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Judiciary Committee  
January 31, 2013

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[LB46 LB106 LB109 LB161 LB226]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 31, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB226, LB46, LB106, LB109, and LB161. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Colby Coash; Al Davis; and Amanda McGill. Senators absent: Mark Christensen, and Les Seiler.

SENATOR ASHFORD: We're ready to go. Good afternoon, everyone. Welcome to the Judiciary Committee. We have five bills today. The first one is LB226, introduced by Senator Smith. Those of you who have not been here before, just a little background. We have the light system and we normally do three minutes per testifier. We're going to move it to four minutes today. But I would ask, I know there are a number of people in the room that need to be somewhere else officially, so we're going to get through the first two bills and I'll talk to some of the other introducers and see where we are on some of these other bills, because I know there are some public officials here that must be somewhere else. So...but I am going to go to four minutes, because I know we have some expert testifiers here today and three minutes is most likely not going to be adequate. So let's do four minutes and start with Senator Smith. If you would introduce LB226, Jim.

SENATOR SMITH: (Exhibit 1) Thank you and good afternoon, Senator Ashford and members of the Judiciary Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h. I represent the 14th Legislative District in Sarpy County and I am here this afternoon to introduce LB226. And I'll tell you in advance this is somewhat similar to LB109, 1-0-9, that Senator McGill will be testifying on later. LB226 seeks to provide for the regulation of dealers in precious items. Under the bill, a precious item is defined as an article that is made in whole or in part of gold, silver, or platinum, or precious or semiprecious stones or pearls. Basically, this bill would regulate the cash-for-gold types of businesses, as well as those transient precious item buyers that set up shop for a few days in a hotel and then leave. This bill is nearly identical to a bill I introduced last year which did not get out of committee prior to the end of the session. In the time between the introduction of the bill last year and today, I am aware of at least one situation in which a hotel event came to Nebraska City, people sold jewelry and other items, the operation left town, and then the checks bounced. I have a letter from the Otoe County Attorney regarding that situation and stating his support of this bill and I have that available for passing out. Under current law, we regulate pawnbrokers, dealers in secondhand goods, and junk dealers in the same section of statute. Pawnbrokers are slightly more heavily regulated than other types of dealers. Dealers in precious items do not fall under the definition of pawnbroker as they don't lend money. It could be argued that they fall under the regulations for secondhand dealers. However, this is not specifically defined in statute. Secondhand dealer can be construed broadly and under some local ordinances includes such as Goodwill and used video game stores. Given

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the nature of businesses that exclusively deal in the purchasing and selling of precious items, I felt it would be reasonable to regulate these businesses at the same level as pawnshops but in its own section of the statute. Under LB226, these dealers would have to obtain a permit, operate from a permanent place of business, keep a ledger of items received, and obtain a fingerprint of the seller. This is exactly what is required of pawnshops today. The permit fee in LB226 is slightly higher than that for pawnshops and the penalty for violating the provisions of the law is a bit stiffer. If the committee wants to amend these to mimic the pawnshop fees and penalties, I certainly would not be opposed. The purpose of this bill is to provide consumer protection but to also level the playing field. I believe that there are at least six states that have enacted or are considering similar legislation to this. They are Alabama, Florida, Kansas, Kentucky, Virginia, and Washington. I anticipate, as gold and silver continue in an overall up trend, that you will see these businesses continue to grow. I know Senator McGill's bill, LB109, seeks to accomplish nearly the same thing, but I do want to point...I do want to point out one very significant difference in our bills. Under LB226, we would require a precious items dealer to have a permanent place of business, and that is defined as a fixed premises, either owned by the dealer or leased by the dealer for at least one year. That, in effect, would prohibit transient dealers from doing business in our state. I have been contacted by scrap dealers that, of course, deal in scrap metals, and there is concern that this bill might inadvertently impact their business. That is not the intent and I will gladly work with them on an amendment to provide further clarification. I have also been told that there are some coin and bullion shops that believe this bill would put them out of business due to the regulations. I do want to point out that both Lincoln and Omaha have ordinances already regulating these businesses, but they do so differently, thus, another reason for a uniform state statute. Lincoln regulates them as secondhand jewelry dealers and that ordinance mimics the state pawnbroker laws. I was told one of the concerns was the period of time that a dealer would be required to hold an item before it could be sold. LB226 would require that any precious item bought would have to be held for 14 days prior to being resold. This gives the law enforcement the chance to check the records against reports of stolen items. The current law for pawnbrokers, secondhand dealers, and junk dealers is also 14 days. If you are a business with a permit in Lincoln, the holding period is 14 days as well, except I do believe coins used for legal tender may be exempt from this. In Omaha, cash-for-gold businesses are regulated as secondhand dealers and the holding period in that ordinance is currently five days. However, this should be changed to reflect a bill passed last year, which was LB941, that made the holding period a uniform 14 days for all items. As an owner of a small business myself, I generally am not in favor of government regulation and understand the potential hardships regulations can cause legitimate existing businesses. My intent is not to put any local businesses out of business, but I think LB226 is necessary to provide regulations to protect the general public, to level the playing field between like businesses, and to provide uniformity across the state. That will conclude my testimony and I'm happy to answer any questions. [LB226]

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SENATOR ASHFORD: Any questions of Senator Smith? I don't see any, Senator. Do you wish to waive or stay? [LB226]

SENATOR SMITH: No, I have another bill that I'm going to introduce in another committee, so I'll stay as long as I can. [LB226]

SENATOR ASHFORD: All right. Thank you, Senator. [LB226]

SENATOR SMITH: Thank you. [LB226]

SENATOR ASHFORD: Do we have proponents first, those who are for the bill? Do you want to...how many proponents do we have, those for the bill? Okay. Come on up. [LB226]

TRACY WOLF: May I approach? [LB226]

SENATOR ASHFORD: Yes. Yeah, he'll take care of it for you. [LB226]

TRACY WOLF: Here's some... [LB226]

SENATOR CHAMBERS: I thought you were going to distribute some precious metal to us. (Laughter) [LB226]

SENATOR ASHFORD: Okay. Go ahead. [LB226]

TRACY WOLF: (Exhibits 2 and 3) Good afternoon. My name is Tracy Wolf. I am the chief of police from the city of Lexington. I am here on behalf of the Police Chiefs Association of Nebraska and also my community. Page 1 of my handout is a letter of support from the Police Chiefs Association of Nebraska in support for LB226. Page 2 is a copy of my summary on precious metals. Page 3 is a chart that depicts burglaries in comparison to population in my area of central Nebraska during 2011. Lincoln was also used in this comparison because they do regulate, under city ordinance. Page 3 is a copy of an actual pawn ticket that includes all the required information per state statute. As required, these are brought to the police department daily. How this all became a topic of conversation within my department started in roll call a few months back. Investigators were frustrated with their inability to complete investigations because of no recordkeeping for the buyers of precious metals. We felt that there should be some state regulations put in place that would require buyers to obtain information about the seller, the items involved, and a waiting period before these commodities could be transferred. The waiting period would give law enforcement a chance to catch up to these items. Gold and platinum prices have been around \$1,700 per ounce and palladium is near \$750. All of these precious metals are part of the jewelry industry. Palladium has been as high as \$1,100 an ounce about ten years ago, and is also used

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in automotive catalytic converters, which is also a high-theft item. Palladium is a lower-cost substitute for platinum in both industries. I would like to see palladium included in LB226. Currently, we have state statutes that regulate pawnshops and scrap metal businesses. Jewelry stores and other storefront businesses which engage in the purchase of precious metals have no requirement to obtain and maintain information on the purchase of jewelry or other forms of precious metals unless that community has a city ordinance in place. Unlike firearms or electronics, precious metals aren't traced by serial number and it is still valuable in a disfigured, altered form. Law enforcement needs the assistance of state statute to regulate the recordkeeping on the purchase of precious metals and the amount of time these items must be held before resale. As long as there are buyers that are not obligated to keep sufficient records, thieves of all ages, including teenagers, will continue to commit these crimes. Victims in my community lost over \$170,000 in precious metal theft as a result of burglaries or storefront "smash and grabs" in 2011. This does not include theft cases. I believe this is a trend that is not going away and I would hope that consideration would be given towards regulating the flow of precious metals. Thank you for your time and consideration. [LB226]

SENATOR ASHFORD: Any questions of the chief? I don't see any. Thank you, sir. [LB226]

TRACY WOLF: Thank you. [LB226]

SENATOR ASHFORD: Lexington is a great town. [LB226]

TRACY WOLF: It is. [LB226]

SENATOR ASHFORD: I love going there. Next proponent. Yes, sir. [LB226]

THOMAS WRIGHT: Good afternoon. I'm Tom Wright. Along with my wife Mary, we operate Wright's Jewelers here in Lincoln, Nebraska. We have been regulated by the Lincoln ordinance on precious metals buying since its inception in approximately 1980-1981. We have seen the good effects of it. It has, I believe, helped in the policing of such things. I'm in favor of this being a statewide issue. I did, prior to coming here today, I did visit with jewelers across the state from other communities: Norfolk, O'Neill, Kearney, and Scottsbluff. All expressed, naturally, not wishing to have more regulation and more forms to fill out but also expressing how they also felt that this would be an important help in their area. They were in favor of it. So it is a situation the...we've seen in the Lincoln area. Aside from the, what I call personally, fly-by-night operations that are here for a Saturday and gone, aside from that we saw, before its...our ordinance here in Lincoln, we saw cases where a person might have problems, actually goes out and steals from his own family. In the case...one case I remember, a young person stole a silver tea set from his grandmother, took it to an interstate motel. It was liquidated for cash. They were gone the next day. And those sort of situations don't happen that way

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now with our ordinance. I am in favor of it. I would also be in favor of the...Senator McGill's LB109. I will not be able to be here for its hearing, but I feel a combination of those two pieces together do help this program. Any questions? [LB226]

SENATOR ASHFORD: Any questions of Thomas? I don't see any. Thanks, Mr. Wright. [LB226]

THOMAS WRIGHT: Thank you. [LB226]

SENATOR ASHFORD: Thanks for coming. [LB226]

JOHN DINEEN: Hello. [LB226]

SENATOR ASHFORD: How are you? [LB226]

JOHN DINEEN: (Exhibit 4) My name is John Dineen. I am the general manager for Sol's Jewelry and Loan in Omaha, Nebraska. We currently have five metro locations. We work very closely with the Omaha Police Department when items come in. In the unfortunate mishap when stolen items come in to our locations, we're able to get these items back to the original owners. When we see these companies, these weekend buyers come in, it's almost a safe haven for criminals and thieves when they want to get rid of items. They know that these places exist. They run full-page ads sometimes on the weekends in the Omaha World-Herald. The one handout that you've all received actually is a flier that they mail out. It attracts people. It gives people a false sense of, you know, security to where they can just come in their stores or most of the time just hotels and sell their items and not be traced. Criminals know this and they will keep using these places if we do not regulate them. We are in favor of both the bills that will be here today, the LB226 and the LB109. And we do believe that they should be regulated just as we are and, you know, help the police as much as we can in any city or state. [LB226]

SENATOR ASHFORD: Thank you, John. Any questions of John? I don't see any. [LB226]

JOHN DINEEN: Yeah. [LB226]

SENATOR ASHFORD: Thank you, sir. Any other who's in favor of this bill? Opponents? Neutral? Neutral. [LB226]

DON WESELY: Senator Ashford, members of the Judiciary Committee, for the record, my name is Don Wesely, D-o-n W-e-s-e-l-y, representing ISRI, Institute of Scrap Recycling Industry, and Alter, Incorporated. These are scrap-processing companies that exist in Nebraska, have been working over the years. Some of you will recall we've had

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a number of pieces of legislation heavily regulating copper and other...catalytic converters, which include precious metals in it. We already are heavily regulated. And Senator Smith's intent is not to include us in this, but we're a little unclear about whether the language gets us there. And we don't want to be part of this process, since we're already covered under other statutes. So Lisa Johns has been working on an amendment. We think it will accomplish what we want to, which is to not be part of the bill. And so we're neutral in anticipation of an amendment that would clarify we're not included in the legislation. So with that, I'd be happy to answer any questions. [LB226]

SENATOR ASHFORD: Thank you, Don. [LB226]

DON WESELY: And the same position would be on LB109. It's the same issue so... [LB226]

SENATOR ASHFORD: So are you going to be here when LB109 comes up or...? [LB226]

DON WESELY: I'll just be sitting here but I won't say anything. (Laugh) [LB226]

SENATOR ASHFORD: Okay. Thank you. Thanks, Don. [LB226]

DON WESELY: You bet. Thanks. [LB226]

SENATOR ASHFORD: Any other neutral testifiers? Okay, Senator Smith waives closing I noticed. He gave me a waive sign over there. So we'll go on to LB46, which is my bill. Oh, we missed opponents. Come on over. How many opponents do we have for this bill? Okay, two opponents. [LB226]

DEBRA EVANS-OLSON: Sort of. Thank you. [LB226]

SENATOR ASHFORD: I apologize. [LB226]

DEBRA EVANS-OLSON: It's okay. [LB226]

SENATOR ASHFORD: Good afternoon. [LB226]

DEBRA EVANS-OLSON: (Exhibit 5) Hi. Chairman Ashford, members of the Judiciary Committee, my name is Deb Evans-Olson. I'm here with my husband Scott Olson in opposition, maybe, of LB226. I wanted Scott to do this but he said I talk faster. Scott and I live in Lincoln and own and operate Lincoln Coin and Bullion. If this bill is intended to cover only jewelry and household items, like serving pieces and things like that, we are completely in favor of it. Our concern was with section (4), which we thought may include any item made of precious metals. That's our primary concern. We have always

