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Transportation and Telecommunications Committee
February 05, 2013

[LB351 LB445 LB446 LB624]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 5, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB445, LB446, LB624 and LB351. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; Beau McCoy; Scott Price; and Dan Watermeier. Senators absent: None.

SENATOR DUBAS: Thank you all for attending this afternoon, the Transportation and Telecommunications Committee. This afternoon we will be hearing bills LB445, LB446, LB624, and LB351 and in that order. I will begin by introducing the committee. I am Senator Annette Dubas, District 34, from Fullerton. To my far right is Senator Dan Watermeier from Syracuse; Senator Scott Price from Bellevue; Vice Chair of the Transportation and Telecommunications Committee, Senator Jim Smith from Papillion. Joselyn Luedtke to my immediate right is the legal counsel for the committee. To my immediate left is Anne Hajek; she is the committee clerk, so she's the one that needs you to fill out all your paperwork; make sure you speak clearly into the mike. Try not to fiddle around with the microphone a lot because it's more for transcribing than it is for amplifying, and so it's very sensitive; it picks up finger tapping and page rustling and those kinds of things. So if you can try to avoid those things, our transcribers really appreciate that. Next to Anne is Senator Galen Hadley from Kearney; Senator Beau McCoy from Omaha; and just joining us is Senator Lydia Brasch from Bancroft. We have two pages with us today, and we really do appreciate the pages and the work that they do for us. They certainly help keep our committees running smoothly, as well as when we're up on the floor and in a variety of other places. They're here to assist you as well. So when you come up to the table, if you will hand them your sign-in sheet or any handouts that you may have, they will make sure they get distributed to the committee members. If you don't have enough handouts with you, we usually like to request you have around 15 handouts. If you can get that to them ahead of time, they'll make those copies for you. So our pages are Kaitlyn Evanko-Douglas from Montrose, Colorado; she is a senior at UNL studying political science and global studies. And David Postier from York, Nebraska, who is a sophomore at UNL studying secondary education. So again, thank you for your help. I mentioned the sign-in sheets, table over there by the door, there are two sheets. The green sheets are for you if you're going to come up to the table and testify; ask that you fill out this information and then hand it in before you testify. If you want to be on the record that you're here today and your support or opposition to the bill, sign your name and information on the pink sheet, and then the clerk will pick that up afterwards and enter that into the record. Oh, let's see, depending on how many people we have testifying on the various bills, and I'll ask for a count of that in a little bit, we may use the light system. So if that's the case, you'll get five minutes to do your testimony, so the green light will come on at the start of that five minutes. And then, at four minutes, the yellow light will come on, just kind of let you

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know it's...your time is running short. And then the red light will come on at five minutes. Now that doesn't mean, boom, you have to stop; we'd like to at least let you finish your thought. But also know that committee members will likely ask you questions, allow you to finish, maybe, some of the things that you haven't been able to say yet. So we want you to be able to make your points, but if we have a lot of people testifying, we need to keep things moving along. I do ask that you silence your cell phones or any other electronic devices you may have. Again, that causes some problems with transcribing, and it also is a little disruptive for the hearing, so we try to keep those noises and those things to a minimum. I believe that I have covered all of the housekeeping duties, so we can go ahead and get started on LB445. Senator Karpisek.

SENATOR KARPISEK: Thank you, Senator Dubas. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k; I represent the 32nd Legislative District. LB445 would raise the fees on records for the DMV mainly from \$18 per thousand to \$50 per thousand. I realize that that seems like a steep increase. Part of what we were going to do is raise the \$1 individual fee up to \$3, and so then we were thinking that we would go up that same increment on the bulk fees. After talking to some people about it, we decided to not do anything with the individual \$1 per fees, leave those alone and go up to \$50 on the bulk. There is in statute now, in 60-3,161, "there shall be a fee of \$50 for every request under 2,000 records and a fee of \$18 per 1,000 records for any number of records over 2,000." So a little bit of what we did was the three times would be \$54 on \$18. But then we did see this already in statute, \$50 is already there so we just kept the \$50 there. So you may ask, "Why?" We had a constituent get a hold of our office, which I would guess many of you do too, about receiving information in the mail about extended warranties or all sorts of different things on vehicles. And he doesn't know where this information is coming from and doesn't like getting it. So that's what started this whole...whole bill. Now after talking to Experian and Polk, they tell me that they are not the ones that would give out this sort of information. And that's fine, I guess. Everyone I've talked to doesn't give out that information. But somehow they still get it. Now I'm sure that Experian and Polk cannot do it because it's against the law. But it got me onto this track. Eighteen dollars per thousand to me seems like a small amount to give to get a thousand names. If you break that down, that \$18 per thousand is almost 2 cents each. Going up to the \$50, although it is a substantial raise, gives you a nickel each. So it is a big percentage raise, but it takes it up about 3 cents per name. What we would like to do with the money is...the extra money that we would get, is put it into a fund to update the DMV computers. Loy Todd with the new car dealerships cannot be here today, but I'm sure he did send you letters, or give you all letters, on trying to get the DMV some new computers so they could do many things, like register the vehicles at the dealerships; many other things that the DMV would be capable of doing that right now they're not. That is where I would like that money to go. I realize that we always talk about earmarks here in the Legislature. We never like them until someone likes them, and then they're not earmarks, and they'll fight to the death that they're not, but they look, smell and act like them. I would like the money that's generated at the DMV to stay

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there to try to build...buy...buy...build new computer system, just to try to get us more up to speed there and make their jobs easier and make it better for everyone. That's the long and short of the bill. I'd be glad to try to answer any questions. [LB445]

SENATOR DUBAS: Thank you, Senator Karpisek. Are there questions? Senator Janssen. [LB445]

SENATOR JANSSEN: Thank you, Chairman Dubas. Senator Karpisek, I was looking at the fiscal; it's going to raise \$207,000 a year, and it costs \$15 million. That's going to take quite some time. [LB445]

SENATOR KARPISEK: It will, and I think it's obvious that we won't get all the money by this, unless we find that you have more vehicles than you show. But I think that once we create the fund that then, maybe, we can look at another way to finance that to get there, whether it be General Fund dollars or however the Legislature would see fit to do. [LB445]

SENATOR JANSSEN: Thank you. [LB445]

SENATOR KARPISEK: Thank you. [LB445]

SENATOR DUBAS: Senator Price. [LB445]

SENATOR PRICE: Thank you, Senator Dubas. Senator Karpisek, I understand when you talk about the extended warranties and, of course, I've had numerous ones come through, but I'm getting those on my home now, you know, so my question is, this becomes a multiheaded type of thing that continue with...and that this is almost like a punitive action, not focused on fixing what's broken; it's just punishing an industry for doing something. Because it's my understanding that the federal government gets all this information for free. So we're setting up separate classes here. We've got a class that gets it free; we're going to charge a class, and then I'm thinking now with the...what you and Senator Janssen talked about, if we're not going to get to the \$15 million in a relatively...I mean, the technology refresh, right, by the time you get into the program, you'd have to rebuy before you ever purchased again, if you wait on the money. It seems to me to be almost a punitive thing that...I don't know that it addresses it. I wonder what your thought would be towards these now...these warranties coming in on homes now? [LB445]

SENATOR KARPISEK: Well, and like I said, I've...talking to Polk and Experian, they say they're not selling for those things, and it's probably coming through the dealerships, somehow, maybe. I don't know. But it...and again, it did get me onto this thought of trying to buy a computer system. Fifteen million is one bid, not even a bid, that we heard. But we have heard lower ones also. So I don't know that this is punitive either. I

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don't mean it to be, but, maybe, to raise up. And I did have the different states and what they charge; and I don't know that I have it readily accessible, but I know I have it. And we're by far not the highest; we're not the lowest; there is a lot of different ways they do it. So, it has kind of changed from stopping these coming, and like you say, you get them on your house, you get them for windows, all sorts of things. I throw them away. However, I think about some older people, maybe, that get caught up in it and think, oh my god, I need to do this. Again, maybe this bill is going in the wrong direction for that. But I still think that we need to look at getting a new computer system. [LB445]

SENATOR PRICE: Well, I agree with you on that. I like the IT aspects of it. Thank you, Senator Karpisek. [LB445]

SENATOR KARPISEK: Thank you. [LB445]

SENATOR DUBAS: Senator Hadley. [LB445]

SENATOR HADLEY: Chairman Dubas, Senator Karpisek, thank you. I was going to follow up. I did the quick math that Senator Janssen did also, and this is about 2 percent a year, so it will take 50 years, if this was our only source of funding for that. And I would guess that the inflation would be larger than that. I don't expect you to answer, but I hope that, as people testify, that we're talking about the bad things that come out of this, but are there good things that might come out of their being able to get these lists? I think in terms of CARFAX, those kinds of things that tell me whether the car is, you know, who owned it or where it's been and those kinds of things that might be...help the consumer make learned decisions. So you don't have to answer that, but... [LB445]

SENATOR KARPISEK: Well, and I agree, I mean, we're not saying that they can't use them and use them for other things. But...and yeah, it's not a whole lot of what we need. Now, if you want a committee amendment to go up more on them to get there faster, which I suppose you can do that. It's not, of course, the intent. But I just know that, in the Legislature, you're probably going...if we would go and ask for \$15 million, part of the question is going to be: Well, where are we going to get that? What are you doing to get there? [LB445]

SENATOR HADLEY: Thank you. [LB445]

SENATOR KARPISEK: Thank you. [LB445]

SENATOR HADLEY: Thank you. [LB445]

SENATOR DUBAS: Senator Karpisek, where is the money going now that is being generated? [LB445]

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SENATOR KARPISEK: It stays with DMV, and there might be more...someone else would know more about that. But it stays there; it helps run the office. [LB445]

SENATOR DUBAS: All right. Thank you very much. Any other questions? Seeing none, thank you. [LB445]

SENATOR KARPISEK: Thank you. [LB445]

SENATOR DUBAS: Are you going to stay to close? All right. Thank you. Could I get an idea of how many people who are here to testify today in support of this bill? Okay, I don't see any. How about opposition? One, two, three. Anybody neutral? Okay, very good, all right. So we'll ask for any proponents to LB445 to come forward. Seeing none, we'll move to opposition. [LB445]

KARL JAKOBI: (Exhibits 1 and 2) Good afternoon, Chairman Dubas, members of the Transportation and Telecommunications Committee. My name is Karl Jakobi, spelled K-a-r-l J-a-k-o-b-i, and I'm representing Experian Automotive. I'm here today in opposition to LB445. Experian Automotive was established in 1998 to serve vehicle manufacturers, lenders, dealers, auctions, and consumers. We have an office located in Lincoln which employs approximately 130 individuals. Experian Automotive has developed the National Vehicle Database which is comprised of motor vehicle title and registration data purchased from all 51 U.S. jurisdictions and 10 Canadian providences. Today the NVDB, which is what we refer to this database as, is used to provide citizens, the automotive industry, and auto dealers, including those located in Nebraska, information on a variety of auto-related issues including safety recalls, vehicle history reports, antifraud services, and statistical reports. For example, our national registration database gives us the unique ability to provide current name and address to vehicle manufacturers expeditiously, making certain affected drivers across the country receive prompt notice of potential safety issues. At Experian, we ensure the safety of our data by closely following the Federal Drivers Privacy Protection Act, or DPPA, and state privacy laws, including Nebraska Revised Statute 60-2907. We have copies of these for you, senators, which are here. In addition to the federal and state laws, we are often...there are often additional privacy requirements written into our contracts. We make it our business to exceed these standards. Experian never uses motor vehicle records for the purposes of marketing or solicitation and never sells the data to a client for the purposes of marketing or solicitation. Experian Motor Vehicle data is not and has never been used for the distribution of extended warranty mailers. The security of this data is of the utmost importance to Experian. For this reason, we employ a compliance team to review all products and services to ensure Experian is complying with all laws and restrictions. Additionally, we utilize state-of-the-art virtual and physical security to protect our database. Experian's business relationship with the state of Nebraska Department of Motor Vehicles has been a long one. We have always worked well with the DMV and most recently signed a two-year contract. The DMV did not request a rate

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increase during our negotiations, and we were honestly taken aback by the proposed 178 percent increase in LB445. Raising the rate to this level would place Nebraska at twice the average regional and national rate per data. After our visit with Senator Karpisek and today's testimony, we understand that this bill was introduced because of some bad actors. However, at Experian we pride ourselves on ensuring the security of our data that is provided to us by the states. We understand the importance of the information we hold and take that responsibility seriously. If LB445 passes, Experian and our customers would see no benefit from the increased rate. We would not be getting better data, faster data, or additional uses of the data. Furthermore, we believe that the increased rate would have no impact on curbing the extended warranty mailers that are at the heart of this issue. I appreciate your time today and would be happy to answer any questions that you might have. [LB445]

SENATOR DUBAS: Very good. Thank you, Mr. Jakobi. Questions? Senator Price. [LB445]

SENATOR PRICE: Thanks, Senator Dubas. Thank you for testifying. How do you receive these records? How is it that your company receives records? [LB445]

KARL JAKOBI: The records we receive from every state, including Nebraska, are sent to us via electronic secured FTP. So it's all electronic; we don't receive any tapes or data, and it comes to us securely through those channels. [LB445]

SENATOR PRICE: Are these automated? These reports just show up on a certain date or within a certain window? No one has to make a query, send a letter, make a request? By contract you've already agreed that they'll send a batch file, FTP it to your service? [LB445]

KARL JAKOBI: Correct. We're receiving...in Nebraska it's a weekly file. It arrives on the same day every week. And it includes every record over the past week that's been generated: title files, registration files, you know, new records, updated records, changed records, anything that might have been added to the database over the past week. [LB445]

SENATOR PRICE: Thank you. [LB445]

SENATOR DUBAS: Other questions? Senator Watermeier. [LB445]

SENATOR WATERMEIER: Madam Dubas, Chairman Dubas. You talk about sending out this letter for the manufacturers, of recalls, all these different things, is that something you charge the manufacturers for? [LB445]

KARL JAKOBI: Yes. [LB445]

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SENATOR DUBAS: Other questions? Seeing none, thank you very much. [LB445]

KARL JAKOBI: Thank you very much. [LB445]

SENATOR DUBAS: Welcome. [LB445]

MICHAEL WELLS: (Exhibit 3) Good afternoon. My name is Michael Wells, M-i-c-h-a-e-l W-e-l-l-s. I represent R.L. Polk and Company, headquartered in suburban Detroit, Michigan. Honorable Dubas, Chairman Dubas, members of the committee, Polk is a family-owned, privately held business, 140 years old, which is in a similar industry to what Mr. Jakobi had just testified moments ago. We acquire motor vehicle records for the purposes of recall, for the purposes of CARFAX, for the purposes of helping the dealerships in the areas serve their constituents, serve their citizens, and provide services for those dealerships. I'm here today to encourage you to vote no against this bill, against LB445. Our sole focus is the automotive industry; we take pride in what we do. We are an ISO 27001 certified organization, meaning our data are secure, that we have achieved the highest level of security in the industry for protecting our data. We acquire the data from the state of Nebraska, from all states through the U.S. and from all Canadian jurisdictions. We take a lot of pride in what we do. And we are here against this bill because the three-fold increase in the price seems somewhat arbitrary, and as Mr. Jakobi had indicated, does not provide any benefit to us or to our consumers or to our clients. This increase in price would be akin to a \$30,000 car today costing \$83,000 tomorrow, which is the average price of an U.S. car, that \$30,000 number, which is why I mentioned that. It is a very steep increase and somewhat arbitrary. The information that Polk uses, that Polk obtains from all the states is...would be jeopardized at a price at this level, if we did not acquire that information, which would not help the citizens of Nebraska nor the citizens of the U.S., if we had to find alternative solutions to acquire the data. That would be the challenge that we would face. Another concern, as Senator Price had alluded, another concern of ours is that the exact same data are provided to a federal entity called NMVTIS which is slowly and surely competing more and more with Polk and with other companies in the market. So that's a big concern for us as well. In talking with Senator Karpisek about his concerns, I would love to be able to have the opportunity to address those with him as far as some bad guys getting information, and helping understand some of the things that we've seen in other areas, as far as what is happening with information in the markets. It's not coming from the DMV; it's not coming from Polk. We understand that. And we've chased this down in other states, some neighboring states, so we would be happy to share that information with Senator Karpisek and work with him to find a solution that he can take back to his constituents and help them feel at ease that something is happening; we're doing something to ensure that we can mitigate the amount of wasted information going to households and going to consumers. So that is all that I have for today. If there are any other questions from the committee? [LB445]

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SENATOR DUBAS: Thank you, Mr. Wells. Questions? Senator Hadley. [LB445]

SENATOR HADLEY: Thank you, Chairman Dubas. Mr. Wells, just so I kind of understand, where do you think...you know, I get the letter in the mail that your new car warranty is about ready to expire, and you can...it makes it look like an official letter from some car dealer or something like that. Who do you think they get most of their information from? Could the dealers be involved in supplying information to these companies? [LB445]

MICHAEL WELLS: From analysis that we've done and some of the research we have done, we have sales records tend to be the source of this information. [LB445]

SENATOR HADLEY: Okay. And is there...to your knowledge, is there anything in the laws that precludes a dealer from selling this kind of information to a company that sells extended warranties? [LB445]

MICHAEL WELLS: From what I've seen in other states, that does not appear to be the case. [LB445]

SENATOR HADLEY: Okay. Okay, thank you, Mr. Wells. [LB445]

SENATOR DUBAS: Other questions? Are there other avenues that they can access this information besides just car dealers? Are there...I mean is this...you know, a lot of tentacles out there that we would be trying to rein in to keep this from happening? [LB445]

MICHAEL WELLS: Not to my knowledge. There are other entities that, for lack of a better word, come and go in this industry and will buy data from the states. In talking with the DMV in Nebraska, only two companies buy this information from the state of Nebraska. Mr. Jakobi represents one; I represent the other. So sales data, or if a consumer gives their information to an entity, an insurance company or something of that effect, the data could, information could get out via that way, I don't...I can't speak to that. [LB445]

