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Agriculture Committee
March 05, 2013

[LB287 LB288 LB636]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, March 5, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB287, LB288, and LB636. Senators present: Ken Schilz, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Ernie Chambers; Tom Hansen; Burke Harr; Jerry Johnson; and Steve Lathrop. Senators absent: None.

SENATOR SCHILZ: Good afternoon, everyone. Welcome to the Agriculture Committee hearing for today. My name is Ken Schilz. I represent the 47th District from Ogallala. And I'll go ahead and introduce the senators that are here, and then as others come in we'll let you know. Over here to my left we have Senator Norm Wallman from Cortland; Senator Tom Hansen from North Platte. To my right is Senator Bloomfield from Hoskins. And to my right here is Rick Leonard; he's the research analyst for the committee. To my left is Jamaica Coles; she is the committee clerk. And today with us we have Cicely Batie who is our page, and she takes care of making sure we have everything we need here. Today, how we'll do this, we'll have the introducer, then we'll have proponents, opponents, and neutral testimony. Some instructions for testifiers, before you come up if you would fill out a testifier sheet, there that's sitting on the desk, prior to your testimony; indicate the organization that you're testifying on behalf of, or if you're testifying on behalf of yourself. Make sure and say...state and spell your name for the record, both first name and last name. Just put the testifier sheet there on the desk and we'll grab it from there. And then if you have any handouts, I think we like to have 12, keep it...just give it to the page and she'll go ahead and hand those out. And then we aren't going to use the clock today, but I would hope that everybody would realize that everybody wants to get a chance to testify so be succinct in your comments. If somebody has said your...has stated in testimony that you have earlier, try to...try not to repeat yourself. If you don't want to testify, but want to indicate your position on the bill, there's a sheet also by the door where you may do so. These will be made part of the hearing record, however, only the persons who verbally testify will be indicated on the committee statement. We also don't allow any displays or any verbalizing among the audience of approval or disapproval of the witnesses, testimony, or bills. And if we could shut off our cell phones or place them in a nonaudible mode, that would be great. And if you have to carry on a conversation or make a call, please take it to the hallway. Today we have three bills on the agenda and we'll go in this order: LB287, LB288 and LB636. And with that I'll recognize Senator Carlson and LB287. Welcome back, Senator Carlson. Ready to go? It's all you, welcome back.

SENATOR CARLSON: Thank you, thank you. Good afternoon, Senator Schilz and members of the Agriculture Committee. I am Tom Carlson, T-o-m C-a-r-l-s-o-n, representing the 38th District here to introduce LB287. And it's nice to be in front of this committee. Some background here, LB287 relates to LB427 which this committee enacted last year. That bill set out additional operating and facility standards for

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commercial dog breeders under the Commercial Dog and Cat Operator Inspection Act. A veterinary care plan is required of breeders and the plan must be signed by and annually reviewed by and updated by the veterinarian. The key element of LB427 was the addition to the plan of a periodic examination of each animal by the veterinarian and require that the plan be signed at the time of an on-site visit and walk through observation of the facility by the veterinarian. This agreement that the veterinarian care plan include a hands-on wellness exam at least once every three years was a significant concession by the breeders. Compliance will not come without additional costs. LB287 would allow licensed breeders to administer rabies vaccination on the breeder's animals if acting within a veterinary care plan. I agreed to bring this bill to you for two reasons. First, there is the potential for savings to the breeders that would help them absorb and offset the cost breeders would incur meeting the new standards for care plans. These standards must be in place in order to renew licenses by April 1 of this year. Secondly, it's a concern that some breeders may be vaccinating their animals out of ignorance of the law or due to the availability of vaccine on the Internet. There's also the fact that as a consequence of LB427, more breeders just choose to do it themselves. However, this bill is not meant to be an absolute license for breeders to vaccinate their pets against rabies...their animals against rabies. This bill provides that any vaccination permitted to be performed by a breeder would have to be authorized and instructed by the breeder's veterinarian. In summary, LB287 would allow a commercial dog or cat breeder to vaccinate their animals against rabies under a required veterinary care plan. The plan would set out specifically authorized and instructed terms for the breeder to follow, and those terms would be part of the required care plan. If the veterinarians oppose this bill, I would encourage you to ask what their charge, including the vaccine, is per animal. I'll be happy to answer any questions before others testify. And thank you for allowing me to present LB287. [LB287]

SENATOR SCHILZ: Thank you, Senator Carlson. Senator Hansen. [LB287]

SENATOR HANSEN: Thank you. Senator Carlson, did you say you could buy rabies vaccine over the Internet? [LB287]

SENATOR CARLSON: I think that's what...I think that's what I said. And I think it's accurate, but I invite you to ask the breeder that follows me. [LB287]

SENATOR HANSEN: Do you see any downside to that? [LB287]

SENATOR CARLSON: Buying it? [LB287]

SENATOR HANSEN: I mean, I don't buy anything on the Internet, so maybe I'm naive, but that sounds like...you buy rabies vaccine and that, in the hands of the wrong people, could be very, very dangerous. [LB287]

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SENATOR CARLSON: It could be. I don't know that that has a whole lot...I probably shouldn't even have brought it up. I'm not sure what it has to do with this bill. [LB287]

SENATOR HANSEN: Well, you brought it up. [LB287]

SENATOR CARLSON: I know I brought it up. (Laughter) Other than it's a way of acquiring it so that they can give the shots themselves. [LB287]

SENATOR HANSEN: And instead of buying it from a veterinarian...okay. [LB287]

SENATOR CARLSON: I believe that's...that would be the intended purpose. [LB287]

SENATOR HANSEN: Okay. [LB287]

SENATOR CARLSON: Or the reason. [LB287]

SENATOR HANSEN: All right. Thank you. [LB287]

SENATOR SCHILZ: Any other questions for Senator Carlson? Senator, thank you very much. And you plan on sticking around to close? [LB287]

SENATOR CARLSON: Yes. [LB287]

SENATOR SCHILZ: I suppose you do, yeah. Thank you. At this time we'll take the proponents. First proponent. Good afternoon. [LB287]

CLEM DISTERHAUPT: (Exhibit 1) Good afternoon. Good afternoon. My name is Clem Disterhaupt, Senior, spelled C-l-e-m D-i-s-t-e-r-h-a-u-p-t. I live in Stuart, Nebraska. I and my wife Betty have operated a kennel for nearly 44 years. I'm president of the Nebraska Professional Pet Breeders Association. And LB287 was created on behalf of Nebraska breeders for the following purposes. First, over the past few years the economy has severely crippled pet breeders and many have gone out of business. This sale will save hundreds, in many cases thousands of dollars for pet breeders and help them stay in business. Number two, current rabies laws are administered through Health and Human Services, but most breeders simply cannot afford them. We have, as breeders, accepted LB427 where we're required to have animal checks every year. This will help offset the cost of that. Simply, funds are not available. Puppy prices have crashed. And LB287 would make it legal for breeders to vaccinate only their adult breeding dogs themselves safely, effectively, and affordable. Please understand the criteria in which this would take place. The rabies would be given under the state Veterinarian Care Plan and signed by their attending veterinarian. The breeder would only be allowed to vaccinate their own breeding dogs. All dogs and puppies sold or leaving the facility would still be done by a licensed veterinarian. The breeder would be required to record

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the date of vaccination, type and manufactured serial number of each dog and make it available to our attending veterinarian in the Veterinary Care Plan. This plan is currently exercised by many other states including Pennsylvania in which this Nebraska LB287 was based on. From the research we've done, Nebraska law has been...all the other laws have been successful in every one of the other states that's allowed to give it. And from the research we've done, I think 34 states that we've found on the Internet are allowed to already give their own rabies vaccine. Some require certain other conditions; some you can do with nothing else, some have...you have to record it, like we're saying, like Pennsylvania does. There are a few that require a certification. At any rate, we think that it's...we do all our other shots safely. And I cannot find any instance, not even one, where there's been any problems with the states that's done their own vaccinations. The commercial dog breeders bring in millions of dollars each year to the Nebraska economy from out of state. Most of our puppies go to California, New York, and other states and bring millions of dollars into the economy in Nebraska. And yet 80 percent of that money is spent here in Nebraska. We're asking the members of the Ag Committee to help us and keep dog breeders in business. They're dropping like flies. These will be ways that we can do that and do it safely. Members of the Ag Committee, as president of the Nebraska Professional Pet Breeders Association and as a 44-year dog breeder, I ask you to vote for LB287. Thank you. [LB287]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Hansen. [LB287]

SENATOR HANSEN: Thank you for coming today. Where do you get your vaccine and what about the tags? How you do get the rabies tags? [LB287]

CLEM DISTERHAUPT: It's my understanding...I don't know if you can buy it on the Internet, but I think you can to a point and this can be checked. But I do know that supply companies advertise and sell all vaccines on the Internet. And it's priced on the Internet so I'm assuming that they do sell it or they wouldn't have it advertised there. [LB287]

SENATOR HANSEN: Where do you buy it? [LB287]

CLEM DISTERHAUPT: Currently, sir, I'm like everybody else. [LB287]

SENATOR HANSEN: You get it from a...you have your dogs done by a vet. [LB287]

CLEM DISTERHAUPT: That's why I've got the bill here so we can afford to do it by veterinarians. But we're hoping that we can do it affordably. The problem is is that it's not all...veterinarians don't cooperate to do it at the same prices. There are some people that can reasonably do it for \$10, and there's others that are charging \$45 a dog plus mileage. When somebody's got a hundred dogs, that's \$4,500; and they got to do a repeat of that so that it's...it's called a booster shot, so this can get to be a very

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expensive thing. And we want to make it affordable, as many, many other states have done and this is a good way to do it. [LB287]

SENATOR HANSEN: Thank you. [LB287]

SENATOR SCHILZ: Thank you, Senator Hansen. Any other questions? That was my question is how much does it cost and does it really vary that much? [LB287]

CLEM DISTERHAUPT: Yeah, it does vary. You just wouldn't believe how much. My own veterinarian will do it like for \$10 if she comes out and do each one and we can make that affordable because we've got everything paid for, we've been in the business long enough. But there are some people, I just talked to a lady today that's paying \$45 a dog plus the repeat for the booster shot and mileage driving to her place. So it can get to be thousands and thousands of dollars a year. [LB287]

SENATOR SCHILZ: Um-hum. Okay, thank you, sir. [LB287]

CLEM DISTERHAUPT: You bet. [LB287]

SENATOR SCHILZ: Appreciate it. Next proponent. Looks like we've got just about enough seats, huh, one gets up, one sits down. Welcome. [LB287]

PENNY FATTIG: Thank you. [LB287]

SENATOR SCHILZ: Just set it right there. [LB287]

PENNY FATTIG: Okay. [LB287]

SENATOR SCHILZ: Good afternoon. [LB287]

PENNY FATTIG: Good afternoon. Ready to start? [LB287]

SENATOR SCHILZ: Whenever you're... [LB287]

PENNY FATTIG: My name is Penny Fattig. I'm from Gothenburg, Nebraska. My husband and I... [LB287]

SENATOR SCHILZ: Excuse me, ma'am. Can you say and spell your name, please. [LB287]

PENNY FATTIG: Oh sure, I'm sorry. P-e-n-n-y F-a-t-t-i-g. [LB287]

SENATOR SCHILZ: Great, thank you, go ahead, sorry. [LB287]

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PENNY FATTIG: My husband and I have been in the kennel business for many years. We, who are in the kennel business are in it for different reasons. Most of us are in it because we love dogs and because we need to earn a living. The kennel business is one of the few ways to make a living on a small amount of land, and the fact that it takes a large amount of land to make a living in the farming industry today leaves very few alternatives for we small land holders. The economic downturn has taken a toll on puppy prices, and due to the fact that our expenses have continued to climb, we have been forced to budget closely. Therefore, we feel that it would be of an economic advantage to be able to give our own rabies vaccinations as we already give our other vaccinations and are very adept at it. Some breeders may feel better having a vet administer their vaccinations, and they may have a veterinarian who will do it very reasonably. As Clem said, there's great variation in the prices that vets charge. My husband and I feel that it should be our decision whether we want to take the responsibility of handling the rabies vaccine and administering it. We handle other kinds of vaccines successfully because we cannot risk being negligent. Why wouldn't we be able to do the same with the rabies vaccine? We can document records on each dog's vaccination and keep receipts, vials, and/or labels which would be proof of purchase. Some may say that this would not be proof of administration of the vaccine. This does not make sense because we would have no reason to purchase the vaccine and not administer it, just as we would not have no reason to purchase other vaccines and not administer them. We would like to have our dogs be vaccinated for the dog's safety and for our own safety, as well as anyone else who may be exposed to them. But due to the expense of having veterinarians administer the shots, it might not be economically feasible. Some vets charge exorbitant amounts to vaccinate. We, like cattlemen and hog farmers, have to do our own vaccinations to be able to remain profitable. Many other states do not have laws which restrict rabies vaccine to be administered only by veterinarians. And I believe that our state would do well to help the industry in this way as the industry does help support other facets of the economy of our state and country. In fact, Nebraska is one of only 17 states that does have a law which restricts the administration of the rabies vaccine to be done only by veterinarians. So that's less than half of the states that has this law. And I've never heard of any problems that have been caused in all these other states that have not had this law. I respectfully urge you to support LB287 as this will help animal agriculture in our state. I want to thank you for your time and attention to this matter. [LB287]

SENATOR SCHILZ: Thank you, ma'am. Any questions? Seeing none, thank you for your testimony. Next proponent. Good afternoon. Good afternoon. [LB287]

JUDY WILLIAMSON: Good afternoon, Chairman. My heart is beating out of my chest right now, so if I keel over I hope there's medical people here to take care of me. [LB287]

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SENATOR SCHILZ: We got a couple vets in here I think. (Laughter) [LB287]

JUDY WILLIAMSON: Because this is totally uncomfortable. This is out of my realm. I take care of dogs. I don't take care of paperwork. [LB287]

SENATOR SCHILZ: You're going to do fine. [LB287]

SENATOR LATHROP: You're fine. Don't worry, don't worry about it. No, you're fine; you're just having a conversation with us. [LB287]

JUDY WILLIAMSON: (Exhibit 2) Good afternoon, Chairman and members of the Ag Committee. My name is Judy Williamson, J-u-d-y W-i-l-l-i-a-m-s-o-n, from Stamford, Harlan County, Nebraska. I am a professional dog breeder, along with my husband and five children who operate a family business of raising puppies. I would like to present three topics concerning this bill: number one, money matters; number two, the laws and its exemptions; and number three, penalties, whoa. Money matters--originally our family business began in 1985, nearly three decades ago, with one male and one female dog. And the next thing we knew, my children and I were enjoying an enterprise of raising healthy, happy puppies for friends, families, and others. Life was good in the "good life" state. Throughout those years we attended many workshops, seminars, and educative sessions given by veterinarians, various drug companies, and professionals from across the United States; as well as working closely with many different veterinarians learning to do vaccinations, wormings, minor surgeries, and dental, all of which have been cost effective. As thus stated in this bill, if we, as a licensed commercial dog breeder, under the supervision of our attending veterinarian, are afforded the privilege of giving this particular vaccine, it will be again cost effective. One less veterinarian expense which for our business would result in a \$4,000 savings in the first two years. Expenses inflicted due to the new laws, rules, and regulations are already at \$12,000 a year to cover license fees, mandated annual vet care plan, vet examines, dentals which are over and above normal operating expenses. Brings us to handout number one: laws and exemptions. Whether due to representation of certain dog breeders, we see under Section 71-4405 that exemptions are granted to those dogs brought in for field trials or show purposes or for hunting purposes as long as they're kept under strict supervision of the owner. Now as a layperson, I understand now that Nebraska laws require a licensed veterinarian to administer this vaccination to all domestic animals. That definition "domestic animal" defined as any dog or cat, and a cat means a cat (inaudible) whole household pet. Identical rabies laws exist in only 16 other states out of 51. Twenty-four states that give permission to someone other than a veterinarian to administer the vaccine including one state that allows a licensed professional breeder to do so. And we've talked about that, Pennsylvania. Ten other states that have no specifications or no laws at all; our ratio is 17 versus 34 right now. Penalties, handout number two: whoa, this is a disciplinary process that the Department of Health and Human Services follows should a complaint be filed against a person in violation of the

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current rabies law. If someone other than a licensed veterinarian were to administer a rabies vaccine, the act of administering the rabies vaccine is considered the practice of veterinarian medicine and anyone other than a licensed vet who administers a vaccination would be considered as engaging in the unauthorized practice of the profession which in the worst-case scenario means the practice of such profession without credential is guilty of a Class III felony which carries with it a maximum of 20 years imprisonment or \$25,000 fine or both, minimum one year imprisonment. This bill, LB287, only requests that those professional breeders licensed with the state of Nebraska under the Dog and Cat Inspection Act be allowed to vaccinate their breeding dogs that are strictly maintained and housed in a kennel facility that meets the rules and regulations and are regularly inspected by the Nebraska Department of Agriculture. It also reflects that each professional licensed breeder will maintain for inspection the exact same information that veterinarians now provide as documentation. As with so many other ag-related businesses, the laws that produce countless rules and regulations resulting in overwhelming expenses in order to conform to all of their requirements have caused a demise in over half of these small businesses of kennel operations. In an already depressed economy of trying to keep a business afloat, I have personally seen so many fellow professional breeders go under. And sadly enough, they were some of the best of the best. We would plead, though we are a small minority, that you members of the Ag Committee would seriously consider passing LB287. And I thank you for your time and consideration. [LB287]

SENATOR SCHILZ: Thank you very much. You did a fine job, so don't worry about that. It sounds like you've done it a number of times. Senator Wallman, I think, has a question. [LB287]

SENATOR WALLMAN: Thank you, Chairman Schilz. Thank you for testifying and coming here. And I feel your pain about costs. Do you think...and I'm an ag person, do you think there was an overproduction of puppies caused some of this? [LB287]

JUDY WILLIAMSON: As far as what the... [LB287]

SENATOR WALLMAN: The prices. [LB287]

JUDY WILLIAMSON: The prices, it was a combination of that. But also the fact that you have advertisements now coming out of puppy mills and that has definitely triggered the public not to. [LB287]

SENATOR WALLMAN: Yeah. Thank you. [LB287]

SENATOR SCHILZ: Okay, thank you, Senator Wallman. Any other questions? Senator Bloomfield. [LB287]

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SENATOR BLOOMFIELD: Thank you, Senator Schilz. Ms. Williamson, you handed us this thing with the states that allow it under supervision. Do you know to what degree that supervision is? If not, we'll find out later. [LB287]

JUDY WILLIAMSON: Well, it really varies. I actually took this information off the American Veterinarian Medical Association Web site. I don't think there has been an update done, according to the Web site I was looking at, since 2010. So some of these figures may have differed from the last two years. I don't know, this is just what I could gather. But the states, which are 24 now, and they vary from a vet tech under the supervision of a veterinarian, or even just...there's one state that just...if you've even worked with a veterinarian. I don't know, in a veterinarian clinic you could be a janitor I think, but you know, as long as you were working in the veterinarian clinic you could do it. To..there are townships...or states where a person could actually just have an okay as an agent to do such a thing. So, you know, there's a broad spectrum here. [LB287]

SENATOR BLOOMFIELD: Okay. Thank you. [LB287]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Any other questions? [LB287]

JUDY WILLIAMSON: Of course, anybody can go to the AVMA Web site and it's diagnosed each state verbatim of exactly...you know, no specifications some and... [LB287]

SENATOR SCHILZ: Seeing no other questions, thank you very much for your testimony. [LB287]

JUDY WILLIAMSON: Thank you. [LB287]

SENATOR LATHROP: I think you did a good job. (Inaudible.) [LB287]

SENATOR SCHILZ: Further proponents. Proponents? Seeing no more, any opponents? Come on up. Good afternoon. [LB287]

MELISSA GIRARD-LEMONS: Good afternoon. Good afternoon, Chairman Schilz and committee members. My name is Melissa Girard-Lemons, M-e-l-i-s-s-a, Girard is G-i-r-a-r-d, hyphen, Lemons, L-e-m-o-n-s. And I'm a practicing veterinarian in Grand Island. I have a multiple doctor small animal practice. We have approximately 6,000 clients. Of those 6,000 clients, I do have a few clients that I work with that are commercial breeders, licensed USDA breeders. Also, as one of the hats that I wear, I currently serve, and I have for the last 12 years, on the animal advisory board for the city of Grand Island. And that has gained me many years of experience with animal-to-animal and animal-human bites and review of rabies and how it pertains to the laws in all the different individual jurisdictions. I'm here today representing the

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Nebraska Veterinary Medical Association. I am the immediate past president. I still am on the executive board, it's a four-year commitment. And I would like to provide you with some basic information today why rabies vaccination should continue to be held in the highest standard and administered by a veterinarian only. And hopefully I can answer some of those questions as we go through this process today that have been brought up. As I sat here, I heard Mrs. Williamson say that money matters. And I understand that, we all have to make a living. But I'm here to talk to you about life matters and safety matters. Rabies is a fatal virus that is zoonotic. So fatal means it's going to cause death and zoonosis means animal to animal, animal to human, human to animal. Okay? It's a virus that all mammals are susceptible to. It's an acute, very quick acting, very progressive virus that causes encephalitis; a very, very inflammatory condition of the brain. In the United States, the rabies virus is maintained in wild animal reservoirs. If you live on the East Coast, it's in raccoons. It is in raccoons so bad on the East Coast that they have oral rabies vaccines that they bait raccoons with to try to keep this virus under control. And control is where we're at in the United States. In Nebraska, this virus reservoir is mainly in skunks. As a child I remember seeing many rabid skunks on our farm. And, as a matter of fact, my brother-in-law just had a rabid skunk last spring that we took care of, had it tested, and confirmed it. Rabies is usually transmitted animal to animal or animal to human by either a bite or by saliva getting into an open wound. The saliva has the actual active virus in it. And it travels along the neurons. So if I'm bitten on the hand, which happens quite frequently in my profession, it will travel along my neurons to my brain. And once that virus is in my brain, I become clinical with neurologic disease in my head, and there's nothing that you can do to fix that. So unfortunately it's fatal. It is...generally takes 3 to 12 weeks from the time that you're bitten to the clinical course of disease starts to manifest itself. And in animals in particular, the disease can have many different manifestations. You can either get the real quiet, stuporous form of rabies or you can get the rabid, like everyone wants to think about, seizing, foaming at the mouth. I've seen them both. There is currently no effective rabies antiviral drugs. If you have that virus travel to your brain, there is no drug that is going to fix you. People, if they're bitten by a rabid animal, can go through the same disease process, but there are prophylaxis treatments that can...preventative treatments that can take place to prevent the virus from spreading and we'll talk about that in a little bit. I included in your handouts the Centers for Disease Control, as we most refer to as the CDC, and the Centers for Disease Control throughout the United States has facilitated for many years procedures to contribute to the effective national rabies control program. The veterinary colleges all extensively teach students throughout their course of their four-year postcollege professional program about the virus rabies, about immunology, and about the laws and how they relate to public health and how you handle rabies as a veterinarian and the liability that goes along with that, as well as veterinarians are extensively trained in immunology and virology, the study of vaccines and the study of viruses. In today's society, I'm happy to say animals and humans live hand in hand. And with that strong animal/human bond and dogs and cats just aren't dogs and cats anymore, they're a member of the family. That also puts us at

