

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

MOSER: The hearing for Transportation and Telecommunications Committee will now come to order. My name's Mike Moser. I'm the Chairman of our committee. I represent Platte County and Stanton County. And then we'll in-- introduce the senators, starting with-- we'll start on Senator Bosn's end for a change.

BOSN: Thank you. Carolyn Bosn. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennett.

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

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

BOSTELMAN: Bruce Bostelman, District 23: Saunders, Butler, Colfax County.

DeBOER: Hi, everyone. Good afternoon. I'm Wendy DeBoer. I represent District 10 in northwest Omaha.

FREDRICKSON: Good afternoon. I'm John Fredrickson. I represent District 20, which is in central west Omaha.

MOSER: All right. Our committee clerk is Lynne Woody. Our legal counsel is Mike Hybl. Also for today's hearing, Amber Tucker from Des Moines is our American Sign Language interpreter. There are blue testifier sheets on the table near the entrance to the room. If you'd like to testify, you need to fill out one of the blue sheets and give that to the page, and then the page will give it to the clerk. Please complete it and hand it in when you come up to speak. Our pages-- couldn't think of that word fast enough-- pages today are Ethan and Ruby. If you're not testifying but would like to record your presence, please sign the gold sheet in the book on the table near the entrance. Handouts submitted by testifiers should be included-- will be included as part of the record as exhibits. Please provide ten copies of any handouts when you give them to the page. Senators may come and go during our hearing. This is common and required, as they may be presenting bills in other committees during this same time. Testimony will begin with the introducer's opening statement. Then we'll hear from any supporters of the bill, then from those in opposition, then from those speaking in a neutral capacity. And then the introducer of the bill will be able to make closing statements if they wish to do so. Please begin your testimony by giving us your

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

first and last name, and also spell them for the record. Today we'll be using a three-minute timer system. We do not allow demonstrations of opposition or support on testimony. Please remember to turn off your cell phones and-- or put them on vibrate. All right. So that brings us up to LB1180. Is Senator Wishart here? OK. Welcome.

WISHART: Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. I think this is my last bill as a state senator, so really happy to be sharing that moment with all of you. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t. And I represent the 27th District in west Lincoln in southwestern Lancaster County. And I'm here today to introduce LB1180. LB1180 is a bill that changes the number of specialized phones available to a household with individuals who are certified deaf, hard of hearing, or speech impaired. And it changes that from one phone to two phones. The Nebraska Specialized Telecommunication Equipment Program-- it's commonly referred to as NS-- NSTEP-- provides monetary assistance to people with disabilities, certified deaf, hard of hearing, or speech impaired to aid in the purchasing of specialized telephone equipment such as cell phones, caption phones, amplifiers, signaling devices, and more. The program was originally created by the Legislature in 1995 and has not been updated since. Originally, the program allowed one specialized phone per address. Since 1995, technology has changed with the prevalence of cell phones, and we're beyond the days of a family sharing one cell phone or having one phone per household. The Commission for the Deaf and Hard of Hearing approached me this past interim saying that this change from one to two phones per household is something that the deaf and hard of hearing community has consistently reached out and advocated for, as well as updating the reapplication for the program from five years to three years. NSTEP program is administered by the Public Service Commission, and funding for the program comes from surcharge from telephone subscribers in Nebraska currently, which is at \$0.3. You'll notice that the fiscal note that the public commission-- excuse me-- \$0.03. You'll notice that the fiscal note from the Public Service Commission would like to update that surcharge to \$0.05 to cover the additional costs associated with this bill. Allowing two phones per household would lessen communication challenges when one recipient may be out of the house in severe weather or medical emergencies. Many people who are deaf or hard of hearing do not have the convenience or ease to use landline telephones. And for homes that have them, it's, you know, very minimal these days to have a landline phone. And they don't have the ease of using cell phones allowing texting by communication as well.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

Perha-- behind me, you'll have testifiers from the Commission for the Deaf and Hard of Hearing who will speak to why this need is a need for this community. And I'd just like to say, I have worked for eight years with this commission from my perspective on the Appropriations Committee. They are an incredible organization that supports community members in Nebraska who are deaf and, and hard of hearing. And when we think about this community, it's not just for people who have lived with this issue for their entire lives. It's also for people who become hard of hearing in their, in their later lives as well. And so it's something that we need to think about in terms of the amount of population that this commission serves here in our state. And the other thing I would say is, you know, it is, it is so important when you think about just what it is like to be-- to, to have a community in which you can communicate effectively with the people you need to, especially during em-- emergencies. And we're seeing more and more a lack of interpreter services in our state. And-- in fact, I think it was a cha-- a challenge getting an interpreter here for, for this committee hearing. And there are opportunities for us as a state to incentivize the technology advancements that are going on in, in terms of accessing interpreter services and communication services through your technology devices. And I think that those representing the commission and community members can talk more to that as well. So I encourage this committee to, to strongly consider supporting this piece of legislation and advancing it out of committee and finding a vehicle through which this could be joined on to and passed this year.

MOSER: OK. Questions? I might ask one. I don't know if you're the best source for that question, but. In the past, there was kind of a TTY kind of a terminal kind of thing they used. Has that now transitioned over to smartphones?

WISHART: I don't know. I can't speak to the history on this. Someone from the commission can probably talk to you about that. And we can get you the historical perspective. But smartphones are becoming more and more of a portal and window towards deaf and hard of hearing community members being able to communicate.

MOSER: OK. Thank you very much.

WISHART: Thank you.

MOSER: Appreciate your appearance with us today. Supporters for LB1180? Welcome.

NORM WEVERKA (THROUGH INTERPRETER): Thank you, Chairperson Moser and committee members. My name is Norm Weverka, N-o-r-m W-e-v-e-r-k-a. And I am from Brainard. I'm here today to support LB1180. As Senator Wishart just explained, smartphones and technology are the way that we all communicate, including my community. You-- Senator Moser had mentioned TTYs. To me, those are antiques. That technology only works when you're at home. And it's not something that's portable that you can take with you when you leave your house. You also must have a landline phone in your house for that to work. I do want to thank the committee for recently supporting access to text to 911 for deaf and hard of hearing people to be able to use text messaging to access emergency services. That is phenomenal for all of your constituents in Nebraska to be able to access 911 through text messaging. That is truly life-changing. The PSC has administered funds for many years since 1995, as was mentioned by Senator Wishart, and they have administered those funds very well. They've worked closely with the deaf community to ensure that our community has had access to the phones. The only problem is that, as technology has advanced, one phone per household hasn't-- has sufficed for a while but no longer is sufficient. Many of you have families, and each of the members of your families-- at least the adult members of your families-- have their own cell phone. And you can see how that is beneficial to your family and how it would be more difficult if you only had one cell phone that was shared amongst all of the members of your family. For example, if somebody leaves the house and takes the phone with them for safety reasons, then all of the members of the, of the home who are still at home don't have any way to reach out. And we also would like to have the bill-- it, it does currently recognize it as one per address, meaning that relatives or nonrelatives who live together would be able to be advantaged by this because, of course, if you're living with roommates, you're not going to both share one cell phone. And also cell phones are not only used for text messaging. Deaf and hard of hearing people in the community also use their cell phones for video communication as well as voice to text. So when I go out in the world, I have an app on my phone that you can speak to me and it will display captioning in real time on my phone to me so that you and I can communicate without the use of a sign language interpreter. So it creates accessibility beyond just telecommunication. It creates accessibility to our entire environment. We also have the ability to use written communication on the phone or on a tablet device, which is very nice and opens up the world of communication. However, for many deaf and hard of hearing people in Nebraska, it can be difficult to afford that technology outright from their own family's budget. So that has been a huge concern for many deaf families, and this bill

would address and alleviate that. So I encourage you, please, to support the passage of this bill. And I'm happy to answer any questions.

MOSER: OK. Questions for the testifier? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Moser. Just wanted to thank Norman for coming in today on Senator Fredrickson's bill. I mentioned my neighbor. And as he's farm-- or, as he's out in the field or out of the house and-- the need on how this helps him. Put a face to that person. Norman is my neighbor who lives a couple miles north of me. So the need for this is significant for those individuals who are deaf or hard of hearing to have that extra device. I would like to ask Norman if there's any other opportunities or things you see we should do specifically to devices or phones to help you in your communications in-- on a daily basis.

NORM WEVERKA (THROUGH INTERPRETER): Thank you for your question. It's, it's a-- not an easy question to answer because of the times that we live in and the different places that people live in Nebraska, not only related to telecommunications but also sign language interpreters. They are incredibly scarce. So deaf and hard of hearing community members who perhaps need to go to the emergency room may not have access to sign language interpreters because of their scarcity of the number of, of qualified interpreters. There are apps available on smartphones where you can access remote sign language interpreters through video conferencing, and those are just a stopgap. I also believe that there is a limit to how much you can use those, so the-- like, per month usage of that. And of course, not all those apps are free, and that comes out of the pocket of the deaf and hard of hearing community members. And I'm not the most tech savvy person in our community, but I do know that there is a cost associated with those things that not every family can afford. There are many deaf and hard of hearing community members who struggle economically, and particularly for our folks who live out in the rural areas who may not have access to the same things that folks who live in the metro areas. So this is one step in a larger picture to, to help on the individual level.

BOSTELMAN: Thank you.

MOSER: Other questions? Senator Bosn.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

BOSN: Thank you. Thank you for coming. I don't know if you recognize me from my time with the county attorney's office, but I have used your relay services.

NORM WEVERKA (THROUGH INTERPRETER): Oh, yes. I do.

BOSN: And I can also speak to your concerns about the lack of interpreters for Nebraskans. And appreciate you coming in to be a strong advocate for this bill. Thanks.

NORM WEVERKA (THROUGH INTERPRETER): And thank you, Senator.

MOSER: I have one question also. So you're Bostelman's neighbor, correct?

NORM WEVERKA (THROUGH INTERPRETER): Yes.

MOSER: So can you get high-speed internet at your house?

NORM WEVERKA (THROUGH INTERPRETER): Oh. So that's a great point. And that is something that I'm very happy that you brought up because the high-speed internet technology is-- that is a problem. Yes. It is-- as, as you know, in our area. And we have struggled for a while with that. I don't know who the service areas-- who the service providers for our area are. A lot of members of our community don't know who to reach out to. And when we do reach out, there's a lot of sort of finger-pointing going on among the internet providers. And we just want it to get done and have it, have it available. But, yes. That's a great point. It is an issue for having that, that high-speed internet. And, and again, like I said, I'm not the most tech savvy person. I do live up on the hill, and so I can see--

MOSER: We, we don't want to get off too far in a tangent.

