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Judiciary Committee
January 23, 2008

[LB766 LB772 LB773 LB774 LB775 LB804]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 23, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB766, LB772, LB773, LB774, LB775, and LB804. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Pete Pirsch; and DiAnna Schimek. Senators absent: Dwite Pedersen.

SENATOR ASHFORD: Why don't we get started? Welcome to the first hearing of this session, the short session. My name is Brad Ashford. I'm Chairman of the committee, and Senator Vickie McDonald is here, Senator Pirsch, and Senator McGill. And my other colleagues...I think Senator Pedersen is gone today, but Senator Lathrop will be here, and Senator Schimek, I'm sure, will be here. We have six bills today to go through. LB766 is the first bill. Let me ask this. How many are here to testify on LB766? Okay. We have, for those who have not been here--and I know many of you have--we have a little light system that we're going to continue to use. It's a holdover from Senator Brashear's tenure here. And you'll see a yellow light...we're going to ask you, the testifiers, to limit their testimony to three minutes, and when your...when the yellow light comes on, that will tell you that it's time to sum. The red light is sort of the stop light, obviously. The introducer has whatever time he or she needs, and hopefully we can get through these bills in an expeditious manner. We're glad you're here. Thank you for coming. It's very, very key to the process that you are here. Every bill that is introduced in the Nebraska Legislature has a public hearing. That is unique. No legislature in the country has that feature. No other legislature has a public hearing for every bill. Every bill has an equal shot, and this committee has a significant number of bills every session, many more than, really, any other committee. And many of the bills we have are extremely...some of them are extremely emotional type bills and get a lot of reaction from all sides. But we try to do the best we can, and we're glad you're here. Senator Cornett is first. Abbie. And Senator Lathrop is here. Senator Lathrop is from Omaha, and he's the Vice Chair of the committee. So welcome to him. Good afternoon.

SENATOR CORNETT: Good afternoon, Senator Lathrop or...sorry, Senator Ashford and members of the committee. (Laugh) [LB766]

SENATOR ASHFORD: I know. I don't...I try not to take that personally, but go ahead. I mean it... [LB766]

SENATOR CORNETT: I was going to say, do you feel him biting at your heels a little bit? (Laugh) [LB766]

SENATOR ASHFORD: Well, it...yes. Well, anyway. Let's proceed. [LB766]

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SENATOR CORNETT: (Exhibit 1) Good afternoon, members of the Judiciary Committee. My name is Abbie Cornett, and I am the state legislator representing District 45. With the increase in demand for copper, aluminum, brass, stainless steel and other metals, and the high cash prices paid in return, metal theft has become a serious problem. As a result, thieves have been targeting businesses, public and private utilities, homes, schools, churches, and even nonprofit organizations, swiping millions of dollars' worth of metal. Staggering losses have been felt by governments, business, and general public. The effect of the scrap metal theft has become both a consumer and a safety issue. Metal has been stolen from industrial yards, copper gutters, downspouts on churches, and even aluminum handrails. There are a couple of examples that have just recently occurred in Nebraska. First, just a few weeks ago in Grand Island, thieves stole more than \$3,000 worth of metal and copper from Southern Power. As a result of the loss, utility officials speculated that the cost for services would likely go up if the thefts continued. Second, in Omaha thieves stole four tons of copper from a Kiewit Construction lot, a home for sale in July lost its air conditioner, and in May at a Habitat for Humanity house, \$50,000 worth of copper vanished. This is also a problem across the country, where the beer industry loses an estimated 300,000 kegs a year, costing the industry \$50 million, or cell phone companies have lost millions of dollars due to metal thefts from cell towers and land lines. Realtors have cited that thieves set up appointments to tour houses, only to return to strip them. Schools under construction have lost material, and even local baseball fields have had electrical circuitry ripped out, disabling their pitching machine and snack bar. These metal thefts also create a serious public safety issue. Thieves have been targeting infrastructure items such as guardrails on highways, light posts, manhole covers, railroad tracks, and stadium bleachers. Thieves have stolen 5,000 feet of copper wire for Union Pacific tracks, 1,200 feet of copper wire from Omaha Street Light Project, and in August thieves stole a copper gas line in an Ottawa, Iowa home, which led to an explosion, killing an unsuspecting 80-year-old man. In an attempt to prevent metal theft, LB766 is a bill that establishes a recordkeeping requirement for scrap metal businesses that engage in the purchase of regulated ferrous and nonferrous metals with the general public. Ferrous metals and alloys are iron-based materials such as alloy steels, stainless steel, and cast iron. Nonferrous metals do not contain iron, such as aluminum, tin, copper, and brass. This proposal would require scrap metal businesses to maintain a record of all purchases involving ferrous and nonferrous metals and forward such records to law enforcement. For these transactions, scrap metal business would be required to record certain information relating to the purchase; for example, name and address of the recycler; name and signature of the individual entering the information; date and time of transaction; description of metal purchase; amount of consideration; name, signature, date of birth, and address of the vendor of the metal; operator's license, state identification card number, or other government-issued ID card; number of the person delivering the regulated metal; photocopy of the identification card; fingerprint from the person delivering the regulated metal; photograph or video of the regulated metal. This information must be retained by the scrap metal business for not less than one year

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after the date of purchase. Law enforcement would retain the right to inspect and regulate metal property on records based by the scrap metal business. No purchase of regulated metal could be made from any persons under the age of majority, any person who appears to be under the influence of alcohol or drugs, any person who does not possess a valid form of identification, or property which the serial numbers have been defaced. LB766 exempts purchases from manufacturing, industrial, or commercial vendors, property in the forms of beverage or food cans, and certain recycling programs. Failure to follow this section is a Class II misdemeanor. Twenty states have passed laws, in 2007, to try and squelch the sales of stolen ferrous and nonferrous metal property. I would note that this legislation is similar to Nebraska pawnbroker statutes, which also require the owner of the pawnshop to keep a ledger and allow law enforcement to examine records and property retained. In the course of drafting this bill we have spoke with a number of the scrap metal dealers, and based on their concerns I'm offering an amendment to the committee. Would one of the pages please take this. This amendment proposes changes to the green copy which you all have in front of you. Specifically, the amendment is in response to the concerns by the scrap metal dealers. First, the amendment narrows the definition of "regulated metal properties" as nonferrous metals, except gold and silver and metal beer kegs, including those made of stainless steel. This eliminates the ferrous metals, except for stainless steel kegs. Second, the amendment deletes the requirement that scrap metal dealers forward copies of the records to law enforcement on the fifth day of each month. Third, the amendment deletes the requirement that the photograph or video recording be with enough clarity to display distinguishing marks. The reason for this is, a lot of times these are large deliveries, and it would be impossible for them to photograph with any clarity distinguishing marks. On wire it would be very difficult. Fourth, the amendment removes the requirement that the scrap dealer pays the customer by check but retains the language that no purchase can be made by cash and payment must be made to the person presenting the identification. That is in response to a number of the scrap metal dealers telling us that they now pay with debit cards or electronic transfers. Fifth, the amendment strikes the language that prevents the scrap dealer from purchasing regulated metal property from someone under the influence of alcohol, drugs, or appears to be mentally incompetent. By working with several scrap metal facilities, it was determined it would be difficult for employees to determine if someone were under the influence or was mentally incompetent. The amendment narrows the language relating to the defacing of serial numbers so that it only applies to the purchase of kegs. Finally, we have removed the preemption language that allows any lawful rule, regulation, resolution, ordinance, or statute which is more restrictive than sections of the bill. What this means is that the state statute will be the law for the state, but individual municipalities can enact ordinances that are more restrictive. This answers the concern of Lincoln, who currently has an ordinance regulating scrap metal and is more restrictive in their ordinance than we were in the proposed bill. We are working closely with all parties concerned, which is why the amendment has been drafted. It is not my intent to make an unworkable law for people dealing with scrap metal, but to help reduce thefts

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of metals, assist law enforcement in prosecution. This is rapidly becoming a very serious health and safety issue for the public and heavy financial problems for the businesses. I ask that LB766 be advanced from the Judiciary Committee and would be happy to answer any questions that you might have. [LB766]

SENATOR ASHFORD: Any questions of Senator Cornett? [LB766]

SENATOR LATHROP: May I ask one? [LB766]

SENATOR CORNETT: Sure. [LB766]

SENATOR LATHROP: This just occurred to me. I was watching the news last night or the night before, and they showed where people are climbing under pickup trucks, predominantly, and taking out the catalytic converters. [LB766]

SENATOR CORNETT: Catalytic converters, yes. [LB766]

SENATOR LATHROP: Is this the right place to maybe outlaw even the receipt of certain kinds of things like catalytic converters or... [LB766]

SENATOR CORNETT: Well, the problem with that, then, is if someone legitimately has an older car and wants to sell their catalytic converter or has bought something from another person, the metals in the catalytic converter, you could include that. I'm not actually sure if they have individual serial numbers; I'm assuming they do. But that might be something at some time, if it becomes a problem, we could include serial numbers of automotive parts. [LB766]

SENATOR LATHROP: Okay, thanks. [LB766]

SENATOR ASHFORD: Just...maybe someone else can talk about this. Does anyone else...did you have a question? I'm sorry. [LB766]

SENATOR LATHROP: No, go right ahead there. [LB766]

SENATOR ASHFORD: The Misdemeanor II, which is six months in jail... [LB766]

SENATOR CORNETT: Correct. [LB766]

SENATOR ASHFORD: ...for the...it's for the recycler. Now this is for the person... [LB766]

SENATOR CORNETT: That is if they do not follow the regulations. [LB766]

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SENATOR ASHFORD: So if they don't get the fingerprints or if they don't get the... [LB766]

SENATOR CORNETT: Correct. And again, it's not our intent that if it's just an oversight. But we sat down with the scrap metal dealers, and they felt, the ones that we talked to, also felt that if they had an employee that was deliberately receiving stolen material and it was not an oversight, like they forgot one step in the procedure, that they ought to be prosecuted for that. [LB766]

SENATOR ASHFORD: That the person ought to be... [LB766]

SENATOR CORNETT: That their employee who was deliberately receiving stolen material or not following the state law. [LB766]

SENATOR ASHFORD: And paying for it. [LB766]

SENATOR CORNETT: Yes. [LB766]

SENATOR ASHFORD: Okay. And the...do you know in Lincoln--and maybe someone from Lincoln is here, but in Lincoln do they have a...does the penalty include jail time, or is it... [LB766]

SENATOR CORNETT: I know that a representative from the city of Lincoln was going to be here to speak, but they are running late. So I do not know at this time, but I'd be happy to get you that answer. [LB766]

SENATOR ASHFORD: Okay. I think that's all I have. Thanks, Senator Cornett. [LB766]

SENATOR CORNETT: Okay. [LB766]

SENATOR ASHFORD: Proponents. How many proponents do we have for this measure? Okay. Senator Chambers has arrived. [LB766]

SENATOR CHAMBERS: I don't know what you're voting for, but I want to be on the winning side. (Laughter) [LB766]

SENATOR ASHFORD: Thank you, Senator Chambers. Welcome. We're talking about metals here. So we're on the proponent side, and do we have a proponent here? And just state your name, if you would, for the record. [LB766]

TED POWERS: (Exhibit 2) Hello. My name is Ted Powers, P-o-w-e-r-s. I'm with Anheuser-Busch. Copies of my testimony are...I've given you the written version, and then just kind of summarize it, so I don't violate your three-minute rule. I'll try and cut it

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down. The main issue for us, obviously, is stolen kegs. The beer industry is losing currently about 300,000 kegs per year, and those are quite expensive to replace. They're worth \$30 or \$40 on the scrap market, but it costs us \$130 or so to replace these kegs, which adds up to tens of millions of dollars per year. So it's become quite a concern for Anheuser-Busch and for the beer industry. There have been 20 or so bills passed last year, and there are a series of bills coming up this year, as well, in a number of other state legislatures. Last year California, New York, Kansas, Colorado, Louisiana and a number of others passed this type of legislation, and I just am here today to emphasize our support for LB766, just due to the...those kegs are property of brewers and should not be something that people are scrapping and receiving money for. I just wanted to emphasize our support for LB766. [LB766]

SENATOR ASHFORD: Thanks, Ted. Any questions for Ted? Seeing none, thank you. [LB766]

TED POWERS: Okay, thanks. [LB766]

SENATOR ASHFORD: Mary? [LB766]

MARY CAMPBELL: Chairman Ashford, members of the committee, my name is Mary Campbell, C-a-m-p-b-e-l-l, executive director of the Associated Beverage Distributors of Nebraska. As Mr. Powers just testified, this is a concern to the beer industry, and as so often happens in a state like Nebraska, there's quite a variability of the degree of severity in the problem, based on locations. In doing kind of a quick and dirty survey of my members, it appeared that the losses suffered by the wholesalers, who in many cases are directly responsible for the cost of the lost kegs, ranges from very negligible cost on an annual basis to costs in the range of tens of thousands of dollars annually. And I would like to just thank publicly Senator Cornett for working with the scrap metal industry, in that the green copy did cause some of our members to take a little pause, in that in some markets around the state, they have very good working relationships with the scrap dealers and have gotten their agreement not to accept these things, and so things are working smoothly. And so their concern was just that whatever measures this committee should go forward with, if that is your decision, that they be reasonable and not overly burdensome to their fellow businessmen in communities around the state. So with that, I thank you for your time. [LB766]

SENATOR ASHFORD: Any questions of Mary? Mary, just briefly, do the wholesalers then reimburse Anheuser-Busch, then? Is that what happens? [LB766]

MARY CAMPBELL: It varies with the brewer, and they have different policies. It's my understanding that in terms of Anheuser-Busch, they do pay...and Ted, correct me if I'm wrong on that, they do reimburse the brewery for that loss. I think some of the other breweries have not pressed that point with their distributors. [LB766]

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SENATOR ASHFORD: Somebody loses, though. [LB766]

MARY CAMPBELL: Yep. [LB766]

SENATOR ASHFORD: Thanks, Mary. [LB766]

MARY CAMPBELL: Um-hum, thank you. [LB766]

TIM KEIGHER: Good afternoon, Chairman Ashford and members of the committee. My name is Tim Keigher. that is K-e-i-g-h-e-r. I appear before you today as the registered lobbyist for Miller Brewing Company. I guess, simply, we are in support of this bill, as well, for the same reasons that others that have testified before me have said. So with that, I'll save your time. [LB766]

SENATOR ASHFORD: Very illuminating. No. (Laughter) Just kidding. Any questions? Senator Chambers. [LB766]

SENATOR CHAMBERS: I was late, so maybe somebody explained what it is we're dealing with, and I didn't hear that explanation, so rather than ask you questions, would you mind briefly going over what the issue is here? In other words, what is in my mind is how these kegs get from the brewer who owns them into a set of circumstances where somebody will steal them and dispose of them. [LB766]

TIM KEIGHER: Okay, just specifically with kegs? I mean, there was a lot of other... [LB766]

SENATOR CHAMBERS: Yes, because that's what they're talking about here, I think. [LB766]

TIM KEIGHER: A lot of other metals, too, like copper and things like that were also mentioned. [LB766]

SENATOR CHAMBERS: Well, are you speaking for those who are losing copper and these other metals, too? [LB766]

TIM KEIGHER: Kegs, just for the kegs. [LB766]

SENATOR CHAMBERS: Just the kegs? Okay, that's why I want to hold you to what you're telling us about. [LB766]

TIM KEIGHER: Sure. I mean, it's my understanding that, you know, wholesalers, retailers, you know, grocery stores or whatever--anyone that sells kegs or uses

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kegs--bars, are stockpiling these mostly outside, and they're having a problem with people stealing them. A new keg costs somewhere between \$130 and \$150, and they're taking them to scrap metal yards and turning them in as scrap for anywhere from \$30 to \$50, is my knowledge. [LB766]

SENATOR CHAMBERS: But the ones who have possession of the kegs legitimately, are making it easy for them to be stolen, really, aren't they? [LB766]

TIM KEIGHER: Well, I don't know that in all cases they're making it easy. I think that some of them fence it in and store them inside. You know, as we heard in earlier testimony or in Senator Cornett's opening, I mean, these people are going into homes and stealing copper, they're breaking into places and stealing other metals. [LB766]

