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COMMITTEE ON JUDICIARY

January 26, 2005

LB 213, 181, 345, 282, 308, 294, 360, 362, 363

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 26, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 213, LB 181, LB 345, LB 282, LB 308, LB 294, LB 360, LB 362, and LB 363. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; and Mike Foley. Senators absent: Mike Friend.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is the fourth day of committee hearings. I think we have nine bills on the agenda today. I'm Pat Bourne from Omaha. Members of the committee, Senator Ray Aguilar from Grand Island; the committee clerk, Laurie Vollertsen; the legal counsel, Jeff Beaty; Senator Foley from Lincoln. There's other senators that will be arriving periodically as they're introducing bills. If you plan to testify on a bill today please use the on-deck area where Senator Cudaback is and sign in. Please print your information so that it's readable. We'll put it into the record. Following the introduction of each bill I'll be asking for a show of hands to see how many people plan on testifying to give other senators notice as to when they need to make an appearance. When you come forward to testify please state your name and clearly spell it for the record. Again, all of our hearings here are transcribed and the transcribers would very much appreciate the spelling. Due to the large number of bills heard here in the Judiciary Committee we will utilize the, as I like to say, the Kermit Brashear Memorial Lighting System. The senator introducing the bill gets five minutes and then all testifiers thereafter get three minutes. The rules of the Legislature state that no cell phones are allowed in the hearing room and that has nothing to do with any of the bills that are reflected in the schedule today (laughter). So if you have a cell phone with you please make sure that it's disabled so that it doesn't ring. Reading someone else's testimony is not allowed in the Judiciary Committee. We'll allow you to submit other individual's testimony that we'll make part of the record but we won't allow you to read someone else's testimony. And again senators on the committee will be coming and going periodically through the afternoon to introduce bills. Please don't take offense to that. It's simply they're

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conducting other business. With that, we'll open on LB 213. Senator Cudaback. And again, as Senator Cudaback makes his way forward, if the proponents of LB 213 would also make their way forward and make use of the on-deck chairs and sign in. Welcome to the committee, Senator Cudaback.

LB 213

SENATOR CUDABACK: (Exhibit 1) Thank you, Senator Bourne, Honorable Chairman Bourne and members of the Judiciary Committee, I'm state Senator Jim Cudaback representing the 36th district and I will be swiftly here as possible. We have some stuff to read here. LB 213 prohibits the use of hand-held cell phones while operating a motor vehicle unless the driver is engaged in using it for an emergency. Police officers, firefighters, emergency vehicle operators are exempt from the prohibition while they are on duty. Hands-free cell phones is permitted during operation of motor vehicles. A verbal warning is the only punishment for a violation until October 31, 2005. But the passage of this act on November 1, 2005, the violation is a traffic infraction and punishable by a fine of not more than \$100. And I have some other stuff here I will read as swiftly as possible. My name is Jim Cudaback, as I said. Let it be clear from the beginning, LB 213 does not eliminate mobile phone use for drivers. What LB 213 is about is banning drivers from using hand-held mobile phones as we increase public awareness of how driver distractions especially mobile phones can be deadly and cause personal injury and damage and so on to property. Mobile phone use tops the list of all driver distractions in Nebraska. According to the Department of Roads, highway safety data on mobile phone use is a contributing circumstance to traffic accidents...I guess they already gave out the handouts, of all distractions attributed to cell phone use. And that's the only data determined by the peace officer (inaudible) at the scene. We don't know how often phone use really causes a driver to lose control of his or her car. Since I started introducing cell phone legislation, many, many people have talked to me about it as well as maybe they have to you. When New York state passed its mobile phone limitations bill several years ago it seemed to me like a step in the right direction. It limited driver phone use to hands-free phones. At least if we are going to permit people to use

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their mobile phones as they drive they'll have both hands on the wheel as they won't be looking around when the phones are dropped, so on and so forth. A warning period up to three months, a fine does not...\$100 for the traffic infraction following the warning period. That three-month period, that could be six months, you know, whatever you wish. Maybe three months is not time enough to give everybody into the hands free so that's up to you or whatever. Mobile phones are not seized or forfeited as part of their arrest. In the latest report from the NCSL titled Along for the Ride on page 20, Dr. Thomas Dingus from the Virginia Polytechnic Institute cited a Japanese national study that found that 43 percent of the crashes occurred while a driver was finding or reaching for a ringing phone. Another 23 percent occurred while the driver was dialing and so on and so forth. You can see where the hands free come in, you know. This will eliminate that. Dr. Dingus also concluded in his remarks that education alone probably would induce about 20 to 25 percent of the drivers to stop using electronic devices. Nationwide according to Dr. Dingus, this high compliance rate could translate into more than 10,000 lives saved by 2010. Who might one of those 10,000 be? Too late for Dan Nealon, he's from Omaha, and Martha, his wife, of Omaha. Their son was killed about 11 months ago by somebody on a cell phone. I mean this is pretty serious stuff when your son is killed. It's hard to reach that until you go through the experience, I know, but God forbid that it happen to anybody here or anybody else later on. I'd like to quote a few words from Mr. Nelson (sic). "This issue is all too real to my family. We lost our son Justin 11 months ago as the result of an accident involving a distracted driver who, among other things, was using his cell phone at the time of the accident. Each time I hear people raise objections to placing restrictions on cell phone use it brings back painful memories, real painful memories of my son's accident and death. I have honestly asked myself whether these objections have merit. When fully considered, my conclusions are that none of them override concerning public safety." Mr. Nealon also included a study from ExxonMobil and I won't go into that but they don't let their drivers drive anymore. I guess my time is about up here and, you know, what more can I say, you know? We are not trying to ban cell phones from automobiles, strictly saying and hands free, that's a legitimate and why not? Why not use the hands free?

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They're available, cheap, go ahead and use your phone, do it the right way.

SENATOR BOURNE: Thank you. Questions for Senator Cudaback? Seeing none, thank you.

SENATOR CUDABACK: You're welcome. Thank you.

SENATOR BOURNE: Could I get a show of hands of those individuals wishing to testify in support of the bill? I see two, three. Those in opposition? I see seven. Neutral testifiers? Okay, again, if you'd come forward. First, proponent and then again we're going to make use of the on-deck chairs so the next proponent, please move forward to the on-deck area, these two chairs up in the front. And again, I want to mention to the audience that we have a number of senators who are introducing bills right now so please don't think that the attendance reflects at all on the issue. It's simply senators are introducing bills and they'll be coming and going. Welcome to the committee.

RICHARD SCHMELING: (Exhibit 2) Thank you. My name is Richard L. Schmeling, S-c-h-m-e-l-i-n-g. I'm not a hired gun. I'm down here on my own time and on behalf of myself and other people who make their living driving. I want to just tell you about four brief episodes that I personally have experienced with people using cell phones. The first one was about five years ago. I was driving westbound on D Street here in Lincoln. D Street is a favored street and there are stop signs right in the middle of 11th Street. As I approached the intersection I saw a real estate lady and don't get me in trouble with the real estate industry, but she was very much engaged in some sort of a transaction. She had the cell phone to her ear. I could see her talking on the cell phone and I said to myself, you know, I've got the right-of-way but I think she might not be paying enough attention and she may blow that stop sign. And so I stopped my car and she went right through the intersection without stopping. Had I not stopped I would have been t-boned. The second one was here in Lincoln at about 56th and Holdrege Street. I was northbound. I was in the inside lane. There was a lady to my right. She was talking on a cell phone. She had children in her car. She was very much again engaged in conversation and when the light turned green without even looking to her left to check to see if there

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was other traffic in the lane she turned and had I not stopped we would have had a collision. The third incident is probably the scariest because it involved a fairly high speed; 56th and O Street in Lincoln, I'm northbound. I'm waiting for the light to turn green. The light turns green. As a defensive driver, I look to my right and left to make sure nobody is going to blow the light. There was a college-age young lady and that college-age young lady was talking on a cell phone and she blew that red light. Had I not hesitated I would have been hit. The fourth one was recently on Cornhusker Highway. I was driving, there was a pickup truck in front of me. The truck started coming into my lane. I looked, the man had his cell phone. He had reached over, it rang, and he picked it up and he came into my lane. The studies indicate that people who use cell phones while driving are as dangerous as a drunk driver. There's a Canadian study; there's a Utah study that came out this summer and surprisingly it indicates that it doesn't matter if it's a hands free or a handheld phone. The statistics are the same and the mechanism is that the drivers do not look far enough down the street in front of them. I have provided, through the pages, I have provided a copy of another study which indicates that cell phone use may cause acoustical neuromas which are a nonmalignant type of cancer. That's a very recent study that just came out.

SENATOR BOURNE: Thank you. We'll enter that study into the record. We've been joined by Senator Combs. Are there questions from the committee? Senator Aguilar.

SENATOR AGUILAR: Of the examples you give, every one of them could be classified as careless driving which in and of itself has a criminal penalty attached to it. Why do you think we need to add something on top of that? I mean, I can give you examples of ladies putting on makeup while they're driving. Not against the ladies, men do funny things too. Some people read books while they're driving. I've seen people have a cup of coffee in their hand while they're driving and I've seen people with cigarettes, lighting cigarettes, opening a pack of cigarettes. I mean, just numerous, numerous situations like that where people are being careless with their driving. And my estimation is that's what's going on here. These people are just careless drivers. I don't think the cell phone enters into it that much.

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RICHARD SCHMELING: Well, here you're going to have to talk to your legal counsel because in order for conduct to be criminal there has to be a reasonable appraisal to the public of the nature of the offense and the fact that the conduct the person is doing is, in fact, prohibited. And it might fall under that umbrella of careless driving but I can see a skillful defense attorney saying, hey, wait a minute. Careless driving is something else. It isn't just simply using my cell phone. Again, I defer to your legal counsel to give you advice on that score. Now, admittedly, we could prohibit a lot of things as a Legislature. Why, we might even require a senator to carry a flashlight at night when he goes to check his basement of his new house. But, unfortunately, we can't prohibit everything. It does seem to me in all seriousness that what we're talking about here is something again that has been proven to be as dangerous as driving under the influence. And I think it's something that this Legislature needs to address and I think you need to address it firmly. And my own feeling, my gut reaction is that careless driving might not cover it and...

SENATOR BOURNE: Thank you. Further questions for Mr. Schmeling. Seeing none, thank you.

RICHARD SCHMELING: Thank you.

SENATOR BOURNE: Appreciate you coming down today. We've been joined by Senator Chambers from Omaha. Would the next testifier in support of the bill please come forward? There's other testifiers in support, could you make your way to the front of the room and use the on-deck chairs, please? Welcome to the committee.

TIM FISCHER: Hi. My name is Tim Fischer and I'm here as a private citizen and I've had a strong feeling about the use of cell phones and how they implicate us in very (sic) aspects of our lives. And at the present time, from what I understand, there are no studies that are clear about defining that cell phones can cause a number of accidents. But by the same token, I haven't seen any studies demonstrating that cell phone use while driving a car can prevent accidents from happening so we've got a relatively unclear area as to what can be a cause and effect situation here. I'm an insurance agent so what my work involves a lot

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of driving time both in and out of the city. And so I get a chance to look at a lot of traffic as I drive around. And I don't have any hard-core specific examples of what I see the use of cell phones creating in terms of actual accidents but I do see unnecessary fluctuation in speeds, awkward turning at intersections, weaving, abrupt stops, and delayed reaction to traffic signs and signals. Now it's a marginal area that we're talking about here. And as you used the example of careless driving and putting on makeup and that can be part of careless driving. But I see this as an opportunity to literally take out of the hands one less thing to be careless about in driving. And I use a device to allow me to use handheld...a non-handheld and this is really simple and it works a lot better than trying to have that thing up next to head while you're driving the car. What does the yellow mean?

SENATOR BOURNE: You've got another minute.

TIM FISCHER: Okay. So my contention is that the use of hands-free cell phones while driving would eliminate physical contact of driver and phone and thus provide more opportunity for one, both hands on the steering wheel, and two, less mental distraction of the phone and the road. And one practical example of this is...I'm sure you've all experienced if you've ever used a speaker phone in an office setting, you do have the opportunity to do more things at your desk while talking on the phone. So that's my issue other than, again, I'll emphasize the marginal aspects of this and if it can save one critical accident, isn't it worth incorporating a requirement to use hands-free cell phone calling?

SENATOR BOURNE: Thank you very much. Other questions for Mr. Fischer? Seeing none, thank you. Appreciate your testimony. Next testifier in support? Is this the last testifier in support? Would those in opposition make their way? Support? Would you make your way to the on-deck area so as to expedite the hearing? Welcome to the committee.

