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Judiciary Committee
January 28, 2010

[LB732 LB763 LB822 LB830 LB859]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 28, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB763, LB732, LB822, LB859, and LB830. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None. [LB763]

SENATOR ASHFORD: Welcome, everybody, to the Judiciary Committee. We have...my name is Brad Ashford. I represent Legislative District 20 in Omaha--here comes Senator Mello--and my colleagues today here and always are Senator Rogert, Senator Lathrop, Senator McGill to my right, Senator Christensen, and Senator Lautenbaugh. Stacey Trout is our legal counsel and Christina Case is committee clerk. We have five bills today, starting with LB763. We'd like you to follow the good old light rule and, other than the introducer, try to limit your testimony to around three minutes. We'll give you an orange light when we'd ask you to sum up. And that's about it. Those are the only ground rules. No cell phones. Once in awhile you can have a cell phone, I suppose, if it's an emergency, but generally not, but...Senator Mello, would you... [LB763]

SENATOR MCGILL: We don't collect them at the door. [LB763]

SENATOR ASHFORD: We don't collect them at the door. We don't...I'm required to say no cell phones, but it's not necessarily the case. Senator Mello. [LB763]

SENATOR MELLO: (Exhibits 1 and 2) The pages, two handouts here real quick. Chairman Ashford and members of the Judiciary Committee, my name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in Omaha and I'm the sponsor of LB763. LB763 will rectify outdated merger rules for asbestos torts acquired through merger before OSHA issued its 1972 asbestos regulations. The result of these outdated rules is that innocent companies are currently being held liable. This issue became of interest to me because of the potential job losses caused by the inequity of such liability and financial stigma associated with it. A local example of a company that was unfairly caught by these outdated rules is the company Crown Cork and Seal, a bottle cap and can manufacturer that has an operation in Omaha in my legislative district. The Omaha Crown Cork and Seal plant has a largely unionized work force that is represented by the International Association of Machinists. Although Crown Cork and Seal never manufactured, sold, or installed a single asbestos-containing product, the company has been named to an increasing number of asbestos-related lawsuits across the nation, with over 300,000 claims filed against it. While Crown Cork and Seal never made a single asbestos product in its over 100-year-long history, it now has paid over \$650 million in asbestos-related payments. On top of that, Crown Cork and Seal also pays more than \$100 million annually in excess interests to Wall Street banks because

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of their junk bond rating due to the threat of that asbestos claims could force Crown Cork and Seal into bankruptcy. Because many companies that were actually involved with asbestos have since gone bankrupt, Crown Cork and Seal is, in spite of no involvement, has become a bigger target and is being sued in a growing number of cases because of obsolete merger rules. To keep good paying jobs in Nebraska and to expand the company's operations domestically, innocent companies like Crown Cork and Seal need legislative help in the form of legislation that limits the liability of innocent successor companies for predecessor asbestos torts incurred as a result of a merger before 1972 when OSHA for the first time issued regulations limiting the use of asbestos. Legislation like LB763 has already been enacted by 11 states: Pennsylvania, Texas, Mississippi, Florida, South Carolina, Georgia, Ohio, Indiana, Oklahoma, North Dakota, and most recently Wisconsin. These laws fix the application of outdated successor liability laws to certain asbestos defendants such as Crown Cork and Seal. Organizations, including the Council of State Governments and the American Legislative Exchange Council, have issued such recommendations in supporting this legislation as model legislation. The laws limit payments to a company as a successor by merger must pay as a result of asbestos claims, reducing the jeopardy of certain companies by fairly altering remedies available so that those harmed by a predecessor company can collect from the successor the same amount that they would have collected if no merger had occurred. The successor receives credit for settlements or judgments it has paid or committed to pay since the merger. The successor's liability ceases when it has paid or committed to pay as much as the predecessor's gross assets would now be worth, adjusted upward for the passage of time. Any successor that independently commits a tort, whether before or after a merger, could still be held liable to the full extent of its own assets for any harm it causes. Under LB763, successor corporations are not granted complete immunity, and any successor that independently commits a tort, whether before or after a merger, could still be held liable to the full extent of its own assets for any harm it causes. Recoveries may be pursued against premises' owners, former manufacturers of asbestos-containing products, and all noncovered successors. Workers' compensation benefits for workplace asbestos-related harms will continue to be collected since the bill does not apply to workers' compensation claims. Collections can continue from potentially dozens of trusts set up to pay claims against companies that have been forced into bankruptcy as a result of asbestos-related liabilities. Crown Cork and Seal provides good paying jobs and retirement benefits to Nebraska employees and Nebraska retirees. But Crown Cork and Seal needs legislation in Nebraska for this most important job preservation issue. The bill would help preserve the savings of ordinary Nebraskans who are stakeholders in companies like Crown Cork and Seal, such as through mutual and pension funds, and helps preserve the pensions and healthcare benefits of retirees. Local unions, as passed out in the letter, support LB763 because it preserves jobs and healthcare benefits. Following my opening, Mr. Bill Gallagher, general counsel for Crown Cork and Seal, will testify and tell his company's story in greater detail, followed with a more technical legal explanation of the provisions of LB763, the need for a legislative

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resolution for Crown Cork and Seal and companies like Crown, and to answer any of your other questions. I ask the Judiciary Committee to favorably report LB763 to the floor for further consideration. I'd be happy to answer any questions. [LB763]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB763]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford, and thank you, Senator Mello. I believe I cosponsored this bill. I obviously support it. I applaud you for bringing it. I apologize in that I'm supposed to be introducing a bill in Government right now, so I'm probably going to leave midway through, but I believe it's a meritorious bill and I hope we do look favorably upon it, and thank you for bringing it. [LB763]

SENATOR MELLO: Thank you, Senator Lautenbaugh. [LB763]

SENATOR ASHFORD: Okay. Thanks, Heath. Are you going to stick around for awhile? Bill. Welcome. [LB763]

WILLIAM GALLAGHER: Thank you. Thanks for inviting me to come. My name is Bill Gallagher, G-a-l-l-a-g-h-e-r, and I'm the in-house attorney, general counsel for Crown Cork and Seal. Our headquarters are in Philly, where I work, and of course, as you've heard, we have a plant right here in Omaha that makes our SPAM cans. What I thought I could do, other than answer questions, is just to share one thing with you which would be really what the origins were of this bill. We were on the verge of bankruptcy about ten years ago, just deluged with these asbestos claims. And a judge in Ohio granted some rejudgment against us to be liable as successor to Mundet, which was the little bottle cap company that we thought we bought in the '60s. And he told our lawyers, he said, look, the law has evolved. Substance is more important than form. And he said, as a judge, we've extended successor liability, the companies who just bought assets, if they continued the business, sold the same products, you know, continued the same product line, even though they only bought assets. And he said to our lawyers, this is the opposite case. This is the company that there's no substance here. They're just trapped in the form of a merger. They didn't continue the business. They never made asbestos products. They only bought a bottle cap business. This is the business we thought we were buying. But there had been an earlier insulation division that had made asbestos. So we said this cries out for a legislative solution. Go back to your clients and ask them to think about it. So what we did, in Pennsylvania where this was passed first, we met with the local legislative leaders. We met with the trial lawyers. We met with the AFL-CIO. And the thought was this: Companies like Halliburton bought other companies...they bought Dresser Industries in the '70s and '80s. After OSHA said that this is a dangerous material and after the plaintiffs lawyers started filing lawsuits. They bought it with their eyes open, but they weren't foolish and they kept the company as a subsidiary. And then when things got really bad and they couldn't survive the litigation, they simply put the company into bankruptcy. So Dresser Industries is now gone in

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bankruptcy, but Halliburton survived. So the idea of the statute is if an innocent company like Crown bought an asbestos-tainted company, and it was before the OSHA regs in '72 so you really wouldn't know what you're getting into, and if you didn't continue in that business--and we didn't; this was the business we continued with--then let's not absolve you from liability but let's limit your liability to the same as if you had kept the company as a subsidiary. And that's what the statute does, and I'll just close by telling you that in Texas and Pennsylvania where the statutes passed, the courts have applied it in cases, and they've determined that we paid \$7 million for this Mundet cork company, this bottle cap business. Its assets were worth \$12 million back in the mid-'60s, and brought current for inflation would be \$50 million to \$60 million today. Thus far we paid over \$600 million in asbestos claims--you know, ten times what the value would be. So that's the sort of rationale for the statute. And any other questions that I can answer, I'd be happy to. [LB763]

SENATOR ASHFORD: Questions of Bill? Senator Lathrop. [LB763]

SENATOR LATHROP: Can I ask just a couple? You've used as the time frame when OSHA regs essentially recognized the hazard created by asbestos in the bill. [LB763]

WILLIAM GALLAGHER: Yes. [LB763]

SENATOR LATHROP: Do you know when...it's a little bit like the Surgeon General coming out with smoking. There's a date when they came out with putting the label on a package of cigarettes, but they were aware of the hazard long before that. [LB763]

WILLIAM GALLAGHER: Yeah, the... [LB763]

SENATOR LATHROP: Do you know when the hazard or the problems with asbestos became known? [LB763]

WILLIAM GALLAGHER: Yeah. My understanding is there was a doctor named Dr. Selikoff that the unions hired, and this was about the mid-'60s, and he began to study asbestos exposure for the unions at that time. And then my understanding is in the late '60s this was presented to the organization of state hygienists. I guess these would be state hygienists like that work for the state of Nebraska. And around 1968 they began to raise the exposure...or lower the exposure levels. That's the first beginning of a thought that maybe this could be dangerous. And then OSHA studied it, and then in 1972 they decided, look, this is a hazardous material and we have to strictly control it. [LB763]

SENATOR LATHROP: And you said it was a Dr. Selikoff? [LB763]

WILLIAM GALLAGHER: That's my understanding. And he worked for the unions in the 1960s. And so by the end of the '60s or early 1970s it had been studied enough where

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the, you know, the government agencies began to think that this needed to be controlled. [LB763]

SENATOR LATHROP: Okay. The other question I... [LB763]

WILLIAM GALLAGHER: But to a company like Crown, I mean, look, the plaintiffs' lawyers allege--and this could be true, I don't know--that asbestos companies were aware that their employees were getting sick from exposure to it. But you have to look at it from a perspective of a bottle cap and can company. We were just the general public. So really if you bought a bottle cap company, until the government really came out and (inaudible) began to regulate this, you know, why would a company like Crown have any more sense to this than the U.S. government or the state of Nebraska? [LB763]

SENATOR LATHROP: What was the year that Crown bought this company? [LB763]

WILLIAM GALLAGHER: We first bought the first shares in '63. We finished getting the rest of the shares I guess in the beginning of '66, and that's when we did the merger. Now the business is... [LB763]

SENATOR LATHROP: So the merger was in 1966. [LB763]

WILLIAM GALLAGHER: Yeah. And then when the first shares were bought, the asbestos insulation factory was already closed, and all that was left were some assets, inventories, contracts. And the Mundet management, within 90 days of our buying the first stock, all the asbestos insulation assets were sold to another asbestos company that was sued for 20 or 30 years and then they went bankrupt. And that's when they turned the focus on us. [LB763]

SENATOR LATHROP: This sounds pretty unique, the scenario that you've described. Can you think of another company that would benefit from this besides Crown and Cork? [LB763]

WILLIAM GALLAGHER: You know, it's sort of too early to tell because what you have to do...I'll tell you this: We're only aware of us. We're not aware of another company who's filed a motion in the other states where it's been enacted to get out. But there is a cap. So, you know, we were a pretty big target and we're far in excess of the cap. So it very well may be that there will be some smaller companies that over time may accumulate enough liabilities that they would file a motion. But you can't file a motion until you've spent enough money to exhaust the assets that you acquired. We got...we were already at that point. You know what's unusual? Very few companies that bought an asbestos-related company, they bought it to stay in the insulation business. What was very unusual about us is we bought it to be in a bottle cap business, and that's why it's

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unusual. [LB763]

SENATOR LATHROP: And maybe that's the question I've got. You're the only one that's going to be the beneficiary of this? [LB763]

WILLIAM GALLAGHER: We are the only company...no, we don't know that. Not at all. But we know...we're... [LB763]

SENATOR LATHROP: Are you aware of any other company that will benefit from this? [LB763]

WILLIAM GALLAGHER: We are not aware of any other company that has filed a motion in any other state to get out of litigation. We're the only ones that have filed a motion so far. We're not sure who else. [LB763]

SENATOR LATHROP: And my question is a little bit different, and that is I understand that you know...you're the only one that's filed a motion, but do you know of any other company that will benefit from this legislation? [LB763]

WILLIAM GALLAGHER: Not that I know of. [LB763]

SENATOR LATHROP: Okay. Thank you. [LB763]

SENATOR ASHFORD: Thanks, Bill. [LB763]

WILLIAM GALLAGHER: You're welcome. [LB763]

SENATOR ASHFORD: Is this your first trip to Omaha? [LB763]

WILLIAM GALLAGHER: Second...or third trip, because we bought Continental Can from Peter Kiewit Sons. [LB763]

SENATOR ASHFORD: Oh, you bought that, too. [LB763]

WILLIAM GALLAGHER: Yeah. So that's...Omaha was a Continental Can plant, so I went back and forth several times to meet with them through the years, working through acquisition-related issues. [LB763]

SENATOR ASHFORD: Well, welcome back. [LB763]

WILLIAM GALLAGHER: Thanks. [LB763]

SENATOR ASHFORD: Good afternoon. [LB763]