NORM WEVERKA (THROUGH INTERPRETER): Yeah. If you don't-- if you lived in those low spots, good luck. Good luck.

MOSER: All right. Thank you so much.

NORM WEVERKA (THROUGH INTERPRETER): Thank you.

MOSER: Thank you for your com-- your testimony.

NORM WEVERKA (THROUGH INTERPRETER): Thank you very much.

MOSER: Are there other supporters? Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

KELSEY CRUZ: Hi. Good afternoon, Chairperson Moser and members of the Transportation and Telecommunications Committee. My name is Kelsey Cruz, K-e-l-s-e-y C-r-u-z. And I am the marketing and communications specialist for the Nebraska Commission for the Deaf and Hard of Hearing. I am also on the interim leadership team for our agency. On behalf of the commission full board, I am here today in support of LB1180. As you know, the Nebraska Specialized Telecommunications Equipment Program provides tremendous aid in many different areas. The world of technology is ever-evolving with new products, capabilities, and updates. In the last-- in the 29 years since the program was established, a lot has changed-- specifically the advancement of video technology in cell phones. Approximately 20%, 20% of people in Nebraska have some form of hearing difference, with 1% of the population representing people who are deaf. There are many challenges, as mentioned, that people who are deaf or hard of hearing face every day. The most common and the most critical is communication access, and the equipment that NSTEP provides allows for that access to technology, whether it is through an app to connect for on-demand sign language interpreter or the simple texting or video, video phone feature on your cell phone. Deaf and hard of hearing community members have long advocated for an update to this program and the reapplication period and allowing for two pieces of telecommunication equipment per household. This updated change would improve areas, including readily available communication access-- as mentioned, for example, if individuals in the family are out, specifically for safety reasons, things of that nature. On behalf of our agency, it is my hope that we can make this small change to help better the lives of Nebraskans who are deaf, deafblind, or hard of hearing. Thank you for your time today. And I will take any questions you may have.

MOSER: All right. Questions? Committee members? All right. It looks like we don't have any questions.

KELSEY CRUZ: Yep.

MOSER: I, I will say that our hearing room has been a little bit of a challenge even for us. And they put up some extra acoustic panels in the room to help-- help dampen the room down. But even as I speak, you can hear a little bit of a, an echo, a little bit of a lisp after I talk, so. Being able to understand and hear is sometimes an issue. Thank you for your testimony.

KELSEY CRUZ: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

MOSER: Any other supporters? We received 1 proponent email. We had 0 opponents and 0 neutral. OK. Are there any opponent testifiers? Are there any neutral testifiers? Senator Wishart, I guess you're recognized to close on your bill.

WISHART: Well, I figure I better close since it's my last bill. First of all, I want to thank Amber, the-- our interpreter for today for coming. She drove all the way from Des Moines to come and, and be here today. So really greatly appreciate it. Thank you. Also I wanted to say that it was brought up earlier by a testifier that we have a-- opportunities with technology for being able to get an interpreter on your phone. Say, if you're in a hospital situation and you can't find someone, you can access a interpreter remotely on your, on your cell phone. And I'm happy to say that in a piece of ARPA legislation that I brought two years ago and we passed-- and this year we're expanding-- those ARPA funds will allow for the commission to be able to spend those dollars on technology advancements like that. So this is a really good opportunity to pair that piece of legislation with this opportunity for these additional devices. And then finally, I would just say that we all know that communication is a-- essential for human survival and for human joy, and everyone in the state deserves to have access to that. So with that, I will close and answer any last questions.

MOSER: Questions? Senator DeKay.

DeKAY: This doesn't have anything to do with the bill, but how many bills did you introduce over eight years in the Legislature?

WISHART: I-- probably Liz could, could answer that. But we, we've, we've introduced some pretty incredible bills, and it's been an in-- wonderful opportunity here. And I'm going to greatly miss it.

DeKAY: Thank you.

MOSER: Other questions? In four years, you're young enough to still be able to come back and be able to think and, and do everything important, so. I, I appreciate your service to your constituents and to the state of Nebraska even when you're on the opposite side. Always pleasant. Always logical. You know, I appreciate your personality and, and what you brought to the job.

WISHART: Thank you, Chairman.

MOSER: OK. Thank you. That'll end our hearing on LB1180. And now we'll be on LB1340. Welcome.

KAUTH: Thank you. Thank you, Chairman Moser and the TNT Committee. My name's Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h. And I represent LD 31, the Millard area of Omaha. LB1340 is about public safety. It raises the classification of motor vehicle homicide from a Class I misdemeanor-- which carries a maximum sentence of one year in jail and a \$1,000 fine-- to a Class IV felony, which allows up to two years in jail and 12 months post-release supervision and/or a maximum fine of \$10,000. This bill also increases the fines for speeding, with a special provision for speeds in excess of 35 miles per hour over the speed limit also being charged with a Class I misdemeanor. Our original bill also had language in it about using cell phones. However, Senator Lippincott has introduced a bill focused specifically on that issue. So as not to have conflicting bills, our white copy amendment-- which you have-- excludes the handheld language. There are several reasons this bill is being introduced. As a society, we have all become more and more distracted. No matter what the cause of our distractions, when we get behind the wheel of a car, we have to be able and willing to focus on what we are doing. We literally take our lives and the lives of those around us in our hands every time we get behind the wheel. According to a 2022 study from the Environmental Protection Agency, the average weight of a car is 4,094 pounds. That is roughly two tons of metal that we are accelerating and guiding on our roads amongst our neighbors. At 55 miles per hour, a vehicle will travel approximately 320 feet before coming to a complete stop. This distance includes both reaction time and the actual braking distance. The faster you go, the longer it takes to stop. This is simple physics. A distracted driver has a much less likely chance of recognizing the need to stop in time to be effective. According to Nebraska statute, a person who causes the death of another unintentionally while engaged in the operation of a motor vehicle commits motor vehicle homicide. Again, currently a Class I misdemeanor, with only a maximum sentence of one year in jail and a \$1,000 fine. By raising the potential penalty to a Class IV felony, we hope to provide extra incentive to focus on the task at hand: driving safely and attentively. We further hope to increase drivers' sense of responsibility and accountability behind the wheel by increasing the fees for speeding. These fees were set decades ago. These fees have not kept up with inflation, and, as such, hold much less power to influence a driver's decision-making. For a deterrent to be effective, there has to be an element of pain. And finally, in the Omaha area, we have been having a significant problem with speeders who are going more than 35 miles per hour over the speed limit. For example, on 204th Street through Elkhorn, a driver was stopped going 100-plus miles per hour. The speed limit is 55 miles

per hour at the highest point on that road. For those who exceed 35 miles per hour over the speed limit, the charge has been changed from a traffic infraction to a Class I misdemeanor, which again carries that maximum sentence of one year in jail and \$1,000 fine. But more importantly, that provides the opportunity to remove the speeder from the road at that moment rather than simply ticketing him or her and letting them drive away. This bill will be known as Latacha's Law, after Dr. Matthoo-- Matthew Latacha, who was killed by a distracted driver going 55 miles per hour when he collided with Dr. Latacha's bike last September. Dr. Latacha's widow, Kim, and daughter, Madelyn, are here to testify after me. This bill is looking towards the future. We know nothing can bring people back, but we would like to make it so that people think twice when they get in their car and understand you really have to focus. And with that, I will ans-- answer any questions.

MOSER: Questions? Seeing none. Thank you. We received 13 proponent emails, 0 opposit-- or, 1 opposition email, and 1 neutral email. OK. Are there supporters for the bill that would like to testify? Welcome.

KIM LATACHA: Thank you for the opportunity to speak today. My name is Dr. Kim Latacha, K-i-m L-a-t-a-c-h-a. And I am the widow of Dr. Matthew Latacha, a well-known and respected cardiologist who was tragically killed by a distracted driver while cycling on September 10, 2023. I'm unable to speak publicly about the details of the case since litigation is still pending. But because alcohol and willful reckless driving were not factors, the driver was charged with misdemeanor motor vehicle homicide, which, under the current Nebraska statute, carries a penalty of a \$1,000 fine or up to one year in jail. We believe this to be an injustice. Nebraska currently has three tiers of charges for motor vehicle homicide: Class I misdemeanor, Class IIIA felony, and Class IIA felony. For any charge greater than misdemeanor to be issued, the driver must be under the influence of drugs or alcohol, have prior convictions, or be driving on a revoked license, driving willfully reckless, which is poorly defined. No level of distraction, even for an extended period of time, is currently enough to elevate the charge, nor is excessive speed even when a pedestrian or cyclist is involved. Distracted driving is six times more deadly than driving drunk and carries a 400% increase in the likelihood of an accident, yet the law views these differently. In both cases, an individual makes a conscious decision to engage in a known, risky behavior while operating a potentially deadly weapon. When the result of that conscious decision is homicide, does it matter why? Is it worse to be drunk than to be

on your phone or eating or simply not paying attention when the outcome is the loss of innocent life? I can assure you it doesn't matter to the victim or the victim's family. The pain is the same. Sorry. Misdemeanor and homicide should not occur together. Negligence which results in the death of an innocent person should carry a stronger penalty than a \$1,000 fine. For comparison, theft of over \$1,500 worth of merchandise is a Class IV felony. Nebraska law has a stronger penalty for stealing a TV from Nebraska Furniture Mart than it does for killing a cyclist with a car. This must change. I acknowledge that many cases have confounding factors for which a felony charge would not be appropriate. This bill does not eliminate the ability to lessen the charge if circumstances warrant. It simply allows a greater charge to be possible beyond the very limited circumstances currently included in the law. Matthew was a wonderful human being. Devoted husband, dedicated father, community healer, innovative, and beloved physician. I've lost my husband, my best friend, my life partner. My kids have lost their amazing dad. This state has lost a tremendous physician. I think his life was worth more than \$1,000. I think your loved ones are worth more too. Thank you for your time today and for your support of LB1340. I'm happy to take any questions.

MOSER: Questions? Seeing none. Thank you so much for your testimony. Other supporters for the bill? Welcome.