SENATOR CHAMBERS: But you don't care about that. If that's all that was happening,... [LB766]

TIM KEIGHER: But I'm saying that they're breaking... [LB766]

SENATOR CHAMBERS: ...you wouldn't be here today. [LB766]

TIM KEIGHER: ...they can break into a warehouse, a wholesaler's place, and steal empty kegs, as well. [LB766]

SENATOR CHAMBERS: So warehouses are being broken into? [LB766]

TIM KEIGHER: I don't know that to my knowledge, but I'm assuming that... [LB766]

SENATOR CHAMBERS: Then don't tell me that. Tell me how these kegs are being stolen. You mentioned they're stacked outside. [LB766]

TIM KEIGHER: Mainly outside, is to my knowledge. Mainly the ones that are being stored outside, because of lack of space inside. [LB766]

SENATOR CHAMBERS: When I was in the army they said when you put a lock on your duffel bag, that lock is not going to keep anybody out except an honest person. In other words, if somebody wants to get in, the lock is nothing. They might take the duffel bag, too. So if people are being careless with a commodity that's going to be stolen, I don't think a law ought to be passed to protect them. If they're not providing the safeguards that they can, then I'm not favorable toward passing a law. And that's just to give you a general idea of how I feel, and maybe others who testify after you will overcome that impression that I've gotten so far. But thank you for your help, and you have been helpful. [LB766]

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TIM KEIGHER: Thank you. [LB766]

SENATOR ASHFORD: Thanks. Any other questions? Good. Thank you. [LB766]

MICHELE BANG: Good afternoon. My name is Lieutenant Michele Bang. I'm a lieutenant with the Omaha Police Department. Prior to my current assignment with major crimes, I was the sergeant of the pawn/salvage squad, and the city of Omaha already does have an ordinance that addresses many of the issues that are addressed in LB766. And we have had some success in locating suspects who are responsible for a great number of crimes that are...far in addition to just beer kegs being stolen. I looked at reports from April of 2007 to December of 2007, and these were businesses and homes, and I was looking specifically at crimes involving copper theft or brass theft that involved water meters, electric meters, electrical wiring, water pipes, and air conditioners. Air conditioners, there are 52 reports involving theft of air conditioners, and the...well, actually, I take that back. There's 101 total reports from April of 2007 to December of 2007 involving theft of air conditioners, either the entire air conditioner or the copper or metal inside the air conditioner. There's an estimated property loss of \$370,000 involving these air conditioners. Senator Cornett already addressed the issue--some of these victims were churches; actually had a church with several large commercial air conditioners were taken or dismantled for the copper inside. Fifty-one percent of these crimes happened in the northeast precinct or our area of the city north of Dodge and east of 42nd Street. This is an area of town where these are the victims that can least afford to have somebody come in, break into their home, rip the copper out, or tear up their air conditioner. The property value, and this is both business and residential, was probably about \$120,000 in property value, either damaged or the actual item taken completely. Of that, a vast majority of those were residential homes. There's only two businesses where air conditioners were stolen, and there were three others that included OHA properties and churches. Of those residential homes, in June alone there were ten primary residences--these again are the people who can least afford to replace their air conditioner--where their air conditioner was stolen or damaged. We had one gentleman who was actually identified and admitted to stealing from churches and residences to support his crack habit. He would either steal...if it was window air, he'd steal the entire air conditioner, or he would dismantle the air conditioner right there. He did receive 18 months, and part of that was because of the ordinance that the city has that allowed us to identify him. Same with copper thefts. Oftentimes these copper thefts are in areas...again, 56 percent of them were in the northeast Omaha area and involved property damage which included stealing--not even shutting off the water--and so these folks had to deal with flooded basements, etcetera. Another case--this is actually an Iowa case, but because of the ordinance in Omaha, we were able to identify a gentleman by the name of Brian Smith. He had pawned on two occasions over...it was approximately...oh, I forget. I think it was about 1,000 pounds of copper, and this was taken from GE turbines which were located in Council Bluffs; \$5 million in property damage, and he received a total of about \$2,000 for those items--\$5

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million in property damage. I'm at the red light, so I have to stop now. Do you have any questions? [LB766]

SENATOR ASHFORD: Senator Pirsch. [LB766]

SENATOR PIRSCH: I think you bring up an element here of, most of, or a large part of these crimes, do they typically involve somebody who has an addiction, methamphetamine or some strong substance that is driving this? [LB766]

MICHELE BANG: Yes. [LB766]

SENATOR PIRSCH: I appreciate that. I think you're right that there's a large correlation that I've experienced in prosecuting some of these crimes, too. [LB766]

SENATOR ASHFORD: Thank you. Thanks. [LB766]

MICHELE BANG: Okay. [LB766]

TIM TEXEL: (Exhibit 3) Senator Ashford, members of the committee, my name is Tim Texel, first name T-i-m, last name T-e-x-e-l. I'm the executive director and general counsel for the Nebraska Power Review Board, and we're the agency with primary jurisdiction over Nebraska's electric utilities. So my testimony will deal primarily with copper and nothing else. My board authorized me to testify today in support of LB766, at least the green copy. I've seen the proposed amendment, AM1601. I have some concerns about a couple of the changes in there, but my testimony deals with the seriousness of the problem with copper theft. There will be others after me that can deal with the particulars of Nebraska. And I'd like to submit a document to the record and for the committee to see, and it's a report from the U.S. Department of Energy issued in April 2007, by their Office of the Electricity Delivery and Energy Reliability, and it's called An Assessment of Copper Wire Thefts from Electric Utilities. I think it has a lot of very good information in that report dealing specifically with copper, anyway. The executive summary, I think, is excellent. It's only three paragraphs, about three-quarters of a page at the very beginning, and I wanted to hit just a few highlights from the report for you, to put into the record. The worldwide demand for copper--and this information is from the report that I'm giving you--the worldwide demand for copper has pushed up the price dramatically. The price has risen from 70 cents a pound in 2003 to \$4 a pound in mid-2006. It then leveled off and dropped a little bit, and in April 2007, when the report was issued, it was at \$3.50 a pound. So that gives you an idea of why this is perhaps a theft of opportunity, because of the lucrateness of copper right now. The report found that there is no geographic pattern in the reported thefts, but there's a strong correlation between crystal methamphetamine use and the reported metal thefts. In particular, the rural Midwest has seen an increase, they pointed out. The U.S. Department of Energy recommended countermeasures, including a waiting period for payment, not paying

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cash for the scrap metal, and waiting periods for the scrap dealers to resell the metal. So they thought that was particularly useful. That was one concern I had about the amendment, AM1601. It removes the 72-hour wait period before paying the vendor for the scrap metal. So my board believes that copper theft and other metal thefts, too, are a problem in Nebraska, they're a problem for our electric utilities, and therefore, for the ratepayers. It's likely to become a worse problem, given the statistics given in other states, and the board believes this bill would help to address that issue. And with that, I'd be glad to answer any...one thing I might add is the total value found in the report from copper thefts in all industries in the U.S. was found to be about...an estimate of \$900 million per year in the United States. So with that, I'd be glad to try to answer any questions. [LB766]

SENATOR ASHFORD: Any questions of Tim? All right, go ahead. Senator Chambers. [LB766]

SENATOR CHAMBERS: I have a copy of the amended version, but some of the pages are missing, and you may not know the answer to this question. Is there a certain poundage which must be met before these provisions of the bill kick in? [LB766]

TIM TEXEL: I don't believe so. [LB766]

SENATOR CHAMBERS: Okay. [LB766]

TIM TEXEL: I'm probably not the expert on that, but I don't believe there's a minimum threshold. [LB766]

SENATOR CHAMBERS: Okay. [LB766]

SENATOR ASHFORD: I just have one question, a couple. Where does most copper come from now? Where is it... [LB766]

TIM TEXEL: Where is it being stolen from or... [LB766]

SENATOR ASHFORD: No, where does it...you know, where does it come from? Where is it mined? [LB766]

TIM TEXEL: Where is it mined? I don't know the answer to that. [LB766]

SENATOR ASHFORD: I'm just trying to...does the U.S. have much of a copper mining industry left? I mean, I mean there is, if someone has an answer back there, so we can find out...okay. [LB766]

MICHELE BANG: A spiking of copper prices at one point because of (inaudible).

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[LB766]

SENATOR CHAMBERS: Why don't we wait (inaudible)? [LB766]

SENATOR ASHFORD: Okay, we'll wait. Well, I was just interested in seeing if you knew the answer to that. [LB766]

TIM TEXEL: I don't where. I know the report said that the mining interests couldn't keep up with the increased demand,... [LB766]

SENATOR ASHFORD: Right. [LB766]

TIM TEXEL: ...but it didn't really go into where it was mined at. [LB766]

SENATOR ASHFORD: But other countries are now engaged in manufacturing and mining copper,... [LB766]

TIM TEXEL: That's my understanding. [LB766]

SENATOR ASHFORD: ...China being a major... [LB766]

TIM TEXEL: Well, China and the U.S. were the primary users, and the demand...and the reason for a lot of the demand is China and the U.S. [LB766]

SENATOR ASHFORD: So it's price, really, that's motivating this market, this sort of black market. [LB766]

TIM TEXEL: Absolutely. It's attractive because it's available. The substations were the main problem for electric utilities, because they're not guarded, typically. They have a fence they can get through, and they're... [LB766]

SENATOR ASHFORD: Okay. And so when copper prices were much lower, the incentive to take the copper was much less. [LB766]

TIM TEXEL: There wasn't a good risk reward, but now if they can steal that and get \$4 a pound or \$3.50, it gives...particularly the homeless and the meth dealers, the report said, are the primary problems. It gives them quick cash for their needs. [LB766]

SENATOR ASHFORD: Okay, just interested in that. Thank you, Tim, for your... [LB766]

SENATOR CHAMBERS: I have... [LB766]

SENATOR ASHFORD: Yes, Senator Chambers. [LB766]

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SENATOR CHAMBERS: You may not know the answer. What percentage of a penny is copper, if you know? Or is the entire penny? [LB766]

TIM TEXEL: It's very little. I understand it's mostly zinc now. [LB766]

SENATOR CHAMBERS: Okay. I thought I had seen that, because it would seem like maybe five pennies would be worth more than a nickel. (Laughter) [LB766]

TIM TEXEL: Well, I...I'm a coin collector, and I remember the mint said it costs more than a cent to produce them, and so they quit producing them as all copper, and they're mostly zinc. I think it's probably like 90-95 percent zinc and then a copper coating. [LB766]

SENATOR ASHFORD: It's good to know. Thanks. Thanks, Tim. Thank you for that. Great. [LB766]

SHELLEY SAHLING-ZART: Good afternoon, Senator Ashford, members of the Judiciary Committee. For the record, my name is Shelley, S-h-e-l-l-e-y, Sahling-Zart, S-a-h-l-i-n-g-Z-a-r-t. I'm vice-president and assistant counsel for Lincoln Electric System here in Lincoln, and today I'm representing the Nebraska Power Association, which represents all of the electric utilities in the state of Nebraska. We're here supporting LB766, and we thank Senator Cornett and Senator Fulton for their interest in this piece of legislation. We do have some concerns about the amendment, as well, which I'll address in a minute. Our primary concern is on copper. Copper thefts are becoming increasingly prevalent in the electric utility industry across the country, and I'm here to tell you that this bill, for us, is more about deterrence than it is punishment. What we would like to do is deter people from this kind of activity, the primary reason being somebody is going to get killed. This is about public health and safety, and I'm here to tell you, that's a really very real threat. There was an article in the Omaha paper earlier this week about a forklift that sustained about \$25,000 in damage from somebody that tried to get a spool of copper over a fence, and they didn't know how to operate the forklift. Somebody is going to get killed. I know OPPD has had a couple of instances where...one in which somebody took a chain saw to a live distribution wire. That's a recipe for disaster. They've had instances where they've found smoking, melting shoes but no body. They've had a substation that had charred equipment and charred clothing, but no body. It's only a matter of time before we find a body in one of these situations. We have situations here in Lincoln where they are now ripping off the ground wire that runs up the power poles. That ground wire is obviously there to prevent people from being electrocuted. Now these activities are putting the electric utility workers at risk, should they not know that those ground wires have been removed. This is a serious public health and safety problem. Is this going to eliminate everything? No, it probably is not. Will it deter it? I hope so. One of our concerns with regard to the amendment is, as

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Mr. Texel mentioned, the payment mechanism. We think that a delay in the automatic payment, a quick payment...if there's some delay in that, we think that serves as a tremendous deterrent to people getting quick cash. We think that's the primary motivator for a lot of this activity, and we think that would help deter some of it. Are we sustaining property damage? Yes, we are. That's certainly a concern, and moreover than that, reliability of the electric grid is a concern. People are going into substations, they're trying to remove it from electric property. That will create really widespread outages. I know NPPD had one that required them to basically bring the entire small community down in order to repair the substation. Those are economic losses for the businesses in those communities. The other concern with the amendment is we really think that the photos that include distinguishing markings are important. It could be that one of the mechanisms we start to look at is ways to mark our wires and things so that they are identifiable. In addition, if you've got a spool that comes in and you've got a big paint mark over a spool, that might indicate it belonged to somebody. It looks like I'm out of time, so I... [LB766]

SENATOR ASHFORD: No, no. You have a sum-up time. [LB766]

SHELLEY SAHLING-ZART: And we like the provision to allow local ordinances to be more strict, but we really think that there needs to be a statewide provision put in place so that we've got some consistency, and we don't just have people stealing the copper, say, in Lincoln and going out to sell it in Grand Island. We'd like to see it throughout the state. I'd be happy to answer any questions. [LB766]

SENATOR ASHFORD: Yes, Senator Chambers. [LB766]

SENATOR CHAMBERS: Would somebody steal a spool? Not that they wouldn't want to, but would somebody do that? [LB766]

SHELLEY SAHLING-ZART: Well, a lot of those are...our large spools of equipment are largely in very secure areas, but yeah, I think there are situations where they would certainly try. I've been amazed at the situations and things that people will go to lengths to do to get this copper. [LB766]

SENATOR CHAMBERS: Okay, my next question: Would they unwind it and jumble it up, or... [LB766]

SHELLEY SAHLING-ZART: Typically. [LB766]

SENATOR CHAMBERS: ...attempt to sell it on the spool? [LB766]

SHELLEY SAHLING-ZART: Typically, if you're a smart criminal, you would unwind it, but... [LB766]

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SENATOR CHAMBERS: Might there be people who would purchase it on the spool?
[LB766]

SHELLEY SAHLING-ZART: It's possible. It's possible. [LB766]

SENATOR CHAMBERS: So there might be people in the business, something like fences who masquerade as pawnbrokers, who are known to be available for purchasing this copper? [LB766]

SHELLEY SAHLING-ZART: I can't say that's not possible, and that's why I say the distinguishing markings. If you've got a spool that had somebody's logo...like we have our logo painted on all of our spools. If you've got a logo that you've taken a photo of that clearly has been...something has been painted over, that to me is a clear indication that that's stolen property, or at least ought to raise a red flag. [LB766]

SENATOR CHAMBERS: And what do those who purchase the copper do with it, if you know? [LB766]

SHELLEY SAHLING-ZART: I don't know. [LB766]

SENATOR CHAMBERS: Okay, thank you. [LB766]

SENATOR ASHFORD: Shelley, and in this bill we are...the deterrence is what now?
[LB766]

SHELLEY SAHLING-ZART : Well, from our standpoint I think the deterrence is the inability to get quick cash. [LB766]

SENATOR ASHFORD: So that's the deterrent factor and the line of defense are the businesses that are in the recycling business? [LB766]

SHELLEY SAHLING-ZART: Yes. I mean, the... [LB766]

SENATOR ASHFORD: I mean, we're asking them to do these things, and I'm not suggesting that they shouldn't, but if they...if there is even a mistake made here, somehow that that is going to be a deterrent if we prosecute them for a Misdemeanor II.
[LB766]

SHELLEY SAHLING-ZART: Well, I think it goes to what Senator Cornett said in her opening. You know, it has to do with distinguishing whether it was willful or whether it was an oversight. [LB766]

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SENATOR ASHFORD: Okay. [LB766]