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risk of zoonotic disease. We could potentially get a disease from them and there's many to list which we're not here for all of that today, we're here about rabies. Rabies does exist in Nebraska. I included in your handout, last year there were 43 reported cases. That's just the reported cases. There's a lot more cases that people are pretty certain that's what it is and it goes unnoted. Animals that were exposed were well cared for according to local codes and ordinances and laws. Public health will be compromised if laypeople are allowed to immunize and I'd like to point out the following reasons. I know we talked today earlier in testimony that breeders and pet owners are allowed to vaccinate their own animals for many diseases. They're allowed to do it to their own, no one else's but their own. But those diseases are not zoonotic. Those diseases do not result in human death; those diseases are simply animal disease. The possibility of inappropriate vaccination storage, vaccination selection...Senator Hansen mentioned where do you get vaccines from? There are vaccines sold on the Internet. There are no drug company that is going to stand behind those vaccines if you purchase them through the Internet. If you purchase the vaccine through a licensed distributor, then the company who produces that vaccine, whether it's Merck, Merial, Boehringer Ingelheim, I can list all of them. And all the vaccines are listed in your compendium if you're interested in looking them all up. Those vaccine companies stand behind their products. So if there's a lot number that they have a problem with, we get notification immediately that those lot numbers are bad. Okay? Inappropriate route of administration, inappropriate dosing: I've had to work really hard with my local breeders to have them understand that just because it's a little dog doesn't mean they get half a vaccine. They have to have an entire vaccine for it to be effective. It's also concerning that we may have inaccurate, adequate recordkeeping; inadequate lot numbers on the vaccines; date of vaccination; and important animal identification, you have to identify each of these animals. And vaccines are only effective if the patient that they're being administered in is healthy. A good physical exam should be done prior to vaccines being administered. If you're not healthy, your immune system will not respond to that vaccine properly, adequately. There's a lot of uncontrolled variables that we have concerns about obviously that I've mentioned. Reliable vaccination information will likely not be able to be obtained in a timely and accurate manner. I know in my community, if there's a bite case, they're calling me no matter what time of the day it is if there's no rabies tag and if they can't produce the rabies certificate...people are human, they lose things. I have a computer system that I can get into in no time at all and I can tell them exactly when it was administered, where it was administered, what lot number it was, and what date it was administered, and the animal ID and everything about that animal including their weight, their sex. Veterinarians, we carry liability insurance, and we're held to a higher standard of practice. We have to abide by the laws and we're disciplined and licensed through the Board of Veterinary Medicine and Surgery. There's no room for errors. Breeders are not held to this standard. The bill does not state that breeders would be required to have liability insurance in the event there is litigation. The bill also...I heard testimony that said it was just their adult breeding dogs. If you look at the bill, it just says animals owned by the breeders. It doesn't specify an age or what

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their purpose is for. Another concern is export of sold animals. It would be illegal if a breeder vaccinated for rabies. It would be illegal for that animal to be exported out of the state of Nebraska. First of all, a veterinarian under the USDA accreditation licensure, we are not allowed to sign a health certificate on that animal without examining it and knowing that a veterinarian administered the vaccine...a licensed veterinarian. So it doesn't have to be me that administered that vaccine, but I have to have proof, I have to have medical records sent to me or I have to have a rabies certificate signed by a veterinarian before I can export that animal. I realize breeders are selling animals that are eight weeks of age, but I looked at my records of the last six months and I got new puppies and kitties in from the age of two to four months. The market is slower; the animals are getting older before they leave, and at three months of age they're eligible and recommended to have a rabies vaccine. So we will have younger animals go out with rabies vaccines that are not rabies administered by a veterinarian. Those animals will end up moving across state lines illegally because a veterinarian will not write a health certificate on them. Another concern is I have three licensed veterinary technicians. They went through a professional program, they passed a national exam, and they are licensed to practice in the state of Nebraska under the Board of Veterinary Medicine and Surgery. They are not allowed to administer rabies, even in my direct supervision, I can look at them and they can't do it. And I take that very seriously because the disease is very serious, and I really truly feel that these guidelines were set up for this very reason. Last, but not least, I've worked with quite a few physicians in the emergency rooms; and I've talked to a few of them in the last couple of weeks. Their concern is having a new puppy or kitty, and it happens all the time that kids get bit. It's not usually the kids that own the dog. It's the neighbor kids that were over playing and the puppy was just being overzealous, but they end up in the emergency room. That puppy, if you don't have a proper rabies knowledge, we're going to end up having a lot more post-exposure vaccines...excuse me, post-exposure prophylactic treatments, which isn't a vaccine, it's actually given an antibody to stop the virus from moving up wherever it entered. And I don't know if you're aware of this, but that expense falls on the state of Nebraska. So the state of Nebraska pays for those, they're expensive. They're also very risky and scary. There are a lot of people who have adverse reactions to those prophylactic treatments, as well as, I know a veterinarian that can't go through it. She will...she developed anaphylaxis once. And anaphylaxis is shock. And I think everyone understands that shock can lead to death. So she has to be very careful. The other vaccines, I do believe there are a lot of breeders out there and I'm very proud to be friends with several of them in the tri-cities areas. They do a good job. They know how to administer vaccines. Unfortunately, I don't feel that we can say that across the board. And we are also looking at breeders administering vaccines that are nonzoonotic. Rabies is zoonotic. It's also the most reasonably priced service that veterinarians provide. I know we asked about price earlier. The average rabies vaccine costs from \$3 to \$5. That is getting it in from a drug company and having a vaccine company follow you up. There has been several times I've had a vaccine failure and I've called the company that manufactured it, could produce the data, and they stood behind

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it and took care of the problem. So the average cost is anywhere from \$3 to \$5 by the time you include the syringe and the sterile needle that should be used each time, you have to add those costs in. And I charge \$10 when I go out to vaccinate for rabies. And we talked about boosters. The very first vaccine that is administered is good for one year and then every one after that is good for three years in dogs. There are vaccines that are labeled for one year; there are vaccines that are labeled for three years. There are vaccines in cats that cost up in the parts of \$10 a vaccine. It's called PUREVAX rabies; it's made by Merial. And it is a vector vaccine. And that vaccine is actually the Canarypox... [LB287]

SENATOR SCHILZ: Excuse me, ma'am. I don't mean to cut you off, but... [LB287]

MELISSA GIRARD-LEMONS: Nope, that's fine, okay. [LB287]

SENATOR SCHILZ: ...we'd like to stick with the bill... [LB287]

MELISSA GIRARD-LEMONS: Fair enough. [LB287]

SENATOR SCHILZ: ...we've got a big room... [LB287]

MELISSA GIRARD-LEMONS: Sure. [LB287]

SENATOR SCHILZ: ...a lot of bills today. [LB287]

MELISSA GIRARD-LEMONS: And I could talk all day long, so, very passionate, so. [LB287]

SENATOR SCHILZ: I appreciate that. [LB287]

MELISSA GIRARD-LEMONS: With that I guess I'll ask if there's questions. [LB287]

SENATOR SCHILZ: Thank you very much. Are there any questions? Seeing none, thank you very much for your testimony. Appreciate it. [LB287]

MELISSA GIRARD-LEMONS: Okay, thanks. And here's the NVMA information (inaudible). [LB287]

SENATOR SCHILZ: Next opponent, please. Good afternoon. [LB287]

BRUCE BRODERSEN: Good afternoon, Chairman Schilz and committee members. My name is Bruce Brodersen, B-r-u-c-e B-r-o-d-e-r-s-e-n. I'm a veterinarian who was in mixed-animal practice for a short time before becoming a veterinarian pathologist. I work at the University of Nebraska Veterinary Diagnostic Center. And we routinely see

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cases of rabies in our laboratory and have to deal with issues relating to identification of animals, their vaccination status, and the potential for having human exposure occurred. Today I'm here representing the Nebraska Veterinary Medical Association and providing testimony for the NVMA in opposition of LB287. As a member of the association, I'm also a member of the legislative committee which is keenly interested in any legislation introduced to lower the standards of practice. Consequently, the passage of this bill would, in effect, lower the standard of animal and human health in the state of Nebraska. We believe passage of this bill will create situations where there is an increased likelihood of inadequate vaccination or inaccurately documented vaccinations. Rabies is a real and sincere threat to the health of all Nebraskans. Likewise, there are...so are dog bites. Many of us know of someone who has been bitten by a dog. With the passage of this bill, the risk that that dog may have been incorrectly vaccinated for rabies will increase substantially. As many of you know, rabies vaccines are different from other vaccines because the disease protects against...because of the disease that the vaccine protects against. Most vaccines, as Dr. Girard-Lemons pointed out, are administered to animals to protect against disease for those animals, whereas with rabies, since it could be transmitted to humans and is virtually 100 percent fatal once that person starts showing signs, that just emphasizes the need for a high standard of practice for administering the vaccine. To highlight...this is an example to highlight what happens in a suboptimal vaccine practice and this is relating to a canine distemper virus, so it's different than rabies virus. But just...the point I want to make is that with suboptimal vaccination practices what can happen. So there's a report in literature, in a refereed, scientific literature that...of canine distemper virus affecting 24 young dogs shortly after sale by two pet stores. This occurred in Wyoming during August and October of 2010. Puppies at the breeding property site of origin, which were intended for sale, were tested for canine distemper virus. This virus was diagnosed on the breeding property site in November of 2010. So the following month after they were discovered at the pet stores. At that point, 1,466 dogs were euthanized to eliminate dispersal of the disease through commercial channels. Again, this report just underscores the risk inherent in large-scale dog breeding with vaccination and bio-security practices are at a lower standard of practice. So the specifics of the bill in addressing those issues, there's no mention in the bill regarding training of breeders to vaccinate their animals, although they do vaccinate for other diseases besides rabies virus. The risk of improper vaccinations such as vaccinating just the hair coat, not getting the needle inserted properly, or a through-and-through vaccination where the vaccine ends up on the table, and improper handling of the vaccine are examples of what could happen with an untrained individual administering the vaccine. Breeders will be required to maintain records, that's what the bill states, but there's no requirement for certification of vaccination. Without a vaccination certificate, a veterinarian cannot legally sign a certificate of veterinarian inspection for interstate movement of dogs and cats. This bill does not specify what type of supervision should be given by the veterinarian when a breeder is vaccinating a dog. There's three types of supervision in Nebraska in the statutes for veterinary supervision. One is immediate

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supervision where the veterinarian is on the premise and in direct eyesight of the person performing that act or procedure. Direct supervision is the purpose...the person is on the premise and is available for the veterinary technician or assistant treating the animal. And indirect is when the person is not on the premise, but easily accessible and has given written or oral instructions for the treatment of that animal. And the bottom line is, that that...this last point is actually kind of a moot point since licensed veterinary technicians are not actually allowed to administer vaccine. Thank you and I'd be happy to answer any questions. [LB287]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Wallman. [LB287]

SENATOR WALLMAN: Thank you, Chairman. Yes, thanks for coming, Bruce. And in regards, does USDA send these tests, say I think I have an animal with rabies, so USDA gives you this test kit? [LB287]

BRUCE BRODERSEN: It's not a kit. Actually we acquire the reagents from the CDC. And so we send individuals down to Atlanta for training on how to perform the test. And they don't really have a proficiency test program in place for rabies testing. But if we have a case where we're suspicious and we have inconclusive results, why, we send them to reference laboratories such as Kansas State University has a...is considered a reference lab. [LB287]

SENATOR WALLMAN: That's quite a bit of money, isn't it? [LB287]

BRUCE BRODERSEN: Yeah, it gets pretty expensive. [LB287]

SENATOR WALLMAN: Thank you. [LB287]

SENATOR SCHILZ: Thank you, Senator Wallman. Any other questions for Mr. Brodersen? Seeing none, thank you for your testimony. [LB287]

BRUCE BRODERSEN: Thank you. [LB287]

SENATOR SCHILZ: Further opposition of LB287? Welcome. [LB287]

MICK MINES: (Exhibit 4) Thank you, Mr. Chairman, members of the committee. For the record my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist for the Nebraska Humane Society. In the last 10 years, the Nebraska Humane Society has been right up-front and, I believe, that through their efforts, along with every senator on this committee, has voted at least once to ensure that the health and the safety of pet animals is secured. LB427, carried by Senator Carlson, was the latest and maybe the most significant piece of legislation that this body passed regarding the safety of pet animals. We would hate to see the committee reverse actions that have gone so far

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toward the cause of protecting animals, specifically in a breeder environment. If you'll recall, years ago, many years ago, breeders were proficient throughout our state. Today there are less than 300 for any number of reasons, but we have long been a target, if you will. We've long been a landing spot for bad actors for poor breeders. And through the years and through legislation, including LB427, we have been able to establish ground rules, establish rules and regulations that protect against those bad actors. There are many pet organizations in Nebraska. Again, there are less than 300 breeders and I'm...I've circulated a letter from Diana Pankonin; Diana is from Grant. She is former president of the United Pet Professional Association. And from Diana's perspective, there is no way she would administer rabies shots by herself. She cites that first of all she's concerned about a liability issue. She knows that if her veterinarian administers the shots that it's done and it's done properly. We heard the price thrown around, I think one of the veterinarians suggested it's \$10 per shot. Ms. Pankonin's veterinarian charges \$12. And I think if you compare that with a breeder-administrated shot where...they started one month and they have a year booster and then every three years, typically, breeder animals don't stay in production for more than ten years. So if you look at the total savings to each breeder, it may be around \$30 over that 10-year period. It's not a significant amount of money. It certainly can multiply it by hundreds of animals, but on a per animal...and more specifically, it's the proper way to protect us and protect those animals. So with that, the Nebraska Humane Society opposes LB287. I'd be happy to answer questions. [LB287]

SENATOR SCHILZ: Thank you, Mr. Mines. Any questions for Mr. Mines? Seeing none, thank you for your testimony. [LB287]

MICK MINES: Thank you. [LB287]

SENATOR SCHILZ: Further opposition? [LB287]

LAURIE DETHLOFF: Good afternoon. [LB287]

SENATOR SCHILZ: Good afternoon. [LB287]

LAURIE DETHLOFF: (Exhibit 5) Thank you for this opportunity. My name is Laurie Dethloff, L-a-u-r-i-e D-e-t-h-l-o-f-f. I'm the executive director for the Central Nebraska Humane Society and the Animal Control Authority in Grand Island, Nebraska, Hall County. Several of my comments that you will receive have also been brought forward, so I will be a little shorter. I do want to point out to you that in Grand Island my two agencies handle over 2,000 to 2,500 animals a year, the majority being cats and dogs. We're responsible for enforcing animal codes, which includes bite cases and doing reports. Just in last year's numbers, we had 116 bite cases. When we do a bite report, we're required to verify the information of who gave the vaccinations, when it was given to help with the physicians as they are tending to the individual that has been bitten or

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the veterinarian that the animal has been bitten. Several of my comments, too, were who would be liable if vaccine was not administered correctly. Privileges, we do not have a vet in our humane society on staff. We are more comfortable with having our vets that are contracted come in and do that. But this opens the door for not only our organization, rescues, and other agencies to...that handle animals to now be able to do vaccinations. What I would like to point out to you are the photographs that are included because of the comments that have already been covered. You have inspectors for these breeders across the state. They're very limited. I believe there are three or four for the entire state. They do not have a lot of clout from what we have been involved with them in having the respect of commercial breeders allow them access to their properties. What you're seeing is one of the cases, and in the past five years we've been asked by the Ag dog and kennel commercial inspectors to go help with the removal of animals. For the amount of money that they're talking about having completed for this rabies vaccination, you can see that the daily care for these animals was not taken even into consideration. When those animals come to us or other humane societies or rescue organizations, there is never compensation or funding from that breeder to make up the difference for the medical expenses that we've incurred for taking care of those animals. So we ask for more support with inspectors, that they have more authority, that the breeders are more responsible with the handling of the day-to-day care before they are awarded the opportunity to give rabies vaccinations. So I'm asking that this not move forward. Thank you. [LB287]

SENATOR SCHILZ: (Exhibit 6) Thank you very much for your testimony. Any questions? Seeing none, thank you. Further opposition? Seeing none, anyone in the neutral capacity? Seeing none, Senator Carlson, you're welcome to close on LB287. While you're coming up, we've got a letter of opposition from the Humane Society of the United States, so we'll hand that out. Thank you, sir. Sorry about that. Senator, you're ready to go. [LB287]

SENATOR CARLSON: Thank you, Senator Schilz and members of the committee. I'm going to make a brief comment. Simply, Senator Mines's testimony concerning Nebraska Humane Society, we work well with the Nebraska Humane Society and have respect for the work that they do and a difference of opinion on one bill probably isn't going to change that relationship. And I'm not saying this sarcastically, I'm trying to be truthful in how I perceive what I heard. Dr. Lemons did a good job of scaring us about rabies. I almost had the feeling that if a breeder administers the shot, the animal will get rabies. No. The shot is to prevent rabies. Now the breeders are trying to maintain a viable business and pets are expensive. But how will the price to purchase a pet be affected if there are no breeders? What if there was a certification process by which a breeder could be authorized to give the rabies shot? Might be a possibility under the supervision of the Department of Ag. And so I thank you for listening in this testimony and hearing today. And I ask for your serious consideration of helping the breeders without creating or allowing a safety issue for the public. Thank you. [LB287]

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SENATOR SCHILZ: Thank you, Senator Carlson. Any final questions for Senator Carlson on LB287? [LB287]

SENATOR CHAMBERS: I'll have a chance to talk to him other than here, so I don't want to prolong the hearing. [LB287]

SENATOR SCHILZ: Thank you, Senator, I appreciate that. Thank you... [LB287]

SENATOR LATHROP: Other than just a comment that there were a number of people that suggested that...was it LB247 that passed last year? [LB287]

SENATOR CARLSON: LB427. [LB287]

SENATOR LATHROP: LB427, pardon me. I know you put a great deal of work into that and it was important legislation in the area. That's all. [LB287]

SENATOR SCHILZ: Thank you, Senator Lathrop and Senator Carlson. That will close the hearing on LB287. And we will move right into LB288. Senator Carlson, you're up again. [LB287]

SENATOR CARLSON: Thank you, Senator Schilz and members of the Agriculture Committee. I am Tom Carlson, T-o-m C-a-r-l-s-o-n, Senator from District 38, here to introduce LB288. LB288 proposes revisions to the Dog and Cat Operator Inspection Act made necessary by the enactment of LB427 which was passed last session. A definition of commercial breeder has been problematic whenever one refers to the inspection act. Current law defines a commercial dog breeder as one who meets at least one of several criteria, including owning four or more breeding dogs or producing four or more litters a year. Under that definition, farmers, ranchers, or sportsmen who keep several intact dogs could be considered commercial breeders. LB288 would combine criteria to say that a breeder would be subject to a Commercial Dog and Cat Operators Inspection Act only if they own four or more breeding animals and produce four or more litters a year. It's a one word change from "or" to "and." The bill also changes how the annual license fee for commercial breeders is calculated. They presently pay based on the average number of dogs or cats housed over the previous annual licensure period. LB288 would calculate fees based on the number of animals housed on the annual licensure renewal date. Now the fiscal note indicates there are still some cleanups if the bill goes forward, but I would hope that the bill could be advanced and that would be a concern that could be addressed before the bill is presented on the floor. I think this is a legitimate request, and I would ask for your consideration and thank you for listening. [LB288]

SENATOR SCHILZ: Thank you, Senator Carlson. Any questions for Senator Carlson? Seeing none, thank you and I suspect you'll close on this one as well. [LB288]

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SENATOR CARLSON: Yes. [LB288]

SENATOR SCHILZ: Okay. We'll take the first proponent, please, LB288. Welcome back. [LB288]