MADELYN LATACHA: Hi. My name is Madelyn Latacha, M-a-d-e-l-y-n L-a-t-a-c-h-a. And I'm the daughter of Matthew Latacha, who was tragically killed by a distracted driver. As a high school junior, I should be focused on my AP classes, on college planning, and on prom, which is only a few weeks away. Instead, my life is consumed by grief. My dad was the person who cooked for me, the person I went to daddy-daughter dances with, and one of the few people who loved me unconditionally. But because of someone else's careless actions, my dad will not see me graduate, will not be there to guide me as I transition to college, walk me down the aisle at my wedding, or hold my future kids. The tremendous weight of this loss has drawn attention to the frustrating lack of punishment in Nebraska for motor vehicle homicide caused by distracted driving. It is not only in grief but also in strength that I come to you pleading that together we can ensure no other family feels a profound injustice in the wake of a death. As a citizen of Nebraska, it is my right and my responsibility to assert my opinion on laws that I do-- that I believe do not give justice. In fact, my AP Language Arts class just finished a unit in which we were tasked to choose a bill currently being proposed in Nebraska Legislature, conduct research, create a

public comment, and present our opinion. Naturally, I chose LB1340. With that said, in order to reduce the number of motor vehicle homicides and ensure justice for the families of those lost, the punishment for speeding and distracted driving, as well as the penalty for motor vehicle homicide, needs to increase. The current fines for speeding are outdated. Inflation has increased the price of nearly everything, so why shouldn't speeding tickets increase as well? Both Nebraska residents and State Patrol Officers have commented on the increase in excessive speeding in the last few years, and this issue urgently needs to be addressed. Distracted driving has never been more prevalent than it is today, and this is often simply seen as a regular part of daily commutes. Drivers fail to recognize that their poor choices have the ability to destroy a family. Taking a life is never something that should be viewed simply as a misdemeanor. Cars have never been safer than they are today, so increases in motor vehicle homicides directly point to poor decisions by drivers. It is frustrating that laws put in place to protect the community can be so easily broken without adequate consequences. I honestly cannot fathom the lack of charges pressed against the defendant. I am disappointed that the life and legacy of a father, friend, and physician have amounted to no more than a \$1,000 fine or a brief period in jail. Changing the penalties does not change what happened to my dad, but it will reduce the chances that another family ends up in the same situation as mine. I will never cease to give my dad a voice where he has none. So on behalf of my family, the cycling community, the medical community, the crossfit community, and every other one of the numerous individuals affected by the loss of my dad: do not let his death be forgotten. Help us take action to reduce motor vehicle homicides with support for LB1340. Thank you for your time and consideration today.

MOSER: Thank you. Questions from the committee? Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here. Who is sitting with you today?

MADELYN LATACHA: This is my younger brother, Nathan, and my older sister, Abby.

M. CAVANAUGH: Hi, kids, young adults. Obviously, I don't know your dad, but I feel ha-- seeing the three of you sit here today that you've given us a little bit of experience of who he was because he raised three children that took his death and turned it into

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

advocacy. So thank you for being here today and thank you for sharing your story with us. We very much appreciate it.

MADELYN LATACHA: Thank you.

MOSER: Other questions? Thank you for your testimony. Thanks for appearing today.

MADELYN LATACHA: Thank you.

MOSER: Are there more supporters for LB1340? Welcome.

MICHEAL DWYER: Welcome. I don't know about anybody else in the room; I wasn't quite prepared for that. Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r. And I'm here today to testify in strong support of LB1340. Thank you, Senator Kauth, for bringing LB1340, an important bill that I am convinced will save lives. I'm a 40-year veteran of Arlington Fire and Rescue with 2,600-plus calls. And I'm the principal author of "The Future of EMS in Nebraska" report. And I'm here today on behalf of the roughly 200 people that have contributed to that report. I believe all of your offices have a copy. If not, certainly let me know. To try to reinforce what was just said, it's just nuts out there. Including the drive I had down today from Arlington. People flying by at all kinds of different speeds, cutting off any concept of rules of the road or a general respect for this 4,000 pound tin can that's flying by me, and somehow completely evaporated. At 7:38 this morning, our pagers went off for a car accident. What we thought would be kind of a routine, from the sounds of things, sort of approach, that turned out not to be that at all. Intersection accident on a county highway. Obviously, somebody wasn't paying any attention. My patient was pretty critical. The other two people were OK. I only tell that story to reiterate the-- this-- and I-- certainly you heard that a moment ago-- this isn't some abstract wrestling match that typically senators go through on a bill. This is life and death stuff. People like me, volunteers like me, kids like this are left to pick up the pieces when we don't address this. As a principled conservative, I'm the guy normally that said, not really crazy about the heavy hand of government doing things. But there are some services, government services, that are the principal responsibility of government to provide. And I am convinced, with all of its shortcomings, this is something that the state of Nebraska needs to address. Because as the public, we're not. And again, I'm the guy that left-- that-- and, and these kids are left to pick up

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

the pieces. So I would strongly encourage your support for LB1340. And I would be happy to take any questions.

MOSER: Questions? Seeing none. Thank you so much for your testimony. Anybody else to speak in support of LB1340? If you plan to testify, please come forward so we can have a little less time between testifiers. Welcome.

TED MARTINEZ: Welcome. Thank you, Senator. Thank you, committee members. I'm here to speak on behalf-- in support of LB1340. My name's Ted Martinez, T-e-d M-a-r-t-i-n-e-z. I'm a long-term employee with Hawkins Construction as our safety director. Our workplace invests heavily in safety and is our priority. Our folks work-- many of our folks, many of our employees, many of our brothers and sisters work out there near roadways, in roadway construction. The-- one of the biggest dangers by far is our workforce is in the tr-- is near the traveling public. Almost every day, a distracted driver veers into our work zones, hits a hard barrier that stops them from entering into and injuring one of our employees. Even near misses are traumatic events for our employees and families. Recently, we have had three incidents where distracted drivers have veered into or entered our work zones and had made contact with either our equipment that were occupied or is occupied-- was occupied by our employees, and two of those three were, were injured. Our request would be that this bill more accurately define distracted driving. It's not just using the handheld devices to send texts. It is anything that prevents the operator from keeping focus on safely operating their vehicles on the roadways, whether that be eating a meal or interacting with the car's computer system, on-board computer system, which is becoming more prevalent every year that the new cars come out. I would like to thank you on behalf of all of our employees, the men and women that work out there in the work zones near the traveling public every day, and also as-- thank you for their families-- from their families that, that expect them to come home safely every evening. Thank you.

MOSER: OK. Questions? Seeing none. Thank you for your testimony.

TED MARTINEZ: Thank you.

MOSER: Are there other supporters? Welcome.

CHAD BENTLEY: Good afternoon, Chairman, members of the committee. My name is Chad Bentley, C-h-a-d B-e-n-t-l-e-y. I'm the president of Trafcon Inc. here in Lincoln. We perform traffic control services and

install permanent pavement markings throughout Nebraska. I'm here today testifying on behalf of the Associated General Contractors Nebraska Chapter in support of LB1340. Trafcon Inc. and the entire construction industry supports all efforts to increase safety on the roadway. Our workers face significant hazards in the form of speeding and distracted driving by the traveling public. Quite often, drivers are doing both of these at the same time. The risk of catastrophic harm to both drivers and roadworkers increases exponentially with speed. Unfortunately, studies show that speeding has increased in the last four years. Putting simply: passing LB1340 will save lives. There's a proposed amendment to LB1340 which removes the provision making texting and driving a primary offense. We understand that's because this is addressed in another bill, LB1033, also in front of this committee. Our workers and the Department of Transportation's roadworkers as well need you to pass both measures. In my 23 years of road construction, I have seen many tragic accidents. I have had employees hit by vehicles. I have witnessed my employees be hit by vehicles. On job sites, we must have our head on a swivel to always be aware of our surroundings. But we would also like to believe we are safe in the work zone, that we are protected because there are traffic control devices separating us from the traveling public. But we are not safe. We are only as safe as the person driving by us. Picture working on I-80 between Lincoln and Omaha. It sees 50,000 vehicles every day. That's an average of over 2,000 vehicles every hour. That's a lot of strangers to trust your life with. Could you do it? Could you trust that every one of those drivers is paying attention as they pass by mere feet from where you're working? Think about it. 2,000 vehicles every hour. That's a scary number. But the scariest number is one. One is the number of distracted drivers that it takes to kill someone. We further encourage you to consider amending either or both bills to expand the definition of distracted driving. As written, the current statute prohibits the sending or receiving of digital communications. The prohibition should be expanded to include any use of cellular phone which requires the user taking his or her eyes off the road. I can't stress enough how concerned our industry is about this risk and how real the danger is. Please use this opportunity to save lives. Thank you. And I'd be happy to answer any questions.

MOSER: Questions from the committee? Seeing none. Thank you for your testimony. Are there more supporters for LB1340? Seeing none. Are there some to speak in opposition to LB1340? Welcome.

SPIKE EICKHOLT: Thank you. Good afternoon, Chair Moser and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t.

I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association as their registered lobbyist in opposition to the bill. I did visit with Senator Kauth before today to explain that we would be opposing. I know this sounds very hollow to the Latacha family, but my testimony should not be interpreted as being against them or the horrible tragedy that happened to them. If the bill passes, the sentiments that we're talking about today will not necessarily be reflected in the statute books. So when we look at possible bills and proposed legislation, we try to look at what they will be and the consequences they will have going forward. I did receive a copy of AM2202. I have a copy of my written testimony that I distributed to you. But the bill basically does three things. One, it does increase the penalty for unintentional motor vehicle homicide to a Class II-- or, Class IV felony from a Class I misdemeanor. And it does add the predicate crimes for motor vehicle homicide of a IIIA felony to include basically use of a cell phone while either operating a vehicle or a bus. And finally, the bill does increase a series of penalties for various speeding offenses. It's our position that criminal law should be proportionate to the mens rea and to the acts that people do. I understand that the loss to victims and their families doesn't matter whether it's intentional, unintentional, negligent, knowing. That doesn't matter. The loss is horrible. I'm not trying to trivialize that. For whatever reason, we do have a Class I misdemeanor-level penalty for unintentional motor vehicle homicide if a person's driving a motor vehicle and they engage in some sort of other law violation. There does not have to be a showing of proximate cause related to the death for the misdemeanor-level penalty. We do have a series of felony-level offenses for motor vehicle homicide if there's a predicate crime that sort of relates to the underlying-- or, to the resulting death, and that would be a DUI, driving during revocation, or violating a red light camera or violating a pedestrian zone or some similar thing like that. In the materials I, I handed out-- I'm going to run out of time. I don't know the facts of this case. Apparently it is being prosecuted now-- I'm assuming at a misdemeanor level. Our Supreme Court and courts around the state have upheld and have allowed for prosecutions for manslaughter, which is a 0 to 20 level felony. A person commits manslaughter if they commit an unlawful act and, during the commission of that unlawful act, a death results. I've cited a number of cases that apply toward scenarios like what we're talking about now, where people are charged with a death while they're driving a vehicle with the crime of manslaughter. Of note, in August of 2022, our Supreme Court affirmed a manslaughter conviction for a nonintentional underlying predicate offense, that of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

reckless driving, where the mens rea is not intentional; it's reckless. So-- I'll answer any questions if anyone has any.