SHELLEY SAHLING-ZART: Some of the other deterrents in the bill are the fingerprinting. To the extent you have to identify yourself when you go to rid yourself of this scrap metal, that's also an increasing deterrent, because we can find out who you are. I mean, that certainly helps. [LB766]

SENATOR ASHFORD: But we are asking another business, in effect, to be the police here. We're asking them to do quite a bit more. [LB766]

SHELLEY SAHLING-ZART: We're asking them to help decrease the stolen property market. [LB766]

SENATOR ASHFORD: And I'm not saying it's bad policy, but we are asking them... [LB766]

SHELLEY SAHLING-ZART: Yeah. We are asking them to. [LB766]

SENATOR ASHFORD: ...to do an awful lot more than what they might be doing now. [LB766]

SHELLEY SAHLING-ZART: Agreed. [LB766]

SENATOR ASHFORD: Maybe they are doing it now, but we are putting it into statute. And whenever we do...and I'm not...again, this may be great public policy, but we are asking another...you're in business. You're asking another business to, in effect, be the first line of defense for us, but not saying that's bad or good. I'm just... [LB766]

SHELLEY SAHLING-ZART: That business is also helping to pay for the losses we sustain. [LB766]

SENATOR ASHFORD: Well, they're a business and they are in business. (Laugh) You know, it's a...okay. Senator Pirsch. [LB766]

SENATOR PIRSCH: Just kind of out of curiosity, do you know how many volts were running through that power station that you related in which the person took an axe to and chopped out the live wire? [LB766]

SHELLEY SAHLING-ZART: It was a distribution line, so relatively low voltage, I'm guessing. I asked that question. But I'm guessing something along the lines of maybe 12,000 volts; you know, serious enough it could do you damage. If it's a transmission line, if somebody would happen to do that with a higher voltage, not knowing whether it's a distribution or transmission line, they won't last long, and those pictures are not

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pretty pictures. [LB766]

SENATOR PIRSCH: Is that the one where the voltage was such that it melted the individual's shoes... [LB766]

SHELLEY SAHLING-ZART: Yes. [LB766]

SENATOR PIRSCH: ...to the floor of the center there? Very good, thanks. [LB766]

SENATOR ASHFORD: Thanks, Shelley. [LB766]

SHELLEY SAHLING-ZART: Thank you. [LB766]

SENATOR ASHFORD: Any other...how many other proponents do we have? Chief. The chief is here. Okay. [LB766]

BRUCE KEVIL: Chairman Ashford, members of the committee, I'm Bruce Kevil, K-e-v-i-l. I represent the Nebraska State Home Builders Association, and I'll keep it very short. We are supportive of this bill, and that concludes my testimony. [LB766]

SENATOR ASHFORD: Well, thank you. Any questions? Okay, great. Thank you. Chief. Good to see you again. [LB766]

TOM CASADY: Good to see you. Senators, I'm Tom Casady, the police chief here in Lincoln, and I'll be testifying on behalf of the city of Lincoln. We support LB766 because we think it's going to help reduce theft of high-value metals like copper and aluminum and brass by constricting the market for these kinds of goods when they're stolen. It's a requirement of identification for both the seller and the materials, including photo ID and a fingerprint, and is very positive in our mind. It's going to help us in investigations, but I think more importantly it will help to deter people who would otherwise be stealing these kinds of products, because they'll know that the market for them is much more risky. You've probably heard about the losses from these thefts and from the property damage that's associated with them, but it's very common for us, the Lincoln Police Department, to investigate cases where thousands of dollars of damage are done for a few dollars' worth of aluminum from the core of a commercial air-conditioning unit or a new house under construction completely stripped of its copper plumbing. So it's not just the theft loss; it's that huge amount of damage that concerns us a great deal, and all of that stolen metal has to go through commercial buyers--virtually all of it. There simply isn't a market on e-Bay for these kinds of goods, and no one is selling them out of their trunk in a parking lot. So we think it's got some really good points. In fact, the city of Lincoln has a municipal ordinance that bears some striking similarities to the provisions of LB766, and I'd like to tell you about that ordinance and our experience with it. One of the unique features in our ordinance is that we've made it unlawful when we adopted this, for

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anyone who has been convicted of a theft-related offense within the past five years to sell high-value metals. We essentially imported that from another ordinance. It's our pawn shop ordinance. We adopted it into that ordinance in 2003, and it's had some success. We also have a requirement that high-value metals be held by the buyer for 72 hours before disposal, with exceptions for certain kinds of sellers. But other than that we require basically the same kinds of things that are required by LB766. The process can be simplified somewhat under our municipal ordinance for people who are willing to obtain a five-dollar salvage permit per year from the police department. Basically, if someone applies for that we do the work up front, to make sure that they're eligible and don't have a criminal history with theft in it. And in exchange for that, they get the short line, the seller. They don't have as much paperwork to do, and the seller...or the buyer, rather, is relieved from the obligation to hold the material for 72 hours, for permit holders, and we have 389 of those, as of this morning. And there's also an exemption for industry and manufacturing businesses, as well, in our ordinance. And it was adopted and became effective on December 1, 2006, and we had an immediate drop-off in metal thefts in our city. They fell from 169 cases in 2006 to 128 in 2007. That's a 24 percent decrease. And the dollar loss fell, too, even more dramatically, from about \$170,000 in 2006 to \$115,000 in 2007, a decline of about a third. And I think you could expect similar results if LB766 were to pass, and I'd be happy to answer any questions. [LB766]

SENATOR ASHFORD: Senator Chambers. [LB766]

SENATOR CHAMBERS: Chief, the issue of proof is separate from everything that is being discussed here, but...and I don't have all the pages to the proposed amendment. Is the mere possession of a certain amount of copper or whatever the metal is, does that create a presumption that it's stolen or that the person came by it illegally? [LB766]

TOM CASADY: No, Senator, it wouldn't. Unless you had some evidence to establish probable cause that it was stolen material, there wouldn't be such a presumption. [LB766]

SENATOR CHAMBERS: So let's say that...and we do have all the pages now, but I don't want to go through that while you're here, because you might can answer the question. If I bring in a relatively large amount of copper--it can be wire or anything else--and there is the 72-hour period between when I drop it off and when I get the money, let's say that...well, how would it be established that that copper was illegally obtained? What is going to be done to establish that? [LB766]

TOM CASADY: We make quick a few arrests for theft of high-value metals, and normally those arrests result when we've taken a report of the stolen goods and then we find it at our local scrap dealer, Alter Metal. We actually find it there, and that's how those cases are made. [LB766]

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SENATOR CHAMBERS: Okay, so there is something in addition to somebody just appearing with metal. You may have had a report of a theft, and then you put two and two together and come up with six, eight, or maybe four. [LB766]

TOM CASADY: That's correct. [LB766]

SENATOR CHAMBERS: Okay. [LB766]

TOM CASADY: You'd be amazed at the line of vehicles on a Saturday morning, trying to get into Alter to drop off all sorts of things. [LB766]

SENATOR CHAMBERS: Okay. [LB766]

TOM CASADY: It could be a very lengthy wait. They do so much business down there, so you certainly can't presume that someone with a load of irrigation pipe has stolen irrigation pipe, but we like to be able to match things up. And we've had a commercial establishment like Kopeli Coffee downtown stripped of all the copper plumbing. We really like to be able to go down and find out who has been here selling copper and selling the same kind and quantity. [LB766]

SENATOR CHAMBERS: Okay. Thank you. [LB766]

SENATOR ASHFORD: Chief, just so I put this together in my mind, if we have a photograph of the...if you have fingerprints and a photograph, and you find the copper, then theoretically you can find the perpetrator. That's the idea, correct? [LB766]

TOM CASADY: Yeah, the idea is that you can find the perpetrator. And you know, with a photograph rather than the actual evidence itself, it's always going to be a little bit dicey for criminal prosecution. But the way I would look at this, and the reason I think our ordinance has been effective, is more of the deterrence aspect of it. So it's keeping people who are stealing these things from thinking that this is an easy mark. [LB766]

SENATOR ASHFORD: Do you require the same sort of thing? You require fingerprints and photographs and... [LB766]

TOM CASADY: No photograph of the property, but the person has to be identified with photo ID, have to record all the information about them and obtain the fingerprint. So the one thing that LB766 would add to what we're already doing is a photograph of the material itself. [LB766]

SENATOR ASHFORD: Somebody brings that in and you hold it for 72 hours or whatever and then sell it--the recycler sells it--it's sold. The money comes back to the

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recycler from whomever they sold it to, and that transaction is complete. There's nothing in here that would impact that transaction if it's later determined to be stolen? [LB766]

TOM CASADY: No. [LB766]

SENATOR ASHFORD: So it would have to be found out fairly quickly, then, in order to... [LB766]

TOM CASADY: You have to catch it real quickly, and as I say, I think the chief value from my standpoint of enacting this, would be...the same things have occurred in Lincoln, thieves that are stealing these properties would be deterred. I think it would help us in Lincoln too, by the way, because I have no doubt that some of the people that continue to steal these metals in Lincoln are taking them elsewhere here in our state to sell them, so I think it has a statewide effect, even though we have a local ordinance here. [LB766]

SENATOR ASHFORD: I got you. Okay. Thanks, Chief. [LB766]

TOM CASADY: Thank you. [LB766]

SENATOR ASHFORD: I believe that is...any other proponents snuck in? Okay, how about any opponents? Do we have...okay. Has everybody had a chance to sign on the sheet back there? Great. [LB766]

ROBERT ELLIS: (Exhibit 5) Good afternoon, Chairman, senators. My name is Bob Ellis. I am vice-president and general counsel for Alter Trading Corporation, based in St. Louis, Missouri. We have four facilities located here in the state of Nebraska--one in Lincoln, one in Grand Island, one in Norfolk, and a smaller buying station in Omaha. Our company was founded in 1898 in Davenport, Iowa, and we currently have 30 scrap facilities located in seven states, mostly in the upper Midwest, along with some newer yards. We've opening five down in Alabama and Mississippi, down in the South. We have 1,000 employees currently, and our company has revenue in the hundreds of millions of dollars a year. So I just wanted to make that point, not to brag or try and appear to be boastful, but as you can see from the brochures that our local manager, Steve Mulinix, just handed out, just to show you that we are a legitimate business. We aren't the Mom and Pop sometimes that you think about when you think about a "junk yard," that we are a sophisticated, legitimate business, with worldwide scope, as are many of the other people here who are going to speak today. We do, you know, have many industrial accounts--John Deere, Alcoa, Anheuser-Busch, who spoke earlier today, all of the major steel companies--Keystone, Nucor, IPSCO Steel. We're among their major supplier, and so we are not like a pawn shop that you're heard referred to before. We are, you know, legitimate businesses with substantial investments in facilities and equipment. Our company alone probably has \$50 million invested in the

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state of Nebraska in our four facilities and all of our equipment and employees and buildings. One of the things I wanted to note today in addition to that, is that, you know, we're the original recyclers. We are not, you know, a pawn shop, like I said, and we want to be part of the solution here and not be part of the problem. We are not the thieves here. We are doing everything we can, and we have done here in the city of Lincoln, where we operate, as well as everywhere else we operate, to cooperate and communicate fully with all the law enforcement personnel. I think everywhere that we do business, and many of our other industry people who are going to speak today, the last thing in the world we want to do is buy stolen property, and we do everything we can internally to prevent that, as well. I guess one of the key things that we talked about industrywise, and that was mentioned earlier, had to do with cooperation, communication with some of the stakeholders here. We would like the opportunity to meet further with some of them, to further address their concerns. As far as the Nebraska bill itself goes here, I'd like to thank Senator Cornett and Senator Fulton and their staffs. They have been very open to talk with us about some of the problems we saw, practically speaking, in the original bill. And some of the amendments that were made to it today that were handed out to you reflect that, and we're willing and able and want to work further with the Senator and with all of you to make sure that there's a bill that's in place that helps solve this problem without putting an undue burden on our legitimate business. With respect to the bill in particulars, I think that the amendment is better, and certainly there are a number of changes that were made that make it more workable for us, but there are a couple of points that do not work, and as a practical matter, really would hurt our business and I don't think would help in solving the problem. First off, one of them that was referred to had to do with the photographs of specific loads and scrap metal. Just for clarification purposes, our yard here in Lincoln probably does several thousand transactions a week--several hundred trucks or cars or peddlers or industrial accounts like the John Deeres, the Nucors, the Kawasakis. We have trucks coming and going all the time, and so as a practical matter, some of the requirements that are still in the bill would cause major problems, including the camera...the photo issue. One of the...we just need to kind of, I think, tweak that more than anything. We at some of our facilities, in most of our facilities, have cameras in place, but they are more of a continuous camera that films everything that comes across the scale and the people that are selling to us, which is something that is pretty workable. But that still needs to be fleshed out, because as far as taking individual pictures of the thousands and thousands of transactions that we have every week and every month, and trying to tie them or somehow have that photo be specifically tied to the paperwork that's filled out and the ID and the fingerprint and everything, would be an unbelievable burden on our small staff of 15 or 20 employees. It would require us to go hire several more employees just to try and handle some of that. And so there's things that we can work on as far as what kind of photographs could be taken or camera can be used, but it's something that we still need to flesh out and work further on. The biggest issue that is, I think, a problem for us has to do with the 72-hour hold period that is still in the bill, where it requires us to hold all metals of the certain kinds, as defined in

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the bill, for a 72-hour period. And that is very expensive to us, it's very impractical, and it's really not likely to assist much more in apprehending thieves or deterring than what we've already got in the bill here. Like I said, we have hundreds and hundreds of transactions a day and a week, and we simply don't have the room in our facilities. If you could just imagine the tons and tons and millions of pounds that come in on a weekly basis, we don't have the ability nor the room to store, 24 hours here, 48 hours here, 72 hours here. It's just, as a practical matter, it really is very difficult to do and would, again, require us to hire more people to try and comply with that. It also disrupts the manufacturing flow. All the metals that need to get out to the Nucors, the John Deeres, the Anheuser-Busches, it causes a severe disruption of that. And also, there are huge shifts in the metals markets on a daily basis, and so having us have to hold things for 72 hours would cause huge shifts in the markets. We have traders worldwide and the prices shift every day. And so it would greatly disrupt our inventory turns as well as the amount of the money we make. If we have to buy something in one market and the price has shifted a dollar, say, in three days, on at times hundreds and thousands of pounds, we just lost a lot of money. [LB766]

SENATOR ASHFORD: Robert, I'm going to ask you to... [LB766]

ROBERT ELLIS: Sure. Any questions that I can answer, I would be happy to, as well. [LB766]

SENATOR ASHFORD: Any questions of Robert? [LB766]

ROBERT ELLIS: Sure, Senator. [LB766]

SENATOR PIRSCH: Well, I appreciate your comments here today about some of...were there other problems that you wanted to mention that you just...and just sum up, that you didn't get a chance to, because of the time? [LB766]

SENATOR ASHFORD: Because I just cut him off? (Laughter) [LB766]

ROBERT ELLIS: Sure, sure. Yeah. That's okay, No,... [LB766]

SENATOR PIRSCH: I mean, if you could just list what... [LB766]

ROBERT ELLIS: I'm vice-president and general counsel. I've been before supreme courts before, so I know the red lights--shut up. [LB766]

SENATOR PIRSCH: Yeah. I mean, if you just want to, without giving much explanation, just list your other concerns, that might be helpful. [LB766]

ROBERT ELLIS: Sure. I think...I guess just on the 72-hour thing, just one more point on

