNINGHAM: Well, if they brought in the original,

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

Committee on Agriculture
February 14, 2006
Page 19

LB 1162

if they brought the original in instead of you keeping that and you determined that was a proper document, why couldn't you have taken a copy at that time and kept the copy and sent the original back?

STEVE STANEC: Going back to the Supreme Court's ruling on title of cattle, if you give them back the original, they still have a document that shows that shows they own X number of cattle with that brand on them, when in fact they do not; they now only own half that many cattle or whatever, and the new buyer owns that other group of cattle. So you have two documents out there of certificate of inspection for double the amount of cattle that are titled for the same cattle. So if you sell something that has title of ownership to it, you must transfer that title and give up that document as you would on a vehicle, house, whatever the case may be.

SENATOR CUNNINGHAM: Okay.

SENATOR KREMER: Steve, in your opinion, is there enough of a problem that something needs to be changed or clarified?

STEVE STANEC: Well, I think we need to look at the problem. It's obviously generated some controversy or interest that there is a problem. We certainly need to look at it and see if we can do something better.

SENATOR KREMER: Okay. Well, I think a lot of people are willing to sit down and do that. We want to make sure it's done in the right manner that it doesn't cause some other problems. So thanks for...any other questions for...? Thank you, Steve, appreciate you coming.

STEVE STANEC: Thank you.

SENATOR KREMER: Anyone else wishing to testify in a neutral capacity? Welcome.

MICHAEL KELSEY: Good afternoon, Senator Kremer, and happy Valentine's Day to the committee. My name is...

SENATOR KREMER: Thank you. Did you bring flowers?

MICHAEL KELSEY: I'm sorry?

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

Committee on Agriculture
February 14, 2006
Page 20

LB 1162

SENATOR KREMER: Did you bring flowers or anything?

MICHAEL KELSEY: Not...for my wife this evening, Senator.
So,...

SENATOR KREMER: Okay.

MICHAEL KELSEY: My name is Michael Kelsey, that's K-e-l-s-e-y. I'm executive vice president of the Nebraska Cattlemen. I'm here to provide testimony in a neutral position regarding LB 1162. Want to begin by appreciating Senator Stuthman for the concern that he's brought, and I've had an opportunity to converse with him about this. And I would say that we strongly support the idea of an interim study in the process to try to determine what we need to do to talk and address the issues that have been brought. I think the common theme that we've seen today in all testifiers is that there's a let's-work-together-type attitude and that there is progress to be made, if we can do it in a controlled environment, meaning that we can take steps, understanding what the ramifications of those steps may or may not be. To do something very quickly oftentimes can produce results that may be unintended or unforeseen, or something along those lines. I certainly appreciate Mr. Mueller's position and other members of the Nebraska Cattlemen that live either in or outside of the brand area, and the process of ownership is incredibly important. There is, and I would agree with Steve's position that there is a very valid place for brand inspection in the process of determining ownership and in the process of animal ID, which we will see coming to our industry in the future. I really appreciated Mr. Mueller's points, the four points that he made, and what he would like to see done. I would say I think that is an excellent testament that we need an interim study to look at this issue. He's thought out some of the process and he wants to look at some of these things; that's the purpose of an interim study, to do that. We would pledge to you and to the committee that we would be involved in that in a very open and fair fashion. We would like to facilitate that. And what we would like to see done is to move forward from here and not just put this on the shelf, if you will, and hope it goes away. We need to talk about this issue. And there may be an opportunity, as well, during this study, to look at other areas where the brand

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

Committee on Agriculture
February 14, 2006
Page 21

LB 1162

inspection system can be improved, can be made more efficient, and yet still protect ownership and the ability to prove ownership when and if that's necessary. So we strongly support the idea of an interim study. Our legislative committee weighed over this bill for quite some time. There's things we like, there's things we're worried about. We're somewhat torn to be truthful with you. So we believe that a study would be by far and away and we would commit that we would like to see that done and then see some action as a result of that. With that, I'll conclude and be happy to try to answer any questions if there are.

SENATOR KREMER: Okay, thank you, Michael. Any questions?
Senator Burling.

SENATOR BURLING: Thank you, Mr. Kelsey, for testifying today. Do you know, Mr. Mueller is out of the brand area, is that right?

MICHAEL KELSEY: Yes, sir.

SENATOR BURLING: Could he not have had the same problem had he been in the brand area?

MICHAEL KELSEY: That's a good question. I don't think so. And I would have to yield to Steve because he deals in those issues daily. I don't believe he would have the same issue, had he been in the brand area, simply from a consistency standpoint, so. But I would...honestly, I'd have to yield to Steve to answer that question.

SENATOR BURLING: I should have asked him, but I didn't think about it until now, so you're the guy.

MICHAEL KELSEY: I'm the guy. And I'm sorry, I would...let me do this, I'll commit to get you the answer and we'll get it to you.

SENATOR BURLING: Okay, thank you.

SENATOR KREMER: Well, the cattle industry is pretty unique. I doubt there is any other industry that has the money change hands in the cattle business by word...just by somebody's word and trust. It's amazing how smoothly it does work, but we still need to have some good proof too of

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

Committee on Agriculture
February 14, 2006
Page 22

LB 1162

those that...you detect people that don't want to be honest with it.

MICHAEL KELSEY: You're absolutely correct, Senator.

SENATOR KREMER: It's pretty unique anyway. Any other questions? Thank you, Michael. Anyone else wishing to testify neutral? Seeing none, Senator Stuthman, would you like to close?

SENATOR STUTHMAN: Members of the Ag Committee, I just want to close in stating that we have heard the concerns of several individuals, and I think we can hopefully resolve those with an interim study. I think, to me the issue is we've got the two areas, the brand area and the nonbrand area. In relating to Senator Burling's question, I'm under the impression that any time cattle in a brand area leaves that area, they need to be inspected. They would...that lot of cattle would have been inspected, the brand certificate would have accompanied them to the packing plant. When the next ones would have left that area, then the paper would accompany the next group. But coming from a nonbrand area, then the issue is a little different going into the brand area. And that's the way I understand it. But I think we can hopefully resolve some of these concerns with an interim study, and let the things air out so that we can get this. I think the biggest issue in my opinion is the time lapse of receiving the money for the product that you have consigned to the packing plant. And with the industry the way that it is now, a week or two late with their check has some effect on the producers, the feedyards, and everything like that. So I think that we can resolve this with an interim study.

SENATOR KREMER: Okay. Any questions for Senator Stuthman? Seeing none, thank you very much.

SENATOR STUTHMAN: Thank you.

SENATOR KREMER: That will close the hearing on LB 1162. Senator Brown, if you'd like to open on LB 1032, dealing with branded cigars.

SENATOR BROWN: Isn't it LB 1034? (Laughter)

SENATOR KREMER: LB 1034, yeah, did I say 2? Sorry,

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

Committee on Agriculture
February 14, 2006
Page 23

LB 1034

LB 1034.