CLEM DISTERHAUPT: Thank you. Good afternoon. My name is Clem Disterhaupt, spelled C-l-e-m, Disterhaupt, D-i-s-t-e-r-h-a-u-p-t. I'm from Stuart, Nebraska, and the president of the Nebraska Professional Pet Breeders Association. I'm personally one of the original supporters and coworkers on the original dog and cat inspection program. I worked with Senator Cap Dierks and Senator Marian Price in putting this program in place. Humane societies didn't do this; nobody else did this, the breeders did this. The purpose of LB288 is to make a few commonsense adjustments to the regulations. And in regard to one of the comments that was made about inspections, please don't be misled. Breeders like myself are AKC inspected with a set of rules about like so and we're state inspected with a big book of rules and we're USDA inspected with still bigger set of rules. So we have three inspectors and we're inspected often. And for those who like to tear us apart and put us down as puppy mills, I would like to say that I'm proud and I work really hard. I have attended over 200 educational seminars in dogs alone and I've asked...I've been doing it so long I've been asked to be speakers in many instances. Not only that, but last year we did a tour that involved Senator Carlson and others to show them what facilities we do have in Nebraska. And I think there's no question that those who did the tour would all agree that we have beautiful facilities, and this idea of puppy mills is totally out of balance because we are inspected by three different people. And I personally am proud to say that I haven't been written up since the state program started, not even for a minor thing. And there are a lot of good breeders like ourselves. The only USDA thing I've had in the last 10 years is a minor thing and that was on a...keeping...on a recordkeeping thing and it was very minor. So we have good...and I'm not the only one, we have a lot of really good breeders in Nebraska, probably some of the best. And we did a tour to resolve this issue of puppy mill thing. First, this LB288 simplified the way in which the license fee is based. It's currently based on the daily average count of animals over the year. That's a nightmare and it's nearly impossible to take a count every day and record it and have a daily count at the end of the year. Other states don't do it. Furthermore, it's not feasible for an inspector to come in and even inspect it. So we want to change this to simplify it so the fee is based on a simple count of the adult dogs on hand at the end of the year. Second, LB288 will clarify a law passed last year which grandfathered in breeding buildings for many...changes made to LB288, particularly making it clear that existing buildings can be moved under the grandfather clause. For example, my kennel building sets on my ranch. I have a \$100,000 kennel facility; automatic waters, automatic feeders, air conditioning, electric heat, you name it, we've got it. But I live in a \$60,000 house. So if we sell, we're not going to sell the ranch. If we retire, we naturally want to sell the beautiful building. Again, this law last fall was challenged when a breeder sold

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out by auction and one of the inspectors told them they couldn't move the building. We challenged the law, went to the state attorney and it was ruled that you can move the buildings. But they asked if we would clarify that in this bill. The agreement is already there, we just need to clarify that those buildings can be moved. However, it was suggested that the law is clarified to make the change so there's no problems in the future with that same situation. Third, LB288 would change the definition of a commercial dog breeder. The purpose is to save unnecessary expense and wasting costs of inspections to breeders who are hobby breeders who only raise an occasional litter for showing or hunting purposes or a rancher who has a few coyote hounds and wants to run those hounds. For example, there's a large number of bird hunters, raccoon hunters, and coyote hunters who have more than four unaltered dogs for hunting purposes. I can tell you from my experience raising hunting dogs, many years ago in the past, that you cannot spay or neuter that dog because it ruins their ability to hunt. Any hunter will tell you that. It is unfair for those people to have to be licensed and it is a waste of time and money for the inspectors, inspection department which will help in keeping the budget in order for the inspection program. As an originator for the program, I can tell you that the inspection program was not meant to burden these people with licensing nor was the program intended to waste money in inspecting those few people. Senators of the Ag Committee, on behalf of the Nebraska Professional Pet Breeders Association, I ask that you vote for this commonsense bill, LB288. Thank you. [LB288]

SENATOR SCHILZ: Thank you. Senator Chambers. [LB288]

SENATOR CHAMBERS: Mr. Disterhaupt, we have worked together, but certainly you don't think that because you supported the creation of a program that you control it. [LB288]

CLEM DISTERHAUPT: No, I didn't say that and I didn't...I just want people to know that we are very involved in the program. [LB288]

SENATOR CHAMBERS: Okay. But I want it clear that the mere participation in a program doesn't mean that those who help can control or determine what the Legislature would do (inaudible). [LB288]

CLEM DISTERHAUPT: I don't believe anybody said that, Senator. [LB288]

SENATOR CHAMBERS: Now when you talk about your facilities, that's not the standard, is it? How many facilities that you described that you have will we find in Nebraska? [LB288]

CLEM DISTERHAUPT: I think that you...I think that there are a lot of them that are really good like that. Most that I have...not so much so 20 years ago, but we worked

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hard as breeders to change that. I have...I've come here many times and wrote bills myself, Senator, that have passed, including the Nebraska Dog and Cat...what we refer to as the puppy lemon law. I worked hard on that and it's better now. It protects the consumers and such so...no, we don't claim to own it, but we claim to work hard to make it a better program. [LB288]

SENATOR CHAMBERS: Now you know what the term "puppy mill" means, don't you? [LB288]

CLEM DISTERHAUPT: I'm not sure...it depends on where you get your definition. [LB288]

SENATOR CHAMBERS: Okay, then we won't...we won't...do you say there are no breeders who would fit that definition? [LB288]

CLEM DISTERHAUPT: Not in the state of Nebraska, absolutely not. [LB288]

SENATOR CHAMBERS: Not one. [LB288]

CLEM DISTERHAUPT: And I've asked our state inspector and he said no, and I asked the USDA inspector and they said no. [LB288]

SENATOR CHAMBERS: Well, the inspector...you know what, I've seen dogs that were taken from these places. In fact, I know somebody who got a dog and...are you aware some breeders run pipes down a dog's throat so the dog will be debarked? [LB288]

CLEM DISTERHAUPT: I think that's a terrible operation. I wouldn't approve of that at all. [LB288]

SENATOR CHAMBERS: Do you think it happens? [LB288]

CLEM DISTERHAUPT: If it does, it isn't anything that we're aware of at all or we would be totally against it. [LB288]

SENATOR CHAMBERS: So based on your understanding of what's happening in Nebraska, there are none of these bad things happening in Nebraska and everybody who claims to be a breeder is operating at the level that you are? That's the impression I got from what you said. [LB288]

CLEM DISTERHAUPT: I won't say that there isn't a bad thing that happens. But I am saying that we have really good standards in Nebraska. We have a lot of good breeders; we've expressed that with our tour that we did. I think you can ask those people that were on the tour and they'll tell you we've got good facilities. We do our very

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best. And my statement...you can come out and look for yourself, Senator. My house is a \$60,000 house and I have a \$100,000 facility. I'm not saying every breeder has that, but a good part of them do. [LB288]

SENATOR CHAMBERS: You know what, when I visit the penitentiary, it's not with a guided tour. When you're taken on a guided tour, you're shown what the person conducting the tour wants you to see in order to get a certain point of view. Have you toured every facility of every breeder in Nebraska? [LB288]

CLEM DISTERHAUPT: Absolutely not. It's not feasible. [LB288]

SENATOR CHAMBERS: Correct. So you don't know what's going on in them, do you? [LB288]

CLEM DISTERHAUPT: I do know what's going on, and it's because I visit many of them myself. [LB288]

SENATOR CHAMBERS: Well, what percentage would you say you visited? [LB288]

CLEM DISTERHAUPT: Over the last 20 years, I've probably visited 70 to 80 percent of them. [LB288]

SENATOR CHAMBERS: Well, you're talking about over a 20-year period, some here, some there. How many breeders do you think there are in Nebraska? [LB288]

CLEM DISTERHAUPT: I have that figure here someplace. I can't give you... [LB288]

SENATOR CHAMBERS: Roughly. [LB288]

CLEM DISTERHAUPT: ...I think there's a couple hundred commercial breeders. [LB288]

SENATOR CHAMBERS: No more than that. No more than 200 breeders. [LB288]

CLEM DISTERHAUPT: No, I didn't say that. I said approximately a couple hundred breeders. [LB288]

SENATOR CHAMBERS: Somebody said about 300 out there. [LB288]

CLEM DISTERHAUPT: There might be up to 300 now. And that varies quite a bit back and forth. [LB288]

SENATOR CHAMBERS: And how many of those have you visited in the last year?

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[LB288]

CLEM DISTERHAUPT: Oh, in the last year not very many, maybe 12 or 15 in the last year. [LB288]

SENATOR CHAMBERS: So you don't know what's going on in the ones you didn't visit, do you? [LB288]

CLEM DISTERHAUPT: I believe that I do, because I'm the president of the association. I see pictures, we have them in folders that they bring. I'd be happy to send pictures. [LB288]

SENATOR CHAMBERS: I don't want to see pictures. [LB288]

CLEM DISTERHAUPT: Okay. Pictures tell a story. [LB288]

SENATOR CHAMBERS: What...you're talking about...you're talking about what you know. [LB288]

CLEM DISTERHAUPT: That's what I know. [LB288]

SENATOR CHAMBERS: But your knowledge is not based on your having acquired...you're going by what people tell you and pictures that you've seen. Isn't that true? [LB288]

CLEM DISTERHAUPT: And facilities that I have visited. [LB288]

SENATOR CHAMBERS: How do you know the pictures are what they are represented as being? [LB288]

CLEM DISTERHAUPT: Are you saying that they're liars? Commercial breeders are not liars. [LB288]

SENATOR CHAMBERS: I'm asking you the questions. You believe that every picture given to you is what... [LB288]

CLEM DISTERHAUPT: Yes, I do. [LB288]

SENATOR CHAMBERS: Okay. So a picture could have been taken in another state and you wouldn't even know that would you? [LB288]

CLEM DISTERHAUPT: Until I go to visit that facility and I've seen pictures and then I go back and visit the facility and it's correct of those that I've visited. [LB288]

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SENATOR CHAMBERS: But you don't know whether these pictures you see are what the sender of the picture indicates they are. You just believe them, right? [LB288]

CLEM DISTERHAUPT: I believe them and I've seen some of them myself after I've seen the pictures and they have been what they said. [LB288]

SENATOR CHAMBERS: That's all that I would ask of you. Thank you. [LB288]

CLEM DISTERHAUPT: Thank you. [LB288]

SENATOR SCHILZ: Thank you. Any further questions? Thank you, sir, for your testimony. Further proponents. Welcome. [LB288]

LESLIE MILLER: (Exhibit 1) Thank you. Good afternoon. My name is Leslie Miller, L-e-s-l-i-e M-i-l-l-e-r. I'm from Nebraska City. Throughout the state of Nebraska are individuals and families who breed and raise dogs. These dogs may be bred for hunting partners, herding dogs, prize-winning show dogs, canine obedience and agility competitors, therapy and service dogs, and loving family pets. The breeders of these dogs would probably never consider themselves to be commercial breeders. After all, they rarely, if ever, make a profit and their dogs never show up in pet stores. However, under the current legislation, many of these breeders are indeed classified as commercial breeders simply because they have four or more dogs intended for breeding. Now one might question the necessity of having four or more dogs that are not spayed or neutered. The fact of the matter is that in dog breeding, like many forms of agriculture, it is not wise to put all of your eggs in one basket. A wide variety of issues can come up during a dog's lifetime that can shatter a breeder's plans for that dog. The dog may display characteristics over time that the breeder does not want to risk reproducing; the dog may develop health problems that affect its fertility; the dog may be injured or killed in a tragic accident; the list goes on and on. If the breeder who owned that dog does not have any other viable options, his or her entire kennel would come to an impasse. Thus, if a breeder is to complete her task in an ethical and responsible way that promotes the well-being of her breed and her kennel, she needs to have options available. Although the current legislation allows these breeders to harbor four or more dogs intended for breeding, it does so by requiring licensure. The licensing process puts an unnecessary burden on these individuals and families who do not see themselves as commercial breeders in the first place. Not only do these breeders have to go through the licensing process and pay the necessary fees when they are already in the red when it comes to their dogs, but they are also stuck with the label of commercial breeder. And those considering applying for the license may fear that their neighbors will be concerned that the property is going to turn into a "puppy mill," when in reality nothing is going to change there. In addition, these private, not-for-profit breeders may be intimidated by the requirements of the commercial breeder status,

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even if their personal standards for dog care are far above those outlined in the current legislation. These private breeders are typically very conscientious, working hard to raise the best dogs they can, dogs that are more than breeding stock, but members of the family as well. These dogs are usually kept in fenced yards, meaning they are not damaging neighboring property, causing distractions or accidents along the roadway, or causing any other sort of mischief. Moreover, the breeders do not simply let nature take its course, but carefully plan the breedings that they do. Puppies are often raised in a home environment where they receive great care and socialization. Here, and then also on the second page of the handout, is a picture of me showing my dog, Presto, last month at the Westminster Kennel Club dog show in New York City. Presto, officially known as Grand Champion Bela's Presto Change-O RN CGC, is a Spinone Italiano that I bred. He has been my dog since the moment he was born and placed into my hands by the veterinarian who performed the C-Section on his mom. Together we have traveled and competed in dog shows all over the country from California to New York to Florida to right here in Nebraska where we won Best in Show at the Nebraska Kennel Club dog show in 2011. Presto has been in the top 10 of his breed for the past six years that I've been showing him. We have competed in hunt tests and obedience competitions as well. He has passed every health clearance required for his breed, as well as some elective ones that we did. He has very high quality, but despite this I've only allowed him to sire one litter. And while the litter was not born at my home, I kept close contact with the breeder and helped in placing the puppies. And I know the names of all the owners of those puppies and have been very involved in mentoring several of them. And two of Presto's sons are now ranked in the top of his breed as well. Presto is not neutered, not because I intend to breed him anytime soon, but because show dogs are not allowed to be altered in that way. So to me this doesn't really sound like your typical commercial breeding program. The current legislation, although most likely well-intentioned, simply does not work for Nebraska or Nebraskans. Here many farms have a whole family of barn cats, and families take pride in raising happy, healthy animals of many species. As Nebraskans, we know how important it is to take responsibility for our animals. And we do so, not because it is legally required of us, but because we love our animals and we love what we do. Therefore, I urge you to vote in favor of LB288 and support private dog breeders here in Nebraska. Thank you. [LB288]

SENATOR SCHILZ: Thank you, Ms. Miller. Any questions? Seeing none, but I will say you don't see many Spinones around, that's for sure. [LB288]

LESLIE MILLER: No, not very many. [LB288]

SENATOR SCHILZ: I've seen three in my whole life, including this one. So thank you for your testimony, appreciate it. [LB288]

LESLIE MILLER: Thank you. [LB288]

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SENATOR SCHILZ: Next proponent. Proponents? Welcome back. [LB288]

JUDY WILLIAMSON: Yeah, my heart isn't beating as fast this time. I think I can get through it. [LB288]

SENATOR _____: Want us to scare you a little bit? [LB288]

JUDY WILLIAMSON: No, don't scare me, please, don't do that. (Laughter) Good afternoon, Chairman and members of the Ag Committee. My name is Judy Williamson, J-u-d-y W-i-l-l-i-a-m-s-o-n from Stamford, Harlan County, Nebraska. I am a professional dog breeder and president, as well as legislative chairperson, for the United Pet Professionals Association. First of all, I want to thank Senator Carlson for sponsoring our bills. We appear to be some of the small guppies in the ocean of big fishes of ag-related bills. First of all, to clarify one thing is that we want to make sure that you understand that the puppies that we raise, first of all, are immediately referred to a veterinarian. When my puppy leaves with his accreditation of the shots its had and everything, the first thing is, you need to see your vet within the next 24 to 48 hours. I want a file developed; I want you taking this puppy to the vet; you need to create an environment where this puppy is going to grow up and receive its boosters and everything from here on after. Those puppies are not given rabies shots by me because any puppy that leaves or goes has to go with a health certificate and has to be certified that that vet did, in fact, give that rabies vaccine. So I just want to clarify that. We're not talking about puppies here as far as the commercial dog breeder. Over the years, the understanding of this bill is mainly to clean up the language. And over the years, we've gained a lot of information from our veterinarians as they've toured our facilities and given us advice on things that we can do to make them better. There's been a lot of bad actors throughout the years. I'm not going to deny that at all. And probably there's going to be some everywhere. I don't care what profession you're in, there's bad actors, there just is, we're human. And we'd like to see all that cleared up too. The state inspectors that come out, they also help educate us and further betterment of our facilities and what we're doing. You can always glean from someone else; I don't know it all. And I'm willing to take on new information from anybody and everybody to make my business better and the health of my puppies and my adults better. We have state inspectors; I have an AKC inspector that comes out. He's always giving advice. And USDA inspector, he comes out and he gives advice. And I try to follow each one. I asked for...well, how can I do this? You know, I'm having problems here, how can...have you run across anything that I can better my facility with? And they're more than happy to investigate and help me remedy some of these things. So, my hat goes off to them. We're not battling that. With regard to the last page of this bill, we originally argued the facts that under the original dog and cat inspection act, USDA guidelines were instituted as a protocol for the kennel operation. That's been since the onset of the dog and cat inspection act. We adopted USDA guidelines that included the primary enclosures and kennel facilities. So from the beginning, professional breeders licensed by the state of

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Nebraska were subject to all those guidelines as the state had determined that the USDA guidelines were, in fact, the best criteria. They had been tried and they were true, I mean, for the best. You're still going to have bad actors out there. Both the USDA and state rules and regulations have been heavily enforced to bring about the cleanup of kennel facilities that were not doing their best. And there were some bad apples that were out there in business. And I'm not saying that there still aren't some bad apples rotting in the bottom of the barrel somewhere. But I'm here to say, let's get it cleaned up. But those facilities that strive to create a positive view of this pet industry have utilized their time and abilities, as well as much monetary funds to do so. I for one had just bought two new facilities for \$20,000 each; and that's more than what I put into the remodeling of my kitchen too, which at the time met both USDA and state guidelines under the housing requirements and was an improvement for maintenance, cleaning and provisions for our dogs. However, with the original proposal of LB427, it configured new square footage that would have made our brand new facilities obsolete and of no value. But negotiations were had that would grandfather in these facilities currently in operation for those already licensed. Those negotiations were to have also maintained the value reflecting that the facilities would be deemed an asset and the value for resale. And that included the ones, my brand new ones. Thus LB288 clarifies subjective of those negotiations by maintaining that the facilities that met both USDA and state regulations at the time of this bill passed would be considered both an asset and resalable value whether the operation when bankrupt or whether the owner had to sell out, whatever the reason, there would be equitable value for that business owner. And that's the same way for me. When I sell out, I'd like to have some value still left in what had to pass on. I know that every one of you probably owns a home and you're hoping that when you get ready to sell it, there will be some value left in it. For this reason we ask you that the Ag Committee please approve LB288. Again, I thank you. [LB288]

SENATOR SCHILZ: Thank you, Ms. Williamson. Any questions? Senator Wallman. [LB288]

SENATOR WALLMAN: Thank you, Chairman Schilz. Yes, ma'am, again thank you for testifying. Do you think, you know, with AKC and USDA and our own inspection, are they close to being the same? [LB288]

JUDY WILLIAMSON: As far as the inspectors coming in... [LB288]

SENATOR WALLMAN: The rules and regs, yes, yes. [LB288]

JUDY WILLIAMSON: No, huh-uh, because AKC is mainly ruling on... [LB288]

SENATOR WALLMAN: Genetics? [LB288]

JUDY WILLIAMSON: ...the things that require the documentation that the animals are

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purebred. So that was the original. Then they've come out with new regulations now just recently that are very similar to what we passed in LB427 that they will deny your AKC rights if you don't bring your facility up to par. They've kind of gone from the paperwork category to we want to make sure that, you know, everything is aboveboard. [LB288]

SENATOR WALLMAN: Thank you. [LB288]

JUDY WILLIAMSON: Does that make sense? Have I made myself clear? [LB288]

SENATOR WALLMAN: (Inaudible.) [LB288]

JUDY WILLIAMSON: Okay. [LB288]

SENATOR SCHILZ: Thank you, Senator Wallman. Any further questions? Seeing none, thank you for your testimony. [LB288]

JUDY WILLIAMSON: Thank you. [LB288]

SENATOR SCHILZ: Further proponents. Proponents? Seeing none, any opponents? [LB288]

JUDY VARNER: Opponents? Oh. [LB288]

SENATOR SCHILZ: Proponents? [LB288]

JUDY VARNER: Opponents. [LB288]

SENATOR SCHILZ: Okay, opponents. [LB288]

JUDY VARNER: (Exhibit 2) My name is--oh, I have some things--Judy Varner. I am the president/CEO of the Nebraska Humane Society, J-u-d-y V-a-r-n-e-r. And I would also like to thank Senator Carlson for all the years he's been so great to work with, even though he banned me from his office. I'm assuming that went with the senator and not his office so, maybe, you and I can talk, right? LB427 was a great piece of legislation. And the big difference between our inspectors and the others is our inspectors are the only ones that put their hands on the dogs. None of the other inspectors do. Before the passage of LB427, the only people that touched their dogs were the breeders, and you have all seen the horror pictures of what can be the result of that. So LB427 was key, and keeping our inspection program as it is, is also key to continue to protect the dogs. The question of puppy mills came up. How do you know a puppy mill? It's sort of like art. You, sort of, know it when you see it. When people come to me and say they want a puppy and we don't have puppies, I advise them to go to a breeder for a puppy, but only to a breeder that allows them on their property, so they can see where the puppy was

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raised and how...what environment the puppy came out of. I think that's key, and I wish we could get the word out to everyone. This piece of paper in front of you, I'm not going to read it because you can all read. I'm just going to highlight some of it. The current definition has been in effect for this program since the inception in 2001. It gives the inspectors the tools they need to do the job that they need to do. There are too many horror stories of bad breeders who have little regard for the health and welfare of their dogs. The only hope for the dogs trapped in horrific conditions are the inspections by the Department of Agriculture, again, because the veterinarians, according to our law, have to put their hands on the dogs. Most of the complaints to the department are made about kennels under 25. So it's important that we don't make the assumption that, because a kennel is small, it can't be bad. We can tell you stories about some that are quite bad. It's also important to keep in mind that there are approximately 275 commercial breeders. A very small percentage of those breeders are part of any club. The breeders before you today do not represent the majority of breeders in Nebraska. I would also challenge you to think carefully about changing the way the count is done. We can do nothing to jeopardize our existing program. And if that count is going to impact the department's ability to function, then I think we have to leave it the way it is. My concern is you get unscrupulous breeders that the day of the count all of a sudden their dogs are taken to their neighbor. I think that's a real threat. Why change what isn't broken? Because a national group wants the change? I'm quite sure the language that's being promoted is from the American Kennel Club, a national organization that's working to dictate what Nebraska needs to do. They've done it before, and they'll probably come back again. They say they want to protect the rights of hobby breeders. The existing definition does just that by beginning with the requirement that a commercial breeder is in the business of breeding dogs. No hobby breeder is in the business of breeding dogs. I don't believe any of us want any national group to come to Nebraska and try to tell us what's in our best interest. No pet owner in Nebraska wants us to go backwards. Please amend LB288 to remove any change of any kind to the current definition of commercial breeder. [LB288]