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JIM HAWKINS: (Exhibit 3) Good afternoon. Chairman Ashford and the members of the Judiciary Committee, my name is Jim Hawkins, spelled J-i-m H-a-w-k-i-n-s, and I am employed by Crown Cork and Seal where I serve as the plant manager for our Omaha facility. The Nebraska Legislature is interested in and often takes action in support of good jobs, which have contributed to the higher quality of life for Nebraska employees, their families, and their communities. Crown Cork and Seal provides many family-wage careers in manufacturing to its employees. Crown Cork and Seal manufactures one out of every five beverage cans in the world today, and one in three food cans used in North America and Europe. Although Crown operates in 44 countries, almost half of its products are made here in the United States and Canada. In Nebraska, Crown operates one manufacturing facility located on South 72nd Street in Omaha. Over 300 employees and retirees of the Omaha plant rely on Crown checks for wages, medical benefits, pensions, and other benefits. Crown's Nebraska plant supplies SPAM cans and lids to Hormel's plant in Fremont, Nebraska. In addition, SPAM cans and lids are sold to CJ CheilJedang in Seoul, Korea. Omaha also produces powdered infant formula easy open lids that ship to South Korea, France, the Netherlands, Mexico, and Columbia. Each year, Crown's Nebraska operations generate over \$103,000 in property and other taxes for Nebraska. The Omaha plant has a gross payroll of \$4.5 million for wages and fringe benefits spread across Omaha's 54 current employees. The Omaha plant is organized under two unions: The International Association of Machinists and Aerospace Workers, Lodge 31 represent our production workers; the United Steel Workers of America represent the hourly clerical workers that work in our front office. Although Crown Cork and Seal is a world leader in consumer packaging products made with breakthrough technologies and a highly skilled work force, the beginnings were more humble. In 1892, the founder, William Painter, invented the bottle cap, and these featured a cork lining which has since been changed to a plastic lining. Crown Cork and Seal has never manufactured, sold, or installed any asbestos-containing products. Not only do Nebraskans depend upon the financial health of Crown Cork and Seal, but so do 20,000 other Crown employees. Nevertheless, our financial future of the company, its jobs, pensions, and medical and other benefits, are severely threatened by what was thought over 40 years ago to be merely an acquisition of bottle cap. The bankruptcy threat has caused the company to eliminate all dividends and most new capital investment, and has caused Crown's debt rating to plunge to junk status. On behalf of all Crown Cork and Seal Employees and retirees, I urge this committee and the Nebraska Legislature to pass legislation that would include a fair limit on asbestos liability for successor companies, like Crown, who are at tremendous financial peril through no fault of their own. Thank you, Mr. Chairman and members of the committee. I would be happy to answer any questions you might have about Crown Cork and Seal's Omaha operations. [LB763]

SENATOR ASHFORD: Thanks, Jim. Senator Lathrop. [LB763]

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SENATOR LATHROP: Jim, thanks for coming down today and making the pitch that essentially what we're doing is trying to help out somebody because there's jobs here in Nebraska, and in Omaha in particular. Do we have any assurance that if we pass this, that Crown Cork and Seal will stay here in Nebraska? [LB763]

JIM HAWKINS: We have...I don't think there's anything that will guarantee that, just other than... [LB763]

SENATOR LATHROP: I'm told today that the Connectivity is going to close its plant in Omaha and lay off about 400 workers (inaudible). And I can appreciate that we're being asked to pass a bill to help out a company, and the support coming from the unions is impressive. But my concern is if we pass it, what's stopping Crown from just leaving Nebraska and all these...? I mean, if we're doing this to save these jobs, apparently, we don't have any assurance that they're going to stay here anyway, do we? [LB763]

JIM HAWKINS: The only assurance we have is we have a very good relationship with our customers, and for me to tell you that there's no way that this plant will ever close, I can't do that. There are other considerations that will factor into that. If the company goes bankrupt, likely this place will be sold off to some other company, and that may or may not leave the jobs here. We have competition out there that could manufacture this product in other locations. So there's a very real chance, if our company goes bankrupt, that we would lose this manufacturing facility once it's sold off. [LB763]

SENATOR LATHROP: But even if we pass this, there's no guarantee that they won't consolidate and send these jobs or this manufacturing to a different plant. [LB763]

JIM HAWKINS: I'll never be able to make that guarantee because you can't make that guarantee. There's other business considerations that may come into play. We've been here since 1954. The plant, I can tell you, is profitable, and we don't plan to go anywhere any time soon. [LB763]

SENATOR LATHROP: Okay. Thank you. [LB763]

SENATOR ASHFORD: Any other questions of Jim? Thanks, Jim. [LB763]

JIM SCHOBBER: Good afternoon. My name is Jim Schober, J-i-m S-c-h-o-b-e-r. I'm an electrician at Plant 40 in Omaha, Crown Cork and Seal. I'm also a union representative from the committeemen on the first shift in the shop department. We represent International Association of Machinists and Aerospace Workers. We're a union plant. We try to work, along with the company, and settle any problems that might come up. Our members are for this bill being passed. We all have good paying jobs here in Omaha. We all appreciate the health insurance and the benefits that this company gives us. We've all raised our families here, and the plant has been here a long time and we'd

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like to see it stay in the future. That's about all I'm here to say. [LB763]

SENATOR ASHFORD: And for full disclosure, we went to high school together. [LB763]

JIM SCHOBBER: Yes, we did. [LB763]

SENATOR ASHFORD: But I don't want to embarrass you any, but we graduated the same year. [LB763]

JIM SCHOBBER: 1967. [LB763]

SENATOR ASHFORD: Well, that you didn't have to go there. (Laughter) The same year would have been sufficient, but. [LB763]

JIM SCHOBBER: Oh sorry, Brad. [LB763]

SENATOR ASHFORD: Any questions of Jim? Thank you. [LB763]

JIM SCHOBBER: Okay. Thank you. [LB763]

DACIA KRUSE: (Exhibit 4) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Dacia Kruse, spelled D-a-c-i-a K-r-u-s-e, and I'm testifying in support of LB763 on behalf of the Greater Omaha Chamber and the Nebraska Chamber of Commerce and Industry. In the interest of time I'll be very brief. I think you have heard the story, and we have heard it too, and we believe LB763 is a measured and reasonable solution to this situation. I would be happy to answer any questions. [LB763]

SENATOR ASHFORD: Any questions of Dacia? Thank you. Any other proponents? Opponents? John. It's all right. We know who you are. [LB763]

JOHN LINDSAY: Thank you, Senator Ashford and members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. There is an old axiom in law: tough cases make bad law. And this is a situation where you look at a company and you think maybe that's not fair to that company. And this committee has heard some of those cases before. I believe you had an interim study hearing involving the Gourleys who ran into a bad law that ended up basically bankrupting their family on a medical malpractice claim. Sometimes you're presented with situations that seem to call for a particular answer. But one of the words I haven't heard used yet today is mesothelioma. Mesothelioma is a form of cancer that is, to my knowledge, caused by one thing: asbestos. Nebraska, as you know, has conservative juries, conservative judges--frankly, is not a haven for asbestos or any other litigation. But the question is, if there is

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someone out there who was harmed through the actions of Crown or any other company--I think Senator Lathrop through his questioning was trying to determine if there's anybody else it applies to--and if we don't know that, and maybe this is much broader than we think, maybe it's a much broader grant of immunity from responsibility than we think, but if there is somebody out there then there is a family who will be harmed by this, as well. And I would suggest to you that that tough case could occur because of bad law as well. I'm not unsympathetic with the presentation of Crown from what I've heard. Crown may have been caught between changes in the law, changes in how successor liability was viewed, maybe a failure to do--and I don't know any of the details, but failure to do an asset purchase as opposed to a stock purchase. I don't know what those details are. And it sounds like they just got caught in a bad deal. But in every case there's two sides, and we have maybe an unknown on one side. We don't know how broad it is, although certainly from all indications it appears to be very limited to maybe one company. But again I think we need to be sure that we're not catching somebody else in the cross hairs when we pull the trigger on this one. I'd be happy to answer any questions. [LB763]

SENATOR ASHFORD: Any questions of John? Yes, Senator Council. [LB763]

SENATOR COUNCIL: Yes, thank you, Mr. Lindsay. And I think...I agree with Senator Lathrop in terms of questioning the expanse of potential companies that could be affected by this legislation, but I'm just looking at this particular situation involving Crown. And my understanding of the facts, when the merger occurred it was 1966. The plant here wasn't even operating. So in terms of claims by Nebraskans against Crown Cork and Seal, wouldn't it be extremely unlikely that there would be any claimants, Nebraska claimants with Crown Cork and Seal who would be adversely impacted by this? [LB763]

JOHN LINDSAY: Yes. I think that's accurate. Which, of course, begs the question of why is the legislation necessary. [LB763]

SENATOR COUNCIL: Okay. So, I mean...and as I understand it, that the primary objective is not really to disenfranchise claimants, but to place the company in a position where their credit rating, their bond ratings, or whatever, aren't negatively impacted by this unknown contingent liability. I mean, that's my understanding. So, I mean, in terms of the question as to the effect on any other claimants, I think that's the only question, because I don't think it would, just based on the facts, the timing, the issues, that any Nebraskan would be denied a claim if this bill was enacted. Would you agree? [LB763]

JOHN LINDSAY: Yeah. I...the...Mr. Sedlacek sat down with me and explained the situation to me as well, and that's my understanding. Like I say, that may very well be the case. Which is maybe looking at the states in which it's been passed, I don't know if it's a similar situation there and whether part of a national plan to start with the states

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that don't have claims. I don't know. But I understand...and like...and that's why I started with tough cases make bad laws. Not...this isn't a shot at Crown at all, because they may very well just have been caught in something they couldn't have avoided, but. [LB763]

SENATOR ASHFORD: Any other questions of John? I would just echo what Senator Council mentioned. I think this committee has...traditionally looks with some skepticism at immunity legislation that would harm Nebraskans, and there's often a rush to immunity. You see a wrong and let's get immunity for it. But the result could be injury or damage to Nebraskans, and our job is to protect our citizens. And so we're skeptical. But this seems like such a unique situation, John. We have workers here who have worked at the plant for 40 years. The possibility of any litigation in Nebraska arising out of asbestos is almost nil. It's my understanding--and Senator Council rightly suggested that this is more...this company is making these pleas, really across the country, in order to enhance its ability to finance its company. You know, it's just...it's hard to...I mean I'm not...but it's hard to see any harm to our state, but there might be on the other side...or our citizens of our state. On the other side there may be some harm, real harm if these employees lose their jobs. So with that, thanks. [LB763]

SENATOR COUNCIL: Can I ask just one more question, Senator Ashford? [LB763]

SENATOR ASHFORD: Yes. [LB763]

SENATOR COUNCIL: And this may be unfair, Mr. Lindsay, and I apologize in advance because I don't know. Do you have any ballpark figure about how many asbestos lawsuits have been filed in Nebraska in the last decade? [LB763]

JOHN LINDSAY: Oh, I'm not sure there has been one. I...asbestos...like I say, Nebraska is, if you have your choice of venue, Nebraska is typically not where you go. The...so generally that would not...Nebraska, you wouldn't have them. From talking to...and I wish the attorney that...there's a couple of attorneys that pursue asbestos litigation, and I am familiar with two asbestos claims from the attorney I was speaking with. Right now, both of those are being pursued in other states. The...so, no, it's not...it's not a broad issue. And I don't disagree with Senator Ashford that if you're going to have an immunity, this is very narrowly crafted, and it does appear that the effort has been made to keep it as narrow as possible and probably focused on just Crown. So it's not...I'm certainly not in here saying this is an overly broad immunity, because it is very narrowly crafted. And we don't have a lot of asbestos cases, and I would suggest though that next year when somebody comes in and says, hey, this only affects two companies and, you know, there might be a few claims, and...the slippery slope (inaudible). [LB763]

SENATOR COUNCIL: All right. Yeah, I was...and that's my concern. I mean, I don't

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think anyone disagrees that it's well intended legislation, and just we want to make sure, to the best that we possibly can, that there aren't any unintended consequences. And I would imagine that the two cases that you're talking about did not involve an injury that arose in Nebraska. It may have involved a Nebraskan but maybe not...because you're only going to venues where you think you're going to get a favorable outcome and where you have personal jurisdiction. [LB763]

JOHN LINDSAY: Yes. [LB763]

SENATOR COUNCIL: So there has to be some connection to these other states where these actions are being filed. [LB763]

JOHN LINDSAY: Yes. [LB763]

SENATOR COUNCIL: So I...probably the company has a presence there in that other state and the likelihood of recovery is pretty good. [LB763]

JOHN LINDSAY: Yes, exactly. And those...and which, by the way, neither of those cases involved Crown. I want to make sure I didn't imply that. The... [LB763]

SENATOR COUNCIL: Oh, no, no, no, no. I didn't...no, I didn't assume that it involved Crown. I assume it involves some other company. [LB763]

JOHN LINDSAY: Yes. [LB763]

SENATOR COUNCIL: And I'm just trying to address the concern, a very legitimate concern that, you know, passage of this legislation could have the unintended effect of affecting claims by others against other companies. And so that's what I was...because, as you well know, we can't have special legislation. This is not the Crown Cork and Seal bill. This is the, you know, the asbestos successor liability bill. So we need to, you know, ensure that when we're looking at that, we're not placing Nebraskans at any disadvantage in terms of legitimate claims against other companies who may have produced asbestos. [LB763]

JOHN LINDSAY: And, Senator Council, I think you've hit on the--kind of a critical, maybe, fork in the road, and that is, down one path, if it is just Crown then it's probably special legislation. If it's not just Crown, who is it? Who else is out there?--not just in the bottle cap industry, but in the insulation industry and a whole host of industries that used asbestos. And so the question is, how broadly or how narrowly crafted is that? And I think...I suggest that there's...we have a huge unknown--or we don't, and that huge unknown does concern us. [LB763]

SENATOR COUNCIL: Okay. Thank you. [LB763]

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SENATOR ASHFORD: Thank you, Senator Council. Thanks, John. Any other opponents? Neutral? Senator Mello. [LB763]

SENATOR MELLO: I will be brief. As far as just I think some of the questions that Senator Council and Senator Lathrop posed in regards to, I think the scope of this legislation--and it's been passed in 11 other states, as I said, big states such as Texas, Florida, Ohio, Indiana. And in the decade or so since this legislation has been passed in other states, no other company has come forward in that in regards to the asbestos successor liability issue. So I think it's a very valid concern, I think that I had as well, when discussing and looking to bring this issue forward. But I weighed the importance in this current economic climate, particularly in my south Omaha and Bellevue district, the need to protect good paying union jobs, compared to what it, at least the facts that I have received and the information I have received, that other states--this does not open up a floodgate, so to speak, to other liability claims or other liability legislation. Because I think most people know where I stand on liability issues and where I normally fall on those issues. So I'd like to once again just ask the committee to look favorably upon this. I think very few times do we see organized labor and business come together as they did under LB763 in support of protecting jobs like this. So I'd ask your favorable view on this, and I'm more than willing to work with the committee on any potential amendments or changes to the bill if you choose to kick it out of the committee. Thank you. [LB763]

SENATOR ASHFORD: Well, LB775 was another one where business and labor came together and changed the course of Nebraska. So it does work and it's great when it happens. So I appreciate you bringing the bill, Heath. Thank you. [LB763]

SENATOR MELLO: Thank you. [LB763]

SENATOR ASHFORD: Thank you all. And that ends the hearing on LB763. LB732, Senator Utter is here. I think...is this your first time here? I think it is. Welcome, Dennis [LB763 LB732]

