

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Transportation and Telecommunications Committee January 23, 2024

**MOSER:** The meeting for the Transportation and Telecommunications Committee will now come to order. I'm Mike Moser. I represent District 22. I'm the Chair of the committee. Introductions by senators will start with Senator Bosn.

**BOSN:** Carolyn Bosn, District 25.

**BRANDT:** Senator Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

**DeKAY:** Barry DeKay, representing District 40, which consists of Holt, Knox, Cedar, Antelope, northern part of Pierce and northern part of Dixon County.

**BOSTELMAN:** Bruce Bostelman, District 23, Saunders, Butler, Colfax counties.

**DeBOER:** Wendy DeBoer, District 10, northwest Omaha.

**FREDRICKSON:** John Fredrickson, District 20, central west Omaha.

**MOSER:** Our pages today are Ruby and Ethan. Our clerk is Lynne Woody. Our legal counsel is Mike Hybl. There are blue testifier sheets on the table as you come in the room. Please complete that and hand it to the page when you come up to testify. If you're not testifying but you want to record your presence, sign a gold sheet in the book on the table near the entrance. Letters for the record must be received by 8 a.m. the day of the hearing. Handouts submitted by testifiers will be included as part of the record as exhibits. Please provide 10 copies of any handouts. Additional copies can be provided by the pages. Senators may come and go during the hearing. This is common and required, since they may be presenting bills in other committees at the same time. Testimony will begin with the introducer's opening statements. Then we'll hear from supporters, then those in opposition, and then those speaking neutral. The introducer of the bill will then be given the opportunity to make a closing statement if they wish to do so. Please give us your first and last name, and please spell them for the record. We'll be using a 3-minute light system today. No demonstrations of opposition or support on testimony are allowed. Be sure to turn off your cellphones-- apologize for that-- or put them on vibrate. All right. Our first bill today is LB891. Welcome.

**BOSN:** Thank you, Chairman Moser. And good afternoon, members of the Transportation and Telecommunications Committee. For the record, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25,

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which consists of the southeast part of Lincoln and Lancaster County, including Bennett. LB891 addresses the need to clarify the current statutory definition of a motor vehicle manufacturer. It will clarify in statutes that those who distribute, manufacture or assemble motor vehicles, trailers or motorcycles, as a manufacturer regardless of their method or distribution. The issue was brought to my attention by the Nebraska New Car and Truck Dealer Association. Every state, including Nebraska, licenses and regulates motor vehicles-- excuse me, motor vehicle dealers and manufacturers. That licensing is necessary to address the multitude of issues regarding the availability, sale and service of what is likely the second largest investment most consumers will make. For well over 50 years, the legal responsibilities of manufacturers and dealers have been established and evolved by the Legislature under the police power of the state. In 1971, the Nebraska Legislature, at Section 60-1401.01, identified the franchise system as the method of distribution of new motor vehicles in Nebraska. There are licensing and franchise laws in every state. In many of the states' laws, the definition of manufacturer included the term franchisor or franchisee. That definition has served the public well and mostly continues to do so. The law clearly identified the different responsibilities and distinctions between dealers and manufacturers. Virtually anyone could define and distinguish the difference between a dealer and a manufacturer. However, now that definition is in need of updating so that all manufacturers are treated the same, and our laws regarding manufacturers remain enforceable and unchanged unless deliberately changed. Nebraska law clearly regulates the motor vehicle industry and needs to continue to do so. This bill amends the Nebraska definition, so our existing laws clearly apply to every manufacturer, regardless if they use a franchisee or not. The bill does not make any other changes to our laws regarding dealers and manufacturers, nor does it change in any way how a manufacturer is regulated. The various laws, including warranty laws, lemon laws, licensing laws and advertising laws are unchanged. Only the definition of manufacturer is intended to be clarified. There may be testifiers behind me who are concerned about a new service center that just opened in the Gateway Mall in Lincoln, and the potential that this bill would mean that location has to close. I assure you, that is not the intent of this bill. The service center will be able to service their own electric vehicles. I, along with many of those individuals, want to make sure that electric vehicle owners in Nebraska are able to service their cars here in Nebraska and do not have to go to another state for the purpose of service-- servicing the vehicles. I am working on an amendment and it may have been passed around or is

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going to be passed around, that I worked in conjunction with some of those individuals who are man-- representing electric vehicles and also the new car and dealers, that would alleviate those concerns and clarify the language in this bill. As soon as I do have it-- I think it's maybe getting passed around now-- is that what's getting passed right now? OK. I will share it with you now. And also, I'll let you know that I believe they will testify that that alleviates their concerns, but I'll let them speak to that themselves. Thank you for your time and attention. I'd be happy to take any questions if you should have them. Mr. Todd from the Nebraska New Car and Dealer-- Truck Dealer Association will be following me and may be able to better answer some of the other questions that you may have if I cannot.

**MOSER:** Thank you. Our comments we received were 3 in support of the bill, opposing the bill, 105, and 1 neutral. Questions for the testifier. Thank you. I guess they're going to let you off easily.

**BOSN:** This is my first hearing, so I appreciate that.

**MOSER:** Well, we'll get around to it.

**BOSN:** Yes.

**MOSER:** The new will wear off. OK. Supporters for LB891.

**LOY TODD:** Good afternoon, Chairman, members of the committee. My name is Loy Todd. It's L-o-y T-o-d-d. I'm the president of the Nebraska New Car and Truck Dealers Association. The need for this legislation was brought to my attention from our national association. And as the senator indicated, there are some 13 states who define the motor vehicle manufacturer including the term franchisor or franchisee, because until recent years, that has been pretty much exclusive manner and, and the, and the dictated manner by Nebraska law on how to distribute new cars and trucks. And so we have been working with, we think, all the interested parties to try to find a definition that works, because we, we do need a-- still need a definition that works identifying manufacturers. There are other laws that are beyond the relationship between a dealer and a, and a-- its manufacturer, such as lemon laws, warranty laws, advertising laws, those kinds of things. We still need to enforce laws on manufacturers in their category. And kind of-- and last minute, we were approached by the, the Tesla folks regarding the bill. We thought they were going to be OK with it. Turns out they've got a service center in Lincoln that's already open. We certainly don't want to shut down-- that business

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down by any means if it takes care of their customers. And, and so the amendment, I believe-- I haven't seen the final draft of it, but we think there's an amendment that will work for everyone, because we still, we still really need to correct the definition of a manufacturer and-- in, in that regard we think that, that works, grandfathering them in, and make-- making sure that the citizens of Lincoln are served. Interesting when you indicated the 105 letters in opposition. Tesla has one heck of a network of their customers. And they can reach them, and they can reach them quickly. I'm quite jealous of that. I wish I could get to my dealers as quickly as they can get to their, their, their good customers. So with the proposed amendment, we, we think we can, we can work with everybody involved and look forward to correcting Nebraska law in a way that works for everyone. Thank you.

**MOSER:** All right. Questions? State Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you, Mr. Todd, for being here today and for sharing your testimony. I was just reading over the amendment, and I think it does kind of, I would, I would assume and maybe you folks from Tesla can sort of elaborate further, but I was also reading the original bill, bill and I, like probably many of my colleagues, received a lot of emails from Tesla drivers. Can you shed some light? What, what was the concern of the bill? Because I didn't see anything in there that--

**LOY TODD:** The, the, the original law that, that we're changing now, in part, reads that a manufacturer cannot act as a dealer. Included in that was a provision that they could not run a service center.

**FREDRICKSON:** Got it. And then the Tesla-specific service center was the concern that they were [INAUDIBLE].

**LOY TODD:** Well, actually, no manufacturer could run a service center. And the reason for that was my dealers couldn't compete with Ford. Let's say, Ford came in and wanted to put in their own Ford service center and-- in competition with the Ford dealer. Well, the Ford dealer has no chance at all of success--

**FREDRICKSON:** Got it.

**LOY TODD:** --or taking care of their customers if they have to compete with their manufacturer. And that's sort of the, the tone of the entire law. And so what we're in-- what we have here is a situation where I-- I hate to give Tesla's argument for them, but, but it's

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their, it's their customers. They don't have dealers. And it's-- so it's the people who-- the, the Tesla owners in Lincoln and Omaha. If you look at where they are, that want to take care of their own vehicles, they're not competing with a-- with their own dealer.

**FREDRICKSON:** Got it. So with the amendment that would allow for the service center to continue. Would that also apply too if Ford or Jeep or whoever else were to--

**LOY TODD:** It, it still would exclude them. It would, it would leave the, the, the law that's been in place for 70 years in place, with the one exception of, of existing service center for the Tesla vehicles by Tesla.

**FREDRICKSON:** Got it. Thank you.

**MOSER:** Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thanks, thanks for being here.

**MOSER:** You could introduce yourself, too, while you're--

**M. CAVANAUGH:** Senator Machaela Cavanaugh, District 6, west central Omaha, Douglas County. So we're making an exception in this amendment for Tesla for their current service center. But based on the current law, aren't they in violation of it then?

**LOY TODD:** That would certainly be our argument. However, what we're finding is because they have never been a franchisor, that they don't squarely meet the definition of a manufacturer under Nebraska law, because Nebraska law defines a manufacturer as someone who manufactures motor vehicles. And it's the same term as a franchisor. And so the-- and 13 states have the same difficult description.

**M. CAVANAUGH:** And when-- how long has this service center been in operation? Do you know? Yeah. I mean, it's not your company.

**LOY TODD:** I have never seen it. I, I-- it's my understanding that it hasn't been very long, I think this year.

**M. CAVANAUGH:** OK. OK. Thank you.

**LOY TODD:** And they'll be here. They're here.

**M. CAVANAUGH:** Thank you.

**MOSER:** Senator DeBoer.

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**DeBOER:** Thank you, Senator Moser. Thank you for testifying. Can you put this in context for me of the conversation we've been having about this very issue for the last several years, about, you know, the 3-tier system and Tesla and how it fits within that or doesn't fit within that? What we have here, how does that fit into that conversation?

**LOY TODD:** Well, nothing's really changed other than we now find this definition-- the existing definition probably created a loophole that would let someone who has never had a, a dealer come in and operate totally outside of the law. And so that's, that's kind of where, where it evolved. And had, had they not opened a service center and been in existence and we were surprised this morning by that information. It, it just-- it just changes the posture of, of our association's stance on it. We're willing to work with them. We don't want to close down a business that some customers are already relying on using.

**DeBOER:** So you're saying that the news this morning that there was a service center in Nebraska was new to you this morning. That information?

**LOY TODD:** Yes.

**DeBOER:** OK. Because in the past, I know that one of the things we were talking about is whether or not the service station-- or the service center would disrupt the 3-tier system. And you're saying we're good like it is, as long as it's just this one carve-out?

**LOY TODD:** Yes.

**DeBOER:** So what if someone else who I don't know, ABC Electric Car Company wanted to have a service center. Would they be allowed to service electric cars in Nebraska?

**LOY TODD:** Not under my understanding of the terms of this amendment that has been-- that's being offered.

**DeBOER:** Only Tesla.

**LOY TODD:** Yes. Well, they'll be grandfathered in because they already exist.

**DeBOER:** OK. So if we discovered that in Seward, there's a ABC electronic car service center, then they would be fine because they'd be grandfathered in?

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**LOY TODD:** No.

**DeBOER:** No, I'm saying if we discovered there was another one. You discovered this morning the Tesla one exists. If we discover, discover someone else has-- I'm saying it's not specific to Tesla. It's just specific to people who have already existed, to service companies. Thank you.

