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Judiciary Committee
February 25, 2016

[LB720 LB885 LB1058 LB1072]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 25, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1058, LB1072, LB720, and LB885. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Ladies and gentlemen, the bewitching hour has arrived and we have now a quorum. The...my name is Les Seiler. I'm Chairman of the Judiciary Committee. On my right is Senator Williams from Gothenburg; Senator Morfeld from Lincoln; Senator Krist from Omaha; our legal counsel, Diane Amdor; our clerk, Oliver--I can never pronounce your last name--I'll just call him Ollie; and Senator Ebke from Crete. Got it. And our two pages, they're the working people. We want you to fill out...if you're going to talk on the subject, make sure you get entered a speaker's sheet. Fill it out. When you come up to the chair, one of the pages will come and get your materials and your speaker information. When you sit down, say your name, spell it for the record, and that way we can get going right away. You will be on a time limit. The green light will come on. Two minutes, the yellow light will come on. And when the red light comes on, stop. If we need you to go further, one of the senators will ask you to continue or wrap up. Let's see. Oh, by the way, these mikes are super sensitive. So if you say anything slanderous in the back row, you may be on public record, so we don't want that. I think we're ready to go. Senator Crawford, you may introduce LB1058. Oh, we will go in the order in which it's published.
[LB1058]

SENATOR CRAWFORD: (Exhibit 1) Thank you. Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm here to open on LB1058, a bill to establish a clear and uniform process for tobacco compliance checks conducted by tobacco prevention coalitions across our state. This issue was first brought to my attention by Tobacco Free Sarpy and Cass, and you will hear from their chair, Alex Brown, shortly. In Nebraska, tobacco compliance checks are conducted by three entities: the Department of Health and Human Services; tobacco coalitions; and the FDA. Both DHHS and tobacco prevention coalitions work with local law enforcement or Nebraska State Patrol to conduct these checks. Each entity should, and likely do, have procedures they follow when conducting these checks. LB1058 creates a minimum for those processes and checks. The minimum contained in LB1058 is based on best practices DHHS follows under the Synar Amendment, as well as statutes from other states. It is our understanding that there are eight tobacco prevention coalitions currently conducting tobacco compliance checks across the state. These include Cass, Sarpy, Douglas, Lincoln, Platte, Hall, Lancaster Counties, and the Panhandle. In 1992, Congress enacted the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act. As part

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of this act, an amendment was introduced by then-Senator Synar, required states to conduct tobacco compliance checks as part of the substance abuse block grant. It is our understanding that the department conducts these compliance checks with the assistance of the State Patrol and Omaha Police. The pages are now circulating an amendment to LB1058 that I bring based on suggestions provided by Sheri Dawson, director of behavioral health for the Department of Health and Human Services, based largely on what is required for their Synar checks. One, it changes the age range of participants to 15 to 18 years old. Two, it clarifies that the notice of positive compliance check in which the business does not sell to a minor could be posted in a newspaper of general circulation, as is the practice of the department and several tobacco coalitions already. Finally, the amendment better clarifies that the process outlined in LB1058 only applies to compliance checks conducted by tobacco prevention coalitions. During our meeting with Director Dawson, she shared that our retail violation rate is low, with violations nearly half of what is found in other states. Almost all of our retailers who sell tobacco products are doing their part to ensure tobacco does not get into the hands of minors. LB1058 ensures there is a clear and consistent process known to coalitions and to retail establishments when these compliance checks are conducted. With that, I'm happy to try to answer any questions that you may have. [LB1058]

SENATOR SEILER: Questions? Seeing none, thank you very much. What was the name of the witness you wanted to call right off the bat? [LB1058]

SENATOR CRAWFORD: Alex Brown. [LB1058]

SENATOR SEILER: Okay. [LB1058]

SENATOR CRAWFORD: Thanks. [LB1058]

SENATOR SEILER: Will he please come forward? [LB1058]

ALEX BROWN: (Exhibit 2) My name is Alex Brown, A-l-e-x B-r-o-w-n, and I'm the chair of Tobacco Free Sarpy County. I'd like to start by thanking Senator Crawford for inviting us here to testify today. You know, across Nebraska we've been largely successful as tobacco coalitions in reducing youth use of tobacco. We've seen tobacco youth smoking rates reduced by 20 percent since 1993; cigar use reduced by 10 percent since 2003; and smokeless tobacco use reduced by 1 percent in that same time frame. And a lot of this is in part to the fact that tobacco coalitions like Tobacco Free Sarpy County follow the Centers for Disease Control guidelines for best practices in terms of comprehensive tobacco control policy. And one of those guidelines is the use of law enforcement-initiated tobacco compliance checks as part of a bigger structure, because evidence has shown that that can help reduce youth tobacco use rates. For our part in Tobacco Free Sarpy

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County, we've seen compliance by retailers under these compliance checks--that is, retailers that are properly refusing sale of tobacco products--go up from 88 percent in 2006 to 98 percent in the most recent round of studies. So that brings us to LB1058. So currently in Nebraska, under the statute 53-1122, there is an explicit allowance for alcohol compliance checks and for the use of these underage cooperating individuals. There is no such explicit allowance for tobacco and the use of these individuals in tobacco compliance checks. And so what Tobacco Free Sarpy would like to see, and what LB1058 does, is add that extra layer of clarity in terms of putting tobacco compliance checks on par with alcohol compliance checks. And we feel that by doing this that law enforcement will continue to be able to make sure that retailers are not selling tobacco products to minors, which in turn will help us to continue to see those reductions in youth use rates that we have been seeing in the state of Nebraska. So with that, I would like to take any questions that any of you may have. [LB1058]

SENATOR SEILER: Questions? Senator Pansing Brooks. [LB1058]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you for coming to testify, Alex...or Mr. Brown. I was just wondering, is this happening in other states? [LB1058]

ALEX BROWN: We've seen other states that have initiated these specific provisions for tobacco and it's my understanding that provisions of this bill have kind of pulled on some of that work that other states have done. But my expertise is specifically in Sarpy County and what we do currently in Nebraska. [LB1058]

SENATOR PANSING BROOKS: Okay. So it's my understanding that it talks about having the parents have to agree to the child, because it is a child,... [LB1058]

ALEX BROWN: Um-hum. [LB1058]

SENATOR PANSING BROOKS: ...doing this and acting in this capacity. So I guess, has there been any discussion about protecting the child that, if they don't agree or if the parents don't agree, the child doesn't lose the job? [LB1058]

ALEX BROWN: Well, I mean, and I think our law enforcement partners can speak to those specific interactions. But for our part, it's important to see that these compliance checks are happening. And so to the extent that parents may not agree with the child participating in this, I think that's something that is important to have both the parent and the child on the same page in terms of that, since we are dealing with underage individuals. And so that's... [LB1058]

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SENATOR PANSING BROOKS: Right. But generally the place of employment could count on their other employers to...the employees to...I mean to expect a 16-year-old to be able to try to sort of run this sort of deal where they try to catch somebody their own age I think is a difficult thing to ask a child to do. [LB1058]

ALEX BROWN: Well, and perhaps those retailers or those clerks that are selling those products, they may not be the same age as those underage individuals. And like I said, I'll let my law enforcement partners speak to those specific procedures as far as what happens during the course of a compliance check (inaudible). [LB1058]

SENATOR PANSING BROOKS: Okay, because I think alcohol is a different issue than cigarettes here because kids that young can't sell alcohol, can they? [LB1058]

ALEX BROWN: No. [LB1058]

SENATOR PANSING BROOKS: So why are we talking about them in this discussion? [LB1058]

ALEX BROWN: So I think what we're talking about is providing specific protections for those individuals that are cooperating with law enforcement in terms of being able to go into these establishments, what those procedures are, because it's clearly laid out for alcohol, but not so for tobacco, and so putting those clear procedures into place so that the cooperating individual knows exactly what they can and cannot do so that those compliance checks are consistent throughout and they're fair to both the law enforcement and to those retailers as well. [LB1058]

SENATOR PANSING BROOKS: Okay. And I just want to clarify that I'm not in favor of selling to minors; it's just I want to make sure that a minor who is barely able to, you know, contract or make decisions on his own isn't being forced to do something against his will or would lose a job for not doing it. [LB1058]

ALEX BROWN: Okay. [LB1058]

SENATOR PANSING BROOKS: Thank you. [LB1058]

ALEX BROWN: Yep. [LB1058]

SENATOR SEILER: Senator Ebke. [LB1058]

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SENATOR EBKE: Thank you. Okay, so let me just clarify what this is doing. [LB1058]

ALEX BROWN: Sure. [LB1058]

SENATOR EBKE: What we're talking about here are I guess now 15-, 16-, 17-year-olds, right,... [LB1058]

ALEX BROWN: Um-hum. [LB1058]

SENATOR EBKE: ...who go in and attempt to purchase? Is that correct? [LB1058]

ALEX BROWN: Yes. [LB1058]

SENATOR EBKE: They go in and attempt to purchase to see if the retailers are being compliant with the law and carding and making sure, is that right? [LB1058]

ALEX BROWN: That is correct. [LB1058]

SENATOR EBKE: Okay, thank you. [LB1058]

SENATOR SEILER: Anything further? Anything further? Seeing none, thank you very much for your testimony. [LB1058]

ALEX BROWN: Thank you. [LB1058]

SENATOR SEILER: Next proponent. [LB1058]

BOB LAUSTEN: Good afternoon. My name is Bob Lausten, spelled L-a-u-s-t-e-n, and I'm the chief of police for the La Vista Police Department. I'm here to testify in support of LB1058. Our agency has been doing tobacco compliance checks for at least 20 years, on our own and working with Tobacco Free Sarpy. We conduct our operations using a process and protocol that's almost the same as what we do for alcohol compliance operations, with the exception of using younger informants, usually 15 to 16. I think that any time we're dealing with what I'll term as "informants," especially juveniles, law enforcement should have policies and procedures in place. With private contractors, such as Tobacco Free Sarpy, the need for guidelines to me is even higher. I believe this bill will make that happen. What I think is critical in the provision of the bill, that it removes the violation of 28-1427. And what that is, is somebody that

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misrepresents her age or goes in and purchases tobacco and is underage could actually be prosecuted. So currently when we're doing operations, they could be...we have a minor technically violating the law, going in, attempting to buy cigarettes. It's what we did for alcohol compliance where we eliminated that and made it okay for kids to work with law enforcement to buy alcohol. If a license holder...let me back up. As originally written, the way I'm reading this bill, and I might be wrong, is the exemption would apply to the informant as long as they're working with the private contractor. I just wanted to make it clear, if this bill goes forward, that if they're operating with law enforcement, they should also have that provision where they're not going to be held as violating the law. If a license holder is successful when a compliance check is done, Tobacco Free Sarpy sends them a letter that says that an operation was conducted and they passed. What we do sometimes, we'll go right back in after somebody has passed and let the clerk know then, there, and on the spot that they passed a compliance check so they're not finding out later. But they also get a letter. As police chief, I'm comfortable with the standard operating policies and procedures when it comes to this. I believe it protects the agency, the retailer, and society. As Alex mentioned, compliance is excellent. In the past five years, we've only issued ten citations for tobacco sales to a minor. Seven of them pled guilty and had fines ranging from \$25 to \$100, and the other three cases were dismissed. And I'll take any questions that you have. I think if you have any follow-ups to what the process is for a kid to sign up... [LB1058]

SENATOR EBKE: So, okay. [LB1058]

SENATOR SEILER: Senator Ebke. [LB1058]

SENATOR EBKE: So occasionally you have...I noticed some language in there about interns or...and that sort of thing that may occasionally work with the police department or...and so they can be used, as well, if they're younger or kids or junior police officers. I don't know what kind of things you guys have. But so you could have kids that are there as sort of...and that can be part of their internship, to help with that, correct? [LB1058]

BOB LAUSTEN: If they would want to do that. A parent also has to agree to that. A parent has to sign a form. There are specific guidelines we cover with the kids. We use, you know, typically maybe sophomores and juniors from high school. [LB1058]

SENATOR EBKE: So do they...are they provided with some training, you know, what kinds of things to do, you know, go in and just ask for a box of Marlboros or, you know, whatever? [LB1058]

BOB LAUSTEN: We try to have them buy the cheapest thing. [LB1058]

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SENATOR EBKE: (Laugh) Right. [LB1058]

BOB LAUSTEN: They'll go in. They meet with the police officer before. They go over exactly what they can do, what they can't do. Sometimes a law enforcement officer will go in and be in the...say if you go into a Kwik Shop, for example. They'll be in the back because he can observe what's taking place. Sometimes we camera a kid up where it's on videotape, just depends on some of the resources we got. They attempt to purchase it. If they're asked for identification, they show their true and correct identification. And sometimes we have clerks that will sell even though the ID says that they're 14 years old. That's what we're trying to prevent. [LB1058]

SENATOR EBKE: Okay, thank you. [LB1058]

SENATOR SEILER: Any further questions? Senator Krist. [LB1058]

SENATOR KRIST: I went through this for several years with compliance checks/stings on the alcohol side. I don't think this bill goes far enough to prescribe the behavior and the way that these compliance checks are performed. I believe that the State Patrol has some very clear guidance on how compliance checks for alcohol are performed, what the parameters are in terms of you can't send a kid in there that's got a mustache, even though he's 14 years old or 16 or 17. I would hope that we would be looking at the precedent that's been set that you are familiar with,... [LB1058]

BOB LAUSTEN: I am. [LB1058]

SENATOR KRIST: ...with alcohol compliance checks, and make them as close as we can if, indeed, we go forward with something like this, because there's a lot of questions in this text, in this proposed bill that we've already answered with those other compliance checks. So I'd be happy to take any comment. But it just...when you start doing this, I want to keep tobacco products out of the hands of underage folks the same way I want to keep alcoholic beverages or products out of the hands of underage folks. I don't, however, want the retail stores to come back and say, I was stung, it wasn't a compliance check. I don't see that this is as strong as those alcohol compliance checks. [LB1058]

BOB LAUSTEN: And I agree with you, especially the part of what the appearance is with a kid that goes in. I know with the Liquor Commission, with alcohol it's different because they're going to have to testify in front of the Liquor Commission. And they really should be wearing the same clothes when they testify as what they did when they went in. And I know this bill specifically is aimed at the private contractor. And personally, I wouldn't be opposed to a bill that

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would include procedures for law enforcement statewide, as long as we have something that's clear and concise. [LB1058]

SENATOR KRIST: All right. [LB1058]

BOB LAUSTEN: I have absolutely no problem personally. [LB1058]

SENATOR KRIST: I felt comfortable making those comments based upon your testimony because, if we're really looking out for safety and keeping tobacco products out of the hands of underage, then it should be extended to law enforcement officers. And that's why we have the State Patrol vigorously watching those compliance checks on the alcohol side. So I think they need to parallel more. [LB1058]

BOB LAUSTEN: Right. And with the Patrol's resources, they're getting assistance from the agencies, because their resources are taxed pretty slim. But I agree we need a standard set for everybody, protocol. [LB1058]

SENATOR KRIST: Thank you. Thanks for coming down. [LB1058]

BOB LAUSTEN: Thank you. [LB1058]