SENATOR DUBAS: And you...this may not be in your area of expertise either; are there not truth in advertising laws that could come into this arena, making sure that people, when they open these up, know where they're actually coming from? [LB445]

MICHAEL WELLS: There...that could be a solution. I don't know; I can't speak to that. [LB445]

SENATOR DUBAS: All right, very good. Any other questions? Senator Hadley. [LB445]

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SENATOR HADLEY: I just had one other follow-up. I guess it's more of a comment. I truly believe that one of the good things in the last two years has been Experian and CARFAX because I think that is getting information to buyers of vehicles, especially in...both the...from dealers, but also in the private market, access to information and, with that information, they can make informed decisions. And I know you go on eBay anymore or Cars.com or anyplace like that to buy a car, the first thing you should look for is that vehicle history to find out that it hasn't been flooded, as Senator Avery will talk about later, or it's those kinds of things. So I want to compliment you...your company and the other companies that do that because that is providing information to buyers that help them make informed decisions. [LB445]

MICHAEL WELLS: Thank you, Senator Hadley. That's an important service that we do provide, and it's a function of having this type of information that we can do that. [LB445]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for your testimony. [LB445]

MICHAEL WELLS: Thank you very much. Thank you, committee. [LB445]

SENATOR DUBAS: Welcome. [LB445]

CHRIS NEAL: (Exhibit 4) Thanks so much, Madam Chairwoman, and thanks so much to the members of this committee for granting me this opportunity to testify here today. My name is Chris Neal, I'm here to represent CARFAX, and I see we have a big fan here in Senator Hadley, appreciate those remarks during the... [LB445]

SENATOR DUBAS: Mr. Neal, could I have you spell your name. [LB445]

CHRIS NEAL: I'll go ahead, yes, spell my name, C-h-r-i-s, last name, N-e-a-l. [LB445]

SENATOR DUBAS: Thank you. [LB445]

CHRIS NEAL: Again as I mentioned, I'm here to represent CARFAX. Obviously, as you guys are well aware in the consumer marketplace our specialty as a company is providing vehicle history and report information to consumers, as well as commercial interests alike. I don't want to belabor a lot of the points that my colleagues with, obviously with the other vehicle information companies here pointed out today, but certainly wanted to echo their sentiments in regards to LB445, that we're here to stand in opposition here today. Obviously, we believe, with regards to the significant increase in costs for these records going forward that...that, ultimately, these records could be considered cost-prohibitive, and as such could, ultimately, have an impact on our customer base. Everybody from the individual walking the lot and the reliability and

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integrity of information that they receive to the state of Nebraska which currently avails itself of thousands of our free investigative reports and free vehicle history reports on an annual basis. So, certainly, we play a very strong role and a partnership role with the state of Nebraska. Obviously, with respect to the issue of e-titling, we have no objections whatsoever to the aim of this proposal. However, again, and I think, Senator Price you pointed this out, this issue of being punitive; we don't believe that one industry or one company in particular should ultimately bear the responsibility of funding this or financing this entire system. Obviously, there is a collective benefit in that, and that's a great concern of ours. So with that again, I don't want to belabor too many of these points, but, again, we're here to stand in opposition to the bill today; welcome any discussion with the committee, with the sponsor and others going forward as this process evolves. And happy to stand for any questions you may have. [LB445]

SENATOR DUBAS: Thank you very much, Mr. Neal. [LB445]

CHRIS NEAL: Thanks, Senator. [LB445]

SENATOR DUBAS: Questions? Seeing none, thank you very much. [LB445]

CHRIS NEAL: Thanks so much, Madam Chair. [LB445]

SENATOR DUBAS: (Exhibits 5 and 6) Additional opposition to LB445? Is there anyone in the neutral? I did neglect to enter into the record, we do have two letters of support for LB445, one from Mr. Loy Todd with the Nebraska New Car and Truck Dealers and the other from Nebraska Bankers Association, Robert Hallstrom. So those are letters in support. I apologize to the clerk for not getting those in sooner. Senator Karpisek. [LB445]

SENATOR KARPISEK: Thank you, Senator Dubas. I want to, again, stress that Polk and Experian have both come and offered to help educate the public on where some of the mailers are coming from. And I do appreciate that and I'm going to take them up on that. Talk about that there wouldn't be any upside to this, well, that's just not true. A new system, of course, is going to have an upside. Part of the problem now is that the system they have doesn't let them filter the information as well as we'd like it to. So I think that's part of the problem with the system is it just can't filter it out. And I know it almost sounds, in this day and age, how you couldn't do that, but I think that's where we're at on the system. We talked about the \$15 million in here; it does say \$15 million or until purchased. That's just the number that we heard. It could be less; it could be more, not more, just the \$15 million. I think one issue, too, is that the money probably could have been there, but through some bad budget times, some of these reserve funds...not some, a lot of them are swept. So the money is not there. They try to accumulate them, and it's not there because it's been swept and used elsewhere. That's why I would like to set up the fund. And however we come up with the money...the

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gentleman from CARFAX said it's not fair for one industry to bear that. I said that we would have to try to find other places to get the money. At first, I was going to bring a bill that would attempt to not let these be used, be resold. I didn't think that that was good because I do think that this information is good information; absolutely, it's good information. It's also very valuable information. I would have...I'd like to know what CARFAX gets per each. Again, we're going from almost 3 cents to 5 cents in this bill. I'm not dead set on these numbers, okay. But it is valuable information. There is a lot of money being made. To say that it will cripple an industry, I think, is not a fact. We all know in business you try to keep your costs down, and I appreciate that. In government, sometimes, you have to try to make some money, and it seems lately we don't do that because none of us want to raise taxes. I don't think that going up, roughly, 2 cents or maybe 1 cent per record is that far out of line. That's why I brought it. If nothing else, I would like to think that we could start this fund and try to get some money in there because we definitely need to get a new system. Thank you. [LB445]

SENATOR DUBAS: Very good, Senator. Questions? Senator Price. [LB445]

SENATOR PRICE: Thank you, Chairwoman Dubas. Senator Karpisek, in going down that line of reasoning about a system, do you know of any program changes to the current baseline, either by the department or by the CIO's Office for upgrading systems? [LB445]

SENATOR KARPISEK: I do not. [LB445]

SENATOR PRICE: Okay, thank you. [LB445]

SENATOR KARPISEK: I'm sorry. [LB445]

SENATOR DUBAS: Any other questions? Senator Brasch. [LB445]

SENATOR BRASCH: Thank you, Madam Chairman, and thank you, Senator Karpisek. Did you say how old this system is? [LB445]

SENATOR KARPISEK: I don't know how old the system is, but it's... [LB445]

SENATOR BRASCH: So old. All right, I'd be curious to know. [LB445]

SENATOR KARPISEK: You know, I think Senator Price hit on it, too. I mean, gosh, any time that we're going to...a computer is always outdated as soon you get it installed. And I understand that, but it seems that we just can't quite...I think it would just make DMV's life a lot easier, too. And I realize it's a lot of money. [LB445]

SENATOR BRASCH: Very good, I have no other questions. [LB445]

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SENATOR KARPISEK: Thank you. [LB445]

SENATOR BRASCH: Thank you. [LB445]

SENATOR DUBAS: Anything else? Thank you, Senator Karpisek. [LB446]

SENATOR KARPISEK: Thank you for your time. [LB445]

SENATOR DUBAS: That will close the hearing on LB445 and open the hearing on LB446. Senator Avery. [LB445]

SENATOR AVERY: (Exhibit 7) Good afternoon, Madam Chairman. My name is Bill Avery, B-i-l-l A-v-e-r-y, representing District 28, here in Lincoln. I bring to you LB446 which amends the Motor Vehicle Certificate of Title Act in order to define flood-branded vehicles as flood damage to a vehicle which has been submerged above the floor board. A little bit on the origins of this bill. My LA was following reports on the Internet, and I suppose TV news, that upwards of a quarter-million Hurricane Sandy-damaged vehicles were headed for resale on the used-car market across the Midwest. She began to look into the incidents of natural disasters and water damage and floods and their effects on vehicles in the marketplace. After the extremely severe 2005 hurricane season, with Hurricanes Katrina, Rita, and Wilma, flood damaged an estimated 600,000 vehicles, many of which made it back onto the used-car market for resale. Tropical Storm Allison damaged another 95,000 in 2001. Hurricane Ivan in 2004 left more than 100,000 vehicles waterlogged. Hurricane Ike claimed approximately 100,000 cars in Texas and Louisiana in 2008. Again, following Hurricane Floyd in 2009, another 40,000 flood-damaged cars were back on the road. Hurricanes and tropical storms, however, are only part of the problem; flooding can occur throughout the country at almost any time of the year. In 2011, record flooding along the Missouri River left thousands of vehicles stranded, many of them water damaged. Vehicles, like homes and buildings, suffer the long-lasting damage left behind from water and literally rot from the inside out. It's often very easy to clean up the cosmetic evidence of flood-damaged vehicles. However, the lasting effects can be quite catastrophic. Salt-water corrosion, for example, can cause severe electrical and mechanical problems, including damage to air bags, the operation of power steering, and power brake failures. Engines can hydrolock which involves water blowing through the engine cylinders instead of air. Lots of car manufacturers now put electronic components under seats or under the dashboard very near the floorboard so that even in a modest amount of water can cost thousands of dollars in damage to an unsuspected buyer. And it is often damage that's not so easy to see unless you are really good at inspecting a vehicle. Consider that a vehicle that has been flooded and then bakes in the sun for a week can have mold, very threatening to one's health, and mold can be very, very difficult to clean up. A current title on a car provides no guarantee that the car is actually clean. Flooded and salvaged cars can be

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reregistered in other states with clean titles and then sold without disclosing the damage. The practice of moving salvaged-branded vehicle to states with weak or little title branding is called "title washing." And that's what this bill is aimed to curb. Consider a car that is flooded during a heavy rain storm. A private owner or an independent car salesman or auctioneer cleans it up; they put in some new seats, wipe it down with Clorox and can sell it to an unsuspecting buyer, who has no idea that the damage to the car might be hidden elsewhere in the car. So now you have a Nebraska consumer who is the owner of a used car that is likely to experience some rather dramatic and costly failures down the road. Nebraska's vehicle titling statutes appear in 60-171 of our laws. These statutes indicate that a salvaged-title designation for a vehicle is required for a late-model vehicle that is wrecked, damaged, or destroyed to the extent that total cost to repair or rebuild exceeds 75 percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed. The statute also allows an owner to voluntarily designate their vehicle as salvaged, which makes it transferable, but the salvage designation is always present. I should tell you that I have an amendment that I've had circulated that revises the original bill by adding the flood brand definition under the salvage designation. So this would be one of the conditions under the definition of salvaged title. And that is a cleaner way of dealing with the issue than the original bill. As always, consumers still need to adhere to the principle of caveat emptor, that is to say "buyer beware." Look under the hood, smell the seats, look for mold, look at warped door panels and water lines under the hood. But we can do better than that; we can help the consumer, and we can do that by this legislation, putting car buyers and sellers on notice that even modest flooding is unacceptable to pass off as a clean title in this state. Let's protect our consumers from people acting in a fraudulent manner and using Nebraska as a dumping ground for cars with damage. It should be noted that the federal government has discussed this, and in true Washington fashion they have deadlocked and cannot pass a bill. But they have looked at, at least following 2005 Katrina damage, they looked at branding hurricane-damaged cars as total-loss cars. But that is still pending. LB446 will make Nebraska one of the most aggressively flood-branded states and protect Nebraska's customers from potentially hundreds of thousands of water-damaged vehicles which make it back onto the market as a result of "title washing." You might notice that LB446 does not include motorcycles. We talked with...or we contacted Lincoln's Frontier Harley-Davidson dealership, and they tell us that it's virtually impossible to water damage a motorcycle. And I suspect it's because of the chrome that provides protective coating on the working parts of engines and various other parts. I think this is a bill worth your serious consideration. I know that the Nebraska New Truck and Car Dealer Association submitted a letter of support, and Mr. Loy Todd would have been here, but he is traveling. There may be others who will testify, maybe not all in support, but I would urge you to give this serious consideration. And if you decide that some amendments are necessary, you will not get pushback from me. Thank you. [LB446]

SENATOR DUBAS: Good, thank you, Senator Avery. Questions? Senator Hadley.

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[LB446]

SENATOR HADLEY: Chairman Dubas, Senator Avery, thank you. Is this primarily to protect Nebraskans from cars that are flood damaged in Nebraska? I guess I ask this if it's Katrina, and it's in Louisiana, how do we know that a car that is shipped from Louisiana to Nebraska has been flood damaged and needs to have a flood-damage title? [LB446]

SENATOR AVERY: Well, this actually...the current problem is likely to come from the northeast, from Sandy. [LB446]

SENATOR HADLEY: From the northeast, or the northeast or...yeah. [LB446]

SENATOR AVERY: Before a car could be sold in Nebraska, you would have to have a clear title. And what we're doing with this bill is, we are saying that if a car has been damaged by water, then it has to have a salvaged title. You can't just do a cosmetic cleanup and pass it off as a clean car without a designation of salvage title. Salvage title says this car has suffered some catastrophic damage. It may still be operable, but if that salvage title really does depreciate the value of the car. So if they're bringing vehicles in here from Jersey Shore, and these cars have been damaged from salt water in particular; that's very corrosive. And then they have to get a proper title before they can transfer that title in the state of Nebraska. And this would allow us, as citizens and buyers, to know whether or not that car has been water damaged. [LB446]

SENATOR HADLEY: I guess I...I'm trying to think his through that...it's hard for me to do since I'm not unscrupulous, but if I was an unscrupulous car dealer, I would buy these in New Jersey, I would ship them to Rochester, New York, and sell them to somebody else, and the person in Rochester, New York, sells them to somebody in Omaha, Nebraska. How do we track that back that it...that somebody knew it was, maybe the original person did, but the third buyer doesn't know? [LB446]

SENATOR AVERY: You know, I...I recognize the point of your question is a good one and I guess I don't have enough knowledge about the transfer of titles, but there is probably somebody that will testify after me that can. [LB446]

SENATOR HADLEY: Okay, that...I just... [LB446]

SENATOR AVERY: If Mr. Todd were here, he would be able to answer that. [LB446]

SENATOR HADLEY: Thank you. [LB446]

SENATOR DUBAS: Senator Brasch. [LB446]

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SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Senator Avery, for testifying today. This is very interesting. When we had the flooding along the Missouri River, as we walked along several of the areas there were many cars that came down the Missouri, that were sunk in the mud, sunk in the sand, very water damaged, but there were many, many golf carts as well, to add to the mix. And I took photographs of several of these things. Would it be the mechanic that would need to document that he's restoring a flood-damaged car? How would you sort that? [LB446]

SENATOR AVERY: Well, you have...any time you have a car that's been significantly damaged to the point where it's likely to get a salvaged title. And you have to have a valid title for any vehicle if you want to transfer that vehicle. [LB446]

SENATOR BRASCH: Um-hum. [LB446]

SENATOR AVERY: Then, they have to undergo inspections. And the point of the inspection, of course, is to determine whether or not it's in sellable condition. And if it's not, can it be made whole enough to operate safely, but with a diminished title? I would consider a salvaged title to be a less than perfect title. It's still transferable, but it's not completely clear of damage. My son used to tinker with cars a lot and he would sometimes buy these salvaged cars, and they were on their way to the junk yard; he could restore them to the point where they were quite workable, and he would then title it with a salvaged title. And you can still sell them. You don't get the same price you can get without a...with a clean title. [LB446]

SENATOR BRASCH: I am familiar with salvaged titles, but... [LB446]

SENATOR AVERY: All this does is allow flood damaged...it changes the definition so it's a little bit more stringent definition that allows flood-damaged vehicles to be clearly designated as salvaged. You can bring a flood-damaged vehicle into the state of Nebraska. Without this definition you could probably camouflage a lot of the damage and get a title that would never...so the consumer would be unaware of what they were getting. [LB446]

SENATOR BRASCH: And that's what I am most curious about is how...enforcing this, how do you know that it didn't get all cleaned up by your son and taken to a dealership or sold on Craigslist or somewhere else? [LB446]

SENATOR AVERY: Well, people who violate the law are subject to the penalties of the law. [LB446]

SENATOR BRASCH: But this would be a requirement that should this be flood damaged, then it is... [LB446]

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SENATOR AVERY: Yes. A flood-damaged vehicle would then be designated for a salvage title only if it met the definition of flood damaged. [LB446]

SENATOR BRASCH: But other salvaged titles, you don't have to declare that this was a rear-ended vehicle or a rolled vehicle or... [LB446]

SENATOR AVERY: There is in statute, let me see if I have it with me here...a number of...on page 2 of the amendment, "salvage means the designation of a vehicle which is:" and then it talks about the late model vehicle that is wrecked, damaged, or destroyed to the extent that the estimated total cost to repair, to rebuild, or reconstruct the vehicle to the condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle...it has to be at 75 percent...has to be damaged to the point that it exceeds 75 percent of the retail value of the vehicle at the time it was damaged. So that's already in law. Also, on page 3, the salvaged vehicle is voluntarily designated by the owner of the vehicle as a salvaged vehicle by obtaining a salvage-branded certificate of title. And then what we're doing is adding (c) to this, flood damage resulting from being submerged. [LB446]

SENATOR BRASCH: Very good, thank you very much. [LB446]

SENATOR AVERY: You're welcome. [LB446]

SENATOR DUBAS: Senator Price. [LB446]

SENATOR PRICE: Thanks, Senator Dubas, Senator Avery. A couple of questions for you, when we take up the same line of talk and consideration about water damage, are we making the assumption that all water damage is always greater than 75 percent of the value? [LB446]

SENATOR AVERY: No, what we're saying is that if the...if this condition exists, if you have damage that is above the floor, then the assumption is, and probably a good one, that there are enough working parts at that level of the vehicle that could have been damaged by the water sufficient to qualify as a salvaged vehicle. [LB446]

SENATOR PRICE: So there is some assumption. [LB446]

SENATOR AVERY: And it doesn't have to be at 75 percent. [LB446]

SENATOR PRICE: Yeah, yeah, I know,... [LB446]

