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Agriculture Committee  
February 14, 2012

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[LB907 LB927 LB1123]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 14, 2012, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB927, LB907, and LB1123. Senators present: Tom Carlson, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Burke Harr; Russ Karpisek; Tyson Larson; and Steve Lathrop. Senators absent: None.

SENATOR CARLSON: Good afternoon and welcome to the February 14 Agriculture Committee hearing. I am Tom Carlson, Chair of the committee, State Senator from District 38. To my right is our research analyst Rick Leonard, and to my left, our committee clerk, Barb DeRiese. Our two pages for today are over here and they are Paige Schreiber from Columbus...wave, Paige; and Cicely Batie from Lexington. Give us a wave. Okay. Now, to Rick's right is Senator Norm Wallman, Vice Chair of the committee, from Cortland; to his right is Senator Lydia Brasch from Bancroft; and next to her will be Senator Burke Harr from Omaha; and then to my far right is Senator Dave Bloomfield from Hoskins. And over here to my left, soon will be Senator Russ Karpisek from Wilber; Senator Steve Lathrop from Omaha; and Senator Tyson Larson from O'Neill. And they may be presenting bills in other committees at this particular time, so they will be joining us, hopefully, rather soon. Now, on these bills this afternoon in these hearings, if you're planning on testifying, pick up the green sheet by the doors and fill those out before you testify. And please print so that we can read. Fill it out in its entirety and this helps with a more accurate public record. When it's your turn to testify, don't be bashful, but step right up and give your sign-in sheets to the page or the committee clerk before you begin testifying. If you have handouts, make sure you have 12 of them and give them to the clerk or the page. They will hand them out. And when you come up to testify, take the chair, speak clearly into the microphone, and tell us your name and then spell...spell your name for us. And that keeps the record accurate. If you don't wish to testify but would like your name entered into the official record as being present at the hearing, there's a nontestifying form at the doors that you can sign and this will be made an official part of the record of the hearing. Please turn off your cell phones or put them on vibrate, and keep the conversations to a minimum or else take them out in the hallway. We don't want any displays of support or opposition to a bill, vocal or otherwise, and we'd ask you to follow those rules. When you come up to testify, we're using the light system, and as you begin to speak, the green light will come on and that gives you four minutes. At the end of four minutes, the yellow light will come on and that means you have a minute left. When the red light comes on, please finish your thought. And so, I'd prefer you did that so I didn't have to stop you. But finish your thought and we'll be cooperative and if we feel like you need a little more time to finish what you've talked about, we'll try and give you that time. But please pay attention to the lights. Are there any questions before we begin our hearing? Senator Lathrop from Omaha has just joined us as a part of the committee. And so with that then, we'll open our hearing on LB927 authorizing cattle brands as official identification. Senator Loudon. And

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Senator Burke Harr is just joining us at this time. Welcome, Senator Louden. You're recognized to open.

SENATOR LOUDEN: Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is LeRoy Louden, and that's spelled L-o-u-d-e-n and I represent District 49. I've introduced LB927 to provide that cattle brands would be official identification for import as prescribed, a brand that shall be accepted as official identification of cattle for purposes of animal disease traceability. At first glance you may think that LB927 is a health inspection and disease traceability bill, but not entirely. The traceability will only be used if some sort of cattle disease outbreak occurs. This is not a day-to-day or everyday occurrence. What does occur on a daily basis is the importation of cattle into Nebraska to sale barns and feedlots. I will point out that LB927 is more of an economic development legislation. First, the sale barns. There are sale barns along the border between South Dakota and Nebraska, about five of the major ones. Gordon is one, imports, and these, of course, are rounded figures that I'll give you, but Gordon imports about 15,000 head of cattle a year from South Dakota. Valentine imports about 20,000 head of cattle from South Dakota through their sale barn. Rushville, 15,000 head; Crawford, from South Dakota and Wyoming both, gets about 15,000 head; and Bassett, around 12,000 head, which totals up somewhere around 87,000 head of cattle that come into these sale barns from South Dakota and some from Wyoming. Now, the auction barns receive about \$15 a head to sell these cattle. So in order to sell those 87,000 head of cattle, that's \$1,305,000, if you figure it up like that. But that's \$1.3 million of service money that comes into Nebraska from other states. Now this money is from out of state and it's a very good source of revenue for those local areas all up and down the north side of Nebraska. There will be peripheral benefits also with those cattle coming in. There's trucking, and there's jobs. And anybody that's been around an auction market knows all the extra jobs and these are usually jobs that local people use because they're on a part-time basis. There's horses to be used and all kinds of jobs like that come with a sale barn, also the sale of feed to the auction facilities and so forth. Now this is money that's collected from out-of-state businesses. We don't give them any incentives. We've been working at that for, I don't know how long around here, ever since the session started about the incentive we give, but here's \$1,300,000 that comes in and we don't give any incentives. The only incentive that goes with this is that you give them a good service for selling their cattle. That's what brings them in. They give them good service, auction their cattle off, and that's what we give in return for the \$1.3 million. Now that the cattle are sold, they have to be delivered to some facilities someplace. The distributions, usually they could be local pastures, they can be packing houses, and usually they go to feedlots. And the biggest number of cattle coming out of these auction barns actually will go to Nebraska feedlots. I'll point out that the feedlots, you want to remember, is a method to value-add to the products that we raise in Nebraska, such as the feed which is corn, soybeans, distillers grain, hay, and about any kind of vegetation that a cow will eat and grow on, is what's usually fed to cattle in Nebraska. Now, you talk about the number of cattle that move into Nebraska feedlots

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from other states that don't go through auction barns. If you look at the total number of cattle on feed here as of January 1, 2012, there was 2.55 million head of cattle on feed in Nebraska. Now, I don't know for sure how many of them would have come from out of state, but I'm sure a goodly portion of them because we usually have somewhere around between six and seven million head of cattle in Nebraska ourselves, but we also import these cattle that come in from other states into the feedlots because, as we all know, Nebraska has the corn, they have the facilities to feed them, they have the feedlot operations. If any of you travel around the state and seen some of the size of the feedlots, I think they talk about the one at Broken Bow, a 90,000 head capacity around there, and Alliance will have a 40,000 head capacity. About every town when you start going west where they grow grain will have a huge feedlot operations. And as you notice that, now the ethanol plants are growing up where the feedlots are because their by-product can be fed right out the back door. They just load it up and bring it out hot and wet and it's fed. So this is all the economy of Nebraska. What LB927 does is to use regulations that are already in place such as a mandatory brand inspection and a certificate of veterinary health inspection to allow cattle to be imported from a state with the same kind of mandatory brand inspections. A veterinary health inspection is already required to bring cattle into the state of Nebraska and for that matter, if you send them anyplace. You can't hardly move cattle across a state line unless you have a veterinary inspection with them. And that's been on for a few years, but this is something that nowadays is nearly mandatory. Another thing, LB927 is just about cattle. It doesn't involve poultry, swine, sheep, goats, horses, buffalo, just to name a few, and is only with states that have mandatory brand laws. LB927 will have a greater impact on economic development than it will on the health and traceability of cattle being shipped interstate. Traceability has been a simmering issue for nearly 15 years. I was involved with it before being elected to this office ten years ago and a solution wasn't reached then. We progressed to a point at one time that all farms and ranches had to be registered, even poultry, swine, sheep. Anybody that raised any kind of food animal, it had to be registered. And they found out that that wasn't acceptable when you started thinking about even a ranch out here, like on our ranch I suppose we have somewhere around 40 pastures. Well, come to find out, we had to register every one of those pastures because as we moved the cattle around through them. So that wasn't acceptable and they even tried to make that work by offering to give us a pair of vise grips if we would sign up and register our ranches, so. I never did get my vise grips. LB927 is a commonsense approach to a problem that can be achieved with rules that are in place. And as I point out in the bill, it reads, "To export or import cattle to or from a state that has a registered brand and mandatory brand inspection system, the cattle shall be officially identified and shall be accompanied by a certificate of veterinary inspection as required by section 54-788. A brand shall be accepted as official identification of cattle for purposes of this section and for purposes of animal disease traceability or the cattle may be identified for such purposes by any other identification method approved by the Department of Agriculture." Now, LB927 doesn't do away with anything else. And as I say, you'd note that the last sentence of that says, "or the cattle may be identified for

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such purposes by any other identification method approved by the Department of Agriculture." Now if we have cattle from some other states that don't have mandatory brand laws, then we have to have them put them little tags in their ears to identify those cattle with whatever they do. And this is what LB927 is all about. We don't have a problem with them requiring that tag to come in from states that don't have mandatory brand laws. What we're trying to get away from is putting these tags in ears that the cattle already have an identification mark on them. Same way when you go someplace with them, is you have to stop and you run 500 head of cattle through and put a tag in every one of them's ear, why that's a major deal as far as economic development. That's something that you have to take into consideration. Feedlots...or auction barns, if they were selling cattle someplace and they had to stop and put all of those tags in their ears in order to move those cattle out, that's just probably another day's work. You take somebody like Ogallala down there, they run 7,000 or 8,000 head of cattle through in a day, and if they had to start putting little tags in every one of them's ear, why, this gets to be something that's really an issue. And this is what LB927 is trying to work around. They already have a brand on them. If they've got a registered brand and a veterinary certificate, a veterinary health certificate, then they should be able to go on through and that should be sufficient to take those cattle most anyplace. With that, I'd be...also I might point out that when this bill was drafted they put "to export" in there and we're not...we shouldn't be talking about export. That I think has to be deleted and I think the committee has to delete that before the bill can go forwards out of the committee because we're talking about importing cattle, but exporting cattle, that would be what the states if they're going to, would have to decide that, that would govern that. So with that, I'd be willing to try and answer any questions. There will be people that will testify on this bill also. [LB927]

SENATOR CARLSON: Okay. Thank you, Senator Louden, for the introduction of LB927. Do we have questions of Senator Louden from the committee? Yes. And Senator Karpisek has joined us since we started, and Senator Larson from O'Neill to my far left has joined us. And so we're a full complement here. Senator Karpisek. [LB927]

SENATOR KARPISEK: Thank you, Senator Carlson. Thank you, Senator Louden. You talk about states that don't have branding. How would...would it work the same way in Nebraska where we have brand law and we don't? [LB927]

SENATOR LOUDEN: Don't have it, yeah, if they don't have a...well, if they have a registered...if that brand is registered in there and they have the health inspection, the ones in Nebraska I would presume would work in that part where we don't have a brand area, as you say. [LB927]

SENATOR KARPISEK: Yeah, so then you... [LB927]

SENATOR LOUDEN: But they have to be branded and have a registered brand on

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them for identification purposes. [LB927]

SENATOR KARPISEK: So then in the eastern part of the state, you'd still use the ear tag? [LB927]

SENATOR LOUDEN: If they're not branded, yeah, they would have to use an ear tag. [LB927]

SENATOR KARPISEK: Could people on the eastern side brand and use that? [LB927]

SENATOR LOUDEN: Well, I wouldn't want to second-guess some of the law people, but I would presume if that was a registered brand on there and they had a health certificate, I don't see any reason why they shouldn't because it's a Nebraska registered brand. [LB927]

SENATOR KARPISEK: Okay. Good. Thank you, Senator Louden. Thank you. [LB927]

SENATOR CARLSON: Any other questions? Senator Louden, I'm going to ask you because I'm keeping track here and I'm interested. You gave Gordon 15,000; Valentine, 20,000; Rushville, 15,000. What were Crawford and Bassett in numbers? [LB927]

SENATOR LOUDEN: Crawford, 15,000 and Bassett has about 12,000. And these are estimates as I talked to one or two of the auction barn managers that come in for there. About 87,000 head comes in from South Dakota, just South Dakota alone and some, of course, from Wyoming in the Crawford sale barn. And I didn't count those that...in Scottsbluff or anything because you have the Torrington sale barn 25 miles from Scottsbluff and there's, what cattle work back and forth there is probably a push. [LB927]

SENATOR CARLSON: Okay. Thank you. Any further questions? And, Senator Louden, will you be here to close? [LB927]

SENATOR LOUDEN: Yes, I will. [LB927]

SENATOR CARLSON: (Exhibit 1) Okay. Thank you. And before we start with our first testifier, I do have a letter of acceptance as a proponent from Roy Barta, the executive director of the Nebraska Livestock Markets Association, and he's also suggested a possible amendment to this bill. Now, we're ready for those of you that want to come forward and testify as proponents of the bill. Let's see a show of hands. How many proponents do we have that intend to testify? Okay. All right. Fine. Come on up. Okay, welcome, and we'll start the light system. [LB927]

DAVID WRIGHT: (Exhibit 2) Thank you, Senator Carlson. Thank you, Ag Committee.

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My name is David Wright, W-r-i-g-h-t, and I'm the current president of Independent Cattlemen of Nebraska. I would like to thank Senator Louden for bringing this bill forward, and I would like to reiterate what he's talking about on economic development. I happen to own a newspaper at home, so see, this is what I did the other night just for fun, you know. (Laugh) But if you turn to page 3, you'll see a USDA statistic that shows the number of cattle in the 14 states that do have registered brand inspections. And to build on what Senator Louden was talking about, you will see where it says, all cows to have calved...that would be just the cows. There's 1.8 million head of cows, but yet the state has 6.2 million. So if you count the cow and the one calf she has, there's another 2 million head of cattle. Where did they come from? The next page, page 4, shows the picture of the United States. And what that pictures is, is it shows those 14 states that have registered brand inspection systems in place. As you notice, you will notice that Nebraska is the only major feeding state within those states that have a registered brand inspection system. The next page shows Nebraska's...where the brand line is in Nebraska and the page after that shows my particular brand, and it shows that this is a state brand and that brand has a number that's associated with it. It is exclusively to the state of Nebraska for identification purposes. The next page then shows the responses that Ross Baker had gotten for me from the other states concerning this...the direction of this branding as identification. Then after that what I have here, is there are testimony from outside of the state of Nebraska. There's seven organizations, one tribe, and numerous individuals that are all stating that they would like Nebraska to take the leadership on this for economic purposes because they're willing to sell their cattle to Nebraska, if that...if it is lesser regulations in place than imposing a silver ear tag system that's being discussed. Since I own the newspaper...well, let me step back a second. I served eight years on Nebraska Beef Council and when LeRoy was talking about cattle coming in, the checkoff remits \$2.4 million back to states that have sold cattle here in the state, \$2.4 million. That represents one head. So that tells you there's 2.4 million head of cattle that come into this state from other states. Now as a main street owner as a business, we've all heard the Chamber of Commerce say every time a dollar hits the economy, it rolls over seven times. Can you imagine the economic impact, the potential that is there if those cattle in those states that already have a system in place, a tried and true system, since we've been having cattle domesticated, brand is how we've identified them, those states have done this for 100 and 200 years. The economic potential that will come to Nebraska, as you see it, looks like a funnel system the way that's set up. You will find testimony in there from producers in Washington State, last...a year ago, Chris Abbott, myself, and Mike O'Neill, who runs O'Neill Pack from Omaha, went out to Washington State to talk to them about building a packing plant, and Chris talked to them about marketing their own beef, and I talked to them about checkoff. And their concern out there is, there's only one major packer out there. And half of the kill in that packing plant is Canadian. So it forces those producers to send their cattle to either Nebraska or Kansas. And when you ask them if they had a choice, would you come to Nebraska, if your brands were honored and a health paper, over Kansas? They say, yes. So I guess that's the yellow light so that's my thoughts. I

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would be welcome to entertain any questions. [LB927]

SENATOR CARLSON: Okay. Yes, go ahead, Senator Lathrop. [LB927]

SENATOR LATHROP: I'm trying to understand this. I'm the guy from Omaha, one of the people from Omaha on the committee. Right now in the cattle industry you can brand a critter or put an ear tag in him, is that how it works? [LB927]

DAVID WRIGHT: Right now in the cattle industry, you don't have to do anything. You don't have to do anything. [LB927]

SENATOR LATHROP: Okay. I can read the bill, but I'm not sure what we achieve and it sounds like you're telling me if we honor brands in states that use brands instead of ear tags, and they come in with a health certificate, you think we'll have more cattle coming into Nebraska and that means people in Nebraska will be busier. [LB927]

DAVID WRIGHT: Right. It's more of a foresight. Several years ago when NAIS was coming down, Senator Dierks introduced a bill that said in Nebraska it shall be voluntary. Nebraska is the only state that got that bill passed that it will be voluntary in Nebraska. And Senator Dierks had the foresight to try and get ahead of NAIS. Mr. Louden's foresight here is, before USDA comes out with their regulations, let's try and get something in place so that we can ensure that that flow of cattle will keep coming to help economic development within the state. [LB927]

SENATOR LATHROP: And the point is, if we don't pass this, then what? Then people, they're afraid that we won't recognize their brands when they bring their cattle in? [LB927]

DAVID WRIGHT: No, what you... [LB927]

SENATOR LATHROP: You can really tell, hopefully, from my questions that I don't know much about this. [LB927]

DAVID WRIGHT: Right. Right. What you'll find out is that USDA has made mention that they do not want to accept the brand as a form of I.D. [LB927]

SENATOR LATHROP: Oh, okay. [LB927]

DAVID WRIGHT: Okay. Those producers...I attended the Wyoming Cattlemen's Convention, and like I said, Washington, and those producers have lamented that they already have an I.D. system in place through the brands. And when it comes down...I also attended the KCA, Kansas Cattlemen's Association in Kansas, and I asked them the same question. Are they going to enforce the silver tags or brands? And they