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had a secondhand jewelry permit with the city of Lincoln, which has identical requirements to LB226. We require valid ID, a fingerprint. We mail daily reports and we hold jewelry for 14 days. We have no problem with that. We're in favor of it. In fact, we require valid ID on purchases of any kind of anything sold to our store, regardless of whether it's jewelry or not. We decline anyone on the city's no-pawn list, even if they're trying to sell something other than jewelry. In over two years we've had less than \$900 reported stolen in over \$1.5 million of total jewelry purchases in the same period. Still, we support the need to protect the community with household items. The majority of our business is the sale and purchase of gold, excuse me, coins and bullion. That's our concern, is if this is included in the bill. It's not unusual for us to buy 10,000 coins in one day. Someone may be able to describe their gold ring, but how would anyone identify their 1964 Kennedy dollar from 1 of the 500 others we may have bought in the same day? Our business is completely predicated on selling coins and bullion as quickly as possible. If we were required to hold those for 14 days, we'd be at a great market risk. We've seen the market drop 30 percent in a matter of days. Silver was down 2.5 percent today. Our coin and bullion margin is between 1 percent and 10 percent, the average being 6.4 percent. We have the margin for scrap jewelry and silver items. We've built that into our hold period. Holding for 14 days would be similar to telling Wall Street to wait 14 days to sell stocks. The holding period on coins and bullion only would require us to secure another half a million dollars in purchasing and funds while our inventory was sitting in our safes, waiting to be sold. We would need to buy additional safes that cost about \$7,500 each to comply with our insurance requirements of TL-30 safes. Every customer is already given a detailed offer to purchase. As I said, we do not sell anything without proper ID. We'd be happy to share our records with anyone. The reporting requirements expanded to coin and bullion would require that we hire another person. We're particularly concerned about enforcement. We've requested better enforcement of the jewelry code in Lincoln, but the city said they don't have the resources to do that. I personally took a leap of faith when I left a really great job to join our business. We've invested our life's savings into it. We moved into a larger store, hired two full-time employees who get great wages, paid time off and health benefits. We've purchased a lot of equipment to go with our store. We're proud to offer fair and transparent buy and sell prices based on formulas, not how people look when they walk in our store or what they may or may not know. I don't want to go over so I'll stop there but would welcome any of you to visit our store at any time, look at our recordkeeping and processes, meet our dedicated coworkers. Hired two new people two years ago. Thank you for the opportunity to share our concerns and we welcome your questions. [LB226]

SENATOR ASHFORD: Thank you, Debra. I don't see any questions. [LB226]

SENATOR CHAMBERS: I just have a couple. [LB226]

SENATOR ASHFORD: Senator Chambers has a couple. [LB226]

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SENATOR CHAMBERS: You operate in Lincoln all the time? [LB226]

DEBRA EVANS-OLSON: Yes. [LB226]

SENATOR CHAMBERS: Are you familiar with the kinds of operations that the bill seems to be aimed at? [LB226]

DEBRA EVANS-OLSON: Yes, and we're completely in favor of that. [LB226]

SENATOR CHAMBERS: Okay. [LB226]

DEBRA EVANS-OLSON: We just didn't read that in the bill, but we're very concerned about the transient organizations and companies that come into the city. [LB226]

SENATOR CHAMBERS: Okay. [LB226]

DEBRA EVANS-OLSON: We get bad feedback on their prices and their practices. [LB226]

SENATOR CHAMBERS: That's all that I had. Thank you. [LB226]

DEBRA EVANS-OLSON: Thank you. [LB226]

SENATOR DAVIS: One question. On the last page you have written down, "We are defined by the Bank Security Act as a financial institution." [LB226]

DEBRA EVANS-OLSON: Yes. [LB226]

SENATOR DAVIS: These other entities would not fit in that category. Would that be correct? [LB226]

DEBRA EVANS-OLSON: No. Coin dealers, jewelry dealers are defined in the Bank Secrecy Act. We have to have an anti-money-laundering policy, pay for an independent audit and review every year, cash reporting, 1099 reporting that people ask us to get around all the time, but we won't do it. So we're pretty highly regulated now. We're okay with that. We're just concerned about holding a precious metal, a coin, a bullion. There aren't a lot of stores like ours in the area so people go to the Internet. Sometimes that's good and sometimes not so good. [LB226]

SENATOR DAVIS: So would that be one way to sort of work around this, to exempt entities that were defined by the Bank Security Act as financial institutions? Would that solve that problem do you think? [LB226]



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DEBRA EVANS-OLSON: Maybe just clarifying what we're...you know, clarifying that we want to protect communities from transient organizations and companies. And also clarifying, we're completely in favor of the hold on jewelry and even expanding that. Lincoln doesn't require it on silver, flatware, you know, tea services, household things that you would find unsecured in someone's home. We're fine with that being included. We think that would be a good thing. And we could do that with our margin on those items. If I sold you a Krugerrand today, I would make 5 percent. The states make 5.5 percent on sales tax. And the city gets another 1.5 percent. That's our margin on bullion-type items, which are pretty popular right now, given the returns on CDs,... [LB226]

SENATOR DAVIS: Uh-huh. [LB226]

DEBRA EVANS-OLSON: ...the stock market, you name it. [LB226]

SENATOR DAVIS: Thank you. [LB226]

DEBRA EVANS-OLSON: Thank you. [LB226]

SENATOR ASHFORD: Thank you, Senator Davis. I don't believe there are any more questions. Thank you, Debra. [LB226]

DEBRA EVANS-OLSON: Thank you for your time. We really do invite you to come to our store. [LB226]

SENATOR ASHFORD: Oh, well, I will if I can. Does anyone else...Scott, do you wish to say anything? [LB226]

SCOTT OLSON: Unless there are any other specific questions. [LB226]

SENATOR ASHFORD: All right. I think that ends the testimony, hopefully, well, not hopefully, but...because it was all good testimony. Senator Smith, do you wish to comment? (See also Exhibit 6) [LB226]

SENATOR SMITH: I just want to be very brief. Since there were some that showed up here in opposition to the bill, I just wanted to be very clear that from what I heard in their testimony up here that my office and what they're saying, that we are in agreement that we're attempting to target bad operators with this legislation. We are in no means attempting to regulate legitimate, reputable businesses. So with that being said, my office is very willing to work with those that came in, in opposition to see if we can work out something in the bill to where their concerns are addressed. [LB226]

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SENATOR ASHFORD: Thank you, Jim. [LB226]

SENATOR COASH: Senator Ashford. [LB226]

SENATOR ASHFORD: Yes, Senator Coash. [LB226]

SENATOR COASH: Senator Smith, just a question that occurred to me during the testimony and reading, looking at the...and the copies of these ads. You did not include diamonds in your bill, and it seems to be a...you know, that's a precious metal as well...or maybe it's...maybe it's implicit in here but it's not listed. And I'm just curious if that was... [LB226]

SENATOR SMITH: You're correct. We...I noticed that as well, that was not specifically addressed. And we did identify other minerals, if you would. Pearls are addressed in there. So that would be an oversight and we would seek to address those. [LB226]

SENATOR COASH: Maybe a diamond is a precious stone so I'll leave that to your judgment. [LB226]

SENATOR SMITH: Uh-huh. So we could make that more explicit. [LB226]

SENATOR COASH: Thank you. [LB226]

SENATOR ASHFORD: Thank you, Senator Coash. Thank you, Senator Smith. [LB226]

SENATOR SMITH: Thank you. [LB226]

SENATOR ASHFORD: (Exhibit 7) All right, with some temerity, we'll go to LB46. Senator Lathrop, my name is Brad Ashford. I represent Legislative District 20 in Omaha and I'm introducing LB46, which calls for the establishment of a committee to create a plan for the consolidation and coordination of the crime lab services within Douglas County. Let me try to lay out generally what I believe is the situation, at least in Douglas County, as it relates to criminology and crime labs and DNA generally. There are plenty of people here to talk about the specifics. Let me start out by saying that I have been...I am convinced that all of the experts, the people who work in this area in Omaha, are committed to doing a good job. And so this is not necessarily or even at all intended to suggest that people who work in this area are not committed to finding the truth. There are three crime labs essentially in Omaha. There's the city crime lab, the county crime lab, Douglas County Crime Lab, and the University of Nebraska Medical Center Crime Lab. The University of Nebraska Medical Center Crime Lab works primarily in the area of DNA testing. The Omaha...and also there are crime labs at Creighton University, and Dr. Nipper is here to talk about that one. Dr. Jim Wisecarver from the Medical Center was unable to attend but has given us a letter about his...given his opinions about this

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issue of consolidation of the crime labs. The only accredited crime lab in Douglas County is the DNA crime lab located at the University of Nebraska Medical Center. It is also my understanding that the city of Omaha crime lab, which is located at police headquarters, has been significantly expanded over the last few years, specifically under Chief Alex Hayes. The number of employees has increased during that time. And also it's my understanding that Douglas County has established a crime lab with drug...primarily with drug forfeiture money, and that crime lab is located in a Douglas County facility. Commissioner Mike Boyle is here to talk about that part of this. We've been in this...in this committee, we have had numerous hearings on issues of evidence and exoneration of convicted individuals. And obviously the popular press in the state, and specifically in Douglas and Sarpy Counties and the counties around Omaha have, are replete with cases where, whether the evidence involved in a prosecution and conviction was tainted, resulting in all sorts of negative consequences. What the committee, I believe, has tried to do is address the issue of justice and fairness as it relates to this evidence and we in fact did pass out a bill dealing with exoneration and that exoneration system or process has been utilized by wrongly convicted defendants in this state. What I've gathered from talking to the experts is that there is a significant issue of independence of crime labs throughout the country, and there is a movement towards the establishment of independent crime labs that are staffed by and managed by experts in the field of criminology. I have...in this bill I have requested that there be an independent board established with expertise in forensic toxicology, forensic DNA, criminology, law enforcement, and crime scene investigation, a medical ethicist as well. And I think Dr. Nipper will talk about the need for that. There is an efficiency issue as you standardize the procedures across the county and in the region. There is the standardization of how we deal with crime scene evidence, and who deals with it is an issue of efficiency as well as an issue...also an issue of making certain that the right kind of evidence is tested in the right way. So in my view what we're after here is one very professional, accredited crime lab that has the ability...I understand that the city of Omaha Police Department has a need to have, as part of their criminology role, to be able to have people at the scene as quickly as possible to gather the appropriate evidence, and that's an essential part of these field...their work in investigating crimes. That function, the DNA function, and the other kinds of testing that goes on here I think can most...can, from my analysis of this, can best be performed by an independent board with the expertise that we've asked for in this bill. [LB46]

SENATOR LATHROP: Very good. Thank you, Senator Ashford. Any questions? I see none. First proponent. Commissioner, welcome to Judiciary Committee. [LB46]

MIKE BOYLE: Thank you. [LB46]

SENATOR LATHROP: Always a pleasure. [LB46]

MIKE BOYLE: It's great to be here. I didn't get my parking card though, so...Senator

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Ashford, members of the committee, my name is Mike Boyle, M-i-k-e B-o-y-l-e. I'm a member of the Douglas County Board of Commissioners. I represent southeast Douglas County. I'm here today to ask for your favorable vote on LB46. For the last two years I've been asking questions about when are we going to get our crime labs together. We have two operating and not exactly side by side, but they are operating, and a total of...the city has 23 full-time employees, the county has 11, that's at present time, with some part-time people as well. So for two years I've been asking questions and I've been told that meetings are taking place. And I was very comfortable with the county attorney, Don Kleine, being the person who was running those meetings. But unfortunately, he had to deal with the people who were running their separate crime labs and it was, I think, a classic turf battle. And it was very difficult listening to the constant layovers--we're still talking and so forth. Well, then we had public budget hearings and at the budget hearing for the sheriff, the crime lab was brought up. I brought it up and I asked how things were going, because the revenue from the crime lab is very small, about \$55,000 a year with the property taxpayers paying about just under \$880,000 to support it. It does get drug seizure money, so it supports a lot of it, but we were paying \$800,000--some in property taxes, getting back \$55,000. And it was all contracted out, most of it I believe, to Sarpy County and other counties because the Douglas County Sheriff's Office, the crime lab, represents 91,000 people in the unincorporated territory outside Bennington, Waterloo, Valley, and the city of Omaha. So it has a small group of apparently pretty well-behaved people, and so there isn't a lot of crime lab activity that's being done directly by the sheriff or the crime lab in that territory. So at that hearing I was shocked to hear when the sheriff and his department said they're expanding their crime lab into DNA. And it took my breath and I was silent and all I could think of was, what about UNMC? I mean if you're talking about a first-class, certified operation, it would be UNMC, so why are we going to compete? So we got into a discussion that isn't worth going into today but it raised the flag. I said this is it. This is proof that these talks are a smokescreen, hoping that they can stall until I'm gone and not in office anymore or something. So having heard that, I asked at another meeting. We had the county attorney, Don Kleine, talking about his budget, and Commissioner Marc Craft asked the question. He said, would you be using the Douglas County Sheriff's Office if they established a DNA unit? And Mr. Kleine said, no. And we didn't really get into it, but we didn't really need to. And I want to talk that...let you know that this isn't about the money involved, although there's a couple of...about \$3 million involved. It's important. But this is really about justice. There are so many stages of the arrest of a person that they're all very important but certainly the gathering of evidence and making sure that it's...we have people who are certifying to its accuracy. I really can't think of anything much more important than the adequate and competent collection of evidence. And I don't cast dispersions on who's there now, but we do need an independent body. We don't even do our computer work. Our IT department is not internal. We hire experts to run it. So for heaven's sake, shouldn't we be hiring experts to run our crime lab? So I really hope that you will look favorably on this bill. There will be people here saying that we need more time, but I think as my time is up, so is theirs.

