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Transportation and Telecommunications Committee
January 24, 2012

[LB718 LB724 LB803 LB910]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, January 24, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB718, LB724, LB910, and LB803. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Loudon; and Scott Price. Senators absent: None.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer; I am Chair of the committee. I'm the senator representing the 43rd District here in the Nebraska Unicameral. At this time I would like to introduce the committee members that are present. Senator Scott Price who is from Bellevue is on my far right. Next we have Senator Galen Hadley from Kearney who is the Vice Chair of the committee. On my immediate right is Dusty Vaughan who is our legal counsel. On my immediate left is Jonna Perlinger, who is our committee clerk. Next we have Senator Annette Dubas from Fullerton; Senator LeRoy Loudon from Ellsworth. We are missing three members at this time; they're probably introducing bills in other committees. I would like to tell you that if we get up and we come and go, please don't be offended in any way. It's that time of year when we're introducing bills in other committees, as well as in this committee. Our pages this year are Alyssa Stokes from Omaha and Gera Carstenson from Lincoln. If you need anything, please feel free, when you come up to testify and the pages will be happy to help you out with that. We are listening to the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order that we keep the hearing moving. I would ask that you fill in the yellow sign-in sheet at the on-deck table to have ready to hand in when you come up to testify, and please bring that up to our committee clerk before you sit down at the table. Have that sign-in sheet filled out properly for us. We do have a computerized transcription program that we're using, so it's important that you follow the directions on that sheet. For the record, at the beginning of your testimony please state and spell your first and last name. Again, we need to have that for our records. I would ask that you keep your testimony concise and try not to repeat what someone else has covered. If you don't want to testify, but you do want to voice your support or your opposition to a bill, you can indicate so at the on-deck table; there is a sheet provided there for that purpose. But if you want to be included in the official hearing record, you do need to come forward, state your name, and state your position on the bill in order to be listed on the committee statement. If you would like to submit written testimony, that is fine and we will be happy to accept that written testimony. At this point I would ask that you please turn off your cell phones. This committee, we don't allow cell phones to be on and that includes texting. With that I will open the hearing on LB718. And Mr. Vaughan, would you introduce the bill please.

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DUSTY VAUGHAN: Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record my name is Dusty Vaughan spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB718 is a cleanup bill with regard to several errors found in the motor vehicle title and registration statutes. First, the bill corrects distribution of title fees that has been in error since 2005. When the Motor Vehicle Certificate of Title Act was recodified in 2005, two statutes regarding title fees were combined into one. Somewhere in the process critical language was dropped from the prior statute governing the fees collected by the DMV. This led to an inadvertent change in how titling fees were distributed with the entire fee being sent to the Motor Carrier Services Division Cash Fund. LB718 restores the distribution of title fees that existed prior to the 2005 recodification. The bill also amends a statutory provision that governs when prorated registration fees are collected for apportionable vehicles that are added to a Nebraska fleet. The current language makes it difficult to understand when fees accrue for a vehicle that was not transferred from another state. The bill makes it clear that prorated fees begin to accrue for the new owner when the prior registration expires regardless of whether the vehicle transfer is from within Nebraska or from another state. Finally, LB718 removes obsolete language that is contrary to the notation of liens since the DMV implemented the Electronic Lien and Title system in 2010. The ELT process removed the restrictions on notations of liens with regard to counties and the department so that it is no longer necessary to return to the county of title issuance when certain transactions occur. I do know that Director Neth from the DMV is here to testify in regard to this bill. So with that, Senator Fischer, I will end my testimony. [LB718]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. Would the first proponent for the bill step forward. And I would like to note for the record that we've been joined by Senator Charlie Janssen from Fremont. Good afternoon, Director. [LB718]

BEVERLY NETH: (Exhibit 1) Good afternoon, Chairwoman Fischer, members of the committee. I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles appearing today to offer testimony in support of LB718. LB718 is a bill relating to titling issues and the Motor Carrier Services Division of the Department of Motor Vehicles. In the department's 2011 audit, we uncovered an error that occurred during the 2005 recodification of the Certificate of Titling Act. LB276, passed in 2005, was the recodification bill. One of the principles of the recodification project was that the recodification act would contain no substantive changes. For those of you who were here, we had a trailing bill that had substantive changes as a part of that process. One portion of LB276 affected the statute governing titling fees collected by the counties and title fees collected by the Motor Carrier Services Division. In the process of combining the two sections, language was eliminated from the original provision that governs the distribution of Motor Carrier Services Division titling fees. The effect of the error was that the title fees normally distributed to the Department of Motor Vehicles Cash Fund were

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mistakenly directed to the Motor Carrier Services Division Cash Fund. LB718 reinstates the original distribution of titling fees. LB718 also clarifies the statute that defines the date of assessment for prorated registration vehicles under the International Registration Plan when a vehicle's previous registration has lapsed. The current language contains the phrase "if the vehicle was previously registered outside Nebraska." That's supposed to be the triggering language. This phrase created a problem in determining the registration dates for the vehicle that were transferred from within Nebraska. For example, a vehicle that is registered at the county level by a fleet owner then transferred into the IRP apportioned fleet. That vehicle has always been inside Nebraska; it just now has a new registration process associated with it. The bill clarifies that the prorated registration fees begin to accrue for the added vehicle whenever the vehicle's prior registration expired, whether or not it was transferred from within the state or outside of the state. LB718 also removes language from Nebraska Revised Statute 60-168 which deals with the restrictions on the issuance of a duplicate title, which affects both the DMV and the county treasurer. For example, a duplicate title for any previously issued by the DMV can be issued by a county treasurer and vice versa. All of the data relating to Nebraska titles rests within the same system and is available both to DMV titling clerks and to the county treasurers' titling clerks. The goal is to remove the artificially imposed statutory barriers to customer service. During the bill drafting, the Revisor's Office also discovered that the same language exists in other statutes as what's in Section 60-168, and they incorporated those provisions into LB718. Those would be motorboats, ATVs, all the types of things that are titled. Finally, LB718 modifies the surrender of a title for a mobile or manufactured home that was previously titled and is subsequently affixed to real estate. LB718 removes language from Nebraska Revised Statute 60-169 which deals with restrictions on the cancellation of a mobile home or manufactured home title. For example, often a lending institution will require that the manufactured home owner cancel the title for the mobile home because they have subsequently affixed it to real estate. So they want to do away with the title and the lien on that title, and they want it to show that the mortgage or deed of trust, or whatever it is, is specific to the real property and not have sort of a bifurcated or a possibility of confusion between the two ownership documents that exist. Cancellation involves...it requires the involvement of a county treasurer, a register of deeds, and the DMV. Today if a mobile home is attached to real property in Cherry County, for example, and the original title was issued, let's say, in Buffalo County, the Buffalo County treasurer must work with the Cherry County register of deeds to file the cancellation notice, calculate, and collect the proper fees--a process that requires multiple mailings between the two counties. Once that process is complete, the cancellation notice is sent to the DMV for cancellation of the certificate of title in the VTR record. LB718 would allow the Cherry County treasurer to process the cancellation request, collect the Buffalo County register of deed filing fees, and send the documents to Buffalo County and forward the notice to the DMV. Our goal with the modification of the language is to remove multiple mailings and reduce the processing time, thereby streamlining the process for both the county and for the customer. Senator Fischer, I'd

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be happy to answer any questions that the committee members may have at this time.
[LB718]

SENATOR FISCHER: Thank you, Director. Are there questions? Senator Price. [LB718]

SENATOR PRICE: Senator Fischer, thank you. Director Neth, thank you for coming down and testifying here. There's a lot of things going on in this bill, but the one thing that caught my eye, particularly when I went back and looked at the fiscal note, it looks like there is possibly about \$74,000 of fees that are collected each year under the program we're talking here? [LB718]

BEVERLY NETH: Titling fees. [LB718]

SENATOR PRICE: Right. [LB718]

BEVERLY NETH: That would be the titling fees in the Motor Carrier Services Division, yes. [LB718]

SENATOR PRICE: Okay. So we've had about six years of that. We've had a challenge in meeting...or we're going to bring it back into compliance. We're changing it. So for six years at \$74,000 a year, we've got \$420,000 that is in the wrong pot. [LB718]

BEVERLY NETH: Right. [LB718]

SENATOR PRICE: What are we doing about that? [LB718]

BEVERLY NETH: What we're doing about that is, that money is going to be...right now, how we fund our Motor Carrier Services Division in the Department of Motor Vehicles is there is a transfer from the Highway Trust Fund into the Motor Carrier Services Cash Fund that covers most of the expenses associated with that division. Because those fees were flowing into the DMV Cash Fund or, you know, the fees were going to the wrong place, what we're doing with the Department of Roads over this biennium cycle is we are simply lowering our request from the Highway Trust Fund. [LB718]

SENATOR PRICE: So you're going to decrement one to make up for it. [LB718]

BEVERLY NETH: Yes, yes. [LB718]

SENATOR PRICE: And it's all going to work out (inaudible). [LB718]

BEVERLY NETH: It will work out just fine. Um-hum. [LB718]

SENATOR PRICE: Thank you very much. [LB718]

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SENATOR FISCHER: Thank you, Senator Price. Other questions? I see none. Thank you, Director. [LB718]

BEVERLY NETH: Thank you. [LB718]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Any opponents to the bill? Anyone wishing to testify in a neutral capacity? I see none. We will waive closing and I close the hearing on LB718, and we'll open the hearing on LB724. Good afternoon, Mr. Vaughan. [LB718]

DUSTY VAUGHAN: Good afternoon again, Senator Fischer and members of the committee. For the record again my name is Dusty Vaughan spelled V-a-u-g-h-a-n, and I'm the legal counsel for this committee. LB724 adopts new federal CDL regulations prohibiting texting by CDL holders operating commercial motor vehicles. The state is required to impose sanctions, including infractions, civil penalties, and disqualification for texting violations. This is a federal compliance requirement to retain federal highway funding and must be implemented no later than October 27, 2013. In addition, the bill makes minor corrections with regard to the new CDL medical fitness certification requirements passed last year by this Legislature. An exemption applicable to drivers who held a CDL prior to July 30, 1996, was mistakenly omitted from the legislation, and LB724 corrects that omission. And with that, Senator Fischer, I'll end my testimony and answer any questions. [LB724]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. Are there proponents for the bill? Welcome, Director. [LB724]

BEVERLY NETH: (Exhibit 2) Good afternoon again, Chairwoman Fischer, members of the committee. I'm Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles offering testimony in support of LB724. LB724 adopts new federal safety regulations into law restricting texting while operating a commercial motor vehicle, also known as a CMV. The federal regulations require the adoption of laws that enact infractions, impose sanctions, civil penalties, and disqualifications for texting violations for a commercial driver license holder while operating a commercial motor vehicle--pretty limited. Adopting the texting provisions enables the state of Nebraska to remain in compliance with the federal highway funding regulations, which as you're all very familiar with, if we're not in compliance with the rules that are promulgated by the Federal Motor Carrier Safety Administration, FMCSA, they can penalize, find Nebraska to be in substantial noncompliance, and penalize us by withholding federal highway funds to the tune of 5 percent the first year of noncompliance and 10 percent for any subsequent year that we remain in noncompliance. The CDL texting provisions will be effective on October 27, 2013, and that will meet the federal regulatory deadline. LB724 also contains clarifying provisions relating to the medical certificate law relating to