LB 1034

SENATOR BROWN: Senator Kremer, members of Ag Committee, I am Senator Pam Brown from District 6 in Omaha, here to open on LB 1034. Senator Kremer insisted that if I was going to come and talk about this bill, that I bring cigars. So I have brought cigars. I do not smoke cigars; I don't smoke anything, but they are available here. They are a little bit old, I will warn you. They are actually Dominicans, which are legal, and they were developed for the White House; they're called Casa Blancas. They were developed for the White House when Reagan was President because people who like cigars were so desperate to have something that simulated the Cubans, and so these are supposed to be the next best thing. LB 1034...do you want one right now? I'll pass them around after I'm done. You'll have to just hold your breath until the hearing is over. LB 1034 allows the state of Nebraska to trade, as in barter, agricultural products for agricultural products. And in 2000, Congress passed the Trade Sanctions Reform and Export Enhancement Act. Farm groups had urged the passage of this legislation for essentially two reasons: one was humanitarian and the other was to provide a greater market for their products. And then after the passage of the bill, they urged codification of the lifting of the unilateral sanctions on commercial sales of food and ag commodities, medicine, and medical products to Iran, Libya, North Korea, Sudan, and Cuba. There were restrictions on financing and licensing that would be required for companies that were trading with these countries, but especially Cuba remained more restrictive and permanent in terms of the restrictions on the financing arrangement and licensing arrangement. I was in California visiting relatives at the time that Governor Heineman went to Cuba to do some of the negotiations under the terms of the Trade Sanctions Reform and Export Enhancement Act, and ended up at an event where someone had Cuban cigars. And so I started asking some questions, because at that time I had not read the Trade Sanctions Reform and Export Enhancement Act. And so I asked, and obviously nobody was willing to say how they had these cigars, but what a cigar would cost in various countries, and they said that these cigars from Cuba would

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

Committee on Agriculture
February 14, 2006
Page 24

LB 1034

cost about \$20 in Canada where they were legal, they were Cohibas, would probably cost \$50 on a black market in the United States. And so I said, okay, so what do you think that they cost in Cuba, like on the street in Cuba? Or what would be the wholesale cost in Cuba? And somebody speculated between a quarter and 50 cents. So I was just doing a purely economic calculation that a bushel of corn costs...well, sells for about \$2, so you get maybe 5, maybe more than that, cigars, for a bushel of corn, and they sell for \$20 even where they are legal in Canada. So I came back and read the Trade Sanctions Reform and Export Enhancement Act and it really did not preclude the trade, as in barter, of agricultural products. It left that kind of open. What I did not read further into the statutes were the regulations for the Treasury Department in terms of the purchase of Cuban items, which says that no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in any merchandise that is of Cuban origin, has been located in or transported from or through Cuba, is made in whole or part from any article which is the growth, produce, product, or manufacture of Cuba. Which that law remains in place, even though the Trade Sanctions Reform Act leaves a little window for the sale of U.S. products in Cuba. And if a violation of this regulation then leads to the Trading with the Enemies Act, which was an act passed during World War I, which allows, during times of war or hostilities that would include Cuba, for the confiscation of about everything that you've ever thought of owning, and your children, too. So that presents a little bit of a problem. But...and then one of our colleagues asked me if this was an attempt to change the politics, the political climate, with Cuba, this bill. Well...and asked me if I realized that at one time Cuba attempted to blow up the world. Well, actually I do remember it; I was a child. We lived in Alaska at that time; my dad was in the military. We, because of the Cold War and the things that were going on, I had at least twice a week where we would do air raid kinds of things and we would that our social studies book and put it over our heads, because that was the fattest book we had, and you know Alaska is just so close to Russia, and the USSR, at that time, that there was an assumption that we would be the first target. My father was called back to the United States because of the Cuban Missile Crisis and was on alert for about three months. And it was at a time before there

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

Committee on Agriculture
February 14, 2006
Page 25

LB 1034

were cell phones and so he couldn't go anywhere without them knowing where he was going to be in case they needed to invade Cuba. I would just say, and this is not a political issue, but I would say that a lot of the things that have informed our dealings with Cuba were at a time when the USSR was intact and was financing what was going on in Cuba. And it was at a time before most of our textiles and manufactured goods were coming here from China. But back to the TSRA. There is, from what I can tell, no barring of barter, and so there might be the possibility of some sort of independent, third-party, outside of the U.S., transaction. There is also in Omaha a free trade zone. Now I don't know how that plays into this at all. But there may be some ways that we could look at doing something that would actually be a value add to the agricultural community. If it isn't, then it's not even worth talking about. I think that it's interesting to look at...I mean...and it's just a commentary on our society, that products like dry edible beans that sustain life are valued at less than a product like a cigar or even Cuban rum, which are less good for life and yet we pay a lot more for these. And so I'd be glad to answer questions.

SENATOR KREMER: Thank you, Senator Brown. Do we have questions? I have a couple. The grievance that...when Governor Heineman went to Cuba, the state did not sell the products. It was private businesses that did that.

SENATOR BROWN: Right. Private businesses that are licensed through the TSRA to sell those products.

SENATOR KREMER: Okay. So if something like this would happen, it would have to be in barter with that private business with Cuba. Then they would have the ability to sell them, or...because...

SENATOR BROWN: No, they couldn't directly, because of the limitations on any sort of...

SENATOR KREMER: So tell me the logistics of...

SENATOR BROWN: ...involvement of a U.S. citizen in any sort of product.

SENATOR KREMER: So they would have to bring them back here,

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

Committee on Agriculture
February 14, 2006
Page 26

LB 1034

sell them to the state, then the state would...

SENATOR BROWN: No, that was...that is pretty clearly precluded. One of my ideas was, well, if people are so interested in these, this might be a way to get people to come to Nebraska, if you could sell them in Nebraska. But there is that pesky supremacy clause, that (laugh) federal legislation trumps our legislation. The only way that I could see that it could work is...and it would probably jeopardize the licensing for the individual businesses, but if the individual businesses had some sort of third-party arrangement where the third party would accept the contraband and sell it in another country, it would have to be done at arm's length in another country. It could not be done in the United States under the restrictions that we have.

SENATOR KREMER: Who are you proposing that would sell these cigars in Nebraska?

SENATOR BROWN: Well, I pretty much have said we can't do it, so. I mean, if it could be done, you would have to do it through the same original channels, I mean the same channels that sell any kind of tobacco products or any kind...you would have to meet all the licensing requirements that there would be. But under the terms of the Office of Foreign Assets control, Cuban assets control regulations, basically, unless we want everything in the state of Nebraska confiscated by the federal government in order to do this. I don't think it's probably a very good idea.

SENATOR KREMER: Would this be a candidate for consent calendar, do you think?

SENATOR BROWN: Oh, very possibly. It depends on what the senior senator would think of it.

SENATOR KREMER: (Laugh) Okay. Any other questions? Thank you, Senator Brown. Anyone wishing to testify in support? How about testimony in opposition? How about in a neutral position? Would you like to close, Senator Brown?

