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COMMITTEE ON JUDICIARY
February 2, 2006

LB 1150, 1133, 1135, 1136, 1137, 1115

The Committee on Judiciary met at 1:30 p.m., Monday, February 2, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1150, LB 1133, LB 1135, LB 1136, LB 1137, and LB 1115. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Jeanne Combs.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our seventh day of committee hearings. We are hearing six bills this afternoon. I'm Pat Bourne. I'm from Omaha, the 8th District. To my left is Senator Aguilar from Grand Island. To my immediate left is Laurie Vollertsen, the committee clerk. To my right is Michaela Kubat, the committee counsel. I'll introduce the other members as they arrive. Please keep in mind that senators have other duties and obligations to do throughout the day, so they'll be coming and going. If they happen to leave during your testimony, please don't take offense to that. They're simply conducting legislative business. If you plan to testify on a bill, we're going to ask that you sign in in advance at the on-deck table where Senator Cornett is at. Please print your information so that it is easily readable and can be entered accurately into the permanent record. Following the introduction of each bill, I will ask for a show of hands to see how many people plan to testify on a particular measure. We'll first hear the introducer, then we'll hear proponent testimony, opponent testimony, and then we'll have neutral testimony at the end. When you come forward to testify, please clearly state and spell your name for the record. All of our hearings are transcribed and your spelling of your name will help the transcribers immensely. Due to the large number of bills, we here in the judiciary committee, we utilize the timer system. You'll see that on the testifier's table there. Senators introducing the bill 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 stop. The rules of the Legislature state that cell

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phones are not allowed, so if you have a cell phone, please disable it so as not to distract the committee. Reading someone else's testimony is also not allowed. If you have some testimony you'd like to enter into the record, give it to the page and we'll enter that in, but we won't allow you to read it. With that, we've been joined by Senator Flood from Norfolk. Senator Cornett to open on Legislative Bill 1150. As Senator Cornett gets ready to testify, can I have a show of hands of those folks here to testify in support of this bill? I see three. Those in opposition? I see one. Those neutral? I see none. Senator Cornett, welcome.

LB 1150

SENATOR CORNETT: (Exhibit 1) Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Abbie Cornett and I represent the 45th Legislative District. I am here to introduce LB 1150. I have brought LB 1150 in part to make the committee aware of what the statewide Automated Fingerprint Identification System, or AFIS, is, and what some of the problems have been in finding a steady funding stream. AFIS is a system that through either live scan workstation or ten-point workstation receives fingerprint identification, which is used to create a criminal history. LB 1150 is a bill which will maintain and upgrade the statewide system. Currently, the system is used mainly in the eastern part of the state with only six live scan workstations west of Lincoln. LB 1150 will allow there to be a fee charged to those who are convicted of a misdemeanor or a felony. The fee is \$5 and again is charged at the time of conviction. \$4.50 is put into the Automated Fingerprint Identification System fund and the other 50 cents goes into the General Fund. The AFIS fund is overseen by the Nebraska State Patrol. The Nebraska State Patrol is to make sure the funds are used to maintain, operate, expand, and upgrade as technology advances the AFIS system and criminalistics laboratory. Currently, money which has been seized is being used to maintain this system. There is nothing to say the money can continue to be utilized in this way. It currently takes about 400,000 per year to maintain this system. This does not allow for any expansion into the smaller communities in the western part of the state, nor the addition of this system into a larger

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metropolitan communities. We need to find a way to maintain, upgrade, and expand the system to improve law enforcement's ability to serve the community. The testifiers after me will go into greater detail on how the system works and what the funding issues are. I also have an amendment that we had drawn up at the request of the AFIS Policy Board. It would include traffic offenses and strike the criminalist laboratory part. Thank you again for your time and consideration in this matter. I and the Policy Board would welcome any suggestions from the committee on this matter.

SENATOR BOURNE: Thank you. Questions for Senator Cornett? Senator Aguilar.

SENATOR AGUILAR: Senator Cornett, do you have any idea what it costs to collect and process a set of fingerprints?

SENATOR CORNETT: I'm sorry. I couldn't hear you.

SENATOR AGUILAR: What it costs to collect and to process a set of fingerprints?

SENATOR CORNETT: No, I do not. You would have to ask the people that follow me on that.

SENATOR BOURNE: Thank you. Further questions? How is this funded now?

SENATOR CORNETT: It has been funded by the appropriations, but with some of the lack of funding in the past years, they weren't able to meet costs, if I'm correct, and they have been using forfeiture money to work on maintaining the system.

SENATOR BOURNE: So in the past, it was funded directly through an appropriation.

SENATOR CORNETT: I believe so.

SENATOR BOURNE: And...

SENATOR CORNETT: Again, that will be something that they have to address because I don't wish to misspeak.

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SENATOR BOURNE: Okay.

SENATOR CORNETT: But I believe that's the case.

