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Natural Resources Committee
March 05, 2015

[LB329 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 21, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB329 and a gubernatorial appointment. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Good afternoon, everyone. Welcome to the Natural Resources Committee hearing. Sorry, we're starting just a little bit late here. I'd like to go ahead and first take an opportunity to let the committee members introduce themselves. And we'll start over here to my far left with Senator McCollister.

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. John McCollister, honored to serve District 20 in Omaha.

SENATOR SCHNOOR: David Schnoor, District 15, Dodge County.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance County, part of Hall County.

SENATOR HUGHES: Dan Hughes, District 44, southwest Nebraska.

SENATOR SCHILZ: And we have a couple senators that aren't here today: Senator Johnson from Wahoo, and Senator Kolowski from Omaha. Also with us today we have Barb Koehlmoos, the committee clerk for the committee, and also Laurie Lage, our committee counsel, as well as Jake Kawamoto, who's here. He's a UNL student studying political science. And he seems to be the stalwart page that we page. He never goes away. Today we have one bill and one confirmation for Mr. Norris Marshall and LB329. And if you are planning on testifying today, please pick up a green sign-in sheet that's on the table at the back of the room. And if you do not wish to testify but would like your name entered into the official record as being present at the hearing, there's a form on the table that you can sign up for that as well. This will then be part of the official record of the hearing. Please fill out the sign-in sheet before you testify. Print, and it's important to complete the form in its entirety. When it's your turn to testify, give the sign-in sheet to the committee clerk, and this will help us make a more accurate record. If you do not wish to testify, you may submit comments in writing and have them read into the official record. If you

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have handouts, please make sure you have 12 copies for the pages to hand out to the committee. And if you don't, let the page know, and Jake will try to get that done for you. And when you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and name even if it's an easy one. Please turn off your cell phones, pagers, or anything else that beeps or makes noise. And please keep your conversations to a minimum, or if you need to, take them out into the hallway. We don't allow any displays of support or opposition to a bill, either vocal or otherwise. So we would appreciate you to respect the testifiers and the senators on the committee to make sure that we can hear and know exactly what's going on with each testifier. We do use the light system in the Natural Resources Committee. You'll be given a total of five minutes. It will be four minutes on the green light. Then the light will turn to yellow. You'll get one minute. And then when it turns to red that's your cue to wrap it up and finish your testimony. And with that, we have Mr. Marshall on the phone. And, Mr. Marshall, welcome to the Natural Resources Committee. Congratulations on your reappointment to the Game and Parks Commission. And we would turn it over to you to give us a little history and whatever you'd like to tell us about yourself. Thank you very much.

NORRIS MARSHALL: (Exhibit 1) All right. Thank you very much, Senator. So spell the name, Norris Marshall, N-o-r-r-i-s M-a-r-s-h-a-l-l. I'd just like to thank Senator Schilz and the committee members for accommodating this hearing with a phone call rather than in person. I appreciate that very much. I grew up on a farm in Phelps County, Nebraska, was involved with row crops, cattle feeding, and cow-calf production. I live today just down the road from where I was raised. My wife and I have a business in Kearney. The business is called Marshall Engines, and that business is engaged with remanufacturing and manufacturing engines for cars and trucks and irrigation and power generation. We also own farm ground and pasture that are rented. And I really appreciate the opportunity to be before the committee today for confirmation. I was first appointed in 2010 to the Game and Parks Commission. And I sought this second appointment to continue my work as a volunteer for the people of the state of Nebraska. That is very much how I see the position. I'm a volunteer and I'm just trying to help. While being on the commission, I have worked to improve the opportunities for families and young people to learn about and enjoy the outdoors. Specifically, I've helped grow and improve our youth program...or participated in helping with that, known as the outdoor expos. These expos give tens of thousands of grade school kids the chance to not only learn about, but also participate in outdoor activities from hunting and fishing to camping and cooking in the outdoors. My primary focus has been and will continue to be related to growing the opportunity that the commission can give to the public, whether that's more campsites or more hunter access. And I believe that it is the role of the commissioner to work with both the staff and the public to come up with the best solution. That's what I have for you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, sir. Are there any questions from the committee? Mr. Marshall, you said you first came onto the commission in 2010. What have been some of the biggest issues

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that you've had to deal with and your impression of what the priorities are of the Game Commission moving forward here for your next term here? [CONFIRMATION]

NORRIS MARSHALL: Well, obviously, go back to 2010, I'm not sure what year it was but I was on the commission when we gathered a lot of public input on whether there should be alcohol in the parks and participated in that. And I think that was a significant action that the commission took at that time. Obviously, as you guys all know down there in the Legislature, the mountain lion thing has become a significant event. Proud to have participated with the selection of a new director with the retirement of Rex Amack. And we did a good job and a good search and were able to name Jim Douglas as the director. You know, he was already there, but he still was and is the best man for the job that we could have found anywhere. So I feel like there's been a lot of real positive accomplishment on the commission. The commission is made up of pretty sharp business people. And I think as a state agency, Game and Parks is more willing to look at how to conduct business in a businesslike fashion maybe than other state agencies--I can't say for sure. But I'm very proud of that. And I think as far as moving forward, creating the opportunities, finding the opportunities for a sustainable funding for the park system I think is really critical. I think that's something that we have to continue to work on and try to gain the ground on. Last year, the Unicameral was very helpful in granting us some funds to work on a backlog of maintenance. And that's a great start, but there's more for us to do. And we need to do all we can do to be sustainable on our own. [CONFIRMATION]

SENATOR SCHILZ: Very good. Any other questions? Well, Mr. Marshall, thank you very much for calling in today. We appreciate your time, and congratulations on your nomination. And we will conduct the rest of the hearing. Thank you for your call. [CONFIRMATION]

NORRIS MARSHALL: Thank you very much. I appreciate it. [CONFIRMATION]

SENATOR SCHILZ: At this point we will take supporters of Mr. Marshall. Anyone to testify in support? Seeing none, anyone to testify in opposition of Mr. Marshall? Seeing none, anyone here to testify in a neutral capacity? Seeing none, that will end our hearing today on Mr. Marshall's confirmation, and we will move on now to...I will turn it over to the Vice Chair, Senator Friesen, as we move on to LB329. [CONFIRMATION]

SENATOR FRIESEN: Thank you, Chairman Schilz. We will now open the hearing on LB329. Welcome, Senator Schilz. [LB329]

SENATOR SCHILZ: Thank you, Vice Chairman Friesen and members of the Natural Resources Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here to introduce LB329. LB329 is a bill that would enable farmers and ranchers and any landowner across the state to add

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value to their businesses through diversification. Many who were around in 2013 will note the text of the bill is essentially a reintroduction of LB551. The purpose of LB329 is to encourage landowners to grant access to their farm and ranchland for recreation and tourism activities by reducing the risk of liability. Agritourism is a growing industry in Nebraska and across the country. Hunters, fishermen, bird watchers, and others are increasingly looking for access to private lands to pursue their activities in as natural a setting as possible. They don't want a canned experience. That's not what they're looking for. As you know, the vast majority of land in Nebraska is privately owned, as much as 95 percent to 97 percent. And that's why access to private land is important to sportsmen and women and nature enthusiasts alike. This bill recognizes the reality of farm and ranch land. The expanse of land owned by farmers and ranchers makes it impossible to inspect and maintain those lands in the same way as a business like a retail store, a museum, or even an amusement park. The land is not purchased for recreation and tourism purposes. It's bought for ag purposes. But agritourism is a way to add value to that land. On the flip side, hunters, fisherman, birders expect to encounter natural hazards to the land like ravines, poisonous plants, dangerous animals like snakes, surface conditions and other conditions inherent to virtually wild land. To envision landowners roping off such inherent risks is absurd and it is not what hunters and birders want. LB329 would encourage landowners in this state to grant access to their lands either free of charge or for a fee. It is modeled after similar laws in numerous other states. LB329 is also similar to the equine liability laws that were adopted by this Legislature in 1997. Those laws of other states and the equine liability laws talk in terms of inherent risks. So does LB329. LB329 revises existing recreation liability laws, which have been the subject of significant disagreement and litigation. It provides protection from liability for landowners, allowing persons or participants, as the term is used in the bill, on their land for recreation and tourism activities such as hunting, fishing, birding, hiking, water sports, and archeological work. It also allows landowners to charge a fee for such activities, but it requires notice be given of inherent risks on the land in order for the landowner to be protected from liability if they do charge a fee. In that regard, it's also similar to the equine liability laws. The landowner, if charging a fee, has to give the participant notice of inherent risks. That notice has to be either in a written agreement or posted where it's easy to see. The language for the warning notice is specifically set forth in the bill. Further, the bill requires that when the landowner posts warning notice on a sign, the lettering must be a specific height. It's the exact same requirement as which appear in the equine liability law. LB329 does not provide absolute immunity from liability. The original iteration of this bill was LB135, which was heard by the Legislature in 2009. That bill also attempted to change the recreation liability laws, but there were many concerns raised with that legislation. We have addressed those concerns in both LB551 from 2013 and now in LB329. First, the focus of LB329 is on protecting landowners from liability arising from injury and damages caused by inherent risks of the land. The focus is on those risks, a term which is defined in the bill, because of the vast size of farm and ranch land we are addressing here. Second, LB329 does not change ordinary standards of care the landowner has for things that are within his or her control. These would include the

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landowner still has a duty to notify participants of particular hazards the landowner knew of or should have known of. An example of that would be if the landowner knows about an abandoned well that he hasn't had a chance to cap, he has to tell those participants about it. The bill does not change the landowner's duty to maintain equipment that the participant may use. An example of that would be a landowner would not be held liable for renting a leaky canoe to a visitor...he would be held liable for renting a leaky canoe to a visitor. We should not let the landowner off the hook for the leaky canoe. He should make sure the canoe won't sink. He should also make sure that if he gives out an ATV, that it's inspected and maintained in a safe condition. The bill does not change the landowner's duty to properly train his or her employees. Another example is the landowner who supplies a hunting guide to the participant. The landowner still has a duty to train the guide on the proper use of weapons, on steering clear of particular known hazards of what to do, or even of what to do if a lightning storm approaches in open country. Finally, we removed the cap on damages that was in the 2009 bill. This bill has evolved considerably since that time, and I think we've presented you a much better bill because of all the changes that have been made. I do have several witnesses to follow including landowners, sportsmen, and lawyers. And I would ask for your serious consideration of this important legislation. First of all, I think it's also beneficial for everyone to understand that part of the impetus for this bill and my support of it was, I believe it was three or four years ago, there was a strategic plan for the Nebraska Tourism Industry which I sponsored, and was passed. That plan spent \$250,000 to come up with that strategic plan. One of the big things in there, it had a whole section devoted to it, was the liability issues. And that is the impetus for this bill. And I think that what you'll see, and I know some of us have had conversations in the past about, you know, what is the usefulness of the plan if we don't put the things in place that we need to. And there's others behind me that can talk about this. But many of the suggestions that were in that strategic plan have been implemented already by the Tourism Commission. This was one of those things that is necessary for the Legislature to change. And that is why this bill is here before you today. And with that, I would answer any questions that I can. Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator Schilz. Senator Schnoor. [LB329]