**LOY TODD:** Yeah, as of, as of the effective date in the [INAUDIBLE].

**DeBOER:** Thank you. Yes. OK. Thank you.

**MOSER:** All right. Other comments? Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Mr. Todd, for your testimony today. To clarify, in Nebraska, if a year from now there were a new manufacturer startup, the only way they could service cars is they would have to have a franchisee that a, a manufacturer cannot directly sell or service his own vehicles in the state of Nebraska under the proposed law.

**LOY TODD:** Under existing law and the proposed law.

**BRANDT:** Right.

**LOY TODD:** Yes.

**BRANDT:** OK. Thank you.

**MOSER:** OK. Thank you for your testimony.

**LOY TODD:** Thank you.

**MOSER:** More supporters? If you plan to testify, please come up and get in the front row so it's a little quicker to get in the testifier seat. Welcome.

**JOSH EICKMEIER:** Thank you. My name is Josh Eickmeier, J-o-s-h E-i-c-k-m-e-i-e-r. I'm the executive director for the Motor Vehicle Industry Licensing Board. And our, our board had, had met actually this morning, for a board meeting, and they support the bill. As a regulatory agency, any time we can get clarity, making terms less ambiguous, we think that's a good thing so that it makes our life a little easier, and we're not put in the position of having to interpret something that may eventually be found to run against what

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the Legislature's policy preference is. And so, with that, I just wanted to express our board's support of the bill.

**MOSER:** Thank you. Did you spell your name?

**JOSH EICKMEIER:** Yes. J-o-s-h E-i-c-k-m-e-i-e-r, Josh Eickmeier.

**MOSER:** OK, great. Thank you. If you did that already, I apologize.

**JOSH EICKMEIER:** No, you're-- easiest question I've gotten all day.

**MOSER:** It's hard to keep all the balls in the air here.

**JOSH EICKMEIER:** I totally understand.

**MOSER:** OK. Questions for the testifier? Thank you so much for your testimony. Anybody else in support of LB891? OK. Anybody in opposition to LB891?

**MARY VAGGALIS:** Good afternoon.

**MOSER:** Welcome.

**MARY VAGGALIS:** Thank you. Good afternoon Chair Moser, members of the Transportation and Telecommunications Committee. My name is Mary Vaggalis, M-a-r-y V-a-g-g-a-l-i-s, and I'm appearing before you today as a reger-- registered lobbyist for Tesla. Tesla is opposed to LB891 as introduced. Since its inception, Tesla has provided a direct sales and service experience to its customers. Tesla has never had a franchise relationship with a dealer in Nebraska or in any other state. Historically, Tesla owners have been forced to travel to neighboring states to purchase or service their vehicles. And despite these laws, Tesla is obligated under Section 60-2702 to make warranty repairs to its vehicles. Nebraska law currently allows Tesla to operate a service center for the purposes of providing service, including warranty repairs, in-state, rather than requiring technicians or customers to travel across state borders. Under this authority, Tesla has opened a service center in Lincoln. We are excited about making an investment in this state and the opportunity to provide job growth and consumer care. LB891 as introduced would jeopardize that investment. As was mentioned previously, this morning, we worked with Senator Bosn's office and the new Car and Truck Dealers Association on a draft amendment that would resolve our concerns with LB891. The proposed amendment would allow Tesla to provide warranty and nonwarranty service to its customers in Nebraska through service centers that work exclusively with Tesla vehicles. As



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more and more Nebraskans become Tesla owners, this policy will help ensure that we-- they have convenient access to service experiences. Thank you for your time. I'm happy to answer any questions. Chad Hart, the manager of the Lincoln service center, will follow behind me if you have specific questions about how they operate.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you, Ms. Vaggalis, for being here to testify. So I have a question just to sort of piggyback on some of the previous questions regarding that with the grandfathering in. So if Tesla were or any other company but I guess we're talking specifically about Tesla. If Tesla were to build another service center elsewhere in the state, so Grand Island, Kearney in the future, would they be allowed to do that under the amendment or that would be-- how would that work with the grandfathered in?

**MARY VAGGALIS:** Yes, we'd be allowed to do that under the amendment, since we already have a service center in operation as of February 1st.

**FREDRICKSON:** OK. So you could expand on that--

**MARY VAGGALIS:** Yes.

**FREDRICKSON:** --under this amendment. Thank you.

**MARY VAGGALIS:** Sure.

**MOSER:** Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Nice to see you again. So I was just reading over the green copy. And it looks like it's kind of just a cleanup of language. I, I am not an attorney, so-- but if it is essentially cleaning up the language that we had in statute, I guess my question that I had previously posed is how did Tesla build a service center under the current law?

**MARY VAGGALIS:** Sure. Great question. So if you're, if you're looking at the introduced version of the bill, there are a couple of changes, particularly on lines 6 and 7. One is the addition of a comma behind motorcycles. And then the includes language. So previously, essentially a manufacturer was defined who-- as someone who manufactures and directly or indirectly distributes their new motor vehicle, trailer or motorcycle as a franchisor. So the definition was

tied to that dealer-franchise relationship. This would sort of exclude the dealer-franchise relationship from the equation when we're figuring out who and is and is not a manufacturer, and make it broader than the current statute reads. And there was a case in Delaware that sort of raised this question, which is why you're seeing it pop up as, as Mr. Todd mentioned, in a couple-- in some other states who had similar definitions in their statutes.

**M. CAVANAUGH:** OK. I understand what you're saying. And I appreciate the addition of a comma, especially if you watched the rules debate, big fan of grammar. But I guess my confusion, after being on this committee for however many years we've been here-- 6, this is the 6th year, I think. My confusion is hearing other previous years of legislation around the franchise dealership model. And taking that context into consideration in this conversation, it, it kind of seems to go against each other, because Tesla has been trying to eliminate that regulation so that they didn't have to operate, operate as a deal--in the dealership model. So they then created a service center but now, want to not be considered a dealership or a franchise?

**MARY VAGGALIS:** Yeah, even--

**M. CAVANAUGH:** But they are a manufacturer.

**MARY VAGGALIS:** So, they manufacture vehicles.

**M. CAVANAUGH:** Yes.

**MARY VAGGALIS:** Under existing law, that we don't believe that they are a manufacturer for purposes of the, of the warranty and lemon law statutes and can provide warranty services in the state. And it's really the, the decision in that Delaware case that causes us to reexamine the, the specific language that's in existing law and its application to those-- the service statutes, particularly the lemon law statute.

**M. CAVANAUGH:** OK. So I understand that, but let's just take into consideration flying cars. I was supposed to talk to somebody about flying cars this week. Or autonomous vehicles. And we are very specific. Like, in Nebraska, we don't allow, allow you to drive an autonomous vehicle. I mean, it could be I don't understand the mechanics of it, but you could have a vehicle that potentially could be autonomous, but you cannot drive it as an autonomous vehicle because of our laws. And if you have to buy a car like that, you would have to buy it outside of our state, presumably. And so, would

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we then be required under the lemon law to allow that company to come in and have service stations. Because they can't sell them here in the state, but they have to service them. And why do they have to service them in the state that you reside and not the state where you purchased it?

**MARY VAGGALIS:** Sure. So just--

**M. CAVANAUGH:** I'm sorry. I'm just down like a winding hole here, Mary. I'm sorry.

**MARY VAGGALIS:** No. You're fine. The autonomous vehicle statutes apply to the vehicles themselves, not necessarily to, to different manufacturers. So the autonomous vehicles that are in state statute now apply to Tesla, apply to Ford, apply to, to any type of vehicle. And, and the amendment as drafted would depend on existing service centers in terms of the exemption. So it would maintain the existing dealer-franchise requirement and-- particularly with the narrowing of the language in the introduced copy, which, which would not be excluded under the amendment. It would exclude new manufacturers entering the market from putting a service center here. They would still be able to, obligated, excuse me, to perform warranty repairs, just, just as Tesla has been. We either send folks in from out of state to, to provide that service, or we ask our customers to either travel to or tow their, their vehicles out of state.

**M. CAVANAUGH:** I have one more question. OK. So the amendment basically makes it so that the current status quo is OK and on the up and up. But it does give Tesla an unfair advantage over future companies that might want to do the same thing, by making this exception that you said would allow Tesla to then open up additional services sites throughout the state, but no other company can. So aren't we essentially creating a monopoly for Tesla in that sort of niche? I understand it is very niche, and it is Tesla and Tesla is its own thing, but aren't we essentially creating a monopoly?

**MARY VAGGALIS:** Tesla would support a broader exemption that applies to any manufacturer that does not already have an existing franchisor relationship in the state. The language was negotiated among other parties who have different interests. And so it's drafted to protect the, the jobs and facilities that are in place now. But, you know, as a broad policy argument, we, we would support some-- something broader than that. But I think other interests involved would have objections to that.

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**M. CAVANAUGH:** OK. Thank you. Thanks for answering my question.

**MOSER:** All right. Thank you for your testimony. Welcome.

**CHAD HART:** Thank you, Chairman. My name is Chad Hart, C-h-a-d H-a-r-t. I am the service manager for the Council Bluffs, I'm sorry, Council Bluffs and Lincoln location now that we have a Lincoln location. The Lincoln location opened, I believe-- I don't have my work calendar, won't come up in this room. But I believe it was December 18th that we actually officially took possession of, of the building from, from the landlords. I was born in Lincoln, Nebraska. My wife was born in Aurora, Nebraska. She's a registered nurse at Saint Elizabeth. We reside in Ashland, Nebraska. Our kids have either graduated from or currently attend Ashland-Greenwood Public Schools. I'm the assistant chief for the fire department. I'm an EMT. All of that to say, like, my Nebraska roots run very deep. I am very excited to bring Tesla into this state and, and support our customers, and I want to help keep it here. I've been with Tesla since 2017. As I stated earlier, I, I currently manage the Council Bluffs and the Lincoln location, along with our mobile service staff. As I stated, our Lincoln Service Center recently opened, and we plan to serve the needs of roughly 3,200 Nebraska customers-- Nebraska Tesla customers for all their service needs, both warranty and customer pay repairs. Currently, we have 3 employees on staff at the service center. As I stated, we just opened, but a typical Tesla service facility will employ around 25 employees. A full sales, service, and delivery location is nearly double that. So, prior to this service center opening, Tesla service centers would have to drive to Iowa to have many of their vehicle repairs made. If you're familiar with Tesla, we, we own and operate our own sales and service centers so we don't contract with third parties, dealerships. We like to think that if we sell a car, it should work and if there's an issue, we want to fix it because we are the experts on that car. Our service technicians and advisors diagnose and maintain and fix our customers' cars efficiently. We're not incentivized to provide up-sales. We do the repairs that are needed, and we do them at a fair price. Average hourly service position pays somewhere between \$22 and \$32 an hour to start, depending on the role. We have a full benefits package. I currently have the option to pay zero for healthcare for my family of six, which is a major advantage in today's economy. If I were at my previous dealership, that would have cost me hundreds, if not thousands of dollars a month for that healthcare package.

**MOSER:** OK. Questions? I assume you drive a Tesla?

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**CHAD HART:** Yes, sir. I do.