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certain commercial driver license holders. In the 2011 Legislature, we adopted LB781 which brought Nebraska into general compliance with the federal medical certification requirements for CDL holders effective January 1, 2012. Sections 1 and 2 of LB724 harmonize existing law and specify the medical standards for two types of CDL holders: one, those who operate solely intrastate; and two, those who operate vehicles whose operators are exempted from compliance with the federal medical requirements found at 49 CFR part 391. Such exempted drivers have to meet the medical standards specified in state law and regulations. Senator Fischer, I'll be happy to answer any questions the committee might have at this time. [LB724]

SENATOR FISCHER: Thank you, Director. At this time I would like to note that we've been joined by Senator Scott Lautenbaugh who is from Omaha. Are there questions from the committee members? Senator Hadley. [LB724]

SENATOR HADLEY: Senator Fischer, thank you. Director Neth, I should know the answer, but if a person has a CDL license, do they also carry a regular Nebraska driver's license then also? [LB724]

BEVERLY NETH: No, they don't. Those driving privileges are simply embedded within the CDL. So if you have a Class O driver license, your CDL has that Class O privilege embedded within that CDL, whatever category it may be. [LB724]

SENATOR HADLEY: So, if I'm a state patrolman, and I pull somebody over because they're texting, we passed a law recently, the last year or two, that said it had to be a secondary offense. I assume this is a primary offense. And so if I pull somebody over that is driving their personal car with a CDL license, are they covered? [LB724]

BEVERLY NETH: This relates only to texting while they're operating their commercial motor vehicle. [LB724]

SENATOR HADLEY: They have to be operating the commercial... [LB724]

BEVERLY NETH: Um-hum, that's correct. [LB724]

SENATOR HADLEY: So if they're driving their own car, it doesn't. [LB724]

BEVERLY NETH: This doesn't cover that. [LB724]

SENATOR HADLEY: And I'll just only say it is interesting that we have two classifications now with this. If you're driving a commercial vehicle it's a primary offense; if you're driving your personal car, it's a secondary offense. [LB724]

BEVERLY NETH: Yes. [LB724]

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SENATOR FISCHER: Thank you, Senator Hadley. Senator Price. [LB724]

SENATOR PRICE: Thank you, Senator Fischer. Again, Director Neth, thank you. My question goes to Section 7, page 18, line 20, where we're talking about devices, and they have a list and one of them there is citizens band radios. [LB724]

BEVERLY NETH: Um-hum. [LB724]

SENATOR PRICE: Is there any opportunity to expand that to include amateur radio? Because there are a lot of amateur radio operators who are operating for...the only difference being the band they're on, the same device. [LB724]

BEVERLY NETH: Um-hum. It would be a question of whether that individual, I guess, first of all, from a statutory adoption standpoint of the federal laws, we've tried to remain pretty close to the federal requirements, understanding we can go a little broader. But whenever we've sort of strayed from adopting exact federal laws into our statutes, we've almost always had to come back and change that language because the feds don't seem to like it when we do that. It doesn't mean we couldn't, but I think that would be just a policy question you have to ask whether or not that is a type of device that you would normally find within a commercial motor vehicle being operated by a commercial driver license holder at the same time they're operating that motor vehicle. I am not...I don't know exactly how those work. [LB724]

SENATOR PRICE: So am I hearing that you could send a message back up line to the federal office that submitted this and ask the question through your office or would it be through mine? [LB724]

BEVERLY NETH: We can. We certainly can ask questions about legislation we're going to adopt and can often get some kind of advice from them. The language that we're asking to adopt in this bill, LB724, is language that was promulgated in I believe 2011, through the rule promulgated by the Federal Motor Carrier Safety Administration. And they normally give the state like three years to adopt that kind of language. So the drop-dead date for the state for compliance is the October 2013 date, so we have some time. [LB724]

SENATOR PRICE: Well, I would never want to get in the way of progress. I just wanted to have the question asked and see if they could be agreeable to that in the future. [LB724]

BEVERLY NETH: Again, certainly. [LB724]

SENATOR PRICE: Thank you. [LB724]

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SENATOR FISCHER: Thank you, Senator Price. Senator Janssen. [LB724]

SENATOR JANSSEN: Thank you, Chairman Fischer. Director Neth, I'm in the same section, and this is probably an old argument back over again and is...so I can talk into a phone as I drive; I can talk into it and give it voice commands, but I can't talk text? [LB724]

BEVERLY NETH: I think talk text is a relatively new technology, if I understand. I don't know, was talk text available in 2010 when they adopted this? I can't really speak to that. [LB724]

SENATOR JANSSEN: I don't...I didn't have it then, but I do now. [LB724]

BEVERLY NETH: Yeah. [LB724]

SENATOR JANSSEN: And that's probably more dangerous than...not that I've ever tried, but I can imagine that talking into it and then sitting there looking at it to make sure it says exactly what you...I don't know if that...I can think of no reason why it shouldn't be included. I mean it's extremely dangerous, but I don't know. [LB724]

BEVERLY NETH: Yeah, I think it's a matter of whether or not we want to expand the existing definition of texting. And I'll just let you know that in December 2011, the Federal Motor Carrier Safety Administration did issue a new rule. It does redefine texting to some degree. And I apologize, I haven't had a chance to really review that in terms of the bill that we have before us today, whether or not it expands that definition. It does add some prohibitions against cell phones, as well for commercial motor vehicle drivers, CDL holders driving a commercial motor vehicle. That has a compliance date of 2015. So we're not looking to adopt that federal rule into Nebraska statutes now. It may address that talk text kind of issue. But I suspect part of that just has to do with the timing of adoption of the federal rule whether or not that technology was something in consideration at the time. [LB724]

SENATOR JANSSEN: Do you have any idea, since we passed the secondary offense, I'm not trying to get way off task here, but just any idea how many...I've only read of one ticket that was issued for that being a secondary offense, and I happened...and that was because it made the newspaper. [LB724]

BEVERLY NETH: Um-hum. I don't know that primarily because of the driver...of the traffic infractions that I normally review what we're doing. And we update roughly 195,000, 196,000 traffic violations to the driving records annually. I really only look at the data as it pertains to revocations, suspensions, those kinds of things. So points, things I don't usually look at. So I can't answer that for you. [LB724]

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SENATOR JANSSEN: It's just more of a curiosity thing. [LB724]

BEVERLY NETH: We could certainly query the system and tell you how many traffic citations exist for that. Maybe it's one. [LB724]

SENATOR JANSSEN: If you have nothing going on some day, I'd appreciate that, but it's not certainly something I'll be waiting in my office to hear back from you on it, so. [LB724]

BEVERLY NETH: Okay. Could be interesting. [LB724]

SENATOR FISCHER: Thank you, Senator Janssen. Other questions? Senator Louden. [LB724]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Thank you for being here today, Director Neth. This just...this bill mostly just refers to people that are driving a commercial operators. Folks that have these semis that are operating their own semis and their own products and their own, it doesn't apply to them? [LB724]

BEVERLY NETH: Not if they are under those excepted uses: farm, not-for-hire, within 150 miles of their own property. Then they don't or they are not required to hold a CDL, and then this rule would not pertain to them. [LB724]

SENATOR LOUDEN: That does not apply to them. Oh, okay, because that's...well, I think I talked to you last summer. I had people that thought they were going to have to get a CDL in order to pull their pickup gooseneck trailer. [LB724]

BEVERLY NETH: Yeah. [LB724]

SENATOR LOUDEN: Yeah. Okay, thank you. [LB724]

BEVERLY NETH: You bet. [LB724]

SENATOR FISCHER: Other questions? I see none. Thank you, Director. [LB724]

BEVERLY NETH: Thank you. [LB724]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Any opponents to the bill? Anyone wishing to testify in the neutral capacity? I see none. With that, and I will waive closing, with that I close the hearing on LB724 and we will open the hearing on LB910. And, Senator Lautenbaugh, would you like to open, please. [LB724]

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SENATOR LAUTENBAUGH: Yes, I will. [LB724]

SENATOR FISCHER: Welcome. Always a pleasure to see you at the committee hearings. [LB724]

SENATOR LAUTENBAUGH: Well, I'm always here. What do you mean? [LB910]

SENATOR FISCHER: You are, you are. [LB910]

SENATOR LAUTENBAUGH: Literally in that chair. [LB910]

SENATOR FISCHER: But you don't always introduce bills, so is this... [LB910]

SENATOR LAUTENBAUGH: This is true. [LB910]

SENATOR FISCHER: I'm trying to think, is this your first bill you've introduced before the committee? [LB910]

SENATOR LAUTENBAUGH: Oh, no, I can't imagine that would be the case. [LB910]

SENATOR PRICE: He must have had a yellow-light bill sometime. [LB910]

SENATOR LAUTENBAUGH: Yeah, yeah. And I'm just as... [LB910]

SENATOR FISCHER: Maybe I've just tried to block those. I don't know, but welcome. Welcome. [LB910]

SENATOR LAUTENBAUGH: They're all gold. Thank you, Madam Chair Fischer and members of the committee. It is my distinct pleasure to be before my own committee today introducing not one, but two bills. And if memory serves, Madam Chair Fischer, you said LB910 first. [LB910]

SENATOR FISCHER: Yes. [LB910]

SENATOR LAUTENBAUGH: Okay. Then we'll do that one. This is not something that I would call a passion of mine or something that I was a self-starter on in any way. It seems to deal with marathons and I think many of you can understand how that might not be part of the community that I'm involved in and the activities that I engage in, but this was a legitimate concern brought to me after...or in the wake of, I think, it was Senator Smith's bill last year, regarding facilitating these types of events, perhaps limiting liability and whatnot. And one of the concerns that came to light, and I think there are some people from the running community, if you will, following me that can

kind of shed some more light on this in organizing these events. But one of the concerns that did come to light had to deal with actually getting reserve deputies or on-duty deputies sufficient manpower to actually staff and do traffic control at these events. So simply put, in a nutshell, what this bill does is it creates another class of person who can direct traffic at an event. We call them a certified traffic personnel, and that's any person specifically trained and certified in traffic control, or an off-duty police officer used by a political subdivision or a special event organizer for directing traffic only at a special event which makes use of public highways. So what we're talking about here, generally, is sending people to classes to become certified in directing traffic, much as we do with construction workers and others, I believe. While they would not necessarily be police officers, they would be people who could, as on a volunteer basis, or even otherwise presumably, take some of the pressure off of local law enforcement, some of the cost off of local law enforcement. We're trying not to get into a circumstance here where if we have to rely solely on local law enforcement to police these events, if you will, and direct traffic at them, the cost becomes prohibitive and then we just don't have the event, or the cost to the taxpayer becomes prohibitive, or at least another expense to the taxpayers. So that is the nature of the bill. I'd be happy to take any questions you might have. I'll say at the outset that I had a conversation with individuals from the city of Omaha police department who did have some concerns. Because of the swiftness of the committee and whatnot, I cannot sit here today and say that we have all of the issues worked out, but I am happy to work with them and properly amend the bill as we can to take everyone's concerns into account and go forward with something that works for the purpose I stated. And I'd be happy to take any questions you may have. And I'll be here to close, obviously, too. [LB910]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. I have a question. In Section 3 in the bill, the new language for the certified traffic personnel, and you have then a (1) and a (2). And of course an off-duty peace officer, I would assume, has had training, but what is a specially trained person? Are there classes where people can be trained and certified in traffic control? [LB910]