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[LB46]

SENATOR LATHROP: Senator Coash. [LB46]

SENATOR COASH: Thank you, Senator Lathrop. Mr. Boyle, I'm confused. You support this bill. [LB46]

MIKE BOYLE: Yes. [LB46]

SENATOR COASH: I got a letter here from the board of commissioners in your county,... [LB46]

MIKE BOYLE: (Laugh) Yes. [LB46]

SENATOR COASH: ...of which I see your name on there... [LB46]

MIKE BOYLE: Right. [LB46]

SENATOR COASH: ...opposing this bill. [LB46]

MIKE BOYLE: That's correct. [LB46]

SENATOR COASH: So the board of commissioners is not of one mind... [LB46]

MIKE BOYLE: Oh, not at all. [LB46]

SENATOR COASH: ...on this particular issue. [LB46]

MIKE BOYLE: No. [LB46]

SENATOR COASH: And you came here to testify. Can you, to the extent you're able, tell me...I mean are you the lone wolf on this, on this issue within your colleagues on the county board or...? [LB46]

MIKE BOYLE: I think I'm the lone wolf. It is...I've been watching this, as I said, for two years. I'm very concerned about the direction that it's not taking. I've been willing to let this kind of develop, see if it can't work internally, and it can't. And so I decided that we...I needed to act, I needed to do something. After the scandal that occurred in Douglas County where we had our chief collector of evidence indicted and found guilty of planting evidence, something had to happen. And the department is tainted by that to this day. The crime lab still has to...still is embarrassed by it, and the county attorney has to deal with it on criminal trials. We need to get a fresh start. We need to have people who are independent and we need to make sure that we can guarantee that

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evidence, when it's used in a trial, is accurate and the people collecting it are being watched. [LB46]

SENATOR COASH: All right. Thank you. [LB46]

MIKE BOYLE: Thank you. [LB46]

SENATOR LATHROP: I see no other questions. Thanks, Mike. [LB46]

MIKE BOYLE: Thank you very much. And thank you, Senator Ashford. [LB46]

SENATOR ASHFORD: Thank you, Mr. Boyle. [LB46]

SENATOR LATHROP: Other proponents, those in favor of the bill, you may come forward. Sat down just a little...couple feet too soon. [LB46]

HENRY NIPPER: Well, I'm trying to keep my distance there. (Laughter) [LB46]

SENATOR LATHROP: Good afternoon. [LB46]

HENRY NIPPER: (Exhibit 8) Good afternoon. My name is Dr. Henry Nipper and I'm currently a professor of pathology at Creighton in Omaha, and my prepared remarks have a bunch of stuff about my degrees and so forth. But the critical issue is that Creighton, where I've been employed for 26 years, I teach medical students, pathology residents, and I direct the laboratory that performs postmortem forensic toxicology for 43 Nebraska counties and several Iowa counties. And that's pertinent to our deliberations today because we're the only postmortem forensic toxicology lab that deals with the jurisdictions that you're considering today. Our labs carried...carry the Nebraska state certification to perform alcohol testing. We're certified by the College of American Pathologists, and I was the only laboratory director in the state that had a National Institute on Drug Abuse certified urine testing laboratory. But I'm appearing to you as a private citizen, not as an employee of Creighton or of Alegent Creighton Health. Now you've heard the divisions of forensic science and many of these divisions don't commingle. For example, our people don't do...go to crime scenes and do investigations. We take material that's supplied to us by the forensic pathologist in Douglas County and they do the autopsies for Douglas and Sarpy and all the other counties, give us the material to test for drugs and other illicit substances that might have contributed to cause of death, and then we provide that information. So we're not the crime scene CSI folks that you see on TV, either pro or con. Currently, Douglas and Sarpy Counties have a combination of public laboratories and private sector labs accomplish these tasks. You've heard about the DNA labs. You've heard about the county and city crime labs and so forth. Now you're hearing about mine. This is neither bad nor good, but they need to be considered as to how they work efficiently and to

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serve the criminal justice system of the counties involved. We should save the taxpayers' money, but we also need to maximize the accuracy of the tests that are used, the training of the scientists who perform the work, and the ability to provide...to acquire modern equipment for use in testing. Now our labs at Creighton were first organized in 1989 when Lutheran closed, Lutheran Hospital, and we established the postmortem tox. lab in conjunction with the labs at St. Joseph Hospital so that the equipment and techniques, we could also use those same techniques to support the Poison Control Center, to deal with trauma issues, and clinical toxicology as well. So we got more work out of the dime that we raised privately for these equipments. In addition, we had another laboratory at the time that evolved into a crime lab for city of Omaha away from Creighton where we perform DUI analyses on blood samples and analyze pills and powders for illicit drugs. We performed arson investigations there as well. And we use that, over at the Creighton School of Medicine, we use that equipment also to help graduate students learn techniques and so forth. We didn't mix and match the two, the two groups. We employ highly regarded forensic scientists and we do it as a private institution in our lab because the defense bar trusts that our work will be objective. It's not bought and paid for by the prosecution, per se. Now it's very timely that this issue should be studied carefully as soon as possible because forensic sciences in the university, forensic science in the criminal...in crime labs are under pressure, as Commissioner Boyle has talked about in the county, because of issues. They're under fire in the country for improvements in quality to make...to get rid of junk science, to get rid of charlatans, and it's time that new national guidelines and rules are coming and we need to be ready in Nebraska to have a legal framework to put these improvements into place that will preserve the good things about our system but yet will allow us to be ready for the challenges that will come. So I appreciate your time and I'd be available for questions. [LB46]

SENATOR LATHROP: Very good. Thanks, Doctor. Any questions for Dr. Nipper? I see none. [LB46]

HENRY NIPPER: Thank you. [LB46]

SENATOR LATHROP: Thank you for your time and your testimony. [LB46]

HENRY NIPPER: Thank you. [LB46]

SENATOR LATHROP: Anyone else here in support of LB46? Is there anyone here wishing to testify in opposition? Come on up. If you'd hand the sheet to the page and tell us your name and spell your last name for us, if you wouldn't mind. [LB46]

JOHN WELLS: Senator Lathrop, members of the Judiciary Committee, good afternoon. My name is John Wells, W-e-l-l-s. I am president of the Omaha Police Officers Association. Today I'm here to speak in opposition to LB46 and there's a very...a couple

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specific reasons. One, just hearing some earlier testimony, it would appear that the onus for this bill is some sort of disagreement between the Douglas County Sheriff's Office and the county board. My members, who utilize every day the Omaha Police Department's Crime Lab, in a court of law our crime lab, to my knowledge, has not been accused of any wrongdoing or proven that there's any malfeasance. Anytime we do these forced mergers, it seems to me that the taxpayers get the short end of the stick, for a couple of reasons. One, both entities end up paying for the existence of whatever entity you create, and the examples I'll use is the joint 911 system and DOT.Comm, which is a joint technology IT system for the city and the county. We pay in to fund that, as taxpayers. And then additionally, anytime the city uses those services, the Omaha Police Department specifically, they get billed for those services. So it almost seems like a double-hit to taxpayers, and the crime lab would be no different. More importantly, when you create independent boards, they are not receptive to the end users who end up using the product. My membership, I constantly hear of issues between dispatchers in the police department...or dispatchers for the countywide system and the police officers on the street having issues as far as response. Any issues that get resolved...and how do you get these issues resolved, especially with an independent board, because there's not that one person that's an elected leader that if they're not taking care of the problem or running it efficiently you can vote them out of office. And you really see that with DOT.Comm, that here's this technology entity that provides technology to the city, and I've seen time and time again where the police department's technology needs aren't met or they can't get things done because it's an independent board. There's not an elected leader you can go to or somebody like that that's receptive. So that is why I'm standing here in opposition today. [LB46]

SENATOR LATHROP: Very good. Thank you, Mr. Wells. Any questions for this witness? I see none. Thank you for your testimony. [LB46]

JOHN WELLS: Thank you. [LB46]

SENATOR LATHROP: Others who wish to testify in opposition. [LB46]

GREG GONZALEZ: Good afternoon, committee members. My name is Greg Gonzalez. Last name is spelled G-o-n-z-a-l-e-z. I'm an assistant police chief of the Omaha Police Department and I'm here today, as you're all well aware, we've had some management changes over the past year with the retirement of Chief Alex Hayes. As such, Chief Schmaderer, Sheriff Tim Dunning, and Douglas County Attorney Don Kleine have been in...have entered into discussions to negotiate a future potential metro crime lab, if you will. They are committed to a positive change and have the best interests of the residents of Douglas County in mind in those negotiations. As law enforcement leaders in Omaha-Douglas County and end users of crime lab, we recognize not only the importance of quality crime lab services but really those nuances involved in operating a first-rate crime lab, which is where we bring that expertise to the table. So I feel LB46 is



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really unnecessary and we are opponents to this bill. We want what's in the best interest for our taxpayers and residents of Douglas County, and I believe and very confident we are further along than we ever have been in these negotiations. Thank you for your time. [LB46]

SENATOR LATHROP: Thank you, Officer Gonzalez. [LB46]

GREG GONZALEZ: Thank you. [LB46]

SENATOR LATHROP: Anyone else here to testify in opposition? [LB46]

STEVE GLANDT: Good afternoon, committee members. My name is Steve Glandt, G-l-a-n-d-t. I'm a captain with the Douglas County Sheriff's Office and I'm in charge of our Criminal Investigation Bureau. One of the divisions within that bureau is our crime lab. While I appreciate the committee's concerns and some of the other concerns that were voiced, I would respectfully ask that you allow this to take place at a local level. As Mr. Gonzalez had mentioned that both the sheriff, the chief of police, and Don Kleine have started meeting together and we are moving forward with plans to consolidate services to meet all of our needs. The sheriff's office...there's some other things as far as DNA. We have no intentions of pursuing any DNA processing. One of the big things that we are, and I've heard the concerns, and one of the things that we are doing to address those concerns are...is to become accredited through ASCLD, which is a nationally recognized body that has standards that we would have to meet. While we're working toward that, we are already collecting evidence and processing evidence by those guidelines. And one of the big points for those guidelines is to show a separation of services, whereas we have people in the field that would collect pieces of evidence and those people would turn the evidence over to the lab. So we'd have somebody, independent of that person who collected it, process it, okay? So in theory, that would help remove any bias in the processing of the evidence, and that's one of the things, one of the many things that ASCLD accreditation would speak to. Another thing that has been talked about is the cost, and from my standpoint, at best it's going to be cost-neutral. You're still going to need the same number of people on each...within each entity to conduct services. We'll still need the same number of people to collect evidence in the field with our crime lab or with our CSI Division in the area of Douglas County. Omaha police will still need the same number of people to handle their crimes as well. So at best we're looking at cost-neutral thing here. There's no savings that I could see. We also, when we invested \$4 million to update our crime lab to have state-of-the-art services, and then the other thing we did, we had a nationwide search to hire a new director. And one of the people I heard Dr. Wisecarver's name mentioned and I sought out Dr. Wisecarver to be on our selection board to make sure we got the person that we needed in the director's chair. And we feel that we have her and she'll be following me. But anyway, when we constructed this new state-of-the-art lab, we made an offer to all the senators to come up and visit it, and I believe only three senators even

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set foot in our lab. So we would feel that if you are genuinely concerned, you would at least visit our crime lab and visit Omaha police crime lab to see exactly what we're offering. And I will reiterate that the Douglas County Board did vote in opposition to this bill. And as a representative of the Douglas County Sheriff's Office, I would like to reiterate that as well, that the sheriff's office is opposed to this bill. Thank you. [LB46]

SENATOR LATHROP: Very good. Senator Coash has a question. [LB46]

SENATOR COASH: Thank you, Senator Lathrop. Mr. Glandt, in your testimony you mention that you believe this will be a cost-neutral proposition. I'm looking at the fiscal note and, unfortunately, neither the city nor the county responded to the Legislature's request for any information on the expense or the savings that this would incur. [LB46]

STEVE GLANDT: Uh-huh. [LB46]

SENATOR COASH: That may be because they chose not to. Maybe they don't know. But appreciate your opinion, but we don't know if this is going to save money because neither side has been willing to even forward any information. [LB46]

STEVE GLANDT: Okay. [LB46]

SENATOR COASH: So I'll leave it at that. [LB46]

SENATOR LATHROP: Okay. I see no other questions. [LB46]

SENATOR CHAMBERS: Excuse me. [LB46]

SENATOR LATHROP: Oh, I'm sorry. Senator Chambers. [LB46]

SENATOR CHAMBERS: There does seem to be some antagonism, maybe that's too strong a word, among and between these different crime labs. Is that true? [LB46]

STEVE GLANDT: Between the sheriff's office and the police department? [LB46]

SENATOR CHAMBERS: Uh-huh. [LB46]

STEVE GLANDT: I don't believe so. I think there might be a perception there, but... [LB46]

SENATOR CHAMBERS: What is there between them then if not antagonism? [LB46]

STEVE GLANDT: Well, I don't see it myself. [LB46]

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SENATOR CHAMBERS: Could you absorb them and they would come work under your operation and get along do you think? [LB46]

STEVE GLANDT: I don't know. I mean we're still...we're still in the planning stages and we're talking about what...is it going to be best served with some type of interlocal agreement where we share services. [LB46]

SENATOR CHAMBERS: How long will that process take? [LB46]

STEVE GLANDT: Well, we would hope by June that we'll have a plan in place. [LB46]

SENATOR CHAMBERS: A plan? And if...would the other...well, are all the labs working on this plan or just the sheriff's department? [LB46]

STEVE GLANDT: Both the sheriff's department and the police department are. [LB46]

SENATOR CHAMBERS: And they're the only two involved? [LB46]

STEVE GLANDT: Yes. [LB46]

SENATOR CHAMBERS: And neither one wants to yield to the other. [LB46]

STEVE GLANDT: I wouldn't say that. I wouldn't say that. [LB46]

