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COMMITTEE ON JUDICIARY

February 1, 2006

LB 768, 1108, 1120, 1223, 1092, 794

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 1, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 768, LB 1108, LB 1120, LB 1223, LB 1092, and LB 794. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our sixth day of committee hearings. We have six bills today. My name is Pat Bourne. I'm from Omaha. To my left is Senator Friend, also from Omaha; Senator Aguilar from Grand Island; the committee clerk is Laurie Vollertsen from here in Lincoln; to my right is committee counsel Jeff Beaty; further to my right is Senator Mike Foley from Lincoln; and Senator Dwite Pedersen from west Omaha. I'll introduce...

SENATOR DW. PEDERSEN: Elkhorn.

SENATOR BOURNE: Oh, excuse me, from Elkhorn. (Laughter)

SENATOR DW. PEDERSEN: Elkhorn, thank you.

SENATOR BOURNE: I'll introduce the other members as they arrive. Please keep in mind that Senators have duties and obligations throughout the afternoon, so they will be coming and going. If they happen to leave during your testimony, please don't take offense to that. They're simply conducting other legislative business. If you plan testify on a bill, we ask that you sign in at the desk that Senator Cudaback is at right now. Please print your name, sign and print your name so that it's easily readable, can be entered into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify on a particular bill. The introducer will go first, then we will take proponent testimony, followed by opponent testimony, and then if there any neutral testifiers, we will take those folks then. When you come forward to testify, please clearly state and spell your name for the benefit of the transcribers. All of our hearings are transcribed, so your spelling of your name will

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help the transcribers immensely. Due to the large number of bills we hear here in the Judiciary Committee, we use the "Kermit Brashear Memorial Lighting System." Senators introducing the bills get five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes to testify, exclusive of any questions the committee may ask of you. The blue light goes on at three minutes; the yellow light comes on as a one-minute warning; and when the red light comes on, we ask that you conclude your testimony. The rules of the Legislature state that cell phones are not allowed in the hearing rooms, so if you do have a cell phone, please disable it so as not to interrupt others. Reading some else's testimony is not allowed. If you have testimony from someone else you would like us to enter that into the record, please forward it on to us and we will do that, but we won't allow you to read that. With that, I think we're ready to go. Senator Cudaback to open on Legislative Bill 768. As Senator Cudaback makes his way forward, can I have a show of hands of those folks here to testify in support of this bill? I see five. Those in opposition? I see none. Neutral? I see none. Would the proponents of the bill please come forward and sign in and we'll make use of the on-deck area. We've been joined by Senator Combs from Milligan. With that, Senator Cudaback, welcome.

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SENATOR CUDABACK: (Exhibits 1, 2, 3, 4, 5) Chairman Bourne, Judiciary Committee members, good afternoon. I'm Senator Cudaback from the 36th District, C-u-d-a-b-a-c-k. Great to be with you here this afternoon. I will read my comments as the testimony. I want to be correct into the record. In 2003, the National Highway Safety Traffic Administration found that car crashes are a leading cause of death for teenagers, killing more young people than the next three leading causes of death combined. In turn, the National Transportation Safety Board recommended that states take action to identify and implement solutions to reduce these fatalities. One of the recommendations for the NTSB asked the states to consider as part of a driver's training program leading to full licensure in that novice drivers not use interactive wireless communication devices. LB 768 as introduced prohibits persons holding a provisional

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operator's permit, school permit, farm permit, LPD learner's permit, or LPE learner's permit from operating a mobile phone while the vehicle they are operating is in motion and provide for a penalty, also. Counsel has provided you a copy of Amendment 1984, which makes two changes. The first change the penalty. In Nebraska law, there is no record of the first offense that occurs towards a second offense when the only penalty for the first offense is a mere warning. The amendment strikes the penalty language of the bill, and in so doing brings in to play the general penalty for the rules of the road, offensive of 60-682, 60-689, traffic infraction and assessment of points found in 60-4,182. The amendment also removes references to a mobile phone or a wireless telephone service from the bill and exchanges them for the interactive, words we have to be careful here in what we say what the device is, interactive wireless communications device, for the record. The more commonly used reference for such telecommunications device is in use today. They come up with this, I just ask for your intellect and advance this bill to the full floor so we can get a full and fair debate on the issue. As we know, it's becoming more and more of a so-called problem, if not a problem. Also, I'd like to introduce, with us today, we have from Washington, D.C., honorable board member of the National Transportation Safety Board Kathryn O'Leary Higgins, so I'd like to introduce her to be our next speaker for this bill. And her biography is included in my hand out, which we handed out earlier, so.

SENATOR BOURNE: Okay. Thank you. First, we'll take questions for Senator Cudaback. Were there any questions? Seeing none, thank you.

SENATOR CUDABACK: (Inaudible) I got off easy.

SENATOR BOURNE: See! We're just nice here in the Judiciary Committee. Ms. Higgins. Welcome.

KITTY HIGGINS: (Exhibit 6) Thank you, Mr. Chairman. I'm delighted to be here, not only to testify on behalf of this legislation, it's an important issue, but also as a new board member to come back to the state where I grew up. I'm originally from Omaha, and I graduated from the University of Nebraska, so, for me, it's a little bit of a homecoming. We strongly support this legislation. As you've already

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heard, 90 percent of all transportation-related deaths each year are from highway crashes. People, I think the public thinks about the NTSB in terms of airplane accidents and railroad accidents. But in fact, 90 percent of all transportation deaths each year are from highway crashes. And unfortunately, a disproportionate number of those highway crashes involve teen drivers between the ages of 15 and 20, young people who have only just gotten their driver's licenses. In 1993, the Safety Board recommended that states implement graduated driver's licensing. And we've seen a significant reduction in the number of teenage accidents and deaths as a result of that. In 2002, the board added a passenger restriction to its graduated driver's license recommendation, and in 2003, we added further to that recommendation a restriction on cell phone use after we investigated a horrific accident in Maryland where five people were killed. In spite of these changes in driver's license practicing, there's still traffic crashes are the leading cause of death among teenagers today, accounting for 40 percent of all deaths among 15- to 20-year-olds. Young drivers between the ages of 15 through 20 make up less than 7 percent of the driving population, but compose more than 13 percent of the drivers involved in fatal crashes; 21 percent of all highway fatalities occur in crashes involving teen drivers. The statistics in Nebraska are just as ominous. Teen drivers are less than 10 percent of the drivers in Nebraska, but account for almost 20 percent of the drivers in fatal accidents. More than 28 percent of Nebraska's highway fatalities in 2004 occurred in crashes involving teen drivers, more than one in four. The AAA just did a national study that showed that this is not just an issue that affects teenagers. The majority of fatalities in teen crashes are persons other than the teenaged drivers. In Nebraska, AAA found that 56 percent of those killed in accidents involving teen drivers were either passengers, occupants of other vehicles, or nonmotorists. Nebraska has done a lot to implement graduated driver's licensing. This has had a significant effect in terms of reducing accidents in this state. We think you need to do more. We hope that you will seriously look at this issue of cell phone use because it is a distraction. When I was helping my sons learn to drive, cell phones really weren't a phenomena. Now they are, and they've gone beyond that. They're handheld PDAs that are used, and so it really is a distraction. The

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accident we looked at, we looked at two accidents, both involving cell phones, both involving the loss of a number of lives. In Nebraska, there were two recent accidents that I want to bring to your attention. One in August, an 84-year-old woman was killed in Omaha. The teen driver was reaching for her cell phone and ran a stop sign and killed an 84-year-old woman. More recently in October, in Morrill County, a teen driver was text-messaging and drove off the road and she was killed, and she had a passenger in the car. There are studies that support the significance of this, and can document the importance of these kinds of distractions that cell phones introduce, not just for teens, but for all drivers. The states are moving in this direction. Ten states now have enacted these laws. Minnesota and Colorado, neighboring states, have enacted versions of this law. We would hope very much that this is something you would consider a priority for this session.

SENATOR BOURNE: Thank you. Long way to come for three minutes. Let me see if there are questions. Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Ms. Higgins, thanks for coming in, and we're happy to have you. You'll get more than three minutes here I think. We're going to hopefully ask you a couple of questions. I wanted to delve into this subject just a little bit, and not, I guess, not go too crazy. But one of things, it's always intrigued me, this issue has always intrigued me a little bit, and we heard a little bit about it last year because Senator Cudaback has been a champion of some of these things, and he's pretty eloquent on the topic. But what I want to try to figure out is whether, you know, this type of stuff, I guess, is stepping on mice when there's elephants running over our head? And here's what I mean by that: when I'm in college, we almost got in a wreck; I'm riding with a guy and we almost get in a wreck because he leans over and tries to light a cigarette. And just so happens, I'm coming to work this morning, and I see somebody eating their breakfast in their car. Now, kids, our kids, kids that are being tested and certified are supposed to grow up real quick. I guess what I'm asking you is, can you make a differentiation, or can you make an argument that a lot of this might not be, and you've got a lot of experience in this area, that's why I'm asking you. Can you make the argument that a lot of

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this isn't legislative and it's certification and it's enforcement and it's folks teaching people to drive and maneuver in a vehicle the right way? Because, you're not supposed to have a license if you're going to do other things, you know, while you're driving a car. I mean, I think we're probably all guilty to a degree, but we do know the seriousness of this. And a 16-year-old is supposed to be, I guess, I think you see my point. Is there a good differentiation between the idea that we have to have legislation in a certain instance, or a certification and testing and registration type of work can handle it for us?

KITTY HIGGINS: I think that, again, cell phones, I think when most of us were learning to drive, weren't a factor. And driver's education certainly is an important, and other kinds of requirements. But I think they're so ever-present, and I think just as we've placed other restrictions on teen drivers because they are vulnerable, they are young, they are not only a risk to themselves, but to others, that I think asking them not to use this while they're, for a limited period of time. We have not taken a position on cell phones for all drivers. I mean, some people would like to go in that direction. But we think the public has a responsibility to recognize that there's some dangers that can be avoided if certain kinds of restrictions are put in place, just as we've put in place, and Nebraska has, restrictions on teenagers driving at night. You know, good drivers will drive well at night, but we, there's just an understanding that when you're a new driver, there's certain things that are more challenging than others. And I think this recognition of this technology, which teenagers are much more adept at using than most of us, and use it all the time, and think nothing of it of multitasking, it's just something we think should be limited until they're through that phase.

SENATOR FRIEND: I appreciate that. Just one more thing that I wanted to delve into. It wouldn't take long. One of the things that concerns me about legislation like this, I think it probably concerns everybody in one way or another, is the enforcement aspect.

KITTY HIGGINS: Um-hum.

SENATOR FRIEND: You have a law enforcement official pull a

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teenager over, and you look at the situation and a law enforcement officer might have thought that that person was talking on the phone. I guess later on, you could probably figure that out, based on the facts or to find out when that call was made. You could grab the phone and look at it and try to figure out when a call was made. But that law enforcement officer is forced into making a judgment call, and that could force the teen into, you know, look, I didn't touch this phone. My Dad gave it to me so in case I get stranded somewhere. I mean, do you see where I'm going? I mean, there are other, you know, we've got seat belt laws that are hard to enforce. Give me a further reason why we should add, you know, I guess, another one that provides difficult enforcement.

KITTY HIGGINS: I think...

SENATOR FRIEND: Have you found it hard to enforce, or seen it hard to enforce in other states?

KITTY HIGGINS: My colleague, who's going to speak after me, could perhaps answer that better than I can. And we have, we now have ten states, I think it's, we're gaining more experience with the enforcement of this. I think that the restriction, just as some of these other restrictions, that we've talked about, we believe it's really up to parents to help enforce these kinds of restrictions. You know, it is a challenge for law enforcement. They've got a lot of things to do. But I think if a teenager knows that he's not supposed to be doing this and he's doing it, I mean, you know, there might be consequences. I don't, you know, I don't think we expect that every kid that's driving with a cell phone is going to get pulled over. It's usually something else in the driving that causes them to be stopped. The cell phone is a contributing, it could be a contributing factor. But it's more, do we, we think it's important to, again, in the kind of other restrictions that we put on, to say, look, this is just something that doesn't make sense when you're learning how to drive. If there's enough, you need to pay attention to the road. You need not to have any other distractions. Just as there's some discussion about limiting the number of occupants in a car, in terms of kids can drive. I mean, those are the kinds of things, we've all been there, and we know how challenging it is, both when we're doing it ourselves but also as parents.

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And we think this is something that just makes it sort of common sense, given, again, where this technology is going, because it started out with cell phones, and as you heard the senator say, we've broadened the language because it's now more than that. I mean, it's interesting that you don't allow cell phones here, because they're a distraction, and we're in a closed hearing room. And there's a reason for that, because they are a distraction. And, you know, a Blackberry, which I carry, and, you know, think I can't live without, you know, it's very...

SENATOR FRIEND: We're going, yeah, we're going to have somebody follow you out to the airport to make sure that you're not using it. (Laughter)

KITTY HIGGINS: I'm taking the shuttle.

SENATOR FRIEND: I'm just kidding. Thank you.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you. Do you think it's justifiable for us to pass a law that it's okay if adults do this, but it's not okay if teenagers do that? How do I justify telling my teenage daughter, I can do this, but you can't do this?

KITTY HIGGINS: Senator, we've already passed those laws. You restrict drivers, teens, from driving at night. You can drive at night after certain hours. And why did we do that? Because there's just a higher incidence of accidents for young drivers at certain times of day and under certain conditions. I thought that the state of Nebraska has issued a chart, which I think is very interesting, which shows the reduction after you passed your restrictions on, graduated driver's licensure, shows a reduction in accidents. I mean, it's dramatic; a 37 percent reduction in five years. I mean, it's just, there's some common sense factors here. This is just one more common sense thing. You know, we have a responsibility, I think, both as parents and as government to help young people do the right thing. It doesn't mean they're always going to follow what we say, but think putting the rules of the road out there, just set the bright line. And I think that's what this is about.

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SENATOR AGUILAR: And I agree with what you're saying, but I would also contend that there's some bad adult drivers out there, don't need to be distracted by this, either.

KITTY HIGGINS: Absolutely. And we've all seen them, as Senator Friend just indicated.

SENATOR BOURNE: Further questions? Ms. Higgins, okay, ten states have passed similar legislation to what's being proposed here.

KITTY HIGGINS: Yes.

SENATOR BOURNE: What have we seen in those states in terms of a reduction in teen fatalities?

KITTY HIGGINS: Let me, I don't know, do we...?

SENATOR BOURNE: If you don't know the answer, we'll...

KITTY HIGGINS: I don't know that specifically.

SENATOR BOURNE: Okay.

KITTY HIGGINS: We could get that for you.

SENATOR BOURNE: Okay. Further questions? I would like to have that. That would help. Seeing none, thank you.

KITTY HIGGINS: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support of this bill. Welcome.