SENATOR LAUTENBAUGH: Yes, I believe the Safety Council may be coming to shed some light on that as well. I hope the Safety Council is coming to shed some light on that, but that is my understanding. And people are looking behind me, so I'm hoping they're seeing someone nodding out there in the crowd and hopefully that person will testify. [LB910]

SENATOR FISCHER: Okay, thank you. Thank you. Other questions? Senator Hadley. [LB910]

SENATOR HADLEY: Thank you, Senator Fischer. Senator Lautenbaugh, a quick question. When we talk about the duties and such as that in traffic control, this in no way allows them to give citations or anything such as that, is that correct? [LB910]

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SENATOR LAUTENBAUGH: No, no. This would just be traffic control at the special event, not any sort of law enforcement. [LB910]

SENATOR HADLEY: So if somebody weaves out of the lane, they can't pull them over and write them a ticket or something like that. [LB910]

SENATOR LAUTENBAUGH: No, no. That would not be my intent, and I wouldn't find that here. [LB910]

SENATOR HADLEY: Okay. [LB910]

SENATOR LAUTENBAUGH: I don't see that here. [LB910]

SENATOR FISCHER: Other questions? Thank you, Senator Hadley. Senator Louden. [LB910]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Senator Lautenbaugh, does this...this just is on public highways. Now is that county roads or state highways where these people would be allowed to work? What I'm wondering is, you go to, well, a Cattlemen's Ball or something, and usually as they're coming off the county road, why, there's people out there on horseback leading the cars around, and that sort of thing, and lining them up. Does that have any effect on those people out there on the private ground on horseback, but does it have any effect on who brings those cars off of that county road onto that private property to park them? And is there some interaction here that needs to be discussed or pointed out or? [LB910]

SENATOR LAUTENBAUGH: We really hadn't designed the bill with that in mind, and I read it as limited to public highways. If we need to clarify that we're only talking about traffic control there on that, that's fine too, but I hadn't contemplated applying to the circumstance you're discussing. [LB910]

SENATOR LOUDEN: Because at the present time you got to be a law enforcement officer, or somebody, to direct traffic on a state highway, is that correct? [LB910]

SENATOR LAUTENBAUGH: Yes, that's...yes. [LB910]

SENATOR LOUDEN: Yeah. And this...if this was in effect, these people could then direct traffic on that state highway? [LB910]

SENATOR LAUTENBAUGH: Within the other parameters of the law, the certified people would be able to, yes. [LB910]

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SENATOR LOUDEN: Okay, thank you. [LB910]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you very much. First proponent for the bill, please. Are there proponents? Please step forward. Good afternoon and welcome. [LB910]

KURT BEISCH: (Exhibits 3-6) Thank you. Senator Fischer and members of the Transportation and Telecommunications committee, my name is Kurt Beisch and I'm testifying today on behalf of Race Omaha, Mimran Event Management, as a nonprofit 501(c)(3) organization. My organization supports LB910. [LB910]

SENATOR FISCHER: Excuse me. Could I have you spell your name please. Thank you. [LB910]

KURT BEISCH: Sure, it's Kurt, K-u-r-t, last name Beisch, B-e-i-s-c-h. [LB910]

SENATOR FISCHER: Thank you. [LB910]

KURT BEISCH: So I'm just going to go into a little bit of history of who I am and then why I think our organization is important, and then like Scott Lautenbaugh said, where the rubber hits the road in terms of the resource issue. So my organization brings multi-sports events to Nebraska for women's only events, adults and kids. We promote a healthy and active lifestyle with every event. When we started in 2010, we had one event, the Omaha Triathlon--Omaha Kids Triathlon. And in 2010 we'll have nine events, four of them being kids' events and one being an all-women's event. Some people probably don't realize and probably...that in 2011, last year, we actually made history in the state of Nebraska. We brought in an all-women sanctioned triathlon in Omaha. That's 1 of 50 in the United States. We're pretty proud of that because we're leading by example and using the best role models in the world: moms. So going on with the statistics, and we all know these, and I'll just reiterate them. Nebraska, 65 percent of the Nebraska residents are overweight and obese. So what we're trying to do is develop a healthy culture in Nebraska and bring fun events with all genders and all ages. They're not just for elite athletes or elite people; they're just for common people just like us in this room. At the Omaha Women's Triathlon there was an athlete that wrote my boss and me a handwritten letter. And in there she said thank you for the event and I never would have done it, but with you guys' organization and so forth, I'm glad I stepped off the curb and did my first triathlon. And she signed it and in parenthesis she said, "the oldest participant, 66 years old," first-time triathlete, so all ages and all genders that we are helping. The other thing that my organization does since we're growing is economic impact. We create a positive effect on Omaha's economy. People travel from New York and California and everywhere in between. And the average stay for a triathlon is two days, just because of the process of checking their bike in the day before and then the actual race day. Last year we had 22 states represented. Our vision at Race Omaha is

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we want to bring a national caliber event to Omaha, just like the College World Series and the Omaha swim trials...or the Olympic swim trials. But in order to do this, we need to bring governing bodies in from other entities to Nebraska and show that we have the space, the infrastructure, the community support, and the law enforcement commitments to host a large event. We are currently in discussion with the U.S.A. Triathlon to host a national age-group event in 2014 and 2015. And it's also our desire to bring a longer distance event, a half Ironman event and an Ironman event to Omaha or Nebraska. So I'm going to maybe help Senator Lautenbaugh with some of...or what he brought up. And this is where the rubber hits the road. It's the resource issue and creating a workable solution between my organization and law enforcement. Then the last...in the previous years with the Omaha Police and Douglas County, they love our events and they want to support our event and they think it's a great cause, but they come to us and say, it doesn't matter if you've got a "bazillion" dollars, we just don't have resources. So that is where I'm trying to cross a bridge and give you guys some examples on where we can do that without compromising the safety of our events. So people do this in the road construction industry, and so my question is, why not in the special events industry? So here are a couple three ways that we can work alongside the law enforcement. We've used CERT people in the past and these are great people. They're very organized and have great communication skills and they work alongside law enforcement. The second one is the American Traffic Safety Services Association. They have successfully trained millions of people across the nation. And so I approached them and asked them, well, what kind of training specifically, what industries have you done? And I said, construction industry? And their answer was yes. Law enforcement? Yes. Special events? Yes. So these are one of the nationally recognized organizations that will offer training to train traffic control personnel. And they've done it at three huge industries including law enforcement. And then the third one is that we're in discussion with the Nebraska Safety Council to implement and participate in traffic control training. So, hey, thanks for letting me present, but in summary I'll try to go through here. I'm a local organization that brings healthy activities one event at a time. That's what me and my boss will do. The women's triathlon, we made history using the best role models in the whole wide world. I don't think anybody can disagree with that: women, moms, aunts, grandmas. Economic development. In a downturn economy, we have a growing industry. Race Omaha vision, we want to highlight Nebraska. We want to bring Nebraska, as the Governor said in one of his speeches that he wants to in the next ten years bring Nebraska to be one of the top ten healthiest cities. And we're trying to do that. And lastly, the resource issues. We're offering a workable solution with law enforcement and we're looking for a win-win situation. Thanks everybody for their time. [LB910]

SENATOR FISCHER: Thank you very much. Did you bring these other three letters with you? [LB910]

KURT BEISCH: Yes, I sure did. [LB910]

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SENATOR FISCHER: If you would like to state who these letters are from so we have it in the record that you presented those, that would be great. Do you need these? [LB910]

KURT BEISCH: Yeah, I need those, but there's one of the persons in here that is going to actually represent. [LB910]

SENATOR FISCHER: But on the other ones if you just want to state the name of the group and who signed the letter so we can have that in the record, that would be great. [LB910]

KURT BEISCH: Absolutely. The first...the next person is the Great Plains Colon Cancer Task Force. And they put on the Colon Run. It is Kelli Sweet. [LB910]

SENATOR FISCHER: Okay. [LB910]

KURT BEISCH: And her name is K-e-l-l-i S-w-e-e-t. And the next letter in support of this bill is from the Omaha Running Club and it's from Tom Whitaker, it's the president, T-o-m, Whitaker, W-h-i-t-a-k-e-r. And then the next person that's in support of this bill is going to be Susie Smisek from the Omaha Running Club. [LB910]

SENATOR FISCHER: Okay, thank you very much. Are there any questions? Senator Hadley. [LB910]

SENATOR HADLEY: Thank you, Senator Fischer. Mr. Beisch, thank you for coming in. A couple of quick questions. Did you say 66 was the oldest person? [LB910]

KURT BEISCH: Yes, absolutely. She'll be 67 this year. [LB910]

SENATOR HADLEY: Okay, I just wanted to check that out in case I might get interested next year. [LB910]

KURT BEISCH: Yeah, absolutely. She's 67 this year and I know that she's still around because she was one of the first people to sign up for the... [LB910]

SENATOR HADLEY: I got her beat, okay. A question on when a person is directing traffic for road construction, I would guess they're employees of the construction company and the legal liability basically goes to the construction company. Is there questions about...how do you handle legal liability in this? Because I assume the persons would be volunteers, and if, heaven forbid, they wave a car into oncoming traffic or they wave it into someone who is running or...so what...it's just a question. Is there...who has the liability for these workers when they're out directing traffic? [LB910]

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KURT BEISCH: My governing body is the United States of America Triathlon Association and they're the ones who insure us. Now in getting their...since I'm a certified race director, getting their blessing on an event we have to follow certain things. And obviously the number one thing is athlete safety, and then it goes from athletes to volunteers and support. So in the rules or in the insurance will say...they bring forth they cover the athletes, the volunteers, and the other associated vendors with the event. So that is our insurance carrier. They do a thousand events at a small local level, and they also insure the United States of America Olympic Committee. [LB910]

SENATOR HADLEY: So if there was something to be happen, something bad happened, that would be the body that the person who was injured would look to...? [LB910]

KURT BEISCH: Absolutely, absolutely, so the volunteer would be covered in that situation. [LB910]

SENATOR HADLEY: Okay, thank you. [LB910]

KURT BEISCH: Yep. [LB910]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Louden. [LB910]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Kurt, as I look at this, you envision not necessarily people directing traffic in and out of a particular area, but as having people scattered around the county where you're having this foot race so that they can hold traffic up when you're crossing public roads and that sort of thing. That's where you would be using these people? [LB910]