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informed me that they will enforce silver tags. So if that's the case, now those producers out in those 14 brand states, they have a choice. This law will provide them with a choice. [LB927]

SENATOR LATHROP: Okay. Are we...this practice will be consistent with federal law? [LB927]

DAVID WRIGHT: The federal law has not been written yet. [LB927]

SENATOR LATHROP: Oh, and what you're saying is, we want to get out ahead of it and show that this works, so perhaps they won't pass this federal statute that would require the ear tags? [LB927]

DAVID WRIGHT: Exactly. In...you know, the states have rights according to the Tenth Amendment and those are our rights to do what we want. USDA has said that they will not interfere if we have agreements among other states. [LB927]

SENATOR LATHROP: Okay. So we're just getting out ahead of it? [LB927]

DAVID WRIGHT: Exactly. [LB927]

SENATOR LATHROP: And you think the time it takes to put ear tags in as opposed to a brand is a big enough inconvenience to the producer that they will choose Nebraska instead of someplace that requires ear tags? Do I have that...? [LB927]

DAVID WRIGHT: I do. I do, because the brands are...generally, the brands are implemented when the calves are born...or I shouldn't say when they're born. Thirty days after birth is when we have our roundups on them. If you put a silver metal tag in their ear at that time and not brand them, the chances of losing that tag are incredible. That brand does not go anywhere. It is with that animal for the rest of its life. So, therefore, if you wait and put that tag in at the time of sale, now you're running cattle through the chute one more time and you're stressing them and you're losing gain and in this market, we can't afford to lose gain. [LB927]

SENATOR LATHROP: Okay. And this is just a city kid's question. If you...let's say I sell my cattle and I'm raising them on grass out by Valentine and I sell them to Ken Schilz, and now they're his cattle, right? Do you change the brand or you just keep track of them? [LB927]

DAVID WRIGHT: That is up to Mr. Schilz. He can keep a bill of sale saying that I bought these cattle with this brand, or Mr. Schilz could rebrand those cattle with his brand. [LB927]

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SENATOR LATHROP: What if the cow...now he takes it to someplace to sell it again, which presumably is a packing plant or somebody like that at that point, and it's got a disease, but it's got my brand on it. So do they talk to him about the disease or they can trace that? [LB927]

DAVID WRIGHT: The first thing, if you think about it, if you're talking about if there's a carcass that has a disease, the first question is going to be is, where did that come from? And they're going to look back and see that animal came in today on this truck from this particular area. [LB927]

SENATOR LATHROP: So then they talk to Schilz and Schilz says, I bought that from Lathrop. Okay, I got it. Thank you. Learned something today. [LB927]

SENATOR CARLSON: I'm going to...before I open it up to the rest of the committee, I'm going to follow up a little bit on what Senator Lathrop had asked because you mentioned that Kansas is in the process of going to ear tags. Are they doing that or when does that occur? [LB927]

DAVID WRIGHT: When I was down at the Kansas convention, it would be Ross Baker's equivalent for Kansas was on a podium, and I had asked her, you know, if they would accept the brands. I asked if Nebraska had contacted them and she said it was a very short conversation. She said we don't accept brands and that was the end of the conversation. [LB927]

SENATOR CARLSON: What about Oklahoma? [LB927]

DAVID WRIGHT: I would guess because Oklahoma is not in the brand inspection area, those 14 states have a brand inspection system in place. I would presume those other states are looking at going toward silver tags. But to Senator Loudon's point, the bill does not exclude that. If Oklahoma wants to send cattle to Nebraska, the last sentence of the bill says, or whatever, Department of Agriculture. [LB927]

SENATOR CARLSON: Now, I realize that but I'm not so much after the possibility of Oklahoma sending cattle up here. But if Oklahoma has the ear tags and these other 14 states don't want them, then Nebraska would remain the better possibility. What about Texas? [LB927]

DAVID WRIGHT: Texas brand inspection is based on counties so it does not have a statewide brand inspection system so, therefore, one man from one county to the next county could have the same brand, but they would have a different brand inspection system. Where Nebraska...where all the rest of these are statewide inspection systems. [LB927]

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SENATOR CARLSON: Well, does Texas have the ear tag requirement? [LB927]

DAVID WRIGHT: Well, that hasn't happened yet, but if it does, it's just an assumption. [LB927]

SENATOR CARLSON: Okay. Okay. All right. Thank you. Other questions of the committee? Okay, seeing none, thank you for your testimony. [LB927]

DAVID WRIGHT: Thank you. [LB927]

SENATOR CARLSON: Next testifier, please. Step right up. And I would ask the next couple, come on up and sit in the front row so we're ready to go here. Welcome. [LB927]

MICHAEL GEORGE: Good afternoon. My name is Michael George, G-e-o-r-g-e. I may not have quite the extravagant numbers that some of these guys have, but just my general view of why I feel this bill is good for the state of Nebraska and the cattle industry in general. I'm from Sutton, Nebraska. It's currently not in the brand inspection area but I can tell you that as far as traceability goes, I believe that giving producers options rather than potentially cornering them to one specific way to identify their cattle is going to be a far better way to successfully trace these animals if there would be a disease outbreak, rather than forcing them into a silver I.D. tag or whatever it may be. You know, the brand system right now has been sufficient as far as I.D.ing cattle for ownership for years and years, and I don't see why it would have to be any different. If a brand inspector can identify an animal to tell you who it belongs to, and if there was a disease outbreak, why couldn't they identify that brand, you know, tell you right where it came from? There's also some other things that, you know, Senator Loudon pointed to that this is going to...if the brand...if a guy would have to go strictly to the EID tag or the silver tag that they talked about, that's going to incur a lot of extra cost as far as handling facilities and labor, especially, in order to get that to work properly. And not only that, if a guy...you're going to end up having to fight with a lot of people to get them to comply to this. You know, it's just going to work a lot better if people could have different avenues in order to identify their cattle rather than just being, you know, having something forced down their throat, and this is what you have to do and this is the only way around it. I also agree with the fact, or the statements made, that this could be a big economic benefit to Nebraska. You know, if there's other states around that have a brand inspection system in place and they want to bring cattle to Nebraska, for example, like all the sale barns along the border, that's a heck of a lot of money coming into the state of Nebraska that, you know, otherwise may not be here if we're going to go strictly to an EID tag. And, you know, last but not least, there's just...there's a lot of history and the family heritage that goes along with branding cattle. You're not going to have to fight people to tell them to put their brand on their cattle. That means a lot to them. It's...it goes back years and years with their family and they're proud to do it. You

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know, if that's going to be a good way to let them comply with traceability standards that the USDA is going to, you know, eventually probably enforce, then I see that being a much better way. You know, like I said, don't rule out any other way that the USDA is going to, you know, agree with, but give these producers the option to identify their cattle the best way that fits to each particular operation. You know, certain guys in certain areas of the state, a brand works much, much better for them because they don't have a big facility and enough labor to run a whole several thousand cattle through a chute and put a tag in their ear. You know, other parts of the state, it may be more feasible for them to put an I.D. tag in their ear because maybe they just have a few cattle and they're just in their own, you know, yard or operation. Well, that's fine, but I think, you know, let's make...let these guys...let's let these guys choose the best way to fit their operation and still be compliant and make everybody happy. [LB927]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of the committee? Senator Brasch. [LB927]

SENATOR BRASCH: Thank you, Chairman, and thank you, Mr. George, for coming here to testify today. I'm curious on ear tags. Are they...you know, I know they come in different colors and things. We've had cattle and there's a number, or is it consecutive numbers? Is it just by lot or will it say, this is cattle number 113, 114, 115? Is it a way of identifying individual cattle? [LB927]

MICHAEL GEORGE: As of right now, like, for example, me not being in the brand inspection area, I ear tag my calves to match up with my cows just for my own identification purposes. My cows have the same number on their ear tag as their calf. That way, depending on where they're going to grass, you know, once they leave my homesite, you know, I got the right cows with the right calves. And then if they would get loose somewhere, you know, I've got a certain color and a certain way of identifying them tags where I can go and say, yeah, those are mine and then I can go get them rounded up. [LB927]

SENATOR BRASCH: But the number is the same per herd, not individual numbers for an individual cow? [LB927]

MICHAEL GEORGE: Yeah, I have individual numbers for individual... [LB927]

SENATOR BRASCH: Oh, you do. Okay. [LB927]

MICHAEL GEORGE: ...each cow. And if I'm correct, what's coming down...that what has been proposed is the silver tag that they're talking about from the USDA, that's also going to be an individual deal so you can tell exactly where each individual animal comes from. [LB927]

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SENATOR BRASCH: Over the lunch hour, I went and had a tour of a company called GeneSeek here based in Lincoln, Nebraska, but they do identification for diseases internationally and they had a table with ear tags where...from the ear tag they're able to take the DNA, and look for certain traits and diseases in animals. So I didn't know if that would be a benefit for you, you know, a cattleman, to be able to take that ear tag and send it in somewhere and have them identify where...it would be hard with a brand that's right there. [LB927]

MICHAEL GEORGE: As far as that goes with a brand, and as I pointed out before, each brand, you wouldn't have to like remove the brand from the animal in order to send it in to get, you know, any kind of information from where that animal came from. It comes along with a number that is specific to that state and to that brand. So if you have a brand inspector, he could find out with a number where that brand came from, and you would know exactly where that animal originated, you know. [LB927]

SENATOR BRASCH: And it wasn't just by...I was also able to take a look at nose swabs from swine this afternoon and, I mean, they have different ways of checking for disease, but I was curious if that would be a benefit to work with an ear tag over a brand when it came to identifying animal... [LB927]

MICHAEL GEORGE: I don't believe it would be. I think, it...you know, that's why I say certain operations maybe the ear tag would work better. On other operations I believe a brand is a better idea, but I think it's important to give these producers the freedom and flexibility to identify their animals whatever way it works best for them, you know. [LB927]

SENATOR BRASCH: You're very helpful. Thank you so much. [LB927]

SENATOR CARLSON: Okay. Any other questions? Mike, you're a young man. Is this your first time testifying in front of a committee? [LB927]

MICHAEL GEORGE: As you can tell, I'm slightly nervous. Yes, it is. (Laughter) [LB927]

SENATOR CARLSON: Well, you don't show it. You've done a good job. So thank you for testifying. Okay. [LB927]

MICHAEL GEORGE: Yes, sir. [LB927]

SENATOR CARLSON: That's it. Welcome. [LB927]

CHRIS ABBOTT: (Exhibit 3) I'll be the nervous one. (Laughter) Chris Abbott, A-b-b-o-t-t. I want to thank the Ag Committee for the opportunity to express my thoughts. I would also like to thank Senator Louden for introducing this bill, as well as Senator Carlson,

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Senator Dubas, Senator Harms, Senator Schilz, and Senator Wallman for cosigning the bill. This bill will keep the brand as an official means of ownership identification for livestock being imported into Nebraska from states that have a mandatory brand inspection system. Speaking as a fifth generation rancher, and by the way, my family has been ranching for those five generations in Cherry County, which is one of the largest cattle producing counties not only in Nebraska but in the country. And the brand has worked well through those generations as a means of ownership identification. With this successful history, it should be included as an existing means of animal disease traceback identification. Any new proposed systems of animal disease traceback have yet to be tested for the success of, or even implementation of, such a program. Nebraska is the only state within the 14 mandated brand inspection states to introduce a bill utilizing the brand as an official means of identification. If this bill should pass through legislation, the economic development boom that it would create in Nebraska from incoming livestock from these states would be enormous. One-third of the production cattle produced in the United States come from these states. Not only do Nebraska statutes regulate, but in- and out-of-state producers are aware that a certificate of veterinary inspection accompanies the official brand certificate for livestock coming into Nebraska. This only strengthens the past and current means by which animal disease traceability can be achieved. I was given permission to submit to you from our neighbor to the west, the Wyoming Livestock Board, comments on the proposed traceability rule for livestock moving interstate issued by the USDA, Animal and Plant Health Inspection Service. Their comments give us all a very basic understanding of the proposed rule and commonsense recommendations for implementing an animal disease traceback system. I strongly suggest everyone read these comments. By doing so, you will be able to make a very informed decision on LB927. In conclusion, the success of any disease traceability program should ultimately be in the hands of the livestock producers, not the states, tribal nations, or federal government. Thank you. [LB927]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of the committee? And you're not the only one. You came a long ways today and hope you got your wife a Valentine. (Laughter) [LB927]

CHRIS ABBOTT: I came to Lincoln. I sent her to Valentine on Valentine's Day. (Laughter) [LB927]

SENATOR CARLSON: Oh, okay. All right. Thank you for your testimony. Welcome. [LB927]

ALBERT DAVIS: Thank you. My name is Al Davis. I'm a rancher from Cherry County, just like Chris, 14 miles north of Hyannis. What I decided to do is bring a little show and tell for benefit of some of the people who don't know about tagging. And I want to talk a little bit about why we think this is an important bill. First of all, I think you understand

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that the law really isn't in place yet, and we're looking to sort of preempt what Washington has basically kind of told us they would prefer. They've also said that the states can arrange between the states as to how they want to I.D. cattle. So Washington has preferred these silver tags, and this is an example of one of those. Now, really there are only two permanent types of I.D. One is the brand, and one is the tattoo. When you give a cow a Bang's vaccination for brucellosis, they tattoo the inside of the ear. They clean the ear and then they put a tattoo in there, and they also put this tag in. You can see it's an orange tag and just exactly like the silver tag. When I picked this up from the vets today, they told me they wanted it to be closed because if it wasn't closed, it could be used somewhere and there would be no record of it. So the brucellosis recording system is very satisfactory and very good. When my calves are born...when my cows are...go through for the first time, they get a permanent tag. They've got their Bang's tag and then they have a permanent tag. And this is kind of an example of what those are like, but there will be an engraved number on that that stays with the cow. So then when that cow has her calf the next spring, I will take a magic marker and write on there so that tag matches the cow. And what I do is I put my brand on the top, the cow's number, and the date on the back. So that tag stays with the calf. Then in weaning that fall, we'll run them through the chute again. Invariably, we'll have lost a bunch of these kind of tags so we retag them again, but this time we don't know who the mother is, so we'll tag them with OLL1 and the date. The following year then we ship them to the feedlot. And I'm in a value-added program, which is a voluntary thing on my part, and so the first year I shipped them down to the feedlot, I put an EID in and there's an example of an EID. This is a readable identification, and then I also had my ranch tag with that, sheets of paper, both numbers on the tag...on the paper. Six months later by the time my animals were gone, I had about 2,000 head of calves in the feedlot, about 30 of them had lost both forms of identification. So they had to drop out of the program. In the fall when we preg check our cows, we go ahead and retag anybody that's lost their tag and usually what we'll do is we'll take this Bang's number and we'll write that down on a tag like this and that will be her new number. Well, there always, out of those 2,200 cows I've got, there's always 2 or 3 that have lost both of their tags over the course of that year. Now, the point of all this discussion is, this tagging discussion that's coming out of Washington is just unrealistic. The brand is a permanent form of I.D. It stays with the animal. Brand and health papers together are all you need. And if the whole purpose of the silver tag is disease traceability, you're going to be running calves through the lot to put these tags in. You've got death loss when those...you know, you're going to lose some animals going through, some weight loss. And I think, as Senator Loudon said, if you have cattle in a sale barn and maybe you've got two or three thousand of them that aren't tagged, it's going to take a couple of days to get those tagged. You're going to back up the sale barn. It doesn't have capacity, and so you're going to have death loss or weight loss. Animal disease control was designed for BSE, primarily. That's bovine spongiform encephalopathy. That's mad-cow disease. You know, that's pretty much gone by the wayside. Hoof-and-mouth disease is the big concern, but it's got an incubation period that is long enough and it's so contagious, any

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kind of I.D. isn't going to work. We have a good system right now. It works very well. We have economic development here. Other states are going to want to ship their cattle here. This makes the most sense. You know, I would say this about Washington. You know, it's full of bureaucrats. Bureaucrats love paperwork. That's what this is all about and it doesn't work on the ranch, it never has, and that's why we don't have the system today. And I have an article here and if you will bear with me, I'd like to read the first paragraph. I realize I'm coming out to the end of my term, but it's from the magazine, CALF News. It's by Will Verboven, contributing editor, and this is the lead paragraph. This comes out of Canada. Rob Meijer, the new president of Canada Beef, Inc., the global promotion agency for Canadian beef, recently jolted attendees at a cattle producers' meeting when he questioned the value of cattle traceability. None of his beef marketing clients were asking for it or cared about it. That caused an outburst of spontaneous applause from attendees. All of them indicated that traceability seems to have lost its way in Canada. American cattle producers might want to take note as they struggle toward national cattle I.D., which is a first step toward complete cattle and beef traceability, birth to plate, and a process loved only by government bureaucracies. Thank you. [LB927]

SENATOR CARLSON: Okay. Thank you, Mr. Davis, for your testimony and thanks for coming a long way today. Do we have questions? Yes, Senator Karpisek. [LB927]

SENATOR KARPISEK: Thank you, Senator Carlson. So right now this wouldn't do anything because they haven't come out with the rule yet. [LB927]

ALBERT DAVIS: Right. But what it does is, it says, you know, these people in Nebraska are close to their roots of the industry and they know what really works. You know, we don't want to do anything that's going to threaten the industry, the health of cattle or the industry, because that's our livelihood. But we know what works. [LB927]