SENATOR UTTER: Chairman Ashford, thank you for your cordial welcome. And, colleagues on the committee, I appreciate the opportunity to be here this afternoon. I come before you today to introduce LB732, which would make a change in cases where there's a forced sale of real property--that the change would simply authorize that, when there is a forced sale, the sale being conducted by either a master commissioner or a county sheriff could be postponed up to 45 days without requiring a second notice of sale. Now I must confess to you my limited knowledge of the law, and so I brought an expert along and he's going to testify behind me. I think it would be very nice of you if you would all hold your questions for... [LB732]

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SENATOR ASHFORD: Oh, that's not going to happen, Senator Utter. We've got...no, sirree. [LB732]

SENATOR UTTER: And at the end of this introduction and I am there, I do want to make a couple of disclosures. One, Senator Ashford, I didn't go to school with you. [LB732]

SENATOR ASHFORD: No. You're younger than I am, Dennis. [LB732]

SENATOR UTTER: And I am filing a conflict of interest disclosure in this matter with regard to Accountability and Disclosure. I disclose to all of you I'm involved in the banking business. This has some remote relation to the banking business. And in the interest of full disclosure...well, I was involved in the banking business. I say I'm retired. The guys out at the bank agree with me, but I still am chairman of the board of a bank. So with that, I'll answer your questions and I may pass the buck. [LB732]

SENATOR ASHFORD: Thanks, Senator Utter. Are there any questions? Yes, Senator Council. My goodness. [LB732]

SENATOR COUNCIL: And please tell me if it's best left for those who follow... [LB732]

SENATOR UTTER: It is. (Laughter) [LB732]

SENATOR COUNCIL: But what is your understanding of public declaration? [LB732]

SENATOR UTTER: That's a very good question for Bob Hallstrom to answer. [LB732]

SENATOR COUNCIL: The person that comes behind you. Okay. [LB732]

SENATOR UTTER: Yes. [LB732]

SENATOR COUNCIL: Thank you. [LB732]

SENATOR ASHFORD: Are you alleging that Bob Hallstrom is an expert in these matters? [LB732]

SENATOR UTTER: I am, yeah. Now that may be hard for you to swallow, but--good luck. [LB732]

SENATOR ASHFORD: Thanks, Dennis. Are you going to stick around? [LB732]

SENATOR UTTER: Yes, I'll stick around. [LB732]

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BOB HALLSTROM: (Exhibit 5) Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB732. Probably based on the committee's reaction, I do not have to disclaim not being an expert on this issue. Senator Utter has indicated what the general purpose of the bill is: to authorize these types of forced sales that are conducted by a sheriff or a master commissioner to be postponed for a period of up to 45 days without requiring the additional expense of re-publication and the like. In my testimony, I have noted a number of different situations in which these types of sales by a sheriff or a master commissioner may arise. Obviously, the course of a foreclosure, traditional foreclosure of a mortgage, if there is a court order where a party has been ordered to convey property and they don't comply with that order, another order may be issued to force a sale where a sheriff or a master commissioner would be involved. There are foreclosures of things called tax sales certificates which are purchased by individuals when they pay the taxes that have gone delinquent by a real estate owner, and ultimately, in the course of that foreclosure, there may be a sale where a sheriff or master commissioner would be utilized. And finally, in the case of executions on judgment, sometimes real property is sold, likewise, in this format. There are notice of publication requirements, other expenses, including the sheriff's fees and master commissioner fees that are associated with these processes. I've noted in my testimony that the approach here is patterned somewhat after legislation that was passed in 2004. At that time, with regard to trust deeds, there was only a one-day postponement of sale provision in the law. We moved at that time to provide greater flexibility and to avoid these types of expenses by allowing for a postponement of up to 45 days. The most common situation where you'd look at that being necessary is someone files bankruptcy on the eve of the foreclosure sale, and you need to have time to get relief from the stay, if appropriate. That gives that additional time without having to restart the process. Avoids costs, which I've indicated in my testimony, some of which are borne by the seller or the lender, and in other cases costs that are borne perhaps unnecessarily by the borrower. So what we're trying to do here is to provide that same type of flexibility to avoid those types of costs. Some of the benefits that we see from a delay or a postponement: If you're trying to work out or modify a loan, you may need some additional time to allow the borrower to come up with refinancing or to get the modification agreements in place. So that may benefit and allow the foreclosure not to ultimately have to go forward; keep the borrower in their home. You may have a buyer that's wanting to bid on the property to maximize the return, and they may need some additional time to decide what they want to bid on the property and so forth. And so that's kind of the basic underpinning of the law, and we would ask the committee to look favorably upon the bill. [LB732]

SENATOR ASHFORD: Senator Rogert. [LB732]

SENATOR ROBERT: Bob, can you...I'm involved in this part of the world, as well as a real estate guy. What's the effect of this passing and not passing? What ultimately does

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that do for--or not for you, by going for this, for your groups? [LB732]

BOB HALLSTROM: Well, it's not always for the lenders. Actually this is probably a bill that could have been brought by the Bar Association or the Sheriffs Association if they had a particular interest in it. We just happened to be contacted by lenders' attorneys who said the same types of issues can arise where either the lender or the borrower or a potential buyer of the property can be benefitted if the statute provides for that additional flexibility to postpone the sale, if necessary, in the examples that I mentioned in my testimony. So whether it's a trustees deed where you clearly have a lender and a borrower involved, or a situation where some other type of forced sale is occurring, those same types of benefits in these areas would apply equally, as they did in the law that we passed in 2004. [LB732]

SENATOR ROBERT: So ultimately it allows for not only more flexibility but some sort of cost savings in the advertising of the sale not going on--but now you're going to have another. [LB732]

BOB HALLSTROM: Yeah, you're generally going to have four weeks of publication without the ability or the flexibility to postpone it. That, at a minimum, is going to be incurred. You're going to have the attorneys filing an alias summons to get the published notice reissued. There may be other legal expenses that are incurred in the process, and, you may, depending upon when you cancel the sheriffs sale--or postpone it, in this case. And oftentimes that literally is on the steps of the courthouse that the sheriff is going to expect some or all of that fee, because they've effectively done everything except drop the gavel. So you may have two sheriffs' fees or master commissioner fees as well. [LB732]

SENATOR ROBERT: So in the event of full foreclosure and the process is already in place, would this have the ability to possibly keep the process moving rather than delaying it further? And when I ask you that, my concern is, take some of these smaller communities around the state--and we have an increase in foreclosures across the state, obviously because of the economy. Some of these places sit for up to a couple years because of technicalities that continue to cause the process to have to be delayed. Does this help solve any of those issues? [LB732]

BOB HALLSTROM: I don't know that it causes any particular problems, Senator. I think you would only have a delay if, for example, if it is a case where a lender is involved. That the lender, if they're truly on the verge of working out a modification, or they're either under a federal program that's available or just on their own, privately, that they would request the sheriff to postpone the sale to allow those discussions or negotiations to go forward. I don't think, in the absence of those types of situations where both parties are going to benefit, that you're going to have a request for any extension. And the foreclosure sales, in many cases, unfortunately, have gotten to that point--will go on

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as scheduled. [LB732]

SENATOR ROBERT: So, but even if you ask for a postponement, with this bill say, well, can you postpone it a couple weeks or 45...? Rather than have to go back through the whole process again, this keeps things rolling along. [LB732]

BOB HALLSTROM: Exactly. [LB732]

SENATOR ROBERT: Thank you. [LB732]

SENATOR ASHFORD: Senator Lathrop. [LB732]

SENATOR LATHROP: This says that the commissioner or the, presumably, the sheriff may, for any cause he or she deems expedient, postpone the sale. So does that mean that the sale will necessarily be postponed by the bank in each case? [LB732]

BOB HALLSTROM: I don't think it would absolutely have to be. In my example, that would probably be the general situation. The bank has precipitated the action, for instance, in bringing the action and has directed the sheriff through the court procedure and may be the one most likely, but there could be other reasons that the sheriff would deem fit or expedient to... [LB732]

SENATOR LATHROP: If the sale gets postponed, my concern, as you might expect, is with the guy who owns the property. And let's say that he forecloses. The bank is foreclosing on his property and he has \$80,000 worth of equity if you look at the fair market value of the house. We publish that notice and maybe it would bring more on the day of the sale but the bank says put it off 30 days, how are people that might be interested in buying that, that would bid the price up and bring some equity to the owner after the foreclosure and the bank has been paid off, how are they going to find out when this sale is actually supposed to happen? [LB732]

BOB HALLSTROM: Well, there's published notice, and then the traditional notion would be that if it's postponed or continued for any reason and they are there the day of the sale, it would be extended and formally announced at that time. [LB732]

SENATOR LATHROP: And would...does this bill require that? So if the sheriff is going to put off a sale on somebody's farm, and the day comes that the published...that's in the published notice, it's the day of the sale, and for some reason the bank says, sheriff, put it off 30 days, does this bill require that he announce that or give prospective buyers... [LB732]

BOB HALLSTROM: Not on the face of the statute, but I don't believe any other statute does as well. [LB732]

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SENATOR LATHROP: Maybe you could--and you don't have to do it right now--but maybe you could share with me how prospective buyers would learn of the new date so that when the new date rolls around, whether it's 30 days or 40 days down the road, that we don't get to the courthouse steps and nobody is there because nobody knows when it was to be sold. [LB732]

BOB HALLSTROM: Well, as a practical matter, Senator, if they're interested and they're there the first time, they will get oral or verbal notice provided as to when it's going to be extended to. Obviously, as a practical matter, it's in the best interest of all parties concerned that if I know that you and Senator Council were there and had an interest in bidding but for some reason the sale was postponed, I'm going to make sure that you know, because it's in my best interest to get the maximum dollar to pay off the loan that's outstanding, and ultimately it's in the best interest of the borrower, as well, to get that to happen. [LB732]

SENATOR LATHROP: And I don't want to...I'm not trying to quarrel with you--but not necessarily. If there's a lot of equity in the home and some guy just lost his job and he can't pay it and he doesn't have any way to...he's got a lot of equity in it and you're the bank and you're the only guy that knows when the sale is because it's been postponed 30 days, if you pick it up for the value of your note, the balance on the note, then you're picking up a piece of real estate that has a considerable amount of equity in my hypothetical. I just...my concern is...my concern is if we're going to...the point of published notice is you read it in the paper, you think it's a nice parcel of property and you want to play in the auction, then you show up at the steps of the courthouse and you bid on it. And if somebody is putting it off and there is no more notice of the new date, then you might have fewer people there bidding on it. [LB732]

BOB HALLSTROM: And, Senator, there's a couple things to address your concerns that I'd note real quickly. The first one is, it's probably relatively rare when anybody does show up to those sales on the courthouse steps, but it does happen. Secondly, the folks that show up in situations where there is equity oftentimes become very tight-lipped in terms of their bidding, because if the bank takes it back for the amount of the loan, that's what's going to happen that day, and then they will go back in and traditionally negotiate with the bank for the deal that's in their best interest. And the third thing is that the bank is always guided by the principle under statutory and case law to try and maximize the benefit. They can be challenged if they underbid. If they underbid, they may not be able to receive a deficiency under certain circumstances. If they sell it for too low of a price, they can be challenged on that basis as well. [LB732]

SENATOR ASHFORD: Senator Council. [LB732]

SENATOR COUNCIL: Senator Lathrop has been going down the line of questions I

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wanted to go down, because, Mr. Hallstrom, I think there ought to be a way, because when I read this, and that's why I asked Senator Utter what is meant by public declaration. So in response to Senator Lathrop's questions, I am left with the impression that you're talking on that day either the master commissioner or the sheriff says this sale is postponed and we'll let you know when. I mean, ostensibly that could occur based on your response to Senator Lathrop, and that's the problem I have. I think if there's going to be a postponement, and this is the kicker because the language says, "notice of postponement shall be given by public declaration." So is the notice of postponement, the intent there to, "hey, we're not having this sale today,"--that's notice of postponement? Or is notice of postponement, "the sale is not occurring today but it will occur 30 days from now or it will occur 20 days from now." I think that there ought to be some obligation to let potentials know when the sale is...it is going to occur. If you're not going to republish it, and I understand about the costs associated with that, but if you're not going to republish there has to be some definitive date set for the sale so people have actual notice of when that's going to occur. [LB732]

BOB HALLSTROM: And, Senator, I would have no difficulties in looking into that issue to determine if there's some language to address that. I would have to check with lenders and maybe the Sheriffs Association to make sure I'm aware and familiar with what the protocol is. It's one of two things. It's either I orally announce that there's no sale today or I do that and I say "and the sale will be scheduled for X date." The only thing I can't tell you right now is what is the ability in every case or is there ability in every case to set a date certain, because that may be dependent upon how quickly you can get things worked out or realize that you're not going to get the modification worked out, for example. But I'll go back to some of the lenders and Sheriffs Association perhaps and see if I can find out some more information. But if there's some need to...if it works within the system to put that a public declaration shall include the date on which the sale will be reconducted, perhaps something like that is what we could look at. [LB732]

SENATOR COUNCIL: Yeah, because I think...this is just my personal opinion, I think something short of that requires published notice. If you can't tell the public when the sale will occur, then, at the time it's postponed, then when that date is established you need to go through the publication requirements. [LB732]

BOB HALLSTROM: Yeah, and Senator, just sitting here thinking off the top of my head, the other end of the equation is if you get things worked out so that you don't have to have that sale by announcing the sale, then you may have somebody that shows up on the courthouse steps because you may not know who they are or who they were, and they may show up and be a party of one if you don't have the sale actually follow through because you worked out something. So I think those are things we need to legitimately look at. [LB732]

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SENATOR COUNCIL: Okay. But I...fundamentally, I understand the intent and what you're trying to accomplish, and I think that's a valid point to try to reach, but I think Senator Lathrop shares my concern that...I mean, that the person being foreclosed on in a full foreclosure, you know, if they want to try to keep their property, they're definitely going to keep in contact with the lending institution or whoever holds that note. But, you know, speculator A here, who, you know, goes down the daily record; says, oh wow, there's a master commissioner sale on this day and it's a nice looking piece of property. And I go and the sale is postponed, how do I know when to come back? [LB732]

BOB HALLSTROM: Understand. . [LB732]

SENATOR COUNCIL: So all right. Thank you. [LB732]

SENATOR ASHFORD: Thanks, Bob. [LB732]

BOB HALLSTROM: Okay. Thank you. [LB732]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Dennis. [LB732]

SENATOR UTTER: Thank you very much, Senator Ashford and committee members. Let me just make one thing clear, and we talked mostly about postponements because of a foreclosure. There will be, an awful lot of these postponements may actually happen not at the impetus of the lending institution, but rather maybe at the impetus of the borrower filing some kind of an action such as a bankruptcy or there may be other reasons, and I just didn't want to...I didn't want to leave here with the impression that it's the bank that is going to...or the lending institution that is going to lead the charge on getting a postponement. I would say that more often than not it won't be the lending institution. With that, if you have any additional questions I'll be happy to try and answer them. And if not, thank you very much for your attention and I look forward to working with you on getting this bill to the floor. Thank you. [LB732]