MOSER: Senator DeBoer.

DeBOER: Thank you. So currently, the misdemeanor statute for distracted driving that results in a death doesn't require any specific intent to have either committed a crime or anything like that. Am I getting that part right?

SPIKE EICKHOLT: If you look at the elements-- you can see the elements on, on the amendment, AM2202, lines 5 through 8. Those are the elements for misdemeanor motor vehicle homicide. A person causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the state or of the city ordinance.

DeBOER: OK.

SPIKE EICKHOLT: So it doesn't necessarily have to be a distracted element of that law of violation. Right? You could be driving over the speed limit but paying attention. You could be driving under the speed limit in violation of the law but paying attention. We talked about this, I think, with that phone usage bill that Senator Lippincott had. We don't really have a general distracted driving crime. We've got a series of other sort of things that are common in distracted driving: a failure to use the signal, failure to stay in lane, driving too fast, not paying attention to pedestrians, that sort of thing.

DeBOER: So-- OK. So-- yeah. One of the things I was wondering about is the proximate cause requirement. So if I am operating a vehicle and I'm above the speed limit-- so in violation of the law-- and somehow that leads to an accident-- or, actually, that doesn't lead to an accident. There is an accident.

SPIKE EICKHOLT: Right.

DeBOER: And it-- let's say someone else is involved in the accident as well and they've-- they're doing some other illegal thing-- they're talking on the phone or something like that. How do you-- and-- how do you figure out what the proximate cause of the accident is?

SPIKE EICKHOLT: Well, there's a couple of things. If you look on that amendment, AM2202, page 1, lines 11 through 14, that is the motor

vehicle homicide, the IIIA felony, that does provide for a proximate cause element. If the proximate cause of death of another is the operation of a motor vehicle in violation of-- and those statutes include-- that 60-60,1-- 213-- [SIC] is if you violate a traffic signal.

DeBOER: Violate the traffic signal.

SPIKE EICKHOLT: That's a felony.

DeBOER: And then the other one?

SPIKE EICKHOLT: The other one is if you violate a pedestrian walkway somehow--

DeBOER: OK.

SPIKE EICKHOLT: --if you failed to yield that and walked right through it.

DeBOER: And this new-- these new ones, though, the operating the bus and the regular texting, driving--

SPIKE EICKHOLT: Yeah. The 0.01 is--

DeBOER: But those require that po-- proximate cause. There has to be some relationship that's close enough, not just your mother gave birth to you and therefore you were there to be in the car when I died kind of but-for causation. But the, the connection, the connected.

SPIKE EICKHOLT: Right.

DeBOER: So-- but in this one that we're now looking to make a Class IV felony, there's no requirement that the, that the unlawful act have any relationship to the death?

SPIKE EICKHOLT: That's correct. You just have to be operating a motor vehicle, there has to be a, a death, and somehow you ha-- were violating some city or state ordinance while you're operating that vehicle.

DeBOER: So you don't even have to have caused the accident. So you could be in an accident. You didn't cause the accident. You were texting while it happened, but somebody swiped-- sideswiped you, and then they die.

SPIKE EICKHOLT: That could be a scenario, yeah.

DeBOER: OK.

SPIKE EICKHOLT: And one thing I want to point out if it's OK-- and I know it's not responsive-- but if you look at the ca-- the letter that I submitted, I reference a case, State v. Wright, W-r-i-g-h-t. And it's a relatively older case in Nebraska. I can't remember where I-- it's 2001. And that-- the court-- our Supreme Court affirmed a manslaughter conviction for someone who-- to have a manslaughter, they have to prove sort of the underlying predicate offense. Right? And in that case, there was a number of them that were charged. There was driving under the influence. There was also excessive speed. The jury found excessive speed was the underlying crime-- intentionally driving past the speed limit resulted in death. That's a manslaughter. That-- I don't know if it's available now, but I'm just telling you that it's something that's there. In other words, when you look at this bill, the three pages that the amendment has, there's other statutes in our books that could apply.

DeBOER: But, but in those cases-- in the one-- the manslaughter, that would require that you actually caused the death by your action.

SPIKE EICKHOLT: Right.

DeBOER: I'm guessing that in this situation that happened to this family that the other person did cause the cr-- you know, they caused the accident.

SPIKE EICKHOLT: Right. The other person.

DeBOER: They 100% did. There's no question there. But what we have in the statute here doesn't require that in the cases. Is that right?

SPIKE EICKHOLT: That's correct. And apparently they've only charged the misdemeanor crime. And so presumably, there must have been-- I don't know if it's excessive speed. There must have been something that the person who's driving the car did that was a violation of a state or city law.

DeBOER: Do you know why they would not charge the manslaugh-- is-- do you know why a manslaughter case would not be charged if someone was reckless driving? Like, what's the distinction in why one gets charged versus another?

SPIKE EICKHOLT: Another case I had mentioned in my letter is State v. Cerros, C-e-r-r-o-s. That was a 2002 case. For a while-- and I think prosecutors generally want to have the predicate offense for mans-- for manslaughter to be an intentional element crime, that you intend to do something.

DeBOER: So like what?

SPIKE EICKHOLT: Well, for, for example, one thing we talked about on an unrelated bill: if you intentionally deliver a controlled substance to somebody else and that results in their death. That's manslaughter.

DeBOER: I mean, what about, what about just not operating the motor vehicle in a safe manner?

SPIKE EICKHOLT: And some, some traffic infractions are intentional. I think arguably cell phone usage is intentional. You deliberately sort of intend to manipulate a phone or receive a message [INAUDIBLE] have that. The issue in Cerros was it was reckless driving. The mens rea in reckless is reckless. It's not intentional. And he argued when he was found guilty on appeal-- this is-- actually happened south of Columbus on Highway 81. He argued on appeal that, hey, I-- you can't find me guilty of manslaughter because I was only found guilty of a reckless act. That can't support a manslaughter. And our Supreme Court said, yes, they can. They didn't extend it to any sort of infraction, but they extended at least to some nonintentional infraction elements-- or, crimes, at least.

DeBOER: I mean-- yeah. OK. Thank you.

MOSER: Other questions? OK. Thank you for your testimony. Are there more opposition testifiers? Seeing none. How about-- are there any neutral testifiers? OK. Senator Kauth, you're recognized to close.

KAUTH: Thank you, Chair Moser. Senator DeBoer, I wish you had asked some of those questions to Mrs. Latacha because she's incredibly well-versed in that subject and was whispering the answers to me as we sat there. So please take some time to talk with her afterwards. She's done extensive research on this, as I'm sure you're well-aware. This bill-- and if, if we need to iron out-- if there's something that's not quite correct in the bill, I'm more than happy to work with Spike and with the senators to make sure that the goal is to increase penalties so that we can make people take more responsibility when they're driving so that we can make them

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

understand that if you drive distracted, if you are speeding, if you're speeding in excess of 35 miles per hour, that is a serious, significant issue. And we need to make sure that the penalties actually do some good. Because right now, the penalties are not enough to make people take that second thought and drive better. So thank you.

MOSEER: OK. Questions for Senator Kauth? Thank you for your testimony. That'll close our hearing on LB1340. Now, LB8-- or, sorry-- LB1186. Senator Sanders.

SANDERS: Good afternoon, Chairman Moser and committee members. For the record, my name is Rita Sanders, R-i-t-a S-a-n-d-e-r-s. And I represent District 45, which includes much of the Bellevue-Offutt community. Today I'm introducing LB1186 to continue a discussion about improperly buried utility lines. Before you today is LB1186, which provides that an excavator who damages a residential communications line that is buried less than ten inches from the ground-- or, the surface and more than 12 inches from a house is not strictly liable for such damage. I'm bringing LB1186 back to you again. This bill is a carryover as I have repeatedly heard about the issues our home builders are struggling with due to the has-- haphazard installation of utilities, mainly telecommunication lines, on their worksites. Frequently the builders enc-- encounter these telecommunication lines outside the easement or casually dropped on the topsoil of the lot. This delays projects and causes conflicts between the contractors and the utilities. Rather than mandating that utilities be-- buried their lines at a certain depth, a different approach would be that utilities that do not wish to bury their lines at the industry standard and at the safe depth will not receive the full protection of the One-Call Act. This approach is both safe and narrow. It only applies to telecommunication lines and only applies to residential properties. This bill also does guarantee liability to either party. It simply states that excavators who stumble upon these pure-- poorly buried lines are not strictly liable. The One-Call Act represents an important balance between the interests of the excavator and utilities. It should not be one-sided that it gives full financial protection to a utility no matter how-- or, how it buries its lines. I know that there are many questions about how this statute is enforced, and I'm happy to have that conversation. I should have someone after me to speak on that behalf and that-- and to continue the conversation to protect homeowners and contractors. With that, I'll take any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

MOSER: Questions for Senator Sanders? So we've had several bills addressing whose fault it is when lines get struck. And this bill protects the contractors if the lines were not buried at industry standard depth?

SANDERS: Yes. However, this bill is more a conversation. I will be asking you to hold this bill in committee. It looks like there has been discussions had by the utilities and the contractors. And someone after me can answer that.

MOSER: OK. Other questions? Thank you.

SANDERS: Thank you.

MOSER: Supporters for LB1186? Welcome.

MARK WESTERGARD: Good afternoon. My name is Mark Westergard, M-a-r-k W-e-s-t-e-r-g-a-r-d. And I am a retired civil engineer, but I am representing, MOBA, Metro Omaha Home Builders Association, the Eastern Nebraska Development Council, and Build Omaha. So I'm representing all three of those groups. We are strongly in support of this measure. Too many instances where One-Calls are called, they identify the horizontal location of a utility but not, not the depth of bury. And so excavators routinely, when they are doing operations that should not encounter utility lines, they do. And we are talking about things as minor as, as putting in a fine grading for sods and swales, putting in a sprinkler system, putting in an invisible dog fence. Even hand-digging with a, with a spade or a shovel some of these poorly constructed lines are encountered. This provi-- bill is fairly narrow. It doesn't impact power or cable. It is, it is directed primarily at the te-- telecommunication lines, which is appropriate because that's where most of the problem is. The, the bill is also very modest and, and reasonable, requiring a ten-inch bury depth. We're not re-- you know, we're not asking-- the bill doesn't ask for a 24 to 42 inch as we have with some of the other more dangerously encountered utilities. A ten-inch depth is, is not very severe and it would allow the, the installation of these invisible dog fences, grading, sprinkler systems without impact if they're, if they're buried ten inches deep. The other thing that I think needs to be considered is that usually these telecommunication activities-- not always-- but they had the opportunity to be put in well in advance of home construction. And that's important because they, they normally will precede by a, a, a large segment of time the installation of these other things I was talking about: fine grading for a home, sprinkler system, et cetera. We feel the adoption of this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

bill would have a positive impact on affordable housing, which is important to all of us. Every time one of these substandard lines are hit, the developer, the builder is re-- is taking that hit for the, the repair of that line, even if it's one or two inches deep. We feel that the-- with the, with the minimum bury of ten feet, that-- those instances--

MOSER: Ten inches.