BOB MITCHELL: Thank you and greetings to all. My name is Bob Mitchell. I live in Lincoln and I'm representing myself mostly and the leadership of the Nebraska section of ARRL, the National Association for Amateur Radio. The only reason I'm really here is because I understand you've received a

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letter from another amateur radio operator and I wish to give a second opinion. Regarding the use of wireless telephone service by amateur radio operators when no emergency exists, we see no reason why they should have privileges denied to the general public. At the very least, a public relations conflict is created where none needs to exist. At worst, there would be an enforcement issue for the peace officers of our state. In emergency situations ham radio operators would have the same privileges as anyone else. I forgot to mention, I am a ham radio operator and have been for 30 years. As we think about adding amateur radio operators to the list of emergency workers defined as a peace officer, a firefighter, or an operator of an authorized emergency vehicle, we see identification as a virtually insurmountable obstacle. Peace officers drive police cars. Firefighters drive fire trucks and operators of authorized emergency vehicles drive ambulances and other reasonably identifiable motor vehicles. Amateur radio operators drive ordinary cars, trucks, SUVs, RVs and so forth that may or may not even be identified by license plates bearing their amateur radio call letters. And they are not the only ones who drive such vehicles considering family members and friends who may drive these vehicles by permission. Even if amateur radio operators were to be added to the list, they would risk being stopped and having to show their amateur radio licenses every time they used a hand-held wireless telephone while driving so please don't except us, don't add us to the list. Now, speaking personally, I'm sufficiently disgusted with the abominable driving practices of the general public as they give more attention to their telephone conversations, their CD players, their personal hygiene, and the kids in the backseat than to their driving that I would rather support this bill in its present form than to needlessly exempt amateur radio operators and thus weaken it. Who will want the next exemption? Users of family radio service radios, members of citizens band groups, bus and taxi drivers, dump truck operators, whatever. May I further say, however, that the problem is not wireless headphones held to the driver's ears. That's only the most visible manifestation of it. I have more to say about that but you've already heard some excellent examples. The bill is too weak, in my estimation, but I would love to support it. Questions?

SENATOR BOURNE: Thank you. Questions for Mr. Mitchell?

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Seeing none, thank you very much. Next testifier in support?

BOB TWISS: Good afternoon, Mr. Chairman and other members of the committee. My name is Bob Twiss, T-w-i-s-s as in sam, sam from Gretna. Really didn't intend to testify in support of the bill but I recall a very, very serious accident in our area at Highway I-80 and 370. A person from Gretna, from the Gretna area, a family that I know was getting onto the interstate eastbound going into Omaha and as she was getting onto the interstate the cell phone rang. Apparently it fell. She reached toward the floor to find the cell phone. When it crossed the median, it was not a divided median at that time...when it crossed the median, hit a car head-on and it was an attorney from a medium-sized law firm in the Omaha area and killed the gentleman. And we have some very, very serious things in terms of lack of attention going on with the use of cell phones. I've done it myself and if we can prevent some of those very, very serious deaths that affected certainly two, if not more families, I think perhaps we ought to do it. Any questions I'll be glad to try and answer.

SENATOR BOURNE: Thank you. Questions for Mr. Twiss? Seeing none, thank you.

BOB TWISS: Thank you.

SENATOR BOURNE: Next testifier in support? The first testifier in opposition, please come forward and again we're going to make use of the on-deck chairs here so would the opposition make their way forward, sign in?

LARRY HOLMES: Hi, my name is Larry Holmes, H-o-l-m-e-s. I'm not here for a group. However, I live here in Lincoln and sell real estate along with some other businesses. And the reason I'm really against the bill is for several reasons. One, you mentioned careless driving. There's also, I believe, reckless driving. There's unsafe lane changes. There's turning without a signal. There's running stop signs, running red lights. Those are all laws that are currently on the books. I think this is just an added law that is unneeded. If you're going to pass this law then please prevent people from reading in the car, eating, drinking, smoking, DVD players, listening to the radio, kids

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in the backseat. Prevent people from even riding with each other because all sorts of people can be distracted for all sorts of reasons. I know of a friend who reached down to get a CD to put in his player, went through a red light, got hit. That's not...you shouldn't punish all of us who are capable drivers for the few that just can't manage what they're doing in the car. Maybe you should prevent standard cars because one hand is on the gearshift. If everybody wants two hands on the wheel at all times, you can't do that. And so to me it just seems like this is one law that's not needed. If you're not capable of doing it then you shouldn't do it and you should be a defensive driver. Everybody should but to me it just seems one extra step that's not needed for thousands of people. Even though I live here in Lincoln I drive back to Box Butte County. If you've ever driven Highway 2 past Grand Island there's not a whole lot of people on that road. And if you want to get some things done and you're on the phone that's a great place. I've driven that stretch and seen one car pass me. And this will prevent me from doing work or doing business that it's a good time to do it when there's nobody else on the road. Now if I'm on Interstate 80, I think it's unsafe because of the traffic, I'm smart enough not to use my phone. You know, hopefully, other people realize when they're driving 75 miles an hour that they don't continue to do it but I think that's everybody's choice so.

SENATOR BOURNE: Thank you. Questions for Mr. Holmes? Seeing none, thank you. Next testifier in opposition? And again, we're going to make use of the on-deck areas. We have nine bills to hear this afternoon. I'd like to get home before midnight so if there's further testifiers in opposition, sign in. Welcome.

CHUCK SIMINO: Good afternoon. Chairman Bourne, members of the committee, my name is Chuck Simino, S-i-m-i-n-o and I represent Sprint but also other wireless carriers in Nebraska. I'm responsible for government affairs in Nebraska and Wyoming and I'm here today to oppose LB 213. There have been numerous research projects that have looked at the issue of cell phone use while driving as it relates to accidents. In addition, there have been numerous research projects that review driver distractions in general. The resulting conclusion from these projects have been conflicting with one stating cell phone use is a major

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contributor to accidents and others stating that they're not. What has been consistent, though, is the fact that driver distractions in general are major factors in vehicular accidents. Therefore, why address cell phones and cell phones only? Don't do this piecemeal. Drivers' distractions include stress, running late to appointments, grooming, reading books, reaching for objects, children or others in the car with conversation going on, new navigation technology, TVs and I understand there are some car manufacturers who want to put TVs on rear view visors and, of course, cell phones. All of these can include in one issue and that is drivers are not as attentive today and subsequently not paying attention to the most important task at hand when they're behind the wheel and that is driving. Most of the studies I've read have indicated cell phone use have been down on the list of items that caused accidents. But why again single out cell phone use? Sprint and the (inaudible) industry is concerned about the bill that singles out cell phone when there are other issues that need to be included. We should not address this issue in a piecemeal fashion. If we require legislation to address the real cause of accidents, the driver, then we should address all of them in one bill, driver distractions. After all, everyone is affected by the number of accidents that are reported each year. At a minimum, we see how driver distractions affect our car insurance bill not including loss of life and injury. Education seems to be important and often overlooked remedy to the issue of driver distractions. This bill also raises concerns in another area. How well respected are law enforcement officers? I have many friends and relatives that are currently or were in the profession. However, I do not want to be pulled over on the road if I happen to have my cell phone in my hand and just have it up near my face. That's a subjective type situation and I don't want to be in a position where I have to prove that I wasn't on the cell phone if I'm not doing anything else wrong. I'm not going to go on and on because some other issues have been talked about already and they will be addressed with folks after me. I'm just asking for your help in voting down this legislation and I would open it up for questions if there are any.

SENATOR BOURNE: Thank you. Questions for Mr. Simino?  
Senator Chambers.

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SENATOR CHAMBERS: Mr. Simino, did your company tell you to come and testify against this bill today?

CHUCK SIMINO: Chairman Bourne, Senator Chambers, members of this committee, no, they have not. I am totally against this bill personally. I also represent Sprint so I guess you could say that I am representing them.

SENATOR CHAMBERS: Sir, I need to know in what capacity you're testifying here today?

CHUCK SIMINO: Chairman Bourne, members of this committee, as I stated when I first started that I was representing Sprint, members of the industry.

SENATOR CHAMBERS: Okay, so then I'm not bothered about your personal view. I'm going to deal with you in the capacity that you came here today.

CHUCK SIMINO: Very good.

SENATOR CHAMBERS: What is the negative financial impact on Sprint and others in your industry that led them to tell you to come here and testify against this bill?

CHUCK SIMINO: Chairman Bourne, members of this committee, I am not aware of any financial information out there that this bill has an impact on. The impact is on singling out cell phone use as one cause of accidents when there are a multitude of other issues out there.

SENATOR CHAMBERS: Mr. Simino, how many issues that have no financial impact on your company and the industry do you testify on? Why are you even here if it has no financial impact? See, that's why I asked you in what capacity you're here. You're not here as a private citizen, just being a good citizen. You're here to represent your industry. Let me not jump to any conclusions. Is your company a nonprofit operation?

CHUCK SIMINO: Chairman Bourne, members of this committee, Sprint is a for-profit corporation, yes.

SENATOR CHAMBERS: And Mr. Simino, you don't always have to say Chairman Bourne and members of the committee because

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it's driving me to distraction (laughter).

CHUCK SIMINO: I'm sorry.

SENATOR CHAMBERS: That would get you a ticket if I were a cop. And I'm taking it step by step for a reason. Your company wants to make as much money as it can. Your company, if it could obtain complete deregulation of the phone industry would probably do so, wouldn't it?

CHUCK SIMINO: I would say that's a correct statement, yes.

SENATOR CHAMBERS: And that would be because you'd be freer to make more money, isn't that true? Let me ask it a different way...

CHUCK SIMINO: There is a possibility there, yes.

SENATOR CHAMBERS: What does your company have as a purpose other than making money? I'm not talking about the means that it uses to make money but isn't the ultimate purpose of your company to make as much money as it can?

CHUCK SIMINO: Senator Chambers, that's the main objective of any company.

SENATOR CHAMBERS: So why do they have you wasting company time in coming here when it's not going to read down to the financial benefit of the company?

CHUCK SIMINO: Senator Chambers, that's not...I'm not here for financial reasons. I've already stated that. I'm here because it's singling out one entity for...

SENATOR CHAMBERS: But if it's not going to hurt that entity, what difference does it make to you?

CHUCK SIMINO: Well, it does make a difference because it's a negative mark on the industry and on Sprint...

SENATOR CHAMBERS: And if it...

CHUCK SIMINO: ...by mentioning cell phone usage, yes.

SENATOR CHAMBERS: And it might impact the bottom line that

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they talk about, isn't that true?

CHUCK SIMINO: I guess in some fashion, possibly it could but that's not what we're concentrating on...

SENATOR CHAMBERS: Why are you so...

CHUCK SIMINO: ...and that has not been any part of my testimony.

SENATOR CHAMBERS: ...Why are you so unwilling to acknowledge what everybody in this room knows? You're here concerned about the financial impact on your company. If you didn't know that, then I'm going to tell you that that's my belief as to why you're here. And I can't figure, if that's not why you're here, what you really are aiming to accomplish.

CHUCK SIMINO: Senator Chambers, I totally disregard and actually not disregard but do not agree with what you stated. I've never once mentioned anything about the financials of Sprint or any other wireless company...

SENATOR CHAMBERS: You don't have to...

CHUCK SIMINO: ...I don't think this is an issue on finances...

SENATOR CHAMBERS: ...Mr. Simino, I...

CHUCK SIMINO: ...I think it's an issue on people...

SENATOR CHAMBERS: ...Mr. Simino, I am not naive. I've dealt with lobbyists for 34...this is my 35th year. They come here when the financial or economic interests of their company are at stake and they are not here as good citizens or altruistic individuals just being here because they think something not nice is being done. So if you are going to sit there and tell me that your company has no financial interest in this bill or concerns about the financial impact, then I'm not going to ask you another question so I want to get that straight so I won't waste my time. Are you saying for the record that your company feels that this bill has no financial impact of a negative nature and they just told you to come here just to have you come here and let us

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know that the phone shouldn't be singled out even though singling it out is not going to hurt your company.

CHUCK SIMINO: Senator Chambers and members of this committee, I have never once mentioned finances. I have not been directed to come here today. No one directed me from my company to come here today. I came here to represent Sprint and the industry on my own accord. Now, there could be some financial facts but that's not what I'm here for. I'm here for, to address the one issue and that is singling out cell phone use when there are a multitude of distractions while driving including the NCSL book that Senator Cudaback brought up and it talks about driver distractions in general...

SENATOR CHAMBERS: That's not what the bill deals with.

CHUCK SIMINO: ...all we're saying is looking at the total area of driver distractions.

SENATOR CHAMBERS: Well, let me ask you this.