SENATOR AVERY: So much of that is hidden... [LB446]

SENATOR PRICE: I'm kind of making two vessels. Salvage is "75 percent" or "any

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water." So the part that follows up on the "any water" is we have a lot of vehicles, particularly those used in farms, they end up in water on a regular basis up to their floorboards, they're SUV or off-road vehicles. So my question, how long does a vehicle...and I'm not trying to say no, I'm trying to understand that we don't get caught up in something...how long does the water have to be, and what type of water to qualify? Because if I drive...if I'm driving through an area that has some water with...I don't know, a Ranger, a pickup...Ford Ranger pickup truck has fairly low clearance, I could have water very easily. I could be in Omaha and have a quick water up to that floorboard level, and it's gone; it's just rainwater; it's dried away. So my question is, is that now...if I sell it, do I have a burden and a duty to report it as a salvaged vehicle? [LB446]

SENATOR AVERY: You will have an opportunity to amend my amendment. [LB446]

SENATOR PRICE: Okay. [LB446]

SENATOR AVERY: There are people who are going to testify, who brought me an amendment too late for me to include it in my testimony. That would amend the definition to include language about that...essentially says it...that if the water reaches a level that causes damage to any electrical, computerized, or mechanical components. [LB446]

SENATOR PRICE: Thank you. [LB446]

SENATOR AVERY: You might like that better. I don't know why you would, but you might. [LB446]

SENATOR DUBAS: Additional questions? Senator Hadley. [LB446]

SENATOR HADLEY: I just wanted...I just...just a little funny aside. A friend had a car and took it into a dealership, and they were working on it, and they asked him...he said they asked him how long it had been upside down in a ditch of water? And he said he didn't know that it had ever been upside down in a ditch of water, but they showed him where it was on the door panels. [LB446]

SENATOR AVERY: And there aren't a whole lot of mechanical parts there except electrical. So you could probably repair that pretty well. [LB446]

SENATOR HADLEY: It was quite a shock to him when they showed him the putty that had been used in the car. [LB446]

SENATOR AVERY: But this definition...this definition doesn't actually refer to upside down vehicles. [LB446]

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SENATOR DUBAS: (Exhibit 8) Any other questions? Thank you, Senator Avery. Can I have an indication of how many people are here to testify in support of Senator Avery's bill? Okay, I don't see any. How about in opposition? I don't see any opposition. Is there going to be anybody in the neutral? All right, we have a couple in the neutral. All right. I will read into the record; we do have one letter of support for LB446 from Loy Todd with the Nebraska New Car and Truck Dealers Association. Welcome. [LB446]

COLEEN NIELSEN: Good afternoon, Chairwoman Dubas and members of the Transportation and Telecommunications Committee. I apologize for my voice and I hope I don't start coughing, so I'm going to try to get through this really quickly. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I represent the Nebraska Insurance Information Service and State Farm Insurance Companies. When we saw this LB446 in its original form, I sent this out to my clients, and some claims people asked if we could, perhaps, amend it so that the process that they go through in obtaining salvaged titles would be clearer. And so the amendment to LB446 does that for a claims person. So when a claims person runs across a vehicle that has either been flood damaged, pursuant to this language, this amendment language, or has been damaged to the tune of 75 percent of the retail cost of the vehicle, then the insurance company obtains that vehicle and has in the...the process then is to obtain a salvage title. So it will just be a salvage title whether it's flood or salvage. Under the old language it might have required a flood and then a salvage or both or whatever. So this is a cleaner way of doing it. To answer your question, Senator Hadley, with regard to...how...who does it protect? I think that the salvage title system, as long as people use the process in other states, as well as our state, it's just like Senator Avery said, it works very well. Most of these cars, once they're damaged, are...go through some sort of insurance process. And so the claims adjusters are the ones that are responsible, then, for purchasing the car from that individual and then taking the title and making sure that a salvage title is placed on the vehicle. So that's how it works. For those that try to sneak into our state, it's fraud, and just as Senator Avery said, you know, there are penalties. But, generally, I think the process works pretty well. And so, Senator Price, with regard to your question, once, then, we sent this language out, we came to an agreement with Loy Todd and Betty Johnson from the Department of Motor Vehicles and checked with them to make sure that this amendment was okay with them. And they were fine. And in addition to that, PCI had...had at some point given me language, and I...I forgot about it, to tell you the truth, but they have...PCI is the Property Casualty Insurers Association, and Korby Gilbertson will follow me; they have some suggested language about what a flood-damaged vehicle is exactly. And it refers to whether or not the electronic or mechanical apparatus has been deteriorated in some fashion. So she'll follow me and testify to that language. [LB446]

SENATOR DUBAS: Very good. Thank you. Are there questions? Senator Hadley.
[LB446]

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SENATOR HADLEY: Thank you, Senator Dubas. Miss Nielsen, just quickly, are there...are the standards in most states for salvage titles, are they pretty standard across the 50 states? [LB446]

COLEEN NIELSEN: I think they're fairly consistent. I think that in some states...what I...what Loy Todd was telling me is some states actually do have a flood brand, or a salvage brand, and sometimes they have to put both on them, based on their law. But I think that they're fairly consistent, yes. [LB446]

SENATOR HADLEY: So we could be on, kind of, cutting edge, to an extent, by doing something. Because I would assume there's probably more awareness now of flood-damaged cars, with the Jersey Shores, Katrina. Because I had heard with Katrina that you didn't really want to buy a car from the South for awhile down there because you were worried about the flood damage. So, maybe someday the flood damage will be just part of the salvage title like anything else. [LB446]

COLEEN NIELSEN: In every state, yes. [LB446]

SENATOR HADLEY: In every state. Okay, thank you. [LB446]

COLEEN NIELSEN: You're welcome. [LB446]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much. [LB446]

COLEEN NIELSEN: Thank you. [LB446]

SENATOR DUBAS: Additional neutral testimony. [LB446]

KORBY GILBERTSON: (Exhibits 9 and 10.) Good afternoon, Chairwoman Dubas, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America, otherwise known as PCI. PCI represents about 40 percent of the PNC business here in Nebraska which is to the tune of a little over 700,000 vehicles in the state, just to give you an idea of that. I don't want to repeat everything that Coleen talked about to deal with. I've handed you two things, one is a position paper from PCI in regards to salvage titles. And as you'll notice that Senator Avery's bill follows right along with PCI's position on salvag-title laws. And, two things I'd like to point out: if you look at page 2, the top of page 2, contains a definition of water damage or flood damage for vehicles. This morning I attempted to get an amendment drafted really quick to Coleen's...or the amendment that Senator Avery handed out, and somehow my language got put into a totally different section of law. So I'm not giving you that, but I'm giving you what I suggested for the amendment to be

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drafted which is the language at the top of page 2. Also, just to point out, Senator Hadley you had asked about across the nation different...what the different levels are for salvage title. Iowa is a lot stricter than Nebraska; it is 50 percent of the value of the vehicle. There are other states that have it at 80. I think...if you look further down the page, 70 percent are for Indiana and Wisconsin; Florida and Oregon go up to 80 percent. So there are some slight differences, but PCI very much supports any attempt to try to get some laws in place so that cars aren't taken to different states and the titles are washed there. We would ask that you adopt an amendment. The way that this is drafted would, hopefully, administrate into AM127 which is what I think you have in front of you. And with that we would support the bill. [LB446]

SENATOR DUBAS: Thank you, Ms. Gilbertson. Any questions? Senator Watermeier. [LB446]

SENATOR WATERMEIER: Madam Chair, Ms. Gilbertson. I guess I'm still confused a little bit. Let's say there's a state somewhere in the United States that doesn't have this in its law about looking for flood damage. And, typically, I understand that all these vehicles go through the insurance process, and that's what brands and salvaged. If they are in flood damage, but they're less than 50 percent, or whatever it is, in their state, insurance company cleans up the vehicle, pays for the damage, owner gets the vehicle back, okay, go ahead if you want to interrupt. [LB446]

KORBY GILBERTSON: It can depend. It depends. If a state, like what Nebraska will have now, and this is what Senator Price was getting at to a certain extent, if a state has specific language regarding flood damage. [LB446]

SENATOR WATERMEIER: Yes. [LB446]

KORBY GILBERTSON: Then it's one of those either/or things. [LB446]

SENATOR WATERMEIER: Right. [LB446]

KORBY GILBERTSON: If the damage...because it can be the body damage or whatever. [LB446]

SENATOR WATERMEIER: Right. [LB446]

KORBY GILBERTSON: This would add a second level. [LB446]

SENATOR WATERMEIER: But if a state does not have that? And how many don't? [LB446]

KORBY GILBERTSON: I do not know. [LB446]

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SENATOR WATERMEIER: A lot of them? Half of them? [LB446]

KORBY GILBERTSON: I don't know. I can find that answer. [LB446]

SENATOR WATERMEIER: Okay, well, I'm just saying, if it comes out of a state that doesn't have the flood rule... [LB446]

KORBY GILBERTSON: Right. [LB446]

SENATOR WATERMEIER: It's cleaned up; the vehicle owner, you know, doesn't really even understand or know, but it may have been flooded, you know, but the...to the less than the 50 percent value or the 70 percent, comes back out as a clean title, and now all of a sudden it's shipped to Nebraska. [LB446]

KORBY GILBERTSON: Yep. [LB446]

SENATOR WATERMEIER: There's nothing in mechanism in place that Nebraska is going to catch that title. I mean, there's no way that's going to be documented. [LB446]

KORBY GILBERTSON: And there's no way you can catch any... [LB446]

SENATOR WATERMEIER: So I realize that's a real small percentage, but that could happen. [LB446]

KORBY GILBERTSON: It could. And that's why I think...and that's why PCI supports legislation like this to, hopefully, get rid of either bad actors or try to keep the standards high enough so that people aren't ending up with a car that had slept in a ditch for awhile, and didn't...they didn't know about it. [LB446]

SENATOR WATERMEIER: Okay, that's what I assume would happen...the way it would work. [LB446]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much. [LB446]

KORBY GILBERTSON: Thank you very much. [LB446]

TAD FRAIZER: Good afternoon, Senator Dubas, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm local counsel and lobbyist for the American Insurance Association, the National Trade Association of Property and Casualty Insurers. I just wanted to echo what Ms. Gilbertson and Ms. Nielson previously told you. We have not had a chance to see the amendments that they were kind enough to draft, but had somewhat similar concerns, but feel they can probably be addressed through

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the amendment and drafting process. And so we just simply echo their concerns and the desire to tweak some of the definitions to make this a little more workable. And I'd be pleased to try to answer any questions you might have. [LB446]

SENATOR DUBAS: Thank you, Mr. Fraizer. Are there any questions? Seeing none, thank you so much. [LB446]

TAD FRAIZER: Thank you. [LB446]

SENATOR DUBAS: Additional testimony in the neutral? Seeing none, Senator Avery, would you like to close? [LB446]

SENATOR AVERY: Very briefly, I've been reading over the position paper from the Property Casualty Insurers. I think you'll find this helpful. And I am not at all opposed to the suggested amendment that the two neutral...or three neutral testifiers offered. But I would point out as did, I believe, Ms. Gilbertson, that they are suggesting that their definition go in one part of the law, but actually it belongs under Section 7 of 6-171; Section 7, it would be item (c). Your legal counsel would have figured that out. [LB446]

SENATOR DUBAS: Well, we certainly will look into that. Are there any additional questions for Senator Avery? [LB446]

SENATOR AVERY: I have a copy here of the position paper from the Property Casualty Insurers if you would like to have it. [LB446]

SENATOR DUBAS: I think that was handed out to us. [LB446]

SENATOR AVERY: It was? [LB446]

SENATOR DUBAS: So yeah, you should have that. Thank you very much, Senator Avery. [LB446]

SENATOR AVERY: Thank you. [LB446]

SENATOR DUBAS: With that, that closes the hearing on LB446. And we move on to LB624, and I see Senator Pirsch is here. Welcome, Senator Pirsch. [LB446]

SENATOR PIRSCH: Thank you, Chairperson Dubas. And I am, for the record State Senator Pete Pirsch, P-i-r-s-c-h, Legislative District 4, and I am the sponsor of LB624. I'll be brief here; there are others here to testify as well, and I am in the middle of a Revenue Committee hearing. So just briefly, I am introducing LB624 on behalf of the city of Lincoln and other Nebraska municipalities so that the cities and the state of Nebraska can continue the present practice of charging a nominal flat fee for accident

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reports while requiring that it is capped at a reasonable fee; that's the underlying basis. There are, obviously, two approaches. You can...you know, for...services are to be provided by government. They can be paid for by the general taxpayers who are...through a specific user fee, so to speak. And that can, I guess, those two alternatives can...the merits of which...you...this committee, I trust to explore, and I think that the important thing about this particular approach is that it would cap it at a reasonable level. So with that I would ask if there's any questions. [LB624]

SENATOR DUBAS: Questions for Senator Pirsch? Senator Janssen. [LB624]

SENATOR JANSSEN: Maybe a question, more of a comment; I was wondering if...when you get back to the Revenue hearing, you could let myself, Senator McCoy, and Chairman Hadley know what's going on in the Revenue Committee today. [LB624]

SENATOR PIRSCH: Oh, I'm sorry; I misspoke there, Banking, and yes, you're late, we were waiting for you. (Laughter) Today must be Tuesday. Thank you for that correction. [LB624]

SENATOR DUBAS: Additional questions? Senator Hadley. [LB624]

SENATOR HADLEY: Thank you, Chairman Dubas. Maybe I'm just slow, but I...in the summary that we had, some information about that, they keep talking about LB363. How does LB363 play into this? [LB624]

SENATOR PIRSCH: You know, and that's probably best addressed to those who will testify after me, the city of Lincoln. [LB624]

SENATOR HADLEY: Okay, that's fine. [LB624]

SENATOR PIRSCH: I do understand, just briefly, and...that there is a bill that Senator Avery has introduced. And I'm not aware...it had some...a number of meetings over the summer. So perhaps the testifier from the city of Lincoln, who I understand will go next, will give some depth to that question. [LB624]

SENATOR HADLEY: Okay. Thank you, Senator Pirsch. [LB624]

SENATOR DUBAS: Any other questions? Seeing none, thank you, Senator Pirsch. [LB624]

SENATOR PIRSCH: Right back to Revenue. (Laughter) [LB624]

SENATOR DUBAS: Can I get an indication of how many people are here to testify in support of LB624. Looks like we have two. How about opposition? One, two. How about

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neutral? Looks like about four testifiers. Thank you very much. All right, we'll begin with testimony in support of LB624. [LB624]

TOM CASADY: (Exhibit 11) Good afternoon, Senators. My name is Tom Casady, C-a-s-a-d-y, I'm the public safety director here in Lincoln. During the past several years, Lincoln has faced some budget challenges that have resulted from flat tax revenues that our Mayor, Chris Beutler, has introduced an outcome-based budgeting approach in Lincoln as a way of prioritizing our services. In this process, we evaluate each of the city's programs in light of its contribution to the city's overarching goals, and these programs are assigned to one of three tiers based on that contribution. The highest tier programs receive priority in the budget, while the lowest are those that are considered for possible cuts. These decisions are made in consultation with our citizens who participate in surveys, focus groups, and forums to help us prioritize our limited dollars. In recent years, this process has led to many service reductions here in Lincoln, including such things as the elimination of the city forester, reductions in hours of service at swimming pools and libraries, lengthening the mowing cycle in our city parks. The police department hasn't been immune from these cuts. For example, we privatized police parking enforcement last year; we've dropped citizen police academy, and we've eliminated school resource officers in both middle schools and elementary schools, and there have been many other service reductions. During the past three city budget cycles, one of the cuts considered was the police investigation of noninjury traffic crashes on our public streets. This function is in the bottom tier of city services. The investigation of these accidents is primarily a service that helps citizens and insurance companies in settling claims, but it's contribution to public safety is relatively small. And the city surmised that police officers could still respond to these minor traffic accidents; we could help unsnarl the traffic and help people exchange information with one another, but we would not complete the additional investigative steps such as interviews and measurements and diagrams and the motor vehicle traffic accident investigator's report. This kind of a change would save about 45 minutes per crash, and if you multiply that by the number of these types of crashes here in the city, it amounts to the equivalent of slightly more than two police officers. So by eliminating the service we could save about \$150,000 annually by reducing, through attrition, the number of police officers on the force. This proposed cut was one of several that was presented in the Mayor's proposed budget last summer. During budget deliberations, we heard some mixed opinions on this idea. It was my impression that people realized the value of a police investigation, and that even though it was a lower priority than some other city services, it could certainly help resolve matters, particularly when fault or contributing circumstances were in dispute in an accident. Several citizens and city council members asked if the service could be retained with a fee. And after much consideration, including consultation with the insurance industry, Lincoln decided to offset the cost of the police investigation of these traffic crashes, at least in part, by establishing a \$15 fee for each copy of a police officer's traffic accident report. Many cities in Nebraska charge such a fee. In Omaha and Grand Island, an accident report costs \$5; in North Platte and

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Ralston and Gothenburg, it's \$10. The Nebraska Department of Roads charges a fee of \$15 for a copy of the traffic crash report. We chose \$15 in Lincoln because it was the same price that was being charged by the state and also because we projected that a fee of this size would come close to offsetting the cost of the investigation and the preparation of the report by a police officer. As a result of this, we were able to avoid reducing the number of police officers and cutting this service. Even though it is a common practice to charge these kinds of fees, since the fee is not based on the number of pages or the cost of photocopying alone, it is potentially subject to challenge. And there is a bill in the Legislature right now that might remove our ability to charge that flat fee. And if we were unable to charge this kind of a fee, we will once again be considering eliminating the service here in Lincoln. I cannot speak for the other cities that charge fees; I can tell you that in Lincoln's case, our choice was really between a report with a fee versus no investigation and no report at all. LB624 would solve this problem by clearly authorizing law enforcement agencies to charge a flat fee of up to \$15 per traffic crash report. No one has to buy a traffic accident report if they don't wish to do so. These reports may be inspected at police headquarters at no cost. The passage of LB624 would allow us to preserve the service, however, and continue to help citizens cope with one of life's minor crises by producing an investigative report which they or their insurance company could purchase if they wished. I'd be happy to answer any questions. [LB624]