MARK WESTERGARD: --will become pretty nominal. And I-- the last thing I'll say is the-- this is probably both important to urban areas and rural areas because home construction in Pierce or in Omaha are exactly the same. So this is narrowly guided towards residential construction. So I thank you for the opportunity to testify.

MOSER: Questions? So you're talking about telephone, cable TV, internet--

MARK WESTERGARD: Data.

MOSER: Those things?

MARK WESTERGARD: Yes, sir.

MOSER: Anything else that I missed?

MARK WESTERGARD: I think those were the four main groups, yes.

MOSER: OK. All right. Thank you. I guess there are no other questions.

MARK WESTERGARD: Thank you.

MOSER: Others here to speak in support of this bill? We had two letters of-- for proponents, two letters of opposition, and no neutral. OK. Anybody to speak in opposition to this bill? Welcome.

ED JARRETT: Mr. Chairman, committee. Thank you for having me. For the record, my name is Ed Jarrett, E-d J-a-r-r-e-t-t. I'm the senior manager of plant operations for Allo Communications. I also serve on the One-Call Notification Center board of directors. I'm here today to respectfully oppose LB1186 on behalf of Allo Communications. For over 20 years, Allo has been building ubiquitous citywide fiber to the home, networks, and communities throughout Nebraska. To date, Allo has invested more than \$600 million of private capital bringing broadband to Nebraskans. Allo is building new fiber networks in

multiple Nebraska markets and currently operates in more than 25 Nebraska communities. The changes proposed in LB1186 are impractical for several reasons. First, underground sprinkler systems, invisible dog fences, other underground utilities often prevent Allo from burying drops ten inches deep. To avoid these facilities while maintaining a ten-inch deep-- depth, we would have to use directional boring. This is several times more expensive and time-consuming than trenching, and putting our drops under other facilities will make them more difficult to repair or replace. Second, fiber contains optical glass that cannot be kinked. By requiring drops to maintain certain depths until only 10-- 12 inches away from the house, the bill would require fiber to the home providers to bend fiber in ways that could damage it or lose disruption to the service. Finally, many existing drops are buried at less than ten inches. And this bill would change the rules of the game and require providers to rebury many of the existing facilities, causing disruptions for existing customers. LB1186 would ultimately allow excavators that choose not to follow the One-Call laws to avoid liability for damaging underground telecom lines that are buried shallower than the mandated depth. This would create serious issues for Allo and other fiber to the home providers that install drops to the homes. I would like to add that Allo is an operator and an excavator as well, and we follow all the state statutes and, and practice safe digging to keep all constituents connected. In conclusion, the changes proposed in LB8-- LB1186 could greatly increase the cost of connecting homes and businesses to wireline voice, TV, and broadband services, which could drive up the costs of those services for Nebraskans. It would also lead to a dig first, ask questions later approach that would absolve reckless excavators from liability of damaging facilities. For these reasons, I encourage you to not advance this bill from committee. Thank you for your consideration. And I will be ap-- happy to answer any questions.

MOSER: Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. So we're-- I'm in a capital project right now for fiber. And when I was contacted by them, they said when they bring the fiber to my house I have to mark all utilities or otherwise. And if they happen to damage any of those, that responsible to repair it is mine. So why isn't that the same thing for-- with, with any of these? To me, it's-- you're going on to per-- someone's personal property and they may have a sprinkler system in line, but you should be able to build underneath of that perhaps. Or if you do damage it, you could repair it. I guess I, I'm kind of wondering why there's a difference here.

ED JARRETT: I'm not sure who the contractor is that's doing the work at your, at your residence, but our, our procedures are that we are responsible for all locates, our contractors are responsible for all locates, and we're responsible for all damages. We've repaired many sprinkler damages that we've incurred. And also dog-- invisible dog fences. We are responsible for repairs of those.

BOSTELMAN: So I appreciate that. And I don't-- to be argumentative or not, but Allo had a reputation of cutting-- or, boring, cutting and fixing things later or not trying to change those in our cities. That's been the, the perception that this committee has received over the years on that. So you know, what we see is, is lines-- I know my-- one of my staff members, they had a line-- fiber go to their house and just lay it on the surface. And it's been months and no one's come back to bury it. I, I guess the challenge is, in residential areas is there has to be a fix or a find to this as to how we can come to some type of agreement on how to get these lines buried deep enough so you don't have to worry about them. And I, I, I think-- I don't think that's an unreasonable ask. I think that's reasonable to do. I don't think it's reasonable that-- from what we've seen so far with very shallow lines being buried. Or there's some markers so the property owner at least knows where they're at, but typically they don't. I don't know if you do anything like that or not.

ED JARRETT: Well, I know in the wintertime we do lay a temp drop on the ground until the ground thaws. And then we strategically go from the first line that we laid on the ground to the latest one that we-- we call in and locate. So that's the main thing, is that we protect our line by locating with flags and paint. And then it's on the contractor to safely dig and expose our lines like Allo does when we deploy fiber to the home. Or, or then the main-- the rights-of-ways and the easements we expose. And you have a line of sight to any utility that's smart. And so we protect that line by locating it, and it's on the contractor to re-- expose it. But as far as the temporary lines, we do have some on the ground that we try to get the customer there as needing their broadband service connected as soon as possible. And then we'll lay a temp on the ground until we wait three days. Sometimes, sometimes it's a couple months if the ground is frozen. And then we'll come back and we'll bury that line once we're able to. But tho-- we do have the, the temporary drops on the ground periodically. Right now, we are burying in February, which is usually unheard of because of the temperatures we've had. But to get the customer connected quickly, we put a temporary on the ground. And

then we call in the locates. And then once we get all the locate utilities to give the all clear, then we'll bury that line.

BOSTELMAN: Let me ask you a question just for clarif-- just for my own awareness. So you bring a, a line-- fiber. We're talking fiber specific-- to a house--

ED JARRETT: Yup.

BOSTELMAN: --how do you connect it to the box then if you don't-- if you're not doing some angles. Because the way-- your testimony seems like you've got to have a long feed to where you ramp that up to that box. Don't you come to the house and go up--

ED JARRETT: It's a gradual--

BOSTELMAN: --house--

ED JARRETT: Excuse me. Sorry. It's, it's a gradual incline. So if we are lower-- you know, if we have to go the ten inches or deeper, then the, the, the bend is a little too incremental for the fiber. So at a gradual incre-- grade, when we come up to that conduit at the co-- at the base of the house, it's not as a 90 degree. It's kind of a gradual slant in the fiber so it doesn't kink it.

BOSTELMAN: OK. Thank you.

ED JARRETT: Mm-hmm.

MOSER: Senator DeKay.

DeKAY: Off of that just a little bit. So how far away from the house would you have to start that gradual bend up to--

ED JARRETT: Usually it's a couple feet, a couple feet from the house. You know, we can sometimes be really close to the topsoil at the house, but when, when we come up into the conduit that's on the side of the house, it's basically just a nice, gradual-- it's less than a 45 degree angle just to not have that opportunity for kinking that fiber, which will just close off your service.

DeKAY: Thank you.

ED JARRETT: Mm-hmm.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

MOSER: Any other questions? At the risk of launching the home builders into orbit, how about requiring conduit from the basement to a connection box in the right-of-way when you build a house?

ED JARRETT: Well--

MOSER: And then let the phone company and the internet companies and all share that. You know, maybe you use one-inch conduits, something that everybody could get their connectors through. You're, you're saying that there's a minimum radius that you can bend that line without snapping.

ED JARRETT: That's correct.

MOSER: But anyway--

ED JARRETT: Most homes, when they're built, they-- we will go in joint with the power companies. And then we are that 30-inch depth with our conduit, and then we'll pull our fiber through that conduit. But a lot of our deployment is already established homes, already established neighborhoods where we have to bury a line regardless to that home to get them service because all the other utilities are already there.

MOSER: You can't mix low voltage and high voltage copper wire, though, right?

ED JARRETT: In fiber optic, there is no voltage whatsoever. But I, I know that there's deployments where you can have a coaxial and a copper cable together, but you can't have it in the same conduit as a power line.

MOSER: Yeah. That's what I was asking. OK. Thank you for your testimony. Appreciate that.

ED JARRETT: Thank you.

MOSER: More opposition, I assume.

DAYTON MURTY: Yes, sir.

MOSER: Welcome.

DAYTON MURTY: Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Dayton Murty, spelled D-a-y-t-o-n M-u-r-t-y. And I'm testifying today in

opposition to LB1186 on behalf of Charter Communications. Charter is a leading broadband connectivity company and cable operator providing superior high-speed internet, voice, video, and mobile services under the brand name Spectrum to more than 32 million customers across 41 states. In Nebraska, we serve over 167,000 customers in 91 communities. And in 2022, we paid over \$20 million in taxes and fees and we invested over \$31 million in private capital to expand our network to reach an additional 4,000 homes and small businesses. This bill would absolve excavators of responsibility for damaging telecommunications lines despite not following the One-Call process. Charter strives to always follow the appropriate One-Call procedures and conduct the necessary due diligence to be good partners with other providers and utilities. We hope that the Legislature would require others to follow the same procedures and not protect bad actors who would, would refuse to follow the same rules. For these reasons, we oppose LB1186. Thank you.

MOSER: Questions for the testifier? Seeing none. Thank you. Other opposition to LB1186? Is there any neutral testimony on LB1186? OK. Senator Sanders, you're welcome to close. She waives her closing. That'll close our hearing on LB1186. And we'll move to LB1105. Senator DeKay. Welcome.