SENATOR SCHILZ: Thank you, Ms. Varner. Any questions? Senator Chambers.
[LB288]

SENATOR CHAMBERS: My faith is restored in the fact that there are people who know that not everything is fine in Nebraska. I don't want to argue with my friend Clem, but I happen to know of facilities that rescue dogs from those kind of things that he says don't exist. [LB288]

JUDY VARNER: Yes, sir. [LB288]

SENATOR CHAMBERS: And I've seen the dogs with my eyes. He doesn't. He goes on guided tours, apparently, and I'm sure he didn't take the ones who went with him to some of the places I'm aware of to see what is happening to these animals. So because

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I didn't ask a lot of questions doesn't mean I don't have turmoil in me. And the young lady I would applaud for the work not only that she's doing but how well she presented herself and what she was saying. But she does not represent the people who would fall under this new definition they're talking about. [LB288]

JUDY VARNER: Right. [LB288]

SENATOR CHAMBERS: They're wise enough to pick the people who can present a good statement and say, I don't do this, I don't do that, I do this, I do that. But they're not the ones. If they were the only ones, we probably wouldn't need any legislation at all, maybe, just some guidance to get ideas on the updated care and tending of animals. But that's all that I have, and I (inaudible) the work that you do. [LB288]

JUDY VARNER: I think that's exactly right and, again, the definition currently protects the people that have one or two. Our development director breeds her dog every two years. She's not in the business of breeding dogs. She's not a commercial breeder. I think our law is great. I think it needs to stand. And I would hope that you don't change the funding source or the language. And I'm sorry we disagree on another bill, Senator Carlson. [LB288]

SENATOR SCHILZ: Thank you, Senator. Any more...? [LB288]

SENATOR CHAMBERS: He can ban you from his office, but he can't ban me from the floor of the Legislature. (Laughter) And I know how to fight. [LB288]

JUDY VARNER: I've heard that, Senator. [LB288]

SENATOR CHAMBERS: Okay. [LB288]

SENATOR SCHILZ: Thank you, Senator Chambers. Any other questions? Seeing none, thank you very much for your testimony. Further opposition, LB288. Any opposition? Neutral testimony. Any neutral testimony? Neutral? [LB288]

PENNY FATTIG: Hi again. [LB288]

SENATOR SCHILZ: Welcome back. [LB288]

PENNY FATTIG: I don't know if I'd be considered neutral, but maybe I am. I guess I am. I just...I mainly wanted to clarify... [LB288]

SENATOR SCHILZ: Can you state your name? [LB288]

PENNY FATTIG: I'm sorry. [LB288]

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SENATOR SCHILZ: Thank you. [LB288]

PENNY FATTIG: My name is Penny Fattig, P-e-n-n-y F-a-t-t-i-g. And I know we're getting long here, so I'll try to keep it short. But I just wanted to clarify why, you know, we are particular about who we allow to touch our dogs. I'm sure many of you are aware that there are diseases that can be transferred--parvo, specifically, is one--by hand and by feet. And our inspectors are good about putting on boots, the plastic boots, when they go in but not on their hands. They don't have gloves on their hands. And I have never said, you can't touch my dog. But they are pretty good about not doing it because of this, for this reason. And in fact, our USDA inspector has specifically told us, do not allow people into your kennel, only the people...you know, the inspectors. We don't sell out of our kennel. Mostly, we sell to a broker. And he said, do not allow people into your kennel except your inspectors. And we are very well-inspected. We are inspected by AKC, USDA, the state, and our veterinarian, as required by the USDA, yearly. So I just wanted to clarify that's the reason we're kind of particular about who we allow to touch our dogs. So that's...and I wanted to thank Senator Carlson, too, for supporting these bills and all of you for being here. I appreciate that. [LB288]

SENATOR SCHILZ: Thank you, ma'am. Any questions? Seeing none, thank you for your testimony. [LB288]

PENNY FATTIG: You bet. [LB288]

SENATOR SCHILZ: (Exhibit 3) Any other neutral testimony? Seeing none, I do have a letter of opposition to LB288 from Jocelyn Nickerson, from the Humane Society of the United States. With that, Senator Carlson, you're welcome to close. [LB288]

SENATOR CARLSON: Thank you, Senator Schilz and members. My first comment is to something Judy Varner said. Good advice: Somebody buys a pet, go to the breeder, and don't buy from them unless they allow you on the property, so that you can view the facilities. I think that's good, sound advice. Clem and Judy and Penny and others that have testified, while I would admit that it was a guided tour, several of us were on the tour of their facilities, and I was impressed by what I saw. And that's why I was willing to present LB287 and LB288 to the committee. Now my experience with them, and others like them who supported LB427, which I think was really a good bill, they supported it because they are interested in dealing with the bad actors in dog and cat breeding. And they either want these individuals, these facilities, to reform their ways, or they want them removed from the business of commercial breeding. And so this bill deals with a change in definition that...I don't agree with Judy Varner on this. I think the change in definition is entirely appropriate. I think it takes out of the mix the sportsmen and hunters that own four dogs and have no intent of breeding. It deals with allowing facilities that are purchased to be moved to a new location without requirements for structural

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changes on that facility and that the license is determined by the number of dogs or cats housed on the annual renewal date. There may be some room for some funny things to happen as a result of that date, and you'll have to determine how serious that consideration is. And then it deals with a procedure for a hearing when licensure or renewal date has been denied. And the applicant can present evidence that he or she is qualified to hold a license and should be able to hold a license, and that's what this bill is about. So appreciate your consideration--you have a serious decision to make--and would ask for your consideration. Thank you. [LB288]

SENATOR SCHILZ: Thank you, Senator Carlson. Senator Chambers. [LB288]

SENATOR CHAMBERS: Senator Carlson, I've had, because of people that I know who got family members in various levels of care facilities...and if a member of that industry takes a person on a tour, they know which facilities to take people to, and they also notify the people that they're coming. And they are worried, to some extent, about patients who are--or residents--covered by Medicaid because Medicaid has more stringent standards than they have. So they cannot just move a person from here to there and other places at will. So they want Medicaid patients to help foot the bill, but they don't want to have to treat them the way they do, and they try to get changes in those requirements. When they have a family member...a person whose family member or somebody else is paying, those people get moved around a lot. And if there's an objection, they say, well, take them somewhere else, knowing that there are not a lot of places to go. So when those in an industry are going to show me around, I don't trust them. You're more trusting than I am because you have a different compass by which you judge than I do. And I just want to say it to you, so they can hear me say it, that I don't trust these guided tours, whoever would be providing them. And one of the persons who has done so much work is the one who indicated that there are not any big problems in Nebraska now and, yet, I see these dogs that come from these places that he doesn't know exist. And the horrendous things done to these animals are why I got legislation that said, when you find animals abused, you don't just send the Humane Society, you send the people from HHS, because the people who do that also harm human beings. So this is a very serious, complicated area and issues. And people do treat animals now as members of their family. They go overboard in a way that I wouldn't. And I love animals but not like some of these people because some of the things they do I think are cruel. They don't mean to be. But at any rate, I'm saying all that to say this: Rural people may have a different view of what constitutes good treatment of animals. I don't see keeping an animal in a confined area. I know something about confinement feeding. I know about farrowing, finishing, and some of the other aspects, and it's cruelty, the way I see it. And in the interest of total disclosure, I was the first legislator--and I don't know if others have gotten it--to get an award from the U.S.--United States--Humane Society, Humane Society of the United States. I'm not ashamed of it. I'm not embarrassed by it. And it trumps people what my views are. And just because you have done work in the past in this area and bring the bill doesn't mean

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that the bill will pass muster. So I want you to be aware of what my views are so you can gird the loins of your mind and prepare for battle. [LB288]

SENATOR CARLSON: Okay. And you had a rather lengthy response here, which was fine. I...a couple things you've brought up I intend to talk to you about. You and I can talk, and I'll do that at a later time. [LB288]

SENATOR CHAMBERS: Okay. [LB288]

SENATOR CARLSON: Thank you. [LB288]

SENATOR CHAMBERS: In my office or yours? (Laugh) Because I may be banned from yours, based on my attitude. (Laughter) [LB288]

SENATOR CARLSON: Why don't you give it a try? You just give it a try. [LB288]

SENATOR CHAMBERS: I think I was joking. (Laughter) [LB288]

SENATOR SCHILZ: Thank you, Senator Chambers. Any other questions for Senator Carlson? Seeing none, thank you very much. [LB288]

SENATOR CARLSON: Okay. [LB288]

SENATOR SCHILZ: And that will close our hearing on LB288 and we will move now to LB363 (sic). Just a couple questions. How many folks do we have that intend to testify on LB363 (sic)? [LB636]

_____ : LB636. [LB636]

SENATOR SCHILZ: LB636, excuse me. Okay, great. Senator Wallman, you're welcome to open on LB636. Welcome. [LB636]

SENATOR WALLMAN: Thank you, Chairman Schilz and members of the Ag Committee. For the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent the 30th Legislative District. And I'm here to introduce LB636. As a corn and soybean producer, I was, at first, very hesitant to introduce LB636. However, once I realized the magnitude of the losses grape growers have incurred and the ongoing problems many are facing as a result of careless application of 2,4-D, I decided something had to be done. So I listened to multiple situations of unintended crop damage to grapes and other susceptible crops resulting from careless or uninformed applications. I realize that it is a big deal, and nearly all of these incidents could have been avoided. If LB636 is enacted, it would not prohibit the spraying of the 2,4-D herbicide. It would require anyone applying or spraying it between April 15 and September 17...and September 15

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outside the corporate limits of a city or village to report their intent to the Nebraska Department of Ag a minimum of 72 hours prior to application. When applying it close to crops that 2,4-D kills, such as grapes, it would require the applicant to take note of the wind direction and velocity to ensure against drift damage. I don't think LB636 is unreasonable. It is based on what the state of Arkansas has in place to protect their cotton crop. Introducing it is the least I could do to bring light to this important issue. So I urge you all to listen closely to the testifiers behind me as they explain the losses they have incurred. I think you will agree with me that we cannot sit on our hands and do nothing. And keep in mind that 2,4-D does not only affect grape growers. Nowadays, we have organic farms, we have tree farms, and beehives which are also very susceptible to the effects of 2,4-D. There's a Web site, [DriftWatch](#). Susceptible crop growers can register their farms on this site. I believe I heard that the name will change this spring to [FieldWatch](#). I believe the Department of Ag can explain it further. My hope is that all growers register on this site. There are many people who spray 2,4-D in a responsible manner. Unfortunately, it is a few that cause problems for everyone else. I would also venture a guess that those here in opposition are not the problem. I'm not sure what the exact solution is, but I do feel that enough farms have been adversely affected that we must, we must, have a conversation about this. Thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Wallman. Any questions for Senator Wallman? Seeing none, thank you. And this time we will have...let me do one more thing. Can I see what the...number of hands, again, as to who is going to testify on this? We're going to use the lights. We're going to allow five minutes for each testifier. You'll have four minutes with the green light on, one minute for the yellow light, and then, when the red light comes on, I would very much appreciate if you would wind up your testimony and move on. First proponent, please. Thank you. [LB636]

ALAN VYBIRAL: Good afternoon. My name is Alan Vybiral and I'm a grape grower and the current president of the Nebraska Winery and Grape Growers Association. [LB636]

SENATOR SCHILZ: Sir, I don't mean...can you spell your name, please? Thank you. [LB636]

ALAN VYBIRAL: Alan, A-l-a-n, Vybiral, V-y-b-i-r-a-l. [LB636]

SENATOR SCHILZ: Thank you. [LB636]

ALAN VYBIRAL: And on behalf of the Nebraska Winery and Grape Growers Association, I am here in support of LB636. Formed in 1997, the NWGGA was...is an organization that seeks to promote and grow a sustainable wine and grape industry in Nebraska. Our association has more than 100 members, including which...which includes 25 designated wineries and 90 designated growers, in addition to various tasting rooms and retailers. With just 5 farm wineries in 2000, the Nebraska industry

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now boasts 26 wineries and approximately 350 acres of grapes planted. In 2006, the NWGGA commissioned an economic impact study that concluded total economic impact of the Nebraska wine and grape industry was \$5.3 million, and that included \$1.6 million in worker wages. In 2006, the total estimated sales of Nebraska wines at that time was \$2.4 billion. In 2011, the estimated retail value was \$6.6 million, and we produced 88,000 gallons of wine. In 2012, the retail value was \$5.8 million, and we produced 77,600 gallons of wine. In 2006, the estimated tonnage of grapes grown in this state was 1,020 tons. The estimated sales of grapes produced in Nebraska in 2006 were \$1 million. Almost all of our growers are registered on DriftWatch registry. We will be commissioning an updated economic impact study in the coming year, and we could only imagine how those numbers have increased since 2006, given the expansion of our industry in the years since. Growing grapes is a unique undertaking. What most people don't realize: It takes \$5,000 or more to establish an acre of grapes and at least three to four years to get a usable crop from that acre. Therefore, if something happens to those grapes, it is no small matter to replace them and the entire industry suffers. The wine and grape industry is a key component of rural economic development in communities across the United States, and Nebraska is no exception. Where you see vineyards and wineries, you inevitably see the arrival of bed-and-breakfasts, restaurants, art galleries, and other unique businesses, thus facilitating the increased tourism which, in turn, brings more revenue to these rural areas. In recent years, Nebraska winery...the Nebraska wine industry has seen a dramatic increase in the quality of wine produced, due in no small part of the grapes being grown. Many of our wines have won medals in competitions all over the country. Our product is more and more becoming a part of the national conversation on American wine. For those of us in the Nebraska wine and grape industry this is not a hobby. It is a passion and it is a significant business venture. A loss to the vineyards of Nebraska is not only a loss to Nebraska wines, but also to the state's agritourism industry as well. I respectfully request your consideration that, as you continue...I respectfully request that you consider that as you consider your deliberations on this bill. Thank you for your time, and I'll be happy to answer any questions you may have. [LB636]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Lathrop. [LB636]

SENATOR LATHROP: I do, because I don't understand the issue that well, so I want to ask you a couple of questions. And I hope to learn something from you so I don't have to hear it from everybody else too. How close does somebody need...you have a...you grow grapes, obviously. [LB636]

ALAN VYBIRAL: Yes. [LB636]

SENATOR LATHROP: So how close can somebody be or does someone have to be with this W...what's it called? [LB636]

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ALAN VYBIRAL: 2,4-D. [LB636]

SENATOR LATHROP: 2,4-D. I was going to call it WD-40 (laughter)...2,4-D, in order to affect your crop? [LB636]

ALAN VYBIRAL: These phenoxy-based herbicides, which includes 2,4-D and another compound called dicamba, can literally drift for miles. [LB636]

SENATOR LATHROP: So is that drift for miles with a strong wind or...? [LB636]

ALAN VYBIRAL: Well, it is the...these products are vaporous, and it's not necessarily physical drift that's harmful. In that vapor is the molecule that is the active ingredient that can damage crops like vineyards, vegetables, orchards, things of that nature. [LB636]

SENATOR LATHROP: How big of a problem is this? [LB636]

ALAN VYBIRAL: Every year in this state it happens. I'll be honest. It has not happened to me specifically, but there are examples of people experiencing damage, one degree or another. [LB636]

SENATOR LATHROP: Is it typical...is it typically the neighbor? I mean, I get that it could drift for miles. But is that theoretical or is that real? [LB636]

ALAN VYBIRAL: That's...that is real. [LB636]

SENATOR LATHROP: And what does it do to your crops, somebody, two miles away, spraying this stuff, and it's in the air and on a breezy day and the vapor drifts into your grapes? Is it going to kill the plants or is it going to retard the growth of the grapes? Or what's going to happen to your crop? [LB636]

ALAN VYBIRAL: It could potentially kill the crop or do significant damage. These phenoxy-based herbicides are synthetic plant-growth regulators. In essence, the plant, it stimulates growth cells unnaturally or, like, what the plant wouldn't normally do. In the growth, the plant just kind of curls, and it fails structurally. It just collapses and fails to function. [LB636]

SENATOR LATHROP: Okay. Is this a problem nationally? Is that why we're seeing this now? [LB636]

ALAN VYBIRAL: Yes. [LB636]

SENATOR LATHROP: So this isn't an effort just in Nebraska, but across the country, to stop the spraying of this chemical. [LB636]

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ALAN VYBIRAL: I can't speak to what's going on across the rest of the country. But it's a problem wherever sensitive crops, like vineyards, orchards, vegetable gardens, are grown. [LB636]

SENATOR LATHROP: Okay. Here's the dilemma that presents. If I'm operating a farm a mile or within the radius of what this would regulate and I want to do on my property what I want to do, does this stuff control weeds? Is that what it's for? [LB636]

ALAN VYBIRAL: Yes, for broadleaf weeds. [LB636]

SENATOR LATHROP: Okay. Okay, so I want to control the broadleaf weeds on my property and now, the fact that you're growing grapes two miles away is now affecting what I can do to control the weeds on my land, right? [LB636]

ALAN VYBIRAL: Well, when someone applies a herbicide, in my opinion, they have 100 percent control of the situation, in as far...and if it's...you're too close to a vineyard and you're using these phenoxy-based herbicides, it's...I don't know if there is a way to safely do it. [LB636]

SENATOR LATHROP: Do you suggest that we prohibit it from being applied within five miles of your place or two miles or whatever? [LB636]

ALAN VYBIRAL: No, not...no. [LB636]

SENATOR LATHROP: What's the solution? We...if you tell me there's a problem and anybody within some radius of your grape...your winery, when they spray this, it has the potential to cause a problem, what's the solution? If we're not telling people who need to get rid of the weeds on their property that they can't do it, what's the answer? [LB636]

ALAN VYBIRAL: Well, I just want to point out that using 2,4-D-type herbicide is not the only option. There are other herbicides that are options. [LB636]

SENATOR LATHROP: Is it more expensive, the other options? [LB636]

ALAN VYBIRAL: I could...I can't say specifically. I don't know what the... [LB636]

SENATOR LATHROP: Is it as effective? [LB636]

ALAN VYBIRAL: It can be very effective, yes. [LB636]

SENATOR LATHROP: The other options? [LB636]

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ALAN VYBIRAL: They can be effective, yes. [LB636]

SENATOR LATHROP: So you would...would you establish some kind of a radius around anybody who grows a crop--grapes, rather--and then suggest that they, or require that they, not use 2,4-D but use some other method of controlling weeds? [LB636]

ALAN VYBIRAL: I'm not sure how to answer that. [LB636]

SENATOR LATHROP: I get that if I'm the guy spraying the 2,4-D, I'm putting it into the environment. And if it can drift into your grapes, that's a problem. [LB636]

ALAN VYBIRAL: Yes. [LB636]

SENATOR LATHROP: I get the guy that has weeds growing in the ditch or wherever he wants to get rid of them, doesn't want the weeds. I'm just not sure what the remedy is. [LB636]

ALAN VYBIRAL: Well, there's one thing that I don't think gets mentioned in this debate is that whatever crop someone has planted on their property is private property. And I don't think it's unreasonable to expect that I can plant my acre of grapes and expect that it not be exposed to a management problem in a neighboring field. I should be able to expect that it's...I know it's not a perfect world, but I should be able to expect that that crop not be subjected to a pesticide applied either next door or farther away. [LB636]

SENATOR LATHROP: Okay, well, we'll look forward to the additional testimony, and it appears there will be plenty of it. So thanks for your...answering my questions. [LB636]

SENATOR SCHILZ: Any other questions? Thank you, Senator Lathrop. Thank you for your testimony. [LB636]

ALAN VYBIRAL: Thank you. [LB636]

SENATOR SCHILZ: Next proponent. Good afternoon. [LB636]

FRANKLIN MINER: Good afternoon. Thank you. Franklin Miner, F-r-a-n-k-l-i-n M-i-n-e-r, Cortland, Nebraska. And I wanted to thank Senator Wallman for introducing this piece of legislation. Myself, I live just south of Cortland, about five miles, with my wife, Robin. We started a vineyard, Indian Creek Vineyard and Winery, Inc. Back in 2007, we planted our first vines, and this last year we noticed the impact of 2,4-D drift on our vineyard. We started off with just 270 vines back in 2007 to kind of figure out what we...how to do a vineyard. And so last year those vines were considered five-year vines, fully mature. We would have expected to get a full crop off of them. We had about

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550 vines of an edelweiss grape and 550 vines of a Marquette grape that we would have expected to get...projected about 5,000 pounds of crop off of the edelweiss where, in fact, we ended up with about 622 pounds, after the drift effect, on the vines themselves. The same with the Brianna. We ended up getting about half of what our yield should have been. It was about two-thirds of an economic loss to our actual vineyard, and we're currently about 3,300 vines right now. I think that LB636 is a good answer to the senator's questions about what the solution is. We're certainly not in a...I don't think anyone is advocating that you don't use 2,4-D. I think it's just that it needs to be used in an appropriate manner and applied correctly. And I believe LB636 really helps to perpetuate that in a reasonable and tailored manner to...we went to all of our surrounding landowners, farmers that were directly adjacent to our vineyard, and talked with them. They all know about our vineyard. They are all aware of it. They don't spray 2,4-D. They spray Roundup. We went and talked with surrounding landowners within the next sections around us and they are aware of our vineyard. Some of them apply 2,4-D. We can't control that. But what we hope to do is to be able to control when they apply it so that it doesn't drift on or it's not likely to drift onto our ground. And I think what LB636 does is it says, hey, you know, you have to pay attention to which way the wind is going and you have to pay attention to how much the wind...or the wind speed. And that's just asking them to be mindful of the farms or the vineyards and various susceptible crops that are registered with DriftWatch, and that's why we're in support of the LB636. [LB636]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Hansen. [LB636]

SENATOR HANSEN: And when...I know you said, but I didn't catch it. When did you plant your first vines? [LB636]

FRANKLIN MINER: 2007. [LB636]

SENATOR HANSEN: 2007? [LB636]

FRANKLIN MINER: Yeah. [LB636]