SENATOR BOURNE: Well, we'll get to it. Thank you. Further questions? Seeing none, thank you, Senator. We've been joined by Senator Friend from Omaha. First testifier in support. And again, if the testifiers, the proponents of this bill would make their way forward, we're going to utilize the on-deck area. So if there are any other proponents besides this gentleman, you should be in the front row and have already signed in. Welcome.

MICHAEL STONE: Thank you. Should I begin?

SENATOR BOURNE: Please.

MICHAEL STONE: Okay. Good afternoon, Chairman Bourne and committee members. My name is Michael Stone, S-t-o-n-e. I'm a member of the AFIS Policy Board and the manager of the Omaha police crime laboratory, and I appreciate this opportunity to speak in support of LB 1150. The Automated Fingerprint Identification System known as AFIS came into existence in Nebraska in 1994 when the 93rd Legislature authorized the State Patrol to proceed with the acquisition of an AFIS system and authorized the formation of an AFIS Policy Board. By the end of 1995, AFIS was installed and operational. The Policy Board was established and began to meet regularly to develop policy, plan for expansion, and resolve operational issues. AFIS is a computerized, searchable database containing fingerprint cards and crime scene latents submitted electronically to the State Patrol from law enforcement agencies in Nebraska. There are 320,000 fingerprint cards in the database representing 32 million individual fingers from booking records, sex offenders, and law enforcement employees. There are 7,157 unidentified crime scene latents in the database. The system is used to expedite identification of crime scene prints, persons giving false information, identification of Jane and John Doe deceased, and serves as an advocate for the innocent. AFIS is comprised of a main server, live scans, and workstations. The main server at NSP headquarters is the heart of the system. An AFIS administrator makes certain the system is operational and available 24/7 to provide critical fingerprint-based

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identification and record check services to law enforcement and the public. Fourteen live scan units located in booking and correction facilities are used to capture fingerprints and biographical data of persons booked for various offenses, and the six workstations are located in agencies that provide fingerprint identification service to law enforcement and the public. Life expectancy of technology like AFIS is five to six years. Our system is over ten years old and due to funding issues has not grown with ever-increasing demands of law enforcement, nor has it kept up with advancements in technology. With the exception of equipment replacements and essential improvements, such as electronic connection to the FBI criminal history database, it is still the same basic system installed in 1995. The Policy Board is concerned that the State Patrol as the agency responsible for the overall system is underfunded. In fact, there is no funding earmarked for AFIS operations. Last year, the Patrol expended \$247,000 on maintenance fees alone. That fee continues to grow. And as Senator Cornett talked about, it's approaching \$400,000. In closing, we would like to see our state financially prepared to meet future maintenance and upgrade costs to keep this identification solution viable. Without an adequate, on-going source, it will become increasingly difficult to meet the public's expectation of accurate, timely, fingerprint based criminal history checks for employment, to protect them from identity theft and wrongful detainment, and law enforcement's need for accurate and timely identification of criminals and wanted persons who come into our custody. Thank you.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Chambers. Are there questions for Mr. Stone? Seeing none, thank you.

MICHAEL STONE: Thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

JIM PESCHONG: Thank you. Mr. Chairman and members of the Judiciary Committee. My name is Jim Peschong, P-e-s-c-h-o-n-g. I am here on behalf of the Police Officers Association of Nebraska, and we are encouraging your support for LB 1150. The passage of this bill will ensure that a funding mechanism is established to support the Nebraska

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AFIS system with on-going maintenance costs, upgrades, and enhancements to the system. Establishing an AFIS revolving fund by assessing a fee to individuals who have been found guilty of a criminal or traffic offense is not a new idea. Similar programs are in place in Oklahoma and in New Jersey. Our current system is over 10 years old, but it has not been able to expand because of the lack of funding. However, technology has significantly advanced over the past decade. Currently, a jail facility may wait for days to know if someone who has been arrested may be wanted in another state under a different name. These types of inquiries can generally be returned within a matter of hours, if not minutes. Waiting days for a response may have been acceptable 10 years ago, but it isn't acceptable today. If we are to become better at what we do and be more responsive to the citizens that we serve, we must identify a funding source in order to meet those needs by maintaining and expanding our system. The AFIS advisory board believes that to adequately fund this program, it needs approximately \$1 million a year committed to it. If a \$5 AFIS fee would be assessed against every adult who is ordered to pay a court cost in criminal and traffic matters, we believe that dollar figure could be achieved. People are not always who they say they are. Fingerprints are being used more and more by law enforcement in trying to identify persons associated with traffic citations. There are a growing number of drivers who do not have a driver's license with them at the time of a traffic stop and provide fictitious information. Most of these incidents result in a warrant being issued or a notice of their driver's license being suspended. Many times, this is when law enforcement discovers that the name used on a citation was not the person's real name. If a fingerprint was obtained at the time of the traffic stop, it can be a fairly simple process to confirm someone else's identity was used. Unfortunately, some of these incidents come to our attention when a victim of identity theft is taken to jail because of a fail-to-appear warrant. Having a fingerprint gives us the ability to rapidly respond and resolve these matters with a great deal of certainty. The automated fingerprint system that was established over ten years ago needs to grow, but it can't without adequate funding. Your support of LB 1150 is needed in order to establish this funding source. Thank you for your consideration of this matter, and I'll be happy to answer any questions.