STEVE BLACKISTONE: Thank you, Mr. Chairman. I am Steve Blackistone. That's B-l-a-c-k-i-s-t-o-n-e. I'm director of state and local affairs with the National Transportation Safety Board, and very much appreciate the opportunity for Member Higgins and I to be able to be here today. Let me just follow up on a couple of the questions and comments that she made. As we've noted, teen drivers are far more dangerous drivers than are adults. Their crash risk, their crash rates are much, much higher than adults. If you were to see a chart by age, what you would see is teenage drivers at age 16 have a crash rate that's up here, and it goes down

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dramatically, like this, to a much lower rate by the time you're in your mid-twenties. And it stays at that lower rate and you don't see a comparable crash rate until drivers are over about 80 years old. So, teen drivers are a clearly distinctive class of drivers. They have a much higher risk, and now matter how you measure that. And that's why the board has concluded in a number of instances that teenagers need, for their own sake as much as anything, need to have special restrictions on the privilege of driving, which they're given through the state. That, in part, Senator Aguilar, I think answers your question, as we see them as a distinctive class of drivers. And until they can get some experience, and learning to drive is something that can only, ultimately, be learned through experience, and until they gain some maturity, they are going to be high-risk drivers. So that is why we have recommended things such as a nighttime restriction, which you have, a passenger restriction, and a cell phone restriction, and other types of restrictions that are part of a comprehensive, graduated licensing system. The question was raised regarding, is it difficult to enforce this law? And, while I think it probably would be better for a representative of the law enforcement community to answer that, in some cases, it may be difficult to enforce. In some cases, it's going to be very obvious. But the primary, I mean, no traffic law is enforced 100 percent of the time. The primary purpose for this law is to create awareness and also to enable parents to better control their children. Parents look to the law for guidance in this area in terms of dealing with their children. The best example is in terms of child safety seats. Parents will tell you that they keep their children in seats until the law says that it's appropriate for them to move to booster seats. They don't put their children in the front seat until the law says it's appropriate for them to sit in the front seat. So those are some examples of how the law is used and enforced in other than a typical law enforcement way. And with that, I would be glad to respond to any other questions that any of the legislators might have.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. I'm sorry, sir, I didn't get your name, but...

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STEVE BLACKISTONE: Steve Blackistone.

SENATOR Dw. PEDERSEN: ...Blackistone. Anyway, Mr. Blackistone, do you have studies on any other distractions with teenagers besides cell phones?

STEVE BLACKISTONE: You mean other types of distractions such as eating?

SENATOR Dw. PEDERSEN: Distractions. Smoking, eating, drinking, making out, primping themselves, the guys and their hair and the girls and their makeup?

STEVE BLACKISTONE: Yeah. Yeah. Right. No, I am not aware of specific studies that have been done on other specific activities. I do know that there have been some specifically on cell phone use, which has shown that it very greatly diverts a person's attention from the driving task and creates an impairment similar to that that's created by alcohol.

SENATOR Dw. PEDERSEN: Is there any talk about radios, stereos, television sets that are now in cars? I'm not questioning at all that these kids are high risk. That's no doubt. I mean, they have been since the beginning of time. But why we always, I'm also on the transportation committee, so I say "we." I've heard these bills over and over again, that were on cell phones, and we've got all these other distractions that are just as heavy if not more so. And then, as I see a bill like this, I think it's schizophrenic to hand a teenager a cell phone and then tell him not to use it. You know what I mean? It's...

STEVE BLACKISTONE: I don't think we're telling teenagers not to use it. We're telling them not to use it at a time when they're in a very high-risk situation, which is when they're driving. I think we would always tell teenagers with anything that we would give them that we would tell ourselves: don't use this in a high-risk situation. As far as our experience goes, while it is clear there are other distractions in the car, and one of the others is having, for teenagers, is having other passengers in the car.

SENATOR Dw. PEDERSEN: Um-hum.

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STEVE BLACKISTONE: And that is another area that's been very heavily researched. But I think the focus has been more on cell phones simply because of their, it's such a self-evident risk and such a self-evident distraction.

SENATOR Dw. PEDERSEN: I do agree that they're a distraction.

STEVE BLACKISTONE: There's a cognitive element that's involved here. When you're speaking with somebody who's not in your presence, you're having to concentrate on that conversation much more so than when you're just trying to reach down to grab your soda or tune the radio or do something like that. That requires far less mental concentration than does carrying on a conversation with somebody who's not in your presence.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Mr. Blackistone, previously, Ms. Higgins testified that less than 10 percent of the drivers are minors, but they are involved in 20 percent of the fatalities. Now, is that nationwide?

STEVE BLACKISTONE: I think nationwide the numbers are about 6 percent and 14 percent, roughly. Here in Nebraska, it's a slightly wider diverse.

SENATOR BOURNE: Okay. Is there data showing, I mean, perfect world, what would reduce that number of fatalities, other than them not driving at all? What would reduce that? I mean, you see, I believe in solving, if there's a problem, let's solve it directly, you know. And I want to, before I would advocate moving this forward, I want to be convinced that it's relevant relative to reducing the number of fatalities. And if we can demonstrate that it would do that, I think it makes sense to go forward.

STEVE BLACKISTONE: Well, I think there are two ways of looking at that question. One, what is the risk that's created when somebody is actually using a cell phone? That has been studied and measured and can be done in a somewhat...

SENATOR BOURNE: But, I agree, but we are...

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STEVE BLACKISTONE: ...but the second part of the question is...

SENATOR BOURNE: ...concentrating on youth.

STEVE BLACKISTONE: Right.

SENATOR BOURNE: And so I guess what I want to do is make sure that there's a direct connection between incidents of fatalities and this conduct.

STEVE BLACKISTONE: Right, and there are no, there have not been any, what you might call epidemiological type studies of this for the primary reason that it is very difficult to ascertain when there's an accident whether or not somebody was using his cell phone. The only way really to do it is to rely upon their own self-reporting, which I think you would agree is notoriously unreliable. The experience in the states that have passed these laws, which you had asked about previously, I believe, so far is quite limited. The first of these laws was passed in 2002, and so most of them have not been in effect long enough to have been studied one way or another. So we have not seen the types of dramatic decreases in crashes that we have with other elements of graduated licensing such as Liz pointed out to you. We are confident that's there simply because we see what a risk it creates. I think it's going to be difficult to measure in terms of connecting cell phone-related crashes before and after.

SENATOR BOURNE: I understand. Thank you. Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Mr. Blackistone, don't you, and I touched on this a little bit with Ms. Higgins, and she was helpful. Don't you think, and I'm not trying to harp on it, but I find it, it's almost amusing, well, it would be amusing if it isn't sad, that in the state of Nebraska, you can get a driver's license pretty darn easy. I mean, the certification for somebody to get out on a road and to take a vehicle that could be quite dangerous under any circumstances, 20 miles an hour, 30 miles an hour, especially at 55 or 60, it's a pretty easy, it's pretty difficult to get a gun in this state. It's very easy to get behind the wheel of a car if you're

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15 years old. I guess my thing, and the point I'm making is, are we, is too much of the focus because it's out there and we know it's happening and we see it on the road. We see somebody blow a red light and they're talking on a cell phone. We see that. What we don't see is a person not, the person blowing a red light, not on a cell phone, that's just a bad, flat bad driver. Doesn't matter what the age is or whatever. How did that person pass the test. I mean, it almost should be like we look at this thing and start realizing that it's pretty tough to get into law school and it's pretty hard to become a lawyer. You know, maybe we should make it a little tougher to actually get behind the wheel of a, you know, of a vehicle that could kill people. Is the test in this state too easy? And the other 49 states, are we allowing too much? Because I remember Minnesota's, it took an hour and a half to actually take it. I mean, it is more intense than Nebraska's. I guess I'm asking you that question. Can we focus more on certification than we do?

STEVE BLACKISTONE: That, certainly, that would be an appropriate area to look. And I can't, I'm not familiar with the specifics of Nebraska's testing and licensing system. But in general what we've found is that passing a test, no matter how intense it is, only assures that the person knows how to control a vehicle. That doesn't mean they know how to handle it in all sorts of, kinds of situations. And there are certain things about driving that you really can't learn except over time by doing it, particularly the cognitive awareness, knowing what's going on behind you, being constantly aware of what's happening to the side, and being able to quickly identify and respond to situations. Last year, the Safety Board conducted a public forum on a related topic, and that is driver education. And what we found is, most, there's little or no evidence that driver education as it's now conducted in this country provides much of a benefit except teaching the very basics. And so, because we were looking to see what works in this area, how do we come up with a better education and testing system that we could recommend to the states, we found nothing. We wound up, instead, recommending the U.S. Department of Education, along with NTSA, develop what would be an adequate testing and education system. So, the short answer is, while I'm not familiar with the specifics, no, Nebraska's system probably isn't adequate simply because,

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from our experience, nobody's is. What's needed really is a comprehensive look at the education, the testing, and what happens after the person gets their license, the first six to 12 months they drive. And making sure that period is as risk-free as you can make it be.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you. Mr. Blackistone, your numbers are really overwhelming, you know, when you talk about fatalities involved with cell phone use. And I would wonder, in those studies, is there is any separation of extenuating factors, for instance, speeding and other traffic violations, use of alcohol, use of seat belts? Is any of that separated out in the numbers that you've compiled?

STEVE BLACKISTONE: The studies that have looked at the risk of cell phone have not been accident based studies, but rather studies of performance when somebody is using a phone and how quickly do they respond, so those are fairly isolated type studies. And so I would think the risks have been. When you look at accidents, often, an accident almost always is a combination of events. Rarely is there one single thing that you can point to. So in those cases where you're looking at accidents, for example, the Maryland accident that was the basis of our recommendation had a number of extenuating factors, of which the cell phone was the aggravating factors that we think put the driver over the top and out of control.

SENATOR AGUILAR: Thank you.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Sir, with the other states that have done it, how did they notify the public when it was done. Obviously, there's a couple of ways. You can put it in your driver's manual and just gradually people are going to learn that they can't do it. Did they do a media blitz that said, you know, from this day forward, this bill is passed that kids are going to start getting tickets? Are you aware of that, how they did it?

STEVE BLACKISTONE: I think that has happened in at least

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some states where they have done it. In Maryland, my home state, there was quite a bit of media attention given as the effective date approached. In other states, the driver licensing agency has made sure it's part of the materials that are sent to everybody who gets a learner's permit. And in conjunction with that, a number of states have set the effective date so that, far enough out so that nobody who is getting their learner's permit today would be affected by it, but only those in the future so that they would of, you know, of necessity be aware of it before they ever started the learner's permit process.

SENATOR Dw. PEDERSEN: The definition of a cell phone, I know, is put in here in the bill, so I know what they're talking about, a phone. But are we talking about the phone, like when you say you pick up and you use? Are you talking about a phone like I have, if I program it right, I mean, I just plug it into the dash and I talk to it. I don't have to push any buttons to answer it. I don't have to push any buttons to send anything. I can talk to my phone and never have to lift it out of the cradle. I can do it right here, I mean, I can push a button and it'll go onto something, answers itself, and everything else.

STEVE BLACKISTONE: There are some...

SENATOR Dw. PEDERSEN: Do them count, too? Are you talk...

STEVE BLACKISTON: In some, the distinction in terms is between handheld and a hands free telephone. Some states have made that distinction and applied the rules only to handheld telephones. Our recommendation is that it should apply to both handheld and hands free telephones because not only are you concerned about the physical action of one hand being tied up, but it's also the mental cognitive distraction that's being created. Again, when you're talking to somebody who's not in your presence, you're having to concentrate on that much more so regardless of whether you're holding the phone to your ear or not. So our recommendation is that it should include both types of phones.

SENATOR Dw. PEDERSEN: Thank you.

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

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STEVE BLACKISTONE: Great. Thank you very much. We appreciate the chance to share our recommendations with you.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Flood, I forgot to mention him, from Norfolk. Next testifier in support. Welcome.

ROSE WHITE: (Exhibit 7) Good afternoon, gentlemen. My name is Rose White, R-o-s-e W-h-i-t-e. I'm the public affairs director for AAA Nebraska. Now some of you might wonder why is AAA here today. Well, if we went back a hundred years ago, it was just a few dozen motorists who were the only few with cars in Nebraska that basically got together to help form laws that could be passed in Nebraska. And so that commitment to this issue continues today. Now the information that's being handed out to you is a study that was just released nationally last week to the news media, which basically states that over the past ten years, there have been 31,000 deaths caused by teenagers behind the wheel. And of that, 11,000 teens, the drivers themselves were killed, but clearly most of the people killed in those incidents, 19,000, were other passengers, other motorists, bicyclists, pedestrians, and so we are here today to take a proactive measure to help prevent additional accidents from occurring. And I want to stress the word "proactive." The few states that have passed certain bills such as this, they don't really have the history really to base any successful figures on just yet. But what we are trying to prevent from occurring is the incident that occurred in the Maryland beltway basically where one teenager utilizing the cell phone, doing some text messaging, caused an accident that killed five people. With the high popularity of cell phone use, text messaging, and so forth that we see today among teenagers, we want to be able to stress very strongly that this is a device that should not be used behind the wheel. When you're behind the wheel, you need to keep your mind on the road, your hands on the wheels, and your eyes in front of you as well as observing those things around you. If they're involved in text messaging, clearly, all three of those items are being taken away from what the task is at hand: driving safely. And so with that, again, we are hoping that you consider the passage of LB 768 out of committee so it can be debated on the floor. The information that I passed out in front of you, I did attach

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my business card in case you have additional questions from the research data that was gathered. But again, gentlemen, we're here to be proactive today, trying to prevent such situations in Nebraska. Now, all of you asked some excellent questions, and I just wanted to expand on a couple of those. You know, as far as cell phone use and distractions, you're absolutely right that cell phone use is only probably a minimal distraction behind the wheel. We haven't seen any reports specifically directed at teenagers alone. All of the studies that I have seen have been on all motorists. What we also know, though, is that with the new technology that we see with the text messaging, that's causing a whole new complication that's out there on the roadway for our teen drivers. This bill also might be difficult to enforce. How do you judge the age of the person behind the wheel. We have similar legislation out there as well, child safety issues and so forth, that also makes it difficult. But we want to send a message strong and clear to teenagers that the engine is on, the cell phone is off. And we plan to, if this bill is passed, to educate the teenagers by working with the high school newspaper editors that do articles and stories to keep that message out there in front of them, at least during that novice driving period. Gentlemen, I'd like to thank you, and ladies, excuse me, Senator Combs, for sharing this information. And if you have any questions at this time, I'd be happy to answer those.

SENATOR BOURNE: Thank you. Questions for Ms. White. Ms. White, we talked about this in a different committee, or a different day of this committee, I guess, and you know, actually, it was in the Education Committee, and my question was, where are the parents? You know, I don't have to worry about this yet. My son is 13, but I guarantee you he won't have a cell phone. He's going to have an old AM radio with one broken speaker (laughter), a ham radio. But, no, where are the parents? I mean, is this a bill that you could argue that would say, this is just help, you know, gives the parents some backup, or, you know, where's the parental involvement in this?

ROSE WHITE: It will certainly do that, Senator Bourne. Many parents, I think, look to the legislation to maybe pass legislation that'll help enforce those things that they'd like to see enforced at home, but they're unable to do so.

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Many teenagers today, probably most of them, clearly have a cell phone. And many of them probably have text messaging. And I'm sure many parents want to impose rules and regulations, but we know once they're out of our sight, they'll basically make their own judgment. And unfortunately, with this age group, many times they do take risk and make poor judgment that unfortunately can result in the death or injuries of others, and that's simply what we're trying to prevent.