SENATOR HANSEN: Was there corn in there before you planted the vineyard? [LB636]

FRANKLIN MINER: No. There had been in the past. We bought the 40 acres and homesteaded it. It had... [LB636]

SENATOR HANSEN: I mean surrounding the area, continuing corn. [LB636]

FRANKLIN MINER: Surrounding area, it alternates between soybeans and corn, depending on which side we're on, on which year. [LB636]

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SENATOR HANSEN: Okay, thank you. [LB636]

FRANKLIN MINER: Um-hum. [LB636]

SENATOR SCHILZ: Thank you, Senator Hansen. Senator Johnson. [LB636]

SENATOR JOHNSON: Thank you. Hope I'm not too far behind on what's happening here. But the damage that you had this last year that you referred to, that was...it was tested and you know for sure that that's 2,4-D? [LB636]

FRANKLIN MINER: Actually, ours was not specifically tested. We were able to look at it, based off of some of the other vineyards that we had seen the damage. [LB636]

SENATOR JOHNSON: Okay. [LB636]

FRANKLIN MINER: This year we will start testing it and having it actually...the tissue test done. So it is speculation on our vineyard, but I'm... [LB636]

SENATOR JOHNSON: Speculate, okay. [LB636]

FRANKLIN MINER: We did go around to all of our neighbors, talked to every one of them, when they sprayed, what they sprayed. They were all Roundup about a month before any noticeable changes in the foliage on our vineyard took place. And then, in speaking with members of the NWGGA and the university, we're making a good educated guess that it was 2,4-D or something to that effect, that it was something that drifted. [LB636]

SENATOR JOHNSON: Okay. So what was the closest fence line? Or how close was the closest field that you believe... [LB636]

FRANKLIN MINER: Oh, I would say our...the cornfield for Mr. Buel (phonetic) was within probably 12 feet of our vineyard. [LB636]

SENATOR JOHNSON: Oh, it's that close. [LB636]

FRANKLIN MINER: Yeah. [LB636]

SENATOR JOHNSON: Okay. I thought, maybe, we had a...okay. [LB636]

FRANKLIN MINER: No. We have a very good relations with our adjoining landowners. We have...we're good neighbors and... [LB636]

SENATOR JOHNSON: But it was that close? [LB636]

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FRANKLIN MINER: Yeah, but...and, again, they use Roundup and they sprayed a month before we had any noticeable foliage change in our vineyard. [LB636]

SENATOR JOHNSON: They actually sprayed the product Roundup? [LB636]

FRANKLIN MINER: Yeah, but they're mindful of the wind and where our vineyard is, so. [LB636]

SENATOR JOHNSON: Okay, that's all. Thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Johnson. Any further questions? Seeing none, thank you for your testimony. [LB636]

FRANKLIN MINER: Thank you. [LB636]

SENATOR SCHILZ: Next proponent. Welcome. [LB636]

BARTON HOLMQUIST: There's a handout here too. There's my sheet. [LB636]

SENATOR SCHILZ: Good afternoon. [LB636]

BARTON HOLMQUIST: (Exhibit 1) Good afternoon. And I'd also like to thank Senator Wallman for sponsoring this bill. My name is Barton Holmquist. That's B-a-r-t-o-n H-o-l-m-q-u-i-s-t. I'm a grape grower, having a four-acre vineyard in Eagle, Nebraska. It provides a significant supplement to my retirement, which I did about ten years ago. And that's when I started my vineyard, hoping to supplement my retirement. On May 5 of last year, my vineyard was severely damaged by a chemical drift later to be identified as 2,4-D. And that came about as a result of an investigation by the Department of Agriculture. I did contact the department, and an inspector visited my vineyard and took samples of damaged vines and grapes and interviewed surrounding residents and farms to attempt to locate the source of that 2,4-D drift. A report was written, given to me four months later, confirming 2,4-D but unable to identify the source of the 2,4-D damage and giving me no recourse for my damages. My immediate loss is about three tons of grapes, which come...representing about \$3,000. The long-term assessment is yet to come. The damage from 2,4-D on grape vines can last up to six years, the recovery period, if they are not killed by the first year. It doesn't appear that my grapes have been totally killed. And I am here to support LB636 which places certain restrictions on the use of 2,4-D and other phenoxy herbicides. Let me go back for a second and say who I...I'm a chemist. I teach at Nebraska Wesleyan. I've taught at MIT. I have taught at Harvard Medical School. And I understand some of the chemistry of these phenoxy herbicides, which 2,4-D represents; and I somewhat understand the GMO developments that have been used to make 2,4-D- and dicamba-resistant plants,

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soybeans, and corn. But let me go on. So despite extensive efforts at the Department of Agriculture, it has not been able to locate the source of the 2,4-D that damaged my vineyard. This inability largely stems from the nature of this herbicide, and we've struck on it a little bit with AI. It's a vapor. The chemical agent that does the killing of plants is a vapor. It doesn't kill grasses, necessarily, but almost everything else. And as a vapor, it becomes volatilized when it's sprayed, and that vapor is what does the damage. You've all, undoubtedly, drove on a country road and smelled skunk, all right? That's a volatile chemical that's not too far different than 2,4-D. It has a vapor pressure that you can smell. You cannot smell 2,4-D, clearly, as easily. But you can go driving out on the road and you know, as well as I do, you can go miles and still smell that skunk. So that vapor is the agent that's very difficult to control. Anybody who sprays 2,4-D, the chemical is put onto the plants. That's fine. But then it gets volatilized and it drifts, and it doesn't take much to drift a vapor, relative to the drift of a particle of water. So that drift is what happens with 2,4-D. And it's extremely difficult to control, and it's going to get worse. And that's a problem that we're going to face in the future. So even if you educate farmers on watching the weather, the temperature--temperature has a major effect--the winds, you are still going to have problems with drift because it is so easy to drift a vapor. The vapor doesn't necessarily have to settle like a droplet of water. It can stay in the atmosphere and either go up or down or do nothing and drift. And that's where the problem comes. And this...the use of it, in spite of the fact that those of you mentioned, there are alternatives. They are slightly more expensive apparently, but yet just as effective. This problem is going to get worse. We have global warming or global climate change upon us, and that's the handout I had handed to you. And we have GMO crops that are developed that are resistant to 2,4-D and 2,4-D derivatives. They...that's going to make the use of these chemicals 10 to 100 times higher than they're used now. And I appreciate your help. Thank you. [LB636]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Johnson. [LB636]

BARTON HOLMQUIST: Okay. [LB636]

SENATOR JOHNSON: Well, thank you, Senator Schilz. Thank you. Reading the bill--and you talked about weather change and that--I'm not...hopefully, we can predict what's going to happen 72 hours from now so we know it's going to be a good day and it's going to be hardly no wind. [LB636]

BARTON HOLMQUIST: Right. [LB636]

SENATOR JOHNSON: One question I have...the four miles away and the wind is to be blowing at least two miles an hour, per hour, away from your... [LB636]

BARTON HOLMQUIST: Um-hum. [LB636]

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SENATOR JOHNSON: So that means somebody four miles further away from you or eight miles away this...you wouldn't be able to do anything in that eight-mile area. Would that be a...because it could blow either way? [LB636]

BARTON HOLMQUIST: Right. [LB636]

SENATOR JOHNSON: So you...that...you wouldn't be able to spray any of this product within that eight-mile segment. [LB636]

BARTON HOLMQUIST: If there was a highly sensitive crop in between, yes, that's the issue. [LB636]

SENATOR JOHNSON: But, I mean, if you had your vineyard on road one and somebody else is on road nine, or eight miles away, they're... [LB636]

BARTON HOLMQUIST: Okay. [LB636]

SENATOR JOHNSON: You wouldn't be able to do anything in between those two fields, if they're both grape vineyards,... [LB636]

BARTON HOLMQUIST: If they were both grapes... [LB636]

SENATOR JOHNSON: ...based on the law, because they wouldn't be able to spray unless there was absolutely no wind. [LB636]

BARTON HOLMQUIST: Without registering, without... [LB636]

SENATOR JOHNSON: And I... [LB636]

BARTON HOLMQUIST: Right, there's never...that's never the case. [LB636]

SENATOR JOHNSON: That's pretty hard. [LB636]

BARTON HOLMQUIST: No, that's never the case. [LB636]

SENATOR JOHNSON: Yeah, yeah. [LB636]

BARTON HOLMQUIST: I...the... [LB636]

SENATOR JOHNSON: I mean, that's the way the math works out for me that, in that eight-mile...you know, eight miles by eight miles, eight miles by eight miles, you wouldn't be able to spray any of this product. [LB636]

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BARTON HOLMQUIST: Right. But they...they way they're...as I understand the law, that all it means is they have to register and let us know if they're going to do that. And it's really important. That knowledge base is really critical to us so that we can let him know if there is expected winds or if he doesn't...hasn't followed the right projections. [LB636]

SENATOR JOHNSON: Okay, so he lets you know, but then there's...all of a sudden, there is some drift. [LB636]

BARTON HOLMQUIST: Yeah. No. There...I...there are times when it's not going to be possible. [LB636]

SENATOR JOHNSON: Yeah. [LB636]

BARTON HOLMQUIST: And that's why, personally, I would refer them to...and I...actually, I offered to my neighbors that if they would do an alternate grass killer...not...I mean, an herb... [LB636]

SENATOR JOHNSON: Yeah, something else. [LB636]

BARTON HOLMQUIST: ...broadleaf, then I would pay for it. And I think a lot of the vineyards will do that because we just do not want it close to our vineyards. [LB636]

SENATOR JOHNSON: So in other words, we're...we'd be banning 2,4-D. [LB636]

BARTON HOLMQUIST: No, you're not going to ban it. No, that's not what the legislation is asking. It's asking you to let us know when you're going to use it so that we can take appropriate actions, if there are any, and there are some, but that we can try to convince them otherwise, perhaps. [LB636]

SENATOR JOHNSON: Okay. [LB636]

SENATOR SCHILZ: Thank you, Senator Johnson. Senator Lathrop. [LB636]

SENATOR LATHROP: No, that...my question is answered. Thanks. [LB636]

SENATOR SCHILZ: You got it? Okay. Thank you, sir, appreciate your testimony. [LB636]

BARTON HOLMQUIST: Yep, thank you. [LB636]

SENATOR SCHILZ: Next proponent. Good afternoon. Welcome. [LB636]

TOM ZUMPF: Good afternoon. My name is Tom Zumpfe, T-o-m Z-u-m-p-f-e. I'd like to

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thank you for the time this afternoon, and I'd like to thank Senator Wallman for introducing this bill. I own a vineyard east of Lincoln, about seven miles. We've got about 8,000 vines, nearly 16 acres of vines planted. And according to our...the previous Department of Ag sensitive crop locator, which was previous to DriftWatch, at that time, we were about the fourth- or fifth-largest vineyard in the state. We planted our vineyard starting in 2006. So we contain about 8 percent of all the grapevines in the state and, in addition to our nine grape varieties--and seven of these are called cold-climate varieties that can't grow in other parts of the country--we're host to a nationwide NE1020 program that's...it's a test vineyard that contains 19 varieties of control and test grapes that haven't yet been released that are being evaluated. And that evaluation is being monitored by Dr. Read from the UNL viticulture. I'm also, by invitation, a member of the producer advisory council in the Northern Grapes Project, which is a 13-state initiative to promote cold-climate variety grapes and the wine produced by them. I'm past president of the Nebraska Winery and Grape Growers Association and cochair of its 2,4-D committee, which is an ad hoc committee. Two thousand twelve was a warm year, and our budding started in mid-April. And when our budding started, we assessed our crop. And when we have too many buds flowering, we have to figure out a way to thin the crop, and we are beside ourselves how to do that. Within two weeks our problem was over with because all the buds were killed by 2,4-D. And we'll be living with the effect of this for four years. What happens with the growth-arresting properties of 2,4-D is that it arrests the growth but, also, when the branches or the spurs grow from the cordon, which is the main horizontal trunk above the vertical trunk, the buds that are formed this spring hold the grapes for next year's crop. Well, in our case, most of those buds for next year's crop, which is 2013, are also destroyed and we're in the process of trying to rehabilitate our vineyard. This spring we also had our winery construction started, and we got the dirt pad built and we were getting ready to start construction. When this started, we had to stop construction of our winery. One of the other things, too, is, well, can't you go somewhere else to buy your grapes? Not really, because we don't have that many grapes excess in the state. And one of the Nebraska winery rules is that you can't get more than 25 percent of your grapes from out of state. The other thing is, first year, you have to do with all your own fruit. So that's why we've put that winery construction on hold. We...our first year loss was about 50 tons of grapes. And the value-added sales loss that we had was over \$500,000. And in evaluating our pruning which we do every winter, like I said before, we're finding out that we don't have a growth coming on that is normal for grapes. The...does that mean I've got one minute left? [LB636]

SENATOR SCHILZ: One minute. [LB636]

TOM ZUMPFER: Whoa. Okay. Okay, so if we lost a plant...six years of lost production. There's no such thing as a 2,4-D-resistant grapevine. When we met with the ag associations--and I hope that they can address this--what recourse do we have, other than hope, when we get hit? Let's say when we have a storm, we close the doors.

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When the 2,4-D storm hits, there is no doors to close. Flu season comes, you get a shot; 2,4-D season comes, there is no inoculation. Get bit by a snake, you can get antivenom; get hit by 2,4-D, we have no antivenom. So if we don't proceed with this legislation, what does that tell the sensitive crop growers of the state? Do we care? [LB636]

SENATOR SCHILZ: Okay, nice job. Senator Lathrop. [LB636]

SENATOR LATHROP: Are there crops other than grapes? When you say sensitive crop, that sounds like it's...like it affects... [LB636]

TOM ZUMPFER: Yes. As matter of fact, there are a lot of organic crops. Right, there are... [LB636]

SENATOR LATHROP: What else are we talking about? [LB636]

TOM ZUMPFER: I don't grow them, but tomatoes is one of the most sensitive crops, and organic crops are. In fact, the fellow that's going to be talking right after me has an organic farm, and he'd probably be better to tell you what those other crops are. [LB636]

SENATOR LATHROP: I just wondered. You used the term sensitive crops and...instead of grapes. And I figured there was something else. [LB636]

TOM ZUMPFER: Yeah, well, sensitive crops, Nebraska has the DriftWatch program in the Department of Agriculture where sensitive crops, including grapes, bees, tomatoes, organic crops, some vegetable crops that are affected by 2,4-D, which I don't grow, so I'm not sure what they all are, they go on a registry, on a map of the state. And when a person is getting ready to spray, the requirement is that you're supposed to look at this map. The only people that have that requirement are the licensed applicators. We have unlicensed applicators like utilities, departments of road, the NRD, the Game and Parks Commission, county roads, utilities. Those people don't have any responsibility and, also, the... [LB636]

SENATOR LATHROP: If we make the political subdivisions in the state of Nebraska use Roundup rather than 2,4-D, would that solve the problem? Or is it a lot of the neighbors that are putting it down on their... [LB636]

TOM ZUMPFER: I can't answer that because... [LB636]

SENATOR LATHROP: Okay. [LB636]

TOM ZUMPFER: ...not having the row crops, I don't know what they have to use. The only thing I do know is that the law that we've introduced here was fashioned after one

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in Arkansas that the...an effective time of use is the months other than April through September. The fall is a better month to do it. [LB636]

SENATOR LATHROP: Thank you, sir. [LB636]

SENATOR SCHILZ: Thank you. Any other questions? Seeing none, thank you for your testimony. [LB636]

TOM ZUMPFER: Okay, thank you, yeah. [LB636]

SENATOR SCHILZ: Further proponents. [LB636]

TOM SCHWARZ: Their time goes real fast. [LB636]

SENATOR SCHILZ: Mr. Schwarz, welcome today. [LB636]

TOM SCHWARZ: (Exhibit 2) Thank you. I'm Tom Schwarz, that's T-o-m S-c-h-w-a-r-z. I'm here representing myself. I'm an organic and conventional farmer from Bertrand, Nebraska. We grow traditional crops like alfalfa, corn, popcorn, wheat, and soybeans, as well as we have a vegetable operation where we grow lettuce, spinach, tomatoes, peppers, microgreens, herbs, and onions. We do, currently, deliver most of our produce to Lincoln and, hopefully, we'll shortly be started into Omaha. I do see a need for a bill. The scale of farms has changed a lot in the last 20-30 years. The farms are a lot bigger. Back when my father was running our operation, you know, typically, if some spraying was going to be done, he did it himself. And he was very concerned about taking care of his neighbors. Today, typically, hired men, sometimes non-English speaking hired men, are doing the spraying. And there's a lack of understanding of the chemicals and what you need to do to take care of your neighbors. So I think there is a problem that's taken place that's come about here over time. I kind of see this bill as an ounce of prevention. The goal of this bill is to prevent drift. And if that actually happens, if this bill is implemented properly, I think you'll see the Department of Agriculture actually have less inspections rather than more. I will refer to a paper that Jamaica should have put in all your packets here which is an experience that we had, actually, with Roundup. The first page of this handout shows a map and an area here that's outlined in purple where we had a problem with popcorn actually destroyed by drift. This was Roundup drift from a neighboring pivot over here. That's why it's kind of a weird shape in here because that's where the neighbor's pivot swung by. And that's where he had it actually planted in corn. So anyway, we were, in this case, able to easily identify where the problem came from, which is an advantage we had over the grape growers and the 2,4-D issues a lot of them have faced. If you go to the next page, it kind of explains what we requested of the chemical company. And we went out and we measured the area. And the problem we have in organics is to have a crop grown organic, you have to...that ground cannot be treated with a chemical for three years--synthetic chemical, herbicide, fertilizer,

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whatever you want to say--for a three-year period. So when that neighbor's spray got on my field, it didn't just affect that popcorn crop. It kicked me out of the organic program for three years for that area. In fact, that ground...this actually took place in June 24, 2010. That ground is still not certified organic to this day. Now this summer we will become eligible for certification on it again. But anyway, we go through and you can see the breakdown of the money. I mean, I've laid it all out here for you, exactly what happens. We were reimbursed by them for our losses, not, I would say, completely, but close enough for our purposes. If you look at the release of all claims, this was the one that just fried me. The second paragraph of the release: It is understood and agreed that this agreement is a compromise with prejudice of a doubtful and disputed claim. Well, guys, if you, any of you, had driven by that popcorn, there would be no doubt or dispute whether that was a legitimate claim. It was dead. The only thing alive was the weeds, which I thought was really curious. So anyway,... [LB636]

SENATOR LATHROP: Oh. [LB636]

TOM SCHWARZ: ...that was our experience. We did get a check from the insurance company, the chemical company that applied it. And it was taken care of. So I have no complaints with that respect. However, I am concerned about this issue in the future. I think it's going to become a bigger problem with time, not a smaller problem. One more thing regarding labels, you know, everybody is going to say, well, you know, there's a label on there, that ought to be good enough. Well, guys, I've been around 2,4-D spraying. When you're spraying pipelines, you're spraying with little-bitty sprayers. You don't know for sure how much you're putting on. You don't know how fast you're traveling. Guys just take their best guess, and that's the way it's done. You know, I'm not...I just don't feel labels are the entire answer in this case. [LB636]

SENATOR SCHILZ: Thank you, Mr. Schwarz. Any questions? Senator Johnson. [LB636]

SENATOR JOHNSON: Thank you. My background, I started out in Holdrege in the co-op, been in that business. Spraying back then, it was not issues. My first experience was getting too--in our company--getting too close to organic field. Now you can still grow a crop on that, but you just can't sell it as organic. [LB636]

TOM SCHWARZ: Right, right. It can't be certified organic. [LB636]

SENATOR JOHNSON: So you do get a crop off of it, but you can't sell it at the value (inaudible)? [LB636]

TOM SCHWARZ: Right. It's a conventional crop off of that particular area. [LB636]

SENATOR JOHNSON: I was thinking it was seven years. Did that used to... [LB636]

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TOM SCHWARZ: No, it's three years. [LB636]

SENATOR JOHNSON: It's three years? [LB636]

TOM SCHWARZ: Um-hum. [LB636]

SENATOR JOHNSON: Okay. [LB636]

TOM SCHWARZ: Yeah, three years. Now the biggest...you know, it's almost...the hassle is almost more than the loss, in terms of the conventional versus organic. I mean, we do take a pretty good loss on that. I mean, the price of corn today is \$5.50; organic corn is \$15. So, I mean, it's a significant hit we take by not having that in organic. But the hassle of having to keep that area separate, I mean, we basically have a whole separate field there we have to maintain now. So it's an expensive process for us. [LB636]

SENATOR JOHNSON: And I know your cost of keeping it organic, with yield and whatnot. I mean, you can't put any fertilizer on it in that three years. [LB636]

TOM SCHWARZ: Well,... [LB636]

SENATOR JOHNSON: Well,... [LB636]

TOM SCHWARZ: ...we can use fertilizer. [LB636]

SENATOR JOHNSON: Yeah. [LB636]

TOM SCHWARZ: But it has to be an organic-accepted fertilizer with, like, a fish emulsion or something along those lines, um-hum. [LB636]

SENATOR JOHNSON: Organics, right, yeah, yeah. So your production costs are higher than traditional corn for that. [LB636]

TOM SCHWARZ: Yes, yes. And our labor costs are significantly higher. [LB636]

SENATOR JOHNSON: Oh, yeah. No, I don't have any other questions. [LB636]

SENATOR SCHILZ: Thank you, Senator Johnson. So, Tom, you're...I mean, whether it's 2,4-D or Roundup or whatever, I mean, anything can cause you issues over there. And I would guess that any of those broadleaf herbicides would cause the grape growers issues and... [LB636]

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TOM SCHWARZ: Well, yeah, that would be my estimation as well. The bottom line here is responsible application. And essentially what we're saying here in this bill is if you don't operate responsibly there is going to be a penalty. And I don't think that's unreasonable to expect. Now can we do a better job of the bill is in its current form? I'm sure we can. But I really do think this is something we do need to address. [LB636]