SENATOR ASHFORD: Thank you, Dennis. That concludes the hearing now. The next bill is LB859, Senator Janssen. No, that's not right. LB822, Senator Janssen. Welcome. [LB732 LB822]

SENATOR JANSSEN: Senator Ashford, members of the Judiciary Committee, for the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15 which is Fremont and all of Dodge County. Thank you for the opportunity to introduce LB822. I got a little nervous there in the beginning, and thought I had the wrong bill, wrong room. And it's the first time I've ever appeared... [LB822]

SENATOR ASHFORD: Well, we clarified it for you. [LB822]

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SENATOR JANSSEN: Yeah, thank you. It's my first appearance in front of the Judiciary Committee as well. LB822 would add an additional provision to the Nebraska construction lien law. In order to ensure that all parties in a construction project are paid in a timely fashion, LB822 would ask that a claimant send a copy of a recorded lien within ten days after recording to (a) the party with whom the claimant contracted, and (b) the prime contractor, (c) the contracting owner. This would assist all parties in being notified of a lack of payment for goods and/or services. Failure to send a copy of a lien would not void or nullify the lien. The claimant's lien amount may be reduced by damages caused to the prime contractor or contracting owner by any delay or failure. Over the interim I became aware of several situations in which general contractors were not aware that their subcontractors were not paying suppliers or other subcontractors. A client may be experiencing difficulties with one party while other parties in the project have no knowledge of this happening at all. In some situations, a general contractor has paid the subcontractor in full for a job, and then later discovered that the subcontractor did not use the proceeds to make the other participants in the process whole. I solicited advice from the contractors and building trades associations to see how to remedy this situation. The Associated General Contractors recommended the provisions of LB822. I think it has merit and could alleviate many situations in which parties may not be aware of where the ball has been dropped so to speak. LB822 would ensure that everyone involved in a lien dispute in a project is aware of the situation in which the lien has been necessary. Thank you. I believe there's some...I am hopeful that somebody is here to testify, and I'd be happy to entertain questions you might have. [LB822]

SENATOR ASHFORD: Senator Council. [LB822]

SENATOR COUNCIL: Yes, thank you, Senator Ashford. Senator Janssen, I just have a couple of questions when I kept reviewing this. And maybe it's just me, but I don't know what's the difference between the party with whom the claimant contracted and the contracting owner. [LB822]

SENATOR JANSSEN: And the way I understand this, and there will probably be more clarification, but the way it was explained to me, I talked to a general contractor and I happen to have a friend who also owns an electrical company, and this situation would be he contracts with the subcontractor doing the electrical work, but this electrical worker, he got his supplies from we'll just say Menards or somebody else. The general contractor has no knowledge that this is where this material came from for his job and may later find out that a lien has been slapped on his project from Menards or somebody else. So this is just making them...and they're not saying that a lien shouldn't be appropriate. They're saying we need to know who's out there and could put these liens on us. [LB822]

SENATOR COUNCIL: Okay, then just following that scenario, then what's the difference between the prime contractor and the contracting owner? [LB822]

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SENATOR JANSSEN: You know, I would have to defer to (inaudible). [LB822]

SENATOR COUNCIL: Okay. And then just reading it, it says if you don't send this notice, your lien isn't...the validity of your lien isn't affected but you could be subject to damages. So the effect, the practical effect of this amendment is if you don't send the recorded copy, a copy of the recorded lien within ten days, you still have a lien but your liability could far exceed the value of your lien and you could be exposed to far...you could be exposed to far greater liability than you would have recovered under your lien. [LB822]

SENATOR JANSSEN: In some cases I could see that scenario. You know, I would imagine likely expenses would be attorneys fees, maybe time...money time value-type situations. There could be a scenario that what you're talking about could happen. [LB822]

SENATOR COUNCIL: Because don't get me wrong, Senator Janssen. I agree with the intent. You know, I've seen a number of cases myself where subs and suppliers of subs have not been paid and the lien may have been filed against the property and the prime didn't know about it until it was too late. So I understand all of that, but I'm concerned about, you know, who it is that is expected to be notified by receiving a copy. And what's the greater objective: making sure that people are notified or subjecting them to greater damages if they fail to notify? And that's...I'm just trying to get to what the bottom line is. [LB822]

SENATOR JANSSEN: And my objective is to make sure...and we had a bill somewhat similar this morning that we passed on Select File on debate this morning. Basically, people are doing the job, they need to get paid for the job, and I think and the AGC thinks this would be a better way of making sure there's communication so people are getting paid for work that has already been completed or is in the process of being completed. [LB822]

SENATOR COUNCIL: Okay, I would...I mean, no disrespect and I'll talk to the AGC representative, if that's their intent then failure to send the copy voids your lien. Why do we need this additional recovery possibility? Because then it appears that it's more punitive than preventive. [LB822]

SENATOR JANSSEN: I'm hoping we're both enlightened. [LB822]

SENATOR COUNCIL: Okay. Thanks. [LB822]

SENATOR ASHFORD: Thanks, Charlie. Proponent testimony. [LB822]

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JAMES OVERCASH: Good afternoon. My name is James Overcash, J-a-m-e-s O-v-e-r-c-a-s-h. I'm an attorney that's been involved in the construction industry for more than 20 years. And either good or bad, I'm here to represent the AGC-Nebraska Building Chapter. Hopefully I can answer the questions. First, I want to say that the AGC members, I believe, are the best in the industry, and I've worked with legislation over time to improve the construction industry for all of Nebraska, and we thank you for working with our members. We do believe that LB822 is an improvement in the Nebraska Construction Lien Act. Senator Council, to go...I'll try to go to your questions. It's difficult in terms of writing that statute because of the potential number of layers there may be in a construction project. You would have the owner, which would be the contracting owner. You may have a general contractor and then a subcontractor... [LB822]

SENATOR COUNCIL: Okay now, let me stop you. [LB822]

JAMES OVERCASH: I'm sorry. [LB822]

SENATOR COUNCIL: Just...is it okay, Mister...? Because the contracting owner, it's my project, is that what you're talking about? [LB822]

JAMES OVERCASH: Correct. [LB822]

SENATOR COUNCIL: I'm the developer. [LB822]

JAMES OVERCASH: Correct. [LB822]

SENATOR COUNCIL: I'm the person who's developing... [LB822]

JAMES OVERCASH: Who owns it. [LB822]

SENATOR COUNCIL: So that's what you mean by contracting owner. [LB822]

JAMES OVERCASH: Correct. [LB822]

SENATOR COUNCIL: Okay. [LB822]

JAMES OVERCASH: And so what the statute is designed to do is to notify the upstream party that you've contracted with and the owner. Now there may be additional parties in that layer that, frankly, the subcontractor may not know who that is, because depending upon who's doing what work, and if you are a...you know, you're the testing subcontractor to the fire alarm system that's a subcontractor of the electrical contractor, it can become difficult. In regards to your second question and the notice and the validity of the lien, we...the draft that I reviewed didn't want the lien to be voided if there

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was a problem with someone that made a mistake sending the notice. And the thinking there is that there is a subcontractor out there. They may not be as sophisticated as the other contractors. They file a lien appropriately. They forget to send notice because they're not aware of the statute. We didn't want a disrecord to automatically invalidate that subcontractor's lien, but we also wanted to say, look, if you don't send notice, you're not giving the owner or an upstream party the ability to take action to maybe rectify the situation. So if I'm not aware of the lien, the owner may go ahead and pay the general contractor again. We think the general contractor to the owner should provide some protection to say, look, you could have noticed me; you didn't; I now have taken that money and gave it to another contractor already. And there may be a circumstance where that should reduce the amount that the lien would be valid. But it's not there to create an additional liability for the person that filed the lien. I'd be happy to answer other questions, too. I see my light is on, so. [LB822]

SENATOR ASHFORD: Senator Council. [LB822]

SENATOR COUNCIL: Just a follow-up question. Would you be willing to consider on that if they don't file and it results in some delay or failure, limiting the damage recovery to the amount of the lien? [LB822]

JAMES OVERCASH: Well, yes. The way that's...you know, you can...when you write something and you look at it a bunch, and I've looked at this, believe it or not, that paragraph I hate to think how many times I've read, it sometimes becomes clear to you and it's not clear to anyone else, and so I apologize if it's not clear. The intent of that is to...not...if I'm a subcontractor that's filed a lien, the intent of that sentence is not to ever make the subcontractor liable for some damages. The intent is only that potentially subcontractors lien is reduced if the notice would have provided the ability... [LB822]

SENATOR ASHFORD: I didn't get that out of the... [LB822]

SENATOR COUNCIL: And see, I didn't...the first time I read it, I didn't see that. Now that you responded... [LB822]

SENATOR ASHFORD: All right, so there is a cap then. [LB822]

SENATOR COUNCIL: So there is a cap. The lien... [LB822]

SENATOR ASHFORD: There's an effective cap. [LB822]

JAMES OVERCASH: Yeah, the effective...if I'm a subcontractor and I'm owed \$1,000, and I file a lien for \$1,000 and I don't send notice to anyone, and you as the owner go ahead and keep paying the general contractor, the general contractor goes bankrupt, and you say, as the owner... [LB822]

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SENATOR ASHFORD: And you're out \$1,000, so... [LB822]

JAMES OVERCASH: You know, I could have saved \$1,000 and paid off that lien, but you didn't give me notice so I don't know. Well then, Mr. Subcontractor, your lien may be reduced to zero. [LB822]

SENATOR ASHFORD: Right. [LB822]

JAMES OVERCASH: But the subcontractor is never going to be responsible for paying the owner any... [LB822]

SENATOR ASHFORD: Above \$1,000. [LB822]

JAMES OVERCASH: Or any...well, paying any money. [LB822]

SENATOR COUNCIL: Okay. [LB822]

JAMES OVERCASH: It's just a lien that they filed. And currently, now, the way the lien laws work,... [LB822]

SENATOR ASHFORD: But they wouldn't have a claim for the \$1,000 because of... [LB822]

SENATOR COUNCIL: Right. [LB822]

JAMES OVERCASH: Correct. There would be no claim for the \$1,000. [LB822]

SENATOR ASHFORD: Okay. Got it. [LB822]

JAMES OVERCASH: The way the lien laws work, they're sent...they're filed with the register of deeds. That's deemed public notice because it's a public area, but, from a practical standpoint, no one goes down and monitors the register of deeds office. [LB822]

SENATOR ASHFORD: Got it. [LB822]

JAMES OVERCASH: We'd appreciate your consideration of LB822. [LB822]

SENATOR ASHFORD: Now it's clear...clearer. [LB822]

SENATOR COUNCIL: Thank you. With the clarification, it's clear. [LB822]

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JAMES OVERCASH: Thank you, Senator. [LB822]

SENATOR ASHFORD: Thank you. Any more proponents? Opponents? Neutral? Senator Janssen waives. Okay, LB859. Senator Lautenbaugh. Oh, boy. Come on up. Okay. How about do we...? We could have Marty introduce it, but I don't know if that's...that works. Okay. [LB822 LB859]

SENATOR LAUTENBAUGH: There's not going to be a PowerPoint. This was for the other committee I was in. [LB859]

SENATOR ASHFORD: LB859, Senator Lautenbaugh. [LB859]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. How do you define failure? I define it as drafting a cost-saving bill which has a fiscal note. (Laughter) [LB859]

SENATOR ASHFORD: Yeah. LB830. (Laugh) No. [LB859]

SENATOR LAUTENBAUGH: No, honestly what this was meant to do was clarify some circumstances where in minor matters, both civil and criminal--and we have experts in both areas following me--where a jury trial would be available. Due to some "inartful" drafting on our part, it was...it actually opened the class of ordinance-type violations for which a jury trial was available. Not our intent. So there is a group of opposition behind me that is very interested in the amendment that we're bringing, which--and I'll probably say this wrong again--takes it from...includes six months and below instead of just over six months, as the current language, which is the problematic language that opened up a new class of ordinance violations to jury trials. So I won't belabor the point. We do offer the amendment to clarify that, and I believe that takes away the fiscal note and actually does make it a cost-saving bill. And I'd be happy to answer any questions you might have. [LB859]

SENATOR ASHFORD: Questions of Scott? Fine. Thanks, Scott. How many are here in opposition because of Scott's explanation? Oh. That's not quite so bad. You might... [LB859]

SENATOR LAUTENBAUGH: Well, they're calmed down now. [LB859]

SENATOR ASHFORD: I thought the whole room was going to come up here. Marty. [LB859]

MARTY CONBOY: Good afternoon. My name is Marty Conboy, C-o-n-b-o-y. I'm the city prosecutor in Omaha here on behalf of the city of Omaha. And your question, oddly enough, was one in the hallway that everybody was...nobody had marked their box

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whether they were a proponent or opponent until the amendment was made, because it really is the issue that was...the reason many of us came down today, and that is because the drafter I think correctly noted in line 4 of page 2 that it's necessary to have a jury trial on any offense over six months, and that's constitutional and the cases are pretty clear. But it's also clearly settled that if it's a misdemeanor city ordinance with a six-month or less sentence, it is not entitled to a jury trial constitutionally. I think they just put the less and not the, you know, the six months or less, and so that's the change. With that, the bill I think is, as Senator Lautenbaugh indicated, is well-intentioned to try to streamline the process of jury demand. For those cases where it's not constitutionally required but optional with the defense, so that there is a system of, you know, I guess how, both in civil and criminal cases, these things are filed in a way to ensure a smooth process and to keep the case progressing. And those are issues that are important to the courts as well as to the attorneys involved. And it also talks about those kind of cases that were transferred which...from a lesser docket. So it is a cost-saving measure, and with that change it's a very important change to those of us who work in the municipal practice and to the courts in those municipal cases, because that previous language inadvertently would have created a huge number of new trials down to the level of parking tickets. You know, 80,000 parking tickets would have suddenly been eligible for a jury trial. And obviously that's somewhat of a concern to those of us who do that. So as it is written, it is acceptable and I think a prudent way to look at cost savings and economy in the courts, and I'd be glad to answer any questions otherwise. [LB859]

SENATOR ASHFORD: Any questions of Marty? It seems pretty straightforward. Thanks, Marty. Any other proponents? How many testifiers do we have here? Okay. [LB859]