SENATOR BROWN: I'll just pass the cigars around.

SENATOR KREMER: Thank you. That will close the hearing on

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

Committee on Agriculture
February 14, 2006
Page 27

LB 1034, 1197

LB 1034. We'll now open the hearing on LB 1197, and Senator Wehrbein is here to introduce the bill. Senator Wehrbein, any time.

LB 1197

SENATOR WEHRBEIN: Yes, I'm getting organized here. Good afternoon, Senator Kremer and members of the Ag Committee. I'm Roger Wehrbein, representing District 2, here to introduce LB 1197. This is titled the "Adopt the Feed Bank Licensure Act." There's going to be several behind me or at least some that are going to talk about the details of this. A short summary: This provides for a voluntary programs of licensure and bonding of feedlots that accept grain from depositors for feeding to the grain depositors' livestock placed at the feedlot to preserve the depositor's interest in the grain against encumbrance by the feedlot. The bill also requires disclosure by certain purchasers of grain who are not licensed and bonded under grain laws. There's quite a detailed explanation that I think some behind me will talk about. The reason I accepted the bill, and (inaudible) frankly came from a feed and grain dealers association, is because there is a gap, if you will, in our licensure laws in part of the industry. And I recognize that not all of the feedlot industry or the ethanol industry is enamored with this bill, but there's a certain amount that do fall out from under the warehouse receipt program that we have or the warehousing bonding and so forth that fall under Public Service Commission. And so I think this is an issue that needs airing, if nothing else, because there are quite a few lots, feedlots and ethanol plants, that do not fall under any control at this point under the grain bank provision where title does not pass until the feed is used or until it's paid for or utilized. And this is an effort to look ahead, if you will, to protect those depositors that bring in grain, because as of now in many cases there is no protection other than the good word of the people. And it's not to cast anything on anybody, it's just the fact that there's a surprise every now and then, and I would be so bold to predict there may well be a surprise in the next year or so because we've had a surprise every now and then over the years under these kind of circumstances. So I think it's a bill for discussion. Frankly, I'll say right up front, it may be a candidate for intense scrutiny in a

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

Committee on Agriculture
February 14, 2006
Page 28

LB 1197

summer study. I think there's an effort that maybe we want to talk about simply warning potential depositors that they will not be covered if they were delivering grain to certain organizations. But it's really an effort to open it up and get discussion and frankly look for suggestions to see if there's some protection. Because once the horse is out of the barn, as we all know, it's too late to go back and try to recover. We've had cases where even with audits and things like that, it hasn't been perfect. There has not been full recovery on the part. So I think this is an area that in a sense it's kind of reluctant to open up because I know there is resistance. On the other hand, I think all people, producers are going to need some kind of protection, and this behooves us to start us down that road.

SENATOR KREMER: Okay. Thank you, Senator Wehrbein. Any questions? Seeing none, thank you, and we're ready for the first proponent. If you go back and forth in speaking, you'll have to identify yourself each time so that the transcribers will know.

DARIN HANSON: Okay. Senator Kremer and the members of the Ag Committee, my name is Darin Hanson, D-a-r-i-n H-a-n-s-o-n. I'm the area manager for DeBruce Grain Company at Nebraska City. Along with our executive vice president, Pat Ptacek, we are here appearing in support of LB 1197. (Exhibit 7) I will be sharing my testimony along with Pat today, and at the end of this we'll be open to any questions that you may have. The NGE, the Nebraska Grain and Feed, is a 109-year-old nonprofit trade association with members representing a cross-section of large and small, private and cooperatively owned grain elevators, feed mills, ethanol facilities, and allied industries throughout the state and region. The Nebraska Grain and Feed also represents over 85 percent of the commercial storage within the state. We would like to thank Senator Wehrbein for introducing the bill because it provides a risk management tool that feedlots could utilize under their grain banking programs. The bill establishes a voluntary grain bank, license and bond administered by the PSC for custom livestock feeding operations. Currently, Nebraska custom feedlots, processing facilities such as ethanol plants, are exempt from the PSC regulation. A primary goal of this proposal is to provide producer depositors with access to information on and distribution of grain bank inventories/proceeds similar to

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

Committee on Agriculture
February 14, 2006
Page 29

LB 1197

the manner prescribed under the Nebraska Grain Warehouse Act. The maximum amount of the voluntary bond would be set at \$150,000. Currently, grain warehouses are required to carry a bond anywhere from \$35,000, up to a maximum of \$500,000, and dealers are required to carry a minimum of \$35,000 or a maximum of \$300,000. The bill would authorize the PSC to take title to grain bank inventories and distribute proceeds prorated to depositors. It should be noted here that the program only attempts to preserve the depositors' security interest in the grain deposited. It does not attempt to preserve title in the grain with the depositor since sufficient interest must pass to the feedlot to enable the grain credited to depositors' accounts to be commingled, processed, and dissipated. While nothing under the proposal requires licensure bonding for a grain bank, the draft contains a provision that would require significant purchasers of grain who are not licensed and do not offer bond protections to depositors of grain to disclose the fact on scale tickets or contracts. The statement would read as follows: Company A, and this is what would be on that, Company A is not a licensed and bonded Nebraska grain dealer or warehouseman. State law does not require this facility to be licensed by a Nebraska Public Service Commission. This facility does not carry a grain dealers or warehouse bond, therefore there is no bond coverage for your protection if you are not paid for your grain. That is what the producer would see when delivering that. This is not to accuse anybody of anything, but really it's a way of educating the producer of the current standards right now for the state of Nebraska. And I guess what I'd like to do right now is to turn it over to Pat and have him talk about some of the other issues we're looking at right now.

PAT PTACEK: That's okay, Senator. My name is Pat Ptakek, that's spelled P-t-a-c-e-k. I'm the executive vice president of the Nebraska Grain and Feed Association. And about three years ago, Senator, as you well know, we started this process in regards to trying to secure and maintain depositors' interests after the Atlanta debacle in which that facility failed. And we were successful, after about three years of not only a couple of additional bills, but rules and regulations, to finally kind of even things out and sort of level the playing field and have the kind of understanding exactly where dealers, warehousemen, and