KURT BEISCH: Yes, so...unlike a marathon or road running race, you know, we've got three disciplines. So our biggest concern is on the bike course. And the two big events that we put on are on highways and they're on a closed course. So we are out there with electronic digital sign boards the week before; we're out there with road barricades, Type II, Type III, and so forth, and grabber cones. So we have that all in place. And then what the volunteer would do would be working those intersections directing the participants and then just stopping traffic and directing them to another direction. We're not...we don't want to eliminate Omaha police. Omaha police, we need them for the obvious reasons, their presence and their support and their knowledge and their speed. So we're not trying to eliminate Omaha police or Douglas County. We're trying to... [LB910]

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SENATOR LOUDEN: But what happens is, when you have these, if you have multiple runners in multiple places, you're crossing these roads, you don't have enough police to be at every place, so this is what you envision this law doing is allowing other people to take over in some of these places that would relieve the police of some of the duties? [LB910]

KURT BEISCH: Yes, absolutely. If the police come to us and say we would normally have 24 people at your event, like they did last year, if we can provide them volunteers, then maybe we only need 12 police and give the people the duties in the less high traffic areas or the less...less high traffic areas or the speed or so forth. So yeah, we're trying to work with the city. [LB910]

SENATOR LOUDEN: Now at the present time can your county sheriff deputize people to do that? [LB910]

KURT BEISCH: I don't know if I can answer that question. [LB910]

SENATOR LOUDEN: Pardon? [LB910]

KURT BEISCH: I don't think I can answer that question. I don't know. [LB910]

SENATOR LOUDEN: Okay, because in some of our counties where we have fairs and stuff, at fair time they usually deputize some people as deputies for that occasion through the fair time, and that's the reason I'm asking if you've ever pursued that for any traffic control. [LB910]

KURT BEISCH: No, but I will. I will ask. I mean we're looking to cross that bridge and we're trying to help us as taxpayers out, and the city of Omaha, to lessen their burden and their resource issues. [LB910]

SENATOR LOUDEN: Okay, thank you. [LB910]

KURT BEISCH: Thank you. [LB910]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you, sir, very much for being here. [LB910]

KURT BEISCH: Thank you, guys. [LB910]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB910]

SUSAN SMISEK: Good afternoon. Thank you, Senator Fischer and committee. My name is Susan Smisek, first name is S-u-s-a-n, last name, S-m-i-s-e-k, and I am the

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race director for the Omaha Marathon and I'm also on the board of the Omaha Running Club. And I help provide organization for many of our organized and fun runs that we provide in Omaha. So I have a lot of experience with that perspective, as well as I've been the race director for 13 years and been on the committee for 15, so I do have a lot of experience in that realm. We also, and I don't want to reiterate the things that Kurt went over, but I do agree with everything that he has provided for you. And so one of the things that I did want to mention is that we work very closely with the police. I've actually met with them two months ago to look at our route again to see what would work the best and to make sure that we are all on the same page. And one of the things that they mentioned again last year, as Kurt had said, is that they don't have the resources. And if we could provide individuals who are certified, that would definitely help. And we have plenty of people that would love to participate in that, that are highly qualified people. Some of them are actually retired police officers. So if we could provide that, that would be wonderful. Again it would decrease the amount of dollars spent for that particular piece and we could put it back into funding such as clinics and training for our individuals who want to become healthier people. It also brings a lot more people into our city and so we're able to showcase what Omaha and Lincoln have to provide, and our other outskirt cities. So that funding would be great to be able to turn back into our participants, again creating healthier individuals. And then...because right now we do have a group that is called Step into Running and we have about 50 women that participate in that every year and they're starting from the bottom line. Maybe they've never run before, or possibly they've been in running or they've walked before and they've gained some weight or they've just lost sight of it because of being a mom and being busy, and so this is their way of getting back into that. Some of those funds would be used for those types of organizations and clinics that we provide, and we provide several of them throughout our city of Omaha. As a board member, I'm one of the people that help provide that, so it would be very beneficial. And on behalf of Kelli Sweet, who Kurt had mentioned, she organizes the Boxer 500 and that's another one of the running events that the Omaha Running Club does provide. And with those funds, again we could buy equipment, flagging, barricades, things that would help make our running events safer so we can involve more of our community and again help make them healthier. I believe that's all I have. Thank you. Do you have any questions?
[LB910]

SENATOR FISCHER: Thank you, Susan. Are there questions? Senator Hadley.
[LB910]

SENATOR HADLEY: Senator Fischer, thank you. Susan, just to ask the same question I asked Kurt: From a liability standpoint, how would that work in the organization that you're dealing with as far as volunteers for their actions, working as a... [LB910]

SUSAN SMISEK: You bet. Number one, safety is our number one concern. And because of the liability, I pull out extra insurance through Running Club of America, and

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then we use USATF, United States of America Track and Field. And so, before we can even provide an event, city of Omaha requires us to have a liability waiver. And I spend extra money just to make sure we do have that insurance. We have medical staff. And I'm big on medical, being a nurse myself. We make sure that we have medical van all along the course, and so those people have radio contact constantly with our tent, with our medical directors, with myself. We also have the Marines that are part of our race, and they are also out on our course helping provide safety. However, going back to your question with regards to insurance, we do have extra insurance, and if we need to restate it and those people are staffed directly underneath our umbrella, then we will do that to make sure that they are covered. And again, working with the police, they cover those vital and critical areas on the route that maybe there is an intersection that there is no way I would ever put anybody that would not be highly qualified, but they would be on the other areas such as we have barricades, possibly along with the barricade we would have one of our people staffed with the appropriate...whether it's a uniform or a vest or somewhat like that, so. Good question though. [LB910]

SENATOR HADLEY: Okay. And secondly, what's the oldest age for people that have run in your marathon? [LB910]

SUSAN SMISEK: We've had a man 78 years old. [LB910]

SENATOR HADLEY: Seventy? [LB910]

SUSAN SMISEK: Seventy-eight. [LB910]

SENATOR HADLEY: Scratch me. (Laughter) [LB910]

SUSAN SMISEK: We'd love volunteers, so please come. It's so much fun. [LB910]

SENATOR HADLEY: You would have to scratch me. [LB910]

SENATOR PRICE: You were just looking for a reason. [LB910]

SENATOR HADLEY: I'm thinking the triathlon, not the marathon. [LB910]

SUSAN SMISEK: You can stand behind the Marines at the finish line and help hand out medals. They're in full dress uniform. We'd love to have you there. [LB910]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? I see none. Thank you, Susan, for coming today. Appreciate it. [LB910]

SUSAN SMISEK: Thank you for your time. [LB910]

SENATOR FISCHER: Are there other proponents for the bill? Welcome. [LB910]

BRENDON POLT: (Exhibit 7) Welcome. My name is Brendon Polt, that's B-r-e-n-d-o-n P-o-l-t, and you're probably looking at me wondering what nursing homes have to do with this issue, but I'm actually here in a personal capacity, not representing my normal trade association, Nebraska Healthcare Association. The reason I'm here is because I'm on the race committee for an event called Market to Market. And that's a new event started four years ago, I believe, where you run from the Old Market to the Haymarket as a team. It's a relay race. And so about every four miles you have a transition area. Most of these areas are rural, but traffic enforcement and traffic direction is a really important part of this event. And so when the race committee found out about this bill from Mr. Beisch, we were actually very ecstatic because it's one of the biggest challenges we have as a race committee trying to find sufficient...or trying to get police to direct traffic, and safety is always our number one concern. To address your question, Senator Hadley, we have the same insurance for volunteers through USA Track and Field. That policy would probably have to be looked at if we were doing more traffic control. But, you know, I've done from numerous 10Ks and 5Ks over the years, even though I believe, and I have learned about this just recently, you're supposed to be a peace officer or a police officer, there's been numerous times in residential areas where I've asked a car to wait where someone came by and I'm just going to tell you, it's not rocket science. Maybe someone will be here to challenge that, but I think, generally speaking, in rural areas you're talking about a car coming by every now and then--keeping track of a runner. It's not too big of a deal. But like the prior testifier said, one of the biggest costs or a significant cost of an event, especially with Market to Market, is the numerous traffic support people that you need. And I will say for the event itself, it's a great charitable event and at every transition there are various charitable groups, the Scouts, churches, that fund-raise for their own organizations and that's what the race fees help pay for. So it's a really neat community event. And that's all I have. [LB910]

SENATOR FISCHER: Thank you, Mr. Polt. Are there questions? Senator Janssen. [LB910]

SENATOR JANSSEN: Thank you, Chairwoman Fischer. Mr. Polt, two quick questions in the name of protocol here. First off...and I'll ask them both at the same time just to save redundancy, what's the age of the oldest participant in your race? [LB910]

SENATOR HADLEY: (Laugh) [LB910]

SENATOR JANSSEN: And secondly, I kind of...Dodge County, we have Dodge County React, and you're talking...I mean Fremont is not a real small, small town, but...and I've ran some 5Ks there, and they run all of our traffic control. They're also weather spotters, and they can also use a yellow light now on top of their vehicles, so, and did

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beforehand. But would they fall under this now? And I'm not certain what their training level is, but I know they run, when we do Avenue of Flags in Fremont, when they put that up, they do traffic control, and the 5Ks that the YMCA does, and I don't believe there's any Fremont police or Dodge County police or sheriff's interaction in that. So I guess what I want to make sure, and I'm asking this question to you in hopes if somebody else is here if you can't answer it that maybe they can, is would the unintended consequence be that we're lumping this large group that's been doing this for years and years into it and now they will be disqualified without taking this whatever training course? And perhaps they already have. I don't... [LB910]

BRENDON POLT: And I can't answer that question. To my understanding, and maybe Senator Lautenbaugh can address this, there isn't currently a certification, and I believe currently as I take a look at the law, it says in order to direct traffic you have to be various groups. And there's possible through the sheriff's office or the...I just don't know about that group in particular to know if they've gotten the permission in some other way. I do not know the oldest participant. But when you go to this event it really does range. You have to be at least, I believe, 18 to do it, because...well actually I think most people are over 21, but it goes all ages again. Running events, you really see all ages. [LB910]

SENATOR JANSSEN: Okay, then 18, I'm sure Senator Hadley would qualify for that. But, yeah, that was just something I was curious about and I...and like I said, perhaps they already do. I know they're trained weather spotters. I don't know if that's part of their training with that or not. I just didn't want to unintended throw them in there. [LB910]

BRENDON POLT: It's possible that they're classified as one of the groups that's allowed currently and they have that. But I just...I'm afraid I can't speak to that group. [LB910]

SENATOR JANSSEN: Okay. Thank you. [LB910]

SENATOR FISCHER: Thank you, Senator Janssen. Other questions? I see none. Thank you, Mr. Polt. Other proponents to the bill. Are there other proponents to the bill? I see none. Any opponents to the bill? [LB910]

TODD SCHMADERER: Good afternoon. [LB910]

SENATOR FISCHER: Good afternoon and welcome. [LB910]

TODD SCHMADERER: Thank you. My name is Todd Schmaderer. I'm an assistant chief with the Omaha Police Department. It's S-c-h-m-a-d-e-r-e-r. On behalf of the city of Omaha, the Omaha Police Department, and Chief Hayes, we do respectfully oppose LB910 as it is written. But I do kind of want to tread lightly because we understand and