DeKAY: Thank you for having me here today. Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. For the record, my name is Senator Barry DeKay, spelled B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska. And I'm here today to introduce LB1105. This bill amends the current statutory scheme relating to automobile repairs. Specifically, this bill would rectify how automobiles are repaired today and eliminate, or at least greatly reduce, the number of automobiles on the road that have been repaired incorrectly, oftentimes unbeknownst to the driver and the owner of the vehicle. This bill would also define and codify what is considered to be a structurally totaled vehicle. This bill is meant to keep drivers and their passengers safe and reduce the financial risk of purchasing a used vehicle. Through a white copy amendment, AM2660, LB1105 would also require automobile body consumer care facilities to follow the original equipment manager-- manufacturer, or OEM, manuals and guidance for performing consumer care except for the use of OEM parts. You will see in the bill that we created a new act, the Branded Certificate of Title Act. That portion was written by the Bill Drafter to harmonize sections and make it easier for them to revise this proposal on future other salvage title-related bills moving forward. The bill's-- the key points of LB1105 are defining structurally damaged vehicle and

providing other definitions and processes for structurally damaged vehicles to be declared a destroyed vehicle branded certificate of title. Under the proposed act, a structurally totaled vehicle will mean a totaled vehicle due to the loss of structural component where the manufacturer has no procedure to repair, and the cost of repairs must exceed 75% of the actual cash value of the vehicle. The aim of this bill is to take automobiles off the road that are too damaged by the manufacturer's standards to be repaired. Because the intent of this bill is to primarily address driver and consumer safety, the structurally totaled vehicle will not include cosmetic damage, such as a total loss due to hail failure-- damage. Notably, any entity that provides consumer care, such as an auto body service businesses, may declare a vehicle structurally totaled per the specific guidance from the manufacturer OEM guidance. Clearly, these professionals are in the best position to evaluate whether a vehicle should be repaired with the objective guidance from manufacturer procedures. If the manufacturer states that an automobile is unrepairable, then it is not serviceable and thus deemed structurally totaled. This sets an objective process to determine what vehicles are damaged beyond repair. Upon acquisition of a structurally totaled vehicle by an insurer, the bill sets out to-- a clear process for application for destroyed vehicle branded titles. Should the owner elect to retain a structurally totaled vehicle, the insurer shall notify the DMV, and the department must enter a destroyed vehicle brand onto a computerized record. Then the owner must forward the structurally damaged certificate of title to the county treasurer within 30 days for recordkeeping purposes. This bill is being brought with the full endorsement of the local industry, Nebraska-owned auto body repair businesses. There is no financial upside for the folks and businesses that have identified this need for this legislation. The industry has simply become concerned, as I hope this committee will be, that, currently, auto bo-- auto body repairs are being performed that put owners and others on the road of-- at physical and financial risk. We can solve that problem with LB1105. Thank you. I'd be glad to try to answer any questions.

MOSER: Questions from the committee? Senator Fredrickson.

FREDRICKSON: Thank you, Chair Moser. Thank you, Senator DeKay, for being here and introducing this bill. So I'm just reading your statement of intent. So you talk about-- in the statement to LB1105, it seems like it's related to the title, but then there's a white copy amendment. Does the white copy amendment no longer address the title and it's more specifically about--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

DeKAY: The white copy was brought late last week to try to quantify some other issues. And there will be people behind me on both sides of this bill that will address that moving forward.

FREDRICKSON: Thank you.

MOSER: Thank you, Senator. Appreciate it. Supporters for LB1105? Welcome.

RYAN CLARK: Hello. Good afternoon, Chairman Moser and members of the Tel-- Transportation and Telecommunications Committee. I am Ryan Clark, R-y-a-n C-l-a-r-k. I'm currently the vice chair for the Nebraska Auto Body Association, or the NABA. Work as vice president and part owner for Eustis Body Shop. We have eight locations employing 95 hardworking professionals across the state along I-80 from Eustis to Lincoln. The NABA is comprised of mostly 100-- almost 100 collision repair centers across Nebraska. Most of our members help Nebraska's motoring public who come to our facilities for repairs on their vehicles. Our members help to repair damage from minor events such as backing into their mailbox or hitting a garage door to more substantial occurrences such as their kids hitting-- having a fender bender in school or a rear-end collision in rush hour. Sometimes repair professionals or insurance companies will decide that the damage is too extensive that the vehicle should be-- not be repaired. When this happens, the vehicle is determined to be a total loss. What is not talked about or known by the community is that these vehicles are sometimes obtained by rebuilders, rebuilt, and sold back to the community, and the consumers have no way of knowing if it was fixed correctly or not. These daily estimates we write on more minor events often turn into large issues once the vehicle's disassembled. When we take the bumper off and see the frame rail is kinked or heated to make the bumper fit, the problem is if the vehicle were to get in another accident and hit the same area, the vehicle's structure will not react in the same as if it would if it was new or repaired correctly. Improperly repaired vehicles are a danger to the occupants and to everyone around the vehicle on the roadway. Vehicles are designed today to absorb the inertia forces and point those forces away from the passengers. They now have crush zones that absorb the force and are designed to save the passengers' lives. If these crush zones are not replace after being damaged, the next impact could also result in a fatality. Vehicles today are equipped with more safety features than ever before. Some systems include adaptive cruise control, lane departure, blind spot monitors, braking, and many, many more. Some manufacturers allow you to repair directly over the area where the sensors are mounted. Some do, some

don't. Some metals in the vehicle can be repaired. Others require replacement. Unless we as collision repairers look at each individual procedure, we do not know how to fix the vehicle properly. As my father-in-law would state, back in the good old days, you were able to use heat to straighten parts on frame rails. Now manufacturers state you can't use heat at all. Vehicles are made quite differently than they were even ten years ago. It is vital for consumer safety that we follow the procedures set forth by the manufacturers, not how we used to do it. For instance, the most common estimating platform industry, CCC, gave sectioning guidelines on a 2018 Chevy Traverse along the roof rail section of the vehicle. This is a common vehicle in our marketplace. However, GM strictly says they do not approve sectioning operation on that repair procedure. Bill payers often want to pay what the estimating system says, not what the manufacturer approves. That's why it should be a requirement to follow the manufacturer's guidelines. The opposition touched on how this will increase the severity of claims. Anyone who asserts that the cost of repairs will increase if shops are following the documented repair procedure instructions from the manufacturers and developed by the engineers who designed the vehicle is admitting that those procedures are not currently being followed. Our opponents stated in their letters that the automakers have monopolistic motives. I want to point out that this bill states the exclusion of OEM parts. I would also like to point out that we are in collision repairs. We are in the business to fix vehicles. We are not in the business to total vehicles. In fact, I would assume that having more total losses deemed as title destruction on the ground would actually increase the amount of used parts available for purchase, which would decrease the repair cost. Again, this issue was not introduced to address parts. It's about ensuring that the vehicles are unrepairable and deemed structurally totaled and off the roadway, and vehicles that are repairable should be fixed safely by po-- following the proper procedures. Thank you for your time. I'd be happy to answer any questions.

MOSER: Questions from the committee? Seeing none. Thank you for your testimony.

RYAN CLARK: Thank you.

MOSER: Are there other supporters for LB1105? Welcome.

SUSAN WACHNER: Thank you. Thanks for having me, Chairperson Moser, Vice Chair DeKay, and members of the Transportation and Telecommunications Committee. My name's Susan Wachner, S-u-s-a-n

W-a-c-h-n-e-r. Thank you for hearing my story. The picture being passed around is my prior car, a Toyota red RAV4. I'm an Omaha mom of four teens and young adults. My family was impacted emotionally, financially, but luckily not permanently by a crash in a salvaged title-- titled car. I will first and foremost call out I was a cost-conscious consumer looking for a good deal for my teen's first car. With a newer driver, I knew there was a high probability of an accident, but I did not expect to inadvertently compromise my daughter's safety as well as her passenger, my son. I purchased this used Toyota RAV4 from a local Omaha car lot. The owner emphasized the car had a salvaged title. He even showed me pictures of the reasons for this titling. He assured me his mechanics and the state of Nebraska had inspected the vehicle and confirmed it had been repaired and was safe to operate. My daughter drove to high school with my son in the passenger seat on a beautiful spring day. They were at a dead stop in a typical morning traffic waiting for a light to turn green. My son confirmed they're-- my daughter was not on the cell phone. But being a younger driver anxious to get to school, she took her foot off the pedal, anticipating the light had turned green when it had not. She bumped into the minivan in front of her. When I arrived at the scene of the accident, I anticipated a minor fender bender. To my shock, the car frankly folded up like a small accordion. I'm no expert, but if the car did this at a standstill, I shudder at the result of a 40-, 50-, 65-mile-an-hour impact. I took the car to Dingman's Collision Center, where the analysis of the state of this car left me speechless-- and that doesn't happen very often. The car structurally had not been repaired, only cosmetically. This car should not have been on the road. I took the car back to that car lot where I purchased it. And when presented with the third-party assessment of the car's lack of repair, I was not surprised by the owner's reaction. He bought it right back from me. If I had not purchased it back, could I have taken legal action? Sure. Was I in a position to hire an attorney and hold him responsible for around a \$10,000 car? I would probably say not. And I would say a majority of the parents in my position would feel the same. So I'm standing here before you to prevent a future tragedy. Please amplify my voice and provide some type of regulation to consumers who thought there was a process and procedures in place when purchasing salvaged titled cars. Thank you.

MOSER: Questions? I don't know if you're an expert on RAV4's, but is that front end-- is that nose all plastic?

SUSAN WACHNER: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

MOSER: Yeah. It's surprising on some of those cars how much plastic there is in the nose of it. I'm not going to go into how I know that.

SUSAN WACHNER: OK.

MOSER: All right. Any other questions for the testifier? Thank you for your testimony.

SUSAN WACHNER: Thank you.

MOSER: More supporters? Welcome.