CHUCK SIMINO: Yes, sir.

SENATOR CHAMBERS: If we put all those in, then would you not object to the cell phones being in it too? I want your company on record. If we pick those others and put them in a bill, you then have no objection to cell phones being in it too. That's correct, isn't it?

CHUCK SIMINO: Senator Chambers, if you want to list every potential, possible...

SENATOR CHAMBERS: Well, I want you to answer the question...

CHUCK SIMINO: ...driver distraction then I would agree with that. Yes (inaudible) Sprint.

SENATOR CHAMBERS: No, you mentioned some specific things that are in that book.

CHUCK SIMINO: Yeah.

SENATOR CHAMBERS: If those specific things are mentioned

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and cell phones are included, you would not have any objection to the cell phones being included, is that what you're telling me?

CHUCK SIMINO: Senator Chambers, I think I just answered that. If all potential driving distractions are listed in here...

SENATOR CHAMBERS: No, I want you to answer. Mr. Simino, I'm asking you a question. Don't play with me. You held up that book. You said there are things in that book. I referred to the book and that's the question I'm going to ask you to answer. Now if you don't want to answer you don't have to. But I'm not going to sit here and let you try to play me for a fool. I don't know who you've been talking to. You held up the book. If the things in that book that you held up are put in a bill and cell phones are with those things mentioned in the book you held up, would you and your industry then not object to cell phones being included in such a bill?

CHUCK SIMINO: Senator Chambers, I've answered that. I said we would not.

SENATOR CHAMBERS: Okay.

CHUCK SIMINO: We would not object to it. I've said that about three times now, sir.

SENATOR CHAMBERS: You didn't say it clearly or precisely enough.

CHUCK SIMINO: Well, then I apologize.

SENATOR CHAMBERS: You don't have to apologize. Just answer the question as it's asked and we won't go through all this.

SENATOR BOURNE: Further questions for Mr. Simino? Seeing none, thank you.

CHUCK SIMINO: Thank you very much for your time.

SENATOR BOURNE: Next testifier in opposition? Welcome.

KENT POPKEN: (Exhibit 3) Mr. Chairman, members of the

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committee, my name is Kent Popken, P-o-p-k-e-n, and I represent Qwest wireless. I'll try not to touch on some of the things that Chuck mentioned. There has been a discussion on studies. About two or three years ago when this bill was in the Transportation Committee we did ask the State Patrol to look at this issue and my copy machine didn't work very well but those are the results of that and it will show that from a distraction standpoint that cell phones are pretty well on the totem pole. I'm not here to say they aren't a distraction. What I'm here to say is, in the scope of things if it's a responsibly used held handset I don't think the distractions are any greater than any of the options that you talked about because I really think if hands free is all right, the issue is what you're doing with your hand. And so if you have hands free, you just then use your hands for other things, coffee, tea, hamburgers, whatever you need. If the issue is, you can't have something in your hand then I think you have to address some other issues if you want to deal with it. We would just as soon not deal with that because we think the solution is careless, reckless driving. If you're not using the phone responsibly you're subject to those rules and that's where we'd like to leave it. I would bring up two things quickly on the hands free. First of all, there's a cost associated. If we moved totally hands free it isn't that great but the gentleman showed a thing you attach to your phone. That's ten or thirty bucks. Some phones have speakers on them. If you don't, that could be 80 or 90. If you go to one that's plugged into your car which is more powerful and used out west it could be two or three hundred bucks. So there is a cost associating with moving that direction. We would just as soon...now, from the company standpoint we can make some more money selling equipment. But that's an option today and that's where we'd like to leave it. The one other thing that when you talk about hands free and I can only give you from a personal experience. If you want to go to a hands-free set like this, the cheapest way to do it is to plug in an apparatus and put it in your ear. Now think about it. You get in your car and you decide to do that. The first thing you got to do is grab this little gizmo and stick in your ear. I assume that's a distraction. You then have to tap it to your shirt some...there's another distraction. You need to come up and put it in here. That's another distraction. So it isn't like there isn't any distractions associated with hands-free sets. The

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reality is, that's probably the most vulnerable time there is of distraction is when you're dialing the number. But there's three distractions that you had before you got this thing. Now you put it on your seat and put the thing in your ear and talk. What happens when you make a turn? The thing falls on the floor. You got to go pick it up. Now the other thing is if you go to New York when they did this, they encouraged people to have speaker phones. How do you make a speaker phone work? You put it on the seat next to you and they can't hear you so you pick it up. The other thing you'll be inundated with people to put little gadgets on your phone to put your speaker phone in. Another distraction, you got to put it in there. You can impale yourself when you have a wreck but then you're going to have to turn it out and take it out. So all I'm saying is, I don't think, our company doesn't think that handheld is that distraction enough to create a new traffic infraction, am I done?

SENATOR BOURNE: Yes.

KENT POPKEN: Okay.

SENATOR BOURNE: Thank you. Questions for Mr. Popken?  
Senator Chambers.

SENATOR CHAMBERS: Mr. Popken, you have made a case for not allowing the use of these phones while driving whether handheld or not. Now, did Qwest have you come here when the other gentleman was speaking for the entire industry?

KENT POPKEN: Yes.

SENATOR CHAMBERS: So why did they have you come? They want to...they're redundant.

KENT POPKEN: Probably so.

SENATOR CHAMBERS: Now why is Qwest concerned about a bill such as this?

KENT POPKEN: I can't quantify it but there's two reasons. A, if the ability to use phones in the car is restricted we may sell less phones. Second of all, many of our plans are based on minutes of usage. There are thousands of minutes,

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they're used on the street. So, yes, we could lose business and we could use (sic) minutes of usage. We would like to have it so there's no restrictions.

SENATOR CHAMBERS: I don't have any more questions. Thank you.

SENATOR BOURNE: Thank you. Further questions for Mr. Popken?

KENT POPKEN: I'm sorry I missed the light.

SENATOR BOURNE: Appreciate your testimony. We've been joined by Senator Pedersen from Elkhorn. Next testifier in opposition? And again, make your way to the way on-deck area, please. Welcome to the committee.

AMY YARKONI: (Exhibits 4, 5) Thank you. Good afternoon. I appreciate the opportunity to speak with you all today on this issue. My name is Amy Yarkoni. It's Y-a-r-k-o-n-i and I represent Cingular Wireless. I wanted to talk with you a little bit...I'm going to try since I have a short, I think I understand the light system. I have a short time to just not cover the material that you've already covered. I agree with most of what was said in opposition to the bill and talk with you about our position. Cingular Wireless would like to have safe drivers on the road. There are a number of distractions and the cell phone because of its proximity to the head and within the glass feature of a vehicle is very easy to see so I think it's an easy target for people to say, oh, that's what they're doing. You don't know if somebody dropped something on the floor. You don't know if they were smoking and their cigarette fell down. You don't know if their eyeliner is in the cup holder. You don't know if they're weaving and you can't see what they're doing. But if they're on the phone you can see it so it tends to be something that people kind of angle to. Cingular Wireless has invested a lot of time and energy in education of both the teen group as well as adults on what would be safe driving but beyond just wireless phones to distractions in general. We produced something and I'm going to leave these behind for you but this is an educational video that has to do with distracted driving. It addresses a lot of different distractions in the car. It's available on Be Sensible for free. Ninety-four schools in Nebraska have ordered this

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since 2001 when the campaign was launched. And we're on our second printing of 20,000 of these videos. It's won several awards for its class in the age group that we're trying to educate as far as what it's done, how it's aimed, how it was prepared. I'm going to leave a copy so you can take a look at that but this is what we think is kind of the stronghold of getting people to be responsible in their cars is educating them on their responsibility while they're there. In addition, I'm going to leave you some information on our company and on the Be Sensible program and some of the other things that CTIA is doing. With regard to the cellular telephone industry and Internet and association, they've done drive time 5 o'clock, radio hours. They've spent millions and millions of dollars trying to educate people about what they need to do to be responsible in their cars. I wanted to just clarify something that is kind of out there right now and that is like this phone. I have the Motorola RAZR so if it's on I click on this button and it turns it into a speaker phone and a picture phone so I can sit in my car and look at it and take pictures. And what I'm doing with it isn't necessarily against the law in this bill but subjectively I could be pulled over just because I had it and I was doing something with it even though I have no call initiated. So I think that some of the presumptions in the bill itself may have liability implications from legal aspects if somebody were to get pulled over and cited but I also think that it's very subjective in nature. It is also discriminatory against one specific technology. I have a blackberry on my waist. It's not a phone but somebody...I could sit and technically page while holding the steering wheel and it wouldn't be illegal under this bill. So I think that a broad-based distraction bill or inattentive driving bill if you don't already have that covered under your negligence and reckless driving statutes in this state would be more appropriate for what you're trying to enforce. My time is up so I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Yarkoni?  
Senator Chambers.

SENATOR CHAMBERS: In this capitol building there are people who walk around with these phones stuck in their ear and they don't look where they're going sometimes. They'll walk over you. If they do that same thing in cars it's magnified. It's easy, as Mr. Popken did, to break down a

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particular act into each of its component parts and if you do it while you're speaking it can seem that this is a very time-consuming, difficult process but in reality it's done almost instantaneously and it's not what it looks like if you break it down. Say we took a video of it frame by frame. You got a hundred frames so you flash a frame; you flash another frame. And if you stop each one then it's going to take a lot longer to do it that way than if you just let it run. It might be a second or two seconds. I said that so that I could ask you this question. Is it your testimony that talking on the telephone while driving is not distracting?

AMY YARKONI: That's not my testimony. I do believe it can be a distraction, absolutely.

SENATOR CHAMBERS: Now if a person is arguing with a spouse or a significant other, do you think it's possible for that person to become oblivious to what is going, oblivious of...what is going on around him or her?

AMY YARKONI: I certainly do.

SENATOR CHAMBERS: I drive on the highway a lot and there was a person...I won't give the gender who was coming off a ramp and did not merge even though that lane was disappearing, just continuing to go and had a phone. And I saw this person. Nobody was behind me so I slowed down and they never turned their wheel to merge. They just let the car just kind of drift and as the lane ran out they just kept driving basically straight. I don't know to whom they were talking. But despite the testimony that people give here for the phone companies, I don't know what the State Patrol concluded. I know what my experience has been as a person who drives a whole lot of miles every year and from 140 to 160 miles every day and people who are on cell phones are not the kind of drivers that everybody assumes will be attentive as they should. This is my question that I'm going to ask you and then I'll leave you be. Is it your belief that if a bill were passed that could stop people from using cell phones altogether there would be no diminishing of the number of traffic accidents attributable to that?

AMY YARKONI: I actually...I think that if you don't allow

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it and everybody adheres to that standard, people don't break the law,...

SENATOR CHAMBERS: Um-hum.

AMY YARKONI: ...and they don't use the phones if there was an accident this year and next year it was disallowed then there would be no accident for that cause. But I'd like to point out that of the calls that are made every day there's 160,000 calls made to 911 so for the accident for the elderly couple on I-70 who comes from Waukeenee (phonetic) down to town and doesn't have a cell phone in their car but for me who travels that route to get out to where I want to see my grandparents I'm going to call 911. I'm going to call and say there's been an accident there and within that golden hour that they've proven getting attention to that person who doesn't have a cell phone, I think that the risk reward of having cell phones in cars is something that needs to be metered when you talk about a law. And so I would absolutely agree that if we make it illegal and no one uses it you saved somebody's life. I would say that you would have to quantify the number of lives that would be lost from losing the precious time you get from having ready access to somebody when you have a cell phone in your car and you have to measure the difference. Technology...

SENATOR CHAMBERS: Now you're making me ask you another question.

AMY YARKONI: Okay, I'm sorry (laugh).

SENATOR CHAMBERS: How many calls roughly in a year might you make while you're driving and this is not to condemn you?

AMY YARKONI: Me personally? Oh, sure. I use about 3,000 minutes a month. I probably make...I talk for a long time though so I probably don't make that many calls. But, you know...

SENATOR CHAMBERS: Well, let's take the number of minutes then.

AMY YARKONI: Okay. So 36,000 minutes a year.

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SENATOR CHAMBERS: Okay, and how many minutes did you use to make that 911 call?

AMY YARKONI: I've probably made four or five 911 calls in the last three or four months and maybe 30 seconds to four minutes for each one, depending on if I had to stay on the line.

SENATOR CHAMBERS: So the vast majority of your use is not to make those calls?

AMY YARKONI: It isn't. It's business use and personal use.

SENATOR CHAMBERS: And most people if you go by statistics are not going to come upon an accident anyway and especially one that is life threatening.