SENATOR SEILER: Any further questions? Thank you for your testimony. Next proponent. [LB1058]

CARL GRUBB: Good afternoon. Carl Grubb, C-a-r-l G-r-u-b-b, with the Bellevue Police Department. Thank you, Senator Crawford. Thank you, committee, for your time. I'm a supporter of LB1058, been a liaison with the Bellevue Police Department and Tobacco Free Sarpy since 2009, conducting compliance checks and education within our community for tobacco-free youth and tobacco-free environments and workplaces. The language that we're looking for to be added as far as the tobacco checks is vital that we can mirror the same effort that we're doing with our alcohol compliance checks. The policies, the approval, the parental permission that is in place currently with the alcohol compliance checks, we've mirrored, we've brought that to apply to the tobacco compliance. Our officers, one of their first important things while they're doing their compliance checks, as I've done them in the past and I still continue to do them, is the safety of the youth that we're working with. They have our phone numbers. We're in the store, we're right outside the store during the checks. At any time the youth is uncomfortable at all during the check, they can refuse to continue, at which time we'll terminate the check for that day or for that particular business. If the youth isn't comfortable doing the

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checks or the parents aren't comfortable doing the checks, then that youth is just not used. With that, I'm open to any questions. [LB1058]

SENATOR SEILER: Questions? Thank you, Officer, for coming down and testifying. [LB1058]

CARL GRUBB: Thank you. [LB1058]

SENATOR SEILER: Next proponent. [LB1058]

GREG LONDON: Thank you. My name is Greg London, L-o-n-d-o-n. I am the chief deputy with the Sarpy County Sheriff's Office. I just want to make one comment. Senator, you asked about what would happen if the child, if the parents didn't agree. We would never, ever use a juvenile if they weren't comfortable in helping us out. And the parents also have to sign a form. So if the parents aren't comfortable either, then we would not use the juvenile. It's just as simple as that. We want to make sure everyone is 100 percent comfortable in their role on that, and that's why we are actively involved with the parents of the juvenile. [LB1058]

SENATOR PANSING BROOKS: I'll just say thank you so much for speaking and coming to talk, Mr. London, or Sheriff London...Sheriff London. [LB1058]

GREG LONDON: I'm not the sheriff; I'm the chief deputy. [LB1058]

SENATOR PANSING BROOKS: Well, there's a "Sheriff" in there. [LB1058]

GREG LONDON: (Laugh) How about "Deputy"? Is that good? [LB1058]

SENATOR PANSING BROOKS: Okay, Deputy London. And I have to admit that I was a bit confused because I thought it was the reverse. I thought that you were...I thought the bill was initially to get employees of a business to catch the people purchasing the cigarettes. So this is...that's why I thought...I thought it was somehow forcing the employee of the establishment, a kid, to try to get his friends to buy these cigarettes from him. So I had it totally reversed, so that... [LB1058]

GREG LONDON: Oh, okay. [LB1058]

SENATOR PANSING BROOKS: And so now that I understand that, I understand that you wouldn't get somebody that... [LB1058]

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GREG LONDON: Yeah. And typically in the past we've used the deputies' children, because obviously the deputies know what's going on. So if they can use their biological children, we have used that in the past. Other than that, how we recruit the kids is our school resource officers. They're in the schools in Platteview and Gretna, for example. They know the kids, most of them, and so that's how we recruit the children. And then we go to the parents. [LB1058]

SENATOR PANSING BROOKS: Well, thank you. I appreciate it. Reading this quickly in the mass of things that we're reading,... [LB1058]

GREG LONDON: Okay (laugh). [LB1058]

SENATOR PANSING BROOKS: ...I was reading it a little bit backwards. But I do agree. I do have some similar concerns as Senator Krist with the language and, you know, making sure that it isn't just something to...again, there are 14-year-olds, I know from my kids having just recently been teenagers, that look a lot older, so. [LB1058]

GREG LONDON: Yeah. Before we have a juvenile help us, we go over...we have written guidelines that they have to...we tell them what to do, what not to do. For example, the juvenile can never lie about his or her age. If they are asked, they're supposed to say, yes, I am this age, or they show them their ID. But we never, ever try to...that's forbidden, to lie to the clerk. So we do have written guidelines on what they're supposed to do and they have to sign off on that too. [LB1058]

SENATOR SEILER: Senator Krist. [LB1058]

SENATOR KRIST: To the point the other police officer or law enforcement that had been up in the chair, when you're talking about what you do, those are your current in-place guidelines on how you would conduct a compliance check, correct? [LB1058]

GREG LONDON: Correct. [LB1058]

SENATOR KRIST: What we're talking about is going statewide with a compliance check. So my comments are pertinent to the same issues that Senator Coash and I wrestled with for the last few years in terms of what's a compliance check, how does the State Patrol regulate compliance for alcohol, and going down that track. If this is what we're going to do and standardize it, so to speak, across the board,... [LB1058]

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GREG LONDON: Yes. And the Sarpy County Sheriff's Office would be in favor of that. [LB1058]

SENATOR KRIST: I understand. And now it's time to really drill down the detail and in some ways either put it in statute or put it in charge, put it in the State Patrol's camp to issue those kinds of policies, procedures, and learn how to do them. We're talking about a statewide program that would be standardized. And when we get to that point, then I think we need to either expand upon this or assign it to an agency that can handle that process. That's...those are my (inaudible). And I do appreciate the individual counties have their own policies and procedures in place. And what you're describing is very similar to what I'm...what my concerns are here, that is, that child needs to know exactly what the parameters are: he can't lie to the clerk; he can't do this; he can't do that. And, you know, that, it's kind of tough to put it all in the statute, but it's not tough to really give it to the State Patrol and say, develop guidelines and, you know, set them out there, so. [LB1058]

GREG LONDON: Yes. And you're correct. And to reiterate, the Sarpy County Sheriff's Office would be in favor of that. [LB1058]

SENATOR KRIST: Yes, sir. Thank you. [LB1058]

GREG LONDON: Okay. [LB1058]

SENATOR SEILER: Any further questions? Thank you, Officer, for coming down. [LB1058]

GREG LONDON: Thank you, Senators. [LB1058]

SENATOR SEILER: Further proponents. [LB1058]

KATHY SIEFKEN: Chairman Seiler and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and lobbyist for the Nebraska Grocery Industry Association, here today in support of LB1058. We run a compliance check program for alcohol out of our organization. It is considered a membership benefit. And as a result of those compliance checks, our compliance rates are like 92-93 percent in the areas where we run those compliance checks. If we could do the same thing with tobacco, that would be wonderful; and that's why we're here to support this. I agree with your comments, Senator Krist and Senator Coash, that there should be guidelines. I believe that the State Patrol's guidelines are in rules and regs; they're not in statute. They'd have to be tweaked a little bit but they are very good guidelines. Everyone knows what the rules are and it is run the same way statewide. So it is a

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good program. The only thing on the alcohol side of it is there is a different interpretation in the various counties in which you reside. And so when you are in Lancaster County, we are not allowed to use a 20...anyone under the age of 21. We have to use 21 or older students from the university, and so if we could clarify, make sure that we're clear on that aspect of it. With that, if you have any questions, I'd be happy to try and answer them. [LB1058]

SENATOR SEILER: I have. You signed your document. You put down you were an opponent. [LB1058]

KATHY SIEFKEN: Oh, I didn't mean to. [LB1058]

SENATOR SEILER: No. Okay, that's fine. [LB1058]

SENATOR WILLIAMS: She's just used to that. [LB1058]

SENATOR SEILER: Oh, okay. [LB1058]

KATHY SIEFKEN: Sorry (laughter). Thank you. [LB1058]

SENATOR KRIST: Wow. [LB1058]

SENATOR MORFELD: He said it, not me. [LB1058]

SENATOR PANSING BROOKS: Wow. [LB1058]

KATHY SIEFKEN: I'm glad you caught that. [LB1058]

SENATOR KRIST: You meant neutral, right? [LB1058]

KATHY SIEFKEN: Actually I meant support. I'm not sure where I was. [LB1058]

SENATOR WILLIAMS: She's never been on that box. [LB1058]

SENATOR KRIST: We're just going the gamut (laughter). [LB1058]

SENATOR SEILER: If you'd initial the one. [LB1058]

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KATHY SIEFKEN: Sorry about that. [LB1058]

SENATOR SEILER: Thank you. No problem. Any further questions? Thank you. [LB1058]

KATHY SIEFKEN: Thank you. [LB1058]

SENATOR SEILER: (Exhibit 3) Any further proponent? Seeing nobody scrambling, any opponent? Anyone in the neutral? We have one letter of support here from the Kruse Company and Kingery Consulting and they are in support of the LB1058. That will be made part of the record. Senator Crawford, you may close. [LB1058]

SENATOR CRAWFORD: Thank you. Well, thank you, committee, for your attention and questions and suggestions, I appreciate that very much. Just to answer one of the questions, among the states that have these kinds of statutes that we looked at when we were putting our statutes together, that included Rhode Island, Pennsylvania, South Carolina, and Wyoming. Those were some of the states we looked at. I'm sure there may be other states who have this kind of policy. I do want to reiterate in the bill specifically it talks about parental consent. And I appreciate the suggestion about the State Patrol. We knew those rules were in rules and regs, but I appreciate the comment that we might consider how to reference those or in some way incorporate reference to those in the statute. We'll have that conversation and see if that's something that parties are interested in doing as well. So I appreciate that suggestion. [LB1058]

SENATOR SEILER: Sue, you delivered an amendment to LB1058. [LB1058]

SENATOR CRAWFORD: Yes. [LB1058]

SENATOR SEILER: Is that an amendment you're going to file or you... [LB1058]

SENATOR CRAWFORD: Oh, I was just offering it to the committee, yes. [LB1058]

SENATOR SEILER: Okay, I just (inaudible). [LB1058]

SENATOR CRAWFORD: And so those...that was the amendment. Those were the amendments to make sure that the bill was consistent with what DHHS does already. [LB1058]

SENATOR SEILER: Right, not a problem,... [LB1058]

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SENATOR CRAWFORD: Right. [LB1058]

SENATOR SEILER: ...just wanted to know what... [LB1058]

SENATOR CRAWFORD: So a second...you know, we will talk about whether to propose an amendment that addresses the State Patrol regulation suggestion. [LB1058]

SENATOR SEILER: Okay, just wanted to make sure we... [LB1058]

SENATOR CRAWFORD: Yeah. [LB1058]

SENATOR SEILER: ...were on the base line. [LB1058]

SENATOR CRAWFORD: Yes. [LB1058]

SENATOR SEILER: Any further questions? Senator Krist. [LB1058]

SENATOR KRIST: I'd be happy to relay... [LB1058]

SENATOR SEILER: Okay. [LB1058]

SENATOR KRIST: ...most of my experiences, good and bad, about trying to work with compliance checks from my time in General Affairs. But it may not be the State Patrol is the right place to do this. It may be that Department of Health and Human Services is the right place to promulgate those rules and regs. [LB1058]

SENATOR CRAWFORD: That's true, yeah. [LB1058]

SENATOR KRIST: I don't know. I don't know the answer to that. [LB1058]

SENATOR CRAWFORD: That's a good point. [LB1058]

SENATOR KRIST: But I'm just suggesting that it's really difficult to put in the statute "thou will do this" with these kinds of things. And so working with an agency to do rules and regs may be a simpler fix. [LB1058]

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SENATOR CRAWFORD: Right. And since they work on tobacco compliance checks, they may be the best place to examine that. [LB1058]

SENATOR KRIST: Right. [LB1058]

SENATOR CRAWFORD: Thank you. [LB1058]

SENATOR SEILER: Thank you, Sue. [LB1058]

SENATOR CRAWFORD: Thank you. [LB1058]

SENATOR SEILER: That will conclude the hearing on LB1058. Senator Haar, you're to open on LB1072. [LB1058]

SENATOR HAAR: (Exhibit 1) Chairman Seiler and members of the committee, the concept behind LB1072 was brought to me by a constituent. Modern farm machinery such as tractors and combines, like much of modern life, operates on software. The intent of LB1072 is to provide a mechanism for farmers to be able to work on their own tractors and machinery and for independent repair people to work on such machinery. I do not intend to have LB1072 apply to other electronic items such as computers, cell phones, or tablets. Because of the fact the bill did not clearly spell this out, I'm offering an amendment to make it clear that it's only intended to apply to farm machinery and equipment and not to these other electronic devices and you'll get a copy of that amendment. I understand that LB1072 won't advance this session because it's not a priority bill and would need considerable amendment. However, I hope the committee will study this issue in order to determine whether a legislative mechanism may be established to allow farmers and independent repair people to work on farm equipment that is governed by software. It's my understanding that others who will follow me will address technical issues related to the bill. Frankly, it's not something I know much about, but it's very interesting and that's why I decided to bring LB1072 to the committee. [LB1072]

SENATOR SEILER: Just for the record, Ken, would you say your name and spell it, please. [LB1072]

SENATOR HAAR: I'm sorry. [LB1072]

SENATOR SEILER: Not a problem. [LB1072]

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SENATOR HAAR: Ken, K-e-n, Haar, H-a-a-r. [LB1072]

SENATOR SEILER: Thank you. Any questions? Thank you very much. First proponent.
[LB1072]

DANNY KLUTHE: Hi, Senator Seiler and the rest of the committee. Thank you very much for allowing us to present our case here. I'm Danny Kluthe, D-a-n-n-y K-l-u-t-h-e. I'm a farmer from Dodge, Nebraska. And farm equipment to farmers, they're very valuable and to keep that equipment running, they take great pride in their farm shop and great pride in doing the necessary mechanic work that needs to be done for the most part. And if they do need help, in a lot of cases, they have...down the road, they've got independent repair shops that do a lot of their repair work. However, now the equipment companies, manufacturers want to monopolize their equipment meaning that with most equipment is labeled with a lot of sensors and electronic components that they want to keep control of and are unwilling to download them and give the farmers the opportunity to work on it. And that's kind of unfortunate. And I'll give you a good example. I farm out there by Dodge and have a livestock operation where I take the hog waste and run it through a methane digester and capture the methane and run it through a 3306 Cat engine that makes electricity 24/7. A couple years ago, I learned to compress the methane and I modified my three-quarter ton Chevy Duramax diesel pickup to run on 80 percent methane and 20 percent diesel. And I'm getting probably 2.5 times the mileage out of my diesel pickup on diesel. And I modified my tractor to run on 90 percent methane and 10 percent diesel. And that equipment just purrs. Methane is methane, whether it comes from the oil fields as natural gas, so we've been working on expanding natural gas fill-up stations. Omaha has got two or three. Lincoln has got a couple, three. Columbus just put one in. Norfolk and a bunch of other cities are talking about it. And now we are unable to modify our equipment so it's a shame because, you know, it's clean running and all together this entire bill--I'm running out of time here--this entire bill is really important to the farm industry. It's costing the farm industry a ton of money if the manufacturers are the only ones that we can work our equipment with. [LB1072]

SENATOR SEILER: Is there anything else you wanted to add? [LB1072]

DANNY KLUTHE: Yes. It would be a shame if we were limited to only the manufacturers working on our equipment. It would be expensive. There would be no reason for them, since they've got a monopoly on it, for them to excel on their timeliness, on their quality of work. There wouldn't be no competition. And that's what makes America great is competition. So...
[LB1072]