**MOSER:** OK. Thank you for your testimony. Anybody else that would like to testify? Welcome.

**MELANIE KIRK:** Hello. Good afternoon. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k, and I'm here in my capacity as an individual, testifying regarding this bill, in opposition to LB891. I wanted to make sure that the members of the committee had a personal look at how this statute change, this bill would impact Nebraskans. My husband is a mobile service tech for Tesla, and he has been since 2019. And he has been-- he has needed to go to Council Bluffs to pick up his-- the parts that he goes to-- all across Nebraska to fix Teslas. And we are very excited to have a place here in Lincoln that he can go to to pick those up. I can tell you as a Tesla owner that it is-- it is amazing the mobile service that they have. I know that my husband's customers really love him. There are individuals all across this state. It's not just doctors and lawyers and businessmen that own them, but farmers own Teslas and individuals all across the state, clear out into western Nebraska, own Teslas and enjoy them. And my concern when I read the bill was that this-- the way that it was written, it would make it so that we couldn't-- that Tesla couldn't operate mobile service, which would cost my husband his job, and so I came to ask you not to do that. We have 4 boys in our house, and we rely on the healthcare that's provided. Two of my children are disabled, and it's very important to us. And I'm asking that you consider that, as we are Nebraskans that support this economy.

**MOSER:** OK. Questions for the testifier?

**MELANIE KIRK:** Yes.

**MOSER:** Senator DeKay.

**DeKAY:** Thank you, Speaker Moser. Your husband has a mobile unit that goes around and does warranty work?

**MELANIE KIRK:** He does.

**DeKAY:** Are there any service bays available for Tesla's owners to take them to, like in Council Bluffs, Lincoln, now or is it all--

**MELANIE KIRK:** So there had been services that they could have provided-- they could provide in Council Bluffs, and now with the new service center in Lincoln, there's a place for them to bring them. But also the mobile service depends on the, the repair. And honestly,

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I'm not really the right person to ask, but I can tell you that some repairs he can't do, if it requires more than one person or something like that, but he does an awful lot of work all across the state for different Tesla owners.

**DeKAY:** So like a Tesla dealership, cars on the line is there-- there's none of that?

**MELANIE KIRK:** I-- not really the right person. I know he doesn't sell them.

**DeKAY:** OK.

**MELANIE KIRK:** He, he just services the vehicles that people already own.

**DeKAY:** OK. Thank you.

**MOSER:** Thank you for your testimony. Other opposition? If you're gonna testify, come up and get in the front row. Kind of cued up more closely to the seat. Welcome. Please state your name and spell it for us.

**JOEL GIMBEL:** I am Joel Gimbel, J-o-e-l G-i-m-b-e-l. I'm sorry, I'm a little new to this. I'm a tech founder, not a lobbyist. So forgive my-- forgive my stumbleness here. I'm used to working with computers, which are easier to deal with when you talk to than legal work. I'm a Tesla owner. I have been since 2018. And back then, the service, they called them Rangers, would come out and work on your car. Whether there was snow in your driveway or not, they came out and they got down into the snow and worked on the driveway. Otherwise, you had to take it into Council Bluffs. And the one time I've had to do that, I had to get a hotel in Council Bluffs to be able to allow them to service, because it doesn't make sense to drive to Council Bluffs, grab the rental from them, come back and be able to do the work today. So as you extend out into Nebraska, as a person that owns this vehicle, it doesn't make sense to not be able to have a service center, from someone that owns it. That's, that's my testimony.

**MOSER:** OK. Questions from the panel? Thank you for your testimony. I appreciate you appearing today.

**JOEL GIMBEL:** Thank you. Sorry. The other thing, Cavanaugh, as you mentioned, this needs to make sure that this isn't just for Tesla. This needs to be brought into other companies that are coming in, to make sure that if I want to buy a Rivian or if I want to buy any

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other vehicle that's coming out, that service centers are allowed for those other vehicles.

**M. CAVANAUGH:** I have no idea what those are, but I trust you.

**JOEL GIMBEL:** OK.

**MOSER:** Thank you. Other opponents? Most of the opponents must be tech types. They sent in emails. Neutral testif-- testifiers? Anybody here to speak in the neutral capacity? OK. Senator Bosn.

**BOSN:** Thank you, Chairman Moser and members of the committee. I took some notes. I think the amendment will hopefully, we can come to something that resolves some of the concerns of those who testified in opposition. And I look forward to the opportunity to continue working with them on that. I know you weren't here when I gave my long spiel, and I'm happy to share it with you on or off the record if you have questions. Otherwise, I can answer any questions before I sit down. Sounds good.

**MOSER:** Must have answered everything very well. Thank you.

**BOSN:** Thank you.

**MOSER:** All right. That closes our hearing on LB891. From there, we go to LB900, Senator Brandt.

**BOSN:** Yes, thank you.

**MOSER:** Floor is yours, Senator.

**BRANDT:** Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. I am Senator Tom Brandt, T-o-m B-r-a-n-d-t. I represent Legislative District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster counties. Today, I'm introducing LB900. This bill will make one simple change: Increase the length of a truck from 40 feet to 45 feet. Specifically, this change is intended for what's called a straight truck. A straight truck would be a single-frame vehicle with a fixed trailer or box. Think of a moving truck like a big U-Haul truck. All of the surrounding states have a maximum length of 45 feet except for Wyoming, where it is 60 feet. NDOT does not define what a straight truck is, so that's why it just says truck in the bill. And this does not affect weight limits. This was brought to our attention by a constituent and he will be testifying after me today, to explain how this affects him and why we brought the bill. And just for fun, I

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am going to read you the proposed change. And a truck may exceed the 45-foot limitation, but shall not exceed a length of 45 feet. That's the whole bill. So if you guys have any questions, I'd be happy to answer. But I would say the testifier right behind me has a wealth of knowledge, is a truck builder, and can answer a lot of your questions.

**MOSER:** Questions? 45 feet total length?

**BRANDT:** Bumper to bumper.

**MOSER:** And it's not for a tractor-trailer thing. It's just a straight truck.

**BRANDT:** No. And I think he can-- he can go through the examples with you. He's got some handouts.

**MOSER:** OK.

**BRANDT:** All right.

**MOSER:** Thank you. Supporters for the bill? Welcome.

**CODY LIGHTWINE:** Good afternoon, Chairman Moser and the committee. I am Cody Lightwine, C-o-d-y L-i-g-h-t-w-i-n-e. I currently serve as mayor of the city of Geneva. And then for work, I work for Norder Supply, based out of Bruning, Nebraska. We are an agricultural retailer. I'm involved with safety, compliance and risk management there, as well as facilities and equipment purchases. And because we're a small company, I spend about 3 or 4 months in our busy season behind the wheel of a truck, doing it for real. So when I was looking for a new truck, I did some research. In order to maximize our efficiency, we need a 26-foot box. And to do that, we run into some issues with that 40-foot length limit. I was very surprised to see that myself, being a CDL holder with medical clearance and a lot of training to drive a truck, was only allowed to be 40 foot, while somebody who's retired and perhaps has very little training and just simply a class O operator's license can run a 45-foot motorhome through our state. It seemed to me that the highly-trained driver should be given at least as much latitude as the person that has virtually no training. As Senator Brandt said, we're not trying to increase weights with this, just simply trying to get more length to allow us to more efficiently serve our customers. As most of you know, farmers continue to grow, so it takes more and more product to serve their needs. So this length law change would allow us to haul 15-20% more product. And as you're all aware, finding labor in rural



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America is also a challenge. So if we can be more efficient by putting less trucks on the road, and I think that makes us all better and makes it safer for everyone. I don't think this length change will cause any challenge with our roads. As Senator Brandt pointed out, all the states around us except Wyoming are already at 45 feet. Our roads are the same as the roads in Kansas, Iowa, and Missouri. We also have several distributors that bring us products from those other states using straight trucks, and it would make it much easier for them to comply if our laws were consistent with those around us. I think it will also-- could benefit the beverage industry, building materials distributors, and others who also gain this additional cargo space by allowing this truck length to be extended. In summary, I would encourage you all to support this bill as we move through. I think it will help out people in general, and I really can't see who it would harm.

**MOSER:** Questions? Senator DeKay.

**DeKAY:** Thank you, Speaker Moser. When you extend the length of the truck from 40 to 45 Wyoming to 60 feet, are you just extending chassis or are you adding-- going from single axle to dual axle to possibly triple axle?

**CODY LIGHTWINE:** I don't think you would see any more axles due to this. It's mostly just extending the chassis and allowing more space. Very few of the trucks on the road are actually running at their maximum legal weight.

**DeKAY:** So extending the chassis isn't going to put any undue pressure on it-- weight that's already allotted from that chassis?

**CODY LIGHTWINE:** No, it won't change the gross amount you can carry or the axle weights that you can carry.

**DeKAY:** All right. Thank you.

**MOSER:** Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thank you for being here. Did you become mayor after Eric became commissioner?

**CODY LIGHTWINE:** Yes.

**M. CAVANAUGH:** OK, well, congratulations on the new job. So if we extend the, the length of the truck, you said-- you just said to Senator DeKay that we don't actually already utilize the full weight

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allotment. Are we going to run into the risk of people going over that weight with that extended amount of footage?

**CODY LIGHTWINE:** I don't think that risk is any different than anybody going overweight with any truck that's on the road. That's why the carrier enforcement guys and the scales are out there, is to make sure everybody complies.

**M. CAVANAUGH:** OK. Great. Thank you.

**MOSER:** What's the limit for semi-trucks?

**CODY LIGHTWINE:** Semi-trucks are governed by federal law and there is no limit on the length of the truck tractor, but the trailer is limited to 53 feet of overall length.

**MOSER:** And what about like tandem trailers or pup trailers?

**CODY LIGHTWINE:** That is governed by Nebraska's statute. And I believe that length limit is set currently at 65 feet. So for your-- like what I would call a rock-hauling truck, where you've got the dump truck and then the pup behind, they're limited to 65 overall.

**MOSER:** But your 45 feet is inclusive of the tractor part, the sleeper, the end box.

**CODY LIGHTWINE:** Correct. That's from front bumper to rear bumper. And other than height, I can just about get a 45-foot truck through a fast food drive-through.

**MOSER:** What's the advantage of driving a straight truck versus a semi as far as hauling things?

**CODY LIGHTWINE:** A little bit more efficiency for us. If we've got somebody that needs 10 boxes of seed instead of 17 boxes of seed. Also, it's easier to find drivers because you only have to have a Class B CDL versus a Class A. And there are still some farm yards we go to where a semi just can't turn around in there because of the nature of the layout. And I think it's also-- you see a lot more straight trucks in other industries too, for those same reasons, like your Pepsi trucks and things like that. It's the difference between a Class A or a Class B CDL.

**MOSER:** Yeah. It's a lot less complicated to back up.

**CODY LIGHTWINE:** It is much easier.

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**MOSER:** The trailer always wants to go the wrong way for me. Any other comments? Thank you for your testimony.