SENATOR SCHNOOR: Thank you. Senator Schilz, you mentioned a cap on...I guess you just mentioned a cap in there that has been removed. [LB329]

SENATOR SCHILZ: Right. [LB329]

SENATOR SCHNOOR: Could you expand on that a little, please? [LB329]

SENATOR SCHILZ: And I'm trying to remember back, I didn't introduce the bill in 2009 so I don't know what that is. But there may be some folks behind me... [LB329]

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SENATOR SCHNOOR: Well, I guess I'm not...I guess, why was there a cap then? What was the cap for? And then why has that been removed, and if you can answer that question. [LB329]

SENATOR SCHILZ: Sure. And I understand that question too. And I don't want to say anything that may be wrong. And so I will defer that to the folks...there are folks behind me that I know can answer that. [LB329]

SENATOR SCHNOOR: Okay. [LB329]

SENATOR SCHILZ: So I don't want to give you the wrong answer. [LB329]

SENATOR SCHNOOR: Okay. Thank you. [LB329]

SENATOR SCHILZ: Thank you. [LB329]

SENATOR FRIESEN: Any other questions? Senator McCollister. [LB329]

SENATOR McCOLLISTER: Yeah. Thank you, Senator. I want to just review the scope of the coverage. I think the bill says owner. Can you help me define "owner" a little bit, would that include a business? Would it include anybody that owns property in Nebraska? [LB329]

SENATOR SCHILZ: I believe that's correct, yes. [LB329]

SENATOR McCOLLISTER: It's a pretty wide definition. Would it include an outfitter on the Niobrara? [LB329]

SENATOR SCHILZ: If that outfitter owned the land, it would. It has to be a landowner. That's who is being protected from the liability is the landowner. [LB329]

SENATOR McCOLLISTER: Okay. In that case, I doubt that it would apply to somebody running an outfitting operation because they don't own the river. [LB329]

SENATOR SCHILZ: No, but if they own land on which they're doing any of it on, then that land that they're on would be. And how this really works out well is if you have a guide or an outfitter that's out there that maybe doesn't own their land and they're looking for places to go to expand their business or to take people bird watching or hunting or fishing or whatever. This makes it much easier for other landowners to say, yes, you can go ahead and do that because I would be

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covered under this and my land wouldn't then become an issue with the liability then. So if you look at it that way, you're right. That guide service would not have to...they would have to deal with the same liability that they've always dealt with in having to train their people, having to let their customers know what the risks are of doing that activity if they had dogs or allowed guns or anything like that to be used by any of the participants. That would still be under the normal law that's there in place now. [LB329]

SENATOR McCOLLISTER: Although wouldn't a business of that type have coverage now that...? [LB329]

SENATOR SCHILZ: Well, they do have it right now. [LB329]

SENATOR McCOLLISTER: Okay. I understand. [LB329]

SENATOR SCHILZ: Yeah. [LB329]

SENATOR McCOLLISTER: Thank you very much, Senator. [LB329]

SENATOR SCHILZ: Yeah, no problem. [LB329]

SENATOR FRIESEN: Senator Schnoor. [LB329]

SENATOR SCHNOOR: Just a little better clarification on Senator McCollister's question, so if a landowner, be it along the Niobrara or anywhere, sublets his land to a group of people to run...for them people to perform a business on his land, this legislation protects the landowner, but not necessarily the business owner...or not the business owner. [LB329]

SENATOR SCHILZ: No, I think you're correct the first time. [LB329]

SENATOR SCHNOOR: Okay. [LB329]

SENATOR SCHILZ: I believe that's correct. [LB329]

SENATOR SCHNOOR: Okay. Thank you. [LB329]

SENATOR SCHILZ: Yep. [LB329]

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SENATOR FRIESEN: Any other questions from the committee? I have just one, kind of. You know, agriculture, it's talked a lot about how we want to do more promotion of agriculture. Does this cover somebody that wants to just do kind of on-farm visits where you might be riding the combine or...? [LB329]

SENATOR SCHILZ: Absolutely. [LB329]

SENATOR FRIESEN: Okay. You talked a lot about hunting and fishing so I wanted to make sure. [LB329]

SENATOR SCHILZ: Sure. Yeah, if you're talking about a dude ranch or you're talking about somebody that wants to come out and be a part of, you know, a tour where they allow them to ride on the combine or do anything like this, this would cover exactly those types of issues. [LB329]

SENATOR FRIESEN: Good. Well, I see no more questions. So thank you, Senator Schilz. And we'll see you at closing. Those proponents who wish to testify can come forward. [LB329]

TODD KIRSHENBAUM: (Exhibits 1 and 2) Good afternoon. My name is Todd, T-o-d-d, Kirshenbaum, K-i-r-s-h-e-n-b-a-u-m. And I do have my testimony plus another letter that we just received from Big Blue Ranch and Lodge out of Burchard in support of the bill. Good afternoon, Senators. My name is Todd Kirshenbaum. I'm the executive director of the York Area Chamber of Commerce. However, today I wear two different hats: one as the chair of the Nebraska Travel Association, otherwise known as NETA; and also as a board member of the Nebraska Chamber of Commerce. Both organizations strongly endorse LB329, the Nebraska Agritourism Promotion Act. Tourism, as you know, is the third leading industry in Nebraska. We have so many wonderful success stories from Omaha to Scottsbluff and points in between. LB329 would give ranchers, farmers, and rural landowners the opportunity to open up their land to those who want to experience rural life and be able to charge a fee for those activities with a reduced risk of liability and cost of insurance. The responsibility of identifying potential hazardous areas, having properly maintained equipment and well-trained staff is on the landowners. This bill would encourage more landowners to add to their income or start up with a new rural experience. The more opportunities we have in the state to experience nature, to see where our food comes from, to watch the spectacular sandhill crane migration, which by the way is happening now, it makes more appealing for the entire state of Nebraska. One only needs to look at the parking lot at the Henry Doorly Zoo to see the appeal of tourism to visitors to our state as well as to our own citizens. By working together across the state and cross-promoting each other, the more we can spread those tourism dollars from border to border. Nebraska is blessed with an abundance of natural gems including the largest stabilized sand dune region in the northern hemisphere, the

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Nebraska Sandhills, hundreds of spring-fed lakes, working ranches of all sizes, hiking trails, and so much more that people want to experience and they're willing to pay for those experiences if they're available. I'm an Omaha native, and growing up I never had the opportunity to experience what life was like outside the metro area. When I began working for the Nebraska Tourism Office, I was able to work with amazing people across the state to help develop rural experiences. We would be able to add so much more to our inventory if landowners weren't overly burdened with litigation and skyrocketing insurance rates. The desire is out there both from the public wanting to experience these activities, and there are people ready to start operations if this bill were to pass. The Nebraska Tourism Commission has coordinated numerous press tours for journalists to experience Nebraska's numerous activities. In the last two days, I have received press clippings from three different stories that covered the crane migration, exposing this natural phenomenon to audiences all over the country. There is an extraordinary interest in bird watching which is just one element of this legislation that will be impacted in a positive way. Both the Nebraska Travel Association, which is a group of 150 tourism supporters from all corners of the state, and the Nebraska Chamber of Commerce recognize the economic impact this bill will have for the state without any fiscal impact to the state. I hope each of you are able to experience some rural tourism experiences across the state in your own districts. I appreciate your time and consideration. Thank you. [LB329]

SENATOR FRIESEN: Thank you, Mr. Kirshenbaum. Any questions from the committee?
Senator McCollister. [LB329]

SENATOR McCOLLISTER: Thank you, Senator Friesen. Has the insurance problem been a big barrier to increasing tourism, ag tourism in the state? [LB329]

TODD KIRSHENBAUM: Yes, Senator. For projects like this one, you'll hear from someone who can give exact experience for that. [LB329]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you for your testimony. [LB329]

TODD KIRSHENBAUM: Thank you, Senators. [LB329]

SENATOR FRIESEN: Welcome. [LB329]

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JESSICA KOLTERMAN: Hello. Senator Friesen, members of the committee, for the record, my name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I come before you today on behalf of both Nebraska Farm Bureau Federation and the Nebraska Cattlemen in support of LB329. Our support for the bill stems from a longstanding policy adopted by our members that encourages broad efforts to enhance rural economic development opportunities across the state including further development of agritourism and recreational tourism industries. Agritourism actually fits really nicely with some of the initiatives of our organization because it gives the opportunity to connect people in urban areas directly to the farm. And although I don't think I've testified before you before, I have testified in education about the challenge we have as an industry in having people more and more generations removed from the farm. So this is something that ties that together. We've also heard from our members in their interest in developing more tourism opportunities through their farms and ranches, whether it's horseback riding, hunting, general tourism as you said, you know, having people come out and ride in the combine and experience harvest or planting. But they often point to the liability issues as a barrier. To answer your question, Senator McCollister, we hear that frequently, that this really is a barrier for our members. I might personally add that I travel around the state a lot when I'm out meeting with our members. And I like to go horseback riding. And so I'll try to find opportunities to do that out in the countryside. And there really aren't as many out there as you would think there would be in a state that has a lot of ranching. Inevitably, when I do find it and I'm riding with these people out on their farms or ranches and I talk to them about what I do for a living, they always bring up this issue when you're out there on the horse riding about the liability insurance and what the cost is to them and how it's a barrier. So I can personally attest to visiting with these people that do this, that it is a challenge and it's something that they think about in their business. Our observation has been that many of these business ventures start out just as something the family really wanted to do, but grows into a really successful business and helps add value to their farm. And that's really what this is about for us is value that is added to a farm or ranch. Maybe it gives an opportunity for somebody to bring another member back to the farm to work, another member of the family or create another job associated with the farm. So for these reasons, we support this legislation and be happy to answer any questions you might have. [LB329]

SENATOR FRIESEN: Thank you, Ms. Kolterman. Senator McCollister. [LB329]

SENATOR MCCOLLISTER: Welcome, Jessica. [LB329]

JESSICA KOLTERMAN: Thank you. [LB329]

SENATOR MCCOLLISTER: Thank you, Senator Friesen. Have a great many states adopted such limitations of liability? [LB329]

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JESSICA KOLTERMAN: I can't speak to that. I'm not sure. But I'm sure someone behind me can probably talk about that. [LB329]

SENATOR McCOLLISTER: Okay. Thank you. [LB329]

JESSICA KOLTERMAN: We could try to find that out for you. [LB329]