SENATOR SEILER: Okay. Thank you very much. [LB1072]

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DANNY KLUTHE: Yes. [LB1072]

SENATOR SEILER: Any questions? Senator Coash. [LB1072]

SENATOR COASH: Thank you, Senator Seiler. Mr. Kluthe, could you explain to me exactly what it is that an independent repair person wants to do that they're unable to do right now. [LB1072]

DANNY KLUTHE: Yes, Senator. What they would like to be able to do--and we need this--is to get the download on the software because without that, if you can't get the software to work on equipment, it's probably pretty much prohibited. You can't work on it. We need to have that downloaded. And see, the Equipment Dealers Association wants to hold that and keep it for themselves. They don't want us to have that. So without that, independent repair shops are not going to be much good. [LB1072]

SENATOR COASH: So it's some software that you need to be able to download in order to repair your own...is that download available...could you...are you able to purchase that from the manufacturer or the dealer? [LB1072]

DANNY KLUTHE: It would be nice if we could. I'm under the understanding that what they want is their company shops to do all the work. And so in other words, instead of like I modified my equipment, when they do the work there won't be no...it would be stock. There won't be no aftermarket parts. They're going to be their parts. And we're kind of held hostage there. [LB1072]

SENATOR COASH: Okay. I think I understand. Thank you. [LB1072]

SENATOR SEILER: Any further questions? Thank you for your testimony. Excuse me, Senator Williams. [LB1072]

SENATOR WILLIAMS: Thank you, Senator Seiler, and thank you for being here. Quick question, you were able to modify both your pickup and your tractor without this legislation. Can you explain that to me? [LB1072]

DANNY KLUTHE: Well, they're earlier equipment. This bill I think is going to take place here in the near future. And so from this point on, they're going to...all your newer equipment they're going to hold the rights to the software. See, and prior to this we had all the rights. And when

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you pay that kind of money for equipment, you should be able to have the rights to that.
[LB1072]

SENATOR WILLIAMS: If a farmer had the ability to change everything on their piece of equipment, what would prevent them from going in and changing the emission controls and settings like that? [LB1072]

DANNY KLUTHE: The software. [LB1072]

SENATOR WILLIAMS: But if they had the software, they could go in and change emissions to exceed EPA requirements and other federal regulations. [LB1072]

DANNY KLUTHE: Okay, to answer that, whenever a farmer or anybody modifies any equipment, they're taking responsibility. If they're doing something they shouldn't be, they're responsible. And so what I'm saying is if they're doing something that they shouldn't be, they're taking that responsibility. [LB1072]

SENATOR WILLIAMS: I guess my question is, is that possible if they had the code to be doing things like that, do you know? You may not know. [LB1072]

DANNY KLUTHE: Well, they could possibly do that. [LB1072]

SENATOR WILLIAMS: Thank you. [LB1072]

SENATOR SEILER: Any further questions? Thank you very much for your testimony.
[LB1072]

DANNY KLUTHE: Thank you. [LB1072]

SENATOR SEILER: Next proponent. [LB1072]

KENNY ROELOFSEN: Good afternoon, Senator Seiler and Judiciary Committee. Thank you for having me. My name is Kenneth Roelofsen, K-e-n-n-e-t-h, Roelofsen, R-o-e-l-o-f-s-e-n. I am here on behalf of Abilene Machine, Incorporated. We are an ag replacement company. We've been selling parts since 1980 for tractors and combines. What this bill is going to do for us is it's going to allow us to progress into the future and to be able to offer product offering that will comply with basically any tractor made after 2004 into the 2008. Basically what the OEMs have

done is they've put three computers on every tractor. You have one in the cab, you have one in the transmission, you have one on the engine. If all three of these computers do not communicate, the tractor shuts down. So the biggest problem with this and what the OEMs are doing is that if one of those doesn't comply, the tractor goes into limp mode. That causes a problem for a farmer. If they're down for one to two days during planting season or during harvest season, they're wasting money. And where I'm going to get with this is if the only person who can repair that equipment is the OEM, then if they have a tech that's already out, they don't have another tech to get out there and essentially plug in a USB port and fix their tractor, then they're out. So they're essentially tying up all the market into a monopoly to themselves, not allowing competition which drives prices up. Point is, is if they're going to have...if you're going to sell a piece of property like a tractor or a combine, anybody should be able to work on it. If you own it, you should be allowed to dictate who works on it. So by getting this bill passed, it's going to allow this software and the rights to be able to at least diagnose the problems and fix the problems. It has nothing to do with modification, on my end anyway. That's my first component. And then I guess what I would say next is that Abilene Machine prospered in the 1980s. And if you remember the 1980s, it was a crucial time in the farming industry. If same laws like this had existed in 1980s prohibiting markets like mine to be able to come into the market, we wouldn't be an industry. We got over 300 companies that do the same thing I do. You got thousands of independent repair shops that rely on being able to repair tractors and combines essentially. If we keep this into play, we're going to cut out a lot of jobs and a lot of money. Competition is going to go down, quality is going to go down, and prices are going to go up. And we all know the ag community cannot take another hit like that, especially with grain prices the way they are. I fully support this bill to ensure that the farming community and farmers themselves, repair shops, and dealers like me can stay in business and stay alive. I don't see a future for me and the future of all my employees unless I can get a bill that allows me to sell future technology. And this law, you know, the laws that they have in place are prohibiting me to do that. That's it. [LB1072]

SENATOR SEILER: Senator Krist. [LB1072]

SENATOR KRIST: I think you're the right person for me to ask these questions and to get this on the record. Mr. Kluthe was talking about when things changed. We're talking about a piece of federal regulation change in the last few years that prohibits you from getting I'll just call it the data of a product, is that correct? [LB1072]

KENNY ROELOFSEN: Yes. [LB1072]

SENATOR KRIST: And the reason that I think it's important is that there aren't very often, not a whole lot of times, when I get calls from Washington, D.C., knowing that we're going to hear a bill, and that's happened on this one. The consumer is not protected in the kind of calls that I got.

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Those calls were to allow me to understand that you shouldn't be monkeying around with their products. Now on the flip side of that, I have to say that if...once you do have the information and you do, in some cases, modify in any way or fix the equipment, we do have a warranty issue, do we not? I mean is there going to come a time...you want to be able to plug USB port in, analyze what's going on, and if you can, fix it on the spot to restore the equipment. That's great. But once you do that and it's not a certified mechanic or...we run into this with cars these days where you try to mess something up and it's no longer under warranty. Can you talk to me about that for just a minute. [LB1072]

KENNY ROELOFSEN: Well, let me say this. If your car runs out of oil in Omaha and you live in Lincoln and you go get the oil changed at an independent repair shop, that's not going to void your warranty. They're not changing the statutes of the warranty. The warranty only says as long as you don't modify the equipment, the warranty shall stay in play. Repair shops aren't modifying. That's not what they're going to be doing. [LB1072]

SENATOR KRIST: No, that's not where I'm going. I guess let me just cut to the chase. Where I'm getting at here is that under any warranty that I've ever seen on any piece of equipment that I've ever owned including airplanes, it's under warranty until you void the warranty which is that point at which you potentially interfere with or maintain the airplane, other than a certified mechanic to do that kind of work. So I get it. You want to buy a million dollar combine and if it shuts down you want to plug in the USB and change it. But is there a risk that now it's no longer under warranty? [LB1072]

KENNY ROELOFSEN: You know, I can't accurately give you an answer on that. [LB1072]

SENATOR KRIST: Okay. All right. I appreciate it. Thank you. [LB1072]

SENATOR SEILER: Any further questions? I have one. You use a term, OEM. Would you explain that just for the record. [LB1072]

KENNY ROELOFSEN: Original equipment manufacturer. [LB1072]

SENATOR SEILER: Okay. Any other questions? Thank you very much. [LB1072]

KENNY ROELOFSEN: Thank you. [LB1072]

SENATOR SEILER: Next proponent. [LB1072]

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JASON DeWATER: Good afternoon. My name is Jason DeWater; it's spelled J-a-s-o-n D-e-W-a-t-e-r. I own a business called iFix Omaha and we actually are in the business of repairing smartphones and tablets. So with all due respect, I'd like to at least speak for my support of the bill as I saw it. For the past several years, we have repaired smartphones and tablets for thousands and thousands of Nebraskans, local school districts, corporations, businesses big and small, nonprofits. They come to my business because they trust us to offer honest, fast, and reliable service, and also they're going to save a lot of time and a lot of money by bringing their broken devices to us. So our team is well-trained, professional, and our staff can fix anything you put in front of it essentially so long as we have the right tool available for the job, as with any sort of service. And in our industry, in our repair industry, there are a few critical tools that we are missing inexplicably and we desperately need that because it's in the best interest of the consumer. These tools are not tools we can hold in our hand. They're diagnostic digital tools. And what we need is the ability to plug in, for instance, an iPhone or an iPad into a system and find the fault quickly. Just like a car auto mechanic can find a fault very quickly, that saves him or her time and it saves the consumer money. Well, we need that same ability. We need to be able to come in and diagnose the problems of these devices. Right now, those tools are available but not to us. They're available only within the manufacturer. And so, for instance, as bad as we need that tool, we can't access it for any price. What's even worse is that the devices are locked in a certain way where we cannot even develop software ourselves to diagnose these problems because the phone will only work with the diagnostic tools made by the manufacturer. So that's a huge problem. The next step to this problem if we look into the future is that we're seeing now that the manufacturers of these smartphones are coupling and locking down the actual hardware components of a phone to the hardware of that phone and the device itself, which means if your button goes out two years down the line, which that happens all the time, or your camera stops working, in the future very near we will not be able to repair that. We will not be able to save you money. You will be locked into probably buying a brand new device and going the route that the manufacturer has you. So we...right now, we're hoping to continue to save people time and money years down the road like we've done the past several years. But things are starting to change, and I think it's time to make action on behalf of the consumer right now. [LB1072]

SENATOR SEILER: Questions? Thank you very much for your testimony. [LB1072]

JASON DeWATER: Yes, thank you. [LB1072]

SENATOR SEILER: Next proponent. [LB1072]

GAY GORDON-BYRNE: (Exhibit 2) Hello. Thank you all, Senators. Thank you, Mr. Chairman. Really appreciate the opportunity to come and speak to you about this. My name is Gay Gordon-Byrne; it's spelled G-a-y G-o-r-d-o-n-B-y-r-n-e. I'm the executive director of The Repair

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Association; and I'm here as a representative of the industry of repair, particularly the independent repair industry. Most of our members...we're a fairly new organization. We were only founded three years ago. Most of our members are in the business of repair or resale or reuse or recycling of digital electronic materials. So I don't disagree that tractors are a huge problem and we need to work on that. But I did want to thank Senator Haar for bringing this bill and also add some of my comments about the problems of repair in general, which you may want to take into consideration, you know, as the bill...as you would logically do. One of the things I wanted to address right away, Senator Krist, is your question about warranty. The bill as it's shown does not do anything about warranty. There's no interference with warranty. And in fact, a lot of manufacturers infer that there's...you know, things are going to fall out of warranty if you use nonoriginal parts or maybe nonoriginal oil or an independent mechanic touches that equipment. But that's actually illegal under current federal law. There's a Magnuson-Moss Warranty Act of 1975 that protects consumers from those kinds of conditions. So the bill doesn't touch warranty; and if you have questions about that, I'd be happy to answer it. But what I wanted to speak to was really the overall problem of repair and what happens in the digital world. It's just flatly easy for a manufacturer to stop helping consumers repair the property. And they just don't...they no longer publish manuals. You can't get a manual; and if the manufacturer doesn't put one up on-line and let you access it, you really don't have access to that. So you can't get...if the manufacturer doesn't publish a schematic, you can't get it. And this is a problem throughout everything with a digital electronic component. So it applies to the largest mainframes, the largest tractors, down to the smallest coffee machines. There's a level of information that you must have in order to be able to repair the product, and we never needed that before because there was no mystery about repair. But as soon as you put a little computer chip in a product, it becomes something that needs help from the manufacturer that we never needed before for the business of repair. So consumers can't get it, owners can't get it, certainly independent repair shops can't get it unless the manufacturer is cooperating. So that's the number one problem and it's not really directed in any particular industry or particular manufacturer, but I can tell you it's absolutely everywhere. This problem is permeating the entire electronics industry, and we're going to need to deal with this or we're never going to be able to fix our stuff. [LB1072]

SENATOR SEILER: Any questions? Seeing none, thank you very much for your testimony. [LB1072]

GAY GORDON-BYRNE: Oh. Thank you very much. [LB1072]

SENATOR SEILER: Further proponents. [LB1072]

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BEN GOTSCHALL: (Exhibit 3) Good afternoon, Senators. Thank you. My name is Ben Gotschall; that's B-e-n G-o-t-s-c-h-a-l-l, and I'm the agricultural and local food director for Bold Nebraska as well as a farmer myself. And I've heard some of the testimony that came before so I'm not going to repeat a lot of the things that have been said, especially about the tractors although I do have a lot of memories of growing up, you know, working in the hay field or feeding cows in the wintertime. And when something broke down, it was always in our best interest to be able to fix it ourselves. We were 20 miles from the nearest town and that town didn't have a repair shop or a dealer. It would have been considerable time and money if we had to, every time something broke down, take it to the nearest dealer. So there's a lot of folks in Nebraska that have that same situation of remote location. And I know we're not talking about the 3020s and 4020s that I grew up with anymore. So that's what I see this bill as kind of bringing us forward into the digital age that we now live in, and not just in tractors but in a lot of other everyday items like cell phones and some of the things that have been discussed. And one of the other things that we appreciate about this bill that we support as Bold Nebraska, that I support as myself is that it is kind of an umbrella bill. It's not picking apart one industry after another after another and having to refight the same battle, so to speak, over and over again. It says if it has a computer chip, if it needs fixed, people should be able to fix it, whether that's the owner of the product or an independent repair person. I also see this as an economic development issue. Like I mentioned, in small-town Nebraska, for example, folks that I know that I went to high school with, they go to, say, maybe a community college and learn about diesel mechanic repair or something like that. They don't really have the option of starting their own tractor repair shop if they aren't affiliated with a dealer...with a company. So I see that as something that would help young people in rural areas. The waste issue is also one that has been touched on. When it becomes more cost effective to throw something away than fix it, I think that's a problem and I think that's something that should be addressed. So thank you for your time. [LB1072]

SENATOR SEILER: Any questions? I have one, Ben. And you may not know this. If I take my tractor to a Ford dealership, can they call, say, John Deere and get those codes? [LB1072]

BEN GOTSCHALL: I do not know that. I would say...I would venture to guess and I would say no unless they were licensed by...you said John Deere? [LB1072]

SENATOR SEILER: John Deere. [LB1072]

BEN GOTSCHALL: Yeah, I... [LB1072]

SENATOR SEILER: Okay. [LB1072]

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BEN GOTSCHALL: But I don't know for sure. I'm not an expert on that. [LB1072]

SENATOR SEILER: Any further questions? Thank you. [LB1072]