SENATOR CHAMBERS: Which one is willing to yield? [LB46]

STEVE GLANDT: Well, I can't speak on behalf of the police department. Both agencies... [LB46]

SENATOR CHAMBERS: Right, so are... [LB46]

STEVE GLANDT: ...have quite an investment in two separate locations. [LB46]

SENATOR CHAMBERS: Are you willing to yield? [LB46]

STEVE GLANDT: I couldn't speak to that. That would have to come from the sheriff himself and he's out of town in Washington, D.C. [LB46]

SENATOR CHAMBERS: And he didn't anticipate that kind of question being asked? [LB46]

STEVE GLANDT: I'm sorry? [LB46]

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SENATOR CHAMBERS: He did not anticipate that kind of question being asked so he didn't discuss it with you? [LB46]

STEVE GLANDT: We didn't have a chance to discuss that particular issue, no. [LB46]

SENATOR CHAMBERS: My last question, I think: What did he discuss with you to tell us other than that you don't want a merger? [LB46]

STEVE GLANDT: Well, just the fact that we're handling on a local level and that we feel that at our level we can best serve the citizens of Douglas County. [LB46]

SENATOR CHAMBERS: Now I said maybe only one. Do you think that the citizenry has confidence in what's going on under the sheriff's department in view of the fact that the sheriff was 110 degrees behind and in favor of Kofoed and praised him and said nothing is wrong here? Do you think the people in Douglas County trust the sheriff's office? [LB46]

STEVE GLANDT: I'm confident they do, and the reason I'm confident they do is because of the direction that we have taken since then. And I, unfortunately, when I took command of that bureau, that was one of the things that was handed to me. And instead of throwing up my hands, I chose to offer some solutions to right the ship. One of the things was invest in a new crime lab that would give us the ability for accreditation, creating the space and the equipment, and that's in place. And the other important aspect was hiring a director who would be able to move us towards accreditation, and we have done that. [LB46]

SENATOR CHAMBERS: If the police crime lab were abolished, could the sheriff's operation handle all of the needs in Douglas County, including Omaha? [LB46]

STEVE GLANDT: Not with the personnel that we have. We would have to hire personnel to be able to do that. So again, there would still be a cost. So there would still be, you know, a great number of people that we would have to hire... [LB46]

SENATOR CHAMBERS: Uh-huh. [LB46]

STEVE GLANDT: ...in order to be able to perform the crime lab services within the city of Omaha. We have enough people to handle outside, Douglas County, whereas Omaha has enough people to... [LB46]

SENATOR CHAMBERS: Just an observation:... [LB46]

STEVE GLANDT: Uh-huh. [LB46]

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SENATOR CHAMBERS: ...You answer questions very forthrightly. What you say is clear and easily understood. [LB46]

STEVE GLANDT: Okay. [LB46]

SENATOR CHAMBERS: And I believe if you really wanted to, you could answer that question that I asked you earlier that you said you hadn't talked over with the sheriff. (Laughter) But that's all. Thank you very much. [LB46]

STEVE GLANDT: All right. Thank you, sir. Yes. [LB46]

SENATOR LATHROP: And I...oh, I'm sorry. Senator Davis. [LB46]

SENATOR DAVIS: Just one. How long has this planning process been going on? [LB46]

STEVE GLANDT: It's been about two years. And as Deputy Chief Gonzalez had commented on, that they've had some changes in their upper levels of leadership, and so once we start talking about how we're going to move forward with this, they'd had a leadership change and that's kind of slowed the process down. But now that Chief Schmaderer is going to be there for a while, I'm confident that we're going to be able to move forward with a plan. [LB46]

SENATOR DAVIS: But at this point the plan is sort of generic and vague; we don't know what the plan is going to be at all? [LB46]

STEVE GLANDT: Right. But I'm confident by summertime, June, we'll have something ready to go. [LB46]

SENATOR DAVIS: All right. Thank you. [LB46]

STEVE GLANDT: Thanks. [LB46]

SENATOR LATHROP: You know, I do have a question now that we've... [LB46]

STEVE GLANDT: Yeah. [LB46]

SENATOR LATHROP: ...now that I've been listening to the questions. Does Douglas County have any equipment that the city of Omaha doesn't? [LB46]

STEVE GLANDT: Yes. [LB46]

SENATOR LATHROP: So is yours newer, faster, better than the city's? [LB46]

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STEVE GLANDT: Well, it's like comparing apples and oranges, and Tracey will be able to speak to that a little bit more because that's her expertise. But the term "crime lab" is kind of a generic term that people think that because Omaha's is a crime lab, we're a crime lab, UNMC is a crime lab. While that's true, UNMC does DNA but they don't collect evidence at a scene. Okay? We collect evidence at a scene, as does Omaha, but we also process trace evidence and chemistry things in our lab. Omaha's lab I believe has a firearms unit that can do ballistics. [LB46]

SENATOR LATHROP: Is there anything that...you maybe answered this. Is there anything in yours that Omaha doesn't have? [LB46]

STEVE GLANDT: In our lab? Yes. [LB46]

SENATOR LATHROP: And is there anything in Omaha's that you don't have? [LB46]

STEVE GLANDT: Yes. I believe their firearms ballistics equipment is unique to their lab. [LB46]

SENATOR LATHROP: Okay. Otherwise, you have everything that Omaha does other than the ballistics. [LB46]

STEVE GLANDT: Yes. [LB46]

SENATOR LATHROP: Okay. That's all the questions I have and I don't see any others. Thank you. [LB46]

STEVE GLANDT: Thank you. [LB46]

SENATOR LATHROP: Any other opponents? Good afternoon. [LB46]

TRACEY RAY: Good afternoon. First of all, I'd like to thank members of the Judiciary Committee to allow me to speak on behalf of LB46. My name is Tracey Ray, R-a-y, and I'm currently the laboratory director for the Douglas County Sheriff's Office, Forensic Services Division. I first just want to give you a little background of myself. I've been working in forensic laboratories for approximately 15 years with the last 10 years working in approximately 10...well, 10 years of those in full-service ASCLD/LAB accredited laboratories. I have served as an ASCLD/LAB Legacy inspector and I'm currently a certified ASCLD/LAB International assessor. So what that means is I have an extensive knowledge of those standards that a lab has to follow, both from a management point of view, from the operations, and the technical view to meet an accreditation standard. Now you've heard a lot of testimony today and a lot of what I was going to say was said, so I'm sure you'll have some more questions for me. But I

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would like to clarify a few points and one of those was what Captain Glandt was getting at, that the word "crime lab" can mean different things to everybody. We have an accredited full-service crime lab here in Nebraska, the Nebraska State Patrol, but they don't due process the evidence, so they don't do crime scene investigation. As Captain Glandt said, we have UNMC, which is also accredited, but they only do DNA analysis. And then you have the Omaha Police Department Crime Lab and Douglas County Sheriff's Office. Although we both collect evidence, we both also do other duties. So we do, at Douglas County, we also do controlled substances, blood alcohols, latent print identification examination. We do the crime scene, the video/audio analysis, and we do trace evidence, which can encompass a lot of different areas, such as hairs, fibers, paint, unknown substances, duct tape. And some of those areas might be the same as NSP. UNMC and NSP also both have DNA labs. So when you talk about crime labs, you will see some duplication in services. Also, if you look at law enforcement agencies across the country, most law enforcement agencies, they all have crime scene units or even personnel that are trained to collect evidence. And that should stay within the parent law enforcement agency because we're talking about jurisdictional lines. What we're looking at is possibly consolidating the actual laboratory services, so that would mean, say, the latent print examinations, the chemistry, all...you know, we're not going to do DNA, but DNA would be one of those laboratory services. And there are, as Captain Glandt just answered your question, some areas that OPD has that we do not have, and some areas that Douglas County Sheriff's Office offers services that they don't have. So we are, again, opposed of forcing this merger and allowing us to come to a reasonable conclusion that would support the taxpayers and the citizens of Douglas County. [LB46]

SENATOR LATHROP: Very good. Thank you for your testimony. Any questions for Ms. Ray? I see none. Thank you for coming down today. [LB46]

TRACEY RAY: Thank you. [LB46]

SENATOR LATHROP: Are there any other folks here to testify in opposition? Anyone here in a neutral capacity? [LB46]

JERRY SOUCIE: Good afternoon. My name is Jerry Soucie, S-o-u-c-i-e. I'm an attorney in private practice. It wasn't my intention to speak on LB46. I didn't even know it was coming up. But I was the attorney for Ivan Henk at the time that David Kofoed planted evidence in his case. I was the attorney for Nick Sampson when David Kofoed planted evidence in his case. I currently represent a client who I strongly suspect David Kofoed planted evidence in his case. I've been contacted by numerous inmates, because I'm a little bit visible, to investigate their case. And there's at least two other cases that I think are highly suspicious involving homicides. And I think that that situation is the 800-pound gorilla in the room. I have no reservations that Tracey Ray will do everything in her power to try and fix Douglas County CSI Unit, and I don't want to smear the

reputations of other people within Douglas County CSI. However, they had a crime going on underneath their nose and nobody in the crime...in the command structure did a damn thing to do anything about it. In fact, when it surfaced in 2006, Captain Dean Olson claimed to have been told by David Kofoed that there was a problem with contamination in the Murdock case. Captain Dean Olson, since retired, told, Mr. Olson, he testified to this under...excuse me, Captain Olson told Mr. Kofoed, and he's testified this under oath, that, well, don't tell the prosecutors this; we'll wait and see if it goes to trial. As a consequence of that decision by Captain Olson, my client sat in jail for another five months. So I think there is a command problem associated with Douglas County that needs to be addressed, and if you can get evidence collection CSI out of that mind-set, you might solve that problem. Now I'm not going to give Omaha Police Department a pass because David Kofoed started his career after getting his general discharge from the Marine Corps after he stole from another Marine. He went to work for the Omaha Police Department as a fingerprints examiner. I have had numerous attorneys come up to me complaining about fingerprints that David Kofoed found while he was working for the Omaha Police Department in which he found fingerprints which nobody else could find. In fact, in October of 2006, David Kofoed planted a fingerprint internally to try and set up an employee, Darnell Kush, who was not on "team David" in terms of supporting him. So I think that something needs to be done in Douglas County. Whether it's done by the Legislature, whether it's done internally, I don't think it makes a difference. You also then need to remember, though, that Douglas County's Crime Lab demands are greater than they are almost for the rest of the state, and currently the Nebraska State Crime Lab, I know, has a terrible, terrible time with turnaround because they are so overwhelmed with DNA testing. I get called on regularly, since I'm a forensic believer, and I've taught numerous seminars here and outside the state involving DNA, but the turnaround time is the problem. The reason Douglas County likes UNMC lab is they can turn around DNA results in a matter of days. The Nebraska State Crime Lab, it may take months because they are so overwhelmed by the demands being made by other departments. So I hope everybody gets on the same page and addresses this. But don't forget, David Kofoed is the 800-pound gorilla in the room. Thank you. [LB46]

SENATOR LATHROP: Thanks, Jerry. I see no questions. Thank you for your testimony. Anyone else here in a neutral capacity? The record should reflect we do have a letter from the Douglas County Board dated January 30, 2013, signed by Mary Ann Borgeson, chair, in opposition to the bill. (See also Exhibits 9 and 10) And, Senator Ashford, would you like to close? [LB46]

SENATOR ASHFORD: Oh, I might just. I just want to second a few things that have been said about the quality of the new director at the Douglas County Crime Lab. I'm convinced that she is...and I know what her credentials are and I'm convinced that she is a top-quality person that can run a crime lab. If we were to start from scratch and Douglas County did not have a crime lab at all, there would be no question that we would create a crime lab for Douglas County. I mean you are not going to...you're not



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going to create a city crime lab and a county crime lab, and then have a DNA lab separate, separate from that. It makes no logical sense to me to have two crime labs and a DNA testing facility in the same county. The Douglas County Crime Lab needs business because it does not generate enough revenue to make its operating expenses, but they are quality people. The new people at Douglas County are good people. And it seems to me extremely logical and defies credulity to think that there should be two of these crime labs. They do essentially the same thing. They do collection at crime scenes. The city of Omaha does ballistics and Douglas County doesn't. There's no logical reason that I can see that there should be two of these units. The Douglas County Crime Lab has jurisdiction over 91,000 people, the 91,000 people who live outside the city in the unincorporated areas. We have a \$4 million crime lab for 91,000 people and that just doesn't make any logical economic sense. What we do have is a series of people in the city, Deputy Chief Gonzalez is absolutely right, people who are committed to doing a good job on the crime lab side. We've got the people. We just have to organize it in a more efficient manner. And the board can certainly be answerable to elected officials, to the point that John Wells made. But there needs to be this independence built into the system. And not to have experts...especially an ethicist. With the Kofoed case clearly out there and the cases that Jerry has talked about--and there are many more than that, that have been brought to my attention of evidence tainting that are going to be reviewed now out of Douglas County--that it seems to me that we need a medical ethicist or a ethicist to be part of this group so that we can make certain that the standards that are applied to evidence gathering and testing, whether it be DNA or ballistics or drug and alcohol, whatever it is, that whatever policies and procedures are adopted, that they be standardized throughout the county. And quite frankly, I don't know why we don't have a regional crime lab, but that's another discussion. And that it be standardized and that it be properly consistent with national standards. Neither of these crime labs are accredited. That doesn't mean they're not trying to be accredited and it doesn't mean they don't have good people working there, but it seems to me that this is a great opportunity to move forward quickly. Obviously, the Legislature adjourns in June so we won't have any oversight in June, and then it's another year and...to get to a completion date of these discussions. I don't disbelieve that they are working towards a solution, but Mike Boyle is right. I mean he's been trying for two years to get this thing done. The Douglas County Board, for some reason I cannot fathom, is opposed to moving forward with discussions. I can't even fathom it. I mean there just is no logical reason. Every time we try to do some sort of consolidation, the county opposes or the city opposes. We're never going to get efficiency and good service if we oppose everything. I mean this is a pretty easy measure to just say why don't you guys get together and develop a plan. So, you know, I don't want to wait till June, if we could...we've been going two years on this. Mike Boyle has been trying to work for two years to get this thing moving. It may be moving now but I really think that pushing forward with this bill will provide the incentive for these...both the city and the county to come up with a positive conclusion. Thank you. [LB46]