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SENATOR BOURNE: Thank you. Are there...before I do that, the committee has been joined by Senator Pedersen from west Omaha. Are there questions...

SENATOR Dw. PEDERSEN: Elkhorn.

SENATOR BOURNE: Oh, I'm sorry. Elkhorn. Are there questions for Mr. Peschong? So the amendment that Senator Cornett brought forward says that you're going to put a \$5 fingerprinting fee on anyone convicted, plus a traffic violation.

JIM PESCHONG: Correct, for any criminal or traffic...

SENATOR BOURNE: Do we have any idea how much money this would generate?

JIM PESCHONG: On taking the figures from 2004, which were, the figures that I got from the Court Administrator's Office, that would generate on those figures about \$1.4 million. If you then subtracted out a 50 cent cost to the courts for their administrative fee, that's about \$141,000, so that would generate about \$1.27 million.

SENATOR BOURNE: And then, how...

JIM PESCHONG: Now that's providing that everybody did pay that.

SENATOR BOURNE: All collectible. Okay. And just so I understand, the database is maintained by the State Patrol, but all law enforcement utilizes it?

JIM PESCHONG: That is correct. There's basically what we call an AFIS Advisory Board, which is made up of Police Officers Association of Nebraska, Police Chiefs Association of Nebraska, the Sheriffs Association of Nebraska, the Nebraska State Patrol, the Crime Commission, and the users group that sit on a board that then wind up making policy decisions based on the AFIS system for the state.

SENATOR BOURNE: Can you think of another situation where we place a surcharge on traffic warrants, things like that, for basically something that's for the public good? And I guess

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the point of the question is, why don't we, everybody that gets to ride in a cruiser, why don't, you know, we assess them \$5? I mean, why this, versus...

JIM PESCHONG: People that are arrested for DWI, there is a charge on that, a \$100 testing fee that is assessed to them. How we kind of came up with this, you know, we just kind of looked at other states on what they are doing. I was looking at one this afternoon, or rather this morning, San Gabriel, they wind up charging 50 cents for every \$10 that is levied in the fine, and then they also assess \$1 for every vehicle that is registered. So it's just really kind of all over the board in regards to how different states wind up funding some of this.

SENATOR BOURNE: So other states are doing it.

JIM PESCHONG: Yes.

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

JIM PESCHONG: Okay. Thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

GARY JUILFS: Good afternoon, Mr. Chairman and members of the committee. My name is Gary Juilfs, J-u-i-l-f-s. I'm currently a member of the AFIS Policy Board representing the Nebraska Sheriffs Association. I would offer testimony today as to the value of the AFIS system as a law enforcement tool, and its ultimate benefit to the citizens of Nebraska. Prior to the advent of automated fingerprint systems, latent prints were recovered at crime scenes by investigators were really only of the value if the suspect was identified. Only then could a latent print be compared to the fingerprints of a suspect to positively identify his or her presence at the crime scene. Often, a suspect may be developed days, weeks, or months after that fact, oftentimes after other crimes were committed by that person. With today's technology, a cold case, and that is one without a suspect, may be quickly resolved by querying the AFIS database against the latent print discovered at a crime scene. The most recent complete report that we have concerning cold case hits are from 2004, and they numbered 504. Some of these cases may have been solved eventually by

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conventional investigative techniques. However, the timely identification and arrest of suspects in these cases undoubtedly curtailed the number of subsequent crimes committed by some of these people. Clearly in my mind, the AFIS system is a benefit to the people of Nebraska as a form of crime prevention by getting criminals who commit multiple crimes off the street in a timely fashion. As a member of a sheriff's office, I can speak to the value of the AFIS system as an aid to quickly identify people on warrants and, in some cases, prove that the person detained is truly not the person named on the warrant. With today's transitory population, it's very common for law enforcement to encounter wanted persons from jurisdictions outside Nebraska. To rapidly identify these types of suspects, continued planning and integration with other state and regional AFIS systems will be necessary. Currently, we can't consider these initiatives due to the lack of funding. With increased public concern over homeland security and domestic peace of mind, the automated fingerprint system is an extremely valuable technological tool. It deserves a permanent source of continued funding, and I would respectfully ask this committee to give LB 1150 serious consideration. Thank you, Senators, for your time.

SENATOR BOURNE: Thank you. Questions for Officer Juilfs? Seeing none, thank you. Appreciate your testimony. Next testifier in support. I don't see anybody in the on-deck area for opponents. Is there any other opponents after Mr. Mueller? Are there any neutral testifiers? Mr. Mueller, welcome.