SENATOR McCOLLISTER: Thank you. [LB329]

JESSICA KOLTERMAN: Sure. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you for your testimony. [LB329]

JESSICA KOLTERMAN: Thank you. [LB329]

JAREL VINDUSKA: Hello. [LB329]

SENATOR FRIESEN: Welcome. [LB329]

JAREL VINDUSKA: Members of the Natural Resources Committee, my name Jarel Vinduska. Jarel is spelled J-a-r-e-l; Vinduska is spelled V-i-n-d-u-s-k-a. I'm here in support of the bill and I'm also representing the Nebraska Wildlife Federation of which I'm a member of, board member of. We think that this bill strikes a good balance between protecting the citizens against gross negligence and also protecting landowners from frivolous or unjustifiable lawsuits. And from a wildlife standpoint, the reason we support this is, as was said earlier, most of the land in Nebraska is privately owned. I read on the Internet it looks like about 97 percent of it is in private ownership. So when it comes to wildlife, if we're going to have any wildlife or nature in this state, it's going to be largely as a result of private landowners. And right now the way it is in production agriculture, high production agriculture and getting more so every day, wildlife and that production of that commodities are kind of at odds with one another. And we're seeing it every day. It's getting harder and harder to find wildlife habitat out there. So in order for us to have that wildlife, it seems like the future...in the future it holds that we have to assign some monetary value to wildlife and nature. And this will be a step in the right direction for that. You know, like last Thursday we heard a lot about Game and Parks when we were discussing the mountain lion bill, LB127, how Game and Parks is charged with managing wildlife in Nebraska. But in reality, they can basically only manage the harvest end. And it's...anybody that's involved in farming knows that the hard part is the production end. That's where the cost and that's where

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the know-how needs to be instituted. And so largely, like I said earlier, to some people that don't have a special love for nature or the outdoors or wildlife, it might boil down to money. If there's a way of gaining a little income then there might be some impetus to provide for wildlife. And I've seen many examples of that over the years, like where our farm is. Deer used to be a problem until the disease a couple years ago. And I've had several neighbors say, jeez, I know I lost \$10,000 worth of crops this year to the deer. And I says, well, I said being this close to town, there's people that will pay good money for access to your land. And he said, yeah, I'd do that. But what if he falls out of a tree? What if he fall out of a deer stand. The insurance I'd have to buy would be so expensive and I'd make no net gain. I might end up losing my farm. And I can even give you another example. Like I say, I'm a member of the Wildlife Federation. And you know how groups are always looking for a way to make money. Well, we've got...I've got quite a few rare prairie plants on our farm that I've planted over the years. And so I figured that would be a good way for our club to make money. So in the fall every year we have a fundraiser by people coming out and handpicking various seeds that we sell to make a little money. Well, my dad cautioned me that when I first started doing that he said, jeez, what if one of these people tripped and broke their leg, fell in a hole or something doing this, you know. It could be pretty costly to us. And I convinced him it was okay because, you know, they're pretty good people and people I know. But still really we are at a little bit of risk doing that. So this would protect us with something like that. So that's the reason, like I say, we support it and appreciate it if you would support it also and advance this bill. [LB329]

SENATOR FRIESEN: Thank you, Mr. Vinduska. Any questions from the committee? Seeing none, thank you for your testimony. Any other supporters wish to testify? Welcome. [LB329]

SARAH SORTUM: Thank you. Good afternoon. My name is Sarah Sortum, S-a-r-a-h S-o-r-t-u-m, and I'm here representing my family ranch, the Switzer Ranch and Calamus Outfitters, which is a tourism entity that we operate on our ranch. First, let me say it's a real honor and privilege to be here. I've never testified in front of a committee before. And I'm nervous but impressed that you'll listen to me. So thank you, I appreciate that. My family, we're Kinkaiders. My great-grandad homesteaded in 1904. And we were just your normal mixed-ag operation, mostly cow-calf operation. Fifteen years ago, my brother, my older brother Adam wanted to find a way to come back to the ranch. And at that time, the cattle market wasn't too good. And so he decided to take what we already had, which basically was land, and diversify. And he took a vacant house that was on the ranch, and he remodeled it for a lodge. And his intent was to open a hunting operation, which he did. However, that soon grew to involve more lodging and more activities. So today we have two lodges and we have four cabins. So we can accommodate 62 people per night when we're full. Our activities in the summer are mostly family activities. We have some hiking trails on the ranch. We also do river trips. On a portion of our land that the Calamus River runs through, we offer tanking, canoeing, kayaking, and tubing. And we provide the shuttle service for that. In the spring and summer and fall, we also do Jeep tours, open-air Jeep tours.

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And they're interpretive tours so I guide them out there and I tell them what they're seeing because it's one thing to go out and see the beauty, but it's another thing to talk about how we as landowners can steward that land. Of course, we're close to the Calamus Reservoir so we also have a lot of fishermen that visit us and stay, and a lot of people that just use our lodging as well. In the fall, we accommodate a lot of hunters. We hunt deer, turkey, pheasant. Those are our main ones. Once in a while we'll do some prairie chicken and grouse hunting, water fowl when it gets cold. So we...lodging is...hunting is still a significant part of our operation. And then in the spring we do bird watching. And people come to our place to watch the prairie chickens and the grouse. This is a growing part of our operation. We doubled our business last year. We had approximately 600 people come out to see the chickens. So it's been really good for us. For my family, the reason my brother and I can raise our kids here is because of our tourism business. The tourism business on our place is my brother...it's his sole income. He has a family of five. That's his living. And then it opened the door for me to bring my family back a little bit later too. He got it started and then I came in later. And you know what, in a small community, one or two families makes a big difference. I'm on our county school board and I can attest that one or two kids in a small school, that's a big deal. Also, businesses in town really benefit from our business. In fact, a couple years ago we had a flood. And so for a while, it was not safe to let people go down the river. Well, after a couple weeks we had businesses in town start calling us and saying when are you going to open the river? We need business, you know. So it's been good. Our main problem has been liability and insurance. We're on our fourth provider because the first two said you're too big of a risk. Their exposure was too much. The third provider was too high. We just couldn't afford it. We're on our fourth provider. It's still nearly ten percent of our revenue. That's steep. And many people have told us that's their biggest hurdle into getting into the tourism business are the high costs of insurance. You can get it, but you're going to have to pay through the nose to get it. So I think agritourism, it's a wonderful tool that is underutilized right now. It's a wonderful way for rural economic development to happen, but we need some good provisions in place to help us build that. So I respectfully ask that you are a proponent for this bill. [LB329]

SENATOR FRIESEN: Thank you, Ms. Sortum. You should have brought some brochures along. (Laughter) I think I might come stay. [LB329]

SARAH SORTUM: I always do marketing. [LB329]

SENATOR FRIESEN: Are there any questions from the committee? Senator Schnoor. [LB329]

SENATOR SCHNOOR: Thank you, Sarah, and thanks for taking the time to come here. Now what community are you from? [LB329]

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SARAH SORTUM: We're near Burwell. We're actually in Loup County, but we're near Burwell, Nebraska. [LB329]

SENATOR SCHNOOR: Okay. Would you...and I guess getting a little on the personal side here, your business, finances, but can you tell us how much you pay for insurance? Or would you like to share that outside of here and give that to me privately? [LB329]

SARAH SORTUM: We can give that to you privately. But I will say it's about 10 percent. [LB329]

SENATOR SCHNOOR: Okay. [LB329]

SARAH SORTUM: And so that's kind of on a sliding scale. So even if you make more a certain year, you're going to have to pay more for insurance too. [LB329]

SENATOR SCHNOOR: That's how they do it? [LB329]

SARAH SORTUM: Yeah, yeah. So it's steep, but of course you've got to have it. [LB329]

SENATOR SCHNOOR: Okay. [LB329]

SARAH SORTUM: Yeah. [LB329]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Kolowski. [LB329]

SENATOR KOLOWSKI: Thank you. Thank you, sir. Sarah, thank you for being here again. And on the birds and other animals, do you stock the birds, do you bring them in? Do you work with different groups as far as getting the young birds and turning them loose? Or is it all homegrown? [LB329]

SARAH SORTUM: Everything is homegrown with the exception of pheasants. If we have a lot of pheasant hunters, we do buy and release some pheasants. [LB329]

SENATOR KOLOWSKI: Pheasants Forever, do you work with them or any of those? [LB329]

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SARAH SORTUM: Yeah, we have in the past. But everything else that we have is there now. We do work and have a lot of great partnerships with other organizations that deal with habitat because we want to provide the best habitat possible because this is...now it's paying. You know, this resource is paying for it. [LB329]

SENATOR KOLOWSKI: Sure. [LB329]

SARAH SORTUM: So we work with Audubon, The Nature Conservancy, World Wildlife Fund, all those types of organizations to help improve our habitat so that that resource is there day after day after day. [LB329]

SENATOR KOLOWSKI: So you... [LB329]

SARAH SORTUM: And the bird...I'm sorry. [LB329]

SENATOR KOLOWSKI: So you seed certain areas so you attract the birds to those areas... [LB329]

SARAH SORTUM: Yeah. [LB329]

SENATOR KOLOWSKI: ...because of food and shelter and everything else. [LB329]

SARAH SORTUM: Well, I mean they're there and we want to keep them there. [LB329]

SENATOR KOLOWSKI: Okay. [LB329]

SARAH SORTUM: You know, yeah, so...and there's some birds that, for instance, my dad when he was younger used to see a lot of and he doesn't see as many anymore. [LB329]

SENATOR KOLOWSKI: Sure. [LB329]

SARAH SORTUM: So we want to make sure that we're able to sustain those populations. [LB329]

SENATOR KOLOWSKI: Does the NRD help you, the local NRD as far as some of those things? [LB329]

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SARAH SORTUM: You know, I haven't worked a lot with the NRD, but I have worked a lot with our local RC&D... [LB329]

SENATOR KOLOWSKI: Okay. [LB329]

SARAH SORTUM: ...which is no longer really funded. But we have worked with them on some projects. [LB329]

SENATOR KOLOWSKI: Excellent. Good luck. [LB329]

SARAH SORTUM: Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator McCollister. [LB329]

SENATOR McCOLLISTER: Yeah, thank you, Senator, and thank you, Sarah, for coming. Your testimony is compelling. And I do want a brochure. [LB329]

SARAH SORTUM: Okay. (Laughter) [LB329]

SENATOR McCOLLISTER: Will you be inclined to still get a blanket coverage, assuming this bill passes? [LB329]

SARAH SORTUM: Well, sure. I think that would only be prudent. [LB329]

SENATOR McCOLLISTER: But that will probably reduce the cost, wouldn't it, if a bill of this kind were to pass? [LB329]

SARAH SORTUM: Reduce the cost of the... [LB329]