SENATOR BOURNE: Fair enough. Senator Flood.

SENATOR FLOOD: Can a minor in the state of Nebraska enter into a contract to purchase a cell phone and contract for cell phone service?

ROSE WHITE: Not that I am aware of, Senator. It usually requires an adult. However, the popularity of these is growing and many parents see this as a safety feature. They don't want their child out there on the roadway where they can't use them. But this is simply...

SENATOR FLOOD: Thank you very much for your testimony. Appreciate it.

ROSE WHITE: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate you taking the time to testify. Next testifier in support. Welcome.

LAURIE KLOSTERBOER: (Exhibit 8) Thank you. My name is Laurie Klosterboer, L-a-u-r-i-e K-l-o-s-t-e-r-b-o-e-r. And Senator Bourne, members of the Judiciary Committee, I'm with the Nebraska Safety Council, and we are a private, not-for-profit organization and a chapter of the National Safety Council. Our mission is to provide leadership and resources to promote a safe and health environment in our workplace and community. This proposed legislation is close to our hearts. We teach teens how to drive, approximately 1,000 students annually, and this number is growing as we expand our programming. We're here today to testify in support. Since the passage of Nebraska's graduated licensing law, we have experienced a decline in both the number of reported crashes and the crash data for drivers 16

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to 17 years of age. We know graduated licensing works, and now we have the opportunity to enhance our law and further affect positive change. For teens, the risk of being in a car crash during the first 12 to 24 months of driving is higher than at any other point in their lives. Driving is a complex task that requires time and practice to learn. Teens that are learning to drive do not need another distraction such as talking on a cell phone while driving. Graduated licensing allows young drivers to gain experience in a controlled environment with lower risk circumstances such as nighttime driving restrictions, passenger limitations, mandatory restraint use for all occupants, and cell phone restrictions. Are we discriminating against our teenagers by adding this provision to our law? No. Just as our youth have limitations on being allowed to work at certain ages and on the type of work they can do, a cell phone restriction will provide them with the needed time and expertise and experience to learn to safely operate a vehicle. I respectfully ask the members of the committee to forward this legislation to the full body, and I would be happy to answer any questions that you might have of me.

SENATOR BOURNE: Thank you. Are there questions for Ms. Klosterboer? Seeing none, thank you.

LAURIE KLOSTERBOER: Thank you.

SENATOR BOURNE: Appreciate your testimony. Other testifiers in support? Are there any testifiers in support after this gentleman? Have you signed in, sir?

PAT VENDITTE: Yes, I have.

SENATOR BOURNE: Thank you. If there are any opponents, if you'd make your way forward and sign in, we'd appreciate it. Welcome.

PAT VENDITTE: Thank you, Senator. Senator and members of the Judiciary Committee, first of all, I want to, my name is Pat Venditte, V-e-n-d-i-t-t-e, representing Cornhusker Driving School in Omaha. And I wanted to commend Senator Cudaback for his efforts on LB 768. I think this is good public policy. My primary purpose for just making a brief appearance before the committee is to let you know that I each year deal with over a thousand students in driver's

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training where we issue the POP. And in some cases, they're as young as 14 years of age, and in some cases those 18-year-olds we take to the DMV. And you know, Senator, I know there are a myriad of things that could come into play to save the lives of our children across the country, but I think it's very simple. Do you want to save lives? Raise the driving age. It's that simple. The question is, are 16-year-olds capable of handling a car? I can only tell you from my experience since 1966 teaching at Westside High School, my children, one of whom is 37, got his license at the age of 18. My 20-year-old, who attends Creighton University, attained his license at the age of 18. I have a daughter at Central High School who's probably about as tall as Larry Ruth, but that's not the reason why she's not getting her license. And it'll be 18 before she gets hers. And I have a 14-year-old who's wanting to drive right now, but that's not going to happen. I think that sometimes we look at what other states are doing, for example, in California, they have now restricted the hours with which young people can drive. Instead of midnight being the curfew, it is now 11 p.m. Iowa is considering the same. I know this is tough. I know it's not something very popular to tackle as a state senator, but I think it's important. I know, the light just went off.

SENATOR BOURNE: You've got a minute yet.

PAT VENDITTE: Okay, one minute. You know, I think it's important, too, sometimes, and I don't want to belabor this particular piece of legislation, but limiting the number of passengers in a car, I think, is extremely important as well. I see the average young person at the age of 15 getting in the car. They can barely handle a car, let alone a cell phone and a car at the same time. But if you have any questions, Senator, I'll be happy to answer any of them.

SENATOR BOURNE: Thank you. Are there questions for Mr. Venditte? Just one quick one, Mr. Venditte. Is 16 a universal age across the country in terms...

PAT VENDITTE: You know, Senator, I don't have the exact data on that.

SENATOR BOURNE: Okay. Senator Aguilar.

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SENATOR AGUILAR: You say you're from Omaha?

PAT VENDITTE: Yes.

SENATOR AGUILAR: And I have some grandchildren who live in Omaha, and their parents kind of feel the same way you do as far as not letting them have a driver's license as soon as they turn 16. I think driving in Omaha is a little different scenario than the rest of the state. In the rest of the state, that's never been a conversation, but I see it's very popular in Omaha.

PAT VENDITTE: And you know, Senator, with mass transportation, the public transportation system that we have in Omaha, you know, our kids could get from home to school, anywhere in the city in a half hour, 45 minutes. I traveled by bus when I was in high school. I drop my daughter off every day at seven o'clock at Central High School. I pick her up at 2:50 every day.

SENATOR AGUILAR: I don't even like to drive in Omaha.

PAT VENDITTE: Thank you.

SENATOR BOURNE: Other testifiers in support? Welcome.

RICHARD HEDRICK: I'm Richard Hedrick. I am for LB 768. An accident where the driver lost control by losing a phone, she dropped the phone and was reaching down, she lost control. When I was a lot younger, I thought my father was over driving with both the hands on the wheel. I would use one hand. Now I use both hands on the wheel with a death grip. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Cudaback to close.

SENATOR CUDABACK: Chairman, members. First of all, we're not against cell phones. I mean, I want to make that perfectly clear. We're not against cell phones. We all know that. Cell phones are great, great tools, and I don't think this bill here will curtail the use of them as far as business and so on goes. This bill is strictly one that was

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actually brought to me by the parents. Many, many, many parents have come to me and said, and maybe come to you, too. I mean, we've heard this in grocery stores, we've heard, I get it all the time. Senator, I'm pushing your bill, I'm pushing bill, you know, blah, blah, blah, whatever. I just think we passed legislation, what, two, three years ago, said they can't drive from 12 at night, what is it, 12 at night to six in the morning? Why do we do that? I'd rather have them driving, keeping mind, I'm not a parent, so I don't worry about my child being out from 12 to six, whatever they're doing, but my point is, nobody on the road. Why do we stop them from driving from 12 to six? I never did quite understand that, that's probably the safest time to drive, there's nobody on the road, but we did. We can pass laws that do this. We can pass laws when we think, you know. I just don't think--and I'm getting kind of passionate here, or whatever--but I think we owe it to our kids, don't we, say hey, you probably shouldn't use that cell phone if you've got your license, jump in my car, got a 500 horsepower motor behind him, go 120, cars go fast now, can't you imagine this youngster behind the wheel, calling up his or her best friend? I just got my license. You know, can't you imagine this? And they'll do it. Think back. You were a kid. I was a kid. I'd have done more than that. I'd have been squealing my tires. I mean, I'm no saint (laughter) most of the time, but, no, we did these things. We did them. Think back. Don't think too hard, Senator Flood, but, I mean, but we did these things. It's being a kid. I think it's the responsibility of us to say, hey, and we're not really taking anything away from them. Thirty years ago, I never even heard of a cell phone. And what are we taking away from the kids? We're taking away a, I don't want to say it's a tool for whatever purpose it might be, for destruction or whatever, because it's not. A cell phone is great. But probably is not great in the hands of a 16-year-old that got behind the wheel and probably doesn't know all the things that can happen to us. And I guess that's my plea. Do what you think is best.

SENATOR BOURNE: Thank you. Are there questions for Senator Cudaback? Seeing none, thank you. That will conclude the hearing on Legislative Bill 768. Senator Cudaback to open on Legislative Bill 1108.

SENATOR CUDABACK: There are some nurses did hand me some,

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shall I slip into the record if you...

SENATOR BOURNE: Okay. We'll enter that as part of the record. Would those folks here that want to testify in support of LB 1108 make their way to the front of the room and sign in on this bill as well? Welcome.

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SENATOR CUDABACK: (Exhibits 9, 10, 12, 13) Chairman, members of the Judiciary Committee, I'm Senator Cudaback, I'm 74, District 36, and I will read my statement of intent rather than ramble on like I've been noted to do. LB 1108 amends Section 60-6,287, which currently prohibits person from operating motor vehicles equipped with, or in which is located, a television set so placed that the viewing screen is visible to the driver to include the video monitor or any similar means of visually displaying of a TV broadcast or a video signal that it produces entertainment, information, or business. As we all know, TV sets were what we had 30 years ago. Now we have more things. That's what that says, to make a long story short. This section of the bill prohibits installation of a television set, a video monitor, or any other similar means of visually displaying a television broadcast or a video signal that produces entertainment, information, or business applications in a motor vehicle so that viewing screen is visible to the driver while driving the motor vehicle. Section 3 creates a distracted driving offense for driver behavior that distracts the person's attention from operating the motor vehicle and provides a penalty for the violation. Section 4 of the bill defines interactive wireless communication device, as I stated earlier, to mean any wireless electronic communication device that provides for voice or data communication between two or more parties, including but not limited to a mobile cellular phone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends and receives messages, or a laptop computer that makes unlawful for a person who is operating a motor vehicle to use such devices so placed that the viewing screen is visible to the person while operating the vehicle. This section also prohibits a person operating a school bus, if nothing else, that probably should be the law. That's not written in my script here, but, I mean, I can't imagine

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that being not part of the law currently. While operating a school bus from using such a device while the vehicle is in motion or carrying passengers, from farm, school, or learner's permit are prohibited from using such devices while operating a motor vehicle. Exceptions for the emergency use of activation, deactivation of such devices are prohibited in this section also, and a penalty for the violation. That concludes the basic parts of LB 1108. Technology has developed, as we all know. Technology has developed in response to the marketplace, we all know, where we now have one product doing the work of many. No longer does one have the juggle the music player or this or that or to, yeah. We just have come a long, long way and we simply haven't kept up with the restrictions to handle these things that can distract us. And that's, I guess that's the long and short of it. So not only do we have the situational lack of awareness at play when a cell phone is in use, we have the compounded level of distractions by allowing devices where sight is removed from the road the period of time necessary to operate the device. The counsel has dispensed the Amendment 1911 that I'm offering to further restrict the use of these devices on page 4, line 11, by prohibiting persons from handling these devices as well. I urge the committee to advance LB 1108 and for the good of all us, and back again, we're not trying to do away with, there's provisions that lets safety patrolmen, this kind of stuff in there, and if you have an accident, naturally you're going to use your phone. You're not going to say, oh, I can't, you know. Naturally, you're going to use it.

SENATOR BOURNE: Okay. Thank you. Questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. First of all, how did you get these bills in the Judiciary Committee and not transportation? The same people are here, Director Neth, and when they got...

SENATOR COMBS: It was in here last year.

SENATOR Dw. PEDERSEN: ...agenda like...

SENATOR CUDABACK: Well, that's...

SENATOR Dw. PEDERSEN: ...the Judiciary Committee has and

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then we'll be out of transportation next week already, so...

SENATOR CUDABACK: No comment, no comment. (Laughter)

SENATOR Dw. PEDERSEN: Tell me, do you have one of these devices in your car?

SENATOR CUDABACK: In my automobile now?

SENATOR Dw. PEDERSEN: Yeah.

SENATOR CUDABACK: Truthfully, no.

SENATOR Dw. PEDERSEN: They're making these cars with these screens in the dash. And you said one of the things it doesn't include is the global positioning display. You seen one of them?

SENATOR CUDABACK: This bill does not stop such mapping, you can't stop, I mean, we have to have a few toys, I mean, and the, you know. God forbid any more...

SENATOR Dw. PEDERSEN: If you seen how one of them work, you have to watch that very closely to where you're going as much as you would a movie or a, I have one. I don't have the global tracking, but I got this little button you push, and I bought the car used and the TV screen is up and it's that TV on it, it's that, I can play DVDs on it, and everything, I mean, you know. But it says right on the screen, do not use. It's dangerous. And obviously, you know, it's dangerous. You can look at a screen watching a movie and try to drive down the road. But the global tracking, my son-in-law has one of them. I was looking at that and that really is, you really have to keep your eyes on that thing if you're using it to go somewhere. I'm kind of astonished that you would say that it's all right to do that, but you can't watch a movie.

SENATOR CUDABACK: Well, you're the committee member. You can put that in there, so you can do that. I appreciate that.

SENATOR Dw. PEDERSEN: Thank you, Senator.

SENATOR BOURNE: Are there further questions? Seeing none,

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thank you.

SENATOR CUDABACK: Back to that...

SENATOR BOURNE: Go ahead.

SENATOR CUDABACK: ...back to that very point, most companies, or I shouldn't say most companies, many, many companies are telling their people, you will not use these kind of devices while operating a vehicle.

SENATOR BOURNE: You mean, many employers are telling their employees, if they're using a company car?

SENATOR CUDABACK: Yes. Employers. Yes, sir, such as, I won't mention the companies, but, and California, by the way, has adopted a policy just like this. It usually works it's way in from the coasts.

SENATOR BOURNE: Gotcha. Thank you. First testifier in support. First testifier in support. Are there any supporters? Any opponents? Are there other opponents besides, make your way forward. Were you going to use the on-deck area? If you've not signed in, if you'd do so after your testimony, that'd be great. So, again, just, there are no proponents? Okay, so now we're on opponent testimony. Welcome.

MICHAEL SMITH: Thank you. I'm Michael Smith, M-i-c-h-a-e-l S-m-i-t-h. I'm a deputy county attorney in Sarpy County, and I'm here on behalf of the County Attorneys Association to speak in opposition. In particular, my attention is drawn Section 3, and it's mostly, as a prosecutor as to how problematic that is in trying to actually enforce that, thinking of, here the case comes before me. I've got this report in front of me. What do I do with it? And I suggest to you that what it's really trying to do is prevent certain particular activities from happening in a car, but the bottom line result is is that it has to result in the unsafe operation of a motor vehicle. And I'd suggest to you that we already have laws that take care of that. If you're convicted of careless driving, the end result is you were driving the vehicle in unsafe operation. As defined here, we don't care it resulted in you doing that. The bottom line is your vehicle was unsafe. You were careless. You

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went over the curb. You rolled through the stop sign. You were speeding. You violated one of those laws that made it an unsafe operation. And again, our concern is not if the dog threw up on your lap, which this one would seem to say you're interacting with the pet animal; we don't care about that. We just care that, in fact, you performed that, violated that offense; the bottom line, unsafe operation. I think this is just going to open up all kinds of mischief if we attempt to charge things under that, and just create a more problematic prosecution in situations that are probably already covered for the most part. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Smith? Mr. Smith, you were here for the previous bill. Could you make the same argument?