STEPHEN GEALY: Senator Ashford, members of the committee, my name is Stephen S. Gealy. I am a trial lawyer with the Lincoln firm of Baylor, Evnen, Curtiss, Gruit, and Witt. I have been a defense trial lawyer for about 27 years, and I can tell you that I have no position on the criminal aspect of this bill. To find myself in a criminal court is malpractice per se, so I simply am not going to address that. I do want to say, however, that it is my understanding that there have been a number of occurrences, in the county courts in Omaha, in particular, where judges have interpreted the statutes, which require one to request a jury trial in a civil case in county court, rather strictly. The statute says by the answer day you must request a jury trial, for example, if you're the defendant. The plaintiff can always request a jury trial in the complaint that's filed with the court, and there's a jury trial in place. The defendant, according to statute, must request by the answer day. Now there are certain circumstances in which, for example, the parties continue to negotiate, and the plaintiff's lawyer says to the defendant's lawyer, look, let's don't worry about filing an answer on time. We'll give you an extension of X number of days and we'll see if we can't negotiate a settlement. If that doesn't happen, then the defendant files an answer which includes a request for a jury trial, and judges have been known, as I understand it, to deny that request for a jury trial because

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the answer day was actually 30 days after the date of service rather than the date on which the answer was filed. And there are numerous circumstances where those sorts of things have happened. Now let me say that the right to trial by jury is the most Jeffersonian of American principles, and it is not completely unique to this country, but it is one of the things that makes this country great. The district court cases, which the district courts, being courts of general jurisdiction without limit, you don't have to request a jury trial. You're automatically entitled to it unless and until both parties or all parties waive it. In county court, there has been a move afoot in recent years by plaintiffs' lawyers as the jurisdictional limit has increased to file more and more serious personal injury cases in county court because they can get cases to trial more quickly. And the rule has been that even if there is a judgment which exceeds the jurisdictional limit of the court, it doesn't make it void, but it can simply be transcribed to district court and you've got a valid judgment. So it's for those reasons that I think this bill, LB859--Senator Lautenbaugh, you're right on the money--we need to preserve the right to trial by a jury in the county courts. [LB859]

SENATOR ASHFORD: Thanks. Yes, Senator Lathrop. [LB859]

SENATOR LATHROP: Can I just ask a simple question? Are you here just on... [LB859]

STEPHEN GEALY: I knew you would ask me a question. (Laugh) [LB859]

SENATOR LATHROP: Hi, Steve. Are you here on your own or are you here for the bar? [LB859]

STEPHEN GEALY: Oh, actually I am here as a practicing lawyer, but I'm here as a member of the Nebraska Defense Counsel Association, which is the association of lawyers in Nebraska who defend civil cases. I apologize. I forgot to mention that. [LB859]

SENATOR LATHROP: That's all right. But you're not here representing the State Bar? [LB859]

STEPHEN GEALY: No, I am not. I am not. [LB859]

SENATOR LATHROP: Okay. Thanks. [LB859]

SENATOR ASHFORD: Thank you. [LB859]

STEPHEN GEALY: Thank you. [LB859]

SENATOR ASHFORD: Good clarification. Any other proponents? Opponents? [LB859]

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JOHN BERRY: Good afternoon, Chairman, members of the committee. My name is John Berry and I'm here on behalf of Nebraska Criminal Defense Attorneys Association. We oppose the amended language of the bill, mainly because it's going to take away the right to a jury trial in some cases: a Class W misdemeanor, first offense DUI, 7 to 60 days jail. Our reading of this amendment is that that would stop that. There are other misdemeanors, such as a Class III misdemeanor, as you start talking about disturbing the peace, minor in possession of alcohol, offenses that may seem minor to some people, but when you're looking at anywhere from zero to just under six months it can be very significant. And the people of Nebraska, as I have found in my profession, as we have found in the Nebraska Criminal Defense Attorneys Association, enjoy their right to have a jury trial. And for some people, a first offense DUI is a huge deal and they want that right to a jury. In some of these other cases, we counsel our clients, look, you could be eligible for diversion; it's really expensive to have a jury trial. And yet, they want it. They feel that it is...if they have that right, they want the decider of fact to be their peers and not a judge. And I heard that this is a cost-saving bill. Not a lot of these misdemeanor cases go to trial. Now the DUIs do--Class W misdemeanors. But a lot of them are blocked by what is already in place. Most of the first offense DUIs in Lancaster County...or several--Judge Yardley could probably correct me--but are charged under the city ordinance, which means you do not have the opportunity for a jury trial. That affects several first offense DUIs. However, in certain cases where a defendant is stopped by the State Patrol or the Sheriffs Office here in Lancaster County, they're charged under the state statute and they are entitled to a jury trial. But once again that is somewhat rare. Most people want that jury trial. And although anything under six months is not guaranteed by the United States Constitution, it's still a very important right to our organization and I believe to the people of Nebraska. [LB859]

SENATOR ASHFORD: Good explanation. Any questions? Senator Lautenbaugh. [LB859]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And sir, I just ask you this because I really don't know the answer. There's a different result whether it's a city ordinance charge or a county or a state charge, if you will, as far as the right to a jury trial? [LB859]

JOHN BERRY: Yes, sir. [LB859]

SENATOR LAUTENBAUGH: Are the penalties different? [LB859]

JOHN BERRY: The penalties are the same. [LB859]

SENATOR LAUTENBAUGH: Does that disparity trouble you at all? [LB859]

JOHN BERRY: No. No, and because we're not concerned about the penalty phase.

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We're concerned about the process, it's due process, and the right to the jury trial. As far as the penalty for whether it's a city ordinance or a county...I mean, the issue you run into is that under the state statute there are other jurisdictions within the state of Nebraska that do not have city ordinances for a DUI, and so, therefore, they go under the state statute. So as far as the penalties, that doesn't bother me. It's the same offense. But the question is, do you take away the opportunity where there is one now? And it seems that this is a vanishing thing that...the jury trial for a misdemeanor is vanishing. I think it's something that we should hold on to. [LB859]

SENATOR LAUTENBAUGH: And I guess my question is, to be clear, is there a reason that a person should have a jury trial, right, if it's a state offense but not have a jury trial, right, if it's a city offense? If the same penalties... [LB859]

JOHN BERRY: In my personal opinion, I think they should have...that...for...it would depend on the offense, but if it is a first offense DUI, my personal opinion is, yes, the person should have a jury trial regardless of whether it's charged under the city ordinance or the state statute, because it's the exact same crime. But the way it's worked out is that that's not always the case. And my point is, it is something that is vanishing and something that I believe we need to hold on to. [LB859]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB859]

SENATOR ASHFORD: Good. Thank you. [LB859]

JOHN BERRY: Thank you. [LB859]

SENATOR ASHFORD: Any other opponents? Neutral? [LB859]

JOHN McQUINN: Good afternoon, Mr. Chairman, members of the committee. I'm John McQuinn, M-c-Q-u-i-n-n, and I'm the chief city prosecutor for the city of Lincoln, Nebraska. As the bill was originally drafted, I intended to appear today on behalf of the city in opposition because of the impact on the city's budget as shown in the fiscal note. As the amended version, as I understand it, would eliminate the city from any involvement really in this legislation, because by state statute for primary class cities our penalty is capped at six months. It cannot exceed that. Also under the city ordinance, that's what our city ordinance says. A vast majority of the almost 16,000 misdemeanors our office files in county court do have that six-month maximum provision. And the difference between the county attorney's office and the city attorney's office, the city attorney's office, because of the number of cases that arise that are violations of municipal ordinance, the county attorney does not have jurisdiction or authority over city ordinance violations, and for as long as I can know, the city attorney's office has prosecuted violations for city ordinance. The fact that they may have comparable statutory charges, we do not have the authority to file state statute violations. And

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therefore, I appear in a neutral capacity with the bill as amended, as I understand it, and I'd be happy to answer the questions. [LB859]

SENATOR ASHFORD: Any questions? Very clear. Thanks. [LB859]

JOHN McQUINN: Thank you. [LB859]

SENATOR ASHFORD: Any other neutral testifiers? One more, it looks like. Judge. [LB859]

LAURIE YARDLEY: Senator Ashford and members of the Judiciary, my name is Laurie Yardley. It's L-a-u-r-i-e Y-a-r-d-l-e-y. I am a Lancaster County judge here in Lancaster County. I've been a judge for 15 years and...first of all, I have a neutral position. I wouldn't want anybody to say that I'm against jury trials. I've done...presided over seven jury trials in the last eight days. I assure you, they are alive and well in Lancaster County. When the Legislature changed the DWI law from a .08 to a .15, part of that we probably did three, maybe four jury trials a year. It went up anywhere between 50 and 60 a year. I did 155 in a three-year period. And there's nothing wrong with a jury trial. It's just that you can only do one case per day and that's pretty fast. And I think I'm pretty fast at it. I don't think I can do more than one jury trial in one day, and it just...if you...if there were 16,000 cases that would be eligible for a jury trial and only a half a percent of those went to trial, you'd be adding 80-100 jury trials a year. And under the six judges we have now I just don't think we could support that currently. So that's just my opinion on it. But as amended, I don't see that it will have an impact or a detriment...I don't think it would cause any more problem in terms of the number of judges we have, so. Any questions? [LB859]

SENATOR ASHFORD: Thanks, Judge. Yes, any questions? Senator Lautenbaugh. [LB859]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And thank you for coming today, Your Honor. As amended, I think we removed, as you indicated, your concern about the increased number of jury trials. I do want to go back to the jury trial issue with the DUI offense. I'm assuming you have jury trials if they're charged by the Lancaster County sheriff? [LB859]

LAURIE YARDLEY: Correct. [LB859]

SENATOR LAUTENBAUGH: But you don't have jury trials if they're charged by the city of Lincoln police? [LB859]

LAURIE YARDLEY: Well, if it's a second offense over .15, then those are filed by the county attorney, not the city attorney, because it's a Class I misdemeanor. So under the

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city ordinance it would be just a first offense and a second offense DWI that's nonaggravated. Anything else goes to the county attorney's office and is entitled to a jury trial. And anything out in the county that's...would be a jury trial. [LB859]

SENATOR LAUTENBAUGH: So what we're talking just--and I didn't speak clearly enough--the first offenses, there is a difference between whether or not you're charged by the city of Lincoln and prosecuted thereby, or whether or not you're prosecuted by the county... [LB859]

LAURIE YARDLEY: Correct, if you're in the... [LB859]

SENATOR LAUTENBAUGH: ...and charged by the county. [LB859]

LAURIE YARDLEY: If you're in the county, you get a jury trial. If you're in the city you do not. [LB859]

SENATOR LAUTENBAUGH: But the penalties are just the same regardless. [LB859]

LAURIE YARDLEY: Exactly the same, yes. [LB859]

SENATOR LAUTENBAUGH: Thank you. [LB859]

SENATOR ASHFORD: Judge, thanks for all your hard work, and I know it is hard work, so. [LB859]

LAURIE YARDLEY: Thank you. [LB859]

SENATOR ASHFORD: We know it is hard work. Any other neutral testifiers? Seeing none, that closes the hearing and we'll move to LB830. Senator Coash. And welcome. I didn't introduce you earlier, but here you are so I will. LB830. [LB859 LB830]

SENATOR COASH: (Exhibits 6 and 7) Ready? Okay. Thank you, Senator Lathrop. Lathrop? And Senator Ashford. [LB830]

SENATOR ASHFORD: That always bothers me. I don't know why. It happens from time to time. [LB830]

SENATOR COASH: I had your name right here. [LB830]

SENATOR LATHROP: We've been working on this bill a long time. [LB830]

SENATOR COASH: Thank you, Senator Ashford and members of the Judiciary Committee. For the record, I'm Senator Coash, C-o-a-s-h, and I represent Legislative

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District 27. And today I'm here to introduce to you LB830. LB830 addresses affordability of insurance for providers of tourism, more specifically agritourism. Last year, Senator Lautenbaugh introduced LB153 in an attempt to address the same problem. Arguments against this bill centered around the idea of capping liability. I was happy to see, however, consensus within this committee that the tourism industry in Nebraska does deserve our attention and support. So I'm not here today to rehash arguments surrounding the idea of liability. I believe those were pretty well vetted in LB159. What was missing from our discussions on LB159 was some input from the insurance industry surrounding this issue, so I've invited some members of the insurance industry to help us gain some clarity on this issue. With that said, I do...there are some differences between LB153 that was introduced last year and LB830 which I'm introducing, which I passed out a sheet that outlines those differences. And for the record, those are very...pretty straightforward. This adopts the Tourism Insurance Act which is to stand alone. It does not amend the recreational liability statute which LB153 did. The Tourism Insurance Act requires small tourism businesses to post a sign warning of potential dangers which was not required. The caps are different. The caps are \$500,000 for one person and \$3 million for two or more, which is up from \$1 million. It mandates that businesses acquire the liability insurance and have an active policy if they want coverage under this act, and it mandates that such a policy be posted in a readily available place on the property. So there are some differences and I wanted to highlight those. I do realize and respect the differing opinions that surround liability, but I'd like to make the following points to this committee as we discuss this issue. First of all, tourism in Nebraska is our number three industry. Right behind agriculture and manufacturing, tourism is our number three. When you go to the people in this industry and you ask them what are the barriers to growing your business, what are the barriers to starting this business, the answer frequently comes down to both affordability and accessibility of liability insurance. In my investigation into this issue, I came to the conclusion there are several factors that raise costs for tourism providers, and one of those factors is liability. I'm hopeful that some of the testifiers from the insurance industry will help us shed some light on this issue so we can begin to work toward a solution. We have to listen to the experts and the practitioners. If they tell us that this is the barrier, we can't say, no, I think it's something else. We really have to listen to these folks. And so I'm going to listen carefully so that we can work with them. So I'm hoping the committee will assist me in using this bill to help out this industry. Thank you.
[LB830]

SENATOR ASHFORD: Thank you, Colby. Any questions? Seeing none, thank you.
Proponents. Richard. [LB830]

RICHARD BAIER: (Exhibits 8, 9, 10) Vice Chairman Lathrop, members of the committee, for the record, my name is Richard Baier, B-a-i-e-r. I serve as the director for the Department of Economic Development. I'm testifying today in support of LB830, and I want to thank Senator Coash for introducing this legislation on behalf of an industry