SENATOR McCOLLISTER: Of the liability insurance inasmuch as it would be a blanket instead of the primary coverage. [LB329]

SARAH SORTUM: Yeah, I would hope so. [LB329]

SENATOR McCOLLISTER: Okay. How many acres are under your control? [LB329]

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SARAH SORTUM: We operate about 12,000 acres. [LB329]

SENATOR McCOLLISTER: Holy smokes. [LB329]

SARAH SORTUM: However, we have many agreements with neighbors, especially for hunting. And the agreements that we have are that we can use their land, access their land, we can take animals, harvest animals, and then we pay by the animal. So it's a good thing for them, and it's a good thing for us. So for instance, for our deer hunting, we have access to about 90,000 acres. [LB329]

SENATOR McCOLLISTER: Oh, wow. So do your neighbors know or expect you to have liability insurance? [LB329]

SARAH SORTUM: Well, I would...I guess I can't say what they know or don't know. But it's never been a problem. They trust us, so I would assume they think we're together (laughter)...you know, have it together. [LB329]

SENATOR McCOLLISTER: Okay. [LB329]

SARAH SORTUM: But I guess I think they would expect it. I don't know if we've ever really gotten into detail about it. [LB329]

SENATOR McCOLLISTER: Well, it's a long trip. Thank you for coming. [LB329]

SARAH SORTUM: Yeah, sure. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Schnoor. [LB329]

SENATOR SCHNOOR: I have another question. This kind of brings me back to I guess what I had asked Senator Schilz. We have landowners, of which, you know, you're neighbors, you know each other. I mean I know how that works. But this type of legislation would then limit not only limit you, but it would limit their liability as well. Is that how you're seeing this? [LB329]

SARAH SORTUM: That's how I see it. Absolutely, yeah. And you know, as another example of that, one of our neighbors next to us, they're not in tourism, but they market a speciality beef product. And so we have cooperated in the past where will take tours to see their ranch. And so I can see where this would really help them as well as help us. [LB329]

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SENATOR SCHNOOR: Okay. Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? I have a couple. Have you ever had an incident where you had a problem, had to collect on your insurance or where somebody was injured? Have you ever had an incident like that? [LB329]

SARAH SORTUM: We have never had a claim. We have had accidents, but we've never had a claim. We've never had a problem. The accidents that have happened...well, I'll just tell you. (Laughter) [LB329]

SENATOR FRIESEN: I don't want to...I mean, I guess more of where my questioning is going is what kind of problems you've had in the past, and have insurance companies ever threatened to drop you because of a claim or something like that? [LB329]

SARAH SORTUM: No. We've never had a claim and that was certainly not the reason that we're on our fourth provider. It was purely that on a business decision for the insurance company that it was too great of exposure for them. And so they quit providing that type of coverage altogether... [LB329]

SENATOR FRIESEN: Okay. [LB329]

SARAH SORTUM: ...on the first two instances. And like I said, on the third instance, for us it was a business decision because it was just too high. So no, we've never had a claim. So, yeah. [LB329]

SENATOR FRIESEN: So as you've run your business, do you intentionally go out and make sure there's no hazards out there or identify them now? Obviously you kind of take care of your ranch and you know what's on it. But do you kind of make some preparation in case...when you have people out? [LB329]

SARAH SORTUM: Sure. You know, we do the best we can. For example, on our river trips, we always go down the river ourselves at the beginning of the season and then if there's ever a big rain or a big wind or anything that might change the condition of the river, we go down ourselves, make sure everything is okay. Of course, we keep our vehicles in good working order and things like that. The types of things that we worry about are things that you really can't prepare for. For example, one thing I worry about in our bird watching business is we take them out. We transport them out there to the pasture, and then there's a very short walk to the blind, maybe 50 yards. And it's just out in the pasture. But remember, we are there in the dark, and we

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have flashlights. Everybody can have a flashlight, but it's still dark. It's in a pasture, so it's uneven ground. And you know, in a pasture there's pocket gophers and everything else that make little tunnels. And most of our birders, the demographic of birders are older, retired people. And so their balance may not be so good. So I worry a lot about somebody stepping in a soft spot, turning an ankle or tripping and falling and breaking a hip. You know, it's things like that that it's really hard. You know, we don't want to pour cement in our pasture to get from the bus to the blind. So we try and do the best we can to prepare, but you just can't prepare for everything. Our place of business is nature, and it's wild. [LB329]

SENATOR FRIESEN: I think that's a really good point to bring up. I mean some of these hazards that some people might call hazards are nature at work. [LB329]

SARAH SORTUM: Right. [LB329]

SENATOR FRIESEN: And so I think that's something we really need to stress here. Are there any other tours you'd like to do but don't because you can't get insurance or anything like that, or it would be more the cost of the insurance? [LB329]

SARAH SORTUM: You know, we pretty much do all the fun stuff. We do rivers and horses and guns and everything. And we love it. I don't know what else we could add because we have a great time and so I think our guests do too. [LB329]

SENATOR FRIESEN: Okay. Senator Kolowski. [LB329]

SENATOR KOLOWSKI: One more if I may, thank you, sir. Do you have buffalo on your land anywhere? [LB329]

SARAH SORTUM: We don't. [LB329]

SENATOR KOLOWSKI: Okay. Just wondering. [LB329]

SARAH SORTUM: There's a story behind that, too, but right now, no. (Laughter) [LB329]

SENATOR KOLOWSKI: Another time. [LB329]

SARAH SORTUM: Yeah. [LB329]

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SENATOR FRIESEN: Thank you, Senator Kolowski. Senator McCollister. [LB329]

SENATOR McCOLLISTER: Thank you, Senator. One more for me too. How many ranches are there like yours that are in similar...in this business, if you know? [LB329]

SARAH SORTUM: That's a good question. I'm not sure I could answer that accurately. However, there's getting to be more and more. And I think the reason for that is because people are seeing it as an economic tool. It's a way to get the next generation back here. It's a way to get young people back in Nebraska. It's a way to get kids to grow up here in Nebraska. I think it's a wonderful tool. Like I said, I think it's been underutilized, but people are seeing it work over and over. And I think we can really build it with a provision like this in place. [LB329]

SENATOR McCOLLISTER: Great. Thank you very much. And thanks again. [LB329]

SARAH SORTUM: Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Thank you very much for your testimony. [LB329]

SARAH SORTUM: Thank you. [LB329]

SCOTT SMATHERS: Good afternoon, Chairman Friesen, members of the Natural Resources Committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am the executive director of the Nebraska Sportsmen's Foundation. We are here today in support of Senator Schilz's proposed legislation on agritourism. As has already been discussed by many of the proponents or the testifiers prior to me...and I can testify, by the way. I've been to that property that was just discussed, and you will not waste your time nor your money by going, trust me. It's a beautiful property. Sportsmen, for the last ten years, our organization has been looking for a way to combine two things. One is our tie with our members who are...better than 45 percent of our members are active ag producers and/or ranchers within our city...in our state boundaries. A lot of those producers obviously have varying seasons on whatever their production may be, whether it's cow-calf, whether it's a crop production. But they also have wonderful access and natural resources on their own property to venture into a side business. One of the hindering blocks to that has been the fact of insurance liability. The cost, depending upon the size of the operation, can vary greatly. That is a hindrance. However, the bigger hindrance as you've already heard, is the underwriters deciding that the risk factor is too large for them to continue coverage. Therefore, you have a tendency to have a bouncing ball effect, to move from company to company to company with no real understanding of loss or injury being claimed prior. In

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addition, we've looked at access issues in our state. As the ag industry, the sportsmen's industry, we are starting to become more and more gray haired, less and less young folks as they move away out of the state, move away to college and don't return due to family issues. So we've looked at a gap to bridge the agritourism with the farm knowledge, the education value, so that they understand that that steak that they're eating at dinner does not necessarily come from the grocery store. It comes from someplace prior to that. Same thing with hunting and fishing and angling and sightseeing and birding and photography work, have an avenue to allow landowners to open up a side business. I have a family member that has looked at allowing individuals to be on his property to morel mushroom hunt. He has a rather wonderful river bottom ground, much to my objections that would interfere with my deer season. But he has looked at it and the insurance would be too strong. It would be too high a cost for him for what he could recoup from a cost factor of letting people on his land. This bill would allow that individual to build a tourism business or a side business other than his main income. One of the main issues we face in the sportsmen's industry is whether you run a guiding outfit or business is that is a part of a total package of income that you generate on your property. And if we can add an opportunity or remove one of the blocks that keeps us from doing that, the state benefits obviously because we know agriculture is the number one economic driver in the state. Tourism is number three. The sportsmen in the state do spend \$780,000...\$780 million annually in the state. We'd like the state of Nebraska following...to answer one of the questions before, there's 25 states that currently have this on their statute in the books. Some of our neighbors, North and South Dakota, Kansas, Colorado, Missouri, and Oklahoma as far as our neighbors that have gotten on to the proper page of being able to provide a business opportunity of providing the insurance liability coverage before. And to answer questions before, we did extensive research on this bill before giving it support. And I believe you'll find your answer, Senator McCollister and Senator Schnoor, on page 3 of the bill, line 10 through line 24 in regards to who is an owner and who is a business. It is very clear, defined statute. With that, I'll take any questions. [LB329]

SENATOR FRIESEN: Thank you, Mr. Smathers. Any questions from the committee? Seeing none, just one question. I mean obviously, the hunting interests are strong out there. And in the past it has gotten very difficult I've noticed when I've tried to go hunting to find land to hunt on. Do you think this is probably the main hold back of people wanting to allow someone on their land? [LB329]

SCOTT SMATHERS: I think it's a part of the problem. I think the other part of the problem, quite frankly that we have done tremendous research on, is the actions of those once they're on the land--not necessarily those that are invited, those that tend to jump fences. As a property owner myself, I know the battles I face being in a...living in a different county than where my property is owned, of having people jump my fences, run my gates. And I think that's where the bottom line comes from, from a standpoint of would it help ease some of that comfort...provide comfort for some of those landowners that they know they're covered by a liability policy? As

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already been stated, they're wild animals. Senator, I was on one of those buffalo ranches. And the buffalo were all supposed to be in a separate section while we turkey hunted. As the sun came up, my hunting partner in the ground blind with me, we noticed a shadow off to our left at 60 yards, which as the sun continued to rise, it was no longer a cedar tree but a male buffalo, which if you leave them alone, they'll leave you alone. He laid down. We didn't become nervous until we noticed that mom and calf had also joined him through the open fence. And at that point as any wild animal, when you have a mom and calf, the only thing I had to worry about was outrunning my partner and getting to the truck first. But for the owner when we told him that you have buffalo that have gotten into the pasture, it provided a concern for him, obviously, because you go to worst case scenario immediately. Now odds are they never would have noticed we were there other than smelling us and noticing there was something out of line. But they probably would have never approached, but you never know. [LB329]