AMY YARKONI: Well, statistically, 160 million calls are being processed for 911 from cell phones.

SENATOR CHAMBERS: Not in Nebraska.

AMY YARKONI: Not in Nebraska, maybe not.

SENATOR CHAMBERS: Okay, that's all that I have. Thank you.

AMY YARKONI: All right.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Appreciate your testimony.

AMY YARKONI: Thank you. Sure.

SENATOR BOURNE: Next testifier in opposition. Are there any further opposition testifiers? Welcome to the committee. I see two.

SENATOR CHAMBERS: Give us a call, Mr. Mueller (laugh). That's not you testifying. That's somebody else.

SENATOR BOURNE: (laugh) Welcome to the committee again, please.

ROB BUTLER: Hello. Yes, I'm Rob Butler of Omaha.

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SENATOR BOURNE: I'm sorry?

ROB BUTLER: Rob Butler of Omaha.

SENATOR BOURNE: Butler?

ROB BUTLER: Yes.

SENATOR BOURNE: Thank you.

ROB BUTLER: Thank you. This is, you know, I really don't care one way or the other. But this is just this unusual need to do things as backward as possible in this state. You know, the Cingular representative brought up a, you know, regarding her use of a V-3 speaker phone and her blackberry, just holding the blackberry, making it illegal. However, of course, if you've read the bill and I'm sure you have it simply states that merely making the call shall be illegal and not to be confused with not include holding a mobile phone to activate, deactivate, or initiate a function of such mobile phone. You know, it seems great. I can look up a phone number on my Internet capable handset, dial it, as long as no one answers hang up, and all that would be legally. If I cannot reach that other party I can, of course, text message them endlessly about the most recent game I've downloaded. You know, and I don't think that's something we really want to go with. Also there's some things we don't really want. We want to say "wireless phone service means two ways." I guess that means that we can listen to our one-way voice mail. You know, I'm hoping it's going to be a good defense attorney calling me because, of course, as we see in the bill "a person operating a motor vehicle who holds a mobile phone to or in the proximity of his ear is presumed to be engaging in a call." I guess innocent until proven guilty is something we'll address later. You know, the CTIA as mentioned by the previous person testifying, you know, has done plenty of studies even unrelated to themselves. A triple A study conducted by the University of North Carolina as for wrecks caused by distracted drivings, 29.4 percent were from an outside person or object. Now I guess we can't really ban pedestrians but 11.4 were from adjusting a radio or a cassette; 10.9 percent of other occupants, probably people we didn't want in our cars anyway. And way down the list, number eight out of nine is using or dialing a wireless

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handset. Again, this is certainly something that we don't want to go with. Speaking in opposition or for me in support to this bill, Bob Twiss noted that an attorney whose name was Michael Moran was killed. The person dropped their phone, went across I-80, t-boned them and killed them. Similar to that, a friend of mine had a coworker whose daughter is paralyzed. Why? Because a person looking for a cassette tape dropped it on the floor, reached down, and now this lady can't even hold her own children. If you want to ban cassette tapes along with this, you know, you can make that amendment. I don't think we want to go down this road, banning everything we have here. Not to mention as for the cost of these devices, you know, sure, there are the \$5, \$6 earbuds. Of course, driving with headphones is illegal. Sure, the industry can make money off of a Bluetooth headset. I know a Bluetooth is going to cost you about a hundred bucks equal to a fine. And I see my time is up. I should have come at night. I have unlimited minutes.

SENATOR BOURNE: Thank you very much. I appreciate your testimony. Are there any questions for Mr. Butler? Seeing none, thank you. Next testifier in opposition?

JUSTIN BRADY: (Exhibit 6) Senator Bourne and members of the Judiciary Committee, my name is Justin Brady, B-r-a-d-y. I'm here representing Alltel and the Nebraska Realtors Association as their registered lobbyist. And I won't take up a lot of your time. I will say that both of the clients I'm here representing will not come before you and say that cell phones are not a distraction. They will say that cell phones are, when you look at the one study I handed out was from...prepared for AAA and cells phones are a...one of many distractions and in essence they're a minor one. However, the main point here is I think there are abilities. It's already been discussed and that's the other handout I had. There are many laws already on Nebraska's books that will allow officers to pull over people who are violating the law. People have talked about running stop signs, speeding, changing lanes when they shouldn't have, all those are covered in either careless, reckless, or willful reckless or even speeding, failure to yield, or failure to signal. So I don't know that we need to set out a single law. And another reason to have officers have the ability to pull people over when they already have this. So with that, I'd conclude my testimony and see if there were any questions.

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SENATOR BOURNE: Thank you. Questions for Mr. Brady?  
Senator Chambers.

SENATOR CHAMBERS: Mr. Brady, didn't I see you yesterday  
before the Ag Committee?

JUSTIN BRADY: You did.

SENATOR CHAMBERS: I thought so. Okay, I just wanted to be  
sure. Okay.

SENATOR BOURNE: Thank you. Further questions? Seeing  
none, thank you.

JUSTIN BRADY: Thank you.

SENATOR BOURNE: Next testifier in opposition? Is this our  
last testifier in opposition? Is there any neutral  
testifiers? Excuse me, are there any neutral testifiers  
(laugh)? Welcome, Mr. Mueller.

BILL MUELLER: Thank you. Mr. Chairman, members of the  
committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear  
here today on behalf of the Nebraska State Bar Association  
in opposition to LB 213. I will not repeat what others have  
said before me. We are concerned about the presumption  
created in this bill. We are always concerned and troubled  
when a presumption is created giving rise to a possible  
criminal offense and that is on page 3, lines 6 through 11.  
We also believe that this activity, this distractive  
activity is covered by negligent driving, reckless driving,  
or careless driving. And lastly, the primary reason for my  
committee taking the position they did is apparently  
attorneys talking on the telephone a lot when they're in  
cars, and they wish to continue doing so. Be happy to  
answer any questions the committee may have.

SENATOR BOURNE: I appreciate your honesty (laugh). Further  
questions for Mr. Mueller? Are there any questions?  
Senator Chambers.

SENATOR CHAMBERS: Mr. Mueller, and I wanted to have the  
opportunity to exchange a few comments with a lawyer and I'm  
not going to keep you here that long.

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BILL MUELLER: Good.

SENATOR CHAMBERS: But there (laugh)...there would be, in my opinion, a simpler, more direct and probably more effective way to get at this...if it was to be done than the way it is written in this bill. If a person were opposed to specific parts of it as you have indicated here and some of the other testifiers for different reasons, that's one thing. And that's where opinions can differ but as far as the general writing of the bill, I don't think it's well crafted. I would never even if I believed we should ban cell phones, period, I couldn't support a bill written in this fashion to do that. Do you see a difficulty with saying that this device is held...I don't see it here but at the ear in the immediate proximity or something like that? That kind of language is kind of difficult to enforce if it's going to be the basis for a law enforcement officer making a decision that a crime has been committed or an infraction which is a crime under Nebraska law, by the way.

BILL MUELLER: Yes, it is. When I read the bill in preparation for the hearing I assumed from my reading of this that a person in order to comply with the law would have to have a true hands-free telephone as Mr. Popken described that is affixed to your dashboard. Then when the witness came up and said, you could just put on this earphone and plug it into your phone, I thought to myself, I don't think that's allowed under this so I think that this is not as clear as it probably should be if we're going to make something criminal. I think it's difficult to know what is allowed and what is not allowed.

SENATOR CHAMBERS: If there are ten evils confronting a society, the Legislature is free to choose any one, any combination, or all to prohibit. Is that correct?

BILL MUELLER: Yes.

SENATOR CHAMBERS: The selecting of the cell phone out of any number of other possibilities would not in and of itself be unconstitutional do you think?

BILL MUELLER: I don't think that it would be. I think that you could do that.

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SENATOR CHAMBERS: So we're really looking at a policy rather than the constitution when we take a bill such as this and look at one particular thing rather than another which is going to be prohibited because it might create a distraction that could lead to an accident.

BILL MUELLER: Yes, and that's where I didn't want to end up by saying that our committee just believes that from a policy standpoint the Legislature should not prohibit cellular telephones in cars.

SENATOR CHAMBERS: Okay.

BILL MUELLER: We do have a concern about the presumption in a criminal context but...

SENATOR CHAMBERS: And I have concern about the language too...

BILL MUELLER: ...more than that.

SENATOR CHAMBERS: ...but I was trying to get to the policymaking authority of the Legislature, that it does have the authority to make such policies if it chooses. That's all that I would have. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Neutral testifiers? Senator Cudaback to close.

SENATOR CUDABACK: I'll make it swift. I do like you, Senator Chambers, your frame by frame analogy there. It doesn't take but a tenth of a second and I appreciate that. We're not reinventing the wheel. We're not reinventing the wheel here. Seventeen states do this so it can be done. Whether this is the right bill, Senator Chambers, or whether it's wrong language. Everything takes time. You got to start someplace, you know. But I personally think, you know, you ask somebody like the Nealon's in Omaha 11 months ago when their son was killed by somebody on a cell phone, they're going to say, do something. Eleven months ago their

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son was killed, he's dead. That person on the cell phone is still driving around chitchatting and I'm trying to be just as serious as I can here. He's dead. They're still chitchatting. Something is wrong here. We're not trying to eliminate the phone from the car. This is just simply hands free. I mean, am I missing something here, you know? Is a dollar extra maybe of a company's money...make a dollar more a year. Is it worth a life? Not if it's my family. Maybe you're willing to give up your family for some chitchat but I guess I'm not so if we can do something, I'm ready to do it.

SENATOR BOURNE: Thank you. Questions...

SENATOR CHAMBERS: But not so fast, my friend.

SENATOR BOURNE: Oh, (laugh) questions for Senator Cudaback.

SENATOR CUDABACK: Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Senator Cudaback, the person who caused the accident that resulted in the death was driving what kind of vehicle if you know?

SENATOR CUDABACK: I really don't know.

SENATOR CHAMBERS: Okay, but was driving a motor vehicle,...

SENATOR CUDABACK: Yes.

SENATOR CHAMBERS: ...was talking on the phone,...

SENATOR CUDABACK: Yes.

SENATOR CHAMBERS: ...apparently got distracted,...

SENATOR CUDABACK: Yes.

SENATOR CHAMBERS: ...the car did not stay in the lane it should have,...

SENATOR CUDABACK: Right.

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SENATOR CHAMBERS: ...and it collided head-on with an oncoming vehicle? Is that what happened?

SENATOR CUDABACK: In this case, another case that's exactly what happened. This case here that I referred to the Nealons, I'm not sure.

SENATOR CHAMBERS: What killed the person, the phone or the vehicle?

SENATOR CUDABACK: Well, I suppose the vehicle, you know.

SENATOR CHAMBERS: We probably would have far fewer accidents if we banned vehicles of a certain kind and no accidents if we banned all vehicles, would we?

SENATOR CUDABACK: I guess you could say that.

SENATOR CHAMBERS: I think if we're going to enact a law it shouldn't be because one person died as tragic as that is. It has to be a policy that embraces the best interests of society at-large. Very few activities that human beings engage in have not resulted in injury to somebody and death to somebody. So I will not be swayed because a family lost an individual even though I can commiserate with them. I would be looking more at what happens in the broader sweep of things when it comes to these phones. Now if it can be shown that drivers are angrier if a person makes a misstep in traffic while on a cell phone than they would be if that misstep were made by somebody not on a cell phone that would be a factor to consider. I don't know that road rage exists or if it's the creation of the media or whatever but people do have a far more negative reaction if they're cut off in traffic, if somebody delays in moving away from a traffic light if they're on a cell phone than if they're not. I don't know for sure what I would do on a proposal such as this but it would have to be really be rewritten a great extent before I could consider it so have you gotten any copies of legislation in any of these other states that you could share with any of us who might be interested?

SENATOR CUDABACK: Yes, we do.

SENATOR CHAMBERS: Okay. I'd like to see that if you don't mind.

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SENATOR CUDABACK: Okay. You will get it, you know.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: And distractions are distractions but we're talking about cell phones. I don't want the ability for a policeman to stop anybody for just any unknown reason. I'm not for that. I want it spelled out for why he had to stop him. That's the way I believe and some people say, well, they can stop you for this, stop you for turning your radio on. I don't want that. I want it spelled out why a policeman should have to stop you and that's what I believe.

SENATOR CHAMBERS: My final comment. One thing that bothers me, black people...a cell phone in the hand of a black person looks like a gun to a cop so if all cell phones were banned from cars then black people wouldn't be killed and all the cop has to say and white people buy it, I thought he had a gun. And candy wrappers have served the same function when one of us gets blown away by a cop so when it comes to police officers stopping people I want them to have as few excuses as possible...