SENATOR DUBAS: Thank you very much, Mr. Casady. Questions? I see none. Thank you very much. [LB624]

TOM CASADY: Thank you. [LB624]

SENATOR DUBAS: Welcome, Director. [LB624]

RANDY PETERS: (Exhibit 12) Good afternoon, Chairman Dubas, members of the Transportation and Telecommunications Committee. My name is Randy Peters, R-a-n-d-y P-e-t-e-r-s, and I'm the director-state engineer for the Nebraska Department of Roads, NDOR. I'm here to testify in support of LB624. The Department of Roads applauds the bill's intent, which is to allow law enforcement offices and departments to charge a fee for copies of accident reports. Additionally, the NDOR respectfully requests to be included in the provisions of LB624 which would codify current practice. The department has charged a fee for the purpose of recovering the costs of these copies for a long time. The NDOR handles a large volume of requests. and we currently charge \$15, pursuant to Nebraska Revised Statute 84-712(3) which allows the custodian of a public record to charge a fee for providing copies of a public record, and as the result of an audit report from 2010. At the time of the audit, the NDOR was charging \$6. The State Auditor's Office determined that the department was not fully recovering its actual costs for the service and sale of those accident report copies. From the recommendation of the State Auditor's report, the NDOR calculated its actual expenses

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at approximately \$15.17 in fiscal year 2010. The department chose to round this charge to \$15. Upon the most recent review of the department's expense of providing accident reports, costs are still below \$16; therefore the NDOR has elected not to increase its charge. Costs currently include approximately two-thirds of the time for one accounting clerk, plus equipment, postage, IT support, and overhead. The NDOR believes that adding the NDOR to LB624 would provide clear, explicit authority for the department and law enforcement agencies to continue collecting a fee for providing copies of accident reports. I thank you for this opportunity to testify, and this concludes my remarks, and I would be glad to try to answer any questions you might have. [LB624]

SENATOR DUBAS: Do we have questions for the director? Senator Hadley. [LB624]

SENATOR HADLEY: Thank you. Mr. Peters, it warms my heart because as an accountant the sentence where you say, you use "calculated actual expenses" and "approximately" in the same sentence, that's just accounting speak. (Laughter) I'll just tell you that that's three wonderful words to use in the same sentence. Thank you. [LB624]

SENATOR DUBAS: Senator Price. [LB624]

SENATOR PRICE: Thank you, Senator Dubas. Thank you, Mr. Peters. So if we have a case where if someone wants the same report, and they want three copies, we're going to charge...you...the department will recoup \$45 for the same amount of time if I record...and just copy one. [LB624]

RANDY PETERS: That's a great question, and I don't know how we handle multiples there. I can research that. [LB624]

SENATOR PRICE: Okay, because I didn't know whether a request...you could have multiple copies made of it sent out to an agent. Or it's: I have one copy, \$15, another copy \$15. [LB624]

RANDY PETERS: We don't stamp it certified official, so I would think you would go down to Kinkos and spend 8 cents to get your next two copies if you wanted three copies. [LB624]

SENATOR PRICE: Well, I hope we weren't providing that, you know, but I don't know because when we talked about that per transaction, it would be nice to know what that really means. Thank you. [LB624]

SENATOR DUBAS: Other questions? The city of Lincoln has indicated that if they're no longer able to charge for this service that they, likely, will not be able to continue providing the service. What would happen if the state was no longer able to charge for

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this...for these reports? [LB624]

RANDY PETERS: Well, the...one of the primary reasons we're in this business is to get data on traffic crash experience so we can make corrective activities. So we'd like to have data before we modify intersection designs or traffic signal timing and that kind of thing. We would survive without the data, but we would lose some data points there. And Director Casady's point in terms of the 45 minutes of investigating time, that mitigates against that loss of data because we also like to have the traffic moving again and prevent secondary crashes. [LB624]

SENATOR DUBAS: Very good. Additional questions? Senator Brasch. [LB624]

SENATOR BRASCH: Thank you, Madam Chairman, and thank you, Mr. Peters. Is this available electronically at all, or do they have to come and physically get this from you? [LB624]

RANDY PETERS: The information is available electronically, yes. As far as the transaction though, we haven't...we don't have a system where you can sit at home and remotely request the accident, so...the crash report, so it does entail a visit. [LB624]

SENATOR BRASCH: Because I was thinking now that you can get your driver's license electronically, perhaps this could all become an electronic transaction between a licensed driver and having the right password, login, or...that it wouldn't require a two-thirds of a clerk, perhaps. [LB624]

RANDY PETERS: That's a good point, although you have to then have a system in place to accept credit cards, and that's something we'd have to work out, yet, in terms of having Pay Pal or a third party person accept... [LB624]

SENATOR BRASCH: I've no other questions, thank you. [LB624]

SENATOR DUBAS: Additional questions for Director Peters? Seeing none, thank you very much. [LB624]

RANDY PETERS: Thank you. [LB624]

SENATOR DUBAS: Additional testifiers in support of LB624? Welcome. [LB624]

RONALD MURTAUGH: Good afternoon. Senator Dubas, my name is Chief Ron Murtaugh. I'm with the Ralston Police Department. [LB624]

SENATOR DUBAS: Excuse me, Chief, could I have you spell your name, please. [LB624]

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RONALD MURTAUGH: Oh, I'm sorry. [LB624]

SENATOR DUBAS: That's fine. [LB624]

RONALD MURTAUGH: Ronald D. Murtaugh, M-u-r-t-a-u-g-h. Committee members, I came in to voice my support of LB624. Just a couple of speaking points from my area, which is Ralston, which is surrounded three sides by Omaha and fourth side by Sarpy County. As previously testified to, we do charge \$10 for an accident report. This fee is attributed to the accident time that it takes to investigate the accident from the time the accident occurs to the time the accident is actually processed, put through our records management system, reported to the state, as well as IT support. All of our accident reports now are being done on-line and uploaded to Department of Roads. In answer to Senator Price's question, in Ralston, if they come in and get multiple copies for the accident report, we charge just the one \$10 fee for the multiple copies. We attribute the rest of it to customer service-type thing versus making them go to Kinkos. And probably, primarily the majority of our customers are third-party vendors that are in a for-profit business. The majority of our customers are insurance companies: LexisNexis, Thomson Reuters, CARFAX, and many of these other companies that have no ties to the community and are only retrieving our information to profit from it. Our cost...we assessed it at the \$10 cost because it's very...it's minimal. As well as, we have customers that come in that are also for profit, but they physically come into our department; they review the accident reports and write down the pertinent information. We continue to send accident reports to an injury lawyer that specializes in injury law in Wisconsin. So I would support the LB624 and strongly encourage the committee to consider that going forward. And with that I'll answer any questions. [LB624]

SENATOR DUBAS: Thank you, Chief Murtaugh. Are there questions? Thank you so much for coming down today; we appreciate it. [LB624]

RONALD MURTAUGH: Thank you. [LB624]

SENATOR DUBAS: Additional testifiers in support of LB624? Opposition? [LB624]

KORBY GILBERTSON: Chairwoman Dubas, members of the committee, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Media of Nebraska Incorporated. I'm also going to add a caveat at the end, I was the, I think, the insurance representative that the city of Lincoln talked to this summer, so I can give you a little background on that discussion as well. But I want to change our focus right now from the issue of making a police report or conducting the investigation and doing the report to what Media of Nebraska concentrates on. Media of Nebraska is made up of both print and broadcast media across the state. We don't focus on the business aspects of media but, rather, First

Amendment issues, open meetings, and public records. This issue falls under the public records category. And why you keep hearing people talk about LB363 is there has always been a continuing discussion regarding excessive requests for records or the ability to charge for records. Heretofore, and I apologize, I'm going to give you a little history, because I'm usually sitting in front of Government Committee, and they've heard it a million times, but what happens is the standard for public records is that the custodian of those records, it is their job, that is part of their duty, is to maintain those records and make them available to the public. One of the underlying principles of that is that the cost or what a person...anyone who walks in and wants a copy of those records, the cost of that should not be a profit center for that municipality or agency or whoever is charging the fee. It should go, rather, to the actual cost of providing the record to the person, or the copy; if it's an excessive request, there is language that is pending in LB363, which will be heard tomorrow in Government, that allows them to add additional expenses into the actual cost of providing the record. However, I think that it was fairly clear from the proponents' testimony that this money that the...excess money that's being used, is being used to offset the time of the officer for preparing this record, not for the access of the person who is asking for a copy of the public record. Senator Brasch, you asked about whether or not they're available electronically. This summer, after dealing with the city of Lincoln, I did go on-line to see how it was, and you just get...you go on-line, you can enter in the accident and the case number or the date of the accident and there's...it is a very simple form to fill out. You have to pay with a credit card; it's \$15. So it's fairly easy. The insurance companies did not take a position on the bill; because they were not opposed to the \$15. Media of Nebraska is opposed to the \$15 because it violates the underlying principles of public record access to the public, which is why it's there, and the citizens for who those reports are completed. With that I'd be happy to answer any questions. [LB624]

SENATOR DUBAS: Questions? Senator Hadley. [LB624]

SENATOR HADLEY: Thank you, Chairman Dubas. Miss Gilbertson, if I heard the city of Lincoln testimony correctly, if they did not get this fee, they would no longer do the reports. So how does Media of Nebraska feel about...I understand open records and making...but if there isn't a record available... [LB624]

KORBY GILBERTSON: Right. [LB624]

SENATOR HADLEY: ...because the city we're not going to do it anymore, you kind of cut off your nose to spite your face? [LB624]

KORBY GILBERTSON: Right, I think...I think that the difference is going from \$2, which is what they previously charged, to \$15 for the accident report is the biggest issue for Media. If I put on another hat...one of the things that struck me; I have to tell you this: this summer when I was contacted, was a fairly blunt statement was "The only reason

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we do these is for your insurance companies." You know, and I thought, "No you don't; you do them for the citizens of Lincoln." It's not about the insurance companies, it's about these people. And it might be minimal and trivial to the police department, but I tell you, if someone gets in their first car accident, they're kind of freaked out, and they're probably going to call the police anyway. And would you rather have people standing out on the street trying to figure out things in between themselves or have an officer there who's there to protect people and help them out? And that's me personally saying, you know, that's what struck me in that conversation. I think it would be sad if the city of Lincoln decided to not do that. [LB624]

SENATOR HADLEY: Just a follow-up on that, and maybe somebody else later could answer it, but if a police person is called to go to the accident, do they have to write a report? [LB624]

KORBY GILBERTSON: No, no, they don't. [LB624]

SENATOR HADLEY: So Lincoln could say fine, we'll come to these accidents, but we won't write a report. [LB624]

KORBY GILBERTSON: Right. They could. There is, under state statute, if you get in an accident that is either an injury accident or fatality, I believe, or more than a \$1,000 damage, with today's cars I'm sure that isn't much, any citizen of Nebraska is required to file an accident report with the Department of Roads, I believe. [LB624]

SENATOR HADLEY: Okay. [LB624]

KORBY GILBERTSON: So, and that's a separate document. [LB624]

SENATOR HADLEY: Okay. [LB624]

SENATOR DUBAS: Other questions? So if the charge was...is it you're opposed to the charge in its entirety, or you're just opposed to a charge that appears to be more than the actual cost of doing that business? [LB624]

KORBY GILBERTSON: The actual cost of doing that business. Yes, we have not opposed legislation in the past that follows the cost of the actual cost of providing the record. And I think that the city of Lincoln and others were a part of the discussion of LB363. It probably should have stayed inside that discussion. [LB624]

SENATOR DUBAS: All right, thank you. Seeing no other questions, thank you very much. [LB624]

KORBY GILBERTSON: Thank you. [LB624]

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SENATOR DUBAS: Additional testifiers in opposition? [LB624]

MATT LATHROP: Good afternoon. My name is Matt Lathrop, L-a-t-h-r-o-p. I'm appearing on behalf of Nebraska Association of Trial Attorneys and testifying in opposition to LB624. To begin with, we heard from the sponsor of the bill that this was a cap on the cost that people might be charged for these reports. And I would just say that I think once something like this...this amendment...all it is is an amendment about a fee. Once that horse is out of the barn, I would expect to see that any agency that could charge \$15, as you heard about as a...a way to make money for the agency in tight times, is going to raise it to \$15. And so that raises some problems for us in our organization on behalf of, not only...or not necessarily the members of our organization, but the people we represent. Many of our clients are people who have been involved in some type of auto accident. Many of the people who call my office, as a lawyer doing insurance...plaintiffs work, are calling because they're having a problem with an insurance company. Many times I can't help them because it's a property-damage-only claim, minimal-injury claim, those kinds of things, but they will tell me, "Here's a problem I have: the insurance company says they can't do anything until I get them the police report, turn it over to them, and then they'll do their investigation and get back to me." So I have a caller who has no car because it's in the shop; they can't get the property damage work done because the police report needs to be in the insurance agency's hands; they have no way to get to work. And many of these people have minimum or collision coverage only, and they're trying to make ends meet, and they can't do without a car. And so, while their claim is waiting for a police report, they're being hamstrung by a \$15 fee. That's very disconcerting to us, doing what we do on behalf of the people that we represent. These reports are not just used for personal injury claims, they are used for people who are involved in property-damage-only claims, as I suggested, hit-and-run claims, injury claims where a friend of theirs may be in the car with them while they were driving, and they were injured, and in order to get their friend the insurance coverage that they paid for, they have to go get these reports. And \$15 may or may not sound like a lot of money; it sounds to me by the testimony that it doesn't seem to be an impressive amount of money, but to many of the people who call me, it's a lot of money. It's a dollar amount that can represent a choice. Just...just by way of doing a little bit of research before I came here, the city of Omaha, where I typically have to get reports, charges \$5; Douglas County charges \$10; Lincoln charges \$15. A search for a Kearney police report revealed that it is on-line electronically, and the charge for that report was \$3. Grand Island also has on-line police reports for \$4.50. The Nebraska State Patrol charges \$15. I went to a Scottsbluff Police Department to see if they had reports available, and for free I can pull up and download my police report; it doesn't cost me anything. That is a reflection of the fact, I believe, that the cost being assigned for these reports has nothing to do with the cost of presenting these reports, but rather, as someone testified earlier, may have more to do with makeup budget shortfalls in other areas by asking citizens to do this, to pay this fee. And finally, I would say, in my

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experience, if we see insurance companies have to pay more money for police reports and insurance companies sit around and, as they occasionally do, talk about their profits and bottom lines, someone may have the bright idea that, "Let's make all of these reports be the responsibility of the person making the claim, so we don't have to pay the \$15 in Nebraska for them," and that's just going to shift it to our citizens and the people that I represent. So, we would be strongly opposed to any fees being charged for these because cities like Scottsbluff are demonstrating that it doesn't cost anything to put these on-line; even the minimal \$3.50 we see in some of the smaller towns in Nebraska reflect that the technology is there, it's available, and we can make these reports available to any citizen who needs them for free. Thank you. [LB624]

SENATOR DUBAS: Thank you, Mr. Lathrop. Are there questions? Senator Brasch. [LB624]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Mr. Lathrop, for your testimony today. Now I'm curious, if what we've heard is the law enforcement officer or...they choose not to do these reports. Could a citizen with their camera, their iPhone, I mean, do their own documentation and submit it? I do a little video tape; I have a laser ruler; I'm measuring...set of instructions out for my insurance card on...I mean, can it...is it law that it must be an enforcement officer or the police reports that insurance uses... [LB624]

MATT LATHROP: I think that's a great question, and to answer it, I'd answer it two ways. First of all, just as a lawyer, if I'm representing you, you've been in a car wreck, and you've done all these things, and you've done them perfectly, I would still have to spend an hour before your deposition, in that case, to tell you the other lawyer is going to beat on you about how you made these measurements, how you took these photographs, what interested parties you recruited to help you with this, and that's going to call into question your claim. That doesn't happen with a police officer. That's the first concern that I would have is citizens documenting their own accidents, although I'm fine with it, and it's always helpful. The second thing is, I am less likely to lie to you at the scene of an accident if a police officer asks me for my ID. On the other hand, if there is no police officer, and I...you say, "Well, we don't need to call the police, let's just exchange information." I can write anything down on the back of a napkin and hand it to you, and then it becomes your insurance company's problem and not mine. And I just think that having a police officer there...now, do they have to fill out an accident report? That's, I think, a separate question. As long as they are filling out the report, I think it needs to be free or at minimal cost for the citizens who need them. But just to say that people can handle this on their own...I suppose, unfortunately, I don't trust people, maybe, as much as you do. [LB624]

SENATOR BRASCH: All right. Thank you. [LB624]

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MATT LATHROP: Sure. [LB624]

SENATOR DUBAS: Senator Hadley. [LB624]

SENATOR HADLEY: Senator Dubas, thank you. Mr. Lathrop, thank you for coming in. The more I listen, it almost seems like we're dealing with a policy question here as to what government should be charging its citizens for. Because we're talking about a police officer going out and having to investigate an accident, and to me the policy question is: should...at what point in time do we start charging citizens for some of the things in the past that we might have done free as a government? And maybe times are changing and, you know, at what point in time do we start charging citizens for things that we might have done free in the past? Would you respond at all to that concept? [LB624]

MATT LATHROP: Sure, I'd be glad to. I think that the argument...or...it's a question that can be asked, but when we talk about first responders or law enforcement, my concern would be, "You know, it really isn't that big of a grease fire, I don't want to pay for the fire department to come; it really isn't that bad of an injury accident, let's not get the police or a rescue squad here." People who aren't qualified to make the decisions about fire, police, and rescue situations making those decisions about whether or not to call the police because they know...or the fire department, "Am I going to have to pay for this?" And at what level do we cut off services. Do we cut off, you know, reception lobby hours in police departments? That may not affect citizens that much. Do we fill out reports that may or may not affect citizens that much? So as a policy question, we can get on the slope and talk about: "What services do we want to provide?" But I think if we provide them, and it's something like fire or rescue or police, I don't think we want to start attaching fees to things because people will make decisions about whether or not they want those services in a time when they shouldn't be making them or for the wrong reasons. And I would hate to see a pressure situation... [LB624]