SENATOR FRIESEN: Thank you, Mr. Smathers. No further questions, thank you for your testimony. [LB329]

SCOTT SMATHERS: Thank you. [LB329]

SENATOR FRIESEN: Welcome. [LB329]

JOHN HANSEN: Mr. Vice Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n, and I'm the president of the Nebraska Farmers Union. We are in support of LB329. We have had a lot of our members diversify their operations and bump up against the issue of insurance and liability. It's a longstanding issue relative to encouraging folks to either do it in a commercial kind of way or even just allow folks to come and hunt on your ground and do all those kinds of things. So we have a substantial number of our members who run these kinds of operations. And so we think there's some kind of...there is a need for some kind of guidance and limits because it is not possible, as was stated before, to know all of the known risks because things change: water patterns, water, floods come through. I've hunted on a friend's property where water came through. It whirled out in the middle of a CRP. And all of a sudden you drop in a three-foot hole. Things happen. And that's...you're out with nature. These kinds of risks happen. And I would also say that it's been a longstanding issue when I was on the Lower Elkhorn NRD Board, we pioneered a program called the Lands for Wildlife program that was trying to help take some marginal grounds out of production and put them into grass and conserving uses and to also augment wildlife, to prevent erosion, but also we had a two-tiered system to try to encourage more public participation. And it was very difficult to get that second level of payment high enough to outrun the fear of liability. It was about half of it. And I think the other half was probably a loss of control issue or a bad experience with folks that had come before. But the liability issue is certainly a longstanding one. And we think that this bill goes the

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right direction and would be a constructive step forward. We have...from one end to the other, I've been traveling this state for 25 years, we have an incredibly beautiful natural resource state. And we have so many different kinds of things to offer the public at large. And I think that it's to the good of not only the local economy, but the good of our society as a whole, to encourage folks to get more familiar with our natural world and wildlife and our Nebraska. So I would thank Senator Schilz for bringing this bill forward and end my testimony and answer any questions if I could. [LB329]

SENATOR FRIESEN: Thank you, Mr. Hansen. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB329]

JOHN HANSEN: Thank you. [LB329]

SENATOR FRIESEN: Are there any other supporters that wish to come forward to testify? Welcome. [LB329]

CAROL SCHLEGEL: (Exhibit 3) Thank you. I have copies of my testimony. My name is Carol Schlegel, C-a-r-o-l S-c-h-l-e-g-e-l. I'm currently the tourism director for McCook, Red Willow County in southwest Nebraska. Like most everyone else here today, my occupation is only part of who I am. I'm also the daughter of a Sandhill rancher--I'm nervous--I'm the wife of a fifth-generation farmer living on a prairie farm that was homesteaded in 1883. And I spent my teenage years as well as a significant part of my adult life working at a motel and restaurant that my family owned in McCook for over 46 years. I am a combination of Nebraska agricultural and tourism. So it has housed and fed me my entire life. I'm also the newest commissioner appointed to the Nebraska Tourism Commission. And while I'm not here in that capacity today, a question that I was asked during my confirmation hearing about a month ago does pertain to this topic. Senator Bloomfield asked me if I had any ideas for encouraging tourists to visit western Nebraska. My ideas involve some basic marketing principles: figure out what people want and then give it to them. That's basic but it's not all that simple. People want experiences. They want to mark things off their bucket lists. They want to learn. They want to be more than an observer. And while considering the wants, you have to determine what makes you unique and what you can offer that others can't. One of the things that makes Nebraska unique is our diverse agriculture. If you were to look at just the two areas I'm most familiar with, the Sandhills with its cattle production and sweeping sections of grass, to the row crop production of wheat, corn, soybeans, and milo combined with a cow-calf operation that make up our farm in Red Willow and Hitchcock Counties, you can begin to recognize the opportunities that agritourism has for our ag producers. It's an opportunity for farmers and ranchers to educate visitors on what it takes to put food on their table. Just as manufacturers invite the public into their factories by offering tours or farm and ranch vacations, ag producers could help reconnect the general public with

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their food source. In the not too distant past, nearly everyone had a close relative that was a farmer or rancher. Now most people are three, four, or five generations removed from the farm, making it more important than ever for them to have access, which agritourism can provide. It's also a potential to provide an alternative source of revenue. My husband and I have been farming for 30 years. I don't think there a single time where the grain and the cattle markets have both been up at the same time. Either the cattle are carrying the grain or the grain is carrying the cattle. Having another option for income that does not depend on those markets would be beneficial. The pheasant hunting has been discussed. And McCook was actually designated by the Unicameral as the pheasant hunting capital of Nebraska a number of years ago. And as a teenager and up until maybe 20 years ago, I would have totally agreed with that because I was at a motel that was full from July on was when our reservations...when we quit taking reservations for that first weekend. We were opening early for breakfast to accommodate them to get them out into their places before sun up. Kiwanis Club was having a breakfast. There was lots of opportunities for income coming into McCook. But one of the biggest issues that we have now is the land access. While I have operated on both sides, I've made a lot of coffee and filled a lot of thermoses for hunters; I've also woke up to gunshots in the morning because of the opening seasons. But as a landowner, we have no incentive to bring them on. And actually there's a disincentive because if we do charge, then there's a liability. If we do not charge then there's none and there's the issues that have been discussed before where one bad apple ruins the whole thing. By bringing in more sources of revenue, it would be more feasible for young people to return, and as my husband and I start thinking about that retirement, also a supplement retirement income as well. So it can be seen on both ends. One...we've discussed...the insurance issue has been discussed. And by passing LB329, it would eliminate the roadblock if we could have a reasonable and not prohibitive cost to the insurance. A couple of other things that have been brought up, Texas is the most recent state to have passed it. And that was just within the last week that they have come on board with their limited liability. And there are about 12 different ranch experiences that are available in the state. One...as with Sarah, we do offer a prairie chicken viewing opportunity in southwest Nebraska as well. It's to benefit the Southwest Nebraska RC&D so there's no one person, there's no private individual that benefits financially. However, being the one that kind of takes the reservations and we will be starting in about three weeks, and at this point we have no reservations from the state of Nebraska. I've got them from everywhere from Washington State to New York, and I have a lady coming from Germany to see the prairie chickens. So it does have an appeal. So I can also see...we're fairly new to that operation. We've been doing it three years. And I can see us needing to expand it. But without being able to offer a financial compensation to a landowner, I can't see that as being a possibility to expand something people really want. Thank you very much for your time. [LB329]

SENATOR FRIESEN: Thank you, Ms. Schlegel. Are there any questions from the committee?
Senator Hughes. [LB329]

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SENATOR HUGHES: Yeah, Carol, thanks for coming. You did a good job. [LB329]

CAROL SCHLEGEL: Thanks. [LB329]

SENATOR HUGHES: And congratulations on your new job as Nebraska Tourism Commissioner, very good. [LB329]

CAROL SCHLEGEL: Thank you. [LB329]

SENATOR HUGHES: In your position as the McCook, Red Willow County Tourism, are there individuals in that region that have expressed interest to you about maybe opening up their lands if this law were to be changed? [LB329]

CAROL SCHLEGEL: There are, and I'm one of them as being a landowner as well. I can see it being...having potential. I have people that just want to be able to share their lifestyle with the farm lifestyle. I have a lot more people that contact me wanting the experience. But because of the liability issue which scares people off, it's not being offered at this point. The market is there for it. [LB329]

SENATOR HUGHES: Yeah. What types of activities would you see in that corner of the state? [LB329]

CAROL SCHLEGEL: In that corner of the state? Anything we do on any given day on a farm is of interest to people that aren't familiar with it. So being able to do ride-alongs in the combine, to go out and just be in the proximity of the cattle. I'm not saying we're going to go pet cows because we don't do that, except my bucket calf. But we have so many things, just those everyday things that we don't think about: how a pivot works, just looking at a planter, looking at a combine with the new flex heads. Those are things that just as an educational...they wouldn't even...you know, we wouldn't put anybody to run one of those. (Laugh) That's a little high price tag there too. But it has the potential just to educate them. And anything we do on any given day is marketable to them. [LB329]

SENATOR HUGHES: Okay. Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator Hughes. Any other questions from the committee? I'm...just kind of one question maybe that we should explore a little bit, you talk of when people want to go out and hunt and having access to that land. Could you explain a little bit what the...when a person offers you the opportunity to use his land, what he's putting at risk, what

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value is he...you know, we look at that and the owner of that land, obviously his main business is farming. [LB329]

CAROL SCHLEGEL: Correct. [LB329]

SENATOR FRIESEN: But he's concerned with the liability. And if something happens on that grounds, he puts all of those resources at risk. And maybe explain a little bit the value of that that he's laying on the line there for... [LB329]

CAROL SCHLEGEL: Well, in our case it's five generations that we have worked very, very hard to maintain and provide an income not only for myself and my husband, but also his mother and before that his grandmother. There's a lot of people that derive an income from a farm rather than those that are just working on it because they definitely have put their time in on it to make it succeed. Having...I couldn't even imagine being faced with the situation where that land is in danger of not being in the family, and by not our choice. You know, there will be a point where that doesn't happen I'm sure. But farming is a business, but it's also our lifestyle. It's where we live. It's where we...I actually said next time I move, they're taking me out in a box because I don't ever intend on leaving. Just the...and it's a very personal loss. My mother-in-law was 17 years old when she got married. She's lived on that place since she was 17. To have that type of loss would...is unimaginable to me. [LB329]

SENATOR FRIESEN: Yeah, I think most people don't realize it's more than just a financial loss. So it really is a big concern when people talk about the liability of allowing someone on there. [LB329]

CAROL SCHLEGEL: It is. [LB329]

SENATOR FRIESEN: (Exhibits 4-12) Thank you very much. Any other questions from the committee? Thank you for your testimony. Any others wishing to testify in proponents? Seeing none, we have some letters to enter in for support: Jeff Boeka from the Nebraska Hotel and Motel Association; Larry Mussack, Nebraska Corn Growers Association; Sandra Powell from Chadron; Glennis McClure, Gage County Tourism Advisory Committee; Angie Bruna, Gage County Tourism; Jim Otto, Nebraska Wine and Grape Growers Association; Rich Edwards, UNL Center for Great Plains Studies; David Brown, Greater Omaha Chamber; Kathy McKillip, Nebraska Tourism Commission. Okay, are there any opponents who wish to testify? Opponents. Welcome. [LB329]