**CODY LIGHTWINE:** Thank you.

**MOSER:** Anybody else to speak in support? Welcome.

**JON CANNON:** Good afternoon, Chairman Moser, members of the Transportation and Telecommunications Committee. Good afternoon. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, also known as NACO, here to testify in support of LB900. First, I want to thank Senator Brandt for bringing this bill up. When we take positions on legislative bills, we spent more-- probably more time on this bill than most other ones. And there was a lot of really good, hearty conversation. There are some concerns that we have, of course, but, I'll, I'll get into those in just a little bit. You're going to hear from highway superintendents about the potential costs that come from extending the, the length of, of our straight trucks. Those are going to be things like they're going to need to move guardrails, they'll need to move stop signs, they'll need to move sewer lines. And we, we certainly agree with those sorts of things. I mean, those are-- those are costs that are borne by government, and this would drive up the cost of government. However, we want to balance that against the cost that, that it puts on our citizens. And so, to the extent that every state surrounding Nebraska has at least a 45-foot length limit, it seems like there would be a cost for those folks that are going to be operating, particularly on the borders, when you're going from one state to the other. And so to the extent that our citizens are, are the ones that are most-- are going to be affected by it, the cost of government probably does not exceed the cost to our citizens if you don't go this way. We're going to end up being in support of it. You know, our, our support is, is-- was going to be conditioned on how do we-- how do we address the cost. But when we tried to look at what-- if we submitted a fiscal note what that might look like, it was, it was really kind of ephemeral. It was very, very difficult for us to kind of really nail down what those costs might be. Like I mentioned, guard-- moving guardrails, moving stop signs, moving sewer lines, those are, those are the things that we'd be looking at. We just don't know what that inventory looks like. What we would like instead is just kind of a, a renewed interest or commitment from members of this committee, to address the funding that, that is-- that, that comes with those sorts of unintended consequences, just settle for this reminder as part of this hearing. We would certainly be opposed if weights increased. And, and on the subject of cost, I do want to

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mention that there is LR1CA out there, by Senator John Cavanaugh. Would love it if you all signed on to that-- as well as LR287CA or I'm sorry/ LR1CA is by Senator Blood. LR287CA is by Senator John Cavanaugh. Those are things that address costs to local political subdivisions. We'd certainly love your support on those sorts of things. You know, with the majority of costs lie with, with our counties, in our big counties, you know, those-- the roads budget is only about 14% of the total budget, and that's for counties 50,000 people and up. For medium counties and small counties, you know, it's about 30 and 31%, respectively, is where those costs lie. So those are the sorts of things that when it, when it comes down to it, if you're driving up the cost of government, that of course leads to increased property taxes. And so that's, that's something we would just like this committee to be mindful of when we vote on these sorts of things. And so with that, I'll be happy to take any questions you might have.

**MOSER:** Senator DeKay.

**DeKAY:** Thank you, Chairman Moser. Mr. Cannon, I was looking at the map. We're in the donut hole of states all the way around us have extended the length of the trucks-- and including Wyoming. Do you have an, an idea when those states changed those statutes to-- from 40 to 45 or how long they've been in?

**JON CANNON:** My understanding is that Kansas changed theirs within the last 5 or 6 years. I, I think the remaining states, they were-- they've been, they've been around longer than that.

**DeKAY:** So reconfiguring intersections as far as stop signs and stuff, was there a-- have-- and maybe somebody else can answer this, too, when they get in the chair. Was there a lot of heartburn in having to redo stop signs and guardrails and stuff or was it pretty much status quo where they were already at?

**JON CANNON:** Not that I'm aware, but my understanding is that in Kansas, in particular, they don't have quite the same requirements that we do as far as having guardrails on your roads, particularly over bridges and whatnot. And so therefore, I, I think it's a little bit of an apples to oranges comparison, comparing us to Kansas necessarily, just because we have slightly more stringent requirements in some ways, on our county-- on our roads and our county roads, in particular.

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**DeKAY:** So guardrails would be in conjunction to turning onto a lane rather than running parallel to the guardrails because it's not going to affect the width of the truck, it's just the length of them, right?

**JON CANNON:** Yeah, the length, but yeah. If, if you've got something that's near an intersection, that's certainly going to affect your turning radius to a certain extent.

**DeKAY:** All right. Thank you.

**JON CANNON:** Yes, sir. Thank you.

**MOSER:** Turning radius-- oh. I'm sorry. Senator Bosn.

**BOSN:** You're OK. You're OK. You first.

**MOSER:** OK.

**BOSN:** I can do this again, then.

**MOSER:** Yes, well, pull the trigger more quickly.

**BOSN:** OK. Sorry.

**MOSER:** My brain doesn't work that-- I'm in another mode or-- turning radius is determined by where the axle is, though, right?

**JON CANNON:** Yes, sir.

**MOSER:** I mean, if you had 5 feet on the back end, it's not going to change your turning radius. Although the back end will swing a little bit more when you turn if your box is cantilevered out beyond the axles. And I would assume those axles can be adjusted if you have a load that you need to balance over the axles.

**JON CANNON:** That, that part I do not know, sir.

**MOSER:** How, how would this change guard rails or stop signs?

**JON CANNON:** Well, with, with stop signs, I mean, when you're-- even if-- and, and as you, as you mentioned, I mean, if you're cantilevered and you're swinging out a little bit further, you might, you might have a wider turning radius. You might, if you're tempted to cut, cut a corner, if you've been-- if you've been using a 40-foot truck, now you're using a 45-foot truck, you might not realize exactly what that's going to do when you, when you take a corner.

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Those are the concerns they didn't-- and again, you'll get more of this from the highway superintendents in, in whatever their testimony or their let-- their letter is. But that's, that's the understanding that was brought forward. And so we're concerned about cost. But again, like I said, we want to balance these costs with costs for our citizenry, and this is something that our citizens seemed to-- would seem to want to have.

**MOSER:** Yes. I, I would think that you'd want to do the right thing for the businesses in the state and, you know, adapt to the changes and try to make it work.

**JON CANNON:** Yes, sir. We would.

**MOSER:** I've heard a lot more damning testimony than yours over the years in here.

**JON CANNON:** Well, and, and again, we're in support of this, sir. I mean, we're-- we, we don't want to damn anybody.

**BOSN:** You asked my question, probably better than I could have done. So. Great.

**MOSER:** I'm sorry.

**BOSN:** Nope.

**MOSER:** OK. Any other questions? Thank you very much. I appreciate your testimony. Further testifiers? Welcome.

**ADAM FESER:** First time testifying this session and it's obvious. Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Adam Feser, A-d-a-m F-e-s-e-r. I am the director of cooperative advancement for the Nebraska Cooperative Council. The Council is a statewide nonprofit trade association representing nearly all of Nebraska's supply and marketing agricultural cooperatives and several rural electric and telephone cooperatives, as well. I'll be extremely brief. Several of Nebraska's cooperatives have locations that cross state lines. We feel it makes sense to align the allowable truck length in Nebraska with those states since cooperative vehicles may need to cross state lines, and I thought Mayor Lightwine did an excellent job laying out some of the benefits that frankly, I hadn't even thought of. Thank you for your time. If you have any questions, I'll do my best to answer them.

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**MOSER:** Questions? Thank you. Good point. Further testimony? Come on up.

**JAY FERRIS:** Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Jay Ferris. It's J-a-y F-e-r-r-i-s. I'm the director of political engagement for Nebraska Farm Bureau. On behalf of the Nebraska Ag Leaders Working Group, we offer our support for LB900. For your reference, those members of the Ag Working Group consist of the Nebraska Cattlemen, the Nebraska Corn Growers Association, Nebraska Farm Bureau, Nebraska Pork Producers Association, Nebraska Sorghum, Sorghum Producers Association, Nebraska Soybean Association, Nebraska State Dairy Association, Wheat Growers Association, Renewable Fuels of Nebraska. And in addition, not a member of the Ag Leaders Working Group, but the Nebraska Grocery Industry Association has asked that they be added to this offering of support. Simply, I'm going to agree with what everybody has said before me. This makes sense to have our laws in Nebraska be respect-- or be similar to those around us. And we think it just leads to better efficiency within the agriculture industry, but also with business and, and trucking. We do not believe that we'll add any safety concerns to that. So, with that, I would encourage your support of LB900 and advance it from committee.

**MOSER:** OK. Questions from the committee? Seeing none, thank you for your testimony.

**JAY FERRIS:** Thank you.

**MOSER:** More supporters for LB900? Welcome.

**JACK PEETZ:** Chairman Moser, committee members, my name is Jack Peetz, J-a-c-k P-e-e-t-z, and I'm with the firm-- lobbying firm of Peetz and Company. And we represent the Nebraska Trucking Association. I've also been authorized today to speak on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, and we are in support of Senator Brandt's bill. We think the-- adding the additional 5 feet to the truck will allow for some efficiencies in the trucking industry, which benefits our members. I think you'll also see some added efficiencies and a little bit of safety, with convenience stores now being able to add 2 more pallets to that 45-foot truck and get into neighborhoods and deliver in, in-- at some point in time, maybe relieve the need to bring a small semi in there, for convenience stores. So essentially, this bill allows us to come into compliance or to equal what our sister states do with the exception of Wyoming, which has been noted, is at 60 feet. But it

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does allow for efficiency of the shipper and probably a little bit of a cost savings to the, the merchant, in that they're able to get a couple of additional pallets of product delivered to their facility with not much, if any, additional cost of transportation. So we're in support of the bill. Thank you.

**MOSER:** All right.

**JACK PEETZ:** Any questions?

**MOSER:** Any questions from the committee? Seeing none, thank you.

**JACK PEETZ:** OK. Thank you.

**MOSER:** Yes. More supporters? Further support for the bill? Opposition? Is there anybody to oppose the bill? Anybody to testify in the neutral? Welcome.

**VICKI KRAMER:** Good afternoon. This is also my first time in front of the committee, so thank you for having me this year. Good, good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Vicki Kramer, V-i-c-k-i K-r-a-m-e-r, and I'm the director of the Nebraska Department of Transportation. I'm here today to testify in the neutral capacity for LB900. In the interest of time, I want to make sure that I say that, on the record, I concur with many of the arguments that were made today for support of the bill, for LB900. I want to thank Senator Brandt for his coordination with the Department as we worked through what the potential implications of this bill could be. As previously referenced, we talked through the importance of making sure that we understood axle weight. We talked through the importance of making sure we understood what implications of truck length were. Upon conversations with our traffic engineers and many of our district engineers, we came to the conclusion that we did not oppose LB900, and we supported the truck length increase from 40 to 45 feet. So again, I want to thank Senator Brandt for his coordination. And just as an anecdote, one of the things that I had not considered coming into this testimony was the CDL requirements. In conversations with many of our stakeholders, CDL requirements become harder and harder to come by, so being able to allow and support the agricultural committee-- or community with this increase, I think, is also beneficial. So thank you for the opportunity to testify and I'll have any questions that you-- answer any questions you might have.

**MOSER:** Senator Bostelman.



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**BOSTELMAN:** Thank you, Chairman Moser. Thank you, Director, for being here. Real quick question on the fiscal note. It says on here that if it were passed, there's minimal fiscal impact to NDOT is estimated for the reduction in the number of overlength permits issued. My question is, we've heard some other discussion before about signs and that. Are there-- the way that reads, we already have vehicles probably in this range that you can get a permit for, so we shouldn't see-- this kind of eliminates that need for getting that--

**VICKI KRAMER:** Thank you for the question.

**BOSTELMAN:** --that waiver to do that.

**VICKI KRAMER:** Thank you for the question, Senator. Our traffic engineers looked at it and we did not see any fiscal impact, that many of our roadways on the state system were already able to support this truck length.

**BOSTELMAN:** Thank you.

**MOSER:** Further questions? Thank you for coming to testify today.

**VICKI KRAMER:** Thank you, Senator.

**MOSER:** Anybody else to testify in the neutral? Senator Brandt, come on up.

**BRANDT:** Oh, that was fun. All right. Let's rehash here real quick. So going to 45 feet will make us more efficient. It'll be easier to handle these trucks than it is the semis. NACO's testimony said this 45 feet will get us just like all the surrounding states, except for Wyoming. The Co-op Council-- and I don't think most of us realize this and I served on a co-op board for 9 years, and our co-op has a strong presence in Kansas and Nebraska and this has always been a problem for us, on a lot of these rules between the 2 states. So this will-- this will make it better. Obviously, you have Farm Bureau and all the ag leaders supporting this, and the trucking association. So what more can I say, unless you have some questions.