SENATOR HADLEY: Sure, and I... [LB624]

MATT LATHROP: ...where you and I were are in a wreck and I tell you, "Let's not call the police, I don't want to deal with a \$15 fee." [LB624]

SENATOR HADLEY: I guess I was...the only thing I...I would counter with a fee is not for the policeman coming out, but the fee is for the record after the accident that you want. [LB624]

MATT LATHROP: Sure. [LB624]

SENATOR HADLEY: And whether or not that's...I guess that's the policy we're arguing whether that's an appropriate charge for the record... [LB624]

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MATT LATHROP: Okay. [LB624]

SENATOR HADLEY: ...that the person made of the accident. [LB624]

MATT LATHROP: Okay. And I think what I said earlier was whether or not we actually provide the service of completing accident investigation reports, I suppose, can be addressed in a different time. But I would say as long as the police or a department has the policy that they're going to do these things that those records need to be made available. So if we just confine this to police reports, should we or shouldn't we be doing them? I don't know that the trial lawyers would tell me to have a position on that. [LB624]

SENATOR HADLEY: Okay. Thank you. [LB624]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much, Mr. Lathrop. [LB624]

MATT LATHROP: Thank you very much. [LB624]

SENATOR DUBAS: Additional opposition to LB624? Neutral? Seeing none, I think Senator Pirsch has waived his closing. So we will close the hearing today on LB624 and move to our final bill of the day today, LB351, Senator Harms. Welcome, Senator Harms, good to see you again. [LB624]

SENATOR HARMS: Thank you. Yes, it is, and just today. Senator Dubas and members of the Transportation and Telecommunications Committee, my name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District, and I'm here to introduce LB351, a bill that requires cognitive tests for seniors at and over the age of 80 as a screening tool at the Department of Motor vehicles. Let me begin by telling you where this legislative idea actually began for me. And it begins with our policy brief distributed by our state planning committee and the research done by the public affairs officials at the University of Nebraska at Omaha. Under our research for Medicaid expenditures for long-term care services, we actually tracked the population increase for the elderly with projections into 2030. In 1990, Nebraska encompassed 223,000 potential drivers 65 and older. By the year 2020, we will have 323,620 individuals who will be 65 years and older. In the year 2030, the projections will be 411,527 individuals that will be older than 65 years. If we break these numbers down at an age, let's say, of 85, for example, we would find that in 2020 there will be approximately 44,167 people at 85. If you looked at 2030, it would be 53,190 persons who would be 85 years and older. These increases based on an increasing aging population include those individuals who often live longer because of medicine, because of science, because of technology, and the quality of life that advances now and into the future. It also is based on a large Baby Boom population

that we expect to reach an age that requires more care in a lifetime. For instance and from a national perspective, according to the USA Today's article in May, 2007, the U.S. Census projected that by 2030 those over the age of 85 will sit at 9.6 million, up 73 percent from 2007 and that, and I quote, "road safety experts predict that by 2030, when all Baby Boomers are at least 65, they will be responsible for 25 percent of all fatal crashes" (end of quote). This legislation seeks not only to protect other individuals on the road, but also to protect drivers over the age of 80 who have an illness that affects their ability to drive. Because many of these illnesses slowly become worse over time, the individuals may not recognize that their ability to drive has been affected. This legislation will help us to identify these individuals prior to their becoming a potential danger on the roads for this great state. My intention with this legislation is to have a good policy discussion and to be hopefully, anticipate and identify this problem for future policy makers. In a general sense, during the aging process, senior citizens can experience slower reaction times, declines in vision and memory loss. They're also more likely to have conditions such as Parkinson disease which deals with tremors and slow movements; Alzheimer's which deal with memory, space, judgment, and planning; and they can suffer from a stroke that addresses issues of balance, vision, brain tissue, muscle control; or just develop or experience complications from diabetes. And a lot of times we don't know that some of these things are actually occurring to us as we go through the aging process. Conditions such as these can affect one's ability to drive, resulting in there being a potential danger on our roads in Nebraska. Fred Zwonecheck with the Nebraska Office of Highway Safety states in an Omaha World-Herald article June 5, 2007, "Older drivers do by nature of medical conditions that affect us as we age tend to represent the largest group of medically impaired drivers." Because of the close association between age and illness, it makes sense from both an individual and a public-safety perspective that routine testing be initiated to detect declines in physical or mental abilities that in turn affect the ability to drive safely. This legislation is designed to help us to start identifying drivers with declines in cognitive ability due to illnesses such as dementia. Currently, the state of Nebraska routinely assesses vision in that we require drivers to have a vision test every five years. However, there is no legislation currently in place to identify drivers with impairment in cognitive functions needed for driving like attention, like memory, like judgment, like decision making, that so many of us struggle with as we get older. The addition of cognitive screening tool will help to identify those drivers whose driving may no longer be safe due to illness that affects a person's cognitive ability. Based on information on the Insurance Institute for Highway Safety Web site from September of 2012, most of the age restrictions relate to licensing to drive in other jurisdictions occur at the age between 65 or 70. Let me give you an example. The District of Columbia, for example, requires a vision test for those 70 and older, and a reaction test may be required, and the applicant must bring a doctor's statement to demonstrate that they are physically and mentally competent to drive. In Illinois, renewal applicants 75 and older must take a road test. So there's a whole variety of different avenues that states are pursuing to address this particular issue. In Nebraska, with LB351, the first part of the process will start with the Nebraska

Department of Motor Vehicles. This process would involve just the paperwork related to application, then an eye test, and then a cognitive test. The cognitive test is only as a screening tool. If the individual passes the cognitive test with no negative indications, then that individual would be issued a renewed driver's license. A person would only have to take a standard test, written test, if there is an indication in the cognitive test that there is a cognitive condition that's not very strong. If that is the case, then a follow up standard written test is required so that if there is an error in the screening process, or due to nervousness or whatever might take place to some minor confusion, a successful written test would alleviate that problem and renew the driver's license would be issued to the individual. I might also add that LB351 does not immediately and permanently revoke driver's license without a good cause. It is a bill that simply puts in place an additional screening tool, so that if there is an indication of mental illness, dementia, or problems with judgment or discerning certain situations, a follow-up or written test would be required, but only if there is an indication. If the Nebraska Department of Motor Vehicles wanted to take them for a road test following the standard written test, they would have the discretion to do so. Once again, the cognitive test is merely a screening tool. If an individual passes that cognitive test with no negative indications, then that individual would be issued a renewed driver's license. The cognitive test would be administered by the Department of Motor Vehicles, and I would expect that it would be quick and simple, not requiring a lot of expertise or training, but a test that is highly effective due to its results. We have an expert, Dr. Bonnie M. Dobbs from the University of Alberta in Canada, here to testify in support of this legislation and the SIMARD MD test, which is simple but effective cognitive test to administer at the DMV. Dr. Dobbs is here to speak on this particular subject, so I won't touch it, so we don't get repetitive, and this moves this hearing along a little quicker for you. Dr. Dobbs has a Ph.D. and is a director of Medically at Risk Driver Center, and director of research at the Division of Care of the Elderly, and a professor at the Department of Family Medicine at the University of Alberta in Canada. And I'm looking forward for her testimony today. In this legislation, we stated that the cognitive test would be chosen under the discretion of the Department of Motor Vehicles through the promulgation of their own rules and regulations. This, we believe, averts any issues with regard to licensing and proprietorship, as well as making some financial conditions, better accommodations for the department. Ultimately, I have received communication from constituents from since I've been here, seven years, from my own area about elderly driving and about their concerns about addressing the decision of their parents shouldn't be driving. As a result, I decided to review the data that supports this idea based on projections into the 2030s. It is also important to mention that in the event that there were no dramatic population increases, then we would also have to consider the severity of the accident and its chances for fatality risks involving the elderly person. Even if the overall accidents on our roads do not increase, the condition of some crashes may be more severe, or we may see more fatalities just within the elderly group. We have worked with groups, this summer, such as the Department of Motor Vehicles, Mark Intermill from the AARP, the State Patrol, the Department of Roads, as

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well as the Nebraska Medical Association to acquire significant input for this bill. We brought them all to the table in hopes that we could start the discussion and hopefully create a policy in the future that would address this issue that I'm talking to you today, LB351, brings before you. And with that, Senator Dubas, I'm happy to take any questions. However, Dr. Dobbs is here to talk about the SIMARD MD test and particulars involved in effective cognitive tests. I would like to have her cover those issues, and I'd like to come back and have the opportunity to close. I think I would encourage you...and I know you will, to listen really carefully to her today and her testimony, because I believe she is going to help us begin to establish what I'm hoping is the record and the foundation that we can start to...begin to have this discussion about this kind of a policy change in this great state. It is a major issue and a major problem, and it's coming; we're just beginning to see this issue. As we look into the future and the planning process, you'll find that eventually this will be an issue. And I've always believed that we should do everything we can to get ahead of those...get ahead of those problems long before they actually occur. So I'd be happy to try to answer any questions if I can, or I'd follow up after the other people have spoken. [LB351]

SENATOR DUBAS: Very good, thank you, Senator Harms. Are there questions?
Senator Price. [LB351]

SENATOR PRICE: Thank you, Senator Dubas, Senator Harms. When you were talking about other states doing something...Washington, D.C. doing one thing, Illinois doing another, how many states are administering a cognitive test? [LB351]

SENATOR HARMS: I don't think that I know that there are any here in this state. There are outside of the United States. We would be the first to begin to address that issue. [LB351]

SENATOR PRICE: Okay, and then...you know, and did it go further with questions later on from others, but if we have a five-year period between getting tests...getting a driver's license...how often is that renewed right now? [LB351]

SENATOR HARMS: I think it's five years. [LB351]

SENATOR PRICE: And we have a disease that progresses along, and now we're offering a cognitive test, someone passes that cognitive test, but then six months later maybe they wouldn't pass that test, how do we address that and are we opening the state up to some type of liability because we just said they're good? [LB351]

SENATOR HARMS: No, no, I don't really think you are. You know, the thing about...the kinds of illnesses that we see happening are long term. These things start a long time in advance, and I don't think just over a six-month period you're probably going to have a major thrust unless it's like cancer or something that is really severe. But I do think that

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with dementia and all those things that take place, it starts early. And what this test does, it just gives you an indication that I think there might be a problem here. And that's really important. It may save their life; it may save your family's life or someone else's life. It definitely is not designed to harm or to hurt the elderly. It's designed to, hopefully, find the problem before it might occur, to protect them and their lives. With the number of people that are aging, Senator Price, we're just going to start to see this problem. And I've never been one who thinks about tomorrow; it's always 10, 15, 20 years down the line. And that's what this legislation is about. It will give you the opportunity to build a foundation, or it gives us the opportunity, like for what we're doing here today, just to have the discussion. I think that's important; just to make people aware that this is an issue, and it will become an issue worse in the future. It's a great question, I appreciate it. Thank you. [LB351]

SENATOR DUBAS: Other questions? Senator Janssen. [LB351]

SENATOR JANSSEN: Thank you, Chairman Dubas, Senator Harms. The question I had, and I apologize, I missed just the very beginning of your introduction. [LB351]

SENATOR HARMS: You probably didn't miss much. [LB351]

SENATOR JANSSEN: Maybe you covered it; I don't know. But the question I come up, and even when you introduced this bill, I've been asked, is: why 80? And then: why not everybody? [LB351]

SENATOR HARMS: Why the...what was that again now? [LB351]

SENATOR JANSSEN: Why that age and why not everybody? [LB351]

SENATOR HARMS: Well, like I said earlier, dementia and some of those illnesses start at a long period of time. And it's really about medically-impaired drivers. Okay, this is what's...they're becoming a medically-impaired driver, and what we want to do is try to identify that. And the closer you get...or I guess the older that we get, the more likely you're going to have one of these issues pop up. And that's really what...where it's at. And talking with the medical physicians, or the people who participated in this felt that 80 was a good time to start that evaluation. If you actually did cognitive testing earlier, you might pick it up quicker. But that's really the reason why. I think by the time you get to 80, and I'm not being critical, there are some 80-year-olds that are just as sharp and will not have any problems, but there are people that are going to create or develop this particular kind of concern. And it's catching those individuals to save their lives and other people's lives. It could be 80, you know, you could chose 75 if you would like. But 80 seemed to be the place where...I would be in hopes for myself, which I'm not too far out, that someone would give me a test that says I don't think you ought to be driving, John. [LB351]

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SENATOR JANSSEN: And the only reason I bring that up is, if we're not specific to dementia here, but we're talking about just bad driving or poor reaction time, I think... [LB351]

SENATOR HARMS: It could be, it could be Alzheimer's, and, you know, the other thing that...what the doctors have said to me, sometimes it's the medicine that you take to counter some of these kind of issues that causes a lot of problems for elderly, causing dizziness, you know, and other sorts of things, and poor judgment, eye and hand kinds of judgment, so there is a lot of reason for it. And as we get older, we just live longer now. And a lot of it is because of the science and the medicine, and the, unfortunately, the drugs you can take to counter some of the issues that 40 years ago we didn't have. Those are good questions, I appreciate that. [LB351]

SENATOR JANSSEN: Thank you. [LB351]

SENATOR HARMS: You're welcome. [LB351]

SENATOR DUBAS: Senator Smith. [LB351]

SENATOR SMITH: Thank you, Madam Chair. And, Senator Harms, thanks for your testimony today. Kind of following up on what Senator Janssen was asking, was there consideration given to that cutoff point of 80 years old and the impact on the fiscal note? Because I see that the fiscal note is \$50,000 to \$70,000. And if you drop that down to 75 years old, because again, you know, these conditions may become present well before 80 years old. So is there consideration being given to the fiscal note? [LB351]

SENATOR HARMS: No. I would like say, because I'm on the Appropriations Committee, that would be yes, but, no, in this case it's not, it was not taken into consideration. In fact, I didn't even look at the fiscal note on that aspect. It's really about the issue of trying to catch the person or the people who need the help at that time. It had nothing to do with the cost. [LB351]

SENATOR SMITH: And then also, just a...I know this testing is not foolproof because...maybe some of the things that you're looking for in a cognitive test may not necessarily be present on the day that the test is administered. I mean, there's good days, and there's bad days. And so it's not necessarily foolproof. [LB351]

SENATOR HARMS: That's possible, but nothing is foolproof. But if you have some indication, Senator Smith, that there might be a problem here, I think if you actually take them and go through the standard written test, you're going to find a relationship between the two. If there is confusion at a point, you may...when they give you alternatives like A, B, C, and D, you may find some confusion in that part. I think Dr.

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Dobbs has...can, probably, get into greater detail in regard to cognitive testing. She's a pretty good expert, and I enjoyed visiting with her this morning. I could give you more on that, but I think I'd rather have her tell you that story, and then I'll be able to follow up later. [LB351]

SENATOR SMITH: And then just one more question. [LB351]

SENATOR HARMS: Sure. [LB351]

SENATOR SMITH: And so, if the other states nearby are not necessarily doing a cognitive test, are they doing something else such as a doctor's note or anything like that? [LB351]

SENATOR HARMS: Washington...earlier as I talked, D.C. is doing that. They do a doctor's...I've talked with...we've explored that. And I'm glad you brought that question...thank you for the question. I'm glad you brought that question up because when we got that group of people together...we had more than one meeting this summer trying to work out what is the best way to go and to approach this because we know that it's a forthcoming problem. So what would be the easiest way to do this? And what we were told is that some doctors will actually pick up the telephone, call Nebraska Department of Motor Vehicles and say, "you know what? Sally has just been here, and I think, maybe, you might want to have her revisit her license. I'm not sure she can really be driving." Other doctors have said, and they've also said, "You know, I've had Bill and Jane as patients of mine for 40 years. I don't have the heart to pick up the telephone and call." And the other question is about the liability aspect of releasing that. So I think...that...we decided, in that process, and if you'd like to go that direction, we can go back...you could go back; we could redo things for the future, but there's a lot of other issues here in regard to liability. And the doctors really wanting to do that. You could require them to do it as Washington, D.C. did, you know, if you've got to come and get your driver's license or go through any of the testing, you've got to have the permit from the doctor. I don't know, there's...there are some pro and con on that. And I know how the rural doctors would feel about some of that, but it's really about what kind of a...if you want to move in this...what is the public policy that we would want to have? That's what this is really about. And right now it's probably not...it's probably not a major issue, but it's coming. And that's all I'm trying to bring forward is to, first, to have the good discussion. And I appreciate your questions. [LB351]

SENATOR SMITH: All right, thank you, Senator. [LB351]

SENATOR HARMS: Yeah, I'd be happy to try to answer any more. [LB351]

SENATOR DUBAS: Senator Brasch. [LB351]

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SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Senator Harms. When you had said that you would like us to hear testimony from the expert, the doctor behind you, that brought to my attention that I have received phone calls from constituents asking why we were thinking that the DMV were experts in this field? That it should be a doctor contacting the DMV, or a family member that the DMV was not the best source and resource to say whether they were able or competent physically to drive at any age. [LB351]

SENATOR HARMS: Great question, Senator Brasch. But this test is a very simple test. It's broken down into four parts. Okay, and it's very easy to determine whether there's any confusion or not. They're not going into great depth. You'll find out, very simply, by taking the test whether or not there is a problem or not. It's based down into four areas. It takes less than a minute to grade the test. And it takes less than seven...probably seven minutes to take the test. But the point is, it flags the issue for us that it's a potential problem. And that if you think it's a problem, and you want to give them further testing, you can do that. But it is just a screening process that allows us to at least have the discussion with the person about, you know what, maybe there is a problem here, and we should be looking at it. For me, all of this is not to be critical of our elderly, it's all about safety, and it's about life, and it's about making sure that we have done everything we can to keep them safe. And then also to keep your family and my family and my grandchildren safe; it's what it's about. I mean for me, that's all I really am concerned about. Anything else that I can answer for you? [LB351]

SENATOR DUBAS: Other questions? [LB351]

SENATOR HARMS: Thank you for your kindness, appreciate it. [LB351]

SENATOR DUBAS: Thank you, Senator Harms. [LB351]