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SENATOR LATHROP: Thank you, Senator Ashford. That will close the hearing on LB46. [LB46]

SENATOR ASHFORD: Senator Lathrop. [LB106]

SENATOR LATHROP: Good afternoon, Chairman Ashford and fellow members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, State Senator from District 12. Today I'm here to introduce LB106, which is the Uniform Unsworn Foreign Declarations Act, and to give you a little background. If you are going to offer an affidavit or have an affidavit prepared in the United States, you would have the affiant appear before a notary public, and the notary public would put their seal and their signature to the fact that the person appeared in front of them and swore to the fact that they...that the matters contained in the affidavit are true. When that affiant or that person that's going to make the statement is outside the United States, it becomes problematic. Currently, they have to appear before the counsel, counselor, a counselor's office in a foreign country where the equivalent of a notary public puts their stamp and seal on the affiant's statement. Since 9/11, however, the counselor's office have become much more restricted and, as a result, it's become more difficult for people in other countries to finalize an affidavit or a statement in the counselor's office that would be used in state proceedings. As a result, the American Bar Association examined this concern and it was referred to the Uniform Law Commission. Uniform Unsworn Foreign Declarations Act was promulgated by the Uniform Law Commission in 2008. If adopted in Nebraska, it would permit in state court proceedings unsworn declarations that are made under the penalty of perjury and those would be allowed for folks physically located outside the United States in lieu of affidavits, verifications, or other sworn court filings. It also harmonizes state and federal treatment of unsworn declarations, since federal law has allowed an unsworn declaration executed outside the United States to be recognized as the equivalent of a sworn affidavit since 1976. The Uniform Law Commission is asking each state to consider this act, and that's why I'm presenting it. So far it's been adopted in 17 states. To assist the committee with better understanding the act, Jill Ackerman, who is a lawyer from Nebraska and who serves on the Uniform Law Commission, is here to testify. And I would encourage your adoption of LB106. [LB106]

SENATOR COASH: Thank you, Senator Lathrop. You also submitted an amendment. [LB106]

SENATOR LATHROP: (Exhibit 11) There is an amendment that we'll... [LB106]

SENATOR COASH: Do you want to talk about that for the record or... [LB106]

SENATOR LATHROP: Let me get to it. I think Ms. Ackerman can probably talk to it but it's found in the materials or I think it's been handed out. It's AM95. [LB106]

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SENATOR COASH: Yeah. Okay. We'll let her talk about that. Any questions for Senator Lathrop? Seeing none, we'll go to the testimony. Start with the proponents. Welcome. [LB106]

JILL ACKERMAN: (Exhibit 11) Thank you, Senator Lathrop, Judiciary Committee. My name is Jill Ackerman, A-c-k-e-r-m-a-n, and I'm here today as a member of the Nebraska Uniform Laws Commission. Other members of the Commission are Chancellor Harvey Perlman; the Honorable C. Arlen Beam; Steve Willborn, a UNL law professor; Joanne Pepperl, the Revisor of Statutes; and Larry Ruth. I am here speaking in support of LB106, the Uniform Unsworn Foreign Declarations Act. As a bit of background for those of you that may not be that familiar with the Uniform Laws Commission, it was established back in 1892. It was established as a proponent of states' rights actually to help states divine cases, use...not cases, excuse me, to devise legislation that will help facilitate economic commerce back and forth between the states. And today it's becoming more and more important to facilitate commerce internationally too. Nebraska has adopted approximately 62 of these acts so far with the state's own tweak. So you're always able to change it a little bit to fit the state's needs. This, as Senator Lathrop said, was drafted as a result of September 11, 2001. Before that it was quite easy to go to the consulate, relatively easy, and get a notary to execute documents. We are asking that the committee adopt this for three reasons: It allows declarations under penalty of perjury to easily be used in Nebraska courts; it conforms state practice to federal practice; and three, it's going to simplify acquiring evidence for businesses that are doing business outside of the United States. Two amendments have been proffered on the bill which are acceptable. The first was a recommendation by the Nebraska State Bar Association and what it does is it includes in the exclusions the use of declarations for use in the conveyance of real estate, not simply in the use of liens. The second amendment was requested by the Nebraska Land Title Association and it excludes the use of a declaration for a power of attorney. And we have no objections to either of those. So based on this, we would ask that you move the bill forward and we would invite any questions that you might have. [LB106]

SENATOR COASH: Thank you, Ms. Ackerman. Any questions? Senator Chambers. [LB106]

JILL ACKERMAN: Yes, Senator Chambers. [LB106]

SENATOR CHAMBERS: We are supposed to...this is not meant in a disparaging way. We are supposed to trust the Commission on Uniform Laws to tell us, in a truthful way, in an objective manner, why these laws that they recommend should be uniform throughout the country? [LB106]

JILL ACKERMAN: I don't think it's a matter of trust. I think that the Uniform Laws Commission is a resource for the senators in the state of Nebraska. This was my first

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year and I have to say I was stunned at how much work goes into these bills. As this bill started, it was a suggestion from the ABA due to problems that was raised by the consulates across the world from a safety factor. Before a bill is moved forward, there has to be a study committee that goes on for approximately a year, and that study committee is comprised of lawyers from around the country, law professors, judges. The study committee has to...also talks with interest groups. Then there has to be a vote at the Uniform Laws Commission meeting in the summer, which is an eight-day meeting with over 300 commissioners. They have to then vote to move it forward to drafting. A drafting committee is then appointed. The drafting committee has eight to ten people on it, again, judges, lawyers, and they also have a recorder appointed, which is usually a paid position and it's usually a law professor from a very well-recognized school. Then what they do is the initial draft gets started of the bill. Then they go through at least three to four full weekend meetings in person to tweak the language, look at it. And again, they talk to special interest groups that again discuss this. Then it's proposed the next summer at the eight-day meeting and it is debated very much like the Legislature. The interest groups stand up, each of the commissioners stand up, and it will go on. Again, it goes through revisions. Then it has to go through a second reading the next summer after they've again many times had two to three weekends of meetings on this. What this is, is a resource for the state. Now the state doesn't have to adopt it because each state has to look at what they would really like to do, whether this helps them out. This bill in particular I think does help us, as Nebraskans may have a business in the middle of China and they need to lay foundation for some evidence. Otherwise, how are they going to get that individual in China to a U.S. consulate to lay foundation for a fairly simple paper document, or in Mexico or in the Mideast, where it's very dangerous? So I believe the Uniform Laws Commission should not be looked at trying to cram legislation down the throat of states. It's looked at as a resource that you can look at that legislation and see if it helps the Nebraska citizens. [LB106]

SENATOR CHAMBERS: Are you aware of any proposal by this commission which was adopted by maybe a majority of the states, if not all of them, to have been found by a court to be deficient legally? Or do all of these as far as you know, oh, you were there just a year. [LB106]

JILL ACKERMAN: Right. [LB106]

SENATOR CHAMBERS: But in the time that you've been there, with what you've found out, all of these proposals that this commission comes up with do withstand judicial scrutiny? None of have been struck down or found to be defective in any way? [LB106]

JILL ACKERMAN: I'm not going to say that any bill, anything is necessarily ever going to have been found defective. But I do know when you have such bills as the Uniform Commercial Code, the Uniform Probate Code, that those both have facilitated commerce and living in other states and having some predictability of when one person

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lives in one state and one person lives in another state that the law won't be completely different. [LB106]

SENATOR CHAMBERS: To be frank, and I'll talk to Senator Lathrop about this, I still don't understand what this is doing. That's...I will put that on myself as being deficient in knowledge and understanding, but I was trying to get some background and you did explain and it's on the record now how this commission does operate. [LB106]

JILL ACKERMAN: And, yeah, and really it is, it's very impressive on how the commission operates. And there is actually a very short film, that if I can send it through e-mails I might send it, that gives you some background of the commission. [LB106]

SENATOR CHAMBERS: I don't use e-mail. [LB106]

JILL ACKERMAN: Okay. I'll put it on a DVD, Senator. (Laugh) [LB106]

SENATOR CHAMBERS: Okay. I appreciate your being so indulgent. [LB106]

JILL ACKERMAN: Okay. [LB106]

SENATOR CHAMBERS: Thank you. [LB106]

JILL ACKERMAN: Any other questions? [LB106]

SENATOR ASHFORD: Any other questions? That's the only job I have so I have to ask are there any other questions. [LB106]

JILL ACKERMAN: And I apologize, Senator. [LB106]

SENATOR ASHFORD: No. (Laugh) No, I'm kidding. [LB106]

JILL ACKERMAN: I'm much more comfortable in a courtroom. (Laugh) [LB106]

SENATOR ASHFORD: I'm kidding. No. Thank you very much for your comment. [LB106]

JILL ACKERMAN: Thank you. [LB106]

SENATOR ASHFORD: Okay. And any other...Jerry? [LB106]

JERRY SOUCIE: (Exhibit 12) My name is Jerry Soucie, S-o-u-c-i-e. I appear here just as an attorney. To address your question, Senator Chambers, in a criminal context where we will have a problem every once in a while particularly with people who may be

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an undocumented alien from another country or something, you may have a homicide case, you may have a sexual assault on a minor situation, an issue will come up as to when that individual was born. That will be a relevant factor whether they're even eligible for the death penalty, whether they were within or outside statutory terms of when they could have sexual assault. A lot of those records are very sketchy in a lot of Third World countries. This bill would actually help, I think, everybody associated with trying to get that evidence. The way it is right now, it's a little shaky. And for some of the more war-torn areas, it's a disaster. So I think there could be some positives and could be some negatives, but in any event I think it would allow at least there being a reasonable compromise at evidence that would be ultimately reliable. I'm not really afraid of that portion of the bill. In regards to what I handed out to you, the concern, and I'm speaking in support but I think there needs to be an amendment because I think our perjury statute is currently unconstitutional because it makes materiality a fact to be determined by the judge. And I think after the Apprendi v. New Jersey decision, any fact necessary to determination of the element of the offense, the defendant has a right to have it decided by a jury. And I know when Senator McGill had LB518, which I think I had a big hand in drafting, we had a big section in there concerning addressing those constitutional questions. The second thing that I'm concerned about is perjury is different in different kinds of cases. If you commit perjury in a murder case, the disposition against the defendant, against whom you commit murder (sic), is that person could be put to death or that person could spend the rest of their life in prison. I think making that a Class III felony is a little low. If you look at the current version of the murder statute, current version of the murder statute makes having someone executed with false testimony is a capital offense. Nobody has been prosecuted for it but it is murder by testimony, and you're just having the state become the instrumentality of your killing. Finally, I think you need to do something to prevent the serial presentation of false testimony that comes from the prosecutors, because the problem that happens right now is there is no remedy. The prosecutor has to decide whether the witness they called can be prosecuted for perjury, and I can tell you it has never happened. Nineteen seventy, county attorney questioned a witness and then was observed by a State Patrol officer. State Patrol officer gave a deposition, testified repeatedly that the defendant during this questioning did not ask to have an attorney. Tape later surfaced: 11 times, 11 times that witness invoked his right to an attorney. And the case settled, once we proved the perjury. I can go on and on. I had a case in which the guy came on, committed blatant perjury about being a cellmate with the guy during the time. It turned out after the trial that the Attorney General's Office prosecuting the case had threatened a civil lawyer for putting the same witness on the stand, and they were going to threaten that civil lawyer for supporting perjury because the guy was such a proven liar. I had a case in which a witness got on the stand. The county attorney knew the fact that this guy had his dates wrong, said he received a phone call from my client confessing to the murder the day after his daughter's birthday, and he was in jail in Lancaster County for three days before that. He doesn't get prosecuted. That particular county attorney is now a special agent for the FBI. The one who originally had perjured testimony, he went

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on to be the U.S. Attorney for the state of Nebraska. I could go on and on. You need a mechanism in there that we can go to the judge and say perjury was committed in your court. If you believe there was evidence, appoint a special prosecutor, but don't leave that decision up to the county attorney because it will never happen. Thank you. [LB106]

SENATOR ASHFORD: Any questions of Jerry? Yes, Senator. [LB106]

SENATOR CHAMBERS: Does the material mention anything in the way of an amendment that could address the issue you're raising or... [LB106]

JERRY SOUCIE: Yes, it's in there, I believe, in which you could amend it to say the decision is on the part of the defendant whether or not to have the materiality determined by the judge or determined by the jury. [LB106]

SENATOR CHAMBERS: Now would that go to this bill that Senator Lathrop brought, or to the one that Senator McGill is presenting? [LB106]

JERRY SOUCIE: This actually was in Senator McGill's bill back in 2009, but I think if you're going to mess around with perjury rather than try and have a separate standalone bill, you do an amendment to it and simply make a change in there. [LB106]

SENATOR CHAMBERS: But I mean with what you're giving us now, because I just got it...oh, I see it would relate to LB106. [LB106]

JERRY SOUCIE: Yes. [LB106]

SENATOR CHAMBERS: Okay. [LB106]

JERRY SOUCIE: Yes, I'm just suggesting that LB106 be amended, certainly to fix the constitutional problem, I think that's essential. The rest is part of my wish list. [LB106]

SENATOR CHAMBERS: But if you do or don't get an amendment, you still would think that LB106 is worth adopting? [LB106]