SENATOR CUDABACK: Um-hum, I do too.

SENATOR CHAMBERS: ...and that might be one of the things that...

SENATOR CUDABACK: ...I do too.

SENATOR CHAMBERS: ...would turn me against supporting legislation of this kind. I may as well put it on the record.

SENATOR CUDABACK: I'll talk with you later.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Further questions for Senator Cudaback? Seeing none, thank you. That will conclude the hearing on LB 213.

SENATOR CUDABACK: Thank you very much.

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LB 213, 181

SENATOR BOURNE: Thank you, Jim. Senator Schimek to open on LB 181. Could I get a show of hands of those folks wanting to testify in support of this next bill? I see one. Those in opposition? I see none. If the proponent could make your way up to the on-deck area and sign in, please. Senator Schimek.

LB 181

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman and members of the committee. And there may be a second proponent somewhere. We are expecting a second one anyway.

SENATOR CHAMBERS: Male or female?

SENATOR SCHIMEK: Female.

SENATOR CHAMBERS: Oh, then you might have three (laughter).

SENATOR SCHIMEK: (Exhibit 13) For the record, my name is DiAnna Schimek. I represent the 27th Legislative District here in Lincoln and I'm here to introduce LB 181. And for those of you who are in the committee you have heard this bill before. This is the third time I've brought it. The first year that I brought it you did advance it from the committee and it got to the floor and I was very much hoping we could attach it to Senator Thompson's bill on seat restraints. But she felt like it was a little bit controversial. I mean her bill is a little controversial and she didn't want to do anything so we didn't have the opportunity that year; time ran out. Last year, for some reason, I don't really know. The committee did not advance the bill. And I...there may have been a reason but I never did learn what that reason was. I think it's a reasonable bill. I have for the pages to distribute letters from six different people or four different people. I believe you already have letters from the county sheriff here in Lancaster County Sheriff Wagner and one from the Police Officers Association of Nebraska, Jim Peschong. And I particularly hope that you'll take a look at Senator (sic) Wagner's letter which I think is a very well stated letter. This bill would help prevent injuries to children and even perhaps the deaths of children who are left alone in vehicles unattended. What the bill does is it authorizes a

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fine of a hundred dollars to any person who leaves a child under six years of age unattended. Nebraska statutes currently classify the leaving of a child unattended in a motor vehicle as abuse and/or neglect. However, if there is no harm to the child it is very unlikely that the person responsible will be prosecuted. My goal with LB 181 is to fine people in minimum of a hundred dollars for leaving their child unattended. It's part of an education process if you will and a warning process. This year we did put one new section in the bill and it's Section 3 and it was brought to our attention by an attorney from home school legal defense in 2003 after we had introduced the bill. The new section states that leaving a child unattended in a motor vehicle is abuse if the child is injured as a result. It clarifies that. And the reason that we needed to put that in I think is because in Section 2 of the bill, a law enforcement would issue a ticket for this infraction but under current statute Section 22-711 that officer would be required to report the incident to Health and Human Services. And we don't want to require the officer to contact the department every time he or she issues a ticket so we made that change. But we do want to make sure that people understand it's not acceptable to leave their children unattended. Twenty other states have considered or enacted similar legislation including California which was the state that we used as a model for this legislation. I do have a packet that shows you what other states have done legislatively, Senator Chambers, and I think that I still like California's approach the best. I would like to encourage you to advance this from committee. I do think that it's a bill that does resonate with the public and if you don't, I'd sure like to know why this year because I really don't have a clue. So with that, I'd be happy to try any questions that you might have (Exhibits 8, 9, 10, 11 12).

SENATOR BOURNE: Thank you. Questions for Senator Schimek?  
Senator Pedersen. (Exhibit 21)

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Schimek, as I look at the bill, what would this do to me when I'd pull into the gas station with my grandchildren and fill up with gas and run inside to pay for it and don't take all four of the grandchildren with me?

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SENATOR SCHIMEK: Well, are you still in attendance? In other words, can you still see the children in the car?

SENATOR Dw. PEDERSEN: Does the bill cover that? I didn't see that that would cover that. And I'm not in favor of leaving kids in the car, Senator, but I...

SENATOR SCHIMEK: I understand what you're saying but I, you know, I have to confess, I was thinking that that was explicitly mentioned in here.

SENATOR BOURNE: Page 2, line 14.

SENATOR SCHIMEK: Page 2, line 14, thank you (laugh), Mr. Chairman. Forcing such person...

SENATOR BOURNE: Page 2.

SENATOR SCHIMEK: Oh, 14. For purposes of this section, unattended means the person does not have the direct ability to care for or come to the aid of the child. I was pretty sure it was in there but I confess I didn't look the bill over before I came in here today so thank you.

SENATOR Dw. PEDERSEN: That would probably cover it, you think?

SENATOR SCHIMEK: Yes.

SENATOR Dw. PEDERSEN: Okay.

SENATOR SCHIMEK: That's the intention. Okay.

SENATOR BOURNE: Thank you. Further questions?

SENATOR SCHIMEK: (Laugh) Thank you.

SENATOR BOURNE: Senator Schimek, so your idea is if there's a child left unattended and is not harmed, that's an infraction. If that child becomes harmed then it elevates to child abuse.

SENATOR SCHIMEK: Absolutely.

SENATOR BOURNE: Thank you. Further questions? Seeing

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none. Thank you.

SENATOR SCHIMEK: Thank you.

SENATOR BOURNE: First testifier in support?

SENATOR SCHIMEK: And I will waive testimony. I'm keeping two of your committee members in Government Committee so I'll get back and try to chase them in here.

SENATOR BOURNE: I wondered where they were. Thank you.

SENATOR SCHIMEK: Okay, thank you.

SENATOR BOURNE: First testifier in support. Welcome to the committee.

ROBERT WATSON: (Exhibit 14) Good afternoon, Mr. Chairman, members of the committee. My name is Robert Watson, W-a-t-s-o-n. And I'm the registered lobbyist for Fathers Rights of Nebraska. And as with any bill that's in the best interests of the children, the group I represent supports LB 181. According to the Centers for Disease Control, over 600 children have died as a result of being left unattended in motor vehicles over the past decade. Although it's been relatively difficult to find stats for Nebraska, according to a national group called Kids In Cars in 2004 it's reported that four children died as a result or Nebraska children died as a direct result of being left alone in a vehicle and well-meaning parents and caregivers of all socioeconomic levels leave children alone in automobiles every day for a variety of reasons but primarily, I believe, it's because they're unaware of the dangers associated with doing so. I'm sure all of us realize the dangers posed by extreme temperatures and the risk of hypothermia but I'd like to draw your attention to some of the other risks and I've supplied, I believe, all the members' explanations and real life examples of each of the following. Abductions and kidnappings. Obviously, unattended children are easy victims to would-be kidnappers. Fires inside the vehicle where they're started by the child or for some other reason, children won't have any way to egress the vehicle. Hypothermia, hot and cold weather represent a real threat to children and in Nebraska we have both extremes. Power windows and seat belts, children can be choked or otherwise

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injured playing with power appliances in the vehicle. Vehicles in motion, it's pretty easy for a child to take the brake off or put the car in gear and vehicle theft, when a car is stolen while a child is inside. I believe LB 181 is a significant first step in eliminating the common practice of leaving children unattended in vehicles and therefore reducing the incidents of injury and death. And I sincerely hope the members of the committee and the Legislature will agree. And as a point of clarification, the group I represent is a nonprofit and are not paid to be here to testify.

SENATOR BOURNE: Thank you. Questions for Mr. Watson? Seeing none, thank you.

ROBERT WATSON: All right.

SENATOR BOURNE: Next testifier in support?

SHIRLEY DEETHARDT: Senator Bourne and committee members, thank you very much for this opportunity to speak to you today. My name is Shirley Deethardt, D-e-e-t-h-a-r-d-t. I am here representing the Nebraska Iowa District of Kiwanis. I am currently serving as lieutenant governor for Division 21 which takes in four Lincoln clubs and three clubs in southeast Nebraska. I am here to speak in favor of LB 181 that will provide a penalty for leaving children unattended in a motor vehicle. The number one goal of Kiwanis International is to work for the health and well-being of all children and we have a program that's called Young Children: Priority One which calls and asks for all clubs to provide service projects that directly support young children. One of these projects is Kids In Cars. This program is dedicated to eliminating the practice of leaving children unattended in and around motor vehicles and therefore reduce the incidence of injury and death to children. Part of this service project is to provide education awareness to all parents and the general public about the importance of safety for all children. Kiwanis has provided decals to be given to all members, families, and friends for side windows of their cars to help stimulate questions about the purpose of this program. We want to help keep children safe. The Kids In Cars website offers a staggering statistical information. The figures speak for themselves. The increase of fatalities from 1999 to 2004 is

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quite large. In 1999, there were 66 reported fatalities with 318 children involved. In 2004, there was a reported 113 fatalities with 506 children involved. Since there is not a mandatory reporting requirement, Kids in Cars has taken on the responsibility of collecting this information. We strongly feel that these numbers underestimate the true magnitude of this public safety issue. Kiwanis will continue to do our part in getting the information out to our members and their families about this issue and as a Kiwanian I encourage you to provide and support LB 181 to increase the safety of Nebraska's children.

SENATOR BOURNE: Thank you. Questions for Ms. Deethardt. Seeing none, thank you. Next testifier in support? Testifier in opposition? Is there any neutral testimony? Senator Schimek has waived closing. That will conclude the hearing on LB 181. Senator Brown to open on LB 345.

LB 345

SENATOR BOURNE: Welcome.

SCOTT DOLTON: Good afternoon, Mr. Chairman and members of the committee. My name is Scott Dolton, D-o-l-t-o-n. I'm the legislative aide for Senator Brown from District 6. Senator Brown is appearing before Senator Landis' committee at present. I'm here to introduce LB 345. LB 345 deals with exempting nonprofit businesses that deals with nonprofit businesses that operate thrift stores. These organizations, chief among them being Goodwill and the Salvation Army provide critically needed community services. These services are funded in part by proceeds from the sale of used household goods, small appliances, and clothing at their thrift stores. In the case of the Salvation Army, men with alcoholism and other chemical dependency issues are housed and rehabilitated thanks to their thrift operation. Likewise, Goodwill Industries throughout Nebraska provide employment and training services and other supports to disadvantaged people including people with disabilities, individuals with severe mental illness and persons on welfare. Unfortunately, the missions of these agencies are thwarted by relentlessly abusive people who choose to dump unusable and unsalable items at their doorstep. Real case examples of these midnight drops include badly stained and

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torn mattresses, rusted and nonworking appliances, and electrical items, broken car seats, highchairs, and other dangerous baby items. Thrift operations post in plain view no dumping signs but the perpetrators persist nonetheless. Goodwill and Salvation Army alone must divert over \$200,000 from needed services throughout Nebraska in order to pay the landfill fees. Last session a related bill attempted to address exempting these agencies from landfill fees. Some concern over this having the effect of actually encouraging illegal dumping derailed the bill. This session we hope to address the problem by increasing penalties for those who break the laws of trespassing and littering. Most drop-offs are monitored electronically by video cameras to prevent theft and the agencies can easily follow up with law enforcement. Relief from the cost would enable these community agencies to channel this savings into the programs that are needed to provide services to Nebraskans.

SENATOR BOURNE: Thank you. Questions for Mr. Dolton. Seeing none, thank you. First testifier in support? Welcome to the committee.

FRANK MCGREE: (Exhibit 15) Good afternoon. Thank you. My name is Frank McGree. I'm the executive director of Goodwill Industries in Omaha.

SENATOR BOURNE: Could you spell your last name please?

FRANK MCGREE: Yes, it's M-c-G-r-e-e.

SENATOR BOURNE: Thank you.