SENATOR KARPISEK: What would happen if the USDA comes out with something different and then we're going this way, they're going that way? Is it...nothing has been hurt? [LB927]

ALBERT DAVIS: I think things can be changed but, you know, I think what we need to do is send Washington a message that this is really the most logical solution, and it's going to help our feedlots and our sale barns and our industry. [LB927]

SENATOR KARPISEK: One last question. Do you lose a lot of the orange tags? [LB927]

ALBERT DAVIS: We'll have two, three, four a year out of those 2,200 cows. I don't know how they come out. You know, they rub against a fence. [LB927]

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SENATOR KARPISEK: But that's what they're taught, it's the same type of...that the silver ones would be, right? [LB927]

ALBERT DAVIS: Would you like to actually look at these? [LB927]

SENATOR KARPISEK: No, I've seen them but I'm creating a record. [LB927]

ALBERT DAVIS Yeah. It's exactly the same. It's exactly the same. You take a crimper and seal it on that ear. [LB927]

SENATOR KARPISEK: So we're...I understand where you're going and I agree with you. But we're really not talking about the red hanging ones that you lose a lot or any of that? [LB927]

ALBERT DAVIS: No, I just brought those because I thought, you know, people might be confused about what kind of tags we're talking about. [LB927]

SENATOR KARPISEK: And I'm glad you did. Okay. Thank you. Thank you, Senator Carlson. [LB927]

ALBERT DAVIS: Thank you. [LB927]

SENATOR CARLSON: Any other questions of the committee? I'm going to ask you one question because the opposition will say that there are duplicate brands. And you've brought out the fact that these ear tags disappear and you've, out of 2,200 head that you handle annually, you've got a pretty good grasp of how many of those are lost. But what about the duplicate brands? [LB927]

ALBERT DAVIS: Well, I think you're going to have a document that travels along with those cattle wherever they come from, that mandatory brand certificate of inspection. You know, with that number of the brand owner on it, will go to the next owner. They're going to know who they got that from. So it's not like it's just a black hole. [LB927]

SENATOR CARLSON: Okay. All right. Thank you. Thank you for your testimony. [LB927]

ALBERT DAVIS: Thank you. [LB927]

SENATOR CARLSON: All right, next. How many more proponents do we have? Okay, do you want to come up to the front and get ready here? Okay, welcome. [LB927]

RICHARD SCHRUNK: My name is Richard Schrunk, I come from O'Neill, Nebraska, S-c-h-r-u-n-k. I didn't prepare nothing. Senator Carlson, I'm glad that you let me speak

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today and to the committee. I agree with what these guys have been talking about, our brand deal. It's a deal that's old. I mean it's been since the 1900s, guys. To let these cattle come in from these other states on a brand paper and a health certificate is what we have done for as long as I've been around the cattle business. These steel clips that they talk about, one thing I do manage livestock market in O'Neill along with my wife. One thing that's going to happen with these ear tags is they're going to give each producer out there a bucketful of these ear tags, and he's going to tag his calves whether it's at birth or if it's weaning or the day before he sells the calves, he's going to put these numbers in their ears. He's going to have a list of numbers from X, Y, Z to whatever it is, they're going to be his series. He brings them to my livestock market, I sell them, and they change ownership right then. These numbers are going to have to be read to change ownership to the next owner. It's going to cause me more work at the sale barn, it's going to be more paperwork. Today when cattle are sold, the brand paper, the invoice is your title to them cattle, whether they've come from Nebraska or whether them cattle have come to Wyoming to O'Neill, Nebraska, we can sell them on that Wyoming brand paper. They can be transferred to the guy over here in Iowa. Traceability, yeah, we got traceability with that brand. It may not be an overnight deal, but within two or three days, that brand could be traced back to that owner in Wyoming, that he shipped them to O'Neill to sell them, that we sold them cattle to this ole boy over here in Iowa. A couple, three days, we'll have that traced back. We had a disease, a TB outbreak in Rock County. Maybe you guys are familiar with it. You know how that was traced back? The first cow was found at Simples (phonetic) with a back tag from a sale barn. The second cow was traced back with a brand. And granted some of those old cows, they get four or five brands on them before they meet their maker, but them brand men, they can trace them cows back to their point of origin, where they started, where they was born, and trace them back through the years of ownership, the change of ownership. So I think the brand should be kept as part of our I.D. system, part of our animal disease traceback. I think it can be used to trace animal diseases back. Thank you. [LB927]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of the committee? Seeing none, thank you. [LB927]

RICHARD SCHRUNK: Thank you, guys. [LB927]

SENATOR CARLSON: Next testifier. [LB927]

DENNIS DERNER: My name is Dennis Derner, D-e-r-n-e-r, and I... [LB927]

SENATOR CARLSON: Spell that again. [LB927]

DENNIS DERNER: D-e-r-n-e-r. [LB927]

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SENATOR CARLSON: Thank you. [LB927]

DENNIS DERNER: And I just come to support kind of what everybody else has said. Our ranch has been in the family for 134 years and the brand has been our mainstay, you know, years ago. It's not quite as common as it used to be, but a lot of the ranches were identified by the brand rather than the name of the ranch itself. I mean, you all heard of the Spade, you know. You say the Spade Ranch and 90 percent of the people recognize the Spade Ranch, but they don't know who owned the Spade Ranch, but that's the way it is. And my question for Senator Brasch on DNA, we do DNA every head of livestock on our ranch, but we're seedstock producers so we have to for parentage. But it is very expensive and it's not practical for the commercial man to do. But the brand is, like I say, it's served our purpose, our family, for 134 years, and it's still serves as our identification. It...you know, it's kind of like McDonald's. You see a McDonald sign, the kids go wild. Well, we've got to stop there. Well, that's the way us ranchers feel like our brand. I mean, you see the brand and that's our identification. I guess that's all I'd have to say. Thank you. [LB927]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Seeing none, thank you for coming. Anyone else as a proponent? Welcome. [LB927]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and appear before you today as my organization's president and lobbyist. I have been...not as many cows as Al Davis, but I've been in the cattle business and I've had cows lose every single kind of tag you could possibly put in a cow, but I have never once, ever, in all the years we were in the cattle business ever had a critter lose a brand, ever. And so as you look at this issue from our perspective, USDA, in this whole animal I.D. arena, brought in ag players from around the country and promised them that if they could develop a consensus about how to go forward on the whole issue of animal I.D., that they would. And so that, including my national organization, we all had reps. We all got together, we hashed out an approach. And then USDA came back and changed the rules of the game and said, well, even though you guys have consensus on this, this isn't really what we want to do so we're not going to do that. And by doing that, they started a process now that has completely unraveled at the national level because of the push back of livestock producers. And so USDA muffed this kickoff on this issue. And so in response to the push back, USDA came back and said to the states, don't, you guys, okay, we get it, we understand that this is not popular. We have all this producer resistance so we're going to back up and start over and we're going to let you guys figure out what it is that you want to do and then when...you know, we're going to be flexible on this and we're going to try a different approach. I think that it's perfectly appropriate for the state of Nebraska to take USDA at their word because now what USDA is doing is once again saying one thing and then pulling back from what they said, so that behind the scene stuff is that USDA is kind of saying, well, you can do

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anything you want as long as it's what we want. And that's not really fair or appropriate. It's clear that in the livestock sector, most folks who use brands think that's a perfectly reasonable approach and I think there's a logical, rational basis for why they think that. And so I think it's appropriate for the state of Nebraska to say, in our case, this is not the only way, but it is one way, and it is an appropriate way that is the traditional way that can be used to identify and trace back livestock. And so I think that this is an opportunity for the state of Nebraska to provide some leadership. And I also think it's an opportunity for our state, based on our feedlot industry, to be a little bit more flexible and a little bit easier to do business with based on where the calves come from than some of our competing states. And if we do that, then I do think there will be a comparative economic advantage. And with that, I would thank Senator Loudon and the sponsors of this bill and encourage the committee to give favorable consideration to it. Thank you. [LB927]

SENATOR CARLSON: Okay. Thank you, John. Any questions from the committee? Seeing none, thank you. [LB927]

JOHN HANSEN: Thank you. [LB927]

SENATOR CARLSON: Are there any other proponents of LB927? All right. Now, we are ready to hear the opponents, so if we have opponents to this bill, please come forward. Welcome. [LB927]

GREG IBACH: (Exhibit 4) Thank you. Senator Carlson, members of the Ag Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h, and I appear today to offer comments in opposition to LB927. I will make my comments briefer than the letter that is being distributed and then make myself available for questions afterwards. And we have some concerns with this bill for some various reasons that are outlined below. First of all, I think that one of the responsibilities of the Department of Agriculture is that we're charged with protecting the health of the Nebraska livestock herd from domestic and foreign animal diseases. By statute we are to do this by employing the most efficient and practical means for prevention, suppression, control, and eradication of dangerous, infectious, contagious, or otherwise transmissible diseases among livestock. We use various tools to accomplish this expectation, including brands, through the rules and regulations process to achieve our statutory mandate. For generations, brands have served a functional role as legitimate indicators of ownership of livestock. In fact, as a producer myself, I use brands on my ranch. And in the absence of any other source of identification, brands provide the Nebraska Department of Agriculture with at least some direction when we are trying to track down the source of a disease in order to prevent further spread of it. I am concerned, however, that the mandate proposed in LB927 will tie the department's hands in determining the best mechanisms to prevent, suppress, control, and eradicate livestock diseases. The import regulations that are in effect now, depending on which disease we're concerned about preventing, suppressing,

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controlling, or eradicating on, make important designations between breeding classes of livestock and classes of livestock that would be feeder cattle, market cattle, or cattle for immediate slaughter. And I think this is an important designation that allows for cattle of certain age classes to come into the state right now with only a brand and a certificate of veterinary inspection, as many of the testifiers before me have attested to.

The...probably the three diseases that are of most concern to me as a beef producer and three diseases that I most often am contacted in my role as director at the department about are brucellosis, tuberculosis, and trichomoniasis. And while TB and brucellosis...brucellosis, the United States is considered to be free of brucellosis except for some certain areas around the greater Yellowstone area where cross-contamination from livestock comes. TB is becoming more prevalent, but trichomoniasis is a disease that probably poses the greatest threat to Nebraska's livestock herd at the present time and it's on the upsurge. In fact, Nebraska Cattlemen, ICON, Farm Bureau, and many others have approached the department about putting in regulations, which we have, that guard against trichomoniasis. And individual animal I.D. is an important tool to be able to allow us to safeguard against this disease. In closing, you know, I'm not sure, you know, what USDA will require. They have posted their regulations. There have been many comments made regarding their animal disease traceability program, and so we are waiting now to see what USDA does make as an expectation for us as a state. I...we believe that what USDA arrives at will be what we have to accept as a state, and I think many of the testifiers have admitted that we will probably have to fall under whatever USDA comes out with. And I do also want to note that as a rancher myself, I'm subject to the same regulations that the department puts in place. And so I always look to these regulations with an eye towards workability and, you know, how I would implement them on my own ranch. And I think that's an important consideration. And, you know, I share some of the same concerns with, you know, tag retention and difficulty in transmitting data that many of the testifiers have before. But I think that's also why we have an important designation in our law between breeding livestock. They're a part of Nebraska's permanent cattle herd or, you know, pretty much permanent cattle herd, and those animals that come into the state of Nebraska for feeding purposes or for slaughter purposes. And so I would like to thank you for the opportunity to testify. [LB927]

SENATOR CARLSON: Okay. Thank you. Any questions of Director Ibach? I have a question. Now, of course, the testifiers before you believe that the brand is adequate. What is it about the other system that is a better identification? [LB927]

GREG IBACH: I'm not... [LB927]

SENATOR CARLSON: Well, brand. I mean you use brands. [LB927]

GREG IBACH: As far as bringing cattle into the state. [LB927]

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SENATOR CARLSON: Yes. [LB927]

GREG IBACH: Brands are an effective, very effective at identifying groups of cattle and showing the ownership of those cattle based on a group. The same TC or 11 mill iron that I put on my cattle are on all of my cattle. It doesn't necessarily designate between, you know, one cow or another cow. And sometimes in disease traceability that designation between those two cows is very important, especially if the cow has originated from another state bringing in a disease like tuberculosis, where it would be very important for Nebraska as a state to be able to prove that cow came from another state. And so while, you know, in across United States brands may be used in each and every state, if it's a really nice brand, it's probably used in almost every state and maybe in every county in Texas. And so I think at times, it's very important to be able to prove that traceability away from Nebraska as well. [LB927]

SENATOR CARLSON: Now several of the testifiers before really feel like that is the best form of identification, brands. But they've stated, several of them, that if this is in place where brands are an accepted form of identification in the state of Nebraska through LB927, that whatever the federal government does will exempt this. I know you don't feel that way, but you did make a statement you felt that others had kind of agreed that you're going to have to do what the federal government says. So you don't...you believe that whatever the federal government comes up with, we're going to have to comply to regardless of what we do with LB927. [LB927]

GREG IBACH: Yes, we do believe that whatever the federal regulation is, we would not have the authority within the Department of Agriculture to supersede their regulation. [LB927]

SENATOR CARLSON: Okay. Any other questions? Yes, Senator Lathrop. [LB927]

SENATOR LATHROP: I do have one. I've heard that folks that have testified in support said that if they run the cattle through the chute to put ear tags on them before they bring them into Nebraska that they would have weight loss. Do these animals actually lose weight going through that process? Or is it a significant or measurable amount? [LB927]

GREG IBACH: Well, I think maybe what they were actually talking about more than if you were trying to run them through the chute to apply tags at the sale barn, maybe, right before they went through the sale ring where they're sold on weight that additional handling, additional stress would cause additional shrink. So, yes, I think that that would be, you know, that's a logical concern. You know, there is...you know, I think the other thing I'd like to say and it truly doesn't answer your question so excuse me if I'm taking a little bit of liberty here. [LB927]

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SENATOR LATHROP: That's okay. [LB927]

GREG IBACH: Is that there really isn't a perfect system of I.D. In a nation where we have the large amounts of cattle that we have, we have to rely on multiple forms of I.D. and we have to rely on being able to communicate with producers whenever we trace a disease as the department. And so, you know, while, you know, certain I.D.s serve certain purposes, you know, there isn't a perfect system. [LB927]

SENATOR LATHROP: The argument in support of this bill is that we're trying to get out ahead of a federal regulation. Do you think this bill is going to be effective in stopping the feds from doing what the proponents believe is inevitable or is coming? [LB927]

GREG IBACH: What I've heard them say, and maybe I've interpreted it incorrectly, is that we can try to send a message to the federal government about how we should...how...what rules they should put in place. And I think that many individuals and organizations have already done that through the comment period on their rules and regulations that the feds have put in place. So while it may be another, you know, another piece of testimony or another piece of evidence, I'm not sure that it carries any more weight than what many of these organizations have already submitted in their own comments directly to USDA. [LB927]

SENATOR LATHROP: If we do this before the feds require the tags, will it result in the importation into Nebraska of more cattle in the short term? [LB927]

GREG IBACH: I think the differentiation is the difference between feeder cattle and breeding animals. And right now under the current regulations that the state of Nebraska has in place, and even initially under what the proposed rules that USDA put out there, we would still be able to allow feeder cattle into our feedlots in many instances, in most instances, and cattle moving into immediate slaughter to still come into Nebraska with a brand and a certificate of vet inspection. It would be those animals that are breeding livestock that we treat differently that could become part of our permanent herd. [LB927]

SENATOR LATHROP: So in the...the answer is yes, there will be more animals coming in but it won't be every head... [LB927]

GREG IBACH: I don't think it changes the rules, so I think that the same amount of cattle that are coming in under a brand and certificate of vet inspection now will continue to come in under a brand and certificate of vet inspection. [LB927]

SENATOR LATHROP: Okay. And the fact that you hold the position that you hold gives a great deal of weight, I would think, to your position. Is there any harm in this bill, or is it just ineffective in sending a statement to the feds? In terms of trying to zero in on your

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opposition, is there any harm from this bill? [LB927]

GREG IBACH: Well, in the bill if the feds do not come through with a rule, if they abandon their rule, which they've done in the past, the bill would in...without the USDA regulation, would lower our current standards and our ability to regulate breeding cattle coming into the state of Nebraska. [LB927]

SENATOR LATHROP: And that's your opposition, regardless of what the feds do, that's the...so there is some harm in the bill regardless of what the feds do. [LB927]

GREG IBACH: If the feds don't come through, yes. [LB927]

SENATOR LATHROP: Okay. Good. I understand. [LB927]

SENATOR CARLSON: Okay. Thank you. Any other questions? Seeing none, thank you for your testimony. [LB927]

GREG IBACH: Thank you. [LB927]

SENATOR CARLSON: Any further testimony in opposition? Anyone wishing to testify in a neutral position? Are you neutral? Okay. Welcome. [LB927]