SENATOR HARMS: I would like the pleasure of closing, if I may. [LB351]

SENATOR DUBAS: Very good. [LB351]

SENATOR HARMS: Thank you. [LB351]

SENATOR DUBAS: Can I get an indication of how many are here to testify in support of LB351. Did I see two hands go up? Okay. Opposition? Okay. We don't have a lot to testify, so I won't use the lights, but again, just kind of a reminder, if you can keep it within that five minutes or so, which will allow a lot of time for questions. So do we have the first supporter for LB351 to come forward. Do you have a green sheet filled out? [LB351]

BONNIE DOBBS: I don't. [LB351]

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SENATOR DUBAS: Okay. We'll need you to fill out...a page will get you one; we'll need you to fill that information out, and if you'll get it to the clerk. [LB351]

BONNIE DOBBS: Okay. [LB351]

SENATOR DUBAS: That will help give us the information that you need. But if you could start out by stating and spelling your name, that will be helpful too. [LB351]

BONNIE DOBBS: I will. I will. So my name is Dr. Bonnie Dobbs, D-o-b-b-s. Good afternoon, Chairperson Dubas, Senator Harms, members of the Transportation and Telecommunications Committee and other attendees. I am very appreciative to be here today to testify for LB351. I'm going to start off by setting a context. From a traffic safety perspective, there are a number of high-risk segments of the driving population including younger drivers, drunk drivers, distracted drivers, and medically-impaired drivers. Many, if not most jurisdictions, have policies in place targeting younger drivers, the high-risk younger driver, alcoholic-impaired drivers, and increasingly for distracted drivers. Less attention has been paid to the medically-impaired driver. Medically-impaired drivers can be just as impaired and just as dangerous as the drunk driver. Many illnesses affect the ability to drive: macular degeneration, traumatic brain injury, stroke. We also know that many of these illnesses are associated with advancing age. A question was, why start testing at age 80? An examination of crash data indicate that there is an increase in driver crashes starting at age 70, with that increase continuing through the upper age ranges. Fatalities also start increasing at age 70, with deaths per miles driven three times higher for both male and female drivers 80 years of age and older. Thus LB351 addresses a very important road safety concern in that it targets a high-risk segment of the driving population, and that is a medically-impaired population. It's really important to note that the crashes associated with older drivers are not due to the changes associated with normal aging, but rather they're due to the presence of one or more illnesses and/or the treatments for those conditions. Nebraska, like other jurisdictions, does not have an older-driver problem, it has a medically-impaired driver problem. And positioning it as a medically-impaired driver problem rather than an older-driver problem is really important because it allows us to focus on the cause, the correct cause. Compared to drivers with other illnesses: heart disease, lung disease, visual impairment, drivers with a cognitive impairment pose the most severe traffic safety problem. Currently in the United States, 1 in 8 Americans, 65 years of age and older, has Alzheimer's disease. That number was projected to triple by 2050 due to the aging of the Baby Boomer population. If we look at all dementias, the Alzheimer's disease is just one form of dementia. If we look at all of the dementias, 24 percent of individuals 80 to 89 years of age in the U.S. have a dementia, and that increases to 37 percent of people 90 years of age and older. And many of these people will be behind the wheel. LB351 is appropriate in that it focuses, appropriately, on assessment of cognitive ability, and that's because of what I've talked about: the

increase in prevalence of cognitively-impaired drivers in the population. It seems like an easy task to be able to assess someone's cognitive ability to drive, but it's not an easy task. Routine testing that is typically done in the doctor's office or in the motor vehicle setting is ineffective in identifying cognitively-impaired drivers. We also know that in the physician setting, in the family physician setting, that two-thirds of all dementias are missed, and 90 percent of mild cognitive impairment is missed. This is not an easy problem to detect. Because of the importance of a driver's license for mobility and independence, it is important to identify those who are safe to drive and leave them behind the wheel, but it's also important for traffic safety concerns to identify those who are no longer safe to drive. This recognition led us to the development of the SIMARD MD test, the cognitive screening test, that is being used in jurisdictions around the world. The research behind the SIMARD MD took eight years. The SIMARD MD is a nonproprietary screening tool; it's available to the medical community, to the motor vehicle community, free of charge. And it can be used in both of those settings. It's a very brief test, as Senator Harms indicated; it takes about seven minutes to administer and less than a minute to score. You do not need to be a medical professional to administer the SIMARD MD. It consists of four short tests. And the tests that are embodied or embedded in the SIMARD MD are used because they measure the cognitive abilities needed for driving. When we get behind the wheel, we need our short-term memory, our long-term memory, selective attention, divided attention, judgment and decision making. And those are the cognitive abilities that these four short tests capture. People who do poorly on the SIMARD MD have a high probability of failing an on-road evaluation which is how we conducted our research. People who do well on the SIMARD MD have a high probability of passing an on-road evaluation. We know from our research at the University of Alberta, where we enroll a lot of cognitively intact community-dwelling seniors into our research studies, that cognitively-intact, community-dwelling individuals will do well on the SIMARD MD. In closing, LB351 is an important step in improving traffic safety. It is a bill that targets a high-risk segment of the driving population: cognitively-impaired drivers. Introduction and passing of the bill is an important step towards meeting the expectations and addressing the public-health issue posed by cognitively-impaired drivers. [LB351]

SENATOR DUBAS: Thank you very much, Dr. Dobbs. Are there questions? Senator Price. [LB351]

SENATOR PRICE: Thank you, Senator Dubas. Thank you very much for coming in and presenting today. The question is, on cognitive...when you have a cognitive disability; I don't know if it is a disability, but if you have a cognitive impairment, are all cognitive impairments subject to...you're not able to be reversed? I mean, can you have a cognitive impairment that is temporary? Let's say a concussion, and then you have a little plaque buildup, etcetera. I mean, is it always going to be there, or is something that can be...that can dissipate where you can recover your cognitive function? [LB351]

BONNIE DOBBS: It's a good question. If we look at the illnesses or conditions that result in cognitive impairment, there's certainly a segment of those conditions that will result in what I would call an episodic cognitive impairment. So if the condition improves or over time the cognitive impairment will return to a normal level. Most of the conditions that we're talking about, the conditions that are associated with age, are what we would call a progressive, a permanent cognitive impairment. So, for example, if you look at dementias, and dementia is just a term for a family of illnesses, and there's over a hundred causes of dementia. Alzheimer's disease is the most common. Two-thirds of all dementias are...oh, sorry, 90 percent of all dementias are progressive. So the cognitive changes are irreversible. That means that 10 percent are reversible. So the reversible forms of cognitive impairment dementia is very small. [LB351]

SENATOR PRICE: Okay, great. Because when you brought up traumatic brain injury, that gave me cause for pause because we could have a lot of reasons. It could be a young person in a contact sport, and so I wanted to make sure that was understood and on the record that there are some situations, not dementia that you're talking about, where that cognitive impairment can be overcome. [LB351]

BONNIE DOBBS: And again, it's a good question in that...that's not to say that someone with a traumatic brain injury or a concussion shouldn't be screened for cognitive safety to drive, their cognitive abilities needed to drive. But what it means is that we recognize that they're likely going to improve, and so you could initiate that process, put into place recommendations for them not to drive until their cognitive impairment returns to a normal level, and then they can resume driving. And I think that's a really good approach; it's an evidence-based approach. We don't want people behind the wheel who are unable to drive. [LB351]

SENATOR PRICE: Okay, thank you. [LB351]

SENATOR DUBAS: Senator Smith. [LB351]

SENATOR SMITH: Thank you, Madam Chair. And, Dr. Dobbs, thanks for your testimony today, appreciate it. [LB351]

BONNIE DOBBS: Um-hum, thank you. [LB351]

SENATOR SMITH: So you call it a SMART MD? (sic-SIMARD MD) [LB351]

BONNIE DOBBS: Yes, the SIMARD MD. [LB351]

SENATOR SMITH: Okay. Spell... [LB351]

BONNIE DOBBS: It's an acronym so it's S-I-M-A-R-D M-D. [LB351]

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SENATOR SMITH: Okay, SIMARD, okay. [LB351]

BONNIE DOBBS: SIMARD, and it's acronym for Screened for the Identification of Medically-At-Risk Drivers. [LB351]

SENATOR SMITH: All right. So that sounds like it's somewhat of a threshold test for a cognitive disability. So it's not necessarily foolproof, but it's kind of a threshold, so it identifies that there might be a problem which in the bill, as it's drafted, would lead to a written test. [LB351]

BONNIE DOBBS: Um-hum. [LB351]

SENATOR SMITH: Now would the written test necessarily be foolproof and identify that there...as a follow-up to that threshold test, that there is indeed a cognitive disability? [LB351]

BONNIE DOBBS: Um-hum. [LB351]

SENATOR SMITH: It doesn't sound to me that it would. Would that be the best follow-up test to the SIMARD? [LB351]

BONNIE DOBBS: Yeah. It's a difficult question for me to answer in that policies and procedures vary across jurisdictions. And, most of the time, it really is based on policy. Having said that, first off you're right, the SIMARD MD is a screening tool in that decisions about whether to revoke a license or the person's ability to retain a license shouldn't be based solely on the results of the test. Rather what it is is what I'd call it a case-finding tool. Someone comes in, there's concerns about their ability to drive, or, for example, legislation: you start screening at age 80, if there's indications that their cognitive abilities have declined, then there is a process that is put in place. And that's up to each state, each jurisdiction to decide on that process. [LB351]

SENATOR SMITH: So, in your expert opinion then, would a written test authorized under the Motor Vehicle Operator's License Act, would that be a test that would better identify cognitive disabilities, about the same as what this SIMARD would do or less than what the SIMARD would do? [LB351]

BONNIE DOBBS: The...in my expert opinion, the two tests measure very different things. So the written tests that is usually given to individuals in a motor-vehicle setting usually assesses Rules of the Road and basic driving skills. And that's not what's impaired with cognitively-impaired drivers. So I see the two as measuring two different types of drivers. Every jurisdiction in the world requires people to meet a certain standard, to understand what a stop sign means, what a yield sign means, to know the

basic Rules of the Road, and you have to go through a process in order to get your license. And then, through our lifetime, we understand those Rules of the Road, and we've developed pretty solid abilities. But then, when a dementia or an illness occurs, it's not the basic driving skills, and it's not the Rules of the Road that are affected, but rather it's the more complex driving behaviors like turning left at an intersection into an oncoming vehicle. And if we look at cognitively-impaired, demented drivers, that's one of the most frequent driving errors that they make. And it's not because they didn't understand what the Rules of the Road are; they've just lost the cognitive capacity to drive. [LB351]

SENATOR SMITH: Okay. And I'm just going to continue to follow up on that just a little bit more. So if they've failed the SIMARD test, and it's possible that they have a cognitive disability, that would not be captured with that written test. [LB351]

BONNIE DOBBS: I don't know the answer to that question because we haven't done that research. But, knowing the population that would fail the SIMARD MD, they would have a hard time even completing a written evaluation, I suspect. [LB351]

SENATOR SMITH: Okay. Thank you, appreciate it. [LB351]

SENATOR DUBAS: Additional questions? Senator Hadley. [LB351]

SENATOR HADLEY: Senator Dubas, Dr. Dobbs, thank you so much. We've used an age of 80 and requiring this for a renewal of a license. Would there be any advantage to using the same concept to people younger than 80 who might have been in an accident and having them have to come in and take the test? Let's say you're 65 to 80, and you cause an accident. Should...would it help to have those people come in too? [LB351]

BONNIE DOBBS: Yeah, and...absolutely, in...but jurisdictions have to start somewhere. If you look at illnesses that affect cognitive abilities, those illnesses can occur at any age. And a perfect example would be diabetes. Individuals with long-standing diabetes often have an associated cognitive impairment, and it's because of the reduced blood flow to the brain. So you could have someone who has not managed his or her diabetes well that's 55 years old that is cognitively unfit to drive; and you could have an individual with diabetes who has managed their condition well at 75 who would be cognitively intact to drive. So it's not age; it's rather that the presence of the illness and what the illness does to the functional abilities for driving. Having said that, we know that many of the illnesses that do affect driving are age associated, and dementia is a perfect one. What's the perfect age to start testing? Again, that's a policy decision. I often distinguish between what I would call age-based testing and age-trigger testing. And age-based testing is when a jurisdiction just simply, based on discussion, based on policy, says we're going to start testing everyone at age 60 or 65 or 70. Most often it's 70, 75, 80. If you look at the research evidence, when the increase in crashes start happening, it's

usually at around age 70 and for sure by age 75. And that's pretty consistent across jurisdictions. So, from a research perspective, an evidence-based perspective, there certainly is...there are grounds to start looking at people at age 70, definitely at age 75, and there is solid evidence to start looking at people's cognitive abilities to drive at age 80. [LB351]

SENATOR HADLEY: People who have this problem, if they are in an accident at a younger age than 80, do they have a higher rate of being involved in a second accident than a person that is not cognitively impaired? [LB351]

BONNIE DOBBS: If they're cognitively impaired? [LB351]

SENATOR HADLEY: Yeah, if they are cognitively impaired at say 65, and they have an accident, they would have a greater chance of being in another accident than a person who is not? [LB351]

BONNIE DOBBS: I'm not familiar with any data that indicate that, but I would suspect that it's absolutely the case. [LB351]

SENATOR HADLEY: Okay, okay. Thank you, Dr. Dobbs. [LB351]

BONNIE DOBBS: One of the other points that I might make is, one of the most difficult issues with the cognitively-impaired driver is that the cognitive impairment not only robs them of their ability to drive, it robs them of their insight that their driving is impaired. And that's where most older drivers self-regulate. So they tend not to drive during rush hour; they tend not to drive during inclement weather; they tend not to drive at night. And it's that insight into the normal changes associated with aging that are the reason for the self-regulation. The cognitively-impaired, the demented driver does not self-regulate because they do not recognize that their abilities have declined to an unsafe level. [LB351]

SENATOR HADLEY: Thank you. [LB351]

SENATOR DUBAS: Thank you, Senator Hadley. Additional questions? Senator Price. [LB351]

SENATOR PRICE: Thank you, Senator Dubas. And I don't want to belabor the point, but you've triggered a thought, and that is: are there levels of cognitive impairment? I mean, could we say that a person is cognitively impaired at a lower level, and then it gets worse? I really...I suspect the answer is yes, but at what level of cognitive impairment does it really begin to impair driving? Because if...you could be impaired, but not impaired driving. So now we're kind of setting thresholds, and it could vary from person to person. I mean, when I think about how alcohol affects people, it affects

different people differently. So if we go down this path, how do we set a threshold to say: that's too much impairment? [LB351]

BONNIE DOBBS: And that's the importance of using an evidenced-based tool like the SIMARD MD is that you then start making decisions based on the person's functional ability as opposed to a diagnosis. And the reason I answered the question that way is if you look at the research literature, individuals with a progressive dementia such as Alzheimer's disease, two-thirds of people in the early stages of the illness are unsafe to drive. What that means is a third are still safe to drive. So we don't want to start making decisions; we don't want to start revoking driving privileges because a person has a diagnosis of a dementia. So, the orientation towards testing the functional ability to drive is the right approach and using evidence-based tools to do that. The other thing that is, I think, really important for me to mention is the SIMARD MD differs from any other cognitive test in that we developed it to predict driving. There's many cognitive tests that are available for the medical community to use to detect cognitive impairment or dementia. But those tests don't predict...they're not very good predictors for driving, and that's why we started the research. We recognized the need; we recognized that the medical community is struggling with this; we recognized motor vehicles are struggles with this, so we thought if we could develop a test what...first off, could we? And if we did, does it predict on-road driving performance? And that's how we conducted our research. [LB351]

SENATOR PRICE: Thank you. [LB351]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much, Dr. Dobbs, for coming today. [LB351]

BONNIE DOBBS: Okay. Thank you. [LB351]

SENATOR DUBAS: Appreciate your testimony. Further testimony in support of LB351? [LB351]

ANN FROHMAN: Good afternoon, Madam Chair, members of the committee. My name is Ann Frohman, for the record that's spelled A-n-n F-r-o-h-m-a-n. I'm an attorney and a registered lobbyist on behalf of the Nebraska Medical Association, and I'm here today to testify in support of LB351 as a matter of public health. The Nebraska Medical Association has been involved in this issue for a number of years, and they've taken great interest dating back to, I believe, approximately 2000, when they put together a task force of their physicians to look at the issues with safe driving and the elderly population and what they could do to assist families in those difficult decisions when the time comes to, you know, get the drivers off the road. In doing so, the members...member physicians of this task force really spent a lot of time on doing what they could do: education. The American Medical Association put out a guideline for

assessing and counseling the elderly drivers. And physicians on this task force put together initiatives to get the word out, in essence, to their member communities so that they could work with families to make sure that they're doing the right thing and that, really, when the time comes there is clear evidence of cognitive decline that would reach to the level of being a public-safety issue. The NMA also worked with then director, Bev Neth, at the Department of Motor Vehicles to move forward the campaign, as well, and took all the steps that they could take to work through these issues with families. But, based upon the testimony you've heard here today from Senator Harms as well as Dr. Dobbs, the issue continues to be one of concern. And there needs to be more effort than simply the efforts and the steps that have been taken to work with families. We think it is an increasing concern; that it is a matter of...if you take anything away from today, remember the statistic of almost 25 percent at age 80. That's a large number. So, from essence of where do you grab the number, well, that's the low-hanging fruit, I think. Could it be lower, yes. There are sensitivity issues with that. Physicians work hard to keep their elderly patients in their homes. They work hard on making sure that...in looking at these issues, that there is an understanding and appreciation for alternatives, for them to get the transportation they need. And with all that said, we still think that this initiative today is one that draws the line, is a good solid balance in determining when to draw that line, that it's crossed over from public health to public safety. And that's where it takes, you know, your commitment and time to think through this as to what is the best approach. With that, I think...I don't really have much more to offer other than to say that we think in here recognizing that the testing itself is left to the Department of Motor Vehicles is a good approach to it as well because they can adjust and, you know, if they need to update that down the road as testing comes out, and they can refine it and do what they need to do to make sure that it's current, and that it works. Thank you. [LB351]