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MATT LATHROP: (Exhibit 13) Good afternoon, Senator Friesen and committee. My name is Matt Lathrop, M-a-t-t L-a-t-h-r-o-p. I'm appearing on behalf of the Nebraska Association of Trial Attorneys in opposition to LB329. One child dies every three days on a farm. Every 38...every day, 38 kids are injured in agricultural related accidents. This is according to the ag safety organization Farm Safety for Just Kids. What brings us all together in our State Capitol today are the agricultural safety rules that protect all of us. These safety rules, like all safety rules, will only protect us if this Legislature chooses to keep them in place. These safety rules come to us from occupational safety groups, the ag industry organizations, and from industry insurers such as Liberty Mutual who published these commonsense safety rules. Ag safety rule number one, keep all machinery and equipment in good repair and safe working condition. Ag safety rule number two, store equipment and tools where they cannot fall, tip, slide, or injure someone. Ag safety rule number three, keep all stairs and permanent ladders in good conditions and install handrails where needed. Ag safety rule number four, promptly make all electrical repairs. Ag safety rule number five, close and secure doors and gates to hazardous areas including silos, manure storage, chemical storage, and animal quarters to prevent children and visitors from entering unescorted. I believe my only familiarity with agritourism are the field trips that every one of my four kids and probably every one of your children or grandchildren have taken or will take to a farm or ranch. But let me tell you just a few of the many very real tragedies that have occurred in agricultural settings in just one year as reported by the National Ag Safety Database. A young boy was playing with a farm dog near a stack of phone poles to be used for building a fence. The poles dislodged and rolled over the boy, crushing him. A girl was playing on a hayfork which was unattached and resting on the ground. She was killed when the 300 pound hayfork tipped and landed on her. A girl was climbing on the side of a utility trailer that had been leaned up against a building. The trailer slid off the building and she was pinned under the trailer for two hours before being found. Two boys found an improperly secured and stored cattle prod. While playing with it, they zapped a propane tank that was being serviced and both were severely burned. An adult farmer was severely injured when a gravity box mounted on a wagon suddenly and unexpectedly tipped, catapulting the farmer into the air. The wagon was improperly secured and was in need of repair. If children had been playing on that wagon they could easily have been killed or injured. Multiple cases have been reported of children who were injured or killed when climbing on tractor tires that were stored by leaning them against a wall. These tires can weigh more than 1,200 pounds. Children have been seriously injured and killed climbing on hay bales. There have been drownings and near drownings in horse tanks, ponds, and creeks. Children have been injured and killed in falls after climbing farm equipment and buildings with unsupervised and unprotected ladders and stairs. Every one of these tragedies was the result of regular negligence, not gross negligence. Every one was completely avoidable with the exercise of reasonable care on the part of the property owner. Every grade schooler on a field trip to the farm is at risk of these dangers unless the farmer exercises reasonable care to follow some of the simple ag safety rules I've just discussed. LB329 is designed to throw out these and many other simple ag safety rules and tell farmers and ranchers that they do not have any

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obligation to keep our kids safe from any of these or the many other deadly "ordinary dangers of structures or equipment used in farming or ranching operations." If you remember one thing about these tragedies, please remember conduct rewarded is conduct repeated. NATA opposes LB329. I'm happy to answer any questions about insurance or liability as an attorney. [LB329]

SENATOR FRIESEN: Thank you, Mr. Lathrop. Are there any questions from the committee?
Senator McCollister. [LB329]

SENATOR McCOLLISTER: Yeah. Welcome, Matt. [LB329]

MATT LATHROP: Thank you, Senator. [LB329]

SENATOR McCOLLISTER: These accidents that you cited, are they a result of ag tourism though? [LB329]

MATT LATHROP: No, they're actually...it doesn't indicate why they occurred. I will tell you that the statistics...and that's the handouts that I gave you. All of them are cited in there. The statistics indicate that the majority of children injured on farms are not the children of the farmers. They are guest visitors or otherwise strangers to the property. [LB329]

SENATOR McCOLLISTER: I see. Thanks very much. [LB329]

MATT LATHROP: You bet. [LB329]

SENATOR McCOLLISTER: Thanks, Mr. Chairman. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions? I've got a couple. If we expect our next generation to learn anything about farming, they're going to obviously have to be exposed to the farm. So if we follow kind of...you know, we try to make the farm safe, I'm sure. But accidents happen. I've never seen anything other than just staying in bed in the morning, things happen. So if insurance is unaffordable and it makes the cost so high and the risk so great that we can't offer these opportunities, what have we accomplished? [LB329]

MATT LATHROP: Can I answer it in two parts? It's in two parts. [LB329]

SENATOR FRIESEN: You may. [LB329]

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MATT LATHROP: First one is the question about accidents, and the other one is about insurance. First of all, with accidents, accidents do happen. Accidents are usually the result of unforeseen circumstances when everybody is acting reasonably. And if everyone acts reasonably, that doesn't just include the guest or the visitor or the patron of the ag tourism industry, but also the ag tourism, the person offering it, then the result of that, the fall, the trip, whatever, that is ordinarily not negligence, okay? So a brief education on the difference between accident and negligence. Negligence means someone had a duty to someone else, and they failed that duty. So there's A. B, when you say the insurance premiums are high, two things strike me about what I've heard in the testimony today. And I do want to say that these businesses that we've heard from, they are the example of how we hope Nebraska businesses operate: respectfully, carefully, and with regard for their visitors. But not everyone is that business, and we have rules because someone out there has paid with their own blood or life to create that rule. So these businesses here have done a good job of taking care of their customers. Insurance premiums are high because there is an incredible risk. In my own industry, lawyers who do certain kinds of work have very low insurance. Lawyers who do other kinds of work have very high insurance because the risk of a claim--not because of the lawyer but because of the kind of claim they handle--is high, just as if I'm a driver with a good record, my insurance is low. And if I'm a driver with a lot of accidents, my insurance is high. I haven't heard anyone come here today that said insurance premiums are going to go down. What insurers will now be asked to do is to cover those injuries that are a result of gross negligence. We still need insurance and people will still need to be covered. And that isn't going to change premiums I can't imagine because now we've got people who are injured by gross negligence, and insurers and going I would only imagine the injuries resulting from a higher degree of negligence are going to be more severe. Limiting liability won't change the degree of injury to these people. It will only socialize the cost--we'll all have to pay. And insurance premiums, I don't understand why they would go down by limiting liability to gross negligence only. And I'm sorry if I sound preachy. [LB329]

SENATOR FRIESEN: So are there methods that can be used whether it's inspections or anything else because when you're talking of possibly 12,000 acres of potential damage, somebody could trip and fall or things can happen. There's machinery out there that you can't foresee down the road. How do we...how would you possibly address this? [LB329]

MATT LATHROP: You have hit exactly on the issue, and that is foreseeability. That is the watchword of any lawyer who does personal injury work. What we look for in personal injury cases is is the person injured a foreseeable victim for some action? And is the injury caused a foreseeable injury based on my duty to you? So if you come to my property and an airplane crashes into you, there's no way I can foresee that. But if you come to my property, I'm operating a rope swing into the Niobrara and the rope breaks, that's foreseeable. It's foreseeable that a rope I string from a tree limb could wear out, and I need to check on it. And I need to do what I can to make sure it's safe. The trial lawyers don't ask that anybody act with any greater degree of care

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than any other member of this...citizen of the state. What we ask is that everybody recognize we all have a duty to each other and that we observe that duty and we meet that duty by doing things like anticipating, what is this bus load of school kids likely to do when they come to my property? What are these hunters likely to do when they come to my property? What is this group of 16 couples over 80 years old likely to encounter when they come across my property? And if I meet my duty by warning them, by inspecting where I'm taking them, if I'm planning an excursion, am I planning it to go through a safe place for a group of school kids? Am I storing my farm equipment so it doesn't harm them? [LB329]

SENATOR FRIESEN: So would you say it's depending on the age group that you're encountering that like adults maybe should know better or kids don't? They climb on things where adults should use reasonable precaution and take self-responsibility. [LB329]

MATT LATHROP: I'll tell you what I know from my wife who's a school teacher. We can expect one group of people, little kids, to behave one way, teenagers who are very willful, their brains are still not developed and we can expect a separate set of behavior. From me and the members of this committee, we can expect another set of behaviors. But again, the bill doesn't talk about separating out those groups. I'll tell you what the law says. The law says we take into consideration who is the plaintiff, who's the person that was harmed, and who were the people that have the duty to them. And if we invite children on to our property, we have to take certain steps to protect kids or teenagers. If we invite only, you know, married couples between the ages of 50 and 70, our duty to them doesn't change. It's still reasonable behavior. But obviously we can expect Senator Friesen on my property to behave very differently than a 15-year-old boy with a couple of girls watching. Maybe. [LB329]

SENATOR KOLOWSKI: Yeah, maybe. [LB329]

MATT LATHROP: Maybe. [LB329]

SENATOR FRIESEN: Thank you, Mr. Lathrop. [LB329]

MATT LATHROP: You bet. [LB329]

SENATOR FRIESEN: Are there any questions from the committee? Seeing none, thank you, Mr. Lathrop. [LB329]

MATT LATHROP: Thank you very much. [LB329]

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SENATOR FRIESEN: Are there any other opponents? Welcome. [LB329]

ROGER FOSTER: (Exhibit 14) Thank you. Senator Friesen and members of the Natural Resources Committee, my name is Roger Foster, R-o-g-e-r F-o-s-t-e-r, and thank you for the opportunity to testify on LB329. I'm not going to follow the testimony to a T that I submitted today. Just from some of the things I've heard, I think I could offer some better insight into some of the history of this. I'll start by telling you why I'm here. Back in 2004, my 8-year-old daughter Alexa was killed when a block wall in a public rest room fell on her. That's when I started to become very familiar with the Recreational Liability Act and the language that in some of this, in some cases is very similar to this. And that's where my worries lie. My family along with numerous other organizations, and I'll...I'm sure I'll miss some, but the Architects and Engineers Association of Nebraska, the Nebraska League of Municipalities, Game and Parks, Lincoln Parks and Rec, I think the city of Omaha was involved. But we engaged in a campaign, what we called the Alexa Check, and it was to promote inspections of public places by laypersons and also by, at that time, by municipalities was a focus of it. My worry with this type of legislation is that it would undermine that proactive approach to make the places where our children and our families play safe. So there's a lot of history on the Recreational Liability Act. I guess I would encourage you...and I'm sure Senator Schilz will share that with you if you ask. But some of that history and some of the things I've heard today...let me say first, I'm not here to blame anybody. I love doing all those things that those earlier testifiers talked about. And as you can see from their testimony, they look like they are doing the right thing. It's the people who may not do the right thing that I think a certain level of liability will encourage them, or at least the insurance companies who insure them would require that they do regular inspections on the things that need to be inspected. And myself, I am not an attorney. But from what I understand about the changes to the Recreational Liability Act, some of the key changes that I remember from...this has been going on since I believe 2006, 2007. There's two types of notice that you can be held responsible for if you don't take those notices. One is an active notice which is as if I would report, you know, a concern with a property. I guess I'll use an example of a banana peel in a grocery store. If I said, hey, there's a banana peel in aisle five. Well, a reasonable amount of time would be...you know, that's probably going to get handled within the day. And the other type of notice from what I understand of the Recreational Liability Act is constructive notice. Much like what Mr. Lathrop had talked about and a rope, over time, a logical person operating any type of business like this would realize that's going to wear out. That's constructive notice. So if I hang a rope and don't check it for 20 years, the way I understand the Recreational Liability Act, I could be held accountable for not abiding by that constructive notice. And I know that also says you have a reasonable amount of time. That could be perceived as very vague. Another concern that I have I guess, and Mr. Lathrop touched on it a little bit, is the capacity of the people who will be using these facilities. You know, much like my daughter, I don't think any of us would think that an 8-year-old has the capacity to judge whether a structure is safe, to judge whether, you know, say an electrical outlet is safe. And I think asking that of a child whether they're on a field trip,