BEN GOTSCHALL: Thank you. [LB1072]

SENATOR SEILER: Any further proponents? [LB1072]

CHAD LECHTENBERG: Hello, committee members, and thank you, Senator Haar, for bringing this forward. My name is Chad Lechtenberg, C-h-a-d L-e-c-h-t-e-n-b-e-r-g. I own and operate ASR, LLC, Alternative Service and Repair. My main work is on automotive pickups, diesel pickups and Class 8 over-the-road trucks and trailers. I deal firsthand on a daily basis with lots of different truck manufacturers as well as different engine manufacturers. Doesn't matter if it's a Cat, Cummins, or Deere, Case, whatever, nowadays if you don't have a computer to communicate with that engine, all you know is something is wrong. And the automotive and trucking industry has already gotten this far and have had to give up their rights to software to providers that either rewrite communication software that gives guys like me the opportunity and the tools which I have to spend a considerable amount of money for to communicate with these vehicles to either diagnose problems or monitor data to try and diagnose problems. And I don't even get that opportunity with a piece of ag equipment at this time because there's nothing out there. It's just not provided. And unless you have that specific software, your hands are tied. A guy could call me wanting me to come repair something on site and I have to, as a repair tech master technician, I just have to pass him up and say I'm sorry, I can't help you. If a guy had the opportunity to get the tooling that he needs to make these repairs, it's no different than me or a farmer. We're not looking to modify or undermine any manufacturer. But if you look at the lifespan of a piece of equipment nowadays, how long is it going to be in warranty, which is what I've heard some concerns of up here, versus the time it's going to be in operation out of warranty where they would have the opportunity to go to an independent shop and nobody cares nonetheless where they go at that point. It's going to be in service out of warranty a heck of a lot longer but yet it will still be having to go to a dealer if nobody like me can get the tooling to communicate with it just to solve a simple problem as easy as a bad injector or possibly clogged fuel filter. And if you have any questions? [LB1072]

SENATOR SEILER: Senator Krist. [LB1072]

SENATOR KRIST: Thanks for making that point. I would imagine a combine is many, many years and very few years is it under warranty. So we're talking about both sides of it. The only reason I brought that up is that it should be and is dealt with in the automotive area at a certain point when it's out of warranty (inaudible) magically becomes available that you can work on

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things. But great point, thanks for bringing it, and thanks for coming. I also want to compliment you because I know you wore a ball cap in here and you were raised the way I was. When you're indoors and you're doing this, you take your ball cap off and I appreciate that. [LB1072]

CHAD LECHTENBERG: Thank you, sir. [LB1072]

SENATOR SEILER: Any further questions? Thank you. Any further proponent? [LB1072]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union. We are in support of this legislation, and we are in support of similar legislation and remedy at the federal level. I also serve as the vice chair of the National Farmers Union's legislative committee. This issue is certainly on our radar, and we have been working at the federal level to address it. And we think that, in this case, this kind of legislation at the state level is also appropriate. But we see this through our eyes as a competition and captive supply issue, that we have a lot of very capable and competent local repair folks. And they need to be able to have the technology that they need to be able to work on the equipment that we buy and pay for. So we're now in a situation that equipment not only costs a lot more money; but in a very strange kind of way, while we own it and we pay for it, we don't really control it. We can't fix our own stuff. And so I am the only...of the four boys in my family, I am the only one that is not a certified automotive diesel mechanic. But that doesn't mean I don't know how to overhaul an engine. But we did our own work. And so historically if you look at what the history is, we have some fantastic shops in the country and we have some great mechanics and we have some folks that are excellent welders and do all kinds of repair work, fabricate equipment, do all these kinds of things. If they're willing to take the risk, especially the local repair guys of which I have one brother that is, and they're willing to buy the tools and stay up with the technology to be able to do the repairs, it's a huge plus to us. Because when it comes harvest time or planting time, service people are hard to come by. And if you'd known and followed what's been going on in the ag economy, our dealers are not just next door anymore. They're a long ways away. So this gets to be an issue, you pay all this money. Your time is worth a lot of money per hour, and yet we're concentrating the technology and the ability to repair our own equipment in fewer and fewer hands. And it's structurally not a good policy. So with that, thank the committee for its consideration and thank Senator Haar for bringing this bill forward. [LB1072]

SENATOR SEILER: Senator Coash. [LB1072]

SENATOR COASH: Thank you, Senator. Mr. Hansen, not that we expect anything to get done in Washington, but you mentioned that this is being contemplated at the federal level. Where is it in the process? I mean what is being talked about, where is it being talked about? [LB1072]

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JOHN HANSEN: The...we thought we were going to have a bill that represented some semblance of negotiated agreement out a while back. And something has gummed up the works and so that bill has not been introduced. We've been a part of those discussions with others. And so we were hopeful that we were going to get something done. And I know that from a practical standpoint, we should not be hopeful that Washington is going to do anything. But nevertheless, it is my job to be hopeful. And so we continue to work and we...we're aware that there's a problem. And so the treatment of ag and ag equipment is an issue. And so maybe it's one of those things where you have competing bills in the end: One goes one way, the other goes the other way, and then you fight it out on the floor. But hopefully...we were hopeful that we could get some things done behind the scenes to avoid that kind of prospect and get something done. But that bill has not been introduced. [LB1072]

SENATOR COASH: Thank you. [LB1072]

SENATOR SEILER: Senator Ebke. [LB1072]

SENATOR EBKE: Thank you. Senator Hansen...Mr. Hansen, what would you...what do you say to the local dealer of whatever type of equipment who says, but wait a second, we pay effectively a franchise fee every year to maintain our dealership and our technicians go and have specialized training? And now you want to give this away for nothing. How do you respond to that? [LB1072]

JOHN HANSEN: Well, I think that if they pay a franchise fee, they should pay a franchise fee to get a dealership to be able to sell equipment and they should be able to service it. But I don't think that they should...you should be able to buy a franchise fee for a noncompetitive system so that nobody else can do it. And so at the end, competition is a good thing. It keeps the prices competitive, it keeps the services better. So you should not be able to buy a franchise for a system that allows no other competition, period, in the sector it seems to me. That kind of goes one step past being able to just...the normal idea of being able to be a kind of dealer. [LB1072]

SENATOR EBKE: What about the brand-specific training and things like that? [LB1072]

JOHN HANSEN: Well, my understanding of what we're trying to do here is to have the technology to be able to repair, to diagnose and repair equipment. And we're still diagnosing or repairing their equipment. And the only difference is that you actually have other folks besides them who can do that. [LB1072]

SENATOR EBKE: Okay. Thank you. [LB1072]

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SENATOR SEILER: Any further questions? Thank you very much for your testimony.
[LB1072]

JOHN HANSEN: Thank you all very much. [LB1072]

SENATOR SEILER: Further proponent. Seeing nobody scrambling, opponent. [LB1072]

GEORGE WHITAKER: Mr. Chairman, thank you and, committee, thank you for the opportunity to testify. My name is George Whitaker, G-e-o-r-g-e W-h-i-t-a-k-e-r. I'm from Racine, Wisconsin, and I work for CNH Industrial. We're the manufacturers and marketers of Case IH and New Holland farm equipment throughout...through dealers throughout North America and globally as well. We have some of the best dealers with us today that you'll hear from later so I'm not going to step on their comments, talk about their particular business requirements but other than to say that we're in agreement with two key points that I think they'll raise and one is operator and public safety. So you may be familiar with recent issue that took place with a Chrysler vehicle where operator was able to take over...some enterprising fellows were able to take over the car and take over the computer system in the car and direct the car accordingly. The other issue, of course, is emissions. Our industry has invested hundreds of millions of dollars over the last ten years to comply with federal emissions standards. And to impact that...I think there was a comment about, well, the farmer will take on liability. Certainly the liability is not going to stop at the farmer's door. It's going to go all the way to the manufacturer and likely the dealer that sold the product. We think there's a couple of other particular issues with the bill, particularly around the discussion of parts, the discussion of immobilizer systems, the discussion of OEMs making the same diagnostic tools available to end users and repair facilities that our engineering staffs have. That's a real different apple and oranges-types of discussion. And I can talk to those in greater detail if you wish. We also think that this particular bill fails to address some key issues like telematics, licensing of users and tool manufacturers, dispute resolution, and just a wide variety of pricing approaches that different brands use in providing electronic service tools to their dealers. I'd like to jump over for a second because there was conversation about the auto market. And I think it's important to make dramatic distinctions. In 2015, the auto industry sold 18 million cars. The farm equipment industry for mobile powered equipment will be about 1.5 percent of that market. Cars are mobile. Cars are migratory. In the truck business, customers are migratory. In the farm equipment business I've heard...I've been in the business for 40 years. Customers have always told me I don't buy because it's Case IH or John Deere; I buy because it's the dealer relationship and I know that dealer will support me. So it's very important to us as a brand that we maintain this important piece of business for our dealers and the brand experience that customers enjoy. I see the red light is on, so I would be happy to answer any questions. [LB1072]

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SENATOR SEILER: Questions? Thank you very much for your testimony. [LB1072]

GEORGE WHITAKER: Thank you. [LB1072]

SENATOR SEILER: Next opponent. [LB1072]

TIM CONRAD: (Exhibit 4) Good afternoon, Mr. Chairman, members of the committee. My name is Tim Conrad; that's C-o-n-r-a-d, and I represent CLAAS of America who's headquartered in Omaha, Nebraska. Appreciate this opportunity to share our views on this important bill and also our president of the region, Leif Magnusson, is serving as this year's chair of the Association of Equipment Manufacturers, a U.S.-based trade association representing nearly 900 members. As part of my statement, I would ask that AEM's statement of opposition be included in the hearing record. And what was mentioned earlier how valuable the equipment has gotten and I think that's an important fact. The agriculture equipment depends on complex on-board electronics and sensors for optimum performance and operational safety. Factory-trained and authorized technicians not only diagnose needed repairs but work directly with the equipment manufacturer to determine the best solution for solving the problem. Manufacturers require our dealers' service technicians to receive weeks of training, which is essential in order to avoid unnecessary damage to the equipment. Service and repair work should only be performed by dealers with factory-certified technicians in order to protect customers' significant investments and ensure continued compliance with emissions, operator safety, and other regulatory requirements. So as we mentioned, you know, I think the key focus for us, of course, is safety and continued compliance with the emissions which has become a major issue in our industry. The other area of concern for us is intellectual property and proprietary control. Through reverse engineering, many of our American products have been copied over the years. Requiring wide distribution of all the embedded data to unauthorized technicians will likely result in greatly simplified counterfeiting process for on-board controls, software, emissions, and digital technology. Allowing unlimited third-party access to electronic data will undermine manufacturers' intellectual property protection and provide numerous opportunities for data theft. We therefore oppose this bill. Any questions? [LB1072]

SENATOR SEILER: This is the handout that you had... [LB1072]

TIM CONRAD: Yes. [LB1072]

SENATOR SEILER: ...you wanted to be part of the transcript? [LB1072]

TIM CONRAD: Yes. [LB1072]

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SENATOR SEILER: It will be made part of the transcript. Senator Krist. [LB1072]

SENATOR KRIST: So at what point would you allow the farmer to work on his own equipment? [LB1072]

TIM CONRAD: That's a difficult question. I think the...you know, in terms of routine repair, you know, we heard a comment earlier about oil changing on a car. You know, those type of things I don't see as a major issue. You know, when you get into the technology behind a lot of this equipment today, it's very sophisticated and the risk of safety and doing something that could be a problem is there. And, of course, we have concerns about liability and that happens frequently today as well. So repair of the equipment, I think, is largely, depending on what type of circumstance we'd be talking about, if it's routine-type activities, probably not an issue. But something more complex definitely would be of better interest to look at the authorized repair centers. [LB1072]

SENATOR KRIST: Okay. So you heard the comment or the question that they're out in the middle of nowhere and it's going to be X number of miles to drive or take the equipment to have it repaired. So I'm going to give you my side of the analogy. Having spent a few years flying Boeing airplanes, I could run the diagnostic on the airplane, send it to Boeing, and they could send me a tech to be there the next morning to fix the airplane. Is there any such interface with the computer systems on board this equipment? You're talking about being very sophisticated and having that technology. I think that the industry, if they're not pursuing that reign...or that run, should probably look at being more accommodating in terms of that kind of thing happening. [LB1072]

TIM CONRAD: Yes, the technology does exist to be able to do that. So there is remote diagnostic capabilities. And again, I think that comes back to some of the discussions about telematics and the overall legislation is related to that activity as well. But the technology does exist. [LB1072]

SENATOR KRIST: So when you sell a Case and...are you going to give them the USB and the technology to put in his computer to say it's not starting this morning so here's my problem? [LB1072]

TIM CONRAD: Not directly to the owner, no. [LB1072]

SENATOR KRIST: Why not? [LB1072]

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TIM CONRAD: Because of the requirement for the safety and the training that's given to the service techs that we have. [LB1072]

SENATOR KRIST: I'm not talking about fixing it. We're talking about diagnostics... [LB1072]

TIM CONRAD: Diagnostics. [LB1072]

SENATOR KRIST: ...the diagnostics that would get it fixed and back on the road. And you know, it's not...we've heard this discussion going on with the cell phone and unlocking it and all that and proprietary and I get that. But, you know, there's got to be...you're getting to a point where there's got to be a happy medium. At what point can he work on, he or she, work on that piece of equipment? And what about the diagnostics? I mean, there is a point at which being responsive as a dealer, particularly with farm equipment, may mean 100 miles away from wherever that product is. [LB1072]

TIM CONRAD: Um-hum, I think that's a valid point, but I do also think that, you know, as related to our equipment and my knowledge of it, which is somewhat limited on the technical side, it depends on the format that that information is coming out as well and how it can be interpreted. [LB1072]

SENATOR KRIST: Okay. Thank you. [LB1072]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB1072]

TIM CONRAD: Thank you. [LB1072]

SENATOR SEILER: Next opponent. [LB1072]

MIKE KONGS: Good afternoon, Senators. My name is Mike Kongs, K-o-n-g-s. I represent LandMark Equipment in Nebraska and Kansas. We have dealerships in all of central Nebraska and northern part of Kansas. I am speaking, of course, in opposition to LB1072. You will hear from some of my counterparts this afternoon regarding the investments that we make as dealers across the state about the investment we have in plant and equipment and also the investment that we do in our employees. Our employees, as a general rule, a technician, we spend in excess of \$3,000 a year per technician just to keep them trained and current. That doesn't cover also the training that we are required by our manufacturers to send our technicians to and the tools and the parts that we have to keep on hand just in order to be able to order that piece of equipment from our manufacturers. One of the things though that I'd like to address is having to do with the

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modification and the liability thereof. Each piece of equipment has become much more technologically advanced than back when I started seeing tractors in the 3010 and 3020 days where a crescent wrench would suffice for being the tool of choice to do most of our daily repairs. Times have changed. Our products have changed. And because of that, the need to control that product and control the repair or the change of that product is becoming important. We've talked about the emissions controls as well as the safety standards. If the ability to change the code which communicates the engine to the transmission to the PTO, for example, on a tractor were to be changed and unknowingly we sent a technician out to work on an entirely different part of the tractor, for example, and the code that had been changed compromised the safety system and, God forbid, something should happen to the customer, then who would be help responsible if say, for example, that code change caused the PTO to suddenly engage? There's sensors obviously and control units throughout the tractors that contain codes that are, let's face it, they are very sensitive to competition and also to the environment and the emissions standards. Any questions? [LB1072]