BILL MUELLER: Mr. Chairman, thank you. For the record, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in opposition to LB 1150. When our committee first looked at LB 1150, we thought that there was a drafting oversight because this \$5 fee was being imposed on cases, and it was not tied to whether there had been a fingerprint obtained in that case. In talking with Senator Cornett, it is clear to us that the proponents are here seeking a funding source for the AFIS program, and we are certainly not here to question the importance or efficacy of AFIS. We are here concerned about the funding method being used. As this committee is aware, last year, the Legislature passed LB 348, introduced by Senator Bourne and Senator Brashear, increasing many court

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costs, many court fees. This year, LB 529 is on the floor, the clerk of the district court bill, seeking to impose, or seeking to increase the court costs another \$5 to partially fund that takeover. I believe that this committee has heard a bill that Senator Synowiecki introduced increasing court costs by a dollar to put more money, more needed money, into the judicial branch education. Our concern is simply a policy question, and that is should our judicial system and now, what I hear, our law enforcement system be funded with a user fee, which is really what court costs or a court fee is, or should they be General Fund funded? I'm certainly aware of the difficulty of obtaining general funds, but we do believe that that is the appropriate funding mechanism for something like AFIS. I'd be happy to answer any questions the committee may have.

SENATOR BOURNE: Great. Thank you. Questions for Mr. Mueller? Are you aware, do we put a fee on any other criminal action? I know we have a host of fees on court actions, but...

BILL MUELLER: And I believe that those fees are now imposed on criminal matters, as well as traffic tickets.

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

BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Last call. Neutral testifiers? Senator Cornett to close.

SENATOR CORNETT: Again, I want to thank the committee for hearing this bill today. To answer your question in regards to appropriations, I spoke with the gentleman in the back, and there was a one time appropriation to set up the AFIS system, and since that, it's kind of been left on its own to try and find funding. We researched a number of different ways to try and fund this program. We even looked at the cigarette tax, which says part of that is to go to infrastructure and technology updates, but that is limited to \$2,500 per year per agency. The need for AFIS funding is greater than that. We appreciate, again, you listening. And if you have any suggestions, we are more than open to amending the bill.

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LB 1133, 1150

SENATOR BOURNE: Thank you. Are there questions for Senator Cornett? Seeing none, thank you. That will conclude the hearing on Legislative Bill 1150. To open on Legislative Bill 1135, Speaker Brashear. As he makes his way forward, can I have a show of hands...well, I'll tell you, we'll pass on that given that the next four bills are Senator Brashear's. We'll just take what we get. Do you want to wait a minute until they clear the room, or no?

SENATOR BRASHEAR: Whatever the Chairman directs.

SENATOR FRIEND: Just keep an eye on those lines.
(Laughter)

SENATOR BOURNE: That's right. You missed this. Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Elkhorn, for coming.

_____ : Thank you.

SENATOR BOURNE: Speaker Brashear to open on LB 1135.

LB 1133

SENATOR BRASHEAR: Thank you, Chairman Bourne, members of the Judiciary Committee. My name is Kermit Brashear. I appear in introduction and support of Legislative Bill 1133. In 1999, together with the leadership of the judicial branch and other state and local officials, we introduced legislation to provide for audiovisual court appearances in criminal cases. This was a significant advance, allowing technology to bring about improved security and reduce costs. The process has worked well, but after several years of experience, we can now examine ways to improve the system. The Committee on Practice and Procedure of the Nebraska Supreme Court has studied the existing requirements for audiovisual court appearances, and based upon that experience has developed recommendations for clarifying and improving sections of the law. LB 1133 reflects those recommendations, and I was pleased to bring this bill on behalf of the committee and the Nebraska Supreme Court. Representatives of the committee will follow to provide you with details on the legislation. I truly and strongly

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believe that this has been a beneficial program for the state. This bill ought to make the use of audiovisual technology more effective in the future, and make its use more widespread. I urge the committee's favorable consideration and advancement of Legislative Bill 1133. Thank you.

SENATOR BOURNE: Thank you, Mr. Speaker. Just for clarity, I had said originally Legislative Bill 1135. So Speaker Brashear was opening on LB 1133. I misspoke. With that, are there questions for the speaker? Seeing none, thank you.

SENATOR BRASHEAR: I'm sure it was my error, Chairman. I'm sorry.

SENATOR BOURNE: First testifier in support of Legislative Bill 1133. Welcome.

ROGER KIRST: (Exhibit 2) Thank you. Thank you, Mr. Chairman, members of the committee. My name is Roger Kirst, K-i-r-s-t. I teach at the University of Nebraska Law School College, procedure and evidence. However, I appear today as a reporter for the Nebraska Supreme Court Committee on Practice and Procedure. Last year, the Nebraska Supreme Court asked its Committee on Practice and Procedure to review the provisions on audiovisual appearances to see if there improvements that could be made to the statute that might make it more workable and possible to try it out in Nebraska, which has not happened since the statute was adopted in 1999. The committee looked at the statute last year, looked at the statutes in a large number of other states. One of the first things we observed was that the Nebraska statute was already much longer than the rules or regulations in any other jurisdiction. It had kind of grown during the drafting process apparently. We were not involved in the original drafting. There were sections that were duplicative, sections that were redundant, sections that appeared somewhat awkward in the phrasing of what was trying to be accomplished. Our suggestion and recommendation to the Supreme Court that perhaps was that the best solution would be to do some technical clean-up of the statute to try to coordinate the provisions, make them read in a way that would emphasize what it was to be done. And that was the recommendation by the committee to the

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Supreme Court. The Supreme Court then forwarded that on to the Unicameral, where now LB 1133 is in front of you. The remarks I've handed out review that history and suggest the reasons I had drafted for the committee as to the reasons for the particular provisions. If there's any questions, be happy to answer them.