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that we work closely with every day. Senator Coash did a nice job of outlining some of the new provisions within the proposed legislation. I did want to, by way of clarification, echo what we think in terms of activities that are considered ag and ecotourism, and you will see a list of those in Section 2(5) of the bill. And they could include things like nature viewing. They could include things like farming and ranching tours, hunting, fishing, hiking, canoeing, and a variety of other activities that involve Nebraska's natural resources. We recognize that multiple factors impact our insurance underwriting relative to this issue: the size of the risk pool, incident experience numbers, and unknown loss limits. Over the past five years, our office has worked diligently to expand the number of tourism-related businesses in our state, thereby increasing the size of the risk pool. For example, on February 3, we are hosting the third annual Governor's Agri/Eco-tourism Workshop with record attendance. Likewise, we communicate regularly with our small tourism business and have yet to identify any major accidents or incidents among Nebraska's leading tourism providers. This issue has really taken center stage in locations around the country as our consumer preference for tourism activities has evolved towards more experiential-based activities. Competing states have adopted legislation that support agri- and ecotourism relative to liability concerns, and some of those states include: Kansas, Texas, Colorado, Kentucky, West Virginia, and North Carolina. I have attached in your presentation some studies that were recently completed, as well as some documentation, for example, that shows the 2006 U.S. Fish and Wildlife survey of Nebraska hunters. The study found that 41 percent of Nebraska's population participated in some sort of wildlife-associated recreation. They found it was much higher in the state of Kansas and even higher in South Dakota. This does not take into account the impact of out-of-state visitors who annually travel to South Dakota to hunt pheasants. Many of us are familiar with those folks. The study also found that 8 percent of Nebraska's residents participate in hunting. In Kansas, that number was 9 percent, and, in South Dakota, 15 percent of the residents reported hunting. I think it's safe to say that our fellow Nebraskans like to hunt and participate in these outdoor activities just as our friends in South and North Dakota, but I think it points to factors such as access to more opportunity and the limited opportunities we have in our state. I will skip a few other things, but with this legislation our goal was pretty simple, and that was really to provide landowners and the insurance companies both predictability and protection in order to allow for the provision of quality insurance coverage at an affordable price. Our ultimate goal is to stimulate additional tourism growth across our state, and I want to thank you for the opportunity to testify today, thank Senator Coash again, and I would be happy to take any questions. I would also tell you that I have with me today, right behind me, following me, is the director of Insurance, Ann Frohman, also to answer technical questions that they will have as part of this discussion. [LB830]

SENATOR LATHROP: Very good. Senator Rogert, you're recognized. [LB830]

SENATOR ROBERT: Richard, thanks for coming in. [LB830]

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RICHARD BAIER: You bet. [LB830]

SENATOR ROBERT: And I support trying to figure out a way to do what we're doing here. On the...a couple questions about your study. [LB830]

RICHARD BAIER: Sure. [LB830]

SENATOR ROBERT: Any idea who answered these questions? [LB830]

RICHARD BAIER: That is a sample of hunters and outdoorsmen. [LB830]

SENATOR ROBERT: Okay. [LB830]

RICHARD BAIER: That's kind of where you get to, is you get into a broad sample of those kinds of things. [LB830]

SENATOR ROBERT: Well, okay. So... [LB830]

RICHARD BAIER: Sure. [LB830]

SENATOR ROBERT: ...you know, just looking at the study and the questions there, "Do you support or oppose Nebraska laws to reduce landowner liability for landowners...?" I have to assume probably that a lot of the guys who answered the question are landowners, and it doesn't really specifically state whether it's, you know, public or whether it was for charge...charge for fees. [LB830]

RICHARD BAIER: Right. [LB830]

SENATOR ROBERT: So, you know, I have no problem believing these answers, but I wonder about the validity of the sample that was taken. But probably the same would go with the question of whether it reduced...what we did in the past, reduced landowner liability. Forty-seven percent thought it was somewhat effective, what we've done for those that aren't charging us apparently, to me, to be 100 percent effective, but. [LB830]

RICHARD BAIER: That's been a lot of the drive in the past, absolutely. There is clearly a push on to get...to make a fee for service in this industry and really be able to create that economic opportunity in our rural areas. And as you look at our target industries, tourism especially, and when you get off the fishhook counties, tourism is an essential component of that. [LB830]

SENATOR ROBERT: What's the difference between...specifically the difference between South Dakota and us in terms of liability? Do you want me to ask somebody else or have you got that (inaudible)? [LB830]

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RICHARD BAIER: No, actually I've got the South Dakota language if you give me just a second here. [LB830]

SENATOR ROBERT: No problem. [LB830]

RICHARD BAIER: Clearly, it deals in a couple of areas. South Dakota law 20-9-13 relieves the landowner of any duty to keep the land safe for use by others for outdoor recreational use or to give warnings of a dangerous condition or activity on land entering for outdoor recreational activity provided there's no charge for the activity. The landowner is responsible for entry caused by owner's gross negligence or (1) misconduct or violation of the law in cases of a fee. [LB830]

SENATOR ROBERT: Gross negligence seems to be the key. [LB830]

RICHARD BAIER: Yeah. And again that's the...I learned a lot about liability insurance over the last few years, and clearly there's a line there between negligence and gross negligence and willful and malicious behavior. [LB830]

SENATOR ROBERT: Apparently that's what this guy next to me tells me, but I don't know, so. [LB830]

RICHARD BAIER: Yeah. Well, I've learned a lot about it. It's those attorney briefings, Senator. I'm getting smarter maybe in my old age. [LB830]

SENATOR ROBERT: Thank you. [LB830]

RICHARD BAIER: You bet. [LB830]

SENATOR LATHROP: Any other questions? I don't see any. Thank you for your testimony. Other proponents? Are you testifying today as a proponent or in a neutral capacity? [LB830]

ANN FROHMAN: I'm testifying today as a proponent. [LB830]

SENATOR LATHROP: All right. [LB830]

ANN FROHMAN: Good afternoon, Senator Lathrop, members of the committee. My name is Ann Frohman. For the record, that's A-n-n F-r-o-h-m-a-n. I am here to testify in support of LB830 and to provide further testimony in support of Director Baier's testimony on this bill to clarify really a little bit about the insurance market in the state, because I think for some they're surprised that this is not something that the insurance markets can handle for us. And it is an interesting issue that Director Baier brought over

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to our office about five years ago when we started researching and monitoring to try to see if there was a way that we could come up with an insurance result, and we really learned quite a bit about the business but we weren't surprised in what we had found. And with respect to the insurance markets, it's pretty much like this. An insurance carrier is going to write what an insurance carrier believes it can write for a profit. And when you're getting into businesses that are specialty where you're not going to find this in the yellow pages or the phone book, and make a phone call to your auto agent, necessarily, or your homeowners agent. It's a little more specialized and tied in with business coverage, for sure, but also for those that aren't landowners or property owners that may have, you know, more of a service bent to it. That can also be a challenge. So what we found didn't really surprise us; that it's a matter of twofold. One, it's risky business, and because it's risky business the experience is such that the liability can be, you know, create sufficient experience that it's going to be expensive. The other factor is that it's not a real large market in the sense of, well, comparing to your homeowners market where you can pool the risk and use the law of large numbers, which is the greatest advantage for policyholders because then you can drive down the rates that way. So what we have really found is that although it is available, and we would testify today that coverage, you can find it. It is exorbitant. And for the small businessman it's very difficult to, you know, really realistically consider the insurance for the business. So that's really why I was here today was to provide that brief background and answer any questions anyone might have on the insurance piece of it. [LB830]

SENATOR ASHFORD: Thanks. Any questions of Ann? Senator Rogert. [LB830]

SENATOR ROBERT: Ms. Frohman, for the record, can you tell us what your position is that you do for a living? You didn't state what you do. You're the director of the department, correct? [LB830]

ANN FROHMAN: Director of the Department of Insurance. [LB830]

SENATOR ROBERT: Thank you. I just wanted to make sure that got on the record. But I do have a couple questions. So thinking in broad terms of insurance and how...you know, you have the pool and you have the different insurabilities. Would it be possible or thinkable to talk about saying that this activity we could create what language that said that this type of activity would force it into a different type of pool? [LB830]

ANN FROHMAN: I think the challenge with that is it's simply too small. [LB830]

SENATOR ROBERT: But to do that, force it into an existing pool. For example, say, force it into a different type of entertainment pool so that you add it to a larger pool. It might cause everybody's insurance rates to go up a dollar, but it actually allowed everybody...allowed these other folks to be insured under a different type of group. Do you follow my line of thinking? [LB830]

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ANN FROHMAN: The insurance markets are generally voluntary in most respects, so that would be a consideration that would be unique, because we don't generally force placed coverage into a... [LB830]

SENATOR ROBERT: Well, and that becomes the trick. This isn't...it's not a general thing and it is a small pool, but if we tried to create a way to make it part of a larger pool, would that be beneficial to everybody in the industry? [LB830]

ANN FROHMAN: I don't think so. I think that these go with specialty writers, because what you're going to find is with the larger carrier they may not have the expertise on the underwriting. They don't know the business. So what you...where your expenses come is in the underwriting and learning the business to make sure that, you know, the safety measures are there like you do on work comp. Those writers know how to reduce the losses, and these writers know that as well. They know the business of equine and being on the water and that sort of thing. So I don't think it would do anything. You're just moving it from, you know, one location to another, but your experience is still going to be there. And for the specialty carriers that write this, they might not write any other line of business. I don't know. I mean, it kind of depends. It's a free market so they write whatever they want to write. [LB830]

SENATOR ROBERT: Okay. [LB830]

SENATOR ASHFORD: Senator Lathrop. [LB830]

SENATOR LATHROP: I do have some questions. The way the bill is written, it would apply to swimming pools? And do swimming pools have trouble getting insurance? [LB830]

ANN FROHMAN: Through their associations or through...? I'm not following it. [LB830]

SENATOR LATHROP: I don't know. Have you heard an outcry of people that are having trouble insuring their swimming pools? [LB830]

ANN FROHMAN: I would expect as a homeowner your rates are going to be higher having a swimming pool, and some cannot get the coverage. I know a lady that had a day care and she had a swimming pool in her backyard, and that did not work on her homeowners. [LB830]

SENATOR LATHROP: That's probably a good thing. But, well, the unavailability of insurance or the price of insurance is a function of a number of things, is that true? [LB830]

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ANN FROHMAN: Yes, it is. [LB830]

SENATOR LATHROP: It's a function in part of how many people do that kind of business in the state. Is that also true? [LB830]

ANN FROHMAN: Yes. [LB830]

SENATOR LATHROP: So last year, when we had LB159 in here, we had somebody come in that had a dude ranch. Wanted to have people out, charge them, and let them come experience the dude ranch experience. Part of the difficulty is we don't have a big industry of dude ranches so there's not a large pool to attract insurance companies who can make a profit insuring those businesses. Is that right? [LB830]

ANN FROHMAN: That is right. [LB830]

SENATOR LATHROP: And limiting liability or capping damages doesn't create more dude ranches. [LB830]

ANN FROHMAN: I think it would enhance the interest of individuals if they knew they could get into the business and have their liability capped. [LB830]

SENATOR LATHROP: And if they did, we'd have more businesses so that we would have a decent pool to develop an experience from in order to set a fair premium. [LB830]

ANN FROHMAN: I wouldn't know what it might draw. [LB830]

SENATOR LATHROP: Is there any limitation on a...somebody that wants to have a dude ranch, for example? And that's primarily what we're talking about, isn't it, dude ranches and outfitters? [LB830]

ANN FROHMAN: I think it's written fairly broadly, but I'm not...yeah, I'm not sure if it's limited to that. I'd defer to Director Baier on that one. [LB830]

SENATOR LATHROP: Okay. Is there any limitation that prevents somebody in Nebraska from buying this kind of coverage in a different state where they do more of this type of activity? [LB830]

ANN FROHMAN: No. What we have is we have two kinds of markets. We have the regulated market--we call it the admitted market in the regulatory environment--the admitted market and the surplus lines market. You will generally find this coverage in the surplus lines market. And what that is, is it's the unregulated market if you will. It's the idea is this: If you can't find coverage in the admitted regulated market, in instances

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it's been concluded that in certain instances it's better off having coverage from an unregulated entity insurer than from...than not having coverage at all. This coverage is available in the surplus lines market. It's an unregulated market. The writer could be anywhere in the United States; they could be in Bermuda, anywhere that provides the coverage. Now the risks there are you don't get the cancellation protections. You don't...it isn't necessarily a bad industry. Some of it's regulated, and depending on where they choose to be regulated, but it's just...it's just not regulated by the Nebraska department so there are no barriers in that respect. [LB830]

SENATOR LATHROP: The regulated industry would include, like auto insurance, homeowners insurance, common... [LB830]

ANN FROHMAN: And liability carriers, yes. [LB830]

SENATOR LATHROP: Okay. [LB830]

ANN FROHMAN: And it might be written on the admitted market, but I just think you generally look to that surplus lines market for this type of thing. [LB830]

SENATOR LATHROP: Okay. And that is a place where it is unregulated because they are specialty. [LB830]

ANN FROHMAN: Yes. Higher risk. [LB830]

SENATOR LATHROP: And they are specialty because there are fewer people seeking that kind of coverage, versus, for example, auto or homeowners coverage. [LB830]

ANN FROHMAN: A higher risk generally. [LB830]

SENATOR LATHROP: Okay. The premiums that are charged and the difficulty people are having would be a function of the type of activity they're engaging in? Having people out near tractors, for example. [LB830]

ANN FROHMAN: Yes. [LB830]

SENATOR LATHROP: Things like that. And the number of people that are doing it so that they have a sufficient number of businesses to spread the risk around. [LB830]

ANN FROHMAN: Um-hum. [LB830]

SENATOR LATHROP: Right? [LB830]

ANN FROHMAN: Yes. [LB830]

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SENATOR LATHROP: And so even if we changed the standard of care and capped damages, if we don't have more people doing it and more people seeking this type of coverage, it may not have any effect on premiums. [LB830]

ANN FROHMAN: Right. I don't see this market changing in the next five years. I mean, I can't see ten years out, but I just see...I see the difficulty that we had five years ago is the same difficulty we have today and we will have in the next five years. [LB830]

SENATOR LATHROP: Which is not a lot of people, and they're doing something that's high risk--putting city slickers around the tractors. [LB830]

ANN FROHMAN: You've got it. [LB830]

SENATOR LATHROP: Okay. That's all I've got. [LB830]

SENATOR ASHFORD: And just one question. The unregulated market for high risks is not a regulated market under Nebraska insurance regulation, but it is...is it...are those companies required to file anything with the Department of...? [LB830]

ANN FROHMAN: They pay premium tax through their agents. [LB830]

SENATOR ASHFORD: Just the premium, but they're not required...and...okay. [LB830]

ANN FROHMAN: But there are some companies that might choose to, in the market where you can't get, they might be admitted and regulated maybe in the state of Connecticut... [LB830]

SENATOR ASHFORD: Right. [LB830]

ANN FROHMAN: ...and choose to do business in Nebraska in a specialty line. That's not...we do have lines that we don't, you know, allow to go over to that market, I guess, if you will. [LB830]