MICHAEL KELSEY: (Exhibit 5) Thank you, Senator Carlson. Happy Valentine's Day to the committee. Good afternoon. My name is Michael Kelsey, M-i-c-h-a-e-l K-e-l-s-e-y. I'm executive vice president of the Nebraska Cattlemen, here on behalf of the association testifying in a neutral position on this bill. I've given you my written testimony and I'll not go through that because there are some...there have been great points made on both sides, in our opinion, on this. Firmly we support as an association brand and the use of brand. We support it as an identification means. It's been told to you that it is one of the only permanent identifiers. That is absolutely correct, tattoo being the other. We don't view this issue, though, as being about whether brand is appropriate or not. This bill more is...goes straight to the heart of, quite frankly, you're the wrong audience. We need to be speaking to the federal government on this. We don't believe we can preempt federal authority. In other words, if the federal government, USDA proposes, and they will propose a final rule this summer according to what we found out this morning from USDA calling APHIS, they will propose their final rule early this summer. If they allow brand to be used as an official identification, which we hope, then this bill is not needed because it's an official identification. If they do not allow it as an official I.D., then we don't believe we, state law, can supersede federal law in this case. And so, then we would be in a position to where we would have to go back and either clean up our law, which we have had to do in the past which is very messy, on some other issues, not on this issue, but on other issues, puts us in a really bad situation where we have conflicting, never mind the fact that we're having to comply with federal law. So, in

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our opinion, all this issue comes down to is where the federal government, specifically USDA, is. And we love the idea of the concept of brand as an official I.D., but as I mentioned, we don't believe that's why we're here. We think the importance of this is whether or not federal law will kick into place. By the way, if...and I think Director Ibach, I believe, was the one who...and we would agree, if federal law does not come into play, then we currently have a situation where brand can be used, and is used currently in some cases, for import of cattle and used very effectively. And so, even in that scenario, we're doubtful that LB927 would help us in that sense. The department has been very responsive to the use of brand in agreements with other states to use it, especially where brand inspection is used in some of the western states. So again, our reason for being neutral on this is we view this as a very important issue, but until the federal government issues their final rule this summer, which we understand is coming this summer, we would think that this issue needs to be in that arena, not in this one. I'd be happy to answer any questions, Senator, if needed. [LB927]

SENATOR CARLSON: Okay. Thank you, Michael, for your testimony. Senator Bloomfield. [LB927]

SENATOR BLOOMFIELD: Thank you. Do you think if we go along with this bill, if we pass this bill, it would have any influence at all on the federal government's decision making? I realize you're getting out in the weeds, there, but... [LB927]

MICHAEL KELSEY: Sure. No, that's a great question, Senator, and I really appreciate that. And I would like to think it would. I really would because we, in our comments that we submitted to the federal government in the comment period for the proposed rule, we believe that brand can be used appropriately when you have an agreement, either a bilateral or a multilateral agreement between states. So I'd like to say, yes, but I really don't think so and here's why. Because according to what we found out this morning from APHIS, evidently the final rule is basically already in the pipe. And so the comments have been submitted, the final rule is all but being printed, if you will, and so USDA for all practical purposes has probably already made their decision. We hope that it includes brand. [LB927]

SENATOR BLOOMFIELD: You apparently don't have any idea what the decision was or you're just unable to share it with us at this time. [LB927]

MICHAEL KELSEY: Well, I am unable...well, no, I'm not unable to share. Well, I am unable to share because I have no idea and we pressed. And the individual would not budge, to his credit, I assume, but, good question, though. [LB927]

SENATOR BLOOMFIELD: Thank you. [LB927]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you for your testimony.

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[LB927]

MICHAEL KELSEY: Thank you, Senator. [LB927]

SENATOR CARLSON: Welcome. [LB927]

CRAIG HEAD: Good afternoon, Senator Carlson, members of the committee. My name is Craig Head, that's spelled C-r-a-i-g, and the last name is H-e-a-d. I'm the state director of government relations for the Nebraska Farm Bureau Federation, here today on behalf of the organization in a neutral capacity to LB927. I think what Senator Louden has done with LB927, as been alluded to earlier, is start the discussion about what we would want to see in a state program for animal identification if, in fact, the federal government moves forward with this rule and we are required to take steps here at the state level. We've had numerous conversations within our organization about what they would like to see in an animal identification program, if we have to implement that here at the state level. And last week our board of directors met to discuss LB927. At that point they took a position of being neutral on the bill because part of, I think what Senator Louden is trying to get at with the bill, we would support. But the way the bill is drafted raises a number of other questions that we think would need to be addressed. Obviously, the basic premise of what I think has been discussed today is the cattle brands should be recognized by the state as official form of identification. And our policy would agree with that concept, and we would be supportive of including brands as part of the state animal I.D. program if, in fact, the federal government provides us that flexibility here at the state level. So really, there's no question from our standpoint that brands should be included as a form of animal I.D. if we're required to do it at the state level. Where we have some issues with the bill is in really the timing of the issue, which has been alluded to a little bit earlier, in how the bill is drafted. I think it's been pointed out several times that the bill may be somewhat premature given that we could be looking at a final rule sometime in June or later this year we would have a rule in place, where if we took action this year, our law would go into effect, and we could be back here next year making changes again. So that's just a point of interest. The manner in the bill that's drafted also appears to mandate official I.D. here at the state level. The bill states, as it's drafted, that all cattle being imported or exported to or from a state with a brand inspection program shall be officially identified. Our member-adopted policy actually favors voluntary over mandatory animal identification programs. So our policy would be completely in conflict with the way the bill is drafted today in that part. I do appreciate Senator Louden's comments earlier. He mentioned that the bill should probably apply only to imports of cattle into the state of Nebraska, not exports of cattle. That was a point of concern in terms of the language that we would be putting in place new requirements on our livestock producers to export cattle out of the state, and then they would have to deal with other state's import requirements. So I appreciate Senator Louden's comments to address that. And then the final thing I would simply point out...I think it was alluded to a little bit by the Department of Ag, if there's going to be an

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animal identification program here in the state, our policy would favor that those animal identification requirements be applied only to breeding animals and not on slaughter animals that are crossing state lines. LB927 right now doesn't make any distinction between breeding and slaughter animals. So that would be another issue. I just would close by saying that we do fundamentally support the concept of including brands in the state I.D. program if we're required to do that. But some of these other pieces of the legislation would probably need to be cleaned up and we'd be interested in further conversation about that, so. That would conclude my testimony. Be glad to try to answer any questions you might have. [LB927]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of the committee? All right, seeing none, thank you. [LB927]

CRAIG HEAD: Yes, thank you. [LB927]

SENATOR CARLSON: Anyone else in the neutral position? Seeing none, Senator Louden, you're recognized to close. [LB927]

SENATOR LOUDEN: Thank you, Senator Carlson and members of the committee. As I would listen to some of the discussion here, I want to thank the testifiers both for and against it and also those in a neutral position that testified here today. We've had a very good discussion. I would, as I bring to mind, one of the first things that Senator Bloomfield mentioned about, do you think that what we do would make any difference with USDA. All I can point out is about, as I've said, I've been at this for over 15 years with this identification process, but somewhere along that line we were supposed to identify all of our pastures, in other words, our premises I.D. is what they called it then. And there was enough push back. And those states that pushed back, I think, if I remember correctly, was Nevada and Arizona and some of those, and they wouldn't go along with it. That's all, they refused. So that was when some of the other states kind of chimed in and USDA then had to back off of that premises identification. Nebraska was one of the few states back then that went ahead and bought into it. And I was a member of the Stockgrowers, and still am, or Nebraska Cattlemen, whatever they want to call themselves nowadays because I was around there before the Cattlemen were, but anyway, they bought into it and pushed forwards. And that was when we were offered vise grips and everything else for premises identification. So there can be, if we go ahead with this bill, there is a good chance that we're talking with 14 other states that have most of the cattle in the country, could probably have some input on how this is done. Now, some of the other issues, and it's been brought up about moving cattle into Nebraska now with just a health certificate, and you notice they said, feeder cattle. Now when you do that, you can bring cattle in with brucellosis, then have the B branded on the jaw. That's what you do with cattle that have brucellosis, they brand a B on the jaw and they can only go to slaughter. They can go in and be fed and go just into a feedlot and go slaughtered. Where your problem comes in is this guy from South Dakota that

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brings in maybe 150 head of calves and some are heifers and some are steers and everything, and somebody buys them, then they want to go back out to the country, as they say. Take them back out to pastures and you don't know if those heifers are going to turn into cows or whatever they are. And you can't bring them in under a feeder contract like that and take them back out to the country. That's...you got to...if they come in under feeders, then they've got to be slaughtered. So there are two different issues there, and I don't think anybody had brought that up on when you start talking about your feeder cattle or your other one. This bill, LB927, doesn't make a distinction about that. It uses that same system that when somebody wants to bring them in from South Dakota, they come in with their brand and their health certificate. Then when those cattle get in that sale barn, they can go anyplace in Nebraska or wherever they want to go. Then they can have to...whatever it takes to move them on to other states or something like that. But that's what the idea is. They can bring them in to Nebraska under this premise that they have a health inspection and they have a brand. Now when it comes to, I think the Director of Agriculture mentioned the trichomoniasis and tuberculosis and brucellosis. Now brucellosis, you can't hardly move cattle across the United States anyplace. If a state shows up with brucellosis, they're quarantined, you can't hardly get any cattle out of there. Wyoming has a big problem with it up around Yellowstone National Park because the buffalo come out with brucellosis and infect the cattle herds. And every once in a while they have whole county areas that are quarantined. They can't move anything out of there. So brucellosis is probably one of the most diseases that's watched for and tested for. Those have to be blood tested. In other words, if you wanted to bring cows into an area, then you would have to run all those cows through and bleed them, actually, if you thought they come from a brucellosis state. So there are other ways that govern some of those disease. Trichomoniasis, as far as I know, I go up in South Dakota and buy a herd of cows with trichomoniasis and bring them into Nebraska and there isn't anything that anybody can do about that except my neighbors would shoot me. And that's usually what decides that right now. We really don't have any laws against trichomoniasis because it hasn't...it's that hard to detect in the process, but they can be brought in. So that's something that your health inspection and you would hope your health inspectors could do that. We're not talking about that with what we have here now. One thing, and I think Al Davis with his tags showed it pretty good, but I was going to...Senator Brasch was talking about, you know, what the tags were from this one young gentleman there. And what I would try to do is draw a parallel on what the ear tags we're talking about that were put...would be having to put in these cattle in order to move them on to the next area or have them brought into our area. If Senator Brasch was going to travel to Europe or Canada or someplace, she would have her passport. Her passport would have her picture on it and probably her Social Security number or her address, they would have some other information, but they would be two things in there. Now when you got ready to go with your passport, it would be like...they would say, well, maybe we can't accept this passport because you don't have glasses on in this picture or whatever, you see. But I'll tell you what we're going to do now, instead of you having a

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passport, you would be expected...we would have you tattooed right across your forehead, 1717 18th Road, Bancroft, Nebraska, 680059. Now see, and that's what the ear tag does. And that's what we're talking about. There's no reason why your passport wouldn't work. It should be good enough to identify. There's no reason to have to put that tattoo across your forehead. And that's what we're talking about here. This little steel tag is, as one of the gentlemen said, you'll get a bucket full of them and you'll have to put them in; maybe they will be there, maybe they won't. But anyway this is what we're talking about. And I think it's a good workable solution. There some of the stuff as it was drafted, as you notice it was drafted late in the drafting session here, but with some amendments and tweaked up a little bit I think this would be a good bill. This is a start. USDA, everybody seems to worry about what they're going to think. Let them come about with what some of us in the industry and the other 14 states that are involved here, let them find out what we think. And with that, I'd be willing to answer any questions and I would thank you for your attention. [LB927]

SENATOR CARLSON: Okay, thank you, Senator Loudon. Any questions of Senator? Okay, hearing none, thank you for your closing and your presentation. With that we close the hearing on LB927. (See also Exhibit 6) And I'm going to turn this over to Vice Chair Senator Wallman and we're ready to move to LB907. Thank you for coming, and we'll let those of you who want to clear out of here. [LB927]

SENATOR WALLMAN: Chairman Carlson, we're ready to hear your bill on LB907. [LB907]

SENATOR CARLSON: Thank you, Senator Wallman and members of the Agriculture Committee. I am Tom Carlson, C-a-r-l-s-o-n, representing District 38 and I'm pleased to present LB907. This bill, for some of you that haven't been on the committee that long, is a possible resolution of what seems to be a perennial issue before the committee for the past decade. Nebraska is unique among all states by requiring manufacturers to verify performance characteristics of interest to agricultural tractor users. Under Nebraska's tractor permitting statutes currently, tractor models of 40 or more horsepower are required to be permitted in order to be offered for sale in Nebraska. We have had legislation introduced in virtually every legislative session that would either increase the horsepower threshold of tractor subject to the law or that would have eliminated the permitting requirement altogether. Now for LB907 there are three parts to this bill. First of all, the bill would change the threshold of tractors that are subject to a mandatory permit requirement. The bill would amend 2-2701 to apply the permit requirements to tractors of 100 or more horsepower. In other words, there would be no restriction on the sale of tractors of less than 100 horsepower. That's different. Secondly, the bill would amend 77-2704.36 to confine the availability of the sales tax exemption for purchases of agricultural machinery and equipment by excluding eligibility of current tractor models that have not met the permitting requirements. So if a tractor hasn't met the permitting requirements because the company chose not to have it

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permitted, not to have it tested, there would not be a sales tax exemption for agricultural use in the state of Nebraska. Note that the bill does not change, that the exemption is available on purchases of tractors and any other type of ag machinery only when used in commercial agriculture. Now, the Department of Revenue has defined ag machinery and equipment as tangible personal property used directly in cultivating or harvesting crops, in animal husbandry or the on-farm processing of agricultural products. In the case of tractors, the bill would confine the exemption to purchase of permitted tractors. If the tractor is permitted because the company has chosen to use the tractor testing lab to test the tractor, that makes it a permitted tractor and then used for agricultural purposes, it would receive the sales tax exemption. All eligible tractors above 100 horsepower would continue to be essentially automatically eligible for the sales tax exemption because it requires permitting. The bill does allow voluntary permitting for tractors under 100 horsepower so that agricultural purchasers of products in this range could claim the sales tax exemption. And that's pretty important part here to understand and to keep in mind as we move forward on this bill today. Finally, the bill places a two-year statute of limitations on a repurchase remedy that's available to purchasers of tractors that have not met the permitting requirements. So if a company chooses not to have its tractor permitted and sells that tractor in Nebraska, the purchaser has two years to bring the tractor back and request a full refund price because the tractor wasn't permitted. If it goes beyond two years and the purchaser wants a refund, then the...if it's beyond two years, the purchaser would have...continue to have any remedies available under the law. But under the first...in the first two years, on a nonpermitted tractor, they would have the privilege of bringing that tractor in for a full refund. The bill would benefit machinery dealers by removing existing constraints to competing in nonagricultural tractor markets for tractors of less than 100 horsepower. Currently, tractor models over 40 horsepower that are not permitted can't be sold in Nebraska. So we're moving up to 100; and now that opens up the array of tractors less than 100 horsepower that could be sold by dealers in Nebraska. It's reasonable to anticipate Nebraska dealers would be able to capture sales in this market that are currently being lost to dealers in other states. The fiscal note does not anticipate that the bill would result in a significant increase in sales tax collections; that's a matter of opinion. But the mechanics of the bill are such that the bill should have a positive impact on sales tax collections in Nebraska. LB907 should be...provide a very visible advantage to manufacturers who continue to meet the permitting requirements. Now, I think what is most unusual about LB907 is that we've had a very good cooperation between the tractor testing lab and the Iowa-Nebraska Equipment Dealers Association since last year. And unlike in prior years, there was an agreement, there's been an agreement. These two have worked together and they've come up with this bill on a joint basis and presented it to the committee. That's unusual; that's not happened before. So I would ask you to listen very carefully to the proponents of this bill. And I think that it deserves our attention and consideration. And with that I'd be happy to try and answer questions that you might have. [LB907]

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SENATOR WALLMAN: Any questions for Senator Carlson? [LB907]

SENATOR CARLSON: (Exhibit 1) Now I'm going to take my spot back here, but Senator Wallman is going to continue to preside over the hearing. I just want to be in a position where I can take some good notes. I do have for the record a letter of support for LB907 from the John Deere tractor company. [LB907]

SENATOR WALLMAN: Senator Lathrop. [LB907]

SENATOR LATHROP: Senator Carlson, do I understand that this is a bill that's kind of a solution that involved the persons that had an interest in the subject matter? So it's kind of a...it's not just a bill that is your idea, but a bill that's sort of the solution that you've arrived at by working with interested parties? [LB907]

SENATOR CARLSON: Yes, and not having been involved in putting together the bills in the past that are of this nature, I think this one has had a lot of cooperation and a lot of thought. And you know very well that if you have a bill that's presented and it needs some work and we need to get parties together, sometimes that's after the hearing. This work has been done before. [LB907]

SENATOR LATHROP: Okay. [LB907]

SENATOR CARLSON: And so I just ask you to pay attention to the proponents as they come forward, whether it's the tractor lab or the equipment dealers. [LB907]

SENATOR LATHROP: Good. Thank you. [LB907]

SENATOR WALLMAN: Thank you. [LB907]

SENATOR CARLSON: Thank you. [LB907]

SENATOR WALLMAN: We have proponents now. [LB907]

PAMELA HOGE: (Exhibit 2) My name is Pamela Hoge, P-a-m-e-l-a H-o-g-e. I'm here as president and co-owner of Wells Implement Incorporated in Plymouth. We're a third-generation ag equipment dealership that began in 1940. My presence today is in support of LB907 that proposes changing the tractor permitting process on tractors under 100 horsepower. I want to express my thanks to this committee for your support of this bill. I've been here several times in the past as we've tried to address issues involved in the current testing and permitting process, and this bill is outstanding in the way it does that without raising the questions that previously proposed horsepower changes have done. This bill will address two specific concerns that our dealership has with the current tractor testing and permitting procedure. First of all, changing the