FRANK MCGREE: I'm speaking today on behalf of four independent Goodwill Industries headquartered throughout Nebraska. Joining me in the room today are representatives of Goodwills in South Sioux City, Grand Island, and Lincoln. Combined, we operate employment programs, training classes, and other human services for people with disabilities and various employment barriers all throughout the state. Many of our human service programs are publicly funded. All of them are supported by revenues generated through the sale of our donated goods at 25 retail stores, retail and donation outlets across the state. Our donated goods centers offer the public convenient locations to donate used goods, merchandise that will be sold to others in order to support

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our mission related activities. Unfortunately, our Goodwill donation sites have become popular places for after-hours dumping of unsellable merchandise. In spite of special signage, lighting, consumer education, and other security measures after hours people come nightly to take good merchandise that has been dropped off and to leave behind a sorry assortment of trash. Store managers have recently reported the following incidents. In Lincoln, over 100 worn automobile tires were dumped behind a store. The Lincoln Goodwill had to pay \$4 per tire to properly dispose of them. Store staff often come to work with clothes, shoes, and other items strewn all over the parking lot by trespassers rummaging through merchandise. We regularly receive soiled mattresses, broken furniture, smelly clothes, bags of household trash. Our Omaha managers have reported receiving everything from rusty metal cabinets and appliances to half empty paint cans and old dirty carpets. At one donation location on Hy-Vee at 96th and Q Street in Omaha the attendant recounted the time he recently arrived to work and found a huge box of dirty disposable diapers and another boxful of used and tattered clothing. I have passed around a few packets of information including photos of what was left behind recently at some of our stores in Omaha. You also have a CD-ROM with stories of local television news shows that have aired about the dumping problems at Goodwill. This unwanted dumping creates a tremendous expense for Goodwills. First, there is the staff time spent cleaning and discarding the merchandise. Second, there are fees associated with hauling the unusable and unsellable merchandise to the county landfill. Last year Goodwill collectively spent over a quarter of a million dollars in disposing of unwanted merchandise. Our \$250,000 annual expense is \$250,000 that is diverted from our mission related activities of providing employment and training services to disadvantaged youth, people on welfare, and people with disabilities. We estimate that last year Nebraska Goodwill hauled nearly ten million pounds of trash to the dump. In Omaha, 40 percent of this poundage is generated from the deposits of unthinking citizens that left this merchandise behind after hours. I see my red light is on so I'll stop there. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you very much. Are there questions for Mr. McGree? Senator Chambers.

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SENATOR CHAMBERS: As I look at the language in this green copy on page 2, the new language says, second degree criminal trespass is a Class II misdemeanor if the offender enters or remains at the place of business of a nonprofit organization that holds a certificate and so forth but it doesn't say what makes the person an offender other than entering or remaining at the place of business. Is that the intent of this?

FRANK MCGREE: No, Senator. The intent is to deal with people who drop trash off at our locations, not to deal with people, you know, who are not doing that.

SENATOR CHAMBERS: Okay. Well, the way that it's written, it doesn't say that the person is guilty of criminal trespass for doing what you said but simply for entering or remaining at the place of business. So that could be somebody who came to make a purchase. They enter, they're remaining there so it's not well drafted. Then on page 3 in the new language it says, a person who commits the offense of littering on or near a nonprofit organization, they don't litter on the organization. They litter perhaps on the property of the organization so there would be some drafting that needs to be done here. But I'm not sure how effective this would be. Do you...and when I say you, I meant the organization, invite people to leave items at your place?

FRANK MCGREE: No. Oh, well, during normal business hours we do, Senator. There is signage if you'll look in your blue packet that I just handed out. There's pictures of the signage that we have that's...

SENATOR CHAMBERS: So after hours nobody is to leave anything.

FRANK MCGREE: That's correct.

SENATOR CHAMBERS: So if somebody were seen by a police officer leaving a \$500 dinette set, a table and four chairs, that person would be guilty of littering and subject to being charged with an offense, wouldn't they?

FRANK MCGREE: Well, I suppose that, you know, I mean I can't answer specifically to the language of the law. You

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know, but I suppose that you're correct. I mean, we encourage people to drop material off during normal business hours when someone is there to accept the merchandise and safeguard it. And that's what we do all day long from 8 o'clock in the morning to 9 o'clock at night. Unfortunately, there are times when people drop trash off after hours so I would hope that an individual who's donating a \$500 table and chair set would have enough sense to come to us during the hours that we're open. They understand and recognize the value of that material as we do and they wouldn't drop it off at night when it could cause problems.

SENATOR CHAMBERS: Well, suppose they were coming, they saw the sign and they decided that they can't come back. Maybe they're going to leave town and rather than take it to the dump they were going to leave it here.

FRANK MCGREE: Right.

SENATOR CHAMBERS: You'd rather they not leave anything to...

FRANK MCGREE: That's correct.

SENATOR CHAMBERS: ...to protect against...

FRANK MCGREE: ...because it opens the opportunity for someone else...right...

SENATOR CHAMBERS: Okay.

FRANK MCGREE: ...to come and take it.

SENATOR CHAMBERS: It's clear to me now what you're after.

FRANK MCGREE: Right. There are...on the CD-ROM that you have it also has stories about theft and problems that we've had with people coming after hours and stealing the merchandise too.

SENATOR CHAMBERS: That's all I have. Thank you.

FRANK MCGREE: Um-hum.

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SENATOR BOURNE: Thank you. Further questions for Mr. McGree? Seeing none, thank you.

FRANK MCGREE: Thank you, Senators.

SENATOR BOURNE: Other testifiers in support? Are there any testifiers in opposition? Is there any neutral testimony? That will conclude the hearing on LB 345. Senator Redfield to open on LB 282.

LB 282

SENATOR REDFIELD: Thank you, Chairman Bourne, learned attorneys and wise senators of the Judiciary Committee. For the record my name is Pam Redfield, R-e-d-f-i-e-l-d. I'm the state senator from District 12 known as the "Independence District." LB 282 deals with the aggregation of values to determine a felony. In 2003, Senator Quandahl introduced a bill which was incorporated into an omnibus bill sent out by the Judiciary Committee. That law changed the definition of a Class IV felony from a loss of \$75 to \$300. All of us recognize the impact of inflation and I also would agree with that decision and voted for that bill. However, I think the intent of the Legislature was to say that \$300 is \$300 and the bill, as it was passed, did not allow for the aggregation of amounts. As a result, professional thieves are working the system by writing checks on closed accounts or stolen checks in amounts just under the \$300 limit. They are moving from retailer to retailer and writing checks just under \$300. I would like to share with you a personal story that goes back a number of years ago and I hesitate to bring up the term garage sale because I have seen it in the news. But this story actually deals with a neighbor of mine who held garage sales every month. We were familiar with this neighbor. He lived right around the corner and all of us knew that every month he held a regular garage sale. He went around and he purchased items from other neighbors when they were doing their clearances and he was actually using capitalism to make a profit and no one objected to that. There was a time when the neighborhood decided to hold a joint garage sale. Everyone was opening their doors and they were cleaning house and sharing the goods that they had no use for. This gentleman was going from garage to garage and he was

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purchasing items. When he came to my garage sale he actually asked for a total of what he had selected and said, oh, let me get a few more things. And then he wanted a total. He wanted a few more things until he got to a certain amount and then he said, okay. He wanted to know if he could write a check because he didn't have enough cash and because this is someone that I knew by name, knew where he lived, and he had been there for a long time, I said all right. Well, it was interesting because when I went to deposit the check, in fact, the check was no good because it bounced. And I am probably aware of the reality of that occurring so rather than going to the bank again and again and having a bad check charge I was talking to some of my neighbors who had also accepted checks from him. And what he had done is systematically gone from house to house and purchased a set amount so that he was under the amount set by law but he exceeded the balance that he carried in his account so, that in fact, he could guarantee that the check would bounce but it would not invoke a felony conviction. Now I think that was a systematic crime and he was trying to beat the system. And yet our system does not allow us to aggregate those amounts, those checks together to call it one offense and come under the statutes of a felony conviction. We are seeing this happen to retailers today. This bill will assist retailers in stopping professional thieves by allowing the checks to be aggregated. The number would still remain \$300 but it would be an aggregate amount. The bill does not punish people that simply make an error in addition or subtraction in their checkbook and mistakenly write an insufficient funds check. We have retailers with us today who will tell you their experiences and if you have questions I'd be happy to address them.

SENATOR BOURNE: Thank you. Questions for Senator Redfield. Senator Redfield, I'm just curious. I wasn't on the committee when that was done. Why wouldn't we just reduce it back to \$75?

SENATOR REDFIELD: You could do so, Senator Bourne, but I think that the reason and I shouldn't speak for the Judiciary Committee but in the discussions about the bill the recognition that \$75 no longer buys what it once did and looking at a Class IV felony and the seriousness of that crime, they wanted to make sure it was proportionate to today's world.

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SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Could I get a show of hands of those wanting to testify in support? I see three. If you could make your way forward. Those in opposition? I see none. The first testifier in support.

JASON OWENS: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Jason Owens spelled J-a-s-o-n O-w-e-n-s. I am here today representing Hy-Vee grocery stores and I would like to thank Senator Redfield for introducing this bill. Our company is very proactive in training clerks in proper check cashing procedures. We also take an active role in tracking down professional thieves who come into our stores and intentionally work the system. By writing checks on closed accounts or stolen checks in the amounts of...under the felony \$300 felony limit despite investments in technology, our stores have recorded close to half a million dollars in bad checks this fiscal year from October, 2003, to October, 2004. The majority of the bad checks are on closed accounts or stolen checks. We have had an elderly woman whose checks have been stolen from her house. Since October of 2004, checks have been cashed throughout the Omaha metro area for thousands of dollars. The person cashing these checks alters the account numbers on the bottom of the checks so our system cannot recognize it as a stolen check. Then they are able to hit all of the stores again. This woman is 83 years old and without the help of her family she would not be able to keep up with all of the letters and explanations this incident has caused. I have permission from her family to provide you with some copies of these checks. This bill will allow us to aggregate all of those checks passed by the individual who stole the checks and can be charged with a felony. We began working a case last October where a lady would find out the name of the store manager. She would fill her cart with product and take it to the checkstand. When she wrote a check for the amount of the purchase and the clerk refused to accept the check she would tell the clerk she knew the manager and she would go visit with him. She would then walk over to the store manager, staying in sight of the clerk and visit with him as if he were an old friend. After visiting for a while, she would go back to the clerk and inform the clerk that the manager had approved this check. The checks were stolen from a dumpster in Tulsa, Oklahoma.

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She pulled this scam about 25 different times with different businesses in Omaha. She would then change her appearance and alter the checks and cycle back through the stores again. This bill would allow us to charge her with a felony. These are just two examples of why we support LB 282. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Owens? Seeing none, thank you. Next testifier in support. Welcome.

LARRY ELIAS: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Larry Elias spelled E-l-i-a-s and I am district manager for B&R Stores. We operate 17 supermarkets throughout Nebraska. I would like to share with you some examples of bad check losses we have incurred. Over a period of several months an individual wrote 35 checks for amounts up to \$186 which would aggregate to a total of \$2,033. He would use multiple banks and alter the account numbers on the bottom of the checks so they appeared to be different amounts or different checking accounts. It's clear from his actions that it was his intent to defraud without going over the felony limit. Passage of LB 282 would allow prosecution as a felony in this case. A woman wrote 22 checks over a period of five months with the bulk of them being written in a seven-day period. All but one of the checks were written under the \$300 felony classification. The combined total of the 22 checks is \$2,218. The bank classified all of these checks as forgeries. By the time we were notified by the bank that the checks were fraudulent they had all been cashed. Again, she wrote these checks with the express purpose of defrauding our stores. When professional thieves are allowed to continue to defraud retailers, it costs Nebraska businesses millions of dollars. In order to stay in business we must recover our losses. As a result, this cost of doing business we are forced to pass this cost on to our customers in the form of higher prices. There are many more examples that I could share with you but let me end by saying that this bill is a reasonable commonsense solution to this problem. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Elias? Seeing none, thank you. Next testifier in support?

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LB 282, 308

JIM OTTO: Senator Bourne, members of the committee, my name is Jim Otto, O-t-t-o. I am president of the Nebraska Retail Federation. I'm just here to lend the federation support and our members support to this bill. I don't want to be repetitive. I would bring up some of the same things that have already been said. We just wanted to lend our support to it.

SENATOR BOURNE: Great. Questions for Mr. Otto? Seeing none, thank you. Next testifier in support? Again, are there any testifiers in opposition? Are there any neutral testifiers? Senator Redfield to close. Senator Redfield waives closing. That will conclude the hearing on LB 282. Senator Redfield to open on LB 308.