SENATOR ASHFORD: But if it's a non-offshore insurer, under federal law are they required to...? Is there any oversight at all for offshore insurers that provide liability coverage? [LB830]

ANN FROHMAN: Not in the surplus lines market, no. [LB830]

SENATOR ASHFORD: Or nor...so a Bermuda or Grand Cayman or whatever company could sell insurance here or anywhere in the country without any kind of federal oversight or state oversight. That's not really related to this question but I... [LB830]

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ANN FROHMAN: Yeah, we look to the...you know, you have the brokerage. [LB830]

SENATOR ASHFORD: And they're regulated. [LB830]

ANN FROHMAN: And they...you know, they have the wherewithal and the resources to study the market and know who the carriers are and... [LB830]

SENATOR ASHFORD: Okay. But the carriers themselves. I understand that the brokers are licensed but the product itself can be coming...can come from somewhere that's totally unregulated by us. I'm not saying it's a bad thing. I'm just asking. [LB830]

ANN FROHMAN: Right, I'm not either. Yeah, they serve a need. We just look at it as it's better to have something than nothing at all. [LB830]

SENATOR ASHFORD: Okay. Gotcha. All right. Thanks. Senator Lathrop, does that...? [LB830]

SENATOR LATHROP: You know, if there's nothing that prevents somebody from going across state lines to get one of these unregulated things, then it seems like the pool should be the entire United States. Wouldn't there be enough experiences? [LB830]

SENATOR ASHFORD: Or the world even. I mean, if you're...(laugh). [LB830]

SENATOR LATHROP: Wouldn't there be enough experiences in the United States with dude ranches to effectively know what the risk is, write it as a standard policy? Or are they going to look at... [LB830]

ANN FROHMAN: It will never be a standard policy. I think there is some...there are specialty carriers that know this business, but they priced it accordingly to the experience, and that's where the problem is. [LB830]

SENATOR ASHFORD: There are fewer people in it, so I...but the competition isn't as great. [LB830]

ANN FROHMAN: It's priced accurately. It's very expensive because it's a reflection of the nature of the risk. That's all. [LB830]

SENATOR LATHROP: It could be a reflection of the nature of the risk or the absence of any regulation or competition, too. [LB830]

SENATOR ASHFORD: Competition. [LB830]

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ANN FROHMAN: I wouldn't think necessarily that's the case. I...the... [LB830]

SENATOR LATHROP: Well, how many people write insurance policies for dude ranches? [LB830]

ANN FROHMAN: Um, I don't know. I know there's...they're out there. [LB830]

SENATOR LATHROP: So it could be one? [LB830]

ANN FROHMAN: No. They're out there. No, there's...they're out there. [LB830]

SENATOR LATHROP: But there are certainly more people writing auto policies and homeowners policies, so there's more competition. [LB830]

ANN FROHMAN: There's more competition, absolutely. With that I would agree. But in terms of if it's property, I do think even Nebraska admitted carriers will sometimes throw that on their business card. [LB830]

SENATOR LATHROP: And because of the factors being the size of the pool and the absence of as much competition, the fact that it's unregulated, those things all bring us to the conclusion that, even if we made these changes, it wouldn't necessarily guarantee that we're going to have one more policy available in Nebraska or that the price would drop either. [LB830]

ANN FROHMAN: Absolutely. [LB830]

SENATOR LATHROP: Okay. [LB830]

SENATOR ASHFORD: Thanks. That was an excellent conversation. Thank you. Any other proponents? Come on up, sir, if you want to get...just, if you want to sit up here, and then we'll... [LB830]

JIM PAPPAS: Mr. Chairman and committee members, my name is Jim Pappas, P-a-p-p-a-s. I'm representing here today the Independent Cattlemen of Nebraska. They are always looking for ways to promote and increase their profits on their ranches, and this is one area that they're thinking about looking into to add some income to it. I am a little disappointed today, I look around the room, that there's not more people that are interested in promotion of tourism in Nebraska that are out here testifying for these type of concepts and ideas. [LB830]

SENATOR ASHFORD: I think, Jim, if you were to...if the Cattlemen's Association would be to go out in the market and...international market for these kinds of activities, do you know, would that not possibly result in a maybe a better product for them? Has that

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been tried? [LB830]

JIM PAPPAS: Most of the ones that I've dealt with and the ones that are looking into this or are trying some of these commercial enterprises have said they've had a tough time trying to find competitive-priced insurance. [LB830]

SENATOR ASHFORD: Oh, I know that, but if they were...I understand...that's a given. They were here last year, and I think they clearly established that it's expensive to buy the insurance and, in many cases, it's prohibitive. And maybe it...well, I'm just wondering if these larger associations, the Cattlemen's Association is a national association with chapters in every state, generally, that have cattle industry. Could they not go out as an industry and procure that insurance and have it be a lot cheaper or more reasonably priced? [LB830]

JIM PAPPAS: I think that. I've never discussed it with them, but that's probably one thing I will do in the near future. [LB830]

SENATOR ASHFORD: I mean I just throw that out. All right. Thanks, Jim. [LB830]

JIM PAPPAS: One thing I will say in parting, that this is known as probably one of the most thoughtful and intelligent committees there is in the legislative body, so I'm quite sure I don't have to remind... [LB830]

SENATOR ASHFORD: Thank you. No, that's true, but...(laughter). [LB830]

JIM PAPPAS: I won't have to... [LB830]

SENATOR LATHROP: He just said that in the Business and Labor on (inaudible). (Laughter) [LB830]

JIM PAPPAS: I'm a lobbyist. So if there is anybody that would dare oppose this bill, I know I won't have to remind you they won't know what they're talking about. [LB830]

SENATOR ASHFORD: Well, Jim, I tell you what. If we...I'll bet you, if they gave us the healthcare deal... [LB830]

JIM PAPPAS: Yeah. [LB830]

SENATOR ASHFORD: ...we'd get it done. We'd get Ann in here. We'd get everybody, and you, and we'd all...and Ted, and we'd figure it out. John. Thank you. [LB830]

JAMES CAVANAUGH: Senator Ashford, members of the Judiciary Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent

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Insurance Agents of Nebraska, and I appear today on their behalf in favor of LB830. This is a vastly improved bill over what you've heard before, and I think that the folks that came before us gave a good outline of the need for this. But Senator Lathrop asked an interesting question: If this was enacted, would there be any more dude ranches in Nebraska; what's going to happen in the twenty-first century? And the reason that we've been here the last couple years is tourism. Ecotourism in Nebraska is going to become if not first, the second largest industry in Nebraska. Currently, that's manufacturing and that's not going to continue. What we have in Nebraska are not a lot of people and not a lot of big cities, but we have a lot of nature, and that is going to become a scarcer and scarcer commodity in the twenty-first century. What the proponents of this would like to do would be to capitalize on that, for lack of a better term, green initiative for the twenty-first century in Nebraska by making insurance affordable and available to people who want to engage in this type of activity. Now I know there are people on this committee who have spent a lot of time in greater Nebraska, riding horses and canoeing and camping out. And a lot of us grew up doing that, where before, you know, things got as organized as they are now. Nobody ever dreamed of liability insurance. But now it's a big deal. And if you're going to go hunting or you're going to go fishing or you're going to go camping or you're going to go canoeing and you take your family along with you, take little kids along with you, you want to make sure that maybe if something goes wrong that's not your fault due to the gross negligence of somebody else, that you might be compensated for that. And maybe this isn't the perfect bill. Maybe this isn't the perfect amount. But if we're going to make ecotourism a big deal in Nebraska, as we should in the twenty-first century, you're going to have to have something like this. And maybe this is just a bridge to something else, some other system, once it is the first or second biggest industry in Nebraska, but that will happen, at least for you younger senators, in your lifetime, and we should get on this. We should do something about this. If you don't like the numbers in there, well, that's fine. As old Judge Grant used to say, we can haggle price. But you need to get something established because they...I can tell you, from representing 600 insurance agents in Nebraska, they're having a tough time in rural Nebraska finding insurance for people who want to go into this. And it's a good deal for rural Nebraska. I'd be happy to answer any questions you might have. [LB830]

SENATOR ASHFORD: Any questions of Jim? Thank you, Jim. Sir. [LB830]

ED SCHAEFER: Senator Ashford, members of the committee, my name is Ed Schaefer, S-c-h-a-e-f-e-r. I run the Bellevue Berry and Pumpkin Ranch located halfway between Bellevue and Papillion, and my brother runs Roca Berry Farm. We are into ag tourism. It's the only way that small farmers can make a living, farming the urban periphery. My brother's operation is a little different than mine, but I made the commitment a few years back that we're going to be mostly a family-run oriented business, grossing about a half million a year. But my two boys, one is 36, one is 32, just came back to...one has been up in Montana for 16 years, came back to work with

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me. One of our biggest costs of production that we have no control over is insurance, whether it's product liability that we have to have because we run restaurants and we cater all our own food, as well as liability insurance. And we've had a heck of a time finding the right kind of insurance. We had somebody slip, years ago. And the next thing you know, the company that still insures two of our farms in Virginia wouldn't insure us. No fault of ours. We had to go out, like they were saying, and we have to get specialty insurance out of Arizona in order to stay in business. When you're looking at the factors of production we can control--our land, labor, capital, and management--we can't control insurance costs. We can't control property escalating costs. Our property costs on our farm went up \$12,000 this year. In a time when we are in a recession, this is a different topic and I don't want to dwell on it, but it's one of the factors that's killing us as small farms. And if we're going to try to increase...I agree with you, ag tourism is the future. [LB830]

SENATOR ASHFORD: That was property and casualty that went up \$12,000? [LB830]

ED SCHAEFER: No. That was our property tax on our buildings. [LB830]

SENATOR ASHFORD: Oh, your property taxes. [LB830]

ED SCHAEFER: Yeah. But our product liability insurance and liability insurance on our farms runs over \$20,000 a year. [LB830]

SENATOR ASHFORD: What percentage of that is of your gross revenues, generally? [LB830]

ED SCHAEFER: Our gross is about...it's as much as we pay ourselves in labor. I pay myself \$18,000. My boys get \$18,000 if there's any profit left. So we're paying equivalent to one, what we consider one full-time person, just in insurance, not counting our property taxes. [LB830]

SENATOR ASHFORD: Thanks, Ed. Any questions Yes, Senator Lathrop. [LB830]

SENATOR LATHROP: Did anybody at this specialty insurance company tell you, if this bill passed your insurance would get cheaper? [LB830]

ED SCHAEFER: No. [LB830]

SENATOR LATHROP: Okay. Thanks. [LB830]

SENATOR ASHFORD: Thank you, Ed. Appreciate it. Next proponent. [LB830]

RENEE SEIFERT: (Exhibit 11) Senator Ashford, Judiciary Committee members, I am

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Renee Seifert and I am here representing the Nebraska Travel Association. The Travel Association includes over 170 members statewide that represents both the public and private sectors. Businesses include everything from outfitters, lodging facilities, farm stays, bed and breakfasts, attractions, convention and visitors bureaus, chambers of commerce, etcetera. We truly represent a cross section of the tourism industry. We do stand in full support of LB830, limiting liability to small business which will encourage new growth, we feel, in the tourism industry. Again, following right along behind Mr. Cavanaugh, that is where we are going tourismwise. Agritourism and ecotourism initiatives in this state are examples of how this would benefit the state of Nebraska. And, in a way, every Nebraska farm and ranch industry enables them to supplement their income. Another example is there is a growing demand for outdoor recreation. And due to the lack of public land that we currently have, there exists an opportunity for private landowners to meet that need. Too many times this fear of liability and costs of liability insurance actually precludes small entrepreneurs from pursuing these particular opportunities. This bill would enable this industry to actually grow. I recently discovered and did find out that Kansas actually has an insurance classification for agritourism business, which passed in 2005, and they have seen an increase in agritourism businesses since that time. So would we have more, Senator Lathrop? Would we have more dude ranches in this state? Maybe not, but it certainly, from the experience that Kansas does have, we would see that type of growth. It is a good bill for Nebraska and we do appreciate your efforts to see this quickly out of committee or in some form to assist our businesses. We do want to thank Senator Coash for introducing this bill and his interest in tourism and the economic growth in the state of Nebraska. So thank you very much. [LB830]

SENATOR ASHFORD: I'd like to see the Kansas law, because maybe they...to see how they handled the issue. [LB830]

RENEE SEIFERT: We can certainly see about getting that. [LB830]

SENATOR ASHFORD: Whether it's a liability...they did it through a liability cap or whatever they did. I mean, certainly we want the industry to grow. [LB830]

RENEE SEIFERT: They actually have an agritourism specialist. [LB830]

SENATOR ASHFORD: Well, that's what I am wondering. I mean, I'm wondering if they've dealt with it internally within the department of insurance in Kansas in a way that somehow encouraged more insurance participation in the market. That's what I'm interested in seeing. [LB830]

RENEE SEIFERT: I believe it's a classification. It's actually an insurance classification from my understanding, but we can get that for you. [LB830]

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SENATOR ASHFORD: Maybe I'll ask Ann later what that means exactly. But thank you. [LB830]

RENEE SEIFERT: Um-hum. [LB830]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB830]

SENATOR LATHROP: Can I ask one question? Do you think we might accomplish the same thing by providing these folks with some kind of a tax credit? I mean, the idea that we are...the idea that the answer is to...right now...right now, if you let somebody on your property for free, you already get protection from the law, and you change the standard of care to gross negligence. Right? So it's people that are making a profit or trying to grow this industry. And I'm wondering if the solution isn't just to provide some kind of a tax credit for people that want to buy this kind of coverage, and that we're coming about it from the wrong angle, because the director told us that even if we passed this law we don't know that it's going to make the insurance more affordable or even more available. And the answer may be we're looking at it from a liability point of view, and maybe it needs to be looked at from a tax credit point of view so that people that want to do this have the state's help in paying for the cost of the insurance. [LB830]

RENEE SEIFERT: I would certainly think not being a...I actually run a convention and visitors bureau. Not being on that particular end, I don't know, because they do have that up-front money. I don't know if it would be more advantageous to have it as a tax credit. But that certainly is, I would think, something to explore--an option to explore. [LB830]

SENATOR ASHFORD: Let me...which convention and visitors bureau do you...? [LB830]

RENEE SEIFERT: Grand Island, Hall County. [LB830]

SENATOR ASHFORD: Okay. So you have turnback money. [LB830]

RENEE SEIFERT: Yes, we do. [LB830]

SENATOR ASHFORD: For the... [LB830]

RENEE SEIFERT: Or we did get...you're talking about... [LB830]

SENATOR ASHFORD: You did get the first \$500,000. [LB830]