SENATOR BOURNE: Thank you. Are there questions for Professor Kirst? Seeing none, thank you.

ROGER KIRST: Thank you, sir.

SENATOR BOURNE: Next testifier in support of Legislative Bill 1133.

DON KLEINE: Good afternoon. My name is Don Kleine, K-l-e-i-n-e. I'm the chief of the criminal bureau for the Nebraska Attorney General's Office, and I'm also a member of the Nebraska Supreme Court Committee on Practice and Procedure. And I'm here testifying, though, on behalf of the Nebraska County Attorneys Association in support of Legislative Bill 1133, letting you know the Nebraska County Attorneys Association has looked at this bill. We're in favor of it. It's carefully drafted. There's no constitutional issues or violations. There's no suspect problems with this particular bill. It's a great bill to allow greater public access again to the courts and ensure that the public has access to the courts. And I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kleine? Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. Mr. Kleine, thank you for your testimony. I guess, I'm trying to get a handle on what this really does for criminal court sessions, especially. You know, in Norfolk, we had the bank murders that occurred up there. Would this allow a defendant to appear by close-circuit television rather than actually transporting them from the jail or from the state pen or...

DON KLEINE: If you notice, in the bill, I think it excepts evidentiary hearings. So, I think what we're talking about here is, in a criminal proceeding, might be a bond review, any hearing that wouldn't need to be necessarily evidence or

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a confrontation clause issue with regard to witnesses. So it just allows for audiovisual appearance in that regard.

SENATOR FLOOD: Would there be any way, and the reason I ask this, and I like the bill, is because in my county, my district, we had a number of defendants that were, before their conviction, being held at Tecumseh State Prison. And it required a lot of money to transport those defendants, and time and security, up to Madison County, be there for the five-minute court arraignment and then drive back.

DON KLEINE: And this will be a situation that would take care of that problem so it...

SENATOR FLOOD: If the technology is available.

DON KLEINE: ...if the technology is available, correct. That's, I think, one of the purposes.

SENATOR FLOOD: Okay. Thank you very much.

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

DON KLEINE: Thank you.

SENATOR BOURNE: Next testifier in support.

BILL MUELLER: Chairman Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB 1133. Our Bar Association Legislation Committee has lawyers who are either prosecutors or criminal defense lawyers. When we look at criminal bills, generally they will line up on opposite sides of that bill and the bar will adopt a no-position on the bill. This was one of the bills in the criminal law area that both prosecutors and criminal defense lawyers looked at and recommended that the bar support. So, I'm here on behalf of the bar to support LB 1133 as making necessary changes to this procedure. Be happy to answer any questions you may have.

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

BILL MUELLER: Thank you.

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LB 1133, 1135

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Brashear waives closing on Legislative...that will conclude the hearing on Legislative Bill 1133. Senator Brashear to open on Legislative Bill 1135. You're still exerting your will over the committee, Senator Brashear.

LB 1135

SENATOR BRASHEAR: Thank you, Chairman Bourne, members of the Judiciary Committee. I'll try and be on the right page. I am legislator from District 4. I'm appearing in introduction and support of Legislative Bill 1135. LB 1135 deals with an often complex and technical area of the law known as conflicts, or conflicts of law. Thankfully, we have expertise from our two local law schools available today to help guide us through the thicket of conflicts. As you might expect, legal disputes often transcend state and even national boundaries. To use a rather simple example for the purposes of this introduction, suppose a Nebraska driver has an accident with a Missouri driver while both are driving in Iowa. The laws of each state might be somewhat different in terms of both the substance and procedure. There would be a question, then, as to which state law would be applied to legal issues arising from that situation. Often, the choice of law will make a significant difference as to the outcome of the case, or might. As a result, courts and legislatures have developed standards over the years for resolving questions regarding the appropriate application of laws of various jurisdictions when disputes cross boundaries. Generally, different standards have been applied for substantive as opposed to procedural law situations. Statutes of limitation have caused particular difficulty because some courts have treated statutes of limitation as procedural, and others have treated them as substantive. The Uniform Conflict of Laws Limitation Act was drafted by national experts to address questions such as these. Professor Susan Franck of University of Nebraska College of Law has brought this issue to our attention, and I agreed to bring this bill before the Judiciary Committee in order that Nebraska's approach to this issue could be examined and discussed. Professor Franck will follow to provide you with a summary of the issues and the different

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means available to address them. I'm hopeful that the Legislative Bill 1135 can be a vehicle for discussion and resolution. I urge your favorable consideration and the bill's advancement. Thank you.