LB 308

SENATOR REDFIELD: (Exhibits 16, 17) Thank you, Senator Bourne, members of the committee. I do have handouts for the page. For the record, my name is Pam Redfield, R-e-d-f-i-e-l-d. I'm the state senator from District 12, the "Independence District." I'm here to introduce to you LB 308. This bill deals with loss to retailers and consumers. Every day \$25 million worth of goods are stolen from our retailers. It is not just a loss to the retailers, it is a loss to the consumers because, in fact, it is reflected in the cost of consumer goods that are passed on to you each day when you buy what you need. Professional shoplifters are responsible for 10 percent of the total dollar costs. Five thousand individuals are apprehended for shoplifting each day. According to the Food Marketing Institute, food retailers and wholesalers report that shoplifting, employee theft, and check fraud remain the greatest sources of annual losses. The value of merchandise recovered per instance average \$51.71. Shoplifting affects everyone. It overburdens our police and our courts. It costs consumers more for the goods and higher prices. It adds to the store's cost for security and it costs government and communities lost dollars in sales tax. The bill that is before you deals with civil restitution. If you know my history while I have been in the Legislature I am not as interested in locking people behind bars as I am in making the victims whole and that is the gist of LB 308. I am looking for another remedy for the retailers when they

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incur these lost. Section 1 of the bill is a civil action for taking, detaining, or injuring personal property. This does not exist in our statutes today. I would rather see our retailers taking people to civil court than criminal court. Section 2 says that in addition to applicable penal sanctions a person who commits the crime of theft may be charged and the remedies that may be obtained in the civil court. We are looking for making the victims whole. That's the intent of LB 308. We did a study which I have passed out to you. Peru State College determined that Nebraska statute is among the most restrictive statutes in the nation regarding the retailer's ability to recover damages. In their opinion, Nebraska civil recovery statutes have two major shortcomings. First, the statute applies only to a person who commits the crime of theft by shoplifting. The language does not address other situations where merchants are victims of theft such as theft by a dishonest delivery person or an employee who might short count product that is delivered to the backdoor. This bill includes that new definition. The second shortcoming is that Nebraska statutes limit the merchant's damages to the value of the merchandise plus court costs and attorney fees. Higher penalties, I think, are in order because, in fact, if I can risk taking something and I am only bound to pay you what I took, then the risk may be worth it. If it costs me more than what I could gain then I might think twice before I do it. I hope that you will consider this bill. We have again asked the proponents of the bill to limit their testimony to value your time and thank you very much.

SENATOR BOURNE: Great. Thank you. Questions for Senator Redfield? Senator Flood.

SENATOR FLOOD: Senator Redfield,...

SENATOR REDFIELD: Yes.

SENATOR FLOOD: I agree with the second part of your bill but in the first part if someone stole a box of fish food from a store, certainly the retailer wouldn't take them to civil court. Most shoplifters that are caught come back to the store with the item and then they call the police. What's the value to the retailer on a shoplifter taking them to civil court rather than calling the police? And don't you have all sorts of issues with detention of a suspect

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until the police arrive if you're just going to use a civil remedy rather than a criminal remedy?

SENATOR REDFIELD: I think the issue of a one-time shoplifter probably the store is going to scare them, tell them this isn't a good idea and what could happen. Something like a small box of fish food is not going to be the issue but certainly I think that you need to have a remedy that in this case is the greater of \$50 or the price of the item and that would be to adjust for a large and expensive item would be worth going after in civil court whereas a small item wouldn't be so you have to give them a remedy of at least \$50 and court costs.

SENATOR FLOOD: Wouldn't you have to let the offender or the individual you pursue in civil court get home with the item first and actually transfer possession to their private residence or some other area outside of the real estate before you can make your claim?

SENATOR REDFIELD: I believe, sir, they only have to leave the property where they took it from. They do not have to take it to their own residence.

SENATOR FLOOD: But if you've got...okay, say they stole a shop vac, \$200 shop vac. You get the shop vac back and then you essentially pursue a, you know, and the damage is to whatever the retailer, whoever the retailer is would be minimal because they still have the shop vac. Wouldn't they be pursuing a criminal penalty in a civil setting with a lower burden for a plaintiff's attorney? Because in criminal court they'd have the burden beyond a reasonable doubt to call somebody a thief. In civil court they'd have the burden of the preponderance of the evidence I believe.

SENATOR REDFIELD: You're absolutely correct. The burden of proof is much higher in criminal court. Here we have addressed that if they were to obtain the merchandise, actually get the merchandise back in sellable condition, that the value here and the penalty would only be a half of that value. And that's because you can't say that they've been restored totally whole because there's restocking, there might be sales have been passed during that time frame where it's been discounted and so the opportunity to sell that merchandise. There still might be a loss in the cost

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to the retailer so I think that even though the merchandise has been returned there should be some penalty but not as significant as if they couldn't resell it.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions?

SENATOR CHAMBERS: I have so many that I'm not even going to begin asking them.

SENATOR BOURNE: Thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: First testifier in support.

TIM TERRY: Good afternoon, Chairman Bourne, members of the Judiciary Committee. My name is Tim Terry spelled T-e-r-r-y. I am the loss prevention manager for Goodwill Stores. I would like to thank Senator Redfield for introducing LB 308. We support this bill because if someone shoplifts product right now the retailer does not pursue for restitution for damages because he cannot recover costs incurred. This bill is a step in the right direction because it will help us collect a portion of our costs as the result of a criminal act. This bill will allow a retailer to tell a shoplifter, you will be prosecuted for the criminal act and I as a retailer will pursue civil restitution for any damages along with the value of the stolen merchandise. Shoplifting has become prevalent and shoplifters have increasingly become more bold. A customer came into our store, placed items in a shopping cart, pushed the cart through the parking lot to her vehicle, placed the items in her car, then actually came back into the store at which point we apprehended her. Police found over \$130 of merchandise from our store in her vehicle. And one instance a customer grabbed another customer's purse and when he ran out of the store he knocked over a display case. This bill will allow us to recover the replacement costs of the damaged property. Because of shoplifting incidents, we have installed security cameras. We try to get by as cheap as we can because we have to sell as cheaply as we can and every loss we incur takes away from the community programs that we fund. Because of risk to our employees and damage to

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property, we as retailers have limited the action our employees are allowed to take in apprehending the thieves. As a result, shoplifters have become more aggressive. We're asking for your support of this bill because it would give us the tools we need that will help us reduce shoplifting without adding risk to our employees. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Terry?  
Senator Chambers.

SENATOR CHAMBERS: Why should you be entitled to 150 percent of the full value of something that was stolen?

TIM TERRY: Again, to recover the costs that we have put in place to try to deter the shoplifting.

SENATOR CHAMBERS: If I buy...if you've got something you're selling for a hundred dollars and I come to buy it, you charge me a hundred dollars, you want a profit from this, don't you? You want a profit. You don't just want the value. You want the value plus 50 percent, right? It says 150 percent of the full value. What does that mean?

TIM TERRY: That 150 percent, if it's unsellable, if it was damaged.

SENATOR CHAMBERS: Why should you get more if it's damaged than you can get from me if I buy it from you?

TIM TERRY: The reason we're doing that is again because if something was stolen and it...

SENATOR CHAMBERS: It's to punish the person isn't it?

TIM TERRY: Correct, correct.

SENATOR CHAMBERS: The criminal law punishes. Civil law makes you whole. You're going beyond that. Have you got 33 votes for this bill? I am so indignant at what I see that I'm not going to ask you any more questions. But I want those in the know to understand, if this bill gets on the floor they better have 33 votes and be ready for some much harsher things that I'm going to say here at this committee. These retailers are gougers. They overcharge. They sell inferior merchandise and I had to save a woman

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this summer because Richman Gordman was going after her for \$300. A young girl had stolen a two-piece bathing suit. She went out of the store, they got it back. They had her criminally prosecuted. She paid for these items. Then Richman Gordman was going after her for \$300 and she and her family...she's white, called me because they felt no white senator cared because white senators made it possible. I talked to the local people. They had a law firm in Texas that represented them. I called Texas and I read the riot act on them and they decided well, it wasn't worth going after \$300 from this family which did not have it. Since they got the garments back, she had been prosecuted and she had paid restitution. And you think I'm sympathetic with a bill like this? You got another think coming and I just want you all to know so you can load up and pay your lobbyists. If you don't have 33 votes this bill is going nowhere. And if the Legislature wants to give the time for a bill like this, they need to get ready too and with that, I don't have any more questions of you. I don't have any questions of Mr. Otto or the gentleman with him or Senator Redfield if she chooses to close. But this is one of the most atrocious pieces of extortion that I've seen and I've been here 34 years. Thank you, Mr. Chairman.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support?

JIM OTTO: (Exhibit 18) Chairman Bourne, my name is Jim Otto, O-t-t-o. I am president of the Nebraska Retail Federation. I'm here to support this bill and thank Senator Redfield for introducing it. What I'm handing out is a quick, maybe it would be a little bit of the answer to some of Senator Flood's questions and, first of all, the civil recovery laws like this do exist in 48 other states. Nebraska and Delaware are the only two states that do not have some kind of civil recovery legislation. Don't need to go through all those numbers but the example there shows just a general national store and what they spend on all of the things for stopping shoplifting whether that be the machine that you walk through that makes the beep or the security personnel or the surveillance cameras, the cost of the hourly wages of those people. I guess the point of all this is that the cost that comes to here is that to catch one shoplifter costs about 350 bucks so the answer to Senator Flood and the frustration is that the retailer isn't

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really damaged, is that if you...usually in these situations the person who stole the item walks out of the store, is caught with the item and they then...the item is not damaged. It is salable so it is very difficult to show damage because the item itself is not damaged. So the purpose here, it sets \$50 minimum. Honestly, Senator, you're concerned about the 150 percent really doesn't concern us. We would just...if taking out 150 percent would make it more amiable to you, we would agree with that. We're trying to set the point that the retailer is damaged and that cost is passed on to the legitimate customer. Because if you don't have a civil penalty law, all of those costs are paid by the customers that actually pay for their merchandise. This would give the retailer two choices. It would not take away the choice of criminal prosecution but it would give the choice of actually taking the person to civil court. They could not extort money from the person because they would still have to go through civil court to get the \$50 or write them a letter saying we're ready to file this action so it's not...but it does give the ability to have two courses of action. It actually may, for some retailers it could be an alternative to criminal action.

SENATOR BOURNE: Thank you. Questions for Mr. Otto? Seeing none, thank you.

JIM OTTO: Thank you.

SENATOR BOURNE: Next testifier in support? Welcome.

DICK COSAERT: (Exhibit 19) Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Dick Cosaert spelled C-o-s-a-e-r-t. I'm vice president of Cubby's Incorporated. We have two grocery stores and 13 retail locations. I'd like to thank Senator Redfield for introducing LB 308. We have seen a substantial increase in grab and go's over the past year where individuals boldly walk into the store, grab products and leave, sometimes maintaining eye contact with the clerk as they walk out the door. We are aware of approximately 50 grab and go's over the last six months. Several weeks ago, we had an individual come into our store. He stuffed items in his coat and attempted to leave and an employee attempted to stop the thief as he exited the door. A struggle took place and a large window was broken and our employee's hand and

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finger was cut. We rushed our employee to the emergency room for treatment. The employee recovered and the thief got away. We've paid for the emergency room charges and the cost of fixing the window, estimated damage is around \$500. At another store, several young men came into the store between 10 p.m. and 2 a.m. and grabbed several cases of beer and calmly walked out. This happened three times in one week so we put a digital camera system in this particular store at a cost of about \$3,600. We also, for the safety of our employees, placed a guard in the store for two weeks. At another store, about four cartons of cigarettes were being stolen about every two weeks. We installed a hidden camera system in the ceiling at a cost of about \$1,600. We've gone to great lengths and considerable expense to identify and apprehend thieves in a very expensive to stop crime. There is a reason shoplifters are blatantly stealing from retailers and because they know they can get away with it. The benefits outweigh the risks. This bill will help bring balance to the shoplifting issue. Thank you very much.

SENATOR BOURNE: Thank you. Questions for Mr. Cosaert? Seeing none, thank you.

DICK COSAERT: Thank you.

SENATOR BOURNE: Appreciate your testimony.

DICK COSAERT: Um-hum.

SENATOR BOURNE: Further testifiers in support? Are there testifiers in opposition? Is there any neutral testimony? Senator Redfield to close.

SENATOR REDFIELD: Thank you very much. I will remind you again, \$25 million per day and I can tell you if it was my loved one I would rather be in civil court than criminal court. And if this could replace that kind of action and keep our children out of jail I think this would be a good price to pay. A hundred and fifty percent, Senator, I understand that you're concerned but I also recognize there are costs to people because our retailers would have to go to court. They would have to hire attorneys, there are costs. So I recognize that and I think that you say, take a chance, take the goods, and if you get caught it only costs

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you the same price as if you would have paid at the cash register, that doesn't seem quite equal to me. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Redfield? Senator Chambers. (laugh) Thank you. That will conclude the hearing for LB 308. The committee will stand at ease for ten minutes.

RECESS

SENATOR BOURNE: Senator Flood to open on LB 294.