RENEE SEIFERT: Sure. For the Heartland Event Center. [LB830]

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SENATOR ASHFORD: For the Heartland Event Center. So that, I think Senator Lathrop is on to something because with the turnback sales tax money that we send back to the...and Richard is involved and does a great job in getting money back out to the 30 communities across the state that are engaged in exactly what you're talking about within their municipalities. I would be very interested...and I think I mentioned this last year. I mean, I would be very interested in pursuing a tax credit for these businesses that would...because we do have to promote these businesses. They are...and I'm with Senator Lathrop. Maybe we'll hear some more evidence today, but that they have to have insurance. They can't operate without it. They can't make much money without...you know, with the cost of all their costs involved. And it's not just insurance but all the other costs. You need help promoting these businesses because you don't get a lot of help. Nebraska is at the lowest, one of the lowest, down at the bottom. And this isn't Richard's fault. This has accumulated over many, many years.. We've never supported tourism in this state as we should. So as a result, it's really a struggle, and...but that turnback works, right? [LB830]

RENEE SEIFERT: Which if you haven't been to Grand Island lately but you do come out for the State Fair next year, you can see all of the growth. Yes. And that has really spurred economic development within our community. I will tell you that one of the things that we have started is a...we have a sports council, and have recently hosted, underwritten a couple events that have required specialty insurance. [LB830]

SENATOR ASHFORD: Sure. It's very expensive. [LB830]

RENEE SEIFERT: Not only is it very expensive, but it didn't even come from the state of Nebraska because our insurance company couldn't find an underwriter that knew enough about the sport that we were hosting to underwrite it. It still costs, for a one-day event with 60 players, \$795 for liability insurance, so. [LB830]

SENATOR ASHFORD: Right. And I don't know if that's going to change. I mean,... [LB830]

RENEE SEIFERT: And I don't either. But, you know, it is...it just is difficult when you don't have experienced underwriters that know the business and know the industry. [LB830]

SENATOR ASHFORD: Well, maybe it's a combination of what they're doing in Kansas and with some tax credits or something, because these people do need some help. They've come...been here twice now, and I'm convinced, as we were when we did the turnback, that Grand Island needed help and the other 30 cities in the state needed help to get some of these events facilities going, so. [LB830]

RENEE SEIFERT: And we have appreciated that very much. [LB830]

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SENATOR ASHFORD: Well, you've done a good job with it very much, so thank you, Renee. [LB830]

RENEE SEIFERT: Thank you. [LB830]

SENATOR ASHFORD: Next proponent. Any opponents? [LB830]

JOHN LINDSAY: Senator Ashford and members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. At the outset, I think we have to remember...I know I'm talking to five lawyers up at the table up there, but we have to...I think people have to remember liability doesn't attach... [LB830]

SENATOR ASHFORD: Two and half actually. [LB830]

JOHN LINDSAY: What's that? [LB830]

SENATOR ASHFORD: Two and half lawyers. [LB830]

JOHN LINDSAY: I was counting Senator Lautenbaugh. He's not actually at the table, but I'm sure he will get a copy of the transcript and read my testimony. [LB830]

SENATOR ASHFORD: I just wanted to be accurate for the record. (Laughter) [LB830]

JOHN LINDSAY: The liability doesn't really attach unless you've done something wrong, unless you've breached a duty of care. This law...or this bill, because of the way it's written, it eliminates the duty of care, and that's how you get at reducing the costs of liability coverage if it doesn't exist as Senator Lathrop mentioned. The...so what it does is that the bill enshrines the ability to be careless in operating a business. I don't think that's what Nebraska wants to be known for: Come to Nebraska where our recreations are unsafe. I don't think that's a good agritourism policy. The...in the bill, the requirement of insurance is illusory, too. We have a requirement that there be a million dollars of coverage. The problem is, because you've eliminated the duty of care except in cases of gross negligence, rarely can it ever be accessed. In the vast, vast majority of cases, you can't recover because we don't...we allow people to be careless. So the requirement of insurance coverage I don't think is going to help people who are injured. I think if we want to promote agritourism, I think there are a couple of suggestions that come out. I think it was Mr. Schaefer, I believe, who mentioned his property taxes have gone up, I think he said \$12,000. His liability coverage is \$20,000. Maybe some sort of a tax credit to reduce property tax or to cover property taxes on agritourism facilities. Or maybe we require carriers to issue agritourism insurance. And instead of capping damages, we cap the premiums, and then we know that that coverage would be

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available at a reasonable level. Or...and we could cap commissions so that we know, again, we're driving down the cost of that insurance. Or if the state is the one who benefits through increased income taxes, increased sales taxes, all the benefits that agritourism can bring--which I agree it can--instead of having those indirect subsidies by transferring it over to people who get injured, we could have a direct subsidy by the state, knowing that those increased taxes are coming in to drive down those premium costs. We could...the state could say we know we'll get additional--maybe through a turnback sort of mechanism, Senator Ashford--we could drive down those costs by the state directly subsidizing rather than indirectly subsidizing. And I see my red light is on so I'll stop. [LB830]

SENATOR ASHFORD: Thanks. Any questions? Seeing none, thanks. Any other opponents? [LB830]

ROGER FOSTER: (Exhibit 12) My name is Roger Foster, F-o-s-t-e-r, and I'm just testifying on my own behalf as a concerned citizen. I've been here before. I think this is the third time on this same language. I think, like most Nebraskans, I favor tourism. I think everybody does, and just so...I remember vividly you bringing up the tax incentive last year and asking the outfitter who was here last time, will your insurance be lower? He said no. I guess the real effects of what this bill will do is create unsafe circumstances across the state. It doesn't promote inspections of building and structures. That was dealt with on a municipality basis I believe three years ago. This committee heard that. Made amendments to it. I think it turned out to be very good legislation and I supported it. And I also remember last year that when you brought up the idea of the tax incentive, I said I would be here testifying as a proponent. And here I am on the opponent side again. I guess some of the circumstances...and I guess after listening to the earlier testimony, maybe what I initially had thought I remember Senator Christensen last year bringing up having some ground that he's been offered to lease for hunting purposes and hasn't done so because of liability reasons. I don't have a problem with some limited liability on those type of activities because, you know, there are laws in place and licensing and hunter safety and things that take care of the inherent dangers of that activity. And at first I thought this was being directed at a specific activity, like Senator Christensen described. And I guess if it is specific then I would favor anything that is specific, but not something that is as broad as this. And this is essentially...this is a recreational liability act. The only thing that...I didn't think it could, the language could get worse, but I think putting an actual dollar value on life when you do something that, the way this is stated, the way I understand it, is you would almost have to do something criminal to be held liable for anything under this type of legislation. And apparently \$500,000 is the going rate on an injury or a death. And \$3 million in multiple injuries or deaths is what the price is put on the value of an injury or a life, which doesn't sound...I mean, I don't think you can put a value on it, period, but it sounds a little, you know, fairly low, to me. I don't know how you put a value on it. But I guess just to go back to what I said earlier, if this comes in a form of a tax credit to

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promote tourism I'll be on the other side next year. [LB830]

SENATOR ASHFORD: Thanks. Thank you. Thanks for your comments. Any other questions? Seeing none, thanks. That's a good memory. Any other opponents? Neutral? Okay. Oh, Korby. [LB830]

KORBY GILBERTSON: (Exhibits 13 and 14) Good afternoon, Chairman Ashford and members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. Senator Coash and Senator Lathrop approached me a few weeks ago after this bill was introduced and asked if I would be willing to go to other insurance industry representatives and go to our respective clients and see if we could get any information on this issue. You're having handed out to you right now copies of two studies that were done in other states. One was done in North Dakota; the other was done in Tennessee. I will admit I only made copies of the first 15 pages of the North Dakota report for you, but I did send e-mail copies of it to both Senators Lathrop and Coash. If you have insomnia some time and want to read the rest of it, it's available for you. I think it's been established through earlier testimony why finding insurance for these types of activities is difficult. The pool is small and the inherent risks are very expensive to cover. Another person that did some investigation into this is Coleen Nielsen from State Farm, and she was able to find out that there is a company that writes this type of policy and it's called AgMax, and the policy is for "agritainment." I think Senator Coash has contact information for that group. There have also been other contacts made regarding the availability of a writer or an additional liability policy for farmers, say, if they're letting a group of people come in and hunt on their land and things like that. So that type of coverage is relatively easy to maintain. But, Senator Lathrop, you asked a few questions and I'm going to rely a little bit on the report done by North Dakota because I think it does illustrate why there are issues and what could be done. And they specifically talk about providing tax credits is one thing that they look at doing, providing immunity or limited immunity based on the inherent risks of the activity that's going on. And then also some of the states that do have laws did different categories. You'll have the basic agritainment category or agritourism category. You will also have separate categories for equine or other more dangerous activities. Senator Ashford, you asked about Kansas, and actually in Kansas they have a registration system. And if the agritourism business is registered then they have no duty for liability in an injury or death if they are registered and the death or injury results from the inherent risk of the activity that they're participating in. It does require signage about the Kansas law and does not protect against wanton or willful acts for injuries. So with that, I'd be happy to answer any questions. [LB830]

SENATOR ASHFORD: Thanks, Korby. It's was very helpful. Yes, Senator Lathrop. [LB830]

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SENATOR LATHROP: First of all, Korby, thank you very much. You mentioned this, but after Colby put this bill in, we talked to you and asked you to do some homework for us even though it wasn't something you really had a stake in at the time. And I appreciate the work you did. I did read these, including this report from Tennessee, and it kind of illustrates the problem that we're dealing with. There's a section called "How will the law impact premiums on liability insurance?" And ultimately, the conclusion is, it won't in the short run, and in the long run we don't know if it will make any difference at all. [LB830]

KORBY GILBERTSON: Because it doesn't impact the cost of the potential claims or the size of the pool necessarily. And unfortunately that's what guides it. However, I think if you look at the North Dakota study, in the states that have passed legislation they obviously are having an easier time getting coverage. And I thought one thing that was interesting, based on the director's comments about needing to go into the surplus lines when they...they did a survey that had both people that had businesses in the travel and tourism industry or the agents that represent these folks, that a lot of them found, in fact, for low-risk things, 84 percent found coverage through their current carriers. If you had for very high risk and things like that, then it went out more and they'd have to go to the surplus lines. But I think that for the lower risk activities it doesn't seem that there's that much of a problem finding insurance. [LB830]

SENATOR LATHROP: And lower risk would be letting somebody on to go watch the Sandhill cranes for some kind of a fee. [LB830]

KORBY GILBERTSON: Yes. [LB830]

SENATOR LATHROP: Then all they're doing is walking through a bean field to a blind and back to their car. [LB830]

KORBY GILBERTSON: Right. And other states, I noticed that they...when I was just reading through this, other states would limit liability or say that you only owe the same liability that you would owe...or duty that you would owe to a trespasser. And so they limit liability that way. [LB830]

SENATOR LATHROP: You know, I...and Doug Koebernick prepared a little book for me to bring down here to this hearing, and he had a... [LB830]

KORBY GILBERTSON: Wish he worked for me. (Laugh) [LB830]

SENATOR LATHROP: It has a little chart here that shows all of...every state's recreational liability. [LB830]

KORBY GILBERTSON: Right. [LB830]

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SENATOR LATHROP: Did we get that from you? [LB830]

KORBY GILBERTSON: I don't think so, no. But I've seen something like that, that had more, like a long chart. [LB830]

SENATOR LATHROP: Yeah. As I look through it, every state has it, but it's just like our current recreational liability. As soon as you charge a fee, the protections are gone. [LB830]

KORBY GILBERTSON: Yeah. There is...well, except for in Kansas that's not the case, if you're registered, and I think in others it depended. It could either be, for lack of a better word, a sliding scale. It kind of depended on how much you charged. I think that the folks that charged \$500 for a seat in a hunting blind probably are going to have a little harder time getting cheap insurance. [LB830]

SENATOR LATHROP: It strikes me that if we're just starting out in this industry and we're going to try to grow the tourism, if we gave a tax credit to people who are buying the coverage, there aren't going to be that many people who take advantage of the tax credit, right? So the fiscal note shouldn't be that big. [LB830]

KORBY GILBERTSON: No. [LB830]

SENATOR LATHROP: Okay. Thanks. [LB830]

KORBY GILBERTSON: And that is something that Kansas did do. [LB830]

SENATOR LATHROP: Okay. [LB830]

SENATOR ASHFORD: This is very interesting. I mean, it outlines sort of the same sort of work you did on... [LB830]

SENATOR LATHROP: The theme is inherent risks, but... [LB830]

SENATOR ASHFORD: Inherent risk and then... [LB830]

SENATOR LATHROP: The difficulty is, with inherent risks they're generally things that don't involve negligence in the first place. So if you're walking through a bean field and you trip over some stubble, that really isn't negligence to start with. [LB830]

KORBY GILBERTSON: No. [LB830]

SENATOR LATHROP: So the inherent risk isn't affording them a great deal of protection because most of those inherent risks wouldn't be negligence in the first place.

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[LB830]

SENATOR ASHFORD: Well, then would that then...if it's not negligence, it's inherent risk. Then the insurance, it wouldn't be a factor then really. I mean, there would be... [LB830]

SENATOR LATHROP: It shouldn't. [LB830]

SENATOR ASHFORD: Shouldn't be a factor. [LB830]

SENATOR LATHROP: Shouldn't result in that big of a savings, but. [LB830]

SENATOR ASHFORD: Thanks, Korby. [LB830]

KORBY GILBERTSON: You're welcome. [LB830]

SENATOR LATHROP: I greatly appreciate what you did. Thanks. [LB830]

SENATOR COASH: Thank you, Korby. [LB830]

KORBY GILBERTSON: You're welcome. [LB830]

SENATOR ASHFORD: It was good. Any other neutral testimony? Thank you. That closes... [LB830]

SENATOR COASH: I guess I'm closing. [LB830]

SENATOR ASHFORD: Oh, good. Do you want to close? [LB830]

SENATOR COASH: Thank you, Chairman and members of the committee. I think we took this issue a lot further than we did last time, and that was my goal at this hearing. Got a lot...we got more ideas on how to assist this industry, and I was happy to have those, and we're going to look into these. This is the future of economic development in our state. I don't know if I agree with the statement that this might overtake manufacturing, but this is number three and we don't treat it like number three. We treat it like it's number 20. And we need to raise the level of awareness how important this is as a driver for our state. So with that, I look forward to working with the committee on these things. [LB830]

SENATOR ASHFORD: (See also Exhibits 15 and 16.) Thanks, Colby. It was very interesting. Thank you. Okay. Now we are done. Close the hearing. [LB830]