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definition of an ag tractor based on the customer usage and not horsepower alone is a huge step in the right direction. With this change, we will be able to sell the lower horsepower models our manufacturer chooses not to test. In the past, sales were lost not only because of manufacturers' projected sales based on horsepower, but also because of the assumption that all tractors tested and permitted will be used for agricultural production. With the increase in the number of acreage owners and their need for equipment for property maintenance instead of crop production, the changes proposed by LB907 will close those gaps in our product offering. We will no longer have to turn customers away because we can't sell them what they want and need. And by the way, these are the customers who will be paying sales tax on the tractors they buy. The second noteworthy change this bill will make is to place a limit on the buyback portion of the law. As it now stands, without a time limit, if a farmer buys a nonpermitted tractor, he can use it for 10, 15, even 20 or more years and then ask for a full refund of the purchase price simply by saying it hadn't lived up to the promised performance. I don't know of any other product with that kind of protected status and if you can name one, please let me know what it is. The two-year time frame will be adequate for a purchaser to determine whether or not a tractor will do what he was promised it would do. You may be asking why a dealer would even sell a nonpermitted tractor. It's rarely, if ever, the intentional sale of a new tractor. Most often it's a situation where a dealer has to take a late model trade-in or lose a sale. It's not unusual for these tractors to have originated in out-of-state sales where the sale of these models is not subject to the testing permitting process as it is for Nebraska dealers. With manufacturers' current emphasis on market share, no dealer can afford to lose a sale because he's afraid to take a late model competitor's tractor as a trade-in. You make the deal and you do your very best to ensure that trade-in will be reconditioned to please the next customer. Since no one I've asked can tell me of any legal claims that have ever been taken to court because of the return provision in this law, the assumption must be that customers are being satisfied by their dealers in this regard, another reason that it's time to change the law. Again, I so appreciate the support of this committee for LB907, and I encourage you to advance it to General File where it can be considered for passage by the Legislature. [LB907]

SENATOR WALLMAN: Any questions for Ms. Hoge? I have one. [LB907]

PAMELA HOGE: Okay. [LB907]

SENATOR WALLMAN: On these smaller tractors, do you have any trouble with mechanical, you know, or any things, the warranty, as well as... [LB907]

PAMELA HOGE: You mean...yeah, warranty is the same. [LB907]

SENATOR WALLMAN: The bigger tractors? [LB907]

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PAMELA HOGE: Same on small tractors as the large one. [LB907]

SENATOR WALLMAN: Okay. [LB907]

PAMELA HOGE: The manufacturers stand behind them for both. [LB907]

SENATOR WALLMAN: Thank you. Anyone else? Thanks. Welcome. [LB907]

DAVE HARDIES: Good afternoon, Senators. My name is Dave Hardies, H-a-r-d-i-e-s. I'm the Kubota salesman at Omaha Tractor in Omaha, Nebraska. As you can tell, that's not an agricultural community. And the tractors that I'm primarily concerned with are affected by this law. And when I was informed about this bill going through, I read through it and my first comment was, it will never pass. It makes too much sense. And I've never known the Nebraska Legislature to make sense before. So we can set precedence here. The tractors I'm most concerned with are going into maintenance and acreage and stuff like that, so they fall under a category that Kubota calls utility tractors. And that's how we're going to be affected by it. We do sell a few agricultural tractors. And Kubota does test a few tractors every year as they bring out new models. In fact, I've ordered three models that they introduced to us in September that are going to be coming out this year that Kubota has assured me they will be putting into the test schedule this coming year, so. I've been at this for 42 years. So I've seen a lot of things come and go and this would make sense. [LB907]

SENATOR WALLMAN: Any questions? Senator Karpisek. [LB907]

SENATOR KARPISEK: Thank you, Senator Wallman. And thank you for testifying and changing my opinion on the bill. Kubota is mainly the problem behind this whole thing, correct? [LB907]

DAVE HARDIES: No. [LB907]

SENATOR KARPISEK: Who else is? [LB907]

DAVE HARDIES: Most of the manufacturers have tractors that aren't tested. Kubota is not a problem; Kubota does test tractors. [LB907]

SENATOR KARPISEK: Do they test them at the tractor test lab? [LB907]

DAVE HARDIES: They do. We have three current models over 100...over 85 horsepower they've tested in the last three years. [LB907]

SENATOR KARPISEK: Have they put up a lot of resistance to do that? [LB907]

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DAVE HARDIES: The resistance is that they've only got so much time and so much money for that for a fairly small market segment. They're looking at a worldwide segment. They are committed to test...well, they're going to be testing at least three models this coming year. Kubota is not a problem here. Kubota likes to think of themselves as a leader in the industry, in the segment that's being affected. [LB907]

SENATOR KARPISEK: Of course they would like to think of themselves as a leader in the industry and they like to try to flex their muscles at it. The whole idea behind the tractor test lab is to try to make a good product and a safe product. [LB907]

DAVE HARDIES: Um-hum. [LB907]

SENATOR KARPISEK: And I think the university has done a wonderful job of doing so. Now, you can argue that it has hurt, especially our border people. And I agree, because Ms. Hoge is one of mine. And we've tried to work on this. To come here and tell us that the Nebraska Legislature has never done anything commonsensewise, sir, is not a way to come in and make friends and influence people and then tell us that your company would like to...has been working with this, because that is just not the fact. [LB907]

DAVE HARDIES: Okay, may I restate my position? [LB907]

SENATOR KARPISEK: No, it's on record and it's done. [LB907]

DAVE HARDIES: I meant it to be a anecdote. [LB907]

SENATOR KARPISEK: I understand what you meant. And I meant what I said, too, about thanking you for coming and changing my mind on the bill. I don't think that this has been a work together situation with Kubota. I think it has been with the others and the university, but, sir, I do not feel that way about your company. Thank you. Thank you, Senator Wallman. [LB907]

SENATOR WALLMAN: Thank you, Senator Karpisek. Anybody else? Senator Bloomfield. [LB907]

SENATOR BLOOMFIELD: Thank you, Senator Wallman. Along with Kubota that doesn't test everything, I think Massey Ferguson does not. Who else are you aware that does not test everything? I know John Deere and Case IH does. [LB907]

DAVE HARDIES: I think you can look through most of the lineup...most of the manufacturers have some models that haven't been tested. A lot of...John Deere tests most of them that I'm aware of. If they don't test them right away, they try to get them in within the next few years' schedule. I think Case does most of them, but I believe that...because Case and New Holland are the same company, basically, and I know

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New Holland has some product that hasn't been tested and comes in. So most of the manufacturers have some that they don't test because they just don't feel there's enough market share in the state to do it. They got more priorities. And it's like Kubota, they want to get into the bigger tractor market and they're testing those tractors. [LB907]

SENATOR BLOOMFIELD: Okay, thank you. [LB907]

SENATOR WALLMAN: Thank you. Anyone else? Thank you, sir. Next testifier. Good afternoon. [LB907]

MARK OTHMER: (Exhibit 3) Good afternoon, Senator Wallman, senators of the Agriculture Committee. My name is Mark Othmer, M-a-r-k O-t-h-m-e-r, and I am the Nebraska field director for the Iowa-Nebraska Equipment Dealers Association. Nearly a year ago, Roger Hoy from the Nebraska Tractor Test Lab and I were asked by Senator Carlson to explore a new idea to find a resolution to a recurring problem that was coming before the Agriculture Committee, that issue being how to properly identify an agricultural tractor for purposes of permitting and testing for sale. After many meetings and discussions with Roger, and I decided that rather than he and I attempt to put wording together for this bill ourselves, we would be far better off, maybe trying to decide what our end result would want to be with the changes in the law, and then report those desires back to Senator Carlson and his legislative aide and allow the staff to try to put together proper wording for the bills. The two main issues that Roger and I wanted to try to address in the law was that tractors under 100 horsepower should not require a permit to be sold in the state of Nebraska if they're sold outside the realm of production agriculture. Of course the second issue that we felt needed addressed was the open-ended buy-back provision and that's why there's a 24-month limit put in the bill. And to be honest with you, LB907, I believe, addresses both of the issues to the equipment dealers' satisfaction. Hopefully it does to the Nebraska Tractor Test Lab also. There's been a lot of cooperation in the production in trying to put this bill together and the acceptance of this bill. And I owe a lot of thanks to a lot of different people for trying to work together. And I realize that maybe there is some disagreement on that issue, but I will tell you that from the dealers' standpoint, the dealer association and tractor test lab, I believe we have reestablished a really, really good relationship that had been almost destroyed in years past. But it's back on track to where it needs to be. With that, I hope you consider LB907 and advance it to the full Legislature. I'd be willing to answer any questions that anyone might have. [LB907]

SENATOR WALLMAN: Anybody have any questions? If not, thank you. [LB907]

CRAIG HEAD: Good afternoon, Senator Carlson and members of the committee. Again my name is Craig Head, that's C-r-a-i-g, last name is H-e-a-d. I'm the state director of government relations for Farm Bureau, here today on behalf of the organization's support of LB907. I will just quickly point out that over the years we've had an interest in

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this issue, primarily from the standpoint of wanting to make sure that any changes made would continue to protect our members who have an interest in buying tractors to make sure they're appropriately tested and also to make sure the viability and protection of the tractor testing lab at the University of Nebraska from a financial standpoint. It appears to us that LB907 would accomplish both of those. And given the numerous conversations that have taken place over the years, it appears this is a very good compromise. So with that we would offer our support. That would conclude my comments. [LB907]

SENATOR WALLMAN: Any questions for Craig? Thank you. [LB907]

CRAIG HEAD: Okay, thank you. [LB907]

SENATOR WALLMAN: Any other proponents? [LB907]

JOHN HANSEN: Vice Chairman Wallman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. As I considered which position I was going to be in on this bill, I could have been neutral-opposed, neutral-in favor, as I thought about all the different options. We are in qualified support of the concept of trying to find a way forward so that we protect the long-term financial viability of the tractor test lab and that we hopefully put to bed the conflict that has been there in the past on the part of the Nebraska-Iowa tractor dealers who have brought bill after bill after bill to try to find ways to defund the University of Nebraska Tractor Test Lab down through the years. This has been a battle year after year. It's consumed a good deal of my time in the past 22 years. And we have some reservations about whether or not this is the compromise that works, but we think it's close enough that...and we thank Chairman Carlson for his efforts to try to broker a compromise that works. We would like to continue to have the opportunity to follow up and make sure that it actually does what we think it's going to do. But if we differentiate between ag and nonag tractors and we're testing all of the ag tractors and we're creating an economic marketplace incentive for manufacturers to...in order to be competitive to get their tractors tested, that is important. And we have to rely on the financial statement that the tractor test lab put together. And if that is the limited downside and that fiscal statement and it allows us to put this issue to bed, then we're in support of that. But we also would hope that there's plenty of public assurances on the part of the folks who have been on the other side of this issue that are put into the record both in this hearing, but also on the floor as we go forward. And so I'm cautiously optimistic that maybe we've got to a middle ground solution that would work. And would thank the committee for their consideration. And we're going to continue to try to figure out just what in the world it is that Rick actually meant when he wrote that stuff in this bill. (Laugh) And with that, I would end my testimony and be glad to answer any questions. [LB907]

SENATOR WALLMAN: Any questions for John? Seeing none, thank you. [LB907]

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JOHN HANSEN: Thank you very much. And would just say one final thing which was that we did support the creation of the tractor test lab in 1919 and the importance that it provides. And that it is, as I travel around the country, one of the crown jewels, not only of the University of Nebraska, but the state of Nebraska, and it's served agriculture particularly well. Thank you. [LB907]

SENATOR WALLMAN: Any other testifiers in the proponents? Any opponents? Welcome. [LB907]

NED MEIER: Welcome. Happy Valentine's Day. [LB907]

SENATOR WALLMAN: Same to you. [LB907]

NED MEIER: I bought my wife flowers today so we're in good shape, she let me come today. [LB907]

SENATOR WALLMAN: Good for you. [LB907]

NED MEIER: My name is Ned Meier. I...name is...Meier is spelled M-e-i-e-r. I am very much opposed to this bill, and I would like to carry you through a little bit of history as to why the tractor test bill...Tractor Test Law was made. The primary purpose of the Nebraska Tractor Test Law was to protect customers from unwarranted claims by manufacturers so that they did not purchase something and then find out that it did not live up to expectations or to their specifications that they had said it would do. This was back in 1920. There were things at that time that took place that probably aren't present in today's environment. But the law...the purpose of it is still the same. It was not put in place to...for the benefit of manufacturers, although manufacturers have benefitted from this bill. A manufacturer that has the expertise, spends the research, does the design, puts together a better vehicle than any of his competitors can put together, has a platform in which he can test that tractor, show his advantages, and it is an unbiased...and it is an unbiased result. The customer can see what he has done and what he...why they should buy his product. If this platform is taken away, anybody can make the claim that the manufacturer that did spend the research money, did design the vehicle, and does have a superior, all they have to say is "me too." There is nothing at all that can be done to show that the "me too" doesn't live up to specifications. It was not designed to the benefit of dealers. Although dealers have benefitted from this, dealers have benefitted from this as well. A dealer that has...that sells a vehicle that has been tested can show their customers what this vehicle has done with respect to an official Nebraska test or the Nebraska law. He does not have to put up with the dealer down the road that has not had their product tested and hits...they say, "me too." Mine will do just as much. But I'm not willing to have it tested, and I'm not willing to bring it to the Nebraska Tractor Testing Lab to verify what my claims are. If I were a dealer, I would

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not sell a tractor from a manufacturer that refused to have it tested. If you want me to spend my money, my reputation, and my dealership on selling your product, the least that you can do is to go have it tested. The costs are not exorbitant, they are very reasonable. Cost has no issue in this thing, and neither does time, because that is not a big issue. The other one is the customer. That is the last one that is to benefit from that and that's what the original bill was stated for is to protect the customer. You take away this platform and you go from 40 to 100 horsepower in which this...the dealers...the customers no longer have this insurance, in my opinion, that is really trashing a big part of the Nebraska Tractor Test Law. I am opposed to it for that reason. I am...I do not support and I am disappointed in the university's position on this that they are willing to sell out the 40 to 100 horsepower customer in what they call a system of compromise. This is not a compromise bill. When you give them everything they want...we've been here last year on 40 to 100 horsepower. They wanted to raise it. Okay, all of a sudden we say, okay, we're all right with that. If that's your definition of compromise, I guess that's one that you'll have to deal with and that's the one that you'll have to make a decision on. But right now this bill is trashing an awfully big part of the Nebraska Tractor Test Law, and it is something that I am very much opposed to. [LB907]

SENATOR WALLMAN: Thank you. [LB907]

NED MEIER: Do you have any questions? [LB907]

SENATOR LATHROP: I do. [LB907]

SENATOR WALLMAN: Senator Lathrop. [LB907]

NED MEIER: Yes, sir. [LB907]

SENATOR LATHROP: Can you tell me what your background is? You gave us your name, but I don't know where you...what your stake is in this. [LB907]

NED MEIER: I was a student at the University of Nebraska, and I worked at the tractor testing lab for I think five or six years. I got my master's degree from the ag engineering department at the University of Nebraska, and I worked there for the time that I was in school. I was born and raised on a tractor test. I went... [LB907]

SENATOR LATHROP: And I'm guessing it's been a while since you were in school there. [LB907]

NED MEIER: Yes. (Laughter) [LB907]

SENATOR LATHROP: Okay. I wanted to find a delicate way to say that. So what do you do now? Is this just... [LB907]

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NED MEIER: I am a farmer. I am a farmer. [LB907]

SENATOR LATHROP: Okay. [LB907]

NED MEIER: I went from the tractor testing lab to a research engineer at Caterpillar. I...when I finished, I decided that I was going to get rich farming. And so I came back to the farm. All my friends at Caterpillar have now retired and call me up and wonder what I'm doing. And I'm still trying to make a living. And I came back to the farm and am presently farming at this time right now. [LB907]

SENATOR LATHROP: Okay. Tell me about those tractors that are between 40 and 100. Are those...is that...that's apparently...we're broadening the range...before if they were 40 or below, then you didn't test them. [LB907]

NED MEIER: Yes, that is correct. [LB907]

SENATOR LATHROP: And now we're raising that up to 100 horsepower or less. [LB907]

NED MEIER: The range of tractors in the 40 to 100 horsepower range are probably a utility tractor that is used on the farm. Hydraulics are a big part of the use of the horsepower and that horsepower range for loaders and for other things that are used on the farm. One of the things that the Nebraska tractor test facility does is to measure hydraulic horsepower. And that came about partly because when I first came back to the farm I bought a new tractor. And the dealer told me that it would lift this new planter that I was buying, because I bought them, one, because of the other. As it turned out, this tractor would not do what the dealer told me it would do. And I think part of that...I bellyached enough about the thing that they did include that in the Nebraska tractor test procedure which is a very important part of the use of agriculture tractors at this time. And it would also be useful information in the 40 to 100 horsepower range. [LB907]

SENATOR LATHROP: At the 40 to 100, these things...these pieces of equipment look like a regular farm tractor, but they're just sort of a miniature. [LB907]

NED MEIER: They're downscale, yes. [LB907]

SENATOR LATHROP: Okay. [LB907]

NED MEIER: It's kind of amazing that a 100 horsepower tractor, when I worked at the tractor testing lab, was a big dog. Right now it's kind of a tractor that is used for other things. And so I remember being at the lab in the evenings and I had a key to the lab so they let me use it to study in there, and when I got tired I'd go out and sit on one, gee, I

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hope I can have one of these some day. So the things have changed considerably in terms of horsepower range. [LB907]

SENATOR LATHROP: Okay. Just so that I have some idea, and this maybe is a poor comparison, but a skid loader, when we see these skid loaders working on the side of the road or businesses that use them to push snow or build retaining walls, things like that, how many horsepower do those have, if you know? [LB907]

NED MEIER: Well, I think it can range, probably, from the 40 to 100 because skid loaders come in all kinds of designs and capacities and some are very small bucket size. Some are pretty large. [LB907]

SENATOR LATHROP: But the 40 to 100 would be, essentially, a tractor that does about what a skid loader does? [LB907]

NED MEIER: I think the 100 would do more. [LB907]

SENATOR LATHROP: Okay. [LB907]

NED MEIER: The 40s probably are in that range. The one thing that 40 to 100 horsepower tractors are used for, if you will drive down the interstate, whenever you drive down the interstate, you will see a lot of maintenance tractors that mow the sides of roads and are used in the county, uses that type of a horsepower in that horsepower range. And those tractors when they bid those things, many times a government entity will require that they have a...what is the results from the Nebraska tractor test before they are allowed to bid on them. If you take that away from them, that part of their bidding process is a crapshoot. They don't have any idea what they're getting. And the one thing that you will get once this bill goes into effect, what was a 60 horsepower tractor PTO tested will automatically become a 100 horsepower tractor, because they will use engine horsepower to designate the size. It's already happening in the tractors that are larger than 100 horsepower. Several of the companies used engine horsepower rating as part of their numerical designation for a model, an 834/345 is a tractor that they say has 345 engine horsepower. The PTO horsepower of that tractor is very possibly in the 300 horsepower range. And you...that's what happens when you go into a dealership now, and that's what will happen. I was in the process this year of possibly buying a tractor and so I went to dealers outside my area. They know better than to do that to me in our area, because they know that I know what the difference is. But you go into another dealership and you ask what is the horsepower of this tractor? It's immediately the 345, which is the engine horsepower designation that corresponds with their model designation. [LB907]

SENATOR LATHROP: Okay. And one more question for you because, as I like to say, I'm the guy from the city and I'm just trying to learn the things that we're talking about.