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that, is that we want to help catch thieves, and we believe that the deterrent factor is there if, you know...I don't know about you, but the deterrent factor would certainly be there for me if you're taking fingerprints, photos, IDs, you know, Social Security numbers, paying by check or whatever, that there's a trail. There's plenty of deterrents there and also the ability to help prosecute later...that the metals...and just a further point. In Lincoln we've worked closely with the city of Lincoln and the city of Omaha. The police department is great. We want to work with them even further on all of this. But of the cases that we...I know from our local facility manager, I think he said there were five to ten cases in the last year in Lincoln alone where we helped them catch thieves. Not one of those five to ten had to do with the metal being held up for 72 hours. It was all because of communication between whoever it was stolen from to the police department to us to be on the lookout for it as it came in, and our manager helped catch them. So that was that. And the only other thing, I guess, would be...two other things. The carve out on the more stringent rules in cities, I don't know if that works in every other state. I've worked on these in three or four other states and about five other cities, and if you don't have one consistent set of rules across a state, all of a sudden you're hitting and missing which...in our case we have four facilities. And all of a sudden you have to put cameras in one and not cameras in the other. You have to hire people in one, not in the other. So one flat, consistent, I think, state law would be beneficial. And then the last point--and then I'll shut up--had to do with...I think there was some indication from, I think, one of the utility companies, who we also are happy to work with on all of this stuff, saying that the 72-hour pay period, which has been amended out--which I think was the right thing to do--should for some reason go back in, and we would be vehemently opposed to that. That would punish the 99.5 percent of our legitimate business to catch a couple of people, and again, I don't think that it would really assist, over and above what we've already got in the bill. [LB766]

SENATOR PIRSCH: Appreciate that. When it comes to...and when you say 72-hour delay in the payment to the person who's bringing in the recycling... [LB766]

ROBERT ELLIS: Right. That was removed in the amendment, and I haven't seen that in any other state where we do business, out of seven states. [LB766]

SENATOR PIRSCH: Oh, that hasn't been part of it. [LB766]

ROBERT ELLIS: Never even mentioned in the bill, no. [LB766]

SENATOR PIRSCH: I guess when it comes to the fact that you've got individuals, typically methamphetamine is the driving force, they're not thinking straight, and when you're talking about individuals who are willing to go the lengths that they're taking hacksaws and knocking out copper from live electrical wires, probably not individuals who may consider as the threats of prosecution, based upon leaving a fingerprint, or do you think that that's, for those type of individuals, a daunting type of... [LB766]

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ROBERT ELLIS: I think it very much is, yeah. [LB766]

SENATOR PIRSCH: Okay. How would the 72-hour delay in payment, or would that negatively affect our industry? [LB766]

ROBERT ELLIS: It would cause people to go out of the state, I guarantee that, because there's no...again, like I said--Iowa, Minnesota, Wisconsin, Illinois, Missouri where we do business, there isn't one bill or local ordinance that has that, and it's just, like I said, the 99-point whatever percent of our...it would hurt our customers. It wouldn't hurt us. I mean, I'd be happy...you know, like the utility company, I'd be happy not to pay my bill for, you know, another 45 days or whatever. But you know, there are people who are legitimate business people who are bringing the scrap metal who, you know, live day to day. And so, you know, they've got other commitments, they've got employees and payrolls to make. If all of a sudden the flow of payment is somehow delayed, I don't know where that really gets you anyway, as far as prosecuting people. If you've got records of checks or debit cards or wires and everything else, you're going to have plenty of information to prosecute somebody, and you'll have a cancelled check or our records of who we paid, and so... [LB766]

SENATOR PIRSCH: So the argument is that then the state will be at a competitive disadvantage, that those are the types of individuals who will take them to Kansas or Iowa or... [LB766]

ROBERT ELLIS: Or another scrap yard in Council Bluffs. I mean, you know, I think there would be plenty that would go right across the river to our largest facility, which is in Council Bluffs, Iowa, and we don't want to do that. [LB766]

SENATOR PIRSCH: Okay. Very good. Thank you. [LB766]

ROBERT ELLIS: And the only other...the final, final point, and then I will be quiet, has to do with...there was a lot of talk here about why this has come up now, and it's of course because of the rise in metal prices, copper prices worldwide, because of the demand in China, where we ship a lot. And the real way that this is going to, you know, be addressed will be when the price goes back down. I certainly hope that doesn't happen for awhile for our business, but the markets fluctuate up and down, and the last thing we want to do is enact a bill that's overly restrictive, that binds the state and all of us in the future. Because if the price of scrap dropped...of copper, for example, drops from \$3.50 a pound back to \$1.50 a pound in a year or two, the problem would have gone away and we'll have this overly restrictive bill in place. So thank you very much for your time. [LB766]

SENATOR ASHFORD: Thanks, Robert. We've been at this an hour, and it's a great bill,

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Senator Cornett, but we have four others after this. So how many opponents do we have? Quite a few. I'm going to ask if they are part of the same group that maybe we try not to be repetitious. And these are important points that are being made, and we want to hear them. But if there's a way of streamlining this testimony so that we can try to get through it and get on with the other four bills. We have five bills, actually, more bills. So let's try to get wrapped up in the next 20 to 25 minutes, if we could. [LB766]

SAM JACOBS: Good afternoon. Same Jacobs, Columbus Metal in Columbus. Senator Ashford and the committee, we thank you for your time. It almost feels like I'm in front of my wife here, for three minutes, but we'll get this quick. (Laugh) Yeah, it's tough. It's tough. We're going to...I'm going to switch to the other side, which you already asked question. We need to get this ahead. Just us sitting back here right now and listening to the brewers and everybody else come up here, we've kind of figured out an answer for their solution--they just raise the deposit to \$200, and they wouldn't lose any money. Senator Chambers had a great idea. Just because you lock your duffel bag doesn't mean it's going to be secured, and that is our biggest issue we have here, is not only identifying the material. Power companies, everybody we buy from, and we buy from all across Nebraska here. When it gets stolen, it has changed its form by the time it gets to any scrap processor. Any good thief, especially the drug addicts, they've all learned the hard way. They've figured out how to change it so when we get it, it is not the same form. We can tag and hold, we can hold it for 72 hours, we can do that. The problem the courts have, and we've been down this road, we work with our law enforcement neck and neck--we just solved one the other day, very simple, quickly, caught them in the act. The problem is the identity of it. When we get to the courts, we take the fingerprints, we can do everything that Senator Cornett...which is a great start, but on the ending part of it, we have a lot more work to do, and we are asking to hold up on this a little bit longer, until we can get some more teeth into this and work with everybody. They did talk to...this was brought to my attention only less than a week and a half ago. So they talked to Lincoln people, they talked to Omaha, but they didn't talk to us scrap processors in the state of Nebraska, which are just as large or bigger than some of the local people you have here today. But the identity of it is very hard to prove once it comes to your facility, because it has changed forms. If we can figure out how to do that, the power companies...everybody that's testified today on their side has really wanted to put all of the emphasis on us as the scrap processor, the buyer. They have not taken a chance to lock their gates. They haven't taken the time to be able to mark their material, find out where they have it, take their own inventory what's going on. And it's very difficult to tell us that 99.5 percent of our customers that come today are legal people, and we're going to commit to everybody else that's thinking we're going to change this because we don't believe you. That is very hard to do. [LB766]

SENATOR ASHFORD: Okay. Any questions? [LB766]

SAM JACOBS: Any questions? [LB766]

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SENATOR ASHFORD: Good. Thanks. [LB766]

SAM JACOBS: Thank you. [LB766]

TODD HOPPE: Good afternoon. My name is Todd Hoppe. I am here on behalf of two different things. I'm a deputy with the Saunders County Sheriff's Office, and I also run a scrap metal recycling place in Fremont, Nebraska. To hit on points that they didn't, I don't believe the 72 hold is going to help in the identifying of a criminal. We have four instances that I had the opportunity to take care of this year in '07. We were able to make convictions solely on one piece of the pie that we helped them. Law enforcement had to take care of the other pieces of the pie. That's by identifying the suspect, what materials were taken, were they there, everything else. Then we had bought material. It linked it up because we had positive ID that on such-and-such a day they were there, they sold us the stuff, and helping them. And having...paying by a check would not help the prosecution in any way, the identifying. All that does is...in my instance would cost me more money for my office staff. You know, there's a financial burden there. So that's all I have. I'll keep it short. [LB766]

SENATOR ASHFORD: Thanks, Scott. Any questions of Scott? [LB766]

SENATOR PIRSCH: Just briefly, is the purpose of the 72-hour hold to help the prosecution, or is it to deter those individuals from stealing who are meth addicted, who don't like waiting that long, they need the money today because their addictions are calling them? [LB766]

TODD HOPPE: Well, you know, there's been a lot of talk of the meth addiction. I don't believe that anybody can say unilaterally across here that my door trade, instead of my commercial accounts, that that's a high percentage of methamphetamine users, that that's a...there's no statistics to back that up,... [LB766]

SENATOR PIRSCH: I see. [LB766]

TODD HOPPE: ...and to label it that way...I have door-to-door trade. They're trying to make extra dollars, clean up their yard. And to label it that way, I think that would be a little out of hand. [LB766]

SENATOR PIRSCH: Okay, so your experiences lead you to believe that meth is not, or drugs are not a big driver of the illegal...the thefts that are leading to these metal recyclings, that it is just your common thief who is behind this, that there might not be a strong link with... [LB766]

TODD HOPPE: I have no basis to say yes, and no basis to say no. There's no stats on

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any of that, as far as people turning in material for a scrap recycler. I would...it would be a safe assumption to say there are some, but are we...how are we trying to do this? This law was introduced. We need to do something--that's correct. But I don't believe we've taken enough time to put enough heads together and draft the bill so it doesn't put a financial burden on us small businessmen like myself, and help the police do their job. [LB766]

SENATOR PIRSCH: Sure. Right, and that's a valid argument. I guess what I'm saying is, it would be the separate issue of a 72-hour hold, as I see it, would only have that...that requirement would only have value if--I don't think for the purpose of prosecution--but only if you were convinced that somehow the majority of these thefts were being driven by drug and alcohol...drug addictions that would...that the 72 hours would somehow prevent or deter an individual from doing that, this activity then, because their addictions won't wait 72 hours. So if that's only...it's relevant, I think, that if that is not a large percentage of your recycling cases, then that really won't help to alleviate that purported problem, that...is that correct? [LB766]

TODD HOPPE: I would agree, but I guess I would ask you: If somebody was on methamphetamines and they were stealing something, are you...would somebody assume that they're only going to steal one thing one day, and that they'd be afraid to come back that third day to receive payment? If they're on methamphetamines, wouldn't they have a consistent stealing pattern? And they'd just be three days behind in their pay as they go along stealing. So would that legitimacy have anything in a bill? I mean, you just...you know, my contracts a lot of times, 30-day pay. I'm sitting there with no pay when I start up, but over time, I get...today I get paid for 30 days ago, so I'm good to go as I go along. I would think they would be able to wait three days. The only person that would hinder is me,... [LB766]

SENATOR PIRSCH: Sure. [LB766]

TODD HOPPE: ...because I have to have clerical staff to send out payments in check form, because checks cost more than me having them sign and print their name and receive the cash, because then I can be down to one office personnel who also weighs the loads and brings in...and has to count her money down, because I have to have control of that. With checks, I have more checks and balances that has to be there, so I have a larger bill when it comes to paying my office staff. And when I have peddler trade, not only do I pay them cash, they leave there, they may use that to buy something downtown, so it's just continuing the cycle in our community. I mean, we're a huge facet in our community, and you know, community policing in a scrap yard you don't find. And I can speak highly of every man behind me in this industry, not the Mom and Pops, and that's how we're doing it. [LB766]

SENATOR PIRSCH: Very good. I appreciate that answer and your insight. [LB766]

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SENATOR ASHFORD: Todd, thank you. [LB766]

TODD HOPPE: Thank you. [LB766]

E.J. WEBBER: I'm E.J. Webber. I'm with Triangle Metals in Kearney, Nebraska. Mr. Chairman, members of the committee, I appreciate the moment of time here. I'd like to be a little more specific in some of the things, just a couple of items. First of all, the beer kegs seem to be a big deal in the bill, and it's stamped right on there, "The Property of Anheuser-Busch," "Property of Miller Brewing," property of whoever. We don't buy them. I mean, it's obviously stolen property. We just, no, we're not interested; we can't buy that stuff. That's one thing. The other thing that I'd like to mention is that--Mr. Jacobs alluded to this--this material changes form before we get it. For example, the officer from Omaha talked about the stolen air conditioners. Well, nobody brings me a stolen air conditioner. They may have some copper, and they may have the radiator out of the air conditioner, but how do you know that that came out of an air conditioner. I don't know, and I don't know how you identify that material as coming out of a particular air conditioner. So I'm a little...once again I get back to, I'm a little leery of the 72-hour deal because of that. But as a small business, I want to explain this 72-hour thing as I see it. Okay, I have to hold everything for 72 hours. If I have 35 customers that day, many of those customers are going to have a half a dozen items--a little bit of copper, a little bit of stainless, a little bit of aluminum, a little bit of this--whatever. So I've got to put this all in a little pile and I've got to keep it all separate, because that was a customer, so I've got 35 different piles of different materials, and that's one day. So then I've got three days' worth of this stacked up in my warehouse, and I'm like, okay. We've got to have room to work, and I don't want to have to set it outside, because then they'd just become picking grounds for the thieves. So that's just the one thing. I would like to see things be a little more proactive. I'd like to have a little more time, I guess, to work with Senator Cornett on this. But you know, this \$3,000 loss at Southern Power? I never heard about that--we're in Kearney. Can't there be a network set up that the police notify us or something right away when there's a theft? There's probably a dozen yards in the state. Just notify us. I mean, we'll watch for it. I didn't even know about this, right down the road from me. Thank you. Any questions? [LB766]

SENATOR ASHFORD: I think not. Thanks, Mr. Webber. [LB766]

CHUCK ROSENBERG: Senator and committee, thank you for hearing me. My name is Chuck Rosenberg, R-o-s-e-n-b-e-r-g. I'm from Hastings, Nebraska. I represent a Ma and Pa organization that has been in business for 94 years, City Iron & Metal Company, and of that, I've worked there for 32 years. I will...the points that have been made I support vehemently. With the 72-hour rule, it makes it very difficult for a small business to operate on that. I do want to reiterate some new things. We need a better way to be in communication with law enforcement. Oftentimes I'm called about thefts, and the first

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thing the officer will say, well, who else buys metal in your area? They could do a better job in this day and age of electronics, with maybe an Internet type of Web site that we could take a look at and make sure we're not buying stolen goods. And I can assure you, we do not. My reputation is impeccable in the community and I've helped make many arrests and convictions, and the best way to do it is during the purchase of the material, not after the material has been received. And I think most county attorneys will agree with me on that. If this bill passes it will increase our costs dramatically. It will hinder law-abiding citizens. It will slow the recycling efforts that we've created in our community, and it will create a huge loss of business from Kansas. Hastings draws tremendously on northern Kansas, and a lot of material comes up from bona fide dealers who then in turn spend that money in our community many times over. They would simply no longer bring it there. It would be a big loss of business for us. So again, thank you for your time. [LB766]

SENATOR ASHFORD: Thanks, Mr. Rosenberg. Let me ask one just quick, because you brought up--just very quickly, because we're taking...I don't want to take someone else's time, but do you get a list from law enforcement of stolen materials ever? [LB766]

CHUCK ROSENBERG: No, we do not, and when they mentioned the copper loss in Kearney, we did not get it. We don't buy utility wire from anyone that isn't in utility. [LB766]

SENATOR ASHFORD: Okay, but I mean there's not a process in your industry. [LB766]

CHUCK ROSENBERG: No, there is not, I mean...and that's why I think if we could look at this bill, something could be drawn up so that we are communicated with by law enforcement around the state, to make us aware. [LB766]

SENATOR ASHFORD: Well, I mean, it seems to me that might be an effective way of getting at some of the larger thefts. [LB766]

CHUCK ROSENBERG: Absolutely. [LB766]

SENATOR ASHFORD: Yeah. [LB766]

CHUCK ROSENBERG: Absolutely. Thanks. [LB766]

SENATOR ASHFORD: Thanks, Mr. Rosenberg. [LB766]

CHUCK ROSENBERG: Um-hum, yeah. [LB766]

SENATOR ASHFORD: Next? Next opponent. And I understand by opponents you're also willing to work on this, so you're sort of opponents, and kind of neutral opponents.