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

Committee on Agriculture
February 14, 2006
Page 30

LB 1197

dealer warehousemen now stand. As you know, the laws under LB 735 and LB...I think it was 439 passed last year, basically allow or it makes those warehouses that are both, not only dealing in warehouse grain but also direct deliver grain, to be duly licensed as a grain warehouse and a grain dealer. And as Darin already alluded to, right now those bonding requirements for a warehouse are from anywhere from \$35,000 to \$500,000 bond, and many of them also are carrying that maximum \$300,000 bond for the seller's protection or the depositor's protection. Again, as we said, we went through the hearing process three years ago and some of the other safeguards that we put into place would require state-licensed warehouses that engage in both warehousing and destination delivery of grain to have both a warehouse and a grain dealer license bonding requirements. It also established an aggressive schedule of fines to address certain and repeat violations of state warehouse laws, including charging for additional PSC inspections, and it also extended current PSC protections to additional merchandising activities, improved monitoring of unlicensed grain dealers, and establishing civil penalties for nonpayment. However, another very important outcome of these new rules and laws has committed all parties to design and launch an aggressive industry campaign, an educational campaign. And as a matter of fact, dealers must now also disclose an expanded warning to seller for direct delivered grain. And, if I could, I'd like to have this handout (Exhibit 8) which clearly states that four licensed dealers, and if you notice this last paragraph is the warning to seller that has to be on all receipts and all your contracts now, to make sure that we are telling the seller of grain exactly what...that these are sort of the playing rules for them to receive payment within a timely manner or, if they do not receive payment, what sort of recourse they have under the Public Service Commission. The Grain and Feed Association believes strongly that the disclosure language in this bill is particularly needed to bring additional educational efforts discussed by the PSC, the Grain and Feed Association, the Nebraska Cooperative Council, a full 360 degrees. These educational efforts will get underway shortly, and include information for warehouses, dealers, and producers. And while the NCF supports a healthy and robust livestock feeding market and a growing ethanol industry, the fact remains that many producers are exposed to potential losses without recourse to the PSC to

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

Committee on Agriculture
February 14, 2006
Page 31

LB 1197

intervene. The Grain and Feed Association would rather have livestock operations and other consumer processors of grain purchase from and therefore take advantage of the protections and bonding coverage state and federally licensed warehouses already carry; many already do. We are only asking for some transparency and some accountability. In 2003, the Nebraska Department of Agriculture records showed that 658 individuals and companies making the first purchase of grain after harvest were paying state checkoff fees, including 290 custom feedlot feeders in the state exempt from current PSC regulations. As of December 2005, the Department of Agriculture reported that 287 livestock feeding operations, 212 grain warehouses, 57 grain truckers and dealers, 24 feed formulators, 10 seed companies, 8 ethanol plants, and 2 poultry feeding operations had remitted the checkoff. Therefore, in 2005, 331 or more than 55 percent of the first purchasers were exempt from any PSC licensing and bonding authority. This also does not take into effect the many unlicensed in- and out-of-state dealers defying the law. And as a matter of fact, I'm a little disappointed today that the Public Service Commission this week decided not to endorse this bill. We had gotten some indications in the past that they would be supportive of this. Unfortunately they were not. We are obviously engaged in those educational efforts with our partners at the Co-op Council and the Public Service Commission, however we're also frustrated because there are many of our folks, especially in the dealer and the warehouse dual dealer program, that feel like we're guilty before proven innocent in the way that we are being examined at this point in time and the scrutiny coming down upon us when we know that there are a number of grain dealers doing business in this state that are unlicensed and unbonded as of this date. And as a matter of fact, the PSC asked us to send out a notification to our members that after a full year and a half of notifying a Salina, Kansas, company that they should be licensed and bonded in the state, the PSC has finally told us to stop doing business with them, in case we were, because they weren't licensed and bonded. We think that that is a lack in some of the protection that should be afforded to legitimate grain dealers and warehouses in the state. The Grain and Feed has supported serious reforms to the current PSC grain laws, including the addition of producer-depositor protections that have cost more in licensing fees, bonding amounts, and paperwork. The

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

Committee on Agriculture
February 14, 2006
Page 32

LB 1197

commercial livestock feeding and ethanol industries have become a major purchaser of commodities from producers and elevators alike. And while they've added to a healthy and competitive market for farmers' grain, they do so without sharing the regulatory obligations of warehouses and grain dealers. The time has come to develop a voluntary grain bank license and expand the grain seller's knowledge about which commercial entities are and are not required to be licensed and bonded for their protection. While we've not received one negative comment about the voluntary grain banking proposal, we have received several very positive suggestions that we would like to potentially express our interest to the committee today in working on an interim study and expanding the voluntary grain banking proposal that would not only allow it as a voluntary means of risk management for producers who have cattle and corn in the same feedlot, but also reward that voluntary grain banking person by putting disclosure language on that says he is afforded protection through the voluntary grain bank, or that he does purchase the majority of his grain through a licensed and bonded entity for that producer's knowledge and for his security. We would also like to suggest that the committee would advance this bill today, LB 1197, with the disclosure language in place, but potentially perhaps delay the operative date until July 2007, if that would be permissible, to allow this committee to explore what we can do to make this voluntary grain bank proposal better and to reward those people that voluntarily go out and actually obtain one of these bonds on their own and disclose that fact to their depositors. With that, we appreciate this committee's time and attention. After three years we know you've gone through some warehouse fatigue. We look forward to working with you again constructively on the feed bank proposal and an interim study, but we are dead serious that we'd love to see this bill come out with the disclosure language, which does not splash any guilt on anybody, it's just a statement of fact.

SENATOR KREMER: Thank you, Pat and Darin. Any questions? Okay, Senator Wehrbein.

SENATOR WEHRBEIN: I just wanted to ask, are you going to pass this out about the audits that you had...I'll make a copy of that...the failures? Do you have a handout on that? (Exhibit 9)

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

Committee on Agriculture
February 14, 2006
Page 33

LB 1197

PAT PTACEK: No, I don't have a handout on that.

SENATOR WEHRBEIN: I want to make a copy and hand it out for the record.

SENATOR KREMER: What would be the incentive for a feedlot or ethanol plant to be voluntarily bonded under the...?

PAT PTACEK: Well, one of the things, I think it's the best management practice, Senator. I think in this day and age of business I think you want to know who you're doing business with. I think the vast majority of cattlemen who have cattle in a feedlot know and trust those people to have this. It's just another tool that I think can be put into place, it can be part of, again, best business management practice for that feedlot to have in place, and it also ought to give them a pat on the back if we can actually work this bonding license out, this grain banking bond out, to actually give them credit by disclosing the fact that they have gone the extra step, the voluntary step, in securing some additional security for them in case of failure. And I've got to say right now I would say there are several ethanol facilities that have already become voluntarily licensed as dealers in the state.

SENATOR KREMER: I think...I know of one feedlot and maybe a couple of others that have...the bank has taken a secondary lien on the grain there, so that they're saying that the feedlot isn't in good enough financial shape that we're willing not to even have a lien on that grain. Is that the tool that would be...?

PAT PTACEK: Well, I think under the structure of the bill what we're trying to avoid is any conflict with the bank in the first place. We're looking at this as sort of a pledge against your cattle in that feedlot as well as banking that grain against it. We don't want...we would rather see those proceeds basically going into the feeding of the cattle. And so under this concept that we've formulated, under an interim study in 2004 when we originally sort of kicked around the idea about the disclosure and the voluntary language, one of the essential issues that we wanted to avoid was any conflict with the banking interests.

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

Committee on Agriculture
February 14, 2006
Page 34

LB 1197

SENATOR KREMER: I remember when this was discussed before, there was going to be some effort on the part of, I think, the banking industry and the grain industry and many of the farm organizations to do some education because there are some tools that a seller of grain to a feedlot can use now in filing a lien and things like that. I don't know...do you know if anything has been done with that?