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[LB907]

NED MEIER: I appreciate your inquiry. I'm glad to hear that. [LB907]

SENATOR LATHROP: So, the difference is that if I go into a dealership and I'm looking at tractors in this new range, what I base my decision off of will be reputation and it will be marketing, the stuff in the shiny brochure. And the tractor testing is sort of an objective way to say this is what this tractor can actually do. Is that the difference between...is that why we test these things in the first place so that somebody can make an informed decision that isn't based just on marketing and the shiny brochure from the manufacturer? [LB907]

NED MEIER: What the Tractor Testing Law does is it changes the information in the shiny brochure that you're going to get. And you get one when you try to make a decision with respect to how this piece of equipment fits into your needs because in that shiny brochure they cannot advertise what they cannot produce. That is the difference. [LB907]

SENATOR LATHROP: Okay, okay. [LB907]

NED MEIER: The shiny brochure is still going to be...there's probably a lot of people that go in and buy a piece of equipment on the shiny brochure that don't know anything about the Nebraska Tractor Testing Law. They are benefitting from the fact that the information in that shiny brochure, even though they don't know it or realize it, is controlled by what they have produced at the Tractor Testing Law and if it's not true, that will no longer be the case. [LB907]

SENATOR LATHROP: Okay. So I have a brother that lives on an acreage up in Washington County and he can buy...and I know he buys these little tractors, or he's got one, he can buy that in Nebraska and the brochure will have to reflect what happens at the Nebraska Testing Lab if it falls within the parameters. But if he goes over to Missouri Valley and buys it in Iowa, is the brochure going to be different? [LB907]

NED MEIER: No. The brochure for a John...oh, I'm going to use John Deere tractor as an example, John Deere...okay, I'm going to use it anyway, John Deere cannot and will not and does not advertise different horsepower in Nebraska than it would in Iowa because the first thing that would happen is the Iowa colleague will say, how come your tractor has 300 horsepower in Iowa, but it's only got 270 horsepower in Nebraska? [LB907]

SENATOR LATHROP: Okay. [LB907]

NED MEIER: This has essentially the effect of regulating advertising and manufacturers'

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claims over the entire United States, and for that matter, all over the world. [LB907]

SENATOR LATHROP: Okay. That's helpful just by way of giving me a little bit of background. Thank you. [LB907]

NED MEIER: Thank you. Any more questions? [LB907]

SENATOR WALLMAN: Senator Bloomfield. [LB907]

SENATOR BLOOMFIELD: Thank you. Thank you, Senator Wallman. Are you operating under the premise that what Senator Carlson's bill would do would prevent anybody from testing a tractor if they wanted to use it as a market advantage? In other words, there's nothing in this bill, as I understand it, that keeps John Deere from testing any tractor they want to test. [LB907]

NED MEIER: My understanding is, as a matter of fact, the grapevine has said that John Deere probably intends to test all their tractors the way they did before. My question then is, if they are going to do that, and if they put forth a design and the research and so forth to build that and have it tested and they claim that the horsepower rating of their tractor is such and can prove it, but the neighbors all they have to do is say, "me too," because they don't have to have it tested, they can say, well, mine does the same thing. But there's no way to prove it. They don't prove it. [LB907]

SENATOR BLOOMFIELD: Does that not in your mind become a marketing advantage for John Deere at that point? [LB907]

NED MEIER: I would say it would, yes. [LB907]

SENATOR BLOOMFIELD: Thank you. [LB907]

SENATOR WALLMAN: Senator Harr. [LB907]

SENATOR HARR: Thank you, Senator Wallman. And I'm the other senator from Nebraska...or from Omaha, so I'm a little slow too. [LB907]

NED MEIER: Okay. My son lives in Omaha, so we got a little in common. [LB907]

SENATOR HARR: Is this tractor testing for all tractors or just tractors used for agriculture? [LB907]

NED MEIER: It's tractors used for agriculture. By definition, a lot of the tractors that are used for industrial purposes are just agricultural tractors that have some modification on them and are painted yellow instead of green, red, or blue. So they're...it has the effect

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of also providing information for those, because if you went into a dealership, they would say, well, this is a tractor equivalent to this model over here and these are the results from that model. [LB907]

SENATOR HARR: Well, it sure seems like bad public policy to say we treat ag tractors different than others. If the reason we have the whole tractor lab is to say there is dishonesty within the industry and we're going to be the gold bearer, the standard bearer to determine who is what, where, when, and why and then we turn around and say but, but, whoa, whoa, only for ag, I don't understand the reasoning for that. And I guess I now have joined Senator Karpisek and have a problem with this bill if all we're doing is testing ag tractors and not all tractors. Could you address that issue? [LB907]

NED MEIER: Well, I understand what you're saying. The bill started out in 1920 because it was strictly ag. And it is passed on through up until the present time. A lot of the issues that were present back then, it isn't a situation now. Back then I think there was blatant dishonesty. I don't feel that there is blatant dishonesty in the situation right now. But there is a situation that if somebody...if one manufacturer does go to the expense of building a true-quality machine and he is willing to prove that, and then another one says he isn't willing...that manufacturer isn't willing to do it and he has the opportunity to just say, "me too," that is not a fair situation. [LB907]

SENATOR HARR: But isn't that what's happening? [LB907]

NED MEIER: No. [LB907]

SENATOR HARR: Industrial is saying, "me too" already? [LB907]

NED MEIER: Under the present law that's not true, because they have to have it tested. [LB907]

SENATOR HARR: But you just said we only test agriculture tractors, not industrial tractors. [LB907]

NED MEIER: We do not test industrial tractors, that's correct. [LB907]

SENATOR HARR: So they're already doing the "me tooisms." [LB907]

NED MEIER: Well, the construction people have a different use for them than we do in agriculture. A construction person may have a loader or a backhoe or some type of equipment on there that uses this particular tractor for hydraulic purposes. We go out and disk cornfields with the one we use. The one we use to disk cornfields is required to have a certain amount of horsepower to get the job done in a certain amount of time. And that is not necessarily the same use that a construction tractor using a similar

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model would do. [LB907]

SENATOR HARR: But you would agree with me, you didn't originally, the tractor test lab did not originally test hydraulics, it evolved. And I guess my question is... [LB907]

NED MEIER: Evolved, that is correct. [LB907]

SENATOR HARR: ...why don't we evolve to test industrial? [LB907]

NED MEIER: I would not be opposed to that. But I'm not proposing it. I would like to give you another example of things that evolved. When I was at the university, my master's degree was in sound. Testing sound...measuring the sound of operators. [LB907]

SENATOR HARR: They were loud then. [LB907]

NED MEIER: They were very loud then. They were atrocious then. And the very first thing that happened when Professor George Steinbruegge suggested that we test for sound was one of the engineers that was testing a tractor at that time came to me and said, you know, it wasn't until Nebraska Tractor said that they were going to measure sound that my engineering staff would allow me even to buy a sound meter. And this is the one thing that I think is so much different here than it is anyplace else, we do not in Nebraska Tractor Test have requirements. You do not have to produce. You do not have a minimum requirement, you don't have to have a maximum requirement. You can make any kind of statement that you want to with respect to your piece of equipment. The only way you can fail a Nebraska test is if you make a statement and you can't live up to it. And I guess it's like Joe Namath said after the Super Bowl, it ain't bragging if you can do it. [LB907]

SENATOR HARR: All right. Thank you. [LB907]

NED MEIER: You're welcome. [LB907]

SENATOR WALLMAN: Senator Bloomfield. [LB907]

SENATOR BLOOMFIELD: Thank you again. I'm going to go back a little bit to this "me tooism" and I'm going to use Kubota again because Kubota does not test everything they sell. [LB907]

NED MEIER: That's correct. [LB907]

SENATOR BLOOMFIELD: Is it fair, in your mind, that a Kubota dealer in South Sioux City, Nebraska, where there doesn't happen to be one, can't sell a model tractor that his neighboring dealer in Sioux City, Iowa, can say "me too" and sell that tractor? [LB907]

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NED MEIER: Well, that's an issue that has come up and that's one that has been brought before this committee quite a few times. I made a trip to several dealers on the borders. I went to one in Norfolk at the New Holland dealer there. [LB907]

SENATOR BLOOMFIELD: Mr. Dinkel. [LB907]

NED MEIER: They came here one time and brought that same issue up. And I went and I talked to those people and we came to a resolution on the thing that that wasn't that big a deal. When you want to buy a piece of equipment, you probably buy it where you're at because of the service and that type of thing. Probably a bigger issue of whether you go across the line or not is whether they got sales tax or not. [LB907]

SENATOR BLOOMFIELD: That might be true for Norfolk. Norfolk is 60 miles from any given border. South Sioux City, that's a half a mile. And you will go buy a 70 horsepower tractor in Iowa if you can't buy it in Nebraska. [LB907]

NED MEIER: Well, the thing that's happened in our local area with respect to dealerships, one dealer owns most...two or three dealers own several dealerships in the state of Nebraska and he may even own one in Iowa. Your point is not without some validity. I'll have to admit that, but in my opinion that is not enough of an issue to take the things that are really positive and all the benefits that have taken place with respect to Nebraska Tractor Testing Law and to discard them for the 40 to 100 horsepower range. [LB907]

SENATOR BLOOMFIELD: Thank you. [LB907]

NED MEIER: You're welcome. [LB907]

SENATOR WALLMAN: Any other questions? Thank you, Mr. Meier. [LB907]

NED MEIER: Thank you. [LB907]

SENATOR WALLMAN: Any other testifiers? Proponent? Neutral? [LB907]

ROGER HOY: Hi, my name is Roger Hoy, that's H-o-y, and I'm the director of the Tractor Test Lab. And I really came today with no prepared testimony whatever. I just thought, you know, what's been said has been said. And thought I would just answer questions, but as I've heard the testimony, I thought of something back to about the seventh grade in a civics class when we were taught that politics was the art of compromise. And so this bill before you, I don't think it has everything in it that the Nebraska Tractor Test Lab would like. I don't think it has everything in it that the dealers would like. But I think it's a pretty "dad-gum" good compromise here. And it's not going

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to hurt the Tractor Test Lab. And I think it's going to benefit the dealers and I think it's maybe moving forward. And on a more personal note, this is the third time I've testified on one of these things, and I'd just be tickled pink if this was the last time I had to do it. So we'll see what happens. I think this bill has a possibility. I guess just in hearing some of the other questions, I'd like to comment that a tractor by itself is essentially a useless piece of equipment. It's only when you put an implement on it that it becomes a machine that is useful to accomplish some task. And, you know, the subject about industrial versus agriculture, we could take the same model tractor and we could put a rotary cutter on the back and it could be mowing a highway median or we could put a front-end loader on it and it could be hauling feed for cattle or we could put a trailer behind it and it could be hauling corn in from harvest or maybe we could put a plow behind it or a planter and it could be seeding. So its use really varies and it's probably one of the most versatile pieces of equipment because of so many different implements that have been designed and developed for it. You know, the question came up about agriculture and I thought maybe I'd refresh everybody's memory that back in 1919 when the tractor law was passed, we probably didn't really know what a tractor was. And I think the first real attempt at that might have come in about 1956 when the law was modified to clearly exclude bulldozers and motor graders and construction equipment. And then it was modified again in 1967 when the minimum horsepower was raised, I think, to 20 horsepower to try to keep lawn and garden tractors out. And it was modified most recently I think in 1986 to, or '89, something like that, to go up to 40. Well, you know, back in those days in the '60s, you've heard testified that 100 horsepower was a big dog. And, you know, 150 horsepower is probably a big dog back in the 1970s. A big dog today is 600 horsepower. And I'd have to say we've seen probably a 60, 70 horsepower change in the upper end in my five and a half years working at the Tractor Test Lab. So with that I'll be quiet and answer any questions I could. [LB907]

SENATOR WALLMAN: Senator Harr. [LB907]

SENATOR HARR: Thank you, Senator Wallman. Thank you, Dr. Hoy, for coming in here. And I think you made my point in that a tractor...if it sounds like...you know, walks like a duck, talks...quacks like a duck, it's probably a duck. So a tractor is a tractor. It's all in how you use it. And I would argue, and maybe you can answer this to me, why is horsepower any less important for someone who uses a tractor to mow their acreage, someone who uses it for construction, or someone who uses it for ag purposes when the only difference is the color on the outside of the tractor? [LB907]

ROGER HOY: Well, I don't know that there would be a difference. I guess all I could say is that working with Mark Othmer and some others on this, one of our fundamental principles was that the Legislature had expressed intent to regulate farming tractors used in agriculture. So that's kind of the premise we went forward on. Now an acreage owner, maybe he needs that same form of protection, you know, it's possible. But we didn't consider that really. We thought about doing what we thought the Legislature had

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intended in the past which was to provide protection to the professional farmer. [LB907]

SENATOR HARR: Well, I guess the question is, was the purpose to protect the farmer or is the purpose to protect the citizens from less than truthful manufacturers? And if it's the latter, it would seem as though by pushing from 40 to 100 we've somewhat lost that protection for some of our citizens. I mean, let's be honest. If you want to talk about professionals and who it's their day-to-day living, farmers are going to pay a lot closer attention than someone who owns an acreage. And so they probably would be a little bit more of the naive purchaser. [LB907]

ROGER HOY: Well, that might be true if we're going to have a reduction in the number of tractors that are tested. Now there's one fiscal note that the university prepared that I think showed \$38,000 to the bad as a result of this. That was based on maybe not testing as many tractors. I guess I'd like to let the committee know that yesterday I was in Louisville, Kentucky, with one of our regular meetings with the tractor manufacturers, and Case and Agco and Deere all basically said this isn't going to change what we're doing. And they said that for a couple reasons. One, they don't want to possibly lose the sales tax exemption for farmers that might choose to use that. But they quoted actually as their first reason this thing about governmental bids, and their marketing departments have got virtually every governmental entity in the United States and some overseas trained to specify power according to the Nebraska tractor test. And, you know, those that have a good history of testing want to keep doing that and keep writing that in to lock out a lot of the foreign competition that don't test. It was particularly noteworthy to me, I shared a cab ride to the conference with a Kubota engineer and he had inquired of me, the last week or so, about some test slots for three tractors and two of them were under 100 horsepower. And I said, Drew, you need to know this is going on here. Does that change your thinking? And I said, I'm aware of LB907 and, no, it doesn't; we need those tractors tested because we don't want to miss those governmental bid opportunities elsewhere. [LB907]

SENATOR HARR: Then why are we even doing this? [LB907]

ROGER HOY: I think we're doing this...what this will allow is a number of manufacturers that do not test today, and most of these tractors are coming out of Korea or China or India and you see names like Farmtrac and Foton and Mahindra and whatever else, whose primary target market is not the professional farmer, but might be the acreage owner. It might be a very low value. I don't want to say it's a low quality, but low product value, not a lot of good bells and whistles, but, you know, it's good for 50 hours a year, or something they might use it. It would allow those dealers to sell those tractors in Nebraska. And particularly, I think, it would be benefit to the dealers that are around the borders of the state that see those tractors coming in from surrounding states to Nebraska acreage owners. [LB907]