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Okay, go ahead. [LB766]

SHEILA JONES: My name is Sheila Jones, S-h-e-i-l-a J-o-n-e-s. I'm the owner of Scrap Central. It's a recycling center in Omaha. It's on 85th and Blondo. And currently, we comply to the letter with the city of Omaha's ordinance, which already requires us to fingerprint, to get ID, to list out on a card what we purchase, and it also lists out how much we pay for what we have purchased for it from an individual. Again, we're recyclers and we have a lot of people who come in and maybe they might only have five dollars' worth of metal to recycle. And I just can't make the connection between having to hold that metal that I've paid...and not being able to pay the person that is going to get the \$5.20 for three days. It...I mean, and then you would have people coming in and out of the offices. Okay, well, oh yeah, we have to remember that, oh, you were in here three days ago. Oh, we can pay you now. It's...it would just be onerous. And I also want to mention, Senator Ashford mentioned about helping with the police. The times that we have been able to be of assistance to the police department is, not from the police, but the person that has lost the material, they call us. They say, have you seen such-and-such? Would you be on the lookout for us? And immediately, we do. We watch for that. And there needs to be much better communication. It is not after the fact, it is not...we can't identify, or we can't distinguish between one person's bucket of copper and the other person's bucket of copper. I mean, it has changed its...it's not on a roll. I mean, we wouldn't buy something that came in on a roll. I mean, give us a break! I mean,... [LB766]

SENATOR ASHFORD: We haven't done anything yet, but...(Laughter) [LB766]

SHEILA JONES: ...we are not going to buy stolen material. [LB766]

SENATOR ASHFORD: Thanks, Mrs. Jones [LB766]

SHEILA JONES: Okay. [LB766]

SENATOR ASHFORD: And I am familiar with your business, by the way. Yes. [LB766]

SENATOR McDONALD: If you've taken unknowingly stolen material and law enforcement comes in and proves that that was stolen material, do you have to take that stolen material and give it back and then you're without money to recycle? [LB766]

SHEILA JONES: Absolutely. [LB766]

SENATOR McDONALD: How does that work? [LB766]

SHEILA JONES: That's why we don't knowingly buy stolen material, because if somebody comes to us and says, that's mine, well, we have bought it and... [LB766]

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SENATOR McDONALD: Spent the money to pay that person. [LB766]

SHEILA JONES: ...we've spent the money, and we can't get that money back. [LB766]

AUDIENCE: (Inaudible.) [LB766]

SHEILA JONES: Well, unless we ask the person for it back, which you know, that could be the case. But... [LB766]

SENATOR McDONALD: Thank you. [LB766]

SENATOR ASHFORD: Thanks, Mrs. Jones. We have...hate to tell you, five minutes left, so. [LB766]

STEVE ANDREWS: Chairman Ashford, committee, my name is Steve Andrews, it's S-t-e-v-e A-n-d-r-e-w-s. I'm with the Nebraska State Recycling Association. We've advocated for recycling for the 28 years. I've worked with many of these individuals on issues, scrap issues, in the past. One of the things I just want to note is that--and this was the case in Omaha, so--an ordinance was brought forward really without, you know, talking and discussing this with the individual companies that were actually in the business of buying scrap metal. In this case the same thing, I believe, has happened. When I look at solid waste issues across the country, a lot of states, when they're going to make a change such as this, they pull together a task force to look at it, sit down and discuss the issues, the variables that are involved in it, and they work together to find a solution. And I think that that could have been done in this case a little bit better, and as we've heard today, we could move forward in that same fashion. The other thing that I don't think has been brought up and hasn't been discussed is the fact that some of this material, because of the value of this material, can be transported across state lines, not only just into South Dakota or into Kansas, but this material can move much farther than that and be sold on the market. So just, you know, limiting the ordinance to Nebraska is probably not the best policy, and I think we've seen that with other product stewardship issues in the past. And there's a bill that Senator Preister has introduced on e-waste, and that's a product stewardship bill. And what we're finding is that most states are now developing bills that are very similar to each other, because they don't want to do what Mr. Ellis said, where I've got four different states and I've got four different policies that I've got to follow. It's just too difficult and stuff. So my recommendation would be to pull together, you know, this group of, you know, proponents and opponents and really sit down and look at this issue and create a solution, I think. So that's it. [LB766]

SENATOR ASHFORD: That's a good idea. Senator Pirsch. [LB766]

SENATOR PIRSCH: And I'm sorry I maybe didn't ask this question. I think you're right

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that you don't operate in a vacuum and that other states' policies are important as to whether or not our state policy would work. And I don't know if your experience is such, from a law enforcement perspective. I'm trying to get an idea, with respect to the facet of a 72-hour wait-before-you-pay policy, again I think that that wouldn't...I'm trying to get an idea of what your typical violation of this law entails. Does it involve...are these, you know, and I'm trying to get an empirical sense of that, or at least an anecdotal sense. Is your typical violator here somebody who is a well-organized thief who has it together and has the means to wait it out, or is your typical violator here a very, you know, a small-scale junkie or somebody who is so addicted that, you know, it's...the immediacy of the payout is an important facet to them? [LB766]

STEVE ANDREWS: I think it's both. I mean, when you look at some of these jobs, it's probably organized. [LB766]

SENATOR PIRSCH: Well, it's undoubtedly both. But you know, is it 80/20 or 60/40, 90/10? [LB766]

STEVE ANDREWS: You know, I haven't seen...yeah, I haven't seen statistics as far as that goes, and I don't know how you would, you know, really kind of track that and stuff. [LB766]

SENATOR PIRSCH: Because waiting 72 hours would hold little reward if, in fact, these are just thefts that are, you know, well-planned and organized and have the capacity to go to different states and do that. And so that's why I'm trying to get it, and that's why it would be a relevant consideration to look at. [LB766]

STEVE ANDREWS: My qualms with the 72 hour is that,... [LB766]

SENATOR PIRSCH: Yeah. [LB766]

STEVE ANDREWS: ...you know, I think people would be hesitant to wait 72 hours, so they might not even want to recycle the material. They'll just throw it away in the old traditional land disposal method. [LB766]

SENATOR PIRSCH: Yeah, yeah. [LB766]

STEVE ANDREWS: The other thing that bothers me or I have qualms about is if the value of this material dips, that at some point they won't even...they'll be like, you know, this isn't even worth doing, because the material isn't, you know, isn't worth waiting 72 hours for. So we have to be concerned with, you know, the structure of this. And again, you know, Alter Steel, a hundred-year-old company... [LB766]

SENATOR PIRSCH: Are you talking about... [LB766]

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STEVE ANDREWS: Chuck Rosenberg, they've been in business, you know. These companies have been around for a long time. This is not a new industry, and you just can't come in and shift an industry without really looking at it and doing it in a fashion that, you know, again, most industry now is saying the Toyota way. [LB766]

SENATOR PIRSCH: Yeah. [LB766]

STEVE ANDREWS: And when Toyota makes a change, it's real quick. When Toyota makes a change, they don't start at the top and say, this is a change for all of you at the bottom. They go from top to bottom, and bottom to top, and that's the task force and sitting down together, is why I think it's important. [LB766]

SENATOR PIRSCH: Sure. And I think you make a lot of great points, and those are understood. I guess I was just kind of hoping that maybe somebody would have a quick answer, and if it was, in fact, this junkie scenario is such a small factor, then maybe that could be quickly ruled out. But... [LB766]

STEVE ANDREWS: I don't know, but I will look for it. There is...you know, history might have Jonathan Levy, who has worked on this issue across the country, might have an answer. So I'll try to find that and forward that to you. [LB766]

SENATOR PIRSCH: Appreciate it. [LB766]

SENATOR ASHFORD: Thank you very much. [LB766]

STEVE ANDREWS: Um-hum. All right, thank you. [LB766]

SENATOR ASHFORD: I think that wraps it up. And do we have any neutral testifiers? Senator Cornett? [LB766]

SENATOR CORNETT: Thank you very much. The first thing that I would like to address is the question on methamphetamine use. We had a testifier that said that he didn't believe there was a correlation between it. If you look at one of your handouts from the...I just want to make sure I quote it correctly; it's the U.S. Department of Energy. Page 7: No geographic pattern appears in the reports of thefts, but there is a strong correlation between crystal methamphetamine drug abuse and reported metal thefts. Many different police departments have confirmed that typical copper theft is a methamphetamine drug user who is stealing for drug money. To address the 72-hour issue that has been brought up, we left the 72-hour hold in the bill at the request of the city of Lincoln, because that is what is in their ordinance. But with the language that we included in the amendment, which allows the cities to have stricter ordinance authority than the state statute, we are more than willing to amend that out of the bill. Where that

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originally came from was also the U.S. Department of Energy study that suggests when states are looking at legislation that one, they require holding periods before payment to be made. It is necessary for law enforcement to determine if the material offered for sale is stolen. Why they suggest the 72-hour waiting period is, a lot of these thefts occur in vacant homes, or homes under construction, or in remote power utility stations, and the thefts are not known right away. It may be a number of days even before people realize that they have been the victim of these thefts. In response to no other state having delays in payment, that is incorrect. There is proposed legislation in other states currently to offer that, Kansas being one of them. Arizona has enacted a delay in payment. But if you look at the amendment to the bill, that has been amended out of the current bill. Senator Ashford, you brought up a point and...that was it correct for us to put this responsibility on someone rather than law enforcement, and while I do not liken scrap metal dealers to pawnbrokers, and that is why we did not draft our copy of this bill to the pawn section, as was drafted by Senator Fulton, we do as a society require private businesses to take information in this regard. If you have cashed a large check at a bank recently, they will fingerprint you. They require state identification. If you do pawn an item, they require fingerprint and identification to do that. We are not asking them to be an arm of law enforcement but simply to do due diligence. We are more than happy to work with the scrap metal dealers on this bill, but I do feel this bill is very important this year, because of the increase in thefts, the amount of dollars that are being lost, and the potential for injury. But like I said, we are more than willing to sit down and work with the committee and with the scrap metal dealers on these points, but I do believe this is a bill that needs to come out of committee this year. Thank you. [LB766]

SENATOR ASHFORD: Okay. Thanks, Senator. And I hear a lot of common ground, actually, between... [LB766]

SENATOR CORNETT: There is quite a bit of common ground. [LB766]

SENATOR ASHFORD: ...and I certainly am not hearing the opponents opposed to some regulation here at all. And so it seems like there's a lot of common ground. I mean, we'll hold the bill for a couple of weeks, and... [LB766]

SENATOR CORNETT: I think the largest area of contention is the 72 hours, which again, we are more than willing to amend out. But the city of Lincoln does want to keep that in their ordinance authority. [LB766]

SENATOR ASHFORD: You know, we won't act on the bill, Senator Cornett, until you come to us, and I think it's a good idea to have everybody get together. But I think you've come a long way already. So thank you for your testimony and for your work. Thank you, and that concludes the hearing. Senator Hudkins, we're going to launch right into LB772. (laugh) without further adieu. Thanks. All right. Senator Hudkins, you

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have two bills? Let me see, are they similar enough where you'd like to introduce them both, or would you like to do them separately? It's a... [LB766]

SENATOR HUDKINS: Whatever you like.

SENATOR ASHFORD: Do them both.

SENATOR HUDKINS: Do them both?

SENATOR ASHFORD: All right.

SENATOR HUDKINS: All right, that's fine with me.

SENATOR ASHFORD: Let's do them both. (Laugh) LB772 and LB773 and Senator Hudkins will be introducing both bills at the same time. So those who wish to testify can testify on one or the other or both. So with that, proceed.

SENATOR HUDKINS: Okay. Thank you, Senator Ashford and members of the Judiciary Committee. For the record, I am Carol Hudkins, H-u-d-k-i-n-s, from District 21. And I'm here today to introduce for your consideration LB772. This bill is very straightforward in what it does. It transfers the costs of courtroom security from the counties to the state. Now in drafting the legislation, it seems that I might have made a slight technical error. The intent of the bill is to require the state to pay for all courtroom security, but because Lancaster, Sarpy, and Douglas Counties have separate juvenile facilities, this bill may not accomplish that intended goal. So if...no, rather when the committee sends this bill to the floor for discussion, I would ask you to also include an amendment that makes it clear that the security costs of the county court, district court, and the separate juvenile courts are all to be paid by the state. The bill as written is not as clear on that issue of the separate juvenile courts as I would like it to be. Sheriff Wagner, of Lancaster County, is here today to give you some insight as to the implication of this bill from his perspective as a sheriff who currently is obligated to provide this security. I thank you for your time and consideration on this matter. And then on LB773, I am still Carol Hudkins, H-u-d-k-i-n-s. And until the end of the year, I represent the 21st Legislative District. I'm here today to introduce LB773. This bill as written would allow counties who currently pay the costs of bailiffs for courtrooms to be placed in the classified system for purposes of establishing pay grades, pay raises and other advancement issues, as well as disciplinary actions. After some discussion with several interested parties, I would ask the committee to consider an amendment to the bill that would, instead of making bailiffs part of the county classified system, that instead you consider making bailiffs employees of the state. The bailiffs immediate supervisors, judges, are employees of the state. It would seem consistent then that the judge should be supervising a state employee not a county employee. The blending of state and county employees is burdensome and, to some people's way of thinking, probably not correct from a legal

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perspective since the supervisor of the state is not given the authority pursuant to law to supervise a county employee. Therefore, should you believe that LB773 has merit and should be considered by the entire Legislature, I would ask that you advance an amendment that would move bailiffs from being county employees to being state employees. I thank you for your time. And I would attempt to answer any questions. [LB772 LB773]

SENATOR ASHFORD: Yes, Senator Schimek. [LB772 LB773]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Hudkins, on LB772 there is a rather hefty fiscal note. And I need to make sure I understand. Right now there is security and it is being paid for by the counties, or there has never been security and we want to have it now, or the state used to pay for the security? Could you... [LB772 LB773]

SENATOR HUDKINS: Okay. To my way of understanding, and if I'm wrong I'm sure that Sheriff Wagner will correct me, counties do have security. Counties are paying for that. And referring to the fiscal note, you're right, it's pretty hefty. But some of those costs aren't really fairly included in here because the people that are already doing the security, they already have their uniform, unless there is new people, of course, they already have their metal detector wands, their weapons. If they are current employees they have already been psychologically tested, the training is already here, the ammunition, the holsters, and the bulletproof vests. Now, of course, ammunition, we hope, would not be a regularly incurred expense. But those supplies have already...are already in the hands of the current security people. So unless there would be new people, I don't believe all these expenses should be here. [LB772 LB773]

SENATOR SCHIMEK: Okay. But the main part of the expenses are the wages and benefits. That's... [LB772 LB773]

SENATOR HUDKINS: Yeah, well, that's right. And it is... [LB772 LB773]

SENATOR SCHIMEK: When you take all the rest of it, it's still a big bill. [LB772 LB773]

SENATOR HUDKINS: Yes, it's... [LB772 LB773]

SENATOR SCHIMEK: What I really am trying to get at, has the state ever paid for this security before or promised payment? I'm thinking of the county jail situation. [LB772 LB773]

SENATOR HUDKINS: Yeah. Well, no, they haven't [LB772 LB773]

SENATOR SCHIMEK: Okay. [LB772 LB773]

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SENATOR HUDKINS: And... [LB772 LB773]

SENATOR SCHIMEK: So it's really asking the state to come in and pick up the tab on a new... [LB772 LB773]

SENATOR HUDKINS: Yes, it is, it is. [LB772 LB773]

SENATOR SCHIMEK: Okay, that's all I need to know. [LB772 LB773]

SENATOR HUDKINS: And we're hearing that, well, this is too much, you know, \$7 million, \$8 million for the state to pay. Well, it's just as difficult for the 93 counties to pay, obviously not that much, but their share is very difficult for them to pay as well. [LB772 LB773]

SENATOR SCHIMEK: Okay, thank you. [LB772 LB773]

SENATOR PIRSCH: With respect to the fiscal note on LB773, it indicates here, it appears that this bill will not have a fiscal impact to the state? But aren't you transferring employees to the state? [LB772 LB773]

SENATOR HUDKINS: That is my intent. And you know what? I am not in charge of the fiscal notes, so if that is incorrect, take it up with them. [LB772 LB773]

SENATOR PIRSCH: Oh, no, no, I was just...I'm just kind of wondering about that. Okay, I do appreciate it. [LB772 LB773]

SENATOR ASHFORD: That's a good suggestion. (Laugh) Thanks, Senator Hudkins. Proponents? Sheriff. [LB772 LB773]