MICHAEL SMITH: Not on behalf of the County Attorneys Association, but I think a lot of the same arguments are applicable.

SENATOR BOURNE: Fair enough. Senator Flood. I got to separate the two "F" guys, because I want to keep saying "Friend" for "Flood." Yeah, thank you.

SENATOR FLOOD: Thank you for your testimony today. Let's say that, for a moment, you have somebody that tells the police officer, the trooper, on the side of the road, oh, I'm so sorry. I ran into this car. I was putting on my makeup or I was petting my animal or I was--What else would there be? (laughter)--using a cell phone? Would the trooper or the police officer then put that in their report, and when you read that report, would you be thinking, maybe we should charge this person with negligent, careless driving. I mean, you have some options there, don't you?

MICHAEL SMITH: And it depends how it comes to us. A lot of the traffic infractions are simply the citation form. We don't know much more than that. On occasion, when there's more involved than that, they have the option of attaching a report. If there's a more serious charge like careless driving, then we will also get a larger report. And, you know, the officer always has discretion as to whether or not he's going to charge that at the time and how he's going to charge it. And then again, when it comes to the prosecutor, they have the discretion as to, in particular, how they're

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going to file that charge. And so they have the option of looking at those situations as they come along and deciding whether that charge is justified by the circumstances or, okay, this is strange enough, we're going to let it go.

SENATOR FLOOD: Have you actually prosecuted somebody for being distracted while driving and getting into an accident in a situation like that where they're on the phone or something similar?

MICHAEL SMITH: It's frequently the case where somebody will say, yes, I was on the phone, the kids were acting up in the back, things of that nature. It happens a lot.

SENATOR FLOOD: Okay. Thank you very much.

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

JUSTIN BRADY: Chairman Bourne, members of the Judiciary Committee, my name is Justin Brady, spelled B-r-a-d-y, appearing today as the registered lobbyist on behalf of the Nebraska State Home Builders Associations in opposition to LB 1108. The Home Builders feel that there already are the laws on the books to take care of people who are, if they're running red lights, you can get them for not obeying traffic signs. If they're, as previous speaker talked about and Senator Flood mentioned, there's reckless driving, careless driving, negligent driving. So there are means to get to people if they're being hazardous to the others on the road. So with that, I'd try to answer any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Brady. Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne: Senator Flood and I were just wondering, I guess, Mr. Brady, you're talking about a bunch of, I guess I'm assuming, and I want you to verify, you're talking about a bunch of homebuilders en route to, you know, service, you know, type of calls and stuff like that and are doing things maybe with GPS, things like that. Something like this could be problematic in the future? Set bad precedent, I mean, I'm guessing.

JUSTIN BRADY: Yes, that's it. I mean, I would say a lot of

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homebuilders look at their vehicle as basically their office. I mean, they may have a brick and mortar building, but they are spending probably most of the day going between job sites or buildings or doing repairs.

SENATOR FRIEND: But just to be clear, there's nobody, at least I wouldn't think, I mean, you know, popping a DVD (inaudible)...

JUSTIN BRADY: No, they aren't watching...

SENATOR FRIEND: ...you know. But, and just to be clear, what could be next is an incremental encroachment. I mean, somebody says, well, okay, look, as Senator Pedersen pointed out, these type of things are distracting. Look, I rode in my brother's, you know, SUV the other day. That GPS is distracting. Maybe because I was like a kid in a candy store, but the bottom line is, you know, I'm glad I wasn't driving because I was, you know, this sets bad precedent, for the record.

JUSTIN BRADY: It sets bad precedent and, I guess, specifically, if you look at like Section 4 when it talks about wireless use. That was one area that specifically is an area that would directly affect them today, not just set the precedent that later you would come back and say other things we may add to this list.

SENATOR FRIEND: Yeah, we just wanted clarification. Thanks.

SENATOR BOURNE: Thank you. Further questions for Mr. Brady? Justin, if the previous bill had been a universal ban on cell phones in a car, would your group be in opposition to that?

JUSTIN BRADY: They would be. Yes. We had talked about it, but since it was the provisional and that with homebuilders being a hazardous work site, they can't have anybody under the age of 18 anyway, so they felt that wasn't an issue that they would get into.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in opposition. Are there any neutral testifiers? Have you signed in? And again,

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okay, if the testifiers, we're going to make use of the on-deck area so as we can expedite this. We've got six bills this afternoon. If there are other neutral testifiers, please make your way to the front row and sign in prior to testifying so we can move right along. Welcome.

JOSEPH BROWN: Yes. My name is Joseph Brown. I'm a cognitive psychologist. I'm associate professor at the University of Nebraska-Omaha and have conducted research on attention and performance issues. I've been asked today to talk a little bit about the attentional loads of holding a cell phone conversation while doing other tasks.

SENATOR BOURNE: Okay. And you are testifying in a neutral capacity?

JOSEPH BROWN: In a neutral capacity, I can tell you what the scientific information is and have no opinion on public policy.

SENATOR BOURNE: Great. Thank you.

JOSEPH BROWN: I would note that my comments are about hands free cell phone usage, that I think the evidence in incontrovertible that any time you take your hands off the wheel or your eyes off the road, you increase risk factor. What I'm going to talk about today is the actual cognitive load of having a remote conversation in an automobile. One of the things that cognitive psychologists talk about when they talk about attention is like it's a mental gasoline that can be divided up among tasks. It's used in mental tasks that sometimes are very, very simple, like is a light on? Is that "X" green? At more extremes, you see things like mental arithmetic or holding a conversation or solving a problem in your head all require attention. When you're trying to perform two mental tasks simultaneously, those tasks generally suffer from this dual performance decrement. I will note that as dual performance decrement goes up, the more difficult the tasks are. And apropos the last bill that you were looking at, one way a task can be difficult is it can be unfamiliar. So a new driver has a much higher task demand associated with driving than an experienced driver. As I told my students, if you're going to listen to the Husker game while you're studying a cognitive psych exam, you're either going to know down and distance or

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you're going to be able to pass my exam, but you're unlikely to do both, and you may accomplish neither. There's quite a bit of evidence to suggest that the attentional demand of a cell phone conversation does have an impact on driving that's fairly substantial. We can compare it, for instance, with listening to a radio or a talking book, something that you guys have asked about before. And the data does show that there is a higher attentional demand of a cell phone conversation than even trying to understand a text that's being read to you. Now, we can see that in things like driving simulations where you can see them: slower stopping rates, more missing signs, misjudging speed, and things like that. We can also compare it to a conversation in person, and again, the task demands of the cell phone conversation are greater than the task demands of a conversation in person, partly, probably, because of the degraded cell phone's sound. You can actually not hear it as well, and that takes that resource away from the driving task. But also, the act of constructing someone that's not there. You've made mistakes, probably, on e-mail where you tried to communicate and did not communicate effectively because they weren't there. The same thing applies to a cell phone. It's a harder task, and therefore draws attention away from what I hope is the primary task of staying between the white lines. So, there is considerable data that suggests that there is a real risk associated with a cell phone conversation over and above what are normally permitted activities in a vehicle.

SENATOR BOURNE: Interesting. Thank you. Questions?
Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Thank you for coming today, Doctor. I have a hard time following your last comment you just made. For instance, on my hands free application on my cell phone, I can increase the volume where it is louder than a normal conversation.

JOSEPH BROWN: Right.

SENATOR AGUILAR: How is that different than me having a conversation with a passenger in my vehicle while I'm driving?

JOSEPH BROWN: Well, I would say in two ways. First, I

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would just answer in an empirical sense. In a study where we have someone actually having the conversation with a person next to them versus over a remote cell phone, they make more mistakes. They're worse at tracking a bulb. They make more mistakes in a driving simulator. So we know it happens. The why it happens is something that is less easily known, but the sound quality is less. And we know from other studies in attention that if I put a little static, for instance, in a message that you're listening to, that will distract you from a second task more than if it's a clear signal. And how many times have you been on your cell phone and said, are you there? That never happens in a personal, when someone is in a room with you. And that's because the signal's degraded. Similarly, just the mental activity of imagining a person that's not there actually requires mental energy. I mean, you're constructing their facial expression, what they're really thinking, all those sorts of things, and it's much harder when they're not present than when they are present. Now, which of those actually causes the decrement, I can't tell you conclusively, but I can tell you that decrement is there and other data suggest that those may be the reasons.

SENATOR AGUILAR: Okay, but on the cell phone, I'm driving, and it's there on the dash. I don't have to do anything but look straight ahead. If I'm having a conversation, you probably do it yourself, you have a tendency to look at the person you're talking to.

JOSEPH BROWN: And that may very well be true. Again, all I can give you is the empirical data where person in present with you versus a remote location where you're doing it hands free. You still perform worse on the task with the person not there. And, you know, the why is speculative, but that's what it is.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Doctor, and I don't mean to beat a dead horse, the certification to me, the testing is important, no matter what the age and let me give you a quick example. I've seen people talking on a cell phone driving fairly well. Let's forget about the

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teenagers for a second. If somebody drops something on the floor, leans over to pick it up, you know, down on the passenger's side, I mean, we're talking about just flat, like I said, flat out bad driving, you're coming from a neutral standpoint, how can we have conversations like this if we're not talking about pure incompetence as well?

JOSEPH BROWN: Well, I'm against pure incompetence. Again, this is an issue of what is the actual, for me, my testimony is about the actual issue of, it's like driving faster. The faster you go, the greater the risk. In this case, simply the data are that if you are on a cell phone, you are at greater risk of an accident. Now, that changes depending on how difficult the driving conditions are, how difficult the conversation you're having and a lot of other things.

SENATOR FRIEND: Age, experience, stuff like that.

JOSEPH BROWN: Exactly.

SENATOR FRIEND: Yeah, you're right. Okay.

SENATOR BOURNE: Senator Combs.

SENATOR COMBS: Yes, thank you. I was just wondering in the testing that you referenced as far as being distracted, was there any notice of a difference given gender proclivities? In other words, you know, females are, have a proclivity to be able to somewhat, anecdotally at least...

JOSEPH BROWN: Yeah.

SENATOR COMBS: ...master, multitask and master things more so than the male gender. And I'm trying not to be gender-biased here, but I'm saying, I'm referring to the...

SENATOR BOURNE: I see all the ladies in the audience nodding, so...

SENATOR COMBS: ...I am referring to the proclivities of each gender. Was that included in the testing, and was there any... a point of curiosity for me.

JOSEPH BROWN: Well, I can't.

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SENATOR COMBS: ...I mean, that's just a point of curiosity for me.

JOSEPH BROWN: I mean, generally I would think, and these particular studies had both male and female subjects. Scientists, they did not report in this data, but traditionally, and I do this, and these are people I know and respect, they would have tested for gender differences, and if they don't report them, they probably weren't there. Generally in these studies, we find that it's not so much that males and females have a general better ability to split attention. It's simply that with specific tasks, women may have more opportunity to practice that skill. (Laughter) So you have...

SENATOR COMBS: Yes, that's right. That's true.

JOSEPH BROWN: ...three children screaming at you while you're trying to do something else, and yes, anything you practice, you get better at. And, so, you know, but I'm not sure that really applies to the driving circumstance.

SENATOR COMBS: Thank you.

SENATOR DW. PEDERSEN: (Inaudible) an education here today.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you, Doctor, for your testimony today. I guess my question is when we start bringing in, you know, you obviously present different testimony than we've heard yet today, what amount of cognitive capacity does it require for a 22-year-old female who just broke up with her boyfriend and she's dealing with that emotion and she's driving home. Would you consider that a serious distraction?

JOSEPH BROWN: Oh, certainly I would, and worse if she's talking to her boyfriend on the cell phone while doing it. (Laughter)

SENATOR FLOOD: That'd be true. I guess my second question would be, what about a state trooper that not only is watching his or her radar, monitoring the police radio, listening to a radio station, using one of those computer

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devices to check warrants, would that, in your opinion, be an excessive amount of cognitive capacity.

JOSEPH BROWN: Well, I think excessive gets to a public policy issue. Whether the benefits that the the trooper acquires by doing those things outweigh the additional risk to highway safety. Clearly, when he does those tasks, it increases the cognitive load and makes him more likely to make an accident. Now, you've got an incredibly experienced driver who has public policy reasons to be engaged in those other tasks, and you might as a matter of public policy decide that the risk is worthwhile. But the risk is increased.

SENATOR FLOOD: So it's, what I gather from your testimony is it's difficult, in your opinion, to identify certain activities because the list of activities is so broad and can be so subjective that any bill that we consider it would be hard to identify the specific types of things someone would have to be doing in order to have their cognitive capacity compromised.

JOSEPH BROWN: Well, we can identify some things that take greater cognitive capacity than others. So a cell phone is a greater cognitive capacity than a radio or a talking book.

SENATOR FLOOD: But, a distraught driver...

JOSEPH BROWN: We cannot say...

SENATOR FLOOD: ...that just broke up with his or her boyfriend might have less cognitive capacity to operate a motor vehicle...

JOSEPH BROWN: Oh absolutely. As I tell my students, that if you're driving down the street and someone tells you, and your girlfriend says, we need to talk about your relationship, you should pull over to the side of the road. I also advise they should get out of the car and run, but that's a whole different issue. (Laughter)

SENATOR FLOOD: What about, I guess my next question, would be, what amount of cognitive capacity does it take to operate satellite radio?

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JOSEPH BROWN: It would be, I mean, depends on what you mean by operate. If you mean by listen to and make sort of hands free adjustment, very low, at least lower than a cell phone, so far as we can tell because the comparison condition in some of these studies is listening to a radio or a talking book, which has fairly high capacity demands. So this is greater than that.

SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate your testimony. Next testifier in a neutral capacity. Is this the last testifier in a neutral capacity?

KEN DICK: But not least.

SENATOR BOURNE: But not least, exactly. Welcome.

KEN DICK: Thank you. My name is Ken Dick, K-e-n D-i-c-k. I'm senior research fellow, telecommunications, University of Nebraska at Omaha, College of Information Science and Technology, Peter Kiewit Institute. Get that on a business card. Two points that I would like to address on this, and one is, we are working currently with Congressman Terry on the rewrite of the Telecom Act, and one of the issues that is very necessary as we look at this is to not build legislature based on technology, because you all, you're not going to keep up with it. And so as we start to look at legislature that is based on a technology, it often has a different impact than what we're looking for in the fact it'll force different technologies onto the scene or will have, it's kind of like pushing down on a water bed; something else comes up. So I would encourage you as you work on policy base to be as technology neutral as possible. And we're working at that on a national level, but I think it's also very important at a state level. The other thing is, and it's mentioned, but we need to focus on the fact that the depth of technology in the cell phone has changed radically. You're right now trying to deal with an issue that changes with every breath. The new video displays coming out on cell phones have a resolution and a processing power that are unheard of until today. There's just new announcements coming out all the time. The processing power doubles on these things continually. They have become so much more than just phones. They are MP3 players. They are

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text messaging. Anybody who is text messaging and trying to do anything else is crazy. They're televisions, they're videos, they're e-mail, there's web surfing, there's gaming, all of this contained in a singular device. It's gotten to the point in classrooms, I insist students power them down when there's exams because there are so many different ways that they can be used, most of which are nefarious during testing time. So, we need to understand, to create technology neutral policies on this because what we need to look at is interactive communication devices would include the Blackberry, would include two-way radios, would include CBs. The video display device, there are students who take the airbags of their car and put a seven-inch LCD screen into their steering wheel. Why? Because they can. You know, it's often that Mount Everest syndrome. But, is that what we want them doing as they're operating a vehicle? So I guess my point being, as we examine policy based, we need to make it technology neutral.