SENATOR SCHILZ: Okay, thank you. Any other questions? Seeing none, thank you for your testimony today. Appreciate it. Next proponent. Proponent? Seeing none, do we have any opponents to the bill? Good afternoon. [LB636]

CHARLES BROOKS: Good afternoon, Chairman Schilz and members of the committee. My name is Charles Brooks, C-h-a-r-l-e-s B-r-o-o-k-s. I'm currently the Phelps County Weed Superintendent and the land resource coordinator for the Tri-Basin NRD. And I'm also president of the Nebraska Weed Control Association. I'm here today representing the Nebraska Weed Control Association and the Nebraska Association of Resource Districts. I'm here today to testify in opposition of LB636. And I think I'll preface my comments with I believe that this is an education opportunity, an education and opportunity bill, and my testimony is going to try to bring out some points on that fact, that it is education. And we've got a new type of agriculture coming in with organic crops and grapes and vegetable farmers. And it's an adjustment for us. But I don't think that the mechanics of the bill are not just sending a signal. Mechanics are dictating what we're going to do. A 72-hour notification from the Department of Ag. We have to wait until we get a receipt back from the Department of Ag says we can. Then we have to go to the landowner. Then we have to have the landowner sign a waiver. How many of these guys would sign a waiver? And if they don't sign a waiver, then where are we at? So it's not just a simple bill that's sending a signal that you have to apply better. It's a bill that is really tying us up and making an effort for efficient weed control hard and almost impossible. I'll just go ahead and read what I've got written down here. The Nebraska Weed Control Association was formed in 1959 for the primary purpose of establishing a uniform program to prevent the spread of noxious weeds across the state, proper chemical uses, and the improvement of weed control. Currently, the Nebraska Weed Control Association represents all county weed control superintendents in the state of Nebraska. Many counties require their weed superintendents to control weeds and brush on the county rights of way, along with their noxious weed duties. This work helps limit the liabilities counties have by maintaining sight distance clearing for the traveling public. It also puts the weed superintendents in contact with all landowners in the county, including those with vineyards, gardens, organic farms, and even farmers growing soybeans. While we understand the volatility of 2,4-D and that the use of commercial aircraft to apply it could result in misapplication, causing damage to adjacent land, this issue or violation is already addressed under the laws of the United States through the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA, which the Nebraska Department of Agriculture has inspectors to enforce. LB636 would add an additional layer to an existing federal law which, I feel, is not required. The objective of

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FIFRA is to control pesticide distribution, sale, and use. All pesticides used in the United States must be registered or licensed by the Environmental Protection Agency. Registration assures that pesticides will be properly labeled and that, if used in accordance with the specifications, will not cause unreasonable harm to the environment. Use of each registered pesticide must be consistent with the use directions contained on the label. All commercial applicators must have training to apply pesticides properly. Training and testing is under the direction of the Nebraska Department of Agriculture. The restriction of phenoxy herbicides includes products that would be allowed in villages and cities but not in rural areas. If LB636 becomes law, a rural homestead owner wouldn't be allowed to put certain weed-and-feed products on his lawn without permission from his neighbors. The NDA has a sensitive drift watch...or a sensitive crop locator on their Web site to assist applicators in identifying areas which may require special consideration. Organic and sensitive crop producers need to use this site and contact their weed superintendents and commercial pesticide firms to notify them of the changes in the crops being grown. We object to provisions (a), (b), and (c) and (d) as unnecessary according to the FIFRA law already imposed upon applicators of pesticides. These provisions would give too much authority to individuals to control the actions of county authorities and their neighbors up to four miles away. Growers of sensitive crops should be responsible for informing neighbors and the authorities of their concerns. Working together and respecting each person's boundary is always better than prohibitive laws. Thank you for your consideration. [LB636]

SENATOR SCHILZ: Thank you, Mr. Brooks. Any questions? [LB636]

SENATOR LATHROP: Can I ask a couple questions? [LB636]

SENATOR SCHILZ: Senator Lathrop. [LB636]

SENATOR LATHROP: Do you apply this stuff? [LB636]

CHARLES BROOKS: Yes, I do. [LB636]

SENATOR LATHROP: Do the labels tell you not to apply it within so many miles of a sensitive crop? [LB636]

CHARLES BROOKS: No, they don't. They just...they caution you about... [LB636]

SENATOR LATHROP: So can I ask another question? I'm a city guy. Can I go to the store and buy this stuff myself? [LB636]

CHARLES BROOKS: Yes, you can. It's not restricted. [LB636]

SENATOR LATHROP: So, believe me, I don't know anything about this stuff or the

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properties of this stuff. And I can go to the store and buy it myself and spray it around. Let's say I have a hobby farm somewhere. It might be right next to a grape crop or a tomato crop. I can go to the store and buy this stuff. The labels won't warn me not to spray it on a windy day. [LB636]

CHARLES BROOKS: Oh, yeah, the labels... [LB636]

SENATOR LATHROP: Well, that's...that was my question. Do the labels tell me not to do this? [LB636]

CHARLES BROOKS: Yes. [LB636]

SENATOR LATHROP: And does it tell me to identify sensitive crops first? [LB636]

CHARLES BROOKS: I am uncertain to that part of the label. It will caution you to what may all happen and advise you to take those things under consideration. [LB636]

SENATOR LATHROP: Okay. And you are...the group you represent primarily is spraying right of ways? [LB636]

CHARLES BROOKS: Right. [LB636]

SENATOR LATHROP: So are you guys sensitive to the fact that it can drift and go into a tomato or a grape crop? [LB636]

CHARLES BROOKS: Oh, very so, and I... [LB636]

SENATOR LATHROP: Do you not do it on windy days? Or how do you avoid that? [LB636]

CHARLES BROOKS: Most restrictions are for wind speeds under ten miles an hour. And when we're spraying a roadside, we use the prevailing wind to protect us from the adjoining side that we're processing. [LB636]

SENATOR LATHROP: So when the wind is out of the west, you're blowing on the west side and spraying on the west side. [LB636]

CHARLES BROOKS: Right, we only...we wake up and we get a weather report from the airport and we see that the wind is out of the southwest, and so we know that we can go on the south side of a road, headed east, and that way we're using the prevailing winds to protect any property that we're spraying against. [LB636]

SENATOR LATHROP: So if I'm listening or hearing this correctly, you may be spraying

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on the windward side of the road, but it's drifting two miles downwind. [LB636]

CHARLES BROOKS: I think the volatility has been a little exaggerated. And under certain conditions and in our operation, in the summertime, when it gets over 90 degrees, we stop spraying because that's when you get the drift cloud that can form, which is the heat and the ditch forms a protective barrier and then the herbicide can just float on it. Then, if the wind changes direction or moves, it can move the 2,4-D in an unknown direction and cause this drift damage that they're talking about. But if you observe temperature and wind speed rules, you could limit that. And you...so, like, if we find out that...earlier that...and this summer, when it was really dry and got hot, we moved that temperature direction down to 86 degrees that we'd quit because we just knew the earth is hot, it's not cooling off at night, let's be more safe, let's move that down another 4 degrees. [LB636]

SENATOR LATHROP: Is that right on the label? [LB636]

CHARLES BROOKS: I'm uncertain. I'm uncertain. [LB636]

SENATOR LATHROP: I just wonder about a guy like me. I've got to think, just listening to where these guys are doing this, they're all doing it pretty close, I mean, relatively close to the population areas, which means the grape growers are growing their grapes right next to the guy with a hobby farm who may know about as much about this as I do. And, you know, just the liability lawyer thinking this through, I think you put that stuff in the atmosphere, you're kind of responsible for what happens to it, wherever it lands. [LB636]

CHARLES BROOKS: Most certainly. [LB636]

SENATOR LATHROP: And I would think the guys that spray it would want to maybe have some protections so that they're not getting themselves into a situation where they're ruining somebody's crop and having to pay for it. [LB636]

CHARLES BROOKS: And that's where the education deal comes in if they're just...they're not aware. Farmers have private pesticide cards. Every applicator of pesticide...the statement was that NRDs and utilities and that do not. Anybody within a...of course, all weed superintendents have commercial pesticide cards. If a county roads superintendent has a crew that is applying a brush killer after they've trimmed off a bunch of bushes or something, that individual has to have a commercial pesticide card. NRD individuals that apply chemicals have to have a commercial pesticide. Anybody that applies chemicals to anything that's not their own, own property has to have a commercial pesticide card to use these. And...but if a...if the hobby farmer next to the grape grower, maybe he doesn't know that he should get a pesticide card or training or...I'm uncertain about that rule. [LB636]

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SENATOR LATHROP: Very sure that's true. But to all the old doctors and lawyers and guys like that, that want to have a horse and a garden somewhere,... [LB636]

_____ : Where their daughters live... [LB636]

SENATOR LATHROP: Is this stuff safe? Does the drift only happen when it gets to 86 or 90 degrees? [LB636]

CHARLES BROOKS: It's an inexact science, you know. It's a combination of everything. It's a combination of--and this was written in the bill--two-mile-an-hour winds, which is very safe. If the wind drops around, down below two miles an hour, you'd better be a little nervous because then you really don't know what's going. So it's a combination of the wind speed, the direction, the temperature, just atmospheric conditions. [LB636]

SENATOR LATHROP: Okay, well, you're the first opponent, so I'll find out what the others have to say. But thank you for answering my questions. [LB636]

SENATOR SCHILZ: Hold on one second. Senator Johnson, you had a question. [LB636]

SENATOR JOHNSON: Yeah, thank you. Part of it has been answered. But are you commercial applicators...develop a spray sheet, at least when I was in the business. And on that spray sheet we had certain things we had to check off. One of them was partly for our own protection, I think. The temperature, wind speed, you know, what the weather forecast was, all those things are usually done. And do you use that at the county level or...? [LB636]

CHARLES BROOKS: Yes, we do. [LB636]

SENATOR JOHNSON: So you... [LB636]

CHARLES BROOKS: Before they leave the yard they call out to the airport and get the...what the wind speed is and the temperature and all that. And then I require them to update that log. They'll...my individuals, my individuals, will call the airport three or four times. And then they'll note the time, the temperature. And we also keep a log of each mile that we travel on. We have a lot of soybeans. Soybeans are a very sensitive crop. And we just have a rule. Fast rule is we spray along corn fields. We do not spray past farmsteads. We do not spray with soybeans as an adjoining crop, for protection. Now if there's soybeans across the road, we figure that our spray operation is safe enough that it will not drift across the road because of that staying within the ten-mile-an-hour wind speed. And the temperature that that product will not leave this ditch and get over and damage these soybeans. [LB636]

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SENATOR JOHNSON: Thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Seeing none, thank you for your testimony, sir. Next opponent. Welcome. [LB636]

MARK KIMBALL: (Exhibits 4 and 5) Chairman Schilz and members of the Agriculture Committee, my name is Mark Kimball, M-a-r-k K-i-m-b-a-l-l, and I am here to oppose LB636 on behalf of the Nebraska Agri-Business Association. I also represent Progressive Fertilizer/Progressive Propane Company of Callaway, Nebraska. The Agri-Business Association represents fertilizer and ag chemical and seed inputs suppliers, as well as the manufacturer and distributors in Nebraska. We're the companies that sell and apply fertilizing chemicals for Nebraska producers. After the introduction of LB636, our association hosted a meeting bringing in the grape growing industry as well as other producer groups, applicator groups, and Nebraska Department of Agriculture and the University of Nebraska. The concerns expressed by the grape grower industry were discussed at length. We very much recognize a grape grower and winery industry and Nebraska and recognize them as partners in agriculture in Nebraska. The application of 2,4-D and other phenoxy herbicides is done throughout Nebraska and all agriculture states. The applicators we have...we represent are some of the most highly trained individuals as it relates to application, rate of application, and drift control. We are required by federal and state laws to follow stringent labels and requirements. The labels on all chemicals outline specifics of wind speed and other weather-related factors when these products are applied. Each year our association trains new applicators before the spring season to make certain they are applying chemicals judiciously. A copy of that training program is attached to my testimony. LB636 as drafted would apply a great degree of bureaucratic red tape to farming practices in Nebraska. We would be taking out many acres of production to protect about 500 acres of grape vineyards from a potential drift of certain products. A better solution exists. An outcome of the meeting held with the producer groups, the applicators, and grape growers showed that there is a very small percentage of applicators who may be causing a problem. In the case of the one loss this past year, it was indicated that an employee with the Nebraska Department of Roads who was spraying a right of way may have been the problem. Our members who make applications around sensitive crops tend to have a positive working relationship with those crop growers. Our members indicate that when there is a vineyard or a sensitive crop they call the owner the day before they make the application and they work out protection for the vineyard or other crops. We believe that DriftWatch, which is a nationally recognized program that deals with this issue, may be a solution. DriftWatch is a voluntary specialty crop registry created by Purdue University in 2008 as a simple tool that is free of charge to specialty crop producers and applicators. Specialty crop producers outline their fields on an on-line map. This also includes bees for pollinators. Data steward reviews the outlined fields and follows up with any questions or apparent

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inaccuracies and then posts. Applicators and neighbors can check areas around their field operations as they prepare for pesticide applications. This would include right-of-way sprayings. There are currently many states--nine Midwest states and mountain states, that have adopted this. Others are evaluating or in the process of adopting it. They include Indiana, Illinois, Nebraska, Michigan, Minnesota, Missouri, Montana, Colorado, and Wisconsin. The popularity of DriftWatch has made it a preferred stewardship tool for specialty crop producers and applicators. It is a source of alignment between groups that are otherwise opposed on matters of drift policy. [LB636]

SENATOR SCHILZ: Than you, sir. Any questions. Senator Johnson. [LB636]

SENATOR JOHNSON: I don't know for sure how I want to ask this or if I even want to ask it. I mean, I was in the business. So corn and row crops have been here since the Indians came out this way, way back. Some of the specialty crops have come in since, and I would include our vegetable gardens, organic, grapes, those types. Are the traditional row crop, field crops, and the specialty crops, as I categorized them, are they both compatible in our climate, I mean, in our society? I guess, with the issues we're talking about today, you talked maybe there are some solutions. I hope there is. [LB636]

MARK KIMBALL: I think DriftWatch is one of them. You know, I happen to own a commercial retail application company, and we have not had an issue. But we do not have vineyards in our area. We have one. But we spray alongside very many susceptible crops, whether it be soybeans, alfalfa, women's gardens,... [LB636]

SENATOR JOHNSON: Yeah. [LB636]

MARK KIMBALL: ...which is the most dangerous, as you well know, and flowers. We...yes, you can. But as we talked with the grape growers, it's a minimal few that are causing the problem, like it is in so many problems in our world today that...and a bill like this really isn't going to control it. You know, the label is there. Those of us that have been at this know what we can do and what we can't do with our nozzles, with our machines, and the direction of wind. Our applicators have wind meters with them they use all the time. They don't rely on calling somebody. They use a wind meter every time they load, and then they know. So, you know, I...and there has been talk about using other products. Roundup gets tossed around an awful lot. Roundup is a great product, but it's starting to struggle. And one of its struggles is broadleaf weeds--2,4-D/dicamba are one of the best inexpensive additives you can add to it, and there is nothing else that works as well at this time for the money. [LB636]

SENATOR JOHNSON: Yeah, I'm not trying to get rid of them. I'm just...I wanted the question on the front (inaudible)... [LB636]

MARK KIMBALL: Yep. No, no, no. And I'm sorry it went on so much, but that's...

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[LB636]

SENATOR JOHNSON: (Laugh) No. Thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Seeing none, thank you for your testimony. Appreciate it. [LB636]

MARK KIMBALL: Thank you very much. [LB636]

SENATOR SCHILZ: Next opponent. [LB636]

KEITH WELLENSIEK: (Exhibit 5) My handouts for the...thank you. Members of the Agriculture Committee, my name is Keith Wellensiek, K-e-i-t-h W-e-l-l-e-n-s-i-e-k. I am a grain and livestock producer located at Cook, Nebraska, in southeast Nebraska. I farm with my brother and two of my sons. I happen to be the sprayer operator for our family farm. A copy of the LB636 was e-mailed to me recently. In studying through the bill, I was compelled to come and testify at today's hearing. I usually begin applying fertilizer and 2,4-D to our pastures in late March and then continue on to apply pre-emerge herbicide for the corn and soybeans. Some 2,4-D may be added to the corn and soybeans pre-emerge, depending on the weed pressure in the field. After that I apply the postemerge herbicide to the corn and soybeans which contains no 2,4-D. This process usually ends around the second week of July, with respray and touch-up. Applying herbicides has evolved greatly in the past 20 years. We have gone from driving by line of sight and matching pressure and speed to accurately apply the herbicides to using GPS steering and GPS-controlled boom shutoff. We also use air induction nozzles and antidrift additives to reduce drift. We have adopted these newer technologies so that we could be good stewards of the land and also save us money by not overapplying. With the introduction of Roundup herbicide first and then Roundup-resistant crops in the 1990s, we have changed our cropping systems. We have gone away from using 2,4-D and that class of herbicides as being the herbicide of choice to postspray our corn. Now our herbicide system is built around using Roundup for the postapplication. The Roundup class of herbicides has seen resistance to certain weed species recently, so we will again be adapting to kill the tougher weeds. I want to stress again that, as farmers, we want to be good stewards of the land. With all the up-to-date technology, there are certain things that we cannot control, two of those being the wind and the rain. I went to the Web site...a Web site and found the temperatures, precipitation, and wind speeds for the 2012 spring season for our operation, and I have included that with a handout to you. It's on the back two pages. This data came from Offutt Air Force Base in Bellevue. I have included the months of May and June in the handout before you. I like to spray when the wind blows less than ten miles an hour. Every year is different. As you can see on the handout, there were very few days last year that met that threshold. We were forced to spray many days that were unfavorable. I can assure you though that even though we might spray on a

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windier day than we would like, we pay careful attention to what crops our neighbors have growing across the fence and if we should avoid this field until evening or morning, when the wind is blowing less. As for this Legislature bill, it appears that someone has decided to plant a sensitive crop and is unaware of the cropping systems in place in the growing area and wants existing growers to adapt their lifestyle, as they may have been unaware that the crop that they are growing is, maybe, sensitive to certain herbicides. The bill doesn't state specifics such as if you are using the 2,4-D to spot spray or...in which we do all summer long for troublesome weeds, or if we are spraying 2,4-D on a large field of pasture or wheat. With this bill, as I understand it, the burden would be upon the sprayer operator or owner to get a waiver signed from the grower of the sensitive crop. It appears to me that this legislation is pointed toward rural agriculture applications when, in fact, it may have unintended implications. What happens if the grower of the sensitive crop lives two miles to the north of a town or city? In Nebraska, the prevailing winds blow from the south in the summertime. A popular herbicide used for lawn care is Trimec 992 which contains 2,4-D. With this legislative bill, the lawn-care business would come to a halt. I would urge the Agriculture Committee to kill this bill in committee as it appears to me to be nuisance legislation. If the committee doesn't agree to kill the bill, would you consider amending the bill to place the burden of proof upon the grower of the sensitive crop? This would require the grower of the sensitive crop to go around to area farmers and all the town or city population and have them sign waivers so that they would not spray 2,4-D or other herbicides that would be harmful to their crops. And thank you to you, members of Agriculture Committee, for letting me speak to you. Do you have any questions I might answer? [LB636]

SENATOR SCHILZ: Thank you, Mr. Wellensiek. Any questions for good sir here? Seeing none, thank you for your testimony. Appreciate it. Further opposition? Good afternoon. [LB636]

BRIAN WILCOX: Good afternoon, Senator Schilz and committee. I'm going to cut mine down short so it's not repeated. First, my name is Brian Wilcox. It's B-r-i-a-n W-i-l-c-o-x. I'm a commercial aerial applicator and president of the Nebraska Aviation Trades Association. LB636 is redundant and unnecessary. If a pesticide product has the potential for drift and cause harm of susceptible, off-target sites, the pesticide label already contains statements concerning restrictions related to drift. Since all federal pesticide labels are recognized in courts of law as legal documents, the Nebraska Department of Agriculture already has the authority given to it by the U.S. Environmental Protection Agency to act on label drift violations. Because Nebraska's weather conditions are extremely variable, a pesticide applicator will often discover a window of opportunity to apply 2,4-D or phenoxy herbicides that is less than 8 to 12 hours in advance of the intended application. The 72-hour advanced notification requirement, in writing, to the Nebraska Department of Agriculture is unrealistic and totally impractical. LB636 establishes buffer zones between the application location and a susceptible crop of four miles for aerial application and one mile for ground

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application. This is unrealistic for a farmer or rancher to know all susceptible crop sites within a radius of four miles of his operation, which could include an area more than 60 square miles, when requesting an aerial application of 2,4-D. Conservative calculation is as follows: A four-mile radius is eight miles north-south, eight miles east-west. That comes up to 64 square miles. We find it hard for that to be complied with. Is there any questions? [LB636]

SENATOR SCHILZ: Thank you, sir. Any questions? Seeing none, thank you very...oh, Senator Hansen. [LB636]

SENATOR HANSEN: I have a quick one. [LB636]

BRIAN WILCOX: Sure. [LB636]

SENATOR HANSEN: You said spring alfalfa fields or whatever for grasshoppers. What about drift to beehives? I mean, that was a...that was talked about earlier. Do you have...how do you know where they are? [LB636]

BRIAN WILCOX: If you look...if they do put them on the susceptible crop Web site, you can find them. Otherwise, to an aerial applicator, they are pretty visible as the white boxes in the fields. [LB636]

SENATOR HANSEN: White boxes. Is that why they're always white? [LB636]

BRIAN WILCOX: I suppose they're white to keep them cool. [LB636]

SENATOR HANSEN: Okay, thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Hansen. [LB636]

BRIAN WILCOX: Thank you. [LB636]

SENATOR SCHILZ: Any other questions? Seeing none, thank you for your testimony. Next opponent. Good afternoon. [LB636]