TERRY WAGNER: (Exhibit) Good afternoon, Senator Ashcroft (sic), members of the Judiciary Committee. My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I'm the sheriff of Lancaster County and the immediate past president of the Nebraska Sheriffs' Association. I passed out written testimony, so I'll just go over that very quickly and briefly. I'm here, obviously, to support LB772 that would transfer security costs for district and county courts in Nebraska to the state of Nebraska. As you may or may not be aware, the sheriffs are statutorily responsible for providing security to the courts in Nebraska. I think if you look at the statute, 23-1705, which was originally passed in 1879, it says that the sheriff shall attend upon the district court when it is in session, and that it's to provide to the county court, upon the judge's request. So I'll give you a real brief rundown of security in Lancaster County and then you can sort of gauge how this whole thing works. Right now we have 19 courts in Lancaster County between separate juvenile court, county court, district court, the district court referee, and we're able to

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provide security for those 19 courts in a variety of ways. We have ten deputy sheriffs, three civilian court officers, a couple sergeants and a captain to provide security for those courtrooms. And we've been able to do that by really juggling their schedules. We evaluate the cases that those courts are being...are hearing on a daily basis to determine and make a determination on their security requirements. Obviously, every court is not in session every day and every hour of every day, so we're able to juggle our personnel around to those various courtrooms. We also have a security checkpoint. When we remodeled that building, about ten years ago, in anticipation of the increased courtroom security we created a centralized entrance...point of entry with a security checkpoint, a metal detector, x-ray machine and those are staffed by civilians. On the second page of my testimony I just briefly let you know that the cost for the commissioned personnel, the 10 deputy sheriffs, 2 sergeants and a captain, is about \$1,055,000 and that's not including x-ray machines and some of the other incidentals. So with that, I'll wind up. My time is running out and I just wanted to provide that testimony. This is a mandated requirement upon sheriffs. It should be...I think it should be paid for by the state. A form of this bill was introduced a number of years ago. Senator Schimek, you may...were you on Judiciary then, you may remember it? I think Senator Chambers might. And I'm thinking the fiscal note then was about \$2.5 million, which would be reimbursement to the sheriffs. It was a few years back, but I do remember, you know, that and that \$2.5 million being the fiscal note at that time. So with that, I'll answer any questions the committee might have. [LB772 LB773]

SENATOR ASHFORD: Thanks, Terry. Any questions? Yes, Senator Lathrop. [LB772 LB773]

SENATOR LATHROP: If I can. So what we're talking about when we talk about courtroom security, you're talking about working the front door where you have the metal detector and then having sheriffs inside the courtroom, for example, at the time of an arraignment of a criminal in front of the district court? [LB772 LB773]

TERRY WAGNER: Correct. Now I didn't include the front door security and the costs that I quoted in my written testimony. Those are simply the deputies that are assigned to the courts on the floors. And I think the building security... [LB772 LB773]

SENATOR LATHROP: So you don't think that the guy that runs the metal detector is part of the district court security detail? [LB772 LB773]

TERRY WAGNER: Well, I didn't want to muddy the water, Senator. I think you could make the agreement that there are other agencies in our building besides the courts. [LB772 LB773]

SENATOR LATHROP: That benefit from it. [LB772 LB773]

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TERRY WAGNER: And they benefit from it as well. And so I didn't want to muddy the waters with our security checkpoint. But I would agree, yes it is, it enhances security. [LB772 LB773]

SENATOR LATHROP: I'm just wondering now, if we turn this over to the state and the state wanted to use rent-a-cops instead of county sheriffs, if it would be...I mean, is it really we'd like to have the money come and compensate the sheriffs, or if we turn it over to the state and let the state do it however they wanted to do it and they chose to do rent-a-cop as opposed to law enforcement officers, would you be okay with that? [LB772 LB773]

TERRY WAGNER: Probably not. [LB772 LB773]

SENATOR LATHROP: Okay. [LB772 LB773]

TERRY WAGNER: What we have done with our front security checkpoint is we hire retired law enforcement officers--the Lincoln police officers, university police officers or deputy sheriffs. They hold commission so they can be armed; they're certified. It's a part-time job for them and so it really is a very good fit for that kind of position. Now I know the U.S. Marshals, they contract with a private security company, and they hire certified law enforcement officers to provide security for the federal courthouse. So they do the same sort of thing a little differently. Thank you. [LB772 LB773]

SENATOR LATHROP: Okay. Thank you. [LB772 LB773]

SENATOR ASHFORD: Thanks, Terry. [LB772 LB773]

TERRY WAGNER: Thanks, appreciate it. [LB772 LB773]

SENATOR ASHFORD: Any other proponents? Do we have any opponents to this bill? One opponent. [LB772 LB773]

JANET WIECHELMAN: (Exhibit) Good afternoon, senators. I am Janet Wiechelman. Janet is spelled J-a-n-e-t. Wiechelman is W-i-e-c-h-e-l-m-a-n. I am the clerk of the district court in Cedar County and also the legislative liaison for the Clerk of District Court Association. I am here in support of LB772. The term security is a broad term when it is applied to the existing financial responsibility of the counties providing security for the district and county courtrooms, judges, and staff offices. The financial responsibility of the counties are detailed as follows: first of all, the sheriffs' offices are required to supply security for the district court and the county court when required by the county judge pursuant to Neb. Rev. Stat. 23-1705. There are times when the sheriff or his or her deputies are not able to be present during court hearings due to the lack of officers available or the lack of funds in which to pay for an officer for court hearings. At

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times the court is in session and an officer is not available which places the court, its staff and the public at risk. The clerks of the district court continue to work with the sheriffs' offices to provide a court schedule to enable them to plan their officers' work schedule. Secondly, the counties are providing many resources to enable the officers to secure and protect the judges, staff and public. Many counties are purchasing metal detectors to be placed at the entrances of the courthouses or the courtrooms. In order for this type of security to be effective, the sheriffs' offices must also make available the staff to monitor the metal detector and enforce the use of it. Further, counties are complying with the rule of the Nebraska Supreme Court to provide bullet proofing of the judges' bench and panic buttons. These extra security measures are given by the counties at a cost. Thirdly, several counties are being assertive in providing a safe working environment for the judges and staff by installing security windows in the clerks' offices, secured hallways and doors. All these efforts are given by the counties at a yet higher cost. As I have previously stated, the Clerk of District Court Association is in favor of LB772 due to the costs currently paid by the counties. If LB772 should pass, this will enable the court system to have an officer always present during a court hearing and also the means to protect the judges, staff and public. Thank for your time. Any questions? [LB772 LB773]

SENATOR ASHFORD: Any questions? [LB772 LB773]

SENATOR PIRSCH: Just briefly. So there are times now that you don't have an officer present in court simply because the county cannot afford it? [LB772 LB773]

JANET WIECHELMAN: In Cedar County, yes, that is the case, and other counties also. [LB772 LB773]

SENATOR PIRSCH: Cedar County, okay, thank you. Appreciate it. [LB772 LB773]

SENATOR ASHFORD: Thank you. [LB772 LB773]

JANET WIECHELMAN: Thank you. [LB772 LB773]

JON EDWARDS: Good afternoon. I'll be brief. I think the issues have been fairly well covered. I'm Jon Edwards, J-o-n E-d-w-a-r-d-s, with Nebraska Association of County Officials and we are here in support of this bill today. And with that, I'll not take any more of your time. [LB772 LB773]

SENATOR ASHFORD: Thanks, Jon. Any questions? Thank you. Janet. The opponents, opponent. [LB772 LB773]

JANET WALKER: The opponent. Good afternoon, Senator Ashford, members of the committee. I'm here to testify, I'm sorry to say, in opposition to LB772. Court security is

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a very big issue. It's an issue of great concern nationally and here in Nebraska as well. And so I certainly do commend Senator Hudkins for her interest in this. It is something we really do need to grapple with. The current situation in Nebraska courthouses ranges from what sheriff Wagner has described, with a security entrance at the front door that everyone goes through, to many courthouses where there is no security whatever. I believe that the solution to this problem, however, is more than simple security in the courtrooms while the judges are in them. And while that is a statutory duty of the sheriffs' now, I think that as we look at court security we need to be broader than that. We have, as you've heard, court employees, clerks offices, public corridors. Our court employees work with a lot of litigants who are not in a good frame of mind always, there are highly emotional situations. We have probation officers and probation staff in our courthouses, also our employees who work with individuals who may have a history of violence. The Supreme Court does have rules regarding security. Not all courthouses, I would vouch to say not many courthouses in the state are in compliance with our guidelines. I do believe that a comprehensive approach to courthouses and court security is needed. But this is going to have to involve a lot of the stakeholders, that's going to be the counties, definitely they are very big stakeholders in this, as well as law enforcement, probation, judges. I think we need to look more broadly. My time is nearly up, but I was going to comment on Senator Hudkins LB773, if I may. You were asking about the fiscal note, Senator Pirsch. And until Senator Hudkins spoke earlier, I didn't know that her intention was to make bailiffs state employees. And yes that will have a fiscal impact. I presume that is going to be included in an amendment, and we'll certainly have to amend our fiscal note. We didn't...weren't aware of that. Questions? [LB772 LB773]

SENATOR ASHFORD: Janet, could you just give your name for the record. I interrupted you and so you weren't able to... [LB772 LB773]

JANET WALKER: Oh. Well, I apologize. Janet Walker, I'm the State Court Administrator. [LB772 LB773]

SENATOR ASHFORD: Janet, could I ask you a question on the bailiff issue? That does make some sense, doesn't it, that the bailiffs would... [LB772 LB773]

JANET WALKER: If bailiffs were state employees? There's...yes, that would make some sense. Currently, in the district court, let me say that only the district judges and the court reporters are state... [LB772 LB773]

SENATOR ASHFORD: Right. [LB772 LB773]

JANET WALKER: ...employees, employees of the Supreme Court. The bailiffs, the clerks of the district court, all of the clerks... [LB772 LB773]

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SENATOR ASHFORD: Right. [LB772 LB773]

JANET WALKER: ...employees. [LB772 LB773]

SENATOR ASHFORD: But the bailiffs, the bailiffs are in a bit of a unique position. They report to the... [LB772 LB773]

JANET WALKER: ...to the judge. [LB772 LB773]

SENATOR ASHFORD: ...judge. [LB772 LB773]

JANET WALKER: Um-hum. [LB772 LB773]

SENATOR ASHFORD: And they...the judge is the responsible party, I believe, for that employee, even though that employee is not a state employee. [LB772 LB773]

JANET WALKER: That is correct. And I can't really tell you how many of the district judges right now have bailiffs, certainly, the judges in Omaha and Lincoln, I believe Sarpy County. There are a couple of counties that I'm aware of where the judge has a bailiff that the counties split the cost between them and the bailiff travels. But as you get outstate, most of the district judges have no staff other than the court reporter. [LB772 LB773]

SENATOR ASHFORD: Right, right. And...okay. It has always been something that, to me, seems... [LB772 LB773]

JANET WALKER: It is rather peculiar. [LB772 LB773]

SENATOR ASHFORD: ...peculiar and illogical. [LB772 LB773]

JANET WALKER: Yes. [LB772 LB773]

SENATOR ASHFORD: But, thanks, Janet. I believe that's it. Senator Hudkins. [LB772 LB773]

SENATOR HUDKINS: Very briefly, Senator Ashford, on four...excuse LB772, the first bill, Mrs. Walker obviously was opposed. And, I guess, I would say that these costs would not necessarily have to be within the Supreme Court's budget. Perhaps they could be reimbursements back to the counties. But neither would I want to get into the same situation that we have with the juvenile court people that are costing more than the state is willing to pay back. And to, Senator Pirsch, that was explained to you. And I would...after I finished, I realized I sounded a little flip, and I didn't mean to do that. The green copy had no fiscal note. But with the amendment with...by moving the bailiffs from

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being county employees to state employees, yes, then there would be a fiscal note. And that would be catching up to the bill at the appropriate time. [LB772 LB773]

SENATOR PIRSCH: Thank you. [LB772 LB773]

SENATOR ASHFORD: Right, and that's in the amendment, and that's why it wasn't... [LB772 LB773]

SENATOR HUDKINS: Yes. [LB772 LB773]

SENATOR ASHFORD: Right. And that's...thank you, Senator Hudkins. [LB772 LB773]

SENATOR HUDKINS: Thank you. [LB772 LB773]

SENATOR ASHFORD: That concludes the hearing on LB773 and LB774, I'm sorry, LB773 and LB772. Senator Wightman, LB774. Good afternoon. [LB772 LB773]

SENATOR WIGHTMAN: Good afternoon. Chairman Ashford and members of the Judiciary Committee, I'm John Wightman. I represent the 36th District. I do also have LB775, and I don't know if it would be permissible, but I present both of them or introduce both of them while I'm here? [LB774]

SENATOR ASHFORD: That would fine, if you'd like to do that. [LB774]

SENATOR WIGHTMAN: During the 2007 session, I had introduced a bill, LB682, which got attached to another bill that I think was Senator Flood's bill, and so it was adopted to provide that incarceration would no longer be considered a voluntary reduction of monthly income of a parent for purposes of computing child support. Accordingly, after months of incarceration someone who is incarcerated could request a reduction of child support. And I think that's six months. County attorneys were concerned that the law was not clear as to their duties to take affirmative action to commence the proceedings to adjust the child support. And the law itself did not provide that they had that duty, but they felt that they might have that duty under the act. LB774 would make it clear that neither the attorney for the Department of Health and Human Services nor the county attorney has an affirmative duty to file an application to reduce child support. We think that that will clarify the situation that the person requesting the modification of child support would have to take some affirmative action to have that done, probably through their own personal attorney. That having been said, I think some situations have arisen since the passage of LB682, or it wasn't LB682 but the contents of LB682, that led me to believe that there may need to be some more legislation, but I'm not sure this is the place to do it. But I will discuss briefly that issue with you. My attention was called to the fact that somebody was placed on parole, got out of the penitentiary, I think they're given a small amount to live on until they find a job. I think in this instance it might have

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been \$100, but it was something like that. He goes out, within a day or two he rents a motel room. Within a day or two he's picked up, hauled into court, I think in Lancaster County, but I'm not sure what county it was. He was represented by counsel and I think the judge sentenced him to jail for 30 days, which I think that situation may need to be addressed because if we are concerned about recidivism I don't know anything that is more likely to lead to recidivism than someone immediately being jailed, when he gets out, for back child support. [LB774]

SENATOR ASHFORD: And they were...the circumstances were that that individual was picked up for violation of a support order, was that... [LB774]

SENATOR WIGHTMAN: That was my understanding,... [LB774]

SENATOR ASHFORD: Okay. [LB774]

SENATOR WIGHTMAN: ...that he was picked up for that, that there was a warrant out waiting for him. And I'm not sure you could avoid the... [LB774]

SENATOR ASHFORD: Yeah. [LB774]

SENATOR WIGHTMAN: ...apprehension of him for that. [LB774]

SENATOR ASHFORD: Yeah, right. [LB774]

SENATOR WIGHTMAN: But perhaps there could be some legislation that would direct or at least suggest strongly to a judge that they would not, under those circumstances, jail them without some order to purge the contempt order. [LB774]

SENATOR ASHFORD: Well, it does seem incongruous. [LB774]

SENATOR WIGHTMAN: Right. [LB774]

SENATOR ASHFORD: It seems incongruous. [LB774]

SENATOR WIGHTMAN: Yeah. [LB774]

SENATOR ASHFORD: Okay. [LB774]

SENATOR WIGHTMAN: That is all I have on this. I will go immediately into LB775. Not knowing if you were going to grant me permission, I didn't handle that very well. [LB774 LB775]

SENATOR ASHFORD: It's at your discretion. We'd certainly welcome you to do it, if you

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like. So... [LB774 LB775]

SENATOR WIGHTMAN: I would just as soon. It probably will speed up your day a little. So...LB775, I'll state for the record for this bill I am John Wightman again, representing District 36. Current law requires the deputy clerks of the district court be residents of the county in which they serve. There is obvious reason for the clerk of the district court to be a resident, because they're elected within the district. Although I assume there are maybe some small counties, much smaller than Dawson County, that that's a problem in. As you will hear from following testimony, a clerk of the district court cannot advance a qualified and experienced county employee to the position of deputy clerk if they are not a resident of the county. Many county employees, especially in rural Nebraska, live on farms or in small towns near the county seat, but sometimes outside the county line, and yet here is an experienced employee who may have worked in that office, and I think you'll hear from at least one testifier who that's exactly the case, and has worked there for more than ten years, but she lives out of the county, and she may not be able to advance to that position unless there is a change in the law. LB775 simply removes the requirement that the deputy clerks of the district court be residents of the same county that they are serving in. I'll try to answer any questions you may have. [LB774 LB775]