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whether they're there at an "end of the school year" picnic as was the case with my daughter, she was in a public rest room. The walls had been fixed previously, so there was some notice. But under the old Recreational Liability Act, just to put it in a simpler form, the way that the language was written and the way I understand it, somebody would have had to almost intentionally push the wall over. Now I know nobody wants to do that, but the downside is if there is no motivation on the company who insures people or insures businesses to inspect those on a regular basis, ignoring them is probably a better motivator because you're better off if you don't know than you are if you knew and you didn't do anything about it. I will wrap up because my red light is on. And I'll be happy to answer question any of you may have. [LB329]

SENATOR FRIESEN: Thank you, Mr. Foster. Sorry for your loss. [LB329]

ROGER FOSTER: Thank you. [LB329]

SENATOR FRIESEN: Any questions from the committee? At the time of the accident, you were in a public place like in a park? Is that why I take it in a rest room? [LB329]

ROGER FOSTER: Yes, it was in the city park in Crete. [LB329]

SENATOR FRIESEN: And the laws at that time, could you tell us a little bit what you experienced under the insurance and the liabilities of the community. [LB329]

ROGER FOSTER: Well, like I said...and I'll go back a little bit. In the 1960s when the interstate was coming through, they were looking for a way to get people to allow people to use, for recreational purpose, their land, their waters, things like that. That's where the Recreational Liability Act originated. The Supreme Court, and I couldn't tell you the year, determined that it was never intended to apply to municipalities. So that was fixed back in...I don't know what year it was. I want to say 2010, but I don't know for sure. And that was brought through the Legislature. And some limits were put on municipalities at that time. But the language as it was set, there was virtually no liability unless it was an intentional gross negligence type of thing. And that wasn't the case at all in Crete. It was...I wouldn't say it wasn't preventable, but I also wouldn't say there's anybody to blame because of it. [LB329]

SENATOR FRIESEN: Okay. Senator Schnoor. [LB329]

SENATOR SCHNOOR: Could you...and as Senator Friesen said, I'm sorry for your loss. When did this happen? [LB329]

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ROGER FOSTER: In May. May 19, 2004. [LB329]

SENATOR SCHNOOR: Okay. Could you explain to us a little bit of what happened? [LB329]

ROGER FOSTER: What happened? They were...and some of you are familiar with...and one of the concerns that came through the proactive effort that we did, if you've been in some of these old rest rooms, many of them were built maybe by the Lions Club or the Rotarians or something like that. They had these block partition walls between the rest room stalls. They weren't anchored correctly. They came loose. In a nutshell what happened, there's a door that entered the bathroom. There was a partitioning wall there. As kids would be, girls in the bathroom filling out their...filling up their squirt guns. My daughter...actually two of my daughters happened to be on the other side. Boys pushed the door. One of the girls goes into the partition wall. It comes down on my daughter. That's how it happened. And that was one of the focuses when we did the Alexa Check campaign was to focus on those. And I can tell you it had positive impact, and there were many walls across the state that people didn't know the risk of them that were pointed out because of this. And they've since been fixed. And I don't think any accident like this has happened since then. So I guess my worry is...my worry about this bill is that we take away the proactive approach by, I guess, by lessening the liability. [LB329]

SENATOR SCHNOOR: Okay. Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? Seeing none, thank you, Mr. Foster. [LB329]

ROGER FOSTER: Thank you. [LB329]

SENATOR FRIESEN: Any other opponents? [LB329]

JOHN LINDSAY: Thank you, Senator Friesen. [LB329]

SENATOR FRIESEN: Welcome. [LB329]

JOHN LINDSAY: Members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys as a registered lobbyist. One of the problems we run into often in dealing with questions of limitations on liability is the misperception that goes along with liability. Bottom line is unless there is carelessness on the part of the defendant, the part of the person who is being sued, there isn't going to be liability. Liability goes with somebody being negligent or somebody being careless. It's not just that an

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accident happens and so there's liability because accidents do happen or accidents can occur because the injured person himself or herself was careless. The goal of tort liability is to provide accountability. The person who causes the accident should be accountable for the damages from that accident. Clearest case to look at it is at an intersection. If you have a...one side has a red light, one side has a green light, person goes through the red light is going to be liable there simply because they were careless. They went through a red light. But if...when you get more complex is when they're both going through during that time when both sides are red. In that case, probably not going to be liability. If it's a 50-50 case, it's not going to occur. So we have to look at liability and what gives grounds to a recovery when we're looking at legislation like this and make sure we know what it is that we're restricting. In this case, I agree with one of the...the last couple of testifiers. I think the folks that have been here talked about doing all the things that you're supposed to do. And that's, the good operators that are not the problem. I heard one testifier talking about we go out if there's a rain. We go out and we inspect the river and we go down it ourselves and make sure that there aren't hazards there. That's what people are supposed to do. If this bill passes, the people who aren't as responsible don't have to do that and may be better off if they don't. They don't have to walk that trail and see if it's washed out or if the foot bridge is structurally unsound or those types of things because they're not responsible anymore. It doesn't matter. They only have to worry about if I'm grossly negligent. The second thing, there are some unintended consequence that I think that you probably wouldn't think of at first. But I heard mention of in one case where they'll transport, I don't know if it's a canoe ride or what, transporting folks from the original spot to wherever they're loading in or loading out of the river. And they're in a vehicle. If the driver of that vehicle, whoever is driving on behalf of the tourism company, runs a stop sign and an accident occurs, they're not liable. And it doesn't sound like it at first blush, but because it's broadly written, there is no duty. And so there is no liability in that case. I'm not sure that that's what the intent of the bill might be, but it kicks in. Secondly, there...I heard description of one of the businesses that has I think several cottages on that, essentially a motel at the agritourism site. And to have two standards, a few miles outside of town you have a motel on an agritourism site, there's no liability. Same size motel inside the city, there is liability. And is that fair to that motel owner inside the city who also has expenses, etcetera, and has to...has a different level of liability? We heard about insurance, being too high risk so they couldn't get it. When insurers say there's too much risk, that should tell us something. And so I think that has to be taken into consideration. Bottom line is I grew up in the city. When I go out near a farm, I'm dangerous generally. I don't know which end of an animal to walk around because I didn't grow up around animals. To all of you that grew up on farms, it's second nature. I mean since you were a kid it was ingrained in your head. There's things you just don't do. I grew up in the city, I don't know that. I never grew up around that. So I think it's...having some duty to watch out for those people like me who would be an idiot on a farm should at least tell us what we should be doing and not doing. I'd be happy to answer any questions. [LB329]

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SENATOR FRIESEN: Thank you, Mr. Lindsay. Any questions? Senator McCollister. [LB329]

SENATOR McCOLLISTER: Yeah, thank you, Senator. In those states that have adopted such limits of liability, have you seen the number of accidents--perhaps you don't know the answer--have those number of accidents actually increased? [LB329]

JOHN LINDSAY: You know, I don't know that. And it's a really interesting question. And I think I'll look into that because I honestly don't know as far as when or if that research is available out there. I don't know the answer. [LB329]

SENATOR McCOLLISTER: Okay. Thank you, John. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you for your testimony. [LB329]

JOHN LINDSAY: Thank you. [LB329]

SENATOR FRIESEN: Any others wishing to testify in opposition? Seeing none, anyone wish to testify in the neutral capacity? Welcome. [LB329]

KORBY GILBERTSON: Good afternoon, Vice Chairman Friesen, members of the committee. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. I'm here in a neutral capacity because I talked to Senator Schilz and also representatives from the tourism association, and they asked if PCI could help get some information regarding what goes on in the other states that have passed this type of legislation. They're still trying to gather some information. One of the questions is whether or not there will be more or different policies available in the state of Nebraska if this legislation should pass. One of the discussions I've had with folks back in doing the research is that a problem remains...and I'll go back to the example that Mr. Lindsay used when you have the car accident and there's no stop sign and both cars hit and you have to determine liability. That's sometimes the case here. You don't know who's at fault. And because we have a fairly litigious society, a lot of times these things are litigated and that, too, adds to the cost of trying to provide insurance because it's always not clear who's at fault or what's going on and also because once you start charging someone to do an activity, you are held to a higher standard than someone who just lets someone go do something free of charge. So those are two issues that I think are...that continue to affect the price of the insurance because there's no way to determine those things. There's no way to rate that risk until you know exactly what will happen and we don't know what will happen

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because you just don't know on activities like that. With that, I'd be happy to try to answer any questions. [LB329]

SENATOR FRIESEN: Thank you, Ms. Gilbertson. Senator McCollister. [LB329]

SENATOR McCOLLISTER: Yeah, thank you, Senator. Does insurance exist for operations that conduct on farm... [LB329]

KORBY GILBERTSON: Yes. [LB329]

SENATOR McCOLLISTER: ...or agritourism? [LB329]

KORBY GILBERTSON: Yes, and I actually have two close friends that have agritourism businesses, do guide hunts and do other things. And both have insurance. And yes, it is expensive. But both of them say, you know, it's a lot cheaper than getting sued and losing my entire farm because someone gets hurt or killed. [LB329]

SENATOR McCOLLISTER: Is the insurance expensive because there have been so many accidents? [LB329]

KORBY GILBERTSON: I think it's expensive because of the perceived risk of...depending on what activities goes on. I think there's generally higher insurance for hunting activities, things where there could be more dangerous things going on. [LB329]

SENATOR McCOLLISTER: Okay. Thank you. Thank you, Senator. [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Schnoor. [LB329]

SENATOR SCHNOOR: Do you know, are there a lot of...do you know of any documented accidents? Are there a lot of them based solely on agritourism? I mean I live on a farm. I know it's dangerous. I know things can happen. And those are all unfortunate, but you know, that's the inherent danger of living on a farm. And we accept that. You know, that's just part of our life. And I do understand when you have kids coming from the city, that they are unaware of that. But I mean we're talking specifically about agritourism. So how many accidents have there been based solely on agritourism? [LB329]