SENATOR BOURNE: Thank you. Are there questions for the Speaker? Seeing none, thank you. First testifier in support. Welcome.

SUSAN FRANCK: (Exhibits 3, 4) Good afternoon, Chairman Bourne and members of the Judiciary Committee. I'm here to speak today on behalf of LB 1135. As Senator Brashear indicated, I'm an assistant professor at the University of Nebraska, where I teach conflicts of law, but I am not here today in my capacity as a representative of the university, instead, because, of my interest in this subject.

SENATOR BOURNE: Could you state and spell your name for the record?

SUSAN FRANCK: Franck, F-r-a-n-c-k.

SENATOR BOURNE: Thank you.

SUSAN FRANCK: The idea for this statute came when I was preparing to teach conflicts of law for the first time in Nebraska. I decided to research Nebraska's borrowing statute, and what I found surprised me tremendously. It made me realize that Nebraska's law meant that Nebraska parties to litigation were at risk of being manipulated unfairly. So, let me tell you quickly what a borrowing statute is. It is a statute that reliably, predictably, and clearly tells you which statute of limitations applies in a multistate setting. Statutes of limitation are important because they provide clarity about basic issues. Can I file this complaint? The Nebraska borrowing statute is in chaos, and the ambiguity is unfortunately being manipulated unfairly. The Nebraska Supreme Court, in the Calvert case recognized this and said, "To say the borrowing statute makes any particular sense would be a gross overstatement." It also called the results from the statute bizarre, and I implicitly invited the Legislature to fix the problem. Other scholars, such as Patrick Green at Creighton, have noticed it and called the statute an embarrassment to the bar and suggested revision of this issue at least 30 years

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ago. I've also provided you a copy with my brief piece in The Nebraska Lawyer. We need this change to provide clarity, to let Nebraska plaintiffs know when they can sue; to let Nebraska defendants know when they are no longer subject to suit. The change is needed to provide procedural fairness and prevent unfair forum shopping. Let me give you the real case that's described briefly in the article. There was an Oklahoma gentleman who got into a car accident in Oklahoma with a Nebraska party. The evidence, the medical treatment, everything happened in Oklahoma. The Oklahoma plaintiff's lawyer forgot to write down the statute of limitations, and instead, after the statute of limitations passed, because of our borrowing statute, was able to actually bring the claim before Nebraska courts. Then, because he filed in federal court, could actually get both his preferred law, namely Nebraska law, as well as his preferred forum of Oklahoma. This statute, LB 1135, will fix that problem. It strikes a balance between the needs of Nebraska defendants and plaintiffs and adheres to established neutral principles. It's similar to a provision passed in Minnesota in 2004. This statute is good for Nebraska citizens and businesses. It closes a loophole to increased clarity and makes the litigation process fairer for everyone. Thank you for your time, and I look forward to questions.

SENATOR BOURNE: Thank you. Are there questions for Professor Franck? Seeing none, thank you. Next testifier in support.

PATRICK BORCHERS: My name is Patrick Borchers, B-o-r-c-h-e-r-s, and I am a professor and the dean of the law school at Creighton, although, like Susan, I wish to make clear that I am appearing only in my personal capacity. I also support this and applaud Professor Franck and Senator Brashear for having taken the lead on this. I, too, when I came to Nebraska noted the oddity of the Nebraska borrowing statute. But not being as ambitious as Professor Franck, I did nothing about it, but I'm happy to join in her efforts. I think this bill is a reasonable accommodation. It always allows Nebraska plaintiffs to take advantage of the Nebraska statute of limitations so there's no unfairness or shortening of the statute of limitations in an unexpected way as one might encounter. And for out-of-state plaintiffs who come to our courts and wish to rely upon the laws of

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other states, then they must accept the statute of limitations of that other state, or indeed, the other nation. So, I think this is a bill that will do a lot to clarify what is a very dangerous area. If there's any area of the law where things ought to be predictable and one ought to be able to know the answer in advance, the question of when the lawsuit can actually be brought seems to me to be one of those things where there ought to be a clear answer. Unfortunately, the existing statute does not provide a clear answer. This does, and for that reason alone, I think it merits your favorable consideration. I'll be happy to take any questions if there are any.

SENATOR BOURNE: Thank you. Are there questions for Dean Borchers? Seeing none, thank you.

PATRICK BORCHERS: Thank you very much.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Brashear waives closing. That will conclude the hearing on Legislative Bill 1135. Senator Brashear to open on Legislative Bill 1136.