SENATOR ASHFORD: And that's not a requirement of other employees. [LB774 LB775]

SENATOR WIGHTMAN: No, and I think a lot of the deputies do not have to be. [LB774 LB775]

SENATOR ASHFORD: Right. [LB774 LB775]

SENATOR WIGHTMAN: But the clerk of the district happens to be one that maybe fell through the cracks. [LB774 LB775]

SENATOR ASHFORD: Okay. Senator McDonald. [LB774 LB775]

SENATOR McDONALD: Do you know why that was put in, in the statute? [LB774 LB775]

SENATOR WIGHTMAN: Well, I think there were a lot of them that were maybe put in and some of those got changed by some...and I'm not certain of this, but I think some of them got changed and this one got left out. But...and I suppose it's to protect...to try to make people residents of the county. But we have a much more mobile society probably than when this was passed. [LB774 LB775]

SENATOR ASHFORD: Sounds good. Any other questions? Thanks, Senator

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Wightman. How many proponents do we have? And I'd ask on both bills and you...two, three. Okay. How many opponents? Any opponents? And you can come up and talk on either bill, if you like. So just tell us which one you're talking about. Just give us your name. [LB774 LB775]

SHERRY WARNER: (Exhibit) My name is Sherry Warner, S-h-e-r-r-y W-a-r-n-e-r, and I'm the clerk of the district court in Dawson County, Nebraska. I have come today to support LB775. The only office to stipulate that the deputy clerk must be a resident of said county is the office of the clerk of the district court. I believe the law to be antiquated and it has created a situation in my office. Until the recent election, I had served as deputy clerk for the last 17 years. The only logical person to assume the duties of the deputy is a staff member who has been in the office for the last 10 years and has recently relocated to a neighboring county. She has superior knowledge of the statewide computer system, has all the skills I would demand of the deputy, and would be able to fill in for me in an instant if the need was apparent. This amendment will clear the way for me to appoint this clerk as my deputy and will eliminate the need for me to hire additional personnel. Senators, I appreciate your time today and urge you to consider passing this amendment. Thank you. [LB774 LB775]

SENATOR ASHFORD: Thank you. Sherry...and questions of Sherry? Thank you, Sherry. [LB774 LB775]

SHERRY WARNER: Thank you. [LB774 LB775]

JANET WIECHELMAN: (Exhibit) I'm here on LB775. Good afternoon again, senators. I am Janet Wiechelman. Janet is spelled J-a-n-e-t, Wiechelman is W-i-e-c-h-e-l-m-a-n. I am the clerk of the district court in Cedar County and also legislative liaison for the Clerk of the District Court Association. I am here in support of LB775. This legislative bill was filed on our behalf. The purpose of this bill is to change the requirement that a deputy of the clerk of the district court be a resident of the county in which he or she performs duties of the clerk of the district court. There are rural counties that are limited in appointing a deputy as there is not a qualified pool of individuals within their county. Further, other counties employ individuals who are exceptionally qualified to be appointed deputy, however, they do reside in another county. It has always been the objective of the clerks of the district court to appoint deputies who are qualified, skilled in their duties and competent to serve the public. Currently, all other elected county officials are able to appoint individuals as deputies and those individuals are not required to reside within the county as per the statutes. The only requirement to the appointment of a deputy of other county officials is that deputy is not a certain other county official. The passage of this legislative bill will allow the clerks of the district court to appoint deputies in the same manner as other elected county officials. Thank you for your time. Any questions? [LB774 LB775]

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SENATOR ASHFORD: Any questions? [LB774 LB775]

JANET WIECHELMAN: Thank you. [LB774 LB775]

SENATOR ASHFORD: Thanks, Janet. [LB774 LB775]

WENDY ELSTON: Hello. My name is Wendy Elston, W-e-n-d-y E-l-s-t-o-n. I'm the Seward County Attorney and I'm representing the Nebraska County Attorney's Association in support of LB774. LB774 puts the responsibility on the party seeking the modification. The incarcerated individual gets the benefit and has the best access to the information surrounding their incarceration, specifically the time that they are incarcerated, when they are going to be paroled, and if they're going to be on any sort of work release. Also, LB774 allows for Health and Human Services, the authorized attorney, and the county attorneys to focus their resources on the children whose parents have the ability to support them, otherwise resources and court time is actually spent modifying child support downward, without much benefit to the child. Does anybody... [LB774 LB775]

SENATOR ASHFORD: Thanks, Wendy. Any questions? Yes. [LB774 LB775]

SENATOR PIRSCH: I just have some kind of general...so you're testifying on LB774, is that correct? [LB774 LB775]

WENDY ELSTON: Yes. [LB774 LB775]

SENATOR PIRSCH: And I take it you're in favor of the amendment which would allow...which would not require the county attorneys then to file to have the modifications made to the child support payments rather, but leave the burden on the incarcerated individual? Is that correct? [LB774 LB775]

WENDY ELSTON: That is correct. [LB774 LB775]

SENATOR PIRSCH: Okay. Okay. I do appreciate that. I was wondering if you just, in terms of more generalized questions about the bill, that bill, because it was...went through last year, correct? Do you know, there are certain exceptions that are written into the bill where you're not allowed to have a modification of your child support. Among those, if I understand, the reason why you're in jail is because you didn't pay your child support. Is that correct? [LB774 LB775]

WENDY ELSTON: That would be the exception under...they have...they define incarcerated individual, they have...if you are...they define it as a voluntary reduction of your income. And they are saying that if you are incarcerated for over a year, you are...it's not considered a voluntary reduction, which then would allow you to have a

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modification. If you are incarcerated for nonpayment of child support, then that, according to the current law, does not...that is not included in a voluntary reduction income. [LB774 LB775]

SENATOR PIRSCH: Is that the total list of exemptions, so to speak, or exceptions that will preclude you from...as an inmate from having your modification or just the...are there other situations in which the reason why you're in jail is because you victimized the very child from whom you're seeking relief from payment for? For instance, sexual assault of a child in which the child was the child you're paying support to, would that be an instance where you would be still allowed by the law to enjoy the benefits of a reduction, even though the person...that the child in question is the one who you victimized and were sent to jail for? [LB774 LB775]

WENDY ELSTON: Yes, it would be. The only exception that I read in the law was just that you're incarcerated for nonsupport of that child or a child. [LB774 LB775]

SENATOR PIRSCH: Okay, that's the only question I have. [LB774 LB774]

SENATOR ASHFORD: Thanks, Wendy. Anyone else? [LB774 LB775]

JON EDWARDS: For the record again, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm with the Nebraska Association of County Officials. We are here to go on record in support of LB775. And I think the issue has been covered, so I won't take anymore of your time. [LB774 LB775]

SENATOR ASHFORD: Thank you, Jon. Thanks. I believe...is there anyone else here on these bills? Senator Wightman, would you like to close or are you... [LB774 LB775]

SENATOR WIGHTMAN: I'll waive closing. [LB774 LB775]

SENATOR ASHFORD: Waive closing. All right. Our last bill, but not the least of importance, Senator Burling. [LB774 LB775]

SENATOR BURLING: Good afternoon, Senator Ashford and members of the Judiciary Committee. [LB804]

SENATOR ASHFORD: Good afternoon. [LB804]

SENATOR BURLING: Thank you for your time and consideration. My name is Carroll Burling, B-u-r-l-i-n-g. I represent District 33 in the Nebraska Legislature. I'm here today to introduce LB804. This is not, I don't believe, a complicated bill, but it might be controversial. So we'll see. [LB804]

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SENATOR ASHFORD: If it's in our committee, Senator Burling, there's a good chance that it's controversial. (Laugh) [LB804]

SENATOR BURLING: Okay. I was asked to bring this issue before the committee by a constituent. And currently, case law says that jurors cannot take notes at a trial unless counsel from both sides agree to allow such activity. LB804 would allow jurors, in both criminal and civil deliberations, to take notes during trial to refer to during deliberations. These notes are to be confidential between the jurors. When the trial is over the notes shall be destroyed immediately upon the verdict...return of the verdict. I believe that allowing jurors to take notes serves justice much better than forcing jurors to rely on memory when they are doing their deliberations. Thank you for your time. I'll try to answer any questions, but I know there are people behind me that are more knowledgeable on this subject than I am. [LB804]

SENATOR ASHFORD: It is an interesting topic, Senator Burling, and I appreciate you bringing it to us. Yes, Pete, did you have a question? [LB804]

SENATOR PIRSCH: No, I'm sorry. [LB804]

SENATOR ASHFORD: Okay. Thanks, Senator. [LB804]

SENATOR BURLING: Thank you. [LB804]

SENATOR ASHFORD: Proponents? [LB804]

BOB PARKER: (Exhibit) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Bob Parker. I'm an attorney from Hastings and I am one of Senator Burling's constituents. This is something that's near and dear to me and something that I approached Senator Burling about and he graciously agreed to introduce this bill for me. A little history on myself. I graduated from law school here in 1989, and I went to work for the Hall County Attorneys Office as a prosecutor for a year and a half. And in May of '91, I went to Hastings and began a private practice with my partner, Les Seiler. I came there in May of '91 thinking some day I would be back in Omaha or Lincoln, but 17 or 18 years later my...me and my family are still there. I primarily practice in civil litigation and criminal defense. Over that period of time that I've been in Hastings, I've probably tried 20, in excess of 20 civil jury trials, many of those jury trials lasting a week or more. And as Senator Burling mentioned, there was a State v. Kipf case, it's a 1990 case out of Supreme Court, that dictates juror note-taking. And I'm sure many of you that are attorneys on this committee are already familiar with it. But as we know, the current status of our law is that unless both parties agree, a jury cannot take notes. My experience has been typically the defendant is one that's more reluctant to agree to note-taking because of the theory, in my opinion, of recency and primacy. You go through a week-long trial, the plaintiff is the one who goes first, they go

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for two or three days, the defendant goes for two or three days, and we humans tend to remember the things we heard most recently. I think it's very important that jurors are allowed to take notes. I want everybody here to know that I don't represent anybody, I just think that this is a bill that's in the furtherance of justice and I think it would better serve our judicial system. I had the opportunity to visit just this morning. Of course, we lawyers don't tend to get around to things sometimes as quickly as we should. But I visited with a federal judge that I have a great deal of respect for. All nine federal judges and magistrates have in excess of 20 years as I understand it, allow jurors to take notes in federal court. The judge that I spoke with, and I won't mention by name, thought it was an obvious thing that jurors should be allowed to take notes. I've done a little research. Colorado has a statute, Iowa, Louisiana, and Illinois that allow it--juror note-taking. And I've given you all what the federal judge actually cited me to today. And out of all of that, there's only one page of real relevance, and I've tabbed it for all of you. But he steered me to this ABA "American Jury Project" on the principles for juries and jury trials. In the preamble, on the second page, it refers to the 19 principles that the American Bar Association defines as their fundamental aspirations for the management of the jury system. Principle 13 is, the court and the parties should vigorously promote juror understanding of the facts in the law. Under A, under Principle 13, jurors should be allowed to take notes during the trial. Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes during the trial. In the trials that I have had, we have days of trial, we have dozens of witnesses, we have complicated facts, numbers, calculations. And we're asking these people to make very weighty decisions. And I'll summarize now, but I have a 12-year-old son who is in sixth grade. And when something is really important and he has a really important class I say, son, make sure you take good notes because there is going to be a quiz. You know, in a murder case, after a week or two weeks of trial, the quiz is, is this person guilty or not guilty? And how do you expect those people to hear all that testimony and all those witnesses and rely purely on memory? As this federal judge referred to, our memories are not tape recorders. So... [LB804]

SENATOR ASHFORD: Does your sixth... [LB804]

BOB PARKER: Pardon me? [LB804]

SENATOR ASHFORD: Does your sixth grader take notes? [LB804]

BOB PARKER: Yes. (Laughter) He's the good student. We won't talk about the third grader. (Laughter) [LB804]

SENATOR ASHFORD: He's on his way then. So that's good advice. [LB804]

BOB PARKER: But I appreciate your consideration of this. And as I said, I'm not being paid by anybody. And I drove out here from Hastings today. And I thank Senator Burling

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for introducing the bill. Quite frankly, I didn't know about the case law here six or eight months ago. When I realized that, I said, I'd like to see legislation that allowed jurors to take notes and... [LB804]

SENATOR ASHFORD: Well, you are well represented in Hastings. Any questions? [LB804]

SENATOR PIRSCH: Just a couple of quick ones. And, I guess, the...is the only policy...I'm surmising, I don't know, and so I guess I'm asking. Is the only policy reason underlying this current prohibition is that the belief that should you allow for notes and one juror take them and the other doesn't, and you get back in the deliberating rooms and that somehow then the deference will be given to the juror who's taken notes such that they'll rely on the manner in which he's written, and perhaps, you know, he had written the substance of how he interpreted it, but it might have been not exactly related in that way? Is that the underlying rationale behind the prohibition or are there other reasons, as you understand it, for policy reasons for the current prohibition which you don't agree with? [LB804]

BOB PARKER: Those are good points, Senator. And I didn't get to the oppositions arguments. One is distraction of jurors, that they think they would be distracted. My reply to that is I've seen juries, after the OK Cafe hot beef sandwich at lunch, snoozing off on me in the afternoon. And I think juror note-taking would cause them, hopefully, to be more stimulated and that is pay more attention. I mean, their minds wander, they're full of carbohydrates, and I see them nodding off in the middle of the afternoon. That's one of them, distraction. Your point is the best juror taking notes dominates. Well, we always have a fore person on a jury. There are always dominant personalities in every dynamic. And there's going to be somebody that probably takes notes better than the other person. But I... [LB804]

SENATOR PIRSCH: Sure. And I just want to say, that's not my point. I just...I guess it's a question. [LB804]

BOB PARKER: That is some of the case history. [LB804]

SENATOR PIRSCH: Yeah. I know, I'm just asking a question. [LB804]

BOB PARKER: And some of the other history is this federal judge that I talked to, back in the thirties and forties, when we didn't allow juror note-taking, we had a number of illiterate jurors. And they felt like there was an unfair advantage to having an illiterate juror that couldn't take notes. A lot of those things have been eliminated. I think we've all come along in the last 60 or 70 years to learn to take notes. And I guarantee all of you have taken notes today. And whenever something is important to us, we always make sure we take a note so that we can remember it. [LB804]

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SENATOR PIRSCH: Yeah. The second question, then I'll be quiet, but is it...I think you bring up really a valid point about refreshing recollections, that just the nature of people's remembrance, the primacy, recency arguments, is it...would it be worthwhile, in your estimation, to look at having an actual transcript of the proceedings to go into...and I don't know if that's realistically... [LB804]

BOB PARKER: It won't...it can't happen, legally. The law, you know, our laws have said they cannot have a transcript of the proceedings. I don't...I can't cite you a case, but I can tell you that a jury, they've come back in the middle of the trial and asked for a transcript of the proceedings, and they cannot be provided with a transcript of the proceedings, that's case law. [LB804]

SENATOR PIRSCH: Sure. And we can't change or mandate that. [LB804]

BOB PARKER: We can't change that. And I don't think we can change...one other example I was going to make to you, if you'll allow me, Mr. Chairman, speaking of defense and plaintiff, I do both sides. I've represented insurance companies and I've represented plaintiffs. And I feel like in the last 20 cases I've tried, I've tried a mix of both defendant and plaintiff's cases. A month ago, two months ago, down in Clay County I had a case, won't go into the details. But I was defending. There were a lot of numbers involved, a lot of cattle involved, a lot of money involved. And on the day of trial, plaintiff's counsel walked up to me and said, I think this would be a good case for the jurors to take notes. And I said, I do too, but I'm not going to agree. Why? Because I didn't want the jury to remember all those numbers. So what's happening now is it's a strategic or tactical advantage, I believe. And the lawyers aren't going to agree to it unless it works to their advantage. There I didn't agree to it because I thought it would work to my disadvantage. Had there been a legislative enactment, I wouldn't have had any choice. And I think it would have been better, quite frankly, for the jurors to take notes in that case, but I can be self-centered and make that decision the way the current law is. I thank you all for your time. [LB804]