PAT PTACEK: That's why we're here today, Senator; we're kick-starting the process once again.

SENATOR KREMER: Okay. Any other questions? Thank you.

PAT PTACEK: Thank you, I appreciate it.

SENATOR KREMER: Next proponent, please. Welcome.

ROCKY WEBER: Mr. Chairman, members of the committee, my name is Rocky Weber; I'm a lawyer with the Crosby Guenzel Law firm here in Lincoln. I'm appearing today on behalf of our client, the Nebraska Cooperative Council. The Nebraska Cooperative Council represents approximately 56 grain and supply cooperatives in the state of Nebraska which have a combined membership of over 49,000 members. When the Cooperative Council sits down to look at legislation or draft legislation, it is interesting because the boards of directors and managers of the cooperatives come to the table with their farmer hats on, and it's very difficult for them to separate the two. And so when the cooperative industry takes a position on something, it's taking a position often as what's in the farmers' best interests, because they believe that's what's in the cooperatives' best interest. That is absolutely indicative of why cooperative associations have been successful over the years in agriculture. We are testifying today in support of LB 1197. We believe that this is a continuing effort to provide public protection, producer protection, in areas of grain production. Over the last three years this committee has been very involved in legislation in an attempt to respond to, first of all, some grain warehouse failures that cost many producers tens of thousands of dollars and also respond to various dealer problems that also cost tens of thousands of dollars. We created in the state of Nebraska a public policy that said in order to have financial responsibility and fiscal responsibility in dealing with Nebraska's grain

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

Committee on Agriculture
February 14, 2006
Page 35

LB 1197

producers, licensed warehouses must also become licensed dealers. There must be two bonds available to protect the producers in dealing with warehouses and dealers. And in doing that we ran into some conflict about some commercial practices of direct shipment of grain and we were able to resolve those issues, and the Legislature last year passed LB 1149 which authorized direct shipment of grain, again with the sole goal of protecting the commercial enterprise of the sale of grain in Nebraska, while at the same time protecting the producers' interests in grain. We believe that LB 1197 advances those interests, seeks to protect the ownership interest in grain when grain gets out of one's possession. We also believe that the disclosure language contained in LB 1197 is very good and appropriate to help protect the producers. The support of the council, however, is qualified. And what the members of the legislative advisory committee talked at great length about was whether or not this was an appropriate extension of current regulatory and licensing authority when there still exists, they believe, some gaps in current regulation and licensing for Nebraska's grain warehouses and grain dealers. And that gap is very simple, and that gap is that when you look at financial responsibility or fiscal responsibility for those who are purchasing the commodities from our farmers, are we doing a good job as a state and do we have the policies in place to make sure that the farmers are dealing with those who can pay for the grain they're purchasing and storing? Today, the Nebraska laws and regulations allow both audited financial statements and reviewed financial statements, not audited, to be submitted in support of a licensure application or a renewal application. There exists today a history of failures over the last several years. And I believe that Senator Wehrbein, you might have had that copied and passed out to the committee already, and it's titled "Audits-Reviews/Grain Failures." And what this document indicates...and this was prepared by John Fecht, the director of the Warehouse Department of the Nebraska Public Service Commission at the request of the Cooperative Council...and what it reflects is that since 1992 there have been 11 failures of either dealers or warehouses in Nebraska where claims have had to be paid on the bonds, and in some instances there were no claims paid because enough grain was recovered. However, all but one of those failures provided simply a financial review and not an independent audited financial statement. There was one that did provide an

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

Committee on Agriculture
February 14, 2006
Page 36

LB 1197

audited financial statement, so only one failure in seven instances with financial reviews, there were failures in each instance. We believe that this is indicative of the concept of financial responsibility for the industry. You know, there are other industries that the state regulates where financial reviews and audited financial statements are looked at. One area is the banking industry. They are inspected, they are audited, and those audits are made public and filed with public officials for review by the public. We know whether our banks are capable of handling our deposits. The other area is in the insurance industry. Every year insurance companies must file independent audited financial statements, as well as statutory financial statements required by the Department of Insurance, again so we the public know whether these companies have the financial ability to hold our risk. And on a very personal level, each of us has to show financial responsibility when we go and license our automobiles so that the public at-large knows that we are insured and that we have the financial wherewithal behind us in order to pay for damages if we are negligent in the operation of our motor vehicles. We think that the same concept should apply to the grain industry. Before we extend it to feedlots, ethanol plants, or other areas, we think that the regulation and protecting the industry starts at home with the grain warehouses and grain dealers. I have handed out...I've had the clerk or the page hand out today a proposed amendment that the Cooperative Council would propose which would make audited financial statements mandatory for licensed grain warehouses and grain dealers. (Exhibit 10) We believe this is the first step and a primary step in creating financial responsibility to protect Nebraska's producers. Today when somebody sells a semi load of corn, we're talking tens of thousands of dollars over the course of a harvesting period, sometimes into the hundreds of thousands of dollars of grain that moves quickly. And dealers buy grain, warehouses store grain very quickly, and the public at-large really doesn't know whether or not there's financial responsibility behind the purchases of the grain and whether or not they're going to get paid. In many instances, bonds are not sufficient to cover the losses, but again requiring those companies in the business to have the financial wherewithal to do the business and protect the producer is where we believe this starts. So again, the council supports LB 1197. We support it with, however, the amendment that we require audited

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

Committee on Agriculture
February 14, 2006
Page 37

LB 1197

financial statements for licensed and regulated grain industries. And at that I'll close and take any questions.

SENATOR KREMER: Okay. Any questions for Rocky? Senator Burling.

SENATOR BURLING: Thank you, Mr. Weber. It probably says in here, but I haven't found it. Are you talking about annual audits?

ROCKY WEBER: Yes.

SENATOR BURLING: Okay. And that's where they count all the kernels?

ROCKY WEBER: Well, that's part of where they count all the kernels, yes. (Laughter) And there's also provisions in the law that allow if the Public Service Commission believes there may be a problem, the Public Service Commission can ask for a recount of all the kernels in the interim period between licensing dates, as well.

SENATOR BURLING: Thank you.

SENATOR KREMER: Any other questions? Rocky, the biggest debate in the last several years has been the audit and the review. And it was sort of a compromise. Where it shows that several of these have been failures for review, how many times do you think the review indicated something was wrong and caused further investigation, so...? I mean, are you saying it's because it was just a review that there was a failure, or...?

ROCKY WEBER: I think the problem, Senator, is that the review is an internal financial statement prepared by the license applicant that is submitted without any independent, outside verification of the financial information put down on the review. And so when you have an independent audit done according to generally accepted accounting principles, you have a licensed auditor or certified public accountant who puts their signature down as a professional, saying, I have independently reviewed the information and the data that supports the numbers on this financial statement. And if they say they have this type of capital, they have this type of capital. If they say they have this type of

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

Committee on Agriculture
February 14, 2006
Page 38

LB 1197

liabilities, they have this type of liabilities. It's a much easier way to verify, for the public to verify the financial wherewithal of the companies they're doing business with.