SENATOR SEILER: Senator Krist. [LB1072]

SENATOR KRIST: This is probably the last time I'm going to talk about this bill today. I just wanted to get this on the record. Being brought up and working in the aviation industry as long as I have, I've found it almost ruthless that manufacturers of airplanes decide to put such a high price on their parts and on the actual modification to their parts that they run an airplane out of business and you have to buy a new one. I don't see any difference here. I see that there's a danger that you're so proud of what you have that you won't let the farmer work on it after a certain point. So my question to you is the same question I asked before. At what point can I work on my tractor? [LB1072]

MIKE KONGS: Actually, Senator, we encourage our customers to work on their equipment. Now, what I mean by that and I need to clarify, is that the portion of this bill that I am the largest opponent to is the modification of the software which controls that piece of equipment. We talked about automobiles, for example, being hacked. Can you imagine the problems involved with a large piece of equipment being operated without control? [LB1072]

SENATOR KRIST: So if we define--not to interrupt you but just to get to the point--if we define that piece of software as diagnostic in nature to facilitate a farmer being able to work on this piece of equipment as opposed to enabling the modification to modify, actually modify it, you would be happy with that? [LB1072]

MIKE KONGS: We do work with our customers to allow them to repair their equipment. You mentioned earlier, one of your questions was about remote diagnostics. Today our tractors have

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remote diagnostics. My service manager can sit in front of his computer and read the diagnostic codes off of a tractor. And we are more than willing to help that customer with determining what that code means. And if it can help him get moving and get that tractor back in the field all the faster, we're in favor of that. [LB1072]

SENATOR KRIST: So in layman's terms, if you are remote diagnostic...if you are enabling remote diagnostics and it's a filter that needs to be replaced, you're going to tell him to go buy the filter and put it on. [LB1072]

MIKE KONGS: Yes, and not only that but dealerships are becoming further apart. There are fewer over the years. By using that remote diagnostics, if that farmer cannot repair his piece of equipment, it also gives us the ability to know what needs to be addressed when we get there so that we have the right pieces and parts and the technology in place to handle that. [LB1072]

SENATOR KRIST: Okay. But my last point--and as I said, I will not talk on this bill again--but my last point is this. The question of when is he going to be able to work on his tractor? If I buy a brand new tractor this year, 2016, and that data is not available to me until after it's out of warranty, at what point can I download that data and work on my own tractor? [LB1072]

MIKE KONGS: I'm not quite sure that I understand exactly...we talk a lot about data and we're all scattering around the edges of data. What piece of code do you need...? I guess what I'm referring to is what part of that data do you need to repair that that would not modify it that we cannot achieve through the remote diagnostics? [LB1072]

SENATOR KRIST: That's one of my questions. [LB1072]

MIKE KONGS: Yeah, and... [LB1072]

SENATOR KRIST: If it's diagnostic in nature or is it modification in nature? [LB1072]

MIKE KONGS: It's modification in nature. The diagnostics you have available to you today. And they're...in fact, in a lot of the owner's manuals there is basic diagnostic codes and it will tell you how to bring that up on the tractor's dash, for example, to determine if that filter, for example, needed changed. The customer already has access to that. And all of our service departments are more than willing to work with our customers to try to avoid that call out into the field if at all possible. [LB1072]

SENATOR KRIST: Okay. Thanks. [LB1072]

MIKE KONGS: Okay. [LB1072]

SENATOR SEILER: Senator Williams. [LB1072]

SENATOR WILLIAMS: Thank you. Thank you for being here. A series of questions, we've had...well, first I'll start with the filter situation. If I understood your testimony correctly, most of these pieces of equipment--the combine, the tractor--already has the self-diagnostic equipment. You can bring it up, see what the codes are. You can call LandMark and determine I need to change this filter. [LB1072]

MIKE KONGS: All the basic codes, yes. There are some underlying codes that would get into much deeper than a customer would want to get into, but yes. [LB1072]

SENATOR WILLIAMS: We had a question earlier about modification as it has to do with emissions, which would be a very sensitive area I would think. At this point in time, the farmer could not make those changes, would that be correct, that would allow them to get deep enough into the process to change emission? [LB1072]

MIKE KONGS: That would be correct. And, you know, when we talk about making those modifications, we've talked about the expense of the piece of equipment. If a piece of equipment is modified and that would directly affect emissions, for example, if that piece of equipment were to come back into our facilities to be resold and we were unaware that that modification had occurred, we could then be responsible and liable for selling that piece again to another customer. And emissions is one thing. Let's say that we get in and change the codes and we take a 150 horsepower tractor and boost it to a 200 horsepower tractor. Now that tractor comes back into my facility to be resold and it's resold unknowing that that modification has occurred. I could be held responsible if something were to happen. The piece of equipment was not designed to withstand that kind of horsepower. I could be liable...held responsible if...well, for example, let's say that there's a PTO-driven piece of equipment that is designed to run on 1,000 RPMs and no more than 150 horsepower. And through the modification, that unit is running at 1,200 to 1,500 RPMs and putting out the 200 horsepower that we talked about. And the piece of equipment that I'm pulling cannot withstand that and something were to happen. Who is liable for that? [LB1072]

SENATOR WILLIAMS: Last question because we've had some discussion on warranties and length of warranties and the length of use of equipment. Would you take us through that on a typical tractor or combine, how long a warranty normally is for the kind of things we're talking about. [LB1072]

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MIKE KONGS: Generally speaking, the manufacturers have a two-year warranty on a piece of equipment on engine and power train. John Deere does offer, and other manufacturers do as well, an extended warranty program which is no different than the automobile industry. [LB1072]

SENATOR WILLIAMS: Thank you. [LB1072]

MIKE KONGS: Okay. [LB1072]

SENATOR SEILER: Further questions? Seeing none, thank you very much for your appearance and your testimony. Next opponent. [LB1072]

SCOTT RABER: Good afternoon, Senators, and thank you for having me here. My name is Scott Raber, S-c-o-t-t R-a-b-e-r, and I am here in opposition of LB1072. I represent Titan Machinery in the state of Nebraska. Our company has 91 agricultural and construction stores across the Midwest, Rockies, and Southwest with 13 of those agricultural dealerships being in the state of Nebraska. A little bit of my background, I grew up on a dairy farm, worked for major OEMs for over 13 years, and now operate or manage two of the agriculture retail stores in Nebraska for Titan Machinery. I think what's being construed a little bit is our mission and I think every dealer's mission is to provide our dealers with the best-in-class solution or best-in-class experience. We want our machines to operate with as much uptime as humanly possible. And I can tell you that we go at great lengths to make sure that our facilities, our stores, our shops are managed and staffed and trained in the ability to do that. We want to make sure that our machines are serviced properly, are repaired properly, and we make a tremendous investment in that. With one of the stores I manage, I will tell you that we will spend no more than \$50,000 this year basically just in personnel training sending people to Case IH-sponsored certified training schools, which it doesn't mention are basically our facility costs, our service vehicle costs, etcetera, etcetera. I think that this machinery has become very highly technical and highly specialized. You know, it's something that we are contractually bound with our manufacturers that we're contracted with to make sure that those machines are operating as productively as possible, that emission standards, data management, and safety parameters are met. And we are contractually bound to make sure the integrity of those systems are sound. So while we want these machines to be repaired, repaired quickly, we most of all contractually want to make sure that they are repaired properly. I can tell you that our business does...that does operate and does thrive on our service and our parts business. At the end of the day, we are not in the business to make sure that we are gouging the customer. But we do want to make sure that our business is able to be there to provide equipment to customers. We want to provide service to customers; and with some erosion to that type of revenue, I can tell you that the landscape of what our businesses would look like would be dramatically different in the long term. So again, I

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appreciate you listening to my testimony today and would be glad to answer any questions you may have. [LB1072]

SENATOR SEILER: Seeing none, thank you for coming and testifying. Next opponent. [LB1072]

ART GILFUS: Members of the committee, thank you for having us here this afternoon. My name is Art Gilfus, A-r-t G-i-l-f-u-s. I'm here in opposition to LB1072. I represent Platte Valley Equipment, a John Deere agricultural equipment dealer in eastern Nebraska, multiple locations. I also represent the Iowa-Nebraska (Equipment) Dealers Association. You've heard a lot of our comments here, so I'm going to jump around from what I had previously prepared and just state that this bill is extremely detrimental to our businesses, our dealerships, all of the training and technology and investment that we've made in them, and the training that we continue to make in our people. For example, our greatest source of technicians are 18-year-old kids right out of school. We spend \$20,000 putting them through a degree program, usually at Milford or some other programs around the state. While they're there, they get a part-time job, on-the-job training with us. That's another \$15,000 each year. And after that, they're an entry-level technician. Over the course of the next two years, they'll work full time while their training continues in our shops. And we'll have all in \$75,000 to \$100,000 into these people. At that point, they're what we consider master level technicians or close to it. We try to make them masters in that time period. And there's no way that somebody out there who simply just gets our proprietary information that was...is tens of millions of dollars invested in it can ever compare to what these people can do. This would be a detriment to the industry that we serve, the greatest, most productive agricultural system the world has ever known. The reason this equipment is so big and so expensive is because the world demanded it. And contrary to earlier comments, there's not three controllers on a tractor. There may be as many as 20. So I see the red light is on... [LB1072]

SENATOR SEILER: That's your yellow light. [LB1072]

ART GILFUS: Oh, I'm sorry. [LB1072]

SENATOR SEILER: You've got the same problem I've got. We're both color blind. [LB1072]

ART GILFUS: (Laugh) A little bit, you're right. So, should we...letting this information out and just anybody do any type of repair, extremely dangerous. It's dangerous for safety emissions reasons. There...the equipment is designed for maximum optimal use by our customers. And there's tremendous on-board diagnostics. We sell our equipment on the basis of uptime availability and we service it accordingly. And we're dedicated to that business. I also heard

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testimony earlier that there's restriction of competition here. My competitors are right over there in opposition to this bill as well. So having said that, I'm open to questions. [LB1072]

SENATOR SEILER: Questions? Thank you very much for your testimony and your appearance. [LB1072]

ART GILFUS: Thank you. [LB1072]

SENATOR SEILER: Further opponent. Further opponent. Seeing nobody scrambling, anybody in the neutral? Senator Haar, you may come up to close. (Exhibits 5 and 6) I have two letters here, both opponents: one from Wells Implement, and one from CTIA, both in opposition. They will be made part of the record. Go ahead. You may close. [LB1072]

SENATOR HAAR: Yes, thank you. Well, after listening to the discussion today it makes me feel pretty old because I worked at my dad's filling station when I could just open the hood and change the spark plugs. They were sitting right there on the top of the engine, but I guess that doesn't happen anymore. First of all, it was mentioned a number of times the thing of modification, and this bill doesn't address modification at all. Again, since there's no priority, it's past that time and so on. You know, I know this won't go any further this year; but it does seem to me listening to the consumers that this is a real problem that they face. And I'm sure you're going to be hearing more about this in the future. And, Senator Krist, you're just going to have to keep your hands off the engine of airplanes you fly I guess. That might be a good thing, by the way. But anyway, I'd be happy to answer any questions you have. [LB1072]

SENATOR SEILER: Any questions? Thank you for your introducing the bill and closing. [LB1072]

SENATOR HAAR: Yeah, thank you so much. [LB1072]

SENATOR PANSING BROOKS: Thanks, Senator Haar. [LB1072]

SENATOR SEILER: LB720, Senator Kuehn. [LB720]

SENATOR KUEHN: Good afternoon, Chairman Seiler and members of the Judiciary Committee. I am Senator John Kuehn, J-o-h-n K-u-e-h-n, and I represent District 38, which is seven counties in south-central Nebraska. It is my honor today to introduce to you LB720, which is a bill designed to establish a right of privacy for individuals with regard to the use of UAVs, or unmanned aerial vehicles, commonly referred to as drones, over private property. We're certainly

in a brave new world here with drone technology. Drone technology is accelerating much faster than our legal ability to regulate it or to even, in many cases, understand the legal implications of the expansion of that technology. What LB720 does is it establishes the right of privacy for the use of an unmanned aerial vehicle over the individual's property and airspace and requires that, if the individual using or operating the UAV captures an image, sound, or video, they must have the express written consent of the owner or the owner's agent. This is the first step in Nebraska at taking a significant look at the privacy issues surrounding the use of drones. I know a couple years ago our colleague, Senator Schumacher, looked at the utilization of drones with regard to law enforcement. But the legal ramifications and regulation of drones has become of significant interest as the technology becomes more widely adapted, not only by business, but also for consumer and for hobbyist use. Last year in 2015, 20 different states adopted 26 different pieces of legislation. Interestingly enough, 45 states last year contemplated some 168 different bills. I recognize that this is just the first starting point in a conversation about the appropriate use of drone technology and how we can find that important balance between consumers' right to use this new, exciting, and, in many cases, entertaining and important-in-business technology, as well as maintain the rights of privacy of the individuals from unintentional, unknown, or even malicious capture of their image, sound, or video. There has been a significant amount of concern over the role between the state and the federal authority and federal primacy with regard to drone technology. In December of 2015, the FAA gave clearer guidance with regard to the overall impact of drone legislation and what drones could and could not...activities could and could not be regulated by the state. What I want to point out in LB720 is we are not regulating the flight of drones, we are not regulating the height of drones and, therefore, there is not a primacy issue with regard to the FAA in LB720. This is purely a privacy statute. There are a few things I want to point out that are just starting points for discussion as we as a body begin to contemplate how we would like to address the privacy issues associated with UAVs. And this looks at an area of airspace which up to this point is only under state and local jurisdiction. So as some of you on the panel know--in much greater detail than I with regard to airspace rules and regulations--one of the challenges goes back to the classic 1946 case which tried to determine how much property extended above an individual surface. At this point in time, FAA regulations only look at 350 feet and above. Some of you may have been familiar with the Amazon plan, as it's referred to, which creates a 200-foot airspace, between 200 feet and 400 feet, for the use of commercial drones. The challenge becomes when an individual would have a reasonable expectation of private property in the airspace above their property. LB720 sets that limit at 200 feet. And the rationale for that 200-foot mark is relatively simple in the sense that you can build a structure on your property up to 200 feet without being required to place lights on it or any other regulation. So it has been accepted that 200 feet and below is the individual's property; above that, we have a regulation which requires additional notification, additional lighting, etcetera. So this bill only looks at the presence of a UAV capturing those images under 200 feet. It also only looks at the idea of capturing the image, the sound, or the video. I cannot reiterate, it does not restrict their flight; it does not restrict their ability to be utilized or used as a hobby.