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SENATOR HARR: And then I'll ask one last question and I'll let you...and you...do you believe, I'm not asking what the previous public policy was, but do you believe it's good public policy to protect those acreage owners, or do you believe good public policy is only to protect ag? [LB907]

ROGER HOY: Well, you're asking a deep question for an engineer here, sir, and especially an engineer that grew up a farmer and has worked for the farming industry and teaches farming techniques at the university. I'd like to really defer on that. I think, maybe, that's a better topic for this committee and the Legislature. We elected you guys for this, right? [LB907]

SENATOR HARR: Well, you elected us, but you're the expert in the field. [LB907]

ROGER HOY: If we could have some sort of unbiased proof of performance for all products sold, yeah, I think there would be some value to that, but then there's some cost to that, too. And there's a certain independence that Americans have that maybe would, you know, that might go counter to us in some cases. I think the Tractor Test Law is a little special. We started something when it was really needed in 1919 and it's continued to this day. And it's really hard to prove a negative, you know. If we took this away, would this quality decline? How would you know unless you did it? And by then it would be too late. But what we have done is we have created a yardstick, and it's even become a yardstick that manufacturers use to market with. In other words, they're complying with the law not just to comply with the law, but also to be able to go out and show we're best in class, and here's an objective third party that's not a Consumer Reports that has to sell ads and things like that that can't be unbiased. Now, I don't know if we're completely unbiased, I don't know if anybody ever could be, but we sure try for that. I don't think we'd be around if we didn't meet an acceptable standard. [LB907]

SENATOR HARR: Thank you very much, I appreciate it. [LB907]

SENATOR WALLMAN: Any other questions? [LB907]

SENATOR LATHROP: Yeah, I do. [LB907]

SENATOR WALLMAN: Senator Lathrop. [LB907]

SENATOR LATHROP: Can you tell me where the pressure...maybe that's not the right term, where is the movement to go from 40 to 100? Where's that come from? Is it the dealers or is it the Tractor Testing Lab that says we don't need to deal with the small stuff? [LB907]

ROGER HOY: Well, I think that's maybe more the dealers. To be frank, I looked at a 40

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horsepower tractor today and I'm not going to say that there aren't farms somewhere that might have one for a special purpose, but I really have a hard time looking at one of those with a straight face and saying this is predominantly a farm tractor. If you go up in horsepower, in 60, 80, 90 horsepower, you see some of those actually do have legitimate agricultural applications--a lot in the western part of the state, the hay and hay forage, they're very useful for that. You know, I think above 100 it's pretty obvious the primary purpose is. [LB907]

SENATOR LATHROP: So what we're doing is making a distinction as we go from 40 to 100, the distinction is we don't think that generally things below 100 have an ag purpose. [LB907]

ROGER HOY: No, I don't think that would be accurate. I think that probably things below 60 don't have a significant ag purpose, and that 60 to 100 band I think it's multiuse and there is some ag purpose to some of those units, but maybe not even a majority in some cases. But I think as you start to approach that 100 horsepower threshold, I mean, you'll see the state out here with 120 or 130 horsepower tractors mowing the roadside ditches, but most of those tractors of that model are on a farm someplace doing productive work. And you know, going down to about 100, I think you could say, you know, 80-plus percent are actually going to be in production ag. [LB907]

SENATOR LATHROP: Okay. [LB907]

ROGER HOY: It's graduated and there's not an obvious dividing line. [LB907]

SENATOR LATHROP: But the reason...then just tell me the reason we're going from 40 to 100 in your judgment? [LB907]

ROGER HOY: Well, I kind of threw that out to Mark. And I sort of picked it thinking if we went to 100, maybe I wouldn't be back here in the next 10 years or so before I retired with somebody saying you were too low the last time, let's bump it up again. [LB907]

SENATOR LATHROP: The reason, though, is that have to do with whether you shouldn't be busy working on 80 horsepower tractors, or that you just don't think they have that much prevalence in ag purpose? [LB907]

ROGER HOY: My thinking, in fact my estimates that I made in the fiscal note assumed all tractors of any horsepower or more will continue to be tested. I assumed that all Deere and Case tractors above 60 horsepower that are currently tested would continue to be tested and that Deere would probably continue to test 40 and up. And that's how I really sort of read the thing. Now the information I heard yesterday said I...they're probably going to continue testing anyway for other reasons, but that was my best feel for what would happen. [LB907]

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SENATOR LATHROP: Okay. Thank you. [LB907]

SENATOR WALLMAN: Yeah, thanks for coming. In the testing lab do you charge more for like 75 horsepower than a 350 or 400 horsepower? [LB907]

ROGER HOY: Yeah, I probably should have mentioned that. For a tractor of less than 100 horsepower today, we do not require a drawbar test. That was decided in 1998 that those tractors rarely engaged in drawbar draft loading applications. So the set cost for one of those tractors is \$11,000. When we go above 100 horsepower, we do do drawbar testing. The base fee is \$18,900 and then it can go up from there based on the actual number of test hours and the power of the tractor. But typically \$18,900 to \$22,000, somewhere in there is what they would be. [LB907]

SENATOR WALLMAN: Thank you. Any other questions? Thank you. [LB907]

ROGER HOY: Thank you. [LB907]

SENATOR WALLMAN: Anybody in opposition? Seeing none, Senator Carlson, would you like to close? [LB907]

SENATOR CARLSON: Thank you, Senator Wallman, and thank you to each one that came and testified today. I'm going to say something that I hate to have to say. And I'm going to make somebody real uncomfortable. Our second proponent made an unfortunate remark. And I'm going to give him the benefit of the doubt. I don't think that he really meant it to hurt as badly as it did in indicating that no Nebraska senator has any common sense. I resent that remark. And it put a damper on this hearing. And I've always thought that when you're trying to persuade somebody of something, you certainly get further ahead by being nice. That's a basic principle. But we as a committee have to rise above this and make decisions that are best for Nebraska. If somebody purchases a tractor that hasn't been tested, that should be a sign--beware of what you're buying. There is a value in tractor testing. And so we're not talking about taking away the testing procedure between 40 horsepower and 100 horsepower. We just aren't requiring it. We hope the results will be continued testing by existing manufacturers and will encourage others to test more. Now if a green or red company continues to permit their tractors because they test them so agriculture can get the sales tax exemption, then maybe the pink company who hasn't tested before might decide to test to permit that tractor. I think that's a possible result of this legislation. But this legislation allows more models for dealers to sell. Nebraska buyers won't have to go out of state to buy certain tractors. I think that companies will sell more if they have their tractors permitted because permitted tractors provide agricultural users with a sales tax advantage. That's a pretty strong pull. In my opinion, LB907 does not destroy the testing lab. It may help the lab. It will help the Nebraska economy. It will add tax revenue. And it

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is worth a try for a few years to see how effective it might be. So I thank you for listening and I'll try to answer any questions you might have. [LB907]

SENATOR WALLMAN: Yes, Senator Harr. [LB907]

SENATOR HARR: Thank you, Senator Wallman. Thank you, Senator Carlson. So I guess at the end of the day the only person really affected by this whole law is the acreage owner. [LB907]

SENATOR CARLSON: No, I don't think so. The acreage owner is no more affected than they are today. [LB907]

SENATOR HARR: Well, sure they are, because right now they're under the protection of the law, meaning that they don't sell equipment in Nebraska unless it has the protection of having it tested by the Tractor Test Lab. Now we're going to allow these cheap imports to come in, or wherever they are, and they're not going to know better because these are the people who don't know...probably don't know about the Tractor Test Lab to begin with, and they're not going to know about the protection. So at the end of the day, you're saying it's going to sell more, well, maybe that is true for the ag, but you can't at one point say it's going to allow more models to come in and then say additionally you'll sell more, the people who do tests will sell more. The fact of the matter is, they will sell less. And the ones that...that means the cheaper ones are going to be there and those aren't going to be tested, and I'm not sure that's what we want. I don't think that's good public policy. [LB907]

SENATOR CARLSON: Okay, and I'm not...I may not be totally following you, but if I am, I don't think I'm agreeing with you. Acreage owners don't tend to buy tractors that are above 40 horsepower. And those aren't tested today. [LB907]

SENATOR HARR: Not the testimony we heard today, though, that they don't buy above 40. [LB907]

SENATOR CARLSON: And it remains to be seen of those companies that are currently testing those tractors that are 40 and above will...whether or not they will continue to do that. I think they will, so the protection will be there. It gives another choice to that acreage owner whether they want to buy something less expensive, probably less expensive. [LB907]

SENATOR HARR: But at the end of the day, this legislation does not affect anyone but the acreage owner, because the farmer who gets the 60 horsepower is still going to buy the one that's tested because they want the sales tax exemption. The only person who doesn't...that currently pays sales tax, that would continue to pay sales tax would be the acreage owner. [LB907]

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SENATOR CARLSON: If the 60 horsepower tractor is tested, is permitted, and is purchased by somebody in agriculture, they're going to get the sales tax exemption. If it's purchased by the acreage owner, they aren't going to get the sales tax exemption, but they've bought the permitted tractor. [LB907]

SENATOR HARR: Okay. Well, let me walk you through this. Let's just take an 80 horsepower tractor. We'll say...we'll call one tested, one nontested. Okay? Tested, farmer gets tax break, tax exemption, correct? [LB907]

SENATOR CARLSON: That's been permitted, yes. [LB907]

SENATOR HARR: Okay. Acreage owner does not, correct? [LB907]

SENATOR CARLSON: Depends on what he purchases. [LB907]

SENATOR HARR: He purchases for nonagricultural purposes to mow his lawn. [LB907]

SENATOR CARLSON: But what is he purchasing? A tractor that's been permitted? [LB907]

SENATOR HARR: Yeah, that's what I said. We're under the assumption, too, a permitted tractor, 80 horsepower, that acreage owner would pay sales tax, correct? [LB907]

SENATOR CARLSON: Yes. [LB907]

SENATOR HARR: Okay. Now let's go to the nontested 80 horsepower. Farmer, because it's not tested, would pay sales tax on it, right? [LB907]

SENATOR CARLSON: Correct. [LB907]

SENATOR HARR: Acreage owner would pay sales tax on it, but he would anyway. [LB907]

SENATOR CARLSON: Correct. [LB907]

SENATOR HARR: So at the end of the day, the only person affected is the acreage owner and they lose the protection of the tractor lab. [LB907]

SENATOR CARLSON: Farmer is...it's no different for the farmer. He has a choice of buying the tractor that's been tested and getting a sales tax exemption or buying the 80 horsepower tractor that hasn't been tested, that's his choice. The acreage owner has

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the choice of buying a tractor that's been permitted and tested or buying one that hasn't. They both have the same choice. [LB907]

SENATOR HARR: But they're not going to. That's the point. I guess...we're going to disagree on this, but I think we have an unintended...I hate to use the word, but unintended consequence here in which we are choosing winners and losers and I'm very...I'll just say I'm very uncomfortable with this bill as it's written now. And I'll just leave it at that. And I'll let you respond. [LB907]

SENATOR CARLSON: Well, I would suggest that you and I need to have a talk about this, because I'm not agreeing with you and that's okay. I think we're looking at the same thing differently is all. [LB907]

SENATOR HARR: Thank you. [LB907]

SENATOR WALLMAN: Anybody else? I got a question, Senator. Senator Carlson, this farmer would still have to pay his property tax, right, on his tractor? [LB907]

SENATOR CARLSON: What we're talking about here doesn't have a thing to do with property tax. [LB907]

SENATOR WALLMAN: No, but he would still pay taxes on his tractor. [LB907]

SENATOR CARLSON: Yes. [LB907]

SENATOR WALLMAN: Thank you. [LB907]

SENATOR HARR: Acreage owner would too. [LB907]

SENATOR WALLMAN: Anybody else? Anybody else? [LB907]

SENATOR LATHROP: You know, I may just ask this question to make a point, and that is, and I haven't studied the Uniform Commercial Code. Senator Harr keeps amending it (laughter), and I don't know if it's going to be uniform when he gets done with all of his amendments. But it seems to me that we're doing the tractor because in the old days folks would misrepresent what a tractor could do. And now I think the Uniform Commercial Code pretty much requires that you be honest in your representations. And so to some extent, the safety net may be for these people that will not...for the 100 horsepower or less, they still have the rule of law which is the Uniform Commercial Code, the representations you make, and the fact that your product has to be in conformity to the representations made. So, I'm making a point to the guy who amends the Uniform Commercial Code regularly by...but that's a consideration as well, isn't it? [LB907]

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SENATOR CARLSON: I think it is. And I think you're correct that over time things have kind of changed in terms of being manufactured and probably used to be you could manufacture about anything you wanted to and sell it to whoever would buy it. [LB907]

SENATOR LATHROP: And say whatever you wanted to about it. [LB907]

SENATOR CARLSON: And it's not that way anymore. It's not that way at all. [LB907]

SENATOR LATHROP: Okay, good. Thanks. [LB907]

SENATOR WALLMAN: Senator Larson. [LB907]

SENATOR LARSON: I guess Senator Lathrop and Senator Harr have brought up interesting points. So, if...I'm not familiar with the Uniform Commercial Code either, I guess Senator Harr might be our defense here, but if it is...if that is the case and they can't misrepresent their tractor, you know, how much horsepower and whatnot, what use is the Tractor Testing Lab anyway if they have to follow the Uniform Commercial Code, if they can't lie about how much horsepower there is? I mean, what...I mean, what use is the Tractor Testing Lab if they have to follow all these other laws anyway and can't misrepresent their product? [LB907]

SENATOR CARLSON: This may not be the best parallel, it's the Good Housekeeping Seal. You go to the expense of testing what you have because you've got a lot of confidence in the product. And you're comfortable that you're going to pass the test. And you're going to let your buyers know that here we have a product, we're willing to test it. This cements the idea that we're telling the truth, it does what we've said it's going to do. And we think that's going to put us in a better position to sell more of these tractors. [LB907]

SENATOR LARSON: Does any other state have their own tractor testing or is Nebraska the only state that requires it? [LB907]

SENATOR CARLSON: I think that we are the only state that requires it for sale in the state. [LB907]

SENATOR LARSON: For sale in the state. Do you know how many of these tractor companies are testing their tractors and putting the "stamp of approval" as you call it, when they're selling out of state? I mean, is this really a stamp of approval or are they just going through the motions because they have to in the state of Nebraska? [LB907]

SENATOR CARLSON: Were you out there the day that we toured the facility? [LB907]

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SENATOR LARSON: No, I wasn't able to come. [LB907]

SENATOR CARLSON: Well, there's a lot of different colors out there. And if you're a major tractor manufacturer, you better have it tested or it's just not going to work for you. And you can say that the lab here holds a hammer over the manufacturers of bigger tractors. That may be true. It's good for Nebraska and it's good for the people in Nebraska that buy those tractors. [LB907]

SENATOR WALLMAN: Thank you, Senator. Thank you, Senator. Senator Bloomfield. [LB907]

SENATOR BLOOMFIELD: Just briefly, and again, it's more of a comment than a question. To Senator Harr with his concern on the small acreage owner, when they buy that 60 horsepower tractor to shred their backyard with, they're not going to put it to the use the guy that buys it to move manure or anything else with. If they want to buy a cheaper brand that isn't tested, I think they should have that right. [LB907]

SENATOR WALLMAN: Thank you, Senator Bloomfield. Anybody else? Thank you, Senator Carlson. [LB907]

SENATOR CARLSON: Okay, thank you. With that we close the hearing on LB907. And, Senator Council, I think we got to take a five-minute break. Are you okay with that? (See also Exhibit 4.) [LB907]

SENATOR COUNCIL: Oh, this is nice and warm, Senator Carlson. This is nice. That's cozy. Somebody's been there for awhile.

SENATOR CARLSON: Let's take a five-minute break.