SARAH STILLAHN: Hello. Good afternoon, Chairman Moser and members of the Transportation and Telecommunication Committee. I am Sarah Stillahn, S-a-r-a-h S-t-i-l-l-a-h-n. Thank you for your time and the opportunity to be in front of you to discuss an important issue in Nebraska. I'm from Bumper to Bumper Body and Paint in Scottsbluff. I manage my family's body shop that opened 40 years ago in 1984. I've been actively working in the industry for 13 years. Our repair center is one of the largest in western Nebraska, and we currently employ 11 people. In western Nebraska, we see a growing concern of vehicles with previously salvaged titles as well as a significant hidden-- previously salvaged titles as well as significant hidden prior damage vehicles. These vehicles have been cosmetically repaired to be marketable at a discount off retail, making these vehicles very appealing in the current economic conditions we are facing. Consumers are misled that these vehicles are repaired properly, are safe to drive, but more often this is not the case. It will shock you how easy it is to cover up major structural damage and disregard or leave off safety features that are designed to protect occupants and mitigate accidents. As a shop, we are liable for the repairs we complete. We continue to be liable even after the vehicle is sold. However, if one of these vehicles are totaled and goes to the salvage auction and then sold to an individual or pack shop, sellers get the protection of as-is used car sale. They will pretend they had no idea there were clear safety issues with the car or they say they disclosed the-- disclosed the previous salvaged title, therefore, you should have known. I also hear owners of these cars say, my insurance allowed me full coverage, therefore I'm protected, right? I could cite examples of these vehicles coming in my shop. I could tell you where to find them locally. I could point you to Facebook Marketplace to see some-- actually a lot here in Lincoln compared to Scottsbluff. Maybe you've shopped for a used car lately and have stumbled across these vehicles. But instead, I'm going to talk about the advanced materials in crash safety of the vehicles today. Why do

we worry about crash safety of brand-new vehicles, but yet as these same vehicles get older and become wrecked, that no longer matters? Do we only care about those who can afford the brand-new car? Who's protecting those who need a budget-friendly, reliable car-- maybe to get two three jobs, take the kids to school, or go to those doctor's appointments? Many have bad credit or no credit at all. That is the demographic that gets stuck with these cars. What about the other vehicles or pedestrians these vehicles impact when their advanced driving systems don't react properly? Who's protecting them? Over 90% of new vehicles today come standard with advanced driving systems. Anyone have teenagers? OK. Well, we all know there is more distracted driving today. Let's be honest, it isn't just the teenagers. Consumers are relying on cars' technology. Maybe it's sensors to recognize the kid on the bicycle. Or how about when you're driving late at night the car steers for you? It might beep to wake you up or slows down when traffic stops in front of you. We are counting on our vehicles to react the way the manufacturer intended it to. Yet when the vehicle needs repaired, we suddenly think we're smarter than the engineer. We don't need to do these extra procedures. It's just too expensive. Many falsely assume these systems are functioning correctly. Just as long as the dash isn't flashing all those lights, right? Or giving you that error message or displaying that dreaded check engine light. Well, vehicles are not only lighter weight for increased gas mileage requirements, but they're designed to crash and deform around the passenger compartment. It takes milliseconds for the vehicle to determine if the airbag needs deployed. If the vehicle is not absorbing the impact as designed, how can the computer accurately-- accurately determine the risk of occupants and make a split-second decision to deploy safety restraints?

MOSER: Are you nearing the end of your testimony?

SARAH STILLAHN: I can.

MOSER: OK.

SARAH STILLAHN: All I'm asking is that you consider the vulnerable consumers who get swindled into these vehicles through no fault of their own. We can't stop all unsafe repairs, but through this bill we can slow down the main source and have an impact as these vehicles become even more complex and advanced.

MOSER: Thank you.

SARAH STILLAHN: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

MOSER: Questions from the committee? Seeing none. Thank you for your testimony. Are there more supporters for LB1105? Welcome.

JAMES RODIS: Welcome. Chairperson Moser, Vice Chair DeKay, and members of the Transportation and Telecommunications Committee. I am James Rodis, J-a-m-e-s R-o-d-i-s. And I thank you for letting me testify today. I come to you with 36 years of experience as vice chair of the Nebraska Auto Body Association and an active member of the Society of Collision Repair Specialist, I-CAR committees, and Nebraska college advisory boards. As you've heard from my colleagues, this bill is twofold. First is to follow the workshop manual. I can tell you, before manufacturers change design of vehicle at the direction of the Insurance Institute for Highway Safety to make passengers safer, this bill would not have mattered as much. In the last 15 to 20 years, vehicle design change has changed immensely and continues to change yearly. We used to be able to do almost anything to fix a car, but serious design changes means if we don't use exactly the right glue or put exactly the right amount and type of welds in place, this will lead to catastrophic failure in the next accident. The government prides itself on crash test ratings. I am led to believe this is-- some of the design changes are due to higher rates of speed that we are allowed to drive today. Those ratings are the reason people buy certain vehicles to keep, to keep their husbands, wives, children, and grandchildren safe. I get calls weekly from friends and family members on this very question. As insurance companies have removed adjusters from the field and inter-- internet insurance companies have popped up, having someone as educated as us about fixing a car is just not the norm anymore. We simply have one side looking at numbers and the other side trying to fix the vehicle correctly. If we as experts aren't able to repair a car correctly if it has sustained substantial structural damage, why are we allowing those to buy a salvage vehicle and resell it? If a shop writes a re-- repair bill to fix a car correctly per the manufacturer, it needs to be granted. To simply-- this is simply not a numbers game. This is to keep severity down. This is to save lives. Let's be honest, a single insurance company in the fourth quarter last year netted \$1.5 billion. We simply do not dictate the repairs or the severity. The crash does. We simply need to fix them in a manner that will react the same whether it's two weeks or 20 years from now. The second part of our bill is the total loss section. Over the last ten years or so, we have seen more businesses pop up, and their business model is to purchase these vehicles from insurance auctions and repel-- repair them and sell them, a lot of times to unsuspecting consumers. I have seen wood screws, baling wire on the front end of cars to attach

headlights and bumpers, along with fabricated brackets. Luckily, this one would not kill anyone, but the customer had no idea and the repair bill was north of \$3,500-- \$3,500 the insurance won't cover as it was not an accident; \$3,500 the car lot does not owe for because it was sold as-is. The normal, everyday customer has no clue what to look for. They make sure the paint looks OK, the body lines are OK, and they got a good deal because it was \$2,000 cheaper than the dealer or the other vehicle owner selling it out of the newspaper. These unsuspecting consumers just don't have the knowledge that the airbags may not deploy at the correct time-- or worse, they could get trapped in the vehicle in an accident. It's just not going to react the same as it was in-- intended to do. After I heard McGalls' testimony, which you guys have received, I drove around Omaha on Saturday and I stopped counting at 23 shops or used car lots that I know that do these kinds of repairs on total vehicles. That, that trip was 30 minutes. That's just the tip of the iceberg.

MOSER: Are you nearing the end of your--

JAMES RODIS: Yes, sir. I'm closing up right now.

MOSER: --testimony? OK. Thank you.

JAMES RODIS: I am sure the opposition will hammer the parts side of this, but we clearly did not include parts in this bill. We excluded them. In closing, I humbly ask that you help us in our fight to keep our families, neighbors, friends, customers, and your constituents safe on the roadways. Thank you for your time. Any questions from the committee?

MOSER: Thank you. Questions from the committee? Thank you very much for your testimony.

JAMES RODIS: Thank you.

MOSER: More supporters for LB1105? If you plan to testify, please come get up in the front row so we're ready for you. Welcome.

BLAIR MacDONALD: Thank you. Good afternoon, Chair Moser and members of the Transportation and Telecommunications Committee. My name is Blair MacDonald, spelled B-l-a-i-r M-a-c-D-o-n-a-l-d. And I am the, the registered lobbyist for the Alliance for Automotive Innovation, which is the trade association which comprises the manufacturers that produce nearly every new vehicle sold in the U.S.: battery manufacturers, AV companies, semiconductor makers, and tier one suppliers. And I am here today in support of LB1105 with amendment

AM2660. Today's vehicles are considerably more advanced than vehicles of even just a few years ago. Features from automatic lane centering to adaptive cruise control to pedestrian detection and avoidance and dozens of other advanced driver assistance systems come equipped and are even standard on many new vehicles today. In order to fix these vehicles, you need the proper repair procedures. Accordingly, automakers develop and publish specific procedures to guide the post-collision repair of every new car they sell each year, detailing the proper way to return a vehicle to a safe, roadworthy condition. No other group or company provides anything comparable to the vehicle's specific guidelines to show how to appropriately conduct post-collision repairs. Under the current system, collision shops are forced to decide between making a proper repair and receiving proper payment for their work from the insurance companies. This is not right. Most consumers-- and, and-- are-- rightly so, would expect OEM repair practices to be followed even in the absence of any law that would require such. To steer a collision repairer to follow any repair procedure other than the one produced by the vehicle's manufacturer is a disservice not only to the owner of that vehicle but their passengers and fellow motorists. In fact, there are-- there actually are not any other procedures to follow. A shop either follows the sound practices established by the OEM or they are not following any approved repair plan. The reality is that the average consumer does not have the expertise or the ability to monitor and approve the post-collision repairs conducted by-- on advanced automobiles of today. So for these reasons, we thank Senator DeKay for bringing this bill and strongly support the advancement of LB1105 with AM2660.

MOSER: OK. Questions from the committee? Seeing none. Thank you for your testimony. More supporters? How about opposition? Is there opposition testimony? Welcome.

MARK BINDER: Thank you. Thank you, Mr. Chairman and members of the committee. Appreciate the opportunity to speak in opposition to LB1150-- excuse me-- LB1105. My name is Mark Binder, B-i-- M-a-r-k B-i-n-d-e-r. And I'm with Copart. We are proud to be part of the business community in Nebraska. And we are located not far from here at the Greenwood exit off I-80. You may know where we're located. Joining me today in the audience is Glenn Shipman, whose responsibility is the entire state for Copart; and Peter Greenwood, who is our regional manager. And they're representing our 23 employees at that location and throughout the state. This bill represents-- presents significant concerns for Copart and our customers. We do not believe this-- there is a need for this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

legislation because the current junk and salvage title requirements fulfill the needs of the bill. We think the concept is flawed because it creates significant inconsistencies with other states. It's duplicative with-- of, of current salvage and junk title requirements. It's confusing and in conflict with current Nebraska statutes. And it's removing many vehicles out of the-- out of the consumer fleet that can be safely repaired and registered as a rebuilt vehicle. I would also like to offer that this is about branding of titles and repair procedures is not part of the conversation. We do believe the bill will also not provide-- will not provide any additional consumer protections. To my knowledge, this idea is unique to Nebraska and no other state has a structurally totaled vehicle brand. In fact-- and I encourage you to do this-- google on-- later on your computer-- structural totaled lost vehicles titles by state, and you'll receive many links that are located to salvage brands, salvage titles, and total loss thresholds. So we believe that the current concerns are captured by the branding that is already in place in the state. I urge the committee to indefinitely postpone LB1105. Thank you for your time and opportunity to serve my concerns.

MOSER: Questions from the committee? Seeing none. Thank you.

MARK BINDER: Thank you, Senator.

MOSER: Is there other opposition?

KIM DECKER: Thank you and good afternoon--

MOSER: Welcome.