NATHAN DORN: (Exhibit 6) Good afternoon. Senator Schilz and members of the Agriculture Committee, my name is Nathan Dorn, N-a-t-h-a-n D-o-r-n. I'm a corn, soybean, and livestock producer from Firth, Nebraska, and I currently serve as state director for the Nebraska Soybean Association. I'm here today to offer our opposition to LB636 which provides restrictions for applications on certain herbicides, such as 2,4-D. I've passed out my testimony. I'll allow you the opportunity to read that at your leisure. I would just like to make a couple points known. First, thank you for Senator Wallman, for supporting the bill. We wouldn't be here at this table today talking about this if his bill

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hadn't been introduced. I'm not in favor of the bill but I am, of course, very interested in talking about it and hearing exactly what the Nebraska Wine and Grape Growers have to say and exactly what the organic farmers have to say. One of the things that worries me about this bill is the fact that you're required to apply 72 hours in advance to give the Department of Agriculture notice. Oftentimes, as a farmer, I don't know what I'm going to do this afternoon, let alone what I'm going to do three days from now. It's also...you're required to get a signature from somebody who has a susceptible crop if you are going to spray within one mile of their farm. What happens if somebody who doesn't have a susceptible crop learns of this bill and plants a susceptible crop just because they want to stick it to me? I see that, as a farmer, being something where, if I'm willing to comply with rules and regulations and I am absolutely willing to not kill, you know, somebody else's produce, then I worry about the fact that somebody would take this opportunity to hold me against a barrel. Also I have a friend from Arkansas, where this bill was introduced, and I talked to him about this. He said this bill works very good in their part of the country because they have a lot of cotton fields and rice fields, which are highly susceptible crops to this, and those are very large cash crops. In fact, large swatches of their countryside are covered in these two crops. And so where this bill was written from, was taken from, is very important to them, as cash crops. And so I can understand their need for this bill, but I don't see why we need a bill that is exactly the same as what works in that part of the country. And finally, I would just like to sympathize with the Nebraska grape growers who lost crops this past year. I'm not sure if you guys are aware but as...because of the drought and other mitigating factors, I was only able to produce 50 percent of my regular population or production history of corn because of the fact that there wasn't any water. So if the grape growers are certain that they lost all of their grapes from the fact that pesticides were sprayed or herbicides were sprayed, then I think that's a serious problem we need to deal with. But if they lost some of their production strictly because of the drought, then, as another producer, I can sympathize with them. The Nebraska Soybean Association, therefore, asks the committee to indefinitely postpone LB636. Thank you. I'd be happy to answer any questions you have at this time. [LB636]

SENATOR SCHILZ: Any questions for Mr. Dorn? Senator Lathrop. [LB636]

SENATOR LATHROP: Maybe. I have to tell you, when I sit and listen to this testimony--and I'm the city guy, but--I wonder how the guys that are raising corn would feel if the grape growers sprayed some powder on their grapes to make them grow better and it drifted into the corn and killed it. If you turn something loose into the environment, you ought to be responsible for where it lands, it seems to me. And I get that the corn and the wheat and the soybeans are important to our economy. I don't know what the answer is. I don't know if this bill is the answer. But I do think that a guy who is raising something on his land ought not to have that killed by something that's going on in a different property. Does that make sense? [LB636]

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NATHAN DORN: Absolutely. [LB636]

SENATOR LATHROP: And I think, if someone was spraying the neighbor's crop and they got yours and killed it, you'd be upset about it. [LB636]

NATHAN DORN: I would probably be on the other side of this argument then, absolutely. [LB636]

SENATOR LATHROP: Okay. (Laugh). [LB636]

NATHAN DORN: And I can... [LB636]

SENATOR LATHROP: And I'm in the middle. I don't have a dog in this fight except that... [LB636]

NATHAN DORN: No, that's... [LB636]

SENATOR LATHROP: ...except that I understand that... [LB636]

NATHAN DORN: That's fine, and I... [LB636]

SENATOR LATHROP: ...if somebody else is turning the chemical loose...who is doing it? [LB636]

NATHAN DORN: And I just... [LB636]

SENATOR LATHROP: Because everybody is coming up and saying, it isn't me, I'm following the label directions. [LB636]

NATHAN DORN: I just want to make sure that, when we pass this or whatever the committee decides to put forward or whatever happens, that it's a bill that everyone can live with and it's not something that's punishing one side to the benefit of another. I mean, we're both farmers. You know, we sat in a room several weeks ago and, you know, I got to hear some of these stories firsthand from the grape growers and I... [LB636]

SENATOR LATHROP: I wasn't there. I wasn't there, so I didn't hear all the stories. [LB636]

NATHAN DORN: No. It was very similar to the stories you've heard today. [LB636]

SENATOR LATHROP: Okay. [LB636]

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NATHAN DORN: And so what...you know, I can sympathize exactly. You know, we've had the co-op spray our fields incorrectly before, and there is a...you know, they are responsible for that. And so, I mean, I understand that if I'm spraying somebody else's field and I'm killing that, I need to be responsible for that. But I'm saying I don't believe that the bill, as it's currently written, is what we need to... [LB636]

SENATOR LATHROP: You may be exactly right. Here's one of the problems I can see, just because I've got my lawyer hat on now: These guys have no idea. If this stuff travels five miles or three miles or two, they have no idea who is doing it. [LB636]

NATHAN DORN: And I don't know who is doing that either. And I...you know, we had in our area a gentleman who put in grapes. And the first year he had grapes, his grapes were killed. And then he went to all of the neighbors and the neighbors talked in the coffee shop, and then he hasn't had any problems since then. And I went on DriftWatch today or the...whatever Web site it is. [LB636]

SENATOR LATHROP: I've got it right here, yeah. [LB636]

NATHAN DORN: And it...I went on DriftWatch today and his farm is on there. And I looked and I found some farms that I didn't even realize were on there. And then we have some neighbors who do have grapes who don't have farms on there. And so I wonder, you know, how many people are actually registering, how many people are a part of the Nebraska Winery and Grape Growers Association. The Nebraska Soybean Association has 1,200 members across the state when, in fact, there are thousands of people who produce soybeans. So just because an organization represents everyone doesn't mean that everybody belongs to that. [LB636]

SENATOR LATHROP: No question about it. And I'm not suggesting you guys need to stop doing something. There may be...there ought to be a solution to this. But I do recognize that, anybody who is growing something on their property, they don't need to have it, their crop, diminished by the activities of the neighbor. [LB636]

NATHAN DORN: Exactly. [LB636]

SENATOR LATHROP: Okay. [LB636]

SENATOR SCHILZ: Thank you, Senator Lathrop. And I guess...any other questions? I guess that I would piggyback off of Senator Lathrop and say that if you're that person on the other side of the fence that's growing crops, you sure as heck don't want to have your ability to grow those crops adversely affected by a rule and regulation that may or may not be the cause of what's happening across the fence. [LB636]

NATHAN DORN: Yes. [LB636]

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SENATOR SCHILZ: You can comment on that if you'd like, but... [LB636]

NATHAN DORN: Yes. I think you guys both put it very well. [LB636]

SENATOR SCHILZ: And therein lies the problem. Thank you. I appreciate your testimony. Next opponent. [LB636]

NATHAN DORN: Thank you. [LB636]

SENATOR SCHILZ: Welcome, sir. [LB636]

SCOTT JAPP: Good afternoon, Senators. My name is Scott Japp, S-c-o-t-t J-a-p-p. I appreciate Senator Wallman's introducing this bill but, however, I'm opposing it too. I understand his...the situation and the concern he has. But with our current liability laws, if I cause damage to my neighbors, we can sue, as Senator Lathrop knows. There is a recourse. And there has been many settlements with...between neighbors where I live, in the rural part, that, if the chemical drifted, there has usually been a cash settlement of some kind. I'm not going to state what's been stated before, but I am going to bring up an issue as this curtails to rural part. In Washington County, where I live, where a winery comes in there, they have to get a conditional use permit. If I was a...the county planner or the county supervisor, where I'm representing the rural part, I may not issue any more conditional use permits for wineries unless there is an exception that the winery knows there could be ag chemicals and the...to make them not as liable or make them aware of. This could be a hindrance on the future growth of the wine industry. I think it's wonderful that they...there is wineries in my area. And they're coming in and there seems to be more of them. But this isn't the way to promote growth of the wine industry and the cooperation between the rural and the hobby farmers, as Senator Lathrop was mentioning, too, so. [LB636]

SENATOR SCHILZ: Thank you, sir. Any questions? Seeing none, thank you for your testimony. Further opposition. Welcome. [LB636]

ELAINE MENZEL: Thank you. Good afternoon, Senator Schilz and members of the Agriculture Committee. For the record, my name is Elaine Menzel, M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials. And I just want to express our appreciation to Mr. Charles Brooks from Phelps County. And he's a weed superintendent, as he indicated, and he testified, essentially, to our position. We were asked by the weed control officials to take a position in opposition. The parameters for nonapplication of the identified herbicides would potentially negate efforts to control identified noxious weeds in a timely manner, such as issues that have been identified before the three days--the wind speed, the ability to forecast the weather. And I am a Nebraska resident, so I know how hard it is to predict the weather. And also, two miles

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an hour, to me, sounds like it's a very low wind speed. But just having, like I said, lived here all my life...but I will attempt to answer any questions, if there are any. [LB636]

SENATOR SCHILZ: Thank you. Senator Harr. [LB636]

SENATOR HARR: I'm going to be very quick. But you have weed control, right? Noxious weed control, right? [LB636]

ELAINE MENZEL: They are one of our affiliate groups, yes. [LB636]

SENATOR HARR: Okay, and one of the reasons is because you don't want action on one property affecting actions on another property, correct? [LB636]

ELAINE MENZEL: Yes. [LB636]

SENATOR HARR: And yet that's exactly what this does. If you spray on one, it affects the other. So why is it okay for a weed but not a chemical? If the result is the same, you've destroyed the property on...the value on the other property. I can't figure out why you'd take this stand. [LB636]

ELAINE MENZEL: I'm at a loss, in terms of further clarifying. [LB636]

SENATOR HARR: Okay, thank you. I didn't mean to be so abrupt, but I just...I can't figure this out. [LB636]

ELAINE MENZEL: No, that's fine. I... [LB636]

SENATOR HARR: Okay, thank you very much. Thank you for coming, too, and thank you for being honest too. [LB636]

ELAINE MENZEL: Yeah, well, (laughter)... [LB636]

SENATOR HARR: I appreciate it. Thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Harr. Thank you for your testimony. Any further opposition? Mr. Merritt, welcome, this afternoon. [LB636]

SCOTT MERRITT: (Exhibit 7) Mr. Chairman, members of the Ag Committee, my name is Scott Merritt, S-c-o-t-t M-e-r-r-i-t-t. I currently serve as the executive director of Nebraska Corn Growers Association. The Nebraska Corn Growers Association is opposed to LB636. Nebraska commercial and private pesticide applicators receive training from and are licensed by the Nebraska Department of Agriculture, as required by the Nebraska Pesticide Act. Applicators receive training on topics such as personal

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safety, environmental safety, container disposal, and appropriate application procedures. Pesticide applicators are required to comply with all requirements and restrictions on a pesticide label. The label will include storage and disposal requirements, targeted pest, application rates, timing, application methods, and precautions to avoid spray drift, including wind speeds and conditions which may be conducive to thermal inversions. Failure to comply with label requirements is a violation of the Nebraska Pesticide Act. Reported violations are investigated and documented by the Nebraska Department of Agriculture. Documented violations can result in assessment of monetary penalties and can be the basis of claims for damage. Nebraska's seed corn and specialty corn farmers protect their high-value corn crops. They communicate with neighboring farmers and determine what can be grown in adjacent fields. The growers of specialty corn have established appropriate isolation buffer areas within their own fields to protect their crops. Our members approve policy which supports this practice as follows, quote, responsibility for isolation barriers shall remain with the producer of a specialty crop, rather than being placed upon a commodity crop producer surrounding the specialty crop producer. Our members believe that thoughtful location decisions, appropriate isolation barrier areas, and communications to create awareness, coupled with existing applicator training and label requirements, provide reasonable protection for crops. The restrictive provisions of LB636 are not necessary. NCGA is willing to work with the Department of Agriculture and the proponents of LB636 to raise the awareness of their concerns. This may be accomplished through the development of best management practices, stewardship plans, stakeholder meetings to raise awareness, and organized communication and outreach programs. Our members support the voluntary-based outcomes, rather than increased regulations. We stand opposed to LB636, and I'd be happy to answer any questions from the committee. [LB636]

SENATOR SCHILZ: Thank you, Mr. Merritt. Senator Lathrop. [LB636]

SENATOR LATHROP: Just briefly, so I better understand, is this a product that's used primarily by corn growers? Do the corn growers use it in their fields? [LB636]

SCOTT MERRITT: It...they do. [LB636]

SENATOR LATHROP: Do they? [LB636]

SCOTT MERRITT: It is one of the tools, of many. [LB636]

SENATOR LATHROP: And I'm not being a wise guy at all, because I don't understand this, which is why I ask the questions. Do producers, corn growers, do they all have to get certified to spray this stuff? [LB636]

SCOTT MERRITT: If they're spraying on their own property. But I will tell you that I think

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there are very few farmers out there in today's environment that are not through the certification program if for no other reason than liability. The equipment that we're using now, as earlier stated, is very complex. And I would say that almost all of my board, that I'm aware of, goes through it every three years, the training process, the same as a commercial applicator, at different levels. [LB636]

SENATOR LATHROP: Okay. So you've listened to the concerns of the...and I got on this site. I have my iPad here. I see that we have fruits, grapes, certified organic, beehives, vegetables, nursery crops, orchards, and then something that falls into the classification of "other." Is there a better solution? I mean, you can appreciate the concerns these guys have. [LB636]

SCOTT MERRITT: Exactly. [LB636]

SENATOR LATHROP: And I suppose that if you're in the middle, long before the tomato and the grape guys showed up or the beehives, spraying this stuff, maybe there is some drift, but it doesn't damage the neighbor's crop. Would that be true? I mean, it's a little harder to damage or cause the problems to crops other than the grapes and the tomatoes. [LB636]

SCOTT MERRITT: Well, I mean,... [LB636]

SENATOR LATHROP: Is that right? [LB636]

SCOTT MERRITT: Yeah, I would say that's... [LB636]

SENATOR LATHROP: Okay, so a little bit of drift didn't do anybody any harm until these guys showed up? [LB636]

SCOTT MERRITT: No, it...drifts has been a problem for Nebraska farmers for a long time. And I would say it's probably less of a concern today than it was 10, 20 years ago, for several reasons. The technology we're using...we're actually using better chemicals than what we did 20 years ago when I was on the farm. We're probably seeing more of it. I mean, unique, during the meeting that we had, is I have an...probably, one of the largest organic farms a half-mile south of me. I have some vineyards within about a quarter of a mile of my personal property. And I have the mad wife with the very complex garden that she loves. We have all of ours done commercially now, from the simple fact that I don't have the technology and equipment to do it well. So we have it hired done, and I think we're seeing more of that. [LB636]

SENATOR LATHROP: And I'm not suggesting that I think LB636 is the answer. You guys all got in a room. Is there a different answer? Because you raise a crop, you understand what...these guys are raising a crop. [LB636]

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SCOTT MERRITT: Oh, yeah, yeah, sure. [LB636]

SENATOR LATHROP: And they may be, like, second into the state. I mean, they weren't here first, I suppose, but that doesn't mean that it's less of a concern to somebody raising just a different kind of crop. [LB636]

SCOTT MERRITT: No. And I hope we don't have anyone with the impression that we're not about...antigrape. I had an interview where the reporter asked me, well, you don't like organic corn coming into your area? I said, no, I love organic corn because that's an acre of corn I don't have to worry about finding a new home for. It's got its own specialty crop. And as I tell my organic friends down the road, you should get a premium for your product, I've seen what you do, you work twice as hard and have twice as much risk as what people...what someone like me does. But, nevertheless, going back to your question, there is room for all of us in there and, I think, by voluntary things and things, the DriftWatch program. There's a lot of unregistered specialty crops out there, and people just don't know about it. [LB636]

SENATOR LATHROP: Well, they can hardly complain if they're not going to participate in the...in identifying themselves. [LB636]

SCOTT MERRITT: I would agree with that, that they have some responsibility on themselves. And I think that's what my folks were trying to say is, you know, we're not antigrape, we're not antiorganic. But everybody has to take responsibility for some of their own. And I think there's room to work through voluntary incentive. And I use incentive-based program. We've been involved with a lot of chemicals over the years on water quality and things like that. We seem to have more success, long term, in our water quality products with chemicals than we do trying to go in and regulate and strong-arming people. [LB636]

SENATOR LATHROP: So is there something your organization can work through? [LB636]

SCOTT MERRITT: I hope to have a conversation with them, and I've had some conversation with some other people on a commodity deal. You know, we were talking about what can we do as an organization, you know. And I know funding for this is going to be an issue, going forward. The CropWatch, we think, is a great program. Is there some outreach? I know that the organic people have got some deals--and maybe the grape folks have already done this--where they actually have cards that they send out to all their neighbors within a five-mile radius, hey, I'm going to do this, this, and this, please contact me to direct. I know that the organic farm by me sent...I get a postcard from them every spring. And the fellow that farms my ground farms right around them, on their fence line. And they just...it's communication. So I'm concerned that we tried to

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create a one-size-fits-all here, and maybe it's more of a localized issue, just off the top of my head. I don't have a master plan on where to go forward. I think there's ideas. [LB636]

SENATOR LATHROP: Nor do I. I'm just listening to it. [LB636]

SCOTT MERRITT: Yeah. I think there's ideas and steps that we could all work together on, try to go forward. [LB636]

SENATOR LATHROP: Well, hopefully that happens, going forward. [LB636]

SCOTT MERRITT: And I look forward to working with them again. I know that's one of the conversations that I've had among my peers is, once we get through the hearings, however this turns out, maybe there's some industry task force where we all sit down and talk about some solutions in a little more depth. [LB636]

SENATOR LATHROP: Okay, thanks. I appreciate your willingness to do that. [LB636]

SENATOR SCHILZ: Thank you, Senator Lathrop. Any other...? Senator Johnson. [LB636]

SENATOR JOHNSON: I have a...refresh my memory. And it's not the issue today, but it does have to do with drift. What's the isolation barrier on...between sweet corn and hybrid corn for pollination? [LB636]

SCOTT MERRITT: I'm not sure on sweet corn. I know some of the criteria for, like, food-grade white corn and things like that. At our farm, we don't have an isolation. We put the sweet corn right next to the regular corn. [LB636]

SENATOR JOHNSON: Okay, how about seed corn? [LB636]

SCOTT MERRITT: Seed corn, they want you to have a barrier around there. Basically, they want it insulated on the quarter, so. [LB636]

SENATOR JOHNSON: By a quarter? [LB636]

SCOTT MERRITT: By quarter, by quarter, and then you build your program around... [LB636]

SENATOR JOHNSON: Stay a quarter away (inaudible)? [LB636]

SCOTT MERRITT: ...with soybean and things like that. [LB636]

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SENATOR JOHNSON: Yeah, well, thank you. [LB636]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Seeing none, thank you, Mr. Merritt. Next testifier. Good afternoon. [LB636]

BRENT MEYER: (Exhibit 8) Good afternoon, Chairman Schilz and members of the Ag Committee. My name is Brent Meyer, B-r-e-n-t M-e-y-e-r. And a lot of my testimony has been covered already today. I do have a handout, so I will send that around. And I am the noxious weed control superintendent for Lancaster County, so I'm going to be able to address, maybe, a question that we have there. [LB636]

_____: Excellent. [LB636]

BRENT MEYER: I am here representing Lancaster County, on the behalf of the Lancaster County Board, which voted to oppose LB636, and I am doing that today. While we agree all pesticides need to be applied with caution and according to the label, but we feel the bill would add an additional layer of state law to already existing federal law which is the label. The label is the law. As weed superintendents, we are required to enforce the Noxious Weed Control Act. And as mentioned before, it is correct that what is not allowed on one person's land because it spreads to another person's land is a law, and it is protected by law, to protect that property owner from the spread of noxious weeds. As the label is federal law and, if applied correctly to the label, there should not be drift. So drift happens, as was stated in the first testimony, because of a number of different things: wind speeds, temperature inversions, temperature, humidity, higher temperatures. And it's not okay to drift on the neighbor's ground, or it's not okay to drift from the corn field to the bean field. And that's why the federal law is there, the labels law. I've been a commercial applicator since 1992 and, I can tell you every year when you go to the training you hear, the label is the law. You know, you have to abide by the label. So if you go off label, you're committing a criminal act, you know, and it's punishable. I think there have been some awards talked about earlier, you know, \$14,000 award because of a misapplication. And those are there. I think...I know...I read the Nebraska Department of Agriculture's newsletter. I think there were 16 off-target application complaints last year. This is not a huge problem, but it's a serious problem when it happens. And that's what we're here to address today. It's just like any other law. You've got to punish the people that are the criminals in this case. You know, I don't think you want to handicap a whole industry for what some applications happen. Most of my testimony has been covered. I can go ahead and go toward one of the parts that I read in the fiscal note, which is part of your handouts that I got off the Legislature Web site today. We've talked a lot about 2,4-D, but this isn't just 2,4-D. According to the Nebraska Department of Agriculture, this will affect 1,500 to 2,000 phenoxy herbicides in the state of Nebraska that are registered in the state of Nebraska to be used. So we're talking a lot about 2,4-D today, but this affects a lot of other herbicides in the state. And one other thing we haven't talked about is an additional cost. I used to be a

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state employee. I now work for Lancaster County. That's due to state cuts. It would add another \$98,448 annually to Nebraska Department of Agriculture's budget to just put people on the ground to take care of this problem. It was testified earlier that, you know, maybe there would be less complaints instead of more complaints. I don't ever see that with more laws. We deal with laws all the time. We added more noxious weeds. We don't see less noxious weeds because we added more. We see more complaints. I do have just one personal experience. I used to live in Nuckolls County. There is a vineyard called Meyer Vineyard. It's no relation to mine. It is right on 16th Street on the north edge of Superior, Nebraska. As it was mentioned earlier, also 2,4-D is the compound in Trimec herbicide, which is one of the leading herbicides used in the lawn-care business. So as this law is written, the way I read it, if any lawn-care company is spraying in the city of Superior, Nebraska, they wouldn't be able to...they would have to get a waiver from that vineyard, you know, and that's, you know, 2,000 people within a half-mile of a vineyard. So I...you know, there's a lot of things, I think, that's good with Senator Wallman to introduce this legislation to get the discussion going, but I don't think this legislation is good. On behalf of the Lancaster County Board, we oppose this legislation as it's written. [LB636]