SENATOR DUBAS: Thank you, Miss Frohman. Questions? Senator Hadley. [LB351]

SENATOR HADLEY: Thank you, Chairman Dubas. Miss Frohman, thank you for your testimony. Is there any obligation for a doctor, physician who knows a person is cognitively impaired and their driving could be impaired to report that to the appropriate facilities if they know the person is driving? [LB351]

ANN FROHMAN: We call that an ethical obligation, as opposed to a legal obligation. But, yes, that was part of the campaign that I mentioned that they spent a lot of time making sure that they went through the steps with the families, none too soon. You know, you have the issue of, is it a temporary cognitive impairment which can occur with medication or some sort of an infection? You know, they work through those issues to make sure that they know what they're dealing with, and that this is a matter of a permanent decline. And so...so, yes, ethically that's where they are. [LB351]

SENATOR HADLEY: Okay. Because I guess...you know, I go back to what I said

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earlier. I understand at age 80 that we would start doing this kind of testing, but I worry about the person who is also 65 who has the same problem that somebody over 80 may have, but we don't have a mechanism to find them. And maybe a physician might be a frontline person to help us in that case. [LB351]

ANN FROHMAN: And they are. Interestingly, not all physicians have a close patient relationship. You know, sometimes they're short term, but definitely that's...that is why the Nebraska Medical Association has spent so many years on this issue. [LB351]

SENATOR HADLEY: Thank you, Miss Frohman. [LB351]

SENATOR DUBAS: Senator Brasch. [LB351]

SENATOR BRASCH: Thank you, Madam Chairman, and thank you, Miss Frohman, for your testimony. And I am very happy that you are speaking for the Nebraska Medical Association and as an attorney. My concern, that I stated earlier with Senator Harms, was: I do believe that that relationship with a physician is best to be between physician and patient, if anything, for the sake of dignity, to have to go to the Department of Motor Vehicles, some place you go every five years or...and have a stranger tell you that we're worried...or something is not right. And so I would encourage for the Medical Association to be the frontline and to work with family members. In our particular family, it was the physician that worked with my aging mother at the age of 85, where it was a family decision; dignity was very first and foremost and handled there rather than going down to the DMV and learning that I need to see a doctor. So that would be...and are the physicians willing to work with this in more of a legal manner rather than the Department of Motor Vehicles, or has that been discussed? [LB351]

ANN FROHMAN: Absolutely, but we do view the road safety as a matter of Department of Motor Vehicles. We do struggle with the issues of best and efficient use of your physicians and the challenges we have with that. So not to say that they aren't on the front lines, clearly they have been and they intend to be. But it does get to a point where you may not have family engagement. You may, you know, mother living 200 miles away who is great on the phone, and you think her driving skills are great. So those sorts of things. It's just another way of approaching the issue because it puts a hard and fast rule where right now it's just a matter of: is it caught and do the families engage? [LB351]

SENATOR BRASCH: And if this individual is not thinking clearly enough to drive, then probably at their physician's they're possibly not taking their medications correctly, and there is other life-threatening issues at stake for that person beyond driving, would you agree with that or...? [LB351]

ANN FROHMAN: Absolutely. Yes. [LB351]

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SENATOR BRASCH: Okay. I have no other questions. Thank you again. [LB351]

ANN FROHMAN: Thank you. [LB351]

SENATOR DUBAS: Other questions? Senator Smith. [LB351]

SENATOR SMITH: Thank you, Madam Chair. Miss Frohman, thank you for your testimony. Since the objective here is to be definitive in the diagnosis of a problem, do you feel that the written test that's a follow-up is foolproof and that it is appropriate to measure or to follow up on the cognitive screening test, based on the Medical Association, do you feel like that's...that the written test is the appropriate follow-up to that screening? [LB351]

ANN FROHMAN: It's an interesting approach because, I think, what it tries to do is put the same rules in play that apply to all of us, in terms of passing a test. And so I can understand why they put that in there from that perspective of, "Okay, if you can't pass the cognitive, can you pass the driver's test?" But, with that said, I do think there's probably other ways that it could be handled than, probably, just this approach. [LB351]

SENATOR SMITH: So it may not necessarily be a foolproof test, following that initial screening? [LB351]

ANN FROHMAN: Yes, I would think maybe they could craft it in such a way to, you know, reflect the concerns. [LB351]

SENATOR SMITH: All right, thank you. [LB351]

ANN FROHMAN: You're welcome. [LB351]

SENATOR DUBAS: Senator Price. [LB351]

SENATOR PRICE: Thank you, Senator Dubas. Thank you for coming and testifying in the capacity you are testifying. Do you know anything in current statute that precludes the administration of this cognitive test today? [LB351]

ANN FROHMAN: I do not know anything specifically other than the current laws applied to all ages, so if folks are being singled out, I would expect you would need a lot to do that. [LB351]

SENATOR PRICE: Okay, great, because in looking at it...and I actually think that we could do this today, if we wanted to. There are three different sections of statute that talk about the ability of the director to require, to appear, to administer tests, to

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promulgate rules and regulations...that if we wanted to, we could...they could do this right now in any location, and I'd say... So I appreciate you, you know, stating that. [LB351]

ANN FROHMAN: Taking what's proposed and just enacting it as a regulation, is that what you're suggesting? [LB351]

SENATOR PRICE: Exactly. [LB351]

ANN FROHMAN: Okay. [LB351]

SENATOR PRICE: And I don't believe...so that's my question. I didn't know that...we need to go this...if it's valuable, we probably should be doing it now, and then we don't...you know, I didn't know that we were saying we couldn't do it right now. [LB351]

ANN FROHMAN: Yes, we would be supportive either way. [LB351]

SENATOR PRICE: Okay, thank you very much. [LB351]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much for coming today. Additional testifiers in support of LB351? Those in opposition? [LB351]

JACK SAMPLE: My name is Jack Sample, so simple it's spelled "sample," S-a-m-p-l-e. And my reasoning for being here today is because I'm an opponent to the bill, and I'm going to give you some background on who I am to give you some idea of why I'm speaking as I speak. First of all, I started out as a young person and retired as a military veteran. Having spent 20 years in the military, I had an opportunity to see drivers in many states, in some of the areas which have been listed previously. After I left the military, after 20 years, I became a licensed examiner for the Department of Motor Vehicles in the state of Nebraska. After about a year and a half as an examiner, I was selected for public relations, which meant I went out and gave drive tests for people who are having difficulty obtaining a driver's license. And I had a few experiences. I had an 80-year-old-plus lady from Beaver Crossing, Nebraska, who put me on the front porch in Goehner, Nebraska. I had a lady who was in her 40s or 50s who put her car forward instead of reverse in Broken Bow, Nebraska, on the east side of the square. We went forward; we hit a light, the city light, and we were being showered by glass. Again, age was not a requirement; she was somewhere between 40 and 50. And I ended up on the sidewalk by giving...when giving a test to a 16-year-old on the east side of Grand Island because I was...she turned east on a one-way street going west. And any of you are familiar with Grand Island know, consequently, that there is quite a bit of traffic on that particular street. And so I ended up on the sidewalk to avoid getting hit by a car. So I've had an opportunity through my lifetime to drive with people of various ages. And, like I said, I was selected to give special licenses for people who had difficulty. For example,

there was a lady whose husband was buried in her town, and... Excuse me. She wanted to go to the grocery store. We ended up giving her a special license. And I don't know whether they still do that now or not, but we gave her a special license where she could go five miles. She could go to the cemetery on Memorial Day; she could go to church in her town; she could buy groceries in her town. I think that you can find that you can still do this; you can still get these special licenses for people who qualify but are not qualified to drive out on the highway or to drive as some of us are accustomed to driving. Following the Department of Motor Vehicles, I attended seminary and have served as pastor of several churches from Bellevue, Nebraska, to Kimball, Nebraska, with some stops in between. This has also given me an opportunity to see the diversity of the ability of driving and people of different areas within the state of Nebraska. For example, a person in Kimball may drive a little bit different than a person in Bellevue or Omaha. Plus the fact that I had an opportunity to be a chaplain for the Good Samaritan Society, and I served a year as the state chaplain for the American Legion for the state of Nebraska which has given me an opportunity to travel throughout the state and have an opportunity to see a various amount of people. I mention this background because I believe it enhances my knowledge in age diversity...in age diversity. In one of the e-mails I received from Senator Harms, he indicated that someone in his district had asked him to introduce the bill in order to keep some of their older family members from driving. So I question you, Senators. I question you with all my heart. Since when has it become the responsibility of government to enter into family and medical issues? Since when? I, myself, my mother, I had to...she no longer could drive; I was her son; we went out for a drive in an area in Nance County, Nebraska. She was just not capable of driving. I told her she couldn't drive anymore. She was my mother. She got mad, yes. She sold her car for about a third of the price of what it was worth. I never once considered...never once considered asking the government to become involved in driving restrictions for a loved one, a family member. I feel that we as family members take our responsibility seriously enough that we have to have the courage to tell them when they're done driving and not expect you, who have certainly have enough on your table as law makers, to reach into the family and tell them, "Well, you can't drive anymore." Senator Harms also referenced projected growth of senior citizens in our state in the years ahead. Well, I'll tell you what, if we keep putting restrictions on expected growth of senior citizens in our state, we're not going to have to worry about senior citizens coming to our state. They're going to go to Arizona. They're going to go to Iowa; they're going to go to Iowa where their military retirement is not totally taxed. They're going to go to other states. I belong to the Fleet Reserve Association in Omaha and you'd be surprised at the number of retired persons who live in Iowa simply because of some of the rules and regulations that we have mandated within the state of Nebraska. And so it is interesting that Senator Harms mentioned, well, at the rate of the senior citizen growth we're going to be in trouble. Well, we're not going to have a senior citizen growth. I can assure you that there are places like Arizona and other places where these people can go and live and not be restricted or at least have driver's licenses that will satisfy their needs to get to the grocery store and so forth. I come

before you totally convinced, ladies and gentlemen, senators, law makers, that the current verbiage, as it is presented by Senator Harms, is prejudiced, prejudging, prejudging an individual. Who amongst us, who amongst us can totally prejudge one individual or any individual and say, "Hey, you can't drive." So we establish an age. I know an 88-year-old man who can probably out drive a lot better than I can. And I am smart enough...I am smart enough myself, and I'm sure you are, and I'm sure the people sitting in back of me are smart enough to know that a restriction in our ability to drive. Perhaps we can't...don't like driving at night anymore. Perhaps the blue lights bother us some who are going down the highway. We can make those decisions...we can make those decisions. And having someone mandate something to us is telling us that we're not the brightest bulb in the socket, is it not? And so that's an individual situation. How do we plan to pay for the transportation costs of those citizens living in communities where there are no grocery store, no doctor, no pharmacy? You folks are senators; you're unique; you're a unicameral; you're the only one in the United States, and so as members of being senators, you're responsible to all areas and all geographical regions within the state of Nebraska. You're not...your responsibility reaches beyond the region that elects you. She lives in Belgrade; she is 82 years old. She has no children of her own; she has some nieces and nephews, but they moved away. She has a sister-in-law who is also in her early 80s. And in her town of Belgrade, there is no grocery store. There is no doctor. There is no pharmacist. Are we, the state of Nebraska, in a position where we can afford to provide transportation at the time of her need so that she can be transported to the medical professional that she may need at a specific time? Can any one of us predict when we're going to have a heart attack? Can any one of us predict when we're going to need to be rushed to the doctor? Belgrade is a town of 175 people. But she has a house where she can afford; \$14,000 is the value of the house. Her husband was an early Korean War veteran. She had no choice but to live there. She can't go someplace else: she don't have the money. Do we have the money to put her in a home? Do we have the money to guarantee her transportation? Do we, the law makers of this state, are we ready to pay for her transportation? Are we willing to pay for a home for her to live in, consequently, so she can go to the doctor at the time of need? A lot's been said about dementia. And I can tell by your eyes that you're getting tired, and I don't blame you; I'm tired too. But I'm going to give you a little test. I'm going to ask you tonight, just before you go to bed, to give yourself what will be a pre-dementia test given to you by the Department of Motor Vehicles. You have one minute to complete the test. You start with number 100; you start counting backwards by 7. You come up with 93, 86, 79, 72, 65, and you can take it from the rest of the way. If you can complete it in 60 seconds, you don't have a thing to worry about. You're going to pass your dementia test when you reach the age of 80. Senator Harms well could be upon something. I'm not against Senator Harms. I'm not against him. I have some complaints that he has sent out some standard e-mails because I have received many, many, many, many, many, and some of them are...say the very same thing as his response, which is good. But I think maybe we should listen to the doctor, we should listen to the attorney, we should listen to you, our lawmakers,

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and work out a system that covers all people because, ladies and gentlemen, all means all and there's variances in all ages from 40 to 30 to 60 to 90; there's variances. So to say one age is...and very simplistically put, prejudging an individual. All 80-year-olds are no more alike than all 30-year-olds are alike, or 16-year-olds are alike. There's a diversity in age. I thank you for the opportunity you've given me, to listen to me. Thank you very much. [LB351]

SENATOR DUBAS: Thank you very much, Reverend Sample. Are there questions? Senator Smith. [LB351]

SENATOR SMITH: Thank you, Madam Chair. Mr. Sample, thank you for your testimony today, and I just have one thing to say, well said. [LB351]

JACK SAMPLE: Thank you, sir. [LB351]

SENATOR SMITH: Thank you. [LB351]

JACK SAMPLE: Thank you very much. [LB351]

SENATOR DUBAS: Additional questions? Thank you for coming forward today, Reverend Sample. [LB351]

JACK SAMPLE: Thank you. [LB351]

SENATOR DUBAS: Thank you so much for coming. [LB351]

JACK SAMPLE: Thank you. [LB351]

RICHARD HEDRICK: I'm Richard Hedrick, and I'm against LB351. [LB351]

SENATOR DUBAS: Sir, can I have you state and spell your name, please. State and spell your name. [LB351]

RICHARD HEDRICK: I still can't hear. [LB351]

SENATOR DUBAS: I need you to state and spell your name. [LB351]

_____: Your name please and spell it. [LB351]

RICHARD HEDRICK: What? [LB351]

SENATOR DUBAS: Can you go tell him to spell his name. [LB351]

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KAITLYN EVANKO-DOUGLAS: State and spell your name. [LB351]

RICHARD HEDRICK: What? [LB351]

KAITLYN EVANKO-DOUGLAS: State and spell your name. [LB351]

RICHARD HEDRICK: Oh, Richard Hedrick, H-e-d-r-i-c-k. [LB351]

SENATOR DUBAS: Thank you. Go ahead. [LB351]

RICHARD HEDRICK: Lincoln, Nebraska, and I'm against LB351. When I read that people over 80 would be subject to a cognitive test to get a motor vehicles license, I wanted to know what kind of a consecutive (sic) test I could get or be subject to as I'm over 80 years old. I got LB351; a new paragraph was added to the old bill. The paragraph on consecutive (sic) test is only general terms. There was nothing that I could go on...what kind of test I would be subject to when I get a permit. There's nothing in LB351 could tell an inspector how to inspect a person over 80 years old. In short, LB351 is an unconstitutional law. To be constitutional, a person is subject to a law must know what they are subject to, being specific, not willy-nilly. If you go driving a car, you know how much...what speed you can drive; it has to be posted. This does not tell you anything as you do not pass cognitive test, then you can go back to the written test that everybody has to take. I recently got ripped off by a unconstitutional law the state has in court. Legislators Ken Haar and other Harr have a bill to change this law. When I showed my wife this bill, her comment was, "They just don't want old people to drive." Thank you. [LB351]

SENATOR DUBAS: Thank you. Any questions? Thank you very much for coming. Further opposition? [LB351]

JUDY ZOHNER: Good afternoon, Chairperson Dubas, and committee members. I am Judy Zohner, and last name is spelled Z-o-h-n-e-r. And I'm representing...I was asked last minute, but I'm not as eloquent as some of them before me, but I have to say most things were covered. And I represent the members of the Vietnam Vets, of which I'm a member, and the Senior Lincoln Center here in Lincoln. So, anyway, I guess my main concern is...one is...just and this question was asked, and I agree with this; we look at it as age discrimination, why 80 is picked. Because there are several inexperienced younger drivers that are having fatalities. I take it a little personally because my father is 88, has never had an accident, but he does limit his driving within Lincoln, Nebraska. I, myself, limit my driving during the daytime; I don't drive at night. But I think the question is, and it's been brought out, and I agree with it, that there are people of various ages that have problems. And I guess the other thing that our concern with...when I met with the groups, was that we feel that the physicians should be the ones to determine this. We're not sure that Motor Vehicles has the medical background to do these tests. And I

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know it's going to be, as was said earlier, stated that it depends on the relationship with the doctor and the family and the patient. And it's a very emotional issue; I don't deny that. It's, like I said, I go back to that, it's mobility and independence for a lot of people. And because I work with the Senior Center, that is the way that they can stay...from going to a nursing home or the way...if they're capable. I mean, I'm talking capability here, not just...I mean, I understand, and I appreciate the direction this is going for screening; I really do. And that's about all I have to say. And I appreciate your time; I really do. [LB351]

SENATOR DUBAS: Thank you...thank you, Judy. Are there questions? Senator Smith. [LB351]

SENATOR SMITH: Thank you, Miss Zohner, for your testimony today. You know, I would agree that, you know, the age, it seems like there could be problems at an earlier age than that, and older age than that, so it's...that point of setting it at 80, I think, is a bit problematic. And then not...some of my line of questioning earlier was whether that written test is a good follow-up to a screening test. But with all that said, I think you're in agreement that there...there could be some problems out there and that it is a, it...it...perhaps, I think in your opinion, it should reside with the doctor and the family. So how do you trigger that? Is that where...do you believe that there is a compromise somewhere that the DMV can...should require something from the doctor? Or should it all be directed from the physician without any prompting by the DMV? I mean, how do you see that being handled? [LB351]