LB 1136

SENATOR BRASHEAR: Mr. Chairman, members of the Judiciary Committee, my name is Kermit Brashear. I'm the legislator from District 4. I appear in introduction and support of Legislative Bill 1136. LB 1136 clarifies a matter of administrative procedure in order to eliminate a trap for the unwary. During my tenure as a member of this committee, we always worked to make an effort each time one of these traps was presented to eliminate it. I strongly believe it is bad law and even worse public policy for substantive outcomes to be dependent upon whether a particular or given lawyer has specific knowledge of a particular aspect of procedure that is not readily apparent to all. One such aspect of the Administrative Procedure Act has come to my attention in my own private practice of law. You may be aware that the Administrative Procedure Act allows for appeals from administrative contested case decided by an administrative agency and appealed to the district court. Contested case is the administrative term of art for a

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matter that is brought for resolution before an agency with the authority to resolve that matter. Because the administrative action is quasi-judicial, the period for appeal to the district court from a final determination by the agency is very short, 30 days. With that background, let me explain the issue at hand in LB 1136. The Administrative Procedure Act allows a reviewing judge to remand a matter back to an agency for additional fact-finding or other proceedings. Nebraska courts have determined that the remand to the agency under Section 84-917(5)(b) of our statutes constitutes a new contested case. So, rather than a continuation of the prior case that was remanded to the agency for further proceedings, the courts have held that the additional proceeding constitutes a new contested matter. The effect of this is that once the agency makes its final determination on the basis of the expanded record after remand, a new appeal must be filed within another 30-day time limitation. Such a result is contrary to the logical assumption that the case would return to the original court. LB 1136 would adopt language employed in Iowa and other states to clarify Section 84-917(5) and eliminate the trap for the unwary that is created in that section. Although this language is employed in Iowa, I recognize that additional clarification may be desirable, and I will work with the committee and with its counsel to develop language that all can agree accomplishes the intended aim of eliminated the trap. I urge your favorable consideration and advancement of LB 1136. And I thank you for your time.

SENATOR BOURNE: Thank you. Are the questions for the Speaker? Seeing none, thank you. First testifier in support.

BILL MUELLER: Chairman Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB 1136. When our committee looked at LB 1136 and understood Senator Brashear's purpose for introducing it, it made sense to us. I think that most lawyers who were in a procedural situation that Senator Brashear described would think that it was the same contested case, that it was not a new contested case, and that their case would end up, would return to the district court after the administrative agency had handled the matter on remand. We, too, have had lawyers

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question the language of the bill, and we, too, are willing to work with Senator Brashear and committee counsel. I think that the concept is a good one, and that is that once you've tried a contested case, once you've appealed it to the district court, once it's been remanded, it doesn't become a new case. It's really a continuation of the underlying case, and that's a concept that we think should be reflected in statute. Be happy to answer any questions the committee may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Mueller? Seeing none, thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Brashear waives closing. That will conclude the hearing on Legislative Bill 1136. (See also Exhibit 5) Senator Brashear to open on Legislative Bill 1137. As he approaches, are there testifiers in support of LB 1137? Are there any opponents to this bill? One. Senator Brashear.

LB 1137

SENATOR BRASHEAR: Thank you, Chairman Bourne, members of the Judiciary Committee. My name is Kermit Brashear. I appear in introduction of Legislative Bill 1137 and in support of it. Among the accomplishments during my tenure on the committee of which I thought made sense was that we were always addressing dollar amount limitations at various places in the statutes. For example, we adjusted the jurisdictional amount for county court, which is now indexed every five years, to the Consumer Price Index. Another example is in Section 30-24,125, where we raised the amount that can be passed through an estate without probate from \$10,000 to \$25,000. It was suggested to me during the interim that the amount that can be transferred to a minor without a conservatorship ought to be adjusted in the same manner, and that it had not been for a considerable period of time. LB 1137 makes that adjustment in the same manner by increasing the amount from \$10,000 to \$25,000. I believe that this change will reflect modern monetary values and inflation, and facilitate the resolution of disputes, and

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increase the efficiency of judicial administration. But I do understand there will be opposition from the Bar Association, which goes to show you how quickly (laugh) you can lose your friends. But I welcome the dialog and I urge favorable consideration of the bill and advancement. Thank you.

SENATOR BOURNE: Thank you. Questions for the Speaker? Seeing none, thank you. We'll try again. Are there supporters of the bill? Opponents?

BILL MUELLER: Chairman Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in opposition to LB 1137. The Speaker took the words almost out of my mouth. I just don't want the committee to get the idea that just because Senator Brashear introduces something, that the bar automatically supports it. We do not support LB 1137. Our concern with LB 1137 is this: In a situation where money is owed to a minor, which is what we're talking about here, what this bill would do would say that you do not need to appoint a conservator for that minor, and you can give that minor or you can give the person having the care and custody of the minor, up to \$25,000 a year. Our concern is this: Minor is injured in some kind of an accident. The minor settles the case, gets a certain amount of money. Currently, and candidly, I don't know that this would change, the insurance company is likely to require that a conservatorship be appointed so that releases can be signed for that minor. The money would be transferred from the insurance company into that conservatorship, and then the only way that money could be transferred out of that conservatorship would be upon a court approving it. Our concern is, in this same scenario, if by chance a conservatorship were not created, you would run the risk of generally apparent taking the minor's money while the minor was a minor. And when the minor reaches majority, there would be no money available. So our concern is, and currently, admittedly, that could happen up to \$10,000 a year. Our concern is by increasing that to \$25,000, you just increase the risk that someone will abscond with that minor's money while that minor is a minor. We believe that the current law protects the minor by, in most situations, requiring the creation of a conservatorship and having a court oversee what happens to that money. That's the

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purpose for our opposition.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Mueller, thank you for your testimony today. Did I understand you correctly? Your concern is here is, say, the 13-year-old young man gets \$22,000. You don't want his parents to have control of that? You want to make sure that's protected for that 13-year-old?