SENATOR SCHILZ: Thank you, Mr. Meyer. Any questions? Senator Harr. [LB636]

SENATOR HARR: Hearing the testimony and the concern about the fiscal note, wouldn't it make more sense just to pass this on to the weed board to take care of then? [LB636]

BRENT MEYER: Well, I can tell you, you've already got the Nebraska Department of Agriculture's pesticide division to manage the EPA regulations that are the label. I can tell you the weed association doesn't want any more things to enforce. [LB636]

SENATOR HARR: (Laugh) Yeah. All right. (Inaudible). [LB636]

SENATOR LATHROP: Would get rid of the fiscal note though. [LB636]

SENATOR HARR: Yeah. (Laughter) [LB636]

BRENT MEYER: That it would. [LB636]

SENATOR SCHILZ: (Laugh) If anybody is wondering. [LB636]

SENATOR HARR: Yeah. [LB636]

SENATOR LATHROP: You seem to find your way to that pretty quickly. [LB636]

BRENT MEYER: Yep. [LB636]

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SENATOR SCHILZ: Thank you, Senator Harr. Any other questions? Mr. Meyer, thank you for your testimony. Next opponent. [LB636]

SENATOR LATHROP: The cattle guys too? [LB636]

PETE McClymont: (Exhibit 9) Chairman Schilz, members of the Agriculture Committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for the Nebraska Cattlemen. Our board of directors, at our annual legislative meeting, voted to oppose LB636. And to be efficient with your time and not to be redundant, I have passed out written testimony. And with that, I'd be happy to answer any questions. [LB636]

SENATOR SCHILZ: You just wait until the end so you can do that, don't you? Any questions for Mr. McClymont? [LB636]

SENATOR HARR: We love it. [LB636]

SENATOR SCHILZ: Seeing none, thank you for your testimony. Appreciate it. Next opposition testifier. Good afternoon, sir. [LB636]

ED WOEPPEL: (Exhibit 10) Good afternoon. I'm Ed Woepfel, here today representing the Nebraska Cooperative Council. My name is spelled E-d W-o-e-p-p-e-l. The Nebraska Cooperative Council is a trade association for the farmer-owned cooperatives across the state. Many of the things that are in the handout have already been talked about today, but there's a couple things I'd like to point out. And Brent mentioned this, but Tim Creger with the Department of Agriculture indicated that the list of products that he was putting together was 42 pages long, of these products that we're talking about. So it is a pretty significant area and it covers a lot of Nebraska. Whether it's pastures, cropland, it has impact with thousands of farmers and, literally, hundreds of thousands of acres. So it is a very significant thing. The other thing that I would talk about from the cooperative perspective: The liability issues that have been talked about are very important to our members and their operations. Certainly, they don't want to get involved in litigation on those kinds of things. So their best practices are really enforced very highly from wind factors, from application, all those kinds of things. And they're doing a lot of things from the technology perspective. And just to talk about a couple of those things, you know, they're using the wind monitors and so forth, but they're using spray nozzles that have larger drops so that you don't have the vaporization. They're able to lower booms, using emulsifiers within the product so that you don't have the vaporization. So there's a lot of things going on from the professional level. So I guess our standpoint is, I think those kinds of things are happening to protect that drift, and that's probably what needs to go on within the industry. And, certainly, to ban the use of the product is probably not the answer. So our recommendation is to kill this bill. But

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with that, I don't know that I have anything else to add to the conversation. But I'd certainly answer questions if anybody did have any. [LB636]

SENATOR SCHILZ: Thank you, Mr. Woeppel. Any questions? Seeing none, thank you for your testimony. Appreciate it. Next testifier. Good afternoon. [LB636]

ANTHONY AERTS: Afternoon, Senator Schilz, members of the Agriculture Committee. My name is Anthony Aerts, A-n-t-h-o-n-y A-e-r-t-s. I appear before you today in opposition to LB636 on behalf of the Nebraska Farm Bureau Federation where I serve as the assistant director of state affairs. I will try my best to be brief, given the testimony that's come before me. Farm Bureau recognizes that herbicides play an important role on Nebraska farm and ranches in controlling the growth and spread of noxious weeds; 2,4-D, in particular, plays a special role, as certain weed species have developed resistances to the commonly used Roundup product over time. It's effective. It's relatively inexpensive. It's been around for a long time, and farmers and ranchers depend upon it. At the core of our position on this bill is that a statewide regulation would be overreaching and inefficient. Our understanding is that the issues are fairly localized and, also, that are likely due to a few negligent or perhaps just inexperienced applicators, whereas, the majority of farmers and ranchers use 2,4-D in a responsible manner. We...I've also heard about, today, the several voluntary mechanisms that exist that could potentially mitigate this problem, by far the best, farmer-to-farmer communication. I mean, yeah, farmer-to-farmer communication, applicator-to-applicator communication. But given that this, you know, coffee shop talk is not always feasible, then we encourage the use of other tools such as DriftWatch, being registered. And, you know, as specialty crops become more prevalent in our state, it's going to become increasingly important that, one, 2,4-D applicators are aware of where these specialty crops are located and, two, that they then use responsible spraying practices to minimize any damage due to drift. And so we really feel like this issue boils down to one of education, awareness, you know, responsible application. And Farm Bureau is certainly willing to work with other organizations to do our part in promoting this awareness and education. And so, with that, I would...we respectfully ask the committee indefinitely postpone this bill, and I would be happy to answer any questions you have. [LB636]

SENATOR SCHILZ: Thank you, Mr. Aerts. Any questions? Seeing none, thank you for your testimony. Any further opposition? Hmm. At this point, I'd like to read... [LB636]

SENATOR LATHROP: We've had everybody here but the trial lawyers,... [LB636]

SENATOR SCHILZ: Yeah, I know. (Laugh) Don't invite them. [LB636]

SENATOR LATHROP: ...the visiting nurses. (Laugh) [LB636]

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SENATOR SCHILZ: I would..this is opposition? [LB636]

DON ALBRECHT: No, neutral. [LB636]

SENATOR SCHILZ: (Exhibit 11) Neutral. At this point I would like to enter into the record written testimony provided on behalf of the North Platte Valley Water Association in opposition to LB636. And with that, neutral testimony. [LB636]

DON ALBRECHT: Neutral. Yes, my name is Don Albrecht, A-l-b-r-e-c-h-t. I am a grape grower, but I hope I have an alternate perspective. The...one thing the grape growers learned this last year was that we need a lot of good communication. And we learned a lot from the Department of Agriculture. They were very good at explaining how things work. A lot of grape growers did not know the options open to them if they had difficulties. And so if you tried to count the number of incidents, you might find out it's because a lot of people just simply didn't report them because they didn't know that there was an avenue. There is one thing that, I think, that is very clear, and that is there is going to be a solution. And one of the best pieces of it is communication because that's what we've learned. Part of that is sprayer education, which right now is a little hit and miss. But we need to learn a lesson from the people who came before us. And Nebraska has a fledgling specialty crop business. But our neighbors to the east, in Iowa, have been doing the same thing longer than we have, and they've learned a few lessons that we should probably learn without having to go through the pain because their gestation period in the specialty crop industry passed through a state of turmoil punctuated by lawsuits. In other words, people in Iowa learned about the problems with spray drift and so forth, basically, by paying for it in a court of law. Now if we're smart, we won't do that. We will find a way around it. And like I said, I think communication is one of the best ways. But I think I have a little bit better idea, and that is...I grew up on a farm. My family is still on the farm. My brothers and sisters are almost all on the farm. I don't live on a farm quite yet. I've got 20 acres with the vineyard. But I know farming. I just...you know, a farm kid. And I appreciate it and, especially, family farms because you've got professional farmers. You've got people who care about their land. They take care of it. They take care of the neighbors. And we've got professional spray applicators and they look at DriftWatch. But we've got another group that I think is our bigger problem, and those are the amateurs. Those are the people who can throw down the \$20 bill at Tractor Supply and grab a gallon of LV400 and go out, not read a label, and go and spray it up in the air someplace, regardless of the wind direction. And I think, in the end, we can solve most of our problems with communication, bypass this need to win in a court of law. And the solution I'm going to suggest to you is that we make 2,4-D a restricted-use pesticide so that only trained applicators can apply it. Now not everybody who sprays is a trained applicator. Not every trained applicator gets good, specialty crop training. We know that because we go to them. I'm a registered private applicator. I went to a training session. I have to go to it every three years. I went to it this spring and not a word about specialty crops. And that's after we spent all of the last

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summer talking to the Nebraska Department of Ag about how we needed to add it to the curriculum. But it's not required. But if we made it required and if everybody who sprays 2,4-D is trained, then I think we're in pretty good shape and we can avoid the hassle of all these lawsuits. The thing about lawsuits, according to the state of Iowa, when somebody is sued, they bring that person to trial, usually a jury trial, and they also sue the chemical company. And the people in Iowa who have a lot of experience with this say that, when you do that, the person being sued has no chance because the jury, almost invariably, does not want anything to do with the chemical company. And so we get some really nice, big legal results--or, I should say, money payments and so forth--that really don't need to have to happen if we can find a more intelligent way of dealing with it. But if you take it out of the hands of the people who just simply have enough money to pull it off the shelf, then I think we will improve the situation. Thank you very much. [LB636]

SENATOR SCHILZ: Okay, thank you, Mr. Albrecht. Any questions? Sir, I appreciate you coming in today and thank you for your testimony. [LB636]

DON ALBRECHT: Thank you. [LB636]

SENATOR SCHILZ: Any other neutral testimony? Come on up. Good afternoon. [LB636]

JOHN LINDQUIST: (Exhibit 12) Good afternoon. My name is John Lindquist, J-o-h-n L-i-n-d-q-u-i-s-t. I am a professor of agronomy in the department of agronomy and horticulture at the University of Nebraska here in Lincoln. I'm a crop and weed ecologist. Herbicides are broadly classified by their mode of action which, basically, describes how they function from a physiological standpoint. Within a mode of action, herbicides are further classified by their chemical family; 2,4-D is a herbicide belonging to the growth regulator mode of action. And herbicides within this mode of action mimic the action of Auxin, a natural plant hormone that controls many aspects of plant growth. Essentially, a plant cannot control its concentration and grows to the point where cellular function and integrity is lost and the plant dies. Plant...growth regulator herbicides are only effective on broadleaf weeds and they typically do not kill grasses, although they can cause injury to some grass species if applied late in the growing season. 2,4-D belongs to the phenoxy acetic acid chemical family, along with several other herbicides. Dicamba is another commonly used growth regulator herbicide that belongs to the benzoic acid chemical family and, as such, is not covered by this proposed legislation. The U.S. EPA considers both 2,4-D and dicamba to be relatively environmentally benign, given their low mammalian toxicity and the short half-life in the soil and water. But there are, however, two areas of concern with regard to the herbicides 2,4-D and dicamba. One is the issue of evolved herbicide resistance in weeds, and the second involves the off-target movement of these herbicides that can cause injury to susceptible plants. Off-target movement includes both drift of spray droplets or by

volatility. Spray drift occurs when the spray droplets actually move in the air to off-target locations, whereas, volatility occurs when the herbicide evaporates and moves in the air as vapor. It is important to note that 2,4-D is sold in at least nine different formulations, typically categorized as amine salts or ester formulations. And the ester formulations are considerably more volatile than the amine formulations. So with that background, I'd like to just outline a couple of pros and cons of this proposed legislation. On the pro side, first, in 1996, when glyphosate-tolerant soybeans were first brought to market, glyphosate was a relatively minor-use herbicide. At the time, there was also only one weed species known to be resistant to glyphosate in the world. Since that time, the proportion of corn and soybean acres planted to glyphosate-tolerant crops has increased to 63 and 92 percent of the total acres of those crops in the United States. Also, today there are 24 weed species known to have evolved glyphosate resistance. The point is that when we increase the use of a single herbicide, the selection pressure increases and the likelihood of evolved herbicide resistance increases. And there is some concern that with the release of 2,4-D- and dicamba-tolerant corn and soybeans as stacked traits with glyphosate tolerance, growers will apply both glyphosate and 2,4-D or dicamba, and this will result in an overall increase in the total pesticide load and selection pressure to a large number of acres across the U.S. This proposed legislation would effectively discourage growers from applying 2,4-D, thereby limiting the increase in 2,4-D applications and the selection pressure that would result in many new weeds becoming resistant to 2,4-D and/or glyphosate. And the second pro is that proposed legislation would certainly provide additional protections to grape and organic broadleaf crop producers. On the con side, the three-day rule excludes opportunistic applications where a grower might choose to apply today because it's the only time the atmospheric conditions are ideal. Second, the three-day rule, along with the buffer restrictions, would effectively discourage most applications of 2,4-D in the state, including its traditional uses in corn and other cereal crops, forage and range lands, utility rights of way, rural golf courses, and many homeowners living outside village limits. Third, 2,4-D and dicamba are currently very effective herbicides for controlling many of the species that have become resistant to glyphosate. The proposed legislation would effectively minimize the practical use of 2,4-D for managing glyphosate-resistant weeds. And fourth, published research does not support the one-mile and four-mile buffer zones. Most published research indicates that ground-based spray drift and volatility drift is limited to the tens of meters, and spray drift from aerial application is limited to hundreds of meters. While it is possible that drift can occur at greater distances, when and how far that would occur are strongly dependent upon environmental conditions such as temperature, wind, atmospheric pressure, and landscape position. So, and finally, treating and regulating all applications of 2,4-D as being equal is not scientifically supported. In the last decade, considerable advances have been made on spray nozzle design to substantially reduce spray drift, and the risk of spray drift is dependent on nozzle selection. Moreover, there are numerous formulations of 2,4-D, varying widely in their volatility, and, currently, manufacturers of these herbicides are developing ultra-low volatility formulations of both herbicides. So

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again, the risk of volatility drift is also dependent on the formulation used. If you have any questions, I'd be happy to... [LB636]

SENATOR SCHILZ: Thank you, sir. Senator Harr. [LB636]

SENATOR HARR: Thank you. You mentioned weeds. Weeds occur naturally in nature, correct? [LB636]

JOHN LINDQUIST: Yes, they do. [LB636]

SENATOR HARR: And we try to limit those, correct? [LB636]

JOHN LINDQUIST: Yeah. [LB636]

SENATOR HARR: Okay, and there is no buffer zone. If I have a lot of weeds in the middle of my property, I can be fined by the weed board, doesn't...there is a buffer zone for them, correct? Okay. And now those are naturally occurring. Herbicides are not naturally occurring, are they, generally? [LB636]

JOHN LINDQUIST: That's correct, that's correct. [LB636]

SENATOR HARR: It's voluntary put thereon by the farmer or the rancher and, yet, we're saying there should be a buffer zone. Is that what you're saying? [LB636]

JOHN LINDQUIST: The buffer zone is written in the legislation. [LB636]

SENATOR HARR: Yeah, okay, and that's what I'm getting at. So...and you're saying it should be smaller, right? It should be smaller than the one mile, four miles. [LB636]

JOHN LINDQUIST: The literature suggests that it should not be as large as a mile to four miles. [LB636]

SENATOR HARR: Okay. And you're in a neutral capacity, and so I appreciate that. Who do you think should have the liability? Should it be the person growing the broadleaf--i.e., the vine--the winery, the vineyard? Or should it be on the person applying, voluntarily applying, the chemical that is not natural to the area? If that is not a leading question, I don't know what is. But I'll let you answer it. [LB636]

JOHN LINDQUIST: That would not be a neutral response. You're asking for my opinion. (Laughter) [LB636]

SENATOR HARR: Okay. (Inaudible) usually see in neutral. But what you are is an expert, I should say, given your history, seeing as you're a professor of agronomy with

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the Department of Agronomy and Horticulture at our University of Nebraska-Lincoln.
[LB636]

JOHN LINDQUIST: Yes. [LB636]

SENATOR HARR: So, given that, who do you think bears the responsibility? Because that's basically what we're coming down to is, who bears the responsibility? [LB636]

JOHN LINDQUIST: I don't think that's what it comes down to. I do think that applicators bear some responsibility because drift is a problem. It happens all the time. Not all the time but, if it happens regularly, I think that the issue is more, well, do we need to regulate it, first of all, because there is legal ramifications. If I know that you sprayed it, the 2,4-D, and it came onto my property, I can sue you. [LB636]

SENATOR HARR: If we know, but you could sue for weeds too. We regulate weeds.
[LB636]

JOHN LINDQUIST: Right, and you can do that too. [LB636]

SENATOR LATHROP: So why do we regulate weeds then? [LB636]

JOHN LINDQUIST: I don't know. [LB636]

SENATOR HARR: All right, thank you. [LB636]

SENATOR LATHROP: Can I? [LB636]

SENATOR SCHILZ: Senator Lathrop. [LB636]

SENATOR LATHROP: This is a dumb question only because I don't...I can't convert the feet into meters. So tell me, if somebody is spraying this stuff manually, you said it had... [LB636]

JOHN LINDQUIST: Tens of meters, which would be... [LB636]

SENATOR LATHROP: ...tens of meters. [LB636]

JOHN LINDQUIST: ...less than 100 feet. [LB636]

SENATOR LATHROP: Oh, so less than 100 feet if it's sprayed manually, and that would include out of the back of a...one of those tractors or something, if somebody is...
[LB636]

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JOHN LINDQUIST: Yeah, ground-based sprayers. [LB636]

SENATOR LATHROP: Okay, and then the aerial is...? [LB636]

JOHN LINDQUIST: Hundreds of meters, which would be less than a kilometer, or about six-tenths of a mile. [LB636]

SENATOR LATHROP: Okay. So this idea of having a four-mile buffer, that's...we're looking for suspects way too far from the grapes, aren't we? [LB636]

JOHN LINDQUIST: Right, right. [LB636]

SENATOR LATHROP: Okay, good. That helps me. Thanks. [LB636]

SENATOR HARR: One (inaudible). [LB636]

SENATOR SCHILZ: Senator Harr. [LB636]

SENATOR HARR: Would you be willing to work with all these? You know, it sounds like everyone is willing to work together. Are you willing? Yeah, I think it's probably good to have a good, third-party, outside expert. Are you willing to work with the corn growers, the soybeans, the vineyards? [LB636]

JOHN LINDQUIST: Sure. [LB636]

SENATOR HARR: Excellent, thank you. [LB636]

SENATOR SCHILZ: You'll rue the day you came up in a neutral capacity. (Laughter). Thank you, Senator Harr. Any further...? [LB636]

SENATOR LATHROP: Thanks for waiting. [LB636]

SENATOR HARR: (Inaudible) not to show up again. [LB636]

SENATOR SCHILZ: Any further questions? Seeing none, thank you for your testimony. Any further neutral testimony? Seeing none, Senator Wallman, you are welcome to close. [LB636]

SENATOR WALLMAN: It's almost good evening, huh? (Laugh) [LB636]

SENATOR SCHILZ: Getting close. [LB636]

SENATOR WALLMAN: Well, thanks for everybody that come in. And by the way, I do

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have a...I've got a card, pesticide. I can apply and I can buy. So I'm a farmer and I have people grow grapes pretty close to us. And we've got to be a good neighbor too. And we can definitely change things in this, the four-mile thing. I agree. We can change things like that. And we spray pretty close, but we have ground rigs. And so we just barely have them above the ground. And 2,4-D, and I won't name the other product we use, we usually use in the fall. And that keeps the weeds out of our soybean fields. And so you don't have to, sometimes, even spray them again. It's a good product. It's an old product. You probably know what it is, if you're a farmer. (Laugh) And so, hopefully, we can talk about this and change things, you know, with everybody involved. It sounds like everybody is interested. I don't want to stop 2,4-D. And should it be restricted use? If it needs to go to Tractor Supply or some of those stores, you can buy it off the shelf. And you're talking about Roundup. Roundup kills grass, too, so you really don't want to kill grass in somebody else's fence row. You know, they might not like it. And so we have some good products out there. And antidrift, I think, maybe, everybody should...farmers, most of them, use that. But now we're getting humongous farms, and they come and there's these big sprayers, and it could be windy as the dickens. I've already had to put my windshield wiper on when I went down the road. And how far does that go, you know, and where did the farmer come from? This wasn't the co-op spraying. I used to be on a co-op board, and we sprayed from Pickrell, Nebraska, to southern Texas, and that's...and we never had any lawsuits that I know of. So we know how to use this product, you know, and sorry the grapes...they're our neighbors too. So thank you. [LB636]

SENATOR LATHROP: So you're the guy that's spraying it down around this fellow's grape (inaudible)... [LB636]

SENATOR WALLMAN: No. (Laughter) No, I'm not. [LB636]

SENATOR SCHILZ: So any questions for... [LB636]

SENATOR LATHROP: Gosh, you were the problem and you proposed a solution. [LB636]

SENATOR SCHILZ: Senator Bloomfield. Senator Wallman, you've got one question from Senator Bloomfield. [LB636]

SENATOR WALLMAN: Oh, yes. I'm sorry. [LB636]

SENATOR BLOOMFIELD: Seeing as how I came back into this late, if you were dealing with your neighbor and you know he's got grapes there, wouldn't you just logically go tell him, hey, I'm going to spray today? [LB636]

SENATOR WALLMAN: Yeah, if the wind is out of the right direction. [LB636]

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SENATOR BLOOMFIELD: Yeah, um-hum. [LB636]

SENATOR WALLMAN: And I always wait until the wind is the opposite direction of where I wanted to go and never had any trouble there with...but I'm not the only farmer. [LB636]

SENATOR SCHILZ: Common sense plays a big part. Any other questions? Thank you, Senator Wallman, and that will close our hearing on LB636. [LB636]