JUDY ZOHNER: Well, when I read the bill, just the part that's changed, but after that I think the law enforcement can also request a test if they find that they see inability or if there is too many citations on their record. I mean, there is some things that can be done; it's not foolproof and the tests aren't either. It was brought out earlier, and I appreciate that, because my parents have had friends that have dementia; they come and go. There might be a good day and a bad day. And it's hard to recognize what's the good day and the bad day. But I think there's a lot of younger drivers that are inexperienced, as opposed to some of the...I mean, I don't think the age cutoff should be. I think it should be all the drivers. That's why we test them, I guess. But I guess I have a thing about the discrimination of saying, "You're 80 years old..." Because both of these groups that I've talked to, they're concerned; they think that they're, you know, being selected as part of the group that people...they're nervous about it. [LB351]

SENATOR SMITH: So you're not opposed to some way of ensuring that the highways are safe, of course, but you're...it's just the methodology you're looking at and the age that you're looking at that you feel is the problem. [LB351]

JUDY ZOHNER: Correct, you know, I want it safe, yes. [LB351]

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SENATOR SMITH: All right. Thank you, I appreciate it. [LB351]

JUDY ZOHNER: Okay, thank you. [LB351]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much for coming today, appreciate it. [LB351]

JUDY ZOHNER: Okay, thank you. [LB351]

SENATOR DUBAS: Additional testifiers in opposition to LB351. Is there anyone in the neutral? Welcome back. [LB351]

BEVERLY REICKS: Thank you, Chairwoman Dubas, members of the Transportation and Telecommunications Committee. I am Beverly Reicks, R-e-i-c-k-s, first name, Beverly, B-e-v-e-r-l-y. I am the president and CEO of the National Safety Council, Nebraska. I've been listening to the testimony, and you'll see by my sign-in sheet that I've changed from proponent to neutral, neutral to proponent a couple of different times on this issue. I think that a great deal of thanks needs to go out to Senator Harms for raising this issue and bringing this to the forefront and starting this policy discussion. He is right; this is an issue that we need to talk about as a state, and we need to figure out how we're going to address the issue of medically-fit drivers. The reason I'm sitting here in a neutral capacity is for reasons that have been raised by all of you, particularly when you're talking about picking one age and asking that age to perform a cognitive test. When this particular issue that we're talking about, Alzheimer's--dementia, really can strike any age. I'll refer you to the 2012 Alzheimer's Disease Facts and Figures Study, 72 pages of worth; it's on the alz.org Web site in which it talks about the 5.4 million Americans who are suffering from Alzheimer's--dementia, some form of dementia, as Dr. Dobbs talked about. Two hundred thousand of those individuals are under age 65; 4 percent of them are 65, 6 percent are 65 to 74; 44 percent are 74 to 84; 46 percent 85 and older. So it can hit really any age. I think we need to...we need to discuss the issue, not so much as an age-based problem, but as a medical problem. The cognitive testing, SIMARD test that Dr. Dobbs talked about, I think is fabulous. I have had the opportunity to work with her in my previous career as the DMV director. She and her husband were, I think, on the forefront at that time, and I think still kind of remain on the forefront of this issue and trying to assist in the cognitive testing arena, both with a physician and with the Departments of Motor Vehicles throughout the state, throughout the country, excuse me. My other concern is whether or not, and, Senator Brasch, I think you raised this issue, whether or not this is properly placed with the Department of Motor Vehicles. It seems to me we need something in between the physician who possibly and probably, most likely should be doing the cognitive testing; they are the professionals. They should understand and be able to address the issues that that person is going to have. I mean, if you give a cognitive test to someone, and they fail; you can imagine they're going to be concerned; they're going to have questions. I'm not sure the DMV has the

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personnel to handle that kind of an issue. It seems to rest with the physicians squarely. Then you have the DMV on the other end whose really...whose job is not to teach people how to drive, but to assess their driving capabilities and, ultimately, make a decision about whether or not they should hold a driver's license. In the middle, you have a bunch of safety organizations throughout this state that have certified driving instructors who day in and day out field these kinds of questions from families: "I'm concerned about mom or dad's ability to drive, can you help me do an assessment of their driving abilities?" It seems like we have everything in place. We just need to figure out how to bring it all together and put a comprehensive solution in Nebraska to address the entire issue of medically-fit drivers. We could certainly be on the forefront if we tackle this issue in Nebraska, really on the leading edge of the...for the whole country. As Dr. Dobbs said, there is no DMV using this kind of test at this point. And this is a sticky problem that needs serious people at the table to discuss a comprehensive solution. With that, I'll end my comments, and I'd take any questions you might have. [LB351]

SENATOR DUBAS: Thank you so much. Questions? Senator Price. [LB351]

SENATOR PRICE: Thank you, Chairwoman Dubas. Thank you, ma'am, for coming to testify in your new capacity, new name, new everything. Going back to my earlier question, is there anything in current statute that would preclude, notwithstanding concerns "should they," but that would preclude someone in DMV administering this test now regardless of age? [LB351]

BEVERLY REICKS: Well, Senator, I think, just from a practical standpoint, and I don't really want...I'm not speaking for the Department of Motor Vehicles; I'll just give you my historical background as a previous agency director. You don't do a lot of things outside of your statutory scope and your statutory responsibility because, first of all, there could be an appropriations issue, a funding issue. You might lack the funding to accomplish this kind of cognitive testing. I'm assuming there is some sort of a...maybe a licensing fee associated with the testing. It would be whether or not that kind of appropriation exists within the DMV. And then you've got the issue of... There's no expressed statutory authority to give the test, and you take some administrative action from that test; you're probably opening yourself up to an appeal that you may or may not prevail on as the agency. Within the construct of the statutes, the DMV has the discretion to administer...well, they have the authority...expressed authority to issue...to administer the vision test. They also have the discretion to administer written and drive tests. Every applicant that the DMV sees, they have that discretion. And much of the screening that's going on today, I would throw out to you, is happening in a discretionary fashion. Some people...the DMV day in and day out sees individuals who have either a medical issue, whether it be a physical or a cognitive issue, and those issues are being dealt with by screening done, conversations with the applicant; maybe the tests are given, maybe they're failed. But, primarily, I think they use, by and large, the physician's statement. If

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an examiner believes that a person doesn't have the capacity or may have some medical issue, they can ask that individual to...they refer that individual back to their physician; the physician then completes a physician's statement, maybe a vision statement as well, and then that comes back to the DMV with a recommendation from the physician. [LB351]

SENATOR PRICE: Well, I appreciate your thorough answer. I just was looking in the current statute where it does talk about physically or mentally incompetent, and I think within that...obviously, we have identified a situation that warrants investigation and that it could happen today without having, like you said, prescribe it in statute. Thank you very much. [LB351]

BEVERLY REICKS: You're welcome. [LB351]

SENATOR DUBAS: Senator Hadley. [LB351]

SENATOR HADLEY: Chairman Dubas. Thank you for coming again. If we use the same kind of arguments we've been using with concerns about aging, why do use, basically, 16? Why don't we say if kids mature...or maturing at age 12 why can't they...I mean, at some point in time we have to give...we have to put an age on the bottom, right? [LB351]

BEVERLY REICKS: Um-hum. [LB351]

SENATOR HADLEY: I mean we don't want a 5-year-old getting behind the wheel of a car. [LB351]

BEVERLY REICKS: No, I don't think you do. [LB351]

SENATOR HADLEY: So, I guess if we're willing to do it at the lower level, is there something magic that we shouldn't do it at age 80 or 75? [LB351]

BEVERLY REICKS: No, I don't think there is any magic to it. I think that what you're doing right now is the policy discussion, is the same thing that occurs in terms of the lower age. This is one of the states that has one of the lowest age for access to driving: 14. Nebraska...we allow kids to drive at a pretty early age here and that has been just a function of public policy discussions and lawmakers doing their job and setting their laws. You, as lawmakers, always have the ability to make those decisions within the confines of that public policy decision. And I think you would always express it in, you know, the...just the privilege of the individual outweigh the public safety interests or however you might discuss that. But, no, Senator Hadley, you certainly have the ability to set an age in statute. [LB351]

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SENATOR HADLEY: Well, and the other thing, and I guess it's more of a statement: listening to Dr. Dobbs, I think she was very careful to talk about evidentiary-based... [LB351]

BEVERLY REICKS: Yes. [LB351]

SENATOR HADLEY: ...research, which I think is very important because so often here...our...we have people asking us to make policy on anecdotal evidence. [LB351]

BEVERLY REICKS: Yep. [LB351]

SENATOR HADLEY: And I thought she made a reasonably good case for picking an age because of what the science says about how this happens when you get older. [LB351]

BEVERLY REICKS: Um-hum. [LB351]

SENATOR HADLEY: So I think we're not arbitrarily...I would hope that the body will not arbitrarily pick an age, but we will look at the evidence and look at the experts and pick that potential age where we are doing the best good for the best people. [LB351]

BEVERLY REICKS: Certainly, Senator Hadley, we're lucky to have Dr. Dobbs here today testifying on this issue. She is a preeminent expert in this area. And I think you're right; you always want to look at fact-based...you want to look at evidence to be making decisions. But in the broader sense of if...as Senator Harms has expressed, the aging population and the prevalence of dementia and Alzheimer's, as it continues to grow. Do we need to...do we need to take a broader look at the individuals who may be subject to this? And I would just say, the question, I think, that is probably most important is, is the cognitive test rightfully placed at the DMV? [LB351]

SENATOR HADLEY: Thank you. [LB351]

SENATOR DUBAS: Thank you. Senator Smith. [LB351]

SENATOR SMITH: Thank you, Madam Chair. And, Ms. Reicks, thanks for your testimony. You said you're familiar with Dr. Dobbs, and...so you're familiar with the SIMARD MD testing. Do you think that it would...how...would it be difficult to incorporate that testing, you know, more broadly to where it is just part of the eye test and everything else that you do for normal testing regardless of age? [LB351]

BEVERLY REICKS: Well, I think it becomes challenging as to what you do with the data once you do the test. If you're going to subject everyone to it, what do you do with it? What happens...or how does the DMV examiner use that data with that applicant? And

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maybe this is a good start, to say there should be something that the DMV can do. I think right now that kind of thing is happening on a very informal basis where the...it's not a test, a cognitive test, per se; it is a conversation and an observance of the individual. Is the applicant following you in what you're asking them for? Are they answering the questions that you're posing to them? Kind of just a normal conversation. I mean if you've...I, unfortunately, have the experience, my mother has been diagnosed with Alzheimer's. And I, actually, about five years prior to the diagnosis would look at her like "You're not responding to the questions I'm asking you." It was a little...it was strange. You could just tell she was changing, her cognitive functioning was changing. And I think if we...if we are around people long enough, you see that. The DMV focuses and tries to train examiners to be able to be aware of what the applicant is telling you, not only from the perspective of: is the person tracking? Is the person lying to you? Sometimes that's what they're also looking for. But are they tracking you? Are they with you in the conversation? And if they have concerns, then they can move to the...having the applicant take the written test and potentially the drive test. But at this point, there is no...there is no...there's not a designed or a prescribed test that those examiners are to be giving. [LB351]

SENATOR SMITH: So that's kind of going back to Senator Price's questions that today the examiners are trained to have a Q&A with the applicant, and then the examiner can direct them to take a written test. [LB351]

BEVERLY REICKS: Yes, and they do that. Day in and day out, they are asking people that they believe either would have a cognitive impairment or a physical impairment. Most of the physical impairment really goes to taking the drive test, whether or not you can safely operate the motor vehicle. [LB351]

SENATOR SMITH: Okay. Great. Thank you. [LB351]

BEVERLY REICKS: Um-hum. [LB351]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much. [LB351]

BEVERLY REICKS: Thank you very much. [LB351]

SENATOR DUBAS: Welcome. [LB351]

MARK INTERMILL: (Exhibit 13) Thank you. Senator Dubas and members of the committee, my name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP on a topic that has generated more discussion in AARP meetings than any other...in my tenure with AARP. And I think it's a very important topic, and we applaud Senator Harms for raising this because it's about assuring that the roads that we drive on are safe. And I think that's the common ground. I think that everybody,

regardless of whether they're a proponent, opponent, or neutral, can agree on. It's also important because we, as Senator Harms referenced, we are going to see an increase in the numbers of people over the age of 80. I am right in the middle of the Baby Boom. Right now, there are 80,000 people over the age of 80 in Nebraska. By the time I'm 80, in 2035, there will be 130,000: an additional 50,000 people over that age who will need to get around their communities, go to the grocery store, go to the doctor's office, all those things that we need to do to be mobile in our communities. What we are suggesting to you today is that this is an important topic that needs a lot more discussion. And our recommendation to the committee is that this would be a good topic for an interim study. And, rather than just say that, I also brought some questions I think that would be good for the committee to consider during the interim. I think...one of the questions is: what factors are there that make...may make a driver unsafe? I completely agree with Dr. Dobbs that this is about identifying medically-impaired drivers. And while there may be a greater likelihood that medical impairment occurs at a certain age, it can occur at any age. And this is one of the policy issues that...concerns that AARP has about this bill is that it does set a specific age rather than look at the conditions that might indicate that a driver is impaired. I think we need to look at: How do we identify those drivers? What steps can be taken to make sure that those individuals who may have a medical impairment that makes them an unsafe driver are identified? And whether that's working with the medical community or the DMV through a screening process, I think is a question that needs a lot more consideration. What is the role of healthcare professionals? Some states require doctors to report a diagnosis of Alzheimer's disease to the DMV which then...that's what triggers the screenings. What sort of measures can be applied to enhance safe driving? AARP has a drivers safety program where we do driver training with older drivers, specifically designed to address some of those issues that changes of sensory perception and discussions about: at what point should a person consider retiring from driving? We also have a car-fit program that helps older drivers sort of work out the interface between themselves and their cars so that it's optimal, that they can see over the wheel and reach the pedals and all those things. Another issue I think that...along those lines is: How do we design roads to make sure that they're safe for older drivers? A majority of the crashes that older drivers are involved in are left turns. And I know here in Lincoln there are certain intersections where there are problems with left turns. I think we can look at design of those intersections, of signage, of being able to...the markings on the highways that will help us avoid some of the accidents that we can...that we might be able to avoid with older drivers and all drivers. And also for those drivers who, willingly or unwillingly, retire from driving, how do we make sure they get around their community? We don't want to be in the position of isolating an individual on the basis of them not having a driver's license, which in Nebraska, the automobile is the primary means by which we move around. I did take a look, in preparation for this hearing, at some of the data from the Department of Roads and the Department of Motor Vehicles and attached to my statement are a couple of charts that lead me to believe that older drivers aren't the problem. The second chart looks at the accident rates by age group. And the accidents

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per thousand drivers for those over 75 is about a third of what it is for drivers under the age of 25. It's not that...it's the second lowest of any age group. The only lower one is 65 to 74 year olds. So I think we need to move into this area of making decisions about testing on the basis of age very carefully. I think medical impairment is an issue that we need to look at in terms of driving...driver safety. But there are a number of...range of issues that we need to consider in that process, and I think we need quite a bit more time to really come to a good conclusion about the best approach in public policy to make sure that our highways are safe. So with that I'd be happy to try to answer any questions. [LB351]

SENATOR DUBAS: Thank you very much, Mr. Intermill. Are there questions? Seeing none, thank you very much for coming. [LB351]

MARK INTERMILL: Thank you. [LB351]

SENATOR DUBAS: Additional testimony in the neutral? Seeing none, Senator Harms, would you like to close? [LB351]

SENATOR HARMS: Senator Dubas, thank you very much. This was good testimony, and I think we heard a lot of really good information. The one thing I would encourage you to do, and you can do whatever you would like because you have the power to do it, is to put this into a study committee. I think there is some valid...validity in that request because I think it's something we're going to have to look at in the future. And whether you have a doctor decide to do it, or whether you have, you know, someone else take the responsibility, I don't know. But the purpose of this was...was to get it...get to the table to have the policy discussions because, I can honestly tell you, I think in the future we're going to see some serious issues. And it's just getting ahead of this, trying to address the issue. And that's really what this is about. It's not about trying to harm the seniors or people who are 80 years old; that's not the intent. The intent is that we need to have a discussion about this. We need to look at whether or not you want to have an age limit, or whether or not you want to have Nebraska Department of Motor Vehicles make that decision on their own. Or do you want to have that be done by the doctors?...or however you want to it; there's so many different options. And that's why I think it's really important, and I'd really encourage you to do that. And I also would encourage you to bring Dr. Dobbs back to help you take a look at this. She is an expert in the field, and we're just fortunate that she was willing to come on her own, by the way, and testify. That tells you about her commitment. So I thank you very much for that. And I'd be happy to answer any questions. But I hope that we can go a step further and do a study. [LB351]

SENATOR DUBAS: Senator Smith. [LB351]

SENATOR SMITH: Thank you, Madam Chair and Senator Harms. I wanted to echo

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what some of the folks said during the testimony and that is how much we appreciate you bringing this issue forward. And I think it's great to have...to start the discussion. And I'm kind of with you; I'm not certain what the right... [LB351]

SENATOR HARMS: I don't know. [LB351]

SENATOR SMITH: ...course of action is,... [LB351]

SENATOR HARMS: Yep. [LB351]

SENATOR SMITH: ...but I appreciate you starting the discussion. [LB351]

SENATOR HARMS: Yeah. These discussions, like this, are always fun for me because you're really starting to look at policy. You're starting to look at the policy decision; you're starting to build a platform for future decisions we're going to make, and I love these sort of things. It's fun for me. It's just designed that...to make us think, and I know we'll come up with the right decision. But I don't know what that decision is at this point. It's going to take a lot more minds to figure it out. And I thank you very much. And I know you're tired. I can see that look in your eyes. I've been there myself. [LB351]

SENATOR DUBAS: Thank you very much. [LB351]

SENATOR HADLEY: You know, I got to get home before it gets dark; I got to drive.
(Laughter)

SENATOR HARMS: Yeah, I know. You're going to be in trouble though.

SENATOR PRICE: No, you don't. We know better.

SENATOR DUBAS: We did have an Exec Session scheduled, and it can be a quick one. (See also Exhibit 14.)

SENATOR HADLEY: I move that we go into Exec Session.

SENATOR SMITH: Second.