SENATOR BOURNE: Good points. Thank you. Questions? Seeing none, thank you. Appreciate your testimony. Other neutral testifiers? Seeing none, Senator Cudaback to close.

SENATOR CUDABACK: I won't go on and on as I could, but I want to make one point. If you do anything, you do one thing, five things, six things, you can at least find something perhaps in this bill that is good that you may come to your attention and, hey, why aren't we doing this, such as the bus driver. I think if a parent knew that a bus driver could, maybe none of them do, I'm not saying they do, I hope they don't, God forbid. I don't think their parent would be very happy if he knew a bus driver could be using a cell phone while he's hauling your kids. I think that's one area, if you can't do anything else, we should do things like this. Maybe the whole bill is maybe it's ahead of its time. California did it. Maybe we won't do it for another two or three years, but it will pass here sometime. Maybe do a little step at a time. You're a knowledgeable committee. I'm going to put my faith in you. That's it. Thank you.

SENATOR BOURNE: Thank you. Senator Aguilar.

SENATOR AGUILAR: Thank you. Speaking of bus drivers, that could really be a problem with this legislation, because I

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would think it very likely that a lot of buses would have a GPS system in them.

SENATOR CUDABACK: Yeah, a good point. Perhaps they do. And maybe there's some places where we should, hey, say, you can view them. By the way, they aren't taken out, they aren't addressed here as such, that they're in your automobile. Now maybe that's bad, maybe that's good. I'm not, that's for you to decide. But the cell phone, I know, I think they can currently use a cell phone while they're driving. There's no restriction on it unless the school board, I guess they could, you know, within, anyway, you got the point.

SENATOR BOURNE: Further questions? Seeing none, thank you. That will conclude the hearing on Legislative Bill 1108. (See also Exhibits 11 and 14.) Senator Smith is here to open on Legislative Bill 1120. Before he begins to testify, would those folks that are here wanting to testify in support of this bill please raise your hands? I see one. Are there those in opposition? I see one. Since we have one supporter, if you'd make your way forward and sign in, use the on-deck area. Are there neutral testifiers? I see none. If you want to wait just a second, Senator Smith, until the room kind of clears. It's too distracting having all of these things happen at one time. Senator Smith to open on Legislative Bill 1120. Welcome.

LB 1120

SENATOR SMITH: Thank you. For the record, my name is Adrian Smith, representing the 48th District, to introduce LB 1120, which would be an affirmative defense against double fines in construction zones. And while I fundamentally disagree with the insinuation that we have any half-priced fines for speeding in Nebraska, I will live with that with some common sense approach to the enforcement thereof. LB 1120 would sharpen the intent and purpose of the double fine for speeding in construction zones and it would provide for more reasonable and fair treatment of motor vehicle operators. It gives a remedy to operators when construction zone signs are poorly placed, put up too early, or left too long. And we have situations where someone could take the same route to work every day through

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a construction zone and observe no discernible work in process or any hazards in sight for days and weeks, yet the speed limit is reduced or the fine is doubled for speeding. The signs certainly lose their impact, and I hope that that is emphasized, that the signs lose their impact and people would pay less attention when hazards do present themselves. There are situations, and I could probably document them, but where signs are placed, when they're placed, there are issues there. And so rather than just get rid of the double fine policy altogether, which I would probably prefer, I could live with providing the affirmative defense against the double fines. So as to give a better understanding, within the driving public, and give more importance to the signs when they are up. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Smith. Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Senator Smith, this is kind of modeled after, if you're in a school zone and, you know, children are present, you know, you back off. If not, there may be a discrepancy between, I know, a ten miles per hour difference in some instances. But couldn't you see where something like this could be problematic because it's pretty evident most of the time, with a law like that, the one that I mentioned, in a school zone, you kind of know when school begins and when school ends. It's kind of tough for a driver really to discern, I'm driving through a construction zone, you know, what's the situation here, without being able to evaluate everything. Not the same thing, right? I mean, I know it's probably modeled a little bit after that, but not the same thing. There could be problems here that may not be inherent in the previous example I gave you.

SENATOR SMITH: Right. And a lot of those school zones are only effective during the day, during the school day, and with the flashing lights or otherwise.

SENATOR FRIEND: But what you're thinking is that Subsection (c) would, you know, sort of be able to deal, I guess, with that discrepancy or that potential problem, which pretty much reads, nothing in the subsection shall be construed to restrict or prohibit the enforcement of subsection 1 of this section.

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SENATOR SMITH: Right.

SENATOR FRIEND: Okay. And then, I assumed that's what you meant, but, I was just curious. Thanks.

SENATOR BOURNE: Thank you. Further questions for Senator Smith? Just so I understand, I assume you've looked at other states that have done this. I've been in states where it says, fine doubles if workers are present. How many states do that, restrict, are you aware?

SENATOR SMITH: I cannot answer that.

SENATOR BOURNE: Okay. I guess, then, the next question, I'm trying to see how, functionally, this would work. So what would happen is the state patrol or the police officer would ticket somebody for being in a speeding zone and the penalty would be enhanced and I assume that's marked on the citation. Then the person receiving the ticket, the obligation would be on them to somehow come in and plead not guilty, prove up at a subsequent trial that, you know, via pictures or whatever else at the time they were ticketed, there was no machinery or road construction workers present.

SENATOR SMITH: Right.

SENATOR BOURNE: Okay. And so then, again, the next question is, is that how other states are doing it? I mean, it seems somewhat cumbersome, and I'm just wondering if there's another easier way to do it, simply say the police officers can't designate on the ticket...

SENATOR SMITH: The police officers could, it's my understanding, could designate on the ticket that there was no machinery or personnel present.

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

SENATOR SMITH: And I'll waive closing as I have another bill in Natural Resources.

SENATOR BOURNE: Appreciate that. First testifier in support of the bill.

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ROB BUTLER: My name is Rob Butler, B-u-t-l-e-r. You know, this really addresses the, as Senator Friend had pointed out, the gaps in some in that one-size-fits-all doesn't always work. On November 22 of '03, I was coming back from the SAC Museum, you know, and I'd known that there had been some construction just prior to 370. I knew that it was over. I knew that because if you go to the Department of Roads web site, you can sign up for updates. You can see it. Admittedly, I'm kind of a road construction nerd. But not only that, there was also a November 5 press release saying that it would be open that Thursday, the sixth, in the World-Herald. You know, I came back, I saw that. I knew that the sign was open. I mean, they were proud of, the Department of Roads was proud it was finished earlier, you know, and I saw the sign. I also saw a state trooper sitting over there. Being from Omaha, I'm used to, you know, dealing with people who think. You know, I saw him, I continued on with my speed at 75. I was pulled over and cited. You know, I brought all the, not only did I bring the documentation to court, I sent it to the county attorney the very next Monday. You know, I get to court and much to my surprise, the judge tells me it doesn't matter what the law is as long as there's a sign. I kind of wonder why you pass laws if that's the reason. You know, this, very similar to a school zone, you know, it just makes it more reasonable. I mean, you drive down the interstate just between Lincoln and Omaha, and I have no idea what goes on out west, but you just drive that little area, you know, and there's a menagerie of different laws. I came this morning, I was coming west, just west of the Platte River where it's 65 due to the new bridges, is a sign that says 75, fines doubled, and less than a tenth of a mile later, you know, says, End Construction, Thank You, Drive Safely. Glad I wasn't in that little area. You know, this, again, especially in some parts of town, you know, especially where I live, there's, it's an older area, not much, you know, heavy police presence. Maybe they get bored sometimes. I hope not. But this just really, really sets it to an even playing field. And again, this isn't, I spoke last year on a very similar bill introduced by Senator Smith, which would have, you know, made it absolute. This merely lets you bring that evidence to court and say, look, nothing was here, you know, and the judge can say, yes, that was probably a reasonable assumption that you made that

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construction was over, and here you go. But that's not to be, and I think that's why we certainly need to pass this. It will certainly be in the interests of everybody, and not to mention, you know, when you have this one-size-fits-all, like Senator Smith, very much like crying wolf. You know, it's a construction zone, there's no construction. Suddenly there is construction, you don't believe it, and that's when somebody gets killed.

SENATOR BOURNE: Thank you. Questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Mr. Butler, one of the things, I didn't mention it to Senator Smith, that seems a little bit problematic to me, I was wondering if you can address it: the laws are in place to a degree, wouldn't you agree with this, the laws are in place to a degree to protect that driver. A lot of construction zones are inherently dangerous. Doesn't matter if there's somebody working at that particular construction zone or not. So if I'm flying through there, if I say, well, I mean, you know, obviously there's no machinery, and clearly, there's no people around, I've got the green light to pretty much, you know, kick it back up to what it's supposed to be. Narrower. You know, I've seen people hit, you know, barriers and things that could cause further problems, you know, five seconds later. Isn't that part of the reason for the law, and aren't we, you know, kind of tapping into something here that maybe we don't need to tape into? I mean, could you speak to that a little?

ROB BUTLER: No, I don't think we are. I think what this, what you're looking at is, for example, down at, on the north freeway jump by Creighton, there's no, when you get right above Cuming, there's no construction, there's no workers, hasn't been there for a while, hasn't been any equipment. Clearly a construction zone, but we're, what I think this is addressing is leaving signs up, you know, the attitude of the Department of Roads when I addressed it with them was that they had a paint and pavement policy. Once the paint and pavement policy, or once the paint and pavement was down, that road was open. If a contractor had anything else left, had any barricades, in my situation, there was stacks of barricades left, clearly ready to be picked up, what that really addresses, what this addresses rather is, is not situations like by Creighton where it

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clearly needs to be that for a reason, and not for only the safety of the construction workers whether they're present or not, but for the safety of the driver. That's, of course, a very bad area down there at this time. I think what this, though, does, is again addresses what I had in '03. You know, you talked about, you brought up a school zone, you know, seeing a kid walking at three in the morning on a Sunday in July doesn't make it a school zone. And I think that's just the same thing here. What you're trying to, and again, this isn't carte blanche. This is not, you know, as you say, kick it up. You know, this is a situation where the state of Nebraska is trusting people to drive a 3,000 or 4,000 pound car at 110 foot per second, at 75 miles an hour, yet you don't trust them to think. And it's not, again, it's not an extreme test that we're doing here. This isn't a situation of, you know, what type of equipment constitutes construction. I mean, the fact that a guy is over there with a "weed whacker," is that construction? Maybe not. Maybe it is. We're not, we're doing an all-or-nothing situation, I think.

SENATOR FRIEND: Yeah, I mean, I think I see your point, but I mean, you know, when West Dodge Road, I mean, there's been all kinds of problems out there in Omaha, you know, with, weather because of the construction they did at one point in time, and removed some of that equipment to move to something else that Omaha felt like they needed to try...(recorder malfunction)...at an unsafe rate of speed, wouldn't it still provide a deterrence, I mean, and a safety measure for the driver. I guess that's what I'm asking.

ROB BUTLER: And again, as I think, and I hope that I'm not redundant here, as I think it was addressed by Senator Smith, this doesn't just get rid of it. This just allows you to take into consideration, and this doesn't provide an absolute defense. You can't go to a judge and say, there was no construction. He's going to say, fine, dismissed. This, you know, gives you a reason to present that. You know, a judge may still say, yes, I think this is a construction zone. That fine is doubled. And, you know, I understand your concern, and I'm pretty concerned by that, too. I mean, I'm a, you know, this is the first speeding ticket I had got in about 12 years.

SENATOR FRIEND: Yeah, I...

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ROB BUTLER: I'm a pretty methodical driver.

SENATOR FRIEND: Okay.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony today. Let's imagine for a moment that you're driving in your vehicle and you're going up a very slight incline, and you've entered a construction zone. An incline continues for a thousand, 1,500 feet, and you have determined based upon your observations that yes, you're in a construction zone, but no, there are not any construction workers present. Furthermore, I don't see any machinery present. So you accelerate up to what the normal speed would be, exceeding the construction zone limit, let's say by 20 miles an hour. As you get to the top of the hill, there's a road grader that is suddenly entered into your vision and observation. And the road grader is now proceeding onto the highway, and there's a construction worker with a Slow sign, and you're traveling 20 miles in excess of what the posted limit in the construction zone is. If we pass this bill, have we compromised someone's life at this point in your opinion?

ROB BUTLER: No, because we've already addressed that in laws that directly address unsafe for conditions. You know, are you not...

SENATOR FLOOD: Hold on a second. You just said, and I'll give you an opportunity to answer, but we are going on the assumption that the driver has made the decision based upon what this law reads that he or she has the ability under the law to disobey our signs based on his or her observations. I want to qualify that before you answer. Thank you.

ROB BUTLER: No, I don't believe that is necessarily so. I mean, do you really want people to follow a sign they believe, we're not talking about safety here, and, you know, you should always be safe to begin with. But I don't think we're talking about safety. Do you want people to follow a sign they believe to be inaccurate?

SENATOR FLOOD: Well, if you were, I'll ask the questions

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today, and you'll answer them. But as you're traveling up the incline, the speed limit has been posted for a safety reason. I personally don't want you making up your own mind as to what the sign means when we have construction workers on the other side of the hill. Do you see what I'm saying?

ROB BUTLER: I absolutely see what you're saying. And again, this, and I think that this does not, again, doesn't just give it a flat out reason. I mean, are you potentially endangering people, including yourself and those workers? Yes, but, you know, we've potentially endangered ourselves raising it to 75 on the interstate, raising it to 65 back in the eighties.

SENATOR FLOOD: If that's the case, then when why were you traveling 75 if you're concerned about the safety?

ROB BUTLER: I wasn't concerned about the safety. It was a clear road, rural divided highway, nonconstruction zone.

SENATOR FLOOD: You and I might disagree on this issue, but I appreciate the fact that you've come down to testify, and maybe you and I can talk about this after the hearing. Thank you.

ROB BUTLER: I appreciate that.

SENATOR BOURNE: Further questions? Just for clarity, if the sign says, Construction Zone, Speed Limit 65 Miles an Hour, Fines Double, what's the speed limit?

ROB BUTLER: I'm sorry. Can you repeat that?

SENATOR BOURNE: The sign says, whether there's construction machinery, construction workers, doesn't matter, if the sign says Speed Limit 65 Miles an Hour, Construction Zone, Fines Double, what's the speed limit?

ROB BUTLER: Indeed, that is still 65.

SENATOR BOURNE: Exactly. So if you go 70, assuming the bill is passed, do you still get ticketed for being five miles and hour over?

ROB BUTLER: Well, you'd be within that five, whatever that

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fine is and not looking at it...

SENATOR BOURNE: Exactly. You just...

ROB BUTLER: ...but you're going to be doubled it.

SENATOR BOURNE: Exactly.

ROB BUTLER: And we're not...

SENATOR BOURNE: So there's nowhere in here that says you can arbitrarily set the speed limit, set your speed. If the speed limit is 65, it's 65. We're just talking about the penalty.