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However, if the image, the video, or sound is captured, it would fall under LB720's purview. The utilization of the concept of privacy is another one that I think will be addressed, and a number of different stakeholders have expressed to me as concerns over the issue of an unintentional capture of an image. So if I'm flying over a house, on your house, on personal property, and the image is captured and it shows some of the adjacent or adjoining property, as stated in LB720, it has to be over that individual's private property. So a diagonal image capture would not be a concern. The other is just going back to the issue with regard to the concept of invasion of privacy and the standard for invasion of privacy being if the intrusion would be highly offensive to a reasonable person. And certainly an unintentional capture would not meet that privacy test, as it is my understanding. LB720 is the starting point for this discussion for the Judiciary Committee's consideration today. I have not lined up a huge number of proponents. I wanted to introduce the bill. And a number of stakeholders have identified to me that they would like to testify in a neutral capacity. I believe you've received some correspondence from the ACLU, and in written correspondence, regarding their position on LB720. I think this is an important ability for us to begin establishing a record as to who all the stakeholders are, what some of the planned uses for UAV and drone technology may be, so as we move forward in subsequent years we have a clear understanding of what the regulatory concerns may be and how we can meet the best interests of all stakeholders involved. With that, I am open to any questions the members of the committee may have. [LB720]

SENATOR SEILER: Senator Pansing Brooks. [LB720]

SENATOR PANSING BROOKS: Thank you. Thank you for bringing this, Senator Kuehn, and welcome to Judiciary. [LB720]

SENATOR KUEHN: Thank you. [LB720]

SENATOR PANSING BROOKS: Okay, well, I'm just...could you remind me again--I was taking notes and you said--what was the 350 feet versus the 200? [LB720]

SENATOR KUEHN: Yeah, so when we look at different levels, there are different levels of regulation in regard to airspace. So there's some thresholds at 500 feet; there's another threshold at 350 feet. And in the most recent FAA guidelines that I've looked at, they're only looking at issues of drone flight above 350 feet. So that 350-foot floor is considered by many to be the bottom of federal primacy. So 200 feet above your property to 350 feet is currently a gray zone, but 350 feet and above you get into regulation by the FAA in terms of flight, flight regulation, air traffic, etcetera. [LB720]

SENATOR PANSING BROOKS: Okay. And thank you for answering that. [LB720]

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SENATOR KUEHN: You bet. [LB720]

SENATOR PANSING BROOKS: When I was...when I'm reading this bill, it talks about "a person" is presumed liable. I mean, I presume we want to protect privacy in lots of instances, not just a private person; I presume corporations should be included. It seems like that's so limiting, just some kid on the ground. You're obviously wanting to do more than just a person. And what about government interaction too? [LB720]

SENATOR KUEHN: Yeah. I'm not going to disagree that this is fairly specific and there are...I think you're going to hear some testimony this afternoon where you might be surprised at some of the potential and proposed uses for this technology by business and industry. And I think that's part of the struggle we have. In this initial piece of legislation, I was initially looking at the voyeuristic uses and some of those nefarious utilizations of drone technology. We've all seen the news reports of drones getting shot down and ultimately being removed from their airspace because they were intruding on someone's private property or they felt they were intruding. So this is the first bite of the apple, if you will, looking at the idea of individual voyeuristic rights. Again, I fully acknowledge that I think we as a body, and this committee, will be the place that's going to be processing that in coming years. We'll need to look further at what are the appropriate uses, both for commercial application as well as the appropriate role of this technology with government surveillance and its utilization there. I fully acknowledge that. [LB720]

SENATOR PANSING BROOKS: Absolutely. Okay, well, I appreciate it. Just recently I was at a friend's house down in the Haymarket area and we were on the sixth floor of their condominium and all of a sudden it was night out and I saw two little red, sort of, lights. And I was like, that's weird. And so I went over to the window, and they have huge windows that go the whole way around, and realized it was a little drone. And so then I looked down the six flights onto the corner, and somebody is waving up at us because they could, of course...they were watching that whole thing. I mean it's so creepy that anybody can use those things to look into any house in any...I know you're talking about for property, but I'm thinking inside property as well, so. [LB720]

SENATOR KUEHN: And I think you're correct in that idea that there's an inherent discomfort we seem to have with this moving into our space. And that's why I think we need to have the discussion as a policymaking body about what's appropriate. [LB720]

SENATOR PANSING BROOKS: Well, and kids think it's funny and we're...I mean, we like to leave our windows open because we're just, like, sort of open people. But, I mean, with this kind

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of technology, if you don't have some guarantee to some privacy, it's pretty ridiculous. Thank you. [LB720]

SENATOR KUEHN: Thank you (inaudible). [LB720]

SENATOR SEILER: Senator Krist. [LB720]

SENATOR KRIST: Thank you, Senator Kuehn, for bringing it. I would note right off the bat that this seems to be very appropriate for people who have farms with lots of property. But the adjacent and the lateral filming which you're describing is just as much an infraction in my community where they can run down the middle of the fairway and take a picture of me in the bathroom. Okay. So there's something to be said for the proximity. And I think that we need to make sure that it's both rural and there's some concession, there are some opinion taken in for the urban areas. And also, I think the FAA...I believe your reference is correct. But I would say that the 200-foot rule applies unless that obstacle lies within or falls within an airport traffic area and/or an instrument approach or approach area. So sometimes flying along that area, that drone is in...could be a problem in terms of an airport traffic area, as well, which is why we've had conversation off the mike, which is why I think that, again, the federal government and how fast they're going to move or how fast they're going to do anything, I'd like to see the FAA weigh in a lot more in terms of what their restrictions are. I feel like anybody who flies, a manned or unmanned, should have to have a license to do so, which, you know, that's big government reach, huh? That's...but anyway, thanks for bringing it. I think it's a great starter for a discussion and I think that at some point we're going to have to deal with it. So thank you. [LB720]

SENATOR KUEHN: Agreed. Thank you. [LB720]

SENATOR SEILER: Senator Morfeld. [LB720]

SENATOR MORFELD: Thank you, Mr. Chairman. And thanks for bringing the bill. I guess I'm one of Patty's kids that likes to fly these things (laughter). You know, but I...you know, it was interesting. I was out in Iowa actually with one of my friends who lives in a small town. And he actually has a commercial license, so he does commercial flying of these drones for...I think he intends to do it to look at properties and then also look at properties in the sense of taking videos of properties to post on real estate when they're selling it and things like that. But so on one hand, I think that people should have a right to fly these things; but on the other hand, you know, I also don't want a sky robot hanging out, you know, right by my house and peering in. So I see that balance. One of my concerns though, and I've read this a few times, is it's just so broad in the sense that, you know, I know that when we were flying ours a week or two ago, it went up and it had an aerial view of pretty much everything. So is that an invasion of everybody's privacy

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right there, because we were recording it, you know, going up? And you could see down and wherever around, you know, for probably a five- or six-mile radius. I mean, so particularly in the urban areas, right away there's probably 2,000 or 3,000 invasion of privacy claims within ten seconds. And so I'm not trying to poke holes in your bill, because I do think this is a legitimate privacy concern. But just as far as the enforceability, for lack of a better term, I have concerns. [LB720]

SENATOR KUEHN: And I'd refer you, on page 3, to line 18. [LB720]

SENATOR MORFELD: Yeah. [LB720]

SENATOR KUEHN: So on Section 6, under (a), to address that issue of that lateral capture, that unintentional capture, it states, "within the airspace overlaying privately owned real property." [LB720]

SENATOR MORFELD: Okay. [LB720]

SENATOR KUEHN: So if you were the adjacent landowner through unintentional capture,... [LB720]

SENATOR MORFELD: Okay. [LB720]

SENATOR KUEHN: ...as this is written, you would not have a claim of an invasion of privacy. [LB720]

SENATOR MORFELD: Okay. [LB720]

SENATOR KUEHN: Again, that invasion of privacy...and I'm not going to claim to be a tort attorney in any way, shape, or form. I can do a C-section much quicker than I can do a legal interpretation. But in terms of my understanding of the privacy statutes, the intrusion has to be highly offensive to the reasonable person. [LB720]

SENATOR MORFELD: Okay. [LB720]

SENATOR KUEHN: So a reasonable person under the privacy statutes of the state would not assume that an accidental capture, you know, from...and again, that 200-foot threshold would be reasonably offensive, and it's a tort claim at that point. And so that again would be just like any

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invasion of privacy. If you step off the sidewalk into someone's yard, you haven't automatically engaged in a trespass. There has to be a complainant and it would be a civil tort. So I think that's where we have to think about, again, how we do it. And I'll fully acknowledge that, you know, in the Kentucky case there was questions over the location of the actual drone that was shot down. It was a case that made a lot of media. The father shot down a drone over his backyard that they felt were spying on his daughter sunbathing. And there was metrics on the UAV that demonstrated that it was not over the property, but two eyewitnesses said it was. And the court found that it was over the private airspace. So we're going to continue to have challenges of how do you determine that altitude, how do you determine the boundaries of the property vertically, and I fully acknowledge them. And that's why I think we need to start looking at some very real legislation and start to identify what are those parameters. And part of that, quite frankly, is just bringing all of the stakeholders out of the woodwork. And I have been amazed since introducing this bill on the first day of the session, the business interest, the government interest, the university interests who have come to me saying, hey, we want to use drones for X, Y, and Z. And I personally kind of went, oh, that's a little frightening. And so I think part of our challenge in this is just going to be understanding what are going to be the acceptable uses and how do we develop legislation that's effective and enforce it. [LB720]

SENATOR MORFELD: Yeah, definitely. Thank you. [LB720]

SENATOR SEILER: Senator Pansing Brooks. [LB720]

SENATOR PANSING BROOKS: Thank you. I just wanted to add one more thing. We had an earlier bill on StingRay, the use of StingRay technology. And that was described to us as a game of Marco Polo, where the police yell, "Marco," and anybody in the region calls back, "Polo," and they have all the phones at that point. They have every contact, every connection. This is just Marco Polo with your eyes open where basically they go up and yell, "Marco," and everything is available, everything is...I mean we don't even have to...so as cool as it is...there's a book called The Second Machine Age that two MIT professors wrote that I'm smitten with and I hope everybody reads. But anyway, trying to keep ahead of this technology is one of the most overwhelming tasks that we have as a Legislature. And to try to protect privacy rights and to try to protect, I don't know, what little we have remaining, it's really important. So thank you for bringing this. I know that we will bring this again and again since it hasn't been prioritized. Thank you. [LB720]

SENATOR KUEHN: Thank you. [LB720]

SENATOR PANSING BROOKS: Thank you. [LB720]

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SENATOR SEILER: Was there a question there? [LB720]

SENATOR KRIST: No. [LB720]

SENATOR SEILER: Senator Krist. [LB720]

SENATOR PANSING BROOKS: No, but I'm just following Senator Krist and Senator Chambers. [LB720]

SENATOR KRIST: Oh, don't try to emulate me. Okay, just a point to follow up on Senator Morfeld and your conversation. Because this--this is the FAA--because this bill focuses on privacy issues and not on the prevention of airspace transit, it would not be preemptive. We have to get preemptive and we have to talk about the airspace to prohibit what Senator Pansing Brooks and I feel are very important. Because whether it's in the city or in the rural community, if you can transit down that road, you can look at both sides of that road and not have permission to do anything that you're doing. Is that important to us? If you're talking about privacy, yes; if you're talking about preemptive, in terms of airspace transit, the two of them at some point are going to have to go hand in hand. So my question is, do you agree with that? [LB720]

SENATOR KUEHN: I am not going to... [LB720]

SENATOR PANSING BROOKS: Oh, good job. [LB720]

SENATOR KRIST: There you go. I finished it with a question. [LB720]

SENATOR PANSING BROOKS: Yeah. Oh, (inaudible). [LB720]

SENATOR KUEHN: I am not going to disagree that this barely, and I will openly acknowledge, this barely scratches the surface on where we need to go with understanding this technology and its use. And in drafting it and looking at the opinions, every state that has looked at an attempt to do this and this interconnection in this airspace with federal issues and local issues and privacy issues, public and private, it is an almost Sisyphean task to try to put all of this together. And I think legislatively we are probably going to look at multiple pieces of legislation incrementally over a period of years to help us identify and get some clarity to this role. And so I fully acknowledge that at some point we are going to have to establish, as a state, where do we interact with that federal primacy. [LB720]

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SENATOR KRIST: Thank you. [LB720]

SENATOR SEILER: Any further questions? Thank you very much. [LB720]

SENATOR KUEHN: Thank you. [LB720]

SENATOR SEILER: First proponent. First proponent. First opponent. [LB720]

ADAM HOUSTON: (Exhibit 1) Good afternoon. My name is Adam Houston, A-d-a-m H-o-u-s-t-o-n. I'm an associate professor at the University of Nebraska. I'm also the codirector of USSRG, the Unmanned Aircraft System and Severe Storms Research Group. From the outset, I am not representing the university. I'm representing myself and my collaborators who are using unmanned aircraft to do research on the atmosphere. So we start off by talking a little bit about what we do. My focus is using unmanned aircraft to study thunderstorms and the hazards they produce. We have a track record of operating in severe storms, tornadic storms, to collect data that we can't collect by any other means in order to answer some important questions about, basic questions about formation mechanisms for tornadoes. We're also starting to explore probably a more challenging--although that's reasonably challenging in and of itself--topic, and that is how we might modernize the weather surveillance network using unmanned aircraft. I can speak a little bit more if I have time, but I just wanted to kind of give you context of where I'm coming from, how we use them. So obviously I'm here as an opponent of LB720 because our research involves flights below 200 feet, we fly over private property, and we have cameras. So by my read on the bill, and my read may be flawed, I must admit, but it would seem like we have the risk of being liable. We are not...we have no intention of capturing images of private citizens. We don't care. Our intent is to have situational awareness of the storms that we're targeting, to use that as data, more than just situational awareness but have context when we're flying. We've used that in the past and we've found it very valuable. Is there the possibility that we unintentionally capture images of private citizens and of their property? Yes, and I think that's where we run the risk of violating or being held liable. Unfortunately, it's not possible for us to request permission ahead of time. We are operating on thunderstorms and we don't know ahead of time where they form. Moreover, thunderstorms don't care if they're over public or private property, so there's a good chance it will be flying over private property. Now I...it's possible, and I would hope to get clarification on this, that we as a public entity would be exempt from this, or that the bill could be amended so that we are exempt. But I want to bring up another...and that's obviously important. But I want to bring up another point, one of the other concerns, and that is that this singles out a particular technology, and it's a technology that I think is...I've kind of get...we understand this...wow, that went fast. [LB720]

SENATOR SEILER: (Laughter) We have a tendency to do that. [LB720]

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ADAM HOUSTON: Yeah, boy, I realized professors talk a lot, but I didn't realize it was that quick. Okay. [LB720]

SENATOR SEILER: Go ahead and finish that point you're making. [LB720]

ADAM HOUSTON: So I'll just finish my statement and then I'll move on...is that there's this perception, this negative perception, of unmanned aircraft. And we're not naive. We understand why that's the case, and in some cases it's very justified. But we just want to make sure that the policy doesn't overstep the potential use of this technology. I'll just...I'll stop there. [LB720]

SENATOR SEILER: Questions? Senator Krist. [LB720]

SENATOR KRIST: Just a question, and you don't have to answer it, but just for general conversation: In the execution of your research, if you happen to run across somebody shooting somebody, what would be your legal obligation with that particular piece of film? [LB720]