KIM DECKER: --Chairman Moser and other members of the committee. My name is Kim Decker, K-i-m D-e-c-k-e-r. And I'm with Farmers Insurance. Farmers Insurance is one of the top ten auto writers in the state of Nebraska by written premium. And we have a number of agents across the cou-- the state who also employ a number of Nebraskans and who offer elite customer service to our customers and do things to support the community. So I'm also here to testify against LB1105. Copart is a company that Farmers uses. So I would first say that I support what Mr. Binder has said. And basically, I would just simply add that we all know insurance is going up. Everything is going up. And it is our concern that this bill will not provide additional safety standards or safety creations for Nebraskans but will simply cause insurance rates to go up. And it will make vehicles harder to find within the state, so. I'm going to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

leave it at that. I'm going to make it simple and ask that you not pass out this bill.

MOSER: OK. Questions from the committee? Seeing none. You lucked out.

KIM DECKER: Thank you.

MOSER: Other opposition? Welcome.

TIM HRUZA: Afternoon, Chair Moser, members of the Transportation and Telecommunications Committee. My name is Tim Hruza. Last name's spelled H-r-u-z-a. Representing LKQ Corporation today. LKQ is a global leading provider of alternative auto parts, including aftermarket, recycled, remanufactured, and specialty parts. Leading provider also of motor vehicle diagnostic services, including pre- and post-scans, calibrations, reprogramming, and other mechanical services. LKQ has global industry leading team of 45,000 employees operating 1,600 facilities in 25 countries. Seven of those facilities are located here in Nebraska. Appearing today in opposition to LB1105. And I, I know that-- I think-- we have submitted a letter that-- to each of you that was emailed earlier that'll outline a little bit more of the details of our opposition today. But I appear mostly in opposition to the amended version of LB1105, particularly AM2660 that was filed on Friday. I've talked with Senator DeKay, and I appreciate his willingness to continue conversations on this issue. Let me tell you: our primary objection to the amended version of LB1105 is located in Sections 18, 19, and 20. I've been working on this issue now for four straight years. I think this is the third iteration of this legislation that we have come in opposition to. And so many of you have talked with us. Primarily what we are opposed to with this effort is the fact that you take away a great deal of consumer choice in choosing the type of parts and particularly the costs related to those parts and the options that they use when repairing their vehicles. So as you look at Sections 18, 19, and 20, there's an attempt in there to try to mark out the, the use of parts. But when you refer to requiring certain procedures to be used, when those procedures then require specific types of parts and tools, it becomes very difficult for consumers to get solutions to their problems, to make choices about how they repair their cars, and to, to choose the option that is best for them when deciding which parts and procedures and, and mechanics too, for that matter, to use and-- in doing this. So I do thank Senator DeKay for continuing conversations. I think at one point, you know, in, in the interims we've had roundtable discussions over this. We've not ever had any real effort, I think, from the proponents to, to work toward an

amended version of this that can work for all parties involved. And so I sit here in opposition today. I'm happy to answer any questions that you might have.

MOSER: OK. Questions? Senator Bostelman.

BOSTELMAN: Thank you, Chair Moser. How do you see this different from the junk title?

TIM HRUZA: What's that? I'm sorry.

BOSTELMAN: The junk title.

TIM HRUZA: I'm not sure I'm familiar enough in terms of the details of that for your question. And like I said, most of our opposition to the bill comes in Sections 18, 19, and 20 that deal with the required repairs, not necessarily the salvage pieces in the, the bulk of the bill.

BOSTELMAN: OK. Thank you.

MOSER: Other questions? Yes, Senator Bosn.

BOSN: Thank you, Chairman. So Mr. Hruza, can you tell me-- so part of what you're saying is that the consumer has the right to decide if they want to buy the more expensive part or the remanufactured part. But some of our testifiers were here and talked about sort of a buyer beware, scary situation that they're buying these cars. And so is there an agreement that we wouldn't, we wouldn't make sure we're marketing that as, hey, this is subpar parts to save \$1,500?

TIM HRUZA: I think from, from my client's standpoint and some of the conversations that we've engaged on in, in dealing with this bill over a couple of sessions now, I think there is a conversation to have about, you know, the title side of those things, the salvage pieces, the discussion related to how we are, are doing those sorts of things. But I would tell you that simply referring to or requiring that OEM parts and procedures are used puts far too much of a restriction on a consumer's ability when we very much believe that the parts that we sell, the aftermarket recycled parts, whether they come from a late model car or something like that, are of like-kind and quality as we have dis-- you know, LKQ stands for that very much. I would also tell you that, to a certain extent, some of that conversation deals with-- when we first started with this bill, it, it came through the Insurance Committee, right, and what insurance policies cover. When we first started those conversations-- the state

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

of Nebraska has regulatory requirements that parts provided by or used in insurance repairs be of like-kind and quality. That's one offer that we've made in this area in terms of how we could statutorily address that requirement, is taking those regulations and codifying them. We've not had success with that discussion in, in past years.

BOSN: Sounds like I might be coming in at the eleventh hour on a conversation that's gone on for several years, so I will talk with you about it later.

MOSER: A lot of times at the eleventh hour, I'm asleep. OK. Any other questions? Thank you for your--

TIM HRUZA: Thank you, Senator.

MOSER: --testimony. Other opposition? Welcome.

KORBY GILBERTSON: Good afternoon, Chairman Moser, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. Appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association. There's been a lot of discussion about the technicalities of what different types of titles there are. I want to kind of focus on-- we've-- this-- as Tim said, has-- is the fourth year we've been dealing with this. And-- I-- it's always interesting to me that, instantly, the blame is laid on insurance companies as if insurance companies want to have unsafe vehicles on the road. That doesn't benefit insurance companies. That is not what insurance companies want. And the examples that are given of why we need this bill are examples of people acting in bad faith or doing bad repair work. It's not that people are using aftermarket parts because, as Tim also said, it is already required in Nebraska that all of those parts be of like-kind and quan-- and quality. So if we want to put that in statute, that's a great idea. We don't see how this bill fixes the issues brought up by the proponents. If you have a body shop or some other repair person using baling wire and duct tape, we have if-- different issues. That's not a subpar part. That's someone doing something fraudulent. So we would love to continue talking with them to see if we can address the real problem, but we don't think that the title issue is the issue.

MOSER: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 27, 2024

KORBY GILBERTSON: And I would also just like to take a minute to thank all of you for all of your attention and work this year. I don't know if it's me, but it seems like an extra long year of hearings, so. Thank you for everything.

MOSER: Senator DeBoer.

DeBOER: OK. Although we've sort of hashed and rehashed these issues many times, I guess-- I went to see a demonstra-- because this has been something-- so I went to see a demonstration. And they had one part that was a manufacturer part and they had one part that was not manufacturer part. And they, like, sawed through them, and the one part sawed through, the nonmanufactured part, they could saw through it more quickly. So my question is, does that fall within the like--

KORBY GILBERTSON: Kind and quality?

DeBOER: --kind quality?

KORBY GILBERTSON: If it's not of the same quality, that would be a violation.

DeBOER: How do we-- how do we know what like-kind and quality means? Like, for what purposes are they supposed to-- like, do you know what I mean? Like, what's the fleshing out of the like-kind and quality?

KORBY GILBERTSON: Well, I, I think generally it's understood that it has to-- it has to function the same as the original manufacturer part, so.

DeBOER: Is the like-kind and quality in statute?

KORBY GILBERTSON: No, and that's one thing we've offered to say-- take it out of the rules, put it into statute, further define it if we need to. But let's make-- let's address the iss-- the real issue at hand, which isn't a title.

DeBOER: OK. All right. Thank you.

MOSER: Seeing no other questions. Thank you.

KORBY GILBERTSON: Thank you.

MOSER: Other opposition? If you plan to testify, if you could come closer to the front, that would be great. Welcome.

KERRIE SNOWDEN: Thank you. Good afternoon. My name is Kerrie Snowden, K-e-r-r-i-e S-n-o-w-d-e-n. I am employed by and a registered lobbyist for Farmers Mutual of Nebraska. We are the leading Nebraska-based insurer for homes, farms, and automobiles in the state. I also appear, appear here today on behalf of the Nebraska Insurance Federation, which is the state's trade association of over 40 member insurance companies. And we are here in opposition of LB1105 and-- as amended. Our concern is also of consumer protection. We believe this bill would create a negative financial impact on buying, repairing, and also insuring vehicles. The structurally totaled vehicles would be taken off of the market, which would vastly reduce the availability of used cars and-- for some in a finan-- financial position that would-- may not be able to buy a newer model vehicle. For someone with teenage drivers in the, in the home, this is particularly of a concern. I understand there was a proponent that had a, a bad experience for her teenage drivers, but it's, it's important to many consumers to have affordable older vehicles available on the market. If the market forces consumers to purchase newer vehicles, they may not be able to afford them nor may they-- or, they may not be able to afford the insurance that goes with them. And then we have the problem of uninsured motorists that not only impacts the owner who would not have insurance to help fix the vehicle but also impacts those persons that the owner would be liable to for causing injuries and damages in an accident. The use of OEM parts increases the amount of repair, which in turn increases the amount of insurance. The option to use aftermarket parts helps keep insurance down for all Nebraskans. In sum, we believe it's better public policy to have a broader market of vehicles and insurance that's affordable to all Nebraskans. And we ask that you not vote this bill out of committee. Thank you.

MOSER: Thank you. Questions from committee members? Seeing none. Thank you.

KERRIE SNOWDEN: Thank you.

MOSER: Any other opposition? Anybody here to speak in the neutral capacity? Seeing none. Senator DeKay, you're recognized to close.

DeKAY: Thank you. I did have an earlier conversation with Mr. Hruza earlier today, and we had a conversation about parts. And I think we both agree that owners should have the discretion to replace the parts that they want. And an example would be if you have a newer vehicle that is in a fender bender, you might want OEM parts, man-- original manufacturer parts. If I have an older vehicle, 12, 15 years

old or whatever, I might be able to go with aftermarket parts that-- but basically, it's to cosmetically fix it, not the internal structure of the vehicle. So I think we both agree on that. And there's no one in this room that doesn't want safe vehicles on the road. I feel that we are really close on having a bill that will achieve that. People repairing vehicles should need to know that they have the backing to repair the vehicles and do the job right. Likewise, people buying used vehicles can have peace of mind that they are not only buying a car that is cosmetically repaired but also structurally repaired to be driven safely. I would like to thank both sides of this issue for the discussion today. I think these discussions will ultimately get us to where we want to be: having safe vehicles on the highway. Appreciate your time. Thank you. And I will try to answer any questions.

MOSER: Any other questions? Seeing none. Thank you for your testimony. That will close the hearing today on LB1105. We'll be having a Executive Session in room 1202 in about five minutes or so. Thank you.