ROB BUTLER: Um-hum, and that's now what I'm here today to discuss. And, of course, that's not what this bill is. You know, this bill expressly deals with construction or potential perceived construction.

SENATOR BOURNE: I understand, but I'm following up on what Senator Flood was saying. And the point is, if the posted speed limit is 65, whether it's construction zone or not, what the issue is is your excessive speed, the fine for that speed, going to be doubled or not? That's the issue.

ROB BUTLER: And at present, it is. And again, my situation, you know, I had every reason to believe that sign was wrong. Had this been place, I probably may have still been fined because there's no affirmative defense for that, but I would not have been doubled.

SENATOR BOURNE: Exactly. Senator Friend.

SENATOR FRIEND: And thank you, too, Mr. Butler. We're not, I don't think we're meaning to appear to be badgering you or anything. Maybe we are. But, wouldn't you agree that a lot of penalties are put in place by folks like us as a deterrence measure. And doubling, there's a public policy reason to double fines in a construction zone. And I think, I could be wrong, but I believe that the public policy reason is to probably to provide some deterrence. Like, the speed limit is 75. We all know that. In this construction zone, it's 65, and we really mean it. Because it's extra dangerous and the public policy argument is that if you

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exceed 65, we're going to crank it up a notch on you. We made that public policy decision, so wouldn't you agree that there is an idea of deterrence associated with decisions like this. And right or wrong, we live with that type of stuff every day.

ROB BUTLER: Well, as for your question of, you know, putting out a deterrent, I think you have put out a deterrent, but I don't think it's very consistent. Certainly, you know, doubling a fine in a construction zone for speed, that makes perfect sense. And truthfully, I'm all for that, you know. But you're not going to, you know, first offense drunk driving, I understand, is about a \$400 fine? But if you do it through a construction zone, it's not.

SENATOR FRIEND: We're trying to take a...I'm sorry, I didn't mean to interrupt you. Go ahead.

ROB BUTLER: And I would appreciate that I understand that some stuff has been introduced by Lowen Kruse to change that, and I do appreciate that. But again, there's not, I mean, not that I've ever done it, certainly have been tempted to slalom through those barrels. That would be reckless driving and that wouldn't be doubled. It would be stupid and so forth. But I think, you know, to start to narrow down things like this just for symbolism fact, and I'm not saying that it's totally symbolism. Indeed, I don't doubt for a minute or a day that this has saved lives. But I think that when you're diluting it, as Senator Smith has said, and as, you know, I said crying wolf, then you're really going to end up getting somebody killed sooner or later.

SENATOR FRIEND: Yeah. Thanks. Interesting.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Would the more appropriate bill in your opinion be a bill that required the Department of Roads to remove the sign within 24 hours after the construction is complete? I mean if we're, is I agree. I've been in this situation on Highway 81. It's a Department of Roads issue, not so much a DMV issue where they completed the roadway, and a week later, the signs were

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still up. Is that the more appropriate bill?

ROB BUTLER: Well, yeah. A week later, you're already living in a perfect world if it's only a week later. Indeed, that would be great. And does the Department of Roads have room for improvement? To be nice, I'll say yes. I think that would be great. But I also think that, you know, just in general that, and that's why this wound up, you know, again, very similar law last year, LB 67, went before T and T, this is coming here because, you know, it allows, we're not dealing with roads any more. Now we're dealing with courts and what can and cannot be done. You know, this may pass. You might have one in a thousand judges accept it as a defense, and I think that's kind of going back to what you're saying. But as for letting...

SENATOR FLOOD: Did you like the sound of that?

ROB BUTLER: ...the Department of Roads, you know, telling them that they have to do something, well, best of luck to you.

SENATOR BOURNE: Are there further questions? Thank you. Other testifiers in support? First testifier in opposition. Welcome.

CURT BECK: Thank you. Chairman Bourne, members of the committee, my name is Curt Beck, C-u-r-t B-e-c-k. I am the executive director of the Nebraska chapter Associated General Contractors of America. I am testifying today in opposition to LB 1120. Our association represents the contractors that build the transportation infrastructure of our state. We've always supported legislation that would provide protection for these workers, and we're asking you to protect our workers in these construction zones. While we respect the need to let the public continue to travel through construction zones, we believe the enforcement of the slower speeds in these work zones also protects the traveling public. A safe construction zone also allows us to get more work done quickly and efficiently. Our construction workers are out there working not only Monday through Friday, but they are often working evenings and weekends. We are trying to get the work done as quickly as possible because we know the public is pleased when we complete projects in a timely manner. This is a priority

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for the industry. We feel strongly that we do not want to provide an affirmative defense for speeding in construction zones. We have concerns about the safety of our workers and the safety of the traveling public. We ask you to oppose LB 1120. Thank you. I would be happy to answer any questions.

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

CURT BECK: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Testifiers neutral? Senator Smith has waived closing. That will conclude the hearing on Legislative Bill 1120. The committee will stand at ease for ten minutes.

RECESS

SENATOR BOURNE: The next bill we are going to hear is Legislative Bill 1223. Senator Cornett is here to open. Can I have, as she makes her forward, can I have a show of hands of those here to testify in support of this next bill? I see four. Those in opposition? I see none. Those neutral? One. Senator Cornett.

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SENATOR CORNETT: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Abbie Cornett and I represent the 45th Legislative District. I'm here today to introduce LB 1223. LB 1223 would allow for driver safety classes and traffic diversion programs of minor traffic violations to be four or eight hours in duration. The regulations from the Department of Motor Vehicles is what currently is used to make the determination on the duration of the class. Currently, those regulations state the class will be eight hours. LB 1223 would allow for flexibility to make them between four and eight hours. This bill was brought to me on behalf of the Sarpy County Attorney's Office, and they will be following me in testimony to explain in further detail why this is needed. Thank you very much.

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SENATOR BOURNE: Thank you. Are there questions for Senator Cornett? Seeing none, thank you. First testifier in support.

MICHAEL SMITH: Good afternoon.

SENATOR BOURNE: Welcome.

MICHAEL SMITH: Again, I'm Michael Smith, M-i-c-h-a-e-l S-m-i-t-h. I'm a deputy county attorney in Sarpy County and I'm here on behalf of the Sarpy County Attorney's Office as well as the County Attorneys Association. I guess the first point of emphasis I'd like to make is our purpose in supporting this bill is not to make it easier for those who engage in the diversion program, but to make sure that more of them do do it. I am lucky enough to have a daughter who just turned 15, and I'm in the process of teaching her how to drive. And in doing that, I have found out and analyzed my own habits is that I've developed some very bad habits over the years, things I'm doing that I don't want her to do, and probably no surprise. It's been almost 30 years since I've had formal driver's training, and I haven't taken anything besides an eye test in order to get a driver's license in 10 or 12 years, so I think it's only natural I would do that. When we have someone in a situation where they want to avail themselves of the STOP program, of the drivers diversion program for these minor traffic offenses, we view it as an opportunity to get people who may be in a similar situation and get them education, not only just on the laws they need to pass the driver's test, but on defensive driving and good driving habits, have them reexamine their own habits and make everyone on the road safer. The problem we're running into, we've seen, is that with the longer program, the experience has been that people just don't take it. It's not necessarily the money. It's not that they don't want the offense on their records or the points involved. It's now all of a sudden you're asking them to sacrifice an entire Saturday instead of a Saturday morning, or two evenings instead of just one. And in the competing demands they have, fewer and fewer of them take that, a substantial amount. I believe the experience in Omaha was somewhere between a third and a half is what size of classes they were seeing. The Department of Motor Vehicles has been very gracious in working with us with trying to mesh the court decision from last year with the

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regulations, with the law, with our practices, and see what fits together. And one of the concerns they came up with is they were concerned that the legislation passed did not give them the ability to pass a regulation of a course of anything but eight hours. And that is why we're asking for the legislation to allow them again to examine that through regulation and attempt to shorten that program if it's appropriate, again, through that regulatory process. If it is a shorter program and deemed to be more appropriate, we believe more people will avail themselves of the educational opportunity, and that is what we believe is the purpose, the only good purpose, of having that program in place. Thank you.

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

MICHAEL SMITH: Thank you.

SENATOR BOURNE: Other testifiers in support?

BILL MULHERIN: (Exhibits 15 and 16) I have a handout for the committee.

SENATOR BOURNE: Just set them on the edge of the desk and we'll get them.

BILL MULHERIN: Good afternoon, members of the committee. My name is Bill Mulherin with the National Safety Council out of Greater Omaha and...

SENATOR BOURNE: Could you spell your last name for us, please?

BILL MULHERIN: Sure. It's M-u-l-h-e-r-i-n. And we are here in support of this bill. The lives of the people who don't realize the real risks of driving are making cost-benefit decisions related to their driving habits every day, and I'll explain to you how that happens. We've been offering, our organization has been offering the STOP program in Omaha for over 20 years and, in conjunction with the city up in Omaha. And in the mid-nineties, we did go to a four-hour program and saw an increase in attendance in that program. Of course, in 2002 when the legislation changed and the DMV rules came out, we had to go to eight

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hours, and we did see an immediate 55 percent drop in attendance, and that has now stabilized at about a 30 percent drop over a two-year period. What we have found, as the previous testifier has said, it's not a money issue, it's not a record issue, it's the time issue. People do not want to spend the time it takes to do an eight-hour program, and that's why we're seeing the decrease. What's in the package there is research that has been done on these programs, and the research shows that any driver education program works. It doesn't matter if it's four hours or eight hours, and the National Safety Council offers both. Both have a discernible positive effect on driver behavior. Drivers who become more cautious because they've got an education have fewer violations, fewer accidents, and drivers who take the class become more cautious about driving. The DMV made the change to their rule back in 2002, doing what it thought was best given its scope, which is a statewide scope. It set a uniform statewide standard. They produced some legitimate rationale for that. As you've heard, fairness, that is, why should somebody who's taking a course to reduce two points from their license or get reinstated have to take an eight-hour course, yet somebody who is taking a course to dismiss a three-point speeding ticket only have to do a four-hour course? They also, they bring that up as well. The real difference is that the people that going to DMV's course for reinstatement or point out have had extensive records, usually. People coming to us to take a ticket dismissal class generally don't. They haven't had any education, and we want to get them in there to do that. The other argument you'll hear today against this is that if some education is good, more education must be better. And again, if it causes fewer people to get the education and thus change their driving behavior, the net result will be more tickets, more accidents, more violations, more injury, and more death out there. This body, historically, has allowed prosecutors to make choices in how they wish to run their diversion and charging decisions. We'd ask that you take this bill under consideration and pass it, bring it forward. Thank you.

SENATOR BOURNE: Thank you. Are there questions? So you're going to condense what you currently teach in eight hours, identify what's most important, and reduce it to four?

BILL MULHERIN: Yeah. The National Safety Council has done

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that, and there's descriptions of the four- and the eight-hour program in one of the packets. I've been there. The four-hour program and the study that's behind that, that backs that up from Lake County, has been extensively studied and has been in existence for nearly 20 years. The eight-hour program has been in existence since 1964, so it's not like these are new programs. What they do is they have tackled the issues that drivers are most need to pay attention to, where they most need updating in their skills, and they bring them forward in the four-hour format very effectively.

SENATOR BOURNE: How is the fee set for the eight-hour program today?

BILL MULHERIN: Excuse me?

SENATOR BOURNE: How is the fee set for an eight-hour program today?

BILL MULHERIN: The fee is set for us as a not for profit, and I think I speak for other not for profits as well, is it's we try to make the cost of the program a small return back to the city or the county and...

SENATOR BOURNE: Who sets the fee?

BILL MULHERIN: Oh, the fee is set in conjunction with the local prosecutor, and then the DMV approves it.

SENATOR BOURNE: Okay, so the prosecutor where I'm from, Douglas County, that prosecutor would set the fee.

BILL MULHERIN: Yeah, he would definitely play a huge part in that.

SENATOR BOURNE: Okay. So, in the bill, there's no language in there. So would a four-hour class be half as much?

BILL MULHERIN: You know, actually, the costs of running a four-hour versus and eight-hour course are fairly similar. The biggest difference being the cost of the instructor for that additional eight hours, and the cost of any room rent. You would see some decrease for sure, but it wouldn't be 50 percent.

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SENATOR BOURNE: Some decrease in the cost of giving the service...

BILL MULHERIN: Um-hum.

SENATOR BOURNE: ...but according to the statute, no decrease in the cost to the offender.

BILL MULHERIN: Well, I'll give you an example. On the corollary, when we went from a four-hour program to an eight-hour program back in 2003, we did not increase the cost of the program to the offender, either. What we did was when we analyzed it, we found that it added a few dollars per student, and we found other ways, again, our goal is to give the motorist as much incentive as possible to take the education, so we found ways to absorb that internally.

SENATOR BOURNE: I was on the committee in 2002, I believe, when we changed this, and I don't remember exactly how this works. So say the class is a hundred bucks, and I'm with you, I hate to admit it, I've had the opportunity to take one of these classes and I elected not to because it wasn't all, it wasn't worth the money to me. So I did make that assessment. I agree with you in that regard. Where does that money go? So of the \$100, how much goes to the county, the state, you as the National Safety Council? How are these fees divided up, just so I know.

BILL MULHERIN: Well, it depends on the jurisdiction, but in Omaha, the course is \$85 to take the course, and \$41 of that is returned to the jurisdiction, and they use that on safety programs in accordance with the, the city council does that in Omaha, benefits the county. The remainder of that, approximately, I haven't done the math, \$43 goes to cover our overhead. There's a cost of purchasing text books, insurance, the cost of the building.

SENATOR BOURNE: So you pretty much split it down the middle, you and...okay.

BILL MULHERIN: Yeah, I mean we try to keep the cost as low as possible to the motorist, so when they're doing their financial cost-benefit analysis, the price of the class is

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equal to or less than a majority of the tickets, again, the goal being to give them as much incentive.

SENATOR BOURNE: The classes have been around long enough. Do we have any evidence, any studies, anything that indicates that they're effective, that they're truly paying their way so to speak in society in terms of safer drivers?

BILL MULHERIN: Yes. I've included in your packet a 1991 study followed up with a 1996 review out of Lake County, Illinois, which is one of the four counties in the Chicagoland area, where they run several hundred thousand people a year through there, and that study was done for their courts using the four-hour program.

SENATOR BOURNE: But nothing here in Nebraska?

BILL MULHERIN: We're in the process of doing that now. It is, the way the records are set up, it's quite difficult to put together a scholarly study, but we are working in conjunction with DMV and others to make sure that we can do that and have something to present, and we really want to make sure that it's accurate when it comes out and not rush it.

SENATOR BOURNE: Great. Any further questions? Seeing none, thank you.

BILL MULHERIN: You're welcome.

SENATOR BOURNE: Appreciate your testimony.

BILL MULHERIN: Thank you.

SENATOR BOURNE: Other testifiers in support? Welcome.