**MOSER:** Senator DeKay.

**DeKAY:** Thank you. You talk about Kansas or neighboring states. What-- what's-- is there any penalties in place now, if Kansas brings its truck into Nebraska to a lumber yard or something that's 45 feet in length now?

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**BRANDT:** Well, they would have to probably comply with Nebraska law. So, I mean, if you look at, like, Highway 81, we've got a weigh station right there, that they would have to go through the port of entry and be in compliance with our laws. But I can look, look into that and get back to you specifically.

**BOSTELMAN:** So they would have to comply with the length besides the weight?

**BRANDT:** I would assume so, yes, or get a permit.

**MOSER:** OK. Any other questions? He had everything so organized, nobody's arguing.

**BRANDT:** I like it. Doesn't happen very often.

**MOSER:** Yes. Thank you.

**BRANDT:** Thank you.

**MOSER:** OK. We received no comments on Senator Brandt's bill. That brings us to our next bill, LB1033. On LB1033, we had 14 proponent comments, we had 2 opponent comments, and 1 neutral comment. Have a seat. Pages, if you could-- it would be helpful if the pages could be a little quicker to get out to pick up stuff when the testifiers come up. Otherwise, if you wait for them to sit down, then we wait for you to go pick them up, so. Thank you. Senator Lippincott, welcome.

**LIPPINCOTT:** Good afternoon, Senator Moser and members of the committee. It's a pleasure to be here this afternoon. Thank you. My name is Loren Lippincott. That's spelled L-o-r-e-n L-i-p-p-i-n-c-o-t-t, and I'm here representing District number 34. I introduce to you LB1033, and it's regarding texting while driving. Current state law prohibits texting while driving. However, as written, it is a secondary offense, meaning that it cannot be the main reason for a law enforcement officer to stop a vehicle. Now, if someone is stopped for a primary offense, such as running a red light, an officer who observes that driver texting can then issue an additional citation for texting while driving. LB1033 strikes the secondary offense language. And without that language, it is considered a primary offense. And what this means is that a law enforcement officer will be able to pull you over when they see you driving and texting. The language is clear and simple with the stricken language. We all have stories of people, directly or indirectly in our lives, who have been hurt or even killed by bad driving decisions, phone related or not. Our roads must be kept safe.

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And although we cannot legislate human nature, of course, we can enforce certain rules for the road. In 2021, a report, according to Nebraska's Department of Transportation, distracted driving accounted for 12% of all total traffic crashes in Nebraska in the year 2019, while speeding crashes accounted for 6%. According to DOT here in Nebraska, in a 2021 report, rear-ended crashes have increased almost 22% since 2011. Nebraska has seen an increase of nearly 32% of distracted-related crashes since 2021. I would just add that nationwide, each day, due to drivers who are distracted while driving, account for 9 people being killed each day and over 1,000 injured every day. And then, just to sum it here, right now in Nebraska, it is a law that texting while driving is illegal, but it's a secondary offense. 44 states have made it a primary offense like what this bill is trying to do. So we want to join those 44 states, become the 45th state to make this offense a primary offense and not just simply a secondary offense, as it is today.

**MOSER:** OK. Questions for the testifier? Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Senator Lippincott, for bringing this bill. I'm driving down the road and I'm observed, I suppose, texting. I get stopped by the officer. How does he know I was texting? Because I don't want to give him my phone, and my phone is off. And what if I refuse to give him the phone? I mean, how, how do you enforce this law? If I just-- it's his word, my word. I wasn't texting. I'm not going to give him my phone. I think that's an infringement of my rights. Does the bill address this?

**LIPPINCOTT:** Well, I'm sure it's just your word. If you took it to a court of law, of course, you would have a history. And everything's recorded nowadays. A lot of these officers carry a camera on them. So everything is by hour, minute and second. And if you're texting and you sent a transmission, that can be tracked. However, it would be just your word. As you know, right now, an officer will stop you for speeding, for instance. And you'll say, well, were you wearing your seatbelt at the time? You'll say yes or no. So there is some honor in the whole matter.

**BRANDT:** So if this bill passes, can I still talk on my phone--

**LIPPINCOTT:** Yes.

**BRANDT:** --while i'm driving and that's still a secondary offense?

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**LIPPINCOTT:** Well, talking on your telephone has nothing to do with this bill. So you can talk on your telephone. It's-- this bill addresses texting only, while driving, not at a stoplight when the car is stopped, but while driving.

**BRANDT:** So it's-- OK. Thank you.

**LIPPINCOTT:** Yes, sir.

**MOSER:** Or MapQuest? That's not considered texting?

**LIPPINCOTT:** That would not be considered texting.

**MOSER:** Other questions?

**DeKAY:** I-- go to Senator Bosn.

**MOSER:** Senator-- a little higher-- there-- Bosn.

**BOSN:** Thank you.

**MOSER:** Do we pronounce your last name with a hard Z or an S?

**BOSN:** It's a hard Z.

**MOSER:** Bosn.

**BOSN:** Like-- yep.

**MOSER:** Thank you.

**BOSN:** Bosn. You're totally fine. I've been called worse, I'm sure. So my question with this, to kind of share off of his concerns, this talks about striking the secondary language only, making it a primary offense. So right now, I can be texting and an officer can drive right by me and see me doing it. But if I'm not violating any other laws, I cannot be pulled over for that. And this would say that if I'm holding my phone, like this, and you have a reason to believe that my finger punching is a text message and you're an officer, you can now pull me over, contact me, and ask me questions such as, what were you doing on your phone? Right? Is that your understanding? OK, so the concern I have with the language and maybe I'm incorrect because I, I have no experience doing traffic law or very little, this says no person shall use a hand-held wireless communication device. So my phone will Bluetooth into my car. Am I using my handheld communication device when it's Bluetoothed into my car, which then reads me a text message over the speaker system?

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**LIPPINCOTT:** Excellent question. No. Handsfree is permitted.

**BOSN:** OK. And where do you see that? Can you tell me where that is in the language? Or is that through statutory interpretation? I'm not trying to have a gotcha moment. I genuinely don't know the answer.

**LIPPINCOTT:** On page 3, and line 6 and 7, line 7 specifically, it says or a handsfree wireless communication device.

**BOSN:** OK. So--

**LIPPINCOTT:** So, again, on line 5, it says handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to a motor vehicle or a handsfree wireless communication. So in other words, I can be wearing my little iPad or iPhone earbuds--

**BOSN:** OK.

**LIPPINCOTT:** --and say, hey. Siri. Call my brother.

**BOSN:** OK.

**LIPPINCOTT:** And I can just talk handsfree.

**BOSN:** And that is-- you believe--

**LIPPINCOTT:** That's OK.

**BOSN:** --that qualifies under this definition of what is and is not a handheld communication device, for purposes of enforcement?

**LIPPINCOTT:** Yes. In other words, I can send a text message wirelessly because I'm not--

**BOSN:** You mean through your Bluetooth?

**LIPPINCOTT:** Correct? Yes.

**MOSER:** OK.

**BOSN:** That's my question.

**MOSER:** Other questions? Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thank you, Senator Lippincott. Following up on what Senator Bosn, Bosn said, so on that same page that you just

referenced, then it goes on to say, on lines 9 and 10, written communication includes but is not limited to text message, instant message, electronic mail and internet websites. And I think somebody asked the question about MapQuest. And I know you say if it's permanently attached, like if you have a holder, but what if you don't have a holder and you have MapQuest on your phone and it's just sitting there in your middle console? Or something like that. Like if your phone doesn't actually attach to your car and you have it on speaker and it's calling out the directions. Is that accounted for?

**LIPPINCOTT:** Again, if you're, you know, if you have MapQuest, you have your phone mounted up here, that's fine to use that.

**M. CAVANAUGH:** But if you don't. If you have MapQuest and you have an old jalopy and you-- it doesn't, doesn't sync to your car and it's-- there-- it's nowhere to put it. It's just sitting on the seat next to you calling out on speaker the directions.

**LIPPINCOTT:** It's OK. It's just-- it's the actual-- it's like [INAUDIBLE] this, and doing this-- texting. But just having it up here and-- it's OK.

**M. CAVANAUGH:** OK. Thank you.

**MOSER:** All right. Oh, boy. Let's start with Senator DeBoer.

**DeBOER:** Thank you. So what would be probable cause to, in your mind, to pull someone over under this primary-- new primary offense? Right. So if I have a phone in my hand and I'm not doing anything with it, it's just in my hand, sometimes-- and this has happened to me. I'm driving down the interstate, and I'm just like this. My phone's not on. For whatever reason, it somehow is in my hand. So does an officer have probable cause to pull me over now?

**LIPPINCOTT:** No. If you-- you can use your phone and be talking on it. That is not illegal.

**DeBOER:** So--

**MOSER:** Are you sure?

**DeBOER:** --so, so I guess the concern that I have that I'd sort of like to bring to your attention--we'll let Moser ask you a question in a minute, but I'll ask you this one. Is-- exactly how do we, if we're going to pass a bill like this, how do we help our law enforcement to understand what's going to constitute probable cause

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to bring someone over-- pull someone over for texting, right. So if I just have this randomly in my hand or if I'm doing MapQuest on it, even if I'm like MapQuest on it, like this, and using my hands, how can I, as a police officer, know whether what I'm doing is one app or another app, whether I'm using the texting app or a different app? And then, all of a sudden we're pulling people over, and then I'd start to worry, you've pulled them over, you find some other thing, right? You find some egregious thing. They've got, you know, bags of illegal drugs sitting in the seat next to them, but the only reason you pulled them over is because you thought that it was a text. But in fact, it's not a text. They're doing some other application. They're shopping on whatever, and they are doing that. Now, you've pulled them over, but your probable cause was for texting and they weren't texting, I'd, I'd start to worry about what happens with this. These are questions I will ask a law enforcement officer. But this is-- I'm just previewing.

**LIPPINCOTT:** You know, there's, there's obviously going to be some latitude here for judgment of the officer and for the person that they're stopping, if it goes to a court of law, for instance, time stamps and such. I understand your question. The technology is certainly changing, but today we know that-- and you've got all the graphs on the handouts we-- that we gave people that-- right now are young people and actually, people of all ages. I mean, grandpas are texting while they're driving. I've done it. You know, all of us have done it. And it's not good. We as parents need to be able to say to our kids, don't text and drive. It's illegal. And I'm not going to pay your fine.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you, Senator Lippincott, for being here, for bringing this bill. I appreciate your commitment to road safety and the safety of everyone who is using our roads. I was just reviewing the bill really quick and, and similar question. I, I appreciate you pointing out on page 3, I think, lines 5-9, it, it specifies that if you have, you know, handsfree and that's-- and so, I think that's prudent and, and, and a wise addition to the bill or, or a wise language for the bill. My question is, so I'm thinking about how in my vehicle, I have a-- when you plug in your phone, Apple CarPlay or whatever comes up, and you can call people and talk to Siri and do all those things. But occasionally, on the screen, it's sort of like a little thing, you're interacting with that and using, similar to what you'd be doing if you're texting, but it's on the actual vehicle. Where does that lie with this, sir?