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KORBY GILBERTSON: I don't have...that's part of the data that we've asked them to look at. I don't think there's data kept in Nebraska because we don't...I don't think there's ever been a data call for that type of information. But I'm trying to find out if there's been reduction in accidents, reduction in claims in other states where they've passed this type of legislation. That's the information that we're waiting on. But kind of back to your original question, it's not necessarily that there's an accident or that someone is liable for that accident. Part of the problem is you have a group of children that come out to your farm to ride along in the combine or do something like that. Someone gets hurt. You very likely are going to face a lawsuit. And so it's the unknown of how many times something like that could happen and the cost of defending those lawsuits obviously can be quite costly. [LB329]

SENATOR SCHNOOR: Okay. Thank you. [LB329]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator McCollister. [LB329]

SENATOR McCOLLISTER: Yeah, thank you, Senator. You know, in the medical business, there are limits of liability. Are there any such limits when it would come to agritourism? [LB329]

KORBY GILBERTSON: There aren't. No. [LB329]

SENATOR McCOLLISTER: So maybe one approach we could take is to put a cap on the liability rather than completely eliminating...is that one opportunity for us? [LB329]

KORBY GILBERTSON: I giggle because I've worked on medical malpractice liability limits here for about 20 years. And when you talk about other limits of liability, and I think you unfortunately will be seeing a lot more of Mr. Lindsay and his clients if you tried to do anything with that. [LB329]

SENATOR McCOLLISTER: He probably wouldn't favor that? [LB329]

KORBY GILBERTSON: Yeah, I don't think so. [LB329]

SENATOR McCOLLISTER: Okay. [LB329]

KORBY GILBERTSON: But you'd have to ask him for yourself. (Laugh) [LB329]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Kolowski. [LB329]

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SENATOR KOLOWSKI: Thank you. Korby, thank you for your testimony. I just am sitting here thinking a kid is going to a farm, a ranch, seeing those kind of experiences. And I put it within the context also of a daily situation in schools, field trips with kids to the children's museum or Henry Doorly Zoo and a lunch in a park with a sack lunch. I mean put a first-grader like I have as a grandson in with another 30 of those and it's fraught with possibilities. [LB329]

KORBY GILBERTSON: Absolutely. [LB329]

SENATOR KOLOWSKI: So it's not just a farm location even though equipment and all those kind of things, anywhere you do something like this has possibilities. So it's not...I don't look at it just as an agribusiness kind of situation. [LB329]

KORBY GILBERTSON: Right. [LB329]

SENATOR KOLOWSKI: I think it's prevalent. [LB329]

KORBY GILBERTSON: Well, I immediately thought of the pumpkin patches and things like that... [LB329]

SENATOR KOLOWSKI: Absolutely. [LB329]

KORBY GILBERTSON: ...that are around Lincoln that all the kids love to go to. And they jump into the corn bins. My son absolutely loves that. But you know, those of you who know me know I'm typically...I'm a bit of a klutz. You wouldn't want me jumping around in there. [LB329]

SENATOR KOLOWSKI: I saw your wrist. (Laughter) [LB329]

KORBY GILBERTSON: Yeah. But that's part of the problem. But also the liability for the activities like that is less than it would be for say hunting activities, things like that. [LB329]

SENATOR KOLOWSKI: Thank you. I appreciate it. [LB329]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions from the committee? Seeing none, thank you for your testimony, Ms. Gilbertson. [LB329]

KORBY GILBERTSON: Great. Thank you. [LB329]

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SENATOR FRIESEN: Any others wishing to testify in the neutral capacity? Seeing none...oh. [LB329]

MICHAEL PAULSEN: May I say something? I'm doing a documentary on the death of the American farm actually (inaudible)... [LB329]

SENATOR FRIESEN: Would you take a chair, and again, say your name and spell it, please. [LB329]

MICHAEL PAULSEN: Michael Paulsen. So this is someone... [LB329]

SENATOR FRIESEN: Spell your name. [LB329]

MICHAEL PAULSEN: P-a-u-l-s-e-n, M-i-c-h-a-e-l. [LB329]

SENATOR FRIESEN: Thank you. [LB329]

MICHAEL PAULSEN: So I am in a position where I have a thousand-acre farm that I could go back and develop. Right now, all of my siblings want to sell the farm and they want to cash in and have money. They want \$500,000 each share. So for me, I could easily start a business on a family farm if I chose to. So what I want to know is how do you guys want to grow Nebraska? I mean if you want to grow business, if you want to make things better, what are you doing for the younger generation who's trying to get away from all these rules and laws and stipulations? And we need insurance. We need insurance to start a business, right? That's common sense. So how do you want to grow Nebraska? And I would like to start a discussion for five minutes with you guys. What do you want to do? Agriculture is 90 percent, land privately owned. I mean this is a step in the right direction. Any questions for me, 33-year-old male, moved home to the farm? [LB329]

SENATOR FRIESEN: If you're done, I guess if the committee wants to ask any questions, they can ask some questions. [LB329]

MICHAEL PAULSEN: Please. [LB329]

SENATOR FRIESEN: Do I see any questions from the committee? [LB329]

SENATOR SCHNOOR: I do. [LB329]

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SENATOR FRIESEN: Senator Schnoor. [LB329]

SENATOR SCHNOOR: Well, it's your...you're talking about this land. Is this actual land that you have or is this just an example? [LB329]

MICHAEL PAULSEN: Father's, family farm LLC. [LB329]

SENATOR SCHNOOR: Say that again. [LB329]

MICHAEL PAULSEN: It's a family farm. It's an LLC. [LB329]

SENATOR SCHNOOR: Okay. [LB329]

MICHAEL PAULSEN: So there's business potential. But right now there's fear. There's people who don't know how to develop it. [LB329]

SENATOR SCHNOOR: Well, it's very hard. I mean we know nothing about where this farm is, what you want to do. I mean you've asked a lot of extremely vague questions. Do we want agriculture to grow and agritourism? Personally, I can't answer for anybody else here, but I do. But you know, I can't...but it's hard for us to answer any of your questions without any specifics. [LB329]

MICHAEL PAULSEN: Okay. So traveling through the states, I mean other states promote small businesses. Other states promote agriculture. Other states promote businesses. What businesses are in Nebraska right now? [LB329]

SENATOR FRIESEN: Well, just let me interject here a little bit. [LB329]

MICHAEL PAULSEN: Please. [LB329]

SENATOR FRIESEN: What we're looking for here is we are trying to find a way to have you develop that business. And we're looking for a model, I guess, that fits. And we've talked a lot about liability insurance and how that may work. So I guess for now, I mean my suggestion to you would be to contact maybe some of the people that have testified here, and they could probably help you with a lot of the pitfalls and direct you probably more to how to start your business. The tourism industry is obviously very great in Nebraska, so there's a lot of people here

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very experienced in that. And they would be a good starting point. Are there any other questions from committee members. Senator Johnson. [LB329]

SENATOR JOHNSON: Not necessarily a question, just kind of a clarification of the process. The hearings are set up for testimony on particular bills... [LB329]

MICHAEL PAULSEN: Correct. [LB329]

SENATOR JOHNSON: ...which we're talking about ag tourism, those types of things. It's not really set up to be a discussion or a debate of how to fix the problems unless you have solutions that you see on how... [LB329]

MICHAEL PAULSEN: Where do you I take my solutions to? [LB329]

SENATOR JOHNSON: Pardon? [LB329]

MICHAEL PAULSEN: Where should I take my solutions to? [LB329]

SENATOR FRIESEN: To your state senator. [LB329]

MICHAEL PAULSEN: State senator. [LB329]

SENATOR FRIESEN: Yeah. [LB329]

MICHAEL PAULSEN: Okay. [LB329]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Kolowski. [LB329]

SENATOR KOLOWSKI: Hopefully one last comment, wherever you live and whatever resources you have to get to chambers of commerce either at the state level or the towns that are around you would be a reference point to start with. And I hope that would help you with opening some doors. Thank you. [LB329]

MICHAEL PAULSEN: I'm going to make one more comment. Back in second grade, the entire school came out to my farm for apple days. We have a family apple orchard. This was back before rules and laws. And people took personal responsibility. They walked off the bus. They

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walked through the chicken coop. They went and picked an apple, and they ate it. Every single one of my classmates has that memory. Thank you. [LB329]

SENATOR FRIESEN: Unfortunately times have changed. Thank you for your testimony. [LB329]

MICHAEL PAULSEN: Yeah, it's funny. Times have changed. [LB329]

SENATOR FRIESEN: Any others wish to testify in a neutral capacity? Seeing none, Senator Schilz, would you like to close? [LB329]

SENATOR SCHILZ: Thank you, Senator Friesen, members of the committee. I want to thank all the proponents for coming in today. I would also like to say that there are a few clarifications that need to be made. When Mr. Lathrop was up here speaking on everything that he spoke about, we need to understand that this bill is not about equipment. This bill has never been about equipment and if you read the bill, Section 5(2) tells you that any equipment has to be maintained. Anybody that is using that equipment falls into that under Section 3(5). So if you have personnel that are driving a vehicle that wreck, that's not...you have the same level of liability today that you would have tomorrow if this bill is passed. This is about the land. This is about what you do on the land, not necessarily the equipment. We heard the talk about the footbridge. A footbridge is equipment. If a landowner is using that for activities such as this, he has to maintain that. He has to tell people and train people on how the proper way is to use that. And all that becomes part of what goes on. So I think it's extremely important that we understand what the bill is about and what it specifically does. And that's my intent of what this bill should do. We heard that there was 25 states that have laws like this in place so far. The last...in 2013, Wisconsin put theirs into place. And we should note that from 2013 until now, in 2013, there were 17 states that had this. Now there's 25. So the trend is that this is going to happen and continue to happen around the country. And if we're not careful, once again, Nebraska could get behind in this. And then what happens is every place else that's developed recreational opportunities gets to be able to have the market share, the vast market share of those opportunities. So I think it's important. I think it's important that we understand first what the law does. And then we will make sure that it only covers those things that we had talked about it covering. And we will make sure that equipment, training, any personnel, anything like that, anything that's used like that doesn't go away from the same liability they have today. And that has always been my intention with the bill. And I think if you look at it, you'll see that that's the case. And with that, I would thank you all for listening. I would be happy to take any final questions if you have them. [LB329]

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SENATOR FRIESEN: Thank you, Senator Schilz. Any questions from the committee? Seeing none, thank you, sir. [LB329]

SENATOR SCHILZ: Thank you. Very good. [LB329]

SENATOR FRIESEN: I'll turn the Chair back over to you, Senator Schilz. [LB329]

SENATOR SCHILZ: Well, folks, thank you very much. That will end our hearing today on LB329. [LB329]