MARTY CONBOY: Good afternoon. Marty Conboy, C-o-n-b-o-y, city prosecutor from Omaha. Good afternoon, Senators, Mr. Chairman, be very brief. You mentioned, Chairman Bourne, that this committee had passed in 2002 a regulation statute, and there was one needed at that time. There were counties in the state where it was really an inappropriate use of this appearance of rehabilitation to raise revenue. The regulations have now eliminated that. There really is no abuse, and it is really an unfortunate thing that the

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tail is kind of wagging the dog in the sense that a very successful and proven series of programs have been impacted tremendously by these regulations. The increase from four to eight hours did cause some cost increase, but did also make it a disincentive for people to attend to the point where close to 100 percent, or 50 percent, I guess of the original number now has been reduced to where we had well over 10,000 attending, it's close to half of that now. And in other words, what you see are people who probably need it most, who have the least incentive to take a class like this, a lot of younger drivers in particular who are now opting not to because of the time constraint or the cost. And it is a proven thing. We crossed that bridge a long time, that the idea of training, especially in Nebraska, is important. We don't require driver's education, and for many of these people, especially the younger drivers, it is the only time anybody really gives them good information and training about safety, not just how to drive, but how to drive safely. And anything that we can do to restore that opportunity is important. We proved for many years, for almost 20 years, that a four-year (sic) program was successful. It is an approved Safety Council program at the national level, and a curriculum which has many successes. We are in the process of a study in conjunction with the University of Nebraska at Omaha to look at some of those pre-2002 attendees and look at their recidivism compared to eligible drivers who did not take the program. And that is something for the benefit of the Department of Motor Vehicles. But this statute would make that program a lot more relevant. It does provide the opportunity for the DMV to consider something like that. In addition, the bill also does talk about the length of the program in relationship to the fees, so that if it was better attended and shorter, the fee reduction then could be passed along to the attendees.

SENATOR BOURNE: Thank you. Are there questions? Senator Chambers?

SENATOR CHAMBERS: Just a comment. Mr. Conboy, I'm not going to comment on your tie today.

MARTY CONBOY: I was afraid that was what it was going to be.

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

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MARTY CONBOY: Thank you.

SENATOR BOURNE: I always appreciate your testimony. Other testifiers in support? Welcome.

PAT VENDITTE: Thank you, Mr. Chairman, members of the Judiciary Committee, Pat Venditte, V-e-n-d-i-t-t-e, 1235 Park Wild, Omaha, Nebraska.

SENATOR CHAMBERS: Before he launches, I want to pull his coattail. Not only was he a member of the Legislature, he was a member of the Judiciary Committee. I just thought I'd let you know what you're dealing with. (Laugh.)

PAT VENDITTE: Thank you.

SENATOR CHAMBERS: Good man, though.

PAT VENDITTE: (Exhibits 17 and 18) Just a couple of things with regard to this legislative bill. At the request of legal counsel, I was advised, or at least had the choice of either coming in as a proponent or as an opponent, and he said it really didn't make any difference, but the point that I want to make this afternoon is very brief. I've communicated with Senator Chambers with regard to an amendment that I would like to have attached to this bill, and it would simply say this: that any provider or vendor who is certified by the state of Nebraska to teach the Driver Safety Option Training Program as pretrial diversion be allowed to administer the program in the jurisdictions, of course, where they apply. And the intent of this amendment is to prevent a monopoly and exclusivity of the pretrial diversion programs. I am certified to teach the class, but my local jurisdiction prevents me from doing so, and it's primarily the intent of this amendment to allow anyone who is certified be allowed to teach the class. And if I could get the page to distribute this for me, please. I have, first of all, is the proposed amendment that I would like to have the committee so consider. And in addition, Mr. Chairman, I have one additional handout, if the page would do so, please. Several years ago, and the way the years pass, I, what do they say? The days pass and the years vanish? I met with Mr. Conboy's legal staff, Mr. Smalheiser and I believe it was Mike Goldberg, and it

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might even have been Jeff Marcuzzo, and I presented my program to teach the pretrial diversion program, and it was upon the recommendation to the city council by Mr. Conboy that they maintained the exclusivity with one agency in the city of Omaha. And I contacted Mr. Conboy, and they had at that time either a one-year or a two-year contract with that particular agency. The next thing I know, the recommendation before the city council is a four-year contract. And I called Mr. Conboy and I said why is it going to a four-year contract, and I, to be perfectly honest with you, don't recall what his rationale was. And I said, Marty, I'll be back in four years. I went back in four years and we attempted to become a certified vendor, and we were refused again. And the next thing I know, the contract now is for six years. And again, Mr. Chairman and members of the committee, we're certified with the Department of Motor Vehicles as you have before you there, and I believe that any vendor who is certified should be allowed to teach the class. I would be more than happy to entertain any questions. And the other thing, Mr. Chairman, and I think this is extremely important. You said you took the class?

SENATOR BOURNE: No, I actually declined...

PAT VENDITTE: You declined?

SENATOR BOURNE: ...because I didn't want to give up a whole Saturday. I'm sorry to admit that, but...

PAT VENDITTE: You know, Mr. Chairman, that's unfortunate because once the insurance companies get wind of this, they decide not to take the class, I've talked to many students, and their insurance rates have increased as much as 33 percent. And I think if many of these drivers were aware of that, whether it's a four-hour, eight-hour, or a twenty-hour class, knowing that that insurance is going up 33 percent, they'll be at the class. And I can recall from years past, they've had as many as 50 and 60 students in a class. And I can tell you it's been even higher than that. And I guess my concern, Mr. Chairman, is this: if we're to go ahead with a four-hour class, and I don't need to have you crunch the numbers, I think you'd be very, you'd be amazed if you started to crunch the numbers with a four-hour class, the amount of revenue that's coming in. And I think there's room for more than one provider in Douglas County,

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and I guess the final recommendation I would have before the committee is very simply this. Limit the number of students in a class. Make it conducive to the learning environment. And make it fair for the people who are going to spend the four hours or eight hours. Make it fair to them, and have a reasonable number of students in a class. And let's define what reasonable is, but 50, 60, 75? I was at a class, I was teaching next to a classroom, an alcohol education class, it was...that's exactly what it was, an alcohol education class. It was a program by Douglas County, 125 students in that class at \$85 apiece, you do the figures.

SENATOR BOURNE: Yeah. Let me just summarize; so you're testifying in support of the bill, but you're also suggesting that by statute we open it up to other vendors, and you're also saying that there should be a limit to the number of people that attend a particular class?

PAT VENDITTE: Precisely, Mr. Chairman.

SENATOR BOURNE: Fair enough. Are there questions for Mr. Venditte? Just to follow up on that since there's no other questions, the certification that you handed out, and this is what you're recommending a person teaching this class has, that's what somebody from the National Safety Council, or the designated vendor would have?

PAT VENDITTE: Exactly.

SENATOR BOURNE: So you could go work for them and teach this class?

PAT VENDITTE: Yes.

SENATOR BOURNE: There's no difference in the training that is symbolized by this certificate and the training of the people who currently are providing the STOP program instruction?

PAT VENDITTE: And you know, Mr. Chairman, we should have the option, too, as to how much we charge for that class? If I can teach the class for \$50 or \$35, so be it. I don't think there ought to be restrictions on the price, on what I need to charge. And I was asked at a hearing what I would charge. And I said it would be considerably less than what

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is being offered the motoring public at the present time.

SENATOR BOURNE: Fair enough. Are there any questions for Mr. Venditte? Seeing none, thank you.

PAT VENDITTE: Thank you, Mr. Chairman.

SENATOR BOURNE: Appreciate your testimony. Other testifiers in support of this bill? Testifiers in opposition? Testifiers neutral?

BEVERLY NETH: (Exhibit 19.) Chairman Bourne, members of the committee, I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles. I am appearing before you today to offer neutral testimony regarding LB 1223. In 2002, the Legislature enacted LB 1303 into law. LB 1303 was the state's first attempt to regulate the minor traffic diversion programs that were in place in a number of cities and counties across the state. The Department of Motor Vehicles was given the task of certifying the pretrial diversion plan for minor traffic violations and regulating the content of the driver safety training programs offered under an approved plan. This process included the responsibility to promulgate rules and regulations to define the state certification process for the pretrial diversion plan and the driver safety training program. During that rule making process, the Department conducted two public hearings in which it received testimony on the proposed regulation. Testimony provided at the hearings reflected that some jurisdictions and providers wanted to conduct a four-hour drivers safety training course, and others wished to conduct an eight-hour safety training course. In the final rule, the DMV required an eight-hour class as a requisite for certification. The Department reached this conclusion after giving serious consideration to the following factors: the testimony of all interested parties presented at the hearings, the text of the enabling legislation, LB 1303, the legislative history of LB 1303, and existing statutory language associated with driver safety training programs. It was clear from the testimony presented by the parties at the hearing that there was not consensus regarding the length of classes. However, no testifiers questioned the proposed curriculum set forth for the driver safety training course. The proposed curriculum set forth in the draft rules was, as

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I understand it, designed for an eight-hour course. Additionally, the legislative debate stressed the need for the state to regulate driver safety training programs so that there would be uniformity in such programs across the state. The Department believed that the need for uniformity stressed by the Legislature required that the certified classes be a uniform length. Finally, the DMV looked to Nebraska Revised Statutes Section 60-4, 183, and 60-4, 188. Both statutes outline the requirements for certain driver education improvement courses that consist of eight hours of instructions. The Department recognized that the legislative history of LB 1303, and I also stress that LB 1303 was the first attempt at state regulation of pretrial traffic diversion plans regulating minor traffic diversions and safety driver training programs, and that future legislatures may need to further amend the law regulating such programs. LB 1223, before you today, is the first opportunity for the Legislature to further refine state policy regarding the traffic diversion plan and related driver safety training programs. The Department of Motor Vehicles welcomes further input and guidance from the Legislature on the requirements for the certified programs. I'll be happy to answer any questions you might have.

SENATOR BOURNE: Thank you. Are there questions for Director Neth? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you, Director Neth for testifying. I'm interested to know if a motorist is stopped and essentially cited for a traffic violation, does the insurance company then receive notice that the citation was issued, but they took the STOP program, or does the insurance company receive no notification at all that the motorist was stopped?

BEVERLY NETH: If an individual is enrolled in a traffic diversion program, the insurance company does not know that the motorist ever received a citation because, in essence, the citation becomes void. It is not ever entered into our system so that it would be tracked as part of a driving record.

SENATOR FLOOD: Thank you. That provides some clarity. I've had some constituents ask me questions if their insurance would still find out. Second question I had, in

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Douglas County, obviously, they have the STOP program. In Madison County, my district, they have a STOP program. But in various counties across the state, there is no STOP program. Are we and have we created an inconsistent enforcement of our state statutes or your regulations governing speed limits across our state, where a driver in Douglas County breaks the law and gets a chance to get it dismissed, but a driver in Dixon County breaks the law and doesn't get it dismissed. That doesn't seem fair if you look at the goal of the uniform application and enforcement of our laws. Would you have a comment on that?

BEVERLY NETH: Well, Senator, I think you've raised an issue that has been raised in a number of venues, including the constitutional challenge to the statutes that was raised when Sarpy County sued the Department. We currently have 75 counties that have approved STOP programs that have been approved by the jurisdictions and eight cities that have approved plans and providers of STOP, or traffic diversion. It really goes to the heart, and I think if you read the Supreme Court decision in Sarpy County v. Department of Motor Vehicles case that what you come away with is the Supreme Court has decided that if a jurisdiction decides that they are going to allow this type of program in their jurisdiction, and it is still the jurisdiction's discretion to allow the program, then the program must follow the statute and the rules as promulgated by the Department. Both the statute and the rules were held to be constitutional. But that issue was raised in the court case, and I think it's been raised in previous testimonies before this committee and in lots of discussions regarding traffic diversion programs and their uniform access across the state.

SENATOR FLOOD: Do you have an opinion as to whether this Legislature or this committee should amend our statutes to require all counties to participate in a STOP program under uniform guidelines and take that discretion away from prosecutors across the state?

BEVERLY NETH: I don't particularly have an opinion about that. I think that you may, once again, see a constitutional challenge to that type of thing on behalf of maybe a county attorney who does not want to offer this type of program in his or her jurisdiction.

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SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Ms. Neth, couldn't a person just go to a county where they offer the program and take the class?

BEVERLY NETH: I believe that they have to deal with the county in which they received the citation. So if you receive a citation in, let's say, Adams County, and Adams County does not provide the program, you cannot go to Webster County and enroll in the program there.

SENATOR AGUILAR: So it's really up to the county where you're cited.

BEVERLY NETH: Yes. You need to deal with that court jurisdiction in that county.

SENATOR AGUILAR: Okay, gotcha. Thank you.

SENATOR BOURNE: Further questions? Director, how many of the 93 counties have such a program?

BEVERLY NETH: There are currently 75 counties and eight cities that have the programs.

SENATOR BOURNE: Oh, the cities can do this as well?

BEVERLY NETH: Um-hum, um-hum.

SENATOR BOURNE: So, again, just to clarify here, your testimony is more of a concern about uniformity as it is four hours versus eight hours.

BEVERLY NETH: It certainly is. We're just really looking to the Legislature to provide us the guidance that you'd like to see in this program. From our perspective, when the statute was first enacted, there was quite a bit of discussion about this was the first attempt to regulate this type of program. And we, I believe, did our best to bring what we believed was the legislative intent to the rules and regulations. That still has some level of controversy and some level of discussion associated with it, so we're really

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looking to the legislature to help us define what is the public policy in this arena, and what is it you wish us to do.

SENATOR BOURNE: Just for clarity, earlier testifier who was advocating that the ability to teach these classes be opened up to other vendors. And he submitted, and we this part of the record, a certificate of safety training program or something that's signed by you. Is that certificate the same as what would be required for an individual to teach one of these STOP programs? Is it the same?

BEVERLY NETH: Not really. What we have done with that particular program is certify the driver training program offered by that particular vendor. And we have said that the vendor is in compliance with the rules and offering a program that utilizes the curriculum and those kinds of, and engages their instructors in the rules. We also have rules for instructors as a subset of the overriding rules. So we have in fact certified that program. What the other step is, the program providers need to have an approval from the jurisdiction that they can in fact deliver that program in that jurisdiction. And in this particular jurisdiction, Douglas County, and, I don't know if it's city and county, have decided that they have entered into an exclusive contract with one single provider to provide the STOP class, the diversion classes.

SENATOR BOURNE: To your knowledge, is that, what they're doing in Douglas County, unique throughout the other counties that offer this?

BEVERLY NETH: I think that this is the only situation where we have two providers in the marketplace, in Douglas County. The rest are really, I think, of a level that one provider is about all the business can stand. So Douglas County is unique in that situation. But I will say that Mr. Venditte's company, Cornhusker Driving School, as you note, has been certified, and they also are a certified provider of the driver improvement course that I referenced under a different statute here.

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

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BEVERLY NETH: Thank you very much.

SENATOR BOURNE: Other neutral testifiers? Senator Cornett to close? Senator Cornett waives closing. That will conclude the hearing on Legislative Bill 1223. With that, Senator Cunningham as Chair of the Business and Labor Committee is here to open on Legislative Bill 1092. As he gets ready to testify, can I have a show of hands of those folks here wishing to testify in support of this next bill? I see none. Those in opposition? I see none. Those neutral? I see two. Senator Cunningham. Would the neutral testifiers please sign in? Welcome.