**LIPPINCOTT:** This bill just addresses a handheld--

**FREDRICKSON:** Actual handheld.

**LIPPINCOTT:** --not a car-installed device.

**FREDRICKSON:** Got it.

**LIPPINCOTT:** Usually the automobiles are designed in such a way to make things-- you know, your eyes only have to move maybe 5 degrees off of straight ahead to engage that device. Whereas, oftentimes, this is over here or-- it's distracting. So two separate issues there.

**FREDRICKSON:** OK. Yeah.

**LIPPINCOTT:** This does not address automobile-installed devices.

**FREDRICKSON:** Thank you.

**MOSER:** Further questions? Seeing none, thank you, Senator.

**LIPPINCOTT:** Thank you, sir.

**MOSER:** Supporters of LB1033.

**TIM OWENS:** Good afternoon.

**MOSER:** Welcome.

**TIM OWENS:** Senator Moser, honorable members of the committee, my name is Tim Owens. I'm a lieutenant with the Douglas County Sheriff's Office. I've been employed by them for 23 years. I'm in charge of the community action team and also an accident investigator for the-- I head up the investigation team. The Douglas County Sheriff's Office and the Nebraska Sheriff's stand as proponents of LB1033. In 2021, nationally, there were 3,522 people killed, an estimated 362,000 people injured in motor vehicle crashes involving distracted drivers. Contributing to some of the distractions were handheld devices or the manual manipulation of cellular devices. Those statistics remained steady from 2017-2021. And roughly 8% of those accidents in Nebraska, distracted driving was a factor reported in 3,924 crashes that claimed the lives of 19 people in 2020. Also reported in 2020 by the Nebraska Department of Transportation Safety Office, 31% of crashes involving drivers 19 or younger, handheld use or manual manipulation of cellular devices was listed as a contributing factor in those



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collisions. Adjacent states like Kansas, Colorado, Wyoming, and Iowa have primary enforcement laws in texting and driving. Observations of primary enforcement states have showed rates of driver handheld cell phone conversations were an estimated 24-76% lower than expected without the ban. In short, the driving behavior was very responsive. Driver behavior was very responsive to cell phone laws. Studies continue the effects of primary enforcement in reducing crashes and fatalities. Our agency, since 2019, has investigated 35 accidents which motorists were distracted by manually operating wireless communication devices at the time of collisions. Those suspected fatal accidents linked to cell phones' use cannot be confirmed due to the lack of first-hand observation or even reporting hesitancy. Aligning Nebraska's primary enforcement state-- with primary enforcement states will contribute, contribute to safe driving habits and overall reduction in collective distracted driving habits will make those traveling in Nebraska safer. Thank you for your time. I know there's probably some questions.

**MOSER:** Questions? Senator Bosn.

**BOSN:** Thank you. I did not catch your last name. I apologize.

**TIM OWENS:** Oh, oh, I'm sorry. I didn't spell it for the record.

**BOSN:** Owens. Nope. That's OK.

**MOSER:** And spell it, too, please.

**TIM OWENS:** It's Tim Owens, T-i-m, Owens, O-w-e-n-s.

**BOSN:** Thank you. Sorry. I just wanted to address you correctly, and I didn't hear it. OK, so right now, Colorado, Wyoming, Kansas and Iowa have this as a primary offense. OK. Do you know how long ago, approximately, they changed that from a secondary? Were they previously secondary offenses or were they always--

**TIM OWENS:** I do not, I do not know that.

**BOSN:** OK. You weren't a sheriff there?

**TIM OWENS:** No, I was not.

**BOSN:** Simultaneously? OK. I guess I just-- my point being, I wondered what their accident rates had changed from when they were a secondary. So as a law enforcement officer and I have some experience dealing with law enforcement as a previous prosecutor, walk me

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through how this will work. Because when I'm-- if I were to review this as a filing. Let's say you give me a police report that Senator Brandt was texting while driving. How do you determine that what he's actually doing on his phone, sort of to piggyback off of what Senator DeBoer was saying, is a violation, without being a person in his car or having a camera in his car or knowing what they were doing. Because my concern is, how will you prove it? Will you be able to do a warrant and get their phone transcripts in order to see what time their text message was sent or received or read? Will, will you-- will it end at Senator Brandt lying to you and saying he wasn't on his phone and then you have to just walk away? What does that look like?

**TIM OWENS:** Yeah, I think there's several different avenues that we have. I think, first of all, this, I think the bill also states the vehicle has to be in motion first. It's just not a vehicle that's stopped. If we see a vehicle in motion and someone is actively typing on that, I believe that would be a probable cause to stop the vehicle. And then you'd have to ask followup questions. You would have to do a little bit of investigation into, into that violation, just like other traffic violations. I think you would bring that together and if it, if it fit the law, the violation and the information that you obtained in the app-- the observations that you made that gave you enough reasoning, I believe you could write the citation at that time. Now, if the vehicle was involved in an accident, I would say the, the confiscation of phones would be with the seriousness of the accident. If we saw-- if we were involved in a fatality accident, we will take the phones and download it, especially if we have information from witnesses that-- here, that maybe the offending driver was on-- who was on the phone at the time of the accident. But just for us to take phones at a normal traffic stop, I would not-- never--

**BOSN:** The seriousness of the offense would sort of dictate what level of intense investigation you would be able to do into someone's phone?

**TIM OWENS:** Absolutely. Just like any crime that we investigate.

**BOSN:** So the example that Senator Lippincott gave was a seatbelt example. And in my experience with law enforcement, is that you can actually pull up behind a car and tell whether a passen-- or a driver has the seatbelt on, because you can see that little gap between their shoulder and the car, in most circumstances. So that's something you can see from behind them, as opposed to just relying on

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their word when they say, yes, I was wearing it. Your eyes can tell you whether that's true or false. And so with transitioning this from a primary to a secondary offense, I assume you've done patrol on the roads?

**TIM OWENS:** Yes.

**BOSN:** Have you had-- can you give me a rough example of how many times you see a driver texting with no other violation that you could pull them over for?

**TIM OWENS:** I mean, I think. I think most people see it all the time. I mean, I do see the distracted driving. It doesn't lead to a-- automatically lead to a secondary offense, but-- or the, the primary offense, but I think as any licensed driver, we have seen an increase over the years of it. The proliferation of cell phones being inside the vehicle and being a-- basically, distracting the driver as they go down the road, I think it's increased tenfold.

**BOSN:** Certainly. Well, I thank you for your service and thanks for answering my questions.

**TIM OWENS:** I appreciate it. Thank you.

**MOSER:** Senator DeKay, still have a question?

**DeKAY:** Yes. Thank you. Going off of what Senator Bosn and Senator Brandt alluded to earlier, first, I'll thank you for trying to make our highways and streets safer. With that, how do you know, you know, if say what Senator Brandt alluded to earlier, how would you know if that is a-- and he denies a text and you confiscate the phone? How do you know if that's a typed-in text or voice text at that point, if it's on record?

**TIM OWENS:** We would give that to someone who is the-- trained in cell phone downloads. I mean, there's, there's obviously classes that are taught, and then downloads to mirror those images and to link those-- that information up. I'm not trained in the cell phone downloads.

**DeKAY:** But there is ways to deal--

**TIM OWENS:** There is, there is ways.

**DeKAY:** --ways of figuring out if it's typed in or voice?

**TIM OWENS:** There is ways of connecting it to it. Yes.

**DeKAY:** Thank you.

**TIM OWENS:** Yep.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you for your testimony today. And thank you for all that you do. The example with the speeding is a little different because they usually walk up to the window and you say how fast you were going. And I was like, well, no. I kind of wasn't paying attention. And then you usually give me an exact number because you've got a radar gun in the car and that's indisputable evidence. It's a calibrated, calibrated thing. I think everybody recognizes that. In a terrible accident where you confiscate the phones, you can do that today. We do that today because we're going to prove that the phone was the cause of the accident. So this really has no bearing on this. We are talking just about vehicles in motion. And if you're going down the street and it appears they're distracted, they probably swerved, which would give you cause to say that they crossed the center line or, or some other reason to stop them for a primary, and then you can get them on the secondary. I mean, is that a likely scenario today?

**TIM OWENS:** Yes. I mean, you have to-- you have to observe that primary offense and then cite for that primary offense.

**BRANDT:** OK. So I, I guess my concern is the tech-- technology someday will allow us or allow the texting or the phones to be turned off internal to the vehicle so that this will no longer be a problem. Because I can just see a ton of problems in a courtroom on these-- basically, will be minor offenses because in the event of an accident, it is, it is turned into something totally different than stopping the car in motion. So I, I, I guess I see this as needing some more work here, unless I-- am I missing something? I mean, is it, is it absolutely obvious to you as a, as a seasoned patrol officer, that you can observe a car and, and without question, know they are texting and not doing something else on their phone?

**TIM OWENS:** I don't think you can prove 100% that they were-- that they're texting without being, without being inside of the vehicle. That's correct. I mean, I don't think any of us seeing somebody down the road manipulating their phone, I think it gives us a reason to stop the vehicle and inquire and get that additional information that if that was a violation or not. Sometimes, in law enforcement, we don't have-- we don't have the ability to make the citat-- to write a

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citation or make an arrest if we don't, don't have that evidence, that probable cause to write the citation.

**BRANDT:** I am absolutely not opposed to pulling the car over, particularly with our, our younger folks and saying, hey, you know, I saw the phone up there. You know, stop it. Don't do it. But I am a little concerned that this could get kind of gummy once it gets to court, at least the way the bill is written, written now. If there's a way to improve it, I'm all for it. So-- but thank you.

**MOSER:** Senator DeBoer.

**DeBOER:** Thank you. Thank you for being here and for your testimony. One of the questions you may have heard me kind of mentioning before, I think is a problem generally with it, which is that if I'm texting on my phone, it's illegal. Now, it's a secondary offense. But if I'm typing a memo to myself in my phone, it's not illegal. Because it says, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion. So if I am shopping, swiping through lawn chairs-- what is it? I don't know what that is. I'm old. You know, so I mean, like the-- so there's some concern there that I have that, that we have not actually gotten at what we're trying to get at, which is all manipulation of the handheld device along a certain line. OK. So that's the first thing. Because I know there are a lot of people out there who are doing other things on their phone besides just texting that is making them equally dangerous. Would you agree that if I'm shopping on my phone, it's equally dangerous to texting?

**TIM OWENS:** That's correct. That would fall under distracted driving.

**DeBOER:** OK. So you have a, a way now of, of handling that by calling it distracted driving?

**TIM OWENS:** Well, that's what we're-- basically jumping at-- getting all of these actions is lumping into distracted driving now, is that we're seeing that it's just not text messages. It's the manipulation--

**DeBOER:** Sure.

**TIM OWENS:** --of the phone. It's everything. I mean, distracted driving could be eating and drinking in your car, as well. So that's-- but the cell phone seems to be the primary, the new, new device that's leading to the increase in distracted driving.

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**DeBOER:** So do we have a crime of distracted driving right now?

**TIM OWENS:** No. It's not-- we only have the wireless.

**DeBOER:** So. OK. OK. So then what constitutes probable cause? I mean, I would-- so I teach college kids from time to time. And they think that you cannot see their phones, but you can see their phones underneath their desks. They're not great at hiding it. I get that. But like, if I am looking at something that has nothing to do with my phone, I don't even have my phone, I don't even own a phone, I'm looking down at a piece of mail or something. Now you think I'm looking down, I must be texting, and you pull me over. How does that work?