SENATOR KREMER: Because I believe at the time the Public Service Commission felt that a review would be an indication that something was wrong, and they could then call for an audit. Is that correct?

ROCKY WEBER: The current law as it currently exists, there is a provision that if the review indicates a problem or the Public Service Commission staff believes there is a problem, they can in fact require an audit. We believe that the history in the last 14 years, however, would indicate that we should proactively stop any further problems like this by requiring just independent audited financial statements up front so that it's not too late when the Public Service Commission can step in.

SENATOR KREMER: Okay. Well, as I look at this I'm trying to clarify in my mind, because quite a number of these were review, but there was no losses. So I'm just wondering if the review did trigger something so that it was effective at that time, or what the connection is between...

ROCKY WEBER: You know, I'm not certain in each instance at what point the Public Service Commission stepped in, whether it was the point at which a review was filed. I know in one instance here that I have personal knowledge of, the Public Service Commission stepped in when the bonding company went to write a new bond for the next license year and so, you know, there are those types of things that are triggered as well, so I don't know at what point they stepped in. And no losses may simply mean that they couldn't meet the financial requirements for licensure by getting bonding, primarily probably, and so therefore they were put out of business, but there might have been enough grain or bond proceeds available to cover all of the depositors' losses.

SENATOR KREMER: Okay, because I could read this both ways. I could say that the review was effective and I could say it wasn't. If it's because it was just a review that there was a failure, or if it was because the review was successful that there was no losses. So I'm trying to know how to

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

Committee on Agriculture
February 14, 2006
Page 39

LB 1197

interpret this and I'm not sure that I can.

ROCKY WEBER: Well, I guess we would take the position, Senator, that when one has to undergo an audited financial process where you have an independent auditor coming in, that the verification of the actual financial resources of the entity is much higher from the point that audit is done than with just a review.

SENATOR KREMER: And you could see a trend earlier to take action much earlier with an audit, I would guess.

ROCKY WEBER: That would be my opinion, yes.

SENATOR KREMER: Okay. Did you spell your name? I'm not sure.

ROCKY WEBER: I don't know if I did. My last name is Weber, W-e-b-e-r.

SENATOR KREMER: Okay. Any other questions for Rocky? Thank you very much for your testimony.

ROCKY WEBER: Thank you.

SENATOR KREMER: Anyone else wishing to testify as a proponent? In opposition?

DUANE GANGWISH: Good afternoon, Senator Kremer and members of the committee. My name is Duane Gangwish, D-u-a-n-e-d G-a-n-g-w-i-s-h. I've handed the page a letter from one of our members who is a feedlot owner in the western part of the state that I'd like to enter into the record. (Exhibit 11) I wanted to thank Senator Wehrbein for bringing the issue to the surface. My comments will be brief and then I'd be happy to answer any questions. The bill would have the broadest impact on the feedlot industry in Nebraska. It's a bit regrettable, however, that the grain dealers association has not contacted or had any discussion with the feedlot operators of Nebraska who would be the regulated persons. We would however be interested in trying to find some solutions that might take place outside of statute. Although the bill is presented as a voluntary issue, we see most of the bill, Sections 1 through 11, as being voluntary. However Section 12, where it talks about

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

Committee on Agriculture
February 14, 2006
Page 40

LB 1197

the description of what shall be on a scale ticket, does not appear to be voluntary, but however it appears to be mandatory. We don't...we are displeased with that. There are several questions that I had in regards to the bill, or we as our organization. One of the factors that oftentimes in feedlots is used as damaged grain or in substandard grain that's used in the feeding industry, and there aren't any provisions in here, any quality standards or mechanisms by which to treat those separately than might be wholesome grain. Another avenue that is used in the grain banking that is described in here as using standards for shrink and drying is that often we don't dry that product; it's come in high moisture and it's quite an advantage to operations. Section 10, subparagraph (2), appears to regulate a potential action. Although we understand the intent of it, in our industry recently the Second Circuit Court of Appeals told the EPA that they could not regulate based upon a potential to discharge. It seems a bit contradictory here that we would have a statutory issue based upon potential in the grain banking issues. Section 10, paragraph 2, subparagraph (a), discusses the evaluation of reserves and pro rata allocation in the case of failure, but it doesn't say how that valuation may be attempted or carried out. And fourth and last is it appears our evaluation of this would have the greatest impact on small producers who do not have the staff or the resources. It talked about dictating software that may be used. This is quite a business activity that happens in small feedyards, and we feel this would be a very high burden for those smaller operations that may be one or two persons. So with that I would be happy to try and answer any of your questions.

SENATOR KREMER: Okay. Any questions for Mr. Gangwish? How do you feel about the disclosure that on anybody delivers grain to a feedlot or an ethanol plant would be given a disclosure of that? In the time table here too, a lot of people don't understand that they have to ask for their money within 30 days and that you're not even in the grain dealer bond and the warehouse bond. If you ask for deferred payment they're not included in that, and a lot of people seemingly don't know that. So do you feel like a requirement for disclosure would be helpful or...?

DUANE GANGWISH: Our evaluation can be quite burdensome. Oftentimes prepayment or delivery of grain for later use,

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

Committee on Agriculture
February 14, 2006
Page 41

LB 1197

deferred payment, is quite a useful tool. Although I read the bill many times, it's a bit confusing in some situations. I wasn't able to see where it really applied to. I'm not sure how ethanol plants grain bank, and maybe if someone would like to inform me, I could address that maybe clearer to you. But the disclosure on the scale ticket, Section 12, seems to be burdensome.

SENATOR KREMER: Okay. Any questions? Thank you, Duane. Anyone else in opposition?

JAY REMPE: Senator Kremer, members of the Agriculture Committee, my name is Jay Rempe; that's R-e-m-p-e. I am state director of governmental relations for Nebraska Farm Bureau Federation here today on behalf of Nebraska Farm Bureau in opposition to LB 1197. And good afternoon; we should be outside instead of sitting here today. This bill kind of represents a little bit of a mixed bag for us because we do hear concerns from time to time from our members about the protections that they are afforded when selling into not only grain warehouses and grain dealers, but also feedlots and ethanol plants as well. And as it relates directly to feedlots the concern has died down considerably over the past few years, but obviously every time you have a feedlot foreclosure you start to hear some concerns, and the last one was the Damrow. And most of the concern that we've heard, quite frankly, is not so much that feedlots are not licensed or bonded, but it's that the banks, and I say this in deference to my good friend from the bankers, but the bankers have a blanket lien on their security interests on anything there, and they don't...our members do not believe that's correct. So when we've asked our members about this, there's...really we've not been able to get any kind of consensus on how to respond to this issue. And two or three years ago we had a policy resolution submitted to our organization to support a mandatory licensing requirement on feedlots and ethanol plants and others, and it failed. And while I recognize that this is not mandatory, it is a "voluntary" program. I think a lot of the concern that we have is once something becomes voluntary, something happens, it doesn't quite work, and before you know it you're talking about a mandatory program. And one of our concerns with the mandatory program right now is we're looking at a sector of the industry that is dealing...having a tough time dealing with some EPA CAFO