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appreciate the events that are taking place. We also appreciate the opportunity to eliminate some of our burden. And, of course, we respect our working relationship with Senator Lautenbaugh; we look forward to perhaps working with him further on this particular bill. The number of events, and I'm talking about marathons, commercials, parades, anything at our TD Ameritrade Park, Qwest Center, in the city of Omaha requires a significant amount of traffic control. You're not only conducting traffic control, but you're policing an environment as well. And those events have risen to their highest level and they continue to rise in number and scope. There were over 200 events of this type in 2011 alone, and that was specifically covered by our traffic unit. That's not including the hundreds of smaller events that our regular patrol officers cover at a precinct level. So the Omaha Police Department, we do agree that some of the slack can be taken off law enforcement and that an event management protocol for the city, a city the size of Omaha, needs to be regulated. However, LB910 does not go far enough to address those issues and is missing some important variables. As such we are against the bill as it is written. LB910 defines certified traffic personnel as any person specially trained and certified in traffic control or an off-duty peace officer, police officer. I'm going to kind of list some of our concerns. The first is the Fair Labor and Standards Act. It's a federal law. If we have an off-duty law enforcement officer conducting traffic control on a public street, we'd be in violation of the FLSA. We'd have to pay that officer overtime. The second issue is, who will provide the certification training? I've heard a few entities here today and I would submit that it should go through the Police Standards Advisory Council. In addition to that certification, is it just going to be general traffic control or does emergency vehicle operation when clearing intersections come into play? All the events described here today are mobile events; they're not stationary venues. That's going to require traffic control to not only move along with that group, but to go out in advance and direct traffic. It is more to it than standing in an intersection and waiving one car through. It goes through a tremendous amount of planning and detail, and that's why we have a large motorcycle unit so we can put on these events. Second of all, when I talk about policing an environment, our law enforcement officers will tell you when you have thousands and thousands of people, it is tough to get somebody to listen to their commands, and they're sworn law enforcement officers. If there's no power to enforce the law, the effectiveness of that event and that traffic control is going to be extremely diminished. Another concern we have is the liability insurance requirement. I've heard some examples here today. I think there's questions that still linger on that front. What onus is on the city of Omaha? The liability insurance requirement definitely needs to be spelled out further. And the final area is permits for these events. Who is going to get approved? What is the cost for that? What standards does the event need to demonstrate so they can conduct their own traffic enforcement? Can we still restrict time, place, and manner of the event? Who determines the number of certified traffic personnel needed? Who determines the route and the streets to close? What if it is deemed unsafe from a traffic control or other consideration? What if there is more than one event during the same time? What I'm trying to say is LB910 is too vague. Can the KKK come to Omaha and say, we have a certified traffic control

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person and we can conduct our own traffic control? I would assure you that policing that environment would not go over well on that front. Westboro, the same thing. It comes to Omaha quite a bit. The traffic control is what it is. But then there's a component to it that's not measured, and that's measured by presence and the power to make an arrest and enforce the laws. So given all the intangibles and the concerns that I just listed, we do feel it's imperative that law enforcement handles these events. We also feel it's probably more of a local ordinance issue than a state issue since Omaha is really the entity greatly affected by this. And with that being said, we appreciate the intent behind the bill and we think that...we certainly look forward to the opportunity, if we get a chance to work with Senator Lautenbaugh, and maybe we can blend this concept with our already trained law enforcement officers. I'd be happy to take any questions. I will answer one question I think Senator Loudon brought up earlier: Can our county sheriff deputize somebody to conduct traffic control? No, they cannot. The reserve program was eliminated a while back. So at least within our confines of the city of Omaha, that won't be happening. [LB910]

SENATOR FISCHER: Okay. Thank you, sir. Are there any questions? Senator Hadley. [LB910]

SENATOR HADLEY: Senator Fischer, thank you. I appreciate your coming. Your first comment about having to pay the officer for directing traffic, does this mean that if an off-duty policeman goes and works in a club as a security... [LB910]

TODD SCHMADERER: Sure. Off-duty security somewhere. [LB910]

SENATOR HADLEY: Yeah. Off-duty security. Do they get paid by the police department for overtime? [LB910]

TODD SCHMADERER: Well, it's a great question and I should clarify. That's on private property. When they're working private property, they're working at the leisure of that business, although they still maintain all their law enforcement powers and responsibilities. When they are on a public street, the Fair Labor and Standards Act requires us to pay them overtime. So what would have to happen is we'd have to be reimbursed for that overtime. So there is a fiscal component to it, and that's what it would be. [LB910]

SENATOR HADLEY: Okay. I didn't realize that distinction. Okay. Thank you, Senator Fischer. [LB910]

SENATOR FISCHER: Other questions? Senator Loudon. [LB910]

SENATOR LOUDON: Yes, thank you, Senator Fischer. Well, thank you for being here today and that's what I was wondering if this is something that can be already resolved

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with...I wasn't familiar if police departments can deputize people, but I was sure sheriff departments could. And that's what I was wondering if...which it's done in some of our rural counties out there during fair time when they have a lot of people, they deputize extra people and that's what it is. That takes care of the insurance problems and the whole bit because then they come under the umbrella of the sheriff's department or whoever deputized them. And I'm wondering if this same thing could be resolved with such a procedure. [LB910]

TODD SCHMADERER: With just the deputization aspect of it? [LB910]

SENATOR LOUDEN: Yeah. [LB910]

TODD SCHMADERER: Well, I would submit that we're talking of two very different venues and aspects. When we're talking marathons and parades and all the venues that I've talked about, to deputize somebody and not have them have any law enforcement power, have any uniform, any training, is not going to be an event that's by a national standard, which we all want, that takes place in the city of Omaha. It just wouldn't fly there. And I'll give an example. We've had a number of groups come in and they've asked for our support and we've supported them. And when the bill comes in later, they decide, well, maybe we can't do this next year and they try and do their own security personnel, and it turns into a massive, massive, failure because, like I said before, we're not only policing an event, you're policing an environment, you're conducting traffic control. I wish it were as simple as standing at an intersection and waiving a vehicle through. I believe we all could do that, providing that driver is willing to listen. But can somebody standing at an intersection tap into the lights and control the lights and have thousands of cars move in and out, have alcohol potentially involved and other variables that take place in an environment in an urban city, and have it managed by somebody that doesn't have law enforcement powers? Now with that being said, I think there could be a blend here. I think there's an opportunity to take a certified traffic control person and strategically put them in locations where we feel it is safe. That would be advantageous for the Omaha Police Department. But I think it would have to be something that that individual was employed by the police department as well, and that we provided the training and they got approved through Police Standards Advisory Council. That way the liability issues are covered and the safety considerations are covered and it would be a cheaper format and provide us additional resources to cover all the marathons and events that we heard all the organizers talk about. [LB910]

SENATOR FISCHER: Other questions? Senator Louden. [LB910]

SENATOR LOUDEN: Yes, then you're saying categorically to deputize somebody wouldn't work. But why can't your police department or your sheriff's department have these people? Well, you go down here to the basketball game or something like that and you've got these same people that are always working the crowds and they've got

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on a different colored coat and the whole bit. Somewhere along the line, why can't Omaha Police Department have people like that that are, what, part-time deputies or someplace along that? They would have to had some type of schooling, no doubt. They wouldn't probably be trained in firearms, I would hope, but there would be issues like that where they could do that to help with crowd control and alleviate some of those areas where a police officer wouldn't necessarily have to be with that type of authority. [LB910]

TODD SCHMADERER: Sure. And certainly I agree with that point. Obviously right now a civilian by state law cannot direct traffic on a public street unless in the event of an emergency. But what you're talking about is some type of blend system with law enforcement in which we provide the training. And I think that's definitely something that we would like to work with on Senator Lautenbaugh on this issue is coming up with that blend that you've described. [LB910]

SENATOR LOUDEN: Do you think something like that should be described then in this bill? [LB910]

TODD SCHMADERER: Yes. And that's where I kind of want to say...at the start I said I want to tread lightly because we understand the concept here, but the swiftness of how everything moved here, as far as this hearing goes, the bill just needs to be fine-tuned and addressed on a number of different fronts and I think I've covered some of them. [LB910]

SENATOR LOUDEN: In other words, the devil is in the details? [LB910]

TODD SCHMADERER: Yes, sir. [LB910]

SENATOR LOUDEN: Okay, thank you. [LB910]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? Senator Janssen. [LB910]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thanks for coming here today. I had a question. I had Senator Hadley's same question in mind, and you clarified that for me, but now when you're off duty, you still carry your powers of arrest with you. And so if you were to volunteer somewhere, maybe at...I don't know if you have children or not, but an after-school event in the park, a public place, would you fall under the Fair Labor Standards that you were acknowledging earlier? And my question being, if there's a way to work around this, could an off-duty police officer volunteer their time or sign something saying I am volunteering my time, I'm an avid runner and I would like to help out with this traffic control? [LB910]

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TODD SCHMADERER: No, that's actually a great question. You can always volunteer your time. But the problem is, the minute you step in and take law enforcement action, now you've become a city employee if it's in the public...if it takes place on a public street. [LB910]

SENATOR JANSSEN: Even...well, what would...okay, directing traffic, would that fall under it? Would directing 9-year-olds to not run in the street in a public park not fall under that? [LB910]

TODD SCHMADERER: It would probably fall...it would probably fall under the guise that I talked about with the violation of the FSOA. [LB910]

SENATOR JANSSEN: So if I were an Omaha police or a police officer, period, I couldn't...technically if I went and volunteered at my child's after-school thing in the park, on public property, I could come back to the city and say I'm owed overtime because there were children running out to the street and I was directing them and directing their parents and there was somebody maybe consuming alcohol and I told them not to in this public place. [LB910]

TODD SCHMADERER: Sure. I mean you've streamed it down pretty small, but that technically would fall under that violation. [LB910]

SENATOR JANSSEN: Interesting. Thank you. [LB910]

SENATOR FISCHER: Thank you, Senator Janssen. [LB910]

TODD SCHMADERER: And when I...I'm sorry, I shouldn't have interrupted. When I say violation, I mean, we just have to pay the overtime. There's no violation as long as the overtime is paid. [LB910]

SENATOR JANSSEN: Well, yeah, I... [LB910]

SENATOR FISCHER: I have a few questions for you. You went through...I got down five points. The Fair Labor Standards Act, and we've had a couple questions on that and I just want to clarify. So, an off-duty police officer who is in the parking lot at Westroads and there's an accident there, so if that officer steps in, in an official capacity, he can charge the department for overtime? [LB910]

TODD SCHMADERER: Is it in the parking lot of Westroads, the accident? [LB910]

SENATOR FISCHER: Yes. Which is...is that a public place? [LB910]

TODD SCHMADERER: That would be...well, that would be considered private and the

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entity... [LB910]

SENATOR FISCHER: Okay. Well, say there is an accident in front of him on I-80, and he gets out of his vehicle to direct traffic around that accident or to assist in any manner whatsoever, he can charge the Omaha Police Department for overtime? [LB910]

TODD SCHMADERER: Well, I mean it...we're getting into a lot of intangibles here as far as charging us the... [LB910]