JERRY SOUCIE: Even without...well, no, because the statute is unconstitutional. And if you ever...I'll be honest with you, Senator. If you ever charge anybody and I represent them, I think I could beat that statute in court the way it's worded right now. But if it was constitutional, if I'm wrong, it is constitutional and it was in there, I think it would actually be of a benefit to everybody. [LB106]

SENATOR CHAMBERS: That's all that I would have. Thank you. Oh, you're back. Thank you. [LB106]

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SENATOR ASHFORD: Yeah, thank you, Senator Chambers. Thanks, Jerry. [LB106]

JERRY SOUCIE: Thank you. [LB106]

SENATOR ASHFORD: Do we have other testifiers? Guess we're on the proponents, aren't we? [LB106]

MATT SCHAEFER: Good afternoon, Chairman Ashford, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r. I'm a registered lobbyist appearing today on behalf of the Nebraska State Bar Association and the Nebraska Land Title Association. Both associations are in support of LB106, with Senator Lathrop's amendments. I think both testifiers before me have accurately conveyed how this bill would benefit the efficient administration of justice or make it more efficient. The amendments are important to the associations to clarify that you would not be able to use this act for conveyances or liens on real estate. Thank you for your time. [LB106]

SENATOR ASHFORD: Okay. Thank you. Any questions? Seeing none, thanks. Anybody else wish to testify on this bill? Let me...that closes the hearing. Senator Lathrop...or, Senator McGill, I'm sorry. [LB106]

SENATOR LATHROP: No, I'll waive close. [LB106]

SENATOR ASHFORD: Okay. What we're going to do here, how many...Mr. Cunningham, who is the Omaha City Planning Director, is in a...explained a situation that he has a conflict that I think it's worthy of consideration, so I'm going to have his bill go first. That's actually Senator McGill's bill. How many...how many testifiers do we have on Senator McGill's bill? Okay, why don't we go ahead, Amanda. [LB161]

SENATOR MCGILL: All right. Thank you, Senator. [LB161]

SENATOR LATHROP: The last two bills are McGill's. [LB161]

SENATOR ASHFORD: Oh, okay. [LB161]

SENATOR MCGILL: Yeah, both of them are my bills. We're going to be doing LB161 first, all right? So I am State Senator Amanda McGill, M-c-G-i-l-l. And like I just said, I'm here to introduce LB161. This is a bill that was brought to me by the city of Omaha through a process actually with the Urban Affairs Committee where we did an interim study looking at a variety of issues that included vacant and dilapidated buildings and what the heck to do with them. This bill increases the penalty for a conviction for a zoning violation in a city of the metropolitan class. These zoning violations are a problem within that city. They harm neighborhoods and bring down living conditions.



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Currently, the penalty in statute is a fine of not less than \$10 and not more than \$100 for each day and every day the violation continues. This limited penalty has not been changed since the 1920s and does not carry much deterrent effect. This bill would increase the penalty to a fine of not more than \$500 for each and every day of the violation. The green copy includes imprisonment, not to exceed six months, or both. And the change in penalty would bring it in line with other existing misdemeanor penalties in Omaha and, for the most part, with other misdemeanor penalties in other cities or under other state laws. The city of Omaha has been working with some other interested parties on negotiating what some of the violations should be...or not the violations but the penalties, and it sounds like we've come to a decision that there wouldn't be imprisonment as a possibility until the third violation. There will be people following me to talk more about the problem in Omaha, as well as that negotiation. [LB161]

SENATOR ASHFORD: Thank you, Senator McGill. Senator Chambers, any questions? Yes, Senator Coash. [LB161]

SENATOR COASH: Thank you, Chairman Ashford. Senator McGill, can you give me an example of a zoning violation? [LB161]

SENATOR MCGILL: I think Rick will be able to talk a lot about this, but this is the situation where somebody owns the property and it's dilapidated and there are things going on in that building that shouldn't be. They haven't kept them up to code, things like that. And so he'll be able to give you probably some very specific examples. [LB161]

SENATOR COASH: Okay. Thank you. [LB161]

SENATOR ASHFORD: Thank you, Amanda. Rick. [LB161]

RICK CUNNINGHAM: Chairman Ashford, members of the Judiciary Committee, my name is Rick Cunningham. It's R-i-c-k, Cunningham is C-u-n-n-i-n-g-h-a-m. Senator Chambers might remember me when I delivered papers to you a long time ago. (Laughter) That has nothing to do with this committee but anyway. I am the planning director for the city of Omaha. And some of you may wonder why I'm here to testify about this particular bill, since I'm the planning director, so I might just give a little foundation. The Planning Department in the city of Omaha actually has three divisions: the Planning Division, Urban Planning Division, which obviously does planning which is long-range plans, zoning ordinances as it relates to land, the use of land and the development of land; and our Sustainability Office and those kinds of things. We also have the building and development group, which is also known as Permits and Inspection, generally speaking, and that group deals with the building of structures and so forth within the city of Omaha, regulated by building codes, mechanical codes, plumbing codes, electrical codes, and so on. In the city of Omaha, as in most of the

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state of Nebraska, we use the International Code Council's suite of codes, except for our plumbing which has been in place for over 100 years and is unique to the city of Omaha. We also have the Housing and Community and Development group, which is primarily focused on neighborhoods and community revitalization within the city of Omaha. Another group, a subgroup of that group, is our Code Enforcement group, which is our second group of inspectors. We have 40 inspectors in the Building Permits and Inspection group, but we have...we're authorized ten inspectors on our Code Enforcement, also have been known as housing inspectors in the past, which deals primarily with our...the property maintenance code, which is Chapter 48 of our ordinance, which is the International Property Maintenance Code that we use now, since 2003. So this bill could...does impact my department and my inspectors on two areas: the Building Inspection and then my Code Enforcement inspectors. I will say that for the most part we don't have the kinds of issues on the Permit/Inspection side, as it relates to enforcement of our codes, that we do on our Code Enforcement side. The Code Enforcement side deals with existing structures, residential and nonresidential, and basically the maintenance of them and, again, for the safety and welfare of the public, as our building inspectors do on the...and plumbing inspectors do on the Permit and Inspection side. But they're, again, dealing mainly with new structures, new buildings, not so much on the maintenance of existing. Having said all that, I've indicated that we do have this problem on the Code Enforcement side. I'd like to identify what that problem is. And I will tell you that I've been the planning director for 3.5 years and I was out of the city for 16 years before that, so I cannot talk to you about the history from my own perspective before 2009. I can only tell you what my staff has briefed me on. When I came on board, we had close to 4,500 open cases of code enforcement, cases that we could not close for various reasons. We have whittled that down to under 4,000 at this point, as we continue to try to work with people to clear those cases. Those cases date back to 2003. They could go further back than that, but in 2003 we had a settlement agreement that basically wiped clean the slate before 2003. So those cases, about 4,000 now, are dating back to 2003. Obviously, the further back they go the lesser the numbers. Some of those are owners, landlords that do not live in the state of Nebraska and we can't find them, can't get to them. Some of those are individual homeowners and so forth that we are continuing to try to work with. Some of those are landlords that might qualify as the top 25 as far as violations within our city. So you asked, well, why are all these cases open? [LB161]

SENATOR CHAMBERS: Mr. Cunningham, since you used to deliver papers to me, it may not offend you if I mention that when the red light comes on, it's like a traffic light. [LB161]

RICK CUNNINGHAM: I'm about done. I'm about done. [LB161]

SENATOR CHAMBERS: Oh. [LB161]

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RICK CUNNINGHAM: And so... [LB161]

SENATOR ASHFORD: Let me do it this way. Any questions? [LB161]

SENATOR CHAMBERS: Because I do have a question. [LB161]

RICK CUNNINGHAM: Oh, okay. Can I... [LB161]

SENATOR CHAMBERS: Now if you... [LB161]

RICK CUNNINGHAM: Can I just say that we...that the reason, one of the reasons we have those cases in there and that they're open is we try to work with people to get those issues taken care of. And so we don't throw the book at them, per se, immediately. But the other... [LB161]

SENATOR ASHFORD: What else did...let me ask, what else do you have to say? [LB161]

RICK CUNNINGHAM: And then the other thing is...the other reason is because we don't have a stick. We have a wet noodle when it comes to complying with the Code Enforcement. [LB161]

SENATOR CHAMBERS: I don't know which of us would make a better traffic or safety officer, him or me, because I said when it says...when it's red it means stop; he says, go on. (Laughter) But here's the question I want to ask... [LB161]

RICK CUNNINGHAM: Yes, sir. [LB161]

SENATOR CHAMBERS: ...and I'm pretty sure what the answer. But when it talks about the penalty on page 3, the language says, "for each and every day that such violation continues," that's...up to a \$500 fine, "imprisonment not to exceed six months, or both." I know it does not mean imprisonment for six months for each day of the violation, correct? [LB161]

RICK CUNNINGHAM: I would have to agree with you because that's never ever occurred, so I think that's the interpretation. [LB161]

SENATOR CHAMBERS: And I... [LB161]

RICK CUNNINGHAM: I will also say that we hardly ever put anybody in jail for these cases. [LB161]

SENATOR CHAMBERS: And, see, I wouldn't want the language...I've got to look at it

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because maybe the way it's written now it's clear that an "imprisonment not to exceed six months" would take care of everything in the way of a penalty, a punishment. But on the other hand, it could be that there would be a six months' imprisonment possible for each day of the violation, which I think would be excessive and probably unconstitutional. So I don't know if putting and "or" after "continues"...but I'll let you all work that out. But I definitely... [LB161]

RICK CUNNINGHAM: That's certainly not the way I interpreted it. [LB161]

SENATOR CHAMBERS: ...wouldn't want it to be...oh... [LB161]

RICK CUNNINGHAM: That's certainly not the way I interpreted it. [LB161]

SENATOR CHAMBERS: But, see, you're not the one who would think about bringing a charge... [LB161]

RICK CUNNINGHAM: Right. [LB161]

SENATOR CHAMBERS: ...or even making a threat to somebody of what might be available. And whereas I think what you're dealing with is a very serious problem--I see it in the community where I live--something has to be done. And some of the enforcement measures could be called laughing measures because they don't even...some people feel it's easier to just let the thing stay like it is because nothing is going to happen. And it will be more difficult to correct it than to go ahead and pay the little fine. So I'm not against the fine. And I'm not even against the imprisonment not to exceed six months in extraordinary circumstances, but I definitely don't think a period of imprisonment for each day of the violation. Other than that, I don't have any more questions. [LB161]

RICK CUNNINGHAM: In support of what you've indicated in our community, some of the things that we see is...how can I...bio solids flowing on the floor; light fixtures hanging and dangling from exposed wires and those kinds of things; receptacles, wall receptacles, 110-volt receptacles hanging out on wires being used in rooms; walls that basically do nothing to hold back subzero temperatures. These are the kinds of things that we see on a daily basis and try to rectify in our maintenance code, and these are the violations that are open and not rectified. I will say that in the city of Omaha hardly anybody ever goes to jail because of code enforcements. [LB161]

SENATOR CHAMBERS: You know, Mr. Cunningham, after listening to you, on second thought maybe... [LB161]

SENATOR LATHROP: Maybe they need six months. [LB161]

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SENATOR CHAMBERS: (Laugh) Yeah. [LB161]

SENATOR ASHFORD: Maybe it is every day. [LB161]

RICK CUNNINGHAM: Unfortunately, when they do go, the people who do go come back out and they still get violations. That's been the case so far, the ones that get to there. There is a progression. The way it's been done is that, you know, there is a notice of violations. We try to work for a long time. And then perhaps you get to the court, and then there's a lot of times a continuance for 180 days or whatever because that's the time the person indicated that they would fix it. A lot of times it does not get fixed and then, generally, it goes back to the court a couple of times, and Mr. Getty is here to talk about that. Finally, then somebody might end up in jail. But I will tell you that last year we had to tear down a building that that owner had been in jail at least once for six months and at the time that we had to tear his building down, because it was literally falling down in the streets of Omaha, he was not in jail. [LB161]

SENATOR ASHFORD: Let me...could I ask, and maybe Mike can talk about this. You know, other cities...and I agree. I mean you're doing a good job, you're doing the best you can do. It's very difficult. Two questions: One, do you...is there a...it's basically by...the priority list is basically based on...is based on the time of the first filing? Is that how you prioritize? Or do you prioritize based on the degree of the problem? [LB161]

RICK CUNNINGHAM: Yes and yes. [LB161]

SENATOR ASHFORD: Okay. So if you can move it up the list... [LB161]

RICK CUNNINGHAM: When I came on board 3.5 years ago and they briefed me about these cases, I said, okay, we're going to sit down, we're going to come up with a strategy... [LB161]

SENATOR ASHFORD: Okay. [LB161]

RICK CUNNINGHAM: ...of removing these cases, closing these cases, not necessarily going to court immediately but you're going to reach back out and we're going to try to get a resolution, a signed agreement to fix it. And if it's not done, then we're going to take you to court. And so that has worked. Let me also say that this is not everybody and it's not wholesale across the city of Omaha. So when we generally talk to a property owner and there's a problem, a lot of times they don't know, and when they know, they fix it. So this is not, you know, wholesale. And then as far as the dates, yes, we started back with the oldest cases,... [LB161]

SENATOR ASHFORD: Right. [LB161]

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RICK CUNNINGHAM: ...but we also said if there is just a really bad case we will...we will... [LB161]

SENATOR ASHFORD: Move it up? [LB161]

RICK CUNNINGHAM: ...move it up. We will close it, if it needs to be closed, and placard it. We will do that if the safety is at danger. But, yes, we had some priorities of how we tried to clean them,... [LB161]

SENATOR ASHFORD: Okay. [LB161]

RICK CUNNINGHAM: ...clean up the cases. [LB161]