SENATOR ASHFORD: Great. Thanks, Bob. [LB804]

BOB PARKER: Thank you very much. Appreciate it. [LB804]

SENATOR ASHFORD: Appreciate it. Anybody...any other proponents? How many proponents do we have? [LB804]

JOHN LINDSAY: Mr. Chairman, members of the Judiciary Committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. I...as I was reading bills the other night, I guess a week ago or so, came across this bill. I read it, I marked it up for our Trial

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Lawyers Legislative Committee figuring it was just something they would want to watch. But when I brought it up at our Trial Lawyers Legislative Committee, on Friday, it sparked a discussion about jury notes, Senator Pirsch, and some of the issues you were bringing up and about what the policy ought to be. And it came to a unanimous decision that we ought to allow the jurors decide whether they want to take notes for some of the reasons that Mr. Parker already mentioned. It becomes a strategic decision, which doesn't necessarily go along with what the policy ought to be, which is finding the truth. And it seems that the party that has the most to lose from jurors remembering is the party that will object, and that's all it takes to keep the notes out of the jury box. As has been mentioned, this has been going on in federal court for years. I know of at least one federal judge actually puts...has the tablets of paper and pencils put out there for the jurors, offering that convenience to the jurors if that's the way jurors can remember things, how they want to proceed. Some of these trials that we deal with can go on for two or three weeks. And I sit back, in the back of this room, and take notes because I can't remember what happened two or three hours ago. And yet we expect jurors to go back that far back and remember some really complicated stuff. We think it just makes sense. It's not our bill, and hopefully it's not the death knoll of the bill. But it is something that we think, just from a trial practice standpoint, just makes sense. And with that, I'd be happy to answer any questions. [LB804]

SENATOR ASHFORD: Neutral might have been safer. (Laughter) Thank you. Any questions of John? Thank you. Good afternoon. [LB804]

JAN GRADWOHL: (Exhibit) Good afternoon, Senator Ashford, members of the committee. My name is Jan Gradwohl. I'm a retired judge of the County Court of Lancaster County. And I'm appearing before you today in support of LB804 because I have a very firm belief that jurors become much more capable jurors if they are allowed to take notes. In considering LB804 you should realize that this is not a far-out concept, a new concept. Juror note-taking is routinely permitted in the federal courts, it's been called attention to, and in most of the trial courts of other states. I come with a little background in this. One of the previous witnesses read from the "National Jury Standards" and the conclusions of the "National Jury Standards Task Force." I happened to serve on that task force and so I'm very familiar with both its research and its conclusions. We started in 1980, so this was some time ago, investigating what it took to make a more viable jury system. And one of the strong conclusions was that juror note-taking was not only advisable but really should be compelled or at least the ability to allow jurors to take notes should be compelled. The results of the task force study were the American Bar Association Jury Standards, which were adopted in 1983. They were revised and reaffirmed in 1994. I also, for ten years, served as chair of the Jury Standards Committee of the Judicial Administration Section of the ABA. And part of the function of that committee was to urge jurisdictions to adopt laws or procedures that would permit juror note-taking. I also, as a trial judge, until the case of State v. Kipf, which happened to be out of my court, allowed jurors to take notes, whether there was

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objection from counsel or not. Of course, I was overruled by the Supreme Court (laugh), but nevertheless, I felt that it was a wise practice. And in addition, I'm one of the few Nebraska judges who has served as a juror in federal court, and realized the wonderful benefit that it gives to you. There simply is not a good reason not to allow jurors to take notes. I have noted that I think every one of you has picked up a pen at some time during the procedure this afternoon to remind yourselves of certain testimony that you might like. It is logical then, if we're going to trust jurors to make the awesome decisions that they have to make, it's logical then to let them do what people in any other walk of life do, to give jurors the tools that they need to make a fair and equitable decision. And so it just seems to me that it is a natural conclusion that Nebraska should not be one of the few states in the country that does not permit jurors to take notes in every case in which the judge feels that it's appropriate. I see that I have a warning light. I have circulated some materials that actually examine both the objections to this and the answers that are given to combat or to argue for allowing juror note-taking. I'd be happy to answer any questions that any of you have. [LB804]

SENATOR ASHFORD: Yes. [LB804]

SENATOR PIRSCH: Just clarification. You said in most states now, the majority of states you can do it, too? [LB804]

JAN GRADWOHL: Yes, yes. [LB804]

SENATOR PIRSCH: Okay, thank you. [LB804]

SENATOR ASHFORD: Well, Judge, thank you for your incredible service to our state. And I must say as an aside that my years I spent with John on then the Court of Industrial Relations were the most stimulating years, I think, I've ever spent in government. So... [LB804]

JAN GRADWOHL: Well, I hope that equally I have stimulated your thought today. [LB804]

SENATOR ASHFORD: Well, please say hello. Thank you very much. [LB804]

JAN GRADWOHL: Thank you. [LB804]

SENATOR ASHFORD: Opponents? Are you...you're bill...okay, two. [LB804]

JAMES SNOWDEN: Senator Ashford, members of the committee, my name is Jim Snowden. I'm a trial lawyer here in Lincoln, Nebraska. I just found out about this bill about 10:30 this morning and felt like I wanted to come over and speak in opposition to it. I'm not here representing anybody or being paid by anybody. I certainly have the

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greatest respect for Judge Gradwohl and those people that advocate juror note-taking. I just have a different point of view in my experience. I think there are some valid reasons for opposing juror note-taking. And I guess I should say I'm not against your taking notes or I came here with notes, I'm not against notes in general, but I think juror note-taking is a little bit of different proposition. One of the things that we want from jurors is their undivided attention. We want them to be observing the demeanor of the witnesses and sometimes how they say something and their body language and their expressions are just as important as what they actually say. My experience is in federal courts where notes have been taken, in talking with the bailiffs and asking the bailiffs, are the jurors taking a lot of notes? The response I get is that 90 percent of the jurors just don't take notes, period. There are just a few of the jurors that actually take notes. Now in every jury trial...in every trial of any kind we have a note-taker, we have a certified court reporter that's getting paid a lot of money to...or maybe not a lot of money in their opinion, to take down accurately, with complete...as completely as possible everything that has been said. The jurors, if they want to find out anything that they don't remember, can go to the judge and ask for testimony to be repeated. The difference is that you have the intervention of the judge and the lawyers at that point. The judge has to go to the lawyers and say, is this something that we want to emphasize, let the jurors hear again, or is it something that was prejudicial or something that shouldn't be emphasized. So we have the inner position of a judge and the lawyers at that point. And that's one of the reasons, I think, we don't let the jury have all the evidence. It's a little bit counter intuitive to say that we won't let jurors have depositions in the jury room, which we don't. If a deposition is taken, it is read to the jury, it's marked as an exhibit, but the deposition doesn't go to the jury, just the oral testimony that they've heard is. It's counter intuitive to say that you cannot have the deposition...the testimony of this important witness in written form in the jury room, but we'll let you take some inaccurate notes about what might have been said and take those back to the jury room with you. And I think it actually does, in a lot of instances, unduly empower certain jurors who for whatever reasons are particularly good at taking notes. They become a little intimidating to the other people who don't have those skills. And it can have, I think, a little bit of a chilling effect on those people who might want to speak up and participate in the process but feel a little intimidated by the person who's been taking down all these notes and who's going to feel challenged as to their voracity if you take them on on what they were saying. I recognize the red light. [LB804]

SENATOR ASHFORD: That is all right. Thanks, Jim. Thanks for your testimony. Any questions? Yes, Senator. [LB804]

SENATOR LATHROP: Can I ask just a couple questions of Jim? In federal court, where they do allow the note-taking, don't they get an instruction? Isn't there an instruction as they...towards the end of the instructions, where they give them some kind of a...the guy who took the notes isn't necessarily the person in charge, or... [LB804]

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JAMES SNOWDEN: You know, I honestly don't remember that, Senator. There could be, but I just don't remember. [LB804]

SENATOR LATHROP: I seem to remember it. Maybe I'm...my memory is foggy on that. The other point, I guess, is if somebody is going to take down an inaccurate note, all it is is a reflection of how they perceived the testimony in the first instance, isn't it? [LB804]

JAMES SNOWDEN: It is and it's accurate to say that they may inaccurately remember the testimony. The problem is that the written word in the jury room, based on oral testimony, emphasizes that. And just like we don't let an expert report go to the jury over an objection, why would we let jurors write down the testimony of their favorite witness and give that with the emphasis that it carries to the rest of the jurors? There's a sort of a leveling effect of making everybody listen, everybody rely on everybody else on the jury to try to remember what was done. [LB804]

SENATOR LATHROP: Okay. I appreciate your remarks. Thank you. [LB804]

JAMES SNOWDEN: Sure. Thank you. [LB804]

SENATOR ASHFORD: Jim, thanks for spending the time to come up here. We appreciate it. Bill, are you neutral? [LB804]

WILLIAM MUELLER: I'm not neutral. [LB804]

SENATOR ASHFORD: Oh. [LB804]

WILLIAM MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today as the lobbyist for the Nebraska State Bar Association in opposition to LB804. Our bar committee met last Friday and had a discussion very similar to the discussion that you've had here today. And at the end of our discussion the vote of our committee was to oppose this. Having said that, Mr. Parker is an officer in the bar association and sit on our Executive Council. So my guess is he will make an effort to change the position of the bar. We are still in the process of establishing our positions. [LB804]

SENATOR ASHFORD: So that one is under review? [LB804]

WILLIAM MUELLER: Well, they're all under review until the House of Delegates meets next week. [LB804]

SENATOR ASHFORD: Oh. [LB804]

WILLIAM MUELLER: Thanks to committee counsel, Ms. Trout, who supplied me the

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two recent cases in Nebraska on this, one being State v. Kipf, K-i-p-f. And Judge Gradwohl did indicate that she was the trial court judge in that. That was interesting having the judge testifying on a case that I'm going to cite to. In 1993, our court, in Paro, P-a-r-o, v. Farm and Ranch Fertilizer, did adopt a rule in Nebraska that jurors are permitted to take notes if the parties agree. And the court, in writing as to why it was concluding this, did actually cite the ABA standards recommending jury note-taking. They cited an article from Judge Urbom. In 1982, Judge Urbom allowed note-taking of jurors for as long as I've been in practice. And our Supreme Court basically recited the argument that you've heard here today, and that is that courts that forbid the practice do so on the grounds that a note-taking juror may emphasize to himself or herself and perhaps other jurors some aspect of the case and neglect other aspects; that an unskilled note-taker is likely to miss what is said; and that a note-taking juror is apt to divert the attention of other jurors and be perceived as being more alert than non-note-takers and thus regarded as more informed than others. It is true, of course, that trial attorneys and judges routinely take notes as aids to memory, but lay jurors lack the legal training which enables attorneys and judges to distinguish between the legally relevant and irrelevant, and many jurors lack the note-taking skills which develop with practice. Moreover, trial attorneys and judges have a greater degree of control over the speed with which the adduction of evidence proceeds than an individual juror would ordinarily possess, and thus are less likely to be distracted by the note-taking process than are jurors. We are not persuaded that juror note-taking is such an aid to the search for truth that a party ought to be compelled to submit to the practice. Neither can there be two trial records. [LB804]

SENATOR ASHFORD: So is that the Supreme Court or is that the group last week? [LB804]

WILLIAM MUELLER: That is our Nebraska (laugh) Supreme Court. [LB804]

SENATOR ASHFORD: Oh, okay, I was just. (Laughter) [LB804]

WILLIAM MUELLER: I'd be happy to answer questions you may have. An interesting issue. It's very interesting. [LB804]

SENATOR ASHFORD: It is. I mean, the instructions...Senator Lathrop has asked a very good question. I mean, it seems to me we instruct the jury on a lot of issues that...where there could be confusion, where there could be some misinterpretation if there was not an instruction. But I...you know, I understand your point. But...okay. Senator Lathrop. [LB804]

SENATOR LATHROP: I just got a question about my bar association. [LB804]

WILLIAM MUELLER: Our bar association. [LB804]

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SENATOR LATHROP: (Laugh) Our bar association. We have lawyers here that are for this, the Nebraska Association of Trial Attorneys, all of whom are members of the state bar, think it's a great idea. How is it that you come in, in opposition? [LB804]

WILLIAM MUELLER: At the time that we met, I believe that the trial lawyers committee was meeting at the same time, and we didn't know where they would come out on this. We have plaintiff's lawyers, who are primarily members of the trial lawyers, on our committee. And we had a very spirited discussion. [LB804]

SENATOR LATHROP: But just as a...just so that I know, because you come in here and testify on a lot of different things. I'm surprised you're not neutral if you...because my take on the state bar is they never take a position, if they don't have everybody along. (Laughter) [LB804]

WILLIAM MUELLER: Well, Senator, we are...we are... [LB804]

SENATOR LATHROP: Well, I'm not... [LB804]

SENATOR ASHFORD: I think that's a touche'. (Laughter) Maybe... [LB804]

SENATOR LATHROP: No, no, no, no, no. It's not...and I'm not taking sides. [LB804]

WILLIAM MUELLER: I think it is. And here we are testifying in...no. I mean,... [LB804]

SENATOR LATHROP: No, I'm not taking sides, but you testify a lot for the state bar. And I also carry bills for the state bar, which I'm happy to do. But I'm wondering, I always thought you guys stayed out of the middle of things, unless you could get everybody to agree to it. [LB804]

WILLIAM MUELLER: And I don't know that you can get every lawyer in the state to agree to anything. But generally, when we are establishing our policy, one of the things that we consider is, is there consensus among the bar on an issue? One of the challenges with being here today in the middle of our process is we've had one meeting where we've talking about this. [LB804]

SENATOR LATHROP: Okay. That question wasn't meant to embarrass you or the bar. It was... [LB804]

WILLIAM MUELLER: Oh, I've heard it before. (Laugh) [LB804]

SENATOR LATHROP: Okay. [LB804]

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WILLIAM MUELLER: Thank you. [LB804]

SENATOR ASHFORD: Thank you, Bill. [LB804]

WILLIAM MUELLER: If our position does change, I will advise the committee of that. And it very well may change. [LB804]

SENATOR ASHFORD: Good...or fine. (Laughter) [LB804]

WILLIAM MUELLER: Or it may not. [LB804]

SENATOR ASHFORD: Excuse me, Jim, I wasn't... [LB804]

WILLIAM MUELLER: Yeah. Mr. Snowden is also a member of our association. [LB804]

SENATOR ASHFORD: I know he is, and he's a good member. [LB804]

WILLIAM MUELLER: A good lawyer. [LB804]

SENATOR ASHFORD: Thank you. [LB804]

WILLIAM MUELLER: Thank you. [LB804]

SENATOR ASHFORD: Any other testifiers? Senator Burling. [LB804]

SENATOR BURLING: Thank you, committee, for your time. I think it was Senator Pirsch reminded us, we're all different and some people might take notes and some not. And is that something we want to happen? And I would just suggest that also goes, some of us have better memories than others and that's the way we're operating now is on memory. You folks know that in this business we're in, as state senators, we receive tons of information. Everything is handed around to us and we have all of this access to information. I still take notes every day on something that I want to remember. If I want to remember, I make a note of it. And so that's why I introduced the bill and I ask you to advance it to General File. [LB804]

SENATOR ASHFORD: Thanks, Senator Burling, very much for your time. [LB804]

SENATOR BURLING: Thank you. [LB804]

SENATOR ASHFORD: Thank you all. That concludes the hearings. Thank you all for staying. [LB804]

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Transcriber's Office

Judiciary Committee
January 23, 2008

Disposition of Bills:

LB766 - Advanced to General File, as amended.

LB772 - Held in committee.

LB773 - Held in committee.

LB774 - Advanced to General File.

LB775 - Advanced to General File.

LB804 - Advanced to General File.

Chairperson

Committee Clerk