SENATOR FISCHER: Well, I just find it...I guess my point is on this... [LB910]

TODD SCHMADERER: But technically...technically we've had some rulings that say yes, that they can. If I'm... [LB910]

SENATOR FISCHER: So there...in effect, there could be absolutely no volunteering by members of the Omaha Police Department if they happen to be on public property. Is that true? [LB910]

TODD SCHMADERER: If it's on public property, it's going to be hard to get a volunteer staff of off-duty Omaha police officers. [LB910]

SENATOR FISCHER: Okay. Second point, certification by whom? When you brought that up, how do people get certified to be traffic directors? Is there a process in place in the police department? [LB910]

TODD SCHMADERER: There is no process in place right now that... [LB910]

SENATOR FISCHER: By anyone. [LB910]

TODD SCHMADERER: ...that I am aware of. And I'm merely suggesting that if that process does get formulated, it should go through the Police Standards and Advisory Council... [LB910]

SENATOR FISCHER: Okay. [LB910]

TODD SCHMADERER: ...who oversees law enforcement standards. [LB910]

SENATOR FISCHER: I appreciate that suggestion. On policing the environment, and you believe that volunteers would probably not be effective because they wouldn't have the power to enforce the law. Is that true? [LB910]

TODD SCHMADERER: In some aspects, sure, it would be effective, but there are other aspects that it would be completely ineffective. And we just don't want to open up a can

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of worms with this bill as it's written to open it up to put the city in any type of peril over that. [LB910]

SENATOR FISCHER: Okay. Under the liability and enforcement, just to cover the liability under it, I think we'll have to check with the national organizations that the proponents represent, but wouldn't their liability that those national organizations offer for those local organizations, wouldn't that cover the liability questions that maybe the Omaha Police Department would have with regards to this? [LB910]

TODD SCHMADERER: It's not for me to say. I feel there are questions on that front. I really do. You're still talking about city of Omaha traffic lights and barricades, and it's still a city of Omaha event that's taking place with our signage, and the city would be the deep pockets. [LB910]

SENATOR FISCHER: And with the permits, which I think was the fifth item that you brought forward. It's my understanding that if it's...if an event is wanting to be held on state roadways, that the Nebraska Department of Roads is the first to grant or not to grant a permit in a case like that. Doesn't the city of Omaha grant the permits for any of these organizations to hold those events on city property or city streets right now? [LB910]

TODD SCHMADERER: Yes, we do grant the permits. [LB910]

SENATOR FISCHER: So it would be up to the city on whether to grant a permit for Senator Hadley's triathlon that he will be entering, or...I mean, you kind of gave some extreme examples there with the KKK and things coming in. [LB910]

TODD SCHMADERER: Well, we think...I don't know. How will this blend if somebody applies for a permit, and they say, look, we have two or three certified traffic personnel to conduct our event, and the premise for us to deny that event in the past was our staffing or we felt the venue was unsafe. One could say under LB910, staffing is not an issue; we have these certified traffic control personnel to conduct it. And we would have no power, or at least it could be very distinctly challenged, to say you don't have enough, you can't do this; you can't do this at noon, there's another event going on a 1:00; the mix of the crowds is not going to work. We feel that it would diminish our ability to do that. And if challenged, we may lose that. [LB910]

SENATOR FISCHER: Okay. Do you feel that there is opportunities here to work with Senator Lautenbaugh? I mean our position as a committee and as a Legislature, of course, is to pass good policy that's going to protect the citizens here. And so law enforcement always carries a lot of weight when you come before a committee. Do you think there is a possibility that you'll be able to work with Senator Lautenbaugh in trying to address some of these issues? [LB910]

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TODD SCHMADERER: I do, I do. [LB910]

SENATOR FISCHER: Okay. [LB910]

TODD SCHMADERER: We, obviously, have a very strong working relationship with Senator Lautenbaugh. That's first and foremost. Second of all is that we're not far apart on these issues. [LB910]

SENATOR FISCHER: Okay. [LB910]

TODD SCHMADERER: My opposition here today is more to the vagueness and the variables that LB910 doesn't address. As far as the concept, we tend to sort of agree with the concept. We think there could be a blending of a civilian traffic control with our law enforcement staff. It would not only augment our staff, it would benefit us just as well it would benefit the marathon organizers. [LB910]

SENATOR FISCHER: Okay. I appreciate it, because public safety is foremost in our minds when it comes to these events. So thank you very much. [LB910]

TODD SCHMADERER: Thank you for having me. [LB910]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? I see none. Anyone in the neutral capacity? I see none. Senator Lautenbaugh, would you like to close? [LB910]

SENATOR LAUTENBAUGH: Well, thank you, Madam Chair Fischer and members of the committee. I think we did have a good discussion here and, of course, as I indicated at the outset, you know, I do understand and I did understand that the city of Omaha had some issues with this and I was...and remain happy to work with them on that. When I said at the beginning this wasn't one of my passions, I didn't mean I didn't care about the bill. I meant I was not a self-starter on this. I mean, this is an important thing to do. It's not a group of people that I, well, run with, so to speak. But I wasn't familiar of the issue...with the issue ahead of time. I think some of the statistics are very sobering. I mean, 65 percent of us are overweight. I don't know how those people get by every day. But I am serious about this. I am serious about wanting to work with the city of Omaha on it and bring it to fruition because it is an important thing for our quality of life here to have events like this flourish, so. I'd be happy to try to answer any more questions you might have and I'm sure we'll talk about this in exec as time goes on as well. [LB910]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. And I know running and events like that, after this hearing, will be your passion as it will be Senator Hadley's. With that I will close the hearing on LB910 and we will open the hearing on LB803. And

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you may open, Senator Lautenbaugh. [LB910]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer and members of the committee. LB803 is a dramatically different topic. And essentially what it does is provides that if you are stopped, if you have a traffic accident, I should say, to which law enforcement responds, I want to get this right here, the individual shall provide the peace officer with the driver's name, address, telephone number, and the driver's operator's license and proof of financial responsibility. And a driver who fails to comply with that subsection is guilty of a Class II misdemeanor. If the drivers have one or more convictions under this section in 12 years prior, then it will be a Class I misdemeanor. Skipping ahead a bit to the part that is probably more noteworthy here, any driver who fails to comply with subsection (1) regarding the information to be provided, including the operator's permit and proof of insurance, shall have his or her vehicle immediately impounded until such time as the operator's license and proof of financial responsibility is provided to the peace officer. And then there's provisions provided for bank lienholders who might have an interest in the car and want to get it out of impound to foreclose their lien, or a spouse to get it out of impound, or the actual registered owner if that's not the driver to get it out of impound, that kind of thing. So what this is doing is targeting people who do not have their driver's license or proof of insurance. If they've had an accident and law enforcement has come, I would argue it makes little sense to let individuals like that just drive away if the car is drivable if we know they don't have proof of insurance or a license. This is a chronic problem in the part of the state where I come from, and I don't think this is really plowing new ground, I would say. States like California, Connecticut, West Virginia, and municipalities throughout the country have passed similar ordinances or statutes to deal with this issue. I believe, again, that we've seen an add...we've seen the current rise in the number of people who are choosing not to carry insurance for whatever reason, and it becomes a massive liability to law-abiding drivers on the road should they be unfortunate enough to have yet another accident with this person without insurance coverage after we've already had an opportunity to remedy this situation and take that person's vehicle, at least, off of the road. I'd be happy to...I know the city of Omaha is coming behind me to testify on this as well. I'd be happy to answer any questions you may have as well also. [LB803]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Are there questions? Senator Dubas. [LB803]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Senator Lautenbaugh. I've had an issue brought to my attention that would kind of stem from this where, you know, you buy insurance to get the insurance card, and it's pretty easy to cancel your insurance, but you still have your insurance card. Would this in any way help us address people who do that kind of behavior? I mean you've got the insurance card at the accident, and if you have your driver's license, I mean. [LB803]

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SENATOR LAUTENBAUGH: Regrettably no. I don't know what to do about that. I suppose at some point maybe there will be some real-time database where law enforcement could check and see if the insurance is still in force. That's not within the ambit of this bill though. [LB803]

SENATOR DUBAS: Yeah, I think that's been... [LB803]

SENATOR LAUTENBAUGH: I do see the problem though. [LB803]

SENATOR DUBAS: Yeah, that's been...you know, could the insurance industry have some kind of a database that would...I mean we know how computers can work and how quickly they can. I didn't think that your bill could address that, but it was an issue that was brought to my attention. Thank you. [LB803]

SENATOR LAUTENBAUGH: Sure. [LB803]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Hadley. [LB803]

SENATOR HADLEY: Senator Fischer, thank you. Senator Lautenbaugh, just a real-life situation. My wife happened to go back to Kearney with my car keys Sunday, and I'm talking to Senator Hansen, and he says, well, Galen, you know where my keys are in the pickup; if you need to use it for something, go ahead and do it. And I happened to have an accident but I have no idea whatsoever where Senator Hansen's insurance certificate is, do I call him up later and say, I'm sorry, Senator Hansen, your car is in the impound lot because I had an accident with it and I didn't know where your insurance card was? [LB803]

SENATOR LAUTENBAUGH: Well, I think what we would be looking at is your insurance card, not the other person's insurance card. The driver's insurance card...the driver has to have the insurance. [LB803]

SENATOR HADLEY: Okay. But most of the time I thought...maybe I'm wrong, but I keep my insurance card in...for the car, I keep it in my glove box of the car I'm driving at that point in time. [LB803]

SENATOR LAUTENBAUGH: There's really two possibilities there, I would argue. One, if you had...and they send you two cards because presumably you keep one in your billfold and one in your vehicle, at least my insurance company. And I won't give them a plug, I don't know if they all do that. I've only had one ever. But I think you're supposed to have one with you for the circumstance where if you rent a car, your insurance card back in your personal vehicle does you no good. That policy would provide coverage over that vehicle you were using. Arguably as a permissive user, the vehicle owner's card would provide coverage as well. [LB803]

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SENATOR HADLEY: You know, that's interesting, because I do get two cards from my insurance company every time and it has never dawned on me that that's one of the reasons they probably do it. The second thing is, is that I know having been the recipient of being hit a couple of times with people and having accidents with people that say, "Insurance? No, I didn't get around to renewing it," it does become very frustrating to the person who has the...who is involved in the accident. [LB803]

SENATOR LAUTENBAUGH: Yes. I agree and I look at having the insurance, frankly, as a cost of doing business. And when you don't have it and you're seeking the privilege--not the right, the privilege--to drive in this state, and you don't have your insurance, you're asking all of us to pick up that cost for your choice. And I'm not willing to...well, if I were willing to see that go on, I wouldn't have brought this bill, I guess is what I'm saying. That's what I'm trying to address. [LB803]

SENATOR HADLEY: Okay. Thank you. [LB803]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Janssen. [LB803]

SENATOR JANSSEN: Thank you, Chairman Fischer. Senator Lautenbaugh, I'm reading over Nebraska Appleseed's opposition to this, and in the second to the last sentence, "Moreover, we are concerned that these unintended consequences could disproportionately burden low-income individuals, who even in the case of a minor accident would now face the expensive impoundment of their vehicle, lost days of work, and subsequent transportation difficulties." How do you respond to that? [LB803]