BILL MUELLER: That's correct.

SENATOR FLOOD: Currently under Nebraska law, isn't any money owned by or any property or anything owned by a minor really the property of his or her parents?

BILL MUELLER: I don't know. I don't...

SENATOR FLOOD: I guess my concern is we have parents for a reason, because they provide for the children. And what the kid has in his bank account is what Mom and Dad allow him or her to have in their bank account. I guess, I'm not interested in conservatorships unless it's a lot more money being created to frustrate the intent of what the parents want to do in raising their son or daughter.

BILL MUELLER: And I think the way that we looked at this is that money belonged to the minor because it was necessitated, or it was created because of an injury sustained by the minor, was not the parents' money.

SENATOR FLOOD: So we have a newborn baby, three months old, and Grandpa says, here's \$10,000. Congratulations, son and daughter-in-law on the birth of your new baby boy. Should we make that \$10,000 go into a tax-deferred, protected account so that when the kid turns 18, he or she can go to the University of Nebraska? Or do we let the parent put it in the piggy bank and add on a new room in the home so the kid has a warm bed to sleep in and...

BILL MUELLER: Senator, I think that under...

SENATOR FLOOD: Am I seeing this wrong?

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BILL MUELLER: I think that under Section 30-2,603, which is Section 1 of the bill, this is money that a person is under a duty to pay to the minor. I don't think that...

SENATOR FLOOD: So my example doesn't really work.

BILL MUELLER: I don't think that it does.

SENATOR FLOOD: But I guess the intent is, we have parents for a reason. Why do we want to frustrate it with a conservatorship when Mom and Dad know how to spend Junior's money.

BILL MUELLER: That is a legitimate position for you to take. We can't...

SENATOR FLOOD: Okay. We can disagree on that, but thank you. I appreciate it.

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

BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Testifiers neutral? Senator Brashear to close.

SENATOR BRASHEAR: Mr. Chairman, members of the Judiciary Committee, knowing how closing is frowned upon, I hesitated, but I couldn't resist.

SENATOR BOURNE: Not since you left. It's okay. (Laughter)

SENATOR BRASHEAR: I couldn't...

SENATOR BOURNE: We're a much friendlier committee now, Senator.

SENATOR BRASHEAR: Oh, I understand. I couldn't resist under, because of Senator Flood's examination. We don't regulate a \$100,000 gift. We don't regulate an \$11,000 award. We regulate an \$11,000 award, but we don't regulate a \$9,000 award. The bill, undoubtedly, could be much improved by the input of the committee and of counsel, but this is like so many of our statutes where we're just

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sitting on idle. Heavens, maybe an interim study or hearings, but I think there's something here that needs attention. I urge the committee's consideration. I thank you for all the time today, cumulatively. Thank you.

SENATOR BOURNE: Questions for the Speaker? Seeing none, thank you. that will conclude the hearing on Legislative Bill 1137.

SENATOR Dw. PEDERSEN: We will now open the hearing on LB 1115. Senator Bourne will present the bill. Whenever you are ready, Senator Bourne.

LB 1115

SENATOR BOURNE: Thank you, members of the committee. My name is Pat Bourne, from the 8th Legislative District here to open on Legislative Bill 1115. Legislative bill updates certain statutes to include female pronouns in places where only male pronouns were previously used. It also removes other references to male pronouns and replaces them with simple nouns.

SENATOR Dw. PEDERSEN: Any questions from the committee? Senator Friend.

SENATOR FRIEND: Senator Quick. Never mind. Thank you.

SENATOR CHAMBERS: I have a question.

SENATOR Dw. PEDERSEN: Senator Chambers.

SENATOR CHAMBERS: Senator Bourne, I heard you mention male pronouns, female pronouns. Are there amateur nouns in there?

SENATOR BOURNE: Any what kind of nouns?

SENATOR CHAMBERS: You have all kind of "pro" nouns.

SENATOR BOURNE: There are all kinds.

SENATOR CHAMBERS: I want to know if there are any amateur nouns. (Laughter) I'm trying to get in the spirit. I

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don't have anything else, thank you.

SENATOR Dw. PEDERSEN: Any other questions from the committee? Thank God. (Laughter)

SENATOR CHAMBER: The chairman should never introduce a bill to his own committee.

SENATOR Dw. PEDERSEN: Anybody here in support of LB 1115?

SENATOR FRIEND: He's planning on prioritizing this.

SENATOR Dw. PEDERSEN: Anybody in opposition? Any neutral? That will close the hearing on LB 1115 and our hearings for the day.