BREAK

SENATOR CARLSON: Okay, we will now open the hearing on LB1123 and welcome, Senator Council, it's yours. [LB1123]

SENATOR COUNCIL: (Exhibit 1) Thank you very much, Chairman Carlson and members of the Agriculture Committee. First and foremost, it's good to be back with the Agriculture Committee. I kind of miss being on the Agriculture Committee, but I'm here today to introduce a bill that most of you heard an identical bill last year. You either heard it as a member initially of the Agriculture Committee, and then you heard it when the bill was advanced by the committee. And what I'm referring to is, last year this committee prioritized LB200, which provided funding to be utilized to stimulate the financing for food desert intervention programs. And again, most of you, with the exception of Senator Harr, are aware of what the definition of a food desert is. And a

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food desert is a designated geographic area where access to healthy foods is not readily accessible. And in Nebraska, according to USDA data, a significant percentage of the state is defined as falling within a food desert. There are very few exceptions in the state where you will not find a food desert. And the intent of LB200 last year was to increase Nebraskans' access to healthy, affordable food so as to improve their diets and health to support expanded economic opportunities in low-income and rural communities, and to provide expanded markets for Nebraska-grown farm products. And particularly with regard to improving diets and health, you were all presented with information last year that drew the connection between lack of access to healthy foods and the increasing incidents of diabetes, obesity, and cardiovascular diseases. For those of you who weren't here last year, this committee again, as I stated, prioritized LB200. It was advanced to General File and it was advanced to Final Reading and it was sent to the Governor for his signature. As you will recall, the Governor vetoed LB200, and in his veto message the Governor stated that while he supports making healthy foods more available, he believed that the financing that was provided in LB200 was duplicative, and the financing that was provided in LB200 was \$150,000 annually. And in support of the position, the Governor stated that there were 19 federal programs designed to support the development of sustainable projects and strategies to increase access to healthy, affordable foods and eliminate food deserts. And if the...one of the pages or someone could pass this out for me. This is the document that the Governor was referring to. And when you receive it, if you look at the top of it, it specifically states that there are 19 programs, but the error is that not all of those 19 programs are designed to address sustainable food projects or strategies to actually increase access to healthy and affordable foods. What you will see on that list are a variety of USDA, IRS, and other programs that can provide various types of assistance to individuals. If you look at the list, you will find on the list the SNAP program. And as you know, the SNAP program doesn't make...provide for the food itself. It provides individuals with the means to purchase the food. You will also see on that list the WIC program, Women, Infants and Children program. Again, while it provides those recipients with the means to purchase food, they still may find themselves located in the food desert and have WIC or SNAP benefits and still not be able to access healthy and affordable foods. And one of the programs that was referenced last year was a federal program that's also listed on that document that provides supplemental benefits to women and children who are under the WIC program. And last year was the first year, and the only year since that program was implemented in 1992, that Nebraska received a grant. And it received a \$75,000 grant last year that enabled a farmer's market to be established at the Charles Drew Health Center to be accessed by WIC recipients. And that program provides no less than an additional \$10 and no more than an additional \$30 a year to a WIC recipient. So the monies were used to provide for a farmer's market, which is precisely what LB1123 is designed to do is to provide a source of funds for organizations to access so that they can develop and offer such things as farmer's markets, expand community gardens, to expand your local corner convenience store so that they can provide healthy and affordable foods. In Douglas County they were able to

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access a small grant to do what is called the neighborhood corner store program where the neighborhood corner store didn't provide any fresh fruits or vegetables or lean meats, and with this grant money they were able to purchase the coolers so that they could have fresh dairy products and fresh meats. They were able to renovate their facility so that they could add produce counters, so that the individuals in those communities could have access to healthy and affordable foods. Now, if you look at the bulk of the programs that are listed on the document that I handed out to you, the intent of LB1123, as was LB200, was to ensure that there was access to healthy and affordable foods across the state of Nebraska. A significant number of the programs that are listed on that document apply only in rural areas, so metropolitan areas could not access any of those federal funds to carry out the purposes. And if you look at the express objective of many of those programs, they're principally rural economic development initiatives. And not to say that the development of a grocery store and an expansion of a grocery store would not fit within those categories, those were not the primary purposes for those federal programs. I wish to direct your attention to one of the programs listed as the New Markets Tax Credit Program as a means of providing funding for the kinds of programs that LB1123 is designed to assist. For those of you who have been reading your agendas, you will know that the Revenue Committee just considered a bill to provide for a New Markets Tax Credit Program in Nebraska. Nebraska is not now nor has it ever been a New Markets Tax Credit state. So while there are New Market Tax Credit programs available, at the time that LB200 was vetoed, there would have been no way for someone who wanted to start a farmer's market or expand a market for their locally produced goods to have access to New Market Tax Credits. So what we have here is a situation where, admittedly, there are some federal funds available, but those federal funds aren't all readily accessible. Several of them require a nonfederal match in order to access, and the express purpose of LB1123 was to provide leverage for those organizations to develop the kinds of programs that would eliminate food deserts in this state, so that if they could access a grant from the state that they could utilize as a match to leverage up to more federal dollars, that is a process that we in this state regularly and consistently encourage. In fact, for those of you who were here last year, I noted in the motion to override the Governor's veto that LB387 was passed last year, and LB387 was the Governor's business and innovation package. And if you look at every single one of those programs, every single one of those programs acknowledges the fact that there are federal funds available for the exact same purposes set forth in those development packages. And, in fact, many of those programs require and mandate that an applicant for state funds under that program must first make application for and receive federal funds. So there's no duplication of funding here. There are additional funding sources available. And the individuals who have been working on this across the state, those involved in public health, those involved in food production, urged me to reintroduce what was LB200 and what is now LB1123 because of the firm belief that we must as a state address the existence of food deserts and the number of food deserts in this state, and take reasonable measures and reasonable steps to try to ameliorate that problem

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as much as we can. LB1123, one of the criticisms I received last year from the advocates of food desert intervention programs was that the bill only requested \$150,000, and that there are so many programs and organizations out there who are poised and waiting to begin to move forward with some of their projects, that this bill provides for \$300,000 annually. I was sharing with someone who was asking about food deserts and LB1123, you'll recall last year, Senators Karpisek, Carlson, and Wallman, that there was a young man who testified in support of this bill who wants to develop an aquaponics program. He is still trying to seek the funding to develop the aquaponics program. But what did occur last year were a few organizations who got together with a small infusion of money and now we've got hydroponics programs where people are growing food with the hydroponic method. With the funds that are available under LB1123, these individuals could expand those programs, they could address the need for fresh and affordable food, and it can also be a significant economic development engine. And so with that, we did have some e-mails, and I saw that some of the e-mails were sent to committee members and I hope you have them, of people in support. We had someone here to testify in support. He has left his written testimony because he has to pick up his son. I know you've had a long day. I will answer any questions you may have. [LB1123]

SENATOR CARLSON: Thank you, Senator Council. Any questions from the committee? Senator Karpisek. [LB1123]

SENATOR KARPISEK: Thank you, Senator Carlson. Real quick, Senator Council, I know last year I was concerned about the big guy getting this money. Can you quickly just say how it gets doled out? [LB1123]

SENATOR COUNCIL: Right. And in fact, it's designed to be administered by the Rural Development Commission, and with the focus being on farmer's markets, expanding community gardens, and retrofitting small grocers and grocery stores. That it was never the intent of this bill, although it was modeled, and I advised you of that last year, Senator Karpisek, it was modeled after a Pennsylvania law where the Pennsylvania Legislature set \$30 million over a six-year period aside for grocery store development because Pennsylvania has a much greater problem than we have in Nebraska in terms of access to healthy and affordable foods in their inner cities. Pennsylvania has more large metropolitan areas. So it was not LB200 nor is LB1123 designed or intended to provide funding to large retailers. [LB1123]

SENATOR KARPISEK: Thank you, Senator Council. Thank you, Senator Carlson. [LB1123]

SENATOR CARLSON: Any other questions? Senator Council, on this page, the back page of what you handed out to us, what is the Healthy Urban Food Enterprise Development Center? Because that's one...you mentioned that most of it's rural, but

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here is an urban. [LB1123]

SENATOR COUNCIL: Well, yes, and that only applies to certain geographic areas in the United States. And if you look at that, Senator Carlson, that was as of 2010. Our last check is that that program was defunded. [LB1123]

SENATOR CARLSON: Okay. So it's not there? [LB1123]

SENATOR COUNCIL: Yes. [LB1123]

SENATOR CARLSON: (Exhibit 2) Okay. Any other questions? All right. Thank you, Senator Council. I do have a letter to read into the record, a letter of support from Brian Krannawitter, government relations director for the American Heart Association. Now, we are open for proponents. Positive testifiers, please come forward. Welcome. [LB1123]

MARY BALLUFF: (Exhibit 3) Good afternoon, Senators. I'm Mary Balluff, M-a-r-y B-a-l-l-u-f-f. I'm Mary Balluff from the Douglas County Health Department in Omaha. The Douglas County Health Department and the Board of Health are testifying today in support of LB1123. Over the past two years, the Douglas County Health Department has successfully carried out activities to improve the healthy food landscape, especially in communities with predominantly minority populations. The handout provided illustrates on maps how food deserts were determined in our community. Our work has centered around the Healthy Neighborhood Store and the Community Garden Network. The Healthy Neighborhood Store project began by meeting with community members to understand their shopping and food preparation habits, their nutrition knowledge, and the neighborhood store expectations. Eight existing stores used the community information as well as their own business knowledge to create a plan aimed at increasing healthy options in their stores. The department offered training about proper food handling, effective placement and promotion of healthy foods, and food storage tips to maximize shelf life. We learned that the monetary investment needed to change behaviors and perceptions of both store owners and clients was small. For example, store owner requests for store enhancements included such things as produce containers or shelf dividers with a per store cost of less than \$2,000. The stores focused more on rearranging the food layout and using the in-store promotion and providing client education. In the few months that these stores have been involved, they have seen increases in healthy food sales and customer support for healthier foods. Owners report that by prepackaging fruits and vegetables in grab-and-go containers resulted in fewer pounds of produce lost to spoilage. Customers liked the packaging as it represented a lower cost commitment and less guessing about what the actual expense would be. Store displays such as the banana tree stand improved produce appearance and quadrupled sales, while ordering smaller containers and pricing lower fat options of milk competitively resulted in a doubling of sales. Customers particularly liked the

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University of Nebraska Extension's Nutrition Education Program's one-on-one education and food demonstrations. Community members appreciated the changes in their stores and enjoyed the taste of these healthy options. Owners continue to demonstrate their commitment by voluntarily replacing a majority of their alcohol and tobacco signs with healthy food marketing materials. By working with existing businesses, Healthy Neighborhood Stores has made it easy for store owners to participate in the initiative, see immediate results, and be a part of a lasting, positive neighborhood change. The Community Garden Network helps existing gardens learn from each other and links interested citizens to gardens or helps them start their own gardens. Just this month, the network supported a seed-share program with over 250 gardeners in attendance. In summary, the activities as proposed in LB1123 are considered evidence-based practices that are occurring across the nation to bring producers, businesses, and consumers together to improve the availability and accessibility of healthy foods. These practices thereby improve health, especially as this relates to obesity and the resulting diseases of obesity. And we, therefore, support this bill. [LB1123]

SENATOR CARLSON: Okay. Thank you. Thank you for your testimony. Questions of the committee? Seeing none, thank you. Next testifier. [LB1123]

JEAN ANN FISCHER: (Exhibit 4) I'm Jean Ann Fischer, J-e-a-n A-n-n F-i-s-c-h-e-r. Good afternoon. Thank you, Senator Carlson and committee. I'm a registered dietician and extension educator at the University of Nebraska-Lincoln. I work with the Nutrition Education Program, which is an umbrella term for our Supplemental Nutrition Assistance Program for education and our Expanded Food and Nutrition Education Program, known as SNAP-Ed, and EFNEP. SNAP is designed to supplement an individual or a family food budget and the benefits the family receives is supposed to supplement a food budget and not to be their only food budget. However, most of the families we work with, those benefits are their only resource for food. This impacts their food purchasing power and as of January, approximately 10 percent of Nebraskans were receiving SNAP benefits. I'm here today to provide testimony on how food deserts affect our limited resource families and children in Nebraska. Food insecurity is defined as limited or uncertain access to nutritious, safe foods necessary to live a healthy lifestyle. Current statistics estimate that about 10 percent of Nebraskans are food insecure and another 3 percent are food insecure with hunger. In addition, another 20 percent are borderline food insecure and lack nutrient dense foods in their diets, which are the foods that provide substantial amounts of vitamins and minerals and protein. The map provided indicates the counties that are most at risk for food insecurity. And in our urban and rural areas we have two major food desert issues: One, that includes physical limitations, which includes the limited choices to purchase foods; and, two, the financial limitations that our clients have. Our Nutrition Education Program tries to address both of these issues with our families, especially the financial limitations, and we work with them on improving their diet quality and food resource management skills. Through entry and exit behavior, we have documented changes that they are able to

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make by participating in our program. And families enrolled in NEP have shared that one of the barriers to being successful is the lack of healthy food choices in their areas. By improving the food deserts in Nebraska, we can help these families be more successful in adopting those healthy, dietary behaviors that will decrease their potential for the development of chronic diseases. [LB1123]

SENATOR CARLSON: Thank you for your testimony. Any questions? Senator Bloomfield. [LB1123]

SENATOR BLOOMFIELD: Senator Carlson, thank you. Is this yours? [LB1123]

JEAN ANN FISCHER: Dr. Wanda Koszewski originally developed it. [LB1123]

SENATOR BLOOMFIELD: Okay, but you passed it out. [LB1123]

JEAN ANN FISCHER: Yes. [LB1123]

SENATOR BLOOMFIELD: Okay. I'm looking down through here at the different areas that are considered high poverty. Can you give us a dollar breakdown as maybe per family of four what that is, or...? [LB1123]

JEAN ANN FISCHER: The federal poverty guidelines are a family of four would be a monthly income of \$2421, so. [LB1123]

SENATOR BLOOMFIELD: Thank you. [LB1123]

JEAN ANN FISCHER: And the maps were developed from USDA ERS, the Economic Resource Service. So that's where the information on the maps are taken from. [LB1123]

SENATOR BLOOMFIELD: Thank you. [LB1123]

SENATOR CARLSON: Any other questions? Okay, seeing none, thank you. Next proponent. Welcome. [LB1123]

JOHN HANSEN: Mr. Chairman, members of the committee, again for the record, my name is John Hansen, H-a-n-s-e-n, and I'm the president of Nebraska Farmers Union. We supported this effort the last time around and we support it this time around. It accomplishes a lot of what we believe to be important public policy objectives. It is difficult for low-income people to have access to good quality food. My organization is in the food producing business; and we do a lot of different kinds of things to try to help relieve poverty, to support food banks, to participate in the farm crisis council and provide emergency services to farm and ranch families who are in financial crisis. And

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one of those primary needs is food assistance, and so as we think about on the need side there is, obviously, a lot of need even in the very heart of very productive agricultural communities. There's still a lot of food needs there. So all of the things we do on that side, this bill seems to be a positive to us in a lot of ways. And on the producers' side, it helps create the opportunity for new and diversified, emerging small niche markets, and try to shorten the distance between food producers and food consumers. And would tell you that I've been working on beginning farmer issues since 1983, I believe it was, when I was on Governor Bob Kerrey's beginning farmer committee, and we continue to look at all the different kinds of ways to get folks started in agriculture. We've just taken on a slightly...a variation of that in that we're cosponsoring a program with several Nebraska organizations to try to help work with returning Vets and try to get them involved in production agriculture and back in. And so anytime you're trying to get folks started in agriculture, we're always looking for all of the different kinds of ways you could possibly do that. And one of the ways that is getting the most traction these days is to have folks produce more intensive production, more direct marketing, smaller amounts of land, and try to get a higher net value on the products that they produce. So all of those kinds of things like farmer's markets, community, CSAs, all of those kinds of things are an important part of doing that. And if you do the math and you figure out what the price of land is these days, land in my community in Madison County, not very long ago, several years ago if you got \$2,500 an acre you thought that was a pretty good deal. We had dryland 80s south of my farm brought up to \$8,000 an acre last August, and then December irrigated ground sold for \$9,200 an acre. It's kind of hard to tell a beginning farmer that you ought to go out and buy a quarter of land and get started because a quarter of land is mighty hard to pay for at those levels. And so as you think about getting folks started, livestock and all of the direct marketing and value-added and niche markets and these kinds of things, are much more bite size and doable to get folks some experience and get their legs underneath them. And I spoke this last weekend to the Nebraska Sustainable Ag Society, and there's some very substantial operators within that group who have started out small and grown and expanded. And so we think that this is a good beginning farmer...entry farmer kind of program, but it also helps meet what we know is, based on our experience, a real need not only just in urban communities but also in rural communities. And we would encourage the committee to give this bill another go. Thank you very much. [LB1123]

SENATOR CARLSON: Okay. Thank you. Any questions of John? Seeing none, thank you. [LB1123]

JOHN HANSEN: Happy Valentine's Day. [LB1123]

SENATOR CARLSON: Yes, same to you. Any more proponents? Any opponents? And anyone in a neutral position? Senator Council, you're recognized to close. [LB1123]

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SENATOR COUNCIL: Thank you, Senator Carlson, and I will be brief. I want to thank all of those who appeared today to testify in support of LB1123, and I just wanted to make two quick points. Mr. Hansen referred to CSAs and I want to tell you that as a result of the advocacy around LB200, we have seen in north Omaha for the first time, a CSA. And what a CSA does is connect a local producer with...it's a direct marketing program. And what the consumer does is pay a set amount of money at the beginning of the growing season and then weekly receives--we call it a basket--of locally produced fruits, vegetables, whole grain breads, jams...it's an amazing program and now...so we're developing markets for some of our local producers. One of the programs on the list I gave you is the Senior Farmer's Market Nutrition Program, and it is one of the few programs that the state of Nebraska has been involved in and has received funding for in previous years. But I want to tell you what the program does. It's a program that provides low-income seniors with coupons that can be exchanged for eligible fruits, vegetables, honey, fresh-cut herbs, at farmer's markets, roadside stands, and community supported agriculture programs. If we don't have the farmer's markets, the roadside stands, and the community agriculture programs, we don't really reap the benefit of the Senior Farmer's Market Nutrition Program. Inherent in that program is that we must develop farmer's markets for these seniors to access and utilize the coupons. That's what LB1123 is designed to do is to provide financing so that we can see more development of farmer's markets and community agriculture programs. And I would urge the committee's favorable consideration of advancement of LB1123. [LB1123]

SENATOR CARLSON: Okay. Thank you, Senator Council. Any questions of the committee? Seeing none, thank you. [LB1123]

SENATOR COUNCIL: Thank you. [LB1123]

SENATOR CARLSON: And with that, we close the hearing on LB1123 and we close our hearing for the day. Thank you. (See also Exhibit 5) [LB1123]