ADAM HOUSTON: So wait, ask the question again. If we... [LB720]

SENATOR KRIST: Somebody shot somebody and you caught it on film while you were doing your research. And you shouldn't answer. It should be a...you should get legal advice as to how to react to that. [LB720]

ADAM HOUSTON: Yeah, I have no idea. [LB720]

SENATOR KRIST: We...that has come up on several occasions where somebody will be flying something, they will pick something up that should be brought to law enforcement's attention, and how do you interface in that way, so. [LB720]

ADAM HOUSTON: Yeah, I have no idea. I mean we...that's kind of an extreme example. I mean I think we might be able to see that that's happening. I mean the...I think what you're getting at is that any infraction, even not quite as extreme, are we held to report that? And I don't even know we'd really know it because we're not even looking for it. [LB720]

SENATOR KRIST: Well, you're a public entity. That's what you're asking for, is an exception for public entities. So how do you deal with those situations? Thanks. [LB720]

ADAM HOUSTON: Yeah, yeah. [LB720]

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SENATOR SEILER: Senator Pansing Brooks. [LB720]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. And thank you for coming forward, Dr. Houston. These are cool handouts and I'm just... [LB720]

ADAM HOUSTON: Colorful. [LB720]

SENATOR PANSING BROOKS: I'm wondering. I guess when I think of weather surveillance I usually think of satellite and...but there is a lot of under 200 feet surveillance going on? Can you explain that to me a little bit? [LB720]

ADAM HOUSTON: Sure, sure. So right now there's not a lot. It's a part of the atmosphere that we don't know a whole lot about for a number of reasons. One is most of the observations we collect are at the surface. I mean you have satellites, of course, that are collecting cloud motions,... [LB720]

SENATOR PANSING BROOKS: Right. [LB720]

ADAM HOUSTON: ...clouds, temperature to some extent, and with that may actually be skin temperature, the actual temperature of the surface. But anything happening in that layer--really it's between the surface and about 1,000 meters, maybe a bit higher--we know very little about it. That lower level, that below 200 feet, is, I mean there's no magic number here, but that's actually a level where our radars can't even see. So because of the curvature of the earth, because of the fact that the being has to be just a bit above, not zero degrees but just a bit above, you lose that lower level--you can't get winds, you can't get precipitation, you can't get anything. So it is a part of the atmosphere that we just don't see. And more the point, it's a part of the atmosphere where there's a lot of important things happening that govern where thunderstorms initiate, how severe they're going to be, that kind of thing. So it's a part of the...a layer of the atmosphere that we definitely need to observe, we definitely need to surveil. [LB720]

SENATOR PANSING BROOKS: Okay, so you aren't doing it now, but you think you might. [LB720]

ADAM HOUSTON: Well, okay, so, right, so in terms of the weather surveillance network, it's not being done; in terms of research, it is being done. We are doing it now for the exact same reason: that you can't collect those data very easily; more importantly, you can't collect pressure, temperature, humidity at all below...well, between basically the surface and 1,000 meters. So we are doing that now. We are doing that right now, not literally right now, but during this spring/

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summer we'll be out doing it, next spring and next summer. And there's an image here kind of shows our territory of operation. Southwestern Nebraska is in our territory, in our area where we have federal authorization to fly, and we're intending to expand that all the way through the rest of southern Nebraska. So we will definitely be out there collecting these data. And I could talk a little bit more how we actually operate, if that's of interest. But the bottom line is we will be below 200 feet at times. [LB720]

SENATOR SEILER: Senator Ebke. [LB720]

SENATOR EBKE: Thank you. I wonder if, given the nature of your research and everything, if the university and all university-type institutions ought not develop some internal protocols through their IRB, you know, for the use of these kinds of drones or... [LB720]

ADAM HOUSTON: They are. [LB720]

SENATOR EBKE: They are? Do they have some? [LB720]

ADAM HOUSTON: They are. Yeah, yeah, we've made quite a bit of progress on that. [LB720]

SENATOR EBKE: Good. [LB720]

ADAM HOUSTON: I won't speak to it because that's not me, that's not mine. [LB720]

SENATOR EBKE: Somebody else is doing that, right? [LB720]

ADAM HOUSTON: Someone else is doing that but, yes, that is there. [LB720]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB720]

ADAM HOUSTON: Thank you. Thank you. [LB720]

SENATOR SEILER: Next opponent. [LB720]

MATT WAITE: Members of the committee, good afternoon. My name is Matt Waite, last name W-a-i-t-e, first name Matt, M-a-t-t. I'm here to testify today as myself. But my day job, I am a

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professor of journalism at the University of Nebraska-Lincoln, and I founded the Drone Journalism Lab there in 2011. I've spoken around the country and around the world about how journalists might use drones safely, legally, ethically, to support their news-gathering missions. I'm here to testify in opposition of LB720, not because I believe low-flying drones over somebody's property is okay--I don't. I'm a homeowner and I don't want that either. I'm opposing LB720 because Nebraska's privacy laws I think already handle what is in this bill, what it seeks to stop. It does it with less danger to the state trying to regulate areas of federal concern and does it without addressing specific technologies into the law and does it without creating unintended consequences. Under Nebraska Statute Chapter 20-203, one of the few sections actually this law does not amend, Nebraska recognizes an intrusion upon seclusion tort. The section says that, "Any person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall be liable for invasion of privacy." Would not a low-flying drone over someone's backyard not qualify as highly offensive to a reasonable person? If it's unclear that the aerial intrusion doesn't qualify, could that not simply be added to that part? Regulation of airspace, as we discussed, is a job relegated to the FAA under our system. Declaring anything below 200 feet as a legal hazard zone comes perilously close, if not arguably does regulate airspace. States have the right to regulate privacy for their citizens, no doubt. But if privacy violations are the worry, then what about zoom lenses? If I can get the same photo from 201 feet, doesn't that obviate the 200-foot restriction and make this bill moot? Does that not create confusion between the amended sections and Section 20-203? If it's not the low-flying parts that were worrisome, then that's better handled in nuisance law or safety and negligence law. The right to privacy is inextricably linked with the notion of a reasonable expectation of privacy. If I'm standing on my front lawn and clearly visible from the streets, courts have found that I really have no reasonable expectation of privacy there. Also, if I can be seen from a manned aircraft flying at a minimum altitude, I'm visible from a public street in a manner of speaking. But this bill says, if I'm seen from a drone at 198 feet, that's actionable. I could use a kite. I have a nine-foot-wide kite that can carry a camera in my office, and that would be fine, or a hot air balloon. Both lack navigation capabilities and don't qualify as aircraft. But because of this bill specifically mentions drones, we've carved out a specific technology, one that is rapidly evolving, and ignored the central question: Is it the privacy violation that's important or is it the technology that we use to violate it? For unintended consequences, let's pretend for a moment that I'm a farmer and I do not like my neighbor or his drone that he uses to map his field. If I'm standing on the fence line next to the highway that separates our properties, mapping drones get to the whole field...to get the whole field, will overfly the end of the row. And if I'm standing at the fence, I'm going to be photographed. Have I been harmed? No, but it's over my property and now I can make my neighbor hire an attorney. And boy, that does happen fast. Drones are going to be a significant part of our economy very soon and agriculture... [LB720]

SENATOR SEILER: But it means stop. [LB720]

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MATT WAITE: Sorry. [LB720]

SENATOR SEILER: Okay. Any further questions? [LB720]

SENATOR PANSING BROOKS: Do you want to say the last comment? [LB720]

SENATOR SEILER: Okay, that's your prerogative. Go ahead. [LB720]

MATT WAITE: Thank you. Drones are going to be a significant part of our economy very soon and agriculture will be the single largest user of drones in the U.S. Creating rules specific to drones makes them more difficult to use for businesses, not easier. Given all of this, isn't it better to let Section 20-203 carry the weight? Thank you. [LB720]

SENATOR SEILER: Questions? Pansing Brooks. [LB720]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you, Dr. Waite. These are really good questions to consider in the next bill that comes forward to try to...and I do think it's privacy that we're trying to protect, not necessarily the technology that we're trying to stop. So that's a good point, other things like hot-air balloons, but those aren't hovering at a certain area outside of somebody's window during a dinner party, like these drones just did to me. So, you know, we have...I understand the free speech issues and the interest in getting to journalistic events that need to be covered. But again, I don't want somebody flying over my backyard if I'm in my swimming suit in the backyard. There's a fence there so that people can't wander in and see whatever they want to see. So if you're...I guess if you're a public person, then that weighs into it. But certainly not every citizen would assume that they lose all privacy rights by being in their backyard because drones can fly over it. [LB720]

MATT WAITE: Certainly, and nor do I. As I said in the beginning, I'm a homeowner and I have kids and they play in the backyard and I don't want somebody buzzing over my backyard either. I just...I question the unintended consequences of this where in the front yard it's a different story. This makes no distinction of where on the property it occurs. Another question is, how is anyone really to know, unless the violation is truly, truly obvious? If someone is a few feet inside your property line at 190 feet: (a) you're not going to be able to tell what 190 feet versus 200 feet is, given your depth perception at that distance; and we don't exactly go around painting lines on the ground that say, okay, my property is here, here, here, and here. So... [LB720]

SENATOR PANSING BROOKS: Well, you bring up very good questions. Thank you. [LB720]

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MATT WAITE: Thank you. [LB720]

SENATOR SEILER: Further questions? Thank you very much for your testimony. [LB720]

MATT WAITE: Thank you. [LB720]

SENATOR SEILER: Next opponent. Neutral testimony. [LB720]

SHAWN RENNER: Senator Seiler, members of the Judiciary Committee, my name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer with the Cline Williams firm here in Lincoln. I appear today on behalf of Media of Nebraska, an umbrella lobbying organization for the state's press and broadcast news media. I have virtually no answers to any of the questions that have come up, (laughter) which is why I'm appearing here neutrally. I've looked at this issue over the last few years because I have clients that are interested in using drones for legitimate journalistic purposes, and none of them can at the moment because the FAA is in the process of promulgating final regulations that will tell commercial users how they can use drones. And journalism is viewed as a commercial use. In fact, virtually any use that generates any income for anyone is viewed as a commercial use and is currently illegal in the United States unless you have an exemption from the FAA or unless you have a pilot's license and go through a licensing process that virtually no journalism folks are able to do. I do think that there will be some interaction between the FAA regulations. Those were supposed to be out by now. I've heard predictions ranging from the end of 2016 till never, when they may actually result in Washington. I have no idea when they'll come out. But I do believe that Senator Krist is right, there is going to be some intersection between state law and federal law. I think there are a lot of issues here that need fairly close examination. I do agree, and my clients agree, that there are serious privacy issues that need to be dealt with. They are not in the business of flying over private residences or viewing dinner parties or any of those sorts of things, but there are a lot of realistic, useful means for journalists to have drones in their pocket as a tool. My request and message is twofold: (1) I would like a place at Senator Kuehn's table when we talk about the stakeholders and how to go about working these kinds of issues. And I believe we'll be invited to that table and we'll make our views known then. But I think on top of that, it makes some sense to hold off for awhile to see what the FAA does, assuming that it does something, because passing a bill that is immediately preempted probably doesn't help anybody ultimately. One last thing and I'll leave it alone. I do...I've done privacy lawsuits in the past, including intrusion suits under our statute. I don't agree with Senator Kuehn that the current version of LB720 includes the outrageous conduct language that's currently in the intrusion statute, and I think it ought to because that's the news media's primary protection in this area. It's pretty easy to accuse someone of invading privacy. If the conduct has to be fairly significantly egregious in order to get a judgment, that matters to the news media. So, appreciate the opportunity to present views. If

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anybody has questions I'll try, but lord knows I'm neither a drone expert nor an FAA expert. [LB720]

SENATOR SEILER: Anything that you've seen describing the person that's operating the drone? Do they describe the person (1) as an individual, whether it's for commercial or not, or are they just only bothering themselves with commercial? [LB720]

SHAWN RENNER: Currently if you aren't...at the federal level for FAA regulation... [LB720]

SENATOR SEILER: I'm talking about the federal level. [LB720]

SHAWN RENNER: Yeah. The (inaudible) generally is hobbyists. And Professor Waite would know this better than I, but commercial is, if you can make any money off of it, it's viewed as commercial. So I believe that a farmer could fly over his own land and use a drone to do whatever he does, including mapping out rows. I don't think he could go to his neighbor's land, do that, and charge his neighbor a fee, even though it's exactly the same drone and used in exactly the same way. [LB720]

SENATOR SEILER: Okay, that's...any further questions? Thank you for... [LB720]

SHAWN RENNER: Thank you. [LB720]

SENATOR SEILER: ...your testimony. Further neutral. [LB720]

KRISTEN GOTTSCHALK: Senator Seiler and members of the Judiciary Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association. I represent 34 rural electric members that provide electric service in the rural areas in Nebraska over more than 80,000 miles of distribution line. And that's kind of an important point in my testimony. We do appreciate Senator Kuehn bringing this bill and turning this bill into an open discussion on the need to evaluate this new and rapidly changing technology where it appears regulation is absolutely necessary to some extent. But we do need to move cautiously and make sure that, as we move forward, we don't have an unintended consequence and defeat a beneficial purpose of this technology. You know, as I mentioned, we have 80,000 miles of distribution line, and it would be nice if all of those miles of line were just right alongside the road and you could drive along and monitor and do your maintenance checks from the cab of a pickup. That's not quite possible in the Sandhills. We may have multiple miles of line that run or kitty-corner through a customer's property. And right now it's not practical to drive a pickup truck up and down miles of Sandhills

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property to monitor those lines. And some of our systems have employed the use of aircraft--you know, manned aircraft technology--but then you also have to have a certain exception so you can fly at a level low enough to be able to view the lines. And flying an airplane is costly and paying a pilot is costly, so there's some real excitement at the potential of being able to use drones to monitor some of our rural distribution lines. So we're looking at using it to do something we currently do, but using it in a way that it's less expensive and more efficient for our member systems to do. Senator Krist mentioned that license and training may need to be a component of whatever happens here, and we would agree with that, simply because we also don't want drones flying around our infrastructure and getting tangled in the power lines or dropped into a substation, which could potentially cause outages for our customers as well. And we have easements and agreements with property owners that we run our infrastructure across. However, at the time most of those agreements--some of those were just a handshake and a promise to keep the lights on--this type of technology was not considered. And so it may not be that we would be authorized to do this without some kind of exception in the statute. And we do agree that there are legal issues in this. And as an industry as a whole, at least within the Rural Electric Association, we're going to begin the process of establishing industry protocols and making sure that we work with our legal counsel to ensure we're using the technology safely. But we also would like to be at the table and appreciate the opportunity to testify in the neutral capacity. [LB720]

SENATOR SEILER: Any further questions? Thank you for your testimony. Senator Kuehn, you'd better start fattening up those cows, because your table is getting big (laughter). [LB720]