**TIM OWENS:** No, I, I would say that it would be something-- I'd need something more to pull you over for. I would need to see you actually manipulating your phone in a-- in an action.

**DeBOER:** So you need the phone in order to--

**TIM OWENS:** Yeah. I just can't pull you over and say you were looking down. Where's your phone at? I don't think that's fair.

**DeBOER:** OK. All right. Thank you.

**MOSER:** Didn't you ask one already?

**DeKAY:** Just one.

**MOSER:** Senator DeKay.

**DeKAY:** Thank you. So probable cause would-- actually could be a lot of different things. Speeding, driving left of center and driving off the shoulder of the road, there's a lot of reasons that you would have probable cause to stop and investigate what's causing that cause to-- driver to act and drive the way they are, erratically. Right?

**TIM OWENS:** Correct.

**DeKAY:** Thank you.

**MOSER:** Well, while we're on the topic, if you have your phone on, say, a little clip that clips on your dash and you're listening or watching YouTube on your dash. Is that illegal?

**TIM OWENS:** I believe there is a television-- watching of television statute still on the books, but.

**MOSER:** Is my phone a television?

**TIM OWENS:** I don't know if that-- I'd have to look into-- really look into that, but, I would say mostly, under this statute, you'd have to be manipulating into writing a communication. I wouldn't see just having a video going is a violation.

**MOSER:** Apologize for the cough. Yeah. I think watching DVDs or television, I think, is illegal. But I know a lot of people, and they'll listen to videos or, you know, maybe glance down while you're driving. Could watching somebody else drive and text be a distraction for you?

**TIM OWENS:** Yeah. So there's plenty of distractions in our vehicles, as well. Yes.

**MOSER:** And all the [INAUDIBLE].

**TIM OWENS:** We have a lot of people talking to us. We got computers ringing. We got-- the radars are going.

**MOSER:** Yeah. The radio's yacking.

**TIM OWENS:** Yeah. So we have our own complications.

**MOSER:** OK. Any other questions? Thank you for your testimony. More supporters. Welcome.

**ERIC KOEPPE:** Thank you. Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. I am Eric Koeppe, that's E-r-i-c K-o-e-p-p-e. And yes, I have written right at the top, spell my name, because usually I forget. I am the president and CEO of the Nebraska chapter of the National Safety Council. We are a Nebraska-based, not-for-profit organization that provides resources, education, to prevent both personal and economic injuries, accidents and health hazards. Of course, I'm here testifying in support of LB23. And I, and I probably won't read all the way down through it because we've talked a little bit about this. But, you know, I think the important thing to note here is that we're talking about lives here. We're talking about lives on the road. And the officer testified and the senator testified to the number, 2020, 19 people. 1,282 people injured in distracted driving crashes. We have a lot of laws that are on the books that are there to prevent harm and this would be one of them. This actually is a law on our books. So I also want to say Nebraska is among the 48 states, which is very proud, 48 states that have instituted an all-driver's texting ban.

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But Nebraska is only 1 of 3 states that makes it a secondary offense. So as we talk about that and we talk about enforcement, there's 45 other states that could probably help our, our law enforcement through this process. According to a '22 report by the Governor's Highway Safety Administration, secondary offenses impede distracted driving enforcement and send a message to both the officers and the drivers that the law is not a priority. I also want to point out the last year that we had a study done by the NDOT, is that about 9 out of 10 respondents, almost 90% of the people responded to this poll, supported allowing drivers to be stopped and ticketed solely for texting while driving. So the last time-- and that's the last year they conducted that poll. So I would encourage you to, to pass this through. This would put us right at the top for enforcement. Now, I will say that if you want the ultimate solution that goes to the senator's comment, I think we had a bill in 2019 or 2020 that would do what most-- a lot of states have done, and that is go to a handheld, a handheld ban. You cannot be holding your phone. So if you'd like the ultimate solution, if you ask me, I supported the bill back in 2019 that would go to a handsfree bill. Then you eliminate the whole thing. You're not holding your phone. You cannot manipulate it. In the interim, this bill would, would be a great thing as a step towards that handsfree.

**MOSER:** Thank you. Questions for the testifier? Senator Bostelman.

**BOSTELMAN:** Thank you, Chair Moser. Why not just make distracted driving a primary offense?

**ERIC KOEPPE:** So I supported making a primary. I support this bill for sure.

**BOSTELMAN:** I mean distracted driving, in general. Primary--

**ERIC KOEPPE:** In general, I would--

**BOSTELMAN:** I mean-- seatbelts weren't a primary offense.

**ERIC KOEPPE:** I think it-- I think we-- well, I wish it was.

**BOSTELMAN:** But that-- but this-- the difference-- and I [INAUDIBLE] I mean--

**ERIC KOEPPE:** Yep. Yep.

**BOSTELMAN:** So if I'm sitting-- if I'm sitting in my car talking on my phone or texting or I've got earbuds in and I'm talking, I'm



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distracted because I'm talking to that person. Why are we picking and choosing what's distracted or not? You got-- I agree 31% is, is a number we don't like, we don't want to see. But there comes a point in time where responsibility has to be responsibility. So if you're going to do distracted driving, it's all. But I have concerns that have been expressed here by others, as to when and how that law enforcement officer can stop an individual, and when and how that may be used or abused in the case, I have concerns with that. But, you know, you can stop someone for dis-- distracted driving now. And I'm, I'm thinking more of the dis-- of the texting and driving, those type of things are found out after an accident. One comment the sheriff made earlier that raised my eyebrows a little bit. And concerned, I wrote it down. You talked about confiscating the phone and searching it. How do I know-- the question was asked, how do I know if-- how do you know if I was texting? Well, we will take your phone and we'll have a forensics take it. Texting and driving? I, I-- you know, where does this go? Where does it stop? That's, that's [INAUDIBLE] answer.

**ERIC KOEPPE:** Yeah. So, yeah. Absolutely. I, I would-- a couple of things to say. One is, part of this bill and, and the officer-- deputy sheriff mentioned it. There is a large degree of-- people are going to comply if it's a primary offense, right? They'll know they can get pulled over. So there is some level to that, that me knowing that I can get pulled over for texting while driving, I'm probably not going to do it. Right. There's a certain level of those people. Now to your ultimate question. Does-- would we be better off with a, a more modern distracted driving bill that would prohibit the use of any electronic device and manual manipulation? I believe we would be better served by that. And we would probably be better served, as I said, with a handsfree law, where I don't have any electronic device in my hand. It is against the law. A number of states and I think in the form that I handed out to you, there's a chart with a lot of states. And one of the ones they have in there is handheld ban, and it's in that first column. So there's a lot of states I remember Arizona, Arizona kind of skipped over the whole texting and driving process because they had the same arguments that you all had. How do I know? So they just went to a handheld ban. You know, they just said you can't hold it. That way, you're not manipulating it.

**BOSTELMAN:** Yeah. Follow up question for you real quick. And I appreciate the data. [INAUDIBLE].

**ERIC KOEPPE:** Yeah.

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**BOSTELMAN:** Do you have any data that says once these laws came into effect, what effect that actually had? Because I see distracted driving, but that's included with other offenses, other things. But is there a report that you have that shows that once this type of a bill or a handsfree bill comes into effect, if there's been a re-- actual reduction, what that is.

**ERIC KOEPPE:** So that is information I can get to the committee. I don't have it with me today.

**BOSTELMAN:** OK.

**ERIC KOEPPE:** Kind of wish I would have brought it now that you asked it, but I will certainly get that information to the committee. Because there's evidence that people comply with these bills, with, with texting and driving laws. As-- and I think that was your question earlier. People do comply with them, just like they comply with a lot of other traffic laws.

**BOSTELMAN:** Thank you.

**ERIC KOEPPE:** Yes. You're welcome.

**MOSER:** Senator DeKay.

**DeKAY:** Thank you, Speaker Moser. Going off of what Senator Bostelman just asked about, you know, going from the action to the reaction, if you have the action of actually texting and when it comes to distracted driving, you could be receiving a text and looking down and be distracted by just reading it, rather than actually doing both procedures of it, you know, texting and just reading it. So that's where, you know, erratic driving or distracted driving, I think it would come into place a little bit more, too.

**ERIC KOEPPE:** Yeah. Yeah. It would, it would be doing that, it would be chan-- you know if you talked about it, it would be changing music on your phone. Listening to this, now I'm going to try to find a different song. I think the statistic is and Brian from AAA might be able to correct it when he comes up, but I think the statistic is it takes an average of 5 seconds, they're talking about, when you're reading or typing a text. Right. And at 55 miles an hour, that's the distance of a football field that you're not paying attention to driving your car. I mean, we are talking about very large consequences. We're talking about an urban area, but we're also talking about a rural area. [INAUDIBLE] traveling very quickly. So certainly, I support this bill. What I would say is and I think that

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was my, my offer, is if the committee, now or in the future, senators now and in the future wanted to take it to the next step that would really get to the heart of the issue would, would be to pursue a little broader, maybe a little more modern and, and make it hands--handsfree.

**MOSER:** OK. Thank you for your testimony.

**ERIC KOEPPE:** Thank you very much.

**MOSER:** Anybody else here to speak in support? Welcome.

**BRIAN ORTNER:** Thank you very much. Good afternoon, Senator Moser, Chairman Moser and Transportation and Telecommunications Committee. My name is Brian Ortner. It's B-r-i-a-n O-r-t-n-e-r, resident of District 20, Senator Fredrickson. And I'm the public affairs specialist at AAA Nebraska, the auto club group. On behalf of AAA and its more than 224,000 members in Nebraska, I'm here to testify in support of LB1033, which will raise the penalties for use of handheld electronics, such as cell phones, while driving. Distracted driving presents serious safety concerns for all who use our roadways. This bill would take positive and long overdue steps forward in strengthening Nebraska's distracted driving laws. AAA membership has consistently voiced its concerns about the dangers and costs associated with distracted driving, and distracted driving has become an epidemic on our roads. Information from the DOT, in Nebraska in 2020, there were 3,924 drivers involved in, in distracted driving crashes in the state; 19 of those were fatal. That's the highest on record in fatalities on the NDOT's website recorded since 2011. And Nebraska must take action to address this important issue. AAA is committed to continuing our educational and public awareness efforts to curb distracted driving behaviors, and we thank you for your attention to the public policy aspect of this traffic safety crisis. Thank you. And I close by encouraging your support of LB1033, and I'm here to answer any questions.

**MOSER:** Senator Bostelman.

**BOSTELMAN:** Thank you, Chair Moser. Thank you for being here today.

**BRIAN ORTNER:** Yes.

**BOSTELMAN:** Could you tell me how many of those 19 fatalities were wearing seatbelts?

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**BRIAN ORTNER:** I did not pull that information from the site, but I can find that out for you.

**BOSTELMAN:** OK. Thank you.

**BRIAN ORTNER:** Yep.

**MOSER:** OK. Thank you very much. Appreciate your testimony.

**BRIAN ORTNER:** Thank you.

**MOSER:** More supporters? I don't know if I mentioned earlier, we had 14 letters of support, 2 letters of opposition, and 1 in the neutral on LB1033. Welcome.