SENATOR DAVIS: Oh, I just had question because you talk about people being imprisoned, but this is new language. So is there some place else in the law where... [LB161]

RICK CUNNINGHAM: There's... [LB161]

SENATOR DAVIS: ...where they have this? [LB161]

RICK CUNNINGHAM: The courts have been able to put somebody in jail for noncompliance of their...of, I guess, their judgments that the courts had usually passed, and then they come back and they hadn't done what they said they were going to do, to my knowledge. [LB161]

SENATOR DAVIS: So then these fines, how...these fines can accumulate for an indefinite period of time before they're paid? Is that the way that would work? [LB161]

RICK CUNNINGHAM: The way it's worded, it would be by day of the occurrence,... [LB161]

SENATOR DAVIS: Then what... [LB161]

RICK CUNNINGHAM: ...but I have never heard where that's been actually done. [LB161]

SENATOR DAVIS: Is there a process then in the law in which the city would say, well, the value of the fines is higher than the value of the property so we'll foreclose on that, or how would that happen? [LB161]

RICK CUNNINGHAM: You know, the fine is done at the court level. I don't know if...I don't know and Mr. Getty would have to answer whether we then, the city, could take

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that property. Certainly if that was the case and the property was given to the city, we would certainly clean it up one way or the other. But I don't know if that judgment, if that automatically can...will, you know, yield the property coming to the city. That...I can tell you that's not what we're interested in doing necessarily. We're interested in these properties being fixed and being safe places for residents to live. [LB161]

SENATOR ASHFORD: But I think to Senator Davis, that's an excellent point. I mean if we could...and maybe Mike has the answer to this. He does; he's shaking his head. And Mike is an expert, and you are too. [LB161]

RICK CUNNINGHAM: Yeah. [LB161]

SENATOR ASHFORD: But if you...it would seem to me if there was a way of getting possession of these properties after the fines exceed some level, I don't know how, if that's a taking. I don't know. But I mean it seems like something that... [LB161]

RICK CUNNINGHAM: Well, there's another bill before the... [LB161]

SENATOR ASHFORD: Right. [LB161]

RICK CUNNINGHAM: ...Legislature this year that's call the land bank, the municipal land bank... [LB161]

SENATOR ASHFORD: Right, and that's a way that expedites the process. [LB161]

RICK CUNNINGHAM: ...that that might be a process... [LB161]

SENATOR ASHFORD: Right. [LB161]

RICK CUNNINGHAM: ...in which that could occur. [LB161]

SENATOR ASHFORD: Right. Right. Yes, Senator Lathrop. [LB161]

RICK CUNNINGHAM: And that would take those out of the mix... [LB161]

SENATOR LATHROP: I'm just going to make an observation. [LB161]

RICK CUNNINGHAM: ...as far as a conflict of interest perhaps. [LB161]

SENATOR LATHROP: I'm just going to make an observation and that is that getting people to change a behavior is, in part, a function of how bad the fine is, but it's also enforcement. And if you have things that are open ten years and 4,000 cases, part of the problem may not be the penalty. It may be whether they think you're ever going to

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show up and hit them with whatever the penalty is. So... [LB161]

RICK CUNNINGHAM: You're absolutely...true. You're absolutely correct on that. I will tell you part of those are demolitions. [LB161]

SENATOR LATHROP: We may give you a little bit of the...half of the answer, but you got to do something better than have cases that are ten years old. Because, if I heard you right, you forgave everything that happened before 2003, and started to enforce things since 2003. But you have cases that go back that far and I'm not a...I mean I'm thinking like a slumlord right now but they're probably like, they're never going to get here... [LB161]

RICK CUNNINGHAM: Two things. [LB161]

SENATOR LATHROP: ...so why do I got to fix the light socket? [LB161]

RICK CUNNINGHAM: Two things: First of all, the majority of the cases are not that old. Most of them are two and three years old. And then the ones that...a lot of them that are really hanging out there are the ones where there's an order to demolish or fix it and, quite frankly, in recent years the city of Omaha has had a pittance of money to do demolition so the demolition orders again have no weight. So we have no money to demolish and then assess against the property. [LB161]

SENATOR ASHFORD: You don't have the money. I mean that's the problem right now. [LB161]

RICK CUNNINGHAM: Yes. Right now I will tell you that our code enforcement is on a complaint basis and so we have to get a call to complain before we can go out, and that's just based, again, based upon our budget, based on the number of inspectors we have, so... [LB161]

SENATOR LATHROP: Okay. Thanks. [LB161]

SENATOR ASHFORD: Thanks, Rick. [LB161]

RICK CUNNINGHAM: I don't think I said it, but I am in support of this legislation. [LB161]

SENATOR ASHFORD: Well, yes. Any other proponents? Yes, Mike. [LB161]

MICHAEL GETTY: I'm sorry. I just jumped right up here. I was very excited. Members of the committee, Michael Getty, assistant city prosecutor. Boy, there's a...I had a lot of things I was going to say, I was organized, but it sounds like some of the questions



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need to be answered first. But I'll stay with the organization briefly. I do have a dog in this hunt and it's...the dog was...sleeping dog was awakened last Sunday with my wife and I when the house across the street burned down. The Section 8 house across the street from me burned down. So before that I was doing this for nine years, prosecuting the code enforcement violations, and I have a little more history. In fact, I had one of our interns go through and help me get some specific numbers on this. But basically, code enforcement, and I'll offer the prosecution perspective, is something that doesn't happen until Mr. Cunningham's folks have tried to get somebody to do something for a long time, with minimal success, sometimes great success, because obviously a vacant house is probably the worst thing we can leave to a neighborhood. So we do have...the city ordinance does provide for jail, to clarify your question, Senator, on building maintenance violations, fire violations, plumbing violations, a general code enforcement thing, dangerous buildings. But zoning is kind of a hole that this bill is designed to patch, zoning with the \$10 to \$100 fine. Some of the examples that I have are outdoor storage. Somebody decides the three school buses that they bought for 80 bucks apiece that still run should be in their front yard instead of somewhere else--\$10 to \$100. Off-street parking, we have a case, I looked up some of these cases earlier, I'll get back to that. Setbacks, where somebody's house is built right on the street or they put something out in front of their house that doesn't belong there; signs that don't belong there. We do have use permits that we can use for general penalties, but zoning is a big hole. In fact, this is Omaha's zoning code and these are all the things that we can only enforce with a \$10 or \$100 fine. I guess the two best zoning cases I can describe are...well, the best one is in the Loess Hills north of Omaha there's what they call an overlay district, a Loess Hills overlay district, which is designed to preserve that area as it was found when Lewis and Clark wandered through here 200 and some years ago. We had a gentleman who bought a house up there and decided he wanted his lot to be three times as big as it was, so I think the count...this is before you, Mr. Cunningham, I think the count was 148 truckloads of building rubble, concrete, rebar, and sidewalk that he put in there to fill it out. And then he covered it with dirt. So we had a lot of trouble proving that case and eventually he ended up, his attorney and he, ended up in the Eighth Circuit suing myself and two other code inspectors for violating his rights by looking at this damage from 20 feet away on somebody else's property when we had access to that property. That case finally went away, but we could not resolve it. He did not have the money to take it out and jail was not really an available issue for us at that time because it was a zoning issue. Wow, yellow already. Okay. [LB161]

SENATOR ASHFORD: Well, Mike, can you address the issue of the priority? How do you...I mean there are, in Senator Chambers' district, I mean, there are a number of houses that are just dilapidated and in need of great repair. How do you prioritize? [LB161]

MICHAEL GETTY: Well, let me tell you what the zoning violation situations that I have that we've actually prosecuted. What I did, you were asking questions about what we've

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been doing and I had our clerk go through these. And the zoning violation, we've actually in the last two years we only actually filed four of those, but one was a lot that just never got straight. The guy did nothing for us, nothing to us, and all we could do was fine him \$50. Another party, he built a deck on his neighbor's line, on his neighbor's property, and that's just a zoning violation. That's all it was. Another gentleman had a flood plain, he was building in a flood plain. He had hundreds of cars parked there and was having concerts on property that wasn't zoned for those concerts. And then another property where we're still working with the guy's widow, I think, to see if she can comply with the zoning requirements. But in the bigger picture, Section 40-81 of the city code, which has jail, we had 48 of those cases last year. That's occupying a placarded dwelling, people that are inside condemned dwellings building small fires, having a good time destroying themselves. We had 48 of those cases and in those cases 18 people went to jail or were arrested and ended up in jail for a while. Section 48-71 deals with dangerous buildings. We filed 62 of those cases in the last two years. [LB161]

SENATOR ASHFORD: Are those condemned buildings? [LB161]

MICHAEL GETTY: Those are condemned buildings and just they're not getting it done. Now a lot of people repaired those buildings. We ended up, out of the 62 we filed, only 8 people went to jail, but the jail hanging over their head, I have no doubt, had an effect on how they came out of it. Section 48-53 is your general building maintenance violations. This is where you've got gutters hanging down, doors that don't fit, plumbing that's plugged up. Out of those 116 cases we filed in the last two years, 3 people went to jail. And I can tell you that out of those three people, one was a...I guess you'd call him a posse comitatus fellow who believed that we didn't have any authority over him unless we had a contract with him under the UCC, and I actually had to put him in jail four times in the last six years. And every time he goes in, we manage to demolish one or more...one or two more of his houses, and that's pretty much all we can do with him. So that's kind of the picture and I guess the zoning, it's just...it's a hole that I would like to fill with the potentiality of jail, because the potentiality seems to have an effect on almost everybody that we eventually get to prosecute. [LB161]

SENATOR ASHFORD: But a lot of the dilapidated buildings are not a zoning problem. They're more a...I mean a house that's in a residential area, it's not a zoning issue. [LB161]

MICHAEL GETTY: Right. Right, this is... [LB161]

SENATOR ASHFORD: So you have to...so that wouldn't apply to that. This is the other part where there's a zoning violation. [LB161]

MICHAEL GETTY: Right. This is where we have a hole in prosecution that I think we've been successful for on other things. Without...and again, I think I mentioned this at

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another hearing, the idea that people go to jail, there are people who just don't worry about that. We have a gentleman that did a code violation here about...I think it was six years ago. He had seven cases pending in county court awaiting sentencing, and he had a plan put together. Then he got upset about the eighth case and went out and slashed the contractor's tires in front of the building where they were going to knock his eighth building down. And so he ended up getting 90 days on each of those counts and ran them consecutive. We are still trying to get him to tear down the eight buildings he still owns. So it's not a be-all, end-all, but for most of the people we deal with, that jail is a reality and it's a threat to their normal life and they pay attention to it. And having one more tool would be helpful to us. [LB161]

SENATOR ASHFORD: Thanks, Mike. I don't see any questions. [LB161]

SENATOR LATHROP: Just one. Did you replace Marty Conboy? [LB161]

MICHAEL GETTY: No. [LB161]

SENATOR LATHROP: Okay. I didn't know. [LB161]

MICHAEL GETTY: That hasn't happened yet. [LB161]

SENATOR LATHROP: I didn't know who the city prosecutor was after Marty left. [LB161]

MICHAEL GETTY: Well, right now we have an interim city prosecutor, that's Mr. Smalheiser, and Mr. Kratz is still ruminating on who the successor is. [LB161]

SENATOR LATHROP: All right. Good. [LB161]

MICHAEL GETTY: We have, for the record, we have completed the interviews, we have completed the ranking, and Mr. Kratz is trying to decide what he's going to do. [LB161]

SENATOR LATHROP: Okay. Good. Good to see you. [LB161]

SENATOR ASHFORD: You're not retiring, too, are you, Mike? [LB161]

MICHAEL GETTY: You know, that's been on my list for a while and it's a thought. [LB161]

SENATOR ASHFORD: You were threatening it the last time I talked to you. I just didn't know. [LB161]

MICHAEL GETTY: I don't know...I don't know if threat is the right word, but...well,

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Senator Chambers retired and he came back so... [LB161]

SENATOR ASHFORD: Okay. Thank you. [LB161]

SENATOR CHAMBERS: No. They kicked me out and I... (Laughter) [LB161]

MICHAEL GETTY: I stand corrected, Senator. [LB161]

SENATOR CHAMBERS: Okay. [LB161]

SENATOR ASHFORD: Thanks, Michael. [LB161]

MICHAEL GETTY: Thank you. [LB161]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? [LB161]

SENATOR MCGILL: Oh, we've got opponents. [LB161]

KENT ROBERT: Slow down, Senator. [LB161]

SENATOR ASHFORD: Where are you, neutral? [LB161]

KENT ROBERT: Opponent. [LB161]

SENATOR ASHFORD: You're opposing this? [LB161]

KENT ROBERT: I'm opposing this. Good afternoon, Senator Ashford, Judiciary Committee. My name is Kent Robert, R-o-g-e-r-t. I'm here on behalf today of the Statewide Property Owners Association and we are in opposition of this bill. And I spoke with Senator McGill earlier about this. And after listening to previous testimony, I think we don't need to be as opposed as we are, but I wonder if we're not. We see this bill as extending further than zoning violations into code enforcement. And our issue isn't with code enforcement. We believe what the city of Omaha is trying to do is good. Dilapidated buildings are bad. But to allow for a pretty excessive fine for what could be a small code enforcement violation every day with jail time, and I understand they're working to take that out, is probably a little excessive. There oftentimes seems to be a lack of an appeal process with code enforcement violations. You go appeal to the same place that set the violation on you, so they really kind of hold the cards when it comes to code enforcement violations. And I know they do work with individuals and groups when they can. But if, indeed, we're looking at zoning violations and not code violations, I wonder if we're...if the bill is quite written correctly, according to how we read it. [LB161]

SENATOR ASHFORD: Okay. Yes, sir. [LB161]