LB 1092

SENATOR CUNNINGHAM: Good afternoon, Senator Bourne and members of the committee. My name is Doug Cunningham, C-u-n-n-i-n-g-h-a-m, representing the 40th Legislative District here today to introduce LB 1092. LB 1092 is a very short and brief bill. It's part of a work comp reform package. Most of the package was introduced this week in the Business and Labor Committee. This bill introduces a penalty for employers that knowingly and with intent to defraud or deceive misrepresent the status of their employees. Employers may misclassify workers by either reporting the worker as an independent contractor when, in fact, the worker qualifies as an employee, or by misreporting the number of hours worked or the work performed by the employee. By misreporting or misclassifying a worker, the employer may reduce or avoid the payment of workers' compensation or unemployment insurance. The purpose of this bill, very simply, is to provide for a provision under the insurance fraud act and a penalty under the criminal statutes for such misreporting or misclassification of workers. And it's a means to discourage those practices. And that's pretty brief.

SENATOR BOURNE: Thank you. Are there questions for Senator Cunningham? Seeing none, thank you.

SENATOR CUNNINGHAM: Thanks.

SENATOR BOURNE: I'll just double check. Are there any proponents? Any opponents? First neutral testifier.

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RUTH CHERMOK: Chairman Bourne and members of the Judiciary Committee, my name is Ruth Chermok, C-h-e-r-m-o-k, and I'm here today on behalf of the National Electrical Contractors Association. I was part of the working group that Senator Cunningham put together some months ago to begin to work on meaningful work comp reform, and I would thank him for all of his efforts. At the beginning of that study, he informed us the he intended to make it hurt for all of us, labor and management. When he said that, I never envisioned the small business owners and contractors I represent in orange jump suits. So I now understand what he meant by making it hurt. And I'm kidding about that, and I'm certainly not making light of insurance fraud. Saying that, we do support fraud prevention and we did engage in the conversation that were some other states with some models to prevent misclassifications of employees. I realize that these penalties may mirror other insurance fraud penalties, but I would like to suggest to you today that some other cases of fraud are more clearly defined. For example, willful destruction of property to create insurance fraud is probably fairly easily measured. Particularly in our industry, this has become a very subjective and gray area, and not because someone is attempting to create a fraudulent act. I'll give you an example if I might. I was speaking to the insurance industry and some brokers that write for our contractors, and one of the quotes was that often the customer doesn't even really know what's right or, in our case, the contractor. In our industry, there are sometimes four classifications that will be appropriate for one line of work, or even within a day, a worker who may be working under one classification and another, depending on the job task. The insurance industry and the brokers have taught us, because our work comp premiums are so high and it is such a high cost of our business, to become very sophisticated in how we track that. An example that was given is there's a classification for executive supervision, which implies that you do not work with the tools. There's also a classification for foreman where you do. We might have someone split those classifications up. I would suggest and ask you to consider perhaps that as opposed to a Class III felony type of penalty for this, within state government, there are other administrative fines and so forth that might be appropriate, and maybe it should be a percentage of premium or some other type of penalty.

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Light's on.

SENATOR BOURNE: Thank you. Questions for Ms. Chermok?
Seeing none, thank you. Next testifier, neutral.

JOE ELLIOTT: Mr. Chairman, members of the committee, my name is Joe Elliott, E-l-l-i-o-t-t. I represent the Professional Insurance Agents Association, and we're testifying neutral on the bill. We have concerns over the specific wording of the bill as it talks about in the, on page 3, at the bottom, "Knowingly and with intent to defraud or deceive makes any false statement." This is the only section of this fraud act that specifically gets into itemizations of what constitutes a premium criteria for certain things. And workman's comp is a very big one. And we as agents are right in the middle because we represent the company, and yet we're representing the insureds. And in many cases, we have to go out and sit down and find out specifically what the payroll is. And some cases, if the insured has got good records and they have a federal ID number and make quarterly, we have payroll reports, they're not going to have any problems. It's pretty simple. But for years, a lot of information just kind of went by word of mouth. You said, what's your payroll? Well, it's \$200,000 last year. And what's it going to be next year? Well, maybe \$200,000 again next year. And so that's what we have to kind of go by, and the job classification is a very complex. There's 200-and-some job classes, and if you get in the construction field, there's real technical differences and we have to go to the NCCI, which is the expert on workers' comp, and get a clarification of what the class should be. So we're not the ultimate word on job classes. And when you start talking about payrolls and rates for some certain classes in contracting, you're talking \$10-\$15 an hour. A roofer in some cases would be close to \$15 an hour. So it's critical that you get the best payroll information you can get. And so I know some agencies, and we've adopted a form, saying, what is your payroll and job classes, classification, number of employees, and so forth, and we have them sign this form because that's the protection we have. And again, the producer, us, as independent agents, sign it as well. But it's, we just see that if there is a dispute, and I've seen audit premiums come in. You audit these premiums at the end of the year. I've seen some audit premiums, one account we

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had was \$60,000 additional premium. Well, you know, some agent probably wasn't on their toes as well as they should have been because they shouldn't ever have let that payroll get that far because they should be asking questions along the way. Did you get a big job? Did you do work in ice storms? Did you get tornado extra work and what classes were they? So, but none the less, if there's any fraud on the part of that insured, and this bill looks to be like it's going after the insureds, then we're going to be in a position where we're going to probably be dragged in by the insured and say, well, this agent told me this is acceptable and this is all right. And by association, I think the agent is going to be in a difficult position to respond because, by just being included in the suit, fraud suit, he's going to damage his reputation materially. So that's our concern on this, and we think the dollar amount of \$1,500 for a fraud case is way out of line, that that should be increased because you're talking a lot more dollars than that in just one case if somebody hasn't reported a new employee.

SENATOR BOURNE: Questions for Mr. Elliott? So you're testifying in a neutral capacity. Maybe I'm having an off afternoon here, but I'm not quite tracking. It sounds to me, though, like you're objecting to this. And I do want to point out, it's you have to knowingly and with intent to defraud or deceive...

JOE ELLIOTT: Right.

SENATOR BOURNE: ...make a false statement to an insurer. So, I mean, Mr. Elliott, when you talked about signing that form, or having that form signed, I mean, that would seem to me to protect you. I'm not quite tracking, number one, your concern, number two, you're testifying in a neutral capacity. I...

JOE ELLIOTT: Well, a lot of time, they rely, the insured relies on us pretty heavily.

SENATOR BOURNE: The insurer or the insured?

JOE ELLIOTT: Both.

SENATOR BOURNE: Okay, but this only applies if you

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knowingly and with intent to deceive make a statement to the insurer.

JOE ELLIOTT: To an insurer.

SENATOR BOURNE: Right.

JOE ELLIOTT: Right. But then we sign a contract with that insurer to represent them and, you know, if we do anything fraudulent, they certainly are going to either cancel our contract or bring an action against us for whatever damages they might have suffered.

SENATOR BOURNE: Which they could do even without this statute.

JOE ELLIOTT: Yes, they can do that without this statute. But I'm concerned, too, that if they're misrepresenting it to an insurer, then you've got a situation, still, where the agent can be brought in to prove or disprove the fraud.

SENATOR BOURNE: Fair enough.

JOE ELLIOTT: That's my concern, I guess.

SENATOR BOURNE: Okay. Further questions? Seeing none, thank you. Next testifier in a neutral capacity.

JAMES CAVANAUGH: Senator Bourne, members of the Judiciary Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska. We appear in neutral capacity on LB 1092. We'd like to commend Senator Cunningham and his staff for the long hours they've put in since the last session on the work comp reform task force, many meetings and drafting this and other ideas of, are for the good. I guess, as a lawyer and someone who's done some criminal law in my career, I don't have the problem that maybe Joe pointed out in terms of the liability. I don't think this expands our liability at all. If you look in the statute, it cites another section, Section 44-607, which is actually contained in the green copy, which is a standard insurance fraud provision. All the new language really does is say, you know, kind of the same things are going to apply to workers' comp. But if they're not in there, you could be prosecuted under that

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existing statute, as far as we can see, Section 44-607. So your liability as an agent is not really expanded. The standard in here is the same standard that you have in all criminal cases, which is you have to have intent. You've got to set out to be a crook, and the state has to prove that beyond a reasonable doubt. So the chances of you just kind of backing into this accidentally in good faith isn't something that's going to hold up in court and get you convicted. They're going to have to prove that you intended and conspired with somebody else to go about defrauding the insurance company. So I guess with those caveats, we would say that the statute seems to be kind of a redefinition and a sharpening of definition in terms of comp, but doesn't in our view expand the liability that agents have had. And we've had discussions with the Insurance Department, which seems to agree with that interpretation. I'd be happy to answer any questions you might have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Cavanaugh? Senator Chambers.

SENATOR CHAMBERS: James.

JAMES CAVANAUGH: Senator.

SENATOR CHAMBERS: So with the Cavanaugh caveat, you are okay with this bill in terms of it not really altering the law of fraud.

JAMES CAVANAUGH: I think that's a fair statement. We looked at this in terms of, you know, we see ourselves as representing the consumer. Our clients are the people who are buying this insurance. And we don't want to be involved in, even if they do, in defrauding anybody. We don't want to be involved in that. And so, as a policing measure, you know, to set a clear standard, this is fine. But it's already there if you look at Section 44-607. It says you can't do this already. This just says, and by the way, we'll add that you can't do this already in comp claims. You've been a lawyer a longer than I have, and maybe you read it differently, but that's how I seem to see it.

SENATOR CHAMBERS: No, I didn't have a problem with it. But I wanted to be sure that I was hearing correctly what you said, and you said again what I thought I heard you say in

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the first place. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Nice seeing you again. Other neutral testifiers? Senator Cunningham to close.

SENATOR CUNNINGHAM: Thank you. I'll be very brief. This idea was brought mostly because of the problems that happened when the Qwest Center was being built and the misclassification of workers. And when we did some investigating and one of the companies that was involved at that time has had 106 injuries since 1996. And in dealing with the Department of Insurance, they felt that this would close a loophole for workers' compensation, so the language was worked on jointly with my staff and the Department of Insurance.

SENATOR BOURNE: Questions for Senator Cunningham? I've got a quick one. I just want to understand how this works globally, I guess. How did, okay, a worker is a worker. If they're, regardless of the classification, aren't they covered by workers' comp?

SENATOR CUNNINGHAM: Well, there's different...well, because of the wage levels of different workers and different hazard levels for those workers, there's different amounts of premium.

SENATOR BOURNE: Okay. So what were we seeing up there, you know, at the Qwest Center and that subcontractor or contractor?

SENATOR CUNNINGHAM: Say that again.

SENATOR BOURNE: What were we seeing specifically that your piece of legislation will stop, specifically?

SENATOR CUNNINGHAM: Well, in that case, the, oh, what's the terminology? Not subcontractor, but...what's the terminology I'm looking for? Independent contractor. They were classifying them that way and not calling them employees.

SENATOR BOURNE: Okay, so then they're, if it's an independent contractor, they don't enjoy workers' comp?

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SENATOR CUNNINGHAM: That's correct.

SENATOR BOURNE: Okay. Okay. Further questions? Thank you.

SENATOR CUNNINGHAM: Thank you.

SENATOR BOURNE: That will conclude the hearing on Legislative Bill 1092. (See also exhibit 20) Senator Brown to open on Legislative Bill 794. Welcome.

LB 794

SENATOR BROWN: Mr. Chairman and members, I know you want to leave, and so we're going to try to make this quick. I'm Pam Brown. I represent District 6 and I'm here to introduce, District 6 in Omaha, to introduce LB 794. Over the past, probably five years, states have been struggling with dealing with the problems that are presented to their citizens and to their businesses by spam. And it has become more rewarding in many ways for individuals to participate in the process of spamming. The federal government decided to become involved because states were developing a patchwork of ways to address it that was generally reliant on the volume of the information that was going out. In some cases, that could be legitimate. The FTC held hearings and most of the testimony was from businesses concerned that they maintain their opportunity to use solicitations of this sort for legitimate purposes. But what they found about the spam, rather than it being about volume, was that the people who were using it for purposes that were not legitimate lied in the header of spam, lied in the body, lied as to the name of the business, and most importantly, they lied about your ability to opt out. In fact, often, if you used, if you hit the thing that said that you did not want to receive these any more, that meant that you were permanently on the list that you were going to receive that kind of information. The FTC hearings resulted in the federal Can Spam legislation, which preempted much of the regulation at the state level of spam. But this bill is, takes a little corner that we think is still available to the states and provides for those intentional acts where an individual or a business is harmed, that there is either criminal

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prosecution recourse or the ability to recover damages. And it is very carefully constructed to be consistent with the Can Spam so that we're not getting into preemption issues, but I think it does offer the citizens of Nebraska some opportunity. I was just in a hearing about a totally different matter, and one of the representatives for a local political subdivisions talked how their system was brought down by an out-of-state company that was trying to access records that they accessed through that system, but the computer methodology that they were using actually brought the system down. Something that is at least tangentially contained in the bill, that there would be a recourse against that company for doing something that would interfere with the computer equipment. So I would just urge you to consider the bill.

SENATOR BOURNE: Thank you. Are there questions for Senator Brown? Seeing none, thank you. Are there testifiers in support? Welcome.

COREY O'BRIEN: Good afternoon. Members of the committee, my name is Corey O'Brien. I'm an assistant attorney general, but today I'm here representing the Nebraska County Attorneys Association in support of LB 794. The benefits of LB 794 are just as apparent as Senator Brown made them appear. There are some gaps in the types of fraud that are occurring. Over the Internet, the spammers adapt as quickly as technology adapts, and we believe LB 794 closes some of those gaps. One additional benefit that I noted from LB 794, in subsection 6 is that, one of the things that we're encountering frequently is spam, or misdirecting of e-mails, to send child pornography, and innocent bystanders are being accused of sending child pornography through some of the software that's being used to also facilitate the sending of spam, so we believe that could also be a benefit of LB 794. That's why we're in support of it. If you have any questions, I'd be happy to answer them. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. O'Brien? Corey, you're comfortable that the federal government didn't totally preempt in this area?

COREY O'BRIEN: I don't believe that federal government totally preempts, and that there are gaps in the federal coverage in that some of these situations do amount to

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localized fraud. They could be and should be, probably, prosecuted on the state level, as well as give the consumers of Nebraska that have been harmed by spam the opportunity to bring their causes of action in state court.

SENATOR BOURNE: Okay. Further questions? Thank you.

COREY O'BRIEN: Thank you, Senator.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Are there any neutral testifiers? Senator Brown to close.

SENATOR BROWN: Corey's testimony reminded me that my husband actually has been the subject of spam at his office soliciting pornography, and we pretty much believe that had he said that he did not want to receive any more of these messages, he would have gotten into some sort of database. He works at the medical center, the University of Nebraska Medical Center. He's asked their IT people to do something about it, but this is something that even though they very sophisticated spam blockers, that has twice gotten by their spam blockers.

SENATOR BOURNE: Try explaining that to your employer. Questions? Senator Chambers.

SENATOR CHAMBERS: I just happened to think, Senator Brown, if your first name were Shirley and were going to do like CEOs do, and you go by your first initial, middle name, last name, you would be "S. Pam" Brown. (Laugh) I just thought I'd...

SENATOR BROWN: That was very to the point. (Laugh)

SENATOR BOURNE: On that note, that will conclude the hearing on Legislative Bill 794 and the hearings for this afternoon.