SENATOR LAUTENBAUGH: Well, again, what we'd be talking about, that those costs only being faced if you didn't have proof of insurance and a driver's license. And regardless of income, I think you have to have that. And collision coverage is not...liability coverage as we call it, is not what you call terribly cost prohibitive, I would say, for just a straight policy that covers your liability to the other driver, leaving aside the repairs to your own vehicle. I guess you could say that almost anything associated with having a vehicle, the cost of gasoline, weighs disproportionately upon those with lower incomes. But there's a point at which you have to be able to be financially responsible for having that vehicle and the damage you can cause. So I understand what they're saying in that clause in the letter you're reading to me, but, again, I think you have to have insurance to protect the rest of us and that just has to be a part of the cost of having a vehicle, just like buying gasoline, in my mind. [LB803]

SENATOR JANSSEN: And what about in the same letter the excuse--and I'm paraphrasing--the excuse, I forgot my wallet or purse at home? [LB803]

SENATOR LAUTENBAUGH: Well, again, normally you would have one in your vehicle

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as well. And honestly this can work a hardship, I'll admit. I've never brought this up when Senator Lathrop was in our committee introducing a bill, but my vehicle was towed down here in Lincoln one time. And I went to get it from the impound lot because that's where it was, and my insurance card had expired and so I couldn't get my vehicle out of impound until I came with a new insurance card which was kind of a hardship and kind of a hectic morning, but that's the rule that applies if your vehicle has already been towed--you need that card to get it back. Similarly, I've represented people, relatives and otherwise, who have, you know, forgotten to renew their license and whatnot, and you show that you have done it and normally the charges are simply dismissed. I mean as a matter of course. We have that now where you are supposed to have done certain things associated with your vehicle and through what we'll call excusable neglect, you failed to do that thing; there is a way to deal with it. This is not meant for that circumstance. It could snag some people in that circumstance and they would have to rectify it by proving they did have the insurance or the operator's license elsewhere and that's regrettable, but I don't see another way to put any teeth in what we're trying to do here. [LB803]

SENATOR JANSSEN: Thank you. [LB803]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Price. [LB803]

SENATOR PRICE: Thank you, Senator Fischer. Senator Lautenbaugh, we talked earlier about that same situation where if I had...like I...just this past weekend I left my wallet on top of my car and drove off. It was problematic for a while. But if you had one, at least, right now the thing is you have to produce both, but if you had one, could you retain possession of your vehicle? [LB803]

SENATOR LAUTENBAUGH: Well, as the bill is drafted, no. But I understood that was your concern that we discussed earlier. [LB803]

SENATOR PRICE: Because a wallet could get lost, but if you had your insurance card in your vehicle...okay, good, because the only other thing I would add to it is with a family member who works in the insurance business, I've heard of the numerous times when people go out and buy a new vehicle--we heard that. They get insurance for the day and they cancel it. So I'd almost wish we could amend it to have insurance companies inform law enforcement when people cancel their insurance and go get the car right away. Thank you. [LB803]

SENATOR LAUTENBAUGH: I worry about the cost and the burden of that. I mean, I suppose that day may very well be coming. I suppose there could be some privacy concerns with that as well. That's... [LB803]

SENATOR PRICE: Understood. It's problematic. It's just the idea, it is a law that you

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have insurance for the privilege of driving. [LB803]

SENATOR LAUTENBAUGH: That's correct. [LB803]

SENATOR PRICE: All right. Thank you. [LB803]

SENATOR FISCHER: Thank you, Senator Price. Senator Hadley. [LB803]

SENATOR HADLEY: Just one other quick question. I was just thinking, your bill really is a natural follow-on for what the requirement is to license your car in the first place. [LB803]

SENATOR LAUTENBAUGH: Yes. [LB803]

SENATOR HADLEY: Because when I go into license my car, I have to take proof of registration or a proof of ownership, and I have to take a current insurance card. Now I can cancel it the next day, and as Senator Price said, but I do have to show that in order to get the license. So the question is, is should we require something three months after I get those plates that I still have the insurance? [LB803]

SENATOR LAUTENBAUGH: And this is...I admit to a certain extent this is the best we can do, but it's kind of like closing the barn door after the horse is already out. We are waiting until there is actually an accident and you, perhaps, don't have insurance, can't produce proof of it anyway. I don't know what else to do about it, but so this is probably the best we can do in this area, but it's at least an improvement over what we have, I would argue. [LB803]

SENATOR FISCHER: Any other questions? I see none. Thank you, Senator Lautenbaugh. Are there proponents for the bill? Good afternoon. [LB803]

JACK CHELOHA: (Exhibit 8) Good afternoon, Senator Fischer and members of the committee. My name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I am the registered lobbyist for the city of Omaha. I'd like to testify on behalf of our city in favor of LB803. I'd like to thank Senator Lautenbaugh for introducing this bill and for this committee hearing this testimony today. Back last fall, or so, when the city of Omaha was looking into what ideas would we like to put forward at the 2012 state legislative session, an idea that came forward from some of our governing body members, i.e., city council members, were we need to do something about drivers that don't have insurance. A lot of times local city councilmembers will take phone calls from constituents where citizens don't quite understand who has domain over which laws, and they'll call up and they'll complain to their city official about some driver that caused an accident and didn't have insurance. And so ultimately what I asked to be handed out here was a resolution that our governing body, at least, instructed me on to try and

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move forward with a bill to have some standards, if you will, regarding proof of insurance, and if you can't prove proof of insurance, what some discretionary consequences would be. LB803 goes a little further than what my resolution called for, but that, obviously, was up to Senator Lautenbaugh, and he thinks this is maybe the appropriate way to get to a solution. It's my understanding now that in order to...as has been pointed out during the senator's testimony, in order to operate a vehicle in Nebraska you must have liability insurance. In order to prove that you have liability insurance, you typically present it at the time that you license your motor vehicle and pay the registration, which we've covered before. It's also my understanding that either the Department of Motor Vehicles or Department of Insurance in the past decade was working on a database to try to be able to provide information relative to drivers and whether they had insurance or not. So I'll have to look further into that to see where we are. We want to, obviously, make sure we have accurate information before law enforcement would act to enforce LB803, should it become law. I wanted to also provide you with some information. Our city prosecutor in Omaha provided me with a little bit of data prior to this hearing today. He says that in the calendar year time in the city of Omaha, that we file, roughly, 7,000 cases a year against drivers for not having proof of insurance. And additionally, there's 2,000 of those above and beyond that, that are dismissed because after a 10-day period, as law provides now, those people were able to prove that they did have liability insurance and therefore those cases would be dismissed. To me that number stands out as being very significant. You know, Omaha is roughly a community of 400,000 people, and if we have that many cases a year, that's a high number. Typically in terms of operating procedures for police, if there's an accident that occurs and law enforcement is called, they have a duty by policy to file a written accident report which becomes part of the record, etcetera. And at the time that they do that we typically would have the requested information that we talk about in this bill available. And at that time drivers would have to present their proof of insurance, and we just feel that there's just so many incidents based upon the number of cases filed, the number of traffic citations issued, that our current existing law maybe just doesn't go quite far enough, and we would respectfully ask the committee to consider what's in LB803 or maybe consider some other options to more strictly enforce our liability insurance requirement on our drivers. I'll try to answer any questions. [LB803]

SENATOR FISCHER: Thank you, Mr. Cheloha. Are there any questions? Senator Price. [LB803]

SENATOR PRICE: Thank you, Senator Fischer. Mr. Cheloha, I have a question. In Omaha, numerous times I've heard them when they're on accident alert due to weather and they say if the vehicles are movable, the drivers exchange information and go on. Okay, so would that be a challenge if we're going to...you see what I mean? So if they didn't have insurance they're not going to get towed. [LB803]

JACK CHELOHA: Right. [LB803]

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SENATOR PRICE: And a civilian can't enforce this, correct? They can't...I mean, block them in and say I want you to get their vehicle towed because you didn't prove my insurance. [LB803]

JACK CHELOHA: Right. It's my understanding in those situations we do as nature dictates, or just the sheer volume of accidents occurring due to some circumstance, we ask people to go to the side and meet and exchange information, etcetera. If there's not an official accident report filed, which only the police would do if they were there to investigate, then it's just a happenstance that, you know, the police weren't there to investigate and to issue the ticket so they could. [LB803]

SENATOR PRICE: So if I...in my past experience, if there was a citation...you can issue a citation later, correct? Can one be issued later? [LB803]

JACK CHELOHA: I'm not certain on that. I wish I could answer that for you. [LB803]

SENATOR PRICE: I'll ask Senator Lautenbaugh when he closes. [LB803]

JACK CHELOHA: Okay, thanks. Thank you. [LB803]

SENATOR FISCHER: Thank you, Senator Price. Other questions? I see none. Thank you very much for being here today. [LB803]

JACK CHELOHA: Thank you. [LB803]

SENATOR FISCHER: Are there other proponents to the bill? Any proponents? Anyone in opposition? Good afternoon. [LB803]

ALAN PETERSON: (Exhibit 9) Good afternoon. Chairman Fischer, members of Transportation Committee. I'm Alan Peterson. I'm an attorney in Lincoln and I sometimes represent ACLU Nebraska, which is what I'm doing today, and I oppose part of this bill primarily because it adds to punishments, potential punishments, increases the criminal penalty, basically, very substantially from existing law. In reading the bill, I am not certain that the introducer or sponsors realize that we already do have a Class III misdemeanor for failing to have the driver's license and also for failing to have proof of safety responsibility, proof of insurance. Those penalties are in a separate section of Chapter 60, the driver's license one is 60-4,111; the safety responsibility criminal penalty is found in 60-650 (sic--60-560), I believe it is. I prepared a one-page letter and handed it out which is part of the record, isn't it, Chairman Fischer? [LB803]

SENATOR FISCHER: We will make it part of the record. Thank you. [LB803]