**RYAN McINTOSH:** Good afternoon, Chair Moser, members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association. I'm here today in support of LB1033. Over the last several decades, we have seen the numbers of our volunteer fire and rescue personnel diminish across the state. While all that has happened, we have seen an increase in the number of calls that are made to our fire and rescue personnel for car crashes. I talked to your local fire chiefs. Those numbers are truly astounding, as I talked to our chiefs across the state. Each year, more and more of these rescue calls are a result of cell phones. Cell phone use while driving. And just to respond to a couple of the comments that were made. Distracted driving is, to my knowledge, is not something that's contained anywhere in Nebraska statute. However, we do have careless driving, negligent driving and reckless driving, which are all-- have subjective standards. But somehow, our criminal justice system has managed to enforce these. So I would suggest that this is not going to cause some sort of enforcement issue. And again, as Lieutenant Owens mentioned, driver behavior has responded well in studies that were conducted in other states. I don't have any first-hand knowledge of these studies, but I trust that he's referring to correct information. So with that, I'd be happy to answer any questions.

**MOSER:** Well, I guess seeing none, thank you.

**RYAN McINTOSH:** Thank you.

**MOSER:** More supporters for LB1033? Supporters for LB1033? OK. Opponents to LB1033? Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Chair Moser and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing as a lobbyist for the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I'm sorry. I'm coming over-- I'm getting over a cold, so I'm sorry for my, for my voice. I did visit with Senator Lippincott last week and this week and explained that we would be opposing the bill, and I kind of gave him some reasons why. I probably should have prepared a written statement, but I have to confess, I thought the hearing was tomorrow. I'm used to being here on Wednesdays, so this day kind of snuck up on me. This-- we-- I want to make a couple things clear. First, it is a crime to text while, while driving, while your vehicle's in motion. It's a secondary offense. So in other words, you'll still get a fine if you're found guilty of this. You still have 3 points put on your license that goes to eventually you losing your license and possibly impacting your insurance. So this does not necessarily increase the penalty or even make anything criminal that's not already criminal. But what this does do is it makes a primary offense that allows a law enforcement officer to pull somebody over based on the officer's observation of someone texting while a vehicle's in motion. This has been a secondary offense in Nebraska since it was first made a crime in 2010. And there have been numerous efforts over the years to make this a primary offense, but it's not been done. The law is and Senator DeBoer asked about this, the law is clear-- and Senator Bosn probably knows from her practice, that any traffic infraction, no matter how minor, is probable cause to stop somebody. So unless the Legislature protects it otherwise, which they have here and they have done with seatbelts. So if an officer sees somebody using their phone, texting or reading a written communication, that's probable cause to stop them. The officer does not have to observe bad driving. The officer doesn't have to observe anyone driving in a careless, reckless way. The crime is committed by simply receiving a written message, which is not necessarily the same as text. For instance, you get a message about a snow squall and you're looking down trying to figure out what that is. You're reading the written communications sent to you. That's the violation. We don't have a crime of distracted driving, but we have crimes that address distracted driving, and perhaps they could be bolsters. We have following too close. We have not using a turn signal. We have driving too slow. We have driving too fast. We have driving carelessly. We have failing to maintain a lane. All those are primary offenses. The bad driving can be addressed. This will do something more, as Senator Bosn addressed earlier. The concern that ACLU has is that we already have a marketed disparity with people of color being

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pulled over and stopped for a variety of reasons. We all have our phones with us in our cars. We don't put them in the trunk. We don't put them in the glove box. This will allow law enforcement really to stop anyone for virtually any reason, and it's not just the actual observation of the officer. There are a number of cases that permit the officer to have a good faith, reasonable misunderstanding as to fact, and that's law that will support the stop. So if the officer doesn't actually witness someone texting but it's reasonable, perhaps, that the officer thought they were because they saw them looking at their phone and looking at MapQuest, how's the officer to know that? I'll answer any questions if anyone has any.

**MOSER:** Senator Bosn.

**BOSN:** I wasn't very quick. Sorry. I just want to follow up. So I'm not sure I followed what you said. Is it your position that this-- you can be pulled over if all you see is someone texting while driving? You--

**SPIKE EICKHOLT:** If this is passed.

**BOSN:** --just can't be ticketed?

**SPIKE EICKHOLT:** If this is passed.

**BOSN:** OK.

**SPIKE EICKHOLT:** That's what I was trying to say.

**BOSN:** So you agree that right now, I can't-- even if I'm seen doing it, I can't be stopped and told, hey, you were texting while driving. I just wanted to give you a courtesy warning that you can't do that.

**SPIKE EICKHOLT:** That's correct.

**BOSN:** OK. That's-- I just want to make sure I understand you correctly.

**SPIKE EICKHOLT:** So long as you're driving and not committing any other infraction.

**BOSN:** And is it hard to find any infraction, in your experience?

**SPIKE EICKHOLT:** My experience? No. But perhaps I'm a bit-- I'm, I'm a bit biased to the issue. But if you look at Chapter 60, we have a whole series of traffic infractions that criminalize and make it an

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offense to do bad things. Not even traffic moving violations, but not having a current plate or not having a current registration, that's a reason to stop somebody. You don't need much more.

**MOSER:** Senator DeBoer.

**DeBOER:** Thank you. So if I had-- so this bill intends only to, the senator said, only to be about a handheld device. This. If I have a console on my-- on my car, it doesn't count, right?

**SPIKE EICKHOLT:** Right.

**DeBOER:** But I know those consoles on the car, if, if somebody sends me a text, it's going to light up briefly. So there's going to be a light. If it's at night and there's a little bit of a light coming from there, I would think an officer would say that's probable cause for texting, or any number of things can cause a light like that to appear to be a phone. Have we just sort of, I don't know, eaten our own tail now, with this sort of-- this continuous regression of well, that's probable cause and--

**SPIKE EICKHOLT:** Well, that's the concern that we have. It's part of the concern. I mean, we've-- during some of the proponent testimony, in my opinion, there was kind of a conflation between cell phone use and distracted driving. You know, when you talked about a console in a car, sometimes just the vehicle itself is tricky enough to figure out, right, whether it's thinking with your phone or not. Just trying to figure out the map feature, the radio, whatever. Those things are, I would ar-- I would suspect, lumped under the category of distracted driving. Passengers in the car could be distracted driving. And I don't fault Senator Lippincott for this, because I think what he's trying to do is just address this carve out that we've had for texting while driving. But I don't know if that's going to address all the things. So in some respects, it doesn't do enough.

**DeBOER:** So I guess-- is there such a thing, distracted driving, that we could create that would say if you have the phone in your hand and you swerve, now you've done distracted driving. So it's had an effect on your driving, or if you get in a car accident and they discover-- OK, well, that would still be currently, because it's a secondary offense. But I'm saying is there a way to add like you have to do something with the vehicle that would, that would make this so it's not just--

**SPIKE EICKHOLT:** I, I would respectfully answer, I think that's already a crime. If you swerve, which I think mean you're-- you go out of your lane, that's an offense. Failing to maintain in-- within the lane of the vehicle, or signaling without-- or turning without a signal or changing lanes without a signal. Phone use or not, that's a-- that's an infraction. I don't think the state needs to show why you were on your phone. It's not a defense for me to say, yeah, he didn't use a turn signal, but he was on his phone so therefore, the case gets dismissed. That doesn't work that.

**DeBOER:** So what you're saying is basically we should criminalize the bad driving and not the cause of the bad driving.

**SPIKE EICKHOLT:** That's right. And I would submit that many of the offenses that we already have addressed with most of those, if not some of those issues.

**BOSN:** I have some followup questions based on that, if I could.

**MOSER:** Yes. Senator Bosn.

**BOSN:** So two things. Is it your position, then, that handsfree legislation would be a better, all-encompassing solution than pigeoning-- pigeonholing us into a cell phone or-- would that alleviate some of the concerns for pulling over minority population or anything like that?

**SPIKE EICKHOLT:** Teh concern we have, if I could just answer it this way, and then I'll try to answer your question. The concern we have about a disparate impact on this crime is that we all have our phones with us, always. I don't know if you can seize, answering what Senator Brandt said earlier, I don't know if a county attorney would authorize seizure of a phone in a traffic infraction, but presumably, it's a crime. It could be evidence of that crime, I think law enforcement could just take it and confiscate it, and then try to get a warrant to see. That's a concern we have, is it is just such an omni-- omnipresent-- it's-- if that's the right word to say. It's just always sort of there. It depends what that handsfree legislation would be. It's, it's difficult and I-- this is probably not correct to say it, but, you know, young kids are good at this phone stuff. I can't-- I have to do talk to text. I can't type as fast as some people do. But some people, my 17-year-old can do it one-handed just like this, like nothing and look me right in the eyes and text me with his friends do it all the time. We've all seen that? Right. So I don't know how you address the issue. I think ultimately what you



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want to have is safe drivers. You want to-- you want to hold people accountable for driving poorly. I don't know if this does it, because this simply allows law enforcement to stop people if they see them texting or reasonably believe that they're texting.

**BOSN:** And to that end, did you know I can call you from my watch without ever touching my phone?

**SPIKE EICKHOLT:** Well, you got a better watch than anybody. Yeah. That's something.

**BOSN:** So I can communicate, I can read texts. I actually just got one from my babysitter, which made me think of it. And communicate with individuals, with other senators, with yourself, from my watch without ever touching that. And this legislation doesn't--

**SPIKE EICKHOLT:** That doesn't address it, which I kind of mentioned to Senator DeBoer. Maybe this doesn't do enough because it could be as distracting just to talk to somebody on the phone as you're driving, if not more.

**MOSER:** OK. Other questions? Thank you. Appreciate your testimony. Other opponents to LB1033? Opponents to LB1033? Are there some neutral testifiers for LB1033? Senator Lippincott, you're recognized to close on your bill.

**LIPPINCOTT:** Just very briefly, a lot of things are illegal. We've discussed those things. This is just simply changing texting from-- using handheld devices for texting; interaction with handheld devices from a primary, or correction, from a secondary to a primary offense, so the police can stop. In researching this, I came up-- it was 25 states currently banned handheld cell phones. And we just heard a few moments ago, it's up to 34 now. So there is a movement of preventing handheld devices from being a distraction to drivers to hopefully eliminate a lot of accidents and deaths that we're seeing amongst people of all ages. So I would ask that you would support this bill.

**MOSER:** OK. Questions for Senator Lippincott? You know, I, I recall somebody in an accident had dropped their soda from their hand. It hit their leg, fell on the floor. She tried to reach down and grab her soda while she's driving and inadvertently turned the wheel and crashed. You know, how many things can we make illegal, would be my question. I mean, it's already illegal. You know, when's enough enough?

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**LIPPINCOTT:** The genesis on this for me, personally, I was driving home on the interstate highway and I was going slowly. I was passing a, a semi-truck. And the guy was-- the driver was very clearly texting. He wasn't doing MapQuest. He was typing out a message and sending it. I could just watch him, right there. And I thought, goodness gracious. We need to do something about this.

**MOSER:** Mr. Counsel, is commercial license-- are, are commercial license regulations different than regular passenger cars?

**MIKE HYBL:** Yes. [INAUDIBLE] statute on it. The following statute [INAUDIBLE] commercial motor vehicles, they cannot text or use a cell phone [INAUDIBLE].

**MOSER:** First, is it a primary offense?

**MIKE HYBL:** Yes, I believe it is.

**MOSER:** So your trucker buddy would have been able to be pulled over had a law enforcement officer seen him. Maybe he wasn't a buddy, but you know what I mean. OK. All right. Thank you very much for your testimony.

**LIPPINCOTT:** Thank you, sir.

**MOSER:** Appreciate it. That will conclude our hearings for the day. If you could clear the room, we're going to have a Exec Session to talk about a bill here, in just a few minutes.