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

Committee on Agriculture
February 14, 2006
Page 42

LB 1197

regs and struggling through those costs and burdens, and potentially we're looking at additional burdens on that. And we keep hearing anecdotal stories about feedlots that are wondering whether they should remain open or not, if they can afford the costs of those regulatory burdens. And I think this would add to that and raise more questions. Section 12 in the disclosure provisions have come up quite a bit. We do have a couple of concerns with those provisions; one has already been noted. It would expand the requirement, not only to feedlots, but anybody else purchasing grain: ethanol plants, soy processing facilities, hog operations, poultry. If you meet the thresholds, you would be required to provide the disclosure. And I guess we, as we sit here today, question the policy justification for that. And as we read the notice, we wonder if it might give the mistaken impression that those kind of facilities aren't following the law. And as you alluded to already, Senator Kremer, one of the things that we've heard is confusion amongst producers about what's covered and what isn't and why isn't this and that. And we wonder if this would just add to the confusion. A second point on the public disclosure requirement: it exempts grain warehouses that are bonded and licensed. And it's my understanding, if things haven't changed...I haven't looked at this for a while...but any delivery that's taken by a licensed grain warehouse, that they buy, that is delivered to their facility, isn't covered under the grain warehouse bond, and so there's no protections there either. And yet they're exempt from providing that public disclosure like other buyers would have to provide as well. So with that, I guess it's something that we think maybe deserves further examination and we'd be willing to participate in that, but we would support maybe other tools of looking at these kind of issues. So with that, I'll be happy to answer any questions

SENATOR KREMER: Any questions? In your...maybe this would have to be just a personal opinion...is there enough incentive, or what is the incentive for someone to be voluntarily bonded? And how many...I mean, you can't answer that, how many...but do you feel like there's an incentive enough?

JAY REMPE: I guess as I read the provisions of the bill I don't think there would be incentive enough for someone

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

Committee on Agriculture
February 14, 2006
Page 43

LB 1197

to...I guess from a competitive advantage someone might be able to avail themselves of the act and be bonded and licensed and try to make that a competitive advantage. But as you look through what would be required, I think it would be rather cumbersome, and as competitive as things are right now I think it would be difficult for someone to do that.

SENATOR KREMER: Okay. Any other questions? Senator Wehrbein.

SENATOR WEHRBEIN: I don't know how much I should participate. Do you know, did you have any members lose out there at that Damrow's lot?

JAY REMPE: Yeah; yeah, we did.

SENATOR KREMER: Okay, thank you, Jay.

JAY REMPE: Um-hum.

SENATOR KREMER: Next in opposition? Did you want us to hand these out?

ROBERT HALLSTROM: (Exhibit 12) If you would, please.

SENATOR KREMER: Okay.

ROBERT HALLSTROM: I did not anticipate being here, but fortunately or unfortunately, depending on where you're sitting, I was able to make it. Chairman Kremer, members of the Agriculture Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in opposition to LB 1197. My written testimony has provided what I think are some areas in the bill, as drafted, that perhaps we would need some more understanding on that at least as first blush, however, provide the ability to do some gamesmanship with the statute, if you will. The way we read the legislation, there is a presumption of sorts that is created in delivering the grain into the feed bank. We believe you could create the situation where everybody would summarily, if they were ever going to have any cattle on feed at the feedlot, bring it in, designate it as a feed bank grain arrangement, and then if they happen to get caught on the wrong side of an insolvency of a feedlot, they

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

Committee on Agriculture
February 14, 2006
Page 44

LB 1197

would have forever more provided protection for whatever happens to be on hand at the feedlot facility. An example would be either having cattle on hand or contracting to have cattle on hand to feed out at a later point in time, and taking a significant amount of grain into the feed bank arrangement. Having it there, it may significantly exceed the requirements to feed those cattle. But yet as we read the bill, if we're reading it correctly, that becomes feed bank grain and would be protected in the event of an insolvency if someone had voluntarily agreed to be subject to the licensing and bonding requirements. We also, and we've pointed out the other end of that equation that leads us to believe that that's the interpretation or could be an interpretation of the legislation is that Section 8 has some provisions that don't exactly flesh with bringing it in up front without expectation of payment but yet being able to demand at any time, anything that's left in there for immediate payment pursuant to a payment on demand or pursuant to some other oral or written agreement. So we've got some concerns and some confusion, I think, with regard to how that is designed and intended to work. We also have expressed concerns in our written testimony regarding the fact that the feed bank grain cannot be pledged as security. I think it's a common notion if in fact it is not the grain of the feedlot, that they certainly cannot grant a security interest therein. That has always been the rub. And I did promise Senator Erdman I wouldn't go into a dissertation of the Uniform Commercial Code transfer of title provisions under LB 2403. But that, nonetheless, is at the heart of the issue. I think the first witness for the elevators indicated that we have to have some type of transfer of title to be able to have the grain on hand and be able to grind it and mix it and do those types of things that by definition is in accord with the provisions of the Uniform Commercial Code that transfer of title has in fact occurred. Interestingly enough in this bill, the easy way to take care of that though is to say that the Uniform Commercial Code should be preempted or superseded in all respects that it might possibly conflict with the Feed Bank Licensure Act. We think that's a dangerous precedent. The Uniform Commercial Code provides certainty to commercial transactions and we think it's the best law that we have to work with and should not be preempted in any respect. Be happy to address any questions.

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

Committee on Agriculture
February 14, 2006
Page 45

LB 1197

SENATOR KREMER: Okay. Any questions of Mr. Hallstrom?
Senator Wehrbein.

SENATOR WEHRBEIN: Do you see there's a problem here as a
bankers association, working with agriculture?

ROBERT HALLSTROM: Senator, we have testified before Senator
Kremer's committee and this committee on many respects with
regard to the issues that are inherent in a feedlot
insolvency. I think and hope that we have expressed a
sensitivity to the fact that there are unfortunately losers
in any conceivable situation where there's not enough money
to go around. We come in with a consistent position on
behalf of the industry, not on behalf of any particular
segment of the industry, whether it be the feedlot
financiers or the financiers of the producers, because
inevitably we have lenders that may be on both sides of the
fence, if you will, and one of them is going to lose and the
other one may be benefitted or advantaged, but what we
maintain under the Uniform Commercial Code is the certainty
of rules that apply and that steps that can be taken under
particular circumstances to protect the provider or the
feedlot owner, as the case may be, if people are able and
willing to undertake those procedures.

SENATOR KREMER: Could you tell us some of the tools the
producer could use now if he was going to sell some grain or
deposit it at a feedlot?

BOB HALLSTROM: Well...

SENATOR KREMER: Can he file a lien that would hold
precedence over the bank? I mean, that's hard to get done,
but, I mean...