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SENATOR CHAMBERS: He reminds me of a guy who sings a song. Now the way it sounds, it sounds to me like he's saying it's what a fool believes, and it sounded like to me he's saying, the white man has got the power. And somebody said, that's not what he's saying. I say, what is he saying? And then when they said it like he said it, I still didn't know because he said it just the way he did. I didn't understand much of what you said except that you said an exorbitant fine or something like that. [LB161]

KENT ROBERT: Yes. [LB161]

SENATOR CHAMBERS: What about this fine seems exorbitant? It says not more than \$500, which means it could be \$1, \$2, \$3. [LB161]

KENT ROBERT: Yes. [LB161]

SENATOR CHAMBERS: And you represent the landowners association you said? [LB161]

KENT ROBERT: Yes. [LB161]

SENATOR CHAMBERS: And what did they find...did they tell you what is exorbitant about that fine? [LB161]

KENT ROBERT: I don't think a range is exorbitant. I think that the assumption would be that if an entity is able to charge a maximum, they will. And if they're able to charge, there is no, I guess, delineation of what would be a \$500 fine versus a \$5 fine. [LB161]

SENATOR CHAMBERS: Have you looked at the property of some of these people you're here to represent? [LB161]

KENT ROBERT: The members of my organization I think have property that's mainly in accordance with the codes of the city. [LB161]

SENATOR CHAMBERS: Well, I need an interpreter (laugh) so I'm not going to ask questions. I'm going to put it like this. If any of the people who own the ramshackle, broken down property in my community, and it's not owned by people in my community, by the way, if they belong to your organization, the organization as a whole ought to be found guilty of conspiracy, charged under RICO, and put in federal penitentiary until I say let them go. But here's the point I'm getting to. Some of the guys, and I'm going to assume that all these slumlords are members of your organization because they're the ones that this kind of legislation is aimed at, I've seen them. There will be a condemned sign; they'll take the sign down. It says unfit for human habitation. Some of them just say condemned, don't enter, these things. They just take it down. And there are people in

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these places. Windows are broken out, animals live in them, and I'm not sympathetic to those kind of people at all. I do not believe this would be aimed at some individual who lives in a house, can demonstrate that he or she does not have a great deal of money but is trying to make repairs that will make the place habitable. [LB161]

KENT ROBERT: Uh-huh. [LB161]

SENATOR CHAMBERS: Maybe somebody would refer that individual to some of these agencies that give assistance in that situation. I don't believe those are the kind of people in your organization. I believe they're slumlords. And if I knew who they were, they would wish that I didn't. And I'm a man of peace, but if I catch them in my community then there will be a way they'll be dealt with, not shot, not beaten up, but they will be told some things that might make them either want to straighten up and fly right or just fly away. Then something can be done with the property. I don't want to know your address, but I think you do write it down when you sign in, do you? [LB161]

KENT ROBERT: Uh-huh. [LB161]

SENATOR CHAMBERS: Do you live in a neighborhood where there are vacant houses, windows broken,... [LB161]

KENT ROBERT: No. [LB161]

SENATOR CHAMBERS: ...no doors? [LB161]

KENT ROBERT: No. [LB161]

SENATOR CHAMBERS: You live in a neighborhood like that? [LB161]

KENT ROBERT: I don't. [LB161]

SENATOR CHAMBERS: I live in a neighborhood like that,... [LB161]

KENT ROBERT: I understand. [LB161]

SENATOR CHAMBERS: ...because I won't move away. And I want to live under the conditions that the people suffer that I'm representing. And you are here as a lobbyist. You're not responsible for what they do. But I'm just telling you these things so you can let them know that the sledding was not very smooth when you came, that they're not respected. I have contempt for them. If I didn't believe that hate kills the hater, I would tell you that I hate them. I'm as close to hating them as a person can come. With us, it's not just how many dollars it's going to take him to get this stuff fixed up. There are children who go in these places. There are children who play in these places. There are

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children who have fallen through floors in these vacant houses. And I tell the parents, well, maybe we can get some kind of legal action so that at least your child can get some medical care. They are so dispirited, they don't want to do anything. They just want me to find a way to get the place shut up so no other kids will fall through. That's what we're dealing with. So when these rascallions send you here to do this, I wish they'd come themselves and speak for themselves so I could see who they are and know who they are. But I don't think the fine is exorbitant at all. If it says up to \$500, that means anything less than that also. [LB161]

KENT ROBERT: Yes. [LB161]

SENATOR CHAMBERS: And if these people don't want the fines to run up, then just don't be in violation. They're able to keep their property up and they've got to. Nothing else has worked. And frankly, this is not going to work, because Senator Lathrop brought us down here and put our feet on the ground. These people know that the city has a budget which will not allow them to demolish a lot of their property. Catty-corner from where I live is a big ramshackle house. Next to it a lady lives alone. She has children. She keeps her house...she keeps her house up very well. She has two jobs. But things can happen next door to her that could damage her property. If somebody was in that house and set it afire, the houses are so close together, hers would burn down too. When she said something to the guy who owns it, he said, go tell the city and tell them I said they can tear it down, but I'm not going to do anything about it. That's the attitude they have. [LB161]

KENT ROBERT: Right. Thank you. [LB161]

SENATOR ASHFORD: Okay. Anybody else on this bill? Opponents? Is this neutral or opposition? [LB161]

MATT SCHAEFER: Opposition. Good afternoon, Chairman Ashford, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r. I'm a registered lobbyist appearing today on behalf of the Eastern Nebraska Development Council and the Nebraska Association of Commercial Property Owners. Our members do live in Nebraska and they have a strong desire not...they have a strong desire for their properties not to be vacant. And they do agree that...strongly agree that there should be penalties and enforcement for bad actors. And what...sitting back there, what I hear the intent of everyone involved in this, the intent of Omaha is to use this mechanism to go after the bad actors, and I hear the word "zoning." When I read this bill, I think it goes a lot broader than just zoning, so I think there would be a lot of common ground if we could narrow this bill to really go after those bad actors. Thanks for your time. [LB161]

SENATOR ASHFORD: Senator Chambers. [LB161]

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SENATOR CHAMBERS: Were you up here earlier today? [LB161]

MATT SCHAEFER: Yes. [LB161]

SENATOR CHAMBERS: And you represented the bar association then? [LB161]

MATT SCHAEFER: Yes. [LB161]

SENATOR CHAMBERS: Uh-huh. And this bill goes after slumlords. And the same person who represents the bar association represents slumlords. I guess there's a tie in. That's all that I have. Thank you. [LB161]

SENATOR ASHFORD: Senator Lathrop. [LB161]

SENATOR LATHROP: Nothing. [LB161]

SENATOR ASHFORD: (Laugh) Okay, Matt. [LB161]

SENATOR LATHROP: I happen to be a member of the bar association... [LB161]

SENATOR ASHFORD: But you're not a slum... [LB161]

SENATOR LATHROP: ...and I own no rental properties. (Laughter) [LB161]

SENATOR ASHFORD: You have no properties. Thanks, Matt. All right, is anybody going to testify more on this? I don't think so. Senator McGill. Scott and Debra have been sitting very patiently waiting. [LB161]

SENATOR MCGILL: We'll get to it here. Thank you. We will bring an amendment to you that we've worked out to get the homebuilders and some other folks more on board. As I discussed, it is a lot broader than zoning but I like it that way. There are some major problems that need to be addressed and this is a tool to get at it. [LB161]

SENATOR ASHFORD: Thanks. It is a terrible problem and I think that Ricky has made a case and I...it just drives me stark-raving mad to see those houses. Okay? [LB161]

SENATOR MCGILL: Yeah. I mean in Urban Affairs we've spent a lot of time looking at how many there are. [LB161]

SENATOR ASHFORD: And we sit and so we...yeah, I think you're right to bring this bill and...so anyway, thanks. Thanks, Senator McGill. [LB161]

SENATOR MCGILL: I have another bill now. [LB161]



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SENATOR ASHFORD: Oh, you have another bill. The Debra and Scott bill is coming up. [LB109]

SENATOR MCGILL: All right. I'm here to open on LB109, if that's okay, Mr. Chair. I'm Amanda McGill, A-m-a-n-d-a M-c-G-i-l-l. This bill aims to discourage the sale of stolen jewelry to jewelry stores. And I know you've already heard one bill that's a little similar, might have some overlapping in it, earlier. I'm sorry I wasn't there for that hearing and was opening on another bill in another committee. During the interim, I heard from a constituent who works for State Farm and processes homeowner claims. This constituent worked with clients who had jewelry stolen from their homes. She proposed additional protections for victims of theft and for jewelry stores that may unknowingly purchase and sell the stolen jewelry. We have statutes that regulate pawnbrokers in Nebraska and impose restrictions designed to address trafficking in stolen goods; however, the definition of pawnbroker limits the...limits how it can be applied. It limits it to persons who lend money in exchange for possession of property. Jewelry stores generally would be excluded from this law if the retailers purchase the secondhand jewelry outright. LB109 adds precious metal dealers, or jewelry stores, to the statute so that these stores will be regulated in the same fashion as pawnbrokers and other dealers in secondhand goods. This bill requires that the dealer must keep a ledger of purchases and identifying information regarding the seller. A copy of the ledger must be provided to law enforcement daily, and the seller must also provide a fingerprint to the dealer. There's a 14-day waiting period before the purchased item can be resold, and violators of this law are guilty of a Class V misdemeanor. At least 15 states, including Colorado and Kansas, statutorily regulate the buying and selling of used jewelry, and some cities in Nebraska, including Lincoln, have ordinances that already regulate it. But there are a number of cities across the state that do not have any local ordinances, and we've had a lot of jewelers from those areas request that we go ahead and put this into statute. [LB109]

SENATOR LATHROP: Very good. [LB109]

SENATOR MCGILL: With that, I ask for your support. [LB109]

SENATOR LATHROP: Very good. Thanks, Senator McGill. Any questions? I see none. Those who are here to testify in favor of Senator McGill's LB109, come forward in support. [LB109]

SENATOR MCGILL: We have some letters but... (Laughter) [LB109]

SENATOR LATHROP: Okay. Those in opposition to LB109. We're going to try the other half of the family. Welcome. [LB109]

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SCOTT OLSON: (Exhibit 13) We may not be opposed. We're just looking for clarification. But, members of the Judiciary, we appreciate this time. My name is Scott Olson, S-c-o-t-t O-l-s-o-n. My wife Deb and I own Lincoln Coin and Bullion, and have operated in excess of seven years here. We have operated under the jewelry purchases law ever since we opened our business and have done probably thousands of jewelry purchase reports and submit it the city on a regular basis. The only opposition we may have to LB109 would be if this bill acts to add precious metal, coins, and bullion. If it doesn't do that, we are not opposed to it. If there are any other questions you have... [LB109]

SENATOR LATHROP: Can you repeat that? If it...what would make you go away on this bill? [LB109]

SCOTT OLSON: Well, our opposition would be is if this bill means that precious metal, coins, and bullion are now included, you know, the definition isn't terribly clear and we just want that clarified, but if it is, we would have the same objections to what we had to LB226. [LB109]

SENATOR LATHROP: And that is the idea that you don't want to have to hold that stuff for 14 days. [LB109]

SCOTT OLSON: Hold it and the reporting costs would be...you know, we'd have to hire another person. Would be pretty expensive, costly to us. [LB109]

SENATOR LATHROP: Okay. [LB109]

SCOTT OLSON: But the 14-day holding period is the big thing that... [LB109]

SENATOR LATHROP: And that's because of the market fluctuations. Okay. [LB109]

SCOTT OLSON: And the nature of the market of precious metals is probably much different than secondhand jewelry where there's a greater potential for margin. [LB109]

SENATOR LATHROP: Okay. Very good. Any questions for Mr. Olson? I see none. Thank you for sticking around, your patience, and your testimony. [LB109]

SCOTT OLSON: Well, thank you for your time. We appreciate it. [LB109]

SENATOR LATHROP: Sure. Anyone else in opposition? Anyone here in a neutral capacity? [LB109]

DON WESELY: Senator Lathrop, members of the Judiciary Committee, Don Wesely, for the record, D-o-n W-e-s-e-l-y, ISRI, the Institute of Scrap Recycling Industries, and Alter

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Trading Company. This situation is a little different than the last bill so I'm just going to clarify that on page 4, lines 21 through 23, it does say in the current statutes, "Dealers in scrap metals, except gold and silver, shall not be included in the provisions of this section." So it looks like we'd be okay. The problem is that is not a very good definition. There are specific definitions in statute that we've worked with Senator Smith and we would offer that language to you to consider as an amendment. But here's kind of the complication in this. It says, "except gold and silver." And interesting enough, e-waste, for instance, there's a quote in a recent article that says e-waste is not just poisonous; it contains precious metals too. Processors, chips, and connecting pins contain seams of silver, gold, and palladium. So when you get into some of this you think gold and silver but...or other precious metals, but they end up being in things like catalytic converters have some of those precious metals and these other, the e-waste has it. So being careful on definitions is important and we'll try and get, you know, some language to you shortly on that. That's it. [LB109]

SENATOR LATHROP: I see no questions. [LB109]

DON WESELY: Thanks. [LB109]

SENATOR LATHROP: Any other neutral testimony? Senator McGill to close. [LB109]

SENATOR MCGILL: Thank you, everyone. I understand in the first hearing on Senator Smith's bill there were people here in support of both of our bills, as is I have a letter from the Retail Federation in support of both of them. (Exhibit 6) The last two testifiers bring up points that we hadn't taken into consideration when drafting this, so perhaps there's some language finessing that we can do to take away their opposition or even neutrality. So thank you. [LB109]

SENATOR LATHROP: Very good. Thank you. That will close our hearing on LB109... [LB109]

SENATOR ASHFORD: Okay. [LB109]

SENATOR LATHROP: ...and our activities for the day. [LB109]