LB 294

SENATOR FLOOD: (Exhibit 20) Thank you, Senator Bourne and members of the committee. For the record, my name is Mike Flood, F-l-o-o-d, and I represent the 19th Legislative District. It's my pleasure to present to you LB 294. This bill will establish the identify theft passport program to be administered by the Attorney General's Office here in Nebraska, and you should know it's modeled after a similar program in North Dakota. The passport program is necessary to prevent victims of identity theft from becoming a victim a second time. Last year in Nebraska over 700 Nebraskans were victims of identity theft and this number will only continue to grow with the increased sharing of personal information on the worldwide web. In addition to the increase of identity theft due to electronic commerce victims in this state continue to have their identities stolen in a variety of ways. One of those ways was discussed earlier this afternoon with regard to using another person's checkbook to write a check. In order to better understand what a victim of this growing crime goes through, I would like to submit a firsthand account published in the Village Voice of false arrest due to identity theft. Byronn Bain was initially stopped because of a missing taillight and subsequently arrested because of warrants issued in his name for crimes committed by an individual who stole his identity. I would ask that you carefully read this account and consider how this program could help protect Nebraskans from false arrest. Under this bill, the Attorney General's Office will issue the passport to victims of identity theft who have submitted a certified copy of a court order for expungement or an identity theft

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report and an identity theft affidavit. Once an identity theft passport is issued the passport will be attached to any records maintained by the Nebraska State Patrol including those used for background checks. The Attorney General's Office would be required to maintain a database of identity theft victims who have received passports for use by law enforcement and victims only. It is important to note that issuance of the passport may be the first step in assisting victims with creditors attempting to secure judgment. Creditors are not required to recognize the identity theft passport but it could help further substantiate the claim of any identity theft victim that he or she is not, in fact, responsible for debts incurred by a third party using their name in a criminal manner. I strongly support this bill because we should help protect victims of identity theft, from shielding them from false arrest. Imagine being a victim yourself driving down the highway being stopped by state officer or city policeman, show your driver's license and then immediately taken into custody because of a mistaken identity incident. By issuing this passport you're giving that victim of identity theft the thing that matters the most to them, their own identity back. You can help stop these confusing situations and provide them some relief from arrest. I thank you in advance for your support of this bill. I'd be happy to answer any questions.

SENATOR BOURNE: Interesting. Questions for Senator Flood? Seeing none, thank you.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: First testifier in support?

JEFF LUX: Good afternoon. Senator Bourne, members of the committee, my name is Jeff Lux, L-u-x and I'm an Assistant Attorney General with the Attorney General's Office. I'm speaking here in support of LB 294 which regards identity thefts. First of all, there was a drafting error in the bill that we apologize for on page 2 on line 10 and lines 14 through 15. The language that is "and sealing of records." That is not needed and should be stricken and on page 3, line 3, that same language and "sealing of records" language is not needed. The Attorney General's Office supports this bill because it's a proactive way to deal with identity

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thefts. For number one, it helps prevent the revictimization of victims in terms of the identity theft passport. Number two, it's a central place to report and obtain information for victims to protect themselves. And number three, the identity theft affidavit can be used by victims to help protect themselves and clean up their credit report. The identity theft affidavit is going to be fashioned after the Federal Trade Commission's identity theft affidavit and that affidavit is already accepted by many companies throughout the country as evidence that you are a victim of identity theft. So even though this bill doesn't require companies to accept the affidavit as evidence, many companies are already accepting this same form as of evidence of identity theft. And the reason that this is important is that federal law allows victims to have certain rights if they are established that they are victims of identity theft. One of those is to put a fraud alert on their credit report. Another is to block fraudulent information from being put on their credit report and another is to be able to obtain information about fraudulent transactions that are on their credit report. But the only way that a person can use those rights is to file a police report and sometimes it's hard for people to get a police report. If someone is using your identity, say, in Pennsylvania I here in Nebraska might not be able to get a police report from Pennsylvania. So, you can use the affidavit here in Nebraska to substitute for that police report and therefore be able to exercise your federal rights. Here in Nebraska Senator Flood already mentioned that in 2003 there was over 700 complaints. In 2002 there was 450. That's up by a third and these are people who might not necessarily all use this, what is pronounced in this bill, but some of them would. And just to put a Nebraska face on this type of problem, there was a prosecution out of Offutt Air Force Base. The facts were that this person, the defendant's MO was to befriend someone, steal their wallet and then take over the identity of that person and join the military. He'd be sent to another part of the country where he would live high on the hog, write checks, pay for cars and then once the heat got hot he would go AWOL. And this person had felony warrants out for his arrest for being AWOL from the military and multiple felony arrest warrants on multiple states. To conclude, this person was arrested and this bill, if we had it, would have helped prevent this person from being

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arrested. They could have used the passport to show police that I'm a victim of identity theft and now this person wouldn't have to go get an expungement. So we support this bill. Are there any questions?

SENATOR BOURNE: Thank you. Questions for Mr. Lux? Mr. Lux, let me ask you a quick question.

JEFF LUX: Sure.

SENATOR BOURNE: You struck that portion of the statute that talks about criminal impersonation statutes so there would be no generic criminal prohibition of carrying on a profession without a license. Was that deliberate or is that?

JEFF LUX: Oh, okay. The section that had to do with licenses and that?

SENATOR BOURNE: Page 4, lines 24 through 26.

JEFF LUX: Okay. Yeah, that was struck because I guess it doesn't really fit in the identity theft section because you're already going to be breaking the law if you're practicing and you don't have a license. And so...

SENATOR BOURNE: But aren't...right, I'll give you that for the practices of medicine, law. There's specific ones yet but isn't there a reason for the generic prohibition?

JEFF LUX: Well, you know, there very well may be and I think that this section could be left in if it covers other things that you feel that, you know, might be left out, dangling out there if it was struck. So I don't think that that's anything in stone...

SENATOR BOURNE: Okay.

JEFF LUX: ...at all.

SENATOR BOURNE: Further questions for Mr. Lux? Seeing none, thank you.

JEFF LUX: Thank you very much. Have a good afternoon.

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SENATOR BOURNE: Thank you very much. Next testifier in support?

STEVE HECKER: Thank you. My name is Steve Hecker. I'm a captain with the Norfolk police division. I am briefly speaking in support of the proposed legislation involving identity theft. While the vast majority of reported crimes involving identity theft relate directly to minor forgeries where checkbooks are stolen and checks are presented at payment, until such time as those checks run out on that checkbook that was stolen. Most of those cases are local cases that could be solved locally. There is and has been a much greater increase in identity theft that involves the opening of false accounts, obtaining loans, increasing credit lines, obtaining numerous credit cards, obtaining utility service, mail service, telephone service, et cetera. When the identity theft begins to expand into multiple business accounts, crosses jurisdictional boundaries victims are left with a tremendous burden in proving they're innocent to each of these accounts. The passport program would allow the victims of identity theft to quickly present themselves as victims of a crime and allow the business and law enforcement agencies to address the real crime sooner. The passport system also gives the victims the process of regaining control of their lives that have been disrupted by the theft of their name. The greatest benefit would be the ability to assist victims to identify themselves as victims of a crime and not suspects of crimes. By obtaining and presenting a passport to law enforcement it would prevent possible arrests or lengthy detention for crimes that they have not committed. For police agencies our size, being able to fill out and find out the exact causes of why an arrest warrant was served after 5 o'clock presents a dilemma for us all. Both the victim and the law enforcement officer have been placed in a bad situation and neither of that is by their fault. Presenting a identity passport would alleviate this situation. Thank you.

SENATOR BOURNE: Thank you. Captain Hecker?

STEVE HECKER: Yes.

SENATOR BOURNE: Thank you. Questions for Captain Hecker? Seeing none, thank you very much.

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STEVE HECKER: Thank you.

SENATOR BOURNE: Next testifier in support? Are there any testifiers in opposition? Is there any neutral testimony? Senator Flood to close.

SENATOR FLOOD: Waive closing.

SENATOR BOURNE: Senator Flood waives closing. That will conclude the hearing on LB 294.

LB 360

SENATOR FOLEY: This will open the hearing on LB 360. Senator Bourne to open.

SENATOR BOURNE: Good afternoon members of the committee. My name is Pat Bourne. I represent the 8th Legislative District, here to introduce LB 360. LB 360 amends the current burglary statute and removes the element of breaking from the offense. Nebraska presently defines the crime of burglary as the act of willfully, maliciously, and forcibly breaking and entering any real estate or improvement erected thereon with the intent to commit any felony or with intent to steal property of any value. For decades the Nebraska courts have struggled to fully define breaking. After much consideration, the courts settled definition of breaking is an act of physical force, however slight, to remove an obstruction to the entry of the premises. This has led to a series of inconsistent convictions under the law of burglary. The problem was specifically addressed in a Nebraska Supreme Court concurring opinion in the case of State v. Greer. An example was given in the concurring opinion. Under the present interpretation of breaking, climbing over the newly-erected fence at the governor's mansion with the intent to commit any felony is not burglary but opening and walking through the gate with the same intent is burglary. The concurring opinion called on the Legislature to resolve the issue. The purpose of this legislation is to clarify the burglary statute and so remove the element of breaking from the offense. The intent of the burglary statute is to protect the sanctity and security of homes and businesses. This intent should not be hindered by formalistic and hypertechnical application of the law. The

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statute is also narrow under LB 360 to only define burglary as those acts where a person not privileged to do so enters or remains unlawfully in a building or occupied structure rather than any real estate as currently prescribed.

SENATOR FOLEY: Thank you. Are there any questions for Senator Bourne? I see no questions. First testifier in support.

JOE KELLY: Members of the committee, my name is Joe Kelly, K-e-l-l-y. I'm a chief deputy county attorney in Lincoln, Nebraska. I'm here on behalf of the Nebraska County Attorneys Association to support LB 360. This bill has been before you several times in recent years. Our support stems from the bill's main purpose which is to get away from splitting hairs on two people who are doing the same thing and end up with two very different punishments. If the door to your house is open, let's say, propped open because someone is working, a repairman. And I am walking down the street and I decide to go into your house and steal something, if I walk through that door which is already propped open and steal something and leave with that item, present law I'm not guilty of a burglary. I'm guilty of a misdemeanor trespass. If I had gone down the street, seen the door to your house open but not locked and nevertheless used any force whatsoever to open that door and entered and taken items and left, I'm guilty under the present law of burglary, a Class III felony punishable by up to 20 years in prison. So you can see that in each case I formed that intent while out in the street to steal and the method by which I entered in either case was only slightly different, a little force to open the door versus a door that was propped open and you end up with very different treatment within the law. So this bill really gives us a new law for burglary, a new definition and it becomes trespass with an intent to steal so we're in favor of the bill.

SENATOR FOLEY: Thank you, Mr. Kelly. Any questions of Mr. Kelly? I see no questions. Other testimony in support? Is there any opposition testimony? I see none. Is there any neutral testimony? I see none. Senator Bourne waives closing. This will close the hearing on LB 360. We'll now open the hearing on LB 362. Senator Bourne to open.

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LB 362

SENATOR BOURNE: Thank you, Senator Foley, members of the committee, my name is Pat Bourne. I represent the 8th Legislative District, introducing LB 362. LB 362 clarifies archaic language in Nebraska Statutes 29-504. Originally adopted in 1873, the statute contains the awkward phrasing directing the magistrate to "proceed as soon as may be in the presence of the accused to inquire into the complaint." LB 362 changes the language directing the magistrate to proceed as soon as practical under the circumstances. The outdated phrase is replaced and the statute clarified with the needed contemporary language.

SENATOR FOLEY: Thank you, Senator Bourne. Any questions of Senator Bourne? I see none. Is there any testimony in support of the bill? I see none. Is there any opposition testimony? I see none. Any neutral testimony? I see none. Senator Bourne waives closing. That will close the hearing on LB 362. We'll now open the hearing on LB 363. Senator Bourne to open.

LB 363

SENATOR BOURNE: Good afternoon, Senator Foley, members of the committee. My name is Pat Bourne. I represent the 8th Legislative District, introducing LB 363. LB 363 inserts unintentionally omitted language pertaining to the crime of criminal attempt. Criminal attempt is defined in Nebraska Statutes 28-201. The penalty section of the statute provides that criminal attempt is a crime when all grades of offenses are attempted except where the attempted crime is a Class IC or Class D felony. The absence of the particular felonies is an oversight. LB 363 corrects the omission by including Class IC and Class ID felonies. The correction does not alter the intent or purpose of the crime of criminal attempt but rather corrects an unintentional error.

SENATOR FOLEY: Thank you, Senator Bourne. Are there any questions of Senator Bourne? I see none. Is there any supporting testimony? I see none. Any opposition testimony? I see none. Any neutral testimony? I see none. Senator Bourne waives closing. That will close the hearing

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on LB 363.