BOB HALLSTROM: The grain becomes a little bit tougher
situation because it is clearly in most cases commingled and
it loses its character and its identity and the ability to
identify it as being grain that's owned by any particular
individual. So that's tougher, Senator Kremer. I think
there are issues that may be a bit beyond my scope of
discussion today having to do with bailment or subordination
of liens that can be obtained from the feedlot, you know, as
to a certain dollar value. We have talked from time to time
as to whether or not the ag input production lien

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

Committee on Agriculture
February 14, 2006
Page 46

LB 1197

notification system could be used in some form in its current stage or perhaps modified to provide notice to the lienholder for the feedlot that I am delivering X bushel of grain. Right now, it applies to fertilizer, chemicals, issues of that nature, inputs, if you will. And there's a system under statute whether or not that could be tweaked and modified to provide at least a notification system to knock on the door of the feedlot lender, to perhaps change the normal way that things happen is something that we certainly I think, and Mr. Leonard has heard this before, has heard us suggest that maybe that's something that we can work on.

SENATOR KREMER: Are you familiar with some feedlots taking out a secondary lien, is that the correct terminology or...

ROBERT HALLSTROM: Well, I don't know, I'm not familiar with that terminology, Senator Kremer. But a subordination...

SENATOR KREMER: Well, that's probably not the correct the terminology.

ROBERT HALLSTROM: But a subordination...

SENATOR KREMER: Right.

ROBERT HALLSTROM: ...in essence would be something that on the heels of Damrow and Oconto there was a lot of discussion about the lenders for the producers becoming more actively engaged and aggressive, if you will, in sending that type of paperwork to the feedlot lender. I'm assuming that the feedlot lender was not receptive to the paperwork blizzard, but I assume they legitimately and diligently looked at those and decided whether or not they wanted to subordinate their interests specifically and expressly, and probably did in some cases. I think one of the issues that we run into inherently on this issue is that once the pain of that insolvency subsides a little bit, everybody, lenders and producers alike, want to go back to doing business the way we've always done it. And it works, quite frankly, in a great majority, amazingly a great majority of the cases. But then when an insolvency comes around, then it's time to look at it again, and that's fine--critically analyze what it is in the system. But we ultimately go back to our old tricks, if you will, and everybody is comfortable with

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

Committee on Agriculture
February 14, 2006
Page 47

LB 1197

dealing on a handshake, not looking into the methodologies that you could protect your interest more beneficially, and that's the way we run the circle and do business.

SENATOR KREMER: Thank you. Any other questions? Thank you, Bob.

ROBERT HALLSTROM: Thank you, Senator.

SENATOR KREMER: Next opponent.

ROD JOHNSON: Senator Kremer and committee members, my name is Rod Johnson, J-o-h-n-s-o-n, director of the Nebraska Pork Producers Association. My comments will be fairly brief because the feed bank situation is not huge in our industry. For the most part, we do not...you know, that's just not the function that we have. But I do look at a lot of opportunities as we try to promote and enhance our industry. We do have a lot of grain producers out there that are looking for opportunities to capture more value out of their grain and also look for opportunities to put a fertilizer plant right on the corner of a pivot, so to speak, by investing in facilities and generating opportunities out there. As this happens, I do see programs where we will be trying to promote a situation where a producer may do some custom feeding for a producer who would...he wants to use his own grain back in there, and I can see this coming along as a possibility down the road. But the one thing I'm concerned about is putting one more level of regulation on these producers. The livestock industry is severely, very heavily regulated at this point. We all have had those discussions numerous times and is this one more situation of putting regulations on the livestock industry. I have personal friends that were affected by both the Atlanta situation and the Damrow situation. And I think they will all indicate that there was...more regulation may not have averted those situations when there was what appeared to be a very clear intent to try to get around the rules and regulations to begin with. So by putting an extra burden on an entire industry to avert a situation that may not have been caught anyway, I think is something that needs to be considered before the committee would move forward too rapidly on putting additional regulations on there. Another thing about our industry is the fact that there are an awful lot of people running around looking for opportunities to

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

Committee on Agriculture
February 14, 2006
Page 48

LB 1197

complain about the industry, whether it be odor or anything like that. I notice in Section 9, a complaint filed by any person can create an opportunity to be audited or looked at. I think this is something that if there's going to be a complaint filed it ought to be from someone that has a financial interest or a direct interest in the situation and not just anyone potentially off the road that drives by and wants to make a complaint. We have a situation out there where we're developing a lot of chronic complainers who are looking for opportunities to complain about the livestock industry. And if we create an opportunity, they'll take advantage of it. And lastly, Section 12 is another concern there. This has been expressed already. In our industry, more than grain banking, we have a lot of neighbors who sell to neighbors. And in a situation like that they may have their own scale that they agree to use as the device to determine the amounts, or they may even run it past a commercial scale someplace to gain the scale ticket and determine the amount of product transacted. In a situation like is explained or is designated in Section 12 here, why, that purchaser may have to go out and get his own scale tickets and make sure they get to the scale or something like that, just creating one more level of obligation on that producer when basically they probably have an arm's length agreement between two neighbors to exchange grain. So I think before another level of regulatory burden is put on the livestock producers, I think it needs to be considered very carefully. With that, I would answer any questions.

SENATOR KREMER: Thank you, Rod. Any questions? Seeing none, thank you for your testimony. Anyone else in opposition? Anyone wishing to testify neutral? Seeing none, Senator Wehrbein, would you like to close?

SENATOR WEHRBEIN: Mr. Chairman and members of the committee, I don't have a lot to say except I think it does probably warrant a study. Maybe this is an idea (inaudible). I was sitting here thinking as operations get larger and larger, the dollars involved are going to get more and more significant to an individual producer. I would think most people would hesitate to take 50 percent of a typical production that we're headed into in the future, 3,000-, 4,000-, or 5,000-acre farms that X number of bushels, right now it would be prudent to diversify your

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

Committee on Agriculture
February 14, 2006
Page 49

LB 1197

sales, I think, because even though no one has the intention of going broke, it can happen. And as we get...one of the reasons I thought this was appropriate to bring at this time is we've gone through some pretty...well, 2004, 2005, have been fairly decent years in Nebraska as well as the United States. But I don't think it's going to stay quite as good as it's been over the next few years again. And there's going to be probably some pressures, whether it's livestock or grain production. So I think it's something we have to keep looking at. I've been encouraged by those that are pledging to work with it, I think many are recognizing that there is a continuing interest. We probably will always have the tension between the financiers and the producers, regardless of which side of the fence you're sitting as a producer. But I think we're going to have to continue to work for a goal--that's you guys, it's not going to be me (laugh). But perhaps a summer study is something we ought to be looking at and continue to work. Certainly you made a lot of progress last year in the warehouse receipt area. And, as I said, with the volume of grain coming down the road by fewer and fewer producers, it's going to be more and more significant.

SENATOR KREMER: Thank you. Any questions of Senator Wehrbein? Thank you very much. That will close the hearing on LB 1197 and also close the hearing for today.