COLEEN NIELSEN: Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Coleen Nielsen; that's spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Insurance Information Service and State Farm Insurance Companies, testifying neutrally on LB720. We, too, appreciate Senator Kuehn inviting us to the table to discuss this. This particular bill I was surprised to find that the insurance industry has in the last year or so been asking for permission from FAA to...for the use of drones in the insurance business. It is true, as Mr. Renner has testified earlier, that commercial-use of drones is currently illegal, unless there is permission granted by the FAA. And several insurance companies have done that over the last year. They do it for the purpose of surveying natural disasters and catastrophes. And so as we move forward in this discussion, we're just looking for consistency with the applicable FAA rules, licenses, and exemptions. And I'd be happy to answer any questions. [LB720]

SENATOR SEILER: Seeing none, thank you for your testimony. Further neutral. [LB720]

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THEODORE FRAIZER: Good afternoon, Chairman Seiler. Members of the committee, my name is Tad Fraizer; that's T-a-d F-r-a-i-z-e-r, local counsel and lobbyist for the American Insurance Association, a national trade association of property and casualty companies. I'd like to echo Ms. Nielsen's comments. The insurance industry is starting to look at drones as a viable, safer alternative for examining damaged properties. Rather than having to send an adjuster or a repair person up onto a high damaged roof or something like that, the possibility of using a drone under those circumstances is appealing. If I could use an example you might be familiar with, the fire up in the Old Market area of Omaha that shelled out the M's Pub building, you could see using a drone in that circumstance with an unstable building to...who will fly within the building to evaluate it, see what was going on. The flip side, going to the unintended consequences, is in an urban area like that it would be hard to fly around a structure such as that or fly into the structure and photograph the damage without possibly taking pictures of neighboring properties, party walls. It could be a condominium situation where it would be hard to photograph the specific portions of the property within a building that you were insuring without photographing a neighboring unit as well. So we have touched base with Senator Kuehn. And as he's indicated, he's open to conversation on the matter. And we just wanted to alert you to some of the possible uses and concerns that we would have going forward. And I'd be happy to try to answer any questions, although my aeronautical abilities kind of stopped with kite flying back in the day. [LB720]

SENATOR SEILER: (Exhibits 2-4) Any questions? Seeing none, thank you for your testimony. Further neutral? Seeing none, we have an informational letter from the FAA Central Region of Kansas City; the Nebraska Cattlemen are strong proponents; and neutral testimony from the ACLU. They will be made part of the record. Senator Kuehn, you may close. [LB720]

SENATOR KUEHN: Yeah. Thank you, colleagues. Thank you, Mr. Chairman. I appreciate your time this afternoon. I know there's a lot left to deal with today for you as a committee. I appreciate the opportunity to have what I think is the good start of a policy discussion and establishing a record. I appreciate those individuals who came representing their industries and their groups and helping alert us as a body to some of the potential issues that we need to think about and address as we start into this really big task of addressing how we regulate, how we balance that interest between commercial interest, privacy, as well as the comfort level of our constituents. So with that, if there are any questions, I'm happy to address them. [LB885]

SENATOR SEILER: Seeing none, thank you. [LB720]

SENATOR KUEHN: Thank you. [LB720]

SENATOR SEILER: Senator Davis. [LB885]

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OLIVER VanDERVOORT: He's on his way. [LB885]

SENATOR SEILER: Okay. [LB885]

SENATOR PANSING BROOKS: He left. [LB885]

SENATOR WILLIAMS: I think we chased him away. [LB885]

SENATOR SEILER: Senator Davis, you may introduce...Senator, you may introduce LB885. [LB885]

SENATOR KRIST: Senator Davis, any time you're ready. [LB885]

SENATOR DAVIS: (Exhibit 1) Good afternoon, Chairman...Vice Chairman...almost-Chairman Krist. [LB885]

SENATOR KRIST: No, I'm just a guy (laughter). [LB885]

SENATOR MORFELD: Ready to roll. [LB885]

SENATOR DAVIS: Members of the Judiciary Committee, my name is Al Davis, D-a-v-i-s, and I am here to introduce LB885. LB885 looks to ensure that student journalists have the same freedom of speech and of the press as their professional counterparts. It guarantees that those students and their advisors have full responsibility for the determination of content in school-sponsored media, regardless of whether the media is supported financially by the postsecondary educational institution or created in the school's educational facilities. The idea was brought to me by the Nebraska Collegiate Media Association and comes in response to instances throughout the country of higher educational institutions retaliating against student journalists and their advisors for publishing stories critical of their administrations. Similar legislation has been passed in eight other states as a result of student censorship. I agreed to bring this bill because a free society relies on a free press. Higher education institutions should not have the special privilege to stifle speech simply because it refers to them. Furthermore, this type of restraint on student journalists is an affront to their education. Many of them will go on to be professional journalists, and they should have the opportunity to approach different stories and difficult stories without fear of censorship as they develop their skills. Of course, the bill does not protect libelous material or material that would be considered unlawful or overly disruptive to the institution's operation. LB885 specifically applies to the university system, our state colleges, and community colleges. It does not extend to Nebraska's high schools. I am targeting

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students at our nation's colleges and universities because they are more mature, more intellectually curious, and closer to adulthood. There is a significant difference between a high school sophomore who may not be old enough to drive and a college senior who may be married, have children, be serving our nation in the National Guard, or perhaps in the Legislature at some point, and carry a full-time job. College students have a unique view of our higher education institutions and may find the opportunity to tell important stories that slip past professional journalists. They should have a right to a free and independent press to address issues which are relevant to students and a press in which they can place full confidence. I've handed out an article from The Atlantic monthly magazine talking about some of the schools and some of the issues that have come up in other places. I think, if you have time, you should read that. And with that, I will thank you for your time and be glad to take any questions which you may have. [LB885]

SENATOR COASH: Thank you, Senator Krist. Senator Davis, is there any evidence of this kind of retaliatory action taken against students here in Nebraska? [LB885]

SENATOR DAVIS: Not that I know of. [LB885]

SENATOR COASH: So it's just...this is preventative... [LB885]

SENATOR DAVIS: It's preventative. [LB885]

SENATOR COASH: ...is your approach. All right. I understand. Thank you. [LB885]

SENATOR KRIST: Vice Chairman, would you like to take it back? [LB885]

SENATOR COASH: Sure. I don't see any other questions. [LB885]

SENATOR DAVIS: Thank you. [LB885]

SENATOR COASH: Thank you, Senator Davis. We'll take the first testifier in support. [LB885]

ALLEN BEERMANN: Acting Chair of this committee, members of this committee, I'm Allen J. Beermann. I represent the Nebraska Press Association. We are the printed media representing newspapers, both weekly and daily. We are here to support this bill. We think it's important for young people who are becoming journalists, working journalists, that they understand the responsibility they have with regard to ethics, honesty, fair reporting, and to enjoy the privileges

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of the First Amendment. The way to learn those responsibilities is to have the responsibility. And so we think it's important to adopt this bill to give them the privileges of operating as journalists under the First Amendment and also to have the consequences thereof if they do not follow ethics, fair reporting, and other guidelines. So we support the bill. [LB885]

SENATOR COASH: Thank you, Mr. Beermann. Senator Pansing Brooks. [LB885]

SENATOR PANSING BROOKS: Thank you for coming today, Mr. Beermann. I appreciate it. I was just trying to figure out what is the current status with children right now? So they don't have...can you tell me, without this bill, what's the difference in how a young journalist would be treated? Could you just give an example? [LB885]

ALLEN BEERMANN: Well, for example, the regents or the dean or even a professor or someone else in the college administration could have jurisdiction over an article written. They could force it to be pulled, they could force it to be rewritten or edited, and so forth, or even to pull the article. [LB885]

SENATOR PANSING BROOKS: Okay, and...all right. That's a help. Thank you. Thank you for your service to the state, too, Secretary Beermann. [LB885]

ALLEN BEERMANN: Thank you. [LB885]

SENATOR COASH: Senator Morfeld. [LB885]

SENATOR MORFELD: Just in...you know, one thing that's come to mind to me on this legislation is I serve on the board of the Daily Nebraskan publications board, which serves as the publisher of the Daily Nebraskan for the University of Nebraska-Lincoln. And one thing that's occurred before, and it's happened in other schools, too, is that student fees have been pulled by certain student fees advisory committees and things, which is actually fairly substantial at the University of Nebraska-Lincoln. I think they collect \$10 million to \$16 million in student fees each year and then distribute it based on the student governments and how they want to distribute it. So one of my questions is, and you may not be able to answer this but I'm just using you as a sounding board, is, by institution, does that mean also the institutional mechanisms in which student fees are distributed through the students to those publications? Because we've actually been threatened before to have our student fees yanked because of some reporting on student government, in retaliation, so. [LB885]

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ALLEN BEERMANN: I'm not sure I'm in a position to answer that because I do not know what jurisdiction Regents or the administration or a chancellor, or even a dean, would have... [LB885]

SENATOR MORFELD: Yeah. [LB885]

ALLEN BEERMANN: ...over the distribution of fees, or the lack thereof,... [LB885]

SENATOR MORFELD: Yeah. [LB885]

ALLEN BEERMANN: ... or to penalize someone because...and pull fees. [LB885]

SENATOR MORFELD: Yeah. [LB885]

ALLEN BEERMANN: I don't know that structure, and I suspect that structure varies within various schools. [LB885]

SENATOR MORFELD: Yeah. No, I think the bill has merit. [LB885]

ALLEN BEERMANN: But it's a very good question. [LB885]

SENATOR MORFELD: Yeah, the bill has merit because we've experienced that before, so this has actually been a problem. I don't think they've gone to the full extent of yanking the fees before, but it's been threatened. [LB885]

ALLEN BEERMANN: It's been threatened, I'm aware of that. [LB885]

SENATOR MORFELD: Yep. [LB885]

ALLEN BEERMANN: And I did not follow the outcome of it, but it is a real issue. [LB885]

SENATOR MORFELD: Okay, thank you. [LB885]

SENATOR COASH: I don't see any other questions. [LB885]

ALLEN BEERMANN: Thank you for your courtesy, appreciate it. [LB885]

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SENATOR COASH: Thank you. We'll take the next testifier in support. [LB885]

MADISON POHLMAN: Hi. Thank you for having me today. My name is Madison Pohlman; that's M-a-d-i-s-o-n P-o-h-l-m-a-n, and I am the editor in chief of the North Star newspaper at North High School in Omaha. And first I'd like to thank Senator Davis for proposing this bill because I think it's really important for me as a senior hopefully going into journalism law next year. When I'm trying to decide what school I want to go to, I really look at where are my rights going to be protected. And in Nebraska they're not. And so when it comes down to that, I think we would want to keep our brightest and our most intelligent and talented journalists in our state. So this bill would help that. Also, I think what affects the college-level journalist also affects the high school journalist. And I know he doesn't want to include them at this point, but I think it's also important to realize that, you know, I'll be the same age as I am now going into college, so really there's not a difference in my age there. Yeah, that's all I have now. [LB885]

SENATOR COASH: Agreed. Senator Pansing Brooks. [LB885]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Pohlman. Wow! You're a wonderful testifier. You did a great job. And I agree: We want to keep bright young people like you in this state. So thank you for making the effort to come down and alert us to this issue. And it's very powerful to hear it from your voice. Thank you. [LB885]

SENATOR COASH: Nice work. Thank you. We'll take the next testifier in support. Welcome. [LB885]

LAURIE THOMAS LEE: Hi. My name is Laurie Thomas Lee. It's L-a-u-r-i-e, Thomas, T-h-o-m-a-s; Lee, L-e-e, is my last name. I am a professor of journalism and mass communications at UNL. I teach broadcasting. I wish we had more of our broadcasting students here, but they're preparing for a 5:00 newscast. But they would be in support of this bill, I can tell you that much. But I am here actually representing the Academic Freedom Coalition of Nebraska which is a coalition of schools, of university/colleges, librarians around the state, and we advocate for the academic freedom of students, of faculty, of library patrons, and so forth. I wasn't planning to testify. The person who was going to do it suddenly told us that she was ill. So I'm going to try to wing it here a little bit. But I wanted to point out some things. There are nine other states that have a similar bill to this, and those include Kansas, Iowa, North Dakota. North Dakota just passed this same kind of legislation a year ago and the reason for it is because we've had some court cases over the years. Now back in 1988 there was the Hazelwood case that came down against the rights of students in the public school system if it was a part of the curriculum. Nobody dreamed at that point in time that this would have anything to do with college-level student journalists, that it would ever rise to that level. But then along came a case, Hosty v.

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Carter, in 2005 that it was in the Seventh Circuit that did extend this to the college level. And this was a case where a dean was criticized in the college newspaper, did not care for that, and decided to enact prior restraint and demand to review the newspaper and essentially pulled the funding for the newspaper, in effect, and some of those kinds of things. And in that case they decided that it extended to college. And even in the case of an extracurricular newspaper situation this is frightening and this is in part the reason that you're seeing some states coming forward to protect the rights of college student journalists. So that's why we're in favor of this legislation. We think this is very much needed just in case something like what happened in the Hosty case happens in the state of Nebraska. Thank you. [LB885]

SENATOR COASH: Thank you very much for your testimony. I don't see any questions, appreciate it. [LB885]

LAURIE THOMAS LEE: Thank you. [LB885]

SENATOR COASH: Any further testimony in support? Seeing none, we'll go to opposition testimony. Seeing none, is there anyone here to testify in a neutral capacity? Senator Davis. [LB885]

SENATOR DAVIS: Thank you, Senator Coash. Members of the committee, I just want to say thank you to the testifiers who were here before me and just highlight one or two of the cases that are mentioned in this Atlantic article. One case in which the faculty advisor was dismissed by the administration, the student editors of that newspaper felt strongly that the reason that took place was because the paper had done an investigative piece on toxic mold at the university, and the university didn't like that, so they wanted that suppressed. Another case took place at the University of Memphis. A woman named Chelsea Boozer had written an opinion article criticizing the director of public safety for not issuing a campuswide safety alert after learning of reports of an on-campus rape and she was dismissed. These are people in training to be adults. They're intelligent, they're capable. In many parts of the world, as I said earlier, they're defending our country. But they don't have the right to a free press? It doesn't make sense. The bill is limited to our public institutions. I think it's a good bill. I think we need to follow the other states and I'm just...I really appreciated knowing that there were nine, because I thought there were eight. So I think we need to be the tenth state and I would ask the body to move the bill. And perhaps if we could get unanimous support, we might be able to put it on the consent agenda. [LB885]

SENATOR COASH: Thank you, Senator Davis, appreciate you bringing this bill. [LB885]

SENATOR DAVIS: Thank you. [LB885]

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SENATOR COASH: Before I close the hearing we'll...oh, did you have a question? [LB885]

SENATOR PANSING BROOKS: Yeah, so you're just...I'm sorry, I just was trying to check where it limits it just to public institutions. And thank you for bringing the bill, Senator Davis. [LB885]

SENATOR DAVIS: Did you find that, Senator Brooks? [LB885]

SENATOR PANSING BROOKS: I was trying to. Oh, "means the University of Nebraska, a state college, or a community," okay, I did. Thank you for bringing this bill. [LB885]

SENATOR DAVIS: Thank you. [LB885]

SENATOR COASH: (Exhibits 2 and 3) All right. Thank you, Senator Davis. I'll read in two letters of support, one from the UNL chapter of the American Association of University Professors, and the ACLU. That will close the hearing. [LB885]