ALAN PETERSON: All right, I appreciate that. ACLU's concern is the increasing criminalization of activity of people in this country. This bill only, perhaps, raises the penalty from three months in jail and \$500, up to six months in jail, \$1,000. Those are the maximums. That's the difference between a Class III and a Class II misdemeanor. Whether the courts feel that would be helpful in deterring this offense, I don't know. But I want to note that the bill has two other additional penalties, or sanctions, and one is the immediate impoundment of the vehicle if you do not have either the proof of your driver's license, that is the physical license; or proof of your safety responsibility which means your insurance card, usually showing the date of expiration and the policy number, or it's about 6 by 5, I think; or you're allowed to prove safety responsibility in this state by showing that you have adequate assets of your own. And that is normally done, not on the spot of the accident, but later on. You're able to satisfy the safety responsibility law by showing that. And I believe, basically, it's...I think it's twenty...I think it's the same as the insurance minimum for liability, 25-50-25, which means \$25,000 per individual who may be hurt, \$50,000 if there's more than one person hurt, \$25,000 for property damage. But at any rate, whether those are the exact figures for proof of safety responsibility without insurance, I'm not positive, so don't hold me to that. But you can. I guess I'm wondering how this would apply if, let's say I'm one of the 1 percent, which I'm not, and have an accident, and I simply tell the officer I'm self-insured, I don't carry insurance because I can afford to pay the damages. The second...besides the impoundment, the second thing that can be done is this bill will allow a judge to impose a one-year no-drive order. Even if you then have a license, you get a license, and you get insurance, you can still be barred from driving for this failure to present it to the police officer at the time of the accident. That seems a little heavy. Those sanctions might be useful. Senator Lautenbaugh is absolutely right, there are a number of jurisdictions, particularly a number of cities, larger cities, that have gone to impoundment. I didn't note that they were bumping up the fine and the imprisonment term so much, but at least one federal court has said that the impoundment right away is constitutional. So I'm not here raising a constitutional complaint, I'm just saying we do not need to keep adding to the number of days or years that citizens spend in jail in this country. We're already practically the world record holder in terms of the number or percentage of our people who are in prison. And essentially this kind of doubles the penalty. I think it's unnecessary, and as this committee, the Judiciary Committee, and the other committees look at criminal sanctions, I would hope they keep in mind not only the effect on individuals of longer terms in jail, but the cost factor. I have read that in Nebraska you're talking somewhere in the vicinity of \$30,000 per inmate per year is the cost of incarceration. I'm not sure this is worth it. I respect the effort to require people to protect others by getting insurance, I understand that. I think that the sanctions imposed here simply go too far. One last point, at the end of this bill it indicates that the penalties imposed by this bill, if it were passed, are in addition to any other penalties or violations that might have occurred at the time that the incident, the accident presumably, takes place. Well, existing law already makes it a Class III misdemeanor simply not to possess the driver's license, and also another Class III if you don't have the...if you don't

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get insurance and can't prove that you are well enough funded not to need it. So since this bill doesn't repeal those, as near as I can tell, this is stacking on a Class II, raisable on the second offense to a Class I, on top of the existing Class III--and I'm not sure that was the intention. Senator Lautenbaugh might want to look at that. I'm not sure he intended that. But it does it. At least, technically, that is how it could be read. I, because of these reasons, I think this bill just goes quite a bit too far. I would ask the committee not to advance it. Thank you very much. [LB803]

SENATOR FISCHER: Thank you, Mr. Peterson. Are there questions? Senator Dubas. [LB803]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Peterson. I may agree to a point with some of the issues that you raised, but I think Senator Lautenbaugh is really trying to address a very serious issue. And I think the numbers that Mr. Cheloha brought forward, I mean that's just for Omaha. [LB803]

ALAN PETERSON: Yes. [LB803]

SENATOR DUBAS: And I know across the state it's a real issue and I've had family members who have experienced that personally. So to me it shows that the laws we have in place really aren't doing what we want to do. And driving is a privilege and we're paying for those people who choose, for whatever reason, not to have insurance through our insurance premiums. We all are required to have underinsured or not-insured coverage on our policies. So where do we...how do we deal with what is a very, very real problem? [LB803]

ALAN PETERSON: One suggestion, if you're going to increase the sanctions, do it incrementally and see if you get any effect. The tough one in this bill, I think, is immediate impoundment of the vehicle even if it is drivable. And that's being done, as Senator indicated, in quite a number of jurisdictions. That doesn't necessarily mean you increase the criminal penalty for what might be a stacking of the offense. Incremental changes might make more sense, particularly since you talk about costs to all of us. There is that cost of incarceration also to keep in mind. [LB803]

SENATOR DUBAS: Thank you. [LB803]

ALAN PETERSON: Yes. [LB803]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Hadley. [LB803]

SENATOR HADLEY: Senator Fischer. Mr. Peterson, thank you for being here. [LB803]

ALAN PETERSON: Yes, Senator. [LB803]

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SENATOR HADLEY: Impoundment was one of the sanctions, and we seem yearly to have the towing bill that comes in with...which to me is kind of an impoundment because the towing company picks up your car... [LB803]

ALAN PETERSON: Right. [LB803]

SENATOR HADLEY: ...from the private lot that you parked in and you've got to figure out how to get down there and pay them and such as that. So I'm trying to think why, you know, we allow that, we allow somebody to take your car from your property...even though you've parked it on their property, we allow them to do that, so why is it a stretch to say if you're in an accident and you can't show that you have proof of insurance or a driver's license, that we shouldn't take that car so you have the ability to drive that car away, even though you don't have that ability, and you can have an accident two blocks later and inflict damage to the public again? [LB803]

ALAN PETERSON: Senator, I think that is the basis for the impoundment idea that's being used. I didn't testify against that idea, but suggested that if you're going to add penalties to deter this conduct, maybe you ought to go one at a time and not clomp down three additional sanctions. The impoundment might be a good idea. It might help. [LB803]

SENATOR HADLEY: Well, I just think the impoundment might be...you know, losing the use of your car is a real significant...you know, the fine is...the fine I worry about next month or the month after that, or something like that, right? Or I don't show up in court or whatever, but if I watch my car get towed down, I certainly get the message that...and you don't let me pick it up until I show that I've got a driver's license or insurance, that might be a pretty strong message to somebody. [LB803]

ALAN PETERSON: It might be. It has effects on your whole life if you lose your transportation... [LB803]

SENATOR HADLEY: Oh, absolutely. [LB803]

ALAN PETERSON: And, boy, that may be a better deterrent perhaps worth considering. [LB803]

SENATOR HADLEY: And I think the key deterrent is the key here. It's not the punishment, the money we're going to get from fining or something like that is to get 7,000 people to buy insurance if you...either don't drive or buy insurance. [LB803]

ALAN PETERSON: There's no city contracts fought over more, I think, than the towing contract, by the way. That's quite lucrative for... [LB803]

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SENATOR FISCHER: Now, Mr. Peterson, we're not on towing today. (Laughter)
[LB803]

ALAN PETERSON: Thank you, Senator. [LB803]

SENATOR FISCHER: Thank you, Senator Hadley. Are there other questions? I see none. Thank you very much. [LB803]

ALAN PETERSON: Yes. [LB803]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? Anyone wishing to testify in the neutral capacity? I see none. Senator Lautenbaugh, would you like to close? [LB803]

SENATOR LAUTENBAUGH: Yes. Thank you, Chair. [LB803]

SENATOR FISCHER: (Exhibit 10) Oh, I'm going to interrupt you just a minute, Senator. We did receive a letter in opposition, with concerns opposition, from Nebraska Appleseed. I'm sorry, Senator, please continue. [LB803]

SENATOR LAUTENBAUGH: Quite all right. Thank you, Chair Fischer and members of the committee. I think we did have a good discussion here. And I even thank Mr. Peterson for coming on behalf of the ACLU, and they frequently do testify on my bills, not always supportive, but always honestly. And I think what we heard today was that the impoundment provision which really is, I think, the big-ticket item in this bill, may be the way to go here across the board. I don't think there was opposition to that. I'm willing to have conversations about the stacking of the penalties and I am one of those who does also believe that we can't forever ratchet them up and expect to get an increased compliance for our buck, but the impoundment certainly is the big-ticket item here. I was intrigued by Senator Price's citizen's impoundment scenario where the law enforcement isn't called, but that might be heavy lifting and I don't think we can pull that one off. But I'm willing to talk about it, just the same. I'm being facetious, of course, I know that's not what you're suggesting. But I think this is a good bill and an important topic. I'd be happy to answer any questions you may still have and I ask for your support. [LB803]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Senator Price. [LB803]

SENATOR PRICE: Thank you, Senator Fischer. Senator Lautenbaugh, I appreciate you bringing it up; it's a great segue. And if we can get the answer later, that's fine. But just because an accident happened during a weather event doesn't absolve the parties of responsibility of that accident, or say that you've done something that could be, I want to say ticketable, I don't know what the right phrase is for that, but if you...you could still

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have the court come back or the law enforcement come back and issue a citation.
[LB803]

SENATOR LAUTENBAUGH: Yes. [LB803]

SENATOR PRICE: Then if that happens, at the moment they issue the citation, and they say, where is your driver's license and proof of insurance, if you don't have it, they can tow that car? [LB803]

SENATOR LAUTENBAUGH: Well, that's not as the bill is currently worded. But I will tell you, you are dead on. I was in a car accident back on Thanksgiving and it was clear to me that the officers were not going to issue a ticket unless there had been a third party there to witness it. I mean...and if you're having an accident and there's a weather event and they can't come out, obviously there's no ticket issued at that time. I do know that if they do find an independent witness of some kind, they do ticket after the event. I don't know, just thinking out loud here, how the enforcement would proceed if we would then be sending out police officers after the fact to people who, once they know they're in an accident, say give me your license and registration and proof of insurance. That's just something I hadn't contemplated. It's a real concern and it would be a hole during weather events as to whether or not some people would be caught and impounded, if you would, the vehicles would be impounded, but I'm not sure if we can cost-effectively address that or not. But what you're saying is certainly valid. [LB803]

SENATOR PRICE: Would it be at all feasible just to say at any traffic stop, even without...because I'm wondering if you get pulled over, the first thing you're handing is your driver's license and proof of insurance and you're at a traffic stop, so you're in the clutch, if you would, of law enforcement. And the law enforcement...and they said, you don't have it, do we have to stop at accidents? I mean, this is a systemic, serious problem for our state. There are too many people out there who are taking advantage of there being a no real consequence, so they continue to have the behavior, and we're trying to stem the behavior. If you're caught by law enforcement and you're doing something wrong, and we have something on the books, I think it would be feasible to say: You just lost your car. [LB803]

SENATOR LAUTENBAUGH: And you are correct, Senator. The bill as drafted is tied only to those circumstances where there has been a traffic accident. And I was lamenting earlier that that was reactive and just hopefully preventing the next incident by taking away the uninsured vehicle, if you will. That would dramatically expand the scope of this bill. I'm not arguing against it; I'm just saying it would be a dramatic expansion of what we're talking about here to just say any time you're in contact with law enforcement in your vehicle and you can't produce that, impoundment is allowed. I don't have an argument against that as I sit here. [LB803]

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SENATOR PRICE: Well, thank you very much, Senator Lautenbaugh. Appreciate that. [LB803]

SENATOR FISCHER: Thank you, Senator Price. Senator Hadley. [LB803]

SENATOR HADLEY: I don't mean to prolong it, but wouldn't it be interesting some day in the future that we have two apps on our phone, one is our driver's license and one is our insurance card. And everybody goes with their phone all the time and so you just...you have an accident and you punch the app and here's my license, and punch the app and here's... [LB803]

SENATOR PRICE: Have a Q code. [LB803]

SENATOR HADLEY: Yep. [LB803]

SENATOR LAUTENBAUGH: I just want to use my laptop in committee, Senator. I think that's probably a bridge too far. [LB803]

SENATOR HADLEY: Oh, that's...no, we're not going that far. (Laughter) [LB803]

SENATOR FISCHER: Now, Senator Lautenbaugh, that's not up for discussion today. (Laughter) Are there other questions from the committee? I see none. Thank you very much. With that I will close the hearing on LB803 and